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## Continuous disclosure policy

CMI Limited ACN 050 542 553

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# Share trading and continuous disclosure policy

CMI Limited

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## 1 Definitions and interpretation

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### 1.1 Definitions

In this document:

<b>Term</b>	<b>Definition</b>
<b>AGM</b>	means the annual general meeting of the Company.
<b>ASIC</b>	means the Australian Securities and Investments Commission.
<b>ASX</b>	means ASX Limited ACN 008 624 691.
<b>Board</b>	means the board of Directors.
<b>Chairman</b>	means the chairman of the Board.
<b>CEO</b>	means the executive officer (by whatever title known, whether chief executive officer, managing director or otherwise) with sole responsibility for the strategic and operational management of the Group.
<b>CFO</b>	means the chief financial officer or equivalent officer of the Company (by whatever title known).
<b>Company</b>	means CMI Limited ACN 050 542 553.
<b>Corporations Act</b>	means <i>Corporations Act 2001</i> (Cth).
<b>Director</b>	means a director of the Company.
<b>Group</b>	means the Company and its controlled entities.
<b>Listing Rules</b>	means the listing rules of ASX.
<b>Secretary</b>	means the secretary of the Company.
<b>Shareholder</b>	means a holder of shares in the Company.

### 1.2 Interpretation

Concepts not defined in this document which are given a meaning in the Corporations Act have the same meaning as in the Corporations Act.

## 2 Continuous Disclosure Policy

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### 2.1 Need for this policy

- (a) The law imposes various obligations on the Company to keep the market fully informed of information which may have a material effect on the price or value of the Company's securities and to correct any material mistake or misinformation in the market.

- (b) This document sets out the policy and procedures adopted by the Board of the Company in order to comply with these obligations.

## **2.2 Obligation to disclose information that has a material effect on price**

- (a) Listing Rule 3.1 requires listed companies to immediately disclose information to the market that is likely to have a material effect on the price or value of their securities. It is the cornerstone of ASX's continuous disclosure framework.
- (b) Listing Rule 3.1 is given legislative support by section 674 Corporations Act. Section 674 imposes penalties for a breach of the continuous disclosure framework created under ASX Listing Rules.

## **2.3 Liability provisions**

- (a) A contravention of section 674 can result in civil and criminal proceedings against both the Company and any person involved in the contravention.

## **2.4 Exceptions to the disclosure requirements**

- (a) Listing Rule 3.1A sets out an exception to the requirement to make immediate disclosure of material information. The intention of the exception is to protect the legitimate commercial interests of companies and their shareholders by not requiring immediate disclosure in certain restricted circumstances.
- (b) Where all three elements of the exception are satisfied in relation to a piece of information, the primary obligation in Listing Rule 3.1 does not apply to that information. The three elements are:
  - (i) a reasonable person would not expect the information to be disclosed;
  - (ii) the information is confidential and ASX has not formed the view that the information has ceased to be confidential; and
  - (iii) one or more of the following applies:
    - (A) It would be a breach of a law to disclose the information;
    - (B) The information concerns an incomplete proposal or negotiation;
    - (C) The information comprises matters of supposition or is insufficiently definite to warrant disclosure;
    - (D) The information is generated for the internal management purposes of the entity; and
    - (E) The information is a trade secret.
- (c) The exception operates only while all three requirements are satisfied. If one or more of the requirements ceases to be satisfied, the exception no longer applies and the entity must disclose the information immediately.

## 2.5 Applying the exceptions in practice

- (a) Examples of the type of information that does not require disclosure include:
- (i) proposed acquisitions or disposals or other commercial arrangements in the process of negotiation;
  - (ii) internal budgets and forecasts;
  - (iii) management accounts;
  - (iv) business plans;
  - (v) internal market intelligence;
  - (vi) information prepared for lenders;
  - (vii) financing terms in the usual course;
  - (viii) dispute settlement negotiations.
- (b) However, there may be a number of matters which are commercially sensitive, the disclosure of which would be detrimental to the Company and which may be required to be disclosed because they may not fall within the exceptions. Examples include:
- (i) a serious claim against the company, prior to commencement of proceedings;
  - (ii) an allegation or investigation by a regulatory body that is not being disputed by the Company;
  - (iii) information about a '*complete*' proposal (e.g. where the board has resolved to adopt a new name or brand);
  - (iv) the terms of settlement of a dispute which the parties wish to keep confidential and which is not supported by a court order of confidentiality;
  - (v) material terms of a trading agreement with a major supplier or customer.
- (c) Whether information of this type falls within one of the exceptions will depend on the facts.

## 2.6 Implementation of a continuous disclosure plan

The Company should implement a continuous disclosure plan. The continuous disclosure plan should include processes for:

- (a) identifying relevant information; and
- (b) reporting that information.

## 2.7 Identifying relevant information

- (a) The following officers should receive this policy and be briefed on the continuous disclosure regime:
- (i) the Company directors;

- (ii) the CEO;
  - (iii) the Company Secretary and CFO.
- (b) In addition, each manager at or above '*general manager*' level in the Group should participate in the continuous disclosure plan. Each of these people is an '*executive officer*' for the purposes of the Corporations Act and therefore their knowledge must be considered in order to comply with the disclosure rules.
- (c) In most cases, whether information must be disclosed will be self-evident on a simple application of the basic criteria: '*Is it price sensitive? If so, do any of the exceptions apply?*' However, there will be instances where it is unclear whether the information needs to be disclosed. In these cases, it may be helpful to assess the information by reference to the questions in the schedule.

## 2.8 Reporting relevant information

- (a) When any of the directors or executive officers becomes aware of information which they believe may need to be disclosed, they should immediately advise full details to a nominated person in the Company who is responsible for communications with ASX.
- (b) The nominated person will then take the following steps:
- (i) assess whether disclosure is required;
  - (ii) consult with the Chairman and Managing Director and advisors if necessary;
  - (iii) prepare a notice to the ASX;
  - (iv) inform the Board; and
  - (v) release the notice.
- (c) In addition, prior to each board meeting, the nominated person should, by circular fax or email, contact each of the people listed in paragraph 2.8 to confirm that there is no information requiring disclosure.
- (d) For each set of board papers there should be an agenda item entitled '*Continuous Disclosure*'. In this item the company secretary should be advised either to:
- (i) confirm that there was no material brought to his or her attention requiring disclosure; or
  - (ii) outline material which had been disclosed or which may require disclosure.

**(NOTE:** the obligation to notify the ASX is an obligation to **notify immediately**, and the company secretary may not be able to wait for a Board meeting before doing so.)

## 2.9 Continuous disclosure in practice

ASX takes the view that Listing Rule 3.1 should not be interpreted in a restrictive or legalistic fashion. ASX suggests a number of practices to be followed in relation to the Listing Rule 3.1 including:

- (a) making holding announcements or applying for a trading halt, even where an exception to the disclosure obligation applies (e.g. for incomplete or uncertain proposals);
- (b) listed companies should respond to specific market rumours or those which cause market movement, even where no information can be provided other than denial of the rumours;
- (c) analysts must not be provided with any information which is material but not public and companies should consider whether it is appropriate to clarify historical information and correct any factual errors in analyst's assumptions;
- (d) information released to overseas markets must be provided simultaneously to ASX (subject to certain practical difficulties discussed in the Guidance Note);
- (e) the fact that information about a company is widely known does not relieve the obligation to disclose it to ASX;
- (f) a listed company must not release information having a material effect to the media (even on an embargoed basis) until the company has given the information to ASX and received an acknowledgment that ASX has released it to the market; and
- (g) an entity is not required to disclose general information (e.g. the gold price) unless that information has a particular effect on the entity, e.g. if a lower gold price means that the entity can no longer economically operate a mine.

## **2.10 Finance Arrangements**

- (a) Where a listed entity has in place or enters into new material financing arrangements or alters existing material financing arrangements which include terms that may be activated upon the occurrence of certain events (particularly those beyond the control of the entity, such as market events), disclosure may be required under Listing Rule 3.1 at the time that any such term is activated or becomes likely to be activated.
- (b) The disclosure required may include the nature and terms of the arrangements, the trigger event and any other material information such as any impact that triggering of the term may have on the entity's relationship with its bankers. It may also be appropriate in some circumstances for the entity to request a trading halt if the entity is unable to immediately release the information.

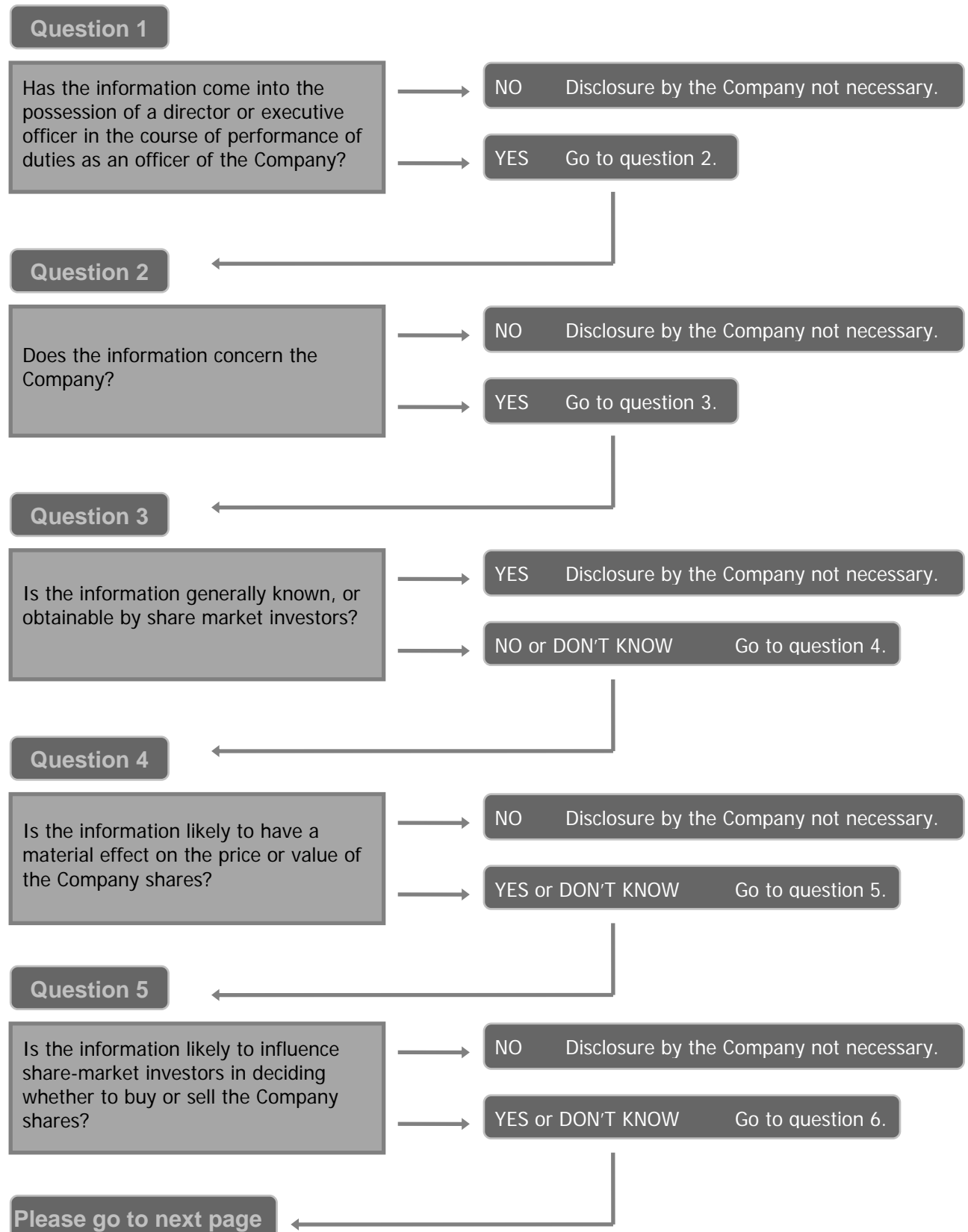
## **2.11 Margin loans by directors**

- (a) Directors must obtain the approval of the Board before entering into a margin loan or similar arrangements concerning the Company's circumstances.
- (b) Where a director has entered into margin loan or similar funding arrangements for a material number of securities in the Company, Listing Rule 3.1 may, in certain circumstances, operate to require the Company to disclose the key terms of the arrangements, including the number of securities involved, the trigger points, the right of the lender to sell unilaterally and any other material details.
- (c) Whether a margin loan arrangement is material under Listing Rule 3.1 is a matter which the Company must decide having regard to the nature of its operations and the particular circumstances of the Company.

September 2008

# Schedule

Questions and answers (clause 2.7(c))





**Question 6**

Would a reasonable person expect the Company to disclose the information to the market?

→ YES Disclosure required.

→ NO or DON'T KNOW Go to question 7.

**Question 7**

Is the information confidential (ie, is everyone who knows, obliged to keep it secret)?

→ NO Disclosure required.

→ YES Go to question 8.

**Question 8**

Would it be a breach of a law to disclose the information?

→ YES Disclosure by the Company not necessary.

→ NO or DON'T KNOW Go to question 9.

**Question 9**

Is the information part of an incomplete proposal?

→ YES Disclosure not yet required - review when completed.

→ NO Go to question 10.

**Question 10**

Does the information relate to a current negotiation?

→ YES Disclosure not yet required - review when completed.

→ NO Go to question 11.

**Please go to next page**

