

**Senate Economics Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Budget Estimates

2014 - 2015

**Department/Agency: ASIC**

**Question: BET 116**

**Topic: LM Investments**

**Reference: written - 10 June 2015**

**Senator: Williams, John**

**Question:**

116. I note that ASIC has taken action against the Founder and Directors of LM Investment Management Limited. There have been calls from investors who have lost funds in this failed enterprise for ASIC to accept responsibility for lack of diligence. Does ASIC accept any responsibility for not heeding “alarm bells” as this fund unravelled, and does ASIC consider it warrants compensation?

**Answer:**

116. ASIC licenses and monitors the operators or responsible entities of registered managed investment schemes to ensure they operate efficiently, honestly and fairly. In exercising this responsibility with respect to LMIM, from 2009 onwards ASIC engaged with LMIM and its directors regarding lodgement of audited financial reports, liquidity of funds, member redemptions, unit pricing, distributions, and refinancing of scheme borrowings. During the same period, ASIC issued statutory notices, investigated investor complaints and obtained advice from external counsel.

Continued surveillance and monitoring of LMIM and its schemes resulted in ASIC commencing enforcement action against LMIM in March 2013, and suspending LMIM's AFS Licence in April 2013. Upon application by ASIC, in September 2013 the Supreme Court of Queensland froze LMIM founder Peter Drake's assets, restrained him from travelling outside Australia without the prior consent of the Court, and ordered him to surrender his passport. In November 2014 ASIC commenced civil penalty proceedings in the Federal Court against five former LMIM directors alleging breaches of directors' duties and seeking financial penalties and banning orders. In April 2015, ASIC banned Mr Drake from the provision of financial services for three years on the grounds of his bankruptcy.

It is not part of ASIC's regulatory or enforcement role to directly compensate investors for losses suffered as a result of possible misconduct by the directors of responsible entities of managed investment schemes. ASIC has not applied for compensation orders against the directors of LMIM as part of its ongoing civil penalty proceedings, as ASIC believes that it is more appropriate for any such application to be made by the Insolvency Practitioners currently overseeing the administration or liquidation of LMIM's various funds. ASIC notes also that investors may wish to seek legal advice regarding the possibility of bringing further potential compensation claims directly against the directors of LMIM.