

A flurry of continuous disclosure updates

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Several announcements and updates relating to continuous disclosure (CD) have come out from NZX and the FMA on Friday and today.

FMA investigation report on Wynyard disclosures ([here](#))

In its report published on Friday the FMA has concerns Wynyard may have breached its continuous disclosure obligation in late September 2016. Of general interest beyond the specific facts:

- FMA gives its view that board minutes should reflect discussions on CD obligations “so the board can be shown to have discussed its CD obligations in an upfront, detailed and considered way”. The FMA says failure to do so risks the board not being able to demonstrate compliance, and could be seen as providing directors the opportunity to rewrite history to suit their purposes (but there was no suggestion that occurred here). Stock statements along the lines that the board has considered its CD obligations and there is no material information to disclose are not considered good enough
- Individual directors and senior managers can be personally liable as accessories to a CD breach by the company, but only if they had actual knowledge the information was material information (ie price sensitive) (but the FMA is not taking action against the individuals here).

NZX case study on CD ([here](#))

This was also published on Friday and highlights three key points:

- Where issuers select non-financial metrics for their forecasts (such as sales of particular product lines), the obligations relating to disclosure of material deviations from those forecasts will still apply, where that information is material information.
- Issuers must keep sufficient internal documentation in relation to continuous disclosure discussions and decisions made by the issuer’s board and executive team (echoing the FMA’s comments above).
- Issuers should not attempt to highlight positive information in market announcements as a means to redirect or lessen attention from negative information which is relevant to investors.

NZX updated guidance on CD finalised ([here](#))

This morning NZX published its new CD Guidance Note. This amends and replaces the previous CD Guidance Note and covers the introduction of constructive knowledge in the updated Listing Rules (directors and senior managers are deemed to be aware of information they ought reasonably to have known). A key addition is that issuers need to have processes in place to identify and escalate material information in order to meet the new deemed awareness provision. See our previous updates [here](#) and [here](#) in relation to when the new Listing Rules will apply and the transition process.

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