



MEMO

To: Board of Directors
From: Company Secretary
Subject: **CONTINUOUS DISCLOSURE – EXEMPTIONS**

You have asked whether we must announce details of the “special arrangement” to the stock exchange.

The ASX has a general Listing Rule 3.1 which states that once a company is (or becomes) aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the company’s shares, the entity must immediately[#] announce that information to the ASX.

This L/R is strengthened by Section 674 of the Corporations Act pursuant to which stock exchange listed companies have an obligation to comply with the L/R’s.

Effect on Price or Value

Whilst potential ‘material effect on price or value’ may be subjective in many situations, Sec.677 attempts to define it as what a reasonable person would be taken to expect if the information would or could influence persons who commonly invest in shares in deciding whether to buy or sell (the company’s shares).

Exemptions

There are, however, exemptions to this rule under L/R3.1A which states as follows:

Listing rule 3.1 does not apply to particular information while each of the following is satisfied:

- One or more of the following situations applies:
 - It would be a breach of a law to disclose the information.
 - The information concerns an incomplete proposal or negotiation.
 - The information comprises matters of supposition or is insufficiently definite to warrant disclosure.
 - The information is generated for the internal management purposes of the entity.
 - The information is a trade secret; AND
- The information is confidential and ASX has not formed the view that the information has ceased to be confidential, AND
- A reasonable person would not expect the information to be disclosed.



Guidance

For further commentary on 'continuous disclosure' and the exemptions see ASX Guidance Note 8.

Unlisted Companies

Disclosing Entities* which are not stock exchange listed are governed by similar continuous disclosure requirements under Sec.675 – and, whilst not specifically stated therein, in my opinion should also enjoy the ASX exemption carve-outs.

Disclosure Obligations

In light of above, I consider that the "special arrangement" in this case could fall within the exemption because it is an incomplete and confidential proposal/agreement that is still subject to contract and remains dependent upon finalising the deal with the other parties.

The ASX describes "immediately" as follows:

The word "immediately" does not mean "instantaneously", but rather "promptly and without delay".

Doing something "promptly and without delay" means doing it as quickly as it can be done in the circumstances (acting promptly) and not deferring, postponing or putting it off to a later time (acting without delay).

* *Part 1.2A of the Corporations Act relates to Disclosing Entities.*

Under Sec.111AC a Disclosing Entity is a corporation that issues Enhanced Disclosure securities ("EDS").

Briefly, Sec.111AF defines EDS as shares or other securities issued where:

- a prospectus (or other disclosure document requiring lodgement with ASIC) has been issued, and*
- there are 100 or more shareholders*

whether or not the corporation is listed on an Australian stock exchange.

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.