
ASX issues updated Guidance on Continuous Disclosure

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In brief

On 1 July 2015, the ASX updated its guidance on continuous disclosure obligations of listed entities under listing rule 3.1 with the re-issue of Guidance Note 8. The new guidance note follows the release of an ASX consultation paper on 6 March 2015 which sought public comment on the proposed changes. The revised ASX guidance contains further information on how ASX considers that listed entities should deal with analyst forecasts, consensus estimates, earnings surprises and analyst and investor briefings in the context of complying with their continuous disclosure obligations. The following is a summary of some of the key features of ASX's updated guidance.

In detail

- ***No requirement to provide earnings guidance or release internal budgets and earnings forecasts***

Generally, an entity is not required by listing rule 3.1 to release its internal budgets or earnings projections to the market because these are generated for internal management purposes. Provided they remain confidential, such information falls within the carve-outs to immediate disclosure in listing rule 3.1A. ASX confirms that provided the information remains confidential and the entity does not give de facto earnings guidance, it is acceptable for a listed entity to have a policy of not providing earnings guidance to the market.

- ***Correcting earnings forecasts by analysts***

Generally ASX does not believe that an entity has any obligation to correct earnings forecasts of analysts, or the consensus estimate of market data vendors, to bring it into line with the entity's internal earnings projections. Further, ASX has stated that an entity does not have any obligation to publish its internal earnings projections merely because they happen to differ from an analyst's forecast or a consensus estimate of analysts' forecasts. However, where an entity has not published earnings guidance, analyst forecasts and consensus estimates can be relevant indicators of market expectations and, in such cases, ASX considers that there will be an obligation under the Listing Rules to make an announcement if the entity becomes aware that its earnings are likely to differ so significantly from market expectations that information about that difference is market sensitive.

- ***Dealing with differences between market expectations and actual earnings***

If, in the process of preparing a periodic disclosure, it becomes apparent that reported earnings will differ "so significantly" from market expectations that a reasonable person would expect the information to have a material effect on the price of the securities, the entity must disclose that information to ASX immediately. The entity should not wait for the periodic disclosure document

to be released. The same is true for information about a material post-balance date event that a reasonable person would expect to have a material effect on the price of securities.

- ***Notifying the market of an earnings surprise***
ASX confirms that in its view an earnings surprise will only need to be notified to the market under listing rule 3.1 if it is market sensitive. This means it must be of such a magnitude that a reasonable person would expect it to have a material effect on the price of securities. Relevant considerations will include the extent of the earnings surprise and whether it relates to earnings guidance published by the entity or to some other measure of expected earnings such as analysts' forecasts.
- ***Entities that do not publish earnings guidance***
ASX has clarified that its recommendation to update the market where actual results differ from projections may, depending upon the circumstances, not apply to entities that have not published guidance for the current reporting period. The fact that actual or projected earnings at a point in time may differ by 5% to 10% from analyst forecasts or the prior corresponding period, will not necessarily be market sensitive and therefore will not necessarily require disclosure to the market under listing rule 3.1. The reason for drawing a distinction between an entity that has published earnings guidance, and an entity that has not, stems from the fact that ASX considers that entities which publish earnings guidance make a representation that sets the market's expectations for their earnings.
- ***Disclosing analysts' forecasts***
In ASX's view, with some limited exceptions, a single analyst's forecast or a single consensus estimate is not information that is required to be published on the ASX Market Announcements Platform under listing rule 3.1. In ASX's view, the act of publishing such information constitutes an implied endorsement of the forecast or estimate and amounts to de facto earnings guidance.
- ***Disclosure of forecasts to analysts***
Entities that provide analysts with periodic summaries of their forecasts should bear in mind that this can create the perception of selective disclosure and a risk that it will be interpreted as de facto earnings guidance. If an entity provides analysts with this information, it will generally be safer to first disclose the information publicly with an appropriate disclaimer. In particular, an entity should not disclose any market sensitive information at analyst or investor briefings, unless it has first been disclosed to ASX.

The takeaway

The continuous disclosure rules are fundamental to an informed and efficient market. It is critical that listed entities have rigorous systems and policies in place to ensure compliance. If you would like further information, please get in touch with your usual PwC legal contact.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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