

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

31 May – 2 June 2011

Question No: BET 107

Topic: Compliance

Hansard Page: Written

Senator Bushby asked:

- What measures are in place to ensure that notices seeking information of compliance with certain matters, are accurate and targeted, so as to avoid the imposition of considerable expense and effort by those subject to the notices, in meeting that required, on matters not relevant to any investigation?

Answer:

Surveillance and compliance checking are important regulatory strategies. ASIC has a range of statutory powers which are available for use in circumstances where ASIC has not commenced a formal investigation.

ASIC's policies and processes contain a number of controls which are designed to ensure that ASIC's compulsory information gathering powers are used responsibly. These processes apply equally to the use of powers in investigations and in compliance matters such as surveillances.

Guiding principles underlying ASIC's approval process for the use of powers include, among others, the following:

- notices are only issued in matters that have been approved by the relevant Senior Executive Leader or appropriate internal committee for investigation or other action (such as a surveillance or compliance action);
- Information gathering powers should only be used when warranted;
- information sought under notice should be no more than what is reasonably needed for the investigation and/or surveillance; and
- the quantity and nature of the material or assistance sought should be consistent with the strategy and objectives of the overall investigation or project.

Responsibility for ensuring that ASIC's information gathering powers are used appropriately and responsibly in accordance with these principles lies with ASIC's Senior Executive Leaders, Senior Managers and Project Managers.

ASIC's two step approval process for use of the powers is designed to ensure that any such use is considered and approved by staff of appropriate experience and seniority. The process has been refined as part of ASIC's recent review of its compulsory information gathering powers. The first step in the process is obtaining general approval for the use of compulsory powers in a particular investigation, surveillance or project. This is given by an ASIC staff member of at least the level of Senior Manager or Senior Specialist. The second step is specific approval of individual notices or use of powers. This is given by a lawyer of at least Executive Level.

ASIC is currently preparing a training course on its use of compulsory information gathering powers. Among other things, the training course will emphasise the guiding principles set out above.