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From: s 22 <Jerome.Davidson@TREASURY.GOV.AU>
Sent: Tuesday, 30 May 2017 10:51 AM
To: Commissioner
Cc: 'olsc@justice.nsw.gov.au'; s 22
Subject: Letter from ASIC Enforcement Review Taskforce re Phillip Sweeney
[SEC=UNCLASSIFIED]
Attachments: AColvin300517.pdf
Categories: Printed

Please see letter attached.

Regards

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Principal Adviser (a/g)
Financial System Division
The Treasury
Level 5, 100 Market Street
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s 22

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30 May, 2017

Andrew Colvin APM OAM

Commissioner, Australian Federal Police

By email: commissioner@afp.gov.au

cc. ^{s 22} Legal Services Commissioner for NSW, by email: olsc@justice.nsw.gov.au

Dear Sir

PHILLIP SWEENEY AND THE ASIC ENFORCEMENT REVIEW TASKFORCE

The Treasury provides the secretariat for the ASIC Enforcement Review Taskforce (the Taskforce). The Taskforce was established in October 2016 under terms of reference that allow for a targeted examination of the adequacy of ASIC's enforcement regime to deter misconduct and foster consumer confidence in the financial system.

The Taskforce is chaired by Kate Mills of Treasury and includes representatives of ASIC, the Attorney-General's Department, and the Office of the Commonwealth Director of Public Prosecutions. The Taskforce is assisted by an Expert Group whose members are: Mr Gerard Brody, CEO, Consumer Action Law Centre; Mr Stuart Clark, Consultant, Clayton Utz; Mr Ross Freeman, Partner, Minter Ellison; Professor Pamela Hanrahan, University of New South Wales; Professor Dimity Kingsford Smith, University of New South Wales; and Professor Ian Ramsay, University of Melbourne.

Since early May this year, Mr Phillip Sweeney has been corresponding with members of the Taskforce, and has recently supplied copies of letters from him addressed to you and to Mr John McKenzie, Legal Services Commissioner for NSW (dated 19 May and 20 May respectively). In these letters, Mr Sweeney asserts that Stuart Clark, a member of the Taskforce's Expert Group, is under a 'disclosure obligation' by reason of section 316 of the *Crimes Act 1900* (NSW). Mr Sweeney has also asserted that similar obligations apply to other members and the Chair of the Taskforce, by reason of section 316 or other general obligations.

These disclosure obligations arise, according to Mr Sweeney, due to the fact that he has, by email, provided information to members of the Taskforce that discloses 'a major fraud'.

This is to advise that the Treasury is of the view that no such obligations arise, either on the Taskforce or its members, for the following reasons:

- The Taskforce has twice written to Mr Sweeney, noting that it has been established to provide recommendations on Government policy relating to ASIC's enforcement powers, and *not* to perform an investigative or enforcement role.
- Treasury has confirmed, including by discussion with the Australian Federal Police hosted Fraud and Anti-Corruption Centre, that the material referred to by Mr Sweeney, and his substantive allegations, have already been made known to APRA, ASIC, and the Australian Federal Police, and have been

thoroughly evaluated by the latter, so that no question of 'concealment' of the alleged offences arises. Mr Sweeney also apparently publishes information relevant to these matters, including correspondence to and from various Government agencies, see:
https://www.righttoknow.org.au/user/phillip_sweeney.

- It appears that Mr Sweeney may be seeking to use section 316 of the Crimes Act or similar provisions as a means to compel complaints to authorities by individuals who would not be privy to the relevant information but for him supplying it to them – an odd purpose for which to seek to use such provisions in circumstances where he has disclosed no reason why he cannot make complaints to authorities on his own behalf, and indeed has already done so.
- Treasury notes that Mr Sweeney has made similar assertions regarding disclosure obligations to members of APRA; and that, in the course of pursuing material associated with his allegations of major fraud he has been declared to be a vexatious applicant under section 89K(1) of the *Freedom of Information Act 1982*, on the grounds that his conduct involved an abuse of process because it:
 - involved harassment of at least one ASIC employee; and
 - unreasonably interfered with the operations of ASIC and APRA.¹

Given the above, the Taskforce and its members do not intend to make any of the 'disclosures' or take any other action sought by Mr Sweeney in relation to these matters, or to engage in further correspondence with him on this subject. Nevertheless, should you wish to examine the information provided by Mr Sweeney, the Taskforce will be happy to supply it.

Yours sincerely

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Acting Chair – ASIC Enforcement Review Taskforce

¹ Sweeney and Australian Information Commissioner and Australian Securities and Investments Commission Sweeney and Australian Information Commissioner and Australian Prudential Regulation Authority [2014] AATA 531; 4 August 2014; [2014] AATA 539; 6 August 2014.