

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates 2014
3 June to 5 June 2014

Department/ Agency: ASIC

Question: BET 9

Topic: Project Harnett

Reference: Hansard pg 14-15, 4 June 2014

Senator: Bishop

Question:

Senator MARK BISHOP: Mr Kirk, we have now received detailed correspondence from Commonwealth Bank—27 pages. I read it through on Monday or Tuesday, and that identifies the entire process of remediation and compensation, and it says who got what. It is clear, unless I have misunderstood that material, that it applied only to clients of Mr Nguyen and to the other fellow. My question still is: why then did it not at least extend to all the clients of those 50 advisers who had been classified as 'critical', and secondly, when the new licence conditions are being issued, why is it not applied to a much broader class of persons?

Mr Medcraft: Just to give fair response to your question, I think we should take it on notice.

Mr Kirk: It is the case. There may be some confusion—there was an initial compensation process called Project Harnett, which occurred before the enforceable undertaking. So it occurred through 2010 and into 2011, and the enforceable undertaking was entered into in November 2011. The Harnett process applied to clients of Mr Nguyen and Mr Orca. Then there was further remediation under the enforceable undertaking that was extended to a wider range of advisers within CFPL under the enforceable undertaking. In addition to that an undertaking was provided by the bank that was separate from the enforceable undertaking that was provided in October 2011. They undertook by letter that they would roll out the learnings and approaches from the enforceable undertaking within their business, as appropriate. One of the things they did roll out was that broader remediation policy, albeit reduced by the removal of the two items we have already talked about.

Senator MARK BISHOP: We will examine your response, Mr Kirk. All I can say to you—and I have no reason at all to suggest that it is not 100 per cent correct—is that the correspondence we received in response to questions we put to both the Commonwealth Bank and to ASIC arising out of Mr Medcraft's decision two Fridays ago, does not seem to me to be anywhere near as wide as you now suggest. It seems to be limited to the project Harnett and the identified people. So we will check that.

Mr Medcraft: I think what we should do is see that correspondence.

Mr Kirk: We certainly have not seen anything that the Commonwealth Bank has provided to you.

Mr Medcraft: Can we get a copy of that correspondence, and let's reconcile the two?

Senator MARK BISHOP: It is currently under the classification of 'confidential', and the committee is going to have a discussion about that in due course.

Mr Medcraft: I think it would be easier if we can see it.

Senator MARK BISHOP: But Mr Medcraft—this is really a question for the boss—why in the new licence conditions has it not been extended either to all of those 50 people and their

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clients, or to all clients as I identified related to the sections run by Mr Nguyen and the other fellow?

Mr Medcraft: Again, I think what we should do is come back to you. What we sought to do was, within the EU, where we identified there had not been consistent treatment, we sought to rectify what we had identified. But I will come back to you separately on that issue.

Answer:

9. We understand the question to be why ASIC has not extended the new licence conditions to "either all of those 50 people and their clients, or to all clients [in] the sections run by Mr Nguyen and [Mr Awkar]".

In response, we note that the license conditions now being finalised will provide for independent review of the adequacy of the methodology used for determining what advisors and clients were in scope for the remediation program in both CFPL and Financial Wisdom (see answer to question 1). Further, the advisers to be included in the current licence conditions are currently being negotiated between ASIC and CBA. Please also refer to ASIC's answer to BET 10.