

**Senate Economics Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

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**Department/Agency: Australian Securities and Investment Commission**

**Question: BET 228 - 238**

**Topic: Bank Bill Swap Rate**

**Reference: written - 15 June 2015**

**Senator: Dastyari, Sam**

**Question:**

228. Can you provide the committee with any update on the ongoing investigation into allegations of manipulation of the BBSW?
229. What is the allegation being tested? Which Act has allegedly or possibly been violated?
230. Traders can reportedly earn millions of dollars, even more than their CEOs – what kind of sums have allegedly been manipulated?
231. If the BBSW has been manipulated – what is the impact on bank mortgage rates, or other consumer lending costs?
232. What is the possible penalty for manipulating the BBSW?
233. Some of the fines for market manipulation overseas, such as LIBOR, have been in the hundreds of millions of dollars – if proven, could Australian banks face penalties on this scale?
234. If so, who would pay – the individual or the entity?
235. Why is the investigation taking so long - is it a question of evidentiary standards, or the time it takes to review seven years of emails and chat-room transcripts?
236. Will a public report be released into this investigation? When?
237. Can you offer the committee any early observations?
238. Seven ANZ have been suspended pending an investigation, have they been charged with any crime?

**Answer:**

**228. Can you provide the committee with any update on the ongoing investigation into allegations of manipulation of the BBSW?**

ASIC's investigation is ongoing. Consistent with ASIC's policy on public comment (see Information Sheet 152) ASIC is not currently in a position to provide public comment on the status of the investigation. To do so might prejudice ASIC's investigation or persons involved in the matters ASIC is investigating.

**What is the allegation being tested? Which Act has allegedly or possibly been violated?**

ASIC is investigating the possible manipulation of the Bank Bill Swap Rate (BBSW) through:

- a) the submission of rates that incorporated a preference that reflected the exposure of a participant; and

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b) the trading of the underlying bank bills to influence the bank bill rate higher or lower so that it would be incorporated into the BBSW rate set submission by other participants.

As stated in ASIC Report 440: *Financial Benchmarks* (REP 440), there are a number of provisions of the *Corporations Act 2001* and *Australian Securities and Investments Commission Act 2001* that may be relevant to benchmark-related conduct issues. These provisions include civil and criminal provisions that apply to particular individuals as well as to financial institutions.

Provisions with potential relevance include provisions of the Corporations Act and ASIC Act relating to:

- (a) the obligations of Australian financial services (AFS) licensees;
- (b) market misconduct and other prohibited conduct relating to financial products and financial services; and
- (c) unconscionable conduct and misleading or deceptive conduct.

**230. Traders can reportedly earn millions of dollars, even more than their CEOs – what kind of sums have allegedly been manipulated?**

ASIC's investigation is ongoing and consequently at present ASIC is unable to state the financial impact of the suspected conduct involving BBSW.

**231. If the BBSW has been manipulated – what is the impact on bank mortgage rates, or other consumer lending costs?**

BBSW is the most important interest rate benchmark utilised in the Australian financial system. It is a reference rate that is utilised to value financial derivatives, such as interest rate swaps, forward rate agreements, cross currency swaps and options. In addition, commercial loans and commercial bill facilities are directly referenced to BBSW. BBSW also may be incorporated into the commercial and retail lending rates of Australian Banks and other financial institutions.

Any manipulation of BBSW would impact all counterparties to transaction and may have the potential to impact investors and borrowers, including both corporate and individual borrowers.

In Australia, the stock of all bank loans was \$2.37 trillion in February 2015 of which home loans made up \$1.34 trillion. The pricing of these loans depends on a range of factors, including wholesale funding costs which will be affected by interest rate benchmarks such as BBSW or the cash rate.

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**232. What is the possible penalty for manipulating the BBSW?**

Under the Corporations Act the maximum penalties for market manipulation are:

*Criminal Penalties (for conduct occurring after 13 December 2010)*

For individuals:

- 10 years; or
- a fine the greater of:
  - \$765,000; or
  - three times the value of the benefit (if the court can determine the benefit).

For corporations:

- a fine the greater of:
  - \$7.65 million; or
  - Three times the value of the benefit (if the court can determine the benefit); or
  - 10% of the corporation's annual turnover for the 12 month period before the offence was committed (if the court cannot determine the benefit).

*Civil Penalties*

For individuals:

- \$200,000 per contravention

For corporations:

- \$1 million per contravention

**233. Some of the fines for market manipulation overseas, such as LIBOR, have been in the hundreds of millions of dollars – if proven, could Australian banks face penalties on this scale?**

ASIC's investigation is ongoing. ASIC is therefore not able to speculate about the size of any fines. In its FSI submission ASIC concluded that findings of Report 387 *Penalties for corporate wrongdoing* (REP 387), REP 387 highlight a number of differences between penalties available to ASIC and other domestic and international regulators. They demonstrate that penalties available for corporate wrongdoing warrant further attention and consideration.<sup>1</sup>

**234. If so, who would pay – the individual or the entity?**

See answers to 232 and 233 above.

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<sup>1</sup> ASIC's April 2014 submission to the Financial System Inquiry, para 184, available at <http://download.asic.gov.au/media/1311553/ASIC-submission-to-the-Financial-System-Inquiry-4-April-2014-1.pdf>, and Report 387 Financial.

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**235. Why is the investigation taking so long - is it a question of evidentiary standards, or the time it takes to review seven years of emails and chat-room transcripts?**

This is a very large and complex investigation. We are examining relevant documents, including trading data, phone recordings, emails and chat messages. We are conducting voluntary interviews and compulsory examinations of numerous individuals, up to senior management level. We are also requiring a number of financial institutions to undertake their own reviews and/or to provide to ASIC records of reviews already conducted. The volume of material extends into the many millions of document and thousands of hours of telephone recordings. The review of this material is obviously a painstaking and time consuming process.

In some instances the banks have been slow to provide communication and trading data to ASIC and some of these productions have been incomplete or erroneous.

It should be noted that three enforcement outcomes have already taken place. We have accepted enforceable undertakings from UBS AG, BNP Paribas and The Royal Bank of Scotland in relation to financial benchmarks.

**236. Will a public report be released into this investigation? When?**

No decision has been made whether ASIC will report publicly on its investigation. This decision is likely to be made once ASIC's investigation has been completed.

On 8 July 2015 ASIC released a report on financial benchmarks. Report 440 *Financial benchmarks* ([REP 440](#)) highlights the importance of key indices to Australia's markets and the broader economy. The report:

- confirms ASIC is investigating financial institutions to test for conduct and other issues relating to financial benchmarks, such as key interest rate and foreign exchange (FX) benchmarks. ASIC's inquiries are informed by the types of benchmark-related conduct and oversight issues that have been observed overseas;
- notes that ASIC's investigations are ongoing and no conclusions have been drawn yet; describes the regulatory reforms and other responses that have occurred internationally and in Australia in response to concerns about poor conduct in connection with financial benchmarks; and
- makes a number of recommendations for dealers, benchmark administrators, and wealth managers and other clients of dealers, including measures they should adopt to avoid conduct issues.

**237. Can you offer the committee any early observations?**

ASIC refers the Committee to Report Report 440 *Financial benchmarks*. ASIC is not otherwise in a position to make further observations at this time.

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**238. Seven ANZ have been suspended pending an investigation, have they been charged with any crime?**

As mentioned above, ASIC's investigations in connection with BBSW are ongoing and no conclusions have been reached by ASIC in its investigations. Questions about the suspension of ANZ traders by ANZ are matters for ANZ.