

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates 2014
3 June to 5 June 2014

Department/ Agency: ASIC

Question: BET 13

Topic: Self-managed Super Funds

Reference: Hansard: pg 28, 4 June 2014

Senator: Gallacher

Question:

13. Senator GALLACHER: What other activities does ASIC undertake in relation to self-managed super funds, given their exponential growth?

Mr Tanzer: There are a range of activities. I will touch on a couple. Perhaps the commissioner—

Senator GALLACHER: You could take that on notice. Send me the complete list but touch on a few of the important ones now.

Mr Tanzer: One of the key things we have been focused on is advertising, particularly advertising of the benefits or otherwise of SMSFs. Anything that exaggerates the benefits or understates the benefits of an SMSF, in particular the cost, we have been very active around. Together with the very serious compliance obligations that someone takes on when deciding to manage their own superannuation, we have been active in ensuring, to the extent that we can, that advisers who are advising that a person move from the regulated super fund sector into an SMSF give a very explicit warning that in doing so a person may lose the benefit of a backstop compensation scheme in the event of fraud or theft by the trustee. That is something we have been active about. The third area that we are particularly focusing on is property investment and potential one-stop shops where you may have an adviser or an accountant together with a link to perhaps a property developer providing advice for a person to set up a self-managed super fund and then invest those funds in the property.

Answer:

- 13.

SMSF's and ASIC

- ASIC set up a SMSF taskforce in September 2012 to examine high risk SMSF issues. The taskforce meets quarterly.
- Deputy Chairman Peter Kell and Commissioner Greg Tanzer have responsibility for the taskforce.
- ASIC regulates advice to establish a SMSF or use one to invest, regardless of whether the underlying product is a financial product. We also regulate SMSF advertising.

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ASIC's SMSF activities (most recent to least recent)

- To date, ASIC has issued five infringement notices in relation to SMSF advertising. One was issued for misleading statements about 'ASIC approved' financial products. Another was for inaccurately representing the costs and benefits of self-managed super funds compared with APRA-regulated funds. Another was issued for being potentially misleading in relation to the costs associated with the setup of the SMSF. These have been paid (\$10, 200 each).
- We have also recently issued two infringement notices in relation to advertising that promoted 'free SMSF setup', where the service was not free. The recipient of one infringement notice has refused to pay. ASIC is currently considering enforcement options in relation to this entity. The second entity has requested an extension to pay, which ASIC has granted.
- In May 2014, Australian financial services (AFS) licence holder, Sentry Financial Services PtyLtd agreed to address concerns raised by ASIC about SMSF advice provided to clients by its corporate authorised representative, Connect Financial Services Pty Ltd. ASIC's surveillance of Sentry identified concerns surrounding SMSF advice provided to clients by Connect that may not have complied with, including:
 - the requirement for a Statement of Advice to be given to the client
 - the requirement to act in the best interests of the client and provide appropriate advice, and
 - the product replacement disclosure requirements when recommending the replacement of one financial product with another.

In response, Sentry has agreed to:

- write to 158 clients that received an SMSF promotional letter from Connect
- engage an independent expert to review 17 client files of Connect
- The independent expert will report to ASIC and Sentry to ensure ASIC's concerns are addressed.
- On 6 February 2014, following an application by ASIC, the Federal Court in Adelaide froze all assets owned or otherwise held by the founder of the Charterhill group of companies. ASIC is investigating the management and activities of the Charterhill group, which operated as a 'one stop shop', providing advice to clients on the establishment of SMFS, rollover of existing superannuation funds into an SMSF, sourcing and purchase of investment properties, property management, insurance and taxation.
- ASIC is aware that there has been a rise in promoters recommending investors either set up or use an existing SMSF to invest in real property. These promoters may not be complying with the law. In November 2013, we issued a Media Release warning the real estate industry that agents recommending that investors use a SMSF to invest in property need a licence. ASIC also wrote to the state, territory and federal real estate bodies about this.

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- In October 2013, we issued a Media Release warning consumers about promoters making misleading representations about the ability to use the National Rental Affordability Scheme to purchase property through SMSFs.
- ASIC closely monitors the market for unlicensed SMSF activity that requires an AFSL. Where we identify unlicensed activity we contact the entity and warn them that their activities require a license. If necessary, we follow this up with enforcement action.
- In September 2013, ASIC released Consultation Paper 216, *Advice on Self Managed Super Funds (CP216)*. This Consultation Paper proposes modifying the law to impose specific disclosure requirements that would require advisers to disclose the risks of setting up a SMSF to clients, for example the risk of losing access to statutory compensation in the event of fraud.
- The Consultation Paper also included findings by Rice Warner on the costs of establishing, running and winding up a SMSF compared with the costs of belonging to an APRA-regulated super fund. These findings were released to stimulate debate about cost issues.
- As part of this consultation, ASIC held three separate roundtables last October 2013.
- ASIC is currently reviewing its proposals in light of government changes to FOFA which commenced on 1 July 2014.

SMSF Taskforce focus for 2014/2015

- In 2014/2015 ASIC will expand its work monitoring advertising in the SMSF space to include proactive surveillances of new advertising channels including facebook, twitter, you tube.
- In 2014/2015 ASIC will also focus on SMSF one-stop-shop business models. These are models that offer SMSF set up, investment advice, arrangement of loans and ongoing compliance and audit services. ASIC has recently engaged a consultant to undertake a market scan of these businesses. This will assist ASIC to understand the relationships between the different individuals or entities involved in one-stop-shop business models, commission arrangements that may exist within those business structures and whether these commissions are consistent with the restrictions on payments of commissions for advice under FOFA.
- ASIC meets with the ATO at Commissioner and officer level on a quarterly basis to discuss emerging SMSF issues and exchange intelligence.