



**ASIC**  
Australian Securities &  
Investments Commission

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|-------------------------|---------------------------------------------------------------------------------------------|
| <b>Committee</b>        | Senate Economics References Committee                                                       |
| <b>Inquiry</b>          | Inquiry into Australian Securities and Investments Commission investigation and enforcement |
| <b>Question No.</b>     | 42                                                                                          |
| <b>Topic</b>            | Blue Sky                                                                                    |
| <b>Reference</b>        | Written, 22 August 2023                                                                     |
| <b>Committee member</b> | Senator Bragg                                                                               |

## Question

1. Why did ASIC drop any potential regulatory action against Blue Sky? Please explain the process of decision making in the answer.

## Answer

We undertook inquiries into a number of concerns relating to Blue Sky Alternative Investments Limited (**Blue Sky**). Our inquiries did not identify sufficient basis for ASIC to take regulatory action against Blue Sky.

We were concerned about allegations made in a report by US entity Glaucus published on 28 March 2018. The report alleged that Blue Sky had significantly overstated the value of its fee-earning assets under management (**FEAUM**), that Blue Sky had overstated the returns on many of its investments, and that the fees charged to its clients were excessive. From our review of documents obtained during the inquiries, we found that Blue Sky had obtained independent valuations in relation to its assets and had disclosed to the market how it calculated its FEAUM in its Replacement Prospectus and in subsequent ASX announcements, including an investor presentation published on 5 March 2018. The fees it charged were directly correlated to the value of its FEAUM.

We were also concerned about whether Blue Sky may have breached its continuous disclosure obligations in relation to:

- (a) a series of ASX announcements (following the Glaucus report) in which Blue Sky downgraded the value of its FEAUM and net profit after tax (NPAT); and
- (b) a series of ASX announcements regarding Blue Sky failing to meet covenants under a loan facility with its lender, Oaktree Capital Partners, L.P.

Our inquiries included reviewing documents provided to the directors of Blue Sky before the announcements and the minutes of board meetings. These inquiries did not identify a basis to allege any breaches of Blue Sky's continuous disclosure obligations. We found that the announcements were made sufficiently timely after the information became available to the company.

We were also concerned about whether Blue Sky may have provided false or misleading information to the market by overstating the returns of its Dynamic Macro Fund (**DMF**) in the financial year 2008. While there were evidentiary challenges given the age of the conduct by 2019 when we undertook our enquiries, we found that the reported performance of DMF, given its trading strategy, was reasonable and that the fund's net asset value had been independently verified in 2008. We were also able to partially verify the profits generated from DMF's futures trading for financial year 2008 against futures broker statements that we were able to obtain from third parties.

We also considered whether regulatory action was warranted against a subsidiary of Blue Sky, Blue Sky Private Equity Limited (**BSPE**), for over-recovery of fees from its funds between 2010 and 2016 which was self-reported by BSPE to ASIC in 2019. BSPE had fully remediated affected clients and had updated its compliance procedures. Together with the age of the matter when it came to the attention

of ASIC following BSPE's self-report, we did not consider that it was in the public interest to take regulatory action against BSPE in relation to this aspect.

**Question**

2. What process was undertaken to ensure directors adhered to their legal obligations and that all disclosure requirements were met?

**Answer**

See response to Question 1. As we did not identify sufficient basis to allege breaches against Blue Sky, there was similarly insufficient basis to allege breaches of obligations by the directors of Blue Sky.

**Question**

3. Is ASIC confident that Blue Sky met its obligations under the Corporations Act with particular reference to market disclosures?

**Answer**

See response to Question 1.