

Key Notes

An outline of the Rule:

- Disclose Material Information
- Disclose to NZX first
- Prevent false market

Application of continuous disclosure to the Listed Issuer:

- Framework /business structure
- Examples

Guidelines:

- Disclose material matters
- Disclose to NZX first
- Prevent false market

Listing Rules:

NZSX / NZDX Listing Rule 10.1
NZAX Listing Rule 10.1

Legislation:

Securities Markets Act 1988 – Part 2 -
Sub-Part 1

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Disclaimer

This guidance note has been issued to promote commercial certainty and assist Issuers and other market participants. It provides guidance to Issuers and their advisors on NZXMS's interpretation of the Listing Rules. This guidance note sets out NZXMS' general approach to the subject, but is not to be regarded as a definitive statement of the application of the Rules in every situation. Guidance notes do not constitute legal advice and are only a guide to NZXMS's policy and practice. NZXMS recommends that Issuers take advice from qualified professionals.

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GUIDANCE NOTE – CONTINUOUS DISCLOSURE

Introduction

Continuous disclosure is:

- a mechanism to ensure that the market is informed of relevant information at all times;
- a critical part of ensuring that New Zealand's listed capital markets are efficient, transparent and fair; and
- designed to promote equality of information in the market so that no investor is disadvantaged against another and all investors are able to make informed investment decisions.

The purpose of this guidance note is to set out the expectations of NZX Market Supervision (“**NZXMS**”) in relation to complying with the NZX continuous disclosure listing rules (the “**Rules**”) and to provide guidance to Issuers to assist with decision making about continuous disclosure. Capitalised terms used in this guidance note which are not otherwise defined in this guidance note have the meanings given to them in the NZSX / NZDX Listing Rules and the NZAX Listing Rules, as the context requires.

This guidance note first sets out the Rules and then examines the application of the Rules to the ongoing businesses of Issuers. Some working examples are provided to show the operation of the Rules in practice. This guidance note concludes with a number of guidelines Issuers may wish to consider to assist with their compliance with the Rules.

The Rules are found in Section 10 of the NZSX/NZDX Listing Rules and the NZAX Listing Rules. The Rules are reinforced by the continuous disclosure provisions contained in Part 2, Sub-Part 1 of the Securities Markets Act 1988 (the “**Act**”).

The Rules apply to all equity and debt Issuers, except Overseas Listed Issuers (who are required to comply with the Listing Rules of their Home Exchange). The relevant Rules and the Act work together. NZXMS, in administering the Rules, will take guidance from section 19A of the Act, which provides the criteria relevant to the implementation of the continuous disclosure regime, including:

- Providing an appropriate level of protection for investors;
- Seeking to maintain the integrity and international competitiveness of New Zealand's listed capital markets;
- Ensuring that the benefits resulting from the continuous disclosure regime justify the costs, including the following costs:
 - the value that the public Issuer gives up if the information is not kept confidential; and
 - compliance costs for public Issuers and NZXMS in disclosing the information;

- Ensuring reasonable consistency and predictability in the application of the continuous disclosure regime;
- Avoiding unfair advantages resulting from inappropriate disclosure of information to some, but not all, investors;
- Recognising the importance to New Zealand’s listed capital markets of attracting and retaining public Issuers;
- Recognising the desirability of an effectively functioning framework of co-regulation of listed markets by NZXMS and the Financial Markets Authority (formerly the New Zealand Securities Commission, the “FMA”);
- Recognising the importance of maintaining international best practices for continuous disclosure in listed markets; and
- Any principles applying to the co-ordination of business law between Australia and New Zealand set out in any agreement or memorandum of understanding between the governments of New Zealand and Australia.

In addition to any penalty that may be imposed for a breach of the Rules, the Act contains various statutory consequences for breaches of continuous disclosure obligations, including pecuniary penalties (section 42T) and compensatory orders (section 42ZA). Note also that failure to comply with continuous disclosure obligations in the Rules and the Act may mean an Issuer is unable to use the simplified disclosure prospectus regime contained in the Securities Act 1978 and Securities Regulations 2009. The FMA, if it is satisfied that a person who is subject to a disclosure obligation has failed to comply with it at anytime in the last 12 months may, if it considers it desirable in the the public interest, make an order prohibiting that person from using a simplified disclosure prospectus for a period not exceeding 24 months.

NZSX/NZDX Listing Rule 10.1 and NZAX Listing Rule 10.1 – the elements of the Rule

NZSX/NZDX Listing Rule and NZAX Listing Rule 10.1 [NZAX Listing Rule reference in square brackets if different from NZSX/NZDX Listing Rule reference] provide:

“Without limiting any other Rule, every Issuer shall:

- (a) *once it becomes aware of any Material Information concerning it, immediately release that Material Information to NZX, provided that this Rule shall not apply when:*
 - (i) *a reasonable person would not expect the information to be disclosed; and*
 - (ii) *the information is confidential and its confidentiality is maintained; and*
 - (iii) *one or more of the following applies:*
 - (A) *the release of information would be a breach of law; or*
 - (B) *the information concerns an incomplete proposal or negotiation; or*
 - (C) *the information comprises matters of supposition or is insufficiently definite to warrant disclosure; or*
 - (D) *the information is generated for the internal management purposes of the Issuer; or*
 - (E) *the information is a trade secret.*

In this Rule 10.1.1 an Issuer is aware of information if a Director or an executive officer of the Issuer (and in the case of a Managed Fund, a Director or executive officer of the Manager) has come into possession of the information in the course of the performance of his or her duties as a Director or executive officer.

(b) not disclose any Material Information to the public, other Recognised Stock Exchanges (except as provided for in Rule 10.2.3(c)(i)) [10.3.3(c)(i)] or other parties except those parties to whom the proviso to Rule 10.1.1(a) applies:

(i) prior to disclosing that Material Information to NZX; and

(ii) prior to an acknowledgement from NZX of receipt of that Material Information.

(c) release Material Information to NZX to the extent necessary to prevent development or subsistence of a market for its Quoted Securities which is materially influenced by false or misleading information emanating from:

(i) the Issuer or any Associated Person of the Issuer; or

(ii) other persons in circumstances in each case which would give such information substantial credibility,

and which is of a reasonably specific nature whether or not Rule 10.1.1(a) applies.”

Material Information

This is the “what” question and is the most important component of decision making concerning continuous disclosure. The term “Material Information” is defined in the Rules to mean information in relation to the Issuer that a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of the Issuer’s Listed Securities. This information must relate to particular Securities, a particular Issuer, or particular Issuers, rather than to Securities generally, or Issuers generally.

The test is an objective test and whether or not a reasonable person would require disclosure will depend on the facts and circumstances of the particular Issuer.

Financial matters

Issuers often report to the market about financial matters. Understanding the financial position of an Issuer is important to investors as it provides a basis for forming a view as to the price investors are willing to pay for an Issuer’s Listed Securities. For the purpose of this guidance note, we class financial matters that require disclosure into three groups:

First, and most significant, are matters that relate to specific events such as major acquisitions or disposals.

Second, a material change to prospective financial information, such as forecasts, may require disclosure. Such prospective financial information about the Issuer may have come from the Issuer or may have become generally available, such as through analyst’s forecasts.

Third, an Issuer’s financial position could change gradually due to a number of influences that would not, in themselves, require disclosure. Review of the Issuer’s monthly accounts could reveal patterns that may need disclosure, for example a gradual decrease in monthly income.

For this reason, we suggest that examination of the monthly accounts include the question as to whether there are any changes that require disclosure to be made to the market.

If information is provided on a frequent basis, it is less likely that markets will react as drastically as they may if, for example, a loss is reported at the end of a long period. Various Issuers make financial announcements outside those stipulated by the Rules. These announcements illustrate the variety of metrics that some Issuers disclose on a monthly basis. However, NZXMS understands that such periodic reporting of metrics may not be appropriate for all Issuers.

Dealing with companies not subject to the continuous disclosure rules

Issuers should be aware that their obligations to disclose will still apply if they are entering into business with a company or other entity that is not subject to the Rules.

Examples of matters that may need to be disclosed

While there can be no definitive list of all matters that may require disclosure, set out below is a list of a number of matters which, if they occurred, would be likely to require consideration as to whether they constitute Material Information:

- A transaction for which the consideration payable or receivable is a significant proportion of the written down value of the Issuer's consolidated assets. Normally an amount of 5% or more would be significant but a smaller amount may be significant in a particular case.
- A disposal or acquisition (including entering into any agreement or option to do so) of Quoted Securities of another Issuer carrying 5% or more of the Votes attaching to any Class of Securities of that Issuer.
- The acquisition or disposition of Securities of the Issuer carrying 5% or more of the Votes attaching to any Class of Securities of that Issuer.
- Acquisition or disposition, by whatever means of assets of any nature (including entering into any agreement or option to do so) where the gross value of those assets, or the consideration paid or received by the Issuer, represents more than 10% of the Average Market Capitalisation of the Issuer.
- Recommendations or declarations in relation to dividends.
- Changes in the character or nature of an Issuer.
- Change in the Issuer's financial forecast or expectation.
- Appointment of a receiver or liquidator.
- Capital or debt raisings of a material amount.
- Over or under subscription to an issue.
- Notice of intention to make a takeover.
- Mergers.
- Material legal proceedings.
- Failure to comply with covenants in financing arrangements, including the consequences of non-compliance.
- A copy of a document containing market sensitive information that an Issuer lodges with an overseas stock exchange or other regulator that is available to the public. The copy given to NZX must be in English.

In certain cases, NZXMS will be prepared to work with Issuers to review information that should be released. However we note that the obligations to disclose under the Rules remain with the Issuer. Any assistance from NZXMS should not be taken to constitute legal advice on the Issuer's obligations.

Is there a difference between disclosure thresholds between Equity Instruments and Debt Instruments?

Those Issuers who are only issuing Debt Securities may have a different materiality threshold to Issuers of Equity Securities. Accordingly, information that may have had to be disclosed if the Issuer had issued Equity Securities may not need to be disclosed where only Debt Securities are issued. This is because information that moves the quoted price of a traditional Debt Security, such as a bond, is usually quite different from that which would move the price of an Equity Security. However, it is important to note that the range of Debt Securities offered on the NZDX Market has become increasingly sophisticated with the introduction of instruments that have both debt and equity characteristics (including “hybrid” Securities).

In respect of traditional Debt Securities, the ability to pay interest on debt and repay principal on maturity, and any information that might relate to these factors, is likely to be Material Information. An increase in current period sales, for example, is less likely to be Material Information. Similarly, any changes, or indicators of review of, the credit rating of Issuer with Debt Securities on issue is also likely to be Material Information. However, the more closely an instrument listed on the NZDX Market resembles an Equity Security, the more likely it is that a wider range of information will be regarded as Material Information.

Note also that, once Debt Securities start to trade at a distressed yield instead of trading at a normal yield, that more information will potentially be Material Information.

Examples of information that may require disclosure by NZDX Issuers under the Rules include:

- Material changes in the overall level and nature (eg, ranking) of debt being serviced by an Issuer of Debt Securities.
- Material changes in sources of funding available to an Issuer of Debt Securities.
- Material changes in the asset quality, including significant defaults and arrears and default concentrations of an Issuer of Debt Securities.

Becomes aware of information

The concept of knowledge is central to the operation of the continuous disclosure regime. The Rules define when an Issuer becomes “aware of information” in the following way:

“...an Issuer is aware of information if a Director or an executive officer of the Issuer (and in the case of a Managed Fund, a Director or executive officer of the Manager) has come into possession of the information in the course of the performance of his or her duties as a Director or executive officer.”

Neither the Act nor the Rules define what an executive officer is. An Issuer may wish to use, as a rule of thumb, the concept of officers contained in the Securities Market (Disclosure of Relevant Interests by Directors and Officers) Regulations 2003.

The first question that officers and Directors of an Issuer should consider in regard to the Rules is whether the Issuer is aware of any Material Information concerning it. Once a Director or executive officer becomes aware of information, he or she must consider, immediately, whether that information must be disclosed to NZX. Appropriate systems and procedures must be implemented by Issuers to ensure that Material Information is promptly identified by the Issuer and decisions taken as to whether disclosure is required.

Note also that there will be information that an executive officer may hold that, until such time as the Board formally signs it off, will not be regarded as Material Information. An example of this would be if the chief financial officer of an Issuer considered that an asset should be written down but this decision is subject to Board sign-off. There is a difference between an executive officer making a recommendation that requires a Board decision, and a known fact. In the case of a known fact, an Issuer cannot delay disclosing this information pending formal sign-off by the Board. This will also be the case if there is Material Information underlying the recommendation to the Board.

Immediately

Issuers must release information as soon as they become aware of it. This means that Issuers cannot hold off releasing the Material Information, for example, until the next scheduled quarterly board meeting.

If an Issuer becomes aware of Material Information about a future event (for example, such as knowing that the breach of a financing covenant or other material covenant is inevitable) it must disclose this as soon as it becomes aware of that information, even if that is ahead of the event to which the information relates.

Information concerns the Issuer

The information must concern the Issuer for the Rules to apply. It must be relevant to the business of the Issuer. However, the information does not necessarily have to emanate from the Issuer and may originate from a third party (e.g. a regulatory body like the Commerce Commission). The obligation on the Issuer is to disclose the information immediately once the Issuer becomes aware of it. In the case of information that has originated from a third party, it will often be necessary for the Issuer to apply for a trading halt, in order for the Issuer to formulate an announcement.

The information must relate to particular Securities, the Issuer or particular Issuers, rather than to Securities generally, or Issuers generally. For example, an agricultural company should not be required to announce general changes in the price of wheat.

Exceptions to the Rules

There are a number of exceptions to the Rules, which are known as the “safe harbour” provisions. The exceptions permit Material Information to be withheld if certain criteria are met. Material Information will not need to be released when:

- “(i) a reasonable person would not expect the information to be disclosed; **and***
- (ii) the information is confidential and its confidentiality is maintained; **and***
- (iii) one or more of the following applies:*
 - (A) the release of information would be a breach of law; or*
 - (B) the information concerns an incomplete proposal or negotiation; or*
 - (C) the information comprises matters of supposition or is insufficiently definite to warrant disclosure or;*
 - (D) the information is generated for the internal management purposes of the Issuer; or*
 - (E) the information is a trade secret.”*

The Issuer must release the Material Information concerning it unless sub clauses (i), (ii) **and** (iii) each apply. It is not sufficient to withhold information on the basis that just one or two of the limbs apply.

Reasonable person

The footnotes to the Rules note that “a reasonable person” would not expect information to be disclosed if the release of the information would:

- unreasonably prejudice the Issuer; or
- provide no benefit to a person who commonly invests in Securities.

This requires a balancing of the value to the Issuer of the information remaining confidential, against the value to investors of the information if made public. NZXMS views the “reasonable person” aspect of the “safe harbour” provisions as being an overarching test when considering whether information should be released – that is, that test must always be satisfied in addition to the other limbs of the test.

The first part of this test requires consideration of the prejudice that disclosing information could have to the Issuer and, by extension to investors. This does not mean that Issuers can simply choose to withhold bad financial news from the market. An example of where disclosure of information might unreasonably prejudice the Issuer is where the Issuer is in the middle of confidential negotiations and disclosure may prejudice the negotiations.

Confidentiality

For the relevant exception to the Rules to apply the information must be confidential, and confidentiality must be maintained. Whether information is confidential will be a question of fact. It cannot be in the public domain. Where negotiations are in progress, the other party must also keep the fact of, and content of, those negotiations confidential. There is likely (but not always) to be a confidentiality agreement in place. However, there can be a difference between information being subject to a confidentiality agreement and information being confidential in fact. Footnote 5 to NZSX/NZDX Listing Rule 10.1 and Footnote 4 to NZAX Listing Rule 10.1 states that once information is received by any person who is not bound by a corresponding obligation of confidentiality with which that person is likely to comply, the exemption no longer applies and the information must be disclosed to NZX. This is the case even if the Issuer has entered into confidentiality arrangements and/or the information has come from a source other than the Issuer.

There have been questions in the Australian context about media and competitors trying to force disclosure by way of speculation and whether this means that once there is speculation in the media the matter it relates to is no longer confidential. NZXMS does not consider that, in itself, media speculation about a matter necessarily means that confidentiality is removed. Information would need to come from a credible source and be reasonably specific for confidentiality to be lost through media speculation (see also comments under “Rumours” below).

Assessment of whether a matter has remained confidential will need to be made on the particular facts if this issue arises. NZXMS will review particular situations on their merits. In appropriate situations, NZXMS may not require disclosure where it is satisfied that those privy to the information have not breached confidence.

NZXMS notes that Issuers will often need to transfer Material Information to related parent or subsidiary companies in the course of their decision-making and reporting processes. Where the information is confidential, passing on of the information to parent or subsidiary companies

will not, in itself, generally change the status of that information from being confidential. Please also note our comments on “Other requirements for exception” below in this regard.

Other requirements for exception

As well as meeting the reasonable person and confidentiality thresholds, at least one of the matters in NZSX/NZDX Listing Rule 10.1.1(a)(iii) or NZAX Listing Rule 10.1 (as the case may be) must apply. Each of these matters is likely to be of relevance at some point in an Issuer’s business life. In particular, we note sub clause (a)(iii)(B) which enables companies to withhold information about incomplete negotiations. NZXMS considers that negotiations can generally be considered to be complete at the point that contracts are signed. Note that signed conditional contracts will not be regarded as incomplete.

NZXMS also notes sub clause (a)(iii)(C), which enables companies to withhold matters of supposition or matters insufficiently definite to warrant disclosure, and sub clause (a)(iii)(D) which provides an exception from disclosure where information is generated for the internal management purposes of the Issuer. For example, a listed Issuer which is a subsidiary may involve its parent in the business planning processes of that Issuer and be required to provide financial information on a regular basis to its parent. Both of these processes are for the Issuer’s internal business planning and management purposes, and NZXMS does not consider that the fact of the involvement of the parent necessarily places the information outside this exception. Whether information falls within the exception will depend on the facts and the particular involvement of the parent company in the internal management of the subsidiary.

Provide to NZX first

NZSX/NZDX Listing Rule and NZAX Listing Rule 10.1.1(b) [*NZAX Listing Rule reference in square brackets if different from NZSX/NZDX reference*] provides that Issuers shall:

“(b) not disclose any Material Information to the public, other Recognised Stock Exchanges (except as provided for in Rule 10.2.3(d)(i) [10.3.3(c)(i)]) or other parties except those parties to whom the proviso to Rule 10.1. 1(a) applies:

- (i) prior to disclosing that Material Information to NZX; and*
- (ii) prior to an acknowledgement from NZX of receipt of that Material Information.”*

NZXMS notes that this Rule should be interpreted to refer to parties to whom the information is provided in circumstances where the proviso in Rule 10.1.1(a) applies. In any situation where the Issuer needs to make disclosure under the Rules, nothing can be said about the matter until the information to be disclosed has been first provided to NZX. Announcements are required to be made to NZX via the Market Announcement Platform (“**MAP**”) or in some other manner permitted by the Rules. Disclosure is required to be made to NZX first, even where the Issuer chooses to release to the media on an embargoed basis.

It may be useful to allocate responsibility to a particular individual in the Issuer for making announcements through MAP. No further public statement should be made unless or until receipt has been acknowledged by NZX.

To avoid a breach of this Rule, Directors and officers of the Issuer should be particularly careful about what they say when speaking publicly about the Issuer. They should only talk about information that has already been disclosed, or information that is not material. In saying this, we note that the Issuer should have already disclosed all Material Information that is not subject to an exception. Accordingly, the requirement to disclose to NZX first should not discourage

Issuers from communicating about the Issuer as long as they have their continuous disclosure obligations in mind.

NZSX/NZDX Listing Rule 10.2.3(c) and NZAX Listing Rule 10.3.3(c) provide that all announcements for public release by NZXMS shall be:

“...released to NZX:

- (i) in the case of an Issuer [NZAX Issuer] listed on a Recognised Stock Exchange, before or at the same time as it releases the announcement to the other exchanges on which it is listed, and in any event at least 10 minutes prior to its public release (other than to the extent a Recognised Stock Exchange releases the information to the public); and*
- (ii) in the case of every other Issuer [NZAX Issuer], 10 minutes prior to its public release.”*

It is a breach of both NZSX/NZDX Listing Rules 10.1.1 and 10.2.3(c) [NZAX Listing Rules 10.1.1 and 10.3.3(c) for NZAX Issuers] for Material Information to be released to any other party before NZX. These Rules are designed to ensure the efficiency and effectiveness of release of market information by NZX. MAP is the central collection point for price sensitive information. Traders have access to the information provided via MAP to allow them to re-price bids or offers as a consequence of an announcement. MAP also reduces risk of unequal distribution of information as NZX data is widely disseminated via this platform.

Where an Issuer is also listed on another Recognised Stock Exchange, NZSX/NZDX Listing Rule 10.2.3(c)(i) and NZAX Listing Rule 10.3.3(c)(i) provide for disclosure to NZX at the same time as disclosure to that exchange. NZX recognises that it may be closed at the time that exchange releases the information and this would not amount to a breach by the Issuer. NZX encourages Issuers to work with NZX for co-release of significant announcements where that Issuer is also listed on a Recognised Stock Exchange.

False markets

In certain circumstances Issuers are required to prevent development of a false market for the Issuer's shares influenced by false or misleading rumours in the media. These circumstances are prescribed in Rule 10.1.1(c) of the NZSX/NZDX Listing Rules and NZAX Listing Rules. Under these Rules, Issuers are required to:

“... (c) release Material Information to NZX to the extent necessary to prevent development or subsistence of a market for its Quoted Securities which is materially influenced by false or misleading information emanating from:

- (i) the Issuer [NZAX Issuer] or any Associated Person of the Issuer [NZAX Issuer]; or*
- (ii) other persons in circumstances in each case which would give such information substantial credibility,*

and which is of a reasonably specific nature whether or not Rule 10.1.1(a) applies.”

If an Issuer does not have Material Information with which to respond to the rumour then it can simply confirm that it is in compliance with its continuous disclosure obligations.

Material influence on market

For the Rule to apply the rumours need to have a material influence on the market. The meaning of material in this context is likely to include where rumours are likely to influence the market in trading the Securities. In considering whether the market has been materially influenced by false or misleading information, it may assist to consider the effect of the rumours on the price of the Issuer's Securities.

Persons who give the information substantial credibility

For the Rule to apply the information must come from the Issuer or its associates, or other persons who give the information substantial credibility. This may include members of the media, particularly the financial media. It may depend on who the media is quoting. However, the Rule specifies that whether the person disseminating the information would give the information substantial credibility depends on the circumstances in each case. NZXMS notes that mere speculation, disseminated by the media, without being backed by a credible source would not have the requisite degree of substantial credibility.

Release information

Where the Rule applies, the Issuer should release Material Information to NZX to the extent necessary to prevent development or subsistence of a market that is materially influenced by false or misleading information. The commentary to the Rules notes that:

“The duty to correct false information in the market is limited so that antagonists cannot force information out of an Issuer simply by generating a false rumour. The market's interest in requiring correction of false rumours is intended to be limited to those which are of a reasonably specific nature and from a source which lends substantial credence to them.”

Some commentators have suggested that the equivalent rule in Australia has been used to force listed companies on the ASX to disclose information that they would not otherwise be required to disclose. This may include details of sensitive confidential negotiations.

NZXMS considers the following to be an appropriate process for compliance with Rule 10.1.1(c):

- (1) The Issuer to respond, via standard language that “[The Issuer] is in full compliance with its continuous disclosure obligations”. We consider that in most cases this will be sufficient to comply with the Rule.
- (2) If further clarification is needed the Issuer should approach NZXMS with additional information for NZXMS to review. If approached, NZXMS may consider making a statement as to whether, on the basis of the information provided, it considers that the Issuer has complied with the Rules.
- (3) Alternatively, the Issuer may release such clarification to the market as is needed.
- (4) If necessary, the Issuer may request a trading halt under Rule 5.4.1 to prevent development of a false market.

This process is intended to enable Issuers to comply with Rule 10.1.1(c) obligations as appropriate, while avoiding the problem noted above.

In other cases, the rumours might be true. In such situations Issuers will need to consider whether the information should be disclosed due to loss of confidentiality. We suggest that Issuers consider following a similar process to that outlined above (where they are not required under the Rules to respond fully).

In some cases, NZXMS will wish to query Issuers for an explanation about rumours in the media that it has become aware of. In a minority of cases it may be necessary for NZXMS to consider imposing a trading halt to prevent a false market developing.

Additional Information

In each case, Rule 10.1.1 is supported by NZSX/NZDX Listing Rule 10.2.5 and NZAX Listing Rule 10.3.5 which provide:

“NZX may, following receipt of an announcement, in consultation with the Issuer [NZAX Issuer], require any amendment, addition or alteration to the announcement, or require the Issuer [NZAX Issuer] to disclose such further Material Information following release of the announcement as NZX determines.”

This Rule enables NZXMS, in discussion with the Issuer, to require that additional information be disclosed to the market. In addition, NZXMS has powers of inspection under NZSX/NZDX Rule 2.3.1 and NZAX Listing Rule 2.3.1, which empower NZXMS to request any document, or require the Issuer to appear for an interview for the purpose of ascertaining whether an Issuer is complying or has complied with the Rules.

Working Examples

The following examples are illustrative only and relate only to the obligations of an Issuer under the Rules. These examples should not be regarded as having any effect on the Rules.

For the purposes of this working example we have developed the following fact scenario, concerning an Issuer, X Limited.

NZX Listed Issuer	Since January 2002	
Market Capitalisation	\$500 million	
Shareholders' Funds	\$200 million	
Current Share Price	\$1.00	
Shareholder Information	Y Limited – an infrastructure investment firm. Members of the Public	51% 49%
Balance date:	30 June	

X Limited is an NZSX Listed Issuer, engaged in the business of running airports that connect major centres in New Zealand and around the world.

X Limited has achieved considerable success by providing luxurious airport environments. The airports have attached airport hotels that provide spa, swimming facilities and tennis courts. The airports also offer a wide range of entertainment with restaurants, bars and health spas. Rent from these facilities provides a good source of income for X Limited.

X Limited has interests in airports based in Auckland, Christchurch, Wellington, Sydney, Canberra, Hong Kong and New York.

A large part of the success of this Issuer is due to the utilisation of new technology enabling aircraft to land and take off on very short runways. Coupled with development in whisper technology, X Limited has been able to place airports in prime locations closer than usual to the central business district in cities.

X Limited is used by wealthy business people and travellers who are willing to pay a high premium to arrive and depart from locations that are convenient.

Example 1

X Limited is considering expanding its operations and has determined to do so via acquisition. It has identified 3 airport businesses, A, B and C that may be suitable. X Limited decides to hire a consultancy firm to take the lead role in reviewing the suitability of the 3 targets. If X Limited comes to a positive view on the project the likely acquisition cost could see \$50 million going from X Limited to the target. X Limited and the consultancy firm enter into a contract. Confidentiality is maintained.

Is the signing of the consultancy contract Material Information?

The project is non-public. Is X Limited required to disclose the consultancy contract?

This question can be broken into three parts: (i) the consultancy contract, (ii) the likely acquisition costs and (iii) the fact that X Limited is considering acquiring an airport business.

In itself the consultancy contract may not be immediately Material Information as this will depend in part on the consultancy fee payable. However, the decision is likely to be important strategically and this must also be considered. It is unlikely that disclosure would be required. With respect to the future acquisition, that information is currently confidential, and is insufficiently definite to warrant disclosure (or alternatively “concerns an incomplete proposal or negotiation”). Again, this is therefore unlikely to require disclosure.

Example 2

After receiving positive advice from the consultancy firm concerning C Limited, X Limited decides to proceed with the plan to acquire C Limited subject to negotiating appropriate terms. X Limited commences negotiations with C Limited and due diligence is underway. X Limited expects to pay \$55 million although a number of important issues remain outstanding that could affect X Limited’s decision to proceed. The negotiations have not yet been made public.

Is this information material?

When should the information be disclosed?

Clearly, the fact of the acquisition, which at a cost of \$55 million is over 10% of the company’s market capitalisation, is Material Information.

If, however, the negotiations are confidential and that confidentiality is maintained, NZXMS considers that disclosure would be unlikely to be required as a reasonable person would be unlikely to expect the information to be disclosed while the negotiations are incomplete.

Example 3

The same facts as in Example 2 apply except that a respected and widely read business column contains specific information from a credible source that X Limited and C Limited have been in discussions and X Limited is about to acquire C Limited and that this will have a positive impact on the financial results of X Limited.

Disclosure of the fact that negotiations are taking place would be required. While the proposal is clearly one that is incomplete, it is apparent that the negotiations have not remained confidential and X Limited would be expected to confirm to the market that it is in discussion with C Limited, but that no decision has been made whether or not to proceed.

Example 4

X Limited and C Limited are close to reaching agreement, but have yet to resolve one outstanding aspect of the transaction. It is expected that this could take up to 24 hours. The following day, a daily newspaper publishes an article stating that X Limited is about to make a significant acquisition and comments on the effect of the proposal.

Disclosure would be required. While the proposal is still one that is incomplete, it is clear that the negotiations have not remained confidential. In circumstances where entry into the agreement is imminent, it would be appropriate for X Limited to apply for a trading halt, pending the release of an announcement concerning the outcome of the negotiations.

Example 5

The negotiations between X Limited and C Limited reach a stalemate and the parties determine that the proposed acquisition will not proceed. Discussions have been terminated. The Securities of X Limited are still in a trading halt.

Disclosure would be required. An announcement of the fact that the negotiations with C Limited have collapsed would be required to lift the trading halt that is currently in place, given the market expectation that agreement was about to be reached.

Example 6

X Limited has completed negotiations with C Limited to purchase its business. The terms of the agreement between X Limited and C Limited are finalised and the agreement is executed. At C Limited's insistence the finalised agreement contains confidentiality provisions under which the terms of the acquisition cannot be disclosed.

Disclosure of the main terms of the finalised agreement would be required. The confidentiality provisions of the agreement do not override the disclosure obligation of X Limited in the Listing Rules. In this instance disclosure of the following would be required.

- Details about C Limited's business, including the type of business, length of operation, financial history, numbers of staff and details of Directors or owners;
- The total consideration paid; and
- Composition and method of payment.

X Limited must immediately disclose the main terms of any agreement that it has entered into that is material under the Rules.

Example 7

On reviewing management accounts part way through a half year period, X Limited becomes aware that actual revenues and profits for the period will vary from one or more of the following to a material extent:

- The financial results for the previous corresponding period;
- Prospective financial information such as forecasts or projections previously provided to the market.

Disclosure would be required. In making such disclosure, the entity must provide some details, however qualified, of the extent of the variation. For example a statement by an entity may indicate that based on internal management accounts, its expected net profit or EBIT will be an approximate amount (e.g. approximately \$10m) or alternatively within a stated range (e.g. between \$9m to \$11m). Alternatively, the entity may indicate an approximate percentage movement (e.g. "up (or down) by 25% on the previous corresponding period"). NZXMS accepts that this information may not be precise and may be changed or amended on completion of the final accounts.

The disclosure required would be limited to information known to the Issuer – for example, close to or following the end of the reporting period.

Example 8

On reviewing management accounts part way through a half-year period, X Limited becomes aware that it will incur a large trading loss for the half year. Due to projected revenues from a new airline taking up landing rights in the second half year, X Limited still expects to achieve full year results broadly in line with that of the previous full year.

Disclosure would be required. As the half-year result differs materially from the previous corresponding period, the market would not be expecting that result and must be immediately informed. X Limited should confirm to the market that despite this result it still expects to achieve full year results broadly in line with that of the previous full year.

Example 9

During the second half of its financial year, and due to unforeseen circumstances, X Limited becomes aware that the new airline will not be able to land as previously expected in the second half of the year and that the revenues expected from the landing rights will now be received in the next accounting period. As a result X Limited will not achieve its expected full year result and the variation is expected to be material.

Disclosure would be required.

Example 10

It is two weeks prior to the due date for lodgement of a preliminary annual report. While the trading results for X Limited are broadly in line with the previous corresponding period, year end adjustments and write-downs will result in a significant reduction in the company's result.

Immediate disclosure would be required. It is not appropriate for X Limited to delay the release of this information until the time of lodgement of the preliminary final report.

Example 11

X Limited now proposes to acquire D Limited, a listed entity in the same industry. Although the acquisition has been contemplated by the board of X Limited for some time no formal approach has previously been made. X Limited and D Limited have just begun confidential negotiations with a view to X Limited effecting a "friendly" takeover of D Limited. Information about the negotiations is strictly limited to the parties and their advisors. Coincidentally a small item appears in the Financial News speculating about rationalisation in the industry, and mentioning both X Limited and D Limited among others, as potential targets.

NZXMS would normally not require a response. The comment appears to be speculative and based on generally known circumstances about the industry and industry analysis of that information rather than the specific circumstances of X Limited.

Example 12

Discussions between X Limited and D Limited proceed as before but are significantly advanced. Only one significant issue remains unresolved. After a few days of intense discussions it becomes apparent that neither party will concede and the proposal is abandoned. A day or so later, two of D Limited's advisers are in a lift discussing the failed proposal. Only part of their conversation is overheard by a senior reporter with the Business Herald and on the following

day, that paper features an article about a proposed deal between the parties under the headline “X Limited to make bid for D Limited”.

Both entities should confirm to the market that following negotiations there is no intention to proceed with a bid. In the absence of any clarification from the entities, the inaccurate media comment would be likely to create a false market in the Securities of both entities, as investors would not know whether the comment is accurate or not.

Example 13

After a number of months and a change in circumstances relating to the “road-block” issue, the discussions between X Limited and D Limited are resumed. After working late one night, two of X Limited’s advisers go to a Wellington city bar and restaurant, and over several drinks discuss a number of key details of the negotiations. They are overheard by a freelance analyst and author of a popular securities newsletter available by subscription only. Early the next morning, the analyst prepares a report on X Limited which includes details of the negotiations and circulates the report to his subscribers by e-mail. Both X Limited and D Limited are alerted to the existence of the report by enquiries from shareholders. The price of X Limited’s Securities decreases by 5% and the price of D Limited’s Securities increases by 10% immediately the market opens.

NZXMS would require both entities to disclose the fact that negotiations are taking place. Such disclosure would be required as the negotiations are no longer secret and their existence has been disseminated to a sector of the market. It is irrelevant who disclosed the details of the negotiations or how dissemination occurred. Details of the terms of the proposed takeover need not be revealed until they are finalised.

It would be appropriate for both entities to request a trading halt pending the release of announcements by the entities.

Guidelines – Disclose material matters

- (1) Issuers to develop processes to keep under review whether:
 - (a) it is aware of Material Information in terms of the Listing Rules (which will involve identifying who the executive officers of the company are); and
 - (b) the exceptions in Rule 10.1.1(a) apply.
- (2) Designate a “communications point” person through whom disclosures should go.
- (3) All staff to be aware of the Rules and should be made aware that they should approach a “communications point” person where they think there may be Material Information.
- (4) Institute a policy that others are not authorised to speak on behalf of the Issuer without specific authorisation.
- (5) In the course of weekly management meetings, management to consider whether any matters need to be put to the board.
- (6) Review monthly accounts to consider if they show any material changes that should be disclosed to the market.
- (7) Staff to send recommendations to Directors with board papers as to what should be disclosed under the Rules.
- (8) Fixed board agenda item to consider whether any matters should be disclosed in terms of the Rules.
- (9) Minutes for board meetings should record reasons for disclosing or not disclosing specific matters.
- (10) Ensure appropriate confidentiality agreements are in place where the company enters into material negotiations.

Guidelines – Disclose to NZX first

- (1) Assign a person to make announcements to NZX.
- (2) Get confirmation from NZX that the information has been received before speaking to the press or analysts.

Guidelines – prevent false market

- (1) Keep media comments and own announcements under continuous review.
- (2) Keep trading of its shares under review.
- (3) Inform the appropriate person where it is possible that a false market is developing to ensure assessment of the situation.