

# **Pacific Brands Limited**

**ABN 64 106 773 059**

## **Continuous Disclosure Policy**

**Adopted by the Board on 1 March 2004, amended on 26 July 2005 and 8 December 2009**

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## 1 Introduction

This policy sets out Pacific Brands Limited's (**Pacific Brands**) practice in relation to continuous disclosure.

This policy sets out the procedure for:

- senior management identifying material price sensitive information;
- reporting such information to the Company Secretary for review;
- ensuring Pacific Brands achieves best practice in complying with its continuous disclosure obligations under the Corporations Act and ASX and NZX Listing Rules; and
- ensuring Pacific Brands and individual officers do not contravene the Corporations Act or ASX or NZX Listing Rules (which carry serious penalties).

The insider trading provisions of the Corporations Act and the New Zealand Securities Markets Act may apply to an action being contemplated by Pacific Brands, such as a capital raising or rights issue, and in these circumstances a higher level of disclosure may be required.

This Continuous Disclosure Policy does not address guidelines for directors, senior officers and employees in buying and selling Pacific Brands' shares, which are set out in the separate policy "Guidelines for dealing in securities".

This policy or a summary of it will be made available to directors, senior officers and employees to help them understand Pacific Brands' continuous disclosure obligations, their individual reporting responsibilities and the need to keep Pacific Brands' information confidential.

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## 2 Continuous Disclosure Policy

Pacific Brands has obligations under the Corporations Act and ASX and NZX Listing Rules to keep the market fully informed of information which may have a material effect on the price or value of Pacific Brands' securities and to correct any material mistake or misinformation in the market. Pacific Brands discharges these obligations by releasing information to the ASX and NZX in the form of an ASX/NZX release or disclosure in other relevant documents (eg the Annual Report).

Information must not be selectively disclosed (ie to analysts, the media or customers) before it is announced to the ASX and NZX.

### 2.1 The policy

The following procedures will continue to apply to safeguard against inadvertent breaches of Pacific Brands' continuous disclosure obligations:

- (a) directors and senior management must notify the Company Secretary/General Counsel (**Company Secretary**) as soon as they become aware of information that should be considered for release to the market (**material information**);

- (b) the Company Secretary will:
- (1) review the material information reported by senior management;
  - (2) determine, in consultation with the Chief Financial & Operating Officer (**CF&OO**), Chief Executive Officer (**CEO**), the Chairman or other members of senior management as the Company Secretary thinks necessary to reach a decision, whether any of the material information is required to be disclosed to the ASX and NZX; and
  - (3) co-ordinate the actual form of disclosure with the CF&OO, CEO and the Chairman.
- (c) if the Company Secretary is unable to undertake his responsibilities under 2.1(b) at any time (eg he is on annual leave or sick leave), the CF&OO will assume his role during such absences.

## **2.2 Your obligations**

As soon as you become aware of information that:

- is not generally available (ie the information in question has not been included in any Annual Report, ASX/NZX 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),

you 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 expenditure associated with the transaction;
- the estimated effect on Pacific Brands' finances or operations (if known); and
- the names of any in-house or external advisers involved in the matter.

If there is any change in the information, you must notify the Company Secretary of the change.

## **2.3 Analyst/Media Briefings**

Information provided to, and discussions with, analysts are also subject to the continuous disclosure policy. These discussions may only be undertaken by the CEO, the CF&OO, the Chairman or other senior executives approved by the CEO.

Material information must not be selectively disclosed (ie to analysts, the media or customers) prior to being announced to the ASX and NZX. If you are proposing to present any material information to analysts, journalists or customers, you must

ensure that copies of your material are provided to the Company Secretary and the Investor Relations Manager prior to presenting that information externally (and within sufficient time to enable a proper review to be undertaken before the presentation).

All inquiries from analysts must be referred to the Investor Relations Manager.

If an analyst sends a draft report to Pacific Brands for comment:

- employees must immediately send it to the Company Secretary and the Investor Relations Manager;
- any response to it will not include price-sensitive information that has not been disclosed to the market;
- it will only be reviewed to correct factual inaccuracies on historical matters; and
- no comment will be made on any profit forecasts contained in it.

Any correction of a factual inaccuracy does not imply that Pacific Brands endorses a report. A standard disclaimer provided by the Company Secretary will be made in response to an analyst.

All material to be presented at an analyst briefing or other public forum (for example at seminars) must be approved by the Company Secretary and the Investor Relations Manager prior to presentation to determine if they contain any price-sensitive information that has not been released to the market.

The different disclosure procedures that apply to open briefings and one-on-one briefings are discussed at 2.4 and 2.5.

All inquiries from the media must be referred to the Investor Relations Manager. All media releases must be approved by the Company Secretary and the Investor Relations Manager prior to release to journalists or other professional bodies.

## **2.4 Open briefings to institutional investors and stockbroking analysts**

Pacific Brands may hold open briefings with institutional investors or stockbroking analysts to discuss information that has been released to the market. Any materials presented at these briefings should first be released through the Company Secretary to the ASX.

For the purposes of this policy:

- public speeches and presentations by the chief executive officer or CF&OO are open briefings;
- any major speech or presentation that relates to Pacific Brands' business should also first be released to the market; and
- any meeting that is not an open briefing is a one-on-one briefing.

If a question raised in a briefing can only be answered by disclosing price-sensitive information, employees must:

- decline to answer the question; or

- take the question on notice and wait until Pacific Brands releases the information to the market through ASX.

If an employee participating in a briefing thinks that something has been raised that might be price-sensitive information that has not been publicly released, he or she must immediately inform the Company Secretary and the Investor Relations Manager.

## **2.5 One-on-one briefings with institutional investors and stockbroking analysts**

It is in the interests of shareholders that institutional investors and stockbroking analysts have a thorough understanding of Pacific Brands' business, operations and activities.

For the purposes of this policy, a one-on-one meeting includes any communication between Pacific Brands and an institutional investor or stockbroking analyst.

Pacific Brands may hold one-on-one briefings with institutional investors and stockbroking analysts. These presentations may only be conducted by the CEO, the CF&OO and/or the Investor Relations Manager or other senior executives approved by the CEO. At these briefings Pacific Brands may give background and technical information to help institutional investors and stockbroking analysts better understand its business operations and activities.

Price-sensitive information that has not been released to the market must not be disclosed at one-on-one briefings.

If an employee participating in a one-on-one briefing thinks that something has been raised that might be price-sensitive information that has not been publicly released, he or she must immediately inform the Company Secretary and the Investor Relations Manager.

Before any series of one-on-one meetings, the Company will inform the market about the content of one-on-one briefings through ASX.

## **2.6 Interview / Briefing black-out period**

No employee may give an interview or make a presentation in the 2 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 CEO.

Any person who is given permission by the CEO to give an interview or make a presentation must notify the Company Secretary of the date and time for the interview and must give a copy of any presentation to the Company Secretary.

Additional periods in which interviews may not be given or in which presentations may not be made without the specific permission of the CEO may be imposed. Relevant persons will be notified of any such additional interview/briefing black-out period.

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## 3 Legal obligations

### 3.1 Introduction

The Corporations Act and the ASX and NZX Listing Rules require Pacific Brands, as a company listed on the ASX and NZX, to comply with continuous disclosure obligations.

### 3.2 Disclosure obligations

#### (a) ASX Listing Rule 3.1/ NZX Listing Rule 5.1.6(c)

ASX Listing Rule 3.1 requires that Pacific Brands immediately notify the ASX of:

*Any information of which Pacific Brands becomes aware, concerning Pacific Brands that a reasonable person would expect to have a material effect on the price or value of any securities issued by Pacific Brands*

NZX Listing Rule 5.1.6(c) requires that Pacific Brands must give the same notices and information to the NZX as it gives to the ASX at the same time that notice and/or information is given to the ASX.

#### (b) Material effect on the price of securities

A reasonable person is taken to expect information to have a *material effect* on the price or value of securities if it would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the securities.

In forming a view as to whether a reasonable person would consider information to be material, previous disclosure to the market should be considered, for example previously released profit expectations, commentary on likely results, or detailed business plans or strategies to the market. A list of matters that may be considered material is set out in Annexure A. This list is merely indicative and should not be seen as an exhaustive list of the matters that should be considered for disclosure.

If in doubt, the information should be disclosed to the Company Secretary.

#### (c) Information in Pacific Brands' knowledge

Pacific Brands becomes *aware of information* if any of its directors or officers has, or ought reasonably to have, come into possession of the information in the course of the performance of his or her duties as a director or executive officer of Pacific Brands.

Once a director or officer becomes aware of information he or she must immediately consider whether the information should be given to ASX. If in doubt, you should consult with the Company Secretary to clarify whether any information is price sensitive.

The disclosure obligation does not apply where the information is “generally available”. Information is considered to be generally available if:

- (1) it consists of a readily observable matter; or
- (2) 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 any of the classes of securities issued by Pacific Brands and a reasonable period for it to be disseminated among such persons has elapsed; or
- (3) it consists of deductions, conclusions or inferences made or drawn from other information that is generally available.

For example, information will be “generally available” if it has been released to the ASX and the NZX, published in an Annual Report or prospectus or otherwise been made generally available to the investing public and a reasonable time has elapsed after the information has been disseminated in one of these ways.

**(d) Release of information to others**

Pacific Brands must not release the material price sensitive information to any person (eg brokers, analysts, the media, professional bodies or any other person) until it has given the information to the ASX and NZX and has received an acknowledgement that the ASX and NZX have released the information to the market.

### **3.3 Exceptions to ASX/NZX disclosure obligations**

Disclosure under ASX Listing Rule 3.1 and NZX Listing Rule 5.1.6(c) is not required where *each* of the following conditions is and remains satisfied:

- (1) a reasonable person would not expect the information to be disclosed; *and*
- (2) the information is confidential and ASX has not formed the view that the information has ceased to be confidential; *and*
- (3) *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 solely for the internal management purposes of Pacific Brands; or
  - (E) the information is a trade secret.

As soon as any of the three conditions are no longer satisfied (for example, the information is reported in the media and is therefore no longer confidential), Pacific Brands must immediately comply with its continuous disclosure obligations.

On receiving details of material information from directors or senior management, the Company Secretary will determine (in consultation with the CF&OO, CEO, the Chairman and other members of the senior management as the Company Secretary thinks necessary to reach a decision) whether the material information is required to be disclosed, or whether the above exception applies.

Confidentiality will be lost if the information becomes known (eg it is leaked) either selectively or generally, whether inadvertently or deliberately. Pacific Brands should also ensure that employees and third parties having access to the confidential information are made aware of and commit to observe the confidentiality of the information.

The exception in the Listing Rules cannot be relied upon if there is a period of self-dealing (for example, during a share buy-back).

It is important that directors and senior management continue to disclose *all* material information to the Company Secretary, regardless of whether they consider the conditions set above to be satisfied. If in doubt, directors and senior management should consult with the Company Secretary to clarify whether any information is price sensitive.

### **3.4 False markets**

If ASX considers that there is likely to be a false market in Pacific Brands' securities and asks Pacific Brands to give it information to correct or prevent a false market, then Pacific Brands must give ASX and NZX the information needed to correct or prevent the false market (ASX Listing Rule 3.1B/NZX Listing Rule 5.1.6(c)). Pacific Brands is also required to make a clarifying statement to the ASX and NZX in circumstances where Pacific Brands becomes aware that speculation or comment is, or is likely to, create a false market in Pacific Brands' securities.

The obligation to give information under this rule applies even where an exception described above in part 3.3 applies.

The ASX does not expect Pacific Brands to respond to all media comment and speculation. However, when:

- media comment or speculation becomes reasonably specific; or
- there is evidence that, or ASX forms the view that, the rumour or comment is likely to have an impact on the price of Pacific Brands' securities, for example, the market moves in a way that appears to be referable to the comment or speculation,

Pacific Brands has a positive obligation to make disclosure to prevent a false market being formed. If any director or senior management believe there may be a false market, they should consult with the Company Secretary immediately.

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## **4 Management of the Policy**

### **4.1 ASIC/ASX guidance**

The 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.

The ASIC guidance note suggests:

- keeping to a minimum the number of directors and staff authorised to speak on Pacific Brands' behalf;
- appointing a senior officer to have responsibility for ensuring compliance with Pacific Brands' continuous disclosure obligations. This officer should be aware of information disclosures in advance, including information to be presented at private briefings; and
- that procedures should be implemented which will ensure that price sensitive information is released first to the ASX before disclosing it to others outside Pacific Brands.

Pacific Brands has nominated the Company Secretary as the person with primary responsibility for all communication with the ASX and NZX. Those entitled to speak on behalf of Pacific Brands to analysts and investors are the CEO, the CF&OO, the Chairman and other senior executives so authorised by the CEO.

## 4.2 Specific Responsibilities

The Company Secretary is responsible for:

- (a) liaising with the ASX and NZX in relation to continuous disclosure issues;
- (b) ensuring that the system for the disclosure of all material information to the ASX and NZX in a timely fashion is operating;
- (c) co-ordinate the actual form of disclosure, including reviewing proposed announcements by Pacific Brands to the ASX and NZX and liaising with the CF&OO, CEO, Chairman or other relevant executives in relation to the form of any ASX and NZX releases;
- (d) liaising with executives and the Board of Directors, as appropriate, in relation to the disclosure of information and ensuring they understand their obligations and responsibilities;
- (e) ensuring officers and employees are aware of and adequately understand:
  - (1) the continuous disclosure obligations;
  - (2) their responsibilities in relation to the continuous disclosure obligations and to protect the confidentiality of information (including, when instructing advisers or conducting negotiations in relation to any matter that may give rise to price-sensitive information); and
  - (3) this policy;
- (f) if necessary, implementing training sessions for officers and employees in relation to the continuous disclosure obligations, their responsibilities in relation to those obligations and the protection of confidential information and this policy;
- (g) implementing and supervising procedures for reporting potentially price-sensitive information;
- (h) ensuring (using all reasonable endeavours) in consultation with the Chief Financial & Operating Officer (**CF&OO**), Chief Executive Officer (**CEO**),

the Chairman or other members of senior management that announcements are factual, do not omit material information and are expressed in a clear and objective manner that allows investors to assess the impact of the information when making investment decisions;

- (i) keeping a record of all ASX and NZX and other releases that have been made;
- (j) periodically reviewing Pacific Brands' disclosure procedures in light of changes to the ASX or NZX Listing Rules or to the Corporations Act or the New Zealand Securities Markets Act and recommending any necessary changes to the procedures;

Any highly strategic or key announcements relating to Pacific Brands should be approved by the Board of Directors and not delegated to any sub-committee for approval prior to disclosure. In such circumstances, the Company Secretary will use best endeavours to arrange for a Board meeting to be held in a timeframe necessary to enable Pacific Brands to meet its continuous disclosure obligations.

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## 5 Contraventions and penalties

### 5.1 Contravention

Pacific Brands contravenes its continuous disclosure obligations if it fails to notify the ASX/NZX of the information required by ASX Listing Rule 3.1 or NZX Listing Rule 5.1.6(c).

Regulatory action is likely to be taken against Pacific Brands (and potentially, involved officers of Pacific Brands) in relation to a suspected contravention.

Allegations of a contravention of its continuous disclosure obligations will also lead to unwanted publicity for Pacific Brands and will cause damage to its reputation and the company's relationship with the regulators.

### 5.2 Liability and enforcement – penalties for breach

#### (a) Pacific Brands

If Pacific Brands contravenes its continuous disclosure obligations, it may face:

- criminal liability in Australia which attracts substantial monetary fines;
- civil liability in Australia or New Zealand for any loss or damage suffered by any person as a result of Pacific Brands' failure to disclose relevant information to the ASX or NZX; and
- de-listing from the ASX or NZX.

There is a no fault element required to establish civil liability. However, a court has power to relieve a person from civil liability if the person acted honestly and in the circumstances the person ought fairly to be excused for the contravention.

The ASIC can also institute proceedings under the ASIC Act 1989.

ASIC also has power to issue an infringement notice to Pacific Brands where it has reasonable grounds to believe that Pacific Brands has contravened its continuous disclosure obligations (see section 6).

**(b) Persons involved in the contravention**

Pacific Brands' officers (including its directors), employees or advisers who are involved in the contravention by Pacific Brands, may also face criminal penalties and civil liability.

Substantial penalties or imprisonment or both, may apply.

**(c) Enforcement**

In Australia, the court also has power under the Corporations Act to order compliance with the Listing Rules on the application of the ASX, the ASIC or an aggrieved person (for example, a Pacific Brands shareholder (section 793C(2) Corporations Act)).

**(d) "Due diligence" defence**

A person will not be considered to be involved in the contravention if the person proves that they:

- took all reasonable steps to ensure that Pacific Brands complied with its continuous disclosure obligations; and
- after doing so, believed on reasonable grounds that Pacific Brands did comply with its continuous disclosure obligations.

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## **6 ASIC infringement notices**

### **6.1 ASIC's power to "fine"**

If ASIC has reasonable grounds to believe that Pacific Brands has failed to comply with its continuous disclosure obligations, it may issue an infringement notice to the company, providing details of the alleged contravention and requiring Pacific Brands to pay a penalty, as set out in the notice.

Prior to issuing the notice, ASIC would issue Pacific Brands with a written statement of reasons, and give the company an opportunity to appear at a private hearing before ASIC, give evidence and make submissions to ASIC in relation to the alleged contravention.

### **6.2 Procedure if ASIC initiates an "infringement notice" procedure**

If Pacific Brands receives a written statement of reasons or an infringement notice from ASIC, the Company Secretary will co-ordinate a response to be provided by the company (if any).

In such circumstances, Pacific Brands is required to respond urgently to ASIC and where members of senior management are consulted, they will be required to provide the Company Secretary with all necessary assistance.

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## Annexure A – Information Disclosure Requirements

Pacific Brands must disclose any information that a reasonable person would expect to have a material effect on the price or value of securities issued by Pacific Brands. Set out below is an illustrative list of matters that may give rise to an obligation to make disclosure. Any such matter must be notified to the Company Secretary, who will in conjunction with the CF&OO, CEO, Chairman or other members of senior management determine whether disclosure is required.

This list is a guide only of matters that may give rise to any obligation to make disclosure and should not be taken as an exhaustive list of issues to be disclosed.

<b>Relevant information / matter</b>	
1	the financial condition, results of operations, company issued forecasts and earning performance of Pacific Brands or a controlled entity, which are significantly different from that anticipated by Pacific Brands or the market;
2	a proposed acquisition or disposition of material assets to be announced by Pacific Brands, a controlled entity or joint venture partner;
3	significant foreign activities (or significant proposed foreign activities), by Pacific Brands or a controlled entity;
4	events or occurrences that have an impact on the operations of Pacific Brands or a controlled entity;
5	natural disasters or accidents that have particular relevance to the businesses of Pacific Brands or its suppliers;
6	significant changes in technology or the application of technology which could affect business;
7	a proposed announcement to alter pricing policies other than in the ordinary course of business;
8	resolving to pay a dividend, or that no dividend be paid;
9	a material change in accounting policy adopted by Pacific Brands;
10	legal proceedings against or allegation of any breach of the law, whether civil or criminal, by Pacific Brands or any of its employees (other than debt recovery proceedings or insured workers' compensation claims);
11	any notification by a Ratings Agency that it will review the credit rating of Pacific Brands;
12	the appointment of a receiver, manager, liquidator or administrator in respect of any loan, trade credit, trade debt, borrowing or securities held by Pacific Brands or any controlled entity;
13	changes in Pacific Brands' senior management or auditors;
14	any negative publicity;
15	entry by Pacific Brands or a company controlled by Pacific Brands 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.