

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2017 - 2018

Division/Agency: Australian Securities and Investment Commission

Question No: 86

Topic: Action under 912A(1)(f) of the Corporations Act 2001

Reference: Written

Senator: Ketter, Chris

Question:

1. Can ASIC provide examples of when it has taken action using paragraph 912A(1)(f) of the Corporations Act 2001, the obligation for financial services licensees to ensure that its representatives are adequately trained and competent to provide financial services? Please provide examples of legal action and other action.
2. How many times has ASIC taken legal action under paragraph 912A(1)(f) of the Corporations Act 2001, the obligation for financial services licensees to ensure that its representatives are adequately trained and competent to provide financial services, since its enactment in 2001?
3. How many times has ASIC taken other enforcement action under paragraph 912A(1)(f) of the Corporations Act 2001, the obligation for financial services licensees to ensure that its representatives are adequately trained and competent to provide financial services?

Answer:

1. Some examples of when ASIC has taken action for concerns relating to s912A (1)(f) are:
 - a. MASU Financial Management Pty Ltd's AFS licence was suspended by ASIC for 8 weeks, a decision affirmed by the Administrative Appeals Tribunal on 31 January 2017;
 - b. Neo Financial Solutions Pty Ltd entered into an EU with ASIC in September 2016; and
 - c. My Adviser Pty Ltd entered into EU with ASIC in August 2016;
 - d. Ascentiv Group Pty Ltd entered into an EU with ASIC in May 2016;
 - e. Wealthsure Financial Services Pty Ltd and Wealthsure Pty Ltd entered into EUs with ASIC in September 2013;
 - f. Macquarie Equities Limited entered into an EU with ASIC in January 2013;
 - g. Kedesco Pty Ltd's Australian financial services (AFS) licence was suspended by ASIC in May 2011;
 - h. UBS Wealth Management Australia entered into an EU with ASIC in March 2011;
 - i. Professional Investment Services Pty Ltd entered into an EU with ASIC in December 2010; and

- j. Australian and New Zealand Banking Group Limited and ANZ Nominees Limited entered into an enforceable undertaking (EU) with ASIC in March 2009.
2. ASIC has not taken Court action against an AFS licensee for breaches of s912A(1)(f) of the Corporations Act 2001. A Court cannot impose a monetary penalty for a breach of this section. However, as indicated in answer 3 below, ASIC has accepted a large number of enforceable undertakings and taken on numerous administrative actions that include s912A(1)(f) as a basis for these actions.
3. ASIC's records of its enforcement actions do not always indicate on their face when the action is as a result of concerns about compliance with s912A(1)(f). In the majority of cases, concerns about a failure to comply with this provision arise where there are numerous other concerns about the particular licensee's compliance. The matters referred to in answer 1 above are all examples of this. There are numerous other enforceable undertakings and administrative actions taken over the past 11 years that include s912A(1)(f) as a basis for the action.