

Appendix 2

Answers to questions on notice

ASIC Oversight hearing, 25 November 2011

Questions on notice to ASIC

Question on Notice 1 (Hansard, p. 14)

Topic: Linkage between fees and costs

Mr FLETCHER: Is there a linkage between the fees and the costs incurred by ASIC in maintaining registers and so on?

Mr Medcraft: In the budget statements, I think it is on page 22 and 23, we actually set out the revenue versus the outcomes. The two outcomes that we have in the budget statements, we set out revenue versus costs. In fact, one of the things I have asked for is that in future we streamline it so we have three outcomes rather than two outcomes. We can provide you with that information.

Response

Fees we collect to maintain registry services and Corporations Act are "administered items", that is, they go straight to the Government. The expenses I provided above includes those expenses that come from departmental (that is appropriations received by ASIC and used to run Real Economy) and administered (that is expenses not requiring appropriations).

Question on Notice 2 (Hansard, p. 15)

Topic: Late fees

Mr FLETCHER: Thank you. It has been suggested to me that, if you work out the late fee for an annual statement as an annual interest rate, it comes out at 370 per cent per annum. Has that ever been put to you by a registrant?

Mr Day: I could not say right now; I would have to go and look to see if anyone has ever put that to us. But the late fee is not small. It is not an insignificant amount as a percentage—that is true. But, again, that is set by government, not by us.

Mr Medcraft: These fees are set by government, not by us.

Mr FLETCHER: Could I ask you to take on notice to see whether that calculation is valid? I think the methodology is to take \$67 and divide it by 218 to get the rate that applies if the payment is a month late, and then annualise that.

Mr Medcraft: We will take that on notice.

Response

Although the methodology used to calculate the percentage is correct, late payment fees should not be annualised as an interest rate.

Late payment fees are prescribed by the Corporations (Review Fees) Regulation 2003 (the Review Fees Regulations). Items 201 and 202 in Part 2 of Schedule 1 to the Review Fees Regulations set out the fees that are payable when the payment of a company's annual review fee is late.

In accordance with s1351(3) of the *Corporations Act 2001* an annual review fee for a company must be paid within two months after a company's annual review date. If the annual review fee payment is received within one month after the due date a late payment fee is applied (item 201 and currently \$69). If the annual review fee payment is received more than one month after the due date the late payment fee increases by \$218 to \$287 (item 202 and current amounts). The second late payment fee does not further increase for every month thereafter that the annual review fee remains outstanding. The late fee will remain at \$287 until paid. Therefore, this second late fee as a percentage of \$226.50 (the current annual review fee for a proprietary company) is 127%. The first late fee of \$69 as a percentage of \$226.50 is 30%.

Note: Fees prescribed under the Corporations (Fees) Regulations 2001, Corporations (Review Fees) Regulations 2003, and National Consumer Credit Protection (Fees) Regulations 2010 are indexed each year from 1 July based on any increase in the Consumer Price Index (CPI) for the previous March quarter.

Question on Notice 3 (Hansard, p. 19)

Topic: Frozen funds

CHAIRMAN: In terms of utility of the Corporations Act particularly of freezing of investors' funds, there has been a range of interest from this committee obviously coming out of the global financial crisis where a whole range of investors' funds were frozen. There has been a significant number of those funds now that either released funds or become unfrozen. Can we get some sort of an update on the latest data in terms of where that is at? I am also particularly interested in whether ASIC has a view on how we might look at regulation in that particular area to work with hardship provisions and other provisions that would allow some investors, depending on conditions, to be able to access those funds.

Mr Medcraft: The last update we had—which I think I provided you with previously—was 30 June. There was \$17.2 billion that was still frozen—\$10.3 million mortgage funds; \$3.6 million property funds; a hedge fund, half a billion dollars; and the cash enhanced funds—10 funds at \$3.2 billion. We will take it on notice and come back to you with some updated figures if you like. I presume the committee would like that.

CHAIRMAN: Absolutely.

Response

Please see attachment to Appendix 2 which gives the latest frozen funds data.

Question on Notice 4 (Hansard, pp 20–21)

Topic: Licence of Elliot Harvey Securities Ltd

Mr FLETCHER: I have a couple of other questions, on a couple of matters. Firstly, I have a specific question about a company called Elliot Harvey Securities Ltd. I am happy to receive the answer on notice if you do not have it with you now, which you may well not. We have had some correspondence about it. My question is a quite specific one. ASIC wrote to me, in response to my inquiries, noting that the Australian Financial Services licence of Elliot Harvey Securities had been suspended until 23 November subject to making provision for the ongoing management of the loans of the scheme. So this is a liquidity issue generally. My question is simply to see if I could get an update on the status of the company's licence.

Mr Medcraft: Certainly. We will take that on notice.

Response

The Australian Financial Services licence of Elliot Harvey Securities Ltd was on 23 November 2011 further suspended until 23 February 2012.

Question on Notice 5 (Hansard, p. 22)

Topic: Superannuation funds operating a financial planning firm

This area is restructuring quite significantly and a number of business models are emerging. Much of this commenced prior to the Future of Financial advice reforms. For instance, trustees are entering into arrangements to ensure fund members can obtain advice, where previously they did not do so.

Though we are unable to advise on the number of funds operating under each model, we see a number of models emerging, including:

- (a) where the trustee owns a financial service provider as part of a group of business that support the fund, and where one of those businesses is involved in the provision of advice;
- (b) where trustees directly employ advisers to provide advice on super and related matters;
- (c) the contracting out of advice to existing advisory groups; and
- (d) where the trustee has part ownership of an advice business with other super funds.



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 142

Estimated frozen funds under management

The term 'frozen fund' refers to a registered managed investment scheme, which was originally marketed on the basis that investors had an ongoing or periodic right to redeem their investments on request, but which has since suspended that right. This information sheet provides an update of the estimated frozen funds under management (FUM) in these schemes.

If you are an investor in a fund that has been frozen, our information sheet *Information for investors in frozen funds* (INFO 111) provides details on your rights and how you can get your money back, the duties that responsible entities have to investors, and our role.

Current frozen fund estimates

Based on the most recent data available to ASIC (at November 2011), we estimate that FUM that are considered frozen have declined to \$15.26 billion from a high of \$25.36 billion in November 2009: see Table 1.

Table 1: Estimated frozen funds under management (FUM)

Type of fund	November 2011				November 2009		November 2008	
	Total no. of schemes	Total frozen FUM (\$b)	Breakdown of total frozen FUM		Total no. of schemes	Total frozen FUM (\$b)	Total no. of schemes	Total frozen FUM (\$b)
			Restructured or being wound up (\$b)	Remaining FUM (\$b)				
Mortgage funds	63	\$9.2	\$4.7	\$4.5	63	\$14.8	63	\$16.8
Property funds	13	\$3.3	\$0.2	\$3.1	13	\$4.9	11	\$3.7
Cash-enhanced funds	10	\$2.7	\$1.1	\$1.6	10	\$5.6	6	\$2.0
Hedge funds	1	\$0.06	–	\$0.06	1	\$0.06	1	\$0.06
Total	87	\$15.26	\$6.0	\$9.26	87	\$25.36	81	\$22.56

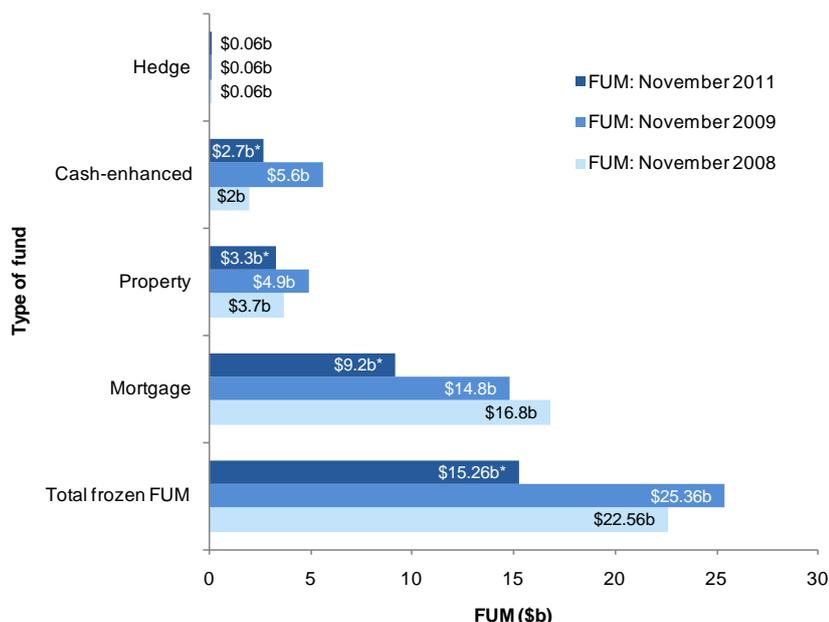
Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Since November 2009, frozen FUM have declined through periodic withdrawal offers, as well as \$127 million of hardship redemptions and asset write-downs. Of the current total frozen FUM of \$15.26 billion, funds worth \$6.0 billion have been restructured with member approval or are winding up their schemes.

We, therefore, estimate that \$9.26 billion¹ remains frozen and inactive in 34 mortgage funds, 11 property funds, 5 cash-enhanced funds and 1 hedge fund.

Figure 1 summarises estimated frozen FUM from November 2008 to November 2011.

Figure 1: Estimated FUM: November 2008–November 2011



* Note: As at November 2011, funds with \$1.1b FUM in cash-enhanced funds (6 schemes), \$0.2b in property funds (1 scheme) and \$4.7b in mortgage funds (29 schemes) have restructured or are winding up their schemes (which represents \$6.0b of the total frozen FUM at November 2011).

Where can I get more information?

- Go to www.asic.gov.au.
- Phone ASIC on 1300 300 630.

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.

¹ This number is derived by removing schemes that have been restructured through members' approval, are in the process of winding up, or have advised ASIC of their intention to wind up (approximately \$165 million).