

ASIC reminds directors of listed entities of their trading obligations during COVID-19

Source: [Australian Securities and Investments Commission](#)

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Abstract:

The Australian Securities and Investments Commission (ASIC) has issued guidance reminding directors of listed companies and schemes of their obligations when trading in their entity's securities or related financial products. ASIC notes that given the significant market volatility in response to COVID-19, investors have a heightened interest in information that signals the potential on their company or scheme, which has in turn led to increased scrutiny and interest in trading by entity directors.

ASIC warns directors to be mindful of two factors in deciding to trade:

- Applicable legal restrictions; and
- The impact their trading activity may have on their reputation and on investor perceptions about the entity and about information asymmetries between "insiders" and other investors.

The regulator is clearly wary of any market or public perception of impropriety, insider trading or breach of directors' duties in the trading environment during the pandemic. It has issued the following guidance regarding key matters to be considered by directors and other insiders such as officers and key management personnel:

The entity's trading policy

Directors, officers and key management personnel should first consider whether a proposed trade is restricted by the entity's trading policy (eg a policy may prohibit trading during a specified blackout period or conversely only allow trades during a specified trading window). Approval of an exemption to a trading policy is only given in exceptional circumstances and to be granted sparingly and with caution.

the information in the person's possession and the current uncertain and volatile market conditions

A director or other insider should consider if they hold information which may give rise to adverse perceptions of their or their entity's reputation, or which may contravene insider trading provisions because it is not publicly available and could reasonably be expected to have a material impact on the price of securities if known, or may breach directors' statutory duties not to improperly use their position. ASIC advises that in the current uncertain, volatile and rapidly evolving circumstances, certain information may be of greater materiality than it would be at other times.

Directors and other 'insiders' considering participating in a fundraising being conducted by their entity should carefully consider relevant legislative provisions, trading policies and reputational risk before deciding whether to subscribe.

Notification requirements

Directors of listed entities must also comply with their obligations under s 205G of the Corporations Act and the ASX Listing Rule 3.19 to notify the ASX of relevant changes to their interests as result of a trade and also to file substantial holding notices where applicable.

Conflicts and disclosure obligations arising from margin loans

ASIC's guidance warns that it does not consider it to be good practice for directors, officers and executives to enter into margin call arrangements over their own entity's securities or financial products due to the potential for misaligned incentives and conflicts of interest, and the guidance points out that this is even more so in times of increased volatility, when margin calls may be more likely to occur. ASIC also reminds directors, listed entities and their advisors that margin loans over material numbers of securities may also trigger continuous disclosure obligations under Listing Rule 3.1

For more information about COVID-19, see the [LexisNexis Information Hub COVID-19](#)