

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates, 16 February 2006

Question: AT 34

Topic: *ASIC response to complaint from WA Dept of Consumer Employment and Protection re Westpoint*

Hansard Page: E40-41

Senator SHERRY asked:

The point I am getting at is that it is my understanding that on 2 August 2002, as you have acknowledged, you received the letter and that is when those matters were first brought to your attention.

Mr Lucy—I am not able to respond as to what we were advised by the Western Australian office at this time, so I will have to take that on notice.

Senator SHERRY—Did ASIC respond to that letter from the WA Department of Consumer and Employment Protection?

Mr Lucy—Again, I would have to take that on notice.

Senator SHERRY—Could you take on notice the production of the response if there was one given. Is ASIC represented on the Fair Trading Operations Advisory Committee?

Mr Lucy—I do not know. I will have to check.

Senator SHERRY—Can you check that, because my understanding is that, on 21 October 2002, risks associated with Westpoint were raised at their meeting. My understanding is that there was a representative from ASIC there. Can you take that on notice. Is ASIC aware that the Western Australian Minister for Consumer and Employment Protection wrote to the federal Treasurer on 21 August 2002 in respect to the activities of Westpoint?

Mr Lucy—I am not aware of that.

Senator SHERRY—Have you received any correspondence—I do not want to go to the nature of it—or has the Treasurer's office forwarded any material to ASIC in respect to concerns about Westpoint?

Mr Lucy—To give a complete and reliable response, again, I would have to take that on notice.

Answer:

ASIC received correspondence from the WA Department of Consumer and Employment Protection dated 2 August 2002. ASIC responded to that letter on 6 September 2002. A copy of that reply is attached.

ASIC is a member of the Fair Trading Operations Advisory Committee (FTOAC). Concerns relating to mezzanine financing were raised at the FTOAC meeting of 21 October 2002 at which

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an ASIC representative was present. An extract of the minutes relevant to this issue is reproduced below.

ASIC is aware that the Western Australia Minister for Consumer and Employment Protection wrote to the Treasurer on 21 August 2002. A copy of this letter was provided to ASIC for comment on 28 October 2002. There had been previous communication with Treasury about mezzanine financing on or about 23 August 2002.

Extract from Minutes of FTOAC Meeting 12 October 2002

"Item 6.4 – Mezzanine Finance (*Western Australia*)

- WA advised that mezzanine financing was a relatively new type of financing arrangement that avoids managed investment scheme controls invoked through Commonwealth legislation. Currently, it was unregulated financing that involved high risk lending with little security for the investor. Mezzanine finance was typically unsecured, a high yielding loan, subordinate to bank and secured loans but ranked above equity. Pensioners and superannuants were target groups at risk, with payments of up to \$50,000 at risk;
- WA advised that ASIC in WA was reluctant to take action as a national approach to the problem was being formulated. There was general discussion on the issues, including lack of highlighting of risks by promoters, complaints being made to Fair Trading agencies, promoters implying that they are licensed, and responsibility for this type of financing falling to ASIC; and
- Members observed that the documents attached to WA's paper appeared to be 'template' documents that could be tailored to where the seminar was being held.

Resolution

The meeting noted the report from WA."