

# Senate Economics References Committee Inquiry into the performance of ASIC

## ANSWERS TO QUESTIONS ON NOTICE

### Treasury Portfolio

Senate Economics References Committee – inquiry into the performance of ASIC

21 February 2014

#### **Question: 1.**

#### **Topic: Complex financial products**

**Senator Bishop asked:** *Is the Treasury or the Government pursuing any follow-up action in relation to concerns regarding the suitability of complex products for retail investors?* (Paraphrased from Proof Hansard transcript p.20.)

#### **Answer:**

The Government has commissioned a root and branch inquiry into Australia's financial system.

Broadly, the Financial System Inquiry will make recommendations to foster an efficient, competitive and flexible financial system, consistent with financial stability, prudence, public confidence and capacity to meet the needs of users. The Inquiry's Terms of Reference require it to recommend policy options to meet the needs of users with appropriate financial products and services.

The regulator, the Australian Securities and Investments Commission (ASIC), is also undertaking work in relation to these matters.

In January 2014, ASIC released a report (*Report 384: Regulating complex products*) which outlines ASIC's concerns regarding complex products. The report does not recommend legislative change; however, it identifies potential opportunities for regulatory change and invites stakeholder feedback. The report forms part of the work undertaken by ASIC's dedicated Complex Products Working Group.

In addition, ASIC undertakes a range of work to help improve the financial literacy of retail investors, including:

- providing guidance to investors on financial services and products through its MoneySmart website;
- developing a range of resources to improve the teaching of financial literacy in schools; and
- publishing annual reports on the state of financial literacy in Australia.

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#### **Question: 2.**

##### **Topic: Adequacy of ASIC's policing and enforcement roles**

**Senator Bishop asked:** *Has the Treasury received any submissions/advice around concerns that ASIC is not adequately performing its policing and enforcement roles?* (Paraphrased from proof Hansard transcript pp 20-21.)

#### **Answer:**

The Treasury has not received submissions or advice from any agency, government department, regulators or industry body about the adequacy of ASIC's policing and enforcement roles in recent years.

The Treasury regularly engages with key stakeholder bodies, including the Law Council of Australia, to discuss potential policy options, market conditions, current market practices and other emerging issues.

The Treasury also monitors the outcomes of the Parliamentary Joint Committee on Corporations and Financial Services hearings in its oversight capacity of ASIC and is aware that a broad range of concerns have been raised around ASIC's performance of its enforcement duties over recent years.

#### **Question: 3.**

##### **Topic: Privatisation of government assets**

**Senator Williams asked:** *Who is responsible for the decisions relating to the privatisation of public sector assets and how do the privatisation processes work?* (Paraphrased from proof Hansard transcript p.23.)

#### **Answer:**

Under the Administrative Arrangements Order, the Department of Finance (Finance) is responsible for Commonwealth asset sales.

Finance takes the lead role in the sale process, working alongside the entity being privatised and relevant advisors and sub-contracted suppliers. Project teams are established within Finance, as required, to manage the sales process.

Following Government policy approval to investigate an asset sale, Finance generally progresses in two stages.

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Stage one is a scoping study, commissioned to: understand the nature of the business; investigate suitability for sale; and develop a sale strategy.

Subject to the findings of the scoping study and policy approval, stage two is the sale process. Generally, there are two types of asset sales:

- Trade sale – sale by way of tender (for example, ADI Limited, Sydney Airports Corporation Limited); and
- Public Float – sale to institutional and retail investors of shares in a company which is listed, or subsequently listed, on a securities exchange (for example, Commonwealth Bank, Telstra, Qantas).

The sale process will vary depending on the type of sale.

Queries on Australian Government asset sales should be referred to the Minister for Finance, Senator the Hon. Mathias Cormann.

#### **Question: 4.**

#### **Topic: Misleading and deceptive conduct**

**Senator Bushby asked:** *Does ASIC's reliance on its specific legislative powers (rather than its broader powers relating to misleading and deceptive conduct and unconscionable conduct) reflect that the ACCC has greater expertise in the exercise of these powers and that this may result in compromised regulatory outcomes? Is the Treasury aware of any calls for ASIC's consumer protection responsibilities to be returned to the ACCC? (Paraphrased from proof Hansard transcript p.22.)*

#### **Answer:**

The Treasury is broadly aware of concerns that have been raised around the appropriate regulatory agency to hold responsibility for consumer protection within the financial sector.

Consistent with the recommendation of the Wallis Inquiry that regulation of financial market integrity and consumer protection in the finance sector should be carried out together; ASIC has responsibility for the enforcement of the financial product and services consumer protection provisions.

A Memorandum of Understanding is in place between the ACCC and ASIC which sets out a framework for co-operation between the agencies to facilitate liaison, co-operation and the exchange of confidential information between the agencies in accordance with the relevant statutory provisions.

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Under its terms of reference, the Financial System Inquiry will consider the role, objectives, funding and performance of regulators in Australia's financial system.

#### **Question: 5.**

#### **Topic: U.S. Consumer Financial Protection Bureau**

**Senator Bushby asked:** *How do the powers and functions of the United States' Consumer Financial Protection Bureau compare to that of the Australian Securities and Investments Commission? If able, comment on whether there are any powers or functions that they have that do not exist in Australia that could appear, subject to further investigation, to have some application here. (Proof Hansard transcript p.22-23.)*

#### **Answer:**

The Consumer Financial Protection Bureau (CFPB) is an independent agency of the United States (U.S.) Government responsible for consumer protection in the U.S. financial sector. The CFPB is largely focussed on consumer financial products and services, such as credit cards, mortgages and student loans.

The CFPB was established by the *U.S. Dodd Frank Wall Street Reform and Consumer Protection Act of 2010*, which, among other things, consolidated many of the consumer financial protection powers previously shared by seven U.S. Federal agencies into the CFPB. This created a single point of accountability in the U.S. Federal Government for consumer financial protection.

The CFPB's core functions include giving consumers the information they need to understand the terms of their agreements with financial companies, and making regulations and guidance as clear and streamlined as possible for providers of consumer financial products and services.

The CFPB's general powers fall into three broad categories: supervisory, which includes the power to examine and to impose reporting requirements on financial institutions; enforcement of various U.S. consumer protection laws and regulations; and rulemaking (such as to declare certain acts and practices to be unlawful).

ASIC is Australia's independent corporate, markets and financial services regulator and is established under the *Australian Securities and Investments Commission Act 2001*. ASIC has a broader mandate compared to the CFPB. ASIC is responsible for consumer and investor protection in Australia's financial sector and ensuring that Australia's financial markets are fair and transparent.

ASIC is also responsible for regulating Australian companies, financial markets (such as the Australian Securities Exchange), financial services organisations and

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professionals who deal and advise in investments, superannuation, insurance, deposit taking and credit (the regulation of banks, credit unions, and other financial companies in their provision of consumer financial products and services fall under these responsibilities).

The laws that ASIC administer provide it with a broad range of powers to perform its role. In relation to consumer protection in the financial sector, ASIC's powers are broadly comparable to that of the CFPB, and include supervisory, enforcement and rulemaking powers. For example, ASIC has the power to: investigate suspected breaches of the law; issue infringement notices in relation to alleged breaches of some laws; and ban people from engaging in credit activities or providing financial services.

Given its broader set of responsibilities however, ASIC has a wider suite of regulatory powers. For example, ASIC has the power to make rules aimed at ensuring the integrity of Australia's financial markets.