

ASX and ASIC Listed Companies Conference

Continuous disclosure hypotheticals

Facilitator: Eric Mayne
Chief Supervision Officer

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Panel members (Melbourne)



- **Facilitator:**
- Eric Mayne, Chief Supervision Officer, ASX
- **Panel Members:**
- **ASIC:** John Price, Senior Executive Leader, Corporations
- **ASX:** James Gerraty, Manager, Issuers, Melbourne
- **AICD:** Susan Oliver, Fellow
- **CSA:** Michaela Healy, Member Legislative Review Committee
- **AIRA:** Ian Matheson, Chief Executive Officer

Case study 1: financial results (Groquick)

- Groquick Ltd has delivered 10% pa increase in profit each year for the last 5 years. This year the result is announced, mid morning on a trading day, and profit is down by 12% on previous year. There has been no warning of this variation in result. After results are released, Groquick's share price falls by 15% .

Case study 1: financial results (Groquick), cont'd



- ASX (James Gerraty) – what is your response
- ASIC (John Price) – what is your involvement if any at this stage?
- CSA (Michaela Healy) – what is the company secretary's role here?
- AICD (Susan Oliver) – what is your reaction to these events?
- AIRA (Ian Matheson) – what does the IR person do at this point?

Case study 1: financial results (Groquick), cont'd



- ASX contacts the company and then sends an “aware” letter on day of results for reply by next day noting that correspondence will be published upon receipt of reply.
- Groquick response indicates that company only became aware the day before the results were released, when auditors required an unexpected write down.
- The letter and the response are released to the market the next day.
- ASX Issuers refers Groquick to ASIC for potential breach of listing rule 3.1

Case study 1: financial results (Groquick), cont'd



Comments:

- ASX (James Gerraty) – why did ASX send an “aware letter”
- ASIC (John Price) – what are ASIC’s steps at this point?
- CSA (Michaela Healy) – what is the company secretary’s role in responding to ASX
- AICD (Susan Oliver) – what is the Chair’s role in responding to ASX
- AIRA (Ian Matheson) – what is the investor relations role in responding to ASX

Case study 1: financial results (Groquick), cont'd



- What should Groquick have done?
 - At first indication that results would be lower, consider whether announcement is necessary and whether trading halt required
 - Take steps to ensure that at time of announcement a range or percentage is given – not “results will vary significantly” (Paragraphs 93-95 of GN 8)
 - If necessary expedite results announcement process
 - Not release results during market hours

Case study 1: financial results (Groquick), cont'd



- The day after results, an appendix 3Y is released to the market showing a director of the company traded 20 days before the announcement of results.

Case study 1: financial results (Groquick), cont'd



Comments:

- ASX (James Gerraty) – what does ASX do with late director trading notifications?
- ASIC (John Price) – what does ASIC do in relation to director notification of trading?
- CSA (Michaela Healy) – what is the company secretary's role in relation to notification of director trading?
- AICD (Susan Oliver) – what should Chair have done in this situation?
- AIRA (Ian Matheson) – what role does investor relations play here?

Case study 1: financial results (Groquick), cont'd



- ASX sends letter regarding Appendix 3Y on the day after the results asking for explanation of breach of listing rule 3.19A. The letter and the response are released to the market.
- ASX refers the matter to ASIC for potential breach of s205G

Case study 1: financial results (Groquick), cont'd



- What should Groquick have done?
 - Ensure trading policy:
 - Prohibits insider trading (Groquick may also consider prohibiting trading for the period during which results are being prepared eg from end of financial period until results announced);
 - requires notification to company secretary and approval by Chair of any director trading
 - Ensure directors and staff are aware of any trading blackout periods (eg email notification to all staff and directors)
 - Ensure that each director signs contract in form of letter in GN 22 or otherwise, agreeing to inform coy secretary of any trading in shares of company within 3 business days. Ensure procedures in place to make this happen and also include checks and balances (eg Chair can notify coy secretary if he/she approves a trade or share registry can notify of any director/staff trade)
 - Ensure Appendix 3Y lodged within 5 business days of trade

Case study 2: transaction (Bigdeal)



- Bigdeal Limited is a listed environmental services supplier. One Friday morning a press article speculates that Bigdeal is anticipating a significant contract for supply of services.

Case study 2: transaction (Bigdeal), cont'd

Comments:

- ASX (James Gerraty) – what does ASX do in relation to article?
- ASIC (John Price) – does ASIC have any involvement at this stage?
- CSA (Michaela Healy) – what is the Company Secretary's role here?
- AICD (Susan Oliver) – how does the Chair react to this situation?
- AIRA (Ian Matheson) – what should the investor relations manager be doing?

Case study 2: transaction (Bigdeal), cont'd



- Bigdeal is contacted by ASX but states that it is in compliance with listing rule 3.1 and has nothing to announce. ASX accepts this explanation. During trading on Friday the share price climbs well above normal range.
- An ASX Surveillance alert based upon the price movement leads to further contact with company and the issue of a price query.
- Bigdeal requests a trading halt.

Case study 2: transaction (Bigeal), cont'd

Comments:

- ASX (James Gerraty) – why issue a price query at this point?
- CSA (Michaela Healy) – why request a trading halt at this point?
- ASX (James Gerraty) – what relevance does ASX's recent guidance on trading halts have here?

Case study 2: transaction (Bigdeal), cont'd



- On Monday Bigdeal announces a contract with a subsidiary of Messmaker Ltd that will secure it \$25m p.a revenue for the next 5 years and result in a 15-20% increase in profit over that period. Bigdeal's share price rises significantly after announcement.

Case study 2: transaction (Bigeal), cont'd



Comments:

- ASX (James Gerraty) – what does ASX do next?
- CSA (Michaela Healy) – what should the company have done differently up to this point?

Case study 2: transaction (Bigdeal), cont'd



- The response to ASX’s aware letter indicated that an MOU was signed 2 months before announcement but the deal was substantially finalised 2 days before the announcement with final board approval due on Friday. Bigdeal purported to rely on the “incomplete proposal” carve-out
- ASX Issuers referred Bigdeal to ASIC for a potential breach of listing rule 3.1

Case study 2: transaction (Bigdeal), cont'd

Comments:

- ASX (James Gerraty) and ASIC (John Price) – can you comment on the referral process?
- CSA (Michaela Healy) – is Bigdeal's reliance upon the incomplete proposal leg of LR 3.1A helpful?
- AICD (Susan Oliver) – what could the Chair have done to avoid this situation?
- AIRA (Ian Matheson) – what could the investor relations manager have done to assist in this process?

Case study 2: transaction (Bigeal), cont'd



- What should Bigdeal have done?
 - At time of signing MOU, consider whether LR 3.1 would require the announcement of the terms of the MOU. If not, Bigdeal should at least enter into arrangements with other party to make 'holding announcement' between the signing of the MOU and the finalisation of the deal if necessary. Ensure expedited announcement approval process is in place (eg CEO can make announcement without board approval if needed to prevent a false market, have a draft announcement ready)
 - Consider confidentiality arrangements – agreements to be signed by advisers and keep register of "insiders" on the deal
 - Ensure press and share price are closely monitored during the period
 - If there is an indication that confidentiality is lost (eg media article or price movement) consider either a holding announcement or a trading halt depending upon the timing of the loss of confidentiality
 - If necessary hold expedited board meeting to do final approval or authorise a board subcommittee to approve final agreement.
 - Have announcement ready for immediate release following the final approval

Conclusion

- Be prepared for continuous disclosure queries
- Plan ahead when material announcements are pending
- Consult with ASX – we are here to help you manage your continuous disclosure obligations