ASIC
Australian Securities & Investments Commission

REPORT 393

Handling of confidential information: Briefings and unannounced corporate transactions

May 2014

About this report

This report sets out key observations from our review of the way in which listed entities and their advisers handle confidential, market-sensitive information.

This issue affects investor confidence in our markets and is key to ensuring investors are trading on the same information.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Contents

Executive summary

Background to our review

1 The leakage of market-sensitive information about a listed entity ahead of a market announcement threatens market integrity by creating selective access to information and increasing the risk of insider trading. It can also pose threats to the outcome of corporate transactions.

2 In the second half of 2013, we reviewed a limited number of listed entities and their advisers in order to consider the practices employed in the Australian market to handle and protect confidential, market-sensitive information.

3 There are many potential circumstances in which the confidentiality of market-sensitive information can be jeopardised and information can be selectively disclosed in an inappropriate way. Our review focused on a subset of those circumstances.

4 Specifically, we 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.

We also considered the prevalence of leaks of this kind of information in Australia.

5 This report outlines our observations and identifies some challenges that listed entities, their advisers, analysts and institutional investors face in managing their obligations relating to confidential, market-sensitive information.

What we did

Analyst and investor briefings

6 Analyst and institutional investor briefings can provide a useful supplement to formal market announcements and can improve the market's understanding of information concerning listed entities.

7 However, based on our surveillance and investigation work outside of this review, we consider that briefings (whether formal or informal) can be a significant risk area for selective disclosure of market-sensitive information.

8 To highlight the importance of this issue we attended a sample of briefings held in August and September 2013, following the release of the relevant entities' financial results. Our primary aim was to increase awareness about the responsibilities of listed entities and briefing participants. We also sought to better understand current market practices.

9 The listed entities in our review covered a wide spectrum of market sectors, market capitalisations and locations in order to draw comparisons between different processes and approaches to briefings.

10 We acknowledge that listed entities hold briefings for many different stakeholders. Our review, however, focused on a sample of analyst and institutional investor briefings. We attended a mix of:

(a) group briefings held by the listed entity where numerous analysts, brokers and investors were in attendance. The majority of these group briefings were conducted by teleconference;

(b) smaller briefings hosted by broking firms and investment banks who invited a select number of their key clients to speak with directors and senior executives of the listed entity over lunch; and

(c) private on-on-one briefings with analysts held by the listed entities.

11 This supplements our ongoing surveillance and investigative work on continuous disclosure and insider trading issues.

Media-based analysis and academic research

12 To assess whether the leakage of confidential, market-sensitive information is a more significant issue in Australia than in other similar markets, we conducted the following research:

(a) an analysis of media reporting in the lead up to market-sensitive announcements, to determine whether the details of those announcements had already been identified in the media. This allowed us to quantify and compare the amount of information leaked in the media in Australia, the United Kingdom, Hong Kong and Canada; and

(b) a review of academic research that attempts to quantify the magnitude of confidential, market-sensitive information leakage in Australia and other overseas jurisdictions.

Market practice interviews

13 We interviewed a limited number of listed entities and their advisers about their systems and controls relating to the management of confidential, market-sensitive information in the context of a recent corporate transaction. We also reviewed their written policies in this area. Our interviews were conducted on a voluntary basis.

14 The corporate transactions we selected for the purposes of this review were a small sample of pro-rata rights offers conducted in the 12 months before our review. The listed entities involved in these transactions included larger and smaller capitalisation entities. The entities were located on both the east and west coasts of Australia.

15 The advisers we spoke to were:

(a) investment banks;

(b) brokers with a corporate advisory team;

(c) accounting firms; and

(d) law firms.

16 We also spoke to a small number of fund managers who may receive confidential, market-sensitive information when they are sounded about a corporate transaction.

What we found

Analyst and investor briefings

17 We did not find any evidence of selective disclosure of confidential, market-sensitive information at the briefings we attended. However, our review was limited in nature and our observations are not conclusive in relation to the market as a whole. Our review was primarily designed to raise awareness in this area and not as a tool to identify cases for enforcement activity. We also note there are a range of more informal communications between listed entities and analysts and institutional investors that this review did not cover.

18 We did, however, observe a range of practices by listed entities (from adequate to good practice) regarding the level of access granted to briefings for the wider market and also the broadcasting and transcription of briefings for public access. We are working with relevant industry bodies to improve guidance and practices in these areas.

19 Outside of the review, we have observed circumstances where a listed entity may have, either intentionally or inadvertently, disclosed confidential, market-sensitive information during an analyst briefing or similar forum. Our experience is that, despite well-documented policies within the analysts' firms, some analysts and their firms did not understand or comply with their obligations and associated restrictions on the use of that information. Similarly, we have also seen cases where a listed entity had well-documented policies on how to conduct briefings and interact with analysts and institutional investors, but these policies were not followed.

20 During our investigation work we also identified instances where staff below the board and officer level—who may not be adequately aware of the obligations surrounding confidential, market-sensitive information—have been involved in discussions with analysts.

21 Given our recent observations we remain concerned that briefings are a significant risk area for selective disclosure of market-sensitive information.

Prevalence of leakage of confidential, market-sensitive information about corporate transactions

22 Our media-based analysis found that, in Australia between 2006 and 2013, the number of leaks reported in the media remains significant. However, since July 2010 (which roughly coincides with the release of relevant industry guidelines), there has been an improvement (i.e. a reduction) in the number of takeover-related leaks in the media. In contrast, since July 2010 there has been a slight increase in the number of leaks relating to equity capital raisings.

23 In most of the media leaks observed in the sample, either the market was closed or the stock was in a trading halt by the time the market opened.

24 Using the same media-based methodology, we also examined a sample of takeovers and equity raisings in the United Kingdom, Hong Kong and Canada. We found that, in relation to takeover transactions, Australia compared favourably to the United Kingdom and Canada. However, while Australia also compared favourably to the United Kingdom on equity raisings, it fell behind Canada and Hong Kong where we found no leaks reported by the media.

25 We also conducted a review of international research literature, which attempted to quantify the magnitude of confidential, market-sensitive information leakage in Australia and offshore based on abnormal share price and volume movements.

26 Overall, Australia compared favourably to Hong Kong on this measure. The Asia–Pacific region as a whole compared favourably to Europe, the Middle East and Africa, but did not perform as well as North America.

Current market practices on handling confidential, market-sensitive information about transactions

27 Despite relevant industry guidance, all of the listed entities in our sample that were in the small- to mid-market capitalisation range relied heavily on their advisers to set the approach to keeping market-sensitive information about their transaction confidential. Most listed entities in the small- to mid-market capitalisation range in our sample group did not have specific

procedures and policies to deal with transaction-related confidential, market-sensitive information, although they usually had more general policies on confidentiality and continuous disclosure.

28 We were concerned by the timing and number of 'soundings' conducted by investment banks and brokers before either the announcement of the transaction or a trading halt being requested. This is a significant risk area for leaks and insider trading.

29 Investment banks and brokers generally had well-documented, detailed policies and procedures for handling confidential, market-sensitive information, which largely mirrored the industry guidelines. We did not conduct a comprehensive review of compliance with those policies and procedures.

30 Lawyers and accountants had less detailed policies and procedures but placed great weight on their professional duties to their clients to keep their client's market-sensitive information confidential.

Our recommendations and further work

31 Our response to the issues of concern that we identified is set out at Section E.

32 Overall, we consider that existing guidance issued by ASIC, ASX and industry bodies is largely sound and, in the main, recognised as best practice by the market. The challenge for listed entities, advisers and analysts is to implement the guidance in a consistent manner and approach issues with a view to following the spirit underlying the guidance. Accordingly, the key focus for our continued work in this area is not on more guidance but on assessing whether this challenge is being met and, if not, taking appropriate enforcement action.

33 It is important that listed entities actively engage with their shareholders and the investment community. However, all parties must be mindful of the various risks involved in conducting and attending briefings. Similarly listed entities and their advisers must remain vigilant about the proper handling of confidential, market-sensitive information when they are preparing for or negotiating a material corporate transaction.

34 We have summarised our key specific recommendations, which will help various parties minimise the risk of regulatory action regarding confidential, market-sensitive information, in paragraphs 35–37.

Listed entities

35 Consistent with existing guidance, we recommend listed entities have in place written policies for handling confidential, market-sensitive information. In particular, we recommend entities:

(a) ensure that their policies are well understood within the entity and are consistently followed;

(b) be vigilant about what information is disclosed at analyst and investor briefings;

(c) refrain from trying to manage or correct market expectations through selective briefings;

(d) make access to their analyst and investor briefings as broad as possible, including through making webcasts, podcasts and/or transcripts available;

(e) prepare for leaks about corporate transactions by composing draft requests for trading halts and draft ASX announcements; and

(f) have frank discussions with their advisers about if and when soundings should be conducted about a capital raising (and how many investors may need to be sounded), and consider using trading halts to manage the risks associated with soundings.

Analysts and investors participating in briefings

36 We recommend analysts and investors who participate in briefings (whether formal or informal):

(a) know and comply with the relevant good practice guidance on briefings;

(b) do not attempt to elicit confidential, market-sensitive information or other information that does not comply with industry codes from listed entities; and

(c) know what to do if they suspect they may have been given confidential, market-sensitive information. Analysts should inform their compliance team immediately and should not pass the information on to people who will, or would likely, trade on the information.

Advisers on corporate transactions

37 We recommend advisers on corporate transactions:

(a) recognise that the confidential, market-sensitive information belongs to the listed entity and ensure that the entity is aware of and comfortable with any release of that information;

(b) ensure they strike an appropriate balance between the benefits to underwriters of soundings and the potential harm to listed entities and the market of leaked information;

(c) know and comply with relevant good practice guidance on handling confidential, market-sensitive information; and

(d) implement appropriate information technology (IT) controls to manage access to confidential, market-sensitive information.

Further work

38 Based on the findings of this review, we will:

(a) continue to focus on analyst and investor briefings by:

(i) undertaking enforcement action against insider trading and against listed entities that fail to comply with their continuous disclosure obligations; and

(ii) conducting a targeted review of research reports by analysts. We will consider the type of information that is available to analysts at the time they make a material change in their forecasts or recommendations. We will look 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.

(b) continue to focus more broadly on ensuring that our market is fair and efficient in relation to the treatment of confidential, market-sensitive information by:

(i) using our market surveillance system, Market Analysis and Intelligence (MAI), to detect leaks and any associated insider trading. MAI provides us with enhanced capabilities to detect suspicious trading;

(ii) continuing to conduct our ongoing surveillance and assessment programs of brokers and investment banks, which encompass reviews of internal controls, risk and compliance frameworks, and other procedures used to manage confidential, market-sensitive information;

(iii) continuing to highlight in communications with industry and in the enforcement action we take the need for listed entities and their advisers to implement strong systems and controls for handling confidential, market-sensitive information;

(iv) taking enforcement action concerning breaches of the continuous disclosure and insider trading laws; and

(v) working with industry bodies to update their guidance where necessary and disseminate key messages.

A Background to our review

Key points

Analyst and investor briefings can play an important role in a listed entity's overall engagement with the market, but disclosure at briefings must comply with the continuous disclosure obligations and related laws.

The continuous disclosure obligations are designed to prevent the leakage and selective disclosure of confidential, market-sensitive information, which can affect the integrity of our markets. The potential for different types of leaks means more than one strategy is needed.

Both ASIC and industry have released guidance for listed entities and analysts on the handling of confidential, market-sensitive information.

Analyst and investor briefings

39 Analyst briefings can play an important role in increasing the dissemination of meaningful information on listed entities to the market. They enable management to explain the entity's financial reports, business strategies and outlook, and they provide analysts the opportunity to question and evaluate management. Analysts' critical analysis of the entity results and management performance can promote a more efficient market and can enhance market integrity.

40 Some of the other main participants in briefings are:

(a) institutional investors (such as superannuation fund managers) and their representative bodies, which are significant holders of equity in many listed entities. Given their level of ownership in listed entities, institutional investors will often have a greater level of access to the management and board of listed companies than retail investors; and

(b) people on the trading side of broking firms—including, for example, institutional salespeople who interact with listed entities.

41 Effective engagement with key shareholders, analysts and others in the investment community can enhance long-term performance and corporate value.[1] However, disclosure at briefings must comply with the laws relating to continuous disclosure and insider trading.[2] Where companies engage in selective briefings and disclose market-sensitive information to only a portion of the market, it creates opportunities for insider trading and

[1] For further information on institutional investors, see the exposure draft of Governance Institute's guidelines for shareholder engagement, titled *Improving engagement between ASX-listed entities and their institutional investors: Guidelines*, released in February 2014.
[2] See the appendix for more information on the Australian legal framework.

undermines other investors' confidence in the market as a level playing field. Our experience is that briefings are a risk area for selective disclosure.

CAMAC report and PJC recommendations

42 In June 2009, the Corporations and Markets Advisory Committee (CAMAC) released its report *Aspects of market integrity*, which considered, among other things, the regulation of the practice by which companies provide briefings to analysts.[3] Although the report did not recommend the need for further legislative intervention in this area, the report identified areas where there was scope for further good practice guidance. The report proposed action by the ASX Corporate Governance Council to build on existing guidance and encourage more open practices in relation to briefings, including:

(a) making briefings more accessible (including through use of the internet);

(b) keeping records;

(c) instituting processes for checking information disclosed and rectifying any inadvertent disclosure by making the information generally available; and

(d) restricting briefings during times of market sensitivity.

43 The Parliamentary Joint Committee on Corporations and Financial Services (PJC) made recommendations in relation to briefings for institutional shareholders in its report *Better shareholders—Better company: Shareholder engagement and participation in Australia*, released in June 2008. The PJC considered that companies should post the information contained in private briefings on their websites. The PJC recommended that, if possible, this information should be available at the same time as the briefing itself and shareholders should be forewarned of its pending availability to provide the most equitable access.

Handling confidential, market-sensitive information about transactions

44 The continuous disclosure obligations are central to the integrity and efficiency of our markets. The timely disclosure of material market-sensitive information underpins the maintenance of a fair and informed market.

[3] A full copy of this report is available for download at: www.camac.gov.au/camac/camac.nsf/byHeadline/PDFFinal+Reports+2009/$file/Market_Integrity_Report_Jun2009.pdf

45 Leakage of confidential, market-sensitive information about a proposed corporate transaction ahead of a market announcement threatens market integrity because it:

(a) impairs the flow of market-sensitive information to the market in an equitable manner;

(b) can be used to facilitate insider trading; and

(c) can result in abnormal price and volume movements ahead of announcement of transactions. This can not only jeopardise the particular transaction but, at a higher level, can damage investor confidence in the relevant entity and in the market.

Types of leaks

46 Leaks can happen in a range of circumstances and for different reasons. The methods used to address and contain the number of leaks can vary depending on the type of leak in question.

Inadvertent leaks

47 As the name suggests, this type of leak occurs when an insider accidentally discloses confidential, market-sensitive information to an outsider. Examples of inadvertent leaks include confidential discussions being overheard by outsiders or accidentally sending an email to the wrong recipient.

48 Robust systems and procedures combined with a culture that reinforces compliance with those procedures can help prevent most, but not all, inadvertent leaks.

Strategic leaks

49 This is information that is intentionally leaked for commercial purposes, normally to help ensure the success of the transaction or gain a preferred outcome. Sometimes strategic leaks are designed to manage the market impact of negative information about the entity's performance or results.

50 Strategic leaks may be sanctioned by the listed entity and their advisers and are often released via the media. Some strategic leaks occur via 'friendly' analysts who publish the information in their reports.

51 We have observed that strategic leaks are far more prevalent in merger and acquisition transactions than in capital raisings. Leakage about a capital raising could have a detrimental impact on the pricing of the capital raising from the entity's perspective, whereas in merger and acquisition transactions a strategic leak can be used to influence the deal to the advantage of the

leaker. International research[4] has found that there is strong support for the view that most leaks about merger and acquisition deals are strategic in nature.

52 Strategic leaks have a detrimental impact on the integrity of our market. They undermine the primacy of the relevant exchange as the source of market-sensitive information and can result in a breach of the listing rules of the exchange. These leaks also can create confusion and uncertainty in the market about the whether the leak is accurate.

53 All of the listed entities and their advisers we spoke to in our interviews (see Section D) had policies that clearly prohibited unauthorised interaction with the media. Our research indicates that in a number of transactions there are authorised, strategic leaks in circumstances that might constitute a breach of the listing rules and could undermine the integrity of our markets.

Deliberate tipping for personal gain

54 A third type of leak is the deliberate sharing of confidential, market-sensitive information by an insider to another person (known as 'tipping') for the purpose of one or both of those parties deriving a personal gain through insider trading activities.

55 Tipping can be addressed through a combination of robust internal compliance systems within listed entities and their advisers, as well as effective enforcement action by ASIC in cases of suspected insider trading.

56 Some insider trading does not involve a leak at all; rather, it concerns insiders who misuse the information that they legitimately possess. Misuse of information by legitimate insiders can be minimised by proper controls and procedures, such as robust policies and compliance systems for share trading by staff and consultants. Enforcement action by ASIC also plays an important role in deterring this type of activity.

ASIC guidance

Analyst and investor briefings

57 We released Consultation Paper 5 *Heard it on the grapevine* (CP 5) and Regulatory Guide 62 *Better disclosure for investors* (RG 62) with a view to providing guidance to listed entities on handling confidential, market-sensitive information.

[4] *When no-one knows: Pre-announcement M&A activity and its effect on M&A outcomes*, Cass Business School, City University, London, November 2013.

58 RG 62 contains specific guidance for listed entities about briefing analysts. Among other things, it recommends that listed entities:

(a) have a procedure for reviewing briefings and discussions with analysts afterwards to check whether any confidential, market-sensitive information has been inadvertently disclosed;

(b) give slides and presentations used in briefings to the securities exchange for immediate release to the market and post them on the entity's website;

(c) be particularly careful when dealing with analysts' questions that raise issues outside the intended scope of discussion. As ground rules, entities should:

(i) only discuss information that has been publicly released through the securities exchange; and

(ii) if a question can only be answered by disclosing confidential, market-sensitive information, decline to answer or take it on notice, and then announce the information through the securities exchange before responding;

(d) confine comments on individual market analysts' financial projections to errors in factual information and underlying assumptions;

(e) seek to avoid any response that may suggest that the entity's, or the overall market's, current projections are incorrect. The way to manage earnings expectations is by using the continuous disclosure regime to establish a range within which earnings are likely to fall; and

(f) announce to the securities exchange any change in expectations before commenting to anyone outside the entity.

Research reports

59 In addition to the specific guidance on the conduct of analyst briefings, we have released general guidance for Australian financial services (AFS) licensees that are providers of research reports, such as analysts, in the form of Regulatory Guide 79 *Research report providers: Improving quality of investment research* (RG 79). RG 79 focuses on the key phases of the research process to improve:

(a) the quality, methodology and transparency of research report production and distribution;

(b) research report providers' management of conflicts, including avoiding, controlling and disclosing these conflicts; and

(c) the ability of users of research to understand and compare the research services of different research report providers.

60 RG 79 supplements Regulatory Guide 181 *Licensing: Managing conflicts of interest* (RG 181). RG 181 focuses on broad principles and guidance for licensees generally in managing conflicts of interest, and sets out expectations that licensees should meet to comply with the conflicts of interest management obligation. Building on RG 181, RG 79 covers various issues that research report providers should take into account in the design, implementation and maintenance of their conflict management arrangements.

ASIC consultation

61 After we conducted some public consultation in 2009[5] about good practice for handling confidential, market-sensitive information, we worked with relevant industry bodies to finalise industry-based guidance in this area:

(a) Governance Institute of Australia (Governance Institute)[6] and Australasian Investor Relations Association (AIRA) jointly published *Handling confidential, market-sensitive information: Principles of good practice*[7] (Governance Institute/AIRA guidelines); and

(b) the Australian Financial Markets Association (AFMA) published *Handling confidential and price-sensitive information and soundings: Best practice guidelines* (AFMA guidelines).

62 These and other relevant industry guidelines are discussed at paragraphs 63–78.

Industry guidelines—Analyst and investor briefings

AIRA guidelines for listed entities

63 In 2011 AIRA published its guidelines *Best practice investor relations: Guidelines for Australasian listed entities* which were intended to complement the high-level guidance contained in RG 62.

64 These guidelines contain a detailed set of best practices for listed entities and their investor relations professionals, based on the principle that material, market-sensitive information should be disclosed in a manner that ensures fair and timely disclosure to a wide range of stakeholders interested in the trading of a listed entity's securities. The guidelines aim to foster best practice communication and create a fully informed market.

[5] Consultation Paper 128 *Handling of confidential information* (CP 128).
[6] Governance Institute was formerly known as Chartered Secretaries Association.
[7] Revised in 2013 following the release of revised ASX Guidance Note 8 *Continuous disclosure: Listing Rules 3.1–3.1B* (GN 58).

65 This guidance is based on the idea that equity of access to information is best achieved by dissemination of information to the widest range of audiences, using appropriate technologies.

66 The guidelines include practices such as:

(a) conducting briefings to provide background to previously disclosed information only and avoiding the discussion of confidential, market-sensitive information;

(b) keeping a record of all briefings; and

(c) appointing authorised spokespersons to minimise the risk of inadvertent disclosure of confidential, market-sensitive information and immediately releasing any such information to the market operator.

67 These guidelines are available from https://aira.org.au.

Joint AIRA and Finsia guidelines for listed entities and analysts

68 In 2006, AIRA and Finsia published their joint best practice guidelines *Principles for building better relations between listed entities and analysts*. These principles focus on the relationship and communication between listed entities and analysts.

69 Suggested best practices include (but are not limited to):

(a) analysts and listed entities should not apply coercion or pressure by disrupting, or threatening to disrupt, the free flow of information on which market integrity depends. Information should not be used as a tool for manipulating positive or negative research findings;

(b) analysts should issue objective research and recommendations that have a reasonable and adequate basis supported by thorough, diligent and appropriate research and investigation;

(c) analysts should not deliberately withhold or delay dissemination of significant research reports to the listed entity that is the subject of the research;

(d) representatives of listed entities should not deny access, restrict access, or threaten to deny or restrict access, to company information or senior management in an attempt to influence analysts; and

(e) listed entities should only provide comment on past performance or forward-looking data that has been publicly disclosed. Listed entities may only review reports before publication for the purpose of verifying factual information.

70 These guidelines are available from https://aira.org.au.

Industry guidelines—Confidential, market-sensitive information about transactions

Governance Institute/AIRA guidelines

71 In October 2010, the Governance Institute/AIRA guidelines were released to help listed entities develop processes to maximise the protection of confidential market-sensitive information. Under the guidelines, listed entities should:

(a) have in place internal systems to protect confidential, market-sensitive information, which includes having documented policies and procedures and secure IT controls;

(b) maintain an insider list when conducting a confidential, market-sensitive transaction;

(c) have appropriate confidentiality obligations and restrictions in place to ensure entity's directors and employees are aware of and maintain their confidentiality obligations;

(d) enter into confidentiality agreements or other arrangements with advisers and other service providers when engaging their services for confidential, market-sensitive transactions; and

(e) be aware of the processes involved in sounding the market for a potential corporate transaction.

72 These guidelines are available from www.governanceinstitute.com.au/knowledge-resources/good-governance-guides.

AFMA guidelines

73 In November 2011, the AFMA guidelines were published primarily for investment banks and brokers. The practices proposed by AFMA in handling confidential, market-sensitive information include the following:

(a) members should have documented policies and procedures that address behaviours in the handling of confidential and potentially market-sensitive information and personal account dealing by staff;

(b) members should consider maintaining an insider list for particularly sensitive transactions; and

(c) unless a member considers it unreasonable to do, a member should conduct a leak investigation on request from the client, and report the results of that investigation to the client.

74 The AFMA guidelines cover the conduct of soundings of equity capital markets transactions and include the following practices:

(a) members should obtain client approval before conducting soundings of a proposed transaction using the client's confidential, market-sensitive information;

(b) if a member discusses a potential transaction independently of a client before being engaged, it should be made abundantly clear to the institution that the transaction has not been discussed with the client and the member has not been mandated in relation to the transaction, but this is not a sounding to which the AFMA guidelines otherwise apply;

(c) soundings should be conducted as close as reasonably practicable to the proposed launch of the transaction, and where reasonably practicable, soundings should take place outside market trading;

(d) soundings should be limited to as few institutions as the member considers reasonably necessary to gain the desired level of comfort or commitment; and

(e) members should have a process for verbally 'wall-crossing' an institution before conducting a sounding and a follow-up confirmation email process, with pro forma scripts and emails attached to the AFMA guidelines.

75 These guidelines are available from www.afma.com.au/standards/codespractices.html.

ASX guidance

76 ASX also provides guidance on disclosure practices for listed entities in ASX Guidance Note 8 *Continuous disclosure: Listing Rules 3.1–3.1B* (GN 8).

77 GN 8 gives an overview of the type of information that listed entities should disclose on ASX, and when that information should be disclosed so that market-sensitive information is announced on ASX first to ensure it is quickly and broadly disseminated to prevent asymmetry.

78 GN 8 highlights the issue of confidentiality and stresses the importance of having appropriate controls and procedures in place. GN 8 also highlights some particular risk areas:

> Even with strong confidentiality safeguards, it is important to recognise that the more people who know information, the greater the risk that it will cease to be confidential. So, for example, if a party proposing to acquire a business wants, as part of its due diligence, to make enquiries of employees, customers or suppliers, or a party proposing to undertake an issue of securities wants to take soundings from brokers and potential investors, it and the other parties involved in the transaction need to be prepared for the chance that information about the transaction will not be kept in confidence.

B Findings: Analyst and investor briefings

Key points

Based on our investigation work outside of this review, we believe that analyst and investor briefings are a significant risk area for selective disclosure of confidential, market-sensitive information.

Listed entities and attendees at briefings must remain vigilant to ensure they comply with continuous disclosure obligations and insider trading laws.

We attended a sample of analyst and investor briefings to highlight this issue within the market.

Observations from our review

79 We did not find any evidence of selective disclosure of confidential, market-sensitive information at the sample of briefings we attended. However, given the limited nature of our review, this finding should not be taken as necessarily indicative of practices in the wider market.

80 As previously noted, we consider briefings of analysts and investors (whether in a formal or a less structured manner) a significant risk area for selective disclosure and all participants must remain vigilant about their conduct at these forums.

81 Our review identified some divergences in practices by listed entities around access by the broader market to the more formal types of group briefings. We make further comments about this in Section C.

Access to briefings

82 We consider that it is good practice for listed entities to provide as broad as possible access to briefings, as well as to the recordings and transcripts of those briefings. This promotes confidence that the market is trading on equal information and can help minimise the risk and perception of selective briefings.

83 We observed a range of practices in relation to providing access to group briefings to the market as a whole, and also in relation to providing public access to recordings and/or transcripts of group briefings. None of the entities made publicly available a recording or transcript of the smaller hosted briefings or one-on-one briefings we attended.

Group briefings

84 At the group briefings, the questions from analysts and responses from listed entities generally fell into the following categories:

(a) clarifications of financial results;

(b) capital management;

(c) future strategies and direction; and

(d) business dynamics, impact of competition and macro environment.

85 All the relevant listed entities lodged their financial results and group briefing presentation slides on ASX's Market Announcements Platform before the commencement of their briefings.

86 Just over half of the entities in our sample provided details, such as dial-in numbers for teleconference group briefings, in announcements lodged with ASX before the event, so that the wider market could hear the briefing in real time. One listed entity, although it publicly broadcast the briefing in real time, did not provide advance details of the briefing via an announcement lodged on ASX.

87 Following their group briefings, most of the listed entities posted either the webcast or audio recording of the briefings on their websites. One listed entity lodged a full transcript of the briefing as an ASX announcement the day after the briefing, and another listed entity posted an edited transcript of the briefing on its website the day following its briefing. We are also aware that the webcast, podcasts and transcripts of all the group briefings we attended are available via Bloomberg, although an investor would need to subscribe to obtain access this way.

One-on-one and smaller briefings

88 In relation to the one-on-one and the hosted smaller briefings, these sessions appeared to provide a more detailed forum for analysts and selected investors to understand the business dynamics, impact of competition and macro environment faced by the entity as compared to group briefings.

89 Particular care needs to be taken in relation to these types of smaller and less formal briefings to ensure that there is no selective disclosure of information. The less structured and scripted the discussion, the greater the risk that confidential, market-sensitive information may be disclosed. Entities should also be aware of the perception of selectivity that these types of briefings can create.

Other observations from outside the review

90 In the 12 months before the release of this report, we observed through our regulatory activities the following concerning practices and issues relating to briefings:

(a) some entities have reasonably sound documented policies and procedures on the conduct of analyst and investor briefings, but do not always follow them;

(b) some entities try to manage the market's expectations through selective briefings. When the market's expectations diverge materially from the entity's internal forecasts, we have seen entities conduct analyst briefings to bring analysts 'in line' so that the market is not surprised when the entity releases its results or provides profit guidance. This appears at odds with how the continuous disclosure regime operates. Instead, the entity should consider making a market announcement;[8] and

(c) some analysts can act in a way that put themselves and their employees at risk when they are given confidential, market-sensitive information by a company. We have seen that not all analysts actively seek to identify whether market-sensitive information they receive has previously been released to the market. Some analysts act appropriately and try to embargo information when they realise it has not been released to the market. However other analysts willingly pass the information to their sales desks and to clients.

91 Through our work we are aware of instances where staff below the board and officer level—who may not be adequately aware of the obligations surrounding confidential, market-sensitive information—have been involved in discussions with analysts. For example, groups of analysts can be flown to mine sites and given full access to technical staff. There is a heightened risk that these staff members may answer questions beyond what has been publicly disclosed.

92 We are also aware that, in seeking a competitive edge, analysts may try to obtain information from an entity that has not already been announced.

93 A particular issue has arisen in the mining and exploration sector in relation to information that has not been announced because it does not have a reasonable basis. For example, we are aware that some analysts are still seeking information that is not compliant with relevant industry codes (such as JORC) or the listing rules for the reporting of explorations results, mineral

[8] This situation should be distinguished from appropriate discussions that a listed entity may have with a particular 'outlier' analyst to ascertain the reason for the divergence. However, where the majority of analysts' views materially diverge from the listed entity's internal forecasts this could indicate a deficiency in the listed entities' disclosure to the market that may need to be rectified by a market announcement.

resources and ore reserves. We are also aware that some listed entities feel obliged to continue to provide non-compliant information to analysts.

94 If a company cannot disclose the information under the relevant industry reporting code or under the listing rules, the entity should not provide that information to analysts. If it does, there is a risk that the entity could contravene the prohibition in the *Corporations Act 2001* (Corporations Act) on misleading and deceptive statements. Similarly, analysts should not seek non-compliant information from listed entities or include that information in their reports.

95 Given these observations, we will continue to focus on suspected instances of selective briefings as part of our ongoing surveillance and enforcement activities.

C Findings: Prevalence of leakage in Australia

Key points

Our research did not provide any conclusive evidence that Australia has more leakage than other markets. It appears to have less leakage in the media than the UK market, and be close to being on par with the Hong Kong and Canadian markets.

The findings of our literature review were largely consistent with the findings of our media-based research.

Media-based research

96 In the first part of our research we sought to ascertain whether the release of the Governance Institute/AIRA guidelines for listed entities had an effect on the number of leaks about corporate transactions.

97 We employed a media-based methodology to examine the largest announced takeovers and equity raisings during two periods:

(a) between 1 July 2006 and 30 June 2010 (i.e. before the release of the Governance Institute/AIRA guidelines); and

(b) between 1 July 2010 and 31 March 2013 (i.e. after the release of the Governance Institute/AIRA guidelines).

98 In assessing the findings of our research it should be noted that the AFMA guidelines for advisers were not released until November 2011.

99 It should also be noted that this research, by its very nature, does not capture leaks that are not reported in the media. Therefore, the actual number of leaks about the transactions in our sample could be higher.

100 A total of 40 takeover announcements and 40 secondary equity raisings were examined. As they were the largest transactions over the time periods under scrutiny, they represented 46% of total announced takeovers by value, and 22% of total secondary equity raised.

101 The methodology involved examining the media reportage in the two weeks before each announcement. Certain parameters were set around the definition of ‘leak’ to avoid capturing articles speculating about potential corporate transactions.

102 We found that a high percentage of Australian transactions were leaked to the media before the announcement.

103 In the pre-June 2010 samples:

(a) 45% of takeovers were leaked ahead of announcement; and

(b) 35% of equity raisings were leaked.

104 After June 2010:

(a) there was a drop in the number of takeover leaks, to 20%; and

(b) there was a slight increase in leaks relating to equity raisings, to 40%.

105 The *Australian Financial Review* was by far the most active in reporting leaked transactions, followed by *The Australian.*

Media briefings and market integrity

106 We observed that in most media leaks either the market was closed or, in response to the media reports, the stock was in a trading halt by the time the market opened. This minimised the risk of early trading on the leaked information.

107 However, these leaks may still contravene the relevant listing rules. Under ASX Listing Rule 15.7, an entity must not release information that is required to be given to ASX under ASX Listing Rule 3.1 to anyone else, unless and until it has been given to ASX and the entity has received an acknowledgement from ASX that the information has been released to the market. This listing rule prohibits media briefings before the release of the ASX announcement, even on an embargoed basis and even while the entity is in a trading halt.

108 Furthermore, and importantly, the practice of briefing media before announcement undermines the primacy of the securities exchange as the source of confidential, market-sensitive information.

Overseas comparison

109 In order to provide some international reference point for our analysis, we also examined the ten largest announced takeovers and equity raisings in the United Kingdom, Canada and Hong Kong between 1 July 2006 and 31 March 2013.

110 We found a large number of media leaks in United Kingdom (50% for both takeovers and equity raisings).

111 In Canada, there also appeared to be a tendency for takeovers to leak to the media ahead of announcement, with half of the deals being leaked. However, we found no evidence of media leakage in the sample of Canadian equity raisings.

112 In Hong Kong, leaks reported in the media appeared to be much less prevalent, with 20% of takeovers found to have leaked, and none in the equity raising sample.

Literature review

113 We also analysed a body of academic work on insider trading that looked at abnormal share price and volume movements around the time of market-sensitive announcements (particularly takeover announcements). A commonly used measure in this area of research is the ratio of abnormal pre-announcement trading movements to the total number of market-sensitive announcements. The higher the percentage, the greater the implied amount of insider trading (from which a level of leakage can be roughly inferred).

114 Research findings include the following:

(a) in the period between 2003 and 2008, ASX compared favourably to the Hong Kong Stock Exchange, the Shanghai Stock Exchange and the Shenzhen Stock Exchange in all years except for 2008. These trading-based Hong Kong findings are interesting to note as a comparison to the media-based findings outlined in paragraph 112, where Hong Kong had fewer media reported leaks than Australia; and

(b) merger and acquisition leaks were more common in the United Kingdom than in the Asia–Pacific (including Australia)—consistent with the media-based leak findings noted above—but less common in North America.

Limitations of price- and volume-based research

115 We note that this trading-based method does not precisely address the issue of confidential, market-sensitive information leakage, because an implied level of insider trading does not equate to a measured level of confidential, market-sensitive information leakage. People in possession of leaked confidential, market-sensitive information may not act on it by way of trading in the relevant stock.

116 Also, as previously noted, insider trading may not involve a leakage of confidential, market-sensitive information, as the trader may be someone who has legitimate access to the information (e.g. company directors or advisers).

117 In addition, share price and volume analyses provide imperfect answers to the question of whether confidential, market-sensitive information has played a part. For example, the movement could be due to speculation or other external factors rather than actual knowledge of confidential, market-sensitive information.

D Findings: Market practice on handling confidential, market-sensitive information about transactions

Key points

We conducted a limited review of market practices on the handling of confidential, market-sensitive information about a corporate transaction.

The challenges listed entities face in handling confidential, market-sensitive information are often related to the fact that they appear to be heavily reliant on their advisers to set the practices in this area. This is particularly the case for listed entities in the small- to mid-market capitalisation range. We observed that this was particularly problematic in relation to the conduct of soundings, where the interests of the listed entity and the advisers who act as underwriters may not perfectly align.

118 At the commencement of our interview process, our starting assumption was that the existing guidance available to listed entities and their advisers on this topic is largely sound. We therefore based our interview questions primarily around the adoption of, and compliance with, the various guidelines.

Internal policies

119 Industry guidelines recommend the adoption of written policies on handling confidential, market-sensitive information.

Listed entities

120 We observed that the listed entities in our sample that were in the small- to mid-market capitalisation range did not have documented policies and procedures on the handling of confidential, market-sensitive information in the context of a material corporate transaction.

121 A common theme expressed was that the adoption of specific policies in this area is unnecessary because listed entities infrequently raise capital via a public offering, undertake a takeover, or are involved in some other kind of market-sensitive corporate transaction.

122 We also observed that only one of the listed entities in our sample had a sophisticated understanding of the issues and risks in this area and took proactive steps to address them. The listed entities in the small- to mid-

market capitalisation range in our sample generally appeared to be somewhat reliant on the advice of their appointed advisers to guide them on the best way to manage confidential, market-sensitive information about transactions, including whether and when to inform external parties about the unannounced transaction.

123 Except in one case (the same listed entity as noted in paragraph 122), the listed entities in our sample generally did not attempt to put any controls around how their advisers conducted themselves regarding the confidential, market-sensitive information.

Advisers

124 Generally, all the investment banks, brokers, accountants and lawyers that participated in the review had documented internal policies and procedures which set out the standards of behaviour and procedures for handling of confidential, market-sensitive information.

125 In most cases we were advised that these internal policies and procedures were revised regularly by internal compliance staff, and reinforced through established internal practices, systems and controls.

126 The common theme from all the AFMA members that participated in the review was that while the AFMA guidelines were helpful, they did not prompt any of the participants to substantially revise their internal policies and practices. This was because they believed that their existing policies and practices already complied with the guidance.

127 However, for some AFMA members, the AFMA guidelines did prompt them to update their pro forma sounding scripts and confirmation emails. Some participants commented that they thought the standardisation in the sounding script and sounding confirmation email was a positive move that was brought about by the AFMA guidelines.

128 Our review of the advisers' written internal policies and procedures revealed that there were varying levels of sophistication and detail between the investment banks, brokers, accounting firms and law firms.

129 The investment banks and brokers we interviewed had policies in place that were more comprehensive than the accounting and law firms by comparison.

130 The accountants and lawyers relied first on their professional duties and obligations to keep client information confidential, which was then supplemented by internal policies and procedures.

Application of the need to know principle

131 Both industry guidelines encourage the adoption of the 'need to know' principle (i.e. only giving people who have a real need to know access to confidential, market-sensitive information). Lists of insiders are also recommended.

Listed entities

132 We observed that one of the main ways the listed entities tried to keep information about the transaction confidential was by restricting the number of persons involved in the transaction within the entity to the board, a handful of senior executives and their personal assistants.

133 Additional staff were usually brought in on the transaction only after the entity had made a market announcement.

134 We found that, as a proportion of all insiders, the number of insiders within the listed entity itself was lower than the number of insiders who were advising the firm in some capacity. In our sample we were advised that between 6 and 16 people within the listed entity were insiders to the transaction before it was announced.

135 None of the listed entities kept insider lists or maintained a register of insiders because they said that the number of people within the entity who were involved in the transaction before it was publicly announced was small and already very well known. They did not request that any of their advisers maintain, or provide the entity with a copy of, an insider list.

Advisers

136 All the advisers we spoke to said that they adhered to the 'need to know' principle. However, the number of people who knew about each transaction was relatively high, particularly within the investment banks we spoke to.

137 Within the investment banks, depending on the transactions, between 12 and 20 people were insiders working directly on the transaction. These insiders were either within the corporate advisory team or were from another part of the bank that is not usually privy to confidential, market-sensitive information (the 'public side') but were brought into the transaction at later stages (but before the market announcement or trading halt). In one transaction in our sample, two investment banks were advising the listed entity and there was a total of approximately 27 people across the two investment banks who were insiders working on the transaction.

138 The figures in paragraph 137 do not include:

(a) compliance and legal staff within the investment banks who have access to certain information about all transactions for conflict checking and other risk management and compliance purposes. One investment bank estimated that approximately 20–30 people would know about the transaction in a compliance or legal capacity; or

(b) any third-party investors who may have been sounded about the transaction. We discuss sounding further at paragraphs 182–220.

139 Given the number of people who are insiders to these types of transactions within investment banks, it is critical that robust systems and practices are in place to protect the confidentiality of information and to prevent misuse of that information by insiders.

140 Generally, all investment banks and brokers kept insider lists or some other form of register of people within the firm who became involved in the transaction as it progressed.

141 The accounting and law firms had fewer people working on the transactions. They did not keep insider lists but all believed that if necessary they would be able to identify insiders in their firms though means such as billing and other IT systems.

Internal wall crossings

142 Organisations put in place information barriers to prevent conflicts of interest or other related risks arising (such as insider trading). Information barriers play an important role in preventing leakage of information. These barriers are often known as ‘Chinese walls’.

143 In all of the investment banks and brokers we spoke to, a person is considered ‘behind the wall’ or ‘over the wall’ if they are routinely in possession of confidential, market-sensitive information because of the nature of their role. Corporate advisory staff and compliance and legal staff are considered behind the wall.

144 A person from the public side will be ‘wall-crossed’ if they are made aware of confidential, market-sensitive information. For example, a research analyst may be wall-crossed on a transaction to provide advice to the corporate advisory team.

145 All of the advisers we spoke to placed various restrictions on staff who are behind the wall or who are wall-crossed, including trading restrictions and other limitations on how they can use the information.

146 The investment banks and brokers all had documented policies and well-established processes about which teams are considered behind the wall and how and when people within their firms are wall-crossed on unannounced transactions. They also had policies about when wall-crossed public-side staff ceased to be insiders.

147 The accounting and law firms did not have such well-developed policies and appeared to rely more heavily on the decisions of the particular engagement partner.

The physical environment

148 Industry guidance recommends the use of appropriate physical separation and document protection measures.

149 Within the listed entities, given their seniority, the people involved in the transaction usually had their own offices, which enabled discussions about the transaction to take place in a closed environment.

150 Generally all investment banks, brokers, accounting firms and law firms that we spoke to were large enough to have physical separation of staff when required, dedicated private meeting rooms, printing controls, secure storage of documents, and various types of secure physical document management.

151 One practice that was not adopted by any of the participants was the practice of classifying documents according to the level of protection they require.

Information technology

152 Industry guidance recommends the use of IT protections for confidential, market-sensitive information.

Listed entities

153 Most of the listed entities in the small- to mid-market capitalisation range relied on the standard internal IT controls they already had in place. Most did not feel the need to employ any additional internal IT controls in relation to the confidential transaction in question.

154 Some listed entities advised us that, if any IT controls were adopted when information was sent between parties, most were suggested and driven by their advisers.

155 Only one listed entity implemented additional IT controls, such as password protection and encryption of documents sent by email.

Advisers

156 All the advisers in our sample appeared to have IT systems and practices that are sufficiently secure to ensure confidential, market-sensitive information is not inadvertently leaked outside the organisation.

157 However, within the organisation, some advisers did not have IT controls in place that restricted access to only those staff members who are part of the core deal team. This meant that staff members outside of the core deal team could access relevant files if they chose to do so, even though this would be against the organisation's internal policy.

158 One adviser commented that they do not often password protect and encrypt electronic communications because it is cumbersome to work with in practice and technology has not yet made this process seamless.

Leak investigation policy

159 The Governance Institute/AIRA guidelines encourage the adoption by entities of leak investigation policies. The AFMA guidelines state that members should undertake a leak investigation in accordance with the member's policy if requested to do so by a client, unless it is considered unreasonable to do so.

160 None of the listed entities or advisers had a documented leak investigation policy.

Draft ASX announcement

161 A listed entity that is relying on Listing Rule 3.1A not to disclose confidential, market-sensitive information to the market must ensure that the information remains confidential. GN 8 at Section 5.8 provides that, in the context of an unannounced deal or transaction, listed entities should:

(a) closely monitor the market, media and certain social media for signs of a leak;

(b) have a draft letter to ASX prepared requesting a trading halt; and

(c) have a draft announcement ready to send to ASX to cater for that eventuality.

162 Only one listed entity we spoke to had prepared a draft trading halt request and draft ASX announcement in case there was a leak. From our discussions with advisers, it does not appear to be common practice for listed entities to have a draft ASX announcement for a leak. This is concerning, given the requirement under Listing Rule 3.1 to disclose information 'immediately' should the exception in Listing Rule 3.1A cease to be available.

Confidentiality agreements

163 The Governance Institute/AIRA guidelines encourage the use of confidentiality agreements with advisers.

164 All engagement agreements between the listed entities and their advisers in our sample included a general confidentiality clause. Except in one case, all the listed entities relied solely on these general terms for their contractual arrangements about confidentiality.

165 One listed entity in our sample required all the external advisers involved in its transaction to sign individual confidentiality agreements. This was the same entity identified elsewhere in this report as using other proactive measures.

166 An adviser informed us that listed entities very rarely ask their advisers to sign specific confidentiality agreements separate to the standard terms of engagement. Another adviser noted that clients simply expect confidentiality will be maintained, rather than having specific discussions about what measures are in place.

167 We asked the advisers about their general thoughts on confidentiality agreements. All the advisers generally tried to resist having their staff sign individual confidentiality agreements with the client or listed entity, due to concerns about the implications for their staff, but they were more receptive to a specific confidentiality agreement at the entity level. One adviser felt that there should not be too much emphasis placed on confidentiality agreements over and above actual processes. The accounting firms generally did not place much emphasis on confidentiality agreements because they felt that the people involved already understand the framework and ramifications.

Employee agreements and training

168 The Governance Institute/AIRA guidelines encourage entities to ensure that their directors and staff are aware of their confidentiality obligations. The AFMA guidelines contain similar guidance.

169 All the listed entities and advisers noted that it is a term of employment that their employees must observe confidentiality obligations.

170 We heard that all employees at investment banks, brokers, accounting and law firms are subject to training on internal policies and procedures, expectations around their conduct in protecting confidential, market-sensitive information within the organisation, and legal requirements relating to insider trading.

171 Employees at the listed entities were subject to less extensive training in this area.

Dealing with the media

172 The Governance Institute/AIRA guidelines encourage the adoption of media policies by listed entities. The AFMA guidelines are silent on this point.

173 All the listed entities and advisers told us that their employees must not speak to the media unless authorised to do so. All participants have designated persons who are specifically authorised to speak to the media on behalf of the organisation and respond to any media inquiries.

174 The investment banks, accountants and lawyers had policies of not speaking to the media about a client transaction without client approval.

175 However, given our research findings in Section C, these media policies seem to have minimal effect on reducing or preventing the number of corporate transactions being leaked to the media ahead of a market announcement.

Personal account dealing

176 The industry guidelines encourage adoption of appropriate personal account dealing policies.

177 In the case of the investment banks, brokers and fund managers that we spoke to, all had quite detailed policies on personal account dealing. In these firms, all employees are required to seek approval before trading in securities and they generally have extensive internal policies on personal dealing.

178 All investment banks and brokers kept a list of securities that employees were restricted from trading in if they were:

(a) on the 'private side' of the business (such as the corporate finance teams and compliance staff); or

(b) a 'public side' employee who had been wall-crossed in relation to a transaction.

179 The accounting firms did not require their staff to seek approval before trading in securities. However, managers and partners were required to regularly declare their holdings, although this was largely for independence and conflict checking rather than insider trading purposes.

180 The law firms we spoke to normally require all their employees to seek approval before trading in securities. Approval is assessed on a case-by-case basis rather than a list of restricted securities being kept.

181 In general, we heard that the personal account dealing policies of most of the listed entities in our sample are a combination of blackout periods and a

high-level policy to restrict employees who are in possession of confidential, market-sensitive information from dealing in the listed entity's securities. One listed entity had more restrictive personal account dealing policies that applied to all of its staff as a result of the nature of its business.

Sounding the market before a capital raising

182 Bankers or brokers sound the market when they gauge investor demand for a transaction and its potential pricing. Soundings are particularly prevalent in underwritten capital raisings.

183 The AFMA guidelines contain reasonably detailed guidelines for the conduct of soundings. The Governance Institute/AIRA guidelines encourage listed entities to know which, when and how soundings are conducted on their behalf.

184 It is common practice for underwriters to 'sound' institutional investors in advance of announcing a capital raising to gauge their interest. The timing and number of soundings can significantly increase the risk of leaks and provide opportunities for insider trading.

185 Soundings were conducted in all but one of the capital raisings in our sample group. The exception in our sample was a listed entity that had specifically instructed its adviser that no soundings were to occur.

186 While there may not be a causal connection between the two, we note that in the transactions in our sample where soundings were conducted, the price of the entity's securities fell by a material amount in the days immediately preceding the announcement. In the one transaction where no soundings were conducted, there was no material price movement in that entity's shares prior to the announcement. A fall in the price of the entity's securities before a capital raising can jeopardise the pricing and overall success of the transaction. It can also indicate that insider trading may have occurred.

187 We were concerned to hear that soundings often take place while there is still active trading of the entity's securities. In some capital raisings, soundings were conducted as early as four days before the entity's securities were placed in a trading halt.

188 We were also concerned to hear about the number of investors that were sounded. In one of the sample transactions, more than 50 investors were sounded before the announcement of the capital raising by a listed entity at the smaller end of the market (although some of these soundings were conducted after a trading halt was in place).

189 We also observed that while the listed entities in our sample agreed to the soundings being conducted, we heard that most listed entities in the small- to

mid-market capitalisation range felt they did not have enough expertise to, or were not in a bargaining position to be able to, influence the number and manner of soundings.

Prevalence of soundings

190 This review did not attempt to conclusively ascertain the incidence of soundings in Australia before the announcement of equity capital raisings. However, based on our observations it appears to be a normal occurrence, apart from where the entity in question is considered to be a 'quality offering'.

191 We observed that only large, well-informed entities that have a 'quality offering', felt they would be in a position to instruct their underwriters not to conduct market soundings before the launch of an offer. We heard that many listed entities, often at the smaller end of the market, that had an urgent need for capital felt far less confident on this issue. We were told that these listed entities did not feel able to influence their underwriter about whether and how many investors were sounded and, if they tried to do so, they were concerned that the underwriter may walk away from the transaction.

Client approval for soundings

192 The AFMA guidelines recommend that client approval should be obtained before conducting soundings.

193 All the investment banks and brokers advised us that their soundings are done with the client's consent and this was the case in the transactions in our sample where soundings were conducted.

194 However, we observed that most of the listed entities in the small- to mid-market capitalisation range in our sample either did not feel well enough informed, or did not feel they were in a strong position, to object to the recommendations of their adviser about soundings. As noted at paragraph 189, we were told that some entities at the small- to mid-market capitalisation end of the spectrum were reluctant to question the adviser in case it jeopardised the transaction.

Timing of soundings

195 The AFMA guidelines on soundings state:

> Soundings on behalf of a client should take place as close as reasonably practicable to the proposed time of the launch of the transaction. Where reasonably practicable, Soundings should take place outside times at which affected financial products may be traded on a financial market and in circumstances where the transaction is proposed to be launched before trading next commences.

196 Our observations suggest that the flexible nature of these guidelines, largely resulting from the use of the phrase 'reasonably practicable' has led to some concerning practices. In some capital raisings in our sample, soundings were conducted as early as four days before the entity's securities were placed in a trading halt.

197 Based on our discussions with the investment banks, brokers and fund managers, we observed that it is not uncommon for investors to be sounded in a live market (i.e. in circumstances where the investor would have an opportunity to trade on the confidential, market-sensitive information before the announcement of the transaction).

198 When we queried the types of transactions that would warrant sounding in a live market, we were advised that this would occur when the transaction is complex or where investors needed more time to consider the transaction According to one investment bank, the types of complex transactions that require market soundings to be done during a live market include a shock capital raising or a transaction associated with a high news flow.

199 However, we observed that soundings in a live market took place in our sample transactions in circumstances where the transaction in question was not particularly complex or unexpected and there was not a high level of news flow about the entity.

200 We conclude that advisers exercise a large amount of discretion regarding when soundings can be conducted in a live market, and the bar does appear to be particularly high. Our conclusions accord with the comments made by the fund managers we interviewed.

Trading halts

201 An obvious way of reducing the potential risks of soundings is for the listed entity to request a trading halt (or voluntary suspension if more time is needed) while the soundings are being conducted. This would help prevent any trading on confidential, market-sensitive information. It may also help reduce the fall in price often seen before announcements of these types of transactions, which can have negative implications for the pricing of the capital raising.

202 However, we heard that listed entities are extremely reluctant to place their securities into a trading halt or suspension until they have certainty that the capital raising will proceed: see paragraph 204. This is despite GN 8, which encourages the use of trading halts to manage an entity's continuous disclosure obligations.

203 Directors, and to some extent their advisers, fear the possible implications of the market knowing about a 'failed' capital raising attempt. However, we

note that one investment bank we spoke to expressed doubts as to whether a 'failed' potential capital raising would have any significant long-term detrimental impact on share price.

204 We heard that the point at which a capital raising such as a pro-rata rights offer was certain to proceed was normally when the underwriter would commit to the transaction (although we note that not all such transactions are underwritten).

205 Capital raising transactions such as pro-rata rights offerings are usually 'soft' underwritten in Australia. This means that the underwriter agrees to buy shortfall shares only at a later stage when pricing and demand is known. This involves a lower level of risk for the underwriter. In practice, this means that investment banks and brokers will not usually sign an underwriting agreement unless they have sufficiently sounded the market to their satisfaction.

206 There can therefore be an inherent tension between:

(a) the underwriter's desire to reduce its risk on the transaction by conducting soundings; and

(b) the need to keep information about the transaction confidential and limited to as few people as possible to ensure, among other things, successful pricing of the transaction.

207 Listed entities and their advisers need to be vigilant about ensuring that the appropriate balance between these goals is maintained.

208 If a listed entity is reluctant to use trading halts as a way of managing this issue then it should give serious consideration to instructing its adviser to conduct soundings only after the market has closed on the evening before the proposed announcement of the transaction.

Number of investors sounded

209 We are concerned about the number of investors sounded in some of the sample transactions.

210 Paragraph 3.4 of the AFMA guidelines provide that:

> Soundings should be limited to as few institutions as the member considers reasonably necessary to gain the relevant level of comfort or commitment.

211 We observed divergent practices in this area depending on the adviser's attitude to the 'level of comfort or commitment' that was required. This appears to be driven by the particular underwriter's appetite for risk.

212 We found that the lowest number of soundings conducted for a transaction in our sample was eight investors (apart from the one transaction in which there was no sounding). On the other end of the spectrum, the advisers sounded 57 investors, 21 of which were sounded before a trading halt was requested.

213 Particularly when the number of investors sounded is at the higher end of the range, listed entities need to consider using trading halts to manage the risk of soundings.

How soundings are conducted

214 In all cases except for one, we heard that the procedures used by the investment banks and brokers for soundings were in accordance with the AFMA guidelines.

Agreeing to be crossed

215 Except in one case in our sample, no identifying information about the entity is disclosed to the investor before they agreed to be wall-crossed. In some instances, there may be reference to an industry sector or other group. However, this will only be the case if the investor could not, from the information they received, distinguish the issuer from other entities within the same industry sector or group.

216 From the investor's perspective, one fund manager advised us that occasionally when sounded brokers will provide them with the name of the entity before they have verbally agreed to be wall-crossed. In that case, the fund manager considers itself to be crossed anyway and will act accordingly.

217 The investment banks and brokers confirmed that, consistent with the AFMA guidelines, they use an approved script for soundings in each transaction. When sounded, fund managers noted that the type of information that is being covered with the investment bank has become noticeably standardised in the last couple of years.

Follow-up email

218 The AFMA guidelines state that if an investor verbally agrees to be sounded, the member should, as soon as possible after the client has agreed to abide by the sounding protocols, send an email confirmation of that arrangement to the investor. The AFMA guidelines set out a pro forma sounding confirmation email.

219 Except for one, all the investment banks and brokers we spoke to advised us that a follow-up confirmation email is always sent to every investor sounded and this procedure is reflected in their internal policies. One broker did not send follow up emails in soundings because they did not think it would enhance the process. We disagree; the follow-up email is a useful reminder of the implications of being sounded.

220 One fund manager advised us that they do not always receive a confirmation email from investment banks or brokers. They noted that when sounded

about a merger and acquisition transaction they usually received a follow-up email, but they could not recall receiving such an email for the many capital raising transactions they had been sounded on. This indicates that some advisers may not be consistently following their own internal policies.

General perceptions about leaks

221 We also asked the listed entities and their advisers about their general views and perceptions on the issue of leaks and insider trading. We set out some of their observations below.

Possible source of leaks

222 There does not appear to be any consensus as to where most of the leaks are coming from. All the people that we spoke to said that leaks of confidential, market-sensitive information would never originate from within their organisation.

223 All the advisers emphasised that their reputation would be at stake if they were associated with leaking confidential client information.

224 We also received feedback that there appears to be a perception that more people conduct insider trading in highly liquid securities than in illiquid securities, because people are more confident that they won't be detected. On the other hand, we heard that insider trading can be more profitable for the trader in an illiquid stock as the price movement caused on announcement of the relevant information may be more pronounced.

225 After looking at the insider trading matters that we have recently investigated, there does not appear to be a common theme about the type of person who is more likely to conduct insider trading or the type of security that is more likely to be insider traded. Our investigations have involved a range of possible offenders, including company directors, advisers, brokers, fund managers and analysts. Similarly, suspected instances of insider trading have involved securities of small and large capitalisation entities and the range of sectors the entities are involved in is diverse.

226 We are committed to taking effective enforcement action against insider trading. Since 2009, we have prosecuted 34 insider trading matters and, of those, 23 have been successful with four still before the courts.

227 A number of recent insider trading prosecutions have involved tipping for the purpose of one or both of the parties involved deriving a personal gain through the insider trading activities. Such insiders have included company officers, brokers and advisers. One recent case involved a former investment banking associate at an investment bank who passed on confidential, market-

sensitive information about three corporate transactions to two friends, who both traded on that information. All three men were convicted of insider trading. The former investment banking associate was sentenced to 23 months imprisonment with a minimum term of 14 months.

228 Two other examples of the use of confidential, market-sensitive information to insider trade are:

(a) a former relationship services associate at an investment bank acquired confidential, market-sensitive information about a large corporate transaction as a result of overhearing conversations of staff involved in the deal, who were located on the same floor. She then passed this information on to a friend, who traded on the confidential, market-sensitive information. They were both convicted of insider trading and each sentenced to 18 months imprisonment fully suspended; and

(b) a former tax consultant at a major accounting firm traded on confidential client information relating to corporate transactions that the firm advised on, which he acquired by searching through the firm's internal database. He was convicted of insider trading and sentenced to 21 months imprisonment with minimum term of 12 months.

229 Our enforcement actions highlight the serious criminal sanctions that insider traders face, and the legal, commercial and reputational risks to listed entities and their advisers that can be posed by leakages of confidential, market-sensitive information.

230 It is therefore important for all listed entities and their advisers to have in place robust policies and compliance procedures in this area.

Limitations of the interviews

231 Our observations from this part of our review should be read in light of the following limitations:

(a) our review did not encompass other types of confidential, market-sensitive information leakage apart from those related to corporate transactions. We acknowledge that there are many other scenarios in which premature leakage of information can be problematic. For example, leakage of drilling results, scientific breakthroughs, or the award of a significant contract can all affect market integrity and result in insider trading;

(b) our interview-based review was not designed to be a comprehensive review of the policies and practices of the Australian market on the handling of confidential, market-sensitive information about corporate transactions. The number of interviews conducted was not statistically significant;

(c) in some cases the information provided to us during the interviews lacked the detail necessary to draw firm conclusions; and

(d) we did not take steps to verify every statement made by participants during the interviews, nor did we comprehensively test whether the participants complied with their written policies in this area.

E Recommendations and further work

Key points

Based on the findings of our review, we have made a number of recommendations for listed entities, advisers and analysts. These recommendations largely accord with existing best practice guidance.

We have also committed to further work to help entities, advisers and analysts comply with their obligations and to continue to pursue enforcement action where appropriate.

Listed entities

232 Listed entities, regardless of their size, must take responsibility for the management of their own confidential, market-sensitive information. Poor practices in this area can have legal ramifications in terms of compliance with the continuous disclosure obligations in the Corporations Act. In addition it can have serious implications for the entity's transaction and its overall reputation.

233 There are significant risks to delegating responsibility for the management of confidential, market-sensitive information to advisers, particularly in transactions such as capital raisings where the adviser may have interests that are not completely aligned with those of the listed entity.

234 Board members and officers of listed entities should familiarise themselves with the Governance Institute/AIRA guidelines in this area and ensure that their staff receive appropriate training. To ensure appropriate conduct, listed entities should have written policies in place and should follow these policies on a consistent basis.

235 In relation to briefings, based on the findings of our review and our recent investigation activities, listed entities can minimise the risk of regulatory action by:

(a) refraining from attempting to manage the expectations of the market by selectively briefing analysts and key investors;

(b) having policies in place to ensure as broad as possible access to analyst and investor briefings. Some examples for entities to consider are:

(i) providing advance notice and dial-in details of group briefings to the market; and

(ii) if the entity undertakes an 'investor roadshow', giving wide access to one of the roadshow briefings (or making a recording immediately available);

(c) making available full transcripts or recordings of group briefings—for example, by posting webcasts, podcasts and/or transcripts on ASX and/or archiving these on the entity's website for public access after the event; and

(d) having compliance systems in place to support the handling of confidential, market-sensitive information. For example, it may be appropriate in certain circumstances to have a system that allows for the segregation of certain teams who conduct briefings.

236 In relation to confidential, market-sensitive information about a corporate transaction, we also suggest that listed entities:

(a) take responsibility for protecting their own confidential, market-sensitive information and obtain some form of assurance from the third parties that market-sensitive information will be kept confidential. As a minimum, listed entities should:

(i) keep a record of which advisers and investors they have approached, and when, in relation to a potential transaction; and

(ii) have a short script about confidentiality to use at the start of initial discussions.

Listed entities could also consider having a pro forma confidentiality agreement ready for use, particularly if the nature of their business means that they are frequently raising capital;

(b) be prepared for a leak when they are putting a transaction together or negotiating a deal (e.g. by having a formal leak policy outlining what steps should be taken to monitor and react to leaks). Listed entities should have draft requests for trading halts and draft announcements prepared; and

(c) educate themselves about the risks involved with soundings and have frank discussions with their advisers about how many and when investors should be sounded. Trading halts and, if necessary, voluntary suspensions should be used to manage the risks of soundings.

Advisers and analysts

237 Advisers on corporate transactions and research analysts have obligations to ensure their interactions with listed entities are conducted appropriately. Both require an AFS licence to operate and are subject to the conditions of those licences. Failure to conduct themselves appropriately may result in a breach of those licence conditions. It may also result in a breach of other Corporations Act provisions, such as the insider trading laws.

238 We encourage these, and all, financial service providers to take their role as gatekeepers of our market seriously and conduct themselves accordingly.

Analysts and investors participating in briefings

239 Based on the findings of our review and our recent surveillance and investigation work, we recommend that analysts and investors:

(a) familiarise themselves with and comply with the joint AIRA and Finsia guidelines for analyst briefings;

(b) do not attempt to elicit confidential, market-sensitive information or information that does not comply with relevant industry codes from listed entities;

(c) know what to do, and what not to do, if they suspect they have been given confidential, market-sensitive information. Analysts and investors should inform their compliance team immediately and should not pass the information on to people who will, or are likely to, trade on the information; and

(d) have robust procedures in place to ensure proper compliance.

Advisers on corporate transactions

240 Based on the findings of our review, we recommend that advisers on corporate transactions:

(a) recognise that the confidential, market-sensitive information about the transaction belongs to the listed entity and ensure that the entity is aware of and comfortable with any release of that information;

(b) in relation to soundings:

(i) give serious thought to how to ensure the right balance between the benefits to the underwriter in minimising their risk versus the harm to the listed entity and the overall market that can result from related leaks and trading;

(ii) be mindful of the AFMA guidelines which encourage advisers to conduct soundings as close as practicable to the launch of the transaction and to limit them to as few institutions as reasonably necessary; and

(iii) encourage the listed entities they advise to use trading halts as a way of managing the risks of soundings or try to conduct soundings overnight before the announcement of the transaction;

(c) know and comply with relevant good practice guidance on handling confidential, market-sensitive information. Even if the adviser is not a member of the particular industry body who issued the guidance, the guidelines are nevertheless sound and relevant to all who operate in that industry;

(d) if a firm with a broker division is giving advice about a corporate transaction or fundraising, have in place robust systems to monitor

trading in those securities by the client, the firm itself and its related entities and its staff;

(e) if they are law or accounting firms, consider having more detailed policies in this area, particularly around personal account dealing and how and when a person is 'wall-crossed' within their firm;

(f) implement appropriate IT controls to ensure only those who require access to electronic information are able to access it;

(g) consider implementing document classification procedures based on the sensitivity of the information; and

(h) have a formal leak investigation policy in accordance with industry guidelines.

Further work

241 As discussed in paragraph 32, we believe that there is good guidance already available to companies, their advisers and analysts. Also, many entities have adequate compliance procedures in place and the spirit of the legal requirements are readily understandable.

242 Accordingly, we think that the further work undertaken by ASIC to improve the handling of confidential, market-sensitive information in our market should include as a significant component an ongoing review of industry practice and enforcement action.

243 Based on the findings of this review, we will:

(a) continue to focus on analyst and investor briefings by:

(i) undertaking enforcement action against insider trading and against listed entities that fail to comply with their continuous disclosure obligations; and

(ii) conducting a targeted review of research reports by analysts. We will consider the type of information that is available to analysts at the time they make a material change in their forecasts or recommendations. We will look 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.

(b) continue to focus more broadly on ensuring that our market is fair and efficient in relation to the treatment of confidential, market-sensitive information by:

(i) using our market surveillance system, MAI, to detect leaks and any associated insider trading;

(ii) continuing to conduct our on-going surveillance and assessment programs of brokers and investment banks, which encompass reviews of internal controls, risk and compliance frameworks and other procedures used to manage confidential, market-sensitive information;

(iii) continuing to highlight in communications with industry and in the enforcement action we take the need for listed entities and their advisers to implement strong systems and controls for handling confidential, market-sensitive information;

(iv) taking enforcement action concerning breaches of the continuous disclosure and insider trading laws; and

(v) working with industry bodies to update their guidance where necessary and disseminate key messages.

Appendix: Australian legal framework

244 There are two main legislative provisions in the Corporations Act that govern the dissemination and use of confidential, market-sensitive information by listed entities in the context of both analyst/investor briefings and also when entities are involved in a proposed market-sensitive transaction.

245 In addition, analysts, research report providers, underwriters and brokers who are involved in the handling of confidential, market-sensitive information and hold an AFS licence are subject to certain obligations under the Corporations Act that can affect how they handle confidential, market-sensitive information in the context of providing a financial service.

Continuous disclosure

246 Listed entities are subject to the continuous disclosure obligations in s674 of the Corporations Act. This section provides statutory force for, and works in tandem with, the continuous disclosure listing rules of the relevant market operator.

247 In the case of ASX, the main continuous disclosure listing rules are found in ASX Listing Rules 3.1 and 3.1A. These listing rules provide that, once a listed 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.

248 The obligation under ASX Listing Rule 3.1 does not apply if the entity is able to rely on the exception in ASX Listing Rule 3.1A. Among other things, reliance on ASX Listing Rule 3.1A requires the information to be confidential. Once confidentiality has been lost—for example, by a leak about the proposed transaction—the entity is obliged to disclose the relevant information to the market if it is market sensitive.

249 Accordingly, it is important that a listed entity that wants to rely on ASX Listing Rule 3.1A, and its advisers who are privy to that information, have in place suitable and effective arrangements to preserve confidentiality.

Insider trading

250 Section 1043A of the Corporations Act contains the prohibition against insider trading. First, an insider who possesses inside information and knows or should reasonably know that the information they possess is inside

information must not acquire or dispose of (or apply for or enter into an agreement to acquire or dispose of) the relevant entity's financial products. Neither is such an insider permitted to procure another person to acquire or dispose of (or enter into an agreement to acquire or dispose of) the relevant entity's financial products. Inside information is defined as information that is not generally available and, if it were generally available, would reasonably be expected to have a material effect on the price of an entity's financial products.

251 Second, an insider who possesses inside information, and knows or should reasonably know that the information they possess is inside information, must not directly or indirectly communicate the information to another person if the insider knows or should reasonably know that the other person would acquire or dispose of (or apply for or enter into an agreement to acquire or dispose of) the relevant entity's financial products or procure another person to do so.

252 Sections 1043B–1043K of the Corporations Act provide exceptions to the prohibition against insider trading.

253 In the context of a confidential, market-sensitive corporate transaction, these prohibitions restrict the way in which people who are in possession of information about that proposed transaction can use that information. These provisions also prohibit an analyst or investor who is given inside information by an entity at a briefing, inadvertently or otherwise, from using that information to acquire or dispose of shares in the entity.

AFS licensee obligations

254 Under the Corporations Act, AFS licensees must comply with the general licensing obligations as set out in s912A of the Corporation Act. This includes the obligation to:

(a) do all things necessary to ensure that their financial services are provided efficiently, honestly and fairly;

(b) comply with financial services laws and to take reasonable steps to ensure their representatives do likewise;

(c) have adequate compliance arrangements;

(d) have adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to the provision of financial services; and

(e) have adequate resources, be competent, and ensure that representatives are adequately trained and supervised.

Key terms

Term	Meaning in this document
AFMA	Australian Financial Markets Association
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an Australian financial services licence under s913B of the Corporations Act Note: This is a definition contained in s761A of the Corporations Act.
AFMA guidelines	AFMA, *Handling confidential and price-sensitive information and soundings: Best practice guidelines*
AIRA	Australasian Investor Relations Association
ASIC	Australian Securities and Investments Commission
confidential, market-sensitive information	Information that a reasonable person would expect to have a material effect on the price or value of an entity's securities that has not previously been announced to the relevant securities exchange or is otherwise not generally available
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
Finsia	Financial Services Institute of Australia
Governance Institute	Governance Institute of Australia, formerly known as Chartered Secretaries Association
Governance Institute/AIRA guidelines	Governance Institute and AIRA, *Handling confidential, market-sensitive information: Principles of good practice*
GN 8	ASX Guidance Note 8 *Continuous disclosure: Listing Rules 3.1–3.1B*
inside information	Has the meaning given in s1042A of the Corporations Act

Term	Meaning in this document
insider trading	Conduct prohibited under s1043A of the Corporations Act which includes a person who is possession of inside information (the insider): • acquiring or disposing of securities or procuring another person to do so; and • communicating the inside information to another person if the insider knows, or ought reasonably to know, that the other person would be likely to acquire or dispose of securities or would procure another person to do so
MAI	Markets Analysis and Intelligence, ASIC's market surveillance system
RG 62 (for example)	An ASIC regulatory guide (in this example numbered 62)
s674 (for example)	A section of the Corporations Act (in this example numbered 674), unless otherwise specified
soundings	Gauging investor demand for a transaction and its potential pricing before the announcement of the transaction
tipping	Deliberate sharing of confidential, market-sensitive information by an insider to another person
wall-crossed	A person from the public side of an organisation will be 'wall-crossed' if they become aware of confidential, market-sensitive information

Related information

Headnotes

advisers; analyst and investor briefings; confidential, market-sensitive information; information barriers; insider trading; leakage; listed entities; soundings; wall-crossed

Regulatory guides

RG 62 *Better disclosure for investors*

RG 79 *Research report providers: Improving quality of investment research*

RG 181 *Licensing: Managing conflicts of interest*

Legislation

Corporations Act, s674, 912A, 1043A, 1043B–1042K

Consultation papers and reports

CP 5 *Heard it on the grapevine*

CP 128 *Handling of confidential information*

CAMAC, *Aspects of market integrity*, June 2009

Cass Business School, *When no-one knows: Pre-announcement M&A activity and its effect on M&A outcomes*

PJC, *Better shareholders—Better company: Shareholder engagement and participation in Australia*, June 2008

Industry guidelines

AFMA, *Handling confidential and price-sensitive information and soundings: Best practice guidelines*

AIRA, *Best practice investor relations: Guidelines for Australasian listed entities*

AIRA and Finsia, *Principles for building better relations between listed entities and analysts*

GN 8 *Continuous disclosure: Listing Rules 3.1–3.1B*

Governance Institute, *Improving engagement between ASX-listed entities and their institutional investors: Guidelines*

Governance Institute and AIRA, *Handling confidential, market-sensitive information: Principles of good practice*

