



11 March 2014

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Committee Members

The performance of the Australian Securities and Investments Commission (ASIC)

I thank you for the opportunity to attend the Senate Economics References Committee's public hearing on 19 February 2014.

At the time of the hearing I took two questions on notice from Senator Bushby. My response to these questions is contained in Appendix One.

Yours sincerely

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Appendix One

Question on notice for Institute of Chartered Accountants Australia (pp 50-51)

Question One

Mr White: The hurdles would have already been achieved via the education, quality review, professional discipline of our two bodies, so therefore the resource heads—they are in the system but the resource actually heads to the areas that do not have those criteria. So the one-size-fits-all is not a smart or efficient approach.

Senator BUSHBY: Think about it and if you can come up with really good concrete examples of how things could have been fixed without imposing broadbrush obligations on the vast majority of people who are doing the right thing, I would be interested in that.

Institute response

The original Financial Services regulation legislation that commenced in the earlier 2000s introduced a new regulatory framework that was to bring the industry to a new minimum level and standard of requirements this included for example a single licensing regime, training and disclosure. This reflected a one size fits all approach. We are now over 10 years down the track and it would be of value to revisit this one size fits all approach.

The current system assumes everyone who comes into the Australian Financial Services Licence (AFSL) framework is coming from the same base and background. As a result ASIC uses the same systems, procedures and processes to assess them when there are clearly differences for those applying for example an AFSL. As such it would be appropriate and more efficient to have a flexible approach that also retains its robustness as a process.

A part of the Future of Financial Advice (FoFA) reforms includes bringing potentially thousands of professional accountants and their practices into the ASIC AFSL regime in regards to the provision of advice on self managed super funds. The objective should be to do so in an efficient but still robust procedure.

The initial dialogue in developing this with ASIC was to try and simply replicate the processes and procedures that were already in place, that is that one size fits all. While that may be a perceived, simple and consistent approach it is not efficient. There was an opportunity to consider how professional accountants already operated and how they could more simply move into this regulatory framework. The accounting bodies saw this as an opportunity to assess how it could be done differently. For example professional accountants coming into the AFSL framework came with extensive expertise in the provision of advice and are operating under a professional model. A professional accountant had achieved a high level of education, were part of a professional body that operated under Professional and Ethical Standards Board and an extensive range of other standards and by-laws, some of which aligned with the AFSL requirements, operating in public practice entailed needing a certain level of professional indemnity cover, the professional bodies quality reviewed practices and both accounting bodies had a professional conduct / disciplinary framework.

There was minimal recognition of this as a result extensive resources and time were unnecessarily allocated to try and put a “round” peg in a “square” hole. A more flexible approach would ensure professional accountants could quickly begin to operate under the AFSL regime and more consumers would be receiving a greater range of professional advice sooner.

In terms of efficiency any group, not only accountants, who operate under a high level of professionalism, education and can demonstrate this could be recognised and this taken into consideration from a regulatory perspective.

In this example, the issue is not to provide an advantage for one group over another but rather consider how they already operate and take this into consideration therefore make it more efficient to bring them into a regulatory framework.

Question Two

I am conscious of time. The Law Council in their submission mentioned a public acknowledgement that people are being investigated by ASIC is a pretty severe punishment in itself, regardless of what might come out of it. The reality is that with some people who are being investigated there is no further action taken, whether it be because of no evidence or because they actually decide that the evidence does not point to transgression. But publicly knowing that they have been investigated can have a disastrous effect on them. Do you have any thoughts about how ASIC should approach investigations to ensure that it is only those investigations that are going to proceed that actually come to public knowledge? You have got to get that balance right between ensuring that those who are breaking the law are suitably pursued and punished, but those who there might be a reason to look at but them it is found that there is not, do not get punished untowardly.

Mr White: That is a really tough one to get right. I think your aspects around balance are spot on. I would come back to my earlier remarks about speed and how to join up the dots, because I think if you see something in isolation you do not really understand the full context and therefore you could actually damage a person's reputation by taking it further. I think if you see it in a sense of a systemic issue then you have got a much clearer case to proceed. But it is a tough one.

Senator BUSHBY: If you have any thoughts on that as well, we are happy for you to take that on notice.

Institute response

The Institute has no further thoughts or comments on this issue.