

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates 20-21 February 2008

Question: aet 3

Topic: Insider Trading

Hansard Page: Written

Senator WATSON asked:

- Can ASIC advise how many insiders trading cases have been brought against market players?
- Can ASIC please advise as to the total number of successful insider trading prosecutions since its inception?
- Of those cases, how many did the defendant plead guilty to the charge?
- Does ASIC consider this to be a successful strike rate?
- Why aren't there more successful prosecutions of insider trading?
- Are there holes in the legislative framework that prevent more successful cases of insider trading?

Answer:

- **Can ASIC advise how many insiders trading cases have been brought against market players?**

Since 1998, ASIC has brought 26 cases against persons and entities for contravening the insider trading provisions. The cases have included:

- 16 criminal
 - 5 civil
 - 4 administrative; and
 - 1 enforceable undertaking.
- **Can ASIC please advise as to the total number of successful insider trading prosecutions since its inception?**

The corporate regulator became ASIC on 1 July 1998. From 21 (criminal and civil) cases ASIC has sought to prosecute, we have successfully prosecuted 15 cases. This excludes matters where ASIC did not seek a prosecution, but an administrative or enforceable undertaking outcome.

In the remaining 5 cases where ASIC did not seek a prosecution, we achieved successful outcomes in 2 administrative cases and 1 enforceable undertaking case.

- **Of those cases, how many did the defendant plead guilty to the charge?**

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Of the 15 successful prosecutions, the defendant:

- plead guilty to the charge in 8 cases;
- plead not guilty to the charge in 3 cases; and
- did not plead but made a declaration of contravention in 2 cases.

- **Does ASIC consider this to be a successful strike rate?**

We consider we have achieved some success in this area, having successfully prosecuted 15 from 21 cases. However we acknowledge there is scope to do more. The task force headed by Commissioner Belinda Gibson is looking at how we can improve ASIC's regulation of insider trading. We also intend to commit more resources to this area.

- **Why aren't there more successful prosecutions of insider trading?**

Insider trading cases are among the most difficult cases ASIC seeks to prosecute.

First, a successful conviction requires the satisfaction of elements which include:

- Possession of information (ss1042G and 1042H)
- Information must be not generally available (s1042C)
- Materiality of the information (s1043D)
- Knowledge (s1043A)

Second, detection is often difficult because the nature of the offence involves information that is not 'generally available' and this element of secretiveness is very hard to discover.

Third, proving a person actually possessed information is challenging. Successful insider trading cases are often built on circumstantial evidence, which on the whole leads to the inference a person possessed inside information. The Criminal Courts have generally demonstrated a reluctance to proceed on circumstantial evidence.

Fourth, it has been ASIC's experience that running insider trading cases is a very resource intensive process. They are amongst the lowest yielding of ASIC's cases in terms of referrals and successful outcomes.

Anecdotal evidence from our overseas counterparts has indicated other regulators share these challenges. We anticipate the results from the task force's review will improve ASIC's delivery of enforcement outcomes.

- **Are there holes in the legislative framework that prevent more successful cases of insider trading?**

Policy questions such as these are a matter for the government.