



## **MESOBLAST LIMITED**

# **MARKET COMMUNICATIONS AND DISCLOSURE CONTROLS POLICY**

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## 1. INTRODUCTION

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This Market Communications and Disclosure Controls Policy (Policy) describes the internal processes designed to ensure that Mesoblast Limited (Mesoblast) complies with the disclosure obligations under the Listing Rules of the Australian Securities Exchange (ASX), the Corporations Act 2001 (Cth) (Corporations Act), the rules of the Australian Securities and Investments Commission (ASIC), the Listing Rules of NASDAQ (NASDAQ Listing Rules), the listing rules of any other stock exchange(s) on which the Company's securities are listed, the Securities Exchange Act of 1934 (as amended) and the rules promulgated thereunder (Exchange Act), the Sarbanes-Oxley Act of 2002 (SOX) and regulations promulgated by the United States Securities and Exchange Commission (SEC), as well as any other applicable law (together, the Applicable Law). This Policy summarises those internal processes and outlines the way in which we communicate information to shareholders and market participants.

## 2. Background

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Mesoblast operates under primary listings on the ASX and the NASDAQ. Mesoblast has established a Level 3 American Depositary Receipt program facility trading on the NASDAQ in the United States.

Mesoblast is committed to providing shareholders and the market with full and timely information about its activities in compliance with its continuous disclosure obligations under Applicable Law.

Based on the type of information required to be disclosed, different functions within the finance and legal departments will coordinate and oversee the compiling, preparing and filing of the appropriate disclosures with the relevant government authorities and listing exchanges.

In addition, Mesoblast places considerable importance on effective communication with its security holders and market participants, and to ensuring that trading in its securities takes place in a market which is orderly and informed and is not, or is not likely to be, false.

This Policy sets out key obligations and processes to manage Mesoblast's obligations with respect to reports issued pursuant ASX requirements, filings with the SEC and communications with listing exchanges as well as issuing financial press releases, delivering investor presentations and distributing other communications with its security holders.

This Policy applies to:

- all Directors and officers of Mesoblast;
- all employees of Mesoblast and its subsidiaries (Mesoblast Group), whether full or part time or casual;
- all contractors and consultants working for the Mesoblast Group,

(Mesoblast Personnel, referred to individually as a Mesoblast Person in this policy).

### **3. MARKET DISCLOSURE**

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#### **3.1 Commitment to continuous disclosure**

Mesoblast will, subject to the exceptions set out in ASX Listing Rules and NASDAQ Listing Rules (as applicable), notify the market by announcing to the ASX, NASDAQ and any other applicable stock exchange(s) on which the Company's securities are listed or filing with the SEC, any information of which it becomes aware which a reasonable person would expect to have a material effect on the price or value of its securities (Market Sensitive Information) in accordance with the timing requirements of the applicable stock exchange. For this purpose, a reasonable person would be taken to expect information to have a material effect on the price or value of Mesoblast's securities if it would, or would be likely to, influence persons who commonly invest in securities in deciding whether to subscribe for, acquire or dispose of Mesoblast's securities.

Whether an exception applies in any specific circumstance will be decided by the Chief Executive Officer (CEO) and/ or Chair of the Board where appropriate. Even though an exception might apply, this does not qualify or change the obligation on Mesoblast Personnel to communicate or report Market Sensitive Information under this Policy. All Mesoblast Personnel must maintain and keep all Market Sensitive Information strictly confidential until it is released to the ASX, NASDAQ and any other applicable stock exchange(s) on which the Company's securities are listed or filed with the SEC and becomes generally available.

Mesoblast becomes aware of information if any of its Directors, the Company Secretary or any other officer has, or ought reasonably to have, come into possession of the information while performing his or her duties as a Director or officer of Mesoblast.

#### **3.2 Approval of disclosures**

The CEO, acting in conjunction with the Global Head of Corporate Communications, the Company Secretary and the General Counsel will consider whether the information needs to be disclosed, taking into account (among other things), the applicable laws, including those promulgated by ASIC or the SEC, the ASX Listing Rules, the NASDAQ Listing Rules, the listing rules of any other stock exchange(s) on which the Company's securities are listed and market expectations.

If a disclosure is necessary, the form of the disclosure must be approved by the Mesoblast Board (in the circumstances set out immediately below), or by the Company Secretary if it is of a routine administrative nature required by the SEC, ASX, NASDAQ or any other stock exchange(s) on which the Company's securities are listed, or by the CEO in all other circumstances. The Materials Review Committee (MRC) should also review all disclosures except financial or routine administrative disclosures.

#### **3.3 Mesoblast Board**

Board approval and input is required in respect of matters that are clearly within the reserved powers of the Board (and responsibility for which has not been delegated to Management) or matters that are otherwise of fundamental significance to Mesoblast, including:

- significant profit upgrades or downgrades;
- dividend policy or declarations;
- significant transactions or events;
- company-transforming events; and
- any other matters that are determined by the Chair to be of fundamental significance to Mesoblast.

If an announcement that would ordinarily require Board approval must be immediately disclosed to the market, the CEO and Company Secretary will make all reasonable efforts to have that announcement urgently considered and approved by the Board prior to release. If such approval cannot be obtained in advance, the CEO will consider and approve the announcement so that Mesoblast complies with its continuous disclosure obligations. The announcement must then be considered by the Board at the first possible opportunity following its release to determine what, if any, further steps are required so that Mesoblast complies with its continuous disclosure obligations.

### **3.4 Materials Review Committee**

The Company has established an MRC which is responsible for, among other things, reviewing the form of disclosures to the market, other than with respect to financial and routine administrative disclosures.

Specifically, the MRC:

- ensures that adequate processes and controls are in place for the identification of Market Sensitive Information and the release of disclosable information;
- reviews the form of relevant disclosures to the market to ensure they are factual, comply with legal obligations, do not omit material information, provide a balanced view, and are presented in a clear and concise way;
- in conjunction with the Company Secretary and General Counsel, oversees compliance with all relevant continuous and periodic disclosure requirements; and
- monitors and ensures that information pertaining to the Mesoblast Group which is not generally available is kept confidential.

If an announcement that would ordinarily require MRC review must be immediately disclosed to the market, the CEO and Company Secretary will make all reasonable efforts to have that announcement urgently considered by the MRC prior to release. If such review cannot be obtained in advance, the CEO will consider and approve the announcement so that Mesoblast complies with its continuous disclosure obligations.

### **3.5 Collecting and Maintaining Financial and Non-Financial Information and Identifying Market Sensitive Information**

Mesoblast operates a global business with operations in a number of countries. In order to capture and evaluate non-financial information for disclosure, the MRC has responsibility for ensuring that all Mesoblast Personnel are aware of and adhere to a Standard Operating Procedure (SOP) governing the collection, communication, review and approval of non-financial information. The SOP includes a list of indicative events to assess information in order to determine if it is material.

A similar process exists for accounting and financial information. Mesoblast maintains a catalogue of policies, procedures and controls regarding the accounting and reporting processes that is ultimately overseen by the Chief Financial Officer (CFO). These financial controls shall be reviewed on a regular basis by its finance function and the external auditors and by the CFO to help confirm that they are designed to ensure timely and accurate financial reporting. Additionally, the information shall be made available for review by the Audit and Risk Committee. The resolution of any disagreements between or among the Audit and Risk Committee, external auditors, management and others that may arise in connection with the certification and review procedures shall be appropriately documented.

Mesoblast's disclosure controls and financial information evaluation process includes, among other things, the following:

- regular business meetings with the CEO and/or CFO in which business and operating information is reviewed and discussed;
- consideration of key financial information, significant matters involving management judgments, and other areas included in critical accounting policies;
- consistent end-of-period closing process, including a schedule of key events and meetings; and
- financial review and approval, including internal and external auditor reviews (if applicable), CFO review, CEO review, audit committee review and legal counsel consultation.

As a result of such process, the CEO and CFO have access to the following:

- information regarding Mesoblast's operations and operational metrics;
- information regarding Mesoblast's subsidiaries, divisions and geographies;
- sufficient financial information to observe consistency with other internal information;
- access to individuals that contribute to disclosure controls and procedures; and
- channels to voice complaints or concerns.

Where a Mesoblast Person becomes aware of information which is not generally available but may be Market Sensitive Information, the Mesoblast Person must immediately report that information to his or her relevant Business Unit Leader. Business Unit Leaders are responsible

for ensuring all Market Sensitive Information about the activities of the Business Unit or area of functional responsibility is reported to the CEO or the Company Secretary so that, if required, the Company can make a determination as to the requirement to disclose.

If any Market Sensitive Information is inadvertently disclosed by a director, officer or employee of the Mesoblast Group to a party outside the Mesoblast Group, the CEO or the Company Secretary is to be immediately notified so that, if required, the Company can make a determination as to the requirement to disclose.

### **3.6 Communications with Stock Exchanges and Filings with the SEC**

The Company Secretary is responsible for ensuring that announcements are communicated to the stock exchange(s) on which the Company's securities are listed and filed with the SEC in accordance with the timing and procedural requirements of the listing rules of those exchange(s) and applicable securities rules and regulations. In the event confidential treatment is desirable with respect to certain portions of any proposed public disclosure, the finance department will advise and work with the legal department to prepare and file a confidential treatment request with the SEC.

### **3.7 Breaches**

Failure to comply with this Policy may lead to a breach of Applicable Law which may result in directors or other officers of Mesoblast incurring personal liability. Disciplinary action, including dismissal in serious cases, may be taken against any person who fails to comply with this Policy.

### **3.8 Review**

This Policy is reviewed annually to ensure it is effective in facilitating disclosure in accordance with Mesoblast's disclosure obligations.

## **4. COMMUNICATION**

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### **4.1 Key corporate governance standards on communication**

Mesoblast has adopted a corporate governance framework that is designed to ensure:

- timely and accurate information regarding Mesoblast, including its financial situation, performance, ownership, strategies, activities and governance is provided equally to all shareholders and market participants;
- channels for disseminating information are adopted which are fair, timely and cost-efficient; and
- it does not communicate Market Sensitive Information to any external party prior to that information being disclosed to all shareholders and market participants in compliance with its continuous disclosure obligations.

#### **4.2 Communication of disclosable information on the website**

All information filed with the SEC or released to the ASX, NASDAQ and any other stock exchange(s) on which the Company's securities are listed is posted on the Mesoblast website by no later than the close of the business day following the day of the announcement.

Mesoblast's website address is: [www.mesoblast.com](http://www.mesoblast.com)

#### **4.3 Authorised spokespersons**

The only Mesoblast Personnel authorised to make any public statement on behalf of, or attributable to, Mesoblast are the CEO and those who have the prior approval of the CEO.

Even an approved spokesperson may only provide Market Sensitive Information to a third party if the information is publicly disseminated at the same time or has already been publicly disseminated (e.g., in a press release, in a filing with the SEC or ASIC, in a conference call that is open to the public, or in other channels of communication that are appropriately compliant with applicable laws and regulations).

Additionally, this Policy shall not prohibit employees from discussing Mesoblast in the ordinary course of business (e.g., talking about Mesoblast's services to a clinician or physician). However, in the event an employee (other than an approved spokesperson) wishes to participate in a conference or presentation to a group outside Mesoblast, approval by an approved spokesperson should be obtained as far in advance as reasonably practicable.

#### **4.4 Rumours and market speculation**

Subject to its obligations under law, the ASX Listing Rules, the NASDAQ Listing Rules and the listing rules of any other stock exchange(s) on which the Company's securities are listed, Mesoblast will not generally comment on rumours or market speculation. If a market or media rumour is causing significant volatility in the Company's price of the Company's securities, the CEO, in consultation with the General Counsel and the Company Secretary, will consider whether to make an exception to this Policy.

#### **4.5 Trading halts**

In order to prevent a false or uninformed market, it may be necessary to request a trading halt or suspension from the ASX, NASDAQ or any other stock exchange(s) on which the Company's securities are listed. Board approval and input will be sought for decisions relating to a trading halt or suspension. If such approval cannot be obtained in advance, the CEO, in consultation with the General Counsel and the Company Secretary, will make all decisions relating to a trading halt or suspension and will report back to the Board at the first possible opportunity.

#### **4.6 Black-out periods**

Mesoblast observes a series of "black-out" periods throughout the year to protect against inadvertent disclosure of Market Sensitive Information. Please consult the Company's "Share Trading Policy" for additional information.

#### **4.7 Financial calendar**

Mesoblast follows a calendar of regular disclosure to the market on its financial and operational results. This calendar includes target dates for the release of quarterly, half year and full year results, other financial information, shareholder meetings, business briefings and Mesoblast's involvement in major investment conferences.

#### **4.8 Analyst and investor briefings**

Mesoblast recognises the importance of its relationships with investors and analysts.

From time to time Mesoblast conducts analyst and investor briefings. In these cases the following protocols will apply.

- No Market Sensitive Information will be disclosed at these briefings unless it has been previously or is simultaneously released to the market.
- If Market Sensitive Information is inadvertently released it will immediately be released to the ASX, NASDAQ and any other stock exchange(s) on which the Company's securities are listed and placed on the Mesoblast website.
- Questions at briefings that deal with Market Sensitive Information not previously disclosed will not be answered.
- Wherever practicable, at least two representatives from Mesoblast will attend all briefings and will keep a record of the briefing. Where this is not possible, the person conducting the briefing is required to keep a record of the briefing.
- Mesoblast will place a copy of the presentation material and webcast (if the presentation is filmed) on the Mesoblast website.

#### **4.9 Analysts' reports and estimates**

Where requested to do so, Mesoblast may review analysts' research reports but will confine its comments to factual matters and material previously disclosed by it.

Mesoblast may comment on analysts' earnings estimates to the extent of:

- acknowledging the current range of estimates;
- questioning an analyst's assumptions or sensitivities if the analyst's estimate is significantly at variance from current market range estimates; and
- advising factual errors where data is already in the public domain.

Forecast information will not be provided by Mesoblast unless it has already been disclosed to the market.

## **5. EVALUATING DISCLOSURE CONTROLS AND PROCEDURES**

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### **5.1 Background**

The SOX requires Mesoblast to evaluate, under the supervision of its CEO and CFO, the effectiveness of its disclosure controls and procedures as of the date of the end of each fiscal period. The overall purpose of the evaluation is to determine whether its disclosure controls and procedures, as defined in SEC rules, are “effective.”

The SEC defines “disclosure controls and procedures” as those controls and procedures that are designed to ensure that information required to be disclosed in the Exchange Act reports is recorded, processed, summarized and reported, within the time periods specified by the SEC’s rules and forms. Disclosure controls and procedures relate to both financial and non-financial information.

### **5.2 Evaluation Procedures**

The evaluation includes the following procedures.

- Interviews of participants in the internal information flow and external disclosure processes, including auditors and outside counsel. See the section entitled “Collecting and Maintaining Financial and Non-Financial Information and Identifying Market Sensitive Information” in Section 3 above for how Mesoblast gathers and maintains information.
- Review of relevant documents, including back-up documentation of previous periodic reports filed with the SEC. Records indicating how each covered report was prepared shall be maintained as part of the formal records.

The evaluation is broad and asks at least the following questions.

- What, if any, changes have occurred since the last evaluation that might affect the functioning of its disclosure controls and procedures?
- What, if any, issues arose in its prior external disclosures that might have been avoided through changes in its disclosure controls and procedures?
- What changes in the legal requirements for disclosure have occurred since its last evaluation?
- Is its internal information flow and process adequate to produce consistent and accurate information and reduce the risk of fraud?
- Have any parties identified irregularities or deficiencies in its disclosure procedures and controls?
- Are sufficient procedures in place to test the accuracy of its financial and non-financial information?
- For periodic filings with the SEC, are the appropriate personnel still involved?

- Are the appropriate personnel participating in the drafting of MD&A and risk factors?
- Are the appropriate internal and external personnel reviewing its external disclosures, and is adequate time provided for their review and the incorporation of their comments?
- Do all participants understand their responsibilities in the process?

If any potential material errors or omissions are uncovered in the evaluation process, those errors or omissions will be investigated under the supervision of the CEO and CFO, with input from the General Counsel, other members of the management team and outside counsel, if necessary.

Mesoblast's disclosure controls and procedures will be updated based on the results of the evaluation, as necessary or advisable.

## **6. CERTIFICATIONS OF PERIODIC REPORTS**

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### **6.1 Background**

Both U.S. and Australian securities laws require certain certifications from directors or officers in certain periodic reports. Among other things, the certifications require certain statements regarding the integrity of Mesoblast's financial data, disclosure controls and procedures, as well as its evaluation of those controls and procedures. At a minimum, the CEO and CFO should follow the following procedures as part of their "due diligence" preparation to make the required certifications.

### **6.2 Certification Requirements**

#### *U.S. Certifications*

Sections 302 and 406 of the SOX, as well as SEC rules, require the CEO and CFO to certify, among other things, that with respect to disclosure controls and procedures they:

- are responsible for establishing and maintaining disclosure controls and procedures;
- have designed the disclosure controls and procedures to ensure that material information relating to the company and its consolidated subsidiaries is made known to them, particularly during the preparation of periodic reports; and
- have evaluated the disclosure controls and procedures as of the end of each fiscal period and have disclosed the conclusions of their evaluation in the periodic report.

#### *ASX Certifications*

Sections 295 of the Corporations Act requires the Directors to declare, among other things, that:

- there are reasonable grounds to believe that Mesoblast will be able to pay its debts as and when they become due and payable;

- Mesoblast has included in the notes to the financial statements, in compliance with the accounting standards, an explicit and unreserved statement of compliance with IFRS; and
- the financial statement and notes are in accordance with the Corporations Act, including compliance with certain accounting standards and presents a true and fair view of the financial condition of Mesoblast.

Sections 295A of the Corporations Act requires the CEO and CFO to declare, among other things, that:

- the financial records of Mesoblast for the financial year have been properly maintained in accordance with the Corporations Act;
- the financial statements, and the accompanying notes thereto, of Mesoblast for the financial year comply with the accounting standards;
- the financial statements and notes thereto of Mesoblast for the financial year give a true and fair view; and
- the financial statements and notes thereto of Mesoblast satisfy all other matters that are prescribed by the Corporations Act.

### **6.3 Certification Procedures**

#### *(a) Review*

Review the periodic report to be certified, allowing sufficient time in the report preparation process for this review and any comments.

#### *(b) Meeting with Involved Parties*

Meet with the outside auditors, legal counsel, internal accounting and auditing staff and other personnel who are involved in the preparation of the report to confirm their understanding that the report contains no material misstatements or omissions, complies with SEC rules as required and fairly presents, in all material respects, the business, financial condition and results of operations as it relates to their areas of oversight. Review the level of involvement of senior management and other key employees (such as business unit heads), auditors, outside counsel and the Audit and Risk Committee in preparing the report. Review reports of any sub-certifications obtained.

#### *(c) Discussion of Processes*

Discuss with internal accounting and auditing staff and outside auditors the processes used for preparing the financial statements (and other financial information) included in the report, paying particular attention to:

- the financial reporting system employed to prepare the financial information, including the size and expertise of financial and auditing staff;

- the critical accounting policies employed, such as revenue recognition and capitalization policies, with particular focus on any variations from customary industry accounting practices and any changes in accounting practices;
- the important assumptions and estimates underlying the financial statements and other financial information;
- business trends and significant developments;
- issues raised in past SEC comment letters, analyst reports or other external documents regarding its accounting or financial reporting;
- any off-balance sheet, pro forma or other information not set forth in IFRS financials that may be material to an investor's understanding of its business;
- any goodwill impairment or other write-offs;
- any related party transactions; and
- any disagreements concerning accounting issues and their resolution.

#### **6.4 Discussion of Trends and Risks**

Discuss the text of the report with those responsible for preparing the report, paying particular attention to:

- major risk exposures, including any pending litigation, the steps taken to monitor these risks, and the related disclosures in the report;
- major contractual obligations and the related disclosures in the report, including a review of which contracts will be filed as exhibits;
- disclosures under MD&A, including the important trends and risks potentially affecting its business, financial performance and liquidity, with particular focus on any inconsistencies in the report with concurrent internal communications; and
- disagreements concerning disclosure issues and their resolution.

#### **6.5 Compliance Check and Sub-Certifications**

Have appropriate personnel perform a thorough compliance check on the report against the legal requirements and discuss the results of this check with such personnel. In an effort to ensure that key personnel exercise care and discipline, the CEO and CFO may receive sub-certifications from certain personnel involved in the preparation of reports. These internal sub-certifications provide confirmation of compliance with Mesoblast policies, applicable laws and regulations, and include questions regarding noncompliance, theft, fraud or dishonest acts, and other job specific queries. The sub-certification process also addresses transactions, commitments, settlements, receivables, related party transactions, contingent liabilities and subsequent events which might require disclosure. Any non-conforming responses are reviewed and evaluated by the CFO. If unresolved, any significant matters are referred to the legal department for further review and evaluation.

## **6.6 Audit Committee**

Review the steps taken and conclusions reached with the Audit and Risk Committee.

## **6.7 Documentation**

Document the steps taken in such review. This documentation should describe the process undertaken, but should not be a transcript of the conversations held. Consider limiting access to this documentation solely to the certifying officers and legal counsel so as to preserve any attorney-client privilege protection that may be available.

## **6.8 Problem Resolution**

If any potential material errors or omissions are uncovered in the diligence process, stop and pursue them. At the first indication of a problem, involve the CFO, General Counsel or his/her designee. Promptly thereafter, inform the Audit and Risk Committee. Depending on what is found, an internal investigation may need to be undertaken.

## **6.9 Amendments**

The Company is committed to continuously reviewing and updating its policies, and the Company therefore reserves the right to amend this Policy at any time, for any reason, subject to applicable law.

## **7. Additional information**

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If you have any questions arising from this Policy you may contact one of the persons listed below.

### **Charlie Harrison**

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