

## Continuous Disclosure Policy

Data#3 Limited ABN 31 010 545 267

### 1. Introduction

This document sets out Data#3's policy on compliance by Data#3 with its continuous disclosure obligations under the Listing Rules of the Australian Securities Exchange (ASX).

The purpose of this document is to:

1. Provide a basic explanation of Data#3's continuous disclosure obligations;
2. Describe the procedures in place at Data#3 to ensure that Data#3 complies with its continuous disclosure obligations; and
3. Assist directors and employees of Data#3 in ensuring that Data#3 does comply with its continuous disclosure obligations by setting out:
  - (a) Examples of the types of information that may require disclosure under Data#3's continuous disclosure obligations;
  - (b) A description of the actions directors and employees should take when they become aware of information which may require disclosure; and
  - (c) The steps implemented by the board and senior management to consider such information.

While it is essential that all senior management, executives and directors take responsibility for implementing this Policy, only the Company Secretary, Chief Executive Officer / Managing Director, Chairman or Chief Financial Officer (or in their absence then another director) can authorise announcements so that Data#3 complies with its continuous disclosure obligations.

### 2. What are Data#3's continuous disclosure obligations?

#### 2.1 General obligation on Data#3

Under ASX Listing Rule 3.1:

*Data#3 must immediately notify the ASX once Data#3 becomes aware of any information concerning Data#3 that a reasonable person would expect to have a material effect on the price or value of Data#3's shares.*

This is a fundamental obligation that applies to Data#3 as part of its admission to ASX but is subject to certain exemptions which are described in section 2.4 below.

This disclosure obligation is supported by the *Corporations Act 2001* which makes it an offence to contravene the continuous disclosure obligation.

Listing Rule 3.1 and the relevant provisions from the Act are set out in the Schedule to this Policy.

#### 2.2 When is Data#3 aware of information?

Under ASX Listing Rule 19.12:

*Data#3 becomes aware of information if a director or executive officer of Data#3 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 Data#3.*

Accordingly, whenever a director or executive officer is in possession of information which may have a material effect on the price or value of Data#3's shares, it is critical that that information is immediately communicated in accordance with this policy.

#### 2.3 What is price sensitive information?

Price sensitive information is information that a reasonable person would expect to have a material effect on the price of the company's shares,

The Listing Rules do not define *material effect* though the ASX Guidance Note on Continuous Disclosure suggests that the test set out in section 1001D of the *Corporations Act 2001* is applicable. That test equates *material effect* with information that would or is likely to influence persons who commonly invest in securities in deciding whether or not to subscribe for, or buy or sell, the securities.

Qualitative and quantitative assessments can be used as a guide but they do not replace the above test. It is often considered that:

(a) a matter satisfies a quantitative assessment of materiality if its effect on a financial statistic is greater than a measure in the range of 5% to 10% of the relevant financial statistic (which is generally related to profits or losses).<sup>1</sup>

(b) a matter (including those which are contingent) satisfies a qualitative assessment of materiality if it may significantly impact on key assets or affect earnings streams (allowing for any contingency).

## 2.4 Exemptions

Under Listing Rule 3.1 the general disclosure obligation does not apply if each of the conditions in paragraphs (a) to (c) below is, and remains, satisfied:

- (a) *a reasonable person would not expect the information to be disclosed; and*  
(b) *the information is confidential and ASX has not formed the view that the information has ceased to be confidential; and*  
(c) *one or more of the following conditions apply:*

- (i) *it would be a breach of law to disclose the information; or*
- (ii) *the information concerns an incomplete proposal or negotiation; or*
- (iii) *the information comprises matters of supposition or is insufficiently definite to warrant disclosure; or*
- (iv) *the information is generated for the internal management purposes of the Company;*  
*or*
- (v) *the information is a trade secret.*

An exception to disclosure is only available if all 3 conditions [(a), (b) and (c) above] are satisfied.

## 2.5 Information that a reasonable person would expect to be disclosed

The ASX Guidance Note states that a reasonable person would not expect information to be disclosed if it would result in unreasonable prejudice to the company or in an inordinate amount of detail being disclosed. The ASX considers that companies must be prepared to accept some prejudice as the price for listing and the quotation of their securities.

In enforcing the Rule, the ASX will balance the needs of the market and the interests of the company bearing in mind the ASX's market information principle.

Section 1001D (see section 2.3 above) is also relevant in determining when 'a reasonable person would expect information to be disclosed'.

## 2.6 Confidential information

Any information that is not confidential does not qualify for the exceptions listed in section 2.4 above. It is therefore essential that information that is to be withheld is, and remains, subject to strict confidentiality obligations and is not inadvertently or improperly disclosed.

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<sup>1</sup> This materiality has been derived by reference to the guidelines set out in Australian Accounting Standards and Practice Statements. However, it is common to apply a lower percentage (i.e. 2-3%) to larger bases such as shareholders' funds.

If the information has been inadvertently or improperly disclosed, even in breach of a duty of confidentiality, it loses the quality of confidence that attracts the exemption from general disclosure.

In any event, information will have to be disclosed if a reasonable person would expect it to be disclosed - regardless of the fact that it is confidential and falls within any of the categories in paragraph (c) of section 2.4 above (eg. is a trade secret or relates to an incomplete proposal).

## **2.7 When does a proposal become sufficiently complete or definite so that disclosure is required?**

Difficulties may arise in determining when an idea, exploratory meeting or proposal under development is sufficiently complete or definite to warrant disclosure.

The ASX states in the Guidance Note that it expects listed companies to consider making a holding announcement, imposing a trading halt or a suspension in trading of the company's securities if a proposal is insufficiently complete or definite to warrant disclosure.

## **2.8 On-going assessment of information required**

Information must be subject to on-going assessment as to whether or not it must be disclosed. If any of the conditions referred to in section 2.4 above ceases to apply in relation to any particular information, Data#3 must disclose that information immediately.

For example, if information that has not been disclosed becomes known to participants in the market, it will cease to be confidential and will need to be disclosed. Similarly, once a proposal is completed or information becomes certain, the information will need to be disclosed (unless it satisfies one of the other tests in paragraph (c) of section 2.4 above).

## **2.9 The ASX view**

Despite the fact that Listing Rule 3.1 is a benchmark for legal obligations and liability, the ASX takes the view that it should not be interpreted in a restrictive or legalistic fashion.

The ASX suggests a number of practices to be followed in relation to Listing Rule 3.1:

- (a) Holding announcements or trading halts may be appropriate, even where an exception to the disclosure obligation applies (eg. for incomplete or uncertain proposals).
- (b) Listed companies should respond to specific market rumours or those which cause market movement, even where no information can be provided other than denial of the rumours.
- (c) Analysts must not be provided with any information which is material but not public.
- (d) Information released to overseas markets must be provided simultaneously to the ASX.
- (e) The fact that information about a company is widely known does not relieve the obligation to disclose it to the ASX. Press releases will need to be copied to the ASX if they contain any material information not already disclosed to the market.

## **3. Implementation**

### **3.1 Data#3's Communications Officers**

As part of Data#3's compliance with the Listing Rules it has appointed Communications Officers for continuous disclosure and coordinating the provision of information to the ASX, analysts, brokers and shareholders. Those persons are currently Ms Cherie O'Riordan (CFO) and Mr Terence Bonner (General Counsel and Company Secretary).

Any temporary or permanent replacement will be notified to all directors and senior management (as well as to the ASX).

The Communications Officers are also responsible for:

- (a) the material disclosures checklist (see section 3.2 below);
- (b) maintaining the currency of this Policy;

- (c) conducting or arranging training of executive officers (being the Chief Executive Officer and Managing Director, CFO and heads of each organisational unit) in relation to Data#3's continuous disclosure obligations;
- (d) annually reviewing Data#3's continuous disclosure; and
- (e) preparing a draft summary of Data#3's continuous disclosure systems for consideration by the board and inclusion in Data#3's annual report.

### **3.2 Material disclosures checklist**

The Communications Officers will be responsible for maintaining a material disclosures checklist that lists the key material items that have been disclosed to the market such as:

- (a) forecasts of financial results;
- (b) sales and revenue forecasts; and
- (c) key commercial relationships.

The checklist will be regularly distributed to senior management and directors. When it is apparent that circumstances have changed and that prior disclosure is no longer accurate the company should consider the need to disclose the new situation. As further disclosures are made the checklist should continue to be updated.

### **3.3 Immediate notification**

If in the performance of your duties as a director or executive officer of Data#3 you become aware of information that may have a material effect on the price or value of Data#3's shares, you should immediately notify that information to the Communications Officers, which ASX Guidance confirms to mean providing notice promptly and without delay having regard to the circumstances but not deferring, postponing or putting it off to a later time. Without limiting other potentially material items, any matter that affects an item on the material disclosures checklist should be immediately notified to the Communications Officers.

It is critical to Data#3's effective compliance with its continuous disclosure obligations that information is communicated by its directors and executive officers as soon as they become aware of that information.

In all circumstances, should you have any doubt as to whether the information requires disclosure, you should err on the side of caution and notify that information to the Communications Officers because the test as to whether information is market sensitive is an objective one and if Data#3 is held to have information that is market sensitive, the subjective opinion of its officers will not avoid a breach of Listing Rule 3.1.

### **3.4 Periodic disclosure**

In support of the immediate disclosure requirement, periodic meetings will provide opportunities to consider and discuss potential disclosure issues.

#### **(a) Senior leadership team meetings**

The senior leadership team is comprised of the Chief Executive Officer and Managing Director, Chief Financial Officer and the Executive General Managers.

The senior leadership team is required to consider prior to each formal meeting whether they have any information in their possession that may require disclosure by Data#3 under its continuous disclosure obligations. Such meetings are held on a regular basis, usually at least monthly.

It is a standing agenda item at each formal meeting that the members of the senior leadership team raise and consider any information that potentially may require disclosure. Reference should be made to the material disclosures checklist.

#### **(b) Board meetings**

Each director is also required to consider prior to each board meeting whether they possess any information that may require disclosure by Data#3 under its continuous disclosure obligations.

It is a standing agenda item at each board meeting that the directors raise and consider any information that potentially may require disclosure. Reference should be made the material disclosures checklist.

### **3.5 How is information considered?**

All information notified to the Communications Officers under this policy:

- (a) will in the first instance be considered by the Communications Officers (and when necessary, the Chairman, an independent director or General Counsel); and
- (b) if a disclosure is required and time permits, the draft form of the disclosure will be circulated to the board members for immediate comment before being announced to the market.

In this way, adequate consideration by appropriately qualified persons is given to the need for, and the contents of, any disclosure in accordance with Data#3's continuous disclosure obligations.

The board recognises that the responsibility for timely continuous disclosure requires that the Communications Officers have sufficient authority to make announcements without consultation with members of the board if they are not immediately available.

All directors and executive officers are required to communicate any information that they consider may require disclosure - even if they are doubtful that disclosure may be required. It is only if such information is brought forward that the appropriate consideration may be given to whether it should be disclosed to the ASX.

In all circumstances the directors and executive officers of Data#3 should err on the side of caution and notify that information to the Communications Officers.

### **3.6 Making disclosure**

Where determined by the Managing Director (or board) to be required in accordance with the law, such information will be immediately disclosed to the ASX.

Listing Rule 15.7 expressly states that the ASX must be provided the information first and that the information cannot be provided to any other persons (including on an embargoed basis) until the ASX has confirmed that it has released the information to the market.

The ASX Guidance Note states that where, contrary to Listing Rules 3.1 and 15.7, information has become publicly available before having been given to the ASX, the Company still has an obligation to disclose that information under Listing Rule 3.1.

### **3.7 Correcting a false market**

The company's general policy is not to respond to reports (or rumours) about it published by analysts, fund managers or reporters. Occasionally, however, such reports may contain information that is either wholly or partially inaccurate or otherwise appears to have a material effect on the market price or traded volumes. Where it appears that a significant portion of the market is acting on a misapprehension of the company's position a *false market* is created.

A false market can also be created by the selective disclosure of inside information.

The ASX takes the view in its Guidance Note that listed companies are under an obligation to disclose any information that is needed to prevent a false market. Accordingly, where it appears that a false market exists, the Managing Director may issue an ASX announcement correcting the misinformation on the basis of publicly available information or non-publicly available information with the consent of the Chairman.

### **3.8 Correcting selective disclosure**

In the event that this policy is not complied with, or notwithstanding compliance the directors become aware that material price sensitive information has been selectively disclosed, the relevant information will be promptly released to the market through the ASX Company

Announcements Platform. Such announcements will be made within 24 hours of learning of the disclosure or by the start of the next trading day, whichever is later.

## 4. Applying the rules in practice

Set out below are some examples, based on the ASX Guidance Note, of how the continuous disclosure obligations and the exemptions operate. However they are not conclusive in all circumstances as there may be other relevant factors involved which alter the conclusion.

These examples assume that the amounts involved are large enough to have a *material effect* on the price or value of Data#3's securities.

1. *Data#3 receives a claim from a third party that Data#3 has breached that party's intellectual property rights.*

Disclosure of the claim would normally be required unless Data#3 has received legal advice that the claim is without foundation or unlikely to succeed.

2. *Data#3 enters into a confidential settlement of a claim involving payment of damages.*

Disclosure of the amount of the settlement and other material terms would normally be required. This is so even if the proposed claim was never made public.

3. *Data#3 reaches agreement in principle for a major supply contract (or acquisition or disposal), but has not yet signed any formal agreements.*

Disclosure would not normally be required, unless the signing of the contract was merely a formality. If binding heads of agreement were entered into and the contract was subject to conditions precedent, then disclosure would normally be required unless satisfaction of the conditions was really in doubt.

If the heads of agreement were not binding, disclosure may be delayed as it could be said that the proposal is incomplete.

4. *Data#3 signs a formal acquisition agreement but the contract is conditional on loan funding.*

Disclosure would normally be required, stating that the contract is conditional upon loan funding being approved. Only if there is real doubt about the loan funding being obtained would this example come within the concept of an incomplete proposal or negotiation.

5. *Data#3 is considering entering into a joint venture and holds preliminary discussions with prospective joint venture partners as to their willingness to explore the possibility.*

Disclosure would not normally be required. The information concerns either an incomplete proposal or negotiation or is insufficiently definite to warrant disclosure.

6. *Data#3 has revised its profit forecasts, whether up or down.*

Where Data#3 has released its profit forecasts to the market and then revises those forecasts by a material amount, the revision should be disclosed.

The above matters are examples only, and should not be considered as an exhaustive list of possible circumstances in which disclosure may be required by Data#3. For example, if some of the matters which are described above as not requiring disclosure are otherwise made public (eg. through a leak to the media), an announcement to the ASX may be required to ensure that the market is fully and properly informed.

## 5. Non-Compliance

### 5.1 For the Company

#### (a) Civil liability

Data#3 will face potential civil action for damages or remedial orders if the company intentionally, recklessly or negligently fails to report relevant information that is not generally available to the market, as directors and executive officers become aware of it.

#### (b) Criminal liability

Criminal sanctions will apply for intentional or reckless contraventions. The maximum penalty that may be imposed on Data#3 for an intentional or reckless contravention is a fine of \$1.65 million (6,000 penalty units).

## 5.2 For individuals

### (a) Civil liability

Anyone who suffers loss as a result of an intentional, reckless or negligent contravention of Data#3's continuous disclosure obligations, including shareholders, can make a claim for damages or other remedies against any person who is 'involved' in the contravention. This could include the directors or executive officers of Data#3 if they are knowingly concerned in the contravention.

### (b) Criminal liability

Criminal sanctions can also apply to individuals in respect of intentional or reckless contraventions (i.e. directors or executive officers of Data#3, provided they are knowingly concerned in the contravention). The maximum penalty that may be imposed on an individual for an intentional or reckless contravention is a fine of \$165,000 (600 penalty units) or five years imprisonment or both.

## 5.3 No explicit defences

There is no explicit defence of due diligence for this liability. This policy is designed to assist in ensuring that an appropriate continuous disclosure system is in place to prevent liability arising.

## 6. Summary

In summary, it is the responsibility of each director and executive officer of Data#3 to communicate any information regarding Data#3 that may have a material effect on the price or value of Data#3's securities as soon as that director or executive officer becomes aware of that information.

If you are in any doubt as to whether the information should be disclosed, you must disclose that information to the Communications Officers in accordance with this policy, and it will then be more fully considered by those responsible for deciding whether or not disclosure to the ASX is necessary.

A failure by Data#3 to make timely disclosure of information that may have a material effect on the price or value of Data#3's securities may result in civil or criminal liability for Data#3, its directors and executive officers.

## 7. Queries

If at any time directors or executive officers have any queries regarding their information reporting obligations, or Data#3's continuous disclosure obligations, they should contact the Communications Officers.