

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Budget Estimates 29, 30 & 31 May 2007

**Question: bet 60 (ASIC)**

**Topic: ASX - Matters referred to ASIC**

**Hansard Page: E91**

**Senator WONG asked:**

Have there been further insider trading cases referred to ASIC by the ASX? I think 18 were reported from the beginning of the financial year to the end of March?

**Mr D'Aloisio**—There would have been, but I do not have the number.

**Mr Cooper**—Yes.

**Senator WONG**—Could you take that question on notice? I have a number of other questions for you to take on notice too. Can you tell me the total number of matters referred to ASIC by the ASX since 2000? Are you able to give me figures as to the proportion of those prosecuted where enforcement action has been taken? Are you able to disaggregate those matters into insider trading, marketing manipulation, continuous disclosures and any other matters? In relation to that last question, perhaps we could just go back to 2004. Since 2000, could you give me the total number for the financial year, but can we have that with a disaggregation into categories for the years ending 2004, 2005 and 2006?

**Mr Cooper**—Yes, I am sure we can do that.

**Answer:**

The following response covers both ASX referrals that ASIC has received, as well as the surveillances ASIC undertakes of its own accord either because of concerns about possible breaches or to target and assess compliance with obligations in particular areas. It covers the period from 1 July 2000 to 30 March 2007. In most instances, the fulsome explanations below are supplemented by the attached tables.

It should be noted that, in the case of some ASX referrals from 1 July 2004, these referrals were received in response to queries from ASIC or, alternatively, resulted from discussions between ASIC and ASX about market conduct that both organisations were reviewing. In such cases, ASIC has only recorded the ASX referral and has not recorded the ASIC surveillance to avoid any confusion about, or duplication in, the total matter numbers. Accordingly, ASIC surveillance is understated in this response.

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Further, the response does not include a small number of matters that ASIC has investigated (some of which have been significant) that have originated from sources other than ASX or ASIC's own surveillance. An example of one such case is the Margot Olive McKay case, which resulted in the conviction and sentencing of Ms McKay: see MR 07-83 *Former Aristocrat media relations consultant jailed for insider trading*. Others include Rodney Adler and Anthony Rechner: see MR 05-91 *Rodney Adler sentenced to four-and-a-half years' jail* and MR 06-007 *Perth exploration company chairman charged with false statements*.

#### ***Before 2004***

From 1 July 2000 to 30 June 2004, ASIC received 55 referrals from ASX relating to insider trading: 14 for financial year 2000-01, 12 for financial year 2001-02, 16 for 2002-03, 13 for financial year 2003-04.

All matters were assessed and investigated.

No further action was taken in respect of 47 of these matters because either no offences were identified or there was insufficient evidence found by ASIC or the Commonwealth Director of Public Prosecutions (**CDPP**) in respect of any alleged insider trading offence (in one case, action was commenced in relation to alleged breach of directors' duties and disclosure to the market; in another, civil penalty proceedings were pursued in respect of contraventions of continuous disclosure provisions).

Of the remaining 8 matters, one matter is ongoing in the investigation phase. One matter is ongoing in the litigation phase (i.e. James Selim faces four charges relating to the provision of information; a trial date is pending: see MR 06-436 *Former Pan Pharmaceuticals CEO committed to stand trial*).

The following actions were taken and/or outcomes were achieved in relation to the balance of the investigations (6):

<b>Entity</b>	<b>Action/Outcome</b>
Ashton Mining Limited	ASIC obtained consent orders under which Malaysia Mining Corporation Berhad agreed to pay compensation to sellers of Ashton shares: see MR 00-502 <i>ASIC obtains compensation for Ashton Mining Sellers</i> .
Davenet Limited	ASIC took administrative action against Christopher Savage, who was banned from acting as a representative because he disclosed information to others before an ASX announcement had been made: see MR 02-170 <i>Christopher Savage banned for 3 months</i> .

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QANTAS Limited	Rene Walter Rivkin was convicted of insider trading and sentenced to 9 months periodic detention and fined \$30,000: see MR 03–170 <i>Rene Rivkin sentenced to jail</i> . Bart Doff was also convicted of insider trading and sentenced to 350 hours community service, fined \$30,000 and ordered to pay a pecuniary penalty of \$37,255.25: see MR 05–23 <i>Bart Doff sentenced for insider trading</i> .
Harts Australasia	Maxwell John Sweetman was convicted of insider trading and sentenced to 18 months imprisonment and ordered to pay a pecuniary penalty of \$280,349.54: see R 04–415 <i>Former Harts executive director jailed for insider trading</i> .
Commander Communications Limited	Jonathan Rabinovitz was banned from the securities industry for 18 months because of his treatment of a substantial purchase order received from a new retail client: see MR 03–215 <i>Sydney authorised representative banned</i> .
BRL Hardy Limited	ASIC obtained civil penalty orders against John Petsas (\$75,000) and Marc Miot (\$65,000) for insider trading; the defendants were also ordered to pay compensation of \$128,495.15: see MR 05–27 <i>Melbourne men ordered to pay \$260,000 over insider trading</i> .

**2004–05**

***ASX referrals***

See Table 1 (attached).

In the financial year 2004–05, ASX referred 50 matters to ASIC. The referrals comprised:

- q 17 continuous disclosure matters;
- q 19 insider trading matters;
- q 11 market manipulation matters;
- q 1 matter that involved suspected contraventions of continuous disclosure and market manipulation; and
- q 2 matters that involved suspected contraventions of continuous disclosure and insider trading.

All matters were assessed and, in many cases (namely, those cases involving suspected contraventions of the continuous disclosure provisions), additional surveillance was undertaken by ASIC.

No further action was taken in respect of 18 of those matters (7 continuous disclosure, 6 insider trading and 5 market manipulation). In the balance of matters, 27 matters were investigated and 5 were not investigated.

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Of the 27 matters investigated, 3 resulted in the issue of infringement notices to listed entities, 2 matters resulted in the commencement of civil penalty proceedings (with one concluded by declarations of contravention and a court imposed fine of \$500,000), 1 resulted in a civil prosecution for contempt of court, with fines of \$8,000 imposed by the court and 1 resulted in a matter being referred to the CDPP for contraventions of s205G of the *Corporations Act 2001*. The relevant media release for each matter is attached: see MR 05–223 *ASIC issues first infringement notice for continuous disclosure breach*, MR 06–042 *ASIC disclosure penalty for Perth company*, MR 06–124 *Melbourne company pays disclosure penalty*, MR 06–062 *ASIC commences proceedings against Fortescue Metals Group and Andrew Forrest*, MR 06–246 *Chemeq Limited ordered to pay \$500,000 in fines for breach of continuous disclosure provisions* and MR 07–129 *Bondi man fined for contempt of court*.

#### *ASIC-initiated surveillances*

See Table 2 (attached).

In addition to the ASX referrals, ASIC commenced its own surveillance of continuous disclosure compliance in financial year 2004–05. In most cases, these surveillances were undertaken because of concerns about possible breaches, but in some cases, the surveillances were undertaken to target and assess compliance with continuous disclosure obligations in particular areas. These surveillances are part of an ongoing program.

In the financial year 2004–05, ASIC undertook 20 such surveillances. Of these cases, 16 were not referred for investigation as no breaches were identified or, if breaches were identified, they were not considered serious enough to warrant enforcement action in those matters.

The balance of the matters (4) were investigated, but no further enforcement action was taken in respect of 3 of those matters. In 1 matter, the listed entity promptly made further disclosure after negotiations and, in those circumstances, enforcement action was unnecessary.

#### **2005–06**

#### *ASX referrals*

See Table 1 (attached).

In the financial year 2005–06, ASX referred 31 matters to ASIC. The referrals comprised:

- q 7 continuous disclosure matters;
- q 17 insider trading matters;
- q 5 market manipulation matters;

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- q 1 matter that involved suspected contraventions of continuous disclosure and market manipulation; and
- q 1 matter that involved suspected breaches of insider trading and market manipulation.

All matters were assessed and further surveillance was undertaken in relation to the continuous disclosure referrals.

No further action was taken in respect of 15 of those matters (4 continuous disclosure, 6 insider trading, 4 market manipulation and 1 insider trading/market manipulation). In the balance of matters, 15 matters were investigated and 1 matter was not investigated.

Of the 15 matters investigated, 1 infringement notice was issued, an enforceable undertaking was accepted and civil penalty proceedings were commenced in 3 cases. The relevant media releases are attached: see MR 06–242 *Chemical company pays \$66,000 penalty*, MR 06–443 *ASIC accepts an enforceable undertaking from the Multiplex Group*, MR 06–295 *ASIC acts against misleading statements by listed company*, MR 06–096 *ASIC commences proceedings against Citigroup for conflicts and insider trading breaches* and MR 07–13 *ASIC takes action against directors of Melbourne mining company*.

No further action was taken in the balance of the 10 matters investigated for lack of evidence of a breach of the law or, in some continuous disclosure matters, the breach found was not considered serious enough to warrant a civil penalty action or infringement notice.

#### ***ASIC-initiated surveillances***

See Table 2 (attached).

In addition to the ASX referrals, ASIC undertook 25 surveillance reviews of continuous disclosure compliance by listed entities in financial year 2005–06. Of these cases, 19 were not referred for investigation as no breaches were identified or, if breaches were identified, they were not considered serious enough to warrant formal enforcement action.

The balance of the matters (6) were investigated, but no further enforcement action was taken in respect of 2 of those matters.

In the 4 matters actioned, 2 infringement notices were issued, civil proceedings for winding up were commenced (but were withdrawn after the company went into voluntary administration) and 1 investigation is ongoing. The relevant media releases are MR 05–322 *ASIC seeks appointment of provisional liquidator to Australis Mining*, MR 06–156 *Sydney life sciences company pays disclosure penalty* and MR 06–428 *Biotechnology company pays \$33,000 fine*.

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**2006–07**

***ASX referrals***

See Table 1 (attached).

In the period 1 July 2006 to 30 March 2007, ASX referred 35 matters to ASIC. The referrals comprised:

- q 8 continuous disclosure matters;
- q 19 insider trading matters;
- q 7 market manipulation matters; and
- q 1 matter that involved suspected contraventions of continuous disclosure and market manipulation.

All matters were assessed and further surveillance was undertaken in relation to continuous disclosure referrals.

No further action was taken in respect of 18 matters (4 continuous disclosure, 9 insider trading, 4 market manipulation and 1 continuous disclosure/market manipulation). In the balance of matters, 15 matters were investigated and 1 matter was not investigated. As at 30 March 2007, 1 matter was still in surveillance phase.

Of the 15 matters investigated, 1 infringement notice was issued and 7 matters are still being investigated. The relevant media release is MR 07–69 *Promina pays \$100,000 fine*.

No further action was taken in the balance of the 7 matters investigated for lack of evidence of a breach of the law or, in some continuous disclosure matters, the breach found was not considered serious enough to warrant a civil penalty action or infringement notice.

***ASIC-initiated surveillances***

See Table 2 (attached).

In addition to the ASX referrals, ASIC undertook 29 surveillances. Of these cases, 26 were not referred for investigation as no breaches were identified or, if breaches were identified, they were not considered serious enough to warrant formal enforcement action.

Two matters were investigated and these investigations are ongoing. One matter referred was not investigated.

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**Table 1: Results flowing from ASX Referrals Only by Alleged Offence**

<i>Continuous Disclosure</i>				
	<b>2004/05</b>	<b>2005/06</b>	<b>2006/07<sup>1</sup></b>	<b>Total</b>
<b>ASX referrals</b>	17	7	8	32
<b>Not investigated<sup>2</sup></b>	8	4	5	17
<b>Approved for investigation</b>	9	3	3	15
<b>Results of matters approved for investigation</b>				
<i>Criminal</i>	0	0	0	0
<i>Civil</i>	2	2	2 (includes 1 ongoing)	6
<i>Ongoing</i>	0	0	0	0
<i>Not proceeded to litigation<sup>3</sup></i>	7	1	1	9
<i>Insider Trading</i>				
	<b>2004/05</b>	<b>2005/06</b>	<b>2006/07</b>	<b>Total</b>
<b>ASX referrals</b>	19	17	19	55
<b>Not investigated</b>	8	7	9	24
<b>Approved for investigation</b>	11	10	10	31
<b>Results of matters approved for investigation</b>				
<i>Criminal</i>	1 <sup>4</sup>	0	0	1 (see note 4)
<i>Civil</i>	0	1 (ongoing)	0	1
<i>Ongoing</i>	0	1	4	5
<i>Not proceeded to litigation</i>	10	8	6	24
<i>Market Manipulation</i>				
	<b>2004/05</b>	<b>2005/06</b>	<b>2006/07</b>	<b>Total</b>
<b>ASX referrals</b>	11	5	7	23
<b>Not investigated</b>	7	4	4	15
<b>Approved for investigation</b>	4	1	2	7
<b>Results of matters approved for investigation</b>				
<i>Criminal</i>	0	0	0	0
<i>Civil</i>	2	0	0	2
<i>Ongoing</i>	0	0	2	2
<i>Not proceeded to litigation</i>	2	1	0	3

<sup>1</sup> 8 months to 30 March 2007.

<sup>2</sup> Insufficient evidence found after surveillance by ASIC, including by means of issue of compulsory notices.

<sup>3</sup> Insufficient evidence and/or prospects of success.

<sup>4</sup> Contravention of s205G.

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<b><i>Continuous Disclosure/Market Manipulation</i></b>				
	<b>2004/05</b>	<b>2005/06</b>	<b>2006/07</b>	<b>Total</b>
<b>ASX referrals</b>	1	1	1	3
<b>Not investigated</b>	0	0	1	1
<b>Approved for investigation</b>	1	1	0	2
<b>Results of matters approved for investigation</b>				
<i>Criminal</i>	0	0	0	0
<i>Civil</i>	1 (ongoing)	1 (ongoing)	0	2
<i>Ongoing</i>	0	0	0	0
<i>Not proceeded to litigation</i>	0	0	0	0
<b><i>Continuous Disclosure/Insider Trading</i></b>				
	<b>2004/05</b>	<b>2005/06</b>	<b>2006/07</b>	<b>Total</b>
<b>ASX referrals</b>	2	0	0	2
<b>Not investigated</b>	0	0	0	0
<b>Approved for investigation</b>	2	0	0	2
<b>Results of matters approved for investigation</b>				
<i>Criminal</i>	0	0	0	0
<i>Civil</i>	1	0	0	1
<i>Ongoing</i>	0	0	0	0
<i>Not proceeded to litigation</i>	1	0	0	1
<b><i>Insider Trading/Market Manipulation</i></b>				
	<b>2004/05</b>	<b>2005/06</b>	<b>2006/07</b>	<b>Total</b>
<b>ASX referrals</b>	0	1	0	1
<b>Not investigated</b>	0	1	0	1
<b>Approved for investigation</b>	0	0	0	0
<b>Results of matters approved for investigation</b>				
<i>Criminal</i>	0	0	0	0
<i>Civil</i>	0	0	0	0
<i>Ongoing</i>	0	0	0	0
<i>Not proceeded to litigation</i>	0	0	0	0



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**Table 2: Results flowing from ASIC Surveillance Only by Alleged Offence**

<i>Continuous Disclosure</i>				
	<b>2004/05</b>	<b>2005/06</b>	<b>2006/07<sup>5</sup></b>	<b>Total</b>
<b>ASIC surveillances</b>	19	23	28	70
<b>Referred for investigation</b>	4	5	2	11
<b>Approved for investigation</b>	4	5	1	10
<b>Not investigated</b>	0	0	1	1
<b>Results of matters approved for investigation</b>				
<i>Criminal</i>	0	0	0	0
<i>Civil</i>	1	2	0	3
<i>Negotiated outcome</i>	0	1	0	1
<i>Ongoing</i>	0	0	1	1
<i>Not proceeded to litigation<sup>6</sup></i>	3	2	0	5
<i>Insider Trading</i>				
	<b>2004/05</b>	<b>2005/06</b>	<b>2006/07</b>	<b>Total</b>
<b>ASIC surveillances</b>	1	2	1	4
<b>Referred for investigation</b>	0	1	1	2
<b>Approved for investigation</b>	0	1	1	2
<b>Not investigated</b>	0	0	0	0
<b>Results of matters approved for investigation</b>				
<i>Criminal</i>	0	0	0	0
<i>Civil</i>	0	1 (ongoing)	0	1
<i>Ongoing</i>	0	0	1	1
<i>Not proceeded to litigation</i>	0	0	0	0

<sup>5</sup> 8 months to 30 March 2007.

<sup>6</sup> Insufficient evidence and/or prospects of success.