

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

10 – 11 February 2010

Question: aet 6

Topic: Off-Market Shares

Hansard Page: Written

Senator XENOPHON asked:

1. I wrote to ASIC late last year regarding a complaint made by a constituent regarding Hassle Free Share Sales Pty Ltd making off-market share purchase offers at well below market value. At the time, ASIC informed me that they were aware of this organisation.
 - a) Has ASIC taken any further action against this company?
 - b) If so, what action has been taken?
2. What investigations does ASIC undertake after receiving a complaint regarding off-market offers from a member of the public?
3. If a complaint is made against a company, are all the company's offers investigated, or only the one detailed in the complaint?
4. What provisions are available to prevent companies re-offending?
5. Are re-offending companies monitored, or does ASIC rely on individual consumer complaints?
6. The company mentioned previously seems to have a long record of making offers well below market value. Why are this company and its director allowed to continue operating?

Answer:

1. ASIC responded to the Senator's correspondence in September 2009 and subsequently to the Senator's constituent in response to direct correspondence from the constituent.

While the actual off-market share offer was not provided at the time of the Senator's correspondence to ASIC, other complaints received by ASIC at that time were carefully assessed and it was found that the offer complied with the minimum requirements stipulated in the *Corporations Act 2001* (the Act). Accordingly, no action could be taken against the company.

2. ASIC assesses every complaint it receives. In respect to off-market, low ball share offers such as with the one identified here, ASIC checks every offer brought to our attention to ensure compliance against the Act, in particular

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

10 – 11 February 2010

Division 5A of Chapter 7.9, and the prohibition against misleading and deceptive conduct.

3. ASIC must first assess the particular offer which has been brought to its attention to determine whether it complies with the legislative requirements. If that offer is found to contravene the provisions of the Act then any history of the company and its directors are considered to determine what action ASIC may take.
4. The Government introduced Division 5A of Part 7.9 of the Act - Unsolicited offers to purchase financial products off-market into the Act in April 2003 with further regulations coming into effect in June 2009. These provisions are aimed at protecting investors from low-ball offers by requiring disclosure of the current market value of the relevant shares in the offer itself.

However, it should be noted that offering someone less than full price for their shares is not an offence, and a company is not 'offending' or re-offending by continuing to make offers which comply with Division 5A of Part 7.9. While the legislation does not prohibit the practice, the legislation has created a number of additional regulatory hurdles to be met for such offers to provide better disclosure to recipients.

5. ASIC relies on its own intelligence gathering, complaints from members of the public and reports from targeted companies to identify such offers. ASIC does not have a dedicated unit to monitor the making of offers, but will assess each report alleging non-compliance by an offeror to determine whether further action should be taken. ASIC relies on complaints from the public who receive such offers or from notification from the companies targeted by such offers. This is because the offers made are "off-market"; there is no requirement of notification by the offeror to ASIC or the ASX that such offers are being made.
6. This practice is not illegal as long as it meets the disclosure requirements set out in the Corporations Act. Where an off-market share offer has been made and satisfies the legal requirements then it is a matter for individuals to carefully assess the offer. ASIC's consumer website, FIDO, has considerable information and guidance to alert vulnerable investors about off-market share offers. As well, ASIC operates an enquiry service where ASIC routinely responds to queries about such offers, advising investors to carefully weigh up the pros and cons of any offer they receive, to check the value of the shares against the offer made and to make an assessment as to whether the offer is in their best interests.

Options for law reform have been canvassed in two papers released by The Treasury. The first was an Options Paper: Access to Share Registers and the Regulation of Unsolicited Off Market Offers in May 2009. The second was a Proposals Paper: Access to Company Registers and Related Issues in February 2010. ASIC has been consulted on both papers and continues to work with Treasury as required.

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

10 – 11 February 2010

Minister Bowen announced on 20 May 2010 the release of draft legislation to deal with below value unsolicited share offers. The reforms are to be contained in the *Corporations Amendment (No. 1) Bill 2010* which, the Minister announced, the Government intends to introduce in the current parliamentary session.