

Continuous Disclosure

Practice Note 6

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The purpose of this Practice Note

This practice note is designed to assist entities and their advisers in complying with their obligations under Listing Rules Sections IIA, IIB and IIC, Rules 6.4, 6.5 and 6.5A in relation to continuous disclosure.

The main points

1. Importance of the Continuous Disclosure Rule
 2. Continuous Disclosure Practice
 3. Who does the Rule Apply to?
 4. What the Rule Requires?
 5. Disclosure Must be Made to the Exchange First
 6. Are there Any Exceptions to the Disclosure Rule?
 7. What if you Fail to Disclose?
 8. Information Already Generally Available
 9. Market Rumours
 10. Prospectus and Other Earnings Forecasts
 11. JORC Reporting
 12. Issuers in Financial Difficulty
 13. Expectations for Responses to Queries From the Exchange
 14. Requests for Extensions to Respond
 15. Publication of Responses
 16. Request for Further Information
 17. Referrals to ASIC
 18. Appendix 1 – Sanctions for Breaches
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Related materials

- NSX Listing Rules
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Guidance

The NSX issues practice notes to promote commercial certainty, reduce costs to business and assist market participants, and we are available to discuss any questions you have in relation to a practice note.

NSX may replace practice notes at any time. Issuers should contact NSX to ensure that they have the latest version of a practice note. As a practice note is only a guide to NSX practice, Issuers are advised to contact NSX to discuss their particular circumstances and the application of the listing rules. NSX cannot give legal advice to Issuers and recommends that they consider taking advice from a qualified professional person.



Section 1 – Importance of the Continuous Disclosure rule

1. The primary focus of the rule is to ensure that the market is conducted in a fair, orderly and transparent manner and that the integrity of the market is maintained at all times.
2. The continuous disclosure rule is given legislative support by Chapter 6CA – Continuous Disclosure, especially section 674 of the Corporations Act, which imposes, in specified circumstances, a statutory liability on the Issuer to disclose specified events or matters.
3. The Exchange is responsible monitoring and enforcing compliance with the continuous disclosure requirements as per the Listing Rules. ASIC has responsibility for enforcing Chapter 6CA of the Corporations Act. Where the Exchange considers there to be a suspected breach of continuous disclosure requirements set out in the Listing Rules or suspects that there has been a serious breach of Chapter 6CA of the Corporations Act, the Exchange may refer the breach to ASIC for further investigation.
4. The legislation binds the listed Issuer to the Listing Rules.

Section 2 – Continuous Disclosure practice

1. Listing Rule 6.4 is expressed in broad principles and must be followed in accordance with the broad spirit of continuous disclosure (as required by the Corporations Act and as would be expected by a reasonable person) and must not be construed in a restrictive or legalistic way.
2. By taking a broad perspective, the integrity of the market is enhanced.

Section 3 – Who does the rule apply to?

1. The rule applies to an Issuer. An Issuer is defined by the Listing Rules and means the legal entity which issues the securities which are listed and tradeable and has been admitted to the Official List of the Exchange.
2. The Issuer¹ is still bound by continuous disclosure even though its securities may be suspended from trading.

Section 4 – What the rules require?

1. Listing Rule 6.4 requires that generally, and apart from compliance with all the specific requirements of Chapter 6 of the Listing Rules – Ongoing Obligations, an Issuer is to keep the Exchange informed without delay, for dissemination, of any information relating to the group of which it is aware that:

¹ Note that an Issuer is admitted to the Official List. The securities that it issues are admitted to quotation for trading purposes.



- a) is necessary to enable the Exchange and the public to appraise the financial position of the issuer and the group;
 - b) is necessary to avoid the establishment of a false market in its securities; or
 - c) a reasonable person would expect to have a material effect on the price or value of its securities.
2. This information is known as “Market Sensitive Information”. Examples of information that may be considered market sensitive are:
- a) A transaction that will lead to a significant change in activities (LR 6.41);
 - b) A deposit discovery (LR 6.13 – JORC);
 - c) Acquisition or disposal of a material portion of the business;
 - d) Granting or withdrawal of a material licence or right;
 - e) Material legal action against the Issuer or legal action the Issuer is undertaking against a third party;
 - f) Changes in the forecast of earnings provided by the Issuer;
 - g) The Issuer moves into liquidation, administrator receivership;
 - h) Breach of covenants on loans or contractual relationships with a financier; and
 - i) Notices of intention or receiving a takeover bid, merger or acquisition.
3. The above list is a guide and is not an exhaustive list of the types of events that could trigger an immediate continuous disclosure announcement.
4. The term “material” is defined by the Australian Accounting Standards in relation to the value of assets of the business and material also relates to the possible impact on the price of the Issuer’s securities.
5. There is also an obligation on the Issuer to report not only favourable but unfavourable information to the market even if the information to be reported may be detrimental to the prospects of the Issuer or the price of its securities.
6. The Issuer is obligated to comply even if it is a party to agreements that might otherwise require the Issuer to maintain confidentiality of the terms of an agreement.
7. The Issuer may be a party to incomplete transactions or agreements and the Issuer is obligated to determine and release appropriate information once these transactions or agreements have reached a stage whereby a reasonable person would expect that the information would be released (LR 6.5).

Section 5 – Disclosure must be made to the Exchange first

1. Listing Rule 6.4 requires the information to be made available to the Exchange before the time at which any other public announcement of the information is made.



2. An acknowledgement of receipt of the information will be provided to the Issuer once the Exchange receives the information. A further receipt will be sent to the Issuer once the announcement has been released to the market and the Issuer is then free to provide the information to others.

Section 6 – Are there any exceptions to the Continuous Disclosure rule?

1. Listing Rule 6.5 does not require information to be disclosed where:
 - a) a reasonable person would not expect information to be disclosed;
 - b) information is confidential; and
 - c) at least one of the following applies:
 - i. it would be a breach of the law to disclose the information;
 - ii. the information concerns an incomplete proposal or negotiation;
 - iii. the information comprises matters of supposition or is insufficiently definite to warrant disclosure;
 - iv. the information is generated for the internal management purposes of the Issuer; or
 - v. the information is a trade secret.
2. In considering the response to a query from the Exchange, the Issuer can consider the above factors as well as the context of previous announcements that have been released, both in themselves and taken as a whole when viewed with other information that is available; the circumstances faced by the Issuer at the time of the enquiry; and other external events, either domestic or global in nature, that may have an impact on disclosing the information to the market.
3. The Exchange expects the officers of an Issuer to carefully consider the above exceptions to the continuous disclosure requirements before making a response to the market.

Section 7 – What if you fail to disclose?

1. Listing Rule 6.4 states that these provisions will be breached by an Issuer who intentionally, recklessly or negligently fails to notify the Exchange of information that:
 - a) is not generally available; and
 - b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of its securities.
2. In these circumstances, the Exchange will refer the potential breach of the rule to the Compliance Committee for possible disciplinary action, which may entail censure or a fine, and to ASIC for further investigation. The Exchange will also consider the timeliness of such disclosure if the Issuer has become aware of the information but has delayed in releasing that information.
3. The Issuer should have processes in place so that the nominated contact officer of the Issuer (which can be the Nominated Adviser) is able to canvass relevant officers, including executives and directors, who can provide the required information to allow the timely formation of a response to the Exchange.



4. Issuers should be aware that ASIC has issued infringement notices for breaches of section 674(2) where market sensitive information has been withheld from the market for as short as 60 and 90 minutes and a trading halt has not been requested to cater for the delay.

Responses to a proven Breach by a Listed Issuer or its Directors

5. Once a breach is proven, the Compliance Committee will refer to the objective seriousness and mitigating factors when formulating a sanction response to the breach. **Appendix 1** lists the various rules and sanctions available to the Compliance Committee concerning a breach.
6. The following table outlines the escalation path for imposition of the remedies depending on the seriousness of the breach.

Type of Breach	Mitigating or observed behaviours and circumstances	Possible Sanction
Minor		
<ul style="list-style-type: none"> • Failure to notify of business address change • Failure to notify of change of officers in a timely manner • Minor periodic disclosure breaches that do not involve Corporations Act breaches 	<ul style="list-style-type: none"> • Disciplinary history; • Minor nature of contravention; • Self-reported; • Isolated occurrence; • Unintentional, inadvertent or accidental; • No damage or loss to a third party; • Immediate and voluntary action taken to remedy breach; and • Reasonable reliance on professional advice. 	<p>None, but consider remedial sanctions including, but not limited to:</p> <ul style="list-style-type: none"> • Request by NSX to remedy breach immediately; and/or • Notification to ASIC.
Serious		
<ul style="list-style-type: none"> • Failure to notify of change of business name • Failure to notify of change of share registry • Failure to lodge financial reports • Periodic disclosure breaches 	<ul style="list-style-type: none"> • Disciplinary history; • Repeat contravention; • Systematic non-compliance; • Negligence; • Failure to rectify in a timely manner; • Conduct has brought the market into disrepute; and • Potential damage or loss to a third party. 	<p>Consider remedial sanctions including, but not limited to:</p> <ul style="list-style-type: none"> • Trading Halt, Censure, Suspension or fine or all of the above until matter is remedied; and/or • Notification to ASIC.
Very Serious		
<ul style="list-style-type: none"> • Serious breaches of the Corporations Act • Continuous disclosure breaches 	<ul style="list-style-type: none"> • Systematic non-compliance; • Concealment of non-compliance; • Intentional or deliberate actions; • Fraud and deception; and • Loss or damage to third party. 	<p>Consider remedial sanctions including but not limited to:</p> <ul style="list-style-type: none"> • Suspension from trading, Censure or fine or all of the above until the matter is remedied; and/or • Notification to ASIC



Section 8 – Information already generally available

1. If material information about an Issuer has become generally available from another source, the Exchange still requires the Issuer to comply with Listing Rule 6.4.
2. This ensures that such information has an authoritative source and can be distributed to the entire market through the Exchange's information distribution mechanisms.

Section 9 – Market rumours

1. If it becomes apparent there are market rumours about an Issuer, for example, of a potential takeover or significant transaction or deposit discovery, an Issuer needs to decide whether it is required to disclose information under Listing Rule 6.4 or take other action.
2. The fact that an Issuer is in no way responsible for a market rumour or would otherwise be entitled to rely upon an exception in Listing Rule 6.4 is irrelevant.
3. If this situation arises, an Issuer should discuss it immediately with the Exchange to determine whether an announcement should be made to the market or a trading halt should be imposed until the Issuer is in a position to make a more detailed announcement.

Section 10 – Prospectus and earnings forecasts

1. The Exchange does not require an Issuer to make earnings forecasts.
2. However, Issuers may wish to make forecasts of financial performance in a prospectuses or at other times. Such forecasting gives rise to an obligation to ensure that the forecast information remains accurate and is updated by the Issuer over time and variations to the forecast are released to the market as soon as possible.
3. Thus, if an Issuer believes actual performance will materially vary from the forecast, it is obliged to make immediate disclosure pursuant to Listing Rule 6.4.
4. The Exchange acknowledges that precise information may not be known or knowable by the Issuer when it becomes aware that it will not meet forecasts. In such cases, the Issuer may provide a range of revised forecast outcomes.
5. An Issuer must not delay the release of revised forecasts until the release of periodic disclosures. Revised forecasts should be accompanied by an explanation of why a variance is expected. An Issuer may decide that it is unable to provide meaningful revised forecasts. In such circumstances, the Issuer should provide the market with disclosure explaining why existing forecasts will not be met and why revised forecasts cannot be provided.



Section 11 – JORC reporting

1. Rule 6.13 requires Issuers that are in the exploration industries to comply with the JORC² standard.
2. The Exchange, in the past, has applied JORC 1999 and 2004 editions and currently applies the 2012 standard which can be referenced in Practice Note #3: Australasian Code for Reporting of Mineral Resources and Ore Reserves.
3. Reporting under the JORC standard obligates an Issuer to report on a continuous disclosure basis much like the report of changes in financial performance and forecast earnings that may have been released by the Issuer.
4. A forward-looking statement, an exploration or production target must have a reasonable basis in fact or it may be considered to be misleading. If these forward-looking statements change in a material way, up or down, the Issuer will have an obligation to inform the market.

Section 12 – Issuers in financial difficulty

1. The Exchange views key data to monitor an Issuer's financial status. This can range from Quarterly reports, Net Tangible Asset reports, Half Year and Annual reports.
2. The Exchange may consider that an Issuer is in financial difficulty if it does not pay its Exchange fees as they fall due or requests time payments for fees. In these cases, the Exchange will discuss with the Issuer its obligations concerning solvency as per Listing Rule 6.54.
3. The fact that an Issuer may be approaching financial difficulty or may have information to release to the market that may be of a financially detrimental nature, does not absolve the Issuer of its responsibilities to inform the market on a continuous disclosure basis. Investors need to know the precise financial state of the Issuer in order to be in a position to review their investment or potential investment in the Issuer.
4. Issuers also need to consider, earlier rather than later, their various capital raising and financing options.

Section 13 – Expectations for responses to queries from the Exchange

Expectations for content of responses

1. If there is no information to release, the Issuer should be clear and concise about this. If there is information to release, the Issuer should request a trading halt immediately and release clear information concerning the market sensitive information.

² More information on JORC can be found from their website at: www.jorc.org.



Immediate Trading Halts

2. Trading Halts are a mechanism that can be employed by either the Issuer or the Exchange to manage the release of information to the market in an orderly manner. Trading Halts are only applied while the market is open for trading.
3. The Exchange expects that if the Issuer is uncertain as to whether there is information to release following a price query, then a trading halt should be requested.
4. If the Issuer becomes aware that it is in possession of market sensitive information as per Rule 6.4, in the absence of a price query, the Issuer should, if it is able, release the information immediately. If it is unable to release the information, the Issuer should request a trading halt to allow the Issuer sufficient time to complete its investigations, verify the information or to allow time for market information to become certain.
5. Issuers should note that in a Trading Halt or Suspension, the Exchange's Listing Rules apply in all other respects and the Issuer is obligated to continue complying with the Rules.

Timeliness for responses

6. When making enquiries of Issuers, the Exchange expects that the Issuer will respond immediately if it is aware that the information is market sensitive. In any case, the Issuer should lodge information immediately with the exchange as soon as it becomes aware that the information is market sensitive.
7. Under all circumstances, "immediately" is defined as "prompt and without delay", rather than "instantaneously".

Persistence of unexplained price movements

8. Where the Exchange detects that unexplained price movements continue to be exhibited on the market, the Exchange will repeat its requests for disclosure by the Issuer. The Issuer should then consider requesting a trading halt so that it is able to make further reaching enquiries of directors, staff and its share registry to determine the reasons for the price movements.
9. In this circumstance, the Exchange may continue to formally request the Issuer explain the price movements even if these movements are over several days and even if this requires the Exchange to issue multiple query letters over those days.
10. If the Issuer is unable to release the market sensitive information to the market, the Issuer should release an interim announcement to the market explaining the facts and continue with the trading halt. After 3 business days, the Exchange may grant a further continuance of the trading halt or impose further trading halts, as is deemed necessary.
11. If, after this extension, the information is still not available for release, the Exchange may impose a suspension on the Issuer or the Issuer may request a suspension of its securities. A suspension of the securities means that the current orders of the Issuer are purged from the trading system, so that when the information is released and the Issuer's securities are available once again for trading, the market is able to establish new orders and market price based on the new information.

Format of responses

12. All responses to the Exchange should be in a format suitable for release to the market. That is, they should be written, on company letter head. All responses must be sent back to the NSX officer by email and not lodged onto the announcements platform.



Section 14 – Requests for extensions to respond

1. The Exchange cannot entertain requests for extensions to respond. The Issuer must follow the below procedure in the case where it must have further time to respond:
 - a) Immediately and unequivocally request a trading halt of all of its listed securities;
 - b) Compile the relevant information; and
 - c) Release that information to the market.
2. In the case where an Issuer needs to speak with the Exchange for clarification, the Issuer should immediately request a trading halt in its securities, rather than allow its securities to continue to trade with a potentially uninformed market.

Section 15 – Publication of responses

1. Issuers are advised that the Exchange will publish a copy of a formal query sent to the Issuer along with the formal response by the Issuer on the Exchange Company Announcements Platform.

Section 16 – Request for further information

1. The Exchange may request further information from the Issuer to clarify the Issuer's response or, if the Exchange is in receipt of conflicting information, seek clarification to reconcile this information.
2. The Exchange will not lift the trading halt or suspension until a suitable response has been released to the market.

Section 17 – Referrals to ASIC

1. If the Exchange suspects that the Issuer or anyone else has significantly breached the Listing Rules or the Corporations Act, the Exchange is required under the Corporations Act, section 792B(2)(c), to refer the breach to ASIC.
2. The purpose of the referral is so ASIC can consider what action, if any, ASIC may wish to take in relation to the suspected breach.

Section 18 – Further Information

For further information, please contact

National Stock Exchange of Australia Limited
Email: trading@nsx.com.au



Appendix 1 – Sanctions for breaches

Suspension

Under section 2.18 of the Listing Rules, the Exchange may at any time suspend trading in any securities or cancel the listing of any securities in such circumstances and subject to such conditions as it thinks fit, whether requested by the issuer or not. The Exchange may do so where:

- a) an issuer fails, in a manner which the Exchange considers material, to comply with the Listing Rules or its Issuer's Undertaking, including a failure to pay any fees or levies due to the Exchange on time;
- b) the Exchange considers there are insufficient securities of the issuer in the hands of the public;
- c) the Exchange considers that the Issuer does not have a sufficient level of operations or sufficient assets to warrant the continued listing of its securities on the Exchange; or
- d) the Exchange considers that the Issuer or its business is no longer suitable for listing.

Censure

Under section 2.23 of the Listing Rules the Exchange may respond to a breach of the rules by:

- a) censuring the issuer; and
- b) publish the fact that the issuer has been censured; and
- c) publish the reason for the censure, if in the Exchange's opinion it is appropriate.

Where the NSX considers that a contravention of these Listing Rules and/or the Corporations Act by an Issuer is due to a failure by all or any of its directors to discharge their responsibilities, it may do one or more of the following:

- a) censure the relevant director;
- b) publish the fact that the director(s) has been censured;
- c) state publicly that, in its opinion, the retention of office by the director is prejudicial to the interests of investors; and
- d) if the director remains in office following a public censure by the Exchange under paragraph (3) above, suspend trading in or cancel the listing of the issuer's securities or any class of securities.

Fine

Under section 2.23 (4) the Exchange may impose fines on the Issuer, with the maximum fine not to exceed \$25,000 per offence (excluding costs and taxes).