

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

26 February 2014

Question: AET 1500

Topic: Proceeds of crime investigation - ASIC

Written: 6 March 2014

Senator WHISH-WILSON asked:

1500. In relation to the Australian Securities and Investment Commission proceeds of crime investigation referred to the Australian Federal Police:
- a. In reference to the John Gay proceeds of crime investigation when did ASIC refer the case to the AFP?
 - b. Was there meetings between ASIC and the AFP when the case was handed over and while the AFP conducted their investigations?
 - i. If yes – how many meetings were there?
 - c. When was ASIC informed by the AFP that the case they referred regarding John Gay had been dropped?
 - i. Did the AFP provide reasoning to ASIC as why the case was dropped?
 - d. The AFP has listed the time that had past since arrest as one reason why they didn't pursue the proceeds of crime action against John Gay
 - i. Could ASIC have referred the case to the AFP earlier?
 - e. Media reports state John Gay is going to apply to be for permission to be become a company director again. Is this a decision for ASIC?
 - i. If yes – have you received an application to this effect?

Answer:

1500. a. 28 August 2013 (following Mr Gay's conviction on 23 August 2013).
- b. There were a number of communications between ASIC and the AFP in relation to the proceeds of crime matter. There was no meeting between ASIC and the AFP prior to the AFP informing ASIC that it did not propose to take action.
- c. ASIC was advised of the AFP's decision not to accept ASIC's referral on 13 December 2013.
 - i. ASIC was given verbal reasons for the decision on 13 December 2013 and the AFP also indicated that it would reconsider the matter if further material was provided.

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- d. Mr Gay was never arrested. While it was possible for ASIC to refer the matter to the AFP at an earlier time ASIC decided, in light of the complexities and uncertainties associated with the criminal proceedings, to wait until a conviction had been obtained (after which POCA proceedings founded on that conviction could be commenced within 9 months).
- e. Mr Gay has applied to the Supreme Court of Tasmania pursuant to section 206G of the Corporations Act for leave to manage two corporations. The decision to grant leave is a decision for the Court not ASIC. ASIC intervened in these proceedings and opposed Mr Gay's application for leave.
 - i. The application was heard by the Court on 17 March 2014 and the decision of the court is reserved.