

ASIC Oversight hearing, 24 June 2011

Questions on notice to ASIC

Question on Notice 1, (Hansard, pp 11–12)

Topic: White label broker sectors

Mr Tregillis: I will start with the first one, which is the white labellers. I think there has been some press commentary on that. This is an area consistent with the notion of trying to identify risks and get a handle on them, but we have been taking some activity. The sector consists of about 650—that is our estimate—so it is quite large but quite diverse.

....

Senator BOYCE: Could we have a list of the 650?

Mr Tregillis: Do you have a list of the 650—

Senator BOYCE: Not today.

Mr Tregillis: Yes, they are all AFSL holders, so we can—again, when we say 'white labellers', these are the ones providing services to retail clients of the markets.

Senator BOYCE: What are their industry organisations? Do they have any?

Mr Tregillis: I do not think there is a specific—

Senator BOYCE: I was wondering if there was one, or two or three, that might pick up a lot of them.

Mr Medcraft: There is a brokers association.

Mr Tregillis: The Stockbrokers Association.

Mr Medcraft: Yes.

Senator BOYCE: That would be it. I was wondering what else there was.

Ms Gibson: I cannot remember its name, but there is one specifically for—

Mr Tregillis: White labellers.

Ms Gibson: I doubt that they call themselves white labellers!

Mr Tregillis: We can get that detail for you.

Response

The Australasian Securities Dealers Association (ASDA), formerly known as ASSFDA, claims to represent the interests of approximately 650 indirect participants. According to its website, the ASDA maintains that it is the peak body representing the interests of securities and derivatives oriented Australian Financial Services License holders in Australia.

ASIC is not privy to ASDA's member list.

Question on Notice 2, (Hansard, pp 14–15)

Topic:

Mr FLETCHER: Is that something ASIC has given consideration to—putting up on your website a three-monthly update on the number of funds that are still freezing redemptions?

Mr Medcraft: It is more a function of—I will take that on notice and come back to you. On our website we have an information sheet which explains to investors how they can get access to the money for hardship relief. The funds offering limited access, as opposed to hardship relief, we publish online, but we will come back to you with the statistics. The underlying thing is that we are monitoring the market. I will talk to the team about how frequently we are doing it, but there is an issue about frequency because it is going back to 80 funds, a large number. Let me come back to you on that.

Response

ASIC has prepared an information sheet providing an update on frozen funds that is scheduled to be available on our website mid August 2011. We will continue to monitor the status of frozen funds and provide further updates when appropriate.

Question on Notice 3, (Hansard, pp 16–17)

Topic: Coercive powers and human rights

CHAIRMAN: One of the issues that was raised both by the Senate Standing Committee for the Scrutiny of Bills, which considered the use of coercive powers, and by the Rule of Law Institute of Australia was the impact of the use of coercive powers in terms of individual rights, and even human rights. How does ASIC see that in terms of the rights of an individual versus the rights of a corporation? The two do not apply in the same way.

Ms Gibson: In terms of the recipient?

CHAIRMAN: We cannot apply human rights to a corporation, as with a human being.

Ms Gibson: I am sorry, I am not sure what the focus is on human rights.

CHAIRMAN: The application, the concept, the idea that you apply due process and consider the impact of the use of coercive powers in terms of an individual versus the use of coercive powers in terms of an organisation.

Ms Gibson: Our rules would be the same for all notice issuers to have regard to the proportionality—that is, the information we seek as against what we seek against them—to talk about cost and impact—

CHAIRMAN: That is all right, if you have not really considered it. The Rule of Law Institute of Australia raised with us the matter of human rights in terms of coercive powers. My question was around how that applies when you are not talking about an individual. Normally you would apply the process: what is the impact on an individual of due process? But we are not talking about individuals. Often in terms of the work

that ASIC will do you are talking about a corporation. A corporation itself has a different set of rights, not the same rights as human rights.

Ms Gibson: It is not something they have raised with us.

CHAIRMAN: If it has not been raised with ASIC—

Mr Medcraft: We will take that on notice.

CHAIRMAN: Take it on notice. I am certainly interested in the view of ASIC in terms of how the differences apply.

Response

Use of coercive powers by regulators such as ASIC can be intrusive. However, these powers are subject to a range of legal limitations which determine when and how they can be used. The purpose of the limitations is to ensure that an appropriate balance is struck between the goal of fulfilling regulatory objectives and the legitimate rights and interests of parties who may be the recipients of compulsory notices.

ASIC's own internal policies are also designed to strike an appropriate balance between these goals. These policies have been recently refined as part of ASIC's general review of its use of compulsory information gathering powers. ASIC's refined internal policy sets out a number of guiding principles including that information gathering powers should only be used when warranted.

In practice, ASIC ensures that the rights of the recipient, including the human rights of any individual, are taken into account through compliance with legal limitations on powers and adherence to internal policies.

Question on Notice 4, (Hansard, p. 19)

Topic: Review of access to databases

CHAIRMAN: Mr Medcraft, can you undertake to provide the committee with a brief on the current situation of the review and whatever you are able to provide us, so that we can better understand.

Mr Medcraft: The review of—

CHAIRMAN: Of access to the databases and what is currently happening.

Mr Medcraft: Sure. We can do that.

Mr Day: Chair, may ask whether that is a question of the type of searching for the public or is it more about access by other parties or academics, or both?

CHAIRMAN: The committee would be generally interested in what the review is about, what the databases are and what is anticipated as an outcome, so that we have a better understanding of what is held by ASIC.

Mr Day: Certainly. I understand. I just wanted clarification. We can certainly do that.

Response

Under the ASIC Act (2001) we are required to receive, process and store, efficiently and quickly, the information given to us, and to ensure this information is available as

soon as practicable for access by the public. This information is contained in prescribed registers specified under the Corporations Regulation 2001 and National Consumer Credit Protection Regulations 2010. These registers are collectively known as the 'public register' (or ASIC's database).

The public register contains the details of companies and various professionals that operate within the Australia economy such as company officeholders, auditors, liquidators, financial services and credit licensees and their representatives. These parties most commonly lodge information to the public register to:

- Support their application for registration or licensing, such as a new company; and
- Meet ongoing compliance requirements under the law, such as lodgement of financial accounts, notifications of a change in company details, and filing copies of minutes of creditor meetings.

In 2010/11, 2.13 million lodgements of information were received. Our public register was searched 68.5 million times, up 13.1 % from the previous year, reflecting the increasing demand for information we hold. The majority of these searches were free, with 6.1 million searches requiring a fee to be paid. The types of ASIC searches available, and the fees payable are outlined in ASIC information sheet 12, available from our website. As a guide, a current company extract costs \$9 and a copy of a document less than 10 pages in length costs \$18. Fees are charged in accordance with the Corporations (Fees) Regulations 2001 ('the fee regulations') Fees are collected on behalf of the Commonwealth and are not retained by ASIC.

Our registers are accessed by a range of external organisations, including businesses, the general public and government agencies. The information is used for a range of purposes that include supporting business and investment decisions, research, investigation and law enforcement activities.

The most frequently used service to search the public register is via the ASIC website. This service has been available for about 10 years and has provided customers with the ability to search and retrieve free information from our registers. Where customers want to purchase more detailed information from the registers (e.g. copy of document) they may currently do so with ASIC via mail or over the counter services. Alternatively they can purchase information online through a third party provider Information Broker (who generally will add a service charge). Searchers are referred to information brokers via direct links on our website. Brokers are charged fees for searches in accordance with the fee regulations. The fees are generally \$3 less than the fee for searches provided over-the-counter.