



CHARTERED SECRETARIES  
AUSTRALIA

*Keeping good companies*

14 May 2004

Ms Ruth Smith  
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**Guidelines for release of price-sensitive decisions by  
Australian Government Departments and Agencies**

Dear Ms Smith

Chartered Secretaries Australia (CSA) welcomes the opportunity to provide input to the Government on the *Guidelines for release of price-sensitive decisions by Australian Government Departments and Agencies*.

CSA has frequently commented on matters concerning continuous disclosure for listed entities over the last couple of years and is keenly interested in the application of continuous disclosure provisions to government departments and agencies. An exhaustive *Benchmarking Company Secretariat Functions* survey of Australia's Top-200 listed companies (conducted in December of 2003) revealed that 95.5% of Company Secretaries in the survey have primary responsibility for 'managing' continuous disclosure within their company - second only in importance to managing the needs of the Board.

CSA is Australia's peak membership body for governance professionals. In Australia CSA has over 8,000 Members and Affiliates representing the majority of public companies listed on the Australian Stock Exchange (ASX).

Members of CSA regularly deal on a day-to-day basis with the ASX, ASIC and the ACCC and have a thorough working knowledge of the operations of the markets, the needs of investors and the law and regulation dealing with market practices, independence and disclosure.

After reviewing the proposed guidelines CSA's views are as follows:

1. Listed entities regard most seriously their obligations for continuous disclosure under the ASX Listing Rules and the Corporations Act. Other than the Pan Pharmaceuticals case, there are no examples which would justify the requirement to introduce guidelines of this nature. Certainly the statement "experience indicates that listed entities can not always be relied upon to comply with these information requirements" is not justifiable or warranted.

2. The guidelines call for agencies to make a determination as to whether information is likely to have a material affect on an entity's securities. It is unrealistic to expect that the agencies would have sufficient detailed knowledge of the entities and the markets to be able to make such a determination. Disclosure is the obligation of the relevant entity and the decisions taken are, of their nature, subjective. In addition, there may be circumstances in which the carve outs under the Listing Rules mean that the entity should not disclose the information. Agencies would have no means of determining whether carve outs apply.
3. The guidelines are stated to be 'informal' and in the nature of 'best endeavours' and no obligations are imposed on the agencies to comply with the guidelines. Such an arrangement is likely to create inconsistencies and confusion in the market as agencies are likely to take differing approaches.
4. The proposal to provide an advance copy of a release to the ASX is not contemplated or supported by the current Listing Rules or the practice notes.
5. There is a concern that agencies may disclose proposed actions at a time when an entity has not had the opportunity to consider and exercise all legal rights in relation to those actions. Disclosure in such circumstances would be inappropriate and damaging.
6. For some agencies, there may be a relationship of confidentiality with the entities they regulate. There would therefore be a conflict created by the obligations under the guidelines. This is no provision in the guidelines for resolving such a conflict.
7. Possible consequences of inappropriate disclosure by agencies include:
  - creation of false markets causing possible loss to investors
  - substantial damage to entities, including reputation and market implications.

In closing CSA is concerned with many of the provisions of the proposed guidelines.

As the matter of continuous disclosure is particularly important to the Company Secretary, given the nature of their relationship with the ASX, CSA would be happy to meet with members of the Department of Treasury to discuss this matter further.

Yours sincerely



Sue Crook FCIS  
PRESIDENT