

Article Information

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To name or not to name? ASX revises its approach to continuous disclosure obligations for market sensitive contracts

Updated guidance from the ASX expands the scope of circumstances where entities are not required to disclose a counterparty or customer's name in an announcement about a market sensitive contract.

Existing Framework for Continuous Disclosure Obligations

Current guidance on the making of announcements regarding market sensitive contracts is set out by the ASX in Listing Rule 3.1 and section 4.15 of Guidance Note 8. An announcement about a market sensitive acquisition, disposal, transaction or other significant agreement must contain material information relevant to assessing the impact of the transaction on the price or value of the entity's securities.

The ASX considers that if a transaction is sufficiently material to warrant disclosure under Listing Rule 3.1, disclosure of the counterparty or customer's identity will, generally, itself be material information to be disclosed. Yet, under the existing framework, announcements about market sensitive contracts may not always require disclosure of the name of a counterparty or customer, given that:

- Generally, the ASX accepts that entities may structure announcements about transactions to avoid disclosure of commercially sensitive matters, provided that the market remains sufficiently informed to assess the impact of the transaction on the price or value of the entity's securities; and
- In very limited circumstances, the ASX may accept a sufficiently detailed description of the counterparty or customer, rather than their name, where the counterparty or customer has strong and legitimate reasons for not wanting to be named in a market announcement.

Revised Approach to Disclosure of Identity Information

This week, the ASX has expanded the circumstances in which it will accept an announcement about a market sensitive contract that describes, rather than names, a counterparty or customer. The ASX will not require the name of a counterparty or customer to be disclosed if the entity's announcement is complete, accurate, not misleading, and provides:

1. Confirmation that the entity does not consider the counterparty or customer's identity to be information that a reasonable person would expect to have a material effect on the price or value of the entity's securities;
2. Confirmation that all material relevant to assessing the impact of the contract on the price or value of its securities is included in the announcement, which is not misleading by omission; and
3. A sufficient description of the counterparty or customer, including its standing, creditworthiness and any other market sensitive information.

If an announcement fulfils these requirements, the entity is not expected to consult with ASX before lodging the announcement. However, in all cases, ASX reserves the right to make further enquiries or require additional disclosure.

Notwithstanding the updated guidance, the ASX strongly recommends that the identity of a counterparty or customer be disclosed. Where an entity does not disclose the identity of a counterparty or customer in an announcement,

the ASX may take action if concerns arise, such as in relation to the completeness, accuracy or misleading nature of information provided, or in circumstances where the entity's security price materially moves following a leak of, speculation about or eventual disclosure of the counterparty or customer's identity.

Key Takeaways

- ASX's existing framework for the contents of announcements remains in effect, under Listing Rule 3.1 and section 4.15 of Guidance Note 8.
- Under the supplementary guidance, where an entity considers that the identity of the counterparty or customer itself is not market sensitive information, the entity may not be required to name the counterparty or customer in announcing a market sensitive contract.
- If an entity chooses not to disclose the identity of the counterparty, ASX will expect the announcement to include specific statements about the counterparty or customer and the entity's compliance with its continuous disclosure obligations.
- ASX's general expectation and recommended practice remains unchanged: counterparties or customers should be named in announcements about market sensitive contracts, except in the limited circumstances set out above.