



**DRUMMOND**  
DRUMMOND GOLD LIMITED

ACN 124 562 849

## **CODE OF CONDUCT**

Adopted on 21 December 2010

# Code of Conduct

## Introduction

The Board has approved and adopted this Code of Conduct which sets out the standard which the Board, Management Personnel and employees of the Company are encouraged to comply with when dealing with each other, transactions in securities, shareholders and its other stakeholders. The Code of Conduct outlines policies and procedures in relation to the overall code of conduct, selection of external auditor, ethical and legal responsibilities, transactions in securities of the Company, obligation of disclosure and responsibilities in respect to accounts.

## 1. Overall Code of Conduct

### Commitment of the Board and Management Personnel and employees to the Code of Conduct

The Board and Management encourage all staff and Directors to consider the principles of the code of conduct and use them as a guide when acting on behalf of the Company.

### Responsibilities to shareholders and the external financial community generally

The Company aims:

- to increase shareholder value within an appropriate framework which safeguards the rights and interests of the Company's shareholders and the community;
- comply with systems of control and accountability which the Company has in place as part of its corporate governance; and
- to act with honesty, integrity and fairness.

### Responsibilities to Clients, Customers and Consumers

The Company is to comply with all legislative and common law requirements which affect its business. Any transgression from the applicable legal rules is to be reported to the Management as soon as a person becomes aware of such a transgression.

### Employment Practices

The Company will ensure a safe work place and maintain proper occupational health and safety practices commensurate with the nature of the Company's business and activities.

### Responsibility to the Community

The Company will recognise, consider and respect legal requirements impacting upon its operations and comply with all applicable legal requirements. In addition the company will consider the interests of the broader community.

The Company will act with honesty, integrity and fairness in all dealings with the community.

### Responsibility to the Individual

The Company recognises and respects the rights of individuals and to the best of its ability will comply with the applicable legal rules regarding privacy, privileges, private and confidential information.

The Company and the Board will maintain the Company's and our shareholders', customers' and suppliers' information confidentiality unless required to be disclosed by law.

## **Obligations Relative to Fair Trading and Dealing**

The Company will deal with others in a way that is fair and will not engage in deceptive practices.

## **Conflicts of Interest**

The Board, Management Personnel and employees must not involve themselves in situations where there is a real or apparent conflict of interest between them as individuals and the interest of the Company (excluding those matters which may be subject to legal professional privilege). Where a real or apparent conflict of interest arises the matter should be brought to the attention of the Chairperson in the case of a board member or the Managing Director or Chief Executive Officer in the case of a member of Management and a supervisor in the case of an employee, so that it may be considered and dealt with in an appropriate manner for all concerned.

## **Compliance with the Code**

Any breach of compliance with this code is to be reported directly to the Managing Director or Chairperson, as appropriate.

## **Periodic Review of Code**

The Company will monitor compliance with the code periodically by liaising with the Board, Management Personnel and staff especially in relation to any areas of difficulty which arise from the code and any other ideas or suggestions for improvement of the code. Suggestions for improvements or amendments to the code can be made at any time.

## **Code of Conduct for employees (and contractors)**

The Company shall ensure that the above principles are implemented and adopted by employees and contractors of the Company by importing the following principles into the terms of such engagements:

- (a) To actively promote the highest standards of ethics and integrity in carrying out their duties for the Company;
- (b) Disclose any actual or perceived conflicts of interest of a direct or indirect nature of which they become aware and which they believe could compromise in any way the reputation or performance of the Company;
- (c) Respect confidentiality of all information of a confidential nature which is acquired in the course of the Company's business and not disclose or make improper use of such confidential information to any person unless specific authorisation is given for disclosure or disclosure is legally mandated;
- (d) Deal with the Company's customers, suppliers, competitors and each other with the highest level of honesty, fairness and integrity and to observe the rule and spirit of the legal and regulatory environment in which the Company operates;
- (e) Protect the assets of the Company to ensure availability for legitimate business purposes and ensure all corporate opportunities are enjoyed by the Company and that no property, information or position belonging to the Company or opportunity arising from these are used for personal gain or to compete with the Company;
- (f) The Company is committed to the ideal of equal employment opportunity and to providing a workplace that is free of harassment and discrimination. To this end the Company will

observe the rule and spirit of the legal and regulatory environment in which the Company operates;

- (g) Report any breach of this code of conduct to Management, who will treat reports made in good faith of such violations with respect and in confidence.

## **2. Selection of External Auditor and rotation of Audit Engagement Partner**

### **Responsibility**

The Board is responsible for the initial appointment of the external auditor and the appointment of a new external auditor when any vacancy arises. Any appointment made by the Board must be ratified by shareholders at the next general meeting of shareholders.

### **Selection Criteria**

#### *Mandatory criteria*

Candidates for the position of external auditor of the Company must be able to demonstrate complete independence from the Company and an ability to maintain independence through the engagement period. Further the successful candidate must have arrangements in place for the rotation of the audit engagement partner on a regular basis.

#### *Other criteria*

Other than the mandatory criteria mentioned above, the Board may select an external auditor based on criteria relevant to the business of the Company such as experience in the industry in which the Company operates, references, cost and any other matters deemed relevant by the Board.

### **Review**

The Audit Committee will review the performance of the external auditor on an annual basis.

## **3. Ethical and Legal Responsibilities**

### **Introduction**

The Company has adopted the following Ethics Policy which has been agreed to by each member of the Board, setting out, in addition to these principles, the obligations of integrity and honesty on each member of the Board and their obligations with respect to trading in Securities in the Company and disclosure to the ASX.

Directors of the Company are subject to certain stringent legal requirements regulating the conduct both in terms of their internal conduct as directors of the Company and in their external dealings with third parties both on their own behalf and on behalf of the Company.

To assist directors in discharging their duty to the Company and in compliance with relevant laws to which they are subject, the Company has adopted the following Ethics Policy).

This Ethic Policy sets out rules binding Directors in respect of:

- a) a Director's legal duties as an officer of the Company;
- b) a Director's obligations to make disclosures to the ASX and the market generally; and
- c) dealings by Directors in shares in the Company.

## **Directors' Powers and Duties**

Each Director of the Company is required to comply strictly with the legal, statutory and equitable duties as an officer of the Company. Broadly, these duties are:

- to act in good faith and in the best interests of the Company;
- to act with due care and diligence;
- to act for proper purposes;
- to avoid conflicts of interest or duty; and
- to refrain from making improper use of information gained through the office of Director, or taking improper advantage of the office of Director.

### **General**

Directors of companies owe a variety of duties to those companies which may impact upon the appropriateness of their attendance and participation in meetings of the board of directors. These duties arise as a result of the general law and also under the *Corporations Act*.

Directors should be aware that if they breach their fiduciary duties to the company, they may be liable to account to the entity for any profit they derive or indemnify the entity against any loss their breach has caused.

Breaches of the *Corporations Act* duties may also give rise to an action for damages, fines and penalties or disqualification.

### **Common Law Fiduciary Duties**

A director is said to be in a fiduciary, as opposed to an arm's length, relationship with the Company. As such a director will owe various fiduciary duties to the Company which underlie matters relating to the conduct of a director, including attendance and participation at meetings. The positive duties of a director include the duty to act in good faith in the best interests of the Company, to act for proper corporate purposes and to give adequate consideration to matters for decision and to keep discretions unfettered.

### **Corporations Act 2001**

A director of a corporation will also be subject to duties imposed by the Corporations Act 2001. They include the duty to exercise care and diligence, to exercise their powers in good faith and for a proper purpose and not to misuse their position or information obtained from their position to gain an advantage for themselves or others or cause detriment to the company.

### **General Duties of Directors**

#### **1. Proper Corporate Purpose**

General law duty - to act for proper corporate purposes.

The duty to act for proper corporate purposes requires directors to exercise the powers granted to them for the purpose for which they were given, not for collateral purposes.

#### **2. Adequate Consideration**

General law duty – to give adequate consideration and duty not to fetter a director's discretion

The duty to give adequate consideration to matters for decision and to keep discretions unfettered requires directors to give adequate consideration to matters when exercising their discretions. They must take positive steps to inform themselves about matters and not simply acquiesce in the decision making process.

### 3. Care and diligence

General law and Corporations Act duty – to act with a reasonable degree of care and diligence in exercising a director's powers and discharging a director's duties

Under the *Corporations Act*, a director must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

- were a director of a corporation in the same circumstances as the Company; and
- occupied the same office and had the same responsibilities as the director.

Apart from the *Corporations Act* obligation, a failure of a director to act with a reasonable degree of care and diligence is also likely to be considered negligent.

### 4. Business Judgment Rule

The Corporations Act 2001 provides for a mechanism for director's to avoid a breach of their duty of care and diligence where certain parameters are met. This is known as the "business judgment rule". All directors of the Company are expected to be familiar with this rule.

In summary, a director who makes a business judgment is taken to meet the duty of care and diligence (whether under statute or the general law) if they:

- make the judgment in good faith and for a proper purpose;
- do not have a material personal interest in the subject matter of the judgment;
- inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
- rationally believe that the judgment is in the best interests of the corporation.

The director's or officer's belief that the judgment is in the best interests of the corporation is a rational one unless that belief is one that no reasonable person in their position would hold.

A 'business judgment' is any decision to take or not take action in respect of a matter relevant to the business operations of the corporation.

Whilst the business judgment rule assists directors to avoid a breach of their duty of care and diligence both under the *Corporations Act* or under the general law, it does not relieve breaches of the other duties of directors, whether under the *Corporations Act* or otherwise, described above.

## **Avoiding Conflicts**

### ***Attending and Participating in Board Meetings***

The duties in relation to conflict are of particular importance when a director is considering whether or not they should attend and participate in Board meetings.

This rule requires a director to avoid situations in which there is a "real and sensible possibility" of conflict between the director's personal interests and the company's interests. This duty is also of particular

significance where directors hold multiple directorships. Whilst merely holding multiple directorships, even in competing companies, is not a breach of the rule against conflict, the rule will be breached if the director discloses confidential information which the director has gained as a result of their directorship of the other company.

Consequently, if a director has a conflicting personal interest, whether direct or indirect, in a matter to be discussed at a board meeting, they should firstly disclose this matter to the Board and secondly consider whether participating in the matter would result in a breach of their fiduciary duties.

### ***Material Personal Interest***

A director who has a material personal interest in a matter that relates to the affairs of the Company is required to disclose this to the Company.

Directors of the Company who have a material personal interest in a matter generally must not attend a directors meeting while the matter is being considered or vote on the matter. However, a director may do these things if a resolution of the Board is passed to this effect or if ASIC consents.

Despite this, the same cautions must be exercised as discussed above if the other directors consent to a conflicting director participation in the meeting. The conflicting director should ensure that participation won't be in breach of their fiduciary duties or the duties imposed by the Corporations Act 2001.

### ***Directors Providing Services to the Company***

In order to capitalise on the professional/technical expertise or experience of directors of the Company from time to time (other than in their capacity as directors), the Company may engage the services of that director (or a firm associated with the director) **only** on the following terms and conditions:

- the scope of the consultancy (or other services) is identified, together with a schedule of estimated costs and charge out rates to be incurred with the director or their firm;
- (where considered necessary or appropriate) the directors seek additional quotations for the same services; and
- the consultancy services are approved by the directors.

### **Confidentiality**

Directors of the Company will have access to any information which the Directors may consider necessary to perform their responsibilities and exercise their independent judgment when making decisions. All information received by a Director in these circumstances must be considered confidential and at all times remains the property of the Company.

Any confidential information of the Company acquired by a Director during the Director's appointment must not be disclosed by the Director, or the Director must not allow it to be disclosed, to any other person unless the disclosure is authorised by the chairperson or is required by law or regulatory body (including a relevant stock exchange).

### **Independence**

The Board is required to regularly assess the independence of Directors to ensure that Directors do not have any relationship or interest that interferes with their unfettered and independent judgment, or could reasonably give the impression that the Director's independence has been compromised. The Directors are required to co-operate fully with any assessment process and give all reasonable information requested. Directors are also required to tell the Company about any interest which they may have in securities of the Company (or of a related body corporate) or interest in any contract relating to those securities. This is discussed in greater detail below.

## 4. Transactions in Securities of the Company

### Introduction

The Company encourages its Key Management Personnel and employees to become shareholders in the Company. However, it is important that trades in the securities by the Key Management Personnel and employees do not breach any legal, statutory or ethical obligation that is likely to result in the trade in securities occurring at inappropriate times or in inappropriate circumstances.

### Key Management Personnel

Key Management Personnel is defined by reference to the Australian Accounting Standards Boards' AASB 124 Related Party Disclosure – being persons with authority and responsibility for planning, directing and controlling the activities of the entity (directly or indirectly), including any director (whether executive or otherwise).

The Code of Conduct for Transactions in Securities of the Company applies to the Key Management Personnel and employees which is defined to include the following parties:-

- a) all Directors and Officers of the Company
- b) key executives including the Exploration Manager, Chief Financial Officer and Company Secretary;
- c) any Director or Officer of any subsidiary of the Company;
- d) any employee or members of the corporate staff that have access to the Group's results;
- e) any employee or members of the corporate staff that have access to exploration results;
- f) any other person nominated by the Board; and
- g) any other related parties of the Company as defined by section 228 of the Corporations Act 2001.

### Application of Code of Conduct

The Board has adopted this Code of Conduct for Transactions in Securities of the Company to govern trades in securities by Key Management Personnel and employees which outlines:-

1. the restrictions on trading that apply to Key Management Personnel and employees (**Restrictions**);
2. periods when trading in company securities by Key Management Personnel and employees are prohibited (**Closed Periods**);
3. trading that is not subject to this Code of Conduct for Transactions in Securities (**Excluded Trading**);
4. exceptional circumstances in which the Key Management Personnel and employees may be permitted to trade during a closed period with prior written clearance (**Exceptional Circumstances**);
5. the procedures for obtaining prior written clearance for trading due to exceptional circumstances (**Prior Written Clearance**); and
6. the notification to the Company of trading in Securities (**Notification**).

## 1. Restrictions

### Introduction

The Key Management Personnel and employees must ensure that they comply with this Code of Conduct and do not do not contravene their obligations under common law, the Corporations Act 2001 and ASX Listing Rules when trading the Securities of the Company.

It is readily apparent that Key Management Personnel and other employees may in the course of carrying out their duties often possess Price Sensitive Information which would be regarded as inside information under the Corporation Act 2001.

Inside information is information that is not generally available which could reasonably be expected to have a material effect on the price or value of securities of a body corporate. Information is taken to have a "material effect" on the price or value of a security if it would be likely to influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy, or sell the securities. Thus, to constitute inside information the information must be both price sensitive and not generally available.

In particular Key Management Personnel and employees must adhere to their obligations and the Code of Conduct when in possession of Price Sensitive Information which has not been publicly disclosed.

### Securities

The Code of Conduct applies to all Securities issued by the Company of any kind including ordinary shares, options, preference shares, debentures, convertible notes and any other financial products including derivative products issued or created in respect to these securities (**Securities**).

The Code of Conduct also applies to securities in other corporations in which the Company has a significant influence.

### ***Price Sensitive Information***

Price Sensitive Information is defined as follows:

Price Sensitive Information is information that:

- a) relates to the affairs of the Company including its subsidiaries;
- b) may give the person proposing to trade in the Securities an advantage over the investors and/or potential investors in the Securities; and
- c) if it were general available, would likely to have a material effect on the price or value of the Securities.

The following information about the Company or its subsidiaries relating to the any of the following subjects is also considered Price Sensitive Information:

- a) change in the entity's financial forecast or expectation;
- b) the appointment of a receiver, manager, liquidator or administrator in respect of any loan, trade credit, trade debt, borrowing or securities held by it or any of its child entities;
- c) a transaction for which the consideration payable or receivable is a significant proportion of the written down value of the entity's consolidated assets. Normally, an amount of 5% or more would be significant, but a smaller amount may be significant in a particular case;
- d) proposed changes to the Board other than filling a casual vacancy or a retirement due to ill health;

- e) a proposed change to the capital structure of the Company;
- f) a recommendation or declaration of a dividend or distribution;
- g) a recommendation or decision that a dividend or distribution will not be declared;
- h) under subscriptions or over subscriptions to an issue;
- i) a copy of a document containing market sensitive information that the entity lodges with an overseas stock exchange or other regulator which is available to the public;
- j) an agreement or option to acquire an interest in a mining tenement;
- k) information about significant exploration results;
- l) information about substantial shareholdings;
- m) proposed significant changes in the holdings of Directors;
- n) giving or receiving a notice of intention to make a takeover;
- o) an agreement between the entity (or a related party or subsidiary) and a Director (or a related party of the Director);
- p) a copy of any financial documents that the entity lodges with an overseas stock exchange or other regulator which is available to the public;
- q) a material change in accounting policy adopted by the entity;
- r) any rating applied by a rating agency to an entity, or securities of an entity, and any change to such a rating; and
- s) a proposal to change the entity's auditor.

#### **Restrictions on trading in Securities by Key Management Personnel and other employees**

Key Management Personnel and other employees who are in possession of Price Sensitive Information (or information that they ought to know as being Price Sensitive Information) which is undisclosed to the general public are prohibited from:

- a) trading or engaging in any dealings with the Securities of the Company;
- b) procuring any person to trade or engage in any dealings with the Securities of the Company; or
- c) directly or indirectly communicating the Price Sensitive Information to any other person who they know or reasonably would have known would likely result in the trade or dealings in the Securities of the Company (**Prohibited Period**).

It is essential that the Key Management Personnel and other employees avoid direct or indirect communication of Price Sensitive Information before it enters the public domain. It is equally essential that the Key Management Personnel and other employees refrain from trading in shares of the company whilst they possess such information.

Key Management Personnel and employees are permitted to trade in Securities provided that:-

- a) they are not in possession of Price Sensitive Information;
- b) the trade does not occur during one of the Closed Periods;
- c) the Chairman is notified at least 48 hours beforehand of any proposed transaction of more than \$20,000 worth of Securities; and
- d) they provide the Company with the information if required for the Company to meet its disclosure obligations.

## 2. Closed Periods

Key Management Personnel and other employees are prohibited from trading or engaging in any dealing with the Securities of the Company at all times during the Closed Periods commencing from the close of books at half and full year end and ending at the beginning of the next trading day after the release of the financial results for the half and full year respectively (**Prohibited Period**).

## 3. Excluded Trading

The Code of Conduct excludes from the operations of the trading policy circumstances where the trading results in no change in beneficial interest in the securities, where trading occurs via investments in a scheme or other arrangement where the investment decisions are exercised by a third party, where the restricted person has no control or influence with respect to trading decisions, or where the trading occurs under an offer to all or most of the security holders of the entity.

The following is a list of trades that are excluded from the operation of the trading policy:-

- a) transfers of securities of the entity already held into a superannuation fund or other saving scheme in which the restricted person is a beneficiary;
- b) an investment in, or trading in units of, a fund or other scheme (other than a scheme only investing in the securities of the entity) where the assets of the fund or other scheme are invested at the discretion of a third party;
- c) where a restricted person is a trustee, trading in the securities of the entity by that trust provided the restricted person is not a beneficiary of the trust and any decision to trade during a prohibited period is taken by the other trustees or by the investment managers independently of the restricted person;
- d) where a restricted person is a beneficiary, trading in the securities of the entity by that trust provided the restricted person is not the trustee of the trust and any decision to trade during a prohibited period is taken by the trustees or by the investment managers independently of the restricted person;
- e) undertakings to accept, or the acceptance of, a takeover offer;
- f) trading under an offer or invitation made to all or most of the security holders, such as, a rights issue, a security purchase plan, a dividend or distribution reinvestment plan and an equal access buy-back, where the plan that determines the timing and structure of the offer has been approved by the board. This includes decisions relating to whether or not to take up the entitlements and the sale of entitlements required to provide for the take up of the balance of entitlements under a renounceable pro rata issue;
- g) a disposal of securities of the entity that is the result of a secured lender exercising their rights; and
- h) the exercise (but not the sale of securities following exercise) of an option or a right under an employee incentive scheme, or the conversion of a convertible security, where the final date for the exercise of the option or right, or the conversion of the security, falls during a prohibited period and the entity has been in an exceptionally long prohibited period or the entity has had a number of consecutive prohibited periods and the restricted person could not reasonably have been expected to exercise it at a time when free to do so.

#### **4. Exceptional Circumstances**

A Restricted Person being a member of the Management Personnel or an employee (who is not in possession of inside information including Price Sensitive Information) may be given Prior Written Clearance to trade their securities during a Prohibited Period defined under this Code of Conduct where the restricted person is facing Exceptional Circumstances.

Exceptional Circumstances is deemed to occur in the following situations:-

- a) Where the Restricted Person is facing severe financial hardship. For example whereby there is a pressing financial commitment that cannot be satisfied otherwise than by selling the relevant Securities of the Company; or
- b) Where the Restricted Person is required by a court order, court enforceable undertakings or by some overriding regulatory requirement to trade in the Securities

The determination of whether the Restricted Person is question is facing Exceptional Circumstances is determined by the Designated Person nominated by this Code of Conduct to give Prior Written Clearance.

#### **5. Prior Written Clearance**

The Designated Person providing Prior Written Clearance to enable a Restricted Person to trade Securities during a Prohibited Period must give consideration to the ASX Listing Rules when determining whether or not Exceptional Circumstances Exist and any discretion should be exercised with caution.

The Restricted Person seeking Prior Written Clearance to trade must satisfy the Designated Person that they are in severe financial hardship or that the circumstances are exceptional resulting in the trade of Securities being the only reasonable course of action available. At least 48 hours notice must be provided by the Restricted Person seeking Prior Written Clearance and the notice can be provided in writing or electronically by email.

The Designated Person nominated to provide the Prior Written Clearance to trade securities during a Prohibited Period is as follows:

- a) in the case of the Restricted Person being the Chairman the Designated Person is any non executive Director;
- b) in the case of the Restricted Person being a Director (not being the Chairman) the Designated Person is the Chairman; and
- c) in the case of a Restricted Person not being a Director the Designated Person is the Chairman or any non executive Director.

#### **6. Notification**

Key Management Personnel and other employees must advise the Company Secretary in writing of details of any trading in Securities within 10 business days after the completion notwithstanding their compliance with other obligations under the Code of Conduct.

Directors are pursuant to the provisions of the Corporations Act 2001 obliged to provide the ASX with appropriate notifications of their interests in the Company.

Pursuant to section 205G of the *Corporations Act 2001 (Cwlth)*, directors must notify the ASX of their:

- a) relevant interests in shares of the Company or of a related body corporate;

- b) relevant interests in debentures of or prescribed interests made available by the Company or a related body corporate;
- c) rights or options over shares in, debentures of, or prescribed interests made available by, the Company or a related body corporate;
- d) contracts:
  - (i) to which the director is a party or under which the director is entitled to a benefit; and
  - (ii) that confer a right to call for or deliver shares in, debentures of, or prescribed interests made available by, the Company or a related body corporate.

Directors must also ensure that the above interests are notified to the ASX in accordance with Listing Rule 3.19A. In particular:

- a) where a director is appointed – the Company must notify the ASX of the above interest within five (5) business days after the appointment (the appropriate form is Appendix 3X);
- b) where a change in the above interests of a director occurs – the Company must outline the change in the director’s interests to the ASX (including whether the change occurred during a closed period where prior written clearance was required and if so, whether the prior written clearance was provided) no more than 5 business days after the change occurs (the appropriate form is Appendix 3Y);
- c) where a director ceases to be a director – the Company must notify the ASX of the interests of the director at the time the director ceases to be a director, no more than five (5) business days after the director ceases to be a director (the appropriate form is Appendix 3Z).

## 5. Obligation of Disclosure

### The Listing Rules

As a listed entity, the Company must comply with certain continuous disclosure obligations imposed by the *Corporations Act 2001 (Cwlth)* and the ASX Listing Rules. Chapter 3 of the ASX Listing Rules requires the

As a listed entity, the Company must comply with certain continuous disclosure obligations imposed by the *Corporations Act 2001 (Cwlth)* and the ASX Listing Rules. Chapter 3 of the ASX Listing Rules requires the Company to provide the ASX with immediate notice of certain material information.

The general disclosure rule imposed on the Company is contained in clauses 3.1 and 3.1A of the ASX Listing Rules:

*“3.1 Once an entity is or 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, the entity must immediately tell ASX that information.*

*3.1A Listing Rule 3.1 does not apply to particular information while each of the following are satisfied:*

*3.1A.1 A reasonable person would not expect the information to be disclosed*

*3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential*

*3.1A.3 One or more of the following applies*

- *It would be a breach of a law to disclose the information.*

- *The information concerns an incomplete proposal or negotiation.*
- *The information comprises matters of supposition or is insufficiently definite to warrant disclosure.*
- *The information is generated for the internal management purposes of the entity.*
- *The information is a trade secret."*

There is also the "false market"/"rumours" disclosure rule in clause 3.1B as follows:

*"3.1B If ASX considers that there is or is likely to be a false market in an entity's securities and asks the entity to give it information to correct or prevent a false market, the entity must give ASX the information needed to correct or prevent the false market."*

The provisions of Chapter 3 are reinforced by Chapter 6CA of the *Corporations Act 2001 (Cwlth)*. In particular, section 674(2) provides that:

*"If:*

- (a) [provisions of the listing rules of a listing market in relation to an entity require an entity to notify the market operator of information about specified events or matters as they arise for the purpose of the operator making that information available to participants in the market]; and*
- (b) the entity has information that those provisions require the entity to notify to the market operator; and*
- (c) that information:*
  - (i) is not generally available; and*
  - (ii) is information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of securities of the entity;*

*the entity must notify the market operator of that information in accordance with those provisions."*

It is therefore essential that directors acquaint themselves not only with their personal obligations of disclosure, but also the disclosure obligations imposed on the Company.

### **The Disclosure Obligation**

Under the provisions of Listing Rule 3.1, the Company is required to immediately notify the ASX of any information concerning the Company of which it is, or becomes, aware, and which a reasonable person would expect to have a material effect on the price and value of the Company shares.

### **When is the Company aware of information**

The Listing Rules provide that the Company is 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 the performance of their duties as a Director or executive officer of the Company.

An "executive officer" of the Company means a person who is concerned in, or takes part in, management of the Company. A person can be an executive officer regardless of his or her designation, and irrespective of whether or not the person is a Director.

## **What information has a material effect on price?**

The effect of information on the price or value of the Company shares is to be judged by the expectations of a “reasonable person”. A reasonable person would expect information to have a material effect on the price or value of the Company shares if the information would, or would be likely to, influence investors who commonly invest in shares in deciding whether or not to deal in the Company shares.

The Company and each director should be aware of ASX policy with respect to the disclosure of material information relating to the:

- financing arrangement of the Company; and
- existence and terms of any finance arrangements that may be in place in relation to director's shareholdings (for example margin loans).

## **Finance Arrangements**

Where the Company has in place or enters into new material financing arrangements or alters existing material financing arrangements which include terms that may be activated upon the occurrence of certain events (particularly those beyond the control of the Company, such as market events) disclosure may be required under Listing Rule 3.1 at the time any such term is activated or becomes likely to be activated.

The disclosure required may include the nature and terms of the arrangements, the trigger event, any other material information such as any impact that triggering of the term may have on the Company's relationship with its bankers, or financial position or financial performance. It may also be appropriate in some circumstances for the Company to request a trading halt if the Company is unable to immediately release the information.

Unless the exceptions in the Listing Rule 3.1 apply to the terms of the Company's material financial arrangements, the Company should disclose to the ASX, upon entering into the arrangements, the nature and terms of the arrangements, the trigger event, any other material information such as any impact that triggering of the term may have on the Company's relationship with its bankers, or financial position or financial performance.

## **Margin Loans**

Listing Rule 3.19A and 3.19B require the Company to disclose the notifiable interests of a director within five business days of the appointment or resignation of the director or a change to the notifiable interests occurring. Information about shareholders and their shareholdings can be material under Listing Rule 3.1 and require immediate disclosure.

Where a director has entered into a margin loan or similar funding arrangements for a material number of securities, Listing Rule 3.1 in appropriate circumstances, may operate to require the Company to disclose the key terms of the arrangements, including the number of securities involved, the trigger points, any right of the lender to sell unilaterally and any other material details. Whether a margin loan arrangement is material is a matter which the Company must decide having regard to the nature of its operations and the particular circumstances of the Company.

Listing Rule 3.1B applies where the ASX considers that there is or is likely to be a false market, and in such circumstances the Company must disclose information necessary to correct or prevent a false market. This requirement may arise even though the Company is not aware of any information that would be required to be disclosed under Listing Rule 3.1.

A Director must disclose to the Company any financial arrangements or margin loan the Director has entered into in respect of any securities which the Director holds in the Company. Such disclosure by the Director should be on entering into the arrangements and should include key terms of the arrangements,

including the number of securities involved, the trigger points, any right of the lender to sell unilaterally and any other material details.

### **Ramifications of Failing to Comply**

The ramifications of failing to comply with the continuous disclosure obligations under Listing Rule 3.1 are extremely serious.

### **Exemption from Disclosure**

The Listing Rules provide that the Company does not need to disclose information under Listing Rule 3.1A if **each** of the following is satisfied:

A reasonable person would not expect the information to be disclosed (Listing Rule 3.1A.1); **and**

The information is confidential (Listing Rule 3.1A.2); **and**

One or more of the following applies (Listing Rule 3.1A.3)

- It would be a breach of a law to disclose the information;
- The information concerns an incomplete proposal or negotiation;
- The information comprises matters of supposition, or is insufficiently definite to warrant disclosure;
- The information is generated for internal management purposes of the Company; or
- The information is a trade secret.

It must be noted that the above exemption from the requirement to make disclosure only **operates while all three elements are satisfied. If any of the requirements cease to be satisfied, the entity must disclose the information immediately.**

By way of example, if information that has not been disclosed by relying on the exemption becomes known in some way to participants in the market, then it **must** be given to the ASX for release to the market, as it would no longer satisfy the confidentiality requirement. It does not matter how the matter became known in the market.

### **Continuous Disclosure Practice**

The Listing Rules make it clear that all Listing Rules (including Listing Rule 3.1A) must be complied with in the "spirit" of continuous disclosure. The ASX states that the Listing Rules are not intended to be interpreted in a legalistic or restrictive manner.

### **Market Speculation**

The ASX notes that from time to time it may be necessary to respond to speculation in order for the market to remain properly informed.

The ASX states that it does not expect companies to respond to all comments made in the media, or to respond to all market speculation. However, when the comment or speculation becomes reasonably specific, or the market moves in a way that appears to be acting on the comment or speculation, the company should make a statement in response to ensure the market remains properly informed.

It is ASX policy that whatever the information, and however much it might otherwise have been reasonable not to disclose it, the information should be released to the whole market once it becomes known to any part of the market.

## **Disclosure of Information to Brokers and Press**

Listing Rule 15.7 has the effect that the Company must not release information which is for release to the market to any person (including the media, even on an embargoed basis) until it has given the information to the ASX, and has received an acknowledgement that the ASX has released it to the market.

With respect to analysts, the ASX states that a company must only disclose public information in answering analysts' questions, or reviewing analysts' draft reports. The ASX states that it is inappropriate for a question to be answered, or a report corrected, if doing so involves providing material information that is not public. The ASX states that when analysts visit the company, care should be taken to ensure that they do not obtain material information that is not public.

## **Internal Disclosure**

Employees will have access to information that is confidential. The employees with such access should be made aware of its confidential nature. The ASX notes that companies should ensure that confidential information does not find its way into "in house" publications.

## **Directors and Executive Officers**

Each of the following personnel (the Reporting Group) will need to participate in the "continuous disclosure" system, because information in their possession will need to be considered in order to comply with the continuous disclosure obligation:

- the Directors
- Executive Chairman, Managing Director or Chief Executive Officer
- Chief Financial Officer and Company Secretary

## **Overseeing and Co-ordinating Disclosure**

The Chairperson, Managing Director (or Chief Executive Officer) and Company Secretary will be responsible for:

- ensuring the Company complies with its continuous disclosure obligations (ie. Market sensitive material)
- overseeing and co-ordinating disclosure of information to the ASX;
- reviewing information to be provided to analysts, brokers, the media and the public, in order to be able to ensure any market sensitive material has been released to the ASX.

## **Information Collecting Procedures to ensure Listing Rule 3.1A (market sensitive information) is identified**

The responsibility of each member of the Reporting Group are:

- To ensure all notifiable (market sensitive) information is kept confidential within the Reporting Group;
- To collect and forward to the Chairperson, Managing Director or Chief Executive Officer and Company Secretary all information which is, or may be required to be disclosed, and consult with him if in doubt;
- To make senior personnel within his or her area of responsibility aware of the Company's disclosure obligations to ensure that all relevant information is provided to him or her.

## **Releasing Information to the ASX**

The system for releasing information to the ASX for the Company is as follows:

When any of the Reporting Group becomes aware of information which they believe may need to be disclosed on the basis of the principles described in this document, they should immediately contact and give full details to the Chairperson, Managing Director or Chief Executive Officer and Company Secretary.

Chairperson, Managing Director or Chief Executive Officer and Company Secretary will take the following steps in relation to information forwarded to them:

- Assess whether disclosure is required and request Board consideration of all non compliance announcements;
- Consult the Chairperson and other advisers (including the ASX) as necessary;
- Prepare a market release for provision to the ASX if required;
- Inform the Managing Director or Chief Executive Officer if required; and
- Forward the release to the ASX if required.

Prior to each Board Meeting, the Chairperson, Managing Director or Chief Executive Officer and Company Secretary should contact the executive members of the Reporting Group to confirm that there is no material requiring disclosure.

For each set of Board Papers, there should be an agenda item entitled "Continuous Disclosure". In this item, the Chairperson, Managing Director or Chief Executive Officer and Company Secretary should either:

- Confirm that there was no material brought to his attention requiring disclosure for the preceding month; or
- Outline material which has been disclosed.

## **Company Spokespersons**

In order to maintain control over disclosures, the following persons only will be authorised to speak on the Company's behalf to analysts, brokers and institutional investors, and to respond generally to shareholder queries:

- Chairperson
- Managing Director or Chief Executive Officer
- Chief Financial Officer and Company Secretary and
- where appropriate, non executive directors

In order to safeguard against inadvertent disclosure of non-public information to brokers, investors, analysts and institutions prior to it being disclosed to the ASX, contact must be made with the Chairperson, Managing Director (or Chief Executive Officer) and Company Secretary prior to making contact with these persons in order that he may provide a briefing of what has been disclosed by the Company to the ASX.

## **Authorising Disclosures in Advance**

Again, in order to avoid an inadvertent breach of the continuous disclosure obligations, materials to be presented and issues to be discussed at external presentation must be discussed with the Chairperson,

Managing Director (or Chief Executive Officer) and Company Secretary prior to presentation in order that he may confirm no non-public material information is being disclosed.

### **Maintenance of Released Material**

The Company Secretary shall advise the Board of the information disclosed to the ASX

### **Handling Rumours, Leaks and Inadvertent Disclosures**

It should be noted that any unauthorised leak of information may place the Company in breach of the Listing Rules and could expose persons to allegations of insider trading.

If external contact is made seeking clarification of a rumour in the market place, the enquiry should be referred to the Chairperson, Managing Director or Chief Executive Officer and Company Secretary. The recommended response to such query is that “the Company does not respond to market rumours”. Consideration will then be given by the Chairperson, Managing Director or Chief Executive Officer and Company Secretary as to whether a public announcement is required.

The Reporting Group should notify the Chairperson, Managing Director or Chief Executive Officer and Company Secretary of any unauthorised disclosure of information (even if regarded as non-public sensitive). Consideration will then be given to the need to make an ASX disclosure.

### **Reviewing Discussions**

In order to ensure no price sensitive material has been inadvertently disclosed, the Chairperson, Managing Director or Chief Executive Officer and Company Secretary should be kept apprised of the contents of any substantive contact with analysts, brokers and institutional investors.

## **6. Responsibilities in respect of accounts**

The Company is required to prepare financial statements for each financial period which gives a true and fair view of the state of affairs of the group as at the end of the financial period and of the profit or loss for that period.

The Directors are responsible for maintaining proper accounting records in accordance with the Australian *Corporations Act 2001 (Cwlth)*, and have general responsibility for taking such steps as are reasonably open to them to safeguard the assets of the Company, and prevent and detect fraud and other irregularities. Part 3 of this Policy is designed to ensure that directors maintain appropriate financial controls and accounting records.

### **Internal Control**

The Company should have in place an internal financial control system with a view to provide reasonable assurance regarding:

- The safeguarding of assets against unauthorised use or disposition; and
- The maintenance of proper accounting records and the reliability of financial information used within the business or for publication.

### **Control Environment**

Whilst the Board retains ultimate control and direction over the Company's major strategic, financial and organisational issues, it is usual to delegate appropriate authorities to executive directors and to put in place an appropriate organisation or structure with clearly defined divisions of responsibility and reporting relationships.

It might be expected that the Company would introduce formal codes of conduct to ensure that employees pursue the highest standards of integrity and ethical values as well as provide further guidance on specific industry or regional matters.

### **Identification and Evaluation of Risks and Control Objectives**

The Company should regularly evaluate and monitor its business risks. The area of risk management is outlined in the Risk Management Policy.

It might be expected that the Company would establish various Committees of the Board and Executive to receive and consider reports on these matters from time to time.

### **Control Procedures**

The Company should establish written procedures to safeguard the Company's assets and to ensure that financial transactions are properly recorded. Accounting policies and practices should be disseminated throughout the Company to any segments of its business. Any significant business unit should document its control procedures which are specific to its operation.