

EBR SYSTEMS, INC.
CONTINUOUS DISCLOSURE POLICY

1 Introduction

EBR Systems, Inc. (**EBR**) is committed to providing securityholders and the market with full and timely information about its activities in compliance with its continuous disclosure obligations. This document sets out the policies and procedures that EBR and its subsidiaries (together, the **Group**) will comply with in relation to continuous disclosure.

2 Objectives

The objectives of this policy are to:

- (a) establish procedures for the reporting of price sensitive information to the Chief Executive Officer (and/or the Chair or Board) for review;
- (b) establish procedures for the preparation, approval and release of announcements to the ASX; and
- (c) establish procedures to enable compliance by EBR with its continuous disclosure obligations under the Australian *Corporations Act 2001* (Cth) (**Corporations Act**) and the ASX Listing Rules.

3 Scope

This policy applies to:

- (a) all directors of the Board of Directors of EBR (**Board**); and
- (b) all officers, employees, contractors and consultants of the Group (**EBR Personnel**).

4 Continuous disclosure obligation

4.1 Disclosure obligation

- (a) Legal obligation of disclosure

EBR has continuous disclosure obligations under the Corporations Act and ASX Listing Rules to keep the market fully informed of any price sensitive information relating to EBR.

ASX Listing Rule 3.1 requires that EBR immediately notify the ASX of any information of which EBR becomes aware, concerning EBR, that a reasonable person would expect to have a material effect on the price or value of any securities issued by EBR (including CHESD Depository Interests (**CDIs**) over securities issued by EBR) (**Material Information**).

- (b) Material effect on the price of securities

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

In determining whether information is Material Information, EBR Personnel should consider the following two questions:

- Would this information influence my decision to buy or sell securities in EBR at their current market price?
- Would I feel exposed to an action for insider trading if I were to buy or sell securities in EBR at their current market price, knowing this information has not been disclosed to the market?

In forming a view as to whether a reasonable person would consider information to be material, previous disclosure to the market should be considered, for example, previously released profit expectations, commentary on likely results, or detailed business plans or strategies.

A list of matters that may be considered material is set out in Annexure A. This list is merely indicative and should not be seen as an exhaustive list of the matters that should be considered for disclosure nor should all matters in **Annexure A** necessarily be regarded as material.

(c) Information in EBR's knowledge

EBR becomes aware of information if any of its officers has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of EBR.

An officer includes a director or secretary of EBR and a person who makes, or participates in making, decisions that affect the whole or a substantial part of the business of EBR.

(d) Release of information to others

Material Information must not be released to any person (e.g. brokers, analysts, the media, professional bodies or any other person) until EBR has given the information to the ASX and has received an acknowledgement that the ASX has released the information to the market.

4.2 Requirement to disclose information 'immediately'

Under ASX Listing Rule 3.1, Material Information must be disclosed to the ASX immediately upon EBR becoming aware of the information, unless it falls within the exception to disclosure under ASX Listing Rule 3.1A (see section 4.3 below).

ASX considers the word "immediately" should not be read as meaning "instantaneously", but rather as meaning "promptly and without delay".

Factors that the ASX will take into account in assessing whether EBR has complied with its obligations to disclose information promptly and without delay include:

- where and when the information originated;
- the forewarning (if any) EBR had of the information;
- the amount and complexity of the information concerned;
- the need in some cases to verify the accuracy or bona fides of the information;
- the need for an announcement to be carefully drawn so that it is accurate, complete and not misleading;
- the need in some cases for an announcement to comply with specific legal or ASX Listing Rule requirements; and

- (g) the need in some cases for an announcement to be approved by the Board.

4.3 Exceptions to disclosure

ASX Listing Rule 3.1A provides that Material Information will not need to be provided to the ASX in certain circumstances. The application of ASX Listing Rule 3.1A will be determined on a case-by-case basis.

Material Information will not need to be provided to the ASX if all of the following exceptions apply in respect of the Material Information:

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

4.4 Procedure for disclosure

The following procedures apply to the preparation, approval and release of continuous disclosure announcements to the ASX:

- (a) All EBR Personnel must notify the Chief Executive Officer as soon as he or she becomes aware of information that may be Material Information (see section 4.5 below).
- (b) The Chief Executive Officer will:
 - (i) review the Material Information with the Chair (or in his or her absence, another director of EBR);
 - (ii) determine, in consultation with the Chair (or in his or her absence, another director of EBR), whether any of the Material Information is required to be disclosed to the ASX;
 - (iii) if disclosure is required, request the Company's ASX representative under ASX Listing 12.6 (**ASX Representative**) (or company secretary) to prepare the form of announcement to the ASX, for approval by the Chief Executive Officer, and if the Chief Executive Officer or the Chair considers it necessary, the Board; and
 - (iv) once approved, instruct the ASX Representative to lodge the announcement with the ASX.
- (c) The ASX Representative will:
 - (i) provide a copy of the announcement to all members of the Board, promptly after lodging it with the ASX; and

- (ii) arrange for the announcement to be posted on EBR's website or investor website after receiving confirmation from the ASX that it has been released to the market;
- (d) In addition to, or in substitution of, the process set out in section 4.4(b), the Board may establish a sub-committee of the Board which considers disclosures of potentially market sensitive information to be made by EBR.
- (e) When assessing whether to approve a draft announcement, the Chief Executive Officer or the Board (or any sub-committee) must ensure that the announcement is factual, complete, balanced and expressed in a clear and objective manner that allows investors to assess the impact of the information when making investment decisions. In this context, "balanced" means disclosing both positive and negative information.

4.5 Obligations of EBR Personnel

As soon as any EBR Personnel becomes aware of information that may be Material Information, they must provide to the Chief Executive Officer the following information:

- (a) a general description of the matter;
- (b) details of the parties involved;
- (c) the relevant date of the event or transaction;
- (d) the status of the matter (e.g. final/negotiations still in progress/preliminary negotiations only);
- (e) the estimated value of the transaction (if applicable);
- (f) the estimated effect on EBR's finances or operations; and
- (g) the names of any in-house or external advisers involved in the matter.

Any change in the information must be immediately notified to the Chief Executive Officer.

The determination of whether certain information is Material Information necessarily involves the use of judgement. Any information that may have a material effect on the price of EBR's securities should be treated as if it is Material Information and the Chief Executive Officer should be notified following the process outlined above.

4.6 Analyst/media communications

Information provided to, and discussions with, analysts are also subject to the continuous disclosure policy.

Only the Chair and Chief Executive Officer are authorised to issue statements or make comments to the media or to speak on behalf of EBR to analysts or journalists unless prior approval is obtained from the Chair or Chief Executive Officer.

Material Information must not be selectively disclosed (i.e. to analysts, the media or members of the medical community) before being announced to the ASX. All information that is proposed to be presented to analysts, journalists or other members of the medical community that may include Material Information should be provided to the Chief Executive Officer before presenting that information externally. If EBR gives a new and substantive investor or analyst presentation, it must release a copy of the presentation materials on the ASX Market Announcements Platform ahead of the presentation.

All inquiries from analysts must be referred to the Chief Executive Officer. All material to be presented at an analyst briefing must be approved by or referred through the Chief Executive Officer (or his or her delegate) before the briefing.

All inquiries from the media must be referred to the Chief Executive Officer. All media releases must be approved by or referred through the Chief Executive Officer (or his or her delegate) before release to journalists.

4.7 *Interview/briefing black-out period*

During the period from the end of the financial year or half-year until the release to the ASX of the financial results of EBR for the relevant period, no EBR Personnel may discuss financial performance or forecasts with any analyst, investor or the media, unless the information has already been disclosed to the ASX.

In addition, during the period from the end of the first or third quarter of a financial year until the release to the ASX of EBR's quarterly cash flow report, no EBR Personnel may discuss financial performance or forecasts with any analyst, investor or the media, unless the information has already been disclosed to the ASX. However, the restriction in this paragraph does not apply if EBR is not required to submit a quarterly cash flow report to the ASX in relation to the quarter.

Any person who is given permission by the Chief Executive Officer to give a media interview, speak with analysts, or make a presentation must notify the Chief Executive Officer and the Chief Financial Officer of the date and time for the interview and must give a copy of any presentation to the Chief Executive Officer and the Chief Financial Officer, before the interview/presentation.

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

4.8 *Market rumours and correcting a false market*

Under ASX Listing Rule 3.1B, if the ASX considers that there is, or is likely to be, a false market in EBR's securities, and requests information from EBR to correct or prevent the false market EBR must immediately give that information to the ASX.

This obligation to give information applies even where an exception described above in section 4.3 applies.

Unless disclosure is required to correct or prevent a false market, EBR has a general "no comment" policy in relation to market speculation and rumours.

4.9 *Trading halts and suspensions*

In order to facilitate an orderly and informed market, it may be necessary to request a trading halt or voluntary suspension of trading in EBR's securities from the ASX, for example:

- (a) to manage unexplained material price and/or volume change;
- (b) if confidential information about EBR is inadvertently disclosed;
- (c) prior to a press conference or briefing being held in advance of a formal announcement;
or
- (d) to prevent an uninformed market pending the announcement of price sensitive information.

The Chief Executive Officer is authorised to request a trading halt or voluntary suspension. In the absence of the Chief Executive Officer, any two directors are together authorised to make a decision to request a trading halt or voluntary suspension.

The Chief Executive Officer will first consult with the Chair (or in his or her absence, another director) regarding the decision to request a trading halt or a voluntary suspension.

No other EBR Personnel are authorised to request a trading halt or suspension on behalf of EBR, unless so authorised by the Board.

5 Relationship between continuous disclosure and other disclosure obligations

In addition to complying with its continuous disclosure obligations, EBR is required to disclose other types of information under the ASX Listing Rules and applicable securities laws. For example, EBR must prepare and issue periodic financial reports and accounts. EBR's compliance with its obligations to prepare such documents does not affect its continuous disclosure obligations.

6 Communication with CDI holders and securityholders

EBR acknowledges that effective communication with CDI holders and securityholders assists the creation and maintenance of an informed market in EBR's securities and enhances corporate governance by encouraging a culture of transparency in relation to EBR's activities. EBR seeks to:

- (a) provide a comprehensive and up-to-date website, which includes copies of all Material Information lodged with the ASX (including announcements and financial information) as well as relevant and non-confidential policies and charters and other company information;
- (b) place all relevant announcements, briefings and speeches made to the market or the media on the website;
- (c) place full text of annual reports, notices of meetings of securityholders and accompanying explanatory notes on the website; and
- (d) facilitate and encourage securityholders participation at meetings and investor presentations via the use of technology.

Securityholders' meetings are an opportunity for CDI holders and securityholders and other stakeholders to hear from and put questions to the Board, management and the external auditor (all of whom EBR will use best endeavours to ensure is present at every annual meeting). Securityholders and CDI holders may attend the meeting in person or by proxy, representative or attorney. If securityholders or CDI holders are present at securityholder meetings, the Chair will provide reasonable time following the consideration of reports for questions and comment on these matters.

7 Management of the policy

EBR has nominated the ASX Representative as the person with primary responsibility for all communication with the ASX.

The ASX Representative is responsible for:

- (a) liaising with the ASX in relation to continuous disclosure issues;
- (b) ensuring that the system for the disclosure of all Material Information to the ASX in a timely fashion is operating;

- (c) co-ordinating the actual form of disclosure, including reviewing proposed announcements by EBR to the ASX and liaising with the Chief Executive Officer, the Chair or the Chief Financial Officer (as appropriate) in relation to the form of any ASX releases;
- (d) liaising with the Board (where necessary) in relation to the disclosure of information;
- (e) keeping a record of all ASX and other releases that have been made;
- (f) periodically reviewing EBR's disclosure procedures in light of changes to the ASX Listing Rules or applicable securities laws and recommending to the Board any necessary changes to the procedures; and
- (g) preparing regular disclosure reports to the Board, which advise of:
 - (i) material matters considered and the form of disclosure (if any); and
 - (ii) any material changes to EBR's continuous disclosure processes.

8 Contraventions and penalties

8.1 Contravention

EBR takes continuous disclosure very seriously. EBR contravenes its continuous disclosure obligations if it fails to notify the ASX of the information required by the ASX Listing Rules.

8.2 Penalties for breach

If EBR contravenes its continuous disclosure obligations under the ASX Listing Rules, the ASX may suspend trading in EBR's securities or may de-list EBR from the ASX.

If EBR contravenes its continuous disclosure obligations, it may also be liable under the Corporations Act and may face:

- (a) criminal liability, which attracts substantial monetary fines; and
- (b) civil liability for any loss or damage suffered by any person as a result of EBR's failure to disclose relevant information to the ASX.

However, if the court finds that EBR has acted honestly and reasonably, the court may, in its discretion, excuse EBR from civil liability.

8.3 Persons involved in the contravention

Any person involved in a contravention by EBR of its continuous disclosure obligations (not just EBR Personnel) may also face criminal penalties and civil liability. Substantial pecuniary penalties, imprisonment, or both, may apply.

8.4 "Due diligence" defence

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

- (a) took all reasonable steps to ensure that EBR complied with its continuous disclosure obligations; and
- (b) after doing so, believed on reasonable grounds that EBR did comply with its continuous disclosure obligations.

8.5 ASIC infringement notices

As an alternative to seeking the imposition of a civil penalty, ASIC may issue EBR with an infringement notice for an alleged contravention of the continuous disclosure obligations. An infringement notice may be issued if ASIC has reasonable grounds to believe (even if it cannot prove) that EBR has contravened its continuous disclosure obligations and ASIC has followed specified procedures.

The risk of EBR being issued with an infringement notice despite ASIC not being able to prove that EBR has contravened its continuous disclosure obligations underscores the importance of EBR Personnel complying with this policy.

9 Further information

Any person who has questions about this policy, or who requires further information, should contact the Chief Executive Officer or the ASX Representative.

10 Review of this policy

This policy may be amended by resolution of the Board of Directors, from time to time, to ensure that it is operating effectively.

Approved by the Board of Directors of EBR Systems, Inc. on 15 October 2021.

Annexure A – Material Information

Material Information may include:

- (a) the financial condition, results of operations, EBR-issued forecasts and the earning performance of the Group, which are significantly different from that anticipated by EBR or the market;
- (b) a proposed acquisition or disposition of material assets by a member of the Group;
- (c) the entry into, variation, or termination of a material agreement;
- (d) material developments in regulatory approval processes, including in relation to device reimbursement;
- (e) material developments in relation to the intellectual property of the Group;
- (f) a transaction for which the consideration payable or receivable is a significant proportion of the written down value of the Group's consolidated assets. Normally, an amount of 5% or more would be significant, but a smaller amount may be significant in a particular case;
- (g) events or occurrences that have an impact on the operations of the Group;
- (h) natural disasters or accidents that have particular relevance to the businesses of the Group or its suppliers;
- (i) significant changes in technology or the application of technology which could affect business;
- (j) a proposed announcement to alter pricing or tariff policies other than in the ordinary course of business;
- (k) resolving to pay a dividend, or a recommendation that no dividend be paid;
- (l) legal proceedings against or allegation of any breach of the law, whether civil or criminal, by EBR or any of its employees (other than debt recovery proceedings or insured workers' compensation claims);
- (m) any credit rating applied by a rating agency or any notification by a ratings agency that it will review the credit rating of EBR;
- (n) a change in EBR's financial forecast or expectation;
- (o) the appointment of a receiver, manager, liquidator or administrator in respect of any loan, trade credit, trade debt, borrowing or securities held by a member of the Group;
- (p) changes in EBR's senior management or auditors;
- (q) entry by the Group into a new line of business or the discontinuance of a particular line of business;
- (r) the commission of an event of default under, or other event entitling a financier to terminate, a material financing facility of the Group; and
- (s) planning to undertake a significant financing or security issue (whether debt or equity) or to take other action with respect to outstanding securities (e.g. security buy-back program) or any default on any securities.