



## **Market Disclosure Plan**

### **Incorporating the “Materiality Guidelines” for disclosure of information to financial markets**

This document describes practices and procedures which implement AGL Energy Limited’s Market Disclosure Policy.



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## **A. CONTINUOUS DISCLOSURE**

### **1. Principle of Market Disclosure**

#### **1.1 What is the Market Disclosure Plan?**

The objectives of the **Market Disclosure Plan** are to ensure that AGL immediately discloses all material information to the Australian Securities Exchange ("**ASX**"), when required to do so by law or the ASX Listing Rules, and conducts its communications with financial markets in accordance with those obligations as outlined in AGL's **Market Disclosure Policy**.

This document is for the use of AGL employees and is known as the Market Disclosure Plan. It is designed to provide guidance to employees about the nature and scope of AGL's Market Disclosure Policy as well as the procedures in place to support compliance.

The plan provides guidance on what might constitute **material information** that would need to be considered for disclosure by AGL to the market generally through the ASX. It also provides processes and procedures all AGL employees must follow in ensuring AGL complies with its market disclosure obligations.

#### **1.2 What is the Market Disclosure Policy?**

The objective of the Market Disclosure Policy is to facilitate a fair and well-informed market in AGL securities by meeting market disclosure obligations under the ASX Listing Rules and the Corporations Act. This ensures all AGL's stakeholders have timely and equal access to information provided by AGL.

The **Market Disclosure Policy** ("policy") explains:

- What AGL's market disclosure obligations are.
- How AGL will meet those obligations.
- The role of AGL's Market Disclosure Committee.
- The role of Business Unit Disclosure Officers.
- The obligations of all employees in giving effect to the policy.

The policy is a publicly available document and is on the AGL website. It is aimed at ensuring external parties understand how we meet our disclosure obligations as well as how we communicate with institutional investors and stockbroking analysts. In this way it helps facilitate a fair and well-informed market in AGL's securities.

## **2. Disclosure Obligations**

#### **2.1 What are AGL's disclosure obligations?**

Employees should refer to Section 1 of the Market Disclosure Policy on Continuous Disclosure Obligations to learn about:

- Principle of continuous disclosure and the exception to the principle (Listing Rules)
- AGL's disclosure practices and procedures
- How AGL deals with market speculation and rumour
- Trading Halts

#### **2.2 What is the principle of continuous disclosure?**

The ASX Listing Rules contain provisions requiring the continuous disclosure of information to keep the market informed of events and developments as they occur.

The text of the key Listing Rules (3.1, 3.1A and 3.1B) is set out in Attachment 1 to this document. Listing Rule 3.1 is fundamental to the ASX's continuous disclosure regime and is supported by the ASX's market information principle that:

*'Timely disclosure must be made of information which may affect security values or influence investment decisions, and information in which security holders, investors and ASX have a legitimate interest.'*

(ASX Guidance Note 8)

In order to comply with these obligations AGL has adopted the **Market Disclosure Policy**. The Policy is necessary because:

- Listing Rule 3.1 requires AGL to immediately disclose to the ASX any information of which AGL is aware that a reasonable person would expect to have a material effect on the price or value of AGL's securities. In this context, AGL becomes aware of information if a director or executive officer has, or ought reasonably to have, come into possession of the information in the performance of their duties as a director or executive officer of AGL.
- Section 674 of the Corporations Act also exposes AGL and any person involved in a contravention by AGL of the continuous disclosure requirement to personal liability (including exposure to an action by an aggrieved investor).
- **The penalty for contravention of the continuous disclosure obligations for an individual is up to \$200,000 or five years imprisonment or both, and for AGL up to \$1 million.**
- Listing Rule 3.1A provides an exception to Listing Rule 3.1.

*Listing Rule 3.1A provides that Listing Rule 3.1 does not apply to information while **all** of the following are satisfied:*

- *A reasonable person would not expect the information to be disclosed.*
- *The information is confidential and the ASX has not formed a view that it has ceased to be confidential.*
- *One or more of the following applies: It would be a breach of law to disclose. The proposal is still incomplete. The matter is just speculation. The information was generated for internal use. The matter is a trade secret.*

### **3. AGL's Practices & Procedures for Market Disclosure**

#### **3.1 Who has responsibility for ensuring the Market Disclosure Policy and Plan is adhered to?**

The Company Secretary is the **Disclosure Officer** for the purposes of the policy and this plan. The Company Secretary is responsible for ensuring both the policy and the plan are up to date and manages all communications with the ASX.

In addition, the Board has established the **Market Disclosure Committee**. The Market Disclosure Committee is a senior management committee and comprises the Managing Director, Company Secretary, Chief Financial Officer and Head of Investor Relations. Any director of AGL may attend a meeting of the Market Disclosure Committee and will be an ad hoc member of the Committee whilst in attendance at the meeting.

The Disclosure Officer is the convenor of the Market Disclosure Committee. The quorum for a meeting of the Market Disclosure Committee is two members one of whom must be the Managing Director.

Decisions of the Market Disclosure Committee are by consensus of those members of the committee available when a decision is required. If the Market Disclosure Committee cannot reach consensus on a matter, the matter must be referred to the Board. In addition,

significant announcements will be referred by the Managing Director to the Chairman prior to being provided to the ASX.

**For the avoidance of doubt:**

- **the substantive content of all market presentations relating to the company's annual or half yearly financial results; and**
- **any statement relating to the future earnings performance of the company**

**must be referred to, and approved by, the Board before being disclosed to the market.**

Routine disclosure matters such as changes in directors' interests can continue to be forwarded to the ASX by the Company Secretary outside of consideration of the Market Disclosure Committee. The Company Secretary must advise the members of the Committee before any routine matters are forwarded to the ASX for release to the market.

**3.2 What is the Market Disclosure Committee responsible for?**

The purpose of the Market Disclosure Committee is to help the company achieve its objective to establish, implement and supervise a continuous disclosure system.

The Market Disclosure Committee is responsible for:

- Deciding if information should be disclosed to the ASX subject to any decision of the Board.
- Ensuring compliance with continuous disclosure obligations.
- Establishing a system to monitor compliance with continuous disclosure obligations and this plan.
- Monitoring regulatory requirements so that this protocol continues to conform with those requirements.
- Monitoring movements in security price and security trading to identify circumstances where a false market may have emerged in AGL's securities.
- Making decisions about any trading halts subject to discussion between the Chairman and Managing Director.

Once notification is received from the ASX that it has released AGL's information to the market, the Company Secretary will ensure that the information is published on AGL's website.

If **material information** (see Section 4) comes to the attention of the Company Secretary, it must, if possible, be immediately referred to the Market Disclosure Committee to decide whether that information must be disclosed to the ASX.

There are three possible ways the Market Disclosure Committee can respond:

- The Market Disclosure Committee forms the view that the information is material and must be disclosed. In this case the Disclosure Officer discloses the material information to the market by sending it to the ASX. A copy of the notification as well as receipt of confirmation must be placed on the Disclosure File maintained by the Disclosure Officer.
- The Market Disclosure Committee forms the view that the information is not material or does not have to be disclosed because it is covered by the exceptions to disclosure. In this case, the Disclosure Officer must make notes as to the information and the reasons why the information is not material or falls within the exceptions in Listing Rule 3.1A. These notes must be placed on the Disclosure File.
- The Market Disclosure Committee is not certain whether the information is material or whether it falls within an exception. In this case, the Disclosure Officer must seek either

additional information or advice to enable the Market Disclosure Committee to reach a decision. This may include seeking urgent legal advice. The Disclosure Officer will need to fully brief any external legal advisers because they could become liable for any contravention of the disclosure requirements.

### **3.3 What are my responsibilities?**

All employees have two key responsibilities:

- First, an employee must immediately advise their Business Unit Disclosure Officer or the Company Secretary if they obtain information that they think may need to be disclosed to the ASX.
- Secondly, where any employee believes that a matter may in time become material they must advise their Manager who will inform the Business Unit Disclosure Officer.

The Company Secretary will report regularly to the Board and to the Market Disclosure Committee at each of its meetings on matters raised in advices or reports from Business Unit Disclosure Officers or any other employee.

**If you are in any doubt about whether a matter might require disclosure please contact your Business Unit Disclosure Officer and/or the Company Secretary.**

### **3.4 Who are the Business Unit Disclosure Officers?**

Business Unit Disclosure Officers are AGL employees who are nominated as being responsible for ensuring business units comply with the Market Disclosure Policy and Market Disclosure Plan. They are usually the first point of contact for people in the business unit to raise matters relating to the policy or plan and matters that may require disclosure.

The Business Unit Disclosure Officers are:

- |                                 |  |
|---------------------------------|--|
| • Retail Energy                 | Group General Manager, Retail Energy   |
| • Merchant Energy               | Group General Manager, Merchant Energy |
| • Finance                       | Chief Financial Officer                |
| • People & Culture              | Group Manager People and Culture       |
| • Information Technology        | Chief Information Officer              |
| • Corporate & External Services | Company Secretary                      |

## **4. Materiality Guidelines**

### **4.1 What must be disclosed?**

The Listing Rules require AGL to immediately notify the ASX of any information concerning AGL which a reasonable person would expect to have a **material effect** on the price or value of securities of AGL. That is **material information** that must be disclosed.

### **4.2 How do I determine what is "material"?**

The determination of what is and is not **material** is usually never clear cut. You should apply the following guidelines:

- (a) As a starting point, transactions (including contracts, purchases, investments, contingent liabilities) having a cash flow or revenue impact of 10 per cent or more (per annum) should be regarded as material.
- (b) Anything having a financial effect of 10 per cent per annum or more on the Group's profit and loss or 10 per cent or more on the Group's assets and liabilities.
- (c) However, clearly matters can be material irrespective of discernible dollar value. Some other tests that should be applied are:

- Is it sufficiently significant to affect the price that any informed investor would be prepared to pay for securities in AGL?
- Would it have a significant effect on the Group's reputation if it were known?
- Could it impact on the ability of the Group to operate or generate profits or affect its future viability?
- Is it in some other way significant, onerous or so removed from the ordinary expected course of business that it ought to be disclosed to potential investors?

If you have any doubt about whether a matter or information is material, please immediately refer it to the Business Unit Disclosure Officer who will refer it to the Company Secretary.

#### **4.3 What is "material information"?**

If information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, or buy or sell, AGL securities, it is **material** and **must be disclosed**.

Under the legal definition, information could be material in a variety of ways - if there is any doubt, the information should be immediately disclosed to your Business Unit Disclosure Officer or the Company Secretary.

The type of **material information** to be disclosed to the ASX could include:

- (a) Changes in revenue or profit or loss forecasts.
- (b) Changes in asset values or the amount of liabilities.
- (c) Appointment of any receiver, manager, liquidator or administrator in respect of any counterparty to any loan, trade credit, trade debt, borrowing or securities held by AGL or any of its controlled entities.
- (d) Changes in tax or accounting policy.
- (e) Formation or termination of a joint venture or strategic alliance.
- (f) Entry into or termination of a major contract.
- (g) Recommendation or declaration of a dividend or distribution.
- (h) Proposal to change AGL's auditor.
- (i) Significant transactions involving AGL or any of its controlled entities.
- (j) Significant labour disputes.
- (k) Threats, commencement or settlement of any material litigation or claim.
- (l) Agreements between AGL and one of its directors or one of their related parties.
- (m) Natural disasters that have particular relevance to AGL's businesses.
- (n) Decisions (final and draft) of regulatory authorities in relation to AGL's businesses.
- (o) Material health issues of the directors or senior executives of AGL.
- (p) Information affecting significant customers or suppliers of AGL.

## **5. Responsibility of the Board**

### **5.1 What is the role of the Board ?**

As the Board has overall responsibility for supervision of AGL it must ensure that AGL meets its disclosure obligations. The Board's responsibilities are to:

- Adopt the Policy and the Plan to ensure compliance with AGL's disclosure obligations.
- Put in place a system for monitoring compliance with the Plan.

## **6. Responsibilities of Senior Managers**

### **6.1 Why must I keep up to date?**

The Listing Rules require disclosure of relevant **material information** that has, or ought reasonably to have, come into the possession of a director or executive officer in the course of their duties.

This means that all Group General Managers, General Managers and Managers must keep up-to-date with all matters within their responsibility which may be or become material. Where it is considered that a matter may be material it is imperative that you contact your Business Unit Disclosure Officer or the Company Secretary.

## **6.2 What are the specific responsibilities of senior managers?**

The role of senior managers in AGL is to notify material information to the relevant Business Unit Disclosure Officer. The decision as to whether that information is material or falls within an exception is primarily the role of the Market Disclosure Committee.

If a Manager discovers information which they believe is or may be material, they must immediately notify that information to:

- Their Business Unit Disclosure Officer.
- In the Business Unit Disclosure Officer's absence, directly to the Company Secretary.
- If the Company Secretary is absent, to another member of the Market Disclosure Committee.

Even where the Manager believes the information falls within the exception to disclosure, they should notify any reasons for believing the information does not have to be disclosed.

Group General Managers must also immediately disclose to the Company Secretary any material information which comes to their attention from sources other than their direct reports.

In addition to immediate notification Group Managers/Group General Managers reporting directly to the Managing Director, must report to the Disclosing Officer each quarter in accordance with the certificate at Attachment 2 of this plan.

Disclosure is part of the ordinary responsibilities of all senior managers in AGL.

## **6.3 What are the responsibilities of the Disclosure Officer (Company Secretary)**

The role of the Disclosure Officer is to:

- Conduct all disclosure dialogue with the ASX.
- Maintain a record of material which has been disclosed to the ASX as well as material which has not been disclosed to the ASX, together with the reasons for non-disclosure.
- Convene meetings of the Market Disclosure Committee as required.
- Make available to the Market Disclosure Committee the reports to and from Group General Managers/Group Managers to determine whether matters which have been noted as potentially material:
  - Should then be disclosed to the ASX.
  - Have been resolved in a manner which does not require disclosure.
- Submit quarterly reports to the Board and to each meeting of the Market Disclosure Committee setting out:
  - The number of matters reported to the Disclosure Officer broken down into the number disclosed to the ASX and not disclosed to the ASX.
  - A brief summary of each matter not disclosed to the ASX and the reason for non-disclosure.
  - Any significant potential disclosure matters revealed by the Disclosure Officer's review of relevant management reports.

- Report more frequently to the Board if there are reasons to be concerned about the efficiency of the system.

## **7. Responding to Market Speculation & Rumours**

### **7.1 What is AGL's policy in responding to market speculation & rumours?**

AGL generally does not respond to market speculation or rumours.

Market speculation and rumours, whether substantiated or not, have the potential to impact on AGL. Speculation may also contain factual errors that could materially affect AGL. The Market Disclosure Committee will monitor movements in the price or trading of AGL securities to identify circumstances where a false market may have emerged in AGL.

In some circumstances the Market Disclosure Committee may decide to make a statement to the market in response to market speculation or rumours. This would be the case if, to prevent or correct a false market occurring in AGL's securities:

- It considers AGL is obliged at that time to make a statement to the market about a particular matter.
- The ASX asks for information.

## **8. Authorised Spokespersons**

### **8.1 Who are AGL Energy's authorised spokespersons?**

Only the following persons may speak on behalf of AGL Energy to institutional investors, stockbroking analysts and the media:

- Chairman
- Managing Director
- Chief Financial Officer
- Company Secretary
- General Manager External Affairs (media only)
- Head of Investor Relations (investors and analysts only)
- Manager Media Relations (media only)
- Any other person nominated by the Managing Director, Chief Financial Officer or Company Secretary for that purpose.

Those persons may only clarify information that AGL has publicly released and must not comment on price-sensitive information that has not been released to the market.

AGL will not expressly or implicitly give institutional investors or stockbroking analysts earnings forecast guidance that has not been released to the market.

Before any media release or any other statement, presentation or other written material can be issued the Market Disclosure Committee must review it, the Company Secretary must then disclose it to the ASX and confirm that AGL has received confirmation from ASX that the information in the media release or other written material has been released to the market.

Only at that stage can AGL issue the information to the market and media generally and publish it on its website.

### **8.2 What if I am asked for information or comment by an external party?**

If other employees are asked to comment by an external investor, stockbroking analyst or the media in relation to any matter concerning AGL they must:

- Say that they are not authorised to speak on behalf of AGL.
- Refer the investor or stockbroking analyst to the Head of Investor Relations.
- Refer the media to the Manger, Media Relations.

## **9. Trading Halts**

### **9.1 How are trading halts decided?**

AGL may ask the ASX to halt trading in AGL's securities to manage disclosure issues, thereby facilitating a fair and informed market in AGL securities.

It is the responsibility of the Chairman and the Managing Director to make all decisions relating to trading halts. No employee is authorised to seek a trading halt other than through the Market Disclosure Committee.

## **B. FINANCIAL MARKETS COMMUNICATIONS**

### **1. General Approach**

#### **1.1 How does AGL communicate with institutional investors and stockbroking analysts?**

AGL may hold general briefings with institutional investors or stockbroking analysts and one-on-one briefings to discuss information that has been released to the market.

Any presentation or briefing materials for general or one-on-one briefings with institutional investors or stockbroking analysts must be given to the Market Disclosure Committee before the briefing to determine if they contain any price-sensitive information that has not been released to the market.

For the purposes of this Plan:

- Public speeches and presentations by the Managing Director, Chairman or other authorised company representative are general briefings.
- Any briefing that is not a general briefing is a one-on-one briefing.

#### **1.2 What can be said at general briefings?**

Price-sensitive information that has not been released to the market via the ASX must not be disclosed at general briefings. 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 AGL 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, they must immediately inform the Company Secretary or another member of the Market Disclosure Committee (if the Company Secretary is unavailable).

Before any general briefing, AGL will inform the market about the briefing through ASX and on AGL's website.

#### **1.3 What can be said at one-on-one briefings?**

AGL may hold one-on-one briefings with institutional investors and stockbroking analysts. At these briefings, AGL may give background and non-price sensitive 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. File notes must be made of all one-on-one briefings and kept for a reasonable period.

If an employee participating in a one-on-one briefing thinks something has been raised that might be price-sensitive information that has not been publicly released, they must immediately inform the Company Secretary or another member of the Market Disclosure Committee (if the Company Secretary is unavailable).

**1.4 What and when is the “blackout” period?**

To protect against inadvertent disclosure of price-sensitive information, AGL will not hold one-on-one and general briefings (except to deal with matters subject to an announcement through the ASX) between the end of its financial reporting periods (31 December and 30 June) and the announcement of those results to the market.

**1.5 What do I do if a stockbroking analyst asks me for comment on their report?**

AGL is not responsible for, and does not endorse, reports by analysts commenting on AGL Energy. AGL does not incorporate reports of analysts in its corporate information.

If an analyst sends a draft report to AGL for comment:

- Employees must immediately send it to the Head of Investor Relations
- 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
- No comment will be made on any profit forecasts contained in it.

Any correction of a factual inaccuracy does not imply that AGL endorses a report. A standard disclaimer will be made in any response to an analyst.

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**Attachment 1**

**PRINCIPAL CONTINUOUS DISCLOSURE PROVISIONS**

**ASX LISTING RULES**

**Listing Rule 3.1 provides:**

'Once an entity 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 entity's securities, the entity must immediately tell ASX that information.'

**Listing Rule 3.1A provides:**

Listing rule 3.1 does not apply to particular information while all of the following are satisfied:

- 3.1A.1 A reasonable person would not expect the information to be disclosed.
- 3.1A.2 The information is confidential and ASX has not formed a view that the information has ceased to be confidential.
- 3.1A.3 One or more of the following applies.
  - It would be a breach of a law to disclose the information.
  - The information concerns an incomplete proposal or negotiation.
  - The information comprises matters of supposition or is insufficiently definite to warrant disclosure.
  - The information is generated for the internal management purposes of the entity.
  - The information is a trade secret.

For the purpose of this Listing Rule the entity becomes 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 the performance of duties as a director or executive officer of that entity.'

**Listing Rule 3.1B provides:**

'If ASX considers that there is or is likely to be a false market in an entity's securities and asks the entity to give it information to correct or prevent a false market, the entity must give ASX the information needed to correct or prevent the false market.'

**Attachment 2**

**TO: THE COMPANY SECRETARY**

**QUARTERLY CERTIFICATE - CONTINUOUS DISCLOSURE PLAN**

To the best of my knowledge and belief all matters which might need to be disclosed to the Australian Securities Exchange, since the date of my last certificate (date), have been brought to the attention of the Disclosure Officer for review.

.....  
Signature

Please Note: This certificate is to be provided on a quarterly basis by all Group General Managers / Group Managers reporting to the Managing Director. They should make due enquiry of their subordinates before completing the certificate as it is assumed that the certificate covers their area of responsibility. They should also refer to the AGL Market Disclosure Policy and Plan.