

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Supplementary Budget Estimates
2014 - 2015

Department/Agency: ASIC

Question: SBT4274

Topic: Accounting Standard AASB8

Reference: Hansard page no. 45 - 11 November 2014

Senator: Xenophon, Nick

Question:

Senator XENOPHON: Can I ask a general question that can be taken on notice. In relation to the accounting standard AASB8, in terms of cost allocation between companies, could you take on notice what ASIC's views are as to whether that is an adequate standard or whether there is room for improvement? You are aware of the issues that I have raised in respect of Qantas and its cost allocation between divisions. Can I go to the issue of continuous disclosure—and I know that Mr Medcraft has spoken out on this. Are there any plans or has any consideration been given to improving the standards of continuous disclosure—this whole issue of having companies giving private briefings to institutional investors that mum and dad investors do not have access to? Would ASIC endorse or consider a more robust system of transparency as to when a company meets institutional investors, who they met, the date and what was said or if it was anything different from what has been previously put out to the market? Is that something that ASIC has looked at?

Mr Price: By and large, can I say at the outset that we think Australia has a good and robust continuous disclosure regime; that is not to say that things cannot improve. We did put out a report on handling confidential information; from memory, that was mid this year. It did suggest a number of measures of good practice that companies might consider; that includes things like making their briefings—

Senator XENOPHON: I will cut you off because of my time constraints. Perhaps you could take that on notice.

Mr Price: I will.

Senator XENOPHON: What I want to understand is that there are—

Mr Price: We have made some good practice suggestions and we encourage companies—

Senator XENOPHON: But they are not mandatory?

Mr Price: They are not mandatory.

Senator XENOPHON: And a small investor does not have the same access to information as big investors.

Mr Price: That is potentially the case.

Senator XENOPHON: That is fundamentally wrong, from your point of view, isn't it?

Mr Price: I think everyone has the same level of access to information for material information, but there can be a perception of unfairness if other information, not material, goes to some people and not others; I would agree with that.

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Answer

In relation to the accounting standard AASB8, in terms of cost allocation between companies, could you take on notice what ASIC's views are as to whether that is an adequate standard or whether there is room for improvement? You are aware of the issues that I have raised in respect of Qantas and its cost allocation between divisions.

ASIC has raised a number of concerns with the International Accounting Standards Board in relation to the identification and reporting of segments under accounting standard AASB 8 *Operating Segments*. However, we have not raised concerns with the provisions for the allocation of costs between reported segments.

Our financial reporting surveillances and enquiries of companies on their segment reporting have not revealed deficiencies in the standard in relation to the allocation of costs between reported segments at this stage.

Where amounts are to be allocated to reported segment profit or loss, the standard requires the allocation to be made on a reasonable basis. The appropriate allocation of costs between segments would have regard to the specific facts and circumstances of each case. In our view, it may be difficult for the standard to prescribe specific cost allocation methods for each circumstance that could arise in practice.

The standard also requires disclosure of the nature of any differences between the measurements of the reportable segments' profits or losses, which could include accounting policies and policies for the allocation of centrally incurred costs that are necessary for an understanding of the reported segment information. This provides transparency as to the methods used to allocate costs.

Are there any plans or has any consideration been given to improving the standards of continuous disclosure—this whole issue of having companies giving private briefings to institutional investors that mum and dad investors do not have access to?

The aim of the continuous disclosure provisions is to ensure that material price sensitive information is equally available to all in the market. Briefings can be a key risk area for selective disclosure of confidential, material price sensitive information.

ASIC recognises that effective engagement of companies with institutional investors can potentially enhance the long-term performance of companies, for the benefit of all shareholders. However, continuous disclosure obligations must take precedence over any other stakeholder engagement goals.

ASIC recently conducted a review of practices in this area and has made recommendations for listed entities and their advisers. In May ASIC issued Report 393 on *Handling of confidential information: Briefings and unannounced corporate transactions*. The report

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details ASIC's review on the handling confidential, market-sensitive information in the context of briefings and during corporate transactions. On the basis of that work, ASIC's present view is that Australia's rigorous continuous disclosure regime, combined with sound guidance and robust industry standards, ensures retail investors can be confident in the integrity of the market.

Section 674 *Corporations Act 2001* and ASX Listing Rule 3.1 sets out the mandatory continuous disclosure obligation for listed companies. In addition, best practice guidance on briefings and the handling of confidential, market-sensitive information is contained in:

- ASIC Report 393 and ASIC Regulatory Guide 62 *Better disclosure for investors*;
- ASX Guidance Note 8 on continuous disclosure;
- Industry guidance in publications such as Governance Institute of Australia and Australasian Investor Relations Association's jointly published *Handling confidential, market-sensitive information: Principles of good practice*, and the Australian Financial Markets Association's *Handling confidential and price-sensitive information and soundings: Best practice guidelines*.

We consider that the existing guidance provided by ASIC, ASX, and industry bodies on the handling of confidential, market-sensitive information when conducting briefings is sound. The challenge for listed entities and their advisers is to implement the guidance in a consistent manner and approach issues with a view to following the spirit underlying the guidance.

Our key focus for our future work in this area is therefore not on more guidance but on assessing whether entities, advisers and analysts are implementing the guidance in a consistent manner, and if not, taking appropriate enforcement action.

ASIC took successful action against Newcrest Mining Limited earlier this year in relation information that was improperly disclosed at briefings conducted by the company. This action resulted in significant penalties being imposed by the Court.

We are currently conducting a targeted review of analysts' research reports. We will consider the type of information that is available to analysts at the time they make a material change in their forecasts or recommendations. We are looking to ensure that changes in research recommendations are not based on non-public, material information which may have been provided to analysts during briefings.

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Would ASIC endorse or consider a more robust system of transparency as to when a company meets institutional investors, who they met, the date and what was said or if it was anything different from what has been previously put out to the market? Is that something that ASIC has looked at?

In June 2009, the Corporations and Markets Advisory Committee (CAMAC) released its report *Aspects of market integrity*, which considered, among other things, the regulation of the practice by which companies provide briefings to analysts. The report did not recommend the need for further legislative intervention in this area, however it identified areas where there was scope for further good practice guidance. The report proposed action by the ASX Corporate Governance Council to build on existing guidance and encourage more open practices in relation to briefings, including:

- (a) making briefings more accessible (including through use of the internet);
- (b) keeping records;
- (c) instituting processes for checking information disclosed and rectifying any inadvertent disclosure by making the information generally available; and
- (d) restricting briefings during times of market sensitivity.

In addition, the Parliamentary Joint Committee on Corporations and Financial Services (PJC) made recommendations in relation to briefings for institutional shareholders in its report *Better shareholders—Better company: Shareholder engagement and participation in Australia*, released in June 2008. The PJC considered that companies should post the information contained in private briefings on their websites. The PJC recommended that, if possible, this information should be available at the same time as the briefing itself and shareholders should be forewarned of its pending availability to provide the most equitable access.

ASIC, ASX and various industry bodies have issued best practice guidance which is consistent with the recommendations CAMAC and PJC (see response to SBT4274 for examples of this guidance).

Following our review of practices in this area late last year, we made a number of suggestions in ASIC Report 393 on the handling of confidential information to provide entities with further guidance on how to conduct briefings with greater transparency. These recommendations were consistent with those of CAMAC and PJC, and include:

- access to briefings by listed entities be as broad as possible and be made available as quickly as possible, including through making webcasts, podcasts and transcripts publicly available;

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- listed entities refrain from trying to manage or correct market expectations through selective briefings;
- listed entities have procedures in place which ensure that they do not disclose market-sensitive information in their communications. But, importantly, entities need to monitor whether these policies are actually being followed on a consistent basis;
- analysts and institutional investors should not attempt to elicit confidential, market-sensitive information from listed entities, and should know what to do if they suspect they have been given such information;
- listed entities think about perception as well as what the law and listing rules might strictly require. Perception is a key consideration for listed entities. If the market thinks that a company is favouring a select audience, serious commercial consequences can follow. Good boards will think about the "front page" test as well as legal obligations; and
- listed entities and their advisers read and apply best practice guidance.