

# **Incitec Pivot Limited**

## Continuous Disclosure Policy

Adopted by the Board on 21 September 2006

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**INCITEC PIVOT LIMITED**  
**CONTINUOUS DISCLOSURE POLICY**

**1 INTRODUCTION**

Incitec Pivot is committed to the promotion of investor confidence by ensuring that trading in its securities takes place in an informed market.

**2 PURPOSE**

The purpose of this policy is to:

- (a) reinforce Incitec Pivot's commitment to the continuous disclosure obligations imposed by law and to describe the processes implemented by it to achieve compliance; and
- (b) outline Incitec Pivot's processes aimed at providing timely and accurate information to all shareholders and market participants.

**3 APPLICATION**

This policy applies to each company in the Incitec Pivot Group.

Companies in the Incitec Pivot Group other than Incitec Pivot should **not** report continuous disclosure matters direct to the ASX.

However the price of Incitec Pivot shares reflects the operations and performance of the Incitec Pivot Group as a whole. Accordingly, all companies in the Incitec Pivot Group have continuous disclosure obligations to Incitec Pivot.

**4 CONTINUOUS DISCLOSURE REPORTING OBLIGATIONS**

**4.1 Sources of Obligations**

Incitec Pivot has obligations under the Corporations Act 2001 (Cth) (in particular, **section 674** Corporations Act) and the ASX Listing Rules (particularly ASX Listing Rules **3.1** and **3.1B**) to keep the market informed of information which may have a material effect on the price or value of Incitec Pivot's securities. Incitec Pivot discharges these obligations by releasing information to the ASX in the form of an ASX release or disclosure in other relevant documents (eg Annual Report).

**4.2 ASX Disclosure Obligations**

- (a) ASX Listing Rule 3.1 and 3.1B

Incitec Pivot must immediately notify the ASX of:

*'any information of which Incitec Pivot is or becomes aware, concerning Incitec Pivot that a reasonable person would expect to have a material effect on the price or value of Incitec Pivot's shares.'*

- (b) ASX Listing Rule 15.7

Incitec Pivot must not release the abovementioned information to any person (eg analysts, institutional investors, or the media) until it has given the information to ASX and has received an acknowledgment that ASX has released the information to the market.

#### 4.3 Exceptions to ASX Disclosure Obligations

- (a) Exceptions

Disclosure is not required where **each** of the following conditions is and remains satisfied:

- (i) a reasonable person would not expect the information to be disclosed; **and**
- (ii) the information is confidential and the ASX has not formed the view that the information has ceased to be confidential; **and**
- (iii) **one or more** of the following conditions apply:
  - (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 Incitec Pivot; or
  - (E) the information is a trade secret.

As soon as any of these elements is no longer satisfied (for example the information is leaked or inappropriately discussed and therefore is no longer confidential), Incitec Pivot must immediately comply with its continuous disclosure obligations. The obligation to disclose the information arises even though two of the above three requirements are still satisfied.

- (b) **“Confidential”** means confidential as a matter of fact. Incitec Pivot may give confidential information to its advisers and will continue to satisfy the exception as Incitec Pivot retains control over the use and disclosure of the information. However, ASX would be likely to consider information has ceased to be confidential if the information, or part of it, becomes known either selectively or generally, whether inadvertently or deliberately. For example, where there is rumour circulating or media comments about the information and the rumour or comment is reasonably specific, this will generally indicate that confidentiality has been lost.

It is important that employees and advisers, who have access to information which is confidential, maintain the confidentiality of that information.

(c) **“Aware”** (ASX Listing Rule 19.12)

Incitec Pivot becomes **aware** of information if a director or executive officer has, or ought reasonably to have, come into possession of the information in the course of performance of their duties as a director or executive officer of Incitec Pivot.

(d) **“Generally Available Information”** (section 676 Corporations Act)

Information is generally available if:

- (i) it consists of a readily observable matter; or
- (ii) without limiting the generality of paragraph (i), both the following subparagraphs apply:
  - (A) 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 securities of a kind whose price or value might be affected by the information; and
  - (B) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed; or
- (iii) it consists of deductions, conclusions or inferences made or drawn from the information either or both of the following: a) information referred to in paragraph i; b) information made known as mentioned in subparagraph ii(A).

(e) **“Material Effect”** (section 677 Corporations Act)

Information has a material effect on the price or value of any of the classes of securities issued by Incitec Pivot if the information would, or would be likely to, influence persons who commonly invest in such securities in deciding whether or not to acquire or dispose of these securities.

(f) **Materiality Thresholds**

The following materiality thresholds have been developed to assist Incitec Pivot to comply with its continuous disclosure obligations. The thresholds are divided into two categories:

- qualitative; and
- quantitative.

Materiality thresholds make it easier to identify matters that clearly do not require disclosure. However, it is important to remember that a matter may be disclosable even if it does not come within the following categories.

(i) Qualitative test

Incitec Pivot must disclose any information that a reasonable person would expect to have a material effect on the price or value of any of the classes of securities issued by Incitec Pivot.

Such information could include, but is not limited to, matters involving:

- a change in the Incitec Pivot Group's financial forecast or expectation (ASX Listing Rule 3.1);
- changes in Incitec Pivot's senior management or auditors, or a proposal to change Incitec Pivot's auditor;
- any rating applied by a ratings agency to Incitec Pivot and any changes to such a rating;
- a proposed announcement to alter the Incitec Pivot Group's pricing policies;
- the appointment of a receiver, manager, liquidator or administrator in respect of any loan, trade credit, trade debt, borrowing or securities held by the Incitec Pivot Group (ASX Listing Rule 3.1);
- the approval or declaration of a dividend or distribution or a recommendation or decision that a dividend or distribution will not be declared (ASX Listing Rule 3.1);
- an agreement between any member of the Incitec Pivot Group and a director (or a related party of the director) (ASX Listing Rule 3.1);
- entry by any member of the Incitec Pivot Group into a new line of business or the discontinuance of a particular line of business;
- under or over subscription to an issue of securities (ASX Listing Rule 3.1);
- giving or receiving a notice of intention to make a takeover; and
- any criminal prosecutions against the Incitec Pivot Group or its management.

*Note: These examples do not provide an exhaustive list. You should include in your reports any matters which you think may be "price sensitive" or influence an investor's decision to buy or sell securities.*

(ii) Quantitative test

The following matters may also require disclosure:

- matters which may affect Incitec Pivot's revenue in any one year by 5%\* or more of the previous years' figures in real terms or forecasts if any given to the market;

- matters which may affect Incitec Pivot's assets or liabilities by 5%\* or more of the previous years' figures in real terms or forecasts if any given to the market;
- matters which may affect Incitec Pivot's after tax profits in any one year by 5%\* or more of the previous years' figures in real terms or forecasts if any given to the market;
- matters involving any claim against Incitec Pivot or a company controlled by Incitec Pivot exceeding 5%\* of Incitec Pivot's consolidated assets (before tax); and
- a transaction for which the amount payable or receivable is a significant proportion of the written down value of Incitec Pivot's consolidated assets (normally, an amount of 5% or more would be significant, but a smaller amount may be significant in a particular case) (ASX Listing Rule 3.1).

(g) **Examples of What Does Not Need Disclosure:**

Documents such as Incitec Pivot's corporate strategic plan or similar internal working papers **do not** need to be disclosed. Nor do truly preliminary discussions with other parties about possible transactions. Information about such matters is insufficiently definite or merely a matter of supposition.

However if such documents or information **are** disclosed outside the Incitec Pivot Group **they will cease to be confidential so that disclosure must be made**. It is therefore important that such documents or discussions are kept to a "need to know" basis within the Incitec Pivot Group so as to minimise the chances of an inadvertent disclosure.

## 5 REPORTING PROCESSES – OBLIGATIONS ON MANAGEMENT

The Company Secretary is responsible for ensuring that all Board decisions that must be disclosed are dealt with by an appropriate Company announcement.

Individual Directors (other than the Managing Director & CEO) will not often be aware of information other than that available to the Board as a whole that is not otherwise dealt with through these reporting processes. If a Director is in doubt about information they should discuss the matter with the Company Secretary or the Managing Director & CEO.

Members of the Executive Team and Senior Managers reporting to the Executive Team must **immediately** notify the Company Secretary as soon as they become aware of information that should be considered for release to the market.

As soon as a member of the Executive Team or Senior Manager becomes aware of information that:

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\* A smaller amount may be significant in a particular case.

- is not generally available (ie the information in question has not been included in any Annual Report, ASX Release or other publication of the Company); and
- which may be price sensitive (ie it is likely to have a financial or reputational impact upon the Company that may be considered material),

they must provide to the Company Secretary the following information:

- a general description of the matter;
- details of the parties involved;
- the relevant date of the event or transaction;
- the status of the matter (eg final/negotiations still in progress/preliminary negotiations only);
- the estimated value of the transaction;
- the estimated effect on Incitec Pivot's finances or operations; and
- the names of any in-house or external advisers involved in the matter.

The Company Secretary will:

- (i) review the information provided by the Executive Team or Senior Managers as appropriate;
- (ii) determine, in consultation with the Managing Director & CEO or the Finance Director & CFO or the Board of Directors, whether the matter is to be disclosed; and
- (iii) co-ordinate the actual form of disclosure with the relevant members of management.

## **6 ANNOUNCEMENTS OR DISCLOSURES**

### **6.1 Timing**

Information that is for release to the market must be publicly released to the ASX **before** disclosing it to journalists (even on an embargoed basis), analysts, institutional investors or any other person outside the Incitec Pivot Group.

As soon as possible after the ASX confirms an announcement, the announcement should be posted on Incitec Pivot's website under the "Announcements" area of the Investor Relations page. This is a separate area from promotional material about any member of the Incitec Pivot Group or its products.

### **6.2 Analyst/Media Briefings**

All inquiries and requests for information from analysts must be referred to the Finance Director & CFO or the Company Secretary.

Material information must not be selectively disclosed (for example to analysts, the media or customers) prior to being announced to the ASX. Where practical the Company Secretary should be informed of the information proposed to be disclosed in advance, including information to be presented at analyst/media briefings. Any material information to be provided to analysts, journalists or customers, including material to be presented at an analyst briefing must be approved by or referred through the Finance Director & CFO and Company Secretary.

**No one in the Incitec Pivot Group is to speak to analysts and institutional investors unless one of the following is present or has given authority to do so:**

- **Managing Director & CEO;**
- **Finance Director & CFO; or**
- **Company Secretary.**

All inquiries from the media must be referred to the Corporate Affairs Manager. All media releases that may be of a price sensitive or material nature must be approved by or referred through the Finance Director & CFO/Company Secretary and Corporate Affairs Manager prior to release to journalists. All other media releases must be approved by or referred to the Corporate Affairs Manager prior to release to journalists.

Slides and presentations to be used in analyst or media briefings must be given to the ASX prior to the briefing and posted on the Incitec Pivot website after confirmation of release by the ASX.

**Enquiries by journalists that may be of a price sensitive or material nature must be discussed with the Company Secretary before information is provided, this includes all press releases by the Incitec Pivot Group which may be of a price sensitive or material nature. All persons in the Incitec Pivot Group should treat information about the Incitec Pivot Group and its business as confidential.**

### **6.3 Approved Spokesperson**

Only authorised spokespersons: Chairman, Managing Director & CEO and Finance Director & CFO (or their delegates nominated for that purpose), may speak on the Incitec Pivot Group's behalf on financial matters. An authorised spokesperson must ensure that they are aware of the information that has been disclosed to the ASX before making any disclosure of price sensitive information.

An authorised spokesperson may discuss information that Incitec Pivot has already released publicly through the ASX, but the authorised spokesperson should avoid commenting on other price sensitive matters.

Comments by the authorised spokesperson on market analysts' financial projections should be confined to errors in factual information. Any response which may suggest that the Incitec Pivot Group's or the market's current projections are incorrect should be avoided. Any change in expectations should be released to the ASX before commenting to anyone outside the Incitec Pivot Group.

If a question by a person outside the Incitec Pivot Group can only be answered by disclosing unreleased price sensitive information, the question must not be answered or

should be taken on notice. The information must be released to the ASX before responding.

If an inadvertent disclosure by an authorised spokesperson or other person occurs, the Company Secretary must be notified immediately. If the disclosed information is price sensitive it must be released to the ASX and then posted on Incitec Pivot's website. If the information is not price sensitive it may nevertheless be preferable to post it on Incitec Pivot's website in order that everyone has access to the same information.

#### **6.4 Interview/Briefing Black-out Period**

No employee may give an interview or make a presentation in the two month period leading up to the annual results announcement or in the one month period before the publication of any other results or outlook without the specific permission of the Managing Director & CEO or the Finance Director & CFO.

#### **6.5 Review**

Subsequent to briefings and discussions with analysts and others outside the Incitec Pivot Group, there should be a review process by the members of the Incitec Pivot Group involved to ensure that no information had been inadvertently disclosed. If information has been inadvertently disclosed, the Company Secretary must be notified immediately. If the disclosed information is price sensitive it must be released to the ASX and then posted on Incitec Pivot's website. If the information is not price sensitive it may nevertheless be preferable to post it on Incitec Pivot's website in order that everyone has access to the same information.

#### **6.6 False Market**

A false market could arise through a variety of circumstances, such as guesswork of media relating to information that is not yet disclosed because the exception rule under ASX Listing Rule **3.1A** applies (e.g. information concerns an incomplete proposal or negotiation). If the comment is inaccurate or only partly accurate this may result in a false market.

If ASX considers that there is or is likely to be a false market, it will tell Incitec Pivot immediately and Incitec Pivot must give the information that ASX asks for to correct or prevent the false market. In effect, Incitec Pivot may be asked to confirm or deny matters that may be unfounded or still subject to negotiation.

Incitec Pivot must disclose the information needed to correct or prevent a false market because it would, or would be likely to, influence persons who commonly invest in Incitec Pivot deciding whether or not to buy, hold or sell. The obligation to give information arises even if the exceptions apply. ASX would consider that there is or is likely to be false market in the following circumstances:

- Incitec Pivot has information that has not been released to the market, eg because all of the limbs to the exceptions are satisfied; and
- there is reasonably specific rumour or media comment in relation to Incitec Pivot that has not been confirmed or clarified by Incitec Pivot; and
- there is evidence that the rumour or comment is having, or ASX forms the view that it is likely to have, an impact on the price of Incitec Pivot's shares.

## **6.7 Market Speculation and Rumours**

Market speculation and rumours, whether substantiated or not, have the potential to impact Incitec Pivot.

Incitec Pivot's general policy on responding to market speculation and rumours is that the company does not respond to market speculation or rumours (unless formally requested by the ASX). Employees must observe this policy at all times.

However, Incitec Pivot may wish to provide a response that corrects speculation if it contains factual errors that could materially affect the company.

## **6.8 Relationship Between “Continuous” Disclosure and “Structured” Disclosure**

In the course of preparing “structured” disclosure documents (for example, periodic financial reports), Incitec Pivot may become aware of material information previously unknown to it, or information, which was previously insufficiently definite to warrant disclosure, may become more precise. Separate disclosure of the information will be required if the structured disclosure document is not ready for release when disclosure of the information must be made under Listing Rule 3.1.

## **7 CONTRAVENTION & PENALTIES**

### **7.1 Contravention**

Incitec Pivot contravenes its Australian continuous disclosure obligations if it fails to notify the ASX of the information required by Listing Rule 3.1 to be disclosed. If Incitec Pivot contravenes this obligation intentionally, recklessly or negligently by failing to notify the ASX of information:

- that is not generally available; and
- that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of securities issued by Incitec Pivot,

it, and its officers, may be guilty of an offence under the Corporations Act.

### **7.2 Liability and Enforcement – Penalties for Breach**

#### **(a) Incitec Pivot**

If Incitec Pivot contravenes its continuous disclosure obligations, it may face:

- if the contravention is intentional or reckless – criminal liability with a monetary fine;
- civil liability for any loss or damage suffered by any person as a result of Incitec Pivot's failure to disclose relevant information to the ASX; and
- de-listing from the ASX.

ASIC can also institute proceedings under the ASIC Act 1989.

(b) **Others**

Incitec Pivot's officers (including its directors), employees or advisers who are involved in the contravention by Incitec Pivot, may also face criminal (monetary fine and/or 5 years imprisonment) and civil liability as outlined above.

### **7.3 Enforcement**

The court has power under the Corporations Act to order Incitec Pivot and its Directors to comply with the Listing Rules on the application of the ASX, ASIC or an aggrieved person (for example, Incitec Pivot's shareholders (section 793C Corporations Act)).

### **7.4 Unwanted Publicity**

Contravention of its continuous disclosure obligations may also lead to unwanted publicity for Incitec Pivot.

## **8 CONTINUOUS DISCLOSURE OFFICER**

### **8.1 Management of the Policy**

ASIC and ASX have issued guidance notes which suggest practical steps that listed companies can take to ensure that they meet their continuous disclosure requirements, including:

- keeping to a minimum the number of directors and staff authorised to speak on Incitec Pivot's behalf;
- appointing a senior officer to have responsibility for ensuring compliance with Incitec Pivot's continuous disclosure obligations. This officer should be aware of information disclosures in advance, including information to be presented at private briefings;
- that procedures should be implemented which will ensure that price sensitive information is released first to the ASX before disclosing it to others outside Incitec Pivot; and
- posting information on Incitec Pivot's website as soon as practical after the ASX confirms release to the market, thereby making the information accessible to the widest audience of investors.

Incitec Pivot has nominated the Company Secretary as the "Continuous Disclosure Officer" that is, the person with primary responsibility for all communication with the ASX in relation to Listing Rule matters.

### **8.2 Specific Responsibilities**

The responsibilities of the Company Secretary as Continuous Disclosure Officer are to:

- (a) liaise with the ASX in relation to continuous disclosure issues;

- (b) ensure that there is an adequate system in place for the disclosure of all material information to the ASX, analysts, brokers, shareholders, the media and the public in a timely fashion;
- (c) review information provided to determine if there is a disclosable matter and, if so, whether the matter involves any confidential aspects;
- (d) review all proposed announcements by Incitec Pivot to the ASX;
- (e) liaise with the Managing Director & CEO, Finance Director & CFO and the Board of Directors, in relation to the disclosure of information;
- (f) ensure that there is an adequate system in place within Incitec Pivot for updating prospectuses in relation to any of the classes of securities issued by Incitec Pivot;
- (g) prepare a regular disclosure report to the Board of Incitec Pivot;
- (h) keep a list of relevant matters (including for example negotiations, internal matters and incomplete matters) in order to monitor disclosure;
- (i) update this Policy as appropriate or otherwise at least every 12 months and whenever there is a change to:
  - (i) an ASX continuous disclosure rule;
  - (ii) a relevant ASIC requirement;
  - (iii) a relevant requirement of foreign regulatory body (such as the US Securities Exchange Commission).

It will be the responsibility of the Company Secretary to determine if the material or the content of any particular announcement must be cleared by the Managing Director & CEO or the Finance Director & CFO, the Board of Directors or an appropriate sub-committee of the Board prior to releasing it to the ASX or a relevant foreign regulatory body.

### **8.3 Reporting to the Board**

The Company Secretary will prepare regular reports to Incitec Pivot's Board, which advise the Board of:

- (a) all material matters considered by the Company Secretary and the form of disclosure, if any. This disclosure can be in summary form; and
- (b) any material changes to the process set out in this Policy.

### **8.4 Education**

The Company Secretary must arrange for presentations to relevant senior management and employees to make them aware of:

- (a) the obligations of Incitec Pivot in relation to its reporting obligations; and
- (b) the procedures set out in this Policy.

## ANNEXURE A – Information Disclosure Requirements

Incitec Pivot must disclose any information that a reasonable person would expect to have a material effect on the price or value of securities issued by Incitec Pivot. Set out below is an illustrative list of matters that may give rise to an obligation to make disclosure to the market. You should not take this as an exhaustive list of the issues that must be disclosed.

Relevant information/matter	
1.	The financial condition, results of operations, company issued forecasts and earning performance of Incitec Pivot or a controlled entity, which are significantly different from that anticipated by Incitec Pivot or the market;
2.	A proposed acquisition or disposition of material assets to be announced by Incitec Pivot, a controlled entity or joint venture partner;
3.	Significant foreign activities (or significant proposed foreign activities), by Incitec Pivot or a controlled entity;
4.	Events or occurrences that have an impact on the operations of Incitec Pivot or a controlled entity;
5.	Natural disasters or accidents that have particular relevance to the businesses of the Company or its suppliers;
6.	Significant changes in technology or the application of technology which could affect business;
7.	A proposed announcement to alter pricing or tariff policies;
8.	Legal proceedings against or allegation of any breach of the law, whether civil or criminal, by Incitec Pivot or any of its employees;
9.	Any notification by a Ratings Agency that it will review the credit rating of Incitec Pivot;
10.	A change in Incitec Pivot's financial forecast or expectation;
11.	The appointment of a receiver, manager, liquidator or administrator in respect of any loan, trade credit, trade debt, borrowing or securities held by Incitec Pivot or any controlled entity;
12.	An agreement between Incitec Pivot (or a related party or subsidiary) and a director (or a related party of the director);
13.	Changes in Incitec Pivot's senior management or auditors;
14.	Any significant negative publicity;
15.	Entry by Incitec Pivot or a company controlled by Incitec Pivot into a new line of business or the discontinuance of a particular line of business; and
16.	Planning to undertake a significant financing or security issue (whether debt or equity) or to take other action with respect to outstanding securities (eg share repurchase program, redemption of bonds) or any default on any securities.

*Note: These examples are not an exhaustive list. You should notify any matters which you think may be "price sensitive" or influence an investor's decision to buy or sell securities.*