

# *Continuous Disclosure Policy*

## 1. Continuous Disclosure Policy and Press Releases

- 1.1 The Company is required under the NZX Listing Rules (LR 3.1) to notify the market of any information concerning the Company that a reasonable person would expect, if it were generally available to the market, to have a material effect on the price or value of shares in the Company ("**Material Information**") unless the exception to LR 3.1 applies (described in paragraph 2.1 below).
- 1.2 The Company will be deemed to be aware of Material Information if, and as soon as, one of its Directors or senior managers has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties.
- 1.3 Examples of events that may constitute Material Information for the Company include:
  - a. the introduction of a new product or service where it has the potential to add significant value to the Company;
  - b. material changes in the forecasted or expected financial performance of the Company;
  - c. the sale or acquisition of assets related to the Company's activities;
  - d. entry by the Company into a major agreement e.g. a licence agreement or national provider network agreement or the termination of such agreements;
  - e. a possible change in the strategic direction of the Company;
  - f. sizeable capital raising;

- g. the appointment or resignation of a Director or senior manager of the Company, for example the CEO or CFO;
  - h. a material legal claim by or against the Company;
  - i. the establishment of a new laboratory;
  - j. any major laboratory accreditation;
  - k. the issue, sale or acquisition of a patent in any of the Company's primary jurisdictions that is expected to add significant value to the Company; and
  - l. any new growth or commercial opportunities, such as entry by the Company into a new market.
- 1.4 Notification must be made promptly and without delay after a Director or senior manager of the Company becomes aware of the information in the course of the performance of those duties unless the exception set out below at paragraph 2.1 applies. Such notification is to be made by way of an announcement to NZX via MAP.
- 1.5 Care must be taken not to disclose any Material Information to the public or any third party prior to submitting the Material Information to NZX via MAP and, where possible, confirmation from NZX that the information has been received has been obtained.
- 1.6 Relevant provisions from LR 3 is reproduced and **appended** to this policy at Appendix 1.
- 2. Exception to LR 3.1**
- 2.1 The Company need not disclose Material Information if the following safe harbour exception ("**Exception**") applies:
- a. a reasonable person would not expect the information to be disclosed; and
  - b. the information is confidential and its confidentiality is maintained; and
  - c. one or more of the following applies:
    - i. the release of information would be a breach of law; or
    - ii. the information concerns an incomplete proposal or negotiation; or

- iii. the information contains matters of supposition or is insufficiently definite to warrant disclosure; or
- iv. the information is generated for the internal management purposes of the Issuer; or
- v. the information is a trade secret.

2.2 In order to rely on the Exception you must satisfy each of the limbs set out in paragraph 2.1 above. Material Information cannot be withheld on the basis that only one or two of the limbs apply.

2.3 For example, if the Company enters into an agreement containing confidentiality provisions with a third party, the confidentiality provisions in the agreement will not override the Company's continuous disclosure obligations merely because the information is confidential. Of course, disclosure cannot be withheld unless limbs (a) and (c) also apply. Each of the limbs is discussed in more detail below.

2.4 If the Exception does apply, consideration needs to be given to the time period for which it applies. For example, if disclosure is withheld on the basis of an incomplete proposal or negotiations around the Company's entry into a proposed agreement, the Exception will cease to apply as soon as the material terms have been agreed. The obligation at that point is to release to the market immediately.

2.5 Given the cumulative nature of the Exception, the limbs should be considered in the following order:

- a. Do any of the categories in limb (c) of the Exception apply to the Material Information?
- b. Is the Material Information confidential and has that confidentiality been maintained?
- c. Would a reasonable person expect the Material Information to be disclosed?

2.6 Please refer to the flowchart at Appendix 2 to assist.

## 2.7 ***Categories of Information***

- a. To rely on the Exception, at least one of the following matters set out in limb (c) must apply:
  - i. **Breach of law** - Limb (c)(i) allows the Company to withhold information where the release of information would be a breach of law. NZX has indicated a simple breach of contract would not satisfy this limb. This means the possibility of breach of a confidentiality provision would not be

sufficient. If it was, parties could simply look to contract out of their obligations to disclose Material Information immediately.

- ii. **Incomplete proposals or negotiations** – Limb (c)(ii) enables the Company to withhold information about incomplete proposals or negotiations. A proposal or negotiation will generally be considered to be complete when all material matters have been agreed and there is the potential for NZX to view it as a complete proposal requiring disclosure. Certainly, as soon as all parties involved sign an agreement to give effect to the transaction it becomes complete. Even if an agreement is conditional, it will be considered to be complete once all material matters have been agreed.
- iii. **Matters of supposition or insufficiently definite** – Limb (c)(iii) permits the Company to withhold matters of supposition or matters that are insufficiently definite to warrant disclosure. Often this will be where a particular matter sits before a proposal is formed that falls within limb (c)(ii).
- iv. **Internal management purposes** – Limb (c)(iv) enables the Company to withhold information that has been generated for internal management purposes, for example papers produced for Board meetings or other internal planning.
- v. **Trade secrets** – If the Material Information is a trade secret it may be withheld by the Company under limb (c)(v).

## 2.8 *Confidentiality*

- a. The second limb of the Exception requires the Material Information to be confidential and that such confidentiality has been maintained. Whether information has been kept confidential is a question of fact.
- b. To assist to satisfy this limb, the Company should endeavour to ensure that there is a clear obligation for all parties involved to keep the Material Information confidential. In practice, this means all parties must have kept the fact and contents of the Material Information in confidence.
- c. An assessment of whether information has been kept in confidence needs to be made on the particular facts of each situation. Disclosure to a subsidiary of the Company will not in itself result in confidence being lost but care should be taken to ensure that the subsidiary is advised of the confidentiality of such Material Information.

## 2.9 *Reasonable person*

- a. The final consideration is whether or not a reasonable person would expect the Material Information to be disclosed. This requires an objective assessment of the circumstances relating to such information.

- b. "Reasonable person" is not defined in the Listing Rules but NZX views a "reasonable person" is a person who commonly invests in securities, and holds securities for a period of time, based on their view of the inherent value of the securities.
- c. Care must be taken when considering whether the release of particular information may unreasonably prejudice the Company. It requires genuine consideration of the prejudice that disclosure could have on the Company (and its investors). However this does not mean that the Company can withhold unfavourable news from the market.
- d. NZX recognises that the reasonable person limb has narrow application in practice because Material Information that falls within both of the other two limbs will generally satisfy the reasonable person test. Accordingly, this should be the final consideration when determining whether or not the Company is able to withhold disclosure of Material Information under the Exception.

### **3. Processes for identifying Material Information**

#### **3.1 The following processes assist in identifying Material Information:**

- a. all staff will have ongoing training to ensure they are aware of the continuous disclosure rules and that they should approach the "communications point" person where they think there may be Material Information;
- b. the "communications point" person will manage the process determining if information referred to them is Material Information and follow the disclosure process set out at clause 4;
- c. in the course of weekly management meetings, management will consider whether any matters need to be put before the Board;
- d. monthly accounts will be reviewed to consider if they show any material changes that should be disclosed to the market;
- e. staff will send recommendations to the Directors with Board papers setting out what should be disclosed under the continuous disclosure rules;
- f. there is a fixed Board agenda item to consider whether any matters should be disclosed in terms of the continuous disclosure rules;
- g. minutes for Board meeting will record reasons for disclosing or not disclosing specific matters; and

- h. the Company will ensure that appropriate confidentiality agreements are in place where the Company enters into material negotiations.

#### **4. Disclosure Process**

- 4.1 "Senior Manager" is defined in the Listing Rules by reference to the FMCA, meaning in relation to a person (A), means a person who is not a Director but occupies a position that allows that person to exercise significant influence over the management or administration of A (for example, a Chief Executive or a Chief Financial Officer).
- 4.2 Although there will be an unavoidable period of time between becoming aware of Material Information and the release of that information, whether it has been released promptly and without delay will depend on the particular circumstances and nature of that information. Such considerations will include the complexity of the Material Information, whether it needs to be verified and the time required to draft the announcement to ensure it is complete, accurate and not misleading.
- 4.3 Where it is possible to anticipate an event that will constitute Material Information, such as entry into an agreement, a draft announcement should be prepared in advance of the event to ensure that the Company is in a position to make an announcement immediately once the event has occurred or the agreement is complete.
- 4.4 Any matter that a Director or the executive team of the Company considers may require disclosure should be immediately referred:
  - a. in the first instance, to the CEO;
  - b. if the CEO is unavailable, to the Chairperson; or
  - c. if both the CEO and Chairperson are unavailable, to another Director of the Company.
- 4.5 That person will then confer with the Chairperson (where relevant) and, if necessary, the Company's legal advisors. That person may also discuss with the other Directors where they consider it appropriate/expedient to do so. Any discussion needs to be carefully considered in light of the obligation to disclose Material Information promptly and without delay.
- 4.6 The person to whom the matter has been referred will then determine whether or not the information is Material Information.
- 4.7 If it is considered that the information contains Material Information, then an announcement must be prepared to disclose that information to NZX (before it is

released to the public). The other Directors will also be immediately notified of the disclosure by the CEO/Chairperson (or relevant Director).

- 4.8 If a Director, senior manager or employee of the Company becomes aware that any Material Information has been inadvertently disclosed without being announced to the market, that Director, officer or employee must immediately notify the CEO/Chairperson who will arrange to immediately request a trading halt to allow time for an urgent announcement to be made. Detailed information on the requirements and process for requesting trading halts is set out at paragraph 5 below.
- 4.9 Where Material Information is obtained or discovered after trading hours an announcement should be made to NZX before trading next commences.
- 4.10 If speculation over a matter concerning the Company exists in the market then the Company may be required to make certain disclosures in order to protect the development of a false market for shares. The Chairperson/CEO will make the decision as to whether information will be disclosed in these circumstances after such discussion with Directors as they consider appropriate in the time available. All Directors will be immediately notified of the decision.

## **5. Trading Halts**

- 5.1 A trading halt is a temporary halt on the trading of the Company's securities in the market. Trading halts are used to ensure the market trades on a fair, orderly and transparent basis. A trading halt may be initiated by NZX or requested by the Company and may be imposed for periods of up to two business days.
- 5.2 A trading halt should be requested by the Company where the Company is unable to make an immediate announcement under LR 3.1. This can allow for a halt to be applied until an announcement can be made.
- 5.3 The Company should also initiate the announcement process set out in paragraph 3 while making a request for a trading halt to ensure that disclosure can be made as soon as possible.
- 5.4 Specific circumstances where trading halts might be necessary include:
- a. when there is insufficient time to respond to an external or unexpected event;
  - b. where Material Information is received outside of trading hours and an announcement is not expected to be made within one hour of trading commencing;
  - c. where there is information in the public arena that the Company needs to confirm, deny or clarify that is of a material nature and has been released by another party.

- 5.5 In the above circumstances a trading halt will be necessary to prevent the formation of false market prior to the Company making an announcement.
- 5.6 Given the time critical nature of trading halts, the Company should call NZX Regulation to discuss its request before it is submitted. Requests should be made by email to [regulation@nzx.com](mailto:regulation@nzx.com), should be in the form prescribed by NZX and should include the following information:
- a. the reasons for requesting a trading halt;
  - b. how long the Company wants the trading halt to last (being a maximum of 2 business days, subject to exceptions in limited circumstances);
  - c. the event the Company expects to occur that will end the trading halt (e.g. the relevant announcement being made);
  - d. confirmation that the Company is not aware of any reason why the trading halt should not be granted; and
  - e. any other information necessary to inform the market about the trading halt or as otherwise required by NZX.
- 5.7 Trading halts must not be used to simply delay the release of information. To ensure this does not occur, NZX considers all requests for trading halts on a case by case basis.
- 5.8 If NZX agrees to grant a trading halt request, it will advise the Company and apply a trading halt to the Company's quoted securities at an agreed time. It will also release a memorandum notifying the market of the trading halt, which may be accompanied by an announcement by the Company. The Company must then act to issue the announcement in a timely manner within the trading halt period.
- 5.9 If NZX declines to grant a trading halt, it will advise the Company of this decision and discuss options for the release of Material Information to the market or the possible suspension from trading. If a trading halt is declined, the relevant announcement must be released to NZX as quickly as possible to minimise any potential beach for failing to immediately notify the market.

## 6. Press Releases

- 6.1 No Material Information or comments regarding Material Information should be included in a press release unless it has been announced to the market and is consistent with such announcement. Disclosure to NZX should be made first, even if the Company chooses to release to the media on an embargoed basis.

6.2 Corporate press releases and comments should be issued under the Chairperson’s name after consultation with other Directors where appropriate. Directors and officers should be particularly careful about what they say when speaking publicly about the Company. They should only talk about Material Information that has already been disclosed or information that is not material.

6.3 Financial press releases and statements should be issued by the CEO after consultation with the Chairperson and other Directors where appropriate.

## 7. Breach

7.1 The obligation to disclose Material Information in a timely manner is a fundamental obligation under the Listing Rules. Failure to comply with the above policy regarding disclosures may lead to a breach of the Listing Rules and/or liability for the Company and its Directors and officers.

7.2 NZX Regulation may refer breaches of the continuous disclosure rules to the NZ Markets Disciplinary Tribunal, which may impose penalties on the Company in respect of such breaches. The Financial Markets Authority also has the power to take action against the Company for any breach of the continuous disclosure rules.

7.3 Any contravention of this policy (and LR 3.1) should be notified to the CEO immediately (who will advise the Board of the Company), and may result in disciplinary action being taken.

7.4 A breach of the Company's continuous disclosure obligations can also impede the Company's ability to raise capital under the provisions of the Financial Markets Conduct Act 2013.

## 8. Guidance Notes

8.1 In addition to the guidance notes contained within the Listing Rules, NZX has issued a Guidance Note (January 2019) for listed issuers in relation to compliance with their continuous disclosure obligations.

8.2 This Guidance Note includes both interpretative guidance on the Listing Rule obligations and useful examples to refer to where there is uncertainty.

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## Appendix 1 – Listing Rules 3.1 – 3.4 and 3.30 (as at 1 January 2019)

### 3.1 Disclosure of Material Information

- 3.1.1 Once an Issuer becomes Aware of any Material Information relating to it, the Issuer must:
- a. promptly and without delay release that Material Information through MAP, and
  - b. not disclose any Material Information to the public, any other stock exchange (except as provided for in Rule 3.26.2(d)) or any other party without first releasing that Material Information through MAP.
- 3.1.2 Rule 3.1.1 does not apply when:
- a. one or more of the following applies:
    - i. release of the information would be a breach of law,
    - ii. the information concerns an incomplete proposal or negotiation,
    - iii. the information contains matters of supposition or is insufficiently definite to warrant disclosure,
    - iv. the information is generated for internal management purposes, or
    - v. the information is a trade secret,
  - b. the information is confidential and its confidentiality is maintained, and
  - c. a reasonable person would not expect the information to be disclosed.

### 3.2 False Market

- 3.2.1 An Issuer must promptly and without delay release Material Information through MAP to the extent necessary to prevent development or subsistence of a market for its Quoted Financial Products which is materially influenced by false or misleading information emanating from:
- a. the Issuer or any Associated Person of the Issuer, or
  - b. other persons in circumstances in each case which would give such information substantial credibility,
  - c. and which is of a reasonably specific nature whether or not Rule 3.1.2 applies.

### **3.3 No Contracting out**

3.3.1 An Issuer must avoid entering into any obligation which may prejudice its ability to comply freely with the provisions of Rule 3.1 or Rule 3.2 to the extent that is reasonably possible without causing a material adverse effect on the Issuer's business.

### **3.4 Related Party Transactions**

3.4.1 Every Issuer must promptly and without delay release through MAP sufficient details to inform the market upon entering into a transaction or related series of transactions with a Related Party under which the Issuer:

- a. purchases, acquires, gains, leases (as lessor or lessee), sells or otherwise disposes of, assets having an Aggregate Net Value above 5% of the Issuer's Average Market Capitalisation,
- b. issues its own Financial Products or acquires its own Equity Securities, having a market value above 5% of the Issuer's Average Market Capitalisation (except where Rule 4.5 applies or for an issue of Debt Securities, in which case only the market value of Financial Products being issued to any Related Party or to any Employees of the Issuer are to be taken into account),
- c. borrows, lends, pays or receives money, or incurs an obligation, of an amount above 5% of the Issuer's Average Market Capitalisation (except for an issue of Debt Securities, in which case only the nominal amount of Debt Securities being issued to any Related Party or to any Employees of the Issuer are to be taken into account), or
- d. enters into any guarantee, indemnity, underwriting or similar obligation, or gives any security, which could expose the Issuer to liability above 5% of the Issuer's Average Market Capitalisation.

3.4.2 Rule 3.4.1 does not apply to a transaction to which Rule 5.2.1 applies.

### **3.30 Ownership of information disclosed**

3.4.3 All information, papers or documents provided to NZX by or on behalf of an Issuer becomes NZX's property and may be copied or (subject to Rule 3.27) disseminated as it thinks fit.

### Relevant Listing Rule Definitions to Interpret LR 3.1 – 3.4 and 3.30

**Associated Person:** a person (A) is associated with, or an Associated Person of, another person (B) if:

- a. A is able, directly or indirectly, to exert a substantial degree of influence over the activities of B (or vice versa),
- b. B is a body corporate and A has the power, directly or indirectly, to exercise, or control the exercise of, more than 50% of the Votes attaching to the Financial Products of B (or vice versa),
- c. A and B are Relatives or Related Bodies Corporate,
- d. A and B are partners to whom the Partnership Act 1908 applies,
- e. A is a Director or Senior Manager of B (or vice versa), or
- f. A and B are acting jointly or in concert,

except that:

- g. A is not an Associated Person of B merely because:
  - i. A acts as a professional or business adviser to B, without a personal financial interest in the outcome of that advice,
  - ii. A's ordinary business includes dealing in Financial Products on behalf of others and A is acting in accordance with the specific instructions of B,
  - iii. A acts as a proxy or representative of B for the purposes of a meeting of holders of Financial Products, or
  - iv. there is another person with which A and B are both associated,
- h. persons will not be Associated Persons if NZX makes a Ruling that they are not Associated Persons.

**Average Market Capitalisation** means, in relation to an Issuer, the Average Market Price multiplied by the number of Quoted Equity Securities carrying Votes on Day A.

**Average Market Price** means, on Day A, the lesser of the volume weighted average price of an Issuer's Quoted Equity Securities (or, when calculating a Minimum Holding, the relevant

Financial Product) calculated from trades through the Main Board over the following two periods: (a) 20 Business Days before Day A, or (b) 5 Business Days before Day A.

**Day A** means, unless a Rule specifies otherwise, the day before a relevant action is taken (e.g. an issue is made or transaction entered into) or the day before it is announced to market, whichever is the earlier.

**Employee** in relation to an Issuer, means an employee or officer of that Issuer or any of its Subsidiaries; a labour only contractor, consultant, or consultant company, who or which contracts with that Issuer or any of its Subsidiaries; any trustee or trustees on behalf of any of the above employees or officers; and any trustee or trustees of, or in respect of any pension, superannuation or like fund established for the benefit of any of the above employees or officers.

**Material Information** in relation to an Issuer is information that:

- a. a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of Quoted Securities of the Issuer; and
- b. relates to particular securities, a particular Issuer, or particular Issuers, rather than to securities generally or Issuers generally.

For the purposes of this definition information is generally available to the market:

- c. if:
  - i. it is information that has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in relevant securities; and
  - ii. since it was made known, a reasonable period for it to be disseminated among those persons has expired; or
- d. if it is likely that persons who commonly invest in relevant securities can readily obtain the information (whether by observation, use of expertise, purchase from other persons, or any other means); or
- e. if it is information that consists of deductions, conclusions, or inferences made or drawn from either or both of the kinds of information referred to in paragraphs (c) and (d).

In this definition, relevant securities means securities of a kind the price of which might reasonably be expected to be affected by the information. Information that is notified to NZX for disclosure to the market in accordance with these Rules is generally available to the market under paragraph (c) of this definition immediately on it being made available to the market (without limiting how quickly the reasonable period of dissemination in paragraph (c)(ii) of this definition may be satisfied in other cases).

**Member of the Public** means, in relation to an Issuer and/or Securities of an Issuer, any person other than:

- a. a person who holds, or who is one of a group of Associated Persons who together hold, 10% or more of a Class of Securities; or
- b. a person who has, or who is one of a group of Associated Persons who together have, the power (whether contingent or not) to appoint one or more Directors of the Issuer; or
- c. any other person or member of a class of persons, whom NZX in its discretion declares not to be a Member of the Public for the purposes of the Rules.

**Related Party** means a person who, at the time of a Material Transaction, or at any time within the previous six months, was:

- a. a Director or Senior Manager of the Issuer or any of its Subsidiaries;
- b. the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes;
- c. an Associated Person of the Issuer or any of the persons referred to in (a) or (b), except where the person becomes an Associated Person as a consequence of the Material Transaction;
- d. a person in respect of whom there are arrangements which are intended to result in that person becoming, or expected to become a person described in (a), (b) or (c), other than as a consequence of the Material Transaction itself;

but a person is not a Related Party of an Issuer if:

- e. the only reason why that person would otherwise be a Related Party of the Issuer is that a Director or Senior Manager of the Issuer is also a Director of that person, so long as:
  - i. the proportion of Directors of the Issuer who are also Directors of that person is one third or less, and
  - ii. no Director or Senior Manager of the Issuer has a material direct or indirect economic interest in that person, other than receiving reasonable Director's fees or executive remuneration, or
- f. that person is a Subsidiary or incorporated joint venture of, or unincorporated joint venture participant with, the Issuer and:
  - i. no Related Party of the Issuer has or intends to obtain, other than through the Issuer itself, a material direct or indirect economic interest in that Subsidiary,

or joint venture other than receiving reasonable Director's fees or executive remuneration; and

- ii. the Issuer has at least 50% of the Votes in or is entitled to at least 50% of the dividends declared or paid by the Subsidiary or incorporated joint venture or is entitled to at least one half of the income or profits, and the assets, of the unincorporated joint venture (if and when distributed).

**Rules** means these NZX Listing Rules as amended from time to time.

**Security** means any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person and includes:

- a. any renewal or variation of the terms or conditions of any existing security;
- b. any Debt Security; and
- c. any Option or Right.

APPENDIX 2 – THE CONTINUOUS DISCLOSURE PROCESS

