

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

31 May – 2 June 2011

Question No: BET 193
Topic: Insider Trading
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Senator Xenophon asked:

Senator XENOPHON: Just finally on this, because I am running out of time. This begs a question about any leaks of information, because it is sensitive market information. Does ASIC have any authority to look behind any bet laid on Centrebet or whomever as to whether there was anything suspect about that bet, or is that another agency?

Ms Gibson: We only have authority over financial products. As we were explaining, it is questionable whether a bet is a financial product or a derivative. That involves some sort of assessment vis-a-vis a commentary on a rate or a value. For instance whether a horse is going to win or whether a football team is going to win would not be a derivative and would not be within our purview.

Senator XENOPHON: So, if there is insider trading, that has to be looked at with the general law, whether it is the police or—

Ms Gibson: Insider trading related to financial products is ours. Anything else would be a question for the Attorney-General.

Senator XENOPHON: So that means that, if somebody has some inside knowledge about an interest rate rise, if this is classified as a bet and it is not seen as a financial product, you do not have jurisdiction? That is the consequence of what you said?

Ms Gibson: That is an interesting point. I would need to get some advice. It is tied into whether it is a financial product and whether the issuer—in this case, the betting house—is carrying on a financial business.

Senator XENOPHON: But if it is not a financial product and somebody has made a quid out of it because they have some inside information, ASIC cannot do anything about it?

Ms Gibson: I would need to take that question on notice with the lawyers, but we will do that.

Answer:

ASIC has responsibility for monitoring and enforcing compliance with the insider trading prohibitions in s1043A of the *Corporations Act 2001*.

Those prohibitions apply to a person who deals in certain financial products (known as “Division 3 financial products”) while in possession of “inside information” (as defined in s1042A) or who communicates “inside information” to another person knowing that the other person would or would be likely to deal in such products.

“Division 3 financial products” (as defined in s1042A) include securities, derivatives and other products that are able to be traded on a licensed market.

As ASIC noted earlier, the definition of a “derivative” under the Act is complex and wide and may include betting contracts where the payout varies by reference to the value of an asset, a rate (including an interest rate or exchange rate), an index or a commodity.

Where the features of a particular betting contract based on an interest rate movement mean that the betting contract is not a “derivative” or any other kind of “Division 3 financial product”, then the insider trading prohibitions will not apply to the conduct of entering into that betting contract.

Where the features of such a betting contract mean that the betting contract is a “derivative”, we may have jurisdiction. However, the operation of the insider trading laws is not straightforward. When those laws are applied to a complex financial product such as a “derivative”, a number of technical questions also arise, including as to “price” or “value” of that product. These questions are difficult to answer in the abstract, as they involve a detailed analysis of the particular product and the particular “inside information” in each case.