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Update Summary

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UPDATE 104

APRIL 2015

ASIC CORPORATE INVESTIGATIONS AND HEARINGS

Middleton

New Developments

Reports

[REP 393] Handling of confidential information: Briefings and unannounced corporate transactions

This ASIC Report sets out key observations from their review of the way in which listed entities and their advisers handle confidential, market-sensitive information. Specifically, ASIC considered the process by which various parties handle confidential, market-sensitive information:

- (a) during briefings held by listed entities for analysts and institutional investors; and
- (b) in the context of unannounced, market-sensitive corporate transactions.

They also considered the prevalence of leaks of this kind of information in Australia. Consequently, this report identifies some challenges that listed entities, their advisers, analysts and institutional investors face in managing their obligations relating to confidential, market-sensitive information. See: [ND.1200]

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[REP 387] Penalties for corporate wrongdoing

This ASIC Report outlines the penalties available for a range of corporate wrongdoing under legislation administered by ASIC, to enable consideration of whether they are proportionate and consistent with those for comparable wrongdoing:

- in overseas jurisdictions (ie Canada (Ontario), Hong Kong, the United Kingdom and the United States); and
- within the Australian context (ie across other domestic regulators and legislation administered by ASIC).

See [ND.1300].

Related legislation

Corporations Act 2001 – extracts

The extracts from the *Corporations Act 2001* (Cth) have been significantly expanded to cover the following issues:

- Disclosure of, and voting on matters involving, material personal interests (CH 2D);
- Application for order to wind up company in insolvency (CH 5);
- Continuous disclosure (CH 6CA); and
- Market misconduct and other prohibited conduct relating to financial products and financial services.

ASIC material

[RG 100] Enforceable undertakings

ASIC has updated its guidance concerning enforceable undertakings by including guidance about independent experts and publicity for enforceable undertakings.

The changes to Regulatory Guide 100 *Enforceable undertakings* (RG 100) provide new guidance about:

- public reporting by ASIC on compliance with enforceable undertakings, including public summaries of independent expert reports;
- criteria for use in assessing the independence of experts, including assessment of conflicts management processes; and
- the circumstances where ASIC will generally seek to appoint an independent expert.

The changes enhance the transparency of outcomes under enforceable undertakings accepted by ASIC.

The updated guidance will apply to enforceable undertakings accepted by ASIC from 9 March 2015. See [18.450].