

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates

2015 - 2016

**Department/Agency: Australian Securities and Investment Commission**

**Question: AET 131-136**

**Topic: Macquarie Bank Enforceable Undertaking**

**Reference: written - 17 February 2016**

**Senator: Dastyari, Sam**

**Question:**

**Macquarie Bank Enforceable Undertaking**

**BACKGROUND**

In his opening statement to this (Additional Estimates) Committee on 22 October 2014, Greg Medcraft confirmed that Macquarie Bank would write to 160,000 customers, past and present, about possible remediation for flawed financial advice, as part of 2013 Enforceable Undertaking (EU).

On 25 February 2015 Medcraft advised, you “have actually set up a specialist wealth management project to focus on the large advice entities” such as Macquarie (AMP, and the Big Four), which Commissioner Mr Kell later characterised as a ‘task force’.

**Questions**

131. What is the nature of current surveillance of Macquarie Bank relating to this EU?
132. Are there any current investigations relating to a the infamous “Penske File”?
133. What happens when a bank attempts to mislead ASIC?
134. What happens when a bank attempts to mislead FOS?
135. What happens when a bank that is subject to an EU attempts to mislead ASIC?
136. What happens to the customers, when a bank subject to an EU misleads ASIC and FOS?

**Answer:**

131. The Enforceable Undertaking (EU) with Macquarie Equities Limited concluded in January 2015 – see ASIC media release 15-022MR. In February 2015, ASIC announced that ASIC and MEL had agreed to a program of further work for an additional 12 months, which would be overseen by KPMG as independent expert. During this period, ASIC has continued to monitor the program of further work. The additional program of work concluded in early March 2016.

132. ASIC has completed its investigations into the alleged Penske File. This was outlined publically in a media conference about the Macquarie EU on 13 February 2015, and reported in the media shortly afterwards.

133. ASIC's response when a bank, or any other licensee, attempts to mislead it will depend very much on the exact facts of each individual case. Where a person has evidence of such an allegation, that evidence should be provided to ASIC.

ASIC is very much alive to the possibility that a person (whether a licensee or otherwise) may attempt to mislead us. ASIC exercises an appropriate degree of professional scepticism when making enquiries or conducting surveillances and investigations.

134. This question should be directed to FOS.

135. ASIC's response when a bank, or any other licensee subject to an EU, attempts to mislead it will depend very much on the exact facts of each individual case. Where a person has evidence of such an allegation, that evidence should be provided to ASIC.

ASIC is very much alive to the possibility that a person (whether a licensee or otherwise) may attempt to mislead us. ASIC exercises an appropriate degree of professional scepticism when making enquiries or conducting surveillances and investigations.

Many larger and more complex EUs provide for oversight by an independent expert of the work that is to be done under the EU. Independent experts generally conduct a significant amount of detailed review and testing of the matters subject to their review, based on primary material. ASIC considers the reports made by independent experts in these circumstances, as well as any other information that is provided to ASIC by the licensee directly.

136. The impact on customers when a bank (or any other licensee) subject to an EU misleads ASIC and FOS will depend very much on the exact facts of each individual case and the exact circumstances of the customer. Where a person has evidence of such an allegation, that evidence should be provided to ASIC.