

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates 1 - 2 November 2006

Question: sbt 6 (ASIC)
Topic: Pistachio Investors
Hansard Page: Written

Senator SHERRY asked:

Question 1 (a)

Why has ASIC not acted against Donald Brownlie Fleming and Dee Dee Fleming over their misconduct as directors of Perpetual Plantations Of Australia (ACN 008 013 447) in the matter of the Peebinga Pistachio Plantation Scheme?

In December 2004 PPA gave ASIC an undertaking that it would make a cash offer to all growers to acquire all their respective interests and entitlements in the Scheme.

PPA advised ASIC (on Dec 13 2004) the offer will be funded by Elan Trading Corporation (another of Donald Flemings companies) and that the proposal was not contingent on funding being made available to PPA. Payment to growers who accepted the offer was to be made by 30th April 2005 but many growers did not receive payment.

Question 1 (b)

As ASIC vowed to monitor the progress of PPA's proposal (letter dated 15 December 2004) please advise the date when ASIC first became aware that growers were not receiving payment?

Question 1 (c)

What correspondence, if any, did ASIC have with PPA regarding the progress of these payments in the period following the expiration of the April 30 payment deadline - until the time that PPA and Elan Trading were placed in liquidation (November 2005)?

Question 2

Is ASIC aware that \$835,000 being the net return from the sale of nuts from the 2005 pistachio harvest (belonging to growers who *did not* accept the PPA offer) has been misappropriated by the directors of PPA.

Question 3

Is ASIC aware that prior to making the offer to growers, PPA had acted illegally in order to obtain a benefit for another Fleming company (not PPA) by giving a Guarantee to a third party, which was secured by a Mortgage and a Charge over the assets of the plantation.

If the answer to that question is 'no' - are we to believe that ASIC did not actually review PPA's corporate details when deciding the issue of how to act in relation to the non complying plantation Scheme?

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates 1 - 2 November 2006

Answer:

Question 1(a)

In its earlier investigations, ASIC formed the view that the Peebinga Pistachio Plantation Scheme (**PPP**) was illegal. However, those investigations also revealed that the scheme was not originally set up by Mr and Mrs Fleming. ASIC has not acted against Mr or Mrs Fleming as, based on the investigation that it undertook, it did not find that they had engaged in conduct that warranted enforcement action other than to remedy the breach of Chapter 5C of the *Corporations Law* by Perpetual Plantations of Australia Pty Limited (**PPA**).

In December 2004, PPA proposed to ASIC that it would make a cash offer to all growers and then wind up the scheme. This proposal was accepted by ASIC on the basis that the cash offer was likely to exceed the amount growers would receive if PPP were wound up.

On 11 November 2005, receivers and managers were appointed to PPA. On 17 November 2005, voluntary administrators (who later became liquidators) were appointed to PPA and external administrators were appointed to Elan Trading Corporation Pty Limited.

On 23 November 2006, ASIC received a confidential preliminary report pursuant to section 533 of the *Corporations Act 2001 (Cth)* in respect of PPA. ASIC has requested a supplementary report from the liquidator and will assess that report to determine what action, if any, is warranted.

Question 1(b)

On 5 November 2005, ASIC received advice from a grower who stated he had accepted PPA's offer, but had not been paid.

Question 1(c)

From 30 April 2005 to November 2005, ASIC exchanged correspondence and telephone calls with the lawyers acting for PPA on at least six occasions.

Question 2

No. As at 12 December 2006, it does not appear that ASIC has received any complaints concerning the return from the 2005 pistachio harvest, nor has it received any correspondence from the liquidators of PPP or PPA about this issue.

ASIC has requested, and is awaiting receipt of, a supplementary report from the liquidator of PPA and will assess that report to determine what action, if any, is warranted.

Question 3

It is not clear what is meant by this question. Cross guarantees and indemnities between associated companies are not of themselves illegal.

It is important to note that the assets of PPA, which gave the guarantee, are separate from the assets of PPP.