



## COVERSHEET

<b>Minister</b>	Hon Dr Duncan Webb	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	Change of Cabinet Office Circular CO (12) 7: Guidelines for Dealing with Inside Information about Public Issuers	<b>Date to be published</b>	25 July 2023

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
June 2023	Change of Cabinet Office Circular CO (12) 7: Guidelines for Dealing with Inside Information about Public Issuers	Office of the Minister for Commerce and Consumer Affairs
7 June 2023	Guidelines for Dealing with Inside Information about Public Issuers: Amendment to Cabinet Office Circular CO (12) 7 DEV-23-MIN-0111 Minute	Cabinet Office

### Information redacted

**YES / NO [select one]**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

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Office of the Minister of Commerce and Consumer Affairs

Cabinet Economic Development Committee

**Change of Cabinet Office Circular CO (12) 7: Guidelines for Dealing with Inside Information about Public Issuers**

**Proposal**

- 1 This paper seeks agreement to replace Cabinet Office circular CO (12) 7: *Guidelines for Dealing with Inside Information about Public Issuers* with a new circular that reflects the changes in the Financial Markets Conduct Act 2013 from the Securities Markets Act 1988.

**Background**

- 2 Ministers and government departments routinely hold, receive and disseminate information relating to listed issuers that can constitute inside information under financial markets legislation. Guidance is needed to ensure all parties are aware of how to deal with this information.
- 3 The current Cabinet Office circular CO (12) 7: *Guidelines for Dealing with Inside Information about Public Issuers* was published in 2012. Its scope covers guidance for Ministers and officials dealing with inside information relating to listed issuers, including mixed ownership model companies and other companies in which the Crown has an ownership stake. For example, it provides guidance for Ministers when making announcements about listed issuers.
- 4 The circular has a wide reach as it applies to all Ministers and officials.
- 5 The existing circular has worked well but it needs to be updated to reflect the provisions in the Financial Markets Conduct Act 2013 (the FMC Act), rather than its predecessor – the now repealed Securities Markets Act 1998. The new circular is attached.

**Analysis**

- 6 The new circular is unchanged in terms of the scope and reach and the broad guidance it provides. The only changes are to ensure the circular remains accurate and reflects current law and are as follows:

**Updated definitions and terminology**

- 7 The new circular updates certain terminology used in the guidance to align with the FMC Act from the old Securities Markets Act. This includes:
  - 7.1 updating the title of the circular to refer to ‘Listed Issuers’ instead of ‘Public Issuers’;

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- 7.2 updating the definitions of 'Licenced market' and 'quoted financial products', and including a new definition of derivatives;
- 7.3 adding guidance for handling information in relation to quoted derivatives;
- 7.4 replacing the terminology 'exchange' or 'stock exchange' with 'financial product market'.

### Minor content changes

- 8 The new circular also makes minor changes to the content of the guidance for clarity and to reflect the changes in the FMC Act from the Securities Markets Act 1988, and current industry norms.
- 9 These include updates to timeframes and penalties:
  - 9.1 The circular updates guidance about making market sensitive announcements that might affect listed issuers. It now provides that the recommended amount of advance notice that should be given to a listed issuer by officials or a Minister has been lengthened from one hour to at least three hours (where practical). This is guidance only, but reflects that adequate advance notice will provide listed issuers with more time to consider any information that might need to be released under any legal obligations to disclose material information to the market and engage with the relevant financial product market operator (eg the NZX) if a trading halt is required, prior to any public announcement.
  - 9.2 The circular notes that there has been an update to penalties for contravention of the insider trading and market manipulation regimes in the FMC Act to increase the possible pecuniary penalty from a maximum of \$300,000 to \$500,000 for individuals.
- 10 Updates to wording have been made to the guidelines for releasing information when the market is closed. This includes:
  - 10.1 Including the addition of the hours the NZX and ASX are open to help guide timing and coordination when releasing information at a time both markets are closed.
  - 10.2 The inclusion of making it clear to listed issuers that they may be impacted by the release of information and the information is material to them when they may not know the contents of the information. To give the listed issuer time to obtain a trading halt and avoid the market trading before the insurer can release the information under its continuous disclosure agreement.

### Process for publishing the new circular

- 11 Subject to Cabinet agreement, the new circular will take effect from the date on which it is published by the Cabinet Office.

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### **Financial Implications**

12 This paper has no financial implications.

### **Legislative Implications**

13 There are no legislative implications.

### **Impact Analysis**

#### **Regulatory Impact Statement**

14 A Regulatory Impact Statement does not apply as this is a routine operational adjustment.

#### **Climate Implications of Policy Assessment**

15 There are no climate implications.

### **Population Implications**

16 There are no population implications.

### **Human Rights**

17 There are no human rights implications.

### **Consultation**

18 The Treasury, the Financial Markets Authority, and the Commerce Commission were consulted. The Department of Prime Minister and Cabinet was informed.

### **Communications**

19 The Cabinet Office will publish the new Circular as soon practicable after Cabinet has agreed to this paper.

### **Proactive Release**

20 I intend to release this Cabinet paper proactively in whole, at the same time as the new Circular is published.

### **Recommendations**

The Minister of Commerce and Consumer Affairs recommends that the Committee:

- 1 agree to update and replace the Cabinet Office circular CO (12) 7 with the attached new Cabinet Office circular entitled *Guidelines for Dealing with Inside Information about Listed Issuers*, which sets out Cabinet's expectations for dealing with inside information;

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- 2 note that the new circular includes minor updates to content and terminology to reflect the Financial Markets Conduct Act 2013 from the Securities Markets Act 1988, and current industry norms;
- 3 note that in other respects the new circular conveys the same expectations and will have the same scope and reach as CO (12) 7 in terms of the relevant agencies and individuals to be guided by the circular;
- 4 agree that the new circular will take effect from the date on which it is published by the Cabinet Office;
- 5 authorise the Minister of Commerce and Consumer Affairs to:
  - 5.1 make any necessary changes to the circular between the date of Cabinet approval of the circular and the effective date of the new circular to ensure it accurately conveys Government policy; and
  - 5.2 make administrative changes over time to maintain the currency of the circular, provided these are consistent with the overall intent of the circular.

Authorised for lodgement

Hon Dr Duncan Webb

Minister of Commerce and Consumer Affairs



# Cabinet Office

CO (XX) X

## Circular

[date] 2022

<b>Intended for</b>	<ul style="list-style-type: none"> <li>All Ministers</li> <li>All Chief Executives</li> <li>All Senior Private Secretaries</li> <li>All Ministerial Advisors</li> <li>All Private Secretaries</li> <li>All Press Secretaries</li> <li>All Heads of Communications</li> <li>All Heads of Legal</li> </ul>
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## Guidelines for Dealing in Financial Products on Markets (Inside Information and Market Manipulation)

### Introduction

- 1 This circular sets out guidance agreed to by Cabinet for Ministers and officials dealing with inside information relating to listed issuers (including mixed ownership model companies and other companies in which the Crown has an ownership stake) and quoted derivatives. Please note, this circular replaces Cabinet Office Circular CO (12) 7, *Guidelines for Dealing with Inside Information about Public Issuers*.
- 2 The guidance in this circular sets out a *recommended approach only*. This circular summarises a number of provisions of the [Financial Markets Conduct Act 2013](#) (the Act) that should be considered in detail when significant issues arise. This circular does not cover provisions in other legislation that may apply to some circumstances<sup>1</sup>. Ministers and officials should obtain specific legal and communications advice on individual situations as they arise.
- 3 The key points are:
  - 3.1 Ministers and officials must treat information about listed issuers with caution;
  - 3.2 Ministers and officials are required to observe the insider trading and market manipulation regimes in the Act;
  - 3.3 announcements should be released as widely and evenly as possible;
  - 3.4 Ministers are still entitled, and may be obliged, to make statements in the House of Representatives in relation to listed issuers without legal liability attaching – these statements will be generally available to the market for the purposes of the insider trading regime soon after they are made;
  - 3.5 where Ministers or officials hold inside information of a listed issuer, they must not trade the quoted financial products of the listed issuer.

<sup>1</sup> For example, section 105A of the Crimes Act 1961 which makes it a criminal offence for an official to corruptly use or disclose any information, acquired in their official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or herself or any other person.

- 3.6 where Ministers or officials hold inside information in relation to quoted derivatives, they must not trade the quoted derivatives;
- 3.7 where Ministers or officials (person A) hold inside information, , of a listed issuer, or in relation to quoted derivatives, they must not:
- 3.7.1 directly or indirectly disclose inside information to any other person (person B) if they know (or ought reasonably to know) or believe that the person will, or is likely to trade the quoted financial products of the listed issuer, or the quoted derivatives, or encourage or advise someone else (person C) to trade or hold the quoted financial products or the quoted derivatives;
- 3.7.2 advise or encourage another person (person B) to trade or hold the quoted financial products of the listed issuer, or the quoted derivatives, or advise or encourage another person (person C) to encourage others to trade or hold the quoted financial products of the listed issuer or the quoted derivatives.
- 3.8 even if inside information is not actually held by Ministers or officials, caution is required when making statements relating to a listed issuer or quoted derivative because there may be a perception that the person making the statement (such as a Minister) holds inside information;
- 3.9 where inside information is to be released by Ministers it should generally be provided to the affected listed issuer or derivatives issuer under embargo in advance of a general release, to allow the listed issuer to prepare information or guidelines for the market, and to arrange a trading halt, if required;
- 3.10 unless compelling reasons exist to release the announcement or media release while the affected market is open, it should be made when the market is closed to give investors time to consider the information before the market opens. If the listed issuer is dual listed on the New Zealand Exchange (NZX) and Australian Securities Exchange (ASX), consider releasing when both markets are closed; and
- 3.11 Ministers and officials must ensure that they do not make a statement or disseminate information about a listed issuer or quoted derivative that is false or inaccurate or could be perceived to be misleading or deceptive (paragraphs 12 and 13 contain more information on the “market manipulation regime”).

### Why this circular is important

- 4 Some policy decisions or exercise of powers involve the release of information that may affect the value of quoted financial products or quoted derivatives. There is no restriction on these decisions being made or announced. In making these announcements, however, the Government should consider the impact on financial product markets.
- 5 The main purposes of the Act include promoting the confident and informed participation of businesses, investors and consumers in the financial markets. Investor confidence in the integrity of the market encourages participation in markets, access to capital and has wider benefits for the economy. Investor confidence may be reduced if information is not released in a fair, orderly and transparent manner that enables investors to have an equal opportunity to obtain and evaluate information relevant to their investment decisions.
- 6 An additional purpose of the Act is to promote fair, orderly, and transparent financial product markets. The insider trading and market manipulation regimes in the Act promote this purpose by ensuring that information provided to the market is accurate and provided in such a way that it does not give any one investor or group of investors an advantage.

## The insider trading and market manipulation regimes in the Financial Markets Conduct Act

### The insider trading regime

- 7 The insider trading regime and the prohibitions it establishes apply where a person has inside information about a listed issuer or in relation to quoted derivatives.
- 8 Key concepts:
- 8.2 A **listed issuer** is a person that is party to a listing agreement with a licensed market operator in relation to a licensed market (and includes a licensed market operator that has financial products quoted on its own licensed market). It also includes people who have been in this position at any time in respect of any action or event or circumstance to which the Financial Markets Conduct Act 2013 applied at that time.
- 8.3 **Licensed market** means any financial product market that is licensed under Part 5 of the Financial Markets Conduct Act 2013. NZX Limited operates the main licensed markets in New Zealand, including a derivatives market, and Catalist Markets Limited operates a licensed market designed for small and medium-sized businesses. However, there are also licensed derivative markets operated by ASX, SGX-NZX, and ICE Futures<sup>2</sup>. A number of state-owned enterprises have equity and debt securities listed on an NZX market.
- 8.4 **Quoted derivatives** means derivatives that are approved for trading on a licensed market (derivatives do not cease to be quoted merely because trading in those products is suspended).
- 8.5 **Quoted financial products** means financial products of the issuer that are approved for trading on a licensed market (financial products do not cease to be quoted merely because trading in those products is suspended). They are either equity securities (usually shares), debt securities (e.g. bonds), managed investment products (e.g. listed managed funds), or derivatives.
- 8.6 **Derivative** means an agreement between parties whose value is based on or derived from the value or amount of something else, including, for example, an asset (like a share in a company), rate (like an interest rate or exchange rate), index (like a share market index), or commodity (like gold or milk powder).
- 8.7 **Material information** in relation to a listed issuer is information that:
- 8.7.1 a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of quoted financial products of a listed issuer; and
- 8.7.2 relates to particular financial products, a particular listed issuer or issuers (rather than financial products or listed issuers generally).
- 8.8 **Material information** in relation to quoted derivatives, the underlying of quoted derivatives, or the issuer of a financial product underlying quoted derivatives, is information that:
- 8.8.1 a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of the derivatives; and
- 8.8.2 relates to particular derivatives, a particular underlying, or a particular issuer of a financial product underlying quoted derivatives (rather than derivatives, underlying's or issuers generally).

<sup>2</sup> The Act also applies the insider trading and market manipulation regime to quoted derivatives. This includes equity, interest rates, energy and dairy futures traded on derivatives markets operated by NZX Limited and ASX Limited. Seek advice from your departmental legal adviser if your information might be material to the price of a quoted derivative.



- 8.9 Information is **generally available to the market** if:
- 8.9.1 it is information that 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 financial products; and since it was made known, a reasonable period for it to be disseminated among those persons has expired; or
  - 8.9.2 it is likely that people who commonly invest in relevant financial products can readily obtain the information (whether by observation, use of expertise, purchase from other persons, or any other means); or
  - 8.9.3 it is information that consists of deductions, conclusions, or inferences made or drawn from either or both of the kinds of information referred to in 8.9.1 and 8.9.2.
- 8.10 **Relevant financial products** means financial products of a kind the price of which might reasonably be expected to be affected by the information mentioned in 8.9.
- 8.11 A person is an **information insider** of a listed issuer if that person:
- 8.11.1 has material information relating to the listed issuer that is not generally available to the market; and
  - 8.11.2 knows or ought reasonably to know that the information is material information; and
  - 8.11.3 knows or ought reasonably to know that the information is not generally available to the market.
- 8.12 A person is an **information insider** in relation to quoted derivatives if that person:
- 8.12.1 has material information relating to the derivatives, the underlying, or the issuer of a financial product underlying the derivatives that is not generally available to the market; and
  - 8.12.2 knows or ought to reasonably know that the information is material information and that it is not generally available to the market.
- 8.13 **Inside information** means:
- 8.13.1 the information in respect of which a person is an information insider of the listed issuer in question; or
  - 8.13.2 in the case of quoted derivatives, the information in respect of which a person is an information insider in relation to the derivatives in question.
- 9 Ministers and officials regularly hold, receive and disseminate inside information, making them information insiders until such time as the relevant information is no longer inside information (when it becomes generally available to the market). This includes both information provided by the issuer and information generated during the policy process.
- 10 A Minister or official who is an information insider of a listed issuer must not:
- 10.2 trade quoted financial products of the listed issuer;
  - 10.3 disclose (directly or indirectly) inside information to any person if they know (or ought reasonably to know) or believe that the person will, or is likely to trade quoted financial products of the listed issuer, or encourage or advise someone else to trade or hold the quoted financial products; or
  - 10.4 advise or encourage another person to trade or hold quoted financial products or advise or encourage another person to encourage others to trade or hold those quoted

financial products.

- 11 A Minister or official who is an information insider in relation to quoted derivatives must not:
- 11.2 trade the derivatives; or
  - 11.3 disclose (directly or indirectly) inside information to any person if they know (or ought reasonably to know) or believe that the person will, or is likely to trade the derivatives, or encourage or advise someone else to trade or hold those derivatives; or
  - 11.4 advise or encourage another person to trade or hold the derivatives or advise or encourage another person to encourage others to trade or hold those derivatives.

### **The market manipulation regime**

- 12 A Minister or official must not:
- 12.2 make a statement or disseminate information where he/she knows or ought reasonably to know that a material aspect of the statement or information is false or the statement or information is materially misleading; and
    - 12.2.1 the statement or information is likely to induce trading or affect the price of quoted financial products; or
    - 12.2.2 the statement or information is likely to induce a person to exercise a voting right attached to a quoted financial product in a particular way, or abstain from doing so; or
  - 12.3 knowingly (or having ought reasonably to know) do, or omit to do, anything that will have, or is likely to have, the effect of creating, or causing the creation of, a false or misleading appearance with respect to the extent of active trading in quoted financial products or the supply of, demand for, price for trading in, or value of those financial products.
- 13 The market manipulation regime requires Ministers and officials to ensure that they do not make any statements that are false or inaccurate, or could be perceived as misleading a market.

### **Penalties**

- 14 Contravention of the insider trading and market manipulation regimes are offences punishable by prison terms of up to five years or fines of up to \$500,000, or both, for an individual. Contravening the regimes can also result in civil pecuniary penalties and a requirement to pay compensation.

### **Guidance for the policy development or decision-making process**

- 15 The following process should be followed when dealing with inside information when developing policy or exercising decision-making powers:

#### **Step 1: Identify whether a listed issuer or group of listed issuers is affected**

- 15.2 The insider trading and market manipulation regimes relate to a specific listed issuer or group of listed issuers (e.g. a group of issuers in a particular sector). The regimes do not relate to listed issuers as a whole (e.g. tax changes that affect all listed issuers would not be captured).
- 15.3 It is important, therefore, to identify at an early stage any listed issuers or groups of listed issuers that may be affected by the policy, bearing in mind that the affected listed issuers may change during the policy development process.

- 15.4 The Act only applies to financial products or derivatives quoted on financial product markets licensed in New Zealand (including in relation to dual-listed or foreign exempt issuers). However, it is good practice to apply the same process to issuers listed on overseas markets if New Zealand activities are a significant part of the issuer's overall business and there could be a risk of contravening equivalent overseas laws.

**Step 2: Decide whether the policy development process involves material information which is not generally available**

- 15.5 The insider trading regime only deals with inside information: information that a reasonable person would expect to have a *material effect on the price* of quoted financial products or derivatives and that is *not generally available to the market*.
- 15.6 In some situations, it can be difficult to determine whether information may have an impact on the price of quoted financial products or derivatives, particularly at the beginning of a policy development process. In such cases, it is better to err on the side of caution.

**Step 3: Put suitable precautions in place**

- 15.7 If Ministers or officials are information insiders, they should take suitable precautions to ensure they comply with their obligations under the Act. These precautions could include:
- 15.7.1 handling and disseminating inside information on a “need to know” basis;
  - 15.7.2 ensuring that inside information carries an appropriate security classification, and that the information is handled in accordance with its classification;
  - 15.7.3 keeping a record of the people who have been given inside information; and
  - 15.7.4 providing inside information only on the basis that recipients are aware of how they can use the information and their potential liabilities under the Act.

**Official Information Act requests**

- 16 Any request under the [Official Information Act 1982](#) for inside information must be dealt with in accordance with the requirements of that Act. The decision on a request should normally be made following consultation with the relevant listed issuer.

**Guidance for Ministers making announcements**

- 17 The following steps should be followed when Ministers make announcements:

**Step 1: Determine whether a listed issuer or group of listed issuers is likely to be affected**

- 17.2 Officials must make a judgement on which listed issuers will be, or are likely to be, affected by the announcement. This will depend on the content and purpose of the policy.

**Step 2: Determine whether the content of the announcement is inside information (i.e. whether it is material information about the listed issuer that is not generally available to the market)**

- 17.3 New announcements made by the Government, by their nature, contain information that is not generally available to the market. However, it is often difficult for officials to assess whether or not a reasonable person would expect particular information to have a material effect on the price of a quoted financial product or derivative. That judgement needs to be made based on officials' knowledge of the industry, the potentially affected listed issuers and the likely effect of the policy decision being announced.

**Step 3: If the content of the announcement is potentially inside information, decide whether a pre-release process is required**

- 17.4 The Government has no legal obligation to disclose information that relates to, or affects, listed issuers, to a financial product market or to the listed issuer itself. There are, however, advantages for the Government in releasing information to the listed issuer in advance under embargo so the issuer can consider whether or not it is required to release information in accordance with its continuous disclosure obligations, and whether or not to request a trading halt of its quoted financial products or derivatives. Listed issuers typically need some time to prepare announcements, to ensure they provide the market with all relevant material information and are not incomplete or misleading.
- 17.5 The approach to disclosure will depend on the importance of the information and the likely effect of the announcement on the market.

**Step 4: If there is a real risk that the announcement contains inside information, then it should be released when the market is closed**

- 17.6 This is unless compelling reasons exist to release the announcement while the market is still open.

**Media releases**

- 18 Releases should normally be made when the relevant markets are closed, either in the morning before the relevant markets open, or in the evening after the relevant markets closes (see paragraphs 22-24 for issuers listed on multiple markets). Releasing the information when the market is closed will reduce disruption to the market during trading hours, and will ensure that the material information is generally available to the market by the time the market reopens. This is the recommended approach.
- 19 If a release must be made while the market is open, the content of the release should be provided to the issuer under embargo where practical, at least three hours prior to the announcement being made. This will enable the issuer to consider any information that might need to be released under continuous disclosure obligations, and engage with the relevant financial product market operator if a trading halt is required, prior to the announcement.
- 20 If the Government is not prepared to risk prior disclosure of the content of the release under embargo, a *media advisory* can be released to the listed issuer and news agencies. The media advisory should be sent at least one hour prior to the announcement being made, and should state only that an announcement is going to be made at a certain time and the sector or listed issuer it relates to, but not the detailed content. This will allow the issuer a limited opportunity to decide whether to seek a trading halt prior to the announcement, but in the absence of hard information the financial product market operator may refuse to grant a request for a halt.
- 21 The approaches for making releases are further outlined in [Appendix 1](#). [Appendix 2](#) sets out text to be used in communications with listed issuers in the case of release while markets are open.

**Dual-listed issuers**

- 22 Some New Zealand issuers are listed on more than one financial product market. Where an issuer is listed on multiple markets, the release should ideally be made when all the relevant markets are closed. This avoids an issuer's quoted financial products or derivatives being traded by investors in one market but not another.
- 23 Dual listing in Australia and New Zealand is common and the trading periods are close. It is recommended that you check the current time difference before making a release, but it is generally preferable to pre-release the information on an embargoed basis to the issuer in the morning and then release the information before the New Zealand market opens. A trading halt can then be sought by

the issuer in both markets if required. Trading can then resume on the basis of equal, complete and up to date information.

- 24 If an issuer is listed on any international financial product market other than Australia's, the media release should be sent out when all relevant markets are closed. This may be a very narrow window.

### Where the Crown holds inside information

- 25 Where the Crown is a shareholder in a listed issuer, the same amount of care should be taken when in possession of, or releasing, inside information.
- 26 Where the Crown holds inside information about a listed issuer or quoted derivatives the Crown should not trade in these quoted financial products or related derivatives until the information is released. Employees, officers, or agents of the Crown should not trade quoted financial products on their own account if they hold inside information in respect of the Crown's intentions in relation to that listed issuer or quoted derivatives.
- 27 Where the Crown holds inside information that has been provided by a listed issuer, any disclosure of this information should be made by the listed issuer (under its continuous disclosure obligations) and not by Ministers.
- 28 Where a person holds inside information that is information about the person's own intentions, there is an exception under the regime. This exception allows the Crown (or officers and agents on its behalf) to trade quoted financial products or if the inside information it holds is knowledge of its own entry into a transaction or agreement (either past or proposed) in relation to the quoted financial products.

### Guidance for Ministers making comments to the media

- 29 It is common after an announcement has been made for media to question the Minister about the effects the announcement will have on a particular listed issuer.
- 30 Information is considered "generally available to the market" after a public announcement has been released, therefore Ministers can make comments about the content of the announcement without breaching the insider trading regime.
- 31 However, Ministers should be very cautious at all times when discussing matters relating to listed issuers, especially where the topic or questions are unexpected and are outside the expected scope of the interview or discussion.
- 32 Ministers should focus comments on government policy rather than commenting on the value of particular quoted financial products or derivatives or the prospects of particular listed issuers. A Minister should *never* directly or indirectly encourage or advise people to trade or hold the quoted financial products or derivatives of a listed issuer and must take care to ensure that comments cannot be interpreted or perceived as false or misleading.
- 33 A Minister should *only* answer a question relating to the impact of the Government's decisions on a listed issuer, or a class of listed issuers, if the Minister is:
- 33.2 sure the answer is based on information that is generally available to the market; and confident that it will not be construed as being based on inside information; and
- 33.3 confident that it is not false or misleading.
- 34 Caution is necessary as public comments, especially if they are verbal, can be misinterpreted or quoted out of context, and disclaimers and qualifying statements may be overlooked or under-emphasised.

### Further advice

- 35 It is each person's responsibility to ensure compliance with the Act's insider trading and market

manipulation regimes. In case of doubt, you should consult your departmental legal adviser.

Secretary of the Cabinet

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**Enquiries:**

This circular has been developed in conjunction with the Ministry of Business, Innovation and Employment. If you have any queries refer them first to your departmental legal adviser.

**Cabinet Office contact**

Mailbox: [CabinetOffice@dpmc.govt.nz](mailto:CabinetOffice@dpmc.govt.nz),

Phone: (04) 830 5010

**Ministry of Business, Innovation and Employment contact**

Chief Legal Advisor, Ministry of Business, Innovation and Employment

**Financial Markets Authority contacts**

Director, Capital Markets

Phone: 0800 434 566

**Contact details for NZX and ASX**

NZX <http://www.nzx.com>

Product Operations

[productoperations@nzx.com](mailto:productoperations@nzx.com)

Phone: (04) 496 2853

ASX <http://www.asx.com.au>

Customer Service Phone: 0061 2 9227 0787

Company Announcements Office Fax: 0800 449 707

**Website reference:**

This circular can be found on the internet at <http://www.dpmc.govt.nz/cabinet/circulars>

## Appendix 1: Approaches for releasing information

The following are approaches to releasing information by the Government to the market, consistent with the principles in this circular.

### Release while the relevant markets are closed (recommended)

#### Morning release before the New Zealand markets open

This is the recommended approach for releases relating to issuers listed on the NZX and those listed on both the NZX and ASX (given that the Australian market opens two to three hours *after* the New Zealand markets).

- Government notifies the listed issuer at or before **8:00am** that there will be a release and its content and specifies an embargoed time for release. A media advisory may also be released at this time.
- The NZX opens at 10:00 am, therefore notifying the issuer at this time gives the issuer time to consider its position, prepare its own market disclosure and media information, and request a halt in trading of the quoted financial products and derivatives when the markets open if required.
- At the specified time for release the press release or statement is made and the information is provided to business media outlets (say **8.55am**). The issuer complies with any obligations imposed by NZX's Listing Rules, such as disclosing the information to NZX if it is material, or seeking a trading halt if it requires more time to prepare a disclosure.

#### Evening release after the markets close

Evening releases give investors until the markets open the next day to decide how to react. Evening releases also enable information to be released close to the evening news at 6pm, provided the issuer is only listed on the NZX.

- At the specified time for release (no earlier than **5.30pm**), the press release or statement is made and provided to business media outlets and the listed issuer.
- The issuer may then prepare and issue its market disclosure and media statement, and release the information via the NZX or request a trading halt before the markets open the next morning.

Government could inform the listed issuer in advance (say 30 minutes), particularly if it issues a media advisory at the same time, but this step is not crucial.

If the listed issuer is also listed on the ASX, the release times should be adjusted to avoid being released while the ASX is still open<sup>3</sup>. Check the current time difference when planning the timing of release.

If an issuer is listed on any other international financial product market, the media release should be sent out when all relevant markets are closed. This may be a very narrow window.

### Release when the relevant markets are open (only if necessary)

Release when the relevant markets are open should only be done where compelling reasons exist, for example where the Government's objectives will be prejudiced if release is delayed until the markets are closed. **Appendix 2** contains recommended text to be used in these circumstances.

<sup>3</sup> ASX opening hours: <https://www2.asx.com.au/markets/market-resources/trading-hours-calendar>.

**Option 1: content of announcement is provided to the listed issuer under embargo**

Under this option, the listed issuer is provided with the release under embargo in advance of the public release.

- During trading hours (for example at **12pm**) the Government informs the listed issuer that there will be a release, provides its content and specifies an embargoed time for release. A media advisory can also be released at this time.
- The issuer may then consider its position, prepare its own market disclosure and media information, and once the embargo is lifted, release the information or request a halt in trading of the quoted financial products and derivatives when the markets open if required.
- At say **3:00pm** (three hours after notification) the press release or statement is made and the information is provided to business media outlets. The issuer complies with any obligations imposed by NZX's Listing Rules, such as disclosing the information to NZX if it is material, or seeking a trading halt if it requires more time to prepare a disclosure.

**Option 2: Release of advance notice of announcement, but not contents of communication**

Under this (less preferred) option the Government informs the listed issuer in advance that there will be a release but **not** the content. This option would be used if the release is very sensitive and Government is not prepared to pre-release the information on an embargoed basis.

- During trading hours (for example at **12pm**) the Government informs the listed issuer that there will be a release and specifies the time for release. A media advisory can also be released at this time.
- The issuer may consider requesting a halt in trading pending the release, but in the absence of hard information the financial product market may refuse to grant a request for a halt. If the Government is confident the release is likely to be material to the listed issuer, this should be made clear in order to help the issuer obtain a trading halt and avoid the market trading before the issuer can release the information under its continuous disclosure obligations.
- At say **3:00pm** the press release or statement is issued and the information is provided to the listed issuer and business media outlets.
- The issuer then complies with any continuous disclosure obligations and/or seeks a trading halt, but there may be trading in the meantime if a halt has not been granted prior to the Government's release.



## Appendix 2: Recommended text for instantaneous communication – letters and emails

### Option 1: Content of announcement is provided to the listed issuer

Chief Executive (or General Counsel)  
[Listed Issuer]

#### [SUBJECT MATTER OF ANNOUNCEMENT]

On [date and time] the Government will release [describe the information being released and how it is being released]. The release will contain information about [describe the policy or facts contained in the release].

**Attached** to this letter is a copy of the release. It is provided to [name of listed issuer] on the basis that it may constitute material information for the purposes of the Financial Markets Conduct Act 2013. It is your responsibility to assess whether the release contains material information that will require disclosure in accordance with [listed issuer's name] continuous disclosure obligations.

**The information in this letter and attachments is provided in confidence and is embargoed until [date and time of release].**

The Financial Markets Conduct Act 2013 prohibits insider trading, and provides for fines and potential imprisonment for information insiders who trade, or advise other persons to trade or hold quoted financial products of a listed issuer or quoted derivatives. Contravening these prohibitions can also result in civil pecuniary penalties and a requirement to pay compensation. You may only act on or disclose inside information contained in this letter in accordance with the law.

Yours sincerely  
[Relevant official]

### Option 2: Content of announcement is not provided to the listed issuer

Chief Executive (or General Counsel)  
[Listed Issuer]

#### [GENERAL REFERENCE]

On [date and time] the Government will be releasing a press statement [or conducting a press conference at [venue]] in which it will be announcing its decisions in relation to [general reference only].

[Name of listed issuer] will be provided with a copy of the statement once it has been released.

[Name of listed issuer] is being notified in advance to enable [name of listed issuer] to take any action as it sees fit. Such action could include seeking a halt in the trading of [listed issuer's name] quoted financial products or derivatives.

Media agencies have also been advised that this announcement is to take place.

Yours sincerely  
[Relevant official]

**Template email to media agencies in both cases**

This is to advise that at [*time/date*] the [*relevant Minister*] will be issuing a press statement [or will be holding a press conference at *venue*] to announce the Government's decision(s) on [*subject matter*].