

Question No: 001
Reference: 44
Committee Member: Mr Gorman MP

Questions:

Mr GORMAN: Mr Savundra or Ms Chester, my understanding is that that policy hasn't been updated for more than two years. Is there a reason that you don't update your conflict of interest policy more regularly?

Mr Savundra: Mr Gorman, I'll have to take that on notice. We do regularly review. Often it's on a two-yearly basis, if not sooner—regular marks to review our policy. I'll just need to check when that was last reviewed and whether there's been any need to update it, but certainly we have a robust conflicts policy and also a conflicts procedure, particularly for those involved in the commission's decision-making forum.

Mr GORMAN: It seems to me that it would be timely to be reviewing that policy. Now that I calculate it, it's been 2½ years since it's been updated. As a member of the oversight committee, that is a concern.

[...]

Mr Savundra: I've just had a look on our intranet, and the current date of the policy is September 2020. I don't have, unfortunately, the history as to when the policy was last updated, and I'm not sure whether your request was for a policy at a particular point in time, but the current version, it appears, was updated on 3 September 2020.

Mr GORMAN: In which case the committee doesn't have the current version, and I'd appreciate you sending it to us.

Mr Savundra: For sure.

Answers:

ASIC has two core policies relating to conflicts of interest:

- The *Policy on disclosure obligations of ASIC Members (Commission Policy)*. This policy applies to Commissioners and is a bespoke policy given that it reflects the special requirements applying to Commissioners as statutory officeholders;
- The *Policy on avoiding conflicts of interests and improper use of information (Staff Policy)*. This policy applies to staff members.

ASIC seeks to review its conflicts policies on a two yearly basis, if not sooner where circumstances require.

We attach copies of:

- The current Commission Policy, dated 24 July 2019; and
- The current Staff Policy, dated 3 September 2020.

Further notes regarding the history of these policies are set out below.

Commission Policy

We note that the Commission Policy is also under review, with certain changes having already been the subject of in-principle approval by the Commission. The updated policy is to be considered by ASIC's Commission in early 2021.

Staff Policy

The current version of the Staff Policy reflects minor updates made to reflect certain legislative changes, in particular ASIC's exit from the *Public Service Act 1999*. Prior to that, the Staff Policy underwent significant review in March 2018. The Staff Policy has recently been the subject of a significant piece of work to be updated, and will be considered by ASIC's Commission in December 2020.



ASIC
Australian Securities &
Investments Commission

Policy on disclosure obligations of ASIC Members

About this policy

This policy is to assist ASIC Members to comply with their disclosure obligations where an interest could conflict with the proper performance of their functions and duties.

OFFICIAL: Sensitive**Document Control****Policy Ownership**

The **Commission Secretary** is responsible for the development, review and implementation of this policy.

Policy Application

This policy applies to all ASIC Members.

Policy Approval

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

| Version | Approver | Approval date |
|---------|---|-------------------------------|
| V1 | Commission meeting 720, 24 October 2017 | 24 October 2017 |
| V2 | In-principle approval at Commission meeting 764, 30 April 2019 Final approval by Chair Shipton | 30 April 2019 21 June 2019 |
| V3 | Commission meeting 771 | 24 July 2019 |

Version History

| Version | Details of changes/comments | Date |
|---------|---|-----------------|
| V1 | Original policy created | 24 October 2017 |
| V1.1 | Update to Appendix 2 to amend the addressee details and individuals to be copied to the letter. | 27 June 2018 |
| V1.2 | Update to Appendix 2 to amend the details of ASIC's Minister. | 3 January 2019 |
| V2 | Update to: a) appendix 3 to reflect the updated Chairperson's instructions of 12 April 2019; b) amend paragraph 51 to ensure consistency with ASIC's Trading Policy; c) clarify the approval process regarding members accepting gifts; d) clarify paragraphs 69 and 70 to apply to self-managed superannuation funds, rather than superannuation funds more broadly; and | 21 June 2019 |

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| | | |
|----|--|--------------|
| | e) amend formatting to reflect the updated policy template and correct minor typographical errors. | |
| V3 | Updated to: | 24 July 2019 |
| | a) Reflect the transition out of the PSA to the ASIC Act and ASIC's Code of Conduct which came into effect on 1 July 2019. | |
| | b) Clarify the definition of 'Member' as described in Part 5 of the ASIC Act. | |
| | c) remove reference in paragraph 53 to the example of 'a small gift such as a bottle of wine, flowers or chocolates'. | |

Distribution

| Version | Date | Distribution list |
|---------|------------------|--|
| V1 | 15 November 2017 | Commissioners, Commission EAs |
| V2 | 21 June 2019 | Commissioners, Commission EAs, Corporate Affairs |
| V3 | 24 July 2019 | Commissioners, Commission EAs, Corporate Affairs |

Policy Location

This policy can be located on <https://myasic.asic.gov.au/myASIC/Forms-Policies-How-To/Procedures/index.htm#secretariat>

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Contents

| | | |
|----------|--|-----------|
| A | Policy objective | 5 |
| | Why disclosure is important | 5 |
| B | Obligations to disclose information to the Minister | 6 |
| | Section 123 of the ASIC Act | 6 |
| | Future business relationships..... | 7 |
| | Outside employment | 9 |
| | ASIC Code of Conduct | 9 |
| | Chairperson's obligation to disclose certain matters regarding ASIC to the Minister | 9 |
| C | Obligations to disclose information to each other and to the Chairperson..... | 10 |
| | The PGPA Act and PGPA Rule | 10 |
| | Compliance with disclosure obligations to each other | 11 |
| D | Obligations to disclose information to ASIC..... | 13 |
| | Section 125 of the ASIC Act | 13 |
| | Related party transactions..... | 13 |
| | Approval to trade..... | 14 |
| | Disclosure of gifts | 14 |
| E | Administration of this policy | 16 |
| | Approval and implementation..... | 16 |
| | Monitoring and reporting | 16 |
| | Appendix 1: Examples of material personal interests that relate to the affairs of ASIC | 17 |
| | Pecuniary interests..... | 17 |
| | Professional and business connections | 18 |
| | Relations | 19 |
| | Other material personal interests | 20 |
| | Appendix 2: Pro-forma disclosure to the Minister | 21 |
| | Appendix 3: Chairperson's instructions for the purpose of Rule 16 of the <i>Public Governance, Performance and Accountability Rule 2014</i> | 26 |
| | Key terms | 28 |

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A Policy objective

- 1 ASIC Members, as described in Part 5 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) have various statutory obligations to disclose certain interests. In addition, other ASIC policies impose certain obligations on ASIC Members to disclose particular interests.
- 2 This policy is intended to assist ASIC Members to comply with their various disclosure obligations and provides guidance on:
 - (a) disclosure of interests to the **Minister**;
 - (b) disclosure of interests **to each other** and to the **Chairperson**; and
 - (c) disclosure of interests to **ASIC**.

Why disclosure is important

- 3 ASIC administers legislation regulating corporations, financial markets and financial products and services.
- 4 The Australian Parliament imposes high standards on ASIC Members under the ASIC Act and the *Public Governance, Performance and Accountability Act 2013* (Cth) (**PGPA Act**) to protect ASIC's reputation.
- 5 ASIC decisions may be found to be void and of no effect if Members have not complied with their obligations. This would adversely affect both ASIC and those relying on ASIC decisions. Additionally, there is significant reputational risk to ASIC where a Member is perceived as having acted inconsistently with their obligations.

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B Obligations to disclose information to the Minister

Section 123 of the ASIC Act

- 6 [Section 123 of the ASIC Act](#) requires a Member to disclose to the Minister in writing:
- (a) any direct or indirect pecuniary interest in a business in Australia or in a body corporate carrying on business in Australia;
 - (b) any direct or indirect pecuniary interest in interests regulated by ASIC;
 - (c) any agreement, understanding or expectation that the Member will enter a new business relationship or resume a previous business relationship when they cease to be a Member; and
 - (d) any severance or ongoing financial arrangement that takes account of any such agreement, understanding or expectation.

Interests

- 7 Interests required to be disclosed include, but are not limited to:
- pecuniary interests, i.e. interests in money, or money's worth (such as shares);
 - indirect pecuniary interests held through an intermediate entity such as a trust or company, or some business, contractual or legal relationship such that an event or circumstance affecting a third party will lead to a gain or loss of money to the person;
 - other interests arising because of a relationship between a Member and another person who has a pecuniary interest, such as where a spouse or dependent child of the Member has a substantial holding of shares in a company;
 - other kinds of interests arising from particular relationships e.g.:
 - as a director of, or a consultant to, a company;
 - as a director of a charitable body;
 - as an advisor, such as a financial or legal advisor, to a company; and

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- a close personal relationship with someone likely to be affected by a particular determination of ASIC.

Biannual disclosures

- 8 Information regarding pecuniary interests which must be provided to the Minister is summarised in the pro-forma disclosure letter to the Minister and assets disclosure schedule ([Appendix 2](#)). Members should use the pro-forma document provided.
- 9 Members' disclosures are to highlight any instances of trading in financial products (as defined in ASIC's Trading Policy) which have occurred during the relevant disclosure period (other than trading which occurs through dividend reinvestment plans).
- 10 The Commission Secretary will notify Members when section 123 disclosures to the Minister are due. At present the Minister requires section 123 disclosures to be made every six months.
- 11 A copy of the disclosures to the Minister by each Member should be provided to the Chairperson, and to the Commission Secretary for confidential record keeping purposes.

Future business relationships

- 12 Members have an obligation to disclose in writing to the Minister, under subsection 123(1)(c) of the ASIC Act, "any agreement, understanding or expectation that the Member will resume a previous business relationship...or enter into a new business relationship when the Member ceases to be a Member." Members who commence discussions with potential employers should be aware that this can give rise to real or perceived conflicts of interest.
- 13 Subsection 123(4) provides that this obligation applies to agreements or understandings entered into, or expectations arising, before or after the Member's appointment.
- 14 Subsection 123(5) provides that a Member is only required to disclose such an expectation where the Member "can identify the other party, or one or more other parties, to the relationship. Disclosure is required whether or not the field of business or legal nature of the relationship has been determined."

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- 15 The term "business relationship" is not defined. However, it would seem to be a broad concept. It may not be limited to relationships of a commercial nature. Even if a post was purely voluntary/charitable, it should arguably be disclosed if it is part of a business context - for example, an engagement with an NGO.
- 16 In any event, Members entering discussions or negotiations regarding an engagement after their term ends should consider the nature of the arrangement that is contemplated. If it is unclear whether the arrangement would fall within the definition of a "business relationship", a decision may be made to disclose the arrangement out of prudence.
- 17 From the time that a Member reaches an expectation of a business engagement with an identified party/organisation after the end of their term as a Member, they need to disclose this to the Minister. The obligation to disclose might well arise before an agreement has been formally entered into.
- 18 While Members are required to disclose such interests under section 123 on a biannual basis, a future business interest should also be disclosed as soon as reasonably practicable and not necessarily at the same time as the regular disclosure.
- 19 In addition, a Member who expects to be engaged by a business in the future may have a current pecuniary interest in that business, which is required to be disclosed as part of their biannual disclosure of pecuniary interests under s123(1)(a) (and potentially s 123(1)(b)).
- 20 An obligation to disclose a future business relationship may also arise under section 29 of the PGPA Act, which requires Members to disclose the details of any "material personal interest that relates to the affairs of ASIC." Arguably, where a Member has an interest arising from an expectation of future employment or business that could be perceived as impacting on their present duties, this would be disclosable. Further details on section 29, and the corresponding PGPA Rules, are at Part C below.
- 21 Future business relationships may also be considered a material personal interest which would be required to be disclosed to the Chairperson in accordance with the Chairperson's instructions under PGPA Rule 16 (set out in Part C and Appendix 3 below).

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OFFICIAL: Sensitive**Outside employment**

- 22 Members are not permitted to engage in any paid employment outside the duties of their office without the consent of the Minister: Section 111(1)(b) of the ASIC Act. The Governor-General can terminate the appointment of a Member who, without the consent of the Minister, engages in any paid employment outside the duties of their office.

ASIC Code of Conduct

- 23 ASIC's [Code of Conduct](#) applies to all ASIC employees, ASIC's Commission Members, contractors, consultants, secondees and volunteers.
- 24 The ASIC Code of Conduct repeats the obligation to disclose details of any material personal interest that might give rise to a real or perceived conflict with a Member's duties. Compliance with this obligation will be fulfilled by compliance with the Member's duties under the ASIC Act and PGPA Act, as outlined elsewhere in this document.

Chairperson's obligation to disclose certain matters regarding ASIC to the Minister

- 25 Pursuant to section 19 of the PGPA Act, the Chairperson is under an obligation to disclose certain matters to the Minister.
- 26 These obligations require the Chairperson to:
- (a) keep the Minister informed of ASIC's activities;
 - (b) give the Minister or the Finance Minister any reports, documents and information in relation to ASIC's activities as required;
 - (c) notify the Minister as soon as practicable after the Chairperson makes a significant decision in relation to ASIC;
 - (d) give the Minister reasonable notice if the Chairperson becomes aware of any significant issue that may affect ASIC; and
 - (e) notify the Minister as soon as practicable after the Chairperson becomes aware of any significant issue that has affected ASIC.

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C Obligations to disclose information to each other and to the Chairperson

The PGPA Act and PGPA Rule

- 27 [Section 29](#) of the PGPA Act creates a statutory obligation upon Members to disclose details of any material personal interest that relates to the affairs of ASIC. The Public Governance, Performance and Accountability Rule 2014 (**PGPA Rule**) sets out the manner in which these interests must be disclosed as well as certain interests that do not need to be disclosed.
- 28 In the case of the Chairperson, section 13 of the PGPA Rule requires him or her to make the disclosure in writing to the Minister. The disclosure must set out the nature and extent of the interest and how the interest relates to the affairs of ASIC, and must be made as soon as practicable after the Chairperson becomes aware of the interest.
- 29 Section 16A of the PGPA Rule requires all Members, including the Chairperson, to disclose to each other, orally or in writing, any material personal interest that relates to the affairs of ASIC. The disclosure must be made at the next Commission meeting and include details of the nature and extent of the interest and how the interest relates to the affairs of ASIC. The Member is also obliged to ensure that the disclosure is made as soon as practicable after they become aware of the interest, and recorded in the minutes of the meeting.
- 30 Section 16 of the PGPA Rule also requires Members other than the Chairperson to disclose any material personal interests that relate to the affairs of ASIC in accordance with any instructions given by the Chairperson. A copy of the Chairperson's instructions is at Appendix 3.
- 31 Section 16B of the PGPA Rule precludes a Member from being present at a meeting of ASIC or voting on a matter that is being considered at that meeting where the Member has a material personal interest in that matter. The Members who do not have any personal interest in the matter may decide that the Member with a personal interest in the matter not be disqualified from attending or voting at the meeting. The absence of the Member, or the other Members' agreement for the member to participate, must be recorded in the minutes of the meeting.

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- 32 Section 12 of the PGPA Rule sets out specific circumstances where a Member does not need to disclose material personal interests (e.g. remuneration, insurance against liability).

'Material personal interest relating to the affairs of ASIC'

- 33 'Material' means a personal interest that can give rise to a real or perceived conflict of interest. The nature and substance of the interest must have the actual or perceived capacity to impact on the ability of the person to honestly discharge their duties to the entity.

'Affairs of ASIC'

- 34 The personal interest must relate to 'the affairs of the entity' to warrant disclosure.
- 35 Given that ASIC has a wide range of unique powers and functions, and as such a wide range of matters capable of being considered or determined by Members and by ASIC, 'the affairs of ASIC' could include all of the affairs and matters that are capable of being determined by ASIC in which a Member may take part.
- 36 More generally, Members should remain alert to their own financial and non-financial interests, personal and professional relationships (past or present) and the financial and non-financial interests of their immediate family to the extent that Members know such interests. This is important to ensure that as and when any potential conflict (real or perceived) arises, it can be disclosed and dealt with appropriately.

Compliance with disclosure obligations to each other

- 37 Detailed instructions on how to make disclosure to each other Member is set out in the Chairperson's instructions (see Appendix 3).
- 38 The instructions also provide for situations where a Member is unsure as to whether they have a matter to disclose.

Commission Meetings

- 39 Each Commission Meeting includes an agenda item that provides Members the opportunity to disclose material personal interests that relate to the affairs of ASIC.

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- 40 The Commission Secretary will ensure the minutes of the meeting properly record the disclosure of the material personal interest, including the name of the Member making the disclosure, the meeting item(s) relating to the interest (if any) and the action taken to address the interest.
- 41 In practice, it may be the case that the interest has already been disclosed to the other Members (for example, at a meeting of a particular committee which is considering the matter, such as the Enforcement Committee or Regulatory Policy Committee). In these cases, while a record of the disclosure will be kept in accordance with secretarial processes for that committee, the disclosure should again be made at the next Commission Meeting and all details noted in the minutes.
- 42 There may be cases where an interest becomes apparent in the course of the determination of a matter. The Member must immediately notify the Chairperson. The Chairperson may determine that the Member should not continue to determine the matter. In particular circumstances the Chairperson may need to consider whether another person should determine the matter before ASIC afresh rather than merely continuing. If the Chairperson has the interest, he or she must notify a Deputy Chairperson, who should make the determination whether the Chairperson may continue to determine the matter.

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D Obligations to disclose information to ASIC

Section 125 of the ASIC Act

- 43 Section 125 (Notification of interests to ASIC) generally applies to ASIC staff members rather than Members, and requires a person to provide a notice to ASIC where the person is required to consider a matter in which the person has a direct or indirect interest that could conflict with their role.
- 44 However, section 125(1)(c) applies more broadly to any person "performing functions or services by way of assisting an ASIC delegate". This could potentially apply to a Member who is involved with a delegate of ASIC on a particular matter.
- 45 However, the Member's obligation under s125 to notify ASIC in such an instance will have already been fulfilled by compliance with the requirements under PGPA Rule 16A (i.e. disclosure to the other Members).

Related party transactions

- 46 Section 42 of the PGPA Act requires the annual financial statements of ASIC to comply with the accounting standards issued by the Australian Accounting Standards Board.
- 47 The *Australian Accounting Standard AASB 124 Related Party Disclosures July 2015* (**AASB 124**) requires government entities to disclose financial results that may be affected by the existence of transactions with related parties.
- 48 All Members and other key management personnel of ASIC must complete a Related Party Declaration once a year to meet these reporting obligations. This requires the collection of information about related parties, which includes the close family members of ASIC's key management personnel and any entities that they control.
- 49 The Related Party Declaration will collect information relating to the names of close family members of ASIC's key management personnel, the details of any entities they control, whether they are employed at ASIC, any compensation paid by ASIC to the key management personnel, and any transactions between

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the key management personnel and a related party that have arisen within the financial year.

- 50 Finance will notify key management personnel, including Members, when the annual Related Party Declarations are required to be completed.

Approval to trade

- 51 Under ASIC's Trading Policy and Guide, all Members (including the Chairperson) have an obligation to obtain approval before they or their Connected Persons trade in financial products. Requests for approval to trade are entered through the myRAD system.

Disclosure of gifts**Gifts**

- 52 Gifts should not be accepted where they may create a real or perceived conflict of interest with the Member's duties. Particular care should be taken if the person or organisation offering a gift or benefit is in a tender, contractual, regulatory or lobbying relationship with ASIC.
- 53 However, there are some situations where it may be appropriate for a Member to accept an insignificant gift, token of appreciation or other benefit in the course of their duties and employment. This would occur where it would facilitate the efficient conduct of ASIC's business and not influence, or be seen to influence, a Member's impartiality in undertaking their duties. Where possible, Members should communicate in advance of speaking at an event that ASIC has a policy of not accepting gifts.
- 54 Members should record all accepted gifts in myRAD. The Chairperson is to review and approve any gifts to be accepted by a Commission Member, and a Deputy Chairperson is to review and approve any gifts to be accepted by the Chairperson. When it is not possible to approve a gift prior to acceptance, the Member must still record the accepted gift in myRAD to be reviewed by either the Chairperson, or in the case of the Chairperson, a Deputy Chairperson.

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- 55 Gifts accepted of a value greater than \$100 may become the property of ASIC.

Official hospitality

- 56 Members are sometimes required to attend seminars or speak at public engagements where hospitality may be provided to the Member in the form of accommodation, food and beverages. It is not intended as part of this policy that food and beverages consumed at the particular engagement, or accommodation provided for attendance at the event, in order for the Member to carry out his or her duties at the event, be included as a reportable gift.

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E Administration of this policy

Approval and implementation

- 57 This policy and any substantial changes are to be approved by Commission.
- 58 Members and the Commission Secretary are responsible for implementing and adhering to this policy.
- 59 This policy is available via [myASIC](#).

Monitoring and reporting

- 60 The Commission Secretary is the owner of this policy and is responsible for monitoring this policy for operational or legislative changes or changes in Government policy that would substantially affect the objectives or implementation of this policy.
- 61 In any event, this policy should be reviewed upon the second anniversary of any version approved by Commission.
- 62 This policy is an internal policy of ASIC and is subject to monitoring and reporting by Internal Audit and Operational Risk.

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Appendix 1: Examples of material personal interests that relate to the affairs of ASIC

Pecuniary interests

- 63 **Direct** pecuniary interests would include interests in shares or interests as a creditor of a company.
- 64 The amount or value of the interest would be important in knowing whether it would be material. This value will be important if it is a significant amount or if it forms more than a minimal proportion of the Member's total assets (e.g., more than 5%). In such cases, the inference could be drawn that there could be a potential conflict.
- 65 The nature of the matter before ASIC may also be relevant in deciding whether an interest of a particular amount or value is material in the circumstances.

Example

- 66 ASIC is considering an application by a listed company for relief from a requirement of the Corporations Act. The Member holds shares worth \$100,000 in the company. This is an asset with a significant real value, although it forms less than 5% of the Member's total assets. The Member proposes making an order for relief under a delegation by ASIC. The nature of the relief sought and the transaction in which the relief is sought will be relevant. For example, relief from an auditing requirement on the grounds of cost saving may have virtually no effect on the amount or value of the interest of the Member so it may be possible to conclude that the interest could not conflict and therefore would not be material. By contrast, if the relief is sought in relation to a proposed takeover that will double the value of shares on issue and so double the amount or value of the Member's holding, the conclusion may be that the interest could conflict and will be material.

Example

- 67 A Member could have a financial interest in a commercial transaction involving ASIC, such as procurement by ASIC of accommodation, goods or services.
- 68 Because shareholdings in listed companies are widespread, a Member may find that they have an indirect pecuniary interest

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in a commercial transaction that ASIC proposes to enter into with a listed company. Whether the interest will be material will depend on the amount or value of the proposed commercial transaction for the listed entity in which the Member has a pecuniary interest, and the nature and extent of that interest.

- 69 A common example of an **indirect** pecuniary interest would be an interest in a self-managed superannuation fund which holds shares in a company whose business will be affected by an ASIC decision.

Example

- 70 A Member could be a beneficiary of a self-managed superannuation fund which has a large portfolio of shares in listed companies, where the Member or a Connected Person has the power to direct or influence investment decisions.

- 71 Generally the approach above for direct pecuniary interests should be followed.

Professional and business connections

- 72 A Member of ASIC will have had previous wide experience in business, the professions, finance or administration: ASIC Act s 9. A Member is therefore likely to have had many situations of interaction with companies or businesses in Australia.

- 73 A Member may in many cases be able to form the view that these interactions do not give rise to a material personal interest relating to the affairs of ASIC.

- 74 However, some connections may yet be sufficiently close to require careful consideration. For example, previous employment by a company or partnership in a firm could in some circumstances give rise to the perception of a conflict with proper performance of the Member's functions.

Example

- 75 For example, a Member may have been a partner in a law firm or an accounting firm.

- 76 That firm may frequently act for persons or companies in respect of whom ASIC is making a determination. Even if the Member has only recently ceased to be a partner of the firm, that fact alone would be unlikely to give rise to a material

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personal interest. However, there may be further relevant circumstances. For example:

- (a) the Member may have had access to relevant confidential information of the person or company;
- (b) the Member may have personally provided some advice to the person or company;
- (c) the Member may have been an integral part of the client relationship team with the person or company;
- (d) the Member may have been involved in advising the person or company in relation to circumstances giving rise to the matter to be determined by ASIC.

77 Depending on the nature of the determination, one or more of these factors may lead to the view that the interest is material.

78 The position would be even clearer if the matter for determination by ASIC related not to the affairs of the company, which was a client of the firm, but rather to conduct of the firm of which the Member was previously a partner (even if all the events occurred after the cessation of the partnership).

Relations

79 It would not be uncommon for a Member of ASIC to be married to someone who holds a senior position in the corporate or financial world.

80 A link between a Member's spouse and a company whose affairs are the subject of a determination by ASIC could clearly give rise to a perception of a conflict of interests.

81 However, whether there was an interest that could conflict would depend on the particular circumstances.

Example

82 For example, a Member may have a relative who is an executive of a major Australian company. Whether this could give rise to a perception of conflict will depend on circumstances, such as the closeness of the relative and the importance of the position of the executive.

83 Contrast a case where the Member's spouse is a second tier executive reporting to the CEO with a case where the Member's nephew or niece with whom the Member has no

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contact holds that position. The interest through a nephew or niece could perhaps be disregarded whereas the interest through a spouse may amount to an interest which could conflict.

84 On the other hand, if the position is CEO, there may be an interest which could conflict regardless of whether the relationship is as spouse or niece or nephew.

85 The special relationship of trust and confidence between spouses/partners is such that the relationship can readily be perceived as giving rise to inappropriate influence or information flow even where the spouses/partners are persons of great integrity. Therefore, particular care is needed in assessing possible interests involving spouses/partners.

Other material personal interests

86 There is no limit to the kinds of material personal interest that could relate to the affairs of ASIC.

87 For example, there could be circumstances where a Member's previous involvement in litigation by a company might give the Member a material personal interest.

88 The circumstances could involve a close relative.

Example

89 For example, if the spouse of a Member had been adversely portrayed by a newspaper or television channel, had subsequently taken defamation proceedings and then lost those proceedings, the Member could (depending on all the circumstances) be regarded as having a material personal interest relating to the affairs of ASIC if the newspaper company or television company was the subject of a determination by ASIC.

90 Another example would be a close personal association with someone likely to be affected by a particular determination of ASIC such as a next-door neighbour or long-term weekly tennis partner.

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Appendix 2: Pro-forma disclosure to the Minister

<Date>

STRICTLY CONFIDENTIAL

[Insert Minister's name]
[Position e.g. 'Treasurer']
PO Box 6022
Parliament House
Canberra ACT 2600

By email: [insert chief of staff's email address]

Dear [Insert Minister's name],

Disclosure of Interests – s.123 Australian Securities and Investments Commission Act 2001 ('Act')

[Following my appointment as a member of the Australian Securities and Investments Commission,] please find below my disclosure of various direct and indirect pecuniary interests and other matters required by the Act and Treasury policy. [Since my last disclosure there has been a change to: [list changes]].

1. Direct or indirect pecuniary interest in:**(a) a body corporate carrying on business in Australia**

(if you have a private/family company or a family trust, specify the name of the company/trust here. If no interest, respond 'None')

(b) a business in Australia

(if you have any interest in a business, disclose this here. If you do not, you can respond 'None')

2. Direct or indirect pecuniary interest in interests (including securities, futures contracts or other financial products) regulated by ASIC

Relevant financial products are as follows:

(a) Securities

Please refer to the attached schedule

(b) Superannuation Interests**OFFICIAL: Sensitive**

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Please refer to the attached schedule

(c) Bank Deposit Accounts

Please refer to the attached schedule

(d) Life Insurance

(Please detail name of insurer/nature of policy eg AMP, Term Life. If nothing, respond 'None')

(e) House and contents insurance

(Detail the name of the insurer)

(f) Motor Vehicle Insurance

(Detail the name of the insurer)

3. Any agreement, understanding or expectation that I will:

(a) Resume a previous business relationship (whether or not that relationship existed immediately before my appointment); or
(Please set out details of the relationship, if there are none, respond 'None')

(b) Enter into a new business relationship when I cease to be a member.
(Please set out details of the relationship, if there are none, respond 'None')

4. Any severance arrangement or ongoing financial arrangement that takes account of an agreement, understanding or expectation that must be disclosed under paragraph 3

(Please set out details of the arrangement, if there are none, respond 'None')

5. Direct or indirect pecuniary interests in real estate in Australia

Please refer to the attached schedule

6. Directorships of Australian bodies corporate

(Please set out details of the directorships/offices held, if there are none, respond 'None')

7. Gifts, hospitality (in excess of generally accepted standards in the business community) and subsidised travel from third parties.

(Please set out details, if there are none, respond 'None')

Yours faithfully,

<Name of Commissioner>

Encl.

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Cc:

[Insert the Chair's details]

[Insert the Commission Secretary's details]

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| <Commissioner's name> | | Currency |
|--|--------------------|---------------------------|
| ASSETS | | |
| Bank Accounts | | |
| Australia List bank List account name type (no need to include account #'s or account balances) ANZ JG & CJ Smith – cheque account Smith Family Trust – Cash Management account CBA JG Smith – term deposit account List accounts held in any other countries (if applicable) in the same format as above (and the currency in which the account is held eg USD, GBP, EUR). | | AUD AUD AUD |
| Stocks | | <i>No. held</i> |
| Australia List company and number held (examples below) Telstra BHP Westpac List stocks held in any other countries (if applicable) in the same format as above (and the currency in which the account is held eg USD, GBP, EUR). Note any instances of trading in stocks which have occurred during the disclosure period | 650 1000 250 | AUD AUD AUD |
| Real Estate | | |
| Australia (for example) 1 Jones Street, Smithtown NSW (residence) 25/4 Harbour Ave, Niceville QLD (investment) List property held in any other countries (if applicable) in the same format as above. | | |
| Retirement Funds | | |
| (Examples below) Colonial First State | | AUD |

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| | | |
|--|--|-----|
| John Smith Superannuation Fund | | AUD |
| Public Sector Superannuation Fund | | AUD |
| (no need to include account #'s or account balances) | | |

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Appendix 3: Chairperson's instructions for the purpose of Rule 16 of the *Public Governance, Performance and Accountability Rule 2014*

1. Where an ASIC member has a material personal interest that relates to the affairs of ASIC, that member must, as soon as practicable after becoming aware of the interest/change of interest:
 - a. disclose the interest in writing to the Chairperson;
 - b. provide a copy of the written disclosure to the Commission Secretary for record keeping purposes;
 - c. disclose the interest, orally or in writing, at the next Commission meeting (whether or not the matter to which the interest relates is to be discussed at that meeting);
 - d. ensure the minutes of the meeting record the disclosure; and
 - e. provide written notification of the interest to such other persons as the Chairperson directs, and provide copies of these notifications to the Commission Secretary for record keeping purposes.
2. Where a member is unsure of whether a matter constitutes a material personal interest that relates to the affairs of ASIC (and therefore has the capacity to give rise to a real or apparent conflict of interest), the member should provide written notification of the interest to the Chairperson. The Chairperson will consider the interest and make a determination as to whether the matter constitutes a material personal interest that relates to the affairs of ASIC.
3. A written record must be made of the Chairperson's conclusion, given to the relevant member and copied to the Commission Secretary for confidential record keeping purposes. The Chairperson should record the reasons for the determination if considered appropriate.
4. Where the Chairperson concludes that the interest is material, the member must follow the process outlined in paragraph 1.
5. Where a member has a material personal interest they must not take part in determining the matter at a Commission meeting, in accordance with Rule 16B.
6. In these cases, the Commission Secretary will, where the Chairperson so directs, ensure that the member does not receive the papers in relation to the matter for meetings of the Commission, as well as meetings of any ASIC Committee or Senior Leaders Forum, and will, in all cases, note in the relevant minutes the absence of that member from any determination (including discussions) in relation to that matter.

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7. These instructions also apply to the Chairperson, who is to notify a Deputy Chairperson of an actual or possible material personal interest. That Deputy Chairperson is to consider the actual or possible material personal interest in accordance with paragraphs 1 to 6 above as if he or she is the Chairperson.

Approved by the ASIC Chair, James Shipton, 12 April 2019

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Key terms

| Term | Meaning in this document |
|-------------------|---|
| ASIC | Australian Securities and Investments Commission |
| ASIC Act | <i>Australian Securities and Investments Commission Act 2001</i> |
| Chairperson | Chairperson of ASIC |
| Connected Persons | (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. |
| Corporations Act | <i>Corporations Act 2001</i> |
| Member | A member of ASIC as described in Part 5 of the ASIC Act. |
| PGPA Act | <i>The Public Governance, Performance and Accountability Act 2013</i> |
| PGPA Rule | <i>The Public Governance, Performance and Accountability Rule 2014</i> |
| Section 29 | Section 29 of the PGPA Act |
| Section 123 | Section 123 of the ASIC Act |

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ASIC
Australian Securities &
Investments Commission

Policy on avoiding conflicts of interest and improper use of information

September 2020

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 |
| 1.3 | Commission | 24 October 2017 |
| 1.4 | Commission Counsel | 3 September 2020 |

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 |

| | | |
|-----|--|------------------|
| 1.4 | Removed references to APS Code of Conduct and replaced with ASIC Code of Conduct, and amended to reflect basis of employment under the ASIC Act, following ASIC's exit from the <i>Public Service Act 1999</i> . | 3 September 2020 |
| | Replaced references to s 70 of the <i>Crimes Act 1914</i> with Division 122 of the <i>Criminal Code</i> . | |

Distribution

| Version | Distribution list | Date |
|---------|------------------------|------------------|
| 1.3 | All of ASIC via myASIC | 8 March 2018 |
| 1.4 | All of ASIC via myASIC | 7 September 2020 |

Location

This Policy is available on myASIC.

Contents

| | | |
|----------|---|-----------|
| A | What this policy is about | 5 |
| | Policy outline..... | 5 |
| | Who does this policy apply to? | 5 |
| B | Why this policy is important to ASIC..... | 6 |
| C | Why this policy is important to you | 7 |
| D | What is ASIC's policy? | 8 |
| | Declare holdings and interests | 8 |
| | Endeavour to avoid conflicts of interest..... | 9 |
| | Immediately Notify conflicts of interest | 9 |
| | Not improperly use Information..... | 9 |
| | Get approval for Gifts or Benefits | 9 |
| | Get approval for work outside ASIC | 10 |
| E | What ASIC may do if there is or may be a conflict..... | 11 |
| F | Further guidance | 12 |
| G | Privacy and confidentiality | 12 |
| H | Key terms..... | 13 |
| I | Related information | 16 |
| | Legislation and regulatory documents..... | 16 |
| | Internal documents | 16 |

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 and the common law.
- 13 The wrongful disclosure of Information can also be a criminal offence under Division 122 of the *Criminal Code*.
- 14 Staff Members have an obligation under the ASIC Code of Conduct to:
 - (a) act with integrity, and behave honestly and impartially, when dealing with stakeholders, and never act in a way which could bring ASIC into disrepute;
 - (b) disclose and avoid situations in which there is a real or potential conflict between their personal interests and their duties towards ASIC;
 - (c) not use ASIC information for an improper purpose, or to obtain an improper personal benefit or potential benefit for themselves or others;
 - (d) behave honestly in connection with their employment, including providing ASIC with accurate and honest information, and disclose any outside employment; and
 - (e) not accept gifts or hospitality which may give rise to a potential or real conflict with their duties.
- 15 A breach of the ASIC 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.
- 16 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.
- 17 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

- 18 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.
- 19 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.
- 20 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

- 21 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

- 22 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.
- 23 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.
- 24 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

- 25 You must not use ASIC information, including inside information, for an improper purpose, or to obtain an improper personal benefit or potential benefit for yourself or others (ASIC Code of Conduct, clause 15).
- 26 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

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

- 28 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.
- 29 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.
- 30 If you consider a special situation exists (for example those listed at paragraph 28) 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.
- 31 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

- 32 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

- 33 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.
- 34 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.
- 35 ASIC will only ask you to divest yourself of your Interest or non-ASIC duty if the options in paragraph 34(a) and (b) are either unavailable or inappropriate in the circumstances.
- 36 Staff Members can contact ASIC's People & Development team to request a review of the action taken in paragraph 34.

F Further guidance

- 37 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

- 38 ASIC will treat your disclosures as having been given in confidence. They are personal information for the purposes of the Privacy Act.
- 39 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> |
| 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 s 120(1) of the ASIC Act; (b) engaged as a consultant under s121 of the ASIC Act; (c) seconded under s122 of the ASIC Act; or (d) 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

ASIC Code of Conduct

Australian Securities and Investments Commission Act 2001, Div 3 of Pt 3, s102, 120 - 122 and 125

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

Criminal Code Act 1995, *Criminal Code* - Div 122

Privacy Act 1988, section 6

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*](#)

[*Handling Sensitive and Classified Information - Protocol - 2019*](#)

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