

11 June 2014

Dr Kathleen Dermody
Committee Secretariat
Senate Standing Committee on Economics (the "Committee")
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Parliament House
Canberra ACT 2600

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Dear Dr Dermody

Committee inquiry into the performance of the Australian Securities and Investments Commission (ASIC) – Public hearing held on 2 April 2014 (the "2 April Hearing")

1. At the 2 April Hearing, Mr James Wheeldon made various comments to the Committee about the development in 2004/5 of ASIC's policy (and consequent class order relief) concerning generic calculators.
2. He referred in his remarks to a National Australia Bank Limited ("NAB") employee, Mr Grant Jones. His remarks, made under parliamentary privilege, are recorded in Hansard and are now a matter of public record.
3. We consider a number of Mr Wheeldon's comments concerning Grant to be either wrong and / or capable of creating a wrong and unfair impression.
4. We respectfully submit to the Committee our comments below to balance the public record in this respect.

General Comments

5. NAB fully supports the Committee process and its current inquiry. Industry, consumers and the Australian government equally share a concern to ensure that the corporate regulator is as efficient and effective as possible in discharging its functions.
6. In context of Grant's secondment to ASIC to which Mr Wheeldon referred, we consider that:
 - (a) consultation and the sharing of knowledge and experience between different stakeholder groups (this includes industry participants, consumer groups, and financial regulators) goes to the heart of effective regulation; and

- (b) the secondment of experienced professionals between stakeholder groups contributes to the quality of the discussion and debate informing regulatory policy development.

Specific Comments

7. Mr Wheeldon made comments at the 2 April Hearing suggesting (expressly or impliedly), that:
 - (c) he was made in his ASIC role to report to Grant Jones [refer p19 of Hansard transcript]; and
 - (d) Grant sought to pursue his employer's (ie MLC's) interests in the discharge of his seconded role within ASIC [p19 of Hansard transcript] including amending ASIC internal issues papers with the purpose of advancing MLC interests.
8. In respect of these suggestions:
 - (e) It was never NAB's (including MLC's) or Grant's understanding that Mr Wheeldon was to report to Grant. Grant was never instructed by ASIC to supervise Mr Wheeldon. He never participated in (nor was invited to participate in), any performance assessment processes concerning Mr Wheeldon;
 - (f) MLC and ASIC agreed the terms of Grant's secondment prior to his commencement in this role. These terms covered conflicts management amongst others. As to his employment terms, Grant was neither directed or expected to prosecute MLC interests, attend to MLC specific matters or attend to the duties of his usual MLC role whilst on secondment;
 - (g) Mr Wheeldon's comments at the 2 April Hearing in our opinion imply that Grant's purpose in his involvement with the generic calculators matter was to advance MLC's interests (or rather, Mr Wheeldon's perception of these) and that this diminished the integrity of the overall policy process;
 - (h) The implications from Mr Wheeldon's comments are in our opinion offensive and an affront to the integrity of Grant Jones (who is an officer of the NSW Supreme Court) and to the intelligence and capability of all ASIC officers and representatives involved in the development of ASIC's policy concerning generic calculators.
9. Grant contributed intelligently and thoughtfully to debate, at various levels, in respect of generic calculators. It was one of a number of regulatory policy matters he contributed to whilst on this secondment to ASIC.
10. He did not seek to prefer MLC's interests in this capacity and did not at any stage act improperly or with any purpose to diminish any aspect of the ASIC policy process.
11. Mr Jones is a senior financial services lawyer who has worked within the NAB group for over 10 years. He is a leader within NAB's legal function and has consistently demonstrated to this organisation, his colleagues and market peers that he is a person and practitioner of the highest skill, integrity and character.

12. Outside of Mr Wheeldon's views (which he vigorously made known at the time), we are not aware of any person who considered that Grant's secondment was either inappropriate or failed to deliver value to ASIC and its constituents.
13. To the contrary, we understand that Grant's secondment was regarded positively within ASIC. This would not have been the case had Grant, as Mr Wheeldon suggests, simply gone about trying to prosecute MLC interests (or Mr Wheeldon's assumptions as to these) during his secondment.
14. We remain of the view that secondments between stakeholder groups are an effective way to share knowledge, enhance debate, and increase understanding. These are all matters that enhance regulatory policy development in Australia.
15. We sincerely hope that Mr Wheeldon's comments and the publicity of these by some media organisations, does not discourage either regulators or other stakeholder groups (or individuals) from arranging or participating in these secondment arrangements in the future.

Yours faithfully

Michaela Healey
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