

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

26 February 2014

Question: AET 29

Topic: Commonwealth Bank takeover of Bankwest

Written: 5/03/2014

Senator EGGLESTON asked:

1. At any point in 2012 or 2013, was a directive given to ASIC's Corporate Breach and Misconduct Analyst, Patrick Foran, or any other analyst or employee(s), instructing that person(s) to conduct a review of any kind into the Commonwealth Bank takeover of Bankwest?
 - a. If so, what did the analysis entail (ie. the process)?
 - b. Were submissions received?
 - i. If so, who were those submissions from (ie. companies, consumers, government bodies, banks etc. (not specific names))?
 - c. What was the outcome of Mr Foran's review?
 - d. Did Mr Foran's review find a systemic issue of misconduct apparent with the Bankwest takeover?
 - e. What other conclusion(s) did the analysis draw?
 - f. What action(s) has ASIC taken or will it take?
 - g. Please provide a copy of any report or findings.

Answer:

1. At any point in 2012 or 2013, was a directive given to ASIC's Corporate Breach and Misconduct Analyst, Patrick Foran, or any other analyst or employee(s), instructing that person(s) to conduct a review of any kind into the Commonwealth Bank takeover of Bankwest?

In 2012 or 2013, ASIC did not direct staff members to conduct a review of the Commonwealth Bank takeover of Bankwest.

ASIC assesses reports of misconduct we receive from members of the public to determine whether the concerns raised may suggest breaches of the laws we administer, and what, if any, regulatory action ASIC should take in response to any alleged breaches.

During 2012 and 2013, ASIC received reports of misconduct from certain former commercial banking customers of Bankwest about their treatment by Bankwest following its takeover by Commonwealth Bank.

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ASIC assessed these reports and determined not to take further action in relation to the issues raised as there was insufficient basis to warrant ASIC's regulatory intervention.

ASIC has issued Information Sheet 153 *How ASIC deals with reports of misconduct* to inform the public about our process on receipt of their report of misconduct. In addition, Information Sheet 151 *ASIC's approach to enforcement* provides the public with general information about the issues we take into account when selecting matters for further regulatory action.

Similarly, Chapter E of ASIC's main submission to the Senate Economics References Committee Inquiry into the performance of ASIC contains a general explanation of the process and methods for ASIC's assessment of reports of misconduct.

These public statements describe ASIC's assessment process. Broadly, as part of the assessment process, ASIC considers (among other things):

- the material provided to us by the person who is reporting the alleged misconduct to ASIC;
- previous reports of alleged misconduct received by ASIC;
- all publicly available information;
- information we may be able to obtain from other agencies;
- information from related third parties; and
- any previous information obtained by ASIC in any of our activities, including surveillances, enforcement actions and investigations.

When deciding whether regulatory action is appropriate, we will consider:

- the strategic significance of the matter;
- the benefits to the market or public of pursuing the misconduct;
- matter-specific issues, including what evidence is available and what outcomes could be obtained using that evidence; and
- whether there is an alternative course of action for dealing with the concern.

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a. If so, what did the analysis entail (ie. the process)?

ASIC did not undertake a review of the Commonwealth Bank takeover of Bankwest as described in the question. We refer to our answer in question 1 on ASIC's consideration of report of misconduct.

b. Were submissions received?

ASIC did not undertake a review of the Commonwealth Bank takeover of Bankwest as described in the question. We refer to our answer in question 1 on ASIC's consideration of report of misconduct.

i. If so, who were those submissions from (ie. companies, consumers, government bodies, banks etc. (not specific names)?

ASIC did not undertake a review of the Commonwealth Bank takeover of Bankwest as described in the question. We refer to our answer in question 1 on ASIC's consideration of report of misconduct.

c. What was the outcome of Mr Foran's review?

ASIC did not undertake a review of the Commonwealth Bank takeover of Bankwest as described in the question. We refer to our answer in question 1 on ASIC's consideration of report of misconduct.

In particular, following ASIC's consideration, ASIC determined not to take action as there was insufficient basis to warrant ASIC's regulatory intervention.

d. Did Mr Foran's review find a systemic issue of misconduct apparent with the Bankwest takeover?

ASIC did not undertake a review of the Commonwealth Bank takeover of Bankwest as described in the question. We refer to our answer in question 1 on ASIC's consideration of report of misconduct.

In particular, following ASIC's consideration, ASIC determined not to take action as there was insufficient basis to warrant ASIC's regulatory intervention.

e. What other conclusion(s) did the analysis draw?

ASIC did not undertake a review of the Commonwealth Bank takeover of Bankwest as described in the question. We refer to our answer in question 1 on ASIC's consideration of report of misconduct.

In particular, following ASIC's consideration, ASIC determined not to take action as there was insufficient basis to warrant ASIC's regulatory intervention.

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f. What action(s) has ASIC taken or will it take?

ASIC did not undertake a review of the Commonwealth Bank takeover of Bankwest as described in the question. We refer to our answer in question 1 on ASIC's consideration of report of misconduct.

In particular, following ASIC's consideration, ASIC determined not to take action as there was insufficient basis to warrant ASIC's regulatory intervention.

g. Please provide a copy of any report or findings.

ASIC did not undertake a review of the Commonwealth Bank takeover of Bankwest as described in the question. We refer to our answer in question 1 on ASIC's consideration of report of misconduct.