

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

29 May – 31 May 2012

Question: BET 67

Topic: Altius Mining Limited

Hansard Page: Tuesday 29 May 2012, page 96

Senator BUSHBY asked:

Senator BUSHBY: ...Is ASIC aware of a request to it from Altius Mining Limited about possible contraventions of the Corporations Act by one of its shareholders, a Chinese national?

Ms Gibson: I have no recollection of that.

Senator BUSHBY: That does not surprise me because basically I think they got pretty short shrift in terms of what they were raising.

Mr Medcraft: Did they write to one of the commissioners?

Senator BUSHBY: I am not sure. I will quickly run through what has happened. Altius's concern centred on the acquisition of Altius shares in late 2011 and early 2012 by two companies which Altius directors suspected may be controlled by this particular Chinese national. If the two companies are controlled by the Chinese national concerned then the purchases of Altius shares through those companies would have given him a relevant interest in Altius of greater than 20 per cent, exceeding the takeover threshold. Altius issued those two companies with beneficial tracing notices in November of last year and January 2012 respectively, and no satisfactory response was received. This precipitated Altius's action in seeking intervention by ASIC. Those concerns were raised with ASIC in the context where the Chinese national is actively seeking removal of the current Altius directors to be replaced by his nominated board members. Altius's letter to ASIC in February 2012 detailed the chronology of events and requested that ASIC take appropriate and timely action to enforce compliance with the act. As far as I am aware, no action was taken.

Mr Medcraft: We will take that information on notice and will come back to you.

Senator BUSHBY: In the context of that, let me know what action was taken. This is asked not so much in the context of this, but to highlight the question of whether ASIC has sufficient resources to investigate all matters that are brought before it—or are the interest of Australian shareholders being put at risk because you do not have the resources to properly investigate cases such as this when they are raised? You may have to prioritise or sort the chaff from the wheat sometimes.

Mr Medcraft: It is fair to say that at the end of the day we, as a securities regulator and the system we have, are not prudential regulators and there is a level of intensity of regulation from an ASIC versus, if you like, an APRA. But clearly that is the system we have. You are certainly right that it is an issue of allocating resources and establishing priorities. We should have a look at what you have raised. I am curious to see what happened.

Senator BUSHBY: Just for the record, in terms of your looking at that as well, the Chinese national has acted since to replace the previous Altius board with his own appointees, and the CEO and the CFO have also been removed.

Mr Medcraft: We will come back to you on that.

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Answer:

ALTIUS MINING

Is ASIC aware of a request to it from Altius Mining about possible contraventions of the Corporations Act by one of its shareholders, a Chinese national?

- Altius Mining Limited (Altius) is a gold exploration company listed on ASX, with a market capitalisation of approximately \$6 million.
- ASIC is aware of a referral from Altius about possible contraventions of the Corporations Act. This was provided to ASIC on 31 January 2012.
- ASIC has also been aware that a major shareholder of Altius has a Chinese background.
- The contraventions of the Corporations Act which have been raised with ASIC form part of a broader set of issues involving a dispute between the Altius Board and a number of shareholders who have sought to voice their concerns about the management and direction of the company.

What action was taken?

- ASIC has been monitoring the affairs of Altius Mining since it has been alerted to the various issues in January 2012 (taking into account various matters about the company, including those raised before ASIC by Altius and the major shareholder).
- As part of this exercise, ASIC held discussions with the legal representatives of both the Altius Board and the major shareholder. Both parties were informed that ASIC is aware of, and is monitoring, the issues raised.
- ASIC has also been aware of two instances of legal action in relation to Altius, being in the Federal Court in relation to validity of certain share issues (*Altius Mining Limited v Sakura Capital Limited* [2012] FCA 13), and in the Supreme Court of Victoria in relation to an extraordinary general meeting convened by the major shareholder (proceedings commenced in February/March 2012, but were withdrawn on 4 May 2012 – *Xiao Jing Wang & Ors v. Altius Mining & Ors* SCI 2012/00709).
- ASIC understands that all relevant parties involved had been in private discussions in relation to the matters raised, and in May 2012, a number of members of the Altius Board chose to resign and new members were appointed.

ASIC'S REGULATORY DECISION MAKING PROCESSES AND PRIORITIES

How we select matters for formal investigation and enforcement

- We carefully consider how to respond to all potential breaches of the law, but we do not undertake a formal investigation of every matter that comes to our attention.
- We consider a range of factors when deciding whether to investigate and possibly take enforcement action, to ensure that we direct our finite resources appropriately. This is important because a number of ASIC's compulsory information-gathering powers can only be used when we are conducting, or intending to conduct, a formal investigation.

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Factors involved in the decision making process

- Several factors are considered when we decide whether or not to investigate. These include:
 - *Strategic significance* (e.g. seriousness of the alleged misconduct, impact on market integrity and consequences for investors, e.g. the amount of money lost);
 - *Benefits of pursuing misconduct* (e.g. whether misconduct is widespread in the market, whether enforcement will send an effective message to the market versus whether an alternative course of action is more appropriate);
 - *Issues specific to the case* (a wide variety of factors such as seriousness of misconduct, whether misconduct is an isolated instance, nature of evidence available); and
 - *Alternatives to formal investigation or enforcement action* (whether the issues would be better addressed by other means such as by another agency or by private dispute resolution between those involved).

Source: ASIC Information Sheet 151, pp3-4.

- For instance, if we receive an allegation of a contravention of the Corporations Act where there is only very limited evidence of a contravention occurring, yet considerable resources will need to be expended to investigate further, we need to think carefully about whether to take further action. One factor that we consider is whether the complainant is pursuing or can pursue alternative remedies such as private court action.