

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

31 May – 2 June 2011

Question No: BET 183

Topic: LKM

Hansard Page: 73

Senator Cameron asked:

Senator CAMERON: So these two operators of LKM, these two solicitors, their reputation is more important than \$63 million of assets of retirees in the Coffs Harbour district?

Mr Day: It depends whether you believe in innocent until proven guilty, Senator.

Mr Medcraft: Senator, on your point, one of the things that I have asked strategy to look at is communicating better why often we cannot disclose what we are doing on operational matters—to explain the reason why. Secondly—

Senator CAMERON: That will be a real comfort for people in Coffs Harbour—that you explain why you cannot tell them anything.

Mr Medcraft: Actually the second thing I was going to say is to see, in terms of our current approach, what room we have to disclose more than we currently do.

Senator CAMERON: I will come back to you on that. Next time you are here I will be asking you what you have done.

Mr Medcraft: I just wanted to highlight that it is something we have discussed, because we do appreciate the frustration. I have asked that we have a look at it.

Mr Day: The other thing I would say is that it is something ASIC is monitoring quite closely, has been watching very closely and has not turned its eyes away from.

Senator CAMERON: I do not know that that will be great comfort either. We will wait and see what the outcome is. If you can tell me at the next estimates—take it on notice—what your monitoring has delivered, that would be good.

Mr Medcraft: We will take that on notice.

Answer:

Following a number of significant failures in early 2007, in August 2007 we released Consultation Paper 89 *Unlisted unrated debentures—improving disclosure for retail investors*. The consultation paper set out our proposals for change in the unlisted unrated debenture sector. The overall objective were to improve disclosure for retail investors to help them understand and assess these debentures, while maintaining the flexibility of the public fundraising process.

We therefore undertook to implement a 3 point plan, over 12 months addressing:

(a) existing debenture issuers in the retail sector; (b) new debenture issues to retail investors; and (c) investor education.

On 31 October 2007, we released Regulatory Guide 69 *Debentures –Improving Disclosure for Retail Investors*. As part of the four guiding principles for improved disclosure by issuers of unlisted, unrated debentures, we developed 8 disclosure benchmarks to allow investors to make better risk assessments.

The guidance meant that new issuers were required to disclose against the benchmarks in their new prospectuses from 1 December 2007, while existing issuers had until 1 March 2008 to report to their existing investors (LKM provided disclosure for the first time under the benchmarks on 29 February 2008).

In addition to providing additional disclosure for investors through RG69, in December 2007 we released Regulatory Guide 156 *Debenture advertising*, being a guide to our expectations for issuers of debentures and publishers of debenture advertising. *RG 156* sets out the standards we expect when debenture issuers are advertising their debenture offerings to retail investors and requires issuers to state that their product is not a bank deposit and that there is a risk of investors losing some or all of their money.

In March 2008, ASIC sought confirmation from all debenture issuers that they had communicated their disclosures with their investors, and the method by which they chose to do this. Within RG 69, ASIC suggested that this communication could take place by way of sending their report to existing investors; or publishing their report on their website and notifying investors that it is available and how to access it.

In April 2008, we released Report 127 that presented the findings of our first review into disclosures made by each of the unlisted, unrated debenture issuers against ASIC's eight benchmarks that are listed in Regulatory Guide 69 *Debentures –Improving Disclosure for Retail Investor*; and listed the entities that were required to make disclosures in accordance with RG 69.

By April 2008, we issued a consumer guide titled "Investing in Debentures? Investor Guide for reading a prospectus for unlisted debentures".

In October 2009, we released Report 173 that outlined the findings of ASIC's second review of the unlisted, unrated debenture industry. It included an analysis of the disclosures made by debenture issuers against the benchmarks set out in Regulatory Guide 69 *Debentures: Improving disclosure for*

retail investors (RG 69). This report covered disclosure against the benchmarks between March 2008 and September 2009 (the review period).

We observed in our review, that some debenture trustees took a more active role in monitoring the financial position of issuers over the review period. This includes tailoring checklists to assist debenture issuers meet their ongoing reporting obligations under RG 69 and, where appropriate, exercising their rights under trust deeds to appoint receivers to debenture issuers. Overall, we considered that our second industry review found that the 'if not, why not' disclosure regime in RG 69 is working well but that it could be strengthened to improve disclosure for investors and to respond to the failure of a number of debenture issuers.

Therefore, we also released Consultation Paper 123 *Debentures: Strengthening the disclosure benchmarks* (CP 123), which sets out ASIC's proposals to:

- adjust the disclosure benchmarks in RG 69, including those relating to minimum amounts of equity capital; adequate liquidity; and disclosure about loan portfolios and valuations;
- improve the presentation and explanation of benchmark disclosures; and
- change how it administers the law regarding the naming of debentures.

In June 2010, we introduced an updated version of RG69. The updated version of RG 69 set out:

- adjustments to the eight benchmarks that issuers should disclose against on an 'if not, why not?' basis from 1 September 2010, including those relating to minimum amounts of equity capital; adequate liquidity; and disclosure about loan portfolios and valuations
- the explanations that issuers should provide in prospectuses from 1 September 2010 about the importance of their benchmark disclosures
- information on naming restrictions that will apply to debentures and unsecured notes under s283BH of the *Corporations Act 2001* from 1 July 2011.

Following industry feedback, in March 2011, we released Consultation Paper 151 setting out proposals to include a new category of notes that currently fall within the meaning of 'unsecured notes' under the *Corporations Act 2001* (Corporations Act). The paper also sets out a proposal to revise the statement about risk that needs to be included in advertisements of offers of debentures and unsecured notes (and interests in mortgage schemes).

This consultation paper sought the views of issuers of debentures and unsecured notes and responsible entities of mortgage schemes, industry bodies, consumer groups, and investors and their professional advisers on these proposals.

We are currently settling our policy position and expect to release updated guidance before October 2011.

Following the release of RG69 in October 2007, and from 1 March 2008, we have monitored the benchmark disclosure in prospectuses, continuous disclosure, and quarterly reports. We continue to do this on an on-going basis.