




## ATO Interpretative Decision

ATO ID 2007/58

### Superannuation

### Self Managed Superannuation Fund: trustee using a margin account for fund investments in listed shares

FOI status: may be released

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## Issue

Has a trustee of a self managed superannuation fund (SMSF) that operated a margin account to purchase listed shares contravened the *Superannuation Industry (Supervision) Act 1993 (SISA)*?

## Decision

Yes. The trustee of an SMSF that operated a margin account to purchase listed shares has contravened the SISA as they have borrowed money and granted a charge over shares that are assets of the fund.

## Facts

In relation to shares, a margin account with a broker is an account through which shares can be purchased for a combination of cash and a loan (margin lending). The portfolio of shares is used as security for the margin lending facility.

An SMSF trustee maintained a margin account with a broker's clearing house.

The margin balance continued over a period of time at different monetary levels depending on the value of shares on hand.

## Reasons for Decision

Subsection 67(1) of the SISA prohibits a trustee of an SMSF from borrowing money or maintaining an existing borrowing of money. There are limited exceptions to the general prohibition available under subsections 67(2), 67(2A) and 67(3) of the SISA. Operating the margin account does not fall within any of the exceptions. The trustee has therefore contravened subsection 67(1) of the SISA.

Regulation 13.14 of the Superannuation Industry (Supervision) Regulations 1994 (SISR) is a prescribed operating standard for regulated superannuation funds under section 31 of the SISA. Subsection 34(1) of the SISA requires that the operating standards are complied with at all times.

Regulation 13.14 of the SISR prohibits a trustee of an SMSF giving a charge over, or in relation to, an asset of the superannuation fund. Regulation 13.14 of the SISR is subject to regulation 13.15A of the SISR which permits a trustee to give a charge in relation to certain options and futures contracts in order to comply with the rules of an approved body (for example the Australian Securities Exchange) provided the investment is in accordance with the fund's derivatives risk statement.

Shares held as assets of the fund were provided as security for the loan taken out to purchase such shares and this represented a charge over some of the assets of the SMSF. This arrangement does not fall within the exception provided for in regulation 13.15A of the SISR. The trustee has therefore contravened regulation 13.14 of the SISR and consequently subsection 34(1) of the SISA.

**Date of decision:** 9 March 2007

**Year of income:** 30 June 2007

**Legislative References:**

*Superannuation Industry (Supervision) Act 1993*

- section 31
- section 34(1)
- section 67
- section 67(1)
- section 67(2)
- section 67(2A)
- section 67(3)

Superannuation Industry (Supervision) Regulations 1994

- regulation 13.14
- regulation 13.15A

**Related ATO Interpretative Decisions**

- ATO ID 2007/56
- ATO ID 2007/58

**Keywords**

- Self managed superannuation funds
- SMSF borrowings
- SMSF breach of compliance
- SMSF charge over assets
- SMSF investments

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