HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS
AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ANNUAL REPORT 2017

QUESTION ON NOTICE

Question 2QON
Enforcement Strategy
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Question:

Mr EVANS: Can I ask you to take on notice, please, to come back to the committee with some ideas about the steps that you will take to ensure that your team will not be led down the path of chasing scalps, but will be focusing on some of the larger, more complex cases, such as we have seen with the banks.

Answer:

ASIC's approach to enforcement is set out in Information Sheet 151, which is titled 'ASIC's approach to enforcement'. See: https://asic.gov.au/about-asic/asic-investigations-and-enforcement/asic-s-approach-to-enforcement/.

When a potential breach of the law is brought to ASIC's attention, ASIC carefully considers a range of factors in deciding whether to investigate and what kind of enforcement action to pursue. These factors vary from case to case but broadly include strategic significance, benefits of pursing misconduct, issues specific to the case such as availability of evidence and alternatives to formal investigation.

The breadth of ASIC’s responsibilities necessitates that ASIC take action across a range of large, complex and smaller matters. Please refer to the document ASIC tabled at the hearing on 22 June 2018 for broad contextual information on ASIC's total enforcement outcomes.

ASIC’s overall objective is to take a strategic approach to its enforcement work. To give effect to this approach, ASIC deploys its finite resources by making often difficult choices as to what matters to take action on and in what manner, so as to most effectively change the behaviour of industry participants and improve consumer outcomes.

This has led ASIC to take on a number of strategically important cases against larger institutions as part of its Wealth Management Project, which ASIC established in 2014 to lift standards in the wealth management arms of the four major banks, AMP and Macquarie, following the Future of Financial Advice reforms in 2013. Enforcement outcomes achieved as part of this Project include:

- civil penalty proceedings commenced against Westpac in 2016 alleging advice compliance failures including breaches of the ‘best interests’ duty in the course of telephone sales of superannuation products – the case was heard by the Federal Court in February 2018 and judgment is reserved;

- court enforceable undertakings accepted from CBA and ANZ in July 2018, to ensure their distribution of superannuation products complies with financial advice laws;

- court enforceable undertakings accepted in April 2018 from CBA subsidiaries and ANZ, requiring improved compliance systems and processes to avoid 'fees for no service' conduct (in addition to substantial remediation programs already implemented for customers affected by this conduct in the past);

- ongoing investigations of 'fees for no service' conduct by other entities;

- civil penalty proceedings commenced against Westpac and against AMP in June 2018 alleging liability as licensee for breaches of the 'best interests' duty by their advisers.

ASIC takes strategic action of this kind to effect changes in behaviour and compliance culture across industry. ASIC has also increasingly sought pro-actively to address compliance issues through surveillance programs that have resulted in public reports highlighting industry-wide issues and have in most cases been followed by significant review, remediation and enforcement activity. Examples include Report 413: *Review of retail life insurance advice* (October 2014), Report 499: *Financial advice: Fees for no service* (October 2016), Report 515: *Financial advice: Review of how large institutions oversee their advisers* (March 2017) and Report 562*: Financial advice: Vertically integrated institutions and conflicts of interest* (January 2018).

ASIC is continually looking for new ways of prosecuting its mandate, to ensure it is evolving to respond to the harms and threats manifesting in Australia's financial system. Over the coming year, ASIC may adopt new supervisory approaches for Australia's largest financial institutions and important sectors. This may involve more intensive, day-to-day supervision, with better co-operation between fellow regulators, especially with the Australian Prudential Regulation Authority (APRA). This approach may be more intrusive, enduring and, with onsite visits, more timely.