

Answer to question on notice:

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

REVIEW OF THE ASIC ANNUAL REPORT (SECOND REPORT) 2019

ASIC28QON

Member: Wilson

Reference: Hansard, 23 October 2020, p. 31-32

CHAIR: ... We've raised this matter before you as well, which is on superannuation funds when, as you may recall earlier in the year, there was a bottoming out of the Australian Stock Exchange as a consequence of COVID-19. Then there was a delayed period, in many cases, where super funds had unlisted assets for revaluation that enabled people to move money about from within funds based on knowledge or inside information to potentially profit. I asked a series of questions of superannuation funds, and this seems to me to be quasi-insider trading, if it does occur.

We asked about the switching behaviour of executives and trustees of superannuation funds across Australia, and we got a number of different responses. Say, for instance, CareSuper, who I give credit to. In answer to, 'What volume of switching between funds occurred in that time by trustees of the fund that are also members of the fund, between the highest and lowest valuations,' their answer was:

Investment choices of individuals are treated with confidence. However, CareSuper has in place a comprehensive Conflicts Management Policy.

This Conflicts Management Policy requires that 'blackout' periods are declared and enforced such that any director, executive or member of staff who was aware of any advance or sensitive information on valuations is prohibited from switching for the duration of the period. Black-out periods were enforced at various times in the six months from 1 January 2020 to 30 June 2020.

I give them credit, and I'll table that evidence, as answered as a question on notice.

I'll go to other funds. For instance, I believe UniSuper have admitted that one member, who is also an executive of the fund, had one or more switch requests processed during the high load periods of their fund to a total value of \$445,368. I'll table that one. We then have other funds where we see other issues similarly occurring. AustralianSuper had one person who did a transaction during that time. I'll table that one. We have Cbus, who refuses to provide any information to us, which is interesting. We then have NGS Super. They have outlined that they have trustees who did major transactions—three of them, in fact—during that time. I'll table that one as well. Then we have Rest. Rest has a person who transacted \$465,949 in funds. I'll table that one as well. You can see the pattern of behaviour. We have people who are trustees or managers of funds transacting huge sums of money within a defined period, where it's known that the stock market may not have reached bottom—we have to concede that—but

had dropped considerably while they hadn't revalued their unlisted assets and therefore may have been able to secure a benefit. Is that the sort of thing that ASIC would investigate?

Ms Press: We would be happy to take those examples away and investigate them, yes.

Mr Wilson has provided the following responses to questions in writing from superannuation funds for this question:

- [REST111QW](#)
- [NGS96QW](#)
- [CBUS98QW](#)
- [AS103QW](#)
- [CARE96QW](#)

Answer:

Yes, this is the kind of matter ASIC would investigate.

ASIC's regulatory role includes taking regulatory action in relation to matters where an Australian financial services licensee has inadequate arrangements in place for conflict management or where directors of a company have failed to comply with their obligations under the *Corporations Act 2001*. ASIC also takes regulatory action in relation to market misconduct.

Where we receive intelligence about a potential contravention of the law, we decide whether to investigate that potential contravention by reference to a variety of factors. These include the likelihood that a contravention of the law within ASIC's jurisdiction has occurred, the quality of the intelligence received and what potential evidence may exist, the seriousness of the harm caused by the potential misconduct, the extent to which ASIC action may influence the behaviour of a specific entity or industry, whether taking action aligns to ASIC current priorities and the resources available to consider the matter having regard to other competing demands.

We note that under the *Superannuation Industry (Supervision) Act 1993* APRA also has a role in relation to conflict obligations applying to superannuation trustees of registered superannuation entities. Therefore, if ASIC decided to take regulatory action in relation to the conflict obligations of a superannuation trustee it would engage with APRA.

It is not ASIC's practice to comment on whether it has formally commenced an investigation or make public comment about the progress of investigations. But we confirm that we are considering the material supplied and what further action might be appropriate for ASIC to take in accordance with our usual practices upon the receipt of intelligence.

We also note that investigations of matters such as breach of directors duties and market misconduct can take some time.