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ASX Review Highlights Need for Prompt Disclosure of Directors' Interests

The Australian Securities Exchange (“**ASX**”) has recently released its findings of a review (“**Review**”) conducted by ASX Markets Supervision (“**ASXMS**”) of disclosure of directors’ interest notices lodged by listed entities. The Review was conducted over the period commencing 1 January and ending on 31 March 2008 (“**Review Period**”).

The Review found that 13% of directors’ notices lodged during the Review Period breached the ASX requirement for disclosure within five business days of the relevant change occurring. A number of those notices also failed to meet the requirements of the Corporations Act 2001 (Cth) (“**Act**”).

Corporations Act

Section 205G(1) of the Act requires a director of a listed public company to notify ASX of:

- (a) his or her relevant interest in securities of that company or a related body corporate; and
- (b) contracts to which the director is a party or under which the director is entitled to a benefit and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the company or a related body corporate.

Under the Act, any change of a director’s interest referred to above must be given to the relevant market operator within 14 days of the date of such change occurring. A breach of section 205G is a strict liability offence and can result in fines and/or (technically at least), jail time. These requirements are separate to those imposed by the ASX Listing Rules. However, if a listed company complies with the ASX disclosure requirement, it is *also* not required to give another notice to satisfy section 205G.

ASX Listing Rules

ASXMS also reviewed trading by directors during the period between the end of a listed entity’s financial period and the release of its half-year or full-year results – referred to as the “blackout” period. Almost 800 trades by directors during “blackout” periods were

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considered by ASXMS to be of potential market concern. Trading by a director during a “blackout” period may contravene the “insider trading” provisions of the Act if that director is in possession of undisclosed, price-sensitive information at the time of acquiring or disposing of the relevant securities. In its media release, ASX stated that it will refer serious matters arising from its Review to ASIC for possible investigation and enforcement.

ASX-Required Disclosures

Directors of publicly-listed companies should be aware of the various disclosure notices that they must provide to ASX. ASX Listing Rule 3.19A requires an entity to notify ASX of:

- (a) the notifiable interests of a director of the entity on the date that the entity is admitted to the official list and on the date that a director is appointed, in the form of Appendix 3X – notification required within 5 business days of appointment;
- (b) any change to the notifiable interests of a director of the entity, in the form of Appendix 3Y – notification required within 5 business days after the occurrence of the change; and
- (c) the notifiable interests of a director of the entity at the date that director ceases to be a director, in the form of Appendix 3Z – notification required within 5 business days after ceasing to be a director.

ASX Listing Rule 3.19B provides that an entity must make such arrangements as are necessary with its directors to ensure that each of its directors discloses to the entity all the information required by the entity to give ASX completed Appendices 3X, 3Y and 3Z within the time period allowed by Listing Rule 3.19A. Entities are also required to enforce such arrangements with their directors.

ASIC Regulatory Guide

The release of ASX’s findings coincides with the issue, by ASIC, of Regulatory Guide 193 entitled “Notification of directors’ interests in securities – listed companies” (“**Guide**”). The Guide provides a summary of directors’ obligations under section 205G of the Act and ASIC’s policy in relation to its enforcement of that section. ASX’s Review and ASIC’s Guide may be viewed via www.asx.com.au and www.asic.gov.au respectively.

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