

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates 25-26 February 2009

Question: aet 4

Topic: Insider Trading - Fortescue

Hansard Page: Written

Senator Bob BROWN asked:

1. Regarding the rise in share price of Fortescue on Wednesday 18 February 2009 preceding an announcement of impending foreign investment in the company, what reason other than insider trading has the government discovered by way of an explanation?
2. Does the government think that regulators have the resources and legislative power they need to adequately investigate insider trading?

Answer:

1. Under Australia's financial system regulatory framework, ASX Market Supervision Pty Ltd (ASXMS) is responsible for the day-to-day supervision of the ASX's markets. As a listed company, Fortescue Metals Group Limited is therefore subject to oversight by the ASXMS, which is part of the ASX group of companies and a wholly owned subsidiary of ASX Limited.

In addition to surveillance by the ASXMS, the Australian Securities and Investments Commission (ASIC) is responsible for administering and enforcing the law. Australia's financial system is overseen by a co-regulatory model. To ensure that the market supervisor (ASXMS) and the regulator (ASIC) coordinate their activities, both ASIC and ASX have entered into a Memorandum of Understanding.

The day-to-day supervisory activities of the ASXMS are conducted in an independent and arms length manner from ASIC, the Government and Treasury. This is appropriate given that the ASXMS is a separate part of a commercial organisation.

ASIC is an independent statutory authority responsible for the administration of the *Corporations Act 2001* and related legislation. Under its governing statute, the *Australian Securities and Investments Commission Act 2001*, the relevant Minister is specifically precluded under section 12 from giving ASIC a direction about its policies or priorities in relation to a specific case. One of the reasons that ASIC was established as an independent body was to ensure that its decisions and actions are, and are seen to be, independent of the political process.

ASIC has also established a Capital Markets Taskforce targeted at improving enforcement of the legal framework on market abuses offences. ASIC has repeatedly informed the Government that it has sufficient resources to fulfil this enforcement role.

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The Government would expect ASXMS to notify ASIC if it had significant concerns about trading on the ASX. Based upon advice from the ASXMS or its own market intelligence, the Government would expect ASIC to act if there was sufficient evidence to indicate a possible breach of the *Corporations Act 2001*. Under its Australian market licence, the ASX is required to operate fair, orderly and transparent markets. If the ASX fails to do so, it can incur a range of penalties, the most extreme being that the ASX could lose its licence.

The ASX made public correspondence into the price movement of Fortescue shares on 18 February 2009. Fortescue publicly responded on 18 February 2008. On 19 February 2009, Fortescue issued a media release regarding movements in the price of its shares and attributing this to press speculation. For your information, these public documents are attached to this answer.

The Government has not been informed of irregular trading in Fortescue's shares. Nor has it been advised that the movement in Fortescue's share price was due to insider trading.

2. The *Corporations Act 2001* prohibits a range of conduct that would undermine the integrity of Australia's financial system. Insider trading is prohibited in Australia. The insider trading prohibition in Australia relates to products traded on exchanges such as the ASX and financial products traded over-the-counter. The wide scope of Australia's insider trading regime means that it is regarded as one of the toughest regimes in the world.

Although the Government believes that the legislative powers given to the regulator are sufficient, it is considering possible reforms to further strengthen the current insider trading prohibition.

Protecting and promoting market integrity is about more than prohibiting insider trading. The Government on 19 November 2008 requested that the Corporations and Markets Advisory Committee inquire into a range of market integrity issues arising out of the global financial crisis, including the use of margin lending by company directors, 'blackout' trading by company directors, the spreading of false rumours and the potential disclosure of market sensitive information at analysts' briefings.

The Government likewise believes that ASIC has the resources to undertake its market surveillance activities in an effective manner. The Government provided an additional \$30 million over two years from 2008-09 to enable ASIC to better manage the implications of the global financial crisis. ASIC funding has increased by approximately 85 per cent above the consumer price index, from \$130.1 million in 2000-01 to a budgeted \$303.3 million in 2008-09.

Given the global financial crisis, the Government continues to monitor developments to ensure that ASIC has sufficient resources to carry out its functions effectively.

In addition ASIC has undertaken a comprehensive corporate restructure to bring it closer to the markets that it regulates and encourage greater stakeholder engagement. This restructure has been complemented by the appointment of three additional commissioners to the regulator. Until these appointments on 12 December 2008, ASIC operated with only three commissioners and did so for 17 years.