



# **Continuous Disclosure Policy**

**Novita Healthcare Limited**

ABN 53 108 150 750

**Version 1.0 August 2017  
Confidential**

## NOVITA CONTINUOUS DISCLOSURE POLICY

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This Continuous Disclosure Policy comprises two parts:

- Part 1:**      **The legal position.** This section describes Novita's principal disclosure obligation and the consequences of a failure to disclose information.
- Part 2:**      **Reporting processes.** This section describes the system to be followed in identifying potentially discloseable information, reporting it internally and, if required, disclosing it to ASX.

## PART 1: THE LEGAL POSITION

### 1. Introduction

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As a public listed company, Novita Healthcare Limited (**Novita the Company**) is required to comply with a continuous disclosure obligation contained in the Listing Rules of Australian Stock Exchange Limited (**ASX**). This continuous disclosure obligation is complemented by requirements under the Corporations Act.

### 2. ASX Disclosure

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#### 2.1 Obligation

Under Listing Rule 3.1, Novita is required to notify the ASX immediately it is or becomes aware of:

*any information concerning it that a reasonable person would expect to have a material effect on the price or value of the Company's securities.*

Novita must not release this information to any other person (such as the media) until it has given the information to ASX and received an acknowledgement that ASX has released the information to the market (Listing Rule 15.7).

#### 2.2 The exception

Disclosure under Listing Rule 3.1 is not required where each of the following conditions is satisfied:

- (a) a reasonable person would not expect the information to be disclosed; and
- (b) the information is confidential and the ASX has not formed the view that the information has ceased to be confidential; and
- (c) one or more of the following applies:
  - (i) it would be a breach of a law to disclose the information;
  - (ii) the information concerns an incomplete proposal or negotiation;
  - (iii) the information comprises matters of supposition or is insufficiently definite to warrant disclosure;
  - (iv) the information is generated for the internal management purposes of the Company; or
  - (v) the information is a tradeseecret.

Novita must meet its continuous disclosure obligation as soon as one of the requirements is no longer satisfied.

For example, any information which is not confidential does not qualify for the exceptions listed above. It is therefore essential that information which is to be

withheld is and remains subject to strict confidentiality obligations **and is not leaked**.

If the information has been leaked, even as a result of a breach of confidentiality, it is no longer confidential, and disclosure of the information to ASX will be required.

In any event, information will have to be disclosed if a reasonable person would expect it to be disclosed - regardless of the fact that it is confidential and falls within any of the categories in paragraph (c) above (eg, is a trade secret or relates to an incomplete proposal).

### 2.3 False market

Under Listing Rule 3.1B, if the ASX considers that there is or is likely to be a false market in Novita's securities and asks Novita to provide information to it to correct or prevent a false market, Novita must provide the information. Novita is required to give the ASX this information even if the exception described in section 2.2 above applies.

The ASX has stated, in a note to Listing Rule 3.1B, that it would consider that there is or is likely to be a false market in a company's securities if:

- (a) the company has information that has not been released to the market (for example because the exception described in section 2.2 above applies);
- (b) there is reasonably specific rumour or media comment in relation to the company that has not been confirmed or clarified by an announcement to the market; and
- (c) there is evidence that the rumour or comment is having, or the ASX forms a view that the rumour or comment is likely to have, an impact on the price of the company's securities.

### 2.4 When is Novita aware of information?

Under ASX Listing Rule 19.12, Novita becomes aware of information if a director or executive officer of Novita has, or ought reasonably to have, come into possession of information in the course of the performance of their duties as a director or executive officer of Novita.

The words emphasised import into this obligation its twofold character: The disclosure obligation applies not only to information of which the directors or officers are actually aware, but also information which those persons ought reasonably to have.

Accordingly, whenever a director or executive officer is in possession of information which may have a material effect on the price or value of Novita's shares, it is critical that the information is immediately communicated in accordance with this policy.

## 2.5 Materiality

The measure used in Listing Rule 3.1, whether a reasonable person would expect the information to have a material effect on the price or value of the company's securities, is the subject of a deeming provision in the Corporations Act (Section 677) and that same deeming provision applies to Listing Rule 3.1. As a result, a reasonable person is taken to expect particular information to have a material effect on the price or value of any of the company's securities if the information would, or would be likely to, influence persons who commonly invest in such securities in deciding whether to acquire or dispose of the securities.

## 2.6 Generally available information

Novita is not required to disclose information which is generally available. Information is generally available if:

- (a) it consists of a readily observable matter; or
- (b) without limiting the generality of paragraph (a):
  - (i) it has been made known in a manner that would, or would be likely to, bring it to the attention of the persons who commonly invest in any of the classes of securities issued by the company; and
  - (ii) since it was made so known, a reasonable period for it to be disseminated among such persons has elapsed.

Information is also generally available if it consists of deductions, conclusions or inferences made or drawn from the information referred to above.

## 3. Appointment of an authorised officer

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Novita has appointed the Company Secretary, Robyn Fry, as the nominated officer who has primary responsibility for administration of the Company's continuous disclosure policy. The nominated officer's primary responsibility is to ensure that Novita complies with its continuous disclosure requirements and to monitor compliance by the Company.

## 4. Contravention and Liability

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### 4.1 Contravention

Novita will contravene its continuous disclosure obligation if it fails to notify ASX of information required by Listing Rule 3.1 to be disclosed.

If Novita contravenes this obligation intentionally, recklessly or negligently by failing to notify the ASX of information, Novita and its officers may be guilty of an offence under the Corporations Act (Section 674).

### 4.2 Liability

If the Company contravenes its continuous disclosure obligations, it may face criminal

and civil liability under the Corporations Act. The Australian Securities and Investments Commission (**ASIC**) can also institute proceedings under the ASIC Act.

Novita's officers, including its directors, employees or advisers, who are involved in a contravention by the Company may face civil liability or, if they aid or abet, or are in any way knowingly concerned in, the Company's contravention, criminal liability under the Criminal Code.

#### **4.3 Enforcement**

The court has the power under the Corporations Act to order Novita and its directors to comply with the Listing Rules on the application of the ASX, ASIC or an aggrieved person (for example, a shareholder) (Section 1324(2) of the Corporations Act).

#### **4.4 Roles and responsibilities of ASX and ASIC**

ASIC and the ASX jointly administer the continuous disclosure regime for listed disclosing entities in Australia. The ASX is responsible for administering the Listing Rules while ASIC is responsible for enforcing the Corporations Act.

The ASX is required to notify ASIC where it believes that there is an actual or anticipated serious contravention of its Listing Rules.

### **5. ASX policy**

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The ASX has issued a Guidance Note in relation to the operation of Listing Rule 3.1. The Guidance Note sets out ASX's general approach to continuous disclosure. It should not be regarded as a definite statement of the application of Listing Rule 3.1 in every case, and should not be considered as legal advice.

#### **5.1 Information that a reasonable person would expect to be disclosed**

The Guidance Note states that a reasonable person would not expect information to be disclosed if it would result in unreasonable prejudice to the Company or an inordinate amount of detail being disclosed. In enforcing the Rule, the ASX will balance the needs of the market and the interests of the Company, bearing in mind the ASX's market information principle.

#### **5.2 When does a proposal become sufficiently complete or definite so that disclosure is required?**

Difficulties may arise in determining when an idea, exploratory meeting or proposal under development is sufficiently complete or definite to warrant disclosure.

The ASX states in the Guidance Note that it expects listed companies to consider making a holding announcement, imposing a trading halt or a suspension in trading of the Company's securities if a proposal is insufficiently complete or

definite to warrant disclosure.

### 5.3 Practice

Despite the fact that Listing Rule 3.1 is a benchmark for legal obligations and liability, the ASX takes the view that it should not be interpreted in a restrictive or legalistic fashion.

The ASX suggests a number of practices to be followed in relation to Listing Rule 3.1:

- Holding announcements or trading halts may be appropriate, even where an exception to the disclosure obligation applies (eg, for incomplete or uncertain proposals).
- Listed companies should respond to specific market rumours or those which cause market movement, even where no information can be provided other than denial of the rumours.
- Analysts must not be provided with any information which is material but not public.
- Information released to overseas markets must be provided simultaneously to the **ASX**.
- The fact that information about a company is widely known does not relieve the obligation to disclose it to the ASX. Press releases will need to be copied to the ASX if they contain any material information not already disclosed to the market.

## PART 2: REPORTING PROCESSES

### 1. Reporting obligations

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#### 1.2 Persons to whom events should be reported

In the performance of their duties as a director of Novita, directors who become aware of information that may have a material effect on the price or value of Novita's shares, should immediately notify the Chairman of that information. Executive officers and employees should immediately report any such information to the Chief Executive Officer.

It is critical to Novita's effective compliance with its continuous disclosure obligations that information is communicated internally in accordance with this policy by its directors, executive officers and employees as soon as they become aware of that information.

In all circumstances, if a director, executive officer or employee has any doubt as to whether information requires disclosure, they should err on the side of caution

and notify that information to the Chairman or Chief Executive Officer as required in accordance with this policy.

### 1.3 Process to determine if disclosure required

When a matter is reported by an executive officer or employee, the Chief Executive Officer will discuss the significance of the matter and possible disclosure responses with the Chairman. If the matter is required to be disclosed, the Chief Executive Officer will:

- Co-ordinate the preparation of a draft ASX announcement by management; and
- instruct the Company Secretary to circulate the draft announcement to the Board and any relevant external advisors for review.

On completion of the review process and receipt of the Chairman's approval and the Chief Executive Officer's instructions, the Company Secretary will disclose the information to the **ASX**.

When an acknowledgement has been received from the ASX that the information has been released to the market, the Chief Executive Officer will authorise management to release the information to the media and to post the information on the Company website as appropriate.

### 1.4 No selective disclosure

A corollary of the continuous disclosure obligation is that there be **no selective disclosure of price sensitive information**. All releases of price sensitive information must first be made through the ASX Company Announcement Platform. This ensures that the market as a whole has equal access to material information about Novita at the same time.

### 1.5 Protecting the confidentiality of information

The Company may choose not to disclose information about the Company that may have a material effect on the price or value of its shares, in reliance on the exception described in section 2.2 above. That exception only applies, however, if the information is kept confidential. Accordingly, each director, executive officer and employee of Novita who possesses price sensitive information about the Company that has not been disclosed to the ASX must protect and preserve the confidential nature of that information, including by:

- (b) refraining from discussing that information with, or divulging that information to, any person who is not authorised by the Company to receive that information; and
- (c) ensuring that any documents or other written material in their possession in relation to that information are properly and securely stored and are not disclosed to an unauthorised person.

If a director, executive officer or employee has any doubt as to whether information is

price sensitive or who is authorised to receive that information, he or she should discuss the matter with the Chairman or Chief Executive Officer.

## 2. Leaks, rumours and inadvertent disclosure of information

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### 2.1 Leaks, rumours and inadvertent disclosure; correcting a false market

The Company's general policy is not to respond to reports (or rumours) about it published by analysts, fund managers or reporters. From time to time, however, it may be necessary to respond to the unauthorised or selective disclosure of information or market rumours concerning the Company, particularly where the information or those rumours are having or are likely to have an impact on the price of the Company's shares. When it appears that a significant portion of the market is acting on a misapprehension of the Company's position, a false market is created.

To ensure a consistent response from the Company to such occurrences, all instances of unauthorised or selective disclosure or rumours should be reported by directors to the Chairman and by executive officers or employees to the Chief Executive Officer as soon as they become known.

### 2.2 Disclosure of information

In the case of unauthorised or selective disclosure of information, even if the information is not considered material and, therefore, would not have been required to be disclosed, it will be made available to investors on the Company's website.

If the information the subject of the unauthorised or selective disclosure is considered material, or there is a significant market rumour concerning the Company that is having or is likely to have an impact on the price of the Company's shares, the Chief Executive Officer will co-ordinate the development of a disclosure response to the ASX.

The Company Secretary will circulate the draft announcement to the Board and any relevant external advisors for review. Upon completion of the review process and receipt of the Chief Executive Officer's instructions, the Company Secretary will disclose the information to the **ASX**. When an acknowledgement has been received from the ASX that the information has been released to the market, the Chief Executive Officer will authorise management to release the information to the media and to post the information on the Company website as appropriate.

### 2.3 Referral of enquiries

Any queries by the **ASX**, media, analysts, brokers, shareholders or the public must be promptly referred to the Chairman or the Chief Executive Officer.

The only employees authorised to speak to the media or any other person outside the Company about market rumours or information that is subject to this policy are those who are expressly authorised from time to time by the Chairman, the Board or the Chief Executive Officer.

## 2.4 Release of information from Novita

To ensure that Novita approaches its continuous disclosure obligation consistently, and information is not released publicly prior to its disclosure to **ASX**, it is important that:

- (a) No-one other than the Chief Executive Officer or the Company Secretary releases information to, or communicates with, the ASX unless specifically authorised to do so by the Chairman and Chief Executive Officer. This includes responding to market rumours, leaks of sensitive information and inadvertent disclosure;
- (b) the Company Secretary should be made aware of information about the Company to be disclosed publicly, such as at private briefings, to ensure that the Company's disclosure obligations are not breached. A copy of any slides or presentations used at briefings should be given to the Company Secretary for release to the ASX in advance of any briefings; and
- (c) any briefings to or discussions with analysts or shareholders must only be undertaken by the Chairman or the Chief Executive Officer or their expressly authorised delegates.

## 3. Novita website

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Ancillary to the reporting process requirements detailed in this policy for the release of information to ASX, the Company recognises the importance of ensuring that all information released into the public domain by or on behalf of Novita is true, accurate and current irrespective of the mode of publication.

Therefore all Company communications to the public including but not limited to the posting of information on Novita's website and the issue of Novita's Annual Report and other correspondence to shareholders are subject to the approval and reporting procedures of this policy. No-one shall post information on the Novita website or release any such information to shareholders unless such information is first approved by the Chairman and the Chief Executive Officer; provided that the Chief Executive Officer may approve the website posting of procedural or technical amendments or other information previously approved by the Chairman or the Board for release to ASX.

#### 4. Summary

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In summary, it is the responsibility of each director and executive officer of Novita to communicate any information regarding Novita that may have a material effect on the price or the value of Novita's securities as soon as that director or executive officer becomes aware of that information.

If there is any doubt as to whether the information should be disclosed, that information must be internally reported by directors to the Chairman and by executive officers and employees to the Chief Executive Officer in accordance with this policy, and it will then be more fully considered by those responsible for deciding whether or not disclosure to the ASX is necessary.

A failure by Novita to make timely disclosure of information that may have a material effect on the price or value of Novita's securities may result in criminal or civil liability for Novita, its directors and executive officers.

Dated 6 September 2004