



**Handling Confidential &
Price-Sensitive Information &
Soundings**

Best Practice Guidelines

November 2011

1. Introduction

1.1 This document outlines best practice guidelines for members in

- the handling of confidential information received by them, and
- how Soundings are conducted,

in relation to potential equity capital markets and mergers and acquisitions transactions involving the financial products of entities with their primary listing on a financial market in Australia.

1.2 In this document, “Soundings” is the term given to discussions with potential investors or other interested parties (which take place prior to announcement of an actual equity raising transaction) to gauge their interest in a potential structure, potential transaction or the potential pricing of a transaction that involves the disclosure of non-public, materially price-sensitive or inside information to the investor.

1.3 This document is designed to establish best practice standards for the handling of confidential information and Soundings that will:

- a) assist to ensure commercially sensitive confidential information received by members is suitably protected;
- b) minimise market risks that leaks prejudice undisclosed transactions, balanced against the need for price discovery processes necessary to facilitate corporate transactions;
- c) assist market integrity and efficiency through the timely and orderly release of confidential and potential price-sensitive information;
- d) minimise the risks of insider trading occurring in relevant financial products;
- e) assist members in complying with applicable licensing and conduct rules; and
- f) protect and enhance the reputation of members and their clients.

1.4 The Australian Financial Markets Association (AFMA) acknowledges that members will also need to consider applicable rules in other jurisdictions and their own internal policies in applying these best practice guidelines, and that different approaches which adequately address the above objectives will also be acceptable.

1.5 AFMA commends these best practice guidelines to other market participants engaged in equity capital markets and merger and acquisition activities.

2. Handling of confidential information

AFMA commends the following guidelines:

- 2.1 Members should have documented policies and procedures that address behaviours in the handling of confidential and potentially price-sensitive information. These should cover disclosure on a need-to-know basis, secure environments and information protection. They should describe and be supported, where appropriate by physical and system information barriers. Staff of members should agree to comply with these policies and procedures in their terms of employment, and this should be reinforced in staff inductions and ongoing training.
- 2.2 Members may also consider the use of umbrella confidentiality agreements with clients for whom they regularly provide or expect to regularly provide financial services.
- 2.3 A member should consider maintaining an insider list for particularly sensitive transactions. Where such an insider list is established, transaction deal team members should be listed by name. Other staff with potential access to transaction information but who may not necessarily access it, or staff involved in internal committees (or who are involved in senior oversight), or who have an administrative, support or risk management function (including legal and compliance, conflict management, internal audit, risk, word processing, printing, photocopying and IT administrators) may be mentioned by class rather than listed individually. Members may agree to provide their list to their client on request.
- 2.4 If a client of a member requests the member to conduct a leak investigation, unless the member considers it unreasonable to do so, the member should conduct an investigation in accordance with its own policies, and report the results of that investigation to the client in a manner that it determines (but which conveys the findings effectively). It would generally be inappropriate to allow the client to be involved in the leak investigation, as that may give rise to actual or perceived disclosure of confidential information of other clients of the member, the member or its employees.
- 2.5 To assist in ensuring that employees do not inappropriately use confidential information for their own personal benefit, members should have established comprehensive and appropriate procedures on personal account dealings undertaken by their staff members in securities and other applicable financial products. The scope of these procedures will depend on the specific circumstances of the member and its activities.

3. Soundings

AFMA commends the following guidelines:

- 3.1 Client approval should be obtained before conducting Soundings of a proposed transaction using the client's confidential information.
- 3.2 This restriction does not prevent a member discussing a potential transaction independently of a client prior to engaging on a potential transaction by the client. Such discussions are not Soundings and thus do not need to comply with these guidelines, but it should be made abundantly clear to the institution that the potential transaction has not been discussed with the client and the member has not been mandated in relation to it.
- 3.3 Soundings on behalf of a client in relation to a specific transaction should take place as close as reasonably practicable to the proposed time of 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.
- 3.4 Soundings should be limited to as few institutions as the member considers reasonably necessary to gain the relevant level of comfort or commitment.
- 3.5 Before sounding an institution, the member should first contact an identified person with the appropriate role and seniority at the institution to confirm whether that person is prepared to be sounded.
- 3.6 The proposed Sounding should not proceed if the identified person at the institution does not verbally agree to treat the information it will receive as confidential. If the information is potentially price-sensitive, the institution should be reminded of its ongoing requirement to comply with applicable insider trading laws and acknowledge this verbally before the Sounding.
- 3.7 There should be a script or dot points for that contact approved by the member's legal/compliance, identifying the key points to be covered, and the member should follow the script or dot points. A Pro Forma Sounding Script, attached to these guidelines, offers an example of a script that members may follow.
- 3.8 Where a member approaches an institution, and the institution verbally agrees to be sounded and to comply with obligations of confidentiality and (if applicable) insider trading requirements, 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 relevant person within the institution. A Pro Forma Sounding Confirmation Email, attached to these guidelines, offers an example of an email that members may use. The member should maintain a written record of Soundings conducted including these details.

Pro Forma Sounding Script

We would like to discuss with you confidential information in relation to an entity listed on *[insert relevant Australian securities exchange, eg ASX]* that may have a material effect on the price or value of financial products of the entity.

We will do so only on the basis that:

- you agree not to disclose the information to anyone within your organisation except on a need-to-know basis and subject to these restrictions, or to anyone outside your organisation, unless our prior consent is obtained; and
- you and your organisation agree not to do anything that breaches the insider trading laws contained in the Australian Corporations Act.

These restrictions will continue until the information is made generally available by or on behalf of the entity or is no longer price sensitive.

Please acknowledge that you understand these restrictions and agree to be bound by them.

If the person replies no, terminate process with that person.

If the person agrees to proceed, continue:

We recommend that you liaise with your Legal & Compliance personnel in respect of this Sounding. You may share the information disclosed to you with those personnel on the basis that they also agree to be subject to these restrictions. If you have any questions regarding the information we propose to disclose to you, please contact me. Your usual contacts at the firm may not be privy to the information that we are providing. We will shortly send you an email confirming these restrictions and your agreement to be bound by them.

Pro Forma Sounding Confirmation Email**CONFIDENTIAL – NOT FOR FURTHER DISTRIBUTION**

As discussed, we propose to disclose, or have disclosed, to you confidential information in relation to a *[issuer]*, which is listed on *[insert relevant Australian securities exchange, eg ASX]*, that may have a material effect on the price or value of financial products of that entity.

In agreeing to our disclosing that information to you, you have agreed to comply with the following restrictions:

- not to disclose the information to anyone within your organisation except on a need-to-know basis and subject to these restrictions, or to anyone outside of your organisation, unless our prior consent is obtained; and
- you and your organisation will not breach the insider trading laws contained in the *Corporations Act 2001 (Cth)* including in relation to the financial products of *[issuer]*.

These restrictions continue until the information is made generally available by or on behalf of *[issuer]* or is no longer price sensitive.

We have recommended that you liaise with your Legal & Compliance personnel in respect of this Sounding. You have agreed to share the information disclosed to you with those personnel on the basis that they also agree to be subject to these restrictions. If you have any questions about the information disclosed to you, please contact me. Your usual contacts at the firm may not be privy to the information that we have provided.

By accepting the information, you have agreed to become an insider and confirmed that you understand, and confirmed your earlier agreement to comply with, the restrictions set out above.
