

DISCLOSURE PROGRAMME AND PROCEDURES

1. INTRODUCTION

Gloucester Coal Ltd (Gloucester Coal) is listed on the Australian Stock Exchange (ASX), Gloucester Coal is required to comply with the ASX Listing Rules. The ramifications of a failure to comply with the Listing Rules could result in Gloucester Coal being suspended or removed from the ASX.

One of the fundamental tenants of the ASX Listing Rules is the requirement to provide immediate notice to the market of material information relating to Gloucester Coal. This obligation arises under Listing Rule 3.1.

The purpose of this document is to:

- Provide a summary of the obligation on Gloucester Coal to disclose material information;
- Provide examples of situations where disclosure is required, and where disclosure may be executed;
- Establish a system within Gloucester Coal to ensure all required disclosure occurs.

2. WHAT DISCLOSURE IS REQUIRED

Under the provisions of Listing Rule 3.1, once Gloucester Coal 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 Gloucester Coal securities, Gloucester Coal must immediately tell ASX that information.**

ME note: this change was made to directly reflect the wording of LR 3.1

a) When is Gloucester Coal aware of information

The Listing Rules provide that Gloucester Coal 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 Gloucester Coal.

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

b) What information has a material effect on price?

The effect of information on the price or value of Gloucester Coal 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 Gloucester Coal 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 Gloucester Coal shares.

3. RAMIFICATIONS OF FAILING TO COMPLY

The ramifications of failing to comply with the continuous disclosure obligations under Listing Rule 3.1 are extremely serious, and may result in the following actions being taken:

a) Removal from the ASX

The ASX may at any time remove an entity from the Official List of the Exchange if the entity breaks a Listing Rule.

b) Criminal Liability

Under the Corporations Act, a failure to make a disclosure under Listing Rule 3.1A, intentionally or recklessly, amounts to a criminal offence, and may result in a fine of \$1,000,000,000 for a corporation.

In addition, individuals who are “involved” in the contravention (who would include officers or advisers who aid, abet, counsel, procure or are knowingly concerned in the contravention) are also liable. The maximum penalty for individuals is \$200,000, or imprisonment for five years, or both.

A negligent failure to make a disclosure under Listing Rule 3.1A is a contravention of the Corporations Act, but will not amount to a criminal offence.

c) Civil Liability

Civil liability arises if the failure to disclose is intentional, reckless or negligent. A person who suffers loss or damage as a result of such failure may recover that loss or damage from Gloucester Coal, or against “any person involved in the contravention”. This could include the directors or executives officers of Gloucester Coal.

4. EXEMPTION FROM DISCLOSURE

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

1. A reasonable person would not expect the information to be disclosed (Listing Rule 3.1A.1); **and**
2. The information is confidential and ASX has not formed the view that the information has ceased to be confidential (Listing Rule 3.1A.2); **and**
3. 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 Gloucester Coal; 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.

Looking at each of the three elements that must be established for information to be exempt from disclosure:

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

A reasonable person would not expect information to be disclosed if the result would be to cause unreasonable prejudice to the entity. Similarly, a reasonable person would not expect disclosures of an inordinate amount of detail.

b) Confidentiality (Listing Rule 3.1A.2)

Listing Rule 3.1A.2 requires that the information that is not to be disclosed be confidential and ASX has not formed the view that confidentiality is lost. If ASX forms the view that confidentiality has been lost, it will tell Gloucester Coal immediately.

“Confidential” in this context has the sense of secret, and generally implies control by Gloucester Coal of the use that can be made of the information.

The mere fact that a confidentiality agreement has been entered into will not automatically satisfy this element. Confidential means that no one in possession of the information is entitled to trade in Gloucester Coal’s shares. Unusual activity in Gloucester Coal’s shares may suggest that the information is no longer confidential.

The ASX accepts that confidentiality is not breached if information is given to Gloucester Coal’s advisers, a person with whom Gloucester Coal is negotiating, or other regulatory authorities, if it is given on a basis which restricts its use to the stated purpose.

c) One of the Elements in Listing Rule 3.1A.3

One of the five elements in Listing Rule 3.1A.3 must also be established. These elements are:

- It would be a breach of the 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 Gloucester Coal; or
- The information is a trade secret.

5. APPLYING THE EXEMPTION IN PRACTICE

The exemption from disclosure would apply, for example, to information which is confidential, which a reasonable person would not expect to be disclosed, and which falls within any one of the following descriptions:

- Proposed acquisitions or disposals or other commercial arrangements in the process of negotiation;
- Internal budgets and forecasts;
- Management accounts;
- Business plans;
- Internal market intelligence;
- Information prepared for lenders;
- Dispute settlement negotiations.

It is possible to foresee, however, matters which are commercially sensitive, the disclosure of which would be **detrimental** to Gloucester Coal, which may be required to be disclosed because they do not fall within the exemptions. For example:

- A serious claim against the company prior to the commencement of proceedings;
- An investigation or allegation by a regulatory body (that is not being disputed by the Company);
- Information about a “complete” proposal;
- Terms of settlement of a dispute which the parties wish to keep confidential, and which is not supported by a Court order of confidentiality;
- Material terms of a trading agreement with a major supplier.

Whether these sorts of matters will fall within any of the exceptions will depend on, and require, an assessment of particular facts.

The Listing Rules and Guidance Note issued by the ASX provide a number of examples of matters that may require disclosure. These examples are set out in Appendix 2.

6. ASX POLICY

The ASX has issued a Guidance Note in relation to Listing Rule 3.1A. The ASX states that the guidance note is only a guide as to ASX practice, and that entities should contact the ASX to discuss their particular circumstances and the application of the Listing Rules. Set out below are some of the highlights from the Guidance Note.

a) Prime Importance

The ASX states that timely disclosure of relevant information is of prime importance to the operation of an efficient market. The fundamental principle under which the Listing Rules operate is that “*timely disclosure must be made of information in which security holders, investors and ASX have a legitimate interest*”.

b) 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.

c) 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 referable to 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.

d) Disclosure of Information to Brokers and Press

Listing Rule 15.7 has the effect that Gloucester Coal 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.

e) Internal Disclosure

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

7. INSIDER TRADING AND "TIPPING"

The Corporations Act prohibits the following conduct:

- A person (the "insider") trading in shares while in possession of information that is not "generally available" to the market, but which if it became "generally available", could reasonably be expected to materially affect the price of Gloucester Coal's shares.
- A person "tipping" or communicating non-public price sensitive information to another person who is likely to trade in Gloucester Coal's shares. An offence is committed even if the person to whom the information is provided is told not to trade in the shares until a public announcement is made, if it is thought likely that the person will disregard that instruction.

The Corporations Act provides that the information becomes "generally available" once it has been published and enough time has elapsed for it to be disseminated in the market.

The prohibition on insider trading and tipping applies not only to company directors and staff, but also to anyone outside Gloucester Coal who has non-public information which may affect the price of Gloucester Coal shares. In addition, it is possible that Gloucester Coal employees could be aware of non-public price sensitive information relating to other listed companies which, if shares in that company were purchased, could breach the insider trading restrictions (for example, a company with which Gloucester Coal is considering entering into a major contract).

Under the Corporations Act, an offence of the insider trading or tipping prohibitions is punishable by a fine up to \$220,000, or five years' jail, or both.

8. ANALYST AND INSTITUTIONAL BRIEFINGS

In November 1999 ASIC issued its draft "Heard it on the Grapevine.....". Guidance Paper dealing with the selective disclosure of information to institutional investors and analysts.

This Guidance Paper addresses ASIC's concern that "ordinary" shareholders have a perception that significant information is disclosed by listed companies to analysts and institutions such that they can profit by trading on that information at the expense of the "ordinary" shareholders. ASIC is concerned that this perception could cause "ordinary" shareholders to lose trust in the fairness of the market place.

In this regard, ASIC notes that documents lodged with the ASX are often supplemented with more comprehensive background information provided to analysts and institutions at private briefings.

ASIC specifically identifies the following situations at which there is a risk that selective disclosure may occur:

- Analyst briefings, roadshows and presentations;
- Individual analyst briefings;
- Ad hoc communications with analysts and institutions;
- Reviewing draft analyst reports;
- Informal social events.

ASIC states that it wishes to see companies exploring ways of improving investor access, both to:

- their ASX announcements; and
- all significant information provided at private briefings to analysts or institutions (regardless of whether it is viewed as price sensitive)

To this end, ASIC suggests:

- Information disclosed to the ASX be added to the releasing company's web site (following ASX acknowledgement of receipt and release to the market);
- Non-material information and supplementary material made available to institutions and analysts to be made available to shareholders and the wider investment community on the disclosing company's web site.

ASIC notes that some companies are giving investors access via the internet to live broadcasts of analyst briefings and are posting transcripts of briefings (including questions and answers) on their web sites. ASIC states that it encourages other companies to follow these practices. ASIC in its Paper suggests a number of procedures to ensure that:

- price sensitive material is disclosed to the ASX;
- briefings do not disclose price sensitive material that has not been released; and
- information disclosed at private briefings is captured for disclosure to "ordinary investors",

such that there is equal access to information for all investors. Certain of these ASIC suggestions are incorporated in the Disclosure Programme set out in item 9 below.

ASIC's focus is on giving investors access to all significant information disclosed to analysts or institutions that is not already publicly available, regardless of whether it is considered price sensitive. ASIC considers it is good practice to provide shareholders with access to all significant background information that is provided to analysts and institutions.

9. INFORMATION DISCLOSURE PROGRAMME PROCEDURES

As will be apparent from the above, it is essential for Gloucester Coal to design a disclosure system to ensure:

- a breach of Listing Rule 3.1 does not occur; and
- that information is made available to all investors equally.

a) 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:

- Gloucester Coal Directors
- CEO/Managing Director
- Chief Operating Officer
- Chief Financial Officer and
- Company Secretary

b) Overseeing and Co-ordinating Disclosure

The Chairman, CEO/Managing Director and Company Secretary will be responsible for:

- ensuring Gloucester Coal 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.

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

The responsibilities of each member of the Reporting Group are:

- to ensure all notifiable (market sensitive) information is kept confidential within Reporting Group;
- to collect and forward to the Chairman, CEO/Managing Director and Company Secretary all information which is, or may be required to be disclosed, and consult with him if in doubt (in this regard, see the flowchart in Appendix 3); and
- to make senior personnel within his or her area of responsibility aware of Gloucester Coal’s disclosure obligations to ensure that all relevant information is provided to him or her.

d) Releasing Information to the ASX

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

- i) 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 Chairman, CEO/Managing Director and Company Secretary.
- ii) Chairman, CEO/Managing Director and Company Secretary will take the following steps in relation to information forwarded to them:
 - (1) Assess whether disclosure is required;
 - (2) Consult the Chairman and other advisers (including the ASX) as necessary;
 - (3) Prepare a market release for provisions to the ASX;
 - (4) Inform the CEO/Managing Director;
 - (5) Forward the release to the ASX.

- iii) Prior to each Board Meeting, the Chairman, CEO/Managing Director and Company Secretary should contact the executive members of the Reporting Group to confirm that there is no material requiring disclosure.
- iv) For each set of Board Papers, there should be an agenda item entitled "Continuous Disclosure". In this item, the Chairman, CEO/Managing Director and Company Secretary should either:
 - (1) Confirm that there was no material brought to his attention requiring disclosure for the preceding month; or
 - (2) Outline material which has been disclosed.

e) Company Spokespersons

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

- Chairman
- CEO/Managing Director
- Chief Financial Officer and Company Secretary

Where appropriate, Chairman appointed 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 Chairman, CEO/Managing Director, Chief Financial Officer or Company Secretary prior to making contact with these persons in order that he may provide a briefing of what has been disclosed by Gloucester Coal to the ASX.

f) Authorising Disclosures in Advance

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 Chairman, CEO/Managing Director, Chief Financial Officer or Company Secretary prior to presentation in order that he may confirm no non-public material information is being disclosed.

g) Maintenance of Released Material

The Company Secretary will maintain a register of information disclosed to the ASX and also register of information disclosed on the Gloucester Coal web site.

h) Gloucester Coal Web site

It is intended to implement the inclusion of information released to the ASX on the Gloucester Coal web site. In addition, it is intended to add to the web site:

- Other materials presented to analysts and institutions;
- A summary of briefings made to analysts and institutions;

i) Handling Rumours, Leaks and Inadvertent Disclosures

It should be noted that any unauthorised leak of information may place Gloucester Coal 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 Chairman, CEO/Managing Director and Company Secretary. The recommended response to such query is that "Gloucester Coal does not respond to market rumours". Consideration will then be given by the Chairman, CEO/Managing Director, and Company Secretary as to whether a public announcement is required.

The Reporting Group should notify the Chairman, CEO/Managing Director 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.

j) Reviewing Discussions

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

k) Draft Financial Statement and Reports

Typically, analysts will seek to obtain the Chief Financial Officer's review of draft analyst reports. It is permissible to comment on errors in factual information and underlying assumptions, but comment on price sensitive information should be avoided.

10. FURTHER INFORMATION

The disclosure obligations under the Listing Rules are expressed in general terms and are not always simple to apply in practice. Much will depend on the facts in existence at a particular point in time. In all instances it is preferable to err on the side of caution and consult with the Company Secretary if in doubt.

APPENDIX 1.

LISTING RULE 3.1

IMMEDIATE NOTICE OF MATERIAL INFORMATION

General Rule

- “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. This rule does not apply to particular information while each of the following applies.

Exception to Rule 3.1

- 3.1A Listing rule 3.1 does not apply to particular information while all 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

3.1A.3 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.
- (d) The information is generated for internal management purposes of the entity.
- (e) The information is a trade secret.”

APPENDIX 2.

EXAMPLES OF THE OPERATION OF LISTING RULE 3.1A

The following are a number of examples of matters that may require disclosure under Listing Rule 3.1. It is assumed that the amounts involved are large enough to have a material effect on the price or value of Gloucester Coal’s shares. These examples are illustrative only, and each particular fact situation will require an independent assessment.

Situations where Disclosure is Required

The following would require disclosure:

- (a) a material change in Gloucester Coal’s published exploration programme;
- (b) a notable drilling result;
- (c) the appointment of a receiver, manager, liquidator, or administrator, in respect of any loan, trade credit, trade debt, borrowing or security held by Gloucester Coal or any of its subsidiaries;
- (d) a transaction for which the consideration payable or receivable is a significant proportion of the written down value of Gloucester Coal’s consolidated assets. Normally, an amount of five (5) per cent would be significant, but a smaller amount may be significant in a particular case;
- (e) a recommendation or declaration of a dividend or distribution;
- (f) under subscriptions or over subscriptions to an issue;



- (g) information about the beneficial ownership of shares obtained under Part 6.8 of Corporations Act;
- (h) giving or receiving a notice of intention to make a takeover;
- (i) an agreement between Gloucester Coal (or a related party subsidiary) and a director of Gloucester Coal (or a related party of the director).