

Article Information

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Truthfulness in Disclosure: Misleading Statements

A reminder to biotech listed entities of their disclosure requirements

Regulatory surveillance of company announcement

ASIC's recent action against listed company *Holista Colltech Limited* (**Company**) and its CEO acts as a reminder to listed biotech and medtech entities of the regulatory scrutiny of their communications with the market.

ASIC's allegations

On 4 August 2021, ASIC announced it had commenced action against the Company and its CEO in relation to alleged misleading statements or conduct. The allegations include:

- the Company making claims about its sanitiser product's effect on the COVID-19 virus prior to testing the product;
- the Company announcing that it had placed certain orders worth a particular value in circumstances where such orders had not been placed; and
- the Company announcing that it had entered into a term sheet to co-develop a new product, whereas that document was allegedly entered into several months later.

In connection with these allegations, ASIC has alleged breaches of sections 1041H and 674 of the *Corporations Act 2001* (Cth) (**Corporations Act**) by the Company, and breaches of section 1309 and the director duties in section 180 of the *Corporations Act* by the Company CEO.

Regulatory context – Continuous Disclosure

ASX Listing Rule 3.1 requires listed entities to disclose to the market any information a reasonable person would expect to have a material effect on the price or value of that entity's securities.

Section 674 of the *Corporations Act* acts as legislative reinforcement of LR 3.1. It requires a listed entity to announce to the market any information that is not generally available and is information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of the entity's securities.

Regulatory context – Misleading or Deceptive Conduct

In making any market announcements or publications generally, companies should be wary of making statements that are, or are likely to be, in relation to financial products or services, misleading or deceptive, or which are false or misleading in a material particular. Such statements are prohibited under sections 1041H and 1309 of the *Corporations Act* respectively.

Such conduct or statements can also result in civil liability against a director for breaching their director duties, as argued by ASIC in this case.

What should listed life sciences companies do?

Companies in the biotech and medtech space should be particularly cautious when making public statements as to the efficacy of, or any financial forecasting in relation to, their products. These announcements need to be properly substantiated, and balanced (e.g. fair disclosure of risks or hurdles that may affect the realisation of the forecast).

ASIC's action against *Holista* demonstrates how, in addition to market participants, regulators scrutinise company

communications. If you have not done so recently, take a look at your continuous disclosure policy to ensure it includes a clear process for reviewing and authorising market announcements.

If in doubt, please reach out to a member of our [Corporate](#) or [Life Sciences](#) team for assistance.