



# Continuous Disclosure

## 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.

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### Practice Note History

First Issued..... Oct 2002  
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### Qualifications

National Stock Exchange of Australia Limited (NSX) issues practice notes to promote commercial certainty, reduce costs to business and assist market participants. 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.

## 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 Chapter 6CA 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 responsibility for monitoring and enforcing compliance with the continuous disclosure requirements and ASIC takes primary responsibility for enforcing Chapter 6CA. 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 Chapter 6CA of the Corporations Act NSX may refer the breach to ASIC for further investigation.

The legislation binds the disclosure of the listed entity to the Listing Rules.

## 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.

## Information Already Generally Available

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

## Market Rumours

If it becomes apparent there are market rumours about an entity (for example, of a potential takeover or significant transaction) an entity needs to decide whether it is required to disclose information under Listing Rule 6.4 or take other action.

The fact that an entity 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.

If this situation arises an entity should discuss it immediately with NSX to determine whether an announcement should be made to the market or a trading halt should be imposed until the entity is in a position to make a more detailed announcement (see further below).

## Prospectus and Other Forecasts

NSX does not require an entity to make forecasts. However, entities may wish to make forecasts of financial performance in prospectuses or at other times. Such forecasting gives rise to an obligation to ensure that the forecast information remains accurate.

Thus if an entity believes actual performance will materially vary from forecast, it is obliged to make immediate disclosure pursuant to Listing Rule 6.4. NSX acknowledges that precise information may not be known or knowable by the entity when it becomes aware that it will not meet forecasts. In such cases the entity may provide a range of revised forecast outcomes.

An entity 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 entity may decide that it is unable to provide meaningful revised forecasts. In such circumstances the entity should provide the market with disclosure explaining why existing forecasts will not be met and why revised forecasts cannot be provided.