

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2016 - 2017

Division/Agency: Australian Securities and Investment Commission

Question No: 180

Topic: Systemic Issues

Reference: Written

Senator: Ketter, Chris

Question:

1. Under RG 139, EDR Schemes are required to report systemic issues and serious misconduct to ASIC.
 - a. How many systemic issues were reported to ASIC in the 2015-16 FY?
 - b. How many systemic issues have been reported in the 2016-17 FY so far?
 - c. How many instances of serious misconduct were reported to ASIC in the 2015-16 FY? Please provide general descriptions categorising the instances of misconduct reported.
 - d. How many instances of serious misconduct were reported to ASIC in the 2016-17 FY so far? Please provide general descriptions categorising the instances of misconduct reported.
2. Please provide a list of all of the systemic issues that have been reported by EDR schemes in the 2015-16 FY and their current status with ASIC.
3. Please provide a list all of the systemic issues that have been reported from EDR schemes in the 2016-17 FY and their current status with ASIC.

Answer:

- 1) There are two ASIC approved EDR schemes, the FOS and the CIO.
 - a) In 2015–16, FOS reported 58 definite systemic issues to ASIC.
In 2015–16, CIO reported 38 definite systemic issues to ASIC.
Please note that since 2014-2015, ASIC's Annual Report includes data on the numbers of definite systemic issues and serious misconduct reports received from the approved EDR schemes.
 - b) Schemes report systemic issues to ASIC on a quarterly basis. For the current financial year, ASIC has only received scheme reports for the period 1 July 2016 to 31 December 2016. In that period,
FOS has reported 33 definite systemic issues to ASIC.
CIO has reported 18 definite systemic issues to ASIC.
 - c) In 2015- 16, FOS reported five cases of serious misconduct to ASIC.
In 2015–16, CIO reported six cases of serious misconduct to ASIC.
In most cases, serious misconduct reports from both FOS and CIO relate to a failure by a scheme member (financial services provider) to pay an EDR scheme determination or a failure to comply with EDR scheme complaints handling or systemic issues investigations or procedures.

ASIC's dispute resolution policy settings defines serious misconduct as conduct that may include fraudulent conduct, grossly negligent or inefficient conduct, and wilful or flagrant breaches of relevant laws (See ASIC Regulatory Guide 139.124).

d) For the period 1 July 2016 to 31 December 2016:

FOS has reported 4 cases of serious misconduct to ASIC.

CIO has reported 10 cases of serious misconduct to ASIC.

These serious misconduct reports involved the following issues

- failure to pay an EDR scheme determination;
- failure to comply the EDR scheme terms of reference or rules;
- failure to comply with a systemic issues investigation by a scheme.

FOS also makes referrals to ASIC pursuant to clause 11.1 of the FOS Terms of Reference. This provision allows FOS to provide reports and recommendations and release information about a financial services provider to a regulator, such as ASIC. In this period, FOS has made 4 further reports to ASIC.

2) As noted at 1. a) above, in 2015-16, ASIC received 96 systemic issues reports from the two approved EDR schemes (58 from FOS and 38 from CIO).

Approved EDR schemes are required under RG139 to identify, deal with and also to report systemic issues to ASIC. EDR schemes are not required to identify scheme members in their systemic reports to ASIC (RG 139.28). In practice, ASIC receives quarterly systemic reports which will include de-identified narratives about potential and definite systemic issues and the status of those investigations within the scheme. Where a systemic issue is deemed to be definite, the scheme will also report on its ultimate resolution. Schemes sometimes also separately send reports to ASIC which identify the scheme member.

ASIC does not itself automatically investigate all systemic issues that are being addressed by the EDR scheme but even where there is no investigation these reports help us to identify and prioritise risks in the financial services sector. In some cases, ASIC may be separately considering the same or similar conduct (e.g. because of a breach notification) or ASIC may issue a statutory notice on the EDR scheme to obtain details about the member and the underlying issues (which might including obtaining customer dispute files).

To provide a list of all systemic issues reported by each scheme in FY 2015-16 and FY 2016/17 would require ASIC to manually review the scheme's quarterly reports and separately track against ASIC's complaints register. This work would substantially divert the resources of ASIC from its other operations. For the reasons outlined above, it is also not possible to advise an "ASIC status" for each of these reports as many are resolved fully within the schemes, and provided to ASIC for information purposes. Examples of definite systemic issues reported to ASIC by FOS in 16/17 include:

- Potential overcharged interest on cash advances on a credit card
- Administrative errors in charging ongoing service fees in financial advice
- Failure to provide PDS to mobile phone customers
- Error in processing internet payments
- Failure by the financial services provider to give adequate notice of the customer's right to go to EDR.
- Financial service provider failed to give policy holders information about IDR

Examples of definite systemic issues reported to ASIC by CIO in 16/17 include:

- Failure to meet responsible lending obligations including failure to make reasonable inquiries about expenses
- Errors in credit reporting processes leading to incorrect default listings
- Poor complaints handling processes including failures to give information about IDR or EDR.

ASIC will review the reporting arrangements in RG 139 in line with the Ramsay Review of the EDR framework. This will include consulting about requiring EDR schemes to identify members in reports to ASIC, and improving the way reports are received and tracked.