

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates, 31 May to 2 June 2005

Question: Bud 100

Topic: ASIC – Unity Eleven P/L v Sharp Partners P/L

Hansard Page: E93/94

Acting Chair asked:

ACTING CHAIR—I refer you to a case on another matter that is in litigation—Unity Eleven Pty Ltd v Sharp Partners Pty Ltd—where there is a claim for losses allegedly suffered as the result of a breach of duty by the auditor; that is the allegation. My interest in the case is that it highlights, I believe, a lack of transparency and accountability to members in certain superannuation fund arrangements. By way of background, Unity Eleven appears to be an investment management company of the Transport Workers Union Superannuation Fund and two of its directors are also trustees of transport workers super. It then goes to a situation whereby there is another trust—and an arts investment trust—of which Unity Eleven Pty Ltd is the trustee of a related trust of transport workers super. Is this really subject to the in-house tests of part 8 of the superannuation industry provisions? It raises questions, particularly if you look at the 2005 transport workers super FSG in the PDS. Could that be deemed to be misleading? Whilst the attention of members and potential members is drawn to the remuneration and the potential conflicts of interest, no disclosure is made in the documents as to the potential conflict arising from the trustee directors also being directors of an investment manager appointed by the trustee. Could you throw some light on this, because I think this is an issue?

I am concerned that superannuation funds do not appear to be subject to the same level of disclosure as other public investment vehicles. You might like to take that on.

Answer:

Superannuation is generally subject to the same disclosure requirements that apply to other financial products under Part 7.9 of the Corporations Act 2001.

Where there are conflicts in any investment or other structures, product issuers, including super trustees, need to keep in mind the need to disclose and also manage those conflicts. ASIC will consider the need to disclose such conflicts in PDSs and FSGs as part of our regular surveillance activities.

ASIC has not considered whether the investments described amount to an in-house asset for the purpose of Part 8 of the Superannuation Industry (Supervision) Act 1993.

The relevant provision here is administered by the Australian Prudential Regulation Authority.