

## GI DYNAMICS, INC.

### CONTINUOUS DISCLOSURE POLICY

#### SCOPE OF POLICY

GI Dynamics, Inc. (**Company**) has adopted a set of procedures and guidelines to ensure that it complies with its disclosure obligations in accordance with all applicable legal and regulatory requirements, including the Corporations Act 2001 (Cth) (**Corporations Act**) and the Listing Rules of the Australian Securities Exchange (**ASX**).

ASX Listing Rule 3.1 sets out the Company's primary Australian disclosure obligations. Listing Rule 3.1 requires the Company to immediately notify ASX of information that a reasonable person would expect to have a material effect on the price or value of the Company's securities when the Company becomes aware of the information, unless the materially price sensitive information falls within one of the exemptions set out in Listing Rule 3.1A.

The Company is committed to taking a proactive approach to continuous disclosure and creating a culture within the Company that promotes and facilitates compliance with the Company's continuous disclosure obligations. This continuous disclosure policy applies to all executive and non-executive directors, officers, employees, contractors and consultants of the Company and its subsidiaries from time to time.

The key aspects of the Company's continuous disclosure program are set out below.

#### DIVISION OF RESPONSIBILITY

##### A. Board of directors

The Company's board of directors (**Board**) bears the primary responsibility for the Company's compliance with its disclosure obligations and is therefore responsible for overseeing and implementing this continuous disclosure policy. The ultimate decision on whether material information needs to be disclosed to ASX or otherwise rests with the Board. It is a standing agenda item at all Board meetings to consider any information that must be disclosed in accordance with the Company's continuous disclosure obligations.

Although the Company has appointed its Chief Executive Officer and Chief Financial Officer as reporting officers (**Reporting Officers**) in order to streamline the day-to-day compliance with its continuous disclosure obligations, all directors are required to notify one of the Reporting Officers if they believe there is material information which requires disclosure. All directors are encouraged to approach one of the Reporting Officers if they have any queries about what information should be disclosed to ASX.

Where a director serves as an officer of another company that the Company has a financial interest in, that director is responsible for providing copies of all material announcements or releases by that company to the Company Secretary as soon as practicable.

## **B. Company Secretary**

The Company has appointed the Company Secretary to serve as its ASX liaison officer, being the person responsible for communicating with ASX with respect to all Listing Rule matters. The Company Secretary plays an important role in the Company's disclosure compliance program and is responsible for:

- (a) maintaining, and monitoring compliance with, the continuous disclosure policy;
- (b) liaising between the Reporting Officers, the Board and ASX;
- (c) overseeing and coordinating disclosure of information to ASX, analysts, brokers, shareholders, the media and the public; and
- (d) coordinating education within the Company about its disclosure obligations and the Company's disclosure compliance program.

## **C. Authorised Company spokesperson**

The Company has appointed the Chief Executive Officer as its authorised spokesperson. The Chief Executive Officer, or a person authorised by the Chief Executive Officer, is the only person who is permitted to make any material public statement on behalf of or in relation to the Company. Such public statements extend to all responses by the Company to enquiries by the media, analysts or shareholders. All enquiries by regulators should be passed on to the Company Secretary.

There must be no selective disclosure of material information. The spokesperson should not disclose any material price sensitive information through public statements which has not already been released to the market through ASX, but may clarify material information which has already been disclosed to ASX. Prior to making any public statement, the spokesperson should liaise with the Company Secretary regarding the Company's disclosure history to avoid the inadvertent release of price sensitive information.

The Company may authorise other persons from time to time to make public statements in particular circumstances.

In the event of inadvertent selective disclosure of undisclosed material information, the person or persons involved should immediately contact the Company Secretary or a Reporting Officer. The Company will determine as soon as practicable whether there is a need (based on who received the unintentional selective disclosure and the probability of dissemination) to disclose the material information to ASX or otherwise, or to require that the party to whom the information was disclosed enter into a written confidentiality agreement.

## **D. Reporting Officers**

The responsibilities of a Reporting Officer are to:

- (a) seek to ensure that management promptly provide the Reporting Officers with all material information and otherwise comply with this policy;
- (b) review information provided to and otherwise obtained by the Reporting Officer from the Company's reporting systems to determine whether the information is material;

- (c) immediately report material information to the Company Secretary who will in turn provide a report to the Board.

## **E. Employees**

All employees are required to comply with this policy and the Company's continuous disclosure obligations. Breaches of this policy will be viewed seriously and may lead to disciplinary action being taken against the relevant employee. In serious cases, such action may include dismissal. Employees should report all breaches of this policy by any person to the Company Secretary.

## **REPORTING OBLIGATIONS**

### **A. Information to be reported**

Subject to the exemptions set out in Listing Rule 3.1A, the Company will notify ASX as soon as it becomes aware of information with respect to the Company that a reasonable person would expect to have a material effect on the price or value of its securities and make all required U.S. Securities and Exchange Commission (SEC) filings. Examples of material price-sensitive information include:

- an issue of equity securities or entry into an agreement to issue equity securities;
- restructurings;
- news of a pending or proposed merger, acquisition, tender offer or divestiture;
- changes in the Board or senior management;
- significant clinical or regulatory developments affecting the Company's products;
- a material change in the Company's financial forecast or expected results;
- declaration of a dividend or changes in dividend policies;
- entry into or termination of material agreements, including financings;
- events triggering material accelerations of, or increases in, financial obligations;
- a material change in accounting policies adopted by the Company;
- a rating applied by a rating agency to the Company or its securities, and any change in such rating;
- a significant change in market or regulatory conditions which is likely to have a material effect on the Company's results;
- projections of future earnings or losses;
- earnings that are inconsistent with external guidance from the Company or with market expectations;
- news of a significant sale of assets or the expansion or curtailment of operations (including a significant new contract or loss of business);
- declaration of a stock split;
- material new products or discoveries;
- material regulatory actions, including receipt or denial of a material regulatory application for clearance or approval of products;
- the gain or loss of, or a material change to the terms of the Company's relationship with, a substantial customer or supplier;

- the commencement of, or material development regarding, any material litigation;
- a decision by the Company to borrow a significant amount of money;
- a decision by the Company to offer securities in a public or private offering or repurchase or redeem any Company securities currently owned by the public;
- a material change in the Company's capital expenditure program; and
- significant shifts in operating or financial circumstances.

The above examples are indicative only, and are not exhaustive. Where Reporting Officers are unsure whether information is material, they should take a conservative view and report it to, or discuss it with, the Board. The Company's legal advisers should be consulted where the materiality of information or the obligation to disclose is unclear.

## **B. Confidential information**

Certain material information does not need to be disclosed if it falls within the scope of the confidentiality exemption set out in Listing Rule 3.1A. To fall within the exemption, all of the following conditions must be satisfied:

- 1 a reasonable person would not expect the information to be disclosed; and
- 2 the information is confidential; and
- 3 the information falls within one or more the following categories:
  - (a) it would be a breach of the law to disclose the information;
  - (b) the information concerns an incomplete proposal or negotiation;
  - (c) the information comprises matters of supposition or is insufficiently definite to warrant disclosure;
  - (d) the information is generated for internal management purposes of the company; or
  - (e) the information is a trade secret.

Once a Reporting Officer determines that a matter is material, the Board will consider the confidentiality of the matter and bears the sole authority to determine whether a matter should not be disclosed on the basis of the confidentiality exemption.

The Reporting Officer should disclose all material information to the Board and should not make a final assessment whether material information should not be disclosed on the basis of the confidentiality exemption. However, to assist the Board in making these decisions, the Reporting Officer should provide details as to why they consider the information may be confidential.

The Reporting Officer should take all necessary steps to ensure that all potentially confidential information remains confidential. For example, potentially confidential information should not be disclosed to external parties except on the basis of a written confidentiality undertaking.

### **C. Reporting obligations of Reporting Officers**

Each Reporting Officer has the following reporting obligations in relation to information that potentially requires disclosure:

- (a) immediately report all material information to the Board via the Company Secretary, either in writing or verbally;
- (b) provide sufficient details of all information to allow the Board to form a view as to whether the information is material and to prepare the appropriate form of disclosure, if necessary; and
- (c) state whether the Reporting Officer considers that the information is confidential and the reasons for forming that view.

In addition, Reporting Officers should provide a formal report to the Board at the end of each month which either provides details of unreported material information regarding their area of responsibility or states that the Reporting Officer is unaware of any unreported material information at that time.

### **D. Dealing with analysts**

The Company must take care to ensure that it does not give analysts or other select groups of market participants any material price sensitive non-public information at any time, such as during analyst briefings, when responding to analysts' questions or when reviewing draft analyst research reports. The Company may clarify or correct any errors of interpretation that analysts make concerning already publicly available information, but only to the extent that the clarification or correction does not itself amount to giving the analyst material non-public information (such as correcting market expectations about profit forecasts). Any material non-public information that was inadvertently disclosed during dealings with analysts should be immediately disclosed to ASX and may also need to be disclosed to the SEC.

All information given to analysts at a briefing, such as presentation slides, and any presentation material from public speeches given by Board members or members of senior management that relate to the Company or its business should also be given to the Company Secretary for immediate release to ASX and posted on the Company's website. The information must always be released to ASX before it is presented at the briefing.

### **E. Market speculation and rumours**

In general, the Company does not respond to market speculation and rumours except where:

- (a) the speculation or rumours indicate that the subject matter is no longer confidential and therefore the exception to disclosure set out in the Listing Rules no longer applies;
- (b) ASX formally requests disclosure by the Company on the matter (which it may do under Listing Rule 3.1B); or
- (c) the Board considers that it is appropriate to make a disclosure in the circumstances.

Only authorised spokespersons may make statements on behalf of the Company in relation to market rumours or speculation. Any person within the Company should report market speculation or rumours of which the Company Secretary may not be aware to the Company Secretary immediately.

### **F. Trading halts**

It may be necessary to request a trading halt from ASX to ensure that orderly trading in the Company's securities is maintained and to manage disclosure issues. The Company's Chief Executive Officer, or in his or her absence the Chief Financial Officer, will make all decisions in relation to trading halts. No Company employee is authorised to seek a trading halt except with the approval of the Chief Executive Officer, or in his or her absence the Chief Financial Officer.

#### **G. Website**

All Company announcements will be posted on the Company's website immediately after they are released to ASX.

#### **H. Questions**

For questions about the operation of the Policy, please contact the Company Secretary.

### **REVIEW OF POLICY**

This policy will be reviewed regularly by the Board having regard to the changing circumstances of the Company and any changes to the policy will be notified to affected persons in writing.

Reporting Officers or other employees should communicate all comments and concerns about this policy to the Company Secretary.