FINAL AMENDMENTS TO ASX GUIDANCE NOTE 8 ON CONTINUOUS DISCLOSURE

BOARDWORX

Introduction

The proposed changes to ASX Guidance Note 8 on continuous disclosure (GN8) foreshadowed in March 2015 have now been finalised. The updated GN8 contains expanded guidance on analyst and investor briefings, analyst forecasts, consensus estimates and earnings surprises.

Earnings guidance and 'market sensitive' earnings surprises

The distinction between entities that have provided earnings guidance to the market and those that have not remains in the updated GN8.

The other key distinction drawn in the updated GN8 is between earnings surprises that are 'market sensitive' and those that are not. The ASX emphasises that it is only market sensitive earnings surprises that trigger disclosures under Listing Rule 3.1.

As a starting point, ASX emphasises that "all other things being equal, an entity is not required by Listing Rule 3.1 to release its internal budgets or earnings projections to the market... Accordingly, subject to the exceptions noted below it is perfectly acceptable for an entity to have a policy of not providing earnings guidance to the market."

There are qualifiers to this position where:

- An entity which has such a policy gives de facto earnings guidance; or
- An announcement is necessary because of a market sensitive earnings surprise; and
- Such a policy does not take precedence over the entities continuous disclosure obligations to disclose market sensitive information unless an exception applies.

However where an entity has provided guidance to the market, the updated GN8 clarifies when entities may have a continuous disclosure obligation as a result of a material difference between the actual or expected earnings for the relevant period and the guidance provided to the market.

- A variation in an entity's earnings compared to its published guidance equal to or greater than 10% is likely to be material with the result that its guidance needs updating;
- A variation of less than 5% is unlikely to be material, unless there is convincing argument to the contrary.

ASX has added a new footnote including examples of where there might be a convincing argument that a 5-10% variation may not be material, such as:

- Where an entity has particularly low earnings, such that a 5-10% variation is very low in absolute terms and unlikely to have a material effect on the value of an entity's securities; or
- An entity that has particularly "lumpy" revenue or expenses, such that a 5-10% variation above its published guidance part way through the reporting period may not be market sensitive, is expected to correct itself over the course of the financial period as it receives revenue and incurs expenses.

For cases where an entity has not published earnings guidance for the current reporting period, the updated GN 8 maintains ASX's previous position that it does not consider it appropriate to lay down any general rule of thumb or percentage guidelines on when a difference in actual or projected earnings compared to market expectations ought to be considered market sensitive.

ASX has emphasised in the updated GN8 that the 5- 10% guidance does not apply to entities that have not published guidance for the current reporting period: "The fact that their actual or projected earnings at a point in time may differ, if they are covered by sell-side analysts, by 5 to 10% from analyst forecasts or, if they are not covered by sell-side analysts, by 5 to 10% from their earnings for 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."

Correcting analyst forecasts and consensus estimates

ASX has added new guidance to the effect that it does not believe an entity (whether market guidance has been provided or not) has any obligation to:

- Correct the earnings forecast of any individual analyst, or the consensus estimate of any individual market data vendor, to bring it into line with the entity's internal earnings projections; or
- Publish its internal earnings projections just because they happen to differ from an analyst's forecast or a consensus estimate of analysts' forecasts. But that guidance is qualified by the principle that where an entity has not published

earnings guidance, analyst forecasts and consensus estimates can be relevant indicators of market expectations and an entity may have an obligation under the Listing Rules to make an appropriate announcement if it becomes aware that its earnings for the current reporting period are likely to differ so significantly from market expectations that information about that difference is market sensitive; and

- ASX expects that the entity will be monitoring analyst forecasts and consensus estimates so that it has an understanding of the market's expectations for its earnings and "is alive to any potential market sensitive earnings surprise that may be emerging". The emergence of a significant difference between an entity's internal earnings projections and analyst's forecasts or consensus estimates, in ASX's view, should prompt an entity to ask itself why that might be so. Whilst it is acceptable to point out to analyst's inaccuracies in their financial assumptions, ASX's new guidance "cautions" entities that may choose to discuss their earnings forecasts with analysts to "tread very carefully" so as to avoid the risk of selectively disclosing information to those analysts or saying anything that could be construed as de facto earnings guidance.

Publishing analyst forecasts and consensus estimates

The updated GN8 makes it clear that, in ASX's view, where an entity chooses to publish a single analyst's forecast or single consensus estimate on the Market Announcements Platform, the entity is implicitly endorsing that forecast or estimate and providing de facto earnings guidance. (Although, ASX will not generally permit an entity to publish a single analyst's forecast or single consensus without a detailed acceptable explanation as to why the entity considers this information to be market sensitive).

For entities wishing to publish or refer to information about analyst forecasts, ASX recommends that the entity consider publishing either:

- A list of the individual earnings forecasts of the analysts known to be covering its stock; or

- A range showing the low, average (or consensus) and high earnings forecasts of the analysts known to be covering its stock, together with a disclaimer making it clear that the entity "does not endorse, confirm or express a view as to the accuracy of, the forecasts nor does it make any representation that its earnings will fall within the range of forecasts provided." The source, completeness and currency of the information should also be disclosed. The publication can be made either on the entity's website or on ASX's Market Announcements Platform. The ASX makes another point in relation to an entity deciding to publish analyst forecasts or consensus estimates. If there is an outlier of analyst forecasts it should not excluded, as this will substantially increase the risk that the published information is de facto earnings guidance.

The updated GN8 now also includes a specified section discussing ASX's view concerning the practice of publishing analyst forecasts or consensus estimates to analysts. There has been a practice of some entities providing summary or consensus information about forecasts to analysts to assist the analysts more with up-to- date information concerning those forecasts than may otherwise be available from market data providers. ASX counsels that it will generally be safer for the entity to make the information available by publishing it on its website or in a market announcement rather than directly to analysts

De Facto Earnings Guidance

ASX cautions entities that have a policy of not providing earnings guidance, against making statements that could be construed as de facto earnings guidance. If they do, a disclosure obligation may be triggered.

Examples of De Facto Earnings Guidance	Consequences
• The entity makes a statement to security holders, analysts or the press that it is "happy" with or expects its earnings to be "in line with" analyst forecasts or consensus estimates, or with the corresponding prior period. • The entity publishes a single analyst forecast or single consensus estimate on ASX.	• If that statement was not made to the market ASX may require it be made to the market or ASX may ask the entity to clarify in the statement which analyst's forecasts are being commented on, the range and where within the range the entity expects its earnings to fall. • Constitutes an **implied endorsement of the forecast or estimate**. • Generally, ASX does not allow an entity to publish this information without a detailed explanation of the reasons why the entity considers the information to be market sensitive.

Disclosing information at analyst and investor briefings

The updated GN8 includes a new section on 'Analyst and investor briefings' emphasising the importance of avoiding selective disclosure of market sensitive information by ensuring that all market sensitive information has first been disclosed to ASX.

To this end, ASX suggests that it is prudent practice for entities to ensure that any new presentation to be given at an analyst or investor briefing is first given to ASX.

Following feedback received during the consultation period, ASX's final guidance note clarifies that where an entity gives a series of presentations over a short period of time and the presentations have been tailored for each event but contain materially the same information, it will not expect that each subsequent iteration of the presentation be lodged with ASX for release to the market.

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