



ASIC
Australian Securities &
Investments Commission

Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation No.1 of the 46th Parliament
Question No.	048-01
Date	12 January 2022
Topic	Insider Trading
Reference	Written Question on Notice
Committee member	Senator Bragg

Question
QoN048-01

- a. Does the compliance plan for super funds include procedures whereby trustees are advised of transactions such as switches and redemptions by any trustees or fund officers?
- b. Are suspicious transactions routinely reported to ASIC? Are there materiality thresholds?
- c. Should funds disclose on their web sites any transactions by directors and/or staff for their holding in the fund that they are a director or employee thereof?

Answer

In providing answers to this question, ASIC has assumed that the following terms in the question have the definitions set out below:

- 'compliance plan for super funds' means the internal procedures of super funds,
- 'trustees' means directors of the trustee; and
- 'fund officers' means employees of the trustee in a position to potentially access information not generally available that might have a material effect on a financial decision to switch options or make a redemption from the fund.

a.

ASIC has reviewed these procedures for 23 funds as at 27 October 2021 (see [21-282MR Surveillance of investment switching by super fund executives identifies concerns with trustees' conflicts arrangements](#)). ASIC has previously noted publicly in respect of this surveillance that it found 10 of the 23 funds reviewed did not have preventive controls in respect of switching, such as the

superannuation trustee being advised of transactions. ASIC surveillance work is continuing, and its findings will be made public later this year once the surveillance work has concluded. ASIC's work has not enabled ASIC to form a view across the whole industry.

b.

Ordinarily, the label of suspicious matters / transactions is applied to those notifiable to AUSTRAC under the *AML/CTF Act*. These transactions do not need to be notified to ASIC.

There are also no specific legal obligations on trustees of superannuation funds to notify ASIC when a director or fund executive switches investment options. Where a trustee suspects a person may be engaged in switching investment options in a manner contravening the law, we would encourage that trustee to report such misconduct to us. Superannuation trustees are obliged to have systems and processes to prevent and detect misconduct. Where a superannuation trustee becomes aware of a failure or inadequacy of such systems and processes, they are required to report it to ASIC as a breach, under s 912D.

c.

As a matter of law there is no obligation for superannuation trustees to disclose on their websites any *transactions* by directors or fund officers involving the relevant superannuation fund.

There is an obligation for a superannuation trustee to disclose 'relevant interests' which is generally understood to include whether executive officers (including directors) are members of the fund. Under s29QB of the Superannuation Industry Supervision Act 1993, and reg 2.38 of the Superannuation Industry (Supervision) Regulations 1994 superannuation funds are required to maintain a register of relevant interests and duties of executive officers (including directors) on their websites. While the legislation and regulations do not presently prescribe what is a relevant interest or duty, APRA has issued a standard relating conflicts of interest disclosure, Prudential Standard SPS 521 *Conflicts of Interest*. It provides a broad explanation of 'relevant interests', as including:

'any interest, gift, emolument or benefit, whether pecuniary or non-pecuniary, directly or indirectly held by the RSE licensee, the associate or the Responsible Person that the RSE licensee has determined is relevant because it might reasonably have potential to have a significant impact in regards to acting in the best interests of members'.

The determination on what might reasonably have potential to have significant impact in regards to acting in the best interests of members, is a matter for funds to determine on the basis of their legal advice. ASIC understands that commonly funds have taken the view that it is appropriate to disclose fund memberships of key personnel, such as executives and directors of the superannuation trustee