



Disclosure and the role of ASIC

ASX and ASIC Listed Companies Conference



ASIC

Australian Securities &
Investments Commission

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Importance of disclosure

- Market integrity is a core asset of a capital market
- 3 elements to integrity
 - transparency: access to company information
 - transparency: access to market information
 - fairness: equal access to trading opportunities

Rumourtrage

- Talking down a stock to profit from a short selling strategy
- Making false statements, knowingly or recklessly, is illegal
- Market manipulation is illegal
- ASIC is actively pursuing allegations of rumourtrage, by inspections and investigations
- ASIC will use all its powers to enforce compliance, including banning of financial advisers

ASIC's role

- To supervise the market and (with ASX) to monitor/enforce compliance with the Act
- To provide guidance to the market on ASIC's approach to regulation, by
 - Regulatory Guides
 - Media and other public pronouncements of Commissioners and senior staff to stakeholders
 - Our interaction with regulated entities

Disclosure

Benefits of disclosure

- Assist efficient price discovery in the market
- Encourage greater securities research by investors and advisers, which ensures that securities more closely, and quickly, reflect underlying economic values
- Ensure equity and loan resources in the Australian market are more effectively channeled into appropriate investments, and funds are withheld or withdrawn from poorly performing disclosing entities
- Lessen the possible distorting effects of rumours on securities prices

Disclosure

Benefits of disclosure

- Assist investors in deciding whether to buy, sell, or hold securities, including the prospect of a switch to alternative securities
- Minimise the opportunities for insider trading or similar market abuses
- Improve managerial performance and accountability by giving the market more timely indicators of performance
- Reduce the time and costs when preparing prospectuses

The disclosure continuum

- The IPO disclosure documents
- Annual directors reports
- Financial accounts – annual and half year
- Significant transaction materials for shareholder approval
- Takeover documents
- Continuous disclosure announcements
- Substantial shareholding disclosure
- Director's interests notification

Continuous disclosure

Key elements of the disclosure regime

- Disclosure of price sensitive information to the market in a timely fashion
- Announcements must not be false, misleading or deceptive
- Announcements must be clear, accurate and complete

Announcements

Content requirements

1. Clear: information contained in a market release or announcement should be factual and expressed in an objective and clear manner. The use of emotive or intemperate language should be avoided. Puffery should be avoided.

Example: reserves as big as the XYZ field.

Announcements

Content requirements

2. Complete: it should not be necessary to refer to other documents to locate the price sensitive information. The document should be able to be read as a standalone

Example: our announcement of 7 July is still correct as at that date

Announcements

Content requirements

3. Accurate: entities should disclose information that is factually correct, easily understandable, and gives due prominence to positive and negative information

Don't bury the bad news

Announcements, not advertising

- Announcements are to inform investors of new information that is important, not simply for promotional purposes (ASIC Report 83: *Small mid-cap miners study, 2006*)
- Announcements must not be misleading or deceptive (s1041H)

Disclosure issues in a volatile market

- Market is very sensitive to any news
- Be alive to “rumours”
- Be vigilant to maintain confidentiality and monitor for loss of confidentiality

Disclosure issues in a stressed economy

- Forecasts
 - sales outlook
 - cost of debt
 - currency volatility
- Significant accounting issues and judgements
 - fair value and impairment of assets
 - going concern questions
- Availability of credit

Continuous disclosure

Disclosure of contracts

- Signing of new contracts can be price sensitive and must be announced immediately
- The fact terms are confidential is not an excuse – negotiate the terms of announcement into the agreement
- Don't try and “time” signing by leaving one comma open for final negotiation. The fact there is substantial agreement may be announceable
- An escrow agreement for a full agreement may be announceable

ASIC remedies

1. Private caution

- Stern discussion

2. Yellow card

- Public outing – “not happy Jan” – Directors say their reputation paramount

3. Enforceable Undertaking

- Multiplex Group - \$32 million compensation fund

4. Infringement penalty

- \$33,000 - for an entity with market cap less than \$100 million.
- \$66,000 – for an entity with market cap greater than \$100 million, but less than \$1000 million.
- \$100,000 – for an entity with market cap greater than \$1000 million.

ASIC remedies

5. Civil

- Pecuniary penalties of up to \$200,000 for a person or \$1 million for a company
- Compensation order
- Banning of directors and managers

6. Criminal

- Person is liable for a maximum penalty of \$22,000 and/or imprisonment for 5 years
- An entity is liable for a maximum penalty of \$110,000

Civil “class action” litigation

7. The big unknown



Dealing with ASIC on disclosure

- The ASX “anything to disclose” and “first aware” letters
- Informal requests from ASIC
- Voluntary provision of information and supporting materials
- Legal professional privilege issues