

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

13 – 14 February 2013

Question: AET 19

Topic: Stock Market Hoaxes

Hansard Page: page 106, 13 February 2013

Senator ABETZ asked:

Senator ABETZ: In general principles, of course, Ms Gibson, is the corporations law adequate to deal with this sort of malfeasance of putting out false statements to the stock market through hoaxes?¹

Ms Gibson: I would have thought so. Those penalties are among the heaviest penalties under the corporations act if the market is misled.

Senator ABETZ: All right. Do you believe there is a need for deceptive and misleading statements of this kind to be made offences under the Crimes Act? Have you given any thought or consideration to that in ASIC?

Ms Gibson: I do not believe we have. I think we feel that the criminal penalties provided for in the act, having been increased in 2010, are substantial.

Senator ABETZ: But do you think a conviction under the Crimes Act might potentially be more of a disincentive.

Senator Wong: That is the same question. She has answered it.

Senator ABETZ: I am not sure she has.

Ms Gibson: I am not aware there is any work being done in ASIC. I certainly have not turned my mind to it.

Senator ABETZ: All right. Take it on notice to see if you have and, if you have not, whether it is something you might turn your mind to in the future. Clearly, if this behaviour has occurred, we may need a stronger disincentive. Thank you.

Answer:

ASIC does not believe there is a need for deceptive and misleading statements of the kind specified to be made offences under the Crimes Act because section 1041E of the Corporations Act is adequate to deal with that particular kind of offending. In particular, the offence created by s.1041E is relatively wide and carries a maximum penalty of imprisonment for 10 years and/or a maximum fine of \$765,000. ASIC does not believe that "a conviction under the Crimes Act" would be more of a disincentive than a conviction under the Corporations Act.

¹ A false statement to the effect ANZ had withdrawn significant financial support from Whitehaven Coal Limited made in a fake media release sent on 7 January 2013, by anti-coal mining activist Jonathan Moylan to over 300 media related email recipients, with the intention of drawing ANZ's customers' attention to the bank's investment in open-cut coal mining despite its perceived social and environmental impacts.