



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

ECONOMICS REFERENCES COMMITTEE

Scrutiny of financial advice

TUESDAY, 7 JULY 2015

SYDNEY

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SENATE

ECONOMICS REFERENCES COMMITTEE

Tuesday, 7 July 2015

Members in attendance: Senators Dastyari, Edwards, Williams.

Terms of Reference for the Inquiry:

To inquire into and report on:

Implications of financial advice reforms, with particular reference to:

- a. the current level of consumer protections;
- b. the role of, and oversight by, regulatory agencies in preventing the provision of unethical and misleading financial advice;
- c. whether existing mechanisms are appropriate in any compensation process relating to unethical or misleading financial advice and instances where these mechanisms may have failed;
- d. mechanisms, including a centralised register, that would ensure financial planners found to have breached any law or professional standards in their employment are transparent, for both the sector and consumers;
- e. how financial services providers and companies have responded to misconduct in the industry;
- f. other regulatory or legislative reforms that would prevent misconduct; and
- g. any related matters.

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KELAHER, Mr Christopher Francis, Managing Director, IOOF Holdings Limited**Committee met at 11:05**

CHAIR (Senator Dastyari): I declare open this hearing of the Senate Economics References Committee's inquiry into the scrutiny of financial advice. The Senate referred this inquiry to the committee on 25 June 2014 for report by 1 July 2015. On 2 March 2015 the Senate granted an extension to the committee to report by 1 February 2016. The committee has received 135 submissions so far, which are available on the committee's website. The closing date for submissions was 5 December 2014. These are public proceedings, although the committee may determine or agree to request that evidence be heard in camera.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee. If a witness objects to answering a question, the witness should state the grounds upon which the objection is taken. The committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may also be made at any other time.

I now welcome Mr Christopher Kelaher from IOOF. Mr Kelaher, before I ask you to make an opening statement, I want to thank you for your making yourself available today. I acknowledge that these are recent allegations and revelations that have been made, and that they required that we put together this hearing at reasonably short notice. I want to thank you for making yourself available. I note that there are other people related to your firm who have also been requested by this committee to attend. They have all given reasonable reasons as to why the notice that was provided was not sufficient for them to be able to attend. We take that in good faith. I note that all of them have insisted that they will make themselves available at another hearing, and that will result in further hearings needing to be held.

I also want to put on the record that the committee has a process for dealing with these matters. Initially we invite people to come as guests of the committee, which is the capacity in which you are appearing; our second process is that we formally request attendance; and, thirdly, is the issuance of a summons. I am hoping that we will not need to get to those later steps. I acknowledge that you have made yourself very available here today.

Senator EDWARDS: I think the other people would have been here if they had been in the country, Chair.

CHAIR: There are a range of people and a range of reasons that were given. International travel was part of that, and there are other reasons as well. But, for the privacy of those people, I do not necessarily think they need to be aired here today.

Mr Kelaher, I have a copy of your opening remarks, which we will table. But I want to give you the opportunity of formally placing them on the record if you want to make some opening remarks. Also, Mr Kelaher, while we are covered by parliamentary privilege, we do respect certain whistleblower protections. When referring to whistleblowers, we will not be referring to them by name. Knowing, as you do, who these whistleblowers are, you are more than welcome to make comments about them in the broader sense, but not to name them by name either.

Mr Kelaher: Likewised action.

CHAIR: Thank you, Mr Kelaher.

Mr Kelaher: I very much appreciate the opportunity to appear today to provide a full and frank response to recent claims made about IOOF, some of which have been reported in the Fairfax Media. These allegations have caused great distress to our investors, our shareholders and our nearly 2,000 staff across Australia. I am confident that I can confirm for you and the broader community that our company has an extremely strong compliance culture and that any claims of widespread wrongdoing have no basis in fact.

To cut to the chase, the allegations centred largely around the conduct of the equity research unit at the company. This unit presently comprises nine full-time equivalent staff. The issues raised were historic, had all been identified internally and are certainly not indicative of any systemic failure. As of today, nowhere can it be demonstrated that any of our customers have lost any money in relation to those claims. The allegations seemingly stemmed from records contained within a single file record maintained by one member of the company's compliance team. Each of the incidents canvassed publicly had been identified for investigation by the company's compliance team through the ordinary course of their duties. The company's legal and compliance team comprises over 40 expert staff.

For the record, the activities of the research unit are governed by four tiers of company supervision, aside from the usual ASIC regulations. These tiers are: an external audit function; an internal audit function; the work of the compliance team; and, finally, comprehensive company policies that are regularly reviewed and, where necessary, updated. Each matter has been thoroughly investigated, and, where appropriate, remedial action has been undertaken. The action taken included: disciplinary action for staff involved; retraining where necessary; and, finally, a review of relevant procedures and policies. There were other claims, and—as I have already detailed in our public releases—I can confirm that an allegation of frontrunning in 2009 was investigated but not substantiated. No insider trading has been detected nor any short selling activity identified. The company strongly believes that there is no systemic occurrence of these alleged activities.

When, through its internal processes, the company first became aware of suggestions of possible frontrunning in late 2014, we appointed an independent accounting firm, and—contrary to the assertions now made in the Fairfax press—these independent accountants have confirmed that no frontrunning had taken place between 2008-09 and 2014. As a result of the recent allegations, which were primarily made by a former employee, PwC has been asked to review the breach reporting conduct of the group as well as the system process of the research group. The first part of this report is due in early August 2015.

Finally, in closing, I can speak a little bit about our acquisition strategy over the years. It has opened up tremendous long-term opportunities to our customers and our shareholders, but—candidly—it has also thrown up many challenges in respect of: merging IT systems; internal policies and protocols; and, most importantly, creating a single culture among staff coming from often diverse and formerly competitive organisations. The work of restructuring the research group, in particular, includes a new organisational structure and a new leader. We have identified outstanding individuals to fill the critical roles, and further upgrade of our research processes and procedures is continuing. The committee can be assured that, in all of these changes, the key priority will be being able to maintain a value-based ethical culture with a company that has proudly served Australia for well over 100 years.

CHAIR: Thank you. Let us talk about what has happened in the past few weeks. These allegations were revealed in the Fairfax press on 20 June, or around there, is that correct?

Mr Kelaher: Yes, the weekend.

CHAIR: What has happened to the share price of your company since these revelations?

Mr Kelaher: It has declined in response.

CHAIR: By how much?

Mr Kelaher: Probably over 10 per cent.

CHAIR: Is this a crisis?

Mr Kelaher: No, not at all.

CHAIR: A 10 per cent drop in your share price is not a crisis?

Mr Kelaher: No. I think when we are looking at a company's price and valuation price movements, it is not something that we study every day. This is a long-term company; it is built for long-term growth.

CHAIR: You do not study a 10 per cent drop in your share price, as the managing director?

Mr Kelaher: We examine the price, but it is not something that we watch exclusively all day. I do not watch it day by day.

CHAIR: What is your share price at the moment.

Mr Kelaher: It is probably circa under \$9. I do not know. I have not looked this morning.

CHAIR: Do your shareholders think this is a crisis?

Mr Kelaher: I think the majority I have spoken to—

CHAIR: Ten per cent of them dropped your shares.

Mr Kelaher: The majority I have spoken to have generally been supportive.

CHAIR: So they are fine with a 10 per cent drop in share price. Have you ever had anything like this happen since the GFC, in this short a period of time?

Mr Kelaher: Not that volatility, I don't think. But obviously the share price moves up and down over time, depending on both the domestic and international market sentiment.

CHAIR: Have you been contacted yet by any class action law firms. Or has IOOF been contacted by any class action law firms.

Mr Kelaher: No, it would not be relevant.

CHAIR: Are you aware of class action law firms following today's proceedings?

Mr Kelaher: No, I am not.

CHAIR: Why would they be interested?

Mr Kelaher: I am not sure. It is not relevant.

CHAIR: Have you engaged public relations counsel?

Mr Kelaher: Yes, we have.

CHAIR: In-house or external?

Mr Kelaher: External.

CHAIR: Are they crisis communication experts, or are they—

Mr Kelaher: They are PR consultants. I do not categorise them beyond that.

CHAIR: And they are reporting directly to you?

Mr Kelaher: Yes they are, and to the board.

CHAIR: And the board?

Mr Kelaher: Yes.

CHAIR: We will get to the board. I have a few more specific questions regarding the allegation and we will probably put some of them on notice. I will come to this, and I want to separate the two. Firstly, I am going to ask you some questions regarding the processes at IOOF and the processes that were taken. Separate to that I want to raise with you what I am concerned about, which is the victimisation of the whistleblower in this case, and your press release that was put out in which you made some claims and assertions regarding an individual who came out with these claims. To me they are two very separate things and I will treat them as separate things.

Mr Kelaher: I agree with you.

CHAIR: One is about the allegations about the conduct and the behaviour at IOOF. Secondly, it is about the actual response and conduct since those allegations have come out. Are the other senators comfortable for us to proceed in this way?

Senator EDWARDS: You go right ahead.

CHAIR: Feel free to jump in at any point. The allegations are fairly serious. When were the allegations by the whistleblower brought to your attention?

Mr Kelaher: The latest ones were brought to my attention probably in detail probably in the last week, post the release of the Fairfax matter.

CHAIR: In the last week. They were not brought to your attention before that?

Mr Kelaher: There is some conjecture here. I think that the employee involved had picked up incorrect email details and had forwarded information—I think that is what you are referring to—and this might have been in February.

CHAIR: I suspect I am, so I am going to get the email.

Mr Kelaher: I have since become aware of the specific details, although I am aware of the matter, but for the specifics, it was only in the last week.

CHAIR: This is quite an important point.

Mr Kelaher: Yes.

CHAIR: Going to the specifics, the allegations relate to a whole series of matters. I think Senator Williams is probably best placed to go through the specifics of the allegations themselves. I have an email here that was sent to you on Thursday, 29 January, outlining these allegations. You are telling me that you never received that email?

Mr Kelaher: That is correct.

CHAIR: But you know that email was also sent to members of the board?

Mr Kelaher: Yes, I think it was also sent to our chairman, with the wrong email or something, I believe.

CHAIR: But you are aware—

Mr Kelaher: I am aware of the import of the email, yes.

CHAIR: And others within the firm, as well.

Mr Kelaher: Yes.

CHAIR: I am not sure if I am in a position to name the other people within the firm who have received this email, so I—

Mr Kelaher: I do not think it adds to it. I am telling you that I am aware of the import of what was raised.

CHAIR: I think it does matter, if there is an allegation here that this matter was brought to people as senior as the chairman of the firm, and other senior officials. The content of the email, effectively, is that someone within the research team in the advice division had serious concerns about the conduct and procedures that were taking place in IOOF, that they raised it with their relevant superiors and they raised it with the relevant people within the firm. They felt that they had been stonewalled and, in what I believe is in other cases—again, I am not talking to specifics here—an appropriate course of action where somebody feels that serious concerns of theirs are not being heard, decided to elevate it to a higher level to bring it to the attention of senior people within management. I just want to be clear. You are claiming that neither you nor the chairman—because there is other correspondence regarding the chairman that has proof of receipt. Again, you are not here to—

Mr Kelaher: I do not want to speak for him. My understanding is that the distinction—but it is a distinction that is not helping us.

CHAIR: You are aware of this whistleblower though?

Mr Kelaher: Yes. What we are saying is—

CHAIR: When did you become aware of these claims by this whistleblower?

Mr Kelaher: Probably around that time. I am conceding that we became aware around that time.

CHAIR: But you also just said that you were not aware of the nature of the allegations until about a week or two ago.

Mr Kelaher: The specifics I am not aware of; the general import of the allegations I am aware of. It is a detailed email, I think, from memory.

CHAIR: There is a series of allegations. There is front-running and insider trading.

Mr Kelaher: Yes.

CHAIR: There is the misrepresentation of performance figures.

Mr Kelaher: Yes.

CHAIR: There are unit pricing errors—

Mr Kelaher: Yes.

CHAIR: and faulty research reports.

Mr Kelaher: Yes.

CHAIR: And there are juniors told to cheat on training and compliance exams on behalf of their boss.

Mr Kelaher: They are your words.

CHAIR: They are the allegations.

Mr Kelaher: Yes, sorry.

CHAIR: There is a whole host of evidence and we are going to go through all of this. Is it your assertion that in every single instance you have no concern about the conduct of officials within IOOF?

Mr Kelaher: I am concerned about the conduct of what goes on in the research group, yes.

CHAIR: You are?

Mr Kelaher: Yes. I am concerned about the conduct of every division in the company.

CHAIR: I just want to get this straight. When these allegations were made—and we will go through the specifics of the allegations through Senator Williams—in January it was not the first time you had heard them; you had obviously heard these allegations earlier. Do you want to talk a bit about the process of bringing in PWC at an earlier point, prior to January this year?

Mr Kelaher: Early in 2014 the issues of sharing passwords and no asset register being maintained in the research group were raised.

CHAIR: How were they raised?

Mr Kelaher: They were raised by the compliance group. Then, in consultation with the head of legal and compliance, an individual was identified as sharing a password and not holding an asset register, and he was disciplined.

CHAIR: Was he given a first and final warning?

Mr Kelaher: He suffered a demotion, he suffered a loss of bonus and he was given a first and final warning.

CHAIR: Was that his only ever first and final warning? Has he received other first and final warnings?

Mr Kelaher: In relation to that matter, yes.

CHAIR: No—that was not the question. Was that the person's—we both know who the person is; we are choosing not to name them, to protect them, and I think that is appropriate—only first and final warning that he had been given while you have been chairman of IOOF?

Mr Kelaher: I am not the chairman.

CHAIR: CEO.

Mr Kelaher: No, he had been given a first and final warning back in 2008-09.

CHAIR: What is a first and final warning? I must have misunderstood what a first and final warning is.

Mr Kelaher: I have to rely on what the HR department tells me, but my comprehension of a first and final warning is that it relates to specific conduct. So it is not a cumulative event.

CHAIR: So I can get a whole series of first and final warnings for other things that I have done? I am a layman here. My understanding of a first and final warning is that if you mess up again you get sacked.

Mr Kelaher: Senator, in this regard so am I. I am instructed that a first and final warning in relation to different conduct is not cumulative.

Senator EDWARDS: If this is generally accepted in the industry, you can have a first and final warning on failing to carry out education, you can have a first and final warning on not being a very good record keeper, you can have a first and final warning on a plethora of different things. If you get a first and final warning it does not actually mean that the next time you get one you are out the door.

Mr Kelaher: Not unless it is a repeat of the conduct in relation to the warning.

CHAIR: That is news to me.

Senator EDWARDS: We just wanted to clarify it. In the interests of keeping credibility in the committee, we just want to know how this works. Obviously you have found out recently as well.

CHAIR: These allegations were first brought to your attention in, you are now saying, January last year. Is that the first time, or not? I am referring to the front-running ones.

Mr Kelaher: The front-running ones, yes, although since the matter has been raised in subsequent investigation I have learned that there was a similar investigation by our compliance group in 2008-09.

CHAIR: Were you CEO at that point?

Mr Kelaher: Yes, I was, but I was not aware of this matter then.

CHAIR: So: January last year?

Mr Kelaher: Yes.

CHAIR: Explain to me how the processes inside your company work. The compliance team comes to you—or the board or whoever—and says, 'We think this is something worthy of further investigation'?

Mr Kelaher: The way it works is that the compliance team would undertake investigations on a random nature across the entire company.

CHAIR: And Mr Rob Urwin is your compliance officer?

Mr Kelaher: Yes, he is one of them, but—

CHAIR: He is the head, though, right?

Mr Kelaher: He is the head of investigations, but there are nearly 40 people in that legal risk and compliance group. He makes random investigations across all the activities of the company, and in this particular case this matter may have arisen from an investigation that he was undertaking.

CHAIR: So, Mr Kelaher, you are telling me—and this is fine, if this is the answer—that you are not sure what brought about the January 2014 compliance report?

Mr Kelaher: It might have been raised as a reference to HR. It does not really matter how it was raised; it emanated from the compliance group, and the compliance group—it goes to the head of risk and compliance.

CHAIR: That is Mr Rob Urwin?

Mr Kelaher: No, he is head of investigations; it is the head of risk and compliance—

CHAIR: Who is that?

Mr Kelaher: Paul Vine. In consultation with general counsel, the matter is then, potentially, referred to what we call the risk and compliance committee, which is an independent board committee.

CHAIR: Who chairs that? I am sure this is all publicly available information, but who chairs that on the board?

Mr Kelaher: I think it is George Venardos. And I do not sit on that committee, for the purposes of not being involved in any consideration of a line management issue.

CHAIR: Did they make the determination to bring in external consultants to look at this? How did that happen?

Mr Kelaher: No. I think, in terms of bringing in external consultants, that was not raised until later on in the year.

CHAIR: So I have my timings wrong. In January 2014, through some internal process, at a level below yours, which is appropriate, this issue of frontrunning was brought to the attention of management—this allegation or concern.

Mr Kelaher: The concern was raised, I think, specifically in relation to sharing of passwords.

CHAIR: So it was only the password issue?

Mr Kelaher: The sharing of passwords, and the absence of an asset register, amongst other things; I think they are the two matters that stand out.

CHAIR: So there are the allegations of frontrunning. The point I am trying to get to—and maybe you can help me with this—is: the allegations here, again, are: frontrunning, insider trading, misrepresentation of performance figures, unit pricing errors, faulty research reports, and juniors told to cheat on training and compliance exams on behalf of their boss. I want to get an understanding of: when these were brought to your attention, what steps were taken to appropriately assess them prior to this being in the public domain on 20 January?

Mr Kelaher: You are grouping a lot of things together, but I will go through them slowly.

Senator WILLIAMS: One at a time.

Mr Kelaher: Yes. The issue of frontrunning was revisited after 2008-09, essentially around Christmas of 2014. From my understanding, early in the period of calendar 2014 it was the issue of registers, asset registers and sharing passwords. So the subsequent reference regarding frontrunning was raised more substantially in December 2014 and, at that point, an external audit firm was asked to review all of the trades in question from 2014 to 2008-09, and no evidence was found of frontrunning.

CHAIR: We will touch on that. So that is the PwC report?

Mr Kelaher: Yes, that is right—dated 15 May.

CHAIR: So at the end of last year you initiated a PwC report—

Mr Kelaher: For the removal of all doubt, absolutely.

CHAIR: But did that specifically look at the issues of frontrunning and insider trading, or was there a link—

Mr Kelaher: Sorry—now I recall: the other issue was plagiarism.

CHAIR: So: the misrepresentation of performance figures; unit pricing—so, effectively, you are saying the faulty research reports and the frontrunning and insider trading were looked at by PwC from December, to produce a final report for the board for May?

Mr Kelaher: PwC produced a report regarding frontrunning and plagiarism, and that emanated—

CHAIR: I am talking about the faulty research reports. Is that the same allegation?

Mr Kelaher: Yes. We need to be specific here. Some of the matters were raised early on but the two substantive ones that were reviewed by PwC were plagiarism and frontrunning.

CHAIR: Explain to me how this works. PwC sends a team in? How does it work?

Mr Kelaher: I understand that they send a team in, they review all the relevant matters and they provide a written report.

CHAIR: Do you work with a partner? Explain to me how it works in PwC.

Mr Kelaher: There is a partner in charge of this sort of style of analysis and they make a report.

CHAIR: What is this called? If I called up PwC today what would I be asking for?

Mr Kelaher: I cannot recall the title of the report. It might be a forensic report or something like that. Do not hold me to that title. I cannot recall. I have seen the top page of the report and it is just 'PwC—

Senator EDWARDS: I am just interested, Mr Kelaher, as to your involvement in this PwC report. You are the CEO and you have a number of people who report to you. Largely that report was commissioned from somebody who reports to you? Or was that at your instigation? In your evidence you are saying, 'As I understand it'. It does not sound like you were involved in this process much at all.

Mr Kelaher: No. I was not directly involved in it. It was fundamentally a report commissioned through our human resources department. Fundamentally what had occurred was that an allegation had occurred as to bullying, and some of the subsequent information around that bullying accusation included frontrunning and plagiarism. Therefore, to remove all doubt, PwC were instructed to complete a report. I am not aware of the terms of the report more than I have read the outcome.

Senator EDWARDS: With the indulgence of the chair, because I am pinching some time, the Chairman of ASIC, Mr Medcraft, has talked to us through Senate estimates about culture. In fact, he says 'culture, culture, culture'. That is what he is interested in. Given that you did not have much of a hands-on in this, are bullying and plagiarism run of the mill for IOOF? Is it 'business as usual', just get PwC to get a report done and that was initiated by somebody down the line? Who authorised that expenditure for PwC? I know they do not come cheap. In this business you probably do not ask a question you do not know the answer to, or like to think you know the answer to. Can you put a bit of flesh on those bones?

Mr Kelaher: Clearly these reports are not cheap, but I think that the purpose behind setting out to undertake a report was to remove all doubt. Certainly the kind of culture you are referring to is totally alien to our company. As I set out in my opening statement, we have 2,000 staff. This is a unit that comprises nine people and there was a bullying and cross-bullying accusation made. As a result of that, to substantiate some of the bullying accusations, it was to add some meat to the bullying was thrown in, and what about some frontrunning for good measure. That was to add fuel to the accusation.

Senator EDWARDS: So you are quite dismissive of that, given the report that you got from PwC.

Mr Kelaher: If we ask PwC to make a report about something, we obviously regard the matter very seriously. I think it is a dangerous thing to throw around these sorts of accusations if they are not true. They made a considered inquiry and provided us with a written report declaring that it was not true. I think we are entitled to rely on that.

CHAIR: Hang on, Mr Kelaher. This report from PwC was put together on the basis of allegations made by a whistleblower.

Mr Kelaher: By an employee, yes.

CHAIR: We will call them an employee. We can throw around titles of 'whistleblower' or not. In my opinion that makes them a whistleblower, but that is a separate matter. So it was by an employee, correct?

Mr Kelaher: Yes.

CHAIR: Did PwC actually speak to the employee in the production of this report?

Mr Kelaher: I could not answer that. I think it is unlikely primarily because my understanding is that the allegation regarding frontrunning related to a series of trades and training examples.

CHAIR: Mr Kelaher, you are the CEO of this firm.

Mr Kelaher: Yes.

CHAIR: This is a serious allegation, the allegation of frontrunning. The information that has been presented to us is quite compelling as to the activity that has been undertaken. You are saying that your response to that is a PwC report.

Mr Kelaher: Yes. It is a source of truth. We are looking at the evidence that you looked at.

CHAIR: But you did not look at it. You got someone else to look at it. You paid PwC to do it for you.

Mr Kelaher: We organised for PwC to look at the facts before—

CHAIR: Who is the partner you deal with at PwC?

Mr Kelaher: I cannot tell you off the top of my head. We deal with a number of different partners. Andrew Wilson is the head of financial services but I am not sure whether he is the specific partner.

CHAIR: Can you take on notice who produced the report?

Mr Kelaher: I am happy to table the report.

CHAIR: Do you have a copy of the report?

Mr Kelaher: Not on me, but we can table it.

CHAIR: Is that a public document at this stage?

Mr Kelaher: No.

CHAIR: If you are prepared to table the report, I think that would go—

Senator EDWARDS: That is as much as Mr Kelaher can do.

CHAIR: That would be a very welcome development. We have been given these allegations and I have to say that they appear to be very, very serious. What I would be very keen to take a look at is which parts of these allegations are addressed by the report, which parts are not and what steps were taken. You have read the whole report, I take it.

Mr Kelaher: Yes.

CHAIR: And you are saying you received it on—

Mr Kelaher: I think it was 15 May. It was somewhere around then. That was the date of the report.

CHAIR: And that report was then given to the board?

Mr Kelaher: No, I do not think the board saw that.

CHAIR: The board did not see that report?

Mr Kelaher: No, but the board was given the findings. The findings were nil. We can slice it and dice it whichever way. On the evidence, there was no frontrunning.

CHAIR: It is hard for me to have faith in a report that has been produced on the basis of claims by a whistleblower when the whistleblower has not even been spoken to in the production of that report. It reeks of a whitewash.

Senator EDWARDS: Chair, that is your interpretation.

CHAIR: We will have an opportunity to look at the report. Mr Kelaher has committed to making it public.

Senator EDWARDS: Can I ask you a question which somebody is ultimately going to ask you—whether it is me or any of the other people here or the media outside reporting on this. If there was a suggestion of frontrunning, why didn't the management of IOOF report that to ASIC?

Mr Kelaher: Because there was no evidence of frontrunning detected.

Senator WILLIAMS: In 2009, Mr Hilton got a first and final warning—for what?

Mr Kelaher: For failing to keep an asset register—basically, a breach of company policy.

Senator WILLIAMS: What if I said to you that we have seen a heap of documents—about 58 of them—that certainly looked towards frontrunning?

Senator EDWARDS: Mr Kelaher cannot comment about 50 pages of documents that he has not seen.

Senator WILLIAMS: Mr Kelaher, if you did an inquiry by PwC into your research group of nine, why didn't they speak to all nine people in that group?

Mr Kelaher: I think the employee in question was no longer there at the time. We are now into early 2015 and he was no longer there.

Senator WILLIAMS: But you called PwC in last year.

Mr Kelaher: I think it was at the beginning of this year or over Christmas.

CHAIR: That is slightly different from what you said before. In December this year or sometime over the break or in January this year—the dates are broadly insignificant and they will all be in this report—you brought PwC in to assess these allegations?

Mr Kelaher: Yes.

CHAIR: Now you have brought PwC in again. Is that correct. I am just going on what I have heard in the media.

Mr Kelaher: Yes, that is correct.

CHAIR: Explain this to me. It seems like there at the claims, the Fair Work dismissal and then there is bringing PwC in again.

Mr Kelaher: Yes. Part of the matters raised in Fair Work were these allegations. I am cautious in referring to it because confidentiality applies to Fair Work procedures. Nevertheless—

CHAIR: Parliamentary privilege does not apply here.

Mr Kelaher: In this forum, part of the substantiation for some of the matters raised were elements of frontrunning. Through the course of that it was resolved that PwC would be brought in to examine the frontrunning and the plagiarism matters.

CHAIR: You are saying PwC was brought in as part of Fair Work, not in response to the allegations being raised with the firm?

Mr Kelaher: No, it was coincident. As you correctly point out, these are serious allegations and they warrant external examination. So, coincident with all of those things, it was resolved that PwC would come in. They came in and they found no evidence—no evidence of plagiarism.

CHAIR: There is a whole series of allegations—and I think there are some issues about how you can produce a report without actually speaking to the people who are raising the concerns, but we will get to that in a further hearing after we have had the opportunity to go through the report. I will put it on notice now to committee members that I think it is appropriate that we call in PwC and the people responsible for producing this report as part of our hearings. But that is a matter for the committee to consider.

Senator EDWARDS: Yes, and we will consider it.

CHAIR: Mr Kelaher, the allegation is that the employee went to people within their line of management and raised concerns. Correct?

Mr Kelaher: Yes.

CHAIR: That employee felt unsatisfied with the action taken by those people who were senior to them and then took a decision to take it further up the chain of the company structure. That is correct?

Mr Kelaher: Yes, that is right.

CHAIR: Was it your decision to bring in the external consultants? How did this work? Was it the compliance team of the board that made the decision to bring them in?

Mr Kelaher: It was essentially a decision between management and the HR group that we should deal with the verification of the allegation, or otherwise, at the time.

CHAIR: A decision was made to bring PwC in to look at some of the claims that were made. Was that decision made before or after this matter was before Fair Work?

Mr Kelaher: During.

CHAIR: At that point had these matters been aired during the Fair Work proceedings?

Mr Kelaher: From my understanding, yes they were.

CHAIR: You point out that these are serious allegations. They go to the heart and the conduct of the firm. They go to a division the head of which has already had a first and final warning. When these allegations were previously brought to your attention why wasn't a decision made to have a full and thorough investigation prior to these matters being aired at Fair Work?

Mr Kelaher: They were not brought to my attention in early 2014. On investigation, once the Fairfax matters were raised it was highlighted that an assertion of frontrunning had been made in 2008-09.

CHAIR: When these matters had been raised with your line managers prior to the escalation point of it becoming a Fair Work matter, that information had not been brought to your attention?

Mr Kelaher: No.

CHAIR: Here is what we have been given evidence of—and there is a bit in the middle that relates to you, Mr Kelaher, that you can obviously answer but we cannot. We have been given evidence that this information was brought to your attention in early January and these concerns had been raised by people within the management structure—and it is appropriate to take it to your next in command and go up the chain.

Mr Kelaher: Early January when?

CHAIR: The email was in early January 2015. You are telling me that, up until this became a Fair Work matter, the managers within your firm had not directly raised with you these concerns that an employee had been raising with them?

Mr Kelaher: It was a year ago but my recollection at this stage is no.

CHAIR: Isn't that concerning?

Mr Kelaher: If it wasn't raised then, it is not concerning. It really goes to the question of whether it was raised then or not. I cannot specifically speak to when that matter was raised other than that I can tell you definitively that I am clear on the allegation of frontrunning around Christmas time.

CHAIR: But you are saying that allegation had not been raised with you before Christmas?

Mr Kelaher: Not that I am aware of. My recollection may be faulty but—

CHAIR: So what you are saying—and I am kind of helping you here—is that the allegation was first raised as a serious matter as part of the Fair Work proceedings with you at the CEO level and your response, in compliance with HR, was to bring external consultants in to review the allegations?

Mr Kelaher: Yes. That I can speak to definitively, but as to whether I became aware earlier I cannot recall at this point.

CHAIR: It sounds like one of two things happened prior to that time. These allegations were made prior to this—and we have evidence that they were given to other managers within your firm at an earlier date. So either the people below you were not passing on this information, were not raising these things as concerns, or you were made aware of it and decided not to act until it became a Fair Work matter. It is one of those two things—which one?

Mr Kelaher: I do not agree. Once the matter is raised and then we want it independently examined—

CHAIR: But it had been raised before December.

Mr Kelaher: I am saying I cannot recall specifically. Maybe I should take that on notice.

CHAIR: But if it was raised with you beforehand, isn't it even more concerning that you did not act?

Mr Kelaher: As I said, I would have to check my recollection. But I take the matter seriously and I think that from our perspective—

CHAIR: You took the matter seriously once it was at Fair Work. I just want to know why it was not taken seriously before that.

Mr Kelaher: No, there is no coincidence with Fair Work; I take the matter seriously when someone is raising the allegation.

CHAIR: You are saying that the allegation was brought to your attention at the end of last year or the start of this year.

Mr Kelaher: I am saying definitively that I can answer that on that basis, yes.

CHAIR: Are you concerned then that these matters that had been raised with your managers had not been brought to your attention before that point?

Mr Kelaher: Certainly, but some of them had been. I was aware of the fact of shared passwords and plagiarism allegations and they had been dealt with earlier in the year. But I cannot speak to the specific time in 2014. They were identified by our own compliance group and action was taken.

CHAIR: But the consultants had not been brought in until this year or the end of last year?

Mr Kelaher: No. Bear in mind that the source of the matter stems from a missing file which contained detail from 2008-09, so it is not clear whether these are fresh allegations or merely reciting the 2008-09 matters.

CHAIR: Is this in relation to—

Mr Kelaher: Frontrunning.

CHAIR: I will touch on that because, I tell you what, they are.

Mr Kelaher: But I am hypothesising.

CHAIR: I will go one further for you.

Senator EDWARDS: Get it on the record, Chair.

CHAIR: I am going to be very careful here. I have here 58 separate examples of allegations of frontrunning by IOOF. The last one relates to December 2014 and they go as far back as 2009. There are 58 allegations. I have detailed information about when your head of research appears to have purchased shares and when decisions had

been made around selling them. What you do not seem to be able to answer—and that is fine because we have got a long process to go through—is whether or not the PwC report specifically looked at these allegations. You obviously do not know that because you do not know the allegations.

Mr Kelaher: No, I am happy to tell you. You mentioned that the end date there was December 2014—that was the last trade you talked about. Correct?

CHAIR: Yes.

Mr Kelaher: So it would seem to me that, if we were to make a report on alleged frontrunning, it would have to be after December 2014 if that was the nub of the allegation.

CHAIR: No. My concern is that—

Mr Kelaher: That was the last part of the allegation.

CHAIR: My concern here is that we have a whistleblower who is making allegations as to trades by your own head of the research team in terms of something as serious as frontrunning, and a report gets commissioned and the whistleblower is not spoken to to have an opportunity to raise their concerns. I cannot comprehend how you can have a thorough detailed examination without speaking to the person who is making the allegations, the person who has the information as to the frontrunning that has occurred.

Mr Kelaher: I can answer that, Chair. First and foremost, again, the last trade raised by the employer was December 14. It, therefore, only follows that you could make an examination post December 14. Furthermore, the employee in question was invited to come in and speak with the company on several occasions; he declined. He was invited to provide medical certification; he declined. I think—

CHAIR: No. That is not true. Hang on.

Mr Kelaher: we are missing some important facts here.

CHAIR: No, no. I am not going to get into the business of demonising whistleblowers—

Mr Kelaher: Neither am I.

CHAIR: That is not what I am going to cop in this.

Senator EDWARDS: I do not wish to fall off here. We are credibly investigating all of these issues. There has been a lot of evidence lobbed on my desk this morning. There are all these allegations from one particular person. In light of all of this, we are going to write to you and seek your comment on the allegations which have been made, rather than try to prosecute them here this morning. You are a company which employs 2,000 wonderful Australians, and we have a person saying these things. Can I tell you: the evidence we have received is lucid. It appears quite credible. A lot of the contentions which are made in rebuttal to the whistleblower seems somewhat hollow this morning. But I will just say that we are going to run a credible inquiry, and we will give you an opportunity to do this rather than try to provide a forum for which there are trapdoors for people. I want this properly prosecuted, and we will see what we do. There is a lot of new evidence here today. In actual fact, there are two folders; there is no third one. I do not have the third one but I am getting one—of emails, time frames and things like, which I have not got my head around, either.

Senator WILLIAMS: Mr Kelaher, I thank you for your attendance. Are the stories in Fairfax today, with 57 customers compensated for \$2.8 million—I think that was the figure—correct?

Mr Kelaher: I believe so.

Senator WILLIAMS: Do you know how many financial planners were involved in, obviously, doing the wrong thing for you to shell out \$2.8 million?

Mr Kelaher: In terms of the questionnaires that we were given by Fairfax, we spoke to about five or six different advisers out of 1,000 or 1,100 that we have.

Senator WILLIAMS: Had you done breach reports on their activities to ASIC?

Mr Kelaher: Yes.

Senator WILLIAMS: When did you do them?

Mr Kelaher: They are kept up-to-date as we speak.

Senator WILLIAMS: So each time that you found out that one of these planners had done something wrong, and which has led you to give \$2.8 million worth of compensation, you delivered breach reports to ASIC within 10 days?

Mr Kelaher: Yes. My understanding is we followed practice there.

Senator WILLIAMS: With your research board of nine—

Mr Kelaher: It is not a board, Senator.

Senator WILLIAMS: Or committee, sorry—or whatever.

Mr Kelaher: It is a group. It is a division.

Senator WILLIAMS: The group; we will call it the 'group'.

Mr Kelaher: Okay.

Senator WILLIAMS: Have they always been compliant with RG146?

Mr Kelaher: No. Out of the, say, nine, it has been reconfigured. Following some of the issues that have been raised, the group was restructured in December. It now has a new head. As a result of which, there are some new personnel involved. There are two people currently RG146 complaint, and the balance all have extensive tertiary qualifications. They will be 146 complaint as well.

Senator WILLIAMS: Are they giving general advice?

Mr Kelaher: Yes, they are.

Senator WILLIAMS: Don't you have to be RG146 complaint to give general advice?

Mr Kelaher: The two in particular the I refer to give general advice to consumers. The balance of the group gives advice to advisers for which they do not require 146. However, for the removal of all doubt, we are ensuring that they all will be 146 compliant.

Senator WILLIAMS: I hope 146 is in the bin very soon, because I think it is a mockery of a regulation. On a parliamentary joint committee that I am on, when we investigated the standards of education and training for financial planners we had a case in which you could do a few hours in a course on the internet to become RG146 compliant. I think that is a disgrace. But we will hear more about that from the other committee when it reports back to the government with its response. Out of this team of nine, have you had five leave in the last 12 months?

Mr Kelaher: There have been several departures, but two of them, for example, were people that had joined within six months. It is not unusual for people to come, go on probation and then leave thereafter.

Senator WILLIAMS: With that \$2.8 million compensation, can you give the committee some summary of what sort of advice was wrong, misleading or not up to scratch. In my opinion, you have to do things very wrong to actually shell out compensation. What was the story of those planners and their advice?

Mr Kelaher: I cannot go into the individual cases of 57, but it varies in different matters. Sometimes it is the wrong risk profile, the wrong insurance cap, contribution cap breaches and things like that. Obviously, from my perspective, one breach is too many, but looking at this, and looking at the claims over the last several years, I think that we are certainly still remediating things that occurred in 2009. After the GFC, people's risk appetites were redirected.

Senator WILLIAMS: I will move to insider trading and frontrunning. They are a breach of the Corporations Act policed by ASIC—is that correct?

Mr Kelaher: Yes, that is right.

Senator WILLIAMS: And by the ASX?

Mr Kelaher: Yes.

Senator WILLIAMS: If you carry out frontrunning or insider trading, are they also a criminal activity?

Mr Kelaher: I am not sure of the designation, but it is a serious act.

Senator WILLIAMS: I am going to take you to Mr Edward Youds. An email says, 'Rob Urwin will facilitate Edward's retraining of the various codes and policies and Edward will ultimately donate the proceeds of profit from the sale of the ETC shares to a charity designated by AW in human resources.'

Mr Kelaher: Yes.

Senator WILLIAMS: You are familiar with that email, obviously.

Mr Kelaher: No, but I am familiar with the matter.

Senator WILLIAMS: That is what it says. It is dated 22 May 2009 and is from Andrew Boyd to Rob Urwin. So here is Edward Youds, accused of insider trading, and he 'will ultimately donate the proceeds of profit from the sale of the ETC shares to a charity'. Isn't even suspicion of insider trading a case where you must report it to ASIC?

Mr Kelaher: No, I think that—

Senator WILLIAMS: It is not?

Mr Kelaher: I think, in relation to that matter, it was investigated. We called the transaction into account by our own compliance department, and it was resolved that it was at best a Chinese wall arrangement. Therefore there was no market-sensitive—

Senator WILLIAMS: Explain to the committee a Chinese wall arrangement.

Mr Kelaher: My understanding of what occurred at the time was that an investment accountant had been involved in a meeting with one of the portfolio heads and, at the same time that a stock was discussed that was going to be the subject of an in-specie distribution—that is, an off-market distribution to unit holders—he bought some stock. He bought \$1,900 worth of stock. When the trade was detected, it was suggested that he had breached Chinese walls, meaning that he should not have been—

Senator WILLIAMS: The principle walls.

Mr Kelaher: Yes. He should not have been engaged in it. So there was no market-sensitive information involved. However, we detected the transaction. The compliance department detected the transaction, and this was their proposal to remediate it. He was also given a first and final warning on the basis that he should have known better.

Senator WILLIAMS: But with the first and final warnings, as you said earlier today when we kicked off, you can breach this law or regulation and get a first and final warning, and then you go into this silo and breach it again and get another first and final warning. Are you going to change your company's attitude to first and final warnings so that if you do one thing wrong, no matter where you do the next thing wrong, you are out? I think it is a mockery to have several first and final warnings.

Mr Kelaher: Certainly we have to operate the company within the confines of current employment law, and that means that you cannot just capriciously terminate someone. There has to be a process, and there has to be a backbone to that process. I do not pretend to be au fait with all the HR standards, but you cannot just terminate people. I am sorry.

Senator WILLIAMS: You have to give them about three warnings to terminate them under the Fair Work Act and unfair dismissal these days, don't you?

Mr Kelaher: Yes.

Senator WILLIAMS: How many warnings did you give to Mr X, the whistleblower?

Mr Kelaher: I could not tell you.

Senator WILLIAMS: Could you take it on notice, please, and provide the committee with the documents about how many written warnings you gave Mr X—and we know who Mr X is—before you terminated his employment?

Mr Kelaher: Yes.

Senator WILLIAMS: I do not think you gave him any.

CHAIR: So, we know of two first and final warnings you had given Mr Hilton. Can you find out how many first and final warnings, or warnings, he had been given? Can you take that on notice?

Mr Kelaher: I think the number is two. And for the gentleman in the case you are referring to, one—so, three individuals. I am presuming you are coming to another matter, but it was three individuals over seven years.

CHAIR: So the company has provided three first and final warnings over seven years—

Mr Kelaher: That I am aware of.

CHAIR: two of them for the same individual, who still works for you.

Mr Kelaher: Yes. There might be other first and finals that I am not aware of, but these ones—

CHAIR: With 2,000 people, I cannot expect you to be on top of every HR matter. That would be unfair.

Senator WILLIAMS: In relation to Mr Hilton, I find very concerning this email from Rob Urwin: 'I have organised a meeting with Michael Carter for this afternoon to discuss Peter Hilton. I will keep you up to date with the outcome. Ideally I want it to go the same way as this example below.' And the example below was 'keep it in-house, donate the profits to charity and not report to ASIC'. What is your opinion of that sort of recommendation from your compliance officer to just keep this in-house again, ideally as was done before? Shouldn't these be reported to ASIC?

Mr Kelaher: I think it is a breach of Chinese walls. Obviously it is easy to second-guess these transactions later. I was not aware at the time that that was the outcome. At the time, that was the resolve. It was a consultation

between compliance and the group line executive having regard to the fact that there had been no market-sensitive information involved, no breach of market integrity rules, and that was the way it was dealt with.

Senator WILLIAMS: What about the cheating on exams and so on, with juniors helping them to cheat the exams? Are you saying that is not reportable to ASIC?

Mr Kelaher: I think what you are referring to is in relation to the online education, e-learning and Kaplan, which is a multiple-choice, continuing professional development and education program. There is sharing of passwords, so a subordinate would complete the exam for you.

Senator WILLIAMS: That is exactly what I am talking about. In the case of this individual, there are allegations that they cheated in the exam to keep their qualifications up to be in a very senior position to advise and research your some 1,100 or 1,200 financial plans—where to invest people's money wisely and correctly. You are saying that is not something that needs to be reported to ASIC?

Mr Kelaher: I think it is—

Senator WILLIAMS: It is either yes or no.

Mr Kelaher: Yes.

Senator WILLIAMS: Chair, we will put those questions to ASIC when we get to them later on—cheating on exams and qualifications, and you do not have to report it to ASIC?

Senator EDWARDS: Are you aware of Dominic McCormick's article that appeared on 2 July?

Mr Kelaher: Yes, I am.

Senator EDWARDS: He seems to be protesting somewhat of a different construction, which is running in Fairfax. The whistleblower has not used your whistleblower policy and your channels to whistleblow, because he asserts that he is engaged with you and the chairman on the issues he normally would have taken to an anonymous whistleblowing hotline or email line or something like that, if you accept that evidence as evidence that he has bypassed the anonymous route and gone fully identifiable and to you and to the chairman subsequently, after dealing with you on these issues. In this article it just asked why the whistleblower had to remain anonymous. Well, he is not anonymous to you.

Mr Kelaher: No. I am not sure. At all reasonable times we considered him a Fair Work applicant.

Senator EDWARDS: A Fair Work applicant?

Mr Kelaher: He had a proceeding under Fair Work, and it was subject to confidentiality and was subject to due process in that forum. That was our belief.

CHAIR: I will point out that he is now covered and these documents are now covered by parliamentary privilege, which sits outside of those structures. I just do not want any grey area over the legality of it all.

Mr Kelaher: No. It is not about playing the man here—

CHAIR: No, I know you were not making that assertion. By the way, this gentleman that Senator Edwards is referring to, Dominic—

Senator EDWARDS: Dominic McCormick, Select Asset Management.

CHAIR: Do you know him?

Mr Kelaher: Yes, he is an acquaintance. I would not have spoken to him in probably five or 10 years.

CHAIR: He was an acquaintance just within the industry, or did you guys work together, or—

Mr Kelaher: No, I am aware—

Senator EDWARDS: What is your relationship? That is what we are asking you.

Mr Kelaher: I have no relationship with him whatsoever.

Senator EDWARDS: Did you work with him at some stage?

Mr Kelaher: I have never worked with him. I did read his article with interest. Obviously it was a balancing act.

CHAIR: You say he is an acquaintance. How is he an acquaintance—through the industry?

Mr Kelaher: Yes, through the industry. I would not have spoken with him in five or 10 years, but I am aware that he is in the industry.

CHAIR: Does he run a blog normally? I am just not familiar. Or does he run a fund?

Mr Kelaher: He writes frequently for all the trade journals on financial planning advice and funds management, so he is regarded as somewhat of an authority.

CHAIR: And you are not aware of whether or not, although I think this is a matter of fact, the person in question, whom the allegations were made against—Mr Peter Hilton, who we are going to get before our inquiry, but he was unavailable to attend, with good reason—

Mr Kelaher: He is on sick leave.

CHAIR: I was not going to say that, but you did. But we will get him to appear later, when he is back at work. Are you aware that he and Mr McCormick used to work together?

Mr Kelaher: I have no knowledge of that.

CHAIR: I think that is a matter of fact, but we will get to that.

Senator EDWARDS: There is some contention that the whistleblower put at risk some of the security of people who worked in your building and there is suggestion that you employed a security guard to ensure the safety of your employees. Do you want to expand on that?

Mr Kelaher: I guess with reluctance, but the circumstances leading up to his termination are that he was asked to return some company property and he continued harassing staff—

Senator EDWARDS: Do you mean the files?

Mr Kelaher: Yes, the files that are missing, which we believe were in his possession. He was asked to return them. He failed to comply with those instructions.

Senator EDWARDS: Perhaps I could just talk about those files. Are they files that are supposedly files of investigation? I do not have many files anymore these days, with the advent of technology. I do not have a large bank of filing cabinets with files in them. Are you contending that the files that are missing are physical files from the investigation unit that had handwritten notes or copies of things that you did not have anywhere else in your organisation and that once they were gone you had no record of anything that was in those files?

Mr Kelaher: Yes, I am. Bear in mind that the matters in the file that are missing are 208, 209 matters. Clearly when we look at these things today—and this is where your question is leading, I presume—there is an electronic record of everything. But in 208, 209 they were hard manila files, and those files have been removed unlawfully from the office and were the subject of this matter. But coming back to your proposition, there were numerous conversations between the employee and the company, and the HR group formed the view that there was a potential threat to personal safety. We employed a security guard in the office in Sydney and the police were notified. It was at that point that we made the decision that a separation was the practical outcome. There was no likelihood that he could return to work, and we would settle on some sort of compensation—going either way, depending on the outcome in court.

CHAIR: Is that matter still before Fair Work?

Mr Kelaher: No, I believe it has concluded. The day or the week before the matters were elevated to Fairfax.

CHAIR: I thought there was a termination notice given by your firm, but it was still in dispute and so it is not the case.

Mr Kelaher: There is no Fair Work outcome; it was inconclusive.

Senator EDWARDS: But you resolved the employment matter with your former employee?

Mr Kelaher: Yes.

Senator EDWARDS: Presumably there was a payout of a quantum sum?

Mr Kelaher: Yes.

Senator EDWARDS: I would not ask the person in question or you to disclose that, because obviously you have both come to an agreement about that. So I would conclude that you are both happy to part company.

CHAIR: I am trying to get my head around where the PwC report did or did not go. Obviously you have read the report and that puts you in a stronger position than us, because we have not seen that report. We will have the opportunity to see the report, and I thank you for that. By the way, could our secretariat get a copy of that report after today's proceedings?

Mr Kelaher: It might take a day because I may be in transit.

CHAIR: Did they look at the stock and debt issue as well as the allocation issues? You say that they were looking at the frontrunning and at plagiarism. The stock and debt issue and the allocation issues are almost a subset of frontrunning. Did they look at that?

Mr Kelaher: They are unrelated to frontrunning.

CHAIR: So they did not?

Mr Kelaher: No.

CHAIR: The allegations that I have here include insider trading and frontrunning of research, and you believe that the allegations have been addressed through the PwC report. We will read that report and we will come to our own conclusions. Misrepresentation of performance for model portfolios was not looked at; stock and debt allocation procedures were not looked at; harassment and cheating in compliance exams may have been partly looked at—

Mr Kelaher: I do not think we are disputing the issue of telling a subordinate to do the online trading.

CHAIR: the non-ASIC compliance to provide general and specific advice was not looked at; conflicted remuneration in breach of Division 5A of the Corporations Act has not been looked at; and then there is the whole issue of whistleblower protections which are separate. The allegations that have been made are wider than the scope of what has been looked at. You made a statement to ASX in 24 or 26 June.

Mr Kelaher: Yes.

CHAIR: Let's not pussyfoot around this: there was a pretty big report in Fairfax publications on the weekend, and you have obviously known for a week or so that it was coming because they would have contacted you for comment. You gave your view for that story, which is appropriate, and after that in response to concerns of shareholders you issued a statement to the ASX regarding these matters. Is that a fair summary?

Mr Kelaher: Yes.

CHAIR: In that you referred to further investigations. Is that correct?

Mr Kelaher: Yes.

CHAIR: So let's talk about that. How wide and deep is the investigation that is currently being conducted by PwC? I believe it has a reporting date of August.

Mr Kelaher: It will have an interim report at the end of July.

CHAIR: What are the terms of reference for that?

Mr Kelaher: It is an examination of breach-reporting procedures and process matters in relation to the research business.

CHAIR: I guess the assurance we would like to be given, Mr Kelaher, is that all of the allegations will be investigated.

Mr Kelaher: No. I think that some of the matters—in relation to model portfolios, for example, they relate to an advisory hypothetical portfolio; it is not a cash portfolio. So there is a distinction: it is not a misrepresented portfolio, it is an advisory hypothetical portfolio.

Senator DASTYARI: Okay. To engage PwC, was there an engagement letter, or an engagement contract?

Mr Kelaher: I suspect there was but I am not aware of the final detail of it.

Senator DASTYARI: I assume how these things happen is that there is some contact between someone within your firm who deals with these matters and PwC.

Mr Kelaher: Yes.

Senator DASTYARI: They have a conversation, and then there is a formal agreement as to what the terms of this investigation will be—that is probably simplifying what is many more levels of things. You would sign off on that, wouldn't you?

Mr Kelaher: Probably not, no; but I would be aware of the content of it.

Senator DASTYARI: I am just asking about the specifics of the content. Do you want to take on notice, Mr Kelaher—maybe this is the best way of doing it—what is the scope in detail, in terms of what exactly will it be looking at, of the current PwC report that has been initiated? And are you saying that we will have an interim or a final report in July?

Mr Kelaher: Interim at the end of July, or possibly the first week in August.

Senator DASTYARI: I suppose that all depends on what gets found, is that correct? These things can be a moveable feast.

Mr Kelaher: We are hypothesising about what may or may not occur.

Senator DASTYARI: Okay. I am trying to get my head around some of this, in relation to the specifics of the stock and debt allocation procedures. You obviously understand this sector quite well.

Mr Kelaher: Yes.

Senator DASTYARI: The allegation here—well, there are several different things but they include inadequate allocation procedures; IOOF staff and financial planners taking the firm allocation for themselves; and a lack of involvement from the legal and compliance team in this. I have about a dozen separate examples of this allegedly having occurred. Is the PwC report going to look at this specifically?

Mr Kelaher: No, it is not. We have made some remediation of company policies in respect of that area.

Senator DASTYARI: When was that?

Mr Kelaher: Well, I think post- that matter. The policy has continued to change over time. My awareness of the assertion there is that there was a dispute about the allocation of stock between members of the unit. But the company policy prescribes that a maximum of 20 per cent of a float can be taken up by staff, and policy procedures now indicate that, for allocations, they require sign-off by HR.

Senator DASTYARI: Okay, so talk me through this: these allegations of stock and debt issuance allocation issues—and there is a whole series of other allegations here; as you know, there are strict rules on advertising in independent reports of IPOs and debt issuances, the Corporations Act, in section 734 and section 995, prohibits licensees to receive any benefit including receiving up to 1 per cent sub-underwriting fee after publishing a positive research report or sending clients with positive recommendations. You are saying that has not happened—or you are saying you do not know whether that has happened, because you are not investigating it.

Mr Kelaher: What I am saying is that the unit did take placement fees. It was not underwriting, to my knowledge.

Senator DASTYARI: Okay. You are saying it was not underwriting.

Mr Kelaher: No.

Senator DASTYARI: But the allegation is that they were underwriting. Are you prepared to take that on board and have a look at that?

Mr Kelaher: Yes, we can have a look at that as well. But the actual allocation of IPO stock among staff—I am not sure why that is an issue that you would be identifying.

Senator DASTYARI: We as a committee had a private discussion about this earlier; I want to get the technicality of this right: the allegation is that, where there were issuances, the senior members of your own teams were actually taking these for themselves once they were seen be profitable, and not issuing them, and saying they were unavailable—or other matters—to your own customers—to the people out there; the public—and, at the point in time at which they were issued them, they contacted their clients. That is a very serious allegation. It would strike me as a form of insider trading, but it is not quite frontrunning. This relates also to inadequate allocation procedures by there having not been any kinds of strict guidelines, no deal sheet which clearly states the time lines, who is involved and respective responsibilities. I have a whole series—I do not want to name the other companies involved, because I do not want to discredit what have been public IPOs, but—

Mr Kelaher: I am agreeing with you, Chairman, that the procedures have tightened.

CHAIR: So when did you change the procedures and tighten them on this?

Mr Kelaher: I could not point to the specific time, but I know that it is—

CHAIR: Are we talking this year, last year?

Mr Kelaher: Certainly last year. I am aware of the procedures governing the allocation of IPO stock and how it is done within the unit, definitely.

CHAIR: Explain to me how it worked before and what got changed.

Mr Kelaher: First and foremost, the allocations are now subject to review by direct report, and if the allocations are to internal staff they have to be signed off by HR.

CHAIR: And that was not the case before?

Mr Kelaher: I do not believe so.

CHAIR: And you are saying that got changed as a result of these revelations?

Mr Kelaher: I think that policies are reviewed from time to time given market developments. I cannot speak to the actual timing of the changes.

CHAIR: That is fine. A whole bunch of people from IOOF, at different points, are going to come before us, who would be able to speak to this. So I am asking: who would be the right person to be asking that question—the head of HR, the head of compliance?

Mr Kelaher: We would just look to the policy document to see when the policy document was changed—that is all.

CHAIR: Can you take these questions on notice. What was the old policy? When was the policy changed? Why was the policy changed? And can we have a copy of the new policy? We will go to Senator Williams for questions.

Senator WILLIAMS: In March 2014 an action plan for the research outlines a series of violations in research. Are you familiar with that action plan?

Mr Kelaher: Yes, I am.

Senator WILLIAMS: The same action plan refers to bullying, harassment and isolation in research. Could you explain a bit more about that—why the action plan refers to bullying and harassment et cetera? Tell us about the plan and why it was brought in.

Mr Kelaher: I cannot speak intimately to it, but I understand that there were some new appointments to the group and there was some resentment within the group regarding those appointments.

Senator WILLIAMS: And that resulted in bullying and harassment, obviously?

Mr Kelaher: Yes, and it was raised with HR.

Senator WILLIAMS: The same action plan refers to the misrepresentation of performance figures. Are you familiar with that?

Mr Kelaher: Yes, we discussed it briefly before with the chairman. As I said, the performance figures are a hypothetical advisory portfolio that people could follow. It is not an actual cash portfolio. As soon as we became aware that there was an arithmetic error in terms of the dividend reinvestment, we discontinued the practice of publishing the numbers. But it is at no stage a cash portfolio that people could invest in. I acknowledge that there was an error, and we discontinued that practice.

Senator WILLIAMS: Just to bring you back to your opening statement, you were saying that none of your clients have lost money through wrongdoing, or words to that effect?

Mr Kelaher: It is not a cash portfolio; it is an advisory portfolio. It is up to the individual whether they want to follow it or not follow it. It is not an instruction to invest. It is purely: this is what a hypothetical non-cash portfolio might look like.

Senator WILLIAMS: What is the relationship between J.P. Morgan and IOOF?

Mr Kelaher: J.P. Morgan and IOOF are joint shareholders in Ord Minnett.

Senator WILLIAMS: Seventy-thirty or something like that?

Mr Kelaher: Yes, that is correct.

Senator WILLIAMS: Who has got the 70—IOOF?

Mr Kelaher: Yes.

Senator WILLIAMS: And you share information, as far as research goes, with J.P. Morgan?

Mr Kelaher: We are entitled to use the Ord Minnett research.

Senator WILLIAMS: So J.P. Morgan puts their research into Ord Minnett?

Mr Kelaher: J.P. Morgan generates research on a daily basis. It is then distributed to Ord, who then reconfigure the information and then publish it as Ord Minnett research.

Senator WILLIAMS: Explain to the committee reconfiguring. What do they do as far as reconfiguring the research from J.P. Morgan?

Mr Kelaher: They are entitled to source the research material and data, and if they want to change their view or form different conclusions, it is research. It is a descriptive narrative.

Senator WILLIAMS: Does that go back to your research team in IOOF as well?

Mr Kelaher: Probably later on that day. That material is probably bordering on a day old, I would think, by then.

Senator WILLIAMS: So it feeds from J.P. Morgan into Ord Minnett then back to IOOF. Have you ever heard of any tampering with any of the those recommendations coming through from J.P. Morgan—in other words, just being cut and pasted and then the actual recommendations being changed?

Mr Kelaher: It is possible to change recommendations, as I said. Researchers will look at the same stock, the same set of metrics, and form different conclusions.

Senator WILLIAMS: Why would you do that? Just explain a bit more detail about that. J.P. Morgan are obviously a well-established company; they do their research. When it goes to Ord Minnett, why would it change when it gets to IOOF in some cases?

Mr Kelaher: It could change when it gets to Ord Minnett. The Ord Minnett view might be different from the J.P. Morgan view.

Senator WILLIAMS: Just because of daily events or whatever?

Mr Kelaher: It could be just by dint of their interpretation of it. A market is made up of a buyer and a seller, and both believe that they are succeeding. Different people have different views.

Senator WILLIAMS: I want to take you through an email I have—one of many. It states: 'Hi, I refer to your email sent just now and was wondering if someone from Research could explain why you are recommending we place 50 per cent of our clients' managed funds portfolios into funds that have consistently underperformed their respective. From the research reports issued this morning, I believe these recommended funds have exceeded the benchmark on just two out of 36 occasions. Surely not? What is going on here? I cannot help but feel our research department has finally been compromised.' That is from one of your planners.

Mr Kelaher: Yes.

Senator WILLIAMS: Not a glowing report for your research team, is it?

Mr Kelaher: Planners will have different views of different investment products. I cannot isolate one. Do I show you 10 that show the reverse?

Senator WILLIAMS: Exceeded benchmarks—only two out of 36. Does that mean, in relation to the recommendations for those 36 products, only two have exceeded, pretty well, the benchmarks?

Mr Kelaher: They may not have been the company's products. They may have been a third-party external manager's. You then get into a debate about active managers and passive managers and exceeding benchmarks. There is always a look-back component to assessing investment management performance.

Senator WILLIAMS: Mr Gunning was boss of Commonwealth Financial Planning, and he went to work at Ord Minnett, correct?

Mr Kelaher: Yes.

Senator WILLIAMS: Have you known Mr Gunning for a long time?

Mr Kelaher: Since he has been running Ord Minnett.

Senator WILLIAMS: Did you offer him a job at Ord Minnett?

Mr Kelaher: I think he was offered by the chairman.

Senator WILLIAMS: Who was chairman at the time?

Mr Kelaher: Karl Morris.

Senator WILLIAMS: Thank you, Chair.

CHAIR: The head of Research has been given two first and final warnings. After he was given his first first-and-final warning, was he promoted two months later?

Mr Kelaher: No, he was not.

CHAIR: So when did Mr Hilton become head of Research?

Mr Kelaher: I think he became head of Research in 2007-08, from memory.

CHAIR: After that, he had his first first-and-final warning?

Mr Kelaher: Yes. That is my understanding of the sequence.

CHAIR: Then, at a later point, early last year he was given his second first-and-final warning. Is that correct?

Mr Kelaher: Yes, that is correct.

CHAIR: I am just getting my head around it. This is all very new to me—what a first and final warning necessarily is. Mr Kelaher, when did you first notify ASIC of these allegations and concerns?

Mr Kelaher: Which specific allegations—the Fairfax matter?

CHAIR: Not the Fairfax matters; we will go a bit earlier than that. Let's run through the series of events as I understand them, and I think we are in agreement on this. The whistleblower raised concerns from about April last year—and there is documentation to prove that—with their line item managers. You have given testimony that you are sure you became aware of these matters towards the end of the year and you may have been notified of these matters earlier. You cannot recall whether you were or not.

Mr Kelaher: Senator, may I ask you: you are saying whistleblower—you are inferring—

CHAIR: Or the employee.

Mr Kelaher: You are referring to the employee—

CHAIR: I am referring to the employee that you terminated about four weeks ago, yes.

Mr Kelaher: Okay.

CHAIR: We use the term 'whistleblower' for people who come to us with information about firms like yours.

Senator EDWARDS: Whistleblowers come to us about many firms, not just Mr Kelaher's.

CHAIR: That is true, but I am saying that is our definition of a whistleblower. That may be different from what your HR department uses—but that is fine. What we need to get to the bottom of—and we will over the proceedings of these hearings and I want to put on notice—is why the decisions by your management were not taken, if the allegations were so serious, to act on these, to have external consultants brought in until December this year. We will talk on a different point. Your evidence is that you are sure you became aware of the matter and that the point at which you can conclusively say you were aware of the matter you participated in bringing in external consultants. We will see that report. We will make our own assessment.

In terms of the other matters, my question is: was there any contact that you are aware of—again, I am not saying there wasn't contact you were unaware of; you can only speak to what you know—relating to these matters that were raised by this whistleblower from March or April last year when we have evidence they were first raised within the firm and to the matters becoming public in June. At what point was ASIC contacted during that period?

Mr Kelaher: We contacted ASIC after the allegations were aired.

CHAIR: So you contacted ASIC after 20 June?

Mr Kelaher: Yes—it would have been a Monday.

CHAIR: As you know, ASIC are going to be speaking after you, so obviously, we cannot pre-empt—they will be able to speak for themselves. What contact have you had with ASIC? Questions about what investigations ASIC is undertaking is a matter for ASIC. I am specifically asking you, Mr Kelaher: since that Monday—from memory it would be 23 June—from that point, what contact has the firm had with ASIC?

Mr Kelaher: We have had two conference calls with them covering these matters.

CHAIR: Has a team from ASIC come in to actually do the investigation inside your firm?

Mr Kelaher: No.

CHAIR: Have you received notice to produce documents?

Mr Kelaher: No.

CHAIR: What was the nature of the conference calls?

Mr Kelaher: To highlight that these issues had been raised and to invite them to make inquiry from us.

CHAIR: Have they taken you up on that offer yet?

Mr Kelaher: No, not yet; not that I am aware of.

CHAIR: We will be putting on notice—and I notice Mr Tanzer is already here—that we will be asking ASIC about their take on this and whether they have come to a conclusion about whether they will be conducting an investigation or not of these matters.

Senator EDWARDS: Have you got sharp increases in your insurance premiums for life insurance and TPDs coming up, Mr Kelaher?

Mr Kelaher: Yes, we do.

Senator EDWARDS: How much are those increases—do you know?

Mr Kelaher: I think they are double-digit rises, but we are not the insurer involved so we act for another insurer.

Senator EDWARDS: I raised it, because I have just got an email from a bloke—I will not mention his name: 'I'm a client of IOOF and recently I received a notification that the premium on my life and TPD insurance would go up by 85 per cent. The reason given was that IOOF clients have been making larger claims than expected, and so the insurer was putting through the increases.' Is that what you are facing—larger claims than expected?

Mr Kelaher: This is a matter for the insurers.

Senator EDWARDS: Yes, I am aware of that bit. They insure through you, do they?

Mr Kelaher: No. It is via us. We are the agent, if you wish, but the insurance company is another company so we are not part of the decision to raise the premium. You would be aware of the issues in the insurance industry across the board. It is not isolated just to this company.

Senator EDWARDS: Thanks, Chair: time has expired.

CHAIR: I think we are out of time. To summarise where we are at, because I want to put you on notice about where we will be heading: there is a series of other people within the firm who we will be keen to speak to. The committee will be making contact with them directly. We will be sorting appropriate dates for further hearings for them to come and present their evidence. The secretariat will be contacting you in the next day or so about getting a copy of the PwC report. I know you have taken a lot of things on notice; the more immediate question on notice from me is: what is the scope of the further inquiry that PwC will be conducting and will it be addressing all of the allegations that have been raised? If that is not the case, I would be putting to you that it may be an opportunity to expand the scope of whatever the PwC process would be to look at some of these other matters as well. The big question that will need to be answered is: when, if and how different matters have been raised with your firm and what steps and actions have been taken when those matters were raised. I think this is going to be a lengthy process and I think there are going to be several more hearings to get to the bottom of a lot of this.

I do want to thank you, Mr Kelaher, for making yourself available on short notice for this matter. I note that I did a little bit of my back-of-the-envelope research with the numbers. I think the number is not 10 per cent, Mr Kelaher. I think it is a 16 per cent drop in your share price since 20 June. Are you sure your evidence is that that does not concern you?

Mr Kelaher: I guess there is a challenge, when you are running a company, to run the company and not keep looking at the share price. So whilst I worry every day about it, when the market is running strongly and it is going up I do not pat myself on the back—I am not that foolish—and if the market is retreating because of something that occurs globally then I do not take it out on myself. But you have to try to avoid watching the share price simply and worry about running the company. That is where my focus is.

CHAIR: Let us not pussyfoot around this. A 16 per cent drop in the share price of your company since these allegations regarding your firm have been aired in public surely must be of concern to you.

Mr Kelaher: As I said, the market goes down and the market goes up. If you do not understand that—

CHAIR: Mr Kelaher, you do not see a relation—

Senator EDWARDS: Equally, this committee has a great responsibility to ensure that we prosecute or involve ourselves in this matter with regard to sensitivities, which you do every day. We are concerned about whistleblowers and their protections so we will equally be diligent in the way in which we handle this to ensure that a proper process is followed and not, indeed, a witch-hunt or a process where whistleblowers are treated badly. We enjoy a good reputation on this committee and we are going to ensure that we keep that. On that, we do have a transcript of the meeting between the whistleblower and Mr Urwin. I understand that if a meeting is recorded without the knowledge or consent of another party, then it is an illegal recording but nonetheless we do have a transcript of that. It is some 29 pages. I suspect it goes for about 90 minutes. But the truth is the truth, of course, and you never, ever have any problems with representing the truth. In the interests of fairness you should know that and that we have taken that into our evidence here today.

CHAIR: And Mr Kelaher, I know you may know this and your legal counsel may know this, but others who may be interested may not know this: regardless of how that evidence was obtained, once it is provided to us it is protected by parliamentary privilege. It is now a tabled document, in camera, of this committee, and the matters and content of it are now protected by the highest level of protection you can get, which is parliamentary privilege. Certainly I would say that with respect to the private conversation that Mr Urwin had with the whistleblower, the word 'explosive' is probably an understatement and it really does call into question your culture, your firm, how it conducts business and how it deals with whistleblowers. But that will be a matter for another day. Thank you, Mr Kelaher.

Mr Kelaher: Thank you.

TANZER, Mr Greg, Commissioner, Australian Securities and Investments Commission

YANCO, Mr Greg, Senior Executive Leader, Market and Participant Supervision, Australian Securities and Investments Commission

[12:46]

CHAIR: We will resume the Senate Economics References Committee's inquiry into the scrutiny of financial advice. I welcome representatives from the Australian Securities and Investments Commission, who are well known to this committee. Mr Tanzer and Mr Yanco, thank you for making yourselves available—and we appreciate you making yourselves available with short notice. I am very aware that the specifics of what we have been speaking about this morning relate to an ongoing matter that is being looked at by ASIC. I am also aware that that puts you in a difficult position, because providing information on an ongoing ASIC investigation is something you are very reticent to do. With that in mind, Mr Tanzer, I was wondering whether you would like to make any opening remarks or an opening statement. If not, we can get straight into questions.

Mr Tanzer: I am happy to be guided by you, Senator. I do have some information here which provides a bit of background on the group. It is publicly available information about the nature of the group. I can also confirm that ASIC is investigating the allegations that have been made here today and in Senator Williams's speech to the parliament and in the media. Over the past little while we have spoken to a person associated with the company who has provided us with an amount of information with respect to that and we have also spoken to the company. As you were discussing with the previous witness, we have spoken with the company and are seeking some further information from them.

CHAIR: I have correspondence here which is from around the same time the story was being broken in the media. The date I have for the correspondence is 17 June and I think the story was on the 20th. By the time that would have arrived, it would have been around the same time. So ASIC was made aware of these allegations on or around 20 June?

Mr Tanzer: It was around that time. We received a communication on 15 June.

CHAIR: You received the communication on 15 June?

Mr Tanzer: Yes.

CHAIR: From the whistleblower?

Mr Tanzer: I will not comment on that, Senator, but we received a communication from a person associated with the company around 15 June this year.

CHAIR: I just wanted to make the distinction, because there is a difference between whether you were contacted by a journalist for comment or by someone providing you information. So you are saying that you received communication from someone providing you with information on 15 June?

Mr Tanzer: Yes. We were contacted on 15 June.

CHAIR: Therefore the dates all kind of line up quite well—15, 17 and 20 June. So some time in the middle of June this information was brought to ASIC's attention?

Mr Tanzer: That is right.

CHAIR: Without going into the specifics of the case itself, once it was brought to your attention what steps were taken by ASIC?

Mr Tanzer: We have spoken to the person concerned and we have a much better picture of the range of the allegations that were raised. We have also analysed the media reports that were around. We have analysed Senator Williams's speech.

CHAIR: A fantastic speech—I will put that on the record.

Mr Tanzer: We had contact from the company, IOOF, on 22 June and have since spoken to the company, as you heard from the chief executive, and have gotten an understanding of what their views are of the various allegations, and have asked for further information. We are assessing that information as we speak.

CHAIR: Without talking about the specifics of this case, could you or Mr Yanco run through your triage processes. Putting aside this specific case, if I come to you with an allegation against a firm, you do not run with every allegation. You obviously make some kind of a preliminary assessment. What is that called?

Mr Tanzer: We receive in the order of 7,000 to 10,000 reports a year of potential misconduct. Of those, at any particular time we would probably have in the order of 200 active investigations. So you are quite right. For every report we receive we obviously consider it and record it in our systems. We look in our systems at whether

there is other intelligence that might affect our initial assessment of the matter, and then we make an initial assessment about whether there are further inquiries to be made or whether it is something that we just take as a piece of intelligence for future use.

CHAIR: The triage system is that there is an immediate question of whether there are further questions to answer. Is it called a preliminary investigation?

Mr Tanzer: A preliminary assessment.

CHAIR: Without putting you in an uncomfortable position, from the evidence you have given us about the general process, and what has happened in this case, is it fair to say that you have obviously moved beyond just taking it as information—and by making contact with the firm. Is it in the preliminary assessment phase?

Mr Tanzer: I would rather not go into all of the details of that, as I have said. I have confirmed that we are investigating the matters.

CHAIR: Going back to how the procedure works, without mentioning the firm's name, there is a preliminary assessment. Obviously you make your own inquiries to see whether or not there is a case to answer. So, hypothetically, someone could come to you with a series of allegations, and, prima facie they may look like they warrant further investigation. You would contact whoever is involved, if you feel you need to, and based on that you then make a decision about whether you proceed further. Is that the normal procedure?

Mr Tanzer: Yes.

CHAIR: Who makes that decision? The board, isn't it?

Mr Tanzer: There are, but in this particular case it is all part of the initial assessment and initial information gathering in order to—

CHAIR: Generally, once you get to the information gathering and you make a determination about whether or not this is a matter you will pursue, that is not done by you alone, Mr Tanzer, is it?

Mr Tanzer: No, what we have is that—particularly if we have decided to have it within our enforcement group, which is a specialist group that undertakes criminal, civil and other investigations—there is a referral committee to look at those types of matters and decide to take them on.

CHAIR: You have obviously been made aware of the allegations, Mr Tanzer. In the normal course of events, but also knowing you were coming here today, you will have sharpened knowledge, knowing that you would be asked specifics about this matter. I want to talk about what Mr Medcraft said at Senate estimates:

I would like to bring to the committee's attention some work ASIC is doing around the issue of culture—it is very front and centre these days. We are concerned about culture. Clearly, culture is a big driver of conduct in the financial industry. Frankly, it is a very sad fact that bad culture often leads to bad conduct. This inevitably can lead to poor outcomes for consumers. Given that there is a strong connection between poor culture and poor conduct, ASIC thinks culture is a major risk to investor trust and confidence, the cornerstone of our financial system, and to fair, orderly and transparent operation of our markets. Frankly, we know that if markets are to do their jobs to fund the real economy, economic growth and a standard of living then those two things must be cherished and preserved.

The allegations that we have heard today and the allegations that have been in the media over the past few weeks in relation to practices and conduct that have been going on at IOOF, in my opinion, certainly go to the heart of the culture of that organisation. Is there a correlation between these kinds of cultural issues within firms and the comments that have been made by Mr Medcraft?

Mr Tanzer: I wholeheartedly endorse the comments that Mr Medcraft made on the last occasion.

CHAIR: You made a similar fantastic speech, I may point out, a week earlier at a financial services conference—second only to the speech by Mr Edwards.

Mr Tanzer: I did, and in Hayman Island.

Senator EDWARDS: Second only to what?

CHAIR: Sorry, the speech by Senator Williams. In Hayman Island, of all places.

Senator EDWARDS: You can refer to my earlier comments and testimony about my reference to 'culture, culture, culture'.

Mr Tanzer: Yes. From our perspective, we think culture is critically important, and I do not think this is just us. A number of our counterparts in other countries are making a particular point about the importance of culture and, in particular, the importance of culture in identifying poor conduct and taking steps to redress it. Indeed, in both speeches we gave a number of examples which indicate that, where problems arise, a culture that does not seek to identify the problem and then does not seek to adequately address it may enable the problem to flourish. It

may enable the problem to become bigger. In the particular examples that we gave, the problem did become bigger, and it means that the entity, if it has a poor culture, often becomes defensive rather than appreciating the true gravamen of the impact of that type of conduct and culture on investors and consumers. We were making the point that where poor conduct leads to significant losses for investors, while markets can recover, quite frequently individual investors do not and do not have the capacity to.

CHAIR: The issue of culture seems to relate to two things: firstly, the issue of poor conduct and poor management techniques—improper activity—and, secondly, a failure to recognise improper activity and to deal with it once it has been brought to your attention. Is it fair to say that some of what you and Mr Medcraft have been saying is that these are dual issues that are related to one another?

Mr Tanzer: Yes, indeed. In fact, we have said that what we intend to do is to include in our risk based surveillance amenities indicators and assessments that go to this issue of both how well entities identify particular problems—perhaps by looking at what their record is with respect to customer complaints, whistleblower issues, more serious complaints and the like—and, more particularly, how those things are dealt with and remediated going forward, including the link between those types of issues and other incentives within the firm, such as remuneration practices.

CHAIR: Again, I am going to be careful, because I do not want to pin you to the specifics here, but what is a breach report? I know that and you know that, but do you want to explain for the record what a breach report is?

Mr Tanzer: Section 912D of the Corporations Act requires financial services licensees to lodge breach reports in particular circumstances. As we have mentioned to this committee before, one of the problems with section 912D is that the breach has to relate to a breach by the licensee, and that is writ large; it may well be a breach by a representative of the licensee that impinges on the licensee's performance of its duties. But it also has to be a material breach or a significant breach. We have also noted that currently the only penalty for a failure to breach-report is a criminal action, and the fine is 50 penalty units or up to one year's imprisonment, rather than the availability of other remedies, such as infringement notices or some sort of civil penalty action. But section 912D can be contrasted with, for example, other breach-reporting requirements that apply with respect to, for example, market integrity rules or under the credit legislation, where different thresholds apply.

CHAIR: Would you have information here with you—I do not know if you had the opportunity to do the research on this before appearing—on how many breach reports you had received from IOOF in the past however number of years that you may have information? Would you have any information on their breach reporting?

Mr Tanzer: I can take that on notice—I am happy to do that. Normally, the breach reports themselves are not public information, but I am happy to provide some analysis on what sorts of breach reports we have had and the broad areas that they go into.

CHAIR: The specific area that concerns me is this: is frontrunning something you normally receive a breach report for?

Mr Tanzer: It depends upon the circumstances of the frontrunning.

CHAIR: Would you explain frontrunning as you understand it.

Mr Tanzer: Frontrunning is not a term that is defined in the legislation, as I understand it, but, where it becomes actionable, it is a form of insider trading. Frontrunning at any time is very poor practice with respect to customers. There is no doubt about that, but whether or not it is actionable as insider trading depends on the definitions in 1043A and other provisions relating to insider trading. That is, basically, where you are trading in securities when you are in possession of inside information, and that is defined by reference to whether the information is not generally available and the information would have what could reasonably be expected to be a material impact on the price of the particular security that you are dealing with. There are some other provisions that deal with tipping and other matters like that. The issue with frontrunning, effectively, is where a person is trading in securities while in possession of information and in advance of that information becoming available more generally. Often where people talk about frontrunning, the information may be that you know that your client may be about to make a trade and you get in in advance of that trade to take advantage of the possible impact on the market of your client trading. Were it the case that—

CHAIR: Let's say I have a major client—I am using this as a hypothetical—who is about to buy X number of shares in company A and, on the day before, I buy shares in company A knowing that the price is likely to go up tomorrow.

Mr Tanzer: Where it becomes actionable is where the knowledge that you possessed, firstly, is not generally available but, secondly—

CHAIR: So it is just insider trading.

Mr Tanzer: would likely have a material impact on the share price. In the case that you are talking about, it becomes actionable as insider trading if the client order the next day would have a material impact. That said, more generally speaking, people understand frontrunning largely to involve any running in front of your client, and, whether or not it involves insider trading, it is poor behaviour.

Senator EDWARDS: Any way you look at it, frontrunning is quite the opposite to the culture that any company dealing in equities, IPOs or anything wants to have.

Mr Tanzer: It goes to the remarks that we were making around culture and the link to trust and confidence, which underpins the whole of the financial system. The financial system is built on trust and confidence. If investors understand that a person in whom they have reposed some trust—their broker, an adviser or someone else—is taking advantage of that trust, obviously it is going to destroy that trust, and it takes a long time to restore.

Senator WILLIAMS: On the frontrunning issue, are frontrunning and insider trading criminal offences?

Mr Tanzer: Insider trading is a criminal offence, and what I was trying to describe was that 'frontrunning' is not a term that you will find in the legislation, but where it is actionable it is a form of insider trading.

Senator WILLIAMS: Under the corporate law, if a company suspects insider trading or frontrunning—if it only suspects it—they should report it to ASIC. Is that correct?

Mr Tanzer: That would depend on whether it is a material breach of the licensee's obligations, and, as we mentioned before, we think that there are some technical legal difficulties with the breach-reporting provision. There is nothing to prevent companies reporting that sort of breach, and the legislation does not say you cannot report a breach unless you believe it is material, and for that reason we strongly encourage companies, where they come across information of that type, particularly if it is cogent information, to report it.

Senator WILLIAMS: If I am working for a company and I do something wrong and I get a first and final warning and a letter telling me to change behaviour or I can be dismissed instantly, that would be a very serious letter for me to receive, wouldn't it? It would be very serious to receive a letter saying it is the first and final warning and I can be sacked instantly if I do anything wrong.

Mr Tanzer: I expect so, if I were in the position of receiving that, yes.

Senator WILLIAMS: So, if I got a first and final warning that I would be sacked for what I have done if it is ever done again, wouldn't you think that would be a case that is strong enough to warrant a breach report to ASIC?

Mr Tanzer: Obviously it depends on the particular circumstances and whether it is material.

Senator WILLIAMS: The reason I put it to you is that we have wrongful dismissal these days. It is very serious if a company says to the employee: 'This is your first and final warning. You're gonna get the spear if you do this again,' because if you sack them wrongfully you face a Fair Work claim et cetera. Surely, if you are going to sack someone, that would be strong enough to warrant a breach report to ASIC.

Mr Tanzer: As I said, the provision itself has some legal difficulties to it. So, in the hypothetical, it is difficult to answer that question. We have seen too many problems in the industry that are internalised and dealt with without broader reporting to ASIC, and we strongly encourage companies to breach report, regardless of their particular view of whether it strictly meets the definition in the legislation.

Senator WILLIAMS: The wording in this email says: 'Please be aware that failure to improve and maintain adequate improvement in the above areas may result in immediate termination of your employment.' They are very strong words, aren't they?

Mr Tanzer: Yes, they are.

Senator EDWARDS: Just on this point of when things come to your attention—and I will use an example which was provided in evidence earlier today with IOOF—IOOF conducted their own external audit of practice within their group. Would you normally expect to get a copy of that or is it not required? If you got KPMG or Ernst and Young or, in this case, PwC—any of those—if you were investigating something that you wanted to clear your company of, would you also, just as a matter of course, hand it on to the chairman or one of the commissioners of ASIC?

Mr Tanzer: We would not routinely expect it. It quite frequently happens, and where it happens we are at pains to point out that when we receive breach reports it is very important intelligence for us and it may well be something then that we need to take action on. So we very much welcome those reports. But whether or not it

happens as a matter of legal requirement really does come down to the terms of the legislation and the particular case.

Senator EDWARDS: Do you think that the disincentive is that the report, or the fact that you are conducting a report at all, may be market sensitive? Should we, therefore, think about a requirement that any internal investigations that are done by outside audits on behaviour automatically have to be tabled with you for review?

Mr Tanzer: I think, in terms of disincentives, the obvious disincentive is a fear of what action ASIC might take with respect to that, which is not necessarily a very good disincentive from a public policy perspective.

Senator EDWARDS: That is exactly what I am talking about.

Mr Tanzer: But there may be that type of fear, which is why we are often at pains to point out that we do not necessarily take action with respect to every breach report or, indeed, every report of misconduct that we get, but we certainly assess them all and we analyse them all to determine whether or not there is extra information that we need or any particular action that we take.

But the point around this breach reporting, I think, is that when the legislation was set it was very clearly part of an overall legislative regime that said, 'The primary responsibility for the conduct of representatives and staff is with the licensee itself, and the licensee should take steps to have adequate controls in place but also when they come across defalcations to see whether there are other issues with their staff.' The breach report—and under the scheme there is a cost involved in that—is really to draw significant matters to ASIC's attention.

What we have seen in more recent times, particularly where breach reports have not come to ASIC, is that there is a concern that the company is actually trying to hide something behind that. But a company may well have thought that what it had dealt with was a relatively minor breach. Even if it had gone and got an external report, it might have done that for the extra insurance that comes with that. But what we are saying now is much better and, from ASIC's point of view, we very much welcome people coming to us with breach reports in exactly these types of circumstances.

Senator WILLIAMS: Mr Tanzer, I want to bring you to one point of your regulations—*Regulatory guide* 238. It says:

This document gives guidance on the obligations for market participants of the ASX market ... to notify ASIC of suspicious trading activity.

Mr Tanzer: Yes.

Senator WILLIAMS: 'Suspicious'?

Mr Tanzer: Yes.

Senator WILLIAMS: This is the point I raised with IOOF. There were suspicions of insider trading and frontrunning but no notification to ASIC. Under *Regulatory guide* 238, surely that is a breach when the information we have had given to us on these things and all the trades et cetera—we have 58 documents now, as the chair has talked about today—is that IOOF has not reported suspicious activity to you? Surely that is a breach under that guide?

CHAIR: Mr Yanco is busting to answer this.

Mr Tanzer: Just before I pass to Mr Yanco, I mentioned section 912D as the core breach reporting obligation for licensees. I also mentioned in respect of market integrity rules and credit legislation that there are different thresholds that apply. The required suspicious transactions reporting relates to one of these areas where different considerations apply.

Mr Yanco: The first important point is that market integrity rule only applies to market participants. IOOF itself is not a market participant, so that rule does not apply to it. Although, for some securities dealers, we would certainly like those rules to apply more broadly. They apply to Ord Minnett, for instance, which is a market participant. It is a slightly lower threshold where you just suspect that there may have been a breach of the market manipulation law or the insider trading law. So there are only two areas covered and it only relates to a market participant. But those are very important reports because about 60-odd per cent of them end up being turned into a formal investigation. But in this case, as Greg said, there is a different standard and it only applies to market participants.

Senator WILLIAMS: Imagine I am a researcher in a big company. Tomorrow I am going to make a recommendation to buy a particular stock and today I get my wife to buy \$50,000 worth of that stock. If my boss finds out that I have directed my wife to buy those shares—in fact, I have even set it up so that I will buy the shares from my wife—are you telling me that under RG 238 my boss is not obliged to report this as suspicious to ASIC?

Mr Tanzer: We are getting into issues that are very close to—

Senator WILLIAMS: Because I am not a market participant—

Mr Tanzer: We are getting very close to a set of facts or allegations on particular issues that we are looking at right at the moment. So I would rather not go into the details or answer questions of that nature, for the obvious reason.

Senator WILLIAMS: Bridges is a market participant?

Mr Tanzer: Yes.

Mr Yanco: But this rule has only—

Senator WILLIAMS: This is the point I want you to have a good look at.

Mr Yanco: This rule has only been in for about 18 months or two years.

Senator EDWARDS: I look back at the previous hearings we have had with other people. It has been an inglorious set of hearings on this standard of financial advice. I take your chairman's comments into account and his championing of those—it is about the culture of companies. Does it seem that, over the period of the global financial crisis and the incredible desperation of people to find solutions to what were, at the time, insurmountable problems, we saw a break-out of culture or a lack of good culture, after—it was like a perfect storm—an credible period of consolidation or acquisition by many of the participants in these hearings, where four, five or six different companies were acquired by one entity, companies which had different operating cultures, and the management found it very difficult to wrangle or lasso a culture for one? Is it me who is just seeing that this was a period when it was almost the wild west in desperation and now we are seeing it cleaned up and we are just not getting the same reporting on the same issues because the market has settled down and there is not this incredible tumultuous period?

Mr Tanzer: That is really good question. It is difficult to give a direct answer, but let me try. You raise the point about, where acquisitions occur, the potential problems which arise out of clashes of culture, causing problems in the future.

Senator WILLIAMS: Or poor integration.

Mr Tanzer: Or poor integration, definitely. We have certainly seen cases where there is rapid expansion of groups and there are difficulties integrating people, integrating processes in particular and integrating culture as a whole. We have also seen some cases where it has been quite useful because the problem which may have been left unaddressed because the due diligence process or because of a normal diligent approach by the new management becomes uncovered. There are occasionally cases of that nature. We have been very clear with respect to system issues. I know that one of the allegations raised in the media was about pricing errors and those types of things. We have been very clear with respect to those types of errors but we expect those problems will come up in future as people upgrade their systems and deal with legacy products and changes in legislation, particularly in tax laws, that will uncover more of those. We have published and have released media statements about BT, about Macquarie and about NAB over the last couple of years which with respect to those types of things. Our message is that, where we see those systems errors, we understand they will arise but we want them identified and we want them rectified going forward. Then there is a very difficult issue of whether the amalgamation actually means that the entity outgrows its capacity to maintain what may be its core values or its core business and that is a constant problem. It is definitely one of the risk factors that we take into account when we are considering our surveillances and targeting of our surveillances.

Senator WILLIAMS: With the inquiry you are doing of IOOF, will you please pay attention to one issue for me? I believe IOOF gave compensation to a client. When you are going to write a client a cheque, you would think you had done something seriously wrong, but I do not believe the planner in this case even had a breach report, do you? So I want you to pay particular attention to the fact that compensation was paid out to a client but no breach report was put forward to ASIC—okay?

Mr Tanzer: Yes, Senator.

CHAIR: I want to be clear here. I want to check whether what you said is right. Bridges is a market participant, correct?

Mr Yanco: Yes.

CHAIR: The next thing I am going to say is a matter of fact. Peter Hilton, the head of research, worked at Bridges, and the reports are stamped 'Bridges'—both matters of fact which you do not need to comment on. If someone was accused of front-running in December, then the 18-month rule would not apply. Is it about when the matter was brought to your attention? Explain to me the 18-month thing.

Mr Yanco: I do not know the exact date that the suspicious transaction rule came in. It was sometime, I think, in 2013. This rule requires market participants to report when they suspect a client or someone else is guilty of insider trading or market manipulation. If that has occurred since then and it was drawn to their attention, that rule would, on the face of it, require them to report that to ASIC as a suspicious transaction.

CHAIR: Wow. Okay.

Senator WILLIAMS: What is the punishment if they don't?

Mr Yanco: I am not sure of the particular fine for that rule. I think it is towards the maximum end of the fine area, which is \$1 million.

CHAIR: On the issue of frontrunners, if something was brought to my attention sometime in the last year after the implementation of this new requirement—we will confirm that date—I as a licence holder have an obligation to report that to ASIC. Is that correct?

Mr Yanco: That is right. There is a test.

CHAIR: What is the test?

Mr Yanco: I do not know the words exactly, but, effectively, it is if you suspect that there may have been a potential breach involving insider trading or market manipulation. So, you do not have to do a big investigation; you just need to suspect, have some grounds to suggest, that there has been a breach.

CHAIR: This is alarming and I think this is quite serious, Mr Yanco. What is the threshold for 'having a suspicion'? If I go out and hire a group of consultants to look at a matter, then that is me having a suspicion. You cannot comment on that? You are giving me this look, Mr Yanco, a 'why are you asking me this' look!

Mr Tanzer: It gets to that difficult area, as we have talked about. We are trying to strike a balance here between trying to help the inquiry and—

CHAIR: You have parliamentary privilege. You can say what you want. We'll protect you, Mr Tanzer! We're with you. We're on your side.

Mr Tanzer: I am not at all worried about the particular—

Senator EDWARDS: It's a very good career Mr Tanzer has had!

Mr Tanzer: I am more worried about the efficacy of the investigation process.

CHAIR: Okay. Putting aside any specifics—and we are not going to mention a company called IOOF; they do not exist anymore—

Senator EDWARDS: They do exist but they are not—

CHAIR: Well, they exist. They are—

Senator EDWARDS: [inaudible] to your question.

CHAIR: just 16 per cent smaller in their share price than they were before all this. But we will put that aside. Mr Yanco, as is already on the public record, I said I would track down when this new rule came into effect. You are saying you believe it was sometime in 2013?

Mr Yanco: Yes.

CHAIR: That is understandable. Explain to me exactly what that rule changed. If I believed frontrunning, which is a form of insider trading—

Senator EDWARDS: It can be.

CHAIR: or it can be. If I have serious concerns that there is insider trading, I have an obligation to report that to ASIC, and that did not used to be the case prior to this new rule coming in. Is that correct?

Mr Yanco: That is right, but one would expect that the person who was considering that information would also look at the materiality. We would expect them to consider whether there was a material impact on the price and the other elements. If it was what we termed 'frontrunning', where someone traded before an order that was not really a significant order, then the person who has this obligation may not form that suspicion, based on it not being material.

CHAIR: Okay. Is it a reasonable person test? What is the test?

Mr Yanco: It is a market integrity rule. We will take that on notice.

Mr Tanzer: I suspect it is a reasonable person test.

CHAIR: Mr Tanzer is saying he suspects it is a reasonable person test. Okay. The rule came into effect—one of our team just looked this up—in August 2013. That sounds right to you, Mr Yanco?

Mr Yanco: Yes. That seems right.

CHAIR: So, if this was occurring in 2014, the question is whether or not they believed it was warranted. I would make the assertion, which you probably cannot comment on, that the act of hiring external consultants is a demonstration of the view that it was, but we will put that aside. Mr Tanzer, could you briefly explain to me the powers of ASIC? It is all right; we are going to be here for another day.

Mr Tanzer: We could be, Senator!

Senator EDWARDS: And we will pay you by the hour!

CHAIR: Mr Tanzer, you have the power to compel the production of documents; is that correct?

Mr Tanzer: Yes.

CHAIR: You have the power to compel testimony?

Mr Tanzer: Yes.

CHAIR: You have the power to move beyond client-attorney privilege; is that correct?

Mr Tanzer: We can ask questions in a section 19 examination and, where a claim of legal professional privilege is made, we can still compel the answer but subject to legal professional privilege. With respect to documents, where claims of legal professional privilege are made, I will go back and check that. I would prefer to take that on notice.

CHAIR: In terms of actions that ASIC can take, is it correct that you have the power to remove directors?

Mr Tanzer: Under an administrative proceeding, we can ban directors from being involved in companies under certain circumstances. There are other actions that we can take, civil penalty actions, where we can see a court order either banning a person from financial services or acting as a director. For certain criminal offences, serious criminal offences, a person is automatically disqualified from acting as a director for a period.

CHAIR: In terms of your powers as they relate to enforceable undertakings, do you have the power, as part of an enforceable agreement, to call for the removal of management? I understand your powers that relate to boards of directors, but in terms of the actual management of a firm, are they powers that you have under enforceable undertakings?

Mr Tanzer: As we have mentioned to the committee before, our powers with respect to banning and other actions are somewhat constrained in terms of management of companies or people who are not in directorship positions. With respect to enforceable undertakings, our general approach is that, unless we were prepared to bring a civil action and the particular orders that we might be seeking through a civil action, we do not generally entertain an enforceable undertaking unless we thought that there was a reasonable case that was worth bringing. I will take on notice the specific question about whether we can under an enforceable undertaking impose a requirement that a particular member of management not engage in management or that part of management anymore.

CHAIR: The bit I am trying to reconcile here is that there are two fundamental kinds of principles. On one hand you have this issue of cultural challenges within a firm—and you have spoken about it today—and that is this issue that there are firms out there with a cultural problem and that infects everything. I think you speak of it, Mr Tanzer, like it is a cancer—that, when you have a cultural problem, it affects how they deal with whistleblowers and how they treat their customers and it becomes a whole-of-company problem. On the other hand are the powers you do and do not have in terms of actually changing the management structure of a firm to ensure that the cultural challenges are addressed. This must not be a new problem for ASIC. There have been circumstances where you have looked at a company and said that there may not be a problem with the underlying product of a firm or the product that it is producing but there are serious management problems. So you are saying, Mr Tanzer, that ASIC does have the power at the directorship level, if they think there are serious breaches, to ban and remove directors, but that if ASIC choose not to exercise that there are other powers available to ASIC through enforceable undertakings?

Mr Tanzer: The powers that we have kick in where there is a contravention of the law. The point that we have been making on culture is twofold. One is that we obviously have our part to play in respect of contraventions of the law. We obviously have that part to play, and we do play that part. I can point you to 200 investigations last year, I can point you to 30 criminals sent to jail, I can point you to 60 people removed from financial services and about the same number as directors in the last year alone. We have our role to play, and we have had discussions within this committee about potential enhancements to the licensing regime, to the banning regime and so on. But what is really important here with this issue of culture is that there is a lot of this behaviour that is not actually a contravention of the law but it dreadfully affects trust and confidence of customers. Where it

does that, any responsible company will be very, very concerned. The reason we are talking about this so much is that we quite often hear that there are problems in the industry with bad apples. There are problems in the industry with bad apples but it is not just because of bad apples. There is a problem with the culture that enables a bad apple to arise, enables a bad apple to continue to operate and enables a bad apple to end up in a management or supervisory position where their type of culture is modelled for other people and maybe even rewarded through the remuneration policies or whatever of the company. This can be well short of a core compliance problem; it can be just very poor behaviour or very poor customer orientation.

CHAIR: This specific investigation into IOOF—you have said on the record that you are looking at this matter. Obviously having only received the material a fortnight ago it is in its preliminary stages, which is reasonable. How long do these types of investigations normally take?

Mr Tanzer: We will obviously be working on this quite hard. It is very difficult for us to set a particular time frame because it depends where those inquiries lead us. So I am sorry but I cannot give a direct answer to your question.

CHAIR: I just want to know when we can call you back; that is why.

Senator EDWARDS: He is just trying to work out the committee's timetable.

Mr Tanzer: I am happy to come back next month or the month after that.

Senator WILLIAMS: Mr Tanzer, ASIC has the power to remove an Australian financial services licence from a company.

Mr Tanzer: Yes.

Senator WILLIAMS: Have you ever done it?

Mr Tanzer: Yes.

Senator WILLIAMS: Was that for something very—

Mr Tanzer: I will take on notice the particular occasion but I can think of one. It involved offering a licence hearing, obviously, but I can think of one occasion when that happened.

Senator WILLIAMS: If you ban a financial services licence—

Mr Tanzer: There are also a whole series of other occasions where we have cancelled people's licences—

CHAIR: Individuals but not—

Senator WILLIAMS: If you banned the financial services licence of a big company, does that just take it out tomorrow from doing its business?

Mr Tanzer: If the licence—

Senator WILLIAMS: They cannot operate without a licence, of course.

Mr Tanzer: No, they cannot, unless they are acting under somebody else's licence—transfer their business to somebody else. We have had cases where, for example, we have suspended a licence for a period and that entity has either transferred its business to someone else for the length of that period or—we normally then provide notice so that the entity can deal with clients in an appropriate way so that they are not left out.

CHAIR: That is a power ASIC has, and you make that determination—cancellation of licence—based on what?

Mr Tanzer: It is the legislation that goes to the bases on which we can cancel or suspend a licence. There are a range of grounds in the legislation. One of them is that we are satisfied that the licensee does not have the capacity to perform its duties efficiently, honestly and fairly, that it does not have the financial—

CHAIR: If you feel that a licensee is incapable of performing its duty—could you just say that again?

Mr Tanzer: It is not that we feel; it is if we are satisfied that the licensee does not operate efficiently or is not able to discharge their responsibilities efficiently, honestly and fairly. It goes back to the core obligations for a licensee in 912A, which include—

CHAIR: I know that Senator Williams has brought your attention to something, but I note that sometimes when you cancel someone's Australian financial services licence they may work elsewhere—for example, a Mr David Griffiths, whose licence you cancelled and who IOOF then employed a month later. But that is a matter that I am sure you will come across in your inquiries.

Mr Tanzer: It depends on what action ASIC has taken. If we have taken a banning action then they cannot participate in financial services. If we have removed a licence and they go and act as an authorised rep of another licensee, as I said, the legislation places primary responsibility on the licensee.

Senator WILLIAMS: We have had a concern through these whole hearings with ASIC and financial planners et cetera about two issues. One is financial planners being dismissed, sacked by companies, and starting up down the road. You are looking at that very issue, I imagine.

Mr Tanzer: Absolutely. We have a current wealth management project that is looking at a range of different things within financial advice businesses, particularly in the major institutions, and this is one of the issues we are looking at.

Senator WILLIAMS: Secondly, the register of planners: I have raised this point before; planners have gone and put their own history on, to get the 19,000 or so up there.

Mr Tanzer: Yes.

Senator WILLIAMS: Surely if they get serious breach reports they get punished, they get dismissed. Can ASIC put that information on its website now? Can they put the bad news on as well?

Mr Tanzer: Where we have taken action against a person, yes, that is public information and it is on the website now. There is no register of—

Senator WILLIAMS: On that individual's history website?

Mr Tanzer: No. There is a register of banned and disqualified persons which contains all of that information. The financial adviser register itself has specific information that is required to be placed on it. The issue you raised, which is about disciplinary activity or other sorts of issues, is I understand being considered as a potential enhancement for the system.

Senator WILLIAMS: The register is about the history of financial planners, not only to show you where they were educated and their qualifications et cetera but whether they have any black marks from ASIC. Surely that is a transparent way of displaying to the public the history of that particular plan that they might be considering doing business with?

Mr Tanzer: As I said, with respect to banned and disqualified persons, we certainly do have a public register of all of that information. But I will check for you whether or not there is an ability to provide that sort of link.

CHAIR: Thank you both. Again, I cannot thank ASIC enough for how forthcoming and helpful you have been in the process of this latest round of inquiries. This now concludes this latest hearing of the inquiry. There will be further hearings of this inquiry in coming weeks related to this and other matters.

Committee adjourned at 13:37