

References

Version 4, Operative 01/01/2009

BSX Listing Rules, Chapter 3

Corporations Act, particularly s111AP and Chapter 6CA

Introduction

This guidance note has been issued to assist entities comply with their disclosure requirements under the BSX Listing Rules.

Regulatory Objectives

One of the key principles underlying the BSX Listing Rules is that listed entities must keep investors and the market informed on a timely basis of information that is likely to affect the price at which their securities trade on the BSX market.

Chapter 3 of the BSX Listing Rules contain a number of requirements designed to satisfy this principle, particularly the continuous disclosure requirement in Listing Rule 3.1.

BSX regards compliance in this area as an important part of ensuring investors are confident they are trading in an informed market. In particular, the price of an entity's securities needs to properly take account of relevant information about the entity.

BSX Disclosure Rules

The disclosure requirements in Chapter 3 of the BSX Listing Rules fall into several broad categories:

- continuous disclosure of material information (see Listing Rule 3.1);
- periodic disclosure, particularly of financial information and annual

reports (see Listing Rules 3.3 to 3.17); and

- disclosure of other specific information.

BSX regards it as particularly important for listed entities to have procedures in place so they can clearly identify and provide to BSX in a timely way information that is required to be disclosed to the BSX market. In order to implement appropriate procedures it is important that entities have a clear understanding of their disclosure requirements under Chapter 3 of the BSX Listing Rules.

The manner in which disclosure information should be provided to BSX is set out in the BSX Announcements Office Guidance Note.

Continuous Disclosure – BSX Listing Rule 3.1

BSX Listing Rule 3.1 provides that:

“if an entity becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, it must immediately provide that information to BSX”.

BSX Listing Rule 3.2 provides that:

“Rule 3.1 does not apply to particular information if a reasonable person would not expect the information to be

disclosed, the information is confidential or a trade secret and one or more of the following applies:

- (a) it would be a breach of a law to disclose the information;*
- (b) the information concerns an incomplete proposal or negotiation;*
- (c) the information comprises matters of supposition or is insufficiently definite to warrant disclosure; or*
- (d) the information is generated for internal management purposes of the entity”.*

Statutory Backing

Listing Rule 3.1 effectively has statutory backing as a result of s111AE, s111AP and s.674 to 678 of the Corporations Act. As a result, an entity that fails to comply with Listing Rule 3.1 may also incur statutory liability under Chapter 6CA.

Complying with Listing Rule 3.1 in Practice

There are a range of issues that frequently arise in relation to complying with Listing Rule 3.1.

When Does an Entity Become Aware of Information?

BSX will regard an entity as aware of information if a director or executive officer has, or ought reasonably to have, come into possession of the information in the course of their duties as a director or executive officer. This approach is broadly consistent with s1042G of the Corporations Act (which defines when information is to be regarded as in the possession of a body corporate).

As noted earlier, BSX expects listed entities to have in place appropriate procedures to ensure directors and executive officers actually become aware of material information in a timely way.

Information Already Generally Available

If material information about an entity has become generally available from another source BSX still requires the entity to comply with Listing Rule 3.1. This ensures that such information has an authoritative source and can be distributed to the entire BSX market through BSX's information distribution mechanisms.

Market Rumours

If it becomes apparent there are market rumours about an entity (for example, of a potential takeover or significant transaction) an entity needs to decide whether it is required to disclose information under Listing Rule 3.1 or take other action.

The fact that an entity is in no way responsible for a market rumour or would otherwise be entitled to rely upon an exception in Listing Rule 3.2 is irrelevant.

If this situation arises an entity should discuss it immediately with BSX to determine whether a short announcement should be made to the market or a trading halt should be imposed until the entity is in a position to make a more detailed announcement (see further below).

Prospectus and Other Forecasts

BSX does not require an entity to make forecasts. However, entities may wish to make forecasts of financial performance in prospectuses or at other times. Such forecasting gives rise to an obligation to

ensure that the forecast information remains accurate.

Thus if an entity believes actual performance will materially vary from forecast, it is obliged to make immediate disclosure pursuant to Listing Rule 3.1. BSX acknowledges that precise information may not be known or knowable by the entity when it becomes aware that it will not meet forecasts. In such cases the entity may provide a range of revised forecast outcomes.

An entity must not delay the release of revised forecasts until the release of periodic disclosures. Revised forecasts should be accompanied by an explanation of why a variance is expected. An entity may decide that it is unable to provide meaningful revised forecasts. In such circumstances the entity should provide the market with disclosure explaining why existing forecasts will not be met and why revised forecasts cannot be provided.

Exceptions

The exceptions in Listing Rule 3.2 are important as they seek to achieve an appropriate balance between the need to maintain an informed market and not risk prejudicing potential transactions by premature disclosure.

It will often require a fine degree of judgement as to when and in what manner particular matters should be disclosed to the BSX market. Entities are encouraged to contact the BSX Listings Manager if in doubt about what action to take in a particular situation. As noted above, in some cases it will be appropriate to make a short announcement to the market or call a trading halt until the entity can make a more detailed announcement.

Other Disclosure

As noted above, Chapter 3 of the BSX Listing Rules provides for a range of periodic disclosure (particularly of accounts and annual reports) as well as disclosure of specific matters.

There are disclosure requirements imposed upon directors of listed entities by the Corporations Act. Directors, associates and related parties must make themselves aware of these requirements.

BSX expects listed entities to be well aware of their disclosure requirements under Chapter 3 and to have appropriate procedures in place to ensure they are complied with in a timely way.

Trading Halts & Suspensions

There will often be circumstances where it will be appropriate for BSX to call a trading halt in an entity's securities or even suspend an entity's securities pending an announcement by the entity to the market. The manner in which BSX will do so in particular circumstances is set out in BSX's Trading Halts Guidance Note.

Scope of Guidance Note

This guidance note is intended to assist BSX listed entities comply with their obligations under the BSX Listing Rules. It is not exhaustive, does not in any way act as a substitute for any BSX Listing Rules and is not binding on BSX in its application of the Rules in any particular case.

This guidance note does not constitute legal advice by BSX. Where appropriate, BSX listed entities should obtain their own professional advice about compliance with their obligations under the BSX Listing Rules.

Queries

If you have queries about this guidance note please contact the BSX Listings office on:

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