




## ATO Interpretative Decision

ATO ID 2007/56

### Superannuation

### Self Managed Superannuation Funds: contracts for differences (CFDs) - no fund assets deposited with CFD provider

FOI status: may be released

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## Issue

Has a trustee of a self managed superannuation fund (SMSF) contravened the *Superannuation Industry (Supervision) Act 1993* (SISA) by investing in CFDs?

## Decision

No. The trustee of an SMSF has not contravened the SISA by investing in CFDs where they have not deposited fund assets with the CFD provider.

## Facts

CFDs are synthetic financial products that enable the investor to access the price movement in shares and other instruments such as stock indices, stock options, currencies and futures contracts without owning the underlying product.

When a CFD is opened the investor pays a deposit into a CFD bank account and may be required to make additional margin payments to cover running losses on open positions. CFDs have a leveraging effect with consequent exposure to potentially large gains and losses stemming from exposure to short term financial risk in relation to a relatively small deposit.

The trustee of an SMSF has invested in CFDs.

The investment is for hedging purposes in accordance with the fund's investment strategy.

Under the product disclosure statement the CFD provider may, under a related agreement, permit an investor to deposit assets with the provider as security against their obligations to pay deposits or margins. The trustee has

not entered into any such agreement and has not granted a charge over any fund assets in relation to the obligations to make payments under the CFD.

## Reasons for Decision

No provision of the SISA or the Superannuation Industry (Supervision) Regulations 1994 (SISR) specifically prohibits trustees of SMSFs from investing in CFDs.

There is no loan between the CFD provider and the SMSF trustee and therefore no contravention of the prohibition on borrowing by trustees in section 67 of the SISA. The requirement to pay a deposit and meet margin calls does not represent borrowing, they are rather contractual liabilities to make payments if and when required and are not repayments ( *Prime Wheat Association Ltd v. Chief Commissioner of Stamp Duties (NSW)* 97 ATC 5015; (1997) 37 ATR 479). The obligations in relation to CFDs are distinguished from margin lending through a broker's margin account in relation to the purchase of shares by an SMSF, which does represent a prohibited borrowing under the SISA.

The operation of the CFD bank account and the obligation to pay deposits and margins does not create a charge over any assets of the fund. The parties are relying on the contract and not on any security interest to be created by the contract ( *White v. Conroy* (1921) 21 SR (NSW) 257; (1921) 38 WN (NSW) 63, *Berrington v. Evans* (1839) 3 Y & C Ex 384; 160 ER 73). Under the CFD, the monies in the CFD bank account are the property of the CFD provider and the fund (investor) has no beneficial interest in the account. (Trustees need to examine individual product disclosure statements and contracts to ensure that there is no charge made over an asset as prohibited in regulation 13.14 of the SISR and that all requirements of the SISR and SISA are adhered to.)

The trustee has not entered into any collateral agreement to the CFD that places a charge over any asset of the fund.

The investment is in accordance with the fund's investment strategy as required under paragraph 52(2)(f) of the SISA and regulation 4.09 of the SISR.

**Date of decision:** 9 March 2007

**Year of income:** 30 June 2007

### Legislative References:

*Superannuation Industry (Supervision) Act 1993*  
 section 67  
 section 52

Superannuation Industry (Supervision) Regulations 1994  
 regulation 4.09  
 regulation 13.14

### Case References:

*Prime Wheat Association Ltd v. Chief Commissioner of Stamp Duties (NSW)*  
 97 ATC 5015  
 37 ATR 479

*White v. Conroy*  
 (1921) 21 SR (NSW) 257  
 (1921) 38 WN (NSW) 63

*Berrington v. Evans*  
 (1839) 3 Y & C Ex 384  
 160 ER 73

### Related ATO Interpretative Decisions

ATO ID 2007/57  
 ATO ID 2007/58

### Keywords

Superannuation  
 Self managed superannuation funds

SMSF borrowings  
SMSF charge over assets  
SMSF investment strategy  
SIS covenants

**Date of publication:** 23 March 2007

**ISSN:** 1445-2782

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