

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

**Treasury Portfolio**

Budget Estimates, 31 May to 2 June 2005

**Question: Bud 13**

**Topic: ASIC – Telstra Sale**

**Hansard Page: Written**

Senator Lundy asked:

1. Do you see any potential conflicts of interest for financial institutions and stockbrokers dealing in a potential sale of the remaining share of Telstra?
2. With so many financial institutions and stockbrokers likely to be involved in the sale - how can small investors be confident that they will be able to access independent impartial advice?
3. In the US a scandal involving investment house Merrill Lynch found inappropriate conflicts of interest to have tainted the integrity of advice provided by analysts. Has ASIC looked into potential conflicts of interest under the Australian regime?
4. The Australian regime does not seem to protect the small shareholder or investor who may not be able to assess the disclosure provided in the same context as a large, sophisticated institution. How does ASIC protect the small investor?
5. If all financial institutions and stockbrokers are disclosing the same conflicts, where do consumers go for independent, untainted advice?
6. What measures does ASIC have in place to ensure the financial institutions and stockbrokers involved in the Telstra sale are able to provide advice with no conflict of interest?

Answer:

1. It is possible that some financial institutions and stockbrokers will have an interest in the Telstra float and will also be asked to advise on that float. However, AFS licensees are obliged by law to have in place adequate arrangements to manage of conflicts of interest that may arise in the provision of financial services as part of their financial services business. The conflicts management obligation does not prohibit all conflicts of interest. It does not provide that a licensee can never provide financial services if a conflict of interest exists. Rather, the conflicts management obligation requires that all conflicts of interest be adequately managed. ASIC policy notes that many conflicts of interest can be managed by a combination of:

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- (a) internal controls; and
- (b) disclosures.

However, some conflicts cannot be managed in this way: where conflicts cannot be adequately managed through controls and disclosure, the licensee must avoid the conflict or refrain from providing the affected financial service.

Further details are set out in ASIC Policy Statement [PS 181] Licensing: Managing conflicts of interest. There is also some specific guidance for analysts in an ASIC Guide for Research Report Providers that was announced in Information Release [IR 04/56].

2. Not all ASX participants and other advisers are likely to be involved in the Telstra float. Further, even if a licensee has a potential conflict that conflict must be adequately managed. (See question 1)
3. ASIC has looked into potential conflicts of interest for licensees and published reports such as:

- 'Research analyst independence', ASIC surveillance report, 22 August 2003
- 'Preferential remuneration project', ASIC report, April 2004
- 'Disclosure of soft dollar benefits', ASIC report, June 2004

ASIC has also published policy statement [PS 181] on managing conflicts of interest and published a guide for research report providers which was announced in Information Release [IR 04/56].

4. ASIC enforces the obligations in the law that requires disclosure to retail investors. Further, it enforces the obligations that apply to AFS licenses including:
  - The obligation for licensees to have adequate arrangements to manage conflicts of interest; and
  - The obligation for advisers to ensure that any advice that is given is appropriate for the client.

5. There are a large number of ASX participants. It is hard to imagine that they all will be part of any proposed Telstra float. Advice can also be provided by financial planners and advisers who are not brokers. As Telstra is listed there is already a significant amount of public information about the company that they might draw upon. Further, even if a broker has a potential conflict it must still manage that conflict and any personal advice given must be suitable advice.

6. See Question 1