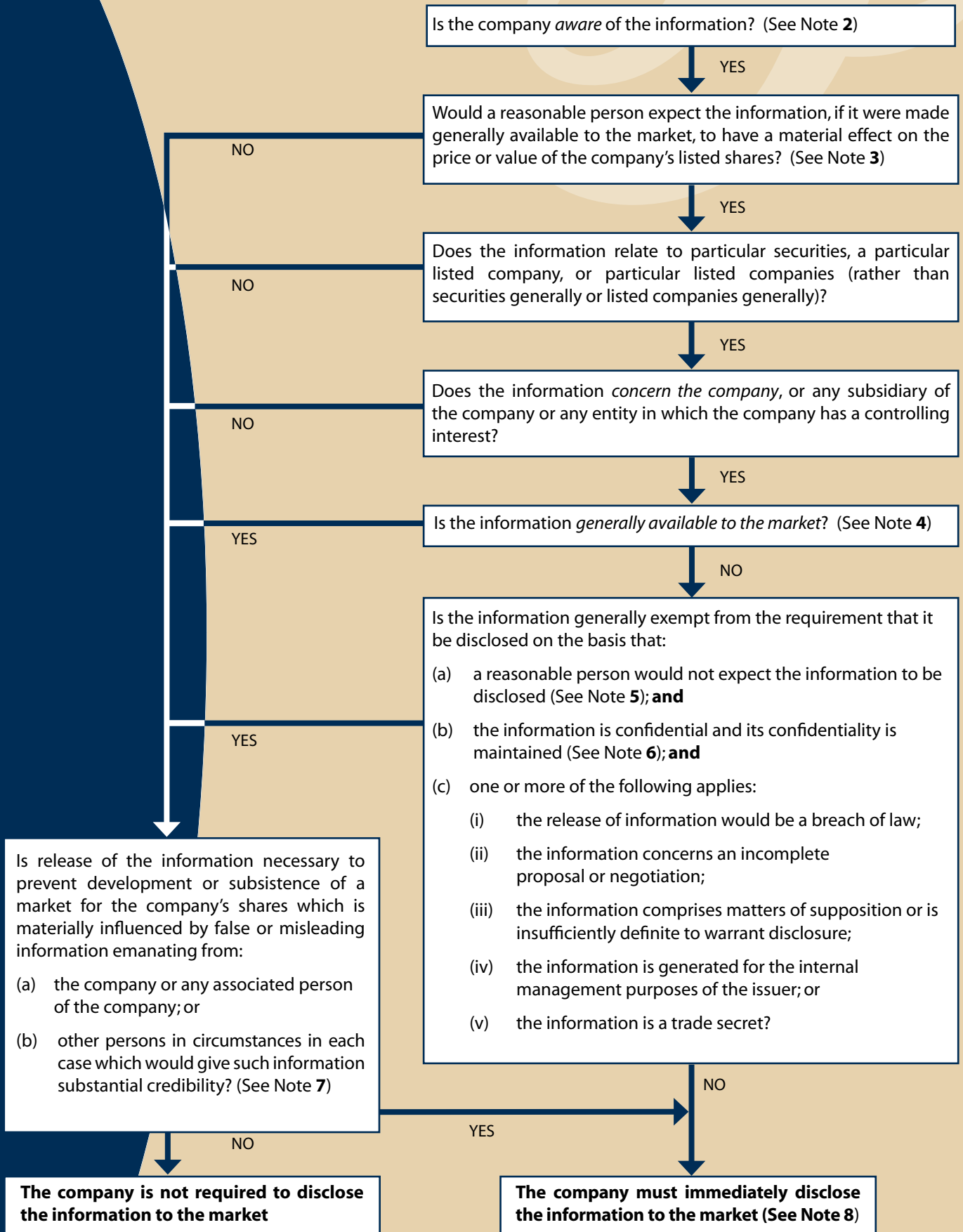




# CONTINUOUS DISCLOSURE OBLIGATIONS DOES INFORMATION NEED TO BE DISCLOSED?





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## NOTES

- This diagram reflects the continuous disclosure obligations of a listed company under the listing rules of the New Zealand Stock Exchange (the Rules) and the Securities Markets Act 1988 (the SMA) as at April 2009, and assumes that no waiver from the requirement to disclose the relevant information has been granted by NZX. This diagram relates to the general continuous disclosure obligations set out in the Rules and the SMA rather than the episodic disclosures required by the Rules, and the obligation to permit shareholders to inspect the company's records (under section 178 of the Companies Act 1993), with which a company will otherwise be required to comply. The most significant episodic disclosures required by the Rules include:

  - Rule 7.12 – requiring notifications of entitlements or events affecting shares such as dividends, the timetable for a rights issue, details about conversion of securities and details about share issues and share buybacks;
  - Rule 10.1.2 – requiring (broadly) disclosure of all arrangements (other than within the group comprised by the company and its wholly owned subsidiaries) that members of the public might reasonably consider confer terms materially more favourable to the other parties to that arrangement than would be conferred in an arms length negotiation. In particular, details need to be disclosed of:
    - any arrangements by the company with any director, associated persons of a director or with any shareholder who is not a member of the public; and
    - entry into any agreement or arrangement which will require the approval of a resolution under Rule 9.2.1 (material transactions with related parties);
  - Rule 10.1.3 - requiring (broadly) disclosure of certain related party transactions that the company enters into where the value of the transaction is greater than 5%, but less than 10%, of the average market capitalisation of the company;
  - Rule 10.8 – requiring notification of any proposal to sub-divide or consolidate shares, to issue shares, to amend the conditions of any quoted shares, non-confirmation (by meeting or cancellation) of any proposal already notified to NZX, a change of directors, any officer or auditors, change of address, telex or facsimile number of the registered office or share registry, proposed change of name, the opening or closing of a branch register, change of credit rating and certain other matters.

In this diagram, a reference to shares or listed shares of a company includes a reference to any securities or listed securities (as the case may be) of that company and a reference to company is a reference to any Issuer (as defined in the Rules).
- A company must disclose information that is otherwise required to be disclosed under the Rules once the company becomes aware of the information. A company is deemed to be aware of information for the purposes of the Rules if a director or an executive officer of the company (or any subsidiary of the company or any entity in which the company has a controlling interest) or, in the case of a “managed fund”, a director or executive officer of the manager, has come into possession of the information in the course of the performance of his or her duties as a director or executive officer (Rule 10.1.1).
- The footnote to Rule 10.1.1 gives examples of what NZX considers likely to be material information, including (broadly) a change in the company's financial forecast or expectation, the appointment of a receiver, manager or liquidator to the company, a transaction where the consideration payable or receivable is a significant proportion (e.g. 5%) of the written down value of the company's assets, a change in the control of the manager of a managed fund, or a change of trustee of a listed trust, a recommendation or declaration of a dividend or distribution (or that a dividend or distribution will not be declared), undersubscription or oversubscription to an issue, giving or receiving a notice of intention to make a takeover, any proposed change in the general nature of business of the company, the acquisition or disposition of assets of any nature (including entering into an agreement or option to do so) where the gross value of those assets or the consideration paid or received by the company represents more than 10% of the average market capitalisation of the company and certain other disposals and acquisitions.
- Broadly, information is generally available to the market if:

  - it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in “relevant securities”, provided a reasonable period for it to be disseminated amongst those persons has expired; or
  - it is likely to be readily obtainable to persons who commonly invest in “relevant securities” (by observation, use of expertise, purchase from other persons, or any other means); or
  - it consists of deductions, conclusions or inferences made or drawn from either or both of the above two kinds of information.
- For the purposes of the continuous disclosure obligations, a reasonable person would not expect the information to be disclosed if the release of the information would unreasonably prejudice the company (or any subsidiary of the company or any entity in which the company has a controlling interest) or provide no benefit to a person who commonly invests in securities.
- In this context, “confidential” has the sense of “secret”. Once the information is received by any person who is not bound by any corresponding obligation of confidentiality with which that person is likely to comply, the exception no longer applies and the information must be disclosed to the market via NZX. This is the case even if the company has entered into confidentiality arrangements and/or the information has come from a source other than the company. NZX accepts that information provided by the company to a professional advisor, a party negotiating on the company's behalf, a third party negotiating with the company, or a regulatory authority, does not lose its confidentiality, provided that in each case the information was provided with an obligation to maintain its confidentiality and such information is used by the party to whom it was provided solely for the purpose for which it was provided. NZX also accepts that information provided by a company to its holding company for the purposes of enabling that holding company to comply with its financial reporting obligations does not lose its confidentiality, provided that the information is provided subject to an obligation to maintain its confidentiality and use the information solely for financial reporting purposes, and such information is used by the holding company solely for the purpose for which it was provided and is kept confidential.
- The duty to correct false information in the market applies irrespective of whether the information is otherwise exempt from the continuous disclosure requirements under the Rules and is limited so that antagonists cannot force information out of a company simply by generating a false rumour. The market's interest in requiring correction of false rumours is intended to be limited to those which are of a reasonably specific nature and from a source which lends substantial credence to them.
- The company should immediately disclose the information to NZX once it becomes aware of the information (see note 2 above) and otherwise in accordance with the requirements of the Rules, including, Rule 10.1.1(b) (requiring that disclosure must first be made to NZX), Rule 10.2.1 (requiring information provided in electronic format to be provided to NZX on the relevant company's letterhead and be dated and attributed to an authorised officer of the company whose name and position should be set out or, where provided, using NZX's Market Announcement Platform, to comply with the required forms or templates relevant for that information), Rule 10.2.2 (which prescribes the mode of making announcements for public release) and Rule 10.2.3 (which prescribes the manner of disclosure of announcements for public release). A company that is dual listed should release information to NZX before or at the same time as it releases information on the other exchanges on which it is listed.
- This publication is intended only to provide a summary of the subject covered. It does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this publication without first obtaining specific legal advice. If you require any advice or further information, please contact the partner/solicitor in Lowndes Jordan who normally advises you, or alternatively contact Michael Busch, Graham Jordan or Rick Shera in our Auckland Office on telephone (09) 309 2500.