

Painting the right picture

Regulator warns on disclosure practices, but is it all just words?



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Australia's corporate regulator has warned all listed companies to improve their handling of sensitive information. The warning is especially directed at the smaller end of the market. That means the vast bulk of the listed miners.

The Australian Securities and Investments Commission (ASIC) has recently conducted a review of the way Australian companies talk to investors. Its May 27 report, "Handling of confidential information: briefings and unannounced corporate transactions", outlines its findings, sheds some light on what it dislikes and proffers some suggestions for better behaviour.

The review has not uncovered or identified any specific examples of wrongdoing. Nor does ASIC's analysis suggest insider trading, its main target, is any worse in Australia than in stock markets elsewhere.

ASIC seems to be working on the theory that where there is smoke there is fire. It considers the number of takeover related leaks reported in the media to be "significant" although there have been fewer since July 2010, it says.

A lengthy discussion in the report about market soundings taken by corporate advisers highlights one source of inappropriate information flow. "The timing and number of soundings can significantly increase the risk of leaks and provide opportunities for insider trading", according to the regulator.

ASIC's comments display some naiveté about what most often happens. It said it was "concerned to hear that soundings often take place while there is still active trading of the entity's securities". It also seemed to express surprise at soundings being conducted "as early as four days before the entity's securities were placed in a trading halt". If only the standards were that high among the listed miners.

There are ample examples of companies or advisers spending several weeks briefing potential investors to gauge their appetite or encourage interest in a new equity offering. The option of instituting a trading halt seems most likely to be exercised only after commitments are secured or close to certain.

Meanwhile, market soundings create selling pressures that cruelly entice those left unaware of what is happening into buying when eventual placements could be com-



pleted at still lower discounted prices.

ASIC needs to shed the shibboleth of extended soundings being unusual if it is to deal realistically with the consequence of these price effects.

Market access remains a bugbear for the regulator. How briefings are advertised and their content disseminated can lead to some classes of investors obtaining access to information ahead of others.

On this point, ASIC is right to promote some changes because there are no legitimate excuses. Given advances in technology, for example, a telephone conference call or webcast in the event of major strategic initiatives or other material business developments should be unexceptional. Yet, hardly any Australian listed miners do this as a matter of course.

Prompted, some say that no-one might ring in. They would be embarrassed. So be it, at least the opportunity will have been there. A scheduled open call would also permit the content, questions or not, to be recorded and made available publicly.

Social media, including those platforms now specialising in financial matters, are an ideal avenue through which to alert people quickly to an impending briefing on an unanticipated topic.

Rather than using words, Australian miners attempt to fulfil many of their communications requirements with an abundance of PowerPoint presentations. These abbreviated notes beguilingly surrounded by plenty of colour conveniently sidestep the need for directors to put formal statements of intent on the record.

Sometimes, graphical timelines hint at what investors can expect but, except for those present at meetings, investors will not know the full nature of the commitment being made.

Graphics can be modified from one presentation to another to signify a material change in development timing, for example, without any separate statement having been made.

Executives will readily claim to have informed the market through these pictorial representations of their thoughts.

Recordings of briefings or transcripts are the only way investors can be given a clear sense of what is said (or not said). If a company thinks it is too small to deal with such an inconvenience, perhaps it should not be listed.

Under the ASIC guidelines, an analyst legitimately raising a question about the content of a presentation in private because there was no public opportunity could be placed in an awkward or even career threatening predicament.

ASIC, in its report, cautions analysts to be aware of whether information they are given might be market sensitive. They are told to make sure that any otherwise confidential information is not disseminated by them. Analysts doubtlessly have a role, but are at risk of having to shoulder an unfair burden of responsibility.

Ironically, the sloppier the corporate communications practices, the greater the responsibility an analyst must assume. In many instances, this puts analysts going about what should be their normal activities at risk of inadvertently straying over an often blurred line and, in doing so, jeopardising their careers.

ASIC has said it intends to review analysts reports "to ensure that changes in research recommendations are not based on non-public material information that analysts might have received from listed entities prior to any formal announcement". ASIC is right to maintain the rage against inappropriate disclosure of this sort but heaping more constraints on analysts generally comes at a potential cost.

Market efficiency is fostered by analysts fearlessly expressing opinions. Out of consensus opinions should be welcomed. The best analysts can methodically assemble a mosaic of individually non-material pieces of information and conduct interviews within and outside the company being reviewed to confirm investment conclusions. The result might be highly material and market moving.

ASIC risks confronting analysts with so much intimidating internal and external regulatory surveillance that they fear drifting too far away from the herd and, in doing so, drawing attention to themselves. Forcing analysts to track the consensus as the easiest way to earn a living could prove as deleterious to market efficiency as insider trading. ▼