

Parliamentary Joint Committee on Corporations and Financial Services

Australian Securities and Investments Commission

Answers to Questions on Notice

Public hearing: 28 February 2020

Question No: 023
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Question:

Ms HAMMOND: Perhaps I can just add to what Mr Falinski said. If we could have a copy of your internal conflict-of-interest policy and process that applies to all your meetings as a starting point, I would be satisfied seeing that before we take it any further.

Answer:

Attached is ASIC's conflict of interest policy. This document sets out the principles of how ASIC manages conflicts and the obligations on all staff to declare and avoid conflicts of interest. This document is currently under review and will be updated shortly.

In addition to the requirements set out in conflict of interest policy, each ASIC team is responsible for establishing processes and procedures for managing conflicts relevant to the team's duties and responsibilities. ASIC's Commission Secretariat has developed the processes and procedure for identifying and managing conflicts of interests that may arise at Commission and other ASIC decision making Committee Meetings (**Meeting**).

Prior to the Meeting, members of the committee and standing attendees are required to consider the matters being considered at the Meeting and disclose to the chair of the Meeting any interests that could give rise to a conflict.

Consideration of conflicts is also a standing item on the agenda for each Meeting and is dealt with by the chair of the Meeting at the commencement of the Meeting. The chair of the Meeting notes the interests that have been declared, reports on his/her assessment of whether the disclosed interests gives rise to a conflict and how any conflicts are to be managed. Disclosed interests and the Meeting's chair's assessment of those declarations, are recorded either in the minutes of the Meeting or in the relevant committee's Conflict of Interest Register (if the Meeting is not minuted).

The Meeting's chair's assessment of disclosures includes (but is not limited to) the consideration of the following factors and circumstances:

- the objectives and functions of ASIC;
- the matter that is to be discussed and determined by the committee;
- the **nature** of the conflict (i.e. is it real, potential, or perceived?);
- the **severity** of the conflict, including:
 - the amount, scope, and likelihood of any expected benefit (e.g. is it a large benefit primarily to the discloser or a small benefit that thousands of people including the discloser will receive?);
 - any other relevant circumstances (e.g. if the conflict relates to a commission/committee decision about an organisation where the discloser's partner works.)

- the **potential effect** of the conflict, including:
 - the extent to which the decision maker's ability to make an impartial decision in the public interest could be compromised (or could reasonably be seen to be compromised); and
- the overall likelihood that the conflict of interest may affect public confidence in the integrity of ASIC and its decisions.

The options for managing a conflict of interest include:

- **Removal**- the discloser is asked to leave the room and not participate at all in the 'conflicted' matter.
- **Restriction**– the discloser's involvement in discussion or decision making on the matter is restricted to the extent that matches the public interest. Monitoring occurs to check whether this remains the appropriate option.
- **Relinquish**– the discloser is asked to relinquish their private interest.



ASIC

Australian Securities & Investments Commission

Policy on avoiding conflicts of interest and improper use of information

March 2018

About this document

This document is ASIC's policy for Staff Members on disclosing their Interests, taking all reasonable steps to avoid conflicts of Interest, not improperly using Information and only accepting gifts or working outside of ASIC where appropriate.

Document Control

Policy application

This policy applies to you if you are a Staff Member of ASIC or are otherwise required to comply with ASIC's policies generally or this policy specifically (e.g. secondees from private organisations, and some consultants and contractors).

Policy approval

This Policy has been reviewed and approved by the following parties on the following dates:

Version	Approver	Approval date
1	Commission	31 Aug 11
1.1	Commission	June 2013
1.2	Commission	27 March 2014
1.3	Operational Risk Committee	4 October 2017
1.4	Commission	24 October 2017

Version history

Version	Details of changes/comments	Date
1	Published	September 2011
1.1	Amended to prohibit day Trading by ASIC staff	June 2013
1.2	Amended to extend pre-Trade approval to all staff	27 March 2014
1.3	Separated ASIC's Policy on Trading into new Trading Policy. Added references to myRAD system. Changed frequency of declarations of Interests from biannual to annual. Added guidance for secondees to and from ASIC. Removed requirement to maintain personal record of holdings and Interests. Updated definition of Gift and Benefit to state gift cards are the equivalent to cash. Increased the threshold of Senior Executive Leader approval of gifts to the value of \$250.	8 March 2018

Distribution

Version	Distribution list	Date
1.1	All of ASIC via myASIC	8 March 2018

Location

This Policy is available on myASIC.

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A What this policy is about

Policy outline

- 1 This document is ASIC's policy for ensuring you:
 - (a) disclose your Interests;
 - (b) take all reasonable steps to avoid conflicts of Interest;
 - (c) do not improperly use Information; and
 - (d) only accept gifts, or work outside of ASIC, where appropriate.
- 2 You must read this document in conjunction with ASIC's *Guide to avoiding conflicts of interest and improper use of information*. The terms defined in the Guide have the same meaning in this policy.
- 3 You must also read this document in conjunction with ASIC's *Trading Policy* and *Guide to ASIC's Trading Policy* which deal with Trading Financial Products.

Who does this policy apply to?

- 4 This policy applies to Staff Members or those otherwise required to meet ASIC's policies generally or this policy specifically (e.g. secondees from private organisations, and some consultants and contractors) (collectively, **you, your**).

B Why this policy is important to ASIC

- 5 ASIC's values of accountability, professionalism and teamwork underpin everything we do. All ASIC Staff Members have a role in upholding these values to promote ASIC's reputation as Australia's corporate, markets and financial services regulator.
- 6 In the course of administering and enforcing the ASIC Act and the Corporations Act, ASIC receives confidential and potentially valuable Information and there is an expectation that the Information will be used for its proper purpose.
- 7 ASIC also has statutory and common law obligations to maintain the confidentiality of some of the Information that it receives.
- 8 In addition, ASIC has extensive powers and discretions. The exercise of such powers, including the decision whether to exercise such powers, may sometimes have an impact on the price or value of Securities or other Financial Products.
- 9 ASIC must maintain the highest standards of probity, integrity and conduct when performing its work to engender and to preserve public confidence in ASIC. ASIC will be criticised, and will lose credibility, unless your conduct is patently and demonstrably proper and correct.
- 10 Therefore, ASIC must make sure that you act lawfully and properly and do not misuse Information you receive in the course of your work.
- 11 In making sure you take all reasonable steps to avoid situations where your Interests or non-ASIC duties conflict, or may reasonably be thought to conflict, with your duties as a Staff Member, ASIC must make certain inquiries about your personal affairs.

C Why this policy is important to you

- 12 You have legal restraints and obligations placed on you by some or all of the Corporations Act, the ASIC Act, the Public Service Act and the common law.
- 13 The wrongful disclosure of Information can also be a criminal offence under section 70 of the Crimes Act.
- 14 Australian Public Service (APS) employees have an obligation under the APS Code of Conduct (set out in s13 of the Public Service Act) to:
- (a) not make improper use of information, or your duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for themselves or any other person; and
 - (b) take reasonable steps to avoid, any conflicts of Interest (real or apparent) in connection with their APS employment.
- 15 Although these obligations are included in the APS Code of Conduct, they apply to all of you.
- 16 A breach of the APS Code of Conduct is a serious matter. A single breach may result in one or more of the following sanctions being applied:
- (a) reprimand;
 - (b) deductions from salary, by way of fine;
 - (c) reduction in salary;
 - (d) reassignment of duties;
 - (e) reduction in classification; and
 - (f) termination of employment or engagement.
- 17 You may also have an obligation under section 125 of the ASIC Act to Notify ASIC if your Interests conflict, or may conflict, with the proper performance of your functions and duties.
- 18 This policy does not limit your duties or obligations to comply with Australian law or limit your liabilities for contravening any Australian law.

D What is ASIC's policy?

Declare holdings and Interests

- 19 You must annually declare (every July) using ASIC's Risk and Disclosure system (myRAD):
- (a) your direct and Indirect Holdings;
 - (b) any Trading by you or on your behalf in any Financial Products during the relevant declaration period;
 - (c) any Trading by your Connected Persons in any Financial Products during the relevant declaration period;
 - (d) any pre-registration for IPOs by you or your Connected Persons during the relevant declaration period;
 - (e) any short term credit arrangements (for example credit cards, margin loans, personal loans) that, given your role at ASIC, you consider may give rise to a conflict, real or apparent, with the proper performance of your functions or duties at ASIC;
 - (f) any paid work, or directorship or similar office, outside of ASIC;
 - (g) any unpaid work outside of ASIC that you consider may give rise to a conflict, real or apparent, with the proper performance of your functions or duties at ASIC; and
 - (h) whether, and, if so, how, a Financial Interest or Other Interest, or a duty you owe to a person other than ASIC, conflicts, or may reasonably be thought to conflict, with the proper performance of your functions or duties at ASIC.
- 20 In considering whether, for the purposes of this Policy, you have an Interest that conflicts, or may reasonably be thought to conflict, with the proper performance of your functions or duties at ASIC, you should have regard to your personal friendships, familial ties, and your business, professional and social associations.
- 21 Your Connected Persons are:
- (a) your spouse or de facto partner, dependent children and anyone for whom you make financial decisions (such as a person for whom you exercise a power of attorney); and
 - (b) companies, trusts and entities which are controlled by you or the persons described in (a) above.

Endeavour to avoid conflicts of Interest

- 22 While at ASIC you must take all reasonable steps to avoid situations where a Financial Interest or Other Interest, or a duty you owe to a person other than ASIC, conflicts, or may reasonably be thought to conflict, with the proper performance of your functions or duties at ASIC.

Immediately Notify conflicts of Interest

- 23 You must Notify ASIC as soon as you become aware that a Financial Interest or Other Interest, or a duty you owe to a person other than ASIC, conflicts, or may reasonably be thought to conflict, with the proper performance of your functions or duties at ASIC.
- 24 You must disclose any conflict or apparent conflict even if you think that your Interest or duty will not actually impair the proper performance of your functions or duties at ASIC.
- 25 You must disclose all Information you have, or can reasonably be expected to obtain, that may be relevant to whether your Interest or duty conflicts, or may reasonably be thought to conflict, with the proper performance of your functions or duties at ASIC.

Not improperly use Information

- 26 You must not improperly use or disclose information obtained in the course of your work at ASIC to gain or benefit yourself or anyone else (APS Code of Conduct clause 10).
- 27 In addition, in light of ASIC's functions, you must:
- (a) scrupulously observe the prohibitions on insider trading and tipping contained in Division 3 of Part 7.10 of the Corporations Act;
 - (b) use reasonable endeavours to avoid situations where it might reasonably appear that you have not observed those prohibitions; and
 - (c) get ASIC's written approval before you or your Connected Persons Trade in a Financial Product or pre-register for certain IPOs. Please refer to the *Trading Policy* and *Guide to ASIC's Trading Policy* for further details.

Get approval for Gifts or Benefits

- 28 You must not improperly use your official position to seek or obtain a Gift or Benefit for you or someone else.

- 29 You should normally decline any Gift or Benefit offered by an external person in the course of, or related to, your work with ASIC. However, it is recognised that in special situations this is not always appropriate. For example:
- (a) acceptance of a minor Gift or Benefit may not give rise to a conflict of Interests, real or apparent, and declining to accept the Gift or Benefit may cause embarrassment or be impracticable;
 - (b) properly managed, attendance without payment at seminars or some other form of further education or training can benefit ASIC and need not necessarily give rise to a conflict of Interests or perceived conflict of Interests; and
 - (c) acceptance of modest hospitality or entertainment can sometimes genuinely assist ASIC to develop and maintain constructive relationships with stakeholders and service providers.
- 30 The key consideration is that the acceptance of a Gift or Benefit by you must not conflict, or be reasonably perceived to conflict, with the proper performance of your functions or duties at ASIC.
- 31 If you consider a special situation exists (for example those listed at paragraph 29) and it appropriate for you to accept a Gift or Benefit, you must:
- (a) unless paragraph (b) below applies, get ASIC's written approval for the acceptance of the Gift or Benefit prior to acceptance; or
 - (b) if it is a minor Gift or Benefit and it is impracticable to get approval prior to acceptance, Notify ASIC on myRAD of the Gift or Benefit as soon as practicable after its acceptance and follow any instructions given in respect of the Gift or Benefit.
- 32 If you become aware that someone else (for example, a family member) has accepted a Gift or Benefit in circumstances where the acceptance of the Gift or Benefit could reasonably be perceived to conflict with the proper performance of your functions and duties at ASIC, then you should promptly Notify ASIC on myRAD about the gift and disclose all relevant details.

Get approval for work outside ASIC

- 33 You must get written approval from ASIC before you perform paid work outside ASIC or act in an outside directorship or similar office. You must also get ASIC's written approval before performing any unpaid work outside of ASIC that you consider may give rise to, or that may reasonably be thought to give rise to, a conflict with the proper performance of your functions or duties at ASIC.

E What ASIC may do if there is or may be a conflict

- 34 When you Notify ASIC, ASIC will consider whether your Interests or non-ASIC duties conflict, or may reasonably be thought to conflict, with the proper performance of your functions or duties at ASIC.
- 35 ASIC may authorise you to continue your duties at ASIC without any further action on your part. If, however, ASIC considers that some action is required to reduce the risk of a conflict, it may:
- (a) rearrange your duties at ASIC;
 - (b) transfer you to an equivalent position; or
 - (c) request that you divest yourself of the Interest or non-ASIC duty.
- 36 ASIC will only ask you to divest yourself of your Interest or non-ASIC duty if the options in paragraph 35(a) and (b) are either unavailable or inappropriate in the circumstances.
- 37 If you are employed under the Public Service Act, you may ask for a review of the action taken in paragraph 35(a)–(c) in accordance with section 33 of the Public Service Act. If you are employed under the ASIC Act or by contract, you can contact ASIC's People & Development team to request a review.

F Further guidance

- 38 To comply with this Policy, you must follow the instructions and processes set out in ASIC's:
- (a) *Guide to avoiding conflicts of interest and improper use of information*;
 - (b) *Trading Policy*, and
 - (c) *Guide to ASIC's Trading Policy*.

G Privacy and confidentiality

- 39 ASIC will treat your disclosures as having been given in confidence. They are personal information for the purposes of the Privacy Act.
- 40 ASIC's collection, use, disclosure, and storage of your personal information and sensitive information (as defined in section 6 of the *Privacy Act*) in relation to your employment with ASIC is set out in the [Privacy Collection Notice](#) for ASIC employees and contractors.

H Key terms

Term	Meaning in this document
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASIC's People & Development team	The team within ASIC ordinarily responsible for advising ASIC's business units regarding its Staff Members
Connected Person	<p>(a) Your spouse or de facto partner, dependent children and anyone for whom you make financial decisions (such as a person for whom you exercise a power of attorney); and</p> <p>(b) companies, trusts and entities which are controlled by you or the persons described at paragraph (a) above.</p>
Corporations Act	<i>Corporations Act 2001</i>
Derivative	Has the same meaning as given in section 761D of the Corporations Act
Financial Interest	Any Interest that has an actual or contingent monetary or marketable value (e.g. real estate, Financial Products, directorships, Interests in trusts, Interests in nominee companies and partnerships)
Financial Product	<p>Has the same meaning as given to "Division 3 Financial Product" by section 1042A of the Corporations Act. That is, Financial Product means:</p> <p>(a) securities; or</p> <p>(b) derivatives; or</p> <p>(c) interests in a managed investment scheme; or</p> <p>(ca) debentures, stocks or bonds issued or proposed to be issued by a government; or</p> <p>(d) superannuation products, other than those prescribed by regulations made for the purposes of this paragraph; or</p> <p>(e) any other Financial Products that are able to be traded on a financial market</p>

Term	Meaning in this document
Gift or Benefit	An advantage and includes, but is not limited to: <ul style="list-style-type: none"> (a) a payment or other valuable consideration (i.e. cash or cash equivalent such as gift cards); (b) any kind of real, personal or intellectual property; (c) any legal or equitable estate or Interest in real, personal or intellectual property; (d) any legal or equitable right; and (e) hospitality, such as entrance to conferences, free or subsidised travel, accommodation or meals, for you or someone else
Guide	ASIC's <i>Guide to avoiding conflicts of interest and improper use of information</i>
Indirect Holding	A holding that is not directly held by you legally or beneficially, but significantly correlates with your actions and Interests, and includes, for example, a holding of an immediate family member which you control, or may be reasonably assumed to control, or where you will, or may be reasonably assumed to, derive some benefit
Information	Includes supposition that is reasonably definite, including those relating to the intentions, or likely intentions, of a person
Interest	Includes a right, or expectation of a right, to benefits produced or to be produced (whether the right is actual, prospective or contingent and whether it is enforceable or not) or a power to exercise, or control the exercise of, a right (including a right to vote) or disposal of a right, and includes a power or control that is indirect, express or implied, formal or informal, exercisable alone or jointly with another Party
IPO	Initial public offering
Notify	Advise in myRAD, or if not available, otherwise in writing
Other Interest	Interests in current or former personal friendships, personal relationships, close social or business relationships, familial ties, professional or social associations, and membership of a group pursuing political or social issues, and can include a relationship or circumstance where you have had prior dealings of a negative kind (e.g. involving animosity)
Party	Includes a person, entity, organisation or association
Policy	ASIC's <i>Policy on avoiding conflicts of interest and improper use of information</i>

Term	Meaning in this document
Privacy Act	<i>Privacy Act 1988</i>
Public Service Act	<i>Public Service Act 1999</i>
Securities	Has the meaning given to it by section 92(1) of the Corporations Act and security has a corresponding meaning
Staff Member	A person: <ul style="list-style-type: none"> (a) employed by ASIC under the Public Service Act; (b) employed under s120(3) of the ASIC Act; (c) engaged as a consultant under s121 of the ASIC Act; (d) seconded under s122 of the ASIC Act; or (e) employed by ASIC under common law contract
Trade	<ul style="list-style-type: none"> (a) Apply for, acquire, or dispose of, Financial Products, or enter into an agreement to apply for, acquire, or dispose of, Financial Products; or (b) procure another person to apply for, acquire, or dispose of, Financial Products, or enter into an agreement to apply for, acquire, or dispose of, Financial Products

I Related information

Legislation and regulatory documents

Australian Public Service Code of Conduct, clause 10

Australian Securities and Investments Commission Act 2001, Div 3 of Pt 3, s102, 120(3) and 121–125

Corporations Act 2001, Part 1.2, Division 3 Part 7.10 and sections 761D 1042A

Crimes Act 1914, section 70

Privacy Act 1988, section 6

Public Service Act 1999, sections 13 and 33

Internal documents

Policy on avoiding conflicts of interest and improper use of information

Guide to avoiding conflicts of interest and improper use of information

Trading Policy

Guide to ASIC's Trading Policy

[*Valuing and handling classified information protocol*](#)

[*Privacy Collection Notice*](#) for employees and contractors