

Answer to question on notice:

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

REVIEW OF THE ASIC ANNUAL REPORT (SECOND REPORT) 2019

QoN: ASIC32QON

Question:

Dr LEIGH: Let me go to one of those particular issues. Annual reports frequently contain inaccurate information on substantial shareholders. Do you pay any heed to the substantial shareholders listed in annual reports?

Ms Armour: We conduct routine surveillance of annual reports and other disclosures. We are very keen to ensure that there are adequate disclosures of substantial shareholding. We are running a criminal case with the CDPP at the moment in relation to the adequacy of a substantial shareholding disclosure.

Dr LEIGH: Have you ever taken action against a company which had a misstatement of substantial shareholders in its annual report?

Ms Armour: I would have to take that on notice and come back to you, because 'ever' is a long time!

Answer:

The Corporations Act requires that a company's annual report contains certain information, including, for example, about the company's directors, any dividends or distributions paid, and various securities issued or granted (section 300). Public companies and listed companies' annual reports must also include additional information (sections 300 and 300A).

Any person who has a substantial holding in a listed public company is required under section 671B of the Corporations Act to provide a substantial holding notice to the company and the market operator (for example, ASX). A listed public company's annual report is one of the places where the largest registered or substantial holders of a company may be identified. The requirement to include information about holders, including substantial holders, in a listed public company's annual report is contained in the ASX Listing Rules (ASX Listing Rule 4.10). The information disclosed in the annual report must be current as at a date no more than six weeks before the report is sent to holders.

A public company listed on ASX must also disclose in its annual report the 20 largest holders of each class of securities in the company and the number of securities each holds (ASX LR 4.10.9). The list of 20 largest holders is reported from the company's register of holders which identifies the registered holders of securities. As a result, the list of 20 largest holders in the company will not necessarily match the list of substantial holders. This is because substantial holders are required to report based on their 'relevant interest' in securities, which may be a direct interest or an indirect interest and will not always be held as the registered holder.

ASIC has conducted searches of its systems and has located one referral from ASX in relation to disclosure of the number of shares held by a substantial holder in a listed public company's annual report not matching a notice from the substantial holder lodged a short time later. In response to this referral, ASIC issued a letter to the substantial holder reminding it of its obligations to lodge notices detailing changes in its substantial holding within two business days of the change.

ASIC receives complaints regarding substantial holding matters and considers these in accordance with its usual processes, taking action where necessary. ASIC regularly takes action to ensure that substantial holding disclosure is made where it is required and accurately discloses the holder's relevant interest. Examples of matters where ASIC has commenced enforcement action in relation to breaches of substantial holding disclosure or similar provisions include:

- Jan Cameron, former director of Bellamy's Australia Limited ([20-033 MR](#)) - ASIC alleges that Ms Cameron began to have a substantial holding in Bellamy's in 2014 which she did not disclose as required at the time. ASIC also alleges that an initial substantial holder notice Ms Cameron lodged in 2017 was misleading. This matter is being prosecuted by the Commonwealth Director of Public Prosecutions.
- John Lindsay Merity, of North Nowra, New South Wales ([20-036 MR](#)) – Mr Merity pleaded guilty to making misleading statements to ASIC in response to enquiries into the identities of parties who had an interest in certain shares.
- Paul Gerard Choiselat, former director of two ASX-listed companies, Q Limited and Jumbuck Entertainment Limited ([13-327 MR](#)) – Mr Choiselat was charged with 25 'rolled up' charges relating to market manipulation and concealing his interests in shares of listed companies. A jury ultimately found that Mr Choiselat was unfit to stand trial on these charges.

ASIC has conducted searches of its systems and has not located any complaints from the general public or any other entities regarding inaccurate disclosure of substantial shareholders in an annual report.