

Inquiry	Parliamentary Joint Committee on Corporations and Financial Services, Oversight of the Australian Securities and Investments Commission, the Takeovers Panel and the Corporations Legislation No. 1 of the 46th Parliament
Agency	Australian Securities and Investments Commission
Question No.	036-02
Reference	Written
Committee member	Senator O'Neill

1. Were you working on the same floor as Dan Phillips who sits on the Nuix board as a rep of Macquarie?

This question relates to Commissioner Armour's previous employment (before June 2013) as General Counsel for Macquarie Capital and as Executive Director of Macquarie Group. Commissioner Armour objects to answering this question on the basis that without further information setting out the purpose of the question and how the question will assist the Committee with its inquiries:

- (a) providing an answer to the question may result in a breach of Commissioner Armour's duty, as a former employee, to Macquarie to maintain its confidentiality and legal professional privilege, in circumstances where Macquarie has not provided a waiver. Without Macquarie's consent to waive confidentiality and its privilege, providing a response to this question may be prejudicial to Macquarie's interests (see *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters*, February 2015 at [4.8] and Odgers' *Australian Senate Practice*, 14th Edition, Canberra, 2016 pp 559, 668-669); and
- (b) the question is not relevant (see *Procedures for dealing with witnesses*, Resolution of House of Representatives adopted 13 November 2013 at [9], *Procedures to be observed by Senate Committees for the Protection of Witnesses*, Resolution of Senate adopted 25 February 1988 at [10] and Odgers' pp 558). As referred to in ASIC Chair Longo's opening statement to the Committee on 18 June 2021, Commissioner Armour has not been involved in ASIC's review of the Nuix prospectus, does not hold any Macquarie shares or otherwise have a financial interest in Macquarie (other than a bank account), and on this basis, ASIC does not believe that Commissioner Armour has a conflict of interest.

2. Were you working on the same floor as David Standen who recently left the Nuix board but was there right up until the prospectus?

We refer to the response to question 1 above.

3. Were you working on the same floor as Nuix co-founder Tony Castagna?

We refer to the response to question 1 above.

4. What connection have you had with these three or other Macquarie staff since you joined ASIC?

The three identified Macquarie staff are former work colleagues of Commissioner Armour and are, therefore, business acquaintances. Commissioner Armour does not have any ongoing personal or social relationship with the three Macquarie staff. From time to time Commissioner Armour meets other colleagues with whom she worked with at Macquarie.

- 5. Ms Armour, when you were at Macquarie were you present on May 21 2008 when Australian Federal Police raided Macquarie Capital with a warrant to search Dr Castagna's office on the same day that his house was searched, looking for evidence of tax evasion?**

This raid by the AFP was part of the Project Wickenby investigation which was an inter-agency operation that included ASIC.

We refer to the response to question 1 above.

- 6. What role did you have in responding to the AFP and the related agencies regarding Dr Castagna?**

We refer to the response to question 1 above.

- 7. In May 2011 Macquarie Capital invested \$10.5 million into Nuix, taking a 49.9 per cent stake in the company.**

As General Counsel for Macquarie Capital what role did you have in this transaction?

We refer to the response to question 1 above.

- 8. In the IPO last December, Dr Castagna received a payout of \$80 million from options that cost just \$3000 to exercise. According to media reports, the options seem to have been backdated. They did not appear in Nuix records until after the Macquarie investment in May 2011. According to a due diligence report by Grant Thornton, Macquarie proposed the issue of these options as part of the investment.**

As General Counsel of Macquarie Capital, what oversight did you have of these options?

We refer to the response to question 1 above.

- 9. Is it common practice to backdate these types of options agreements?**

We refer to the response to question 1 above.

- 10. When you were notified of the Nuix prospectus what action did you take to remove yourself from any perceived conflict of interest?**

As referred to in ASIC Chair Longo's opening statement to the Committee on 18 June 2021, Commissioner Armour has not been involved in, or otherwise sought to influence, ASIC's approach to the review of the Nuix prospectus. One of the complaint letters sent by Aperion Law was addressed to ASIC's Commissioners, and in accordance with ASIC's usual process this was referred to the relevant team for consideration.

11. When you received the letter from Aperion Law what action did you take to remove yourself from any perceived conflict of interest?

We refer to the response to question 10 above.

12. When the Nuix prospectus was given to ASIC for IPO listing, did you communicate to anyone within ASIC, including your fellow commissioners, about your awareness of Dr Castagna's previous history with the AFP in respects to tax evasion?

We refer to the response to question 10 above.

13. Upon receiving the letter from Aperion Law did you communicate to anyone within ASIC including your fellow commissioners about your awareness of Dr Castagna's previous history with the AFP in respects to tax evasion?

We refer to the response to question 10 above.

14. Did you communicate to anyone outside of ASIC about the Nuix IPO upon receiving the letter from Aperion Law?

We refer to the response to question 10 above.

15. Will you be involved in any investigation into Nuix and Macquarie?

At Commissioner Armour's own volition, she has recused herself from involvement in or participation in any decision made by ASIC in respect of any inquiries into Nuix and Macquarie's investment in Nuix. As referred to in ASIC Chair Longo's opening statement to the Committee on 18 June 2021, ASIC does not consider that Commissioner Armour has a conflict of interest.

However, in light of the comments made by Senator O'Neill in the Senate on 17 June 2021, the questioning before the Committee on 18 June 2021 and the Committee's written questions, Commissioner Armour has decided that it would be in the best interests of ASIC if she recuses herself from any involvement in these matters so as to enable ASIC's work to continue without disruption.