

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates, 16 February 2006

Question: AT 22

Topic: *ASIC thoughts about the governance structure within the AWB*

Hansard Page: E11

Senator WONG asked:

Is this something that ASIC has previously considered? Had ASIC turned its mind to the governance structure within AWB prior to these allegations being raised?

Mr Lucy—I cannot speak for ASIC in its entirety since the time that that prospectus was issued, so therefore I need to take that question on notice.

Senator WONG—There have been a number of commentators, including CGI, over some time who have raised concerns about the governance structure within AWB. I am interested to know whether that issue had ever been the subject of consideration by ASIC prior to these allegations in relation to the oil for wheat.

Mr Lucy—That will be part of the matter that I take on notice.

Senator WONG—I would appreciate it if you would. I would be interested in knowing whether any investigation or consideration by ASIC officers regarding the AWB governance structure occurred prior to the current round of allegations being raised.

Mr Lucy—I understand.

Answer:

ASIC takes the question on notice to be a query as to whether or not it has carried out some form of surveillance or investigation of the structure of the Board of AWB. While the constitution of a company and any modifications to the constitution have to be lodged with ASIC, ASIC does not scrutinise company constitutions.

In August 2001 when AWB became a publicly traded company on the Australian Stock Exchange the terms of its constitution were available to all those who purchased publicly traded shares in the company. In certain circumstances, including where the conduct of a company is oppressive to a member or members or contrary to the interests of members as a whole a Court may make orders including an order for the company's constitution to be amended or repealed. Applications to a court for such orders may be made by the persons oppressed (as defined) or by a person whom ASIC thinks appropriate but such applications are not made by ASIC.

ASIC would only conduct a surveillance or investigation concerning the governance structure of AWB if it were alleged that the company was in breach of the legislation administered by ASIC either with regard to the governance structure itself or that it had committed breaches in some way connected with the governance structure.

Prior to the Cole Commission of inquiry ASIC had not received any information or complaints that indicated that such breaches had occurred.