

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2017 - 2018

Division/Agency: Australian Securities and Investment Commission

Question No: 103

Topic: FOI: Ben Butler

Reference: Hansard page 18-19 (31 May 2017)

Senator: Williams, John

Question:

Senator WILLIAMS: Welcome, ASIC. You would be particularly familiar, Mr Medcraft and Mr Kell et cetera, with the emails that were FOIed by Ben Butler. Who is the expert on them?
Mr Kell: I am happy to start.

Senator WILLIAMS: I find it concerning because, if we look at correspondence with the Commonwealth Bank on 15 May 2014 from Greg Kirk:

[...]

What we are seeing, Mr Kell, is that your media team is preparing media releases and corresponding with the very people, whether it be Westpac or Commonwealth Bank—that is like me preparing a media release to attack the Labor Party, and I ring up Mr Bill Shorten and say, 'Bill, are you happy with this? Regards, Wacka.'

[...]

Senator WILLIAMS: Back to these media releases and the preparation of them. We mentioned Mr Cohen being involved and having an input into them. In one press release the initial draft said, 'CBA misled ASIC', but this was deleted from the final release. Are you familiar with what I am saying? Who authorised its deletion and why?

Mr Kell: I would have to take that on notice.

Senator WILLIAMS: One of a series of draft releases bears the handwritten heading, 'Version 15D Cohen', and the date, '15 May 2014', the day before the press release was issued. Can you explain why it has got 'Version 15D Cohen'?

Mr Kell: I will have to take that on notice.

Answer:

The media release referred to in the question was issued on 16 May 2014. In it ASIC sought to make public that the compensation process put in place in 2010-11, in relation to customers of Commonwealth Financial Planning Limited (CFPL), had not been consistently applied across the two phases of compensating customers. It set out the measures that were not consistently applied to all customers, and announced ASIC would impose license conditions on CFPL and on Financial Wisdom Limited (FWL) requiring corrective action to ensure all customers got the benefit of those measures. Both CPL and FWL are owned by the Commonwealth Bank of Australia (CBA). ASIC sought to make this public announcement as soon as practical after becoming aware of the inconsistent application of the compensation process.

It is correct that an earlier draft of the 16 May 2014 media release included a statement that CFPL "misled ASIC over its compensation scheme and the methodology used to compensate clients." This sentence was deleted from the final version of the release, because as a federal government agency that enforces the law in relation to misleading and deceptive conduct, a

statement which concludes that an entity has been misleading is one which ASIC would only make after it had investigated the matter and formed a conclusive view. In this instance, ASIC had not investigated the circumstances of how CFPL's submission came to include the inaccurate information, and on this basis, ASIC decided to remove the reference.

The final version of the media release was approved by Peter Kell (Deputy Chairman) and Greg Kirk (Senior Executive Leader, Strategy Group) on 16 May 2014.

Question: One of a series of draft releases bears the handwritten heading, 'Version 15D Cohen', and the date, '15 May 2014', the day before the press release was issued. Can you explain why it has got 'Version 15D Cohen'?

Response: The handwritten note on the draft media release in fact reads: '*Version to* [not '15'] *D Cohen 15/5/14*'. The note was written on the version of the media release sent by email from ASIC to David Cohen (then Group General Counsel of CBA) on 15 May 2014.