

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

4 – 6 June 2013

Question: BET 125-126

Topic: Complaints to ASIC

Written: 13 June 2013

Senator EGGLESTON asked:

125. While ASIC is not obliged nor does it have the capacity to investigate every complaint made to it, is it correct that ASIC has a complaint system whereby complaints lodged are assessed to determine whether the regulator should act further on the subject of the complaint?
- a. If that is so, what is the time period ASIC allows for a complaint to be assessed for ASIC to then regard itself as having assessed the complaint in a timely manner?
126. Does ASIC consider that a complaint lodged in December 2012 that has still not been assessed on 6 May 2013 – over six months after lodgement –satisfactory?
- a. If so, why? If not, why has it taken so long?

Answer:

125. ASIC assess all reports of alleged misconduct lodged with us to determine whether the concerns raised suggested breaches of the law we administer, and whether ASIC should take further action in response to any identified breaches. Misconduct reporters can lodge their reports with us online: www.asic.gov.au/complain. Further details of how ASIC deals with reports of misconduct are set out in Information Sheet 153 *How ASIC deals with reports of misconduct*.

The public and members of the regulated community provide ASIC with valuable information about misconduct that may be occurring and may breach the laws we administer.

ASIC makes a distinction between this kind of information that we receive and complaints that companies, company officers, insolvency practitioners, financial services providers, or credit services providers may receive from shareholders, creditors, or customers. The latter forms of correspondence are indeed complaints. The shareholders, creditors, or customers investing in, engaging with, or trading with these entities may be dissatisfied in some way with the provider of those services, and then make a complaint. Where these complaints are not resolved to the satisfaction of these people, they may be raised with ASIC, and ASIC will treat this correspondence as reports of misconduct.

ASIC continues to use ISO/AS10002 *Customer satisfaction—Guidelines for complaints handling in organizations* to base our process for receiving reports of misconduct, acknowledging them, assessing them, and actioning them. The Commonwealth Ombudsman has confirmed our approach in this regard. However, for the reasons noted above, ASIC's process is not a true 'complaints handling' process. Accordingly, the ways we resolve and finalise reports of misconduct cannot reflect how organisations receiving complaints about their own service provision resolve and finalise those complaints.

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ASIC endeavours to assess and respond to reports of misconduct within 28 days of receiving all relevant information. Responses to misconduct reports will generally advise the misconduct reporter whether we have determined to refer any regulatory issues raised in their report on to a specialist stakeholder or enforcement team for further consideration, or alternatively, whether we have determined not to take further action in relation to their misconduct report.

ASIC's Service Charter sets a level of service for ASIC that we will finalise 70% of reports of misconduct within 28 days of receiving all relevant information. In the 2011–12 financial year, ASIC finalised 72% of reports of misconduct within 28 days (8,954 of 12,516). See pages 47–52 of our 2011–12 Annual Report for further information about ASIC's performance in this regard.

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This level of service generally acknowledges that there will be matters with a higher level of complexity, requiring more detailed analysis or a greater number of inquiries before we will be able to come to a determination about whether we should refer the issues raised to a specialist stakeholder or enforcement team, or whether we should take no further action in relation to the misconduct report. This can mean that ASIC takes longer than 28 days to finalise a matter.

In these circumstances, we endeavour to communicate with misconduct reporters, explain the delay, and provide updates about the progress of our assessment during that period. However, there may be limits about what information about our assessment or inquiries we can convey to misconduct reporters. Further information about the circumstances when ASIC may make public comments to confirm our assessment, inquiries, or operational activities is set out in ASIC Information Sheet 152 *Public comment*.