



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 47

Public comment

Chapter 1 — Introductory and general topics

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Previous versions: Superseded Policy Statement 47B [SPS 47B] (superseded 3/5/2005) and Superseded Policy Statement 47 [SPS 47A] (superseded 6/9/2000) in the ASIC Digest on CD-ROM.

From 5 July 2007, this document may be referred to as Regulatory Guide 47 (RG 47) or Policy Statement 47 (PS 47). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 47.1) or their policy statement number (e.g. PS 47.1).

What this guide is about

RG 47.1 This guide sets out:

A when we will comment publicly on investigations and enforcement actions

see RG 47.2–RG 47.14

B who are our authorised spokespersons

see RG 47.15

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A When we will comment publicly

Our policy

RG 47.2 In general, we will neither confirm nor deny the existence of an investigation unless it is in the public interest to make a statement.

RG 47.3 We will normally only comment on action we are taking against an individual when the enforcement action has begun, ie:

- (a) charges have been laid (that is, no earlier than the time of arrest, or of the first court appearance on the charges commenced by summons); or
- (b) the civil or administrative proceeding has begun.

We may comment before the first court appearance where the accused is outside Australia with no reasonable prospect of imminent return at the time charges are laid.

RG 47.4 Generally, we will not comment on whether a matter has passed to the control of the Director of Public Prosecutions (DPP) at the handover date without prior consultation with the DPP.

RG 47.5 Where an investigation has concluded and enforcement action has not yet commenced, in cases of significant public interest where comment must be made, we will normally say that an investigation has been concluded and that the appropriate enforcement action (if any) is being considered.

Media releases

RG 47.6 We will generally issue a media release when:

- (a) charges are laid;
- (b) significant civil actions and administrative actions which involve public hearings commence; and
- (c) we refer a case to the Takeovers Panel.

RG 47.7 We will not publicise matters which are the subject of private hearings, such as Companies Auditors and Liquidators Disciplinary Board (CALDB) references, when they commence.

RG 47.8 Where we have publicised the laying of charges, we will publicise the outcome, including withdrawal of charges, acquittal

or successful prosecution. If a matter is appealed, we will ordinarily publicise the outcome of the appeal.

RG 47.9 In the same way, where we are a party to civil litigation, we will issue a media release on the outcome of that litigation.

RG 47.10 We will generally issue a media release on the outcome of administrative proceedings, including merits review by the Administrative Appeals Tribunal. In these cases, the media release will include the name of the person against whom the proceeding was taken and the nature of any penalty imposed.

RG 47.11 We will not settle any civil proceeding or enter into an enforceable undertaking under s93A and 93AA of the *Australian Securities and Investments Commission Act 2001* on the basis that the terms of settlement or parties will be confidential: see Superseded Policy Statement 69 *Enforceable undertakings* [SPS 69]. In general, we will publicly announce the terms of settlement and the fact and nature of the enforceable undertaking: see [SPS 69.26]–[SPS 69.30], in particular [SPS 69.29].

Underlying principles

RG 47.12 As the corporate regulator, we are responsible for maintaining the integrity of Australia's capital markets.

RG 47.13 We are accountable to Parliament and the public for our investigations and the enforcement actions arising from our investigations.

RG 47.14 By publicising details of our enforcement actions, we inform:

- (a) the public of what we are doing about people who break the law; and
- (b) industry about the standards we expect and the consequences of failing to meet these standards.

B Who are our authorised spokespersons

Our policy

RG 47.15 Our authorised spokespersons for investigations and enforcement actions are:

<i>Circumstance</i>	<i>ASIC spokesperson</i>
All matters	Members of the Commission Director, Public Affairs ASIC Media Unit
Matters relevant to their responsibilities	Executive Directors Deputy Executive Directors Directors Chief Accountant Other officers authorised by the Commission through the Office of Public Affairs
Matters relevant to their region	Regional Commissioners

Key terms

RG 47.16 In this policy statement, a reference to:

“enforcement actions” includes prosecutions, civil actions and administrative actions.

Related information

RG 47.17

Headnotes

Section 93A, 93AA, investigations, enforcement actions, enforceable undertakings, administrative proceedings, civil litigation, Takeovers Panel, Companies Auditors and Liquidators Disciplinary Board, Administrative Appeals Tribunal, authorised spokespersons, prosecutions, when we will comment publicly, when we will issue media releases

Practice notes

Superseded Practice Note 69 *Enforceable undertakings* [SPN 69]

Legislation

s93A, 93AA of the *Australian Securities and Investments Commission Act 2001*