



Phosphagenics

**Phosphagenics Limited**

## **Continuous Disclosure Policy**

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## 1 The Company's obligations

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- 1.1 Australian Securities Exchange ("**ASX**") Listing Rule 3.1 requires Phosphagenics Limited ("**Company**") to "immediately" disclose any information concerning the Company:
- (a) when the Company is, or becomes, aware of the information; and
  - (b) which a reasonable person would expect the information to have a material effect on the price or value of the Company's securities, commonly referred to as continuous disclosure obligations.
- 1.2 Section 674 of the Corporations Act 2001 (Cth) ("**Corporations Act**") reinforces the Listing Rule by creating criminal and civil penalties for non-compliance.
- 1.3 The requirement to disclose this information does not apply if, and only if, each of the following four conditions is, and remains, satisfied:
- (a) a reasonable person would not expect the information to be disclosed; and
  - (b) the information is confidential; and
  - (c) one or more of the following conditions apply:
    - (i) it would be a breach of a law to disclose the information; or
    - (ii) the information concerns an incomplete proposal or negotiation; or
    - (iii) the information comprises matters of supposition or is insufficiently definite to warrant disclosure; or
    - (iv) the information is generated for the internal management purposes of the Company; or
    - (v) the information is a trade secret; and
  - (d) ASX has not asked the Company for information to prevent a false market in the Company's securities.

## 2 When the company is deemed to have become aware of the information

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- 2.1 The Company will be deemed to have become aware of information where a Director or executive officer has, or ought reasonably to have, come into possession of the information in the course of performance of his or her duties as a Director or executive officer of the Company.
- 2.2 An executive officer is a person concerned in, or taking part in, the management of the Company.

## 3 Procedures adopted by the board to ensure compliance

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The board of Directors of the Company ("**Board**") has established procedures to ensure compliance with its Continuous Disclosure obligations. These include the appointment of a compliance officer ("**Compliance Officer**") and deputy compliance officer ("**Deputy Compliance Officer**") to ensure that the Company complies with its obligations of continuous disclosure.

## 4 The compliance officer

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- 4.1 Appointment of Compliance Officer and Deputy Compliance Officer

- (a) The Board has appointed the Chief Executive Officer as the Company's Compliance Officer. The General Counsel has been appointed as the Deputy Compliance Officer and shall act when the Compliance Officer is not available.
- (b) The Compliance Officer is primarily responsible for ensuring that the Company complies with its disclosure obligations under the Corporations Act and the ASX Listing Rules, and is primarily responsible for deciding what information will be disclosed.

#### 4.2 Responsibilities of the Compliance Officer

The Compliance Officer shall:

- (a) decide what information must be disclosed to the ASX and, in this regard, consult with the Company's legal advisors when necessary;
- (b) conduct all disclosure discussions with the ASX;
- (c) maintain a disclosure file containing:
  - (i) all reports received by the Compliance Officer setting out information required, or potentially required, to be disclosed to the ASX;
  - (ii) copies of all disclosure correspondence with the ASX; and
  - (iii) copies of all material that has not been disclosed to the ASX;
- (d) as required, submit periodic reports to the Board, setting out:
  - (i) details of the matters reported to the Compliance Officer for consideration as to whether they should be disclosed to the ASX;
  - (ii) details of those matters disclosed to the ASX; and
  - (iii) ensure that each of the Company's Directors, executive officers and employees has a copy of the Continuous Disclosure Memorandum attached as Schedule 1, and institute such other procedures as the Compliance Officer considers necessary and expedient to ensure that all of the Company's employees are aware of and understand the Company's Continuous Disclosure requirements and of their responsibilities under this policy.

## 5 Reporting and disclosure procedure

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### 5.1 Reporting to the Compliance Officer

- (a) Where any information comes to light about the Company which may need to be disclosed, all Directors, executive officers and employees are obliged to bring that information to the attention of the Compliance Officer or the Deputy Compliance Officer (as the case may be) with all possible expediency.
- (b) In the case of an emergency, or where any delay would prejudice the Company, initial verbal notification should be given directly to the Compliance Officer, to be followed by a written report.

### 5.2 Determining whether the information must be disclosed

Upon receipt of a report from a Director or any other person, the Compliance Officer shall determine whether the information contained in that report may have a material effect on the price of the Company's securities and whether it should be disclosed to the ASX. In making that determination, the Compliance Officer shall decide whether the information:

- (a) is price-sensitive and must be disclosed;
- (b) is not price-sensitive and does not have to be disclosed; or

- (c) does not have to be disclosed because it falls under each element of the exception to ASX Listing Rule 3.1.

### 5.3 If the information must be disclosed

- (a) If the information is price-sensitive and must be disclosed, the Compliance Officer shall, immediately:
  - (i) discuss the matter with the Chairman of the Audit and Risk Management Committee or, in his absence, the Chairman if necessary;
  - (ii) prepare an appropriate release, to be reviewed by the Chairman of the Audit and Risk Management Committee or, in his absence, the Chairman prior to it being sent to the ASX;
  - (iii) send the release to the ASX's Company Announcements Office by facsimile or electronic means; and
  - (iv) place a copy of the release on the disclosure file.
- (b) If the Compliance Officer and the Chairman of the Audit and Risk Management Committee or the Chairman (as the case may be) are unable to agree on the terms of the disclosure, the Company's legal advisors should be consulted immediately.

### 5.4 If the information does not have to be disclosed

- (a) If the information is not price-sensitive or does not have to be disclosed because it falls under all elements to the exception to ASX Listing Rule 3.1, then the Compliance Officer must:
  - (i) record the information and the reason for it not being disclosed; and
  - (ii) place a copy of all notes and correspondence relating to the matter on the disclosure file.

### 5.5 If the Compliance Officer is unsure

- (a) If the Compliance Officer is unsure whether the information is price sensitive or whether it falls under an exception to ASX Listing Rule 3.1, then he must immediately discuss the matter with the Chairman of the Audit and Risk Management Committee, or in his absence, with the Chairman.
- (b) If the Compliance Officer and the Chairman of the Audit and Risk Management Committee or the Chairman respectively (as the case may be) cannot agree on whether the information is required to be disclosed, then the Compliance Officer shall immediately seek advice from the Company's legal advisors.

### 5.6 Release of Information

- (a) The Company must not disclose the information in any way until disclosure has been made to the ASX and the Company has received acknowledgement from the ASX that the information has been released to the market.
- (b) After receipt of the ASX's acknowledgement, the Compliance Officer will arrange for a copy of the announcement to be posted on the Company's website.
- (c) All announcements must be kept separate from any promotional material found on the Company's website.

## **6 Confidential information**

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If a determination is made that the information which comes to light is confidential, the Compliance Officer will ensure that anyone who has a copy of, or knows about, the information is aware that it is confidential.

## **7 Relationship with media, public and analysts**

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- 7.1 Care must be taken not to make comments to the media or others which could result in rumours or speculation about the Company. Directors must comply with the media relations policy of the Company.
- 7.2 The policy limits media contact to the Chairman and the Chief Executive Officer. Other Directors and executives may only speak with the media in relation to a particular matter concerning the Company if they have obtained the prior express approval of the Chief Executive Officer.
- 7.3 It is also important to ensure that any speeches, or external addresses given, do not result in rumours or speculation about the Company or unauthorised disclosure. The text of all speeches and external addresses must receive prior endorsement of the Chief Executive Officer.
- 7.4 During any briefings and discussions with analysts, Directors and executives must only disclose information that has been publicly released through the ASX. If a question arises which can only be answered by disclosing price sensitive information, the Director or executive must decline to answer the question or take it on notice and then announce the information through the ASX before responding.

## **8 Maintenance of continuous disclosure policy**

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- 8.1 This Continuous Disclosure Policy shall, at all times, be kept under review by the Compliance Officer to ensure that the Company complies with its continuous disclosure obligations under the Corporations Act and the ASX Listing Rules. Where appropriate, the Company's legal advisors shall be consulted to ensure that the Continuous Disclosure Policy complies with all relevant legislation.
- 8.2 Any queries about the Continuous Disclosure Policy should be referred to the Compliance Officer.

## SCHEDULE 1 - CONTINUOUS DISCLOSURE MEMORANDUM

### 1 Introduction

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- 1.1 As a listed company, Phosphagenics Limited (“**Company**”) must notify the Australian Stock Exchange Limited (“**ASX**”) of price sensitive information, and must do so immediately if it becomes aware of it, unless certain requirements are satisfied.
- 1.2 Price sensitive information is information that is not generally available and, if it were generally available, would have a material effect on the price or value of the Company’s securities.
- 1.3 Failure to notify the ASX of price sensitive information constitutes a breach of the Company’s obligations under the ASX Listing Rules and a contravention of the Corporations Act 2001 (Cth), exposing the Company and its Directors and executives who are involved, to a range of sanctions including fines, criminal charges or civil liability. It could also result in suspension of the Company’s securities from quotation or possible delisting.
- 1.4 The procedures set out in this Memorandum apply to all the Company’s personnel to ensure compliance by the Company with its continuous disclosure obligations.

### 2 Information required to be disclosed

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- 2.1 The type of information required to be disclosed may include:
- (a) change in financial forecasts or expectations;
  - (b) natural disasters or accidents that have particular relevance to the business of the Company;
  - (c) decisions of regulatory authorities in relation to the business of the Company;
  - (d) material information affecting the manufacture or supply of product;
  - (e) disclosure of a significant product liability claim or the settlement of such a claim;
  - (f) receiving a notice of intention to make a takeover for the Company;
  - (g) a significant development in major litigation to which the Company is a party;
  - (h) a change in accounting treatment adopted by the Company;
  - (i) the appointment or resignation of Directors of the Company; and
  - (j) any rating applied by a rating organisation to the Company, or its securities, or any change in that rating.
- 2.2 The above is not a definitive list and the Compliance Officer should always be informed if there is any doubt.

### 3 Exception to the disclosure rule

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- 3.1 Disclosure is not required if **all** four of the following requirements are satisfied:
- (a) the information must be such that a reasonable person would not expect it to be disclosed; and
  - (b) the information must be confidential; and
  - (c) one or more of the following apply:
    - (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 trade secret; and
- (d) the ASX has not asked the Company to give it information to prevent a false market in the Company's securities.

Disclosure can be avoided only if all four requirements are satisfied, and continue to be satisfied.

Ultimately, however, it is for the Compliance Officer and Deputy Compliance Officer to determine whether the above conditions are satisfied.

## **4 Reporting process**

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- 4.1 Any personnel becoming aware of any actual or potential price sensitive information must report it to the Compliance Officer immediately.
- 4.2 If the Compliance Officer is not available, the information must be reported to the Deputy Compliance Officer, and if the Chairman is not available, the information must be reported to another senior person in the Company.
- 4.3 A recipient of information under section 4.2 must immediately pass on the information to the Compliance Officer or, in his or her absence, the Deputy Compliance Officer.
- 4.4 Reports of price sensitive information can be made by telephone but must in all instances be followed up by a comprehensive written report.
- 4.5 All managers must keep up to date with all matters within their responsibility which may be or become material to the Company.

## **5 Confidentiality**

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- 5.1 The price sensitive information must not be passed on to anyone outside of the Company before the ASX is notified and the Company receives an acknowledgment from the ASX that the information has been released to the market. Further, the information must not be passed on to anyone within the Company, other than the Compliance Officer, the Deputy Compliance Officer, the Chairman of the Audit and Risk Management Committee or the Chairman of Directors, unless the person concerned needs to know in order to do their job properly.
- 5.2 Any person who passes the information on improperly, may be committing a criminal offence.
- 5.3 If it is discovered that persons outside of the Company are aware of the information before the ASX has been notified, the Compliance Officer (or if unavailable, the Deputy Compliance Officer) must be immediately informed.