

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2014 - 2015

Department/Agency: ASIC

Question: AET 179-190

Topic: Register of Advisers

Reference: Written - 6 March 2015

Senator: Dastyari, Sam

Question:

179. Please provide an update on the implementation of the financial advisers register?
180. What consultation with the sector and other stakeholders was undertaken?
181. What feedback was received? What concerns were raised?
182. What consultation has ASIC undertaken on the register with the Government?
183. What consultation has ASIC undertaken on the register with the Clive Palmer?
184. Has there been consultation with the Government on what information is to be included on the register?
185. Exactly what information will be on the register?
186. How will the information be verified as truthful and accurate?
187. Who will be required to verify the accuracy of the information provided? Advisers, licensees, or ASIC?
188. Is this different from other reporting obligations that ASIC is responsible for?
189. Are there penalties for supplying misleading or untruthful information?
190. Would it be fair to assume that if there are no obligations to verify the information provided, that it is unlikely to be discovered that someone has provided false information until possibly after fraud or criminal activity has occurred?

Answer:

179. Please provide an update on the implementation of the financial advisers register?

On 9 March 2015, ASIC successfully launched the online portal service for licensees to notify information about their financial advisers.

On 31 March 2015, the new register of financial advisers will be publicly available from ASIC's MoneySmart website. Consumers will be able to search by adviser name, any ABN held by an adviser or the ASIC allocated adviser number.

180. What consultation with the sector and other stakeholders was undertaken?

Consultation was conducted by The Treasury and this question is best directed to The Treasury.

181. What feedback was received? What concerns were raised?

Consultation was conducted by The Treasury and this question is best directed to The Treasury.

182. What consultation has ASIC undertaken on the register with the Government?

Consultation was conducted by The Treasury and this question is best directed to The Treasury.

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183. What consultation has ASIC undertaken on the register with the Clive Palmer?

Consultation was conducted by The Treasury and this question is best directed to The Treasury.

184. Has there been consultation with the Government on what information is to be included on the register?

Consultation was conducted by The Treasury and this question is best directed to The Treasury.

185. Exactly what information will be on the register?

In accordance with Regulation 7.6.06B of the *Corporations Regulations 2001* (Cth), the information on the register made available to the public will include:

- the adviser's name and unique number allocated by ASIC;
- the name and Australian Financial Services (AFS) licence number of each financial services licensee on whose behalf the relevant provider is or was authorised to provide personal advice in relation to relevant financial products to retail clients;
- if applicable, each person who controls the licensee;
- if the adviser is sub-authorised by an authorised representative, the name and number of the authorised representative;
- the relevant financial products in relation to which the adviser is authorised to provide personal advice to retail clients;
- the recent advising history of the adviser;
- the year in which the adviser first provided personal advice in relation to relevant financial products in accordance with the law (including the law of a State or Territory);
- whether the adviser is currently, or has ceased to be, an adviser;
- if the adviser has been banned or disqualified or has provided an enforceable undertaking to ASIC;
- if applicable, the ABN of the adviser, the AFS licensee or the authorised representative;
- information about the educational qualifications of, and any training courses completed by the adviser (up to a maximum of five); and the adviser's membership, if any, of professional bodies (up to a maximum of five), to the extent the qualifications, training course or memberships are relevant to the provision of financial services.

Information about qualifications and training courses and membership of professional bodies will be provided by licensees in late May 2015 and added in June 2015.

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Information about an adviser's date of birth and place of birth will be on the Financial Advisers register but will not be displayed to the public, in accordance with Regulation 9.1.02(q)(ii) of the *Corporations Regulations 2001* (Cth).

186. How will the information be verified as truthful and accurate?

It is an offence for licensees to knowingly give false or misleading statements. ASIC's system design involves some basic validation checks on the completeness and quality of the data provided.

187. Who will be required to verify the accuracy of the information provided? Advisers, licensees, or ASIC?

Subsection 922L(4) of the regulations specifies that the obligation to lodge the prescribed information with ASIC is on the licensee. Section 922N of the regulations requires that, upon request from a licensee, an adviser is required to provide that information so that the licensee can comply with its obligation to lodge under s922D of the Corporations Act.

While there is no specific regulation requiring a licensee to verify this information, the regulations note that it is an offence if a person knowingly gives false or misleading information, and references s1308 of the Corporations Act and 137.1 of the Criminal Code.

ASIC is not required to verify information provided to it upon lodgement, although, as noted above, the system design involves some basic validation checks on the data. Furthermore, ASIC may make inquiries about information lodged and take action (in accordance with the offence provisions listed below), where it becomes aware of inaccurate information.

188. Is this different from other reporting obligations that ASIC is responsible for?

There are a number of reporting obligations that ASIC is responsible for. The provisions for reporting in relation to the Financial Advisers register are similar, although not the same as, the Authorised Representatives register.

189. Are there penalties for supplying misleading or untruthful information?

ASIC may take action for providing a false or misleading document/statement to ASIC under section 1308 of the Corporations Act (false or misleading statements). The penalty is 200 units (\$34,000) or imprisonment for 5 years or both. If a corporate entity contravenes the provision, it will be 1,000 penalty units (\$17,000).

190. Would it be fair to assume that if there are no obligations to verify the information provided, that it is unlikely to be discovered that someone has provided false information until possibly after fraud or criminal activity has occurred?

Advisers and licensees may commit an offence if they knowingly give false and misleading information (see section 1308 of the Corporations Act and section 137.1 of the Criminal Code).

Therefore, it is not accurate to say that there are no obligations to verify the information provided.