

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2014 - 2015

Department/Agency: ASIC

Question: AET 38

Topic: PJC Report

Reference: Hansard page no. 99 - 25 February 2015

Senator: O'Neill, Deborah

Question:

Senator O'NEILL: My final question relates to the report from the PJC and your response as an agency to the recommendations. You have made one point that Senator Dastyari picked up about an additional item on the register to indicate if somebody was summarily dismissed or terminated.

Mr Medcraft: I was just highlighting that. I was not necessarily saying that is a recommendation from us. I was just highlighting the issue that was being raised that, compared to the United States, the register does not have that. It will not indicate the basis for leaving.

Senator O'NEILL: I will provide an opportunity for you on notice to further inform the PJC of any other insights you have so that we can make that a part of any decision making that might be underway with the government.

Mr Medcraft: We can provide what is on the FINRA—

Senator O'NEILL: I invite you to expand on your remarks about the independence of a model of oversight as opposed to the recommendation that went to highly engaging the industry representatives. Can you put on the record your view?

Mr Medcraft: With the US FINRA there are two differences in governance. FINRA is overseen by the SEC, which is the equivalent of ASIC. They are the oversight body. In the case of the model proposed, it was overseen by the Professional Standards Council. That is the model. The majority of the governors of FINRA are non-industry representatives, so the majority of the board are basically academics and consumer representatives. It is very independent. It is structured like that to be independent from industry, being that the majority are not industry representatives. It is there to assure investors that, even though it is an industry funded body, it is truly very independent. It was really just around those two things. As I said, the governance is important. The initiative, which I think is a great initiative, that is proposed is robust. We can provide more information on FINRA if you like.

Answer:

Adviser Register Content

The items to be included in the adviser register are a policy matter for Government.

FINRA Model

The PJC Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry recommended that a Finance Professional Education Council be established to set and administer an entrance exam for financial advisers. In the US, the Financial Industry Regulatory Authority (**FINRA**) holds this role.

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FINRA is an American independent non-profit organisation whose purpose is to protect US investors by ensuring the securities industry operates fairly and honestly. It oversees nearly 4,100 brokerage firms and almost 636,000 registered securities representatives. It is self-funded through the fees it levies on its member firms, and it also maintains a US\$1.7 billion investment portfolio. It has total expenses of US\$998M and has approximately 3,400 employees.

FINRA has a broad regulatory remit. It is not only responsible for developing and administering appropriate qualification exams and determining appropriate continuing education, but also for:

- managing registration of its members;
- monitoring and enforcing compliance with the law and with FINRA's own rules;
- educating and informing investors; and
- resolving securities disputes.

These different roles inform FINRA's role in setting educational and professional standards through qualification exams.

FINRA is not a statutory body but is registered with the Securities Exchange Commission (SEC) as a "securities association" pursuant to the Securities Exchange Act 1934 (the Exchange Act). The Exchange Act sets obligations for securities associations on what their rules must cover, including in respect of the governance and enforceability of their members. Under the Exchange Act, all brokers and dealers must register with a securities association in order to transact and deal in securities. As FINRA is the only registered securities association in the US, registration with FINRA is mandatory for all broker/dealers.

The SEC has oversight of FINRA. The SEC regularly reviews FINRA's activities for compliance with the Exchange Act and FINRA is subject to the SEC's reporting requirements. A failure by FINRA to meet its legislative requirements under the Exchange Act could result in the SEC withdrawing FINRA's registration as a "securities association". FINRA refers any insider trading, serious fraud and other cases outside their jurisdiction to the SEC.

Despite being industry funded, FINRA is independent of industry. This is because the majority of Governors on its Board are required under its by-laws to be non-industry Governors (e.g. academics, consumer representatives). Currently the Board has 24 seats with 13 seats held by public Governors and 10 by industry Governors. FINRA's CEO has the remaining seat. Governors are appointed or elected to 3-year terms and may not serve more than 2 consecutive terms.