

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

20-21 November 2013

Question: SBT 38

Topic: Investigation Thresholds

Hansard Page: 16, 20 November 2013

Senator DASTYARI asked:

38. Senator DASTYARI: I just want to get my head around thresholds for an investigation. Senator Williams was asking about this, and I was not quite clear on the answer. I know, for instance, that the New Zealand fraud squad have a \$2 million threshold, which is an internal policy that they have; and the New Zealand fraud office will not investigate matters below \$2 million. That is a policy matter for New Zealand, not for us. Is there a policy in terms of any kind of financial threshold?

Mr Medcraft: No. It is the amount of harm or loss. It could be that in fact it is not one single incident but a series of incidents. A principle I really wanted to focus on when I became chairman was making sure that what we do internally and what we communicate external are consistent—and that is actually how we apply internally. In terms of your question, Senator, and the harm or loss, do you just want to give a bit more colour to that, if you can?

Mr Savundra: Certainly. There are a number of factors to be taken into account. For example, it would depend on whether the person is in a position of trust. It may be the impact it has had on the market—for example, with an insider trading claim, they may have only profited \$1,000 but, if it is a director, there may have been a significant impact on the market as a result. So there is no dollar threshold at all: we look at the circumstances of each matter.

Senator DASTYARI: That is what I thought. Are you able to take on notice producing for the committee a little bit of a report—I am sure you have already got some of the work done for previous reports—on this? We are very interested in the kind of smaller amounts.

Mr Kell: There is some of that material in our submission to the inquiry, including references to our policies.

Mr Medcraft: But also, Senator, one of the things I was very insistent on is that we were more transparent about what we do on enforcement. We have actually now issued an information sheet—No. 151—that sets out in much more detail those three principles.

Senator DASTYARI: I think I have that.

Mr Kell: A key point on that is that one of the issues we do take very much into account is the nature of the consumers or investors who have been impacted. For people on very low incomes, or people who are significantly disadvantaged, it may be that what seems like a relatively small amount can have a huge impact on them. So that is something we also take into account.

Mr Medcraft: Senator, if I can just add a third thing: we will send you a copy of our enforcement report, which is released every six months. That shows actions we have taken and why. That would give you a feel, under the various categories, for the sorts of things we undertake enforcement on.

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Answer:

38. ASIC considers a range of factors when deciding how to address matters that come to our attention, to ensure that we direct our finite resources appropriately.

Factors underlying our decision to take action include:

- (a) the strategic significance of the matter;
 - a. the impact on market integrity and/or on the confidence of investors and financial consumers
 - b. nature and extent of the harm and loss suffered
- (b) the benefits to the market or public of pursuing the misconduct;
 - a. whether the misconduct is widespread or part of a growing trend
 - b. consequences of misconduct for individual investors. For instance, we will consider the amount of money lost and impact of the loss on the individual consumer. There is no specified threshold or monetary value used in this determination
- (c) matter-specific issues, including the seriousness of the alleged misconduct, the age of that misconduct, what evidence is available and what outcomes could be obtained using that evidence; and
- (d) whether there is an alternative course of action for dealing with the concern.

The attached figure summarises how we select matters for investigation and enforcement action. More detail on ASIC's approach to enforcement is set out in Information Sheet 151 *ASIC's approach to enforcement* (INFO 151).

Copies of Information Sheet 151 (Attachment A) and ASIC's most recent Enforcement Report (REP 360) (Attachment B) are attached.