



## **INTRODUCTION**

The purpose of this document is to:

- provide a summary of the legislation relating to “insider trading” and
- set out the guidelines for Directors, senior executives and employees dealing (buying or selling) in securities (shares, options, derivatives and other types of financial products) in Superior Resources Limited.

### **Prohibition**

Directors, senior executives and employees are prohibited from engaging in insider trading in breach of the Corporations Law.

### **What is “insider trading”?**

Insider trading is defined in Part 7.10, Division 3 of the Corporations Act 2001 (Cwlth). There are three separate types of insider trading:

- a trading offence,
- a procuring offence and
- a tipping offence.

### **Who is an “insider”?**

An insider is defined in section 1043A of the Corporations Act 2001 (Cwlth) as someone who:

- possesses information:
  - a. that is not generally available and
  - b. that a reasonable person would expect to have a material effect on the price of shares if it were generally available and
- knows or should know that the information:
  - a. is not generally available and
  - b. might have a material effect on the price or value of shares if it was generally available.

### **What is a “trading offence”?**

A person commits a trading offence if they are an insider (defined above) in relation to a particular company and they apply for, buy or sell the company’s securities.

### **What is a “procuring offence”?**

An insider commits a procuring offence if they procure someone else to apply for, buy or sell the company’s securities.

The Corporations Act defines “procure” more broadly than its dictionary meaning. Section 1042F of the Corporations Act 2001 (Cwlth) states that a person procures someone else to do something not only if they “incite” or “induce” them to do it, but also if they simply “encourage” them to do it.



### What is a “tipping offence”?

An insider commits a tipping offence if they communicate the inside information to someone else and the insider knows, or should know, that the other person will be likely to apply for, buy or sell the company's securities or procures a third person to apply for, buy or sell the company's securities.

### Which information is “material”?

Section 1042D of the Corporations Act 2001 (Cwlth) provides that a reasonable person would expect information to have a material effect on the price or value of the shares if the information would be likely to influence people who commonly invest in shares deciding whether to apply for, buy or sell those shares.

### When is information “generally available”?

Section 1042C of the Corporations Act 2001 (Cwlth) says information is generally available if:

- it consists of observable matter, or
- it has been made known (disseminated) in a manner likely to bring it to the attention of investors and a reasonable time period has elapsed.

### What are the defences?

There are several defences to the insider trading offence including:

- where the trading occurs as part of underwriting an issue of securities,
- where someone buys securities such as shares because they are legally required to do so (eg. family law order) and
- where a company trades in shares and an officer or employee has inside information provided there is a “Chinese Wall” separating the person with inside information from those conducting the trading (eg. a bank advising on a takeover where it also has a share broking department - the person providing advice on the takeover cannot provide information to the persons employed as share brokers).

### What are the consequences of a breach?

A breach of the insider trading legislation is a criminal offence and there are civil penalty provisions.

**Punishment.** The maximum criminal penalty for an individual who is found guilty is a \$200,000 fine or five years gaol or both and for a company the maximum penalty is \$1,000,000.

**Compensation.** Someone who suffers loss or damage due to an insider trader's activities may recover from the insider trader compensation amounting to the loss suffered.

**Other orders.** A court has powers to make a wide range of orders including directing the disposal of securities and cancelling agreements where an insider trading offence has occurred.

### Have there been many prosecutions?

A recent successful action brought by ASIC on the criminal standard of proof being beyond a reasonable doubt involved the stockbroker Rene Rivkin. The sentencing judgement which sets out the facts is *R v Rivkin* (2003) 198 ALR 400.



## **GUIDELINES FOR DIRECTORS, SENIOR EXECUTIVES AND EMPLOYEES DEALING IN SECURITIES**

Directors, senior executives and employees concerned or involved with the control or management of a company are prohibited from using confidential information acquired as a result of their position from benefiting themselves or others.

Directors, senior executives and employees are not totally prohibited by law from trading in the shares of a company because they have an understanding of the affairs and prospects of the company. However, when Directors, senior executives and employees trade in shares of the company it is important to ensure that the transactions do not reflect adversely on either the Directors or the company.

As stated above the Corporations Law prohibits insider trading and tipping.

In order to assist Directors, senior executives and employees of Superior Resources Limited acting prudently in these matters, the following guideline must be followed:

*A Director, senior executive or employee of Superior Resources Limited must inform and receive acknowledgement from the Chairperson or Company Secretary of their intention prior to entering into any dealings in Superior Resources Limited's securities by either himself or herself or by his or her associates.*

*A Director, senior executive or employee of Superior Resources Limited must not deal in Superior Resources Limited Securities:*

- *on consideration of a short term nature,*
- *when they are in possession of price sensitive information not yet released to the market in which case they are prohibited by law from dealing,*
- *for a period of fourteen (14) days prior to the scheduled (per ASX Listing Rules) release by Superior Resources Limited of Quarterly Operations, Quarterly Cashflow, Annual and Half-Yearly Reports and*
- *any other time, notified by Superior Resources Limited from time to time, when Directors, senior executives and employees are prohibited from trading.*

*Directors, senior executives and employees will generally be permitted to engage in trading (subject to due notification being given to the Chairperson or Company Secretary) at the following times:*

- *for a period commencing one (1) business day after the release of Quarterly Operations, Quarterly Cashflow, Annual and Half-Yearly Reports to the market,*
- *for a period commencing one (1) business day after the release of price sensitive information to the market which allows a reasonable period of time for the information to be disseminated among members of the public and*
- *where a proposed acquisition of securities is under:*
  - a. *a bonus issue made to all shareholders,*
  - b. *a dividend reinvestment plan or top up plan available to all shareholders or*
  - c. *an employee share plan.*

### **Dealing In exceptional circumstances:**

In exceptional circumstances, where it is the only reasonable course of action available, clearance may be given for a Director, senior executive or employee to sell (but not to purchase) securities when he/she would otherwise be prohibited from doing so. An example of the type of circumstance which may be considered exceptional for these purposes would be a pressing financial commitment on the part of the Director, senior executive or employee that cannot otherwise be satisfied. The determination of whether circumstances are exceptional for this purpose will be made by the Chairperson or Company Secretary.



**Director's obligation on acquisition or disposal of securities or on ceasing to be a Director of Superior Resources Limited**

Directors must also be aware that pursuant Section 205G of the Corporations Act 2001 (Cwlth) they are obliged to provide the ASX with appropriate notifications of their interests in the company.

Under the ASX Listing Rules, a Director must notify the Company Secretary of the acquisition or disposal of any security and the Company is obliged to notify the ASX (LR 3.19A).

Information to be provided concerning security transactions (the information to be provided to Superior Resources Limited) includes:

- Appendix 3X – Initial Director's Interest Notice,
- Appendix 3Y – Change of Director's Interest Notice and
- Appendix 3Z – Final Director's Interest Notice.

This information is to be forwarded to the Company Secretary.

Each Director is required to enter into an agreement with Superior Resources Limited to supply such information in the required form.