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

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Introduction

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

Structure of Practice Note

- Importance of rule
- Who does the rule apply to?
- What does the rule state?
- Disclosure must be to NSX first
- Are there any exceptions to the disclosure rule?
- What if the issuer fails to disclose?
- Continuous disclosure practice

Importance of Rule

The primary focus of the rule 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.

The continuous disclosure rule is given legislative support by section 1001A 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 1001A. 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 1001A of the Corporations Act NSX may refer the breach to ASIC for further investigation

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 the rule requires

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.

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.

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

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.

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.