Disclosure Policy

Overview

Orocobre Limited (Orocobre) is listed on the Australian Securities Exchange (ASX) and Toronto Stock Exchange and must comply with the Corporations Act, the ASX Listing Rules (Listing Rules) and the Toronto Stock Exchange Rule Book and Policies (Rule Book and Policies).

The ASX Listing Rules

As a listed entity, the Company must comply with certain continuous disclosure obligations imposed by the *Corporations Act* 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 clause 3.1 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."

ASX Listing Rule 3.1A provides that Listing Rule 3.1 does not apply to particular information while each of the requirements of Listing Rule 3.1 are satisfied (see section (d) below).

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 immediately give ASX that information.*"

The provisions of Chapter 3 are reinforced by Chapter 6CA of the *Corporations Act*. 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;

(b) the entity has information that those provisions require the entity to notify to the market operator; and

(c) that information:

(1) is not generally available; and

(2) 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 or value of the Company's shares.

(1) **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.

The meaning of Immediately

The ASX has issued a guidance note that provides guidance on how ASX interprets the word "immediately" in the context of disclosure. The guidance note provides that the word "immediately" should not be read as meaning instantaneously, but rather as meaning promptly and without delay. Doing something promptly and without delay means doing it as quickly as it can be done in the circumstances (acting promptly) and not deferring, postponing or putting it off to a later time (acting without delay).

ASX recognises that the following circumstances may dictate how quickly an entity can give an announcement of particular information to ASX and will take them into consideration when assessing whether an entity has complied with its disclosure obligations:

- where and when the information originated;
- the forewarning (if any) the entity had on the information;
- the amount and complexity of the information concerned;
- the need in some cases to verify the accuracy or bone fides of the information;
- the need for an announcement to be carefully drawn so it is accurate, complete and not misleading;
- the need for an announcement to comply with specific legal or listing rule requirements, such as the requirement for an announcement that relates to mining or oil and gas activities to comply with Chapter 5 of the Listing Rules; and
- the need in some cases for an announcement to be approved by the entity's board or disclosure committee.

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.

ASX Guidance Note 8 states that an officer faced with a decision on whether information needs to be disclosed under Listing Rule 3.1 may find it helpful to ask two questions in deciding whether information is information that a reasonable person would expect to be disclosed:

- Would this information influence my decision to buy or sell securities at their current market value?
- Would I feel exposed to an action for insider trading if I were to buy or sell securities in the entity at their current market price, knowing this information had not been disclosed to the market?

If the answer to either question is "yes", then that should be taken to be a cautionary indication that the information may be market sensitive and, if the carve-out from immediate disclosure in Listing Rule 3.1A does not apply, may need to be disclosed under Listing Rule 3.1.

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

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

Trading Halts

Where the Company is or will be trading at any time after it first becomes obliged to give market sensitive information to ASX under Listing Rule 3.1 and before it can give an announcement with that information to ASX for release on the market, the Company should consider requesting a trading halt to ensure its securities are not being traded on an uninformed basis.

The Chairperson and the Managing Director (or Chief Executive Officer) are authorised to make a decision to request a trading halt. In the absence of the Chairperson or the Managing Director (or Chief Executive Officer), the chief financial officer, the Company Secretary or a Director are each authorised to make a decision to request a trading halt. An authorised person will endeavour to consult with the Chairperson and as many Board members as practicable regarding the decision to request a trading halt. No other employees are authorised to request a trading halt or suspension on behalf of the Company.

The Company will have a template letter requesting ASX to grant a trading halt ready for use at all times. The Company will ensure that ASX can always contact someone who can speak on behalf of the Company.

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 of entry or alteration on 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.

Employment Contracts

Listing Rule 3.16.1 requires the Company to immediately tell ASX of a change of Chairperson, Director, chief executive officer (or equivalent), or Company Secretary. In addition, Listing Rule 3.16.4 requires the Company to immediately disclose the material terms of any employment, service or consultancy agreement (or any variation to such agreement) it or a related entity enters into with its chief executive officer, Directors or a related party of its Chief Executive Officer or any Director.

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 occurring to the notifiable interests. Information about shareholders and their shareholdings can be material under Listing Rule 3.1 and require immediate disclosure.

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.

Where a Director has entered into a margin loan or similar funding arrangements, the Company may be under an obligation under Listing Rule 3.19A to disclose the key terms of the arrangements, including the detail of the contract, the nature of the interest, the interest acquired and disposed, and the value/consideration.

In certain circumstances a margin loan may be required to be immediately disclosed under Listing Rule 3.1. Whether a margin loan arrangement is material and requires immediate disclosure is a matter which the Company must decide having regard to the nature of its operations and the particular circumstances of the Company.

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:

(1) Removal from the ASX

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

(2) Criminal liability

Under the *Corporations Act*, a failure to make a disclosure under Listing Rule 3.1, intentionally or recklessly, amounts to a criminal offence, and may result in a fine of $170,000 for a corporation (as at the date of adoption of this Policy).

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 $34,000, or imprisonment for five years, or both (as at the date of adoption of this Policy).

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

(3) Civil liability

Civil liability arises if the failure to disclose is intentional, reckless or negligent and may result in a fine of up to $1,000,000 (as at the date of adoption of this Policy). Alternatively, ASIC may, by administrative action, issue and infringement notice of up to $100,000 (as at the date of adoption of this Policy).

Officers who are involved in the breach may also face fines of up to $200,000 (as at the date of adoption of this Policy).

A person who suffers loss or damage as a result of such failure may recover that loss or damage from the Company, or against "any person involved in the contravention". This could include the directors or executives officers of the Company.

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:

(1) one or more of the following applies (Listing Rule 3.1A.1):

  (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 Company; or

  (E) the information is a trade secret; and

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

(3) a reasonable person would not expect the information to be disclosed (Listing Rule 3.1A.3).

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:

(1) One of the elements in Listing Rule 3.1A.1

One of the five elements in Listing Rule 3.1A.1 must also be established. These elements are:

  (A) it would be a breach of the 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 Company; or

  (E) the information is a trade secret.

(2) Confidentiality (Listing Rule 3.1A.2)

Listing Rule 3.1A.2 has two components: (1) the information must be confidential; and (2) ASX has not formed the view that the information has ceased to be confidential.

The word confidential in the context of Listing Rule 3.1A.2 means "secret". Information will be confidential for the purposes of that Listing Rule if:

  (A) it is known to only a limited number of people;

(B) the people who know the information understand it is to be treated in confidence and only used for permitted purposes; and

(C) those people abide by that understanding.

The mere fact that a confidentiality agreement has been entered into will not automatically satisfy this element. When negotiating a potentially market sensitive transaction the Company should be monitoring market prices of the Company and other parties involved in the transaction, newspapers, investor blogs and other social media for signs that the transaction may no longer be confidential and have a draft letter to ASX requesting a trading halt and a draft announcement about the negotiations ready to send ASX to cater for that eventuality. Any unusual activity in the Company's shares may also suggest that the information is no longer confidential, in which case, an announcement should be released or the Company should request an immediate trading halt.

(3) A reasonable person would not expect the information to be disclosed (Listing Rule 3.1A.3)

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.

As a general rule information that falls within the prescribed categories in Listing Rule 3.1A.1 and that meets the confidentiality requirements in Listing Rule 3.1A.2 will also satisfy the reasonable person test in Listing Rule 3.1A.3.

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 categories of Listing Rule 3.1A.3 which may include matters such as:

(1) proposed acquisitions or disposals or other commercial arrangements in the process of negotiation;

(2) internal budgets and forecasts;

(3) management accounts;

(4) business plans;

(5) internal market intelligence;

(6) information prepared for lenders; or

(7) dispute settlement negotiations.

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

(1) a serious claim against the company prior to the commencement of proceedings;

(2) an investigation or allegation by a regulatory body (that is not being disputed by the company);

(3) information about a "complete" proposal;

(4) terms of settlement of a dispute which the parties wish to keep confidential, and which is not supported by a Court order of confidentiality; or

(5) 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 accompanying Guidance Notes issued by the ASX provide a number of examples of matters that may require disclosure.

ASX policy

The ASX has issued Guidance Note 8 in relation to continuous disclosure under Listing Rules 3.1 – 3.1B. Although not necessarily binding on ASX, the Guidance Note gives some insight into the factors ASX will take into consideration when determining if a Company has complied with its continuous disclosure obligations and provides worked examples of the operation of Listing Rule 3.1.

(6) **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 of market sensitive information is essential to maintaining and increasing the confidence of investors in Australian markets, and to improving the accountability of company management."*

(7) **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.

(8) **Market speculation**

The ASX notes that from time to time it may be necessary to respond to speculation (whether this be a report or rumour) 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 appears to be based on credible market sensitive information (whether that information is accurate or not), and the market moves in a way that appears to reference 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.

(9) **ASX review**

In considering whether information is sufficiently material to require disclosure, it is important to bear in mind the test the ASX will apply when analysing the Company's actions after the disclosure might have otherwise been made.

In particular, if information is announced later than when the ASX thinks it should have been and the trading in the lead up to, and shortly after, the announcement suggests that it has moved the market price of the Company's Securities (relative to other securities in the same sector) by:

(A) 10% or more, ASX will generally regard that as confirmation that the information was market sensitive;

(B) 5% or less, ASX will generally regard that as confirmation that the information was not market sensitive.

The ASX has also set out in the notes to Listing Rule 3.1 a number of specific circumstances that may require disclosure under Listing Rule 3.1.

(10) **Disclosure of information to brokers and the media**

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 a company, care should be taken to ensure that they do not obtain material information that is not public.

Information disclosure program procedures

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

(1) a breach of Listing Rule 3.1A does not occur; and

(2) that information is made available to all investors equally.

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:

(1) the Directors;

(2) Managing Director; and

(3) Chief Financial Officer and Company Secretary.

(d) **Overseeing and co-ordinating disclosure**

The Chairperson, Managing Director and Company Secretary will individually and collectively be responsible for:

(1) ensuring the Company complies with its continuous disclosure obligations (i.e. market sensitive material);

(2) overseeing and co-ordinating disclosure of information to the ASX;

(3) 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;

(4) overseeing and co-ordinating any request for a trading halt for the purpose of dealing with a potential disclosure issue; and

(5) educating Directors, Management and employees on the Company's disclosure policy and raising awareness of the principles underlying continuous disclosure.

Information collecting procedures to ensure Listing Rule 3.1A (market sensitive information) is identified

The responsibilities of each member of the Reporting Group are:

(1) to ensure all notifiable (market sensitive) information is kept confidential within the Reporting Group;

(2) to collect and forward to the Chairperson, Managing Director (or Chief Executive Officer) and Company Secretary, as the case may be, all information which is, or may be required to be disclosed and consult with them if in doubt; and

(3) 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 them.

Releasing information to the ASX and TSX

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

(1) As soon as an employee becomes aware of information which they believe may need to be disclosed on the basis of the principles described in this Policy, he or she must immediately notify a member of the Reporting Group.

(2) When any member 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 Policy, they should immediately contact and give full details to the Chairperson, Managing Director (or Chief Executive Officer) and Company Secretary, as the case may be.

(3) Chairperson, Managing Director and Company Secretary, as the case may be, will take the following steps in relation to information forwarded to them:

   (A) assess whether disclosure is required and as part of this, when circumstances require, consider whether it is necessary to call a trading halt;

   (B) consult the Chairperson and, as necessary other Directors and advisers (including the ASX or TSX);

   (C) inform the Managing Director (or Chief Executive Officer);

   (D) prepare a market release for submission to the ASX and have this reviewed and approved by the Chairperson and the Managing Director (or Chief Executive Officer), or if one of them is not available, another Director in their place;

   (E) forward the release to the ASX and TSX once appropriate approval for the release has been obtained; and

   (F) post the market release on the Company's website once confirmation is received from the ASX and TSX that it has been released to the market.

(4) Prior to each meeting of the Board , 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.

(5) The Board papers for each meeting should include an agenda item entitled "Continuous Disclosure". In this item, the Chairperson, Managing Director or Chief Executive Officer and Company Secretary should either:

   (A) confirm that there was no material brought to his or her attention requiring disclosure for the preceding month; or

   (B) outline material which has been disclosed.

Company spokespersons

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

(1) Chairperson;

(2) Managing Director;

(3) Chief Financial Officer;

(4) Company Secretary;

(5) any Executive who has chief responsibility for investor relations; and

(6) where appropriate, non-executive Directors nominated by the Chairperson.

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 and TSX, the spokesperson must make contact with the Chairperson, Managing Director) and Company Secretary prior to making contact with these persons in order that they can be briefed on what has been disclosed by the Company to the ASX and TSX.

Any person speaking on behalf of the Company should only discuss information that has been released to the ASX and TSX or is not of a material nature. They should decline to respond, or take on notice, any question the answer to which would require disclosure of material information until the information has been disclosed to the ASX and TSX.

Discussions with analysts or investors

The following guidelines apply in relation to briefings or other conferences with analysts or investors:

(1) information which is, or may be market sensitive, that has not been announced to ASX and TSX and the market must not be disclosed at these briefings, either verbally or in writing;

(2) the Company will not selectively release information to any investor, analyst or journalist and all employees involved in conducting briefings or attending conferences shall take appropriate steps to ensure that no selective information release occurs;

(3) if a question raised during the briefing or conference can only be answered by disclosing market sensitive information which has not previously been disclosed to ASX and TSX, the employee must decline to answer the question and take the question on notice;

(4) a review of the content of briefings and discussions with analysts shall be undertaken promptly after the briefing or discussion by a Director or employee of the Company who was present, in order to check if any market sensitive information that was not previously disclosed may have been inadvertently disclosed;

(5) if an employee of the Company or Director present at a briefing or a conference considers that market sensitive information that was not previously disclosed may have been inadvertently disclosed during the briefing, he or she must immediately notify a member of the Reporting Group; and

(6) a copy of all presentation material will be disclosed through ASX and TSX prior to the briefing and placed on the Company's website after the briefing.

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 any external presentation must be discussed with the Chairperson, Managing Director (or Chief Executive Officer) and Company Secretary prior to the presentation in order that the presenter can confirm that no non-public material information is being disclosed.

Maintenance of released material

The Company Secretary will maintain a register of information disclosed to the ASX and TSX.

The Company website

Information released to the ASX and TSX should also be disclosed on the Company's website. In addition, it is good practice to include on the Company's website other materials presented to analysts and institutions.

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 inquiry should be referred to the Chairperson, Managing Director (or Chief Executive Officer) and Company Secretary. The recommended response to such inquiries 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 not regarded as publicly sensitive). Consideration will then be given to the need to make an ASX or TSX 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 appraised of the contents of any substantive contact with analysts, brokers and institutional investors.

Draft reports

Typically, analysts will seek to obtain a review of draft analyst reports from the chief financial officer (or Chief Executive Officer). It is permissible to comment on errors in factual information and underlying assumptions, but comment on price sensitive information should be avoided. In addition any response should be given in a way that avoids suggesting that the Company's or the market's projections are incorrect.