

Summary

This Practice Note provides guidance on how issuers should manage common disclosure scenarios.

Relevant Listing Rules:

- Main Board and Debt Market Listing Rule 10.1.1
 - NZAX Listing Rule 10.1.1
- (together, the **Listing Rules**)

Also refer to:

- [Guidance Note: Continuous Disclosure](#)
- [Guidance Note: Trading Halts and Suspensions](#)
- [Practice Note 10/2017: Trading Halt Applications](#)

The Listing Rules require an issuer to release Material Information immediately, subject to certain exceptions. The NZX [Guidance Note on Continuous Disclosure](#) provides additional commentary, indicating that “immediately” means “promptly, and without delay”.

This Practice Note provides guidance on how to manage disclosure obligations in four scenarios:

- Material Information arises during a trading day;
- Material Information arises outside of trading hours;
- Material Information crystallises for an issuer that is listed on more than one exchange; and
- A third party releases information about an issuer.

Material Information arising during a trading day

NZX Regulation (**NZXR**) encourages issuers to manage their activities in a way that enables Material Information to be released out of market hours if possible. Section 6 of NZX's [Guidance Note on Continuous Disclosure](#) sets out some relevant examples. However, issuers will not always be able to control when Material Information arises.

There may be limited circumstances that mean an issuer is unable to immediately release Material Information to the market. For example, an issuer may need time to assess information it has received, and the potential impact on the issuer, before it can release an announcement. In these circumstances, issuers should contact NZXR as a matter of urgency to discuss whether a trading halt may be appropriate, to assist the issuer manage its continuous disclosure obligations.

Material Information arising outside business hours

When Material Information arises outside of business hours, the obligation to release the information “immediately” still applies. As a starting principle, the issuer should prepare a market announcement which sets out the Material Information and submit this via the NZX Market Announcements Platform (**MAP**) before releasing the information elsewhere.

However, announcements submitted outside business hours are held within MAP and are released at 8:30 am on the next trading day. As a result, the timing of releasing the announcement to NZX does not



have any actual effect in terms of the timing of the announcement being released to the market. NZXR also appreciates that in a rapidly developing situation, issuers may need to react to other events. The market is not, and cannot, trade on the information until the market re-opens, so there is no risk of information asymmetry arising. Accordingly, while Rule 10.1.1 requires an issuer to provide the market announcement via MAP prior to announcing it elsewhere even when the market is not trading, in this specific scenario NZXR would not be concerned if the market announcement is lodged subsequent to a public announcement, as long as it is submitted prior to 8:30 am on the next trading day.

The exception to this approach by NZXR is where the issuer is also listed on another exchange, and its securities are trading. Issuers should be mindful of the risk of information asymmetry regardless of where their primary obligation to disclose arises. Accordingly, NZXR expects that issuers who are listed with NZX as their Home Exchange will prepare an announcement to release to NZX immediately, and subsequently to their other listing venue.

Overseas Listed Issuer/Dual Listed Entity/Foreign Exempt Issuers (NZX and ASX)

This section applies to issuers that are listed on both the NZX and ASX. Due to the time difference between countries:

- The NZX starts trading before the ASX; and
- The ASX continues trading after NZX has closed.

Issuers have queried what the correct course of action is where they are in possession of Material Information but only one market is open for trading. Issuers should disregard the possibility that investors in one jurisdiction may be able to trade with the benefit of the Material Information before investors in the other jurisdiction, and instead:

- Issuers should comply with their obligation to release Material Information to their Home Exchange immediately; and
- Release the information to the other listing venue as required by the relevant Rules.

Issuers may seek to engage with NZX about whether a trading halt is desirable in order to manage the release of information across jurisdictions. [PN10/2017 Trading Halt Applications](#) sets out further information for issuers in respect of this.

Material Information arising immediately prior to market open

An obligation to disclose Material Information may also arise in the period immediately prior to market open. In these circumstances, the issuer must determine whether it is able to finalise an announcement and release it via MAP before the market opens. If the issuer does not believe that it will have sufficient time or information to provide a market update through an announcement, it should contact NZXR at the earliest possible time to request a trading halt, effective until the Material Information is released.



Third Party disclosures

It is not unusual for a third party to publicly release material information relating to an issuer (for example, a regulatory authority). Issuers are not required to re-release that information via MAP on receipt from the third party, if it is generally available, as it is no longer Material Information.

However, issuers are likely to be required to release an announcement if:

- The manner in which the third party has released any information that is Material Information is such that the information is not generally available (for example, if it is behind a paywall);
- Having assessed the third party information, the issuer identifies further Material Information (for example, relating to the financial impact of the matter disclosed); or
- The information arises from a credible source and is false or misleading.

An issuer may have particular connections or associations with certain third parties, including regulatory bodies, where information (such as the outcome of a material application) will be released to the public by the third party.

On occasion, the third party will provide an issuer with a copy of the public statement it intends to make, under embargo. This is intended to ensure that the issuer is able to promptly provide its comments when the announcement is made available to the public. NZXR has developed protocols with a number of regulatory bodies to encourage them to release information to issuers outside of trading hours, to enable issuers to consider the information and prepare a response.

However, should an issuer receive a copy of a draft or final public statement during trading hours, the issuer must:

- Engage with NZXR urgently, to discuss whether a trading halt is required while the issuer assesses the information it has received;
- Immediately assess whether the embargoed public statement gives rise to Material Information. As the statement has not yet been released, it is not generally available and therefore it may still be Material Information; and
- If there is Material Information, immediately determine whether that information is subject to an exception from the Listing Rules and, if not, notify the third party that the issuer is required to release that Material Information immediately.

It should be noted by issuers that Material Information cannot be embargoed, and that issuers cannot contract out of their continuous disclosure obligations by entering into confidentiality arrangements. However, if the information is confidential and the release of that information would be a breach of law, it is likely that the information can be withheld under that exception from the Listing Rule.

Practice Notes are not intended to be a definitive statement of the application of the rules in every situation and are only a guide to NZX's policy and practice. This Practice Note does not limit NZXR's discretion under the rules. NZX takes no responsibility for any error contained in the Practice Note. NZXR may replace Practice Notes at any time.