

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates 29, 30 & 31 May 2007

Question: bet 56 (ASIC)

Topic: Foreign Ownership

Hansard Page: E86

Senator WONG asked:

Can I go to the issue of the levels of foreign ownership, which has had some airplay in terms of the Qantas takeover. There has also been some media commentary about the difficulty in ensuring that companies that are subject to foreign ownership ceilings actually comply with those, particularly given some of the derivatives and other contractual products that might underlie share ownership. For example, the ASA has written some commentary about this in May. The suggestion that was made in that is that, for example, hedge funds and other such entities effectively engineer products that enable some, I suppose, ducking of public scrutiny of who is in fact the legal owner of share interests. Are these issues that ASIC has considered and/or investigated?

Mr D'Aloisio—That is a question that has a fairly wide remit. If we are talking specifically about the threshold issues of five per cent when you need to notify substantial shareholding, for some time around certain types of cash derivatives—I think they are called cash settled derivatives—there has been uncertainty as to whether stock that is subject to that then requires, when they get over the five per cent threshold, that that be notified. I think the market view is ‘no’ to that, but they have to be—

Senator WONG—Is that a definitional problem or position?

Mr D'Aloisio—It is a very complex area and one that I am not quite as qualified to answer here, but we could get advice for you on it. Basically, as you know, whether it is legal or beneficial ownership, for the five per cent you need to notify. But with certain types of derivative products that are cash settled there is a view that that does not need to be notified, and it is something that the Takeovers Panel has been looking at. I can get you further detail. That is one issue.

In relation to Qantas’s ownership register, the 4951, the primary obligations are, through the constitution of Qantas, on Qantas’s board to comply with those, and in the absence there is a regime in the legislation that requires the minister to take proceedings. They are the two issues that I am aware of.

ANSWER:

Are these issues that ASIC has considered and/or investigated?

These are not issues that ASIC has considered or investigated specifically in the context of Qantas.

Is that a definitional problem or position?

The issue of whether this is a problem is a policy matter for the Government.