

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

1 June – 3 June 2010

Question: BET 336

Topic: Frozen Funds #3

Hansard Page: Written

Senator EGGLESTON asked:

Similar to mortgage trust funds frozen as a result of the Government's bank deposit guarantee in 2008, does ASIC offer some way of accessing funds frozen as a result of ASIC investigations? For instance, under hardship provisions?

Answer:

In providing this answer, ASIC notes that the freezing of funds took place between 29 January 2008 and 8 February 2009. Some of these were frozen before and some after the Government guarantee was announced on 12 October 2008. ASIC did not freeze funds as a result of the Government's bank deposit guarantee.

Under the Corporations Act, a responsible entity of a frozen fund cannot make any exceptions to the blanket freeze on redemptions. However, ASIC has certain powers to modify the Corporations Act and, following the freezes in October 2008, ASIC made an urgent modification of the Corporations Act to allow responsible entities to return some capital to certain members in exceptional circumstances. This is known as hardship relief. Responsible entities need to apply to ASIC for this relief.

The terms of the hardship relief modification allow responsible entities to accept partial redemption applications from members who, for example, were unable to meet reasonable and immediate family living expenses or who were experiencing circumstances warranting compassion, including medical costs for serious illness, funeral expenses or to prevent foreclosure.

The amount available for withdrawal under the original modification was capped at \$20,000 per member, plus 50% of the balance of the member's investment in the scheme.

In August 2009, ASIC amended the cap on hardship withdrawals for each member to \$100,000 per calendar year, expanded the number of hardship withdrawals per calendar year from one to four (subject to the \$100,000 per calendar year cap), and extended the grounds for hardship to a beneficiary of a deceased estate of a member where the beneficiary is suffering hardship and to a person unemployed for at least three months without other means.

ASIC's modification of the law allows responsible entities to seek relief and make payments to investors experiencing exceptional hardship. Once this relief is granted the responsible entity determines which members are entitled to hardship relief, having regard to the relief criteria in Media Release (08-214) *ASIC facilitates*

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withdrawals from frozen funds and Media Release (09-148MR) ASIC expands relief for hardship withdrawals from frozen mortgage funds.

ASIC has also extended the terms of hardship relief to facilitate operators of frozen funds making hardship payments to members where the fund is in the process of winding up. Responsible entities of frozen funds in the process of wind up will need to apply for this relief.