

SENATE ECONOMICS REFERENCES COMMITTEE
Inquiry into the Performance of the Australian Securities and Investments Commission

Mr Peter Francis, Ocean Financial Pty Ltd (submission 248)

The AFS licensee under whom Mr Francis held a Corporate Authorised Representative status instigated court action against him. As part of the trial process the AFS licensee, lodged an s912D Breach Report with ASIC, which can only be lodged based upon serious or likely to be serious breaches of the law. ASIC accepted the report. However, according to Mr Francis, the report was used as a tool by the AFS Licensee to frustrate the trial process, which they were successfully able to do for almost three years.

According to Mr Francis, he was led to believe that he was under investigation by ASIC and had this confirmed by at least two market participants who later testified in the trial that this was the case.

Questions

- Is it correct that, at the time, if an authorised representative was under an ASIC investigation he/she must inform any proposed employer of the fact?
- Could ASIC explain how this confusion arose between whether Mr Francis was under an investigation or surveillance?
- Could you clarify for the committee whether ASIC was investigating Mr Francis?
- If so, why did it take so long?
- If not, why did ASIC allow the Court to remain under the impression that an investigation was underway and had delayed the trial pending the result of the investigation?
- What does ASIC do to ensure that damaging and unfair speculation does arise from its activities and when it does what does ASIC do to correct the record?
- What has ASIC learnt from this case?

Answer:

ASIC does not consider that it would be appropriate to answer these questions at this time. The issues raised by the questions are relevant to both a complaint made to ASIC about the conduct of its staff; and to an application made by Mr Francis for compensation under the scheme for Compensation for detriment caused by Defective Administration. Attempting to answer the question at this time could be prejudicial to the fair and proper consideration of the complaint and the application.