Practice Note #6

Continuous Disclosure

Issued: October 2002

Qualifications

The Stock Exchange of Newcastle Limited (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.

Practice Note History

First Issued 10/2002
Amended 10/2003

Introduction

This practice note is designed to assist entities and their advisers in complying with their obligations under Listing Rule 6.4 and Listing Rule 6.5 in relation to continuous disclosure.

Structure of Practice Note

- Importance of Listing Rule 6.4
- Who does the rule apply to?
- What does the rule require?
- Disclosure must be to NSX first
- Are there any exceptions to the disclosure rule?
- What if the issuer fails to disclose?
- Continuous disclosure practice
- The Australian Securities and Investments Commission (“ASIC”) “Better disclosure to investors guidance”.

Importance of Listing Rule 6.4

The primary focus of Listing Rule 6.4 is to ensure that the NSX market is conducted in an orderly manner and the integrity of the NSX market is maintained at all times. By virtue of being publicly listed on the NSX and having access to the capital that the market provides, an Issuer has a duty not just to its shareholders, but to investors and the market generally.

The continuous disclosure rule is given legislative support by section 674 of the Corporations Act, which imposes, in specified circumstances, a statutory liability on the listed entity.

NSX and ASIC have entered into a Memorandum of Understanding whereby NSX takes the primary responsibly for monitoring and enforcing compliance with the continuous disclosure requirements and ASIC takes primary responsibility for enforcing section 674.

Where NSX considers there to be a suspected breach of continuous disclosure requirements set out in the NSX Listing Rules or a serious breach of section 674 of the Corporations Act NSX may refer the breach to ASIC for further investigation. ASIC may pursue a variety of remedies in such cases, including possible civil or criminal action, by referral to the Director of Public Prosecutions.

Who does the rule apply to?

The rule applies to an Issuer. Issuer is defined in the Rules to mean the legal entity which issues the securities.

What does the rule require?

Listing Rule 6.4 requires the Issuer to keep NSX informed without delay:

Generally, and apart from compliance with all the specific requirements of this Chapter, for dissemination of any information relating to the group of which it is aware that:

(1) is necessary to enable the Exchange and the public to appraise the financial position of the issuer and the group;

(2) is necessary to avoid the establishment of a false market in its securities; or

(3) *a reasonable person would expect to have a material effect on the price or value of its securities*.

An Issuer must give equal to all three elements when complying with its obligations under Listing Rule 6.4. The interests of the Issuer should not take precedence over the interests of the market, and more specifically the interests of a fully informed market.

It is important for the Issuer to strike an appropriate balance between timely disclosure of material information and preventing premature disclosure or incomplete or indefinite matters. Premature disclosure may result in a false market or unfairly prejudice an Issuer's commercial interests.

An Issuer must disclose information would expect that information to have a material effect on the price or value of the securities. A reasonable person is taken to expect information to have a material effect on the price or value of securities if it would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the securities.

Listing Rule 6.4 (2) requires the Issuer to disseminate any information to avoid the establishment of a false market in its securities. If the NSX forms the view that there is a false market, it will tell the Issuer immediately. An Issuer must disclose information needed to correct or prevent a false market because it would, or would likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, or buy or sell the securities.

A false market can arise in a number of circumstances, including where the entity does not have disclosable information, and comment is made about the Issuer that is inaccurate or incomplete. The

Issuer should release information to clarify the position to avoid a false market in the Issuers securities.

The Listing Rule does not require the Issuer to respond to all media or analyst reports or all market speculation. However when the comments or speculation becomes reasonably specific or when the market moves in a way that appears to be referable to the comment or speculation the Issuer should consider a public release to ensure that the market remains properly informed, or correct or prevent a false market in the Issuer's securities.

Disclosure must be made to NSX first

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, including the release of information to the media, even on an embargoed basis.

An acknowledgement of receipt of the information will be provided to the Issuer once the Exchange receives the information.

If the Issuer becomes aware that material information has become generally available or is available to a sector of the market, and that information has not been given to NSX, the entity should immediately give the information to NSX in a form suitable for release to the market. The Issuer is not excused from its obligations under Listing Rule 6.4 because the information has become generally or selectively available.

Are there any exceptions to the disclosure rule?

Listing Rule 6.5 does not require information to be disclosed while:

(1) a reasonable person would not expect information to be disclosed;

(2) information is confidential; and

(3) at least one of the following applies:

- *(a) it would be a breach of the law to disclose the information;*
- *(b) the information concerns an incomplete proposal or negotiation;*
- *(c) the information comprises matters of supposition or is insufficiently definite to warrant disclosure;*
- *(d) the information is generated for the internal management purposes of the issuer; or*
- (e) *the information is a trade secret*.

The intention of the exemptions is to protect the legitimate commercial interests of Issuers in those circumstances where market integrity is not adversely affected. The exemption only operates while all of the three requirements are satisfied. If one or more of the requirements ceases to be satisfied, the exemption no longer applies and the Issuer must disclose the information immediately.

The first requirement of the exemption is that a reasonable person would not expect the information to be disclosed. A reasonable person would not expect information to be disclosed if the result would be unreasonably prejudicial to the Issuer. Even if listing rule 6.5(2) and listing rule 6.5(3) are satisfied, but a reasonable person would expect the information to be disclosed, the exemption is not available and the Issuer must disclose the information.

The second requirement is that the information is confidential. 'Confidential' in this context has the sense of 'secret'. It means that the information is in the possession of only those who will not trade in the entity's securities and there is control over the use of the information. Loss of confidentiality may be indicated by otherwise unexplained changes to the price of the Issuers securities, or by reference to the information in the media or analysts' report.

There may be circumstances where confidentiality has been lost in which the entity is not able to make immediate disclosure. In those cases, the entity can apply for a trading halt until disclosure can be made.

What if you fail to disclose?

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.

Continuous Disclosure Practice

Listing Rule 6.4 is expressed in broad principles and must be followed in accordance with the broad spirit of continuous disclosure and must not be construed in a restrictive or legalistic way. By taking a broad perspective the integrity of the market is enhanced. This also ensures that investor protection is maintained and the reputation of the market is protected.

ASIC GUIDANCE PRINCIPLES – "Better disclosure for investors"

In August 2000, the ASIC released non-mandatory guidance principles to assist to Issuers seeking to establish practices and procedures to ensure compliance with the obligations under the Corporations Law and the Listing Rules.