

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

10 – 11 February 2010

Question: aet 127

Topic: 'Market Integrity'

Hansard Page: E126 (11/02/2010)

Senator PRATT asked:

Senator PRATT—I have a brief question. I note that late last year a consultation on market supervision reforms was launched. That included a change in the way the obligation on domestic financial market operators supervise their financial markets. Instead, market operators are responsible for the operation of their markets and the supervision and enforcement of their operating rules which relate to operational issues. But it also included a new type of rule called the 'market integrity' rule. I note the words 'market integrity' have come up a few times this evening. I think I have a general sense of what it is, but I would be interested in hearing from you what is sought to be introduced through the introduction of that new rule, given the changes I have outlined.

Mr D'Aloisio—Is that an ASIC or ASX consultation? I cannot get it in my mind quickly.

Senator PRATT—It is ASIC. Minister Bowen's press release states:

This follows on from the announcement on 24 August this year by the Treasurer and Minister Bowen that the Australian Securities and Investments Commission ... would take over the supervision of real-time trading on all of Australia's domestic licensed markets.

... ..

The government is consulting on a new system for rule-making and enforcement of those rules by ASIC in relation to the domestic licensed financial markets in Australia.

Mr D'Aloisio—Can I take that on notice and give you a specific answer. It is really around the operating rules and so-called rule around market integrity?

Senator PRATT—Yes. What is a market integrity rule? It has been described as a new type of rule. I would like some clarity about what that means.

Mr D'Aloisio—I will provide that.

Answer:

In August 2009, the Government announced its decision that the Australian Securities and Investments Commission (ASIC) would take over the supervision of real-time trading on all of Australia's domestic licensed markets with a possible commencement in the third quarter of 2010.

The Corporations Amendment (Financial Market Supervision) Bill 2009 (the Bill) gives effect to the transfer of supervision to ASIC. This Bill has passed both Houses of Parliament and is awaiting Royal Assent. The Government consulted on a draft version of the legislation in December 2009.

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This legislation establishes a new rule-making regime, in which ASIC will set market integrity rules which it will be responsible for supervising from the date of transfer of supervision. The Explanatory Memorandum to the Bill (the Explanatory Memorandum) states that these market integrity rules can deal with the activities and conduct of licensed markets, and of persons in relation to licensed markets and financial products traded on licensed markets. The Explanatory Memorandum further states:

'The Bill allows ASIC to make market integrity rules in a wide range of areas. The current law already allows markets to make operating rules, which also cover a wide range of areas. Operating rules and market integrity rules will operate together, but to the extent of any inconsistency the market integrity rule will prevail and the operating rule will have no effect. The regime is designed to be flexible and to allow ASIC to make rules to cover new and emerging issues as the market adapts and innovates, while also recognising that every market is different and needs operating rules tailored to the specifics of that market.'

At the end of February 2010, ASIC released a consultation paper on its proposed market integrity rules for ASX and SFE markets¹. The proposed ASIC market integrity rules are modelled on a sub-set of existing operating rules of the markets with only consequential changes. In creating these market integrity rules, ASIC took the view that, in general, the market integrity rules should:

- relate to market integrity (e.g. market misconduct, including trading with the intention of giving a false or misleading appearance and front running);
- assist the real-time monitoring of trading for protecting market conduct; and
- relate to general participant conduct, including participant conduct with clients.

Under this new regime, market operators will continue to set and monitor compliance with rules for their market on operational, administrative and technical issues. This will allow them to continue to maintain the day-to-day administration of their market, including the admission of new participants and trading operations. Market operators which have a primary market function (such as the ASX) will continue to make, monitor and enforce listing rules (including the continuous disclosure requirement).

The legislation makes no change to current arrangements for supervision and enforcement of clearing and settlement rules.

The ASIC market integrity rules are subject to the consent of the Minister and will be a legislative instrument. As a legislative instrument, the proposed ASIC market integrity rules will be tabled in Parliament and subject to parliamentary scrutiny.

¹ The consultation period closes on 26 March 2010. ASIC is also creating ASIC market integrity rules for other domestic market operators and will consult with relevant stakeholders in April 2010.