

Answer to question in writing:

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

REVIEW OF THE ASIC ANNUAL REPORT (SECOND REPORT) 2019

ASIC43QW:

Does ASIC intend to submit an appeal in regards to ASIC v Mitchell (No 2) [2020] FCA 1098? If not:

- (a) What are ASIC's reasons for not submitting an appeal?
- (b) Does ASIC hold the view that the prospects of success for an appeal are low?
- (c) Which commissioner/senior executive at ASIC made the decision not to submit an appeal?
- (d) Did ASIC consider submitting an appeal on the grounds that Beach J did not ultimately, in his judgement, provide his reasons for excluding Mr Healy's evidence, as he had undertaken to do? If not, why not?

Answer:

ASIC does not intend to file an appeal against the decision of Justice Beach.

- (a) ASIC carefully considered the judgment of Justice Beach and took advice from senior counsel on prospects of success in relation to any appeal against that judgment. Based on that advice, ASIC decided not to appeal.
- (b) Yes. On this basis, a decision was made not to file an appeal.
- (c) The decision not to file an appeal was made by the Commission collectively sitting in session.
- (d) In his judgment, Justice Beach did not give reasons for his decision during trial to exclude the evidence given by Mr Healy in his examination before ASIC. ASIC did not consider this failure as a specific appeal point—ASIC decided not to appeal following receipt of senior counsel's advice that considered the judgment in its entirety.