

ASIC responses to Questions on Notice

Written QoN – W001

Question

1. In its financial surveillance reports (e.g. MR 19-269 and MR 19-270), ASIC does not name the auditor, nor does it state whether the problem is due to the company, the auditor or both.
 - a) Would it be legally possible for ASIC to provide this information?
 - b) If so, will ASIC consider doing so in future?

Answer

Answer

- 1a) The identity of the auditor of a company that has made material changes to net assets and profit following ASIC enquiries can already be ascertained from the relevant financial report of the company, which is public information.

Whether or not any change is due to failings of an individual within the company or the company auditor is a serious matter raising legal issues around the adequacy of evidence to support such a statement, natural justice and possibly defamation.

Generally, we would not suggest the lack of care of an auditor of a company has led to material changes to financial reports if we have not comprehensively investigated the role of that auditor, formed a view that the evidence clearly establishes those facts to the standard required at law and taken action against them. This may take a considerable amount of time.

- 1b) In addition to improving the level of market transparency, our media releases about material changes to net assets and profit by a company have been intended to make directors and auditors of other companies more aware of ASIC's concerns in a timely manner so that they can avoid similar issues in financial reports (see, for example, ASIC media release 17-219 *ASIC review of 31 December 2016 financial reports*).

This is why ASIC issues media reports as soon as practicable without the details set out in the question.

ASIC will consider naming individuals whose failings may have led to the need for material changes to a financial report subject to the issues noted in paragraph 1(a) above and if broader information about the financial restatement can be released to the market in a timely manner. For the reasons above, however, we consider this will be rare in practice.