

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates 30 May – 1 June 2006

Question: bet 106 (ASIC)

Topic: Rabobank

Hansard Page: E87

Senator SHERRY asked:

When was the last time ASIC carried out an oversight as to the way in which the banks generally were handling complaints through their internal procedures?

Mr Lucy—I will take that particular question on notice. Certainly we do receive complaints in respect of banks, and you have mentioned the CBA I think twice. Typically we find that when we raise issues with the banks they are sorted to the full satisfaction of the customers. There was recently a series of loans to indigenous people up in Queensland.

Senator SHERRY—Yes, I saw that.

Mr Lucy—That was resolved by the bank to the full satisfaction, I believe, of the borrowers. We will take the question on notice regarding when did we last look at the dispute resolution mechanism of the banks, and to the extent that we need to tease it out further we will do so.

Senator SHERRY—It just seems to me that overlooking the dispute resolution procedures and processes, which, hopefully, is where disputes about fees and disclosure and other things would be resolved, to see whether it is working fairly and reasonably is part of ASIC's role.

Mr Lucy—Yes, and of course the parties that are not satisfied can then go further on.

Senator SHERRY—Yes.

Mr Lucy—It is a fair question, and I for one have not looked at it recently so I will do so and come back to you.

Answer:

ASIC's oversight as to the way in which banks and other AFS Licensees handle complaints through their internal procedures is an ongoing process.

Background

The Corporations Act requires that all AFS Licensees providing financial services to retail clients, including banks, have an internal dispute resolution (IDR) system that complies with standards made or approved by ASIC and covers complaints made by retail clients in connection with the provision of all financial services covered by the licensee (ss 912A(1)(g) and 912A(2)(a)).

ASIC Policy Statement 165 explains ASIC's requirements for IDR procedures. In part, PS 165 applies the Essential Elements of IDR set out in Section 2 of the Australian Standard on Complaints Handling (AS 4269-1995). PS 165 also provides guidance on the application of AS 4269-1995 to the financial services industry and outlines additional matters necessary for

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compliant IDR procedures. ASIC is satisfied that all banks have procedures in place to ensure their IDR procedures comply with these requirements.

Oversight of compliance

As this is a licence obligation, failure to maintain a compliant IDR process would be a matter for a breach notification, if such a failure is characterised as a significant breach, or likely breach of the licensee's obligations (s912D).

ASIC also reviews the efficacy of IDR procedures when considering individual complaints made by or on behalf of consumers or analysing complaints data provided by banks under Statutory Notices in relation to particular issues.

It is an additional licence requirement that AFS Licensees be a member of an ASIC approved External Dispute Resolution (EDR) Scheme. ASIC Policy Statement 139 explains how ASIC will approve an EDR scheme. PS139.62 requires that EDR schemes identify issues that are systemic or that involve serious misconduct and report such issues to ASIC. Failures to adequately deal with complaints at the IDR level are likely to result in systemic issues capable of being identified by the relevant EDR scheme (in the case of banks – the Banking and Financial Services Ombudsman), which will in turn be reported to ASIC.

ASIC therefore monitors the effectiveness of the IDR procedures by banks through feedback from the BFSO and through reviewing complaints.