

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates 14 – 15 February 2007

Question: aet 6 (ASIC)

Topic: Ponzi scam

Hansard Page: Written

Senator SHERRY asked:

Ponzi scam

Senator Sherry has received a letter from a victim of the Ponzi scam and this victim is seeking answers to the following questions:

In late 2003, The constituent went to FICS after determining which company his investment cheque was deposited with – CPT Securities Pty

Ltd. FICS considered the complaint and after 18 months of deliberation disallowed the complaint.

He is seeking answers to the operations of FICS:

Q1 If FICS' wages are paid by the AFSL holders, could this result in a conflict of interest. What actions are taken by government to

ensure unbiased resolution by FICS and why has ASIC not appointed a delegate to the FICS board to ensure adequate oversight of the resolution service?

Q2 In the case of the constituent he paid \$60,000 to a Mr George Markos of High Wealth Securities P/L this money was placed

into CPT Securities Pty Ltd Equipoise Toowoomba Trust Account with the NAB. Reportedly, FICS accepted CPT's claim that they were *not* trustee despite owning the account and co-signing every dollar out, which resulted in FICS disallowing his claim.

In light of this and after complaints from investors is ASIC planning on taking any action or further investigation against CPT

Securities or High Wealth Securities?

Q3 Does ASIC require all investment schemes to be registered with them, irrespective of number of investors and amounts raised, so ASIC double checks if the investment Offer is properly licensed and insured? If not why not?

In this case the constituent actually checked ASIC's database before investing and found no black marks or warnings against any of

these people/companies, does ASIC feel investors are sufficiently warned of investments by visiting their website and if not what other

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avenues are available for investors to check on investments?

Q3 Why aren't the NAB required to ensure that there is a trustee / trust deed in place when an FSL company opens a trust account

with them?

Q4 Why is there no government agency to give me redress and compensation?

Answer:

Question 1

ASIC approves external dispute resolution (EDR) schemes such as the Financial Industry Complaints Service Limited (FICS) under *Policy Statement 139: Approval of external complaints resolution schemes (PS 139)*. There are several key principles in PS 139 that aim to prevent a conflict of interest arising between the scheme and external parties.

Independence

PS 139.34 clearly states that a scheme must be independent of the industry or industries that provide its funding and constitute its membership. In practice, this means that the decision makers and staff of the scheme are:

- entirely responsible for the handling and determination of complaints;
- accountable only to the scheme's overseeing body; and
- adequately resourced to carry out their respective functions.

To ensure independence, PS 139 states that a scheme should be a legal entity in its own right: that is, it should be an incorporated entity.

The overseeing body

In order to ensure that a scheme is clearly perceived to be independent, PS 139 states that membership of the overseeing body should comprise of:

- an equal number of consumer and industry representatives; and
- an independent Chair.

There is no ASIC representative on the overseeing body of a scheme. After consultation with stakeholders it was decided that it was not appropriate that a representative be appointed from or by ASIC. This reflects a consideration of the appropriate balance of membership on the overseeing body and the potential for a conflict of interest to arise with such an appointment (refer to PS 139.124).

Natural justice and procedural fairness

To ensure that decisions of EDR schemes are unbiased, PS 139 requires that:

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- a scheme produce decisions which are fair and seen to be fair by observing the principles of natural justice and procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based; and
- a scheme should provide written reasons for such a decision.

Question 2

In July 2004 ASIC commenced an investigation into the activities of High Wealth Securities Pty Ltd and George Markos. This investigation related to concerns about the suitability of investment advice provided by Mr Markos to his clients, including recommendations that they invest in an investment syndicate associated with Equipoise Total Health Pty Ltd. During the time Mr Markos provided the advice he was a director of High Wealth Securities Pty Ltd, a licensed securities dealer. CPT Securities Ltd was alleged to have played a role with the investment syndicate. That investigation did not reveal any evidence about CPT Securities Limited activities that warranted ASIC taking any action against the company. ASIC's investigation resulted in ASIC banning Mr Markos from providing financial services advice for one and a half years on 17 June 2005.

On 13 February 2006 High Wealth Securities Pty Ltd was placed into liquidation. As a requirement of its former securities dealer's license High Wealth Securities Pty Ltd was required to maintain a \$20,000 security bond. ASIC is currently considering a number of claims against this security bond. These claims have been lodged by former clients of the company.

Once these claims have been determined, ASIC currently has no outstanding matters in relation to Mr Markos, High Wealth Securities or CPT Securities Ltd.

Question 3

The Corporations Act does not require that all managed investment schemes be registered by ASIC. For example, some small-scale schemes and some schemes offered to wholesale clients need not be registered by ASIC.

However, if the operator of a managed investment scheme applies for a scheme to be registered with ASIC, ASIC checks to see if they have an appropriate licence authorisation to operate the scheme.

Further, when a managed investment scheme operator applies for a licence, ASIC checks to see if the operator has compensation arrangements that meet the legal requirements set out in the Corporations Act. This may or may not include having insurance, depending on the financial services and products being offered.

ASIC advises people to check its databases before investing.

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The safety checks ASIC advises people to take (set out on the ASIC website) are:

- searching the ASIC database to see if the company managing the investment holds an Australian financial services licence;
 - searching the ASIC database to see if the scheme is registered with ASIC;
 - checking the list of illegal investments on the FIDO website (www.fido.asic.gov.au);
- and
- asking the seller for their Product Disclosure Statement; and for listed managed investments, searching ASIC databases to see if a PDS has been lodged with ASIC.

Question 4

Each Australian Financial Services Licensee is required to have an internal dispute resolution (IDR) procedure to deal with consumer disputes and is required to be a member of an external dispute resolution (EDR) scheme. If a consumer's dispute is unable to be resolved to the consumer's satisfaction within the IDR process the consumer may then elect to take the dispute to the appropriate EDR scheme.

There are seven approved EDR schemes operating in the financial services sector. Each of these schemes has been approved pursuant to the requirements and criteria set out in PS 139. The decisions of the EDR schemes are binding on the member but not on the consumer. Consumers retain their rights to pursue their claims through the Courts.