

Trio Fraud Manual

Victims of Financial Fraud (VOFF Inc) January 2018

VOFF's response to ASIC's failures concerning the disappearance of superannuation and investment savings from the Australian financial system

ASIC say there are no unresolved issues around the Trio Capital Limited fraud. VOFF strongly disagree.

ASIC's website states that its role is,
'.... an independent Commonwealth Government body. We are set up under and administer the Australian Securities and Investments Commission Act 2001 (ASIC Act), and we carry out most of our work under the Corporations Act 2001 (Corporations Act).

VOFF allege that in regards to the largest superannuation fraud in Australian history, ASIC was directed by the office of Minister of Superannuation, Bill Shorten to prosecute the financial advisor that had recommended Trio products to the Australian Workers Union 'slush fund'. Little attention was paid to the international architects of the Trio fraud while much attention was placed on Enforceable Undertakings.

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Thank you VOFF Inc members,

- Jenny Butler and
- Andrew Grey

For reviewing, editing and guidance in writing this document.

Also thank you to my neighbour for offering a layperson perspective.

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Abbreviations and key definitions

ACC	Australian Crime Commission
AFP	Australian Federal Police
AFSL	Australian Financial Services Licence
APRA	Australian Prudential Regulation Authority
ASF	Astarra Strategic Fund
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
CNMV	Comisión Nacional del Mercado de Valores (Spain)
FBI	Federal Bureau of Investigation
FINOP	Financial and Operations Principals
FINRA	Financial Industry Regulatory Authority
FMA	Financial Market Authority
FMA NZ	Financial Markets Authority (New Zealand)
FOI	Freedom of Information
FOIA	Freedom of Information Act (United States)
FOI Act	Freedom of Information Act 1984
GCSL	Global Consultants and Services Limited
IOSCO	International Organisation of Securities Commissions
PJC report	The Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital May 2012
NASD	National Association of Securities Dealers
OAIC	Office Australian Information Commissioner
PI	Professional Indemnity
PDS	Product Disclosure Statement
RE	Responsible Entity
SEC	Securities and Exchange Commission (US)
SFC	Hong Kong Securities and Futures Commission
SIS Act	Superannuation Industry (Supervision) Act 1993
SMSF	Self-managed superannuation fund
Trio	Trio Capital Limited
VOFF	Victims of Financial Fraud
WGAM	Wright Global Asset Management
WGI	Wright Global Investments Pty Ltd

Reference to some of the people mentioned in this document. Expanded reference at end of this document see pages 111 to 118.

Names are in Alphabetical order.

Bell, Frank Richard managed Trio's underlying Exploration Fund.

Cormann, Mathias MP sat on some Trio hearing and became familiar with some of Trio's issues.

Flader, Jack W. Jr. American citizen and Attorney, lives in Asia.

Fletcher, Paul MP on PJC Committee and battled for ARP Growth victims.

Frazer, Timothy Steven Accountant responsible for Trio's audits.

Garling, Peter Justice of the Supreme Court of NSW who saw the case against Shawn Richard.

Hart, Steven Irvine accountant embroiled in tax fraud against the Commonwealth.

Littauer, Matthew Nguyen Founder of the Trio scheme.

Medcraft, Greg former Chairman of ASIC.

Meerveld, Carl associate of Flader, based in Hong Kong. Managed the Exploration Fund.

Millhouse, David director of Trio. Part of the Trio acquisition.

O'Neill, Deborah MP Chair of the PJC Inquiry.

Phillpott, Rex former assistant commissioner at the Australian Taxation Office. A director of Trio.

Provini, Charles chief executive of Paradigm Global and US asset consultant for Trio.

Revell-Read, Jeffrey Australian-born broker with association with Trio characters.

Richard, Shawn Darrell Canadian and principal director of Trio who deceived everyone.

Shorten, Bill Minister for Financial Services & Superannuation.

Sutherland, James Campbell Scottish accountant. Contributed to the purchase of Trio.

Tarrant, Ross financial advisor who was made into a scapegoat.

Unicomb, Glen forensic investigation for ASIC.

Villavert, Florissa legal compliance officer for Trio.

Trio Fraud – a brief summary.

Ordinary Australians doing what the government suggested, saving for their retirement, invested into the conservative Trio Capital Limited (Trio) products –regulated and licenced by ASIC and APRA. But the financial regulators, the auditor, the Custodians, the Research Houses and the Star-rating firms failed to identify that Trio had set up a fraudulent scheme in the Australian financial system. Total failure of the system is testimony to a systemic failure.

From 2010 to 2012 the Minister of Superannuation and Financial Services, Mr Shorten and ASIC deflected attention away from the crime by politicizing the Trio matter.

In 2017 two important pieces of evidence saw the light of day.

1) In February 2017 VOFF learnt that an overseas Trio operator in 2010 had offered to help ASIC in their investigations, but ASIC refused his help. In 2011 ASIC withheld that information from the trial of the Trio perpetrator, Shawn Richard. This raises the question as to whether ASIC's involvement with Trio was an interference with the criminal investigation and an obstruction of justice?

2) October 27th 2017 VOFF learnt that Mr Shorten's office had issued a directive to ASIC to bring down Mr Tarrant. Mr Tarrant was the financial advisor who had recommended Trio to the AWU Officers Election Fund. The AWU fund became exposed to the Trio fraud.

Mr Shorten as Minister of Superannuation did not disclose his history with the AWU, or that the AWU fund was exposed to the Trio fraud, although he was in charge of the Trio investigations.

Mr Shorten's politicizing the Trio matter is perceived as a form of tampering with a crime. He pointed to "poor financial advice"; suggested SMSFs were "swimming outside the flags"; said that APRA-regulated funds lost money for 'no fault of their own' but the SMSFs and direct investors placed their savings into 'troubled funds' and are therefore responsible for their own losses. ASIC and Mr Shorten ignored the Trio crime or bothered to carry out a proper investigation.

Did ASIC and Mr Shorten bring down 1 financial planner out of 155 as retribution?

1.1 Introduction

The PJC Report points out that,

*'nearly 6,090 Australians invested in Trio and lost their money. 5,400 of those Australians had their money invested in Trio through APRA-regulated superannuation funds. Of the remaining 690 Trio Capital investors, 415 were direct investors, and around 285 investors were in self managed superannuation funds (SMSFs).'*¹

The PJC added,

'the APRA-regulated funds that invested in these schemes received full compensation under the provisions of the Superannuation Industry (Supervision) Act 1993 (SIS Act).'... *'The SIS Act excludes SMSFs from financial assistance where certain superannuation entities have suffered loss as a result of fraudulent conduct or theft.'*²

Victims of Financial Fraud's (VOFF Inc) are pursuing justice over the Trio Capital Limited (Trio) scheme, a trust fund, discovered in September 2009 to have operated fraudulently over its operational life (2004 to 2009). Trio was not just any fraud. It changed the Australian financial system landscape.

The Trio fraud was often cited with collapsed companies such as Westpoint and Storm Financial. There is no evidence that a thorough forensic investigation was ever carried out into the Trio fraud. It remains unknown why ASIC never questioned the directors that operated Trio's overseas funds where \$70 to \$80m Australian dollars disappeared.

ASIC say there are no unresolved issues surrounding Trio. VOFF disagree.

In 2016 new information came to VOFF's attention from Guernsey.³ ASIC withheld evidence from the court hearing before Justice Garling in the NSW Supreme Court in 2011.⁴ ASIC also withheld information from the PJC Inquiry - 2011 to May 2012.

Australians are denied an accurate acknowledgment of the weaknesses in the financial system. In respect to the Trio fraud, 8% of the Trio victims were blamed and 2 financial advisors out of 155.

In Australia, crime against the Commonwealth is handled differently compared with a crime against ordinary citizens – see VOFF Press Release dated 21.05.17.⁵

¹ Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital May 2012 page

² PJC Report May 2012 page 151.

³ VOFF Press Release Sept 25 2017

<http://www.mysuperrights.info/resources/VOFF%20Press%20Release%20Sept%2025%202017.pdf>

<http://tinyurl.com/yb5l88yp>

⁴ Regina v Shawn Darrell Richard [2011] NSWSC 866

⁵ <http://www.mysuperrights.info/media-release-p3.php>

For example, the Australian Federal Police (AFP) carried out a thorough investigation into the alleged \$165m tax fraud and produced detailed diagrams with the explanation about what happened. On the other hand, ASIC's so-called investigation of Trio has no diagrams, no information or evidence about how the Trio money disappeared and nothing about the money trail.

During the last three years, VOFF lodged complaints to the Commonwealth Ombudsman, the Attorney General Office and the Independent Commission Against Corruption (ICAC) about Mr Shorten and ASIC's handling of the Trio fraud. The following correspondence examples highlight VOFF's frustration.

On January 14th 2014 Michael Smith & Bob Kernohan on 2GB radio discussed Mr Shorten's ties with the Australian Workers' Union slush Fund and how Mr Kernohan approached Mr Shorten over the AWU slush fund fraud, but was told its best to forget about it.⁶ VOFF became concerned that Mr Shorten's handling of the fraud in the AWU might be repeated in Trio. VOFF wrote to the Commonwealth Ombudsman, letter dated January 28th 2014 of our concerns.

On February 4th 2014 Waleria Siuta, Senior Investigation Officer said, *'The office of the Commonwealth Ombudsman's investigates complaints about the administrative actions of Australian Government agencies (that is 'Federal' or 'Commonwealth' Government agencies).'Please note that our office is unable to investigate the actions and decisions of Ministers or Members of Parliament. Complaints about legislation are best directed at the relevant Federal Minister or your local Member of Parliament. It is our office's role to investigate complaints about the administrative actions of Australian Government agencies, rather than the legislation that guides the actions of the agency.'*

On February 10th 2014, Waleria Siuta provided Section 5 (2) of the Ombudsman Act 1976, showing the reasons why the Ombudsman Office will not investigate our complaint.

On November 20th 2014 VOFF informed the ICAC of a meeting between 2 VOFF Executive members with the Executive Director of the Association of Independently Owned Financial Planners (AIOFP) at the Radisson Hotel Sydney. VOFF learnt at the meeting of Mr Shorten's demand for \$3,000 in cash in a paper bag. The issue of Michael Smith & Bob Kernohan on 2GB radio⁷ (January 14th 2014) talking about how Mr Shorten ignored the Australian Workers' Union slush fund.

On July 3rd 2015, JD Heydon, Commissioner, said, *'I regret that it is not possible for the Royal Commission to investigate Mr Shorten's conduct in this respect. Mr Shorten ceased to be a trade union official in 2007. His behaviour as Minister for Superannuation in 2012 is outside the commission's Terms of Reference.'*

On April 27th 2015 VOFF informed ICAC about potential corruption in superannuation and ASIC's failure to do anything. The example VOFF provided was how in 2007 Austcorp Group redeemed \$30

⁶ <http://tinyurl.com/y7d3jxlg>

⁷ Anthony Klan 'Cleavevent staff lost \$400m under deal by Bill Shorten's AWU' July 8, 2015
<http://tinyurl.com/hwqmqae>

million for its 700 investors. Then in 2009, the Meat Industry Employees' Superannuation Fund lost \$30 million it invested into Austcorp. VOFF's letter provided a link to a 15-minute audio from VOX FM Radio that raised the concern.

On May 1st 2015 Linda Madgwick, Senior Assessment Officer said, *'that the Commission's role is to investigate and expose corrupt conduct in the NSW public sector, as defined in the Independent Commission Against Corruption Act 1988'. 'unfortunately, as the concerns you have raised do not involve a NSW public authority or NSW public official, we are not able to pursue it'.*

On March 24th 2016 a complaint about some of the weaknesses of the financial system was sent to Gabrielle Upton MP, at the Attorney General's Office. On April 20th 2016 The Attorney General's Office said, *'Unfortunately, the Attorney General is unable to assist in superannuation matters.'... 'It may also be appropriate for you to be guided by independent legal advice regarding any other options that may be available to you. I attach a factsheet on sources of legal assistance that may be of assistance to you'.*

On April 1st 2016 Kelly O'Dwyer MP, said in a media statement, *"The Government considered the action taken by the financial regulators, ASIC and APRA, and is satisfied that in relation to the collapse of Trio, both regulators carried out their roles and responsibilities appropriately, in accordance with the law and the regulatory framework."*⁸

Ms O'Dwyer did not provide any evidence to back up her statement.

On October 23rd 2017 VOFF informed the Commonwealth Ombudsman that ASIC withheld important information about the Trio fraud from the NSW Supreme Court (NSWSC). On October 25th 2017 Ellisha Hill, Acting Director from The Commonwealth Ombudsman's Office said, *'We cannot intervene in court matters. If you believe ASIC did not provide relevant information to the court, that would be a matter for the court and the parties involved in the dispute. I can only suggest you seek your own legal advice or make further contact with Members of Parliament.'*

Because ASIC failed to provide evidence to the NSWSC that may have added to the understanding of the crime, did this deny the Trio victims, honest and fair treatment?

It was a 2010 letter that led VOFF to discover that ASIC withheld information from the NSWSC. The letter by the Guernsey Financial Services Commission (GFSC) concerned correspondence between Mr Carl Meerveld and ASIC. Mr Meerveld, was based in Hong Kong when he operated the Trio underlying fund. About 2008 he became a resident in Guernsey and applied to become a Deputy in 2016. Citizens in Guernsey found out about the connection between Mr Meerveld and the Trio fraud in Australia. This caused concern and in 2016 Mr Meerveld presented his GFSC letter, like a clean bill of health, to prove that he tried to offer ASIC his help in 2010 but ASIC wasn't interested. Mr Meerveld became the St

⁸ Government decision on financial assistance relating to the collapse of Trio Capital
<http://kmo.ministers.treasury.gov.au/media-release/032-2016/>

Sampson's Deputy. VOFF received a copy of the GFSC letter in early 2017.

In addition to Mr Meerveld's willingness to assist ASIC, Mr Meerveld's Hong Kong work colleague, Jack Flader, in March 2010, provided the Sydney Morning Herald with information about Trio to set the public records straight.

Two of the key overseas Trio operators from the largest superannuation theft in Australia's history, offered their assistance to Australia in respect to an investigation into the missing money and ASIC showed no interest. Furthermore, ASIC failed to inform the Parliamentary Joint Committee that were assigned to investigate the fraud and ASIC failed to inform the NSW Supreme Court about Mr Flader and Mr Meerveld's willingness to assist in the Trio investigation.

In August 2011 at the NSWSC trial of the Trio perpetrator, (one year after Mr Meerveld offered to assist ASIC) the court noted that Mr Richard had assisted ASIC by providing information that saved ASIC from, *'significant time and resources seeking to gather independent admissible evidence, including evidence from uncooperative witnesses from numerous overseas jurisdictions'*.⁹

ASIC's omissions disadvantaged the Trio victims.

ASIC's failing to inform the NSWSC about the two cooperative witnesses from overseas jurisdictions who did indeed offer assistance, left the court in a position where it possibly overvalued the significance of Mr Richard's assistance to ASIC. The court rewarded Mr Richard's pleas of guilty, with a discount of 25% off his sentence with an additional 12.5% discount allowed for the utilitarian value of the pleas of guilty.¹⁰

1.2 FAILURE ASIC ignored the crime.

VOFF allege ASIC failed to acknowledge the Trio fraud or the serious nature of this crime.

In the 1940s sociologist Edwin Sutherland noted that the treatment of white-collar criminals by a biased criminal justice system, favoured the executive class over the common citizen. White-collar criminals belong to the 'respectable class,' and their crime was considered to be a victimless crime activity and consequently was 'not ordinarily called crime'.¹¹

ASIC have not alleged any wrongdoing by the international Trio operators. ASIC continue to protect the confidentiality of company documents long after the companies had closed and the operators had long since disappeared.

⁹ Regina v Shawn Darrell Richard [2011] NSWSC 866 (12 August 2011) before Garling J.

¹⁰ *ibid*.

¹¹ Fletcher, Dr Robin, White-collar, Blue-collar and Collarless crime, Department of Criminology and Sociology, Middlesex University. p4. Ref. Sutherland E. H. (1940) White Collar Criminality, American Sociological Review, Vol. 5, No. 1 (Feb., 1940), pp. 1-12

At the NSW Supreme Court trial of the Trio offender in August 2011, Justice Garling expressed his concern over the absence of victims,

68. *The material tendered by the Crown did not establish the identity of any of the victims of the offences of Mr Richard. Obviously, it can be said that those who invested in one or other of the superannuation funds of the Trio Capital Group who were promoted and run by Mr Richard were victims. However, no individual detail of the personal circumstances of those investors is provided.*

Further on Justice Garling adds,

74. *The terms of the financial assistance grant announced by the Commonwealth Government means that, if there are individual investors or else self-managed superannuation funds who are victims of Mr Richard's conduct, they will be required to bear the losses themselves.*

75. *However, I am quite uncertain as to the detail of any of these victims who are not to be compensated by the Commonwealth Government and find myself unable on the present state of the evidence to make any specific finding about the personal circumstances of any victim of the offence.*¹²

The Trio victims were not informed about the court hearing or told they had Rights under the 'Victims Rights Act' to submit a 'Victims Impact Statement' to the court. Justice Garling could not have known that the Minister for Superannuation, Mr Shorten made discrediting comments against the Trio victims, like suggesting they were swimming outside the flags.

Justice Garling could not have know that the absence of Trio victims from his court was because ASIC's perception of the Trio fraud victims was from the 1940s era - when white-collar crime was regarded as a victimless crime.

It took ASIC six months from first being notified that the Astarra Strategic Fund (ASF) might be a potential Ponzi, until ASIC acknowledged that the missing assets were indeed missing. From this early period it appears ASIC compromised any proper investigation into the international crime by focussing on local issues. ASIC's correspondence with the Australian Federal Police (AFP), obtained under the Freedom of Information, dated June 21st 2012, states,

"Trio was a funds management group based in Albury, NSW and provided a complex suite of managed investment funds which were heavily marketed through several financial advisors in Australia. These financial planners earned fees and commissions based on investments into Trio funds...It is alleged that financial advisers provided recommendations to clients due to high

¹² Regina v Shawn Darrell Richard [2011] NSWSC 866 (12 August 2011) before Garling J.

*commissions which were paid by Trio It is further alleged that the complex structure of the Trio scheme was designed to conceal fraudulent activity.*¹³

ASIC make no mention of the overseas Trio operators who had previously been in trouble before the courts in the United States over financial matters. ASIC already knew about two Trio operators based in Hong Kong as ASIC had travelled to their Hong Kong offices in 2002 to secure 100,000 documents that were used as evidence in a fraud against the Commonwealth matter. Why would ASIC keep such important information out of reach of the AFP? The AFP document also noted that 'the material provided by ASIC does not provide sufficient information to support an investigation into any *Criminal Code Act 1995* offences...'

The Company and Securities Law Journal, a publication that is recognised as the leading commentary and analysis of Australian, International Corporate and Securities Law and the relevant regulatory regimes published an article by Watson BJ in 1990, could well have been describing the 2009 Trio fraud. The article notes,

*"These collapses have been accompanied by allegations of fraud and mismanagement by company directors, of improper movement of funds between associated companies and entities and financially disadvantageous transactions outside the contemplation of shareholders."*¹⁴

Similar types of fraudulent schemes can be found in the literature about white-collar crime, suggesting that criminologists, law enforcement and financial regulatory authorities knew about fraudulent schemes. However, VOFF cannot find any evidence of warnings prior to September 2009 informing the Australian public about international crime gangs who could exploit weaknesses in the financial system. There were no warnings about the weaknesses in the Australian financial system due to limitations of ASIC's licencing and APRA's governance. Also, no warning that Part 23 of the SIS Act, compensates APRA-supervised funds only. Perhaps the public were not given the facts about such crime because,

*"Law enforcement and regulatory authorities are, at best, reticent, possibly fearing that any untoward revelations would trigger a loss of confidence in the investment industry generally".*¹⁵

¹³ VOFF FOI No 373 to the AFP July 28 2015 17 pages and 2 pages

<http://www.mysuperrights.info/resources/CRM2016-45%20Documents.pdf>

<http://www.mysuperrights.info/resources/Schedule%20-%20Released%20Documents%20-%20CRM2016-45.pdf>

¹⁴ Arie Freiberg Confiscating the Proceeds of White-Collar Crime. Ref. Watson BJ 1990 Corporate Collapses: Time to Reintroduce the Ultra Vires Rule? Companies and Securities Law Journal, vol. 8, p. 240.

¹⁵ Arie Freiberg Superannuation Crime No. 56 Australian Institute Of Criminology June 1996 page 2.

The Trio fraudsters, by exploiting weaknesses in the poorly regulated Australian financial market were able to redirect Australian investors savings to their chosen locations. ASIC have failed to show how and why the funds disappeared. As of writing this document there is no evidence to show that transparency has improved for consumers to see whether the weaknesses have been fixed.

ASIC rely on self-reporting to notify them as soon as the financial market become aware of any breach.¹⁶ The United States Financial Industry Regulatory Authority, Inc. (FINRA) use a proactive approach claiming its, “technology is powerful enough to look across markets and detect potential fraud.”¹⁷

The PJC questioned why Trio, one of the largest financial frauds in Australian history, was not more thoroughly investigated by agencies such as the Australian Federal Police (AFP), and the Australian Crime Commission (ACC).¹⁸ ASIC sought limited involvement from the AFP¹⁹ and the ACC informed the PJC inquiry that it did not conduct any specific investigations into the Trio case.²⁰

ASIC’s submission to the Parliamentary Joint Committee Inquiry into the ‘collapse’ of Trio, illustrates that ASIC is giving nothing away about the Trio crime. Its 123-page submission does not mention the words: ‘predatory fraudsters’; ‘international gang’; ‘Ponzi’; ‘White-collar crime’; or even the word ‘crime’.

ASIC’s avoidance of comment regarding financial fraud in general has continued for the last 15 years. In that time ASIC has not recognised the problem of international predatory fraudsters, or the collaboration of organised gangs operating sophisticated fraudulent schemes that exploit weaknesses in the financial markets. International law enforcement agencies and criminologists have recognised the problems of predatory fraudsters and sophisticated schemes for thirty years, why have ASIC failed to do so?

Clearly, Trio demonstrates the urgent need for ASIC to address this.

On the one hand, ASIC demonstrated that it knows very little about ‘financial fraud’ particularly the sophisticated organised crimes carried out by international predatory fraudsters. However, ASIC accepts that a minister with no background training in criminology or forensic accountancy is able to make a decision about a sophisticated organised crime.

¹⁶ ASIC Market Supervision Update Issue 51 October 2014

<http://asic.gov.au/about-asic/corporate-publications/newsletters/asic-market-supervision-update/asic-market-supervision-update-previous-issues/asic-market-supervision-update-issue-51/>

¹⁷ <https://www.finra.org/about>

¹⁸ The Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital May 2012 pp xx & 84. (PJC Report).

¹⁹ PJC Report page 142 Ref. *Commander Peter Sykora, Manager of Crime Operations, Australian Federal Police, Committee Hansard, 4 April 2012, p. 25.*

²⁰ PJC Report page 143

The decision about whether criminal activity has occurred in superannuation funds is left up to the minister of superannuation, who has the authority to grant compensation to the APRA-supervised funds in the event of fraud,

*"It is up to the Minister's discretion whether or not to grant financial assistance and the amount of that assistance. This means that a court, tribunal or other dispute resolution body does not have to find that there was fraud or theft; rather, the Minister must be convinced in their own mind that fraud or theft did in fact occur."*²¹

Mr Shorten, the then Minister for Superannuation had the ultimate say about whether there was fraud in Trio. A decision that Mr Shorten made based on the ACT Super Report that has remained confidential, restricted and not publicly available. Even through the FOI process the Trio victims are not permitted to see the report. The \$5 million ACT Super report went into APRA's hands, APRA accepted the document and the minister accepted the document. The document confirms 'fraud', opening the way for Mr Shorten to grant compensation under part 23 of the Superannuation Industry (Supervision) Act 1993 (SIS Act). Although the report fulfilled its function, the information remains highly sensitive. Uncompensated investors in the same fund that lost their savings to the same fraud are denied access to see what the report had to say about their losses.

APRA appears to have ignored the Trio crime by its²² and ASIC's lack of action due to limitations in international jurisdictions as acknowledged during a 2013 Parliamentary Joint Committee Statutory Oversight,

*"Fraudulent activity where money is siphoned to other jurisdictions is an international problem. The committee is of the view that Mr Medcraft's new position as head of the international corporate regulator provides an opportunity to negotiate measures that would close the loopholes in international fraud detection and response."*²³

How could ASIC have ignored the weaknesses that limited its regulatory powers when, it, at the same time licensed operations to conduct business in ASIC's blind spots? What actions have ASIC taken to progress international co-operation in these matters?

Kumar Lagnesh's thesis about Trio notes that the 'investment scheme that the Astarra Strategic Fund (ASF) used to deceptively transfer investment funds into overseas tax havens and defraud investors'. Lagnesh adds that 'The fraudulent conduct of ASF provides significant insight into the disregard of operational risks within managed investment schemes and potentially the broader funds management industry in Australia. Trio Capital was licensed as

²¹ ASIC Submission PJC Inquiry into the collapse of Trio Capital Limited Sept 2011 page 50 Ref Treasury, Review into Part 23 of the Superannuation Industry (Supervision) Act 1993, Review Paper, 3 June 2003, p. 5

²² Stuart Washington Uproar as ASIC clears man behind Trio scam June 6, 2012

<http://www.smh.com.au/business/uproar-as-asic-clears-man-behind-trio-scam-20120605-1zude.html>

²³ Parliamentary Joint Committee on Corporations and Financial Services, Statutory Oversight of the Australian Securities and Investments Commission, Number 2, May 2013. page 47

*a superannuation fund trust and the responsible entity of various managed investment schemes with complex structures incorporated in Australia and linked to tax havens in various jurisdictions...*²⁴ ref & ref.

Since the Trio scheme in September 2009 was reported as being potentially a Ponzi scheme, ASIC did not interview the overseas Trio operators. ASIC entered into arrangements with the perpetrator of the Trio fraud, Shawn Richard but the public were denied any evidence of what arrangements were made. ASIC's interactions with Trio and its entities is not publicly available. As of January 24th 2018 VOFF have submitted 258 FOIs to ASIS of which 38 of the FOIs received some form of documentation.

VOFF released the following 9 Press Releases in 2017. They cover some of the unresolved issues that have arisen from the Trio crime. Because the crime in Australia was ignored, unresolved issues appeared on the other side of the world. Now residents of Guernsey are concerned about what might unfold over one of the Trio directors living in their midst. VOFF suggest that if the Trio crime had been approached professionally from the start, there would be no need for the press releases urging disclosure of vital information sought by citizens and Trio victims.

May 21 2017-Double standards in fraud investigation.

June 1 2017-Close book on Trio & Mr Meerveld.

July 9 2017 Open Letter to Australian & Guernsey.

July 16 2017-Unavoidable fraud.

Sept 17 2017-AML_CTF Laws.

Sept 25 2017-Farewell Greg Medcraft.

November 5 2017-Mr Medcraft's warning.

20.11.2017-Open letter to ASIC's new Chairman, James Shipton.

27.11.2017 Open letter to Financial Authorities & Law Enforcement in Guernsey.²⁵

²⁴ Lagnesh, K. 2013 op cit. page iii ref. Trio Capital Limited (Admin App) v ACT Superannuation Management Pty Ltd & Ors [2010] NSWSC 941, at [3] and [5]. and ref. Goonetilleke, T. (2011), "Obligations and Liabilities of the Key Players in Managed Investment Schemes: Contentious Questions Arising from Trio Capital", Company and Securities Law Journal, vol.29(7), pp.419-438 p.421

²⁵ <http://www.mysuperrights.info/press-release-2017.php>

1.3 FAILURE No evidence of a forensic investigation.

The Australian Securities and Investments Commission (ASIC) describes Trio Capital Limited (Trio) as a super fund trustee that operated five super funds worth \$300 million, with 10,000 investors and invested the superfund money it was entrusted into 17 active managed investment schemes (MISs). Trio operated as responsible entity and its MIS schemes were available to 700 non-super fund investors with assets of about \$126 million.²⁶

ASIC said in September 2009, it already had been carrying out a pro-active surveillance into hedge funds since mid 2009 and a Trio fund was on its list.²⁷ Suspecting something was wrong, on October 2nd 2009, ASIC commenced an investigation to check the legitimacy of Trio's investments, focussing on Trio's conduct between 2005 and 2009. It appears ASIC and APRA relied solely on "self-reporting" during this period, despite routine audits showing alarming reporting discrepancies.

During December 2009, the Australian Prudential Regulation Authority (APRA) appointed an acting trustee to Trio's superannuation funds, ASIC suspended the Australian Financial Services Licence held by Trio²⁸ and ASIC's Media Centre announced on December 7th 2010 that the perpetrator of the Trio fraud, *'pleaded guilty to two charges of dishonest conduct in the course of carrying on a financial services business and admitted a third charge of making false statements in relation to financial products.'*²⁹

No one explained whether Trio's assets were retrievable. It took 6 months before ASIC confirmed that Trio's assets are not verifiable. In 2011 ASIC noted, *'the liquidator of Trio Capital has been unable to recover the vast majority of the investments made by the Astarra Strategic Fund'*.³⁰ ASIC said, *'Most of its assets were directed into what were called hedge funds, located in the Caribbean. There is little, if any, credible evidence that the purported investments were actually made, or if they were, that they have any realisable value. Most of the assets invested were subsequently lost.'*³¹

ASIC's account is vague and makes suppositions about what may or may not have happened to the missing money. ASIC's account clearly shows that a proper forensic investigation into the Trio fraud was not carried out.

Levitt Robinson in a submission into the performance of ASIC in 2013 encapsulate what has occurred to VOFF in the Trio fraud matter,

²⁶ ASIC Media Centre 10-261AD 7 December 2010

²⁷ ASIC Media Centre 12-116MR 5 June 2012

²⁸ ASIC Media Centre 09-261MR 17 December 2009

²⁹ ASIC Media Centre 10-261AD 7 December 2010

³⁰ ASIC Media Centre 11-133MR 4 July 2011

³¹ Trio and Astarra May 28, 2015

<http://asic.gov.au/about-asic/media-centre/key-matters/trio-and-astarra/>

*'Too often, ASIC perceives its role as being to impose information lockdown in order to achieve damage control or containment, so as to minimise the exposure to public scrutiny of the inner workings of important financial institutions, as if, by approaching its remit in this way, it is somehow protecting the financial system.'*³²

VOFF have tried persistently to access information held by ASIC such as ASIC's Appendix 4. ASIC refer to Appendix 4 in their submission to the Parliamentary Joint Committee Inquiry into the collapse of Trio Capital Limited, September 2011. ASIC write,

*'Confidential Appendix 4 sets out ASIC's interactions with Trio over the relevant period and the status of its ongoing investigations. Appendix 4 is provided to the PJC on a confidential basis because disclosure of the information set out in this appendix may prejudice our ongoing investigations in relation to Trio. When our inquiries and investigations are complete, we will review the appendix to assess the extent to which it can be made public.'*³³

Appendix 4 is a prime example of what the public cannot find out about ASIC's actions/inactions in what it does to keep Australian superannuation safe. The lack of transparency in what ASIC do or don't do is not an example of democracy at work. ASIC and APRA refuse to disclose their interaction with Trio directors and Trio's entities.

VOFF's brief history in attempting to access Appendix 4 through Freedom of Information started in 2014.

1. FOI number 143 Feb 9th 2014. VOFF request the Appendix 4 document after ASIC had terminated its investigation of the Trio mastermind and therefore could no longer refuse on the basis that their investigation was continuing.

April 2nd 2014, ASIC refused under section 46 of the FOI Act.

2. FOI number 236 August 26th 2014. VOFF request from ASIC 'Spreadsheet & Appendix 4'. ASIC provide a list of documents (55 items) but all were refused under section 37(1) 37(2)(b) 45, 47E and 47F while two items, (Timeline of Appointment of Directors) were released. ASIC did not acknowledge the Appendix 4 part of the request.³⁴

3. FOI number 368 July 26th 2015. VOFF request information about the experts and resources assigned to the forensic investigation of Trio.

August 28th 2015, ASIC said no such document exists.

4. FOI number 391 September 15th 2015. VOFF sought from ASIC Appendix 4 in view that the Assistant Treasurer, Josh Frydenberg MP, met with Victims of Financial Fraud, ASIC, APRA and Treasury at the

³² Levitt Robinsonon Submission on the Performance of the Australian Securities Investment Commission 29 October 2013 page 4.

³³ ASIC's submission to the PJC Inquiry, Sept. 2011 page 11.

³⁴ <http://www.mysuperrights.info/resources/20141124%20-%20FOI%20236%20-%20letter.pdf>

Commonwealth Parliament Offices, 1 Bligh Street, Sydney, September 3rd 2015. At the meeting ASIC confirmed it had finished its investigations into Trio.

November 23rd 2015, ASIC refused under s46 of the FOI Act.

5. FOI number 393 September 16th 2015. VOFF sought ASIC's review of its interactions with Trio and its associated entities. The review is mentioned on page 11 in ASIC's submission dated September 2011 to the PJC Inquiry into the collapse of Trio Capital Limited.

November 24th 2015, ASIC refused under section 46 of the FOI Act adding that ASIC found that the document requested is the Appendix 4.

6. FOI number 431 April 7th 2016. VOFF sought from ASIC Appendix 4 in view that ASIC has completed its investigations and as of March 2016 had *'more than 11 people have either been jailed, banned from providing financial services, disqualified from managing companies or have agreed to remove themselves from the financial services industry for a total of more than 50 years.'*³⁵ The government announced on April 1st 2016 that no compensation would be given to groups of self-directed investors and SMSF trustees concerning Trio Capital. Jack Flader, the American lawyer based in Hong Kong was also cleared of any wrongdoing in the way he handled investor's money.

May 6th 2016, ASIC refused under section 46 of the FOI Act.

ASIC's Appendix 4 remains covered up despite ASIC claiming, *'We will not agree to keep regulatory outcomes secret. This is important for regulatory transparency and effective deterrence'*.³⁶

Appendix 4 would illustrate to consumers just what ASIC does in the event of a large fraud such as Trio infiltrating the Australian financial market. Denying consumers information about the loss of their savings, help keeps secret the fraudster's method of carrying out the crime. Australians are compelled into superannuation, refusing to reveal the details of what happens if superannuation or investment savings are exposed to fraud, is questionable and raises concerns about bullying tactics by vested interests in the financial market. Citizens can be led like sheep to the slaughter. Secrecy around major frauds is problematic. For instance, ASIC have X-employees now with liquidator and insolvency firms that profit from belly-up companies. Secrecy about the loss of citizen's savings is potentially inviting corruption.

In South Africa, President Jacob Zuma used a law from apartheid times to keep information secret. The law defined an area as a 'national key point' and national key points are protected sites of 'national

³⁵ ASIC's media release on a 2016 update of Trio and Astarra 23/03/2016
<https://asic.gov.au/about-asic/media-centre/key-matters/trio-and-astarra>

³⁶ Information Sheet 152 (INFO 152), 1 Sept. 2017.

<http://asic.gov.au/about-asic/asic-investigations-and-enforcement/public-comment-on-asics-regulatory-activities/>

security'. President Zuma defined his own home 'Nkandla' under the law and no one had any right to information about the public money he spent on his home because it was a 'national security' protected matter. In 2016 the South African Court found President Zuma breached constitution over home upgrades and ordered him to repay money for lavish home improvements.³⁷

President Jacob Zuma's exorbitant spending of public money on his own home in South Africa and kept secret under 'national security' legislation is an example of closed and/or dysfunctional systems and/or bad governance that can lead to 'corruption'.³⁸

Governments see the value in having accountability and transparency in decision-making but in regards of ASIC and APRA's interactions with Trio and its entities, information remains secret. ASIC and APRA have several levels of legislation to prevent information from becoming publicly available. APRA refuse information under Section 56 of the APRA Act, ASIC seldom use section 127 of ASIC Act because both regulators have ample sections under the Freedom of Information Act, where they can refuse by citing for example, section 33, 37, s38 and s46 of the FOI Act.

Charles Hugh Smith notes that when there is a lack of transparency, the damage done by financial predators and parasites is unlikely to be recognised or measured. Financial predators optimize private gain because there are no powerful vested interests in their way. Predators buy protection of their racket from the state and the financial system is stacked favouring their vested interests. Vested interests are mainly wealthy individuals, corporations, cartels and public unions.³⁹

VOFF now recognise that the investigations into Trio by ASIC, the PJC and the liquidator PPB Advisory are flawed. The PJC Inquiry published May 2012 (204 pages) provides a chronological timeline, detailing the network of people and funds, but fails to explain the money flow. The PJC could not have achieved an understanding of the money flow because ASIC did not provide the PJC with the main money flow documents showing money flow from Australia to Hong Kong. ASIC did not, and could not provide the money flow documents to the PJC as the information was protected under a Memorandum of Understanding between Australia and Hong Kong.

The Securities and Futures Commission of Hong Kong gathered a tranche of documents from Jack Flader's Hong Kong based company Global Consultants and Services Limited (GCSL) that received money transactions from Australia. The tranche of documents was handed over to ASIC. The thousands

³⁷ Elgot, Jessica Nkandla, Jacob Zuma's private residence 31 March 2016
<http://www.theguardian.com/world/2016/mar/31/jacob-zuma-ordered-repay-upgrades-nkandla-home-south-african-state-funds>

³⁸ Elgot, Jessica Nkandla, Jacob Zuma's private residence 31 March 2016
<http://www.theguardian.com/world/2016/mar/31/jacob-zuma-ordered-repay-upgrades-nkandla-home-south-african-state-funds>

³⁹ Charles Hugh Smith Financial Predators and Parasites June 17, 2015
<https://dailyreckoning.com/financial-predators-and-parasites/>

of GCSL documents are a vital piece of evidence in the process of understanding the money flow from Australia to GCSL and from GCSL to investment locations. ASIC never provided the PJC with the tranche of documents from GCSL or say that it held information under the MoU agreement or did ASIC provide a summarization about the documents.

The GCSL documents would automatically constitute essential material for a forensic investigator to study. The committee cannot be blamed for not knowing about vital information withheld from them. The PJC Report does mention of the GCSL Company. Here is what the PJC Report notes,

*'The GSCL Group, of which Mr Flader was the Chief Executive Officer and Chairman, was the custodian of the assets of the Flader Controlled Funds at all material times. In addition, the GCSL Group, provided administration services to EMA.'*⁴⁰

Twice GCSL is mentioned. [First, written as the GSCL group and then as the GCSL Group.] The information only explains Mr Flader's relationship with the company but not the significance of GCSL.

Further on in the PJC Report the Committee provides some recent news about GCSL,

*'In January 2011, it was reported that Mr Flader sold his business, Global Consultants and Services Ltd., to two Liechtenstein businessmen.'*⁴¹ *He is now, apparently, living in Thailand.'*⁴²

But overall the PJC failed to recognise or acknowledge what GCSL's role was in the disappearance of hundreds of millions of Australian dollars.

The liquidator, PPB Advisory, assigned to investigate Trio was denied access to the GCSL documents. ASIC sought a Supreme Court suppression order to prevent the release of the GCSL documents in its possession. PPB Advisory had to take ASIC to court to gain access. Even then ASIC only provided part of the documents.

PPB Advisory informed VOFF⁴³ that each company the liquidator searched led to a complex web of more companies. PPB carried out its investigation with limited funding. Legal expenses were the biggest expense. PPB did not bring people to Australia to question. Nor did PPB go overseas to specifically question people connected with operating the Trio scheme. While on other business in Hong Kong, PPB went the offices of GCSL only to be told to go and the door slammed in their face.

PPB said ASIC only provided PPB with a tiny amount of information and they were denied access to many of the overseas documents, referring to this as the 'corporate veil' that they could not penetrate.

ASIC's discretion as to what evidence of crime exists or not, raises questions. For example, Frank Richard Bell, while he was in jail in the Philippines sent information to Australia about Trio's

⁴⁰ PJC Report May 2012 page 28.

⁴¹ RJC Report May 2012 page 139 ref. Stuart Washington, 'Flader link to father and son in \$1 billion scam', Sydney Morning Herald, 25 January 2011, <http://www.smh.com.au/business/flader-link-to-father-and-son-in-1b-scam-20110124-1a2v0.html> (accessed 17 April 2012).

⁴² PJC Report May 2012 page 139 ref. Tony Boyd, 'It's a joke , but no one's laughing', Australian Financial Review, 9 March 2012, p. 52.

⁴³ Meeting with PPB on June 25th 2015 at their Sydney office.

underlying funds. Apparently this volunteered information helped PPB gain an understanding into the network of underlying funds, which begs the question, what else could have been achieved had ASIC bothered to question those involved in running Trio's underlying funds?

Why didn't ASIC investigate the Sydney Morning Herald's attempt to check whether Trio's custodian bank could confirm that the Trio assets it held were verifiable? The time is important, as it was about six months before Trio was discovered to be fraudulent. If ASIC are actively maintaining the financial health of the market, it would be in consumer's best interest for ASIC to recognise that a bank sent a Herald journalist away with incorrect banking data months before the Trio fraud was discovered. Will the same thing happen again?

In December 2014 ASIC's Mr Medcraft at a Press Conference, *'warned that the corporate regulator will not be able to do its job properly if it does not have access to critical metadata that other enforcement agencies such as the federal police and ASIO have access to.'*⁴⁴ The telephone conversations from the Australian Trio Office to the Hong Kong Office could, have offered a metadata goldmine. But before ASIC acquire new toys it must be remembered that it didn't use the technology at hand, such as the telephone and email to communicate with its peers to share information. The PJC Inquiry noted that, had the regulators communicated with each other and shared their concerns, the fraud would have been stopped much earlier.

At the same Press Conference, *'Mr Medcraft said he would like to see penalties introduced in Australia that "scare the pants off" white-collar criminals to increase the deterrent effect....What we really need [are] penalties that amplify the fear ... we need penalties that actually mean that if you have an ill-gotten gain the penalty should be a multiple of that gain.'*⁴⁵

Increasing penalties would not help the courts if ASIC withhold vital evidence from the NSW Supreme Court⁴⁶ as it did in Trio and appears to be ASIC's pattern - not to show information it doesn't want others to see.

⁴⁴ Gareth Hutchens and Georgia Wilkins ASIC wants access to metadata DECEMBER 3, 2014
<http://www.abusinessherald.com/2014/12/asic-wants-access-to-metadata/>

⁴⁵ Ibid.

⁴⁶ Victims of Financial Fraud (VOFF Inc) Press Release Sept 25 2017
<http://tinyurl.com/yb5l88yp>

1.4 FAILURE systemic failure.

The 'Satyam Computer Services, scandal was a 2009 corporate scandal affecting Indian-based company Satyam Computer Services where the chairman Ramalinga Raju confessed that the company's accounts had been falsified. – Wikipedia

A. N. Raman writing for the Hindu Business Line said *'The Satyam episode has made a mockery of corporate governance. It is a clear indication of systemic failure and has exposed the inadequacies of the compliance-oriented corporate governance.'*⁴⁷

Lecturers Ms. Shruti Mehta and Ms. Rachana Srivastavaare in 'Reasons for Corporate Governance failures' state that a critical factor in many corporate failures was:

- *Poorly designed rewards package*
- *Including excessive use of share options (that distorted executive behaviour towards the short term)*
- *The use of stock options, or rewards linked to short-term share price performance (led to Aggressive earnings management to achieve target share prices)*
- *Trading did not deliver the earnings targets, aggressive or even fraudulent accounting tended to occur.*

This was very apparent in the cases of Ahold, Enron, WorldCom and Xerox (IFAC, 2003).

Some of the better known cases of financial irregularities are summarized in following table.

Company	Country	What went wrong
Ahold	NL	earnings overstated
Enron	USA	inflated earnings, hid debt in SPEs
Parmalat	Italy	false transactions recorded
Tyco	USA	looting by CEO, improper share deals, evidence of tampering and falsifying business records
WorldCom	USA	expenses booked as capital expenditure
Xerox	USA	accelerated revenue recognition

In terms of corporate governance issues, Ahold, Enron and WorldCom all suffered from,

- *Questionable ethics*
- *Behaviour at the top*
- *Aggressive earnings management*
- *Weak internal control*
- *Risk management*
- *Shortcomings in accounting and reporting*

⁴⁷ A. N. Raman Systemic failure January 21,2009
<http://www.thehindubusinessline.com/todays-paper/tp-opinion/article1040124.ece?css=print>

Mehta and Srivastavaare said in regarding to the corporate governance failure at Enron,

'Every time you turn a stone, another worm creeps out. That seems to be the story of the Enron debacle. Not a day goes by without a new expose of wrong doing in the company that one begins to wonder if there is anything in our systems and structure of an enterprise that can prevent such a catastrophe.

*Enron is an excellent example where those at the top allowed a culture to flourish in which secrecy, rule-breaking and fraudulent behaviour were acceptable.'*⁴⁸

Whether the systemic failure is the consequence of shortcomings in auditing; management behaviour; or outright breach of the Corporations Act; (factors found in the Trio fraud) consumers should not be held responsible just because they are the weakest and easiest to blame.

Grant Kirkpatrick's report prepared for The Organisation for Economic Co-operation and Development Steering Group on Corporate Governance in 2009, commences with,

*'This report analyses the impact of failures and weaknesses in corporate governance on the financial crisis, including risk management systems and executive salaries. It concludes that the financial crisis can be to an important extent attributed to failures and weaknesses in corporate governance arrangements which did not serve their purpose to safeguard against excessive risk taking in a number of financial services companies. Accounting standards and regulatory requirements have also proved insufficient in some areas.'*⁴⁹

The understanding of systemic failure around the world reflects exactly what occurred in the Trio fraud. During the 6 month period ASIC took to confirm if Trio assets were realisable, the first signs of misinformation had started to surface in the media. Misinformation in terms that the narrative inferring it is OK for APRA-supervised funds to be hit by fraud but it's the SMSFs or direct investor's own fault if they were exposed to fraud.

The then Minister for Superannuation and Financial Services, Bill Shorten, following the discovery of the Trio fraud, said, the self-managed superannuation funds (SMSFs) and direct investors in Trio chose to be in unprotected funds and chose to place their savings into a troubled fund. Prior to 2009, investors could not have made an informed decision about choosing Part 23 of the Superannuation Industry (Supervision) Act 1993 (SIS Act) because there was no information to inform consumers about the fraud protection contained in Part 23. Also consumers could not have learnt about organised international crime gangs targeting superannuation, because there was no information about superannuation being the target of serious financial fraud.

⁴⁸ Ms Shruti Mehta & Ms R Srivastavaare Reasons for Corporate Governance
Lecturers Skyline Institute of Engineering & Technology March 18, 2009
http://www.indianmba.com/Faculty_Column/FC974/fc974.html

⁴⁹ Grant Kirkpatrick The Corporate Governance Lessons from the Financial Crisis OECD 2008
<https://www.oecd.org/finance/financial-markets/42229620.pdf>

Some investors hit by the Trio fraud had started a self-managed superannuation fund with APRA. In about 2004 APRA gave the regulatory control of SMSFs to the Tax Office. Trustees were not given a choice nor were they warned that they had no protection under the SIS Act.

The government's official narrative fails to acknowledge that there was no information prior 2009 to have warned consumers about massive organised fraud, or about fraud protection. The official narrative also fails to acknowledge that Trio was set up to exploit the weaknesses in the Australian financial system, allowing moneys to be sent to undisclosed overseas locations. There were also no consumer warnings of ASIC and APRA's limited powers, to follow the activities of an Australian registered company that invests offshore.

VOFF highlight some of factors that contributed to the systemic failure of the Australian financial system. Strange how the systemic failure is denied yet the Trio fraud, according to journalist Ben Eltham, was part of the reason for the Inquiry into the Performance of ASIC.⁵⁰

VOFF have found with the issues surrounding Trio, *every time VOFF turn a stone, another worm creeps out*. Often the worm is another unanswered question. With so many unanswered questions, VOFF do not regard the Trio fraud as resolved. There are many unresolved issues such as,

- What evidence does the government have to base its decision that 'APRA and ASIC carried out their roles and responsibilities appropriately'? ⁵¹
- Why were a group of international brokers when some had been driven out of Europe, barred from operating in the financial industry in the United States but welcomed into Australia?
- Some of the Trio operators had connections with funds in the United States, the United Kingdom and New Zealand where large sums of money disappeared, yet they were able to take over a respectable business in Australia, turn it into the Trio Capital Limited scheme and make 194.5m⁵² in Australian dollars disappear?
- The government and ASIC need to explain to the Australian public why ASIC's failures have been ignored?
- And why the victims of the crime were blamed?
- After all the reforms and legislation changes made as a consequence of the Trio fraud, why has the government refused to acknowledge the systemic failure of the Australian financial system?

⁵⁰ Ben Eltham The Corporate Watchdog Is Fast Asleep 25 June 2013
<https://newmatilda.com/2013/06/25/corporate-watchdog-fast-asleep>

⁵¹ 'Review of the Trio Capital Fraud and Assessment of the Regulatory Framework' April 2013)

⁵² Financial System Inquiry: Submission by the Australian Securities and Investments Commission April 2014 page 192

After the Trio scheme exploited weaknesses in the Australian financial system, deceiving ASIC, APRA, the NAB and ANZ banks acting as custodians, the Research Houses, the Star Rating Firms, the legal firms that drew up contracts, including the auditing firm, the PJC said,

*'there appears to be an expectations gap within the community about the regulatory responsibilities of APRA and ASIC and their ability to safeguard against all investment risks as well as an expectations gap within the community about who is responsible for managing investment risks for SMSF trustees.'*⁵³

The PJC inquiry found that the financial market held one definition for certain words while consumers held a different definition. The community's understanding of certain words was akin to dictionary definitions. Some of the definitions have remained unchanged for centuries. The interpretation of words, sometimes reflecting job responsibilities, did not match the consumers' interpretation. The different understanding of the same word is what the PJC call "expectation gaps."⁵⁴ Seven are listed:

- 1 No Protection
- 2 Financial Advisors
- 3 AFS Licence
- 4 Auditors
- 5 Custodians
- 6 Research House
- 7 Level of Disclosure

The financial system into which people are encouraged to place their savings is open to interpretation, yet the PJC did not ask whether the few who manage the savings of the masses might owe the consumers a responsibility to ensure there is a clear and concise communication. The Trio fraud is an example where information asymmetry left consumers at a disadvantage.

1) No 'fraud' Protection

*Trio investors in SMSFs seemed unaware they were not protected in the same way as APRA regulated superannuation funds;*⁵⁵

The committee said superannuation investors never considered whether there was compensation available in the event of fraud and theft before they chose their superannuation fund, be it an APRA-regulated / APRA-supervised fund or a SMSF.⁵⁶

⁵³ Treasury 'Review of the Trio Capital Fraud and Assessment of the Regulatory Framework' 26th APRIL 2013 (ISBN 978-0-642-74891-1) Page 5.

⁵⁴ Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital May 2012 page 123

⁵⁵ page 123

Prior to September 2009 there were no warnings available about international crime gangs targeting superannuation or that ASIC and APRA allowed known criminals into the Australian financial system. Consumers had no chance to consider their options about fraud protection because there was no information on the subject to prepare consumers for the Trio fraud.

ASIC is required under the ASIC Act to:

- *maintain, facilitate and improve the performance of the financial system and entities in it*
- *promote confident and informed participation by investors and consumers in the financial system*
- *administer the law effectively and with minimal procedural requirements.*⁵⁷

In regards to Trio, ASIC failed on each of the above points. APRA never informed consumers that it attended the meetings where decisions were made to selectively protect the APRA-regulated funds under the SIS Act. At the same time, APRA had direct contact with Trio directors throughout the operational life of Trio and in 2006 had formed the impression that the Trio directors were a ‘bunch of incompetents’.⁵⁸ APRA never warned the market about the bunch of incompetents running Trio.

ASIC’s role to ‘*promote confident and informed participation by investors and consumers in the financial system*’ appears challenged when ASIC’s ex-employees hold positions with insolvency and liquidation firms. There is less evidence of ASIC ex-employees working in fraud prevention.

If consumers want to learn about companies, ASIC’s company registration database has information available. It is good that ASIC charge for the service, but the flip side, it discourages public research. ASIC’s charges are clearly available but what you get for your money, like the number of pages being purchased is not always defined. The costs can be a powerful deterrent to keep the public away.

Companies that want to carry out fraudulent activity in Australia probably benefit by company details remaining behind ASIC’s fee charge, compared to being more readily available as it is in the United States.

“Fraud protection” proved useless when ASIC failed to check the histories of the international characters that came to Australia and founded the Trio scheme. In early 2016, two of the founding members of Trio, Jack Flader and James Sutherland, stood before Southwark Crown Court in London on

⁵⁶ page 124

⁵⁷ <http://asic.gov.au/about-asic/what-we-do/our-role/>

⁵⁸ July 5, 2012 meeting APRA’s office in Market St. attendees VOFF delegation, the then Superannuation Minister, Bill Shorten, APRA’s Ross Jones and ASIC’s Greg Medcraft. Also see, Hansard, Parliamentary Joint Committee on Corporations and Financial Services, Collapse of Trio Capital. (30.8.2011) - Sydney p 38

money-laundering charges. The charges had nothing to do with the Trio scheme. During the hearing, the court learned that,

'over seven years of investigation, fraud police had uncovered a network of offshore companies and bank accounts across Europe and the world, through which "multiple unnecessary movements of money" were used to launder the fraud's proceeds, make them clean and untraceable and then distribute them back to those involved in the fraud. The entire edifice of companies and accounts was set up to deceive.

*The two accused money launderers were directors and managers of that process, bank signatories and in some cases even the beneficial owners of the companies involved.'*⁵⁹

The court was not informed that Flader and Sutherland were behind the Trio scheme that had successfully carried out a similar web of deception in the Australian financial system.

In 2011 the NSW Supreme Court recognised, Mr Jack Flader, as *'the architect and ultimate controller of the Trio scheme'*.⁶⁰ However, in 2013 ASIC *'abandoned an international investigation into Jack Flader, the mastermind of Australia's biggest superannuation fraud, saying there is insufficient evidence to prove Mr Flader breached Australian law'*.⁶¹

Financial regulators and law enforcement knew about the risks from organised crime attacking the superannuation pool as early as the 1990s but the information was never made available to consumers. Recognising in 1996 that serious fraud occurred around the world, the Australian Institute Of Criminology warned,

*The sheer size of the asset pool and events elsewhere in the world have sounded alarm bells. Before his mysterious demise, British media tycoon, Robert Maxwell, allegedly stole the equivalent of over \$A900m from the pension funds of two of his public companies. In Australia, examples of theft and fraud in relation to superannuation funds are slowly emerging and experts have warned the industry of the dangers of crime. But how vulnerable to theft and fraud are Australian superannuation funds?*⁶²

The Australian Institute Of Criminology understood the potential danger of large-scale crime in relation to superannuation in the 1990s, why didn't this important warning reach consumers?

ASIC's publications (prior September 2009) show that the Australian Institute of Criminology's warning about the vulnerability of superannuation does not appear in the following:

⁵⁹ Nick Miller Busting the boiler room March 28, 2016

<http://www.smh.com.au/business/markets/busting-the-boiler-room-20160323-gnpuxj.html>

⁶⁰ Regina v Shawn Darrell Richard [2011] NSWSC 866 (12 August 2011) before Garling J.

⁶¹ Ben Butler Trio kingpin Jack Flader free of ASIC's eyes October 29, 2013

<http://www.smh.com.au/business/banking-and-finance/trio-kingpin-jack-flader-free-of-asics-eyes-20131029-2widi6.html>

⁶² Arie Freiberg Superannuation Crime Australian Institute Of Criminology June 1996 page 1.

- A Report on *Enforceable Undertakings Accepted by ASIC from 1998 to 2008* by Carol Taing (74 pages).
- *ASIC Annual Report 1998/99* (67 pages).
- *Enforcement and compliance seminar 27 – 28 March 2001* Melbourne, Regulatory compliance in the borderless community of 2001 by Sean Hughes Director, ASIC (27 pages).
- *Don't kiss your money goodbye - 7 Smart steps*, ASIC & FPA March 2002. (17 pages).
- *REPORT 14 International cold calling investment scams* June 2002 (69 pages)
- *REPORT 15 Hook, line & sinker: Who takes the bait in cold calling scams?* June 2002 (99 pages).

The above articles only refer to 'fraud' in the context of: cold-calling scams; people banned by ASIC for fraud; fraud in an electronic environment; and the Nigerian Advance Fee Fraud. None of the articles mention about organised crime attacking superannuation. With no publicly available warnings, consumers cannot form an educated decision about their investment savings.

2) Financial Advisors detect fraud

*The expectation among investors that financial advisers will check the investments that they recommend to their clients, to ensure not only that there are prospects for good returns but that they are run legitimately;*⁶³

The PJC found,

*The strength of single responsible entity regime is its clean lines of accountability. With some notable exceptions, most submitters supported the regime primarily for this reason. However, the system can falter when the responsible entity stalls and deceives. In these circumstances, as the Trio case amply demonstrates, there are various points of systemic weakness relating to the role of the regulators, the auditors, custodians, research houses and financial advisors.*⁶⁴

The Trio 'fraud' experience illustrates how information was shaped by vested interests. For example, the official narrative about the Trio fraud presented the 'fraud' as 'poor financial advice' 'secret commissions' and self-managed investors 'swimming outside the flags'. The narrative was able to shift the focus away from a systemic failing of the financial system and to point blame at the consumers and their advisors. Decision makers behind the APRA supervised funds, made the same investment choices but were not named, blamed or shamed. Why?

The PJC helped keep the selective focus on financial advisor and consumer. The PJC did not conclude that some financial advisors were highly educated and had studied the Trio investments carefully before making recommendations. The PJC failed to say that when advisors were checking to see if the Trio funds were run legitimately, they found the funds met all the regulatory requirements and were approved by ASIC and APRA.

⁶³ page 123

⁶⁴ PJC Report 2012 *Op. cit.* page 154

3) AFS Licence

Consumer expectation is that an Australian Financial Services Licences (AFSLs) would not be issued to known criminals;

The Trio victims were infuriated to learn that the man charged over the Trio fraud was issued an AFSL by ASIC that enabled him to handle superannuation moneys. But ASIC informed the PJC,

*"The AFSL attaches to the company, not the directors"*⁶⁵

In the PJC's opinion,

*"the Trio case does reflect a problem with the current licensing system. The fact that ASIC does not make checks when there are changes in ownership of an AFSL creates a loophole for a would-be criminal syndicate looking to acquire a reputable company holding an AFSL."*⁶⁶

4) Auditor

PJC found that 'auditors cite the limitations on their role and that the primary responsibility for detecting fraud rests with the responsible entity'...⁶⁷

Consumers expected auditors to provide an accurate audit, but auditors had a different idea. The PJC found,

*"KPMG considered that there is an 'expectations gap' between what the public believes is the work of a compliance plan auditor, and the work that by law he or she is actually required to perform. It suggested that this expectation gap could be reduced 'through Auditing and Assurance Standards Board (AuASB) and ASIC working together to provide additional guidance'."*⁶⁸

Trio victims were angry that auditors did not provide accurate audits. But the PJC found that,

*'...both the regulators and investors have expressed frustration at the role of Trio Capital's financial statement and compliance plan auditors, particularly their inability to verify information. The auditors cite the limitations on their role and that the primary responsibility for detecting fraud rests with the responsible entity. They note that auditors can only obtain reasonable assurance that a financial report is free from material misstatement, whether caused by fraud or error.'*⁶⁹

In other words, auditors don't need to rely on evidence-based information. They don't have to verify amounts. The PJC said,

"The committee is particularly concerned at the 'expectation gap' between what is expected of auditors and what they are actually responsible for doing. ... Clearly in the case of Trio, the

⁶⁵ PJC Report 2012 *Op. cit.* page 123

⁶⁶ PJC Report 2012 *Op. cit.* page 128

⁶⁷ PJC Report 2012 *Op. cit.* page 123

⁶⁸ PJC Report 2012 *Op. cit.* page 97

⁶⁹ PJC Report 2012 *Op. cit.* page 123

*requirement for the auditors to demonstrate 'professional scepticism' about the information given to them was insufficient to prevent the loss of investors' funds."*⁷⁰

Clarke and Dean (2007)⁷¹ have highlighted concerns for many years about the weakness in how financial reporting is not evidence based and also claim ASIC have failed to manage the way financial reporting is carried out. In this sense, the Trio fraud owes its success to the financial reporting system that approves and endorses at all levels, the dishonesty and fabrication of reports – that are designed to deceive and defraud.

Some ASIC staff did start their career by working for KPMG. For example, ASIC Chairman Greg Medcraft had worked as a chartered accountant with KPMG; Colin Nicol and Tony McGrath who had been part of the corporate recovery team of KPMG, left in about 2004 and set up their own boutique insolvency practice,⁷² McGrathNicol was part of the investigation into the collapse of Trio Capital in 2009.⁷³ Administrative Appeals Tribunal Deputy President Professor R Deutsch who presided over, '*Eugene Liu v. Australian Securities and Investments Commission [2013] AATA 117 (6 March 2013)*' and was Director KPMG 2007 – 2011 (4 years).⁷⁴ Professor Bob Deutsch in May 2007 became the first KPMG sponsored Professor of Taxation at the Australian School of Taxation (Atax) in the Faculty of Law.⁷⁵ Mr Deutsch is also Board Member KPMG LLP.⁷⁶

In respect to Trio, no action was taken against the auditors' failure to detect fraudulent activities other than to agree to an Enforceable Undertaking. The PJC found the problems with inaccurate audits was the consumer's expectation gap. Consumers expected accuracy. The committee never explored whether the auditors who provided misleading information, could have been a source for compensation.

The dangers of a faulty auditing system has been known by ASIC for more than two decades and is recognised as a major flaw in the superannuation and Australian financial system. Consumers did not know before the Trio fraud that audits in Australia didn't have to be correct and they don't need to verify their assets.

⁷⁰ PJC Report 2012 *Op. cit.* page 130

⁷¹ Clarke and Dean, *Indecent Disclosure: Gilding the Corporate Lily*, 2007.

⁷² Leon Gettler KPMG insolvency team becomes 'corporate doctor' May 27, 2004
<http://www.theage.com.au/articles/2004/05/26/1085461833039.html?from=storylhs>

⁷³ Superannuation: APRA's super way to manage fraud risk Sept. 7, 2015
<http://www.mcgrathnicol.com/superannuation-apras-super-way-manage-fraud-risk/>

⁷⁴ <https://www.linkedin.com/in/robert-deutsch-a4565142>

⁷⁵ <http://newsroom.unsw.edu.au/news/inaugural-kpmg-professor-taxation>

⁷⁶ <http://www.zoominfo.com/p/Robert-Deutsch/25461090>

In August 29th 2016 a \$7.3b fraud detection failure lawsuit by Colonial Bank against PricewaterhouseCoopers was settled in a landmark case that shone a light on the responsibility of auditors to detect fraud.⁷⁷

The defence for the bank claimed that PwC was in a position to catch and stop the fraud but missed multiple red flags. PwC countered that no auditor can reasonably be expected to catch a well-organised and determined fraud. However, PwC settled the fraud detection lawsuit for \$5.5bn.⁷⁸

In Dec 5, 2016 The US Public Company Accounting Oversight Board fined auditors of the Brazil-based Deloitte a record \$8 million for what amounts to massive fraud involving low-cost airline Gol Linhas Aéreas Inteligentes.⁷⁹

In April 25th 2014 VOFF submitted a Freedom of Information request to ASIC for a copy of the insurance policy claim made on behalf of the Trio Capital Limited unit holders, lodged by the assigned liquidator PPB Advisory. **ASIC refused information saying it is exempt under s45(1) of the FOI Act.**

In November 2010 and July 2012 ASIC investigated whether there was any possibility for legal compensation under the Proceeds of Crime Act 2002. In May 2014 VOFF sought under the FOI Act documentation of what ASIC had found, **ASIC refused to release the information** and they did not suggest to the Trio victims of a possibility to claim compensation against the auditor.

Michael Rapoport in the Wall Street Journal writes that a ruling by US District Judge Barbara Rothstein opens an accounting firm to litigation for failure to detect fraud. The Judge found *'PricewaterhouseCoopers was negligent in connection with the failure of Colonial Bank, one of the biggest bank failures of the financial crisis.'* ...*'PwC failed to design its audits to detect fraud, violating auditing standards. She also said PwC could have uncovered the fraud simply by inspecting some of the underlying documents for the mortgages at issue, but it didn't'*.⁸⁰

Ben McLannahan in the Australian Financial Review pointed out that,

PricewaterhouseCoopers 'had given the bank's parent, 'Colonial BancGroup', a clean audit for years before it emerged that huge chunks of Colonial's loans to Taylor, Bean & Whitaker, (TBW) were secured against assets that did not exist.

⁷⁷ Ben McLannahan 'PwC settles \$7.3b fraud detection failure lawsuit' Aug 29 2016
<http://www.afr.com/business/accounting/pwc-settles-55bn-fraud-detection-failure-lawsuit-20160828-gr2v4u>

⁷⁸ Ben McLannahan PwC settles \$5.5bn fraud detection lawsuit August 27, 2016
<https://www.ft.com/content/befa9e50-6ba4-11e6-a0b1-d87a9fea034f?mhq5j=e6>

⁷⁹ Tyler Durden 'Auditor Deloitte Fined A Record \$8 Million For Massive Fraud' Dec 5, 2016
<http://www.zerohedge.com/news/2016-12-05/auditor-deloitte-fined-record-8-million-massive-fraud>

⁸⁰ Michael Rapoport, Judge Says PricewaterhouseCoopers Was Negligent In Colonial Bank Failure Dec. 31, 2017
<https://www.wsj.com/articles/judge-says-pricewaterhousecoopers-was-negligent-in-colonial-bank-failure-1514762610>

PwC argued — and the judge accepted — that it was duped by a determined gang of fraudsters. Lee Farkas, TBW's founder and chairman who skimmed millions of dollars to buy a private jet, vacation homes and vintage cars, was jailed in 2011 for 30 years. Several other senior executives at TBW and Colonial were sentenced to long stretches in prison for their roles in a seven-year scam that grew to \$US2.3 billion.

But PwC fell short nonetheless, wrote Barbara Jacobs Rothstein, US District Judge, in her judgment delivered last week. She cited professional standards, saying that the firm failed to perform adequate checks that Colonial's financial statements were fairly stated.⁸¹

The Wall Street Journal article has hundreds of readers' comments, some suggesting that the 'Audits are not designed to root out fraud' and that 'Contracts with the Big Auditors specifically state, they are not responsible for finding fraud.'

Such points would have been recognised by Barbara Jacobs Rothstein, who according to Wikipedia, is a United States District Judge on senior status since September 1, 2011, having served on the United States District Court for the Western District of Washington from February 20, 1980.

Mr Medcraft before departing his position as ASIC Chairman, warned on AM - ABC Radio⁸² (03.11.2017) that Australia could have an Enron-style corporate collapse if the accounting firms Deloitte, KPMG, PWC and Ernst and Young don't improve their auditing standards.

Investigative journalist Stewart Washington points out that Trio Capital is the responsible entity and a responsible entity has legal obligations to employ a series of third-party gatekeepers, such as the auditor. WHK was a listed accounting business for Trio. KPMG was paid to perform another gatekeeping role... but it is unclear whether KPMG's audit asked questions of Trio.

Particularly when the scheme's financial position as at June 30th 2009 showed that \$47 million was transferred between Trio funds, with an overseas fund expanding to \$75 million. KPMG should have asked:

Where did the \$47 million come from?

Who moved it?

Why the rush on June 30th?

Why were these transactions going unreported in annual reports?

⁸¹ Ben McLannahan PwC falls 'short' in averting one of the biggest US bank collapses, judge says Jan 2 2018
<http://www.afr.com/business/accounting/pwc-falls-short-in-averting-one-of-the-biggest-us-bank-collapses-judge-says-20180101-h0c9u1>

⁸² Peter Ryan on AM - Poor auditing risks Enron-style collapses: ASIC boss 03.11.2017
<http://www.abc.net.au/radio/programs/am/poor-auditing-risks-enron-style-collapses-asic-boss/9114592>
<http://www.abc.net.au/news/2017-11-03/asic-boss-concerned-over-poor-auditing/9114490>

The June 30th movement of \$47 million into one of Trio's offshore fund, affecting several other Trio funds, was not something that was noted in particular. KPMG signed off on all the affected funds' compliance plans.⁸³

5) Custodians

The Trio victims relied on the ANZ and the NAB banks to accurately and responsibly account for the Trio assets they handled, but the PJC found:

*'..there is an expectation in the public mind that custodians will act to protect and secure the underlying investment. By contrast, Trio's custodian, the National Australia Trustee Limited, has noted that the custodian does not have the expertise to question underlying values of either domestic or offshore funds.'*⁸⁴

The PJC Inquiry found,

*'The custodian (in Trio's case, the National Australia Bank) does very little to protect the funds of investors. It makes no independent checks before transferring money offshore. Instead, the custodian simply acts on the instructions of the responsible entity.'*⁸⁵

The PJC point out,

*'ASIC in its submission drew attention to its current review of custodians and flagged that one aspect of the review will be to consider whether custodians should be more proactive in identifying and reporting suspicious matters involving their clients.'*⁸⁶ & Ref.

In response to Trio's missing money, the ANZ and NBA banks blamed the responsible entity, who was Shawn Richard. The ANZ and NBA never reported the large and continuous cash deposits, not even a \$50m transfer to a foreign tax haven. Why were Trio's transactions that were in breach of the *money-laundering and anti-terror financing laws* not reported? Why didn't such transfers ring alarm bells?

The money stolen through Trio right from under AUSTRAC the ANZ and NAB banks, was said to be the fault of SMSF trustees and financial advisors. Again APRA regulated union run industry funds that received compensation, made the same investment decision. Australian investors with savings in Trio had no idea that their money ended up in tax haven locations. Only after the fraud was discovered, was it uncovered that money had been directed to tax havens.

In early 2009 the Sydney Morning Herald contacted Trio's custodian, the National Australia Trustee, and enquired about Trio's Astarra Strategic Funds assets. The bank provided a statement confirming that the assets were indeed in the safe custody of the bank. The statement quelled any concerns by the

⁸³ Stuart Washington Trio problems are a failure on the part of its gatekeepers Jan 2 2010
<http://www.smh.com.au/business/trio-problems-are-a-failure-on-the-part-of-its-gatekeepers-20100101-llqf.html>

⁸⁴ PJC Report 2012 *Op. cit.* page 123

⁸⁵ PJC Report 2012 *Op. cit.* page 123

⁸⁶ PJC Report 2012 *Op. cit.* page 12 Ref ASIC, Submission 51, p. 77.

Herald. But the bank had made a mistake and had simply passed on information given to the bank by the Trio scheme.⁸⁷ The mistake suggests the custodian was not fulfilling its role as an independent gatekeeper as required under legislation. By incorrectly confirming that assets were indeed in the safe custody of the bank, the Herald was inadvertently prevented from possibly discovering the fraud. There is no evidence the bank was questioned over this incident.

6) Research Houses

The PJC found there was a lack of understanding as to the claims made in the reports issued by research houses and in particular, whether the data provided by the responsible entity upon which these reports are based had been verified. There is also some confusion as to whether the ratings are intended as an indicator of future performance, or simply an assessment of past performance.⁸⁸

The PJC found a number of expectation gaps between what consumers had expected and what the industry was offering. Often the two did not match, for example the PJC found,

*'There is a reasonable expectation among investors that research houses will verify the data upon which their reports and ratings are based. Again, this is not the case.'*⁸⁹

Research houses and star rating firms like Morningstar and VanMac provided 4 or 5 stars out of 5 for the low risk Astarra funds but it was discovered after September 2009 that all their supportive information was irrelevant. Morningstar's reports amounted to nothing, going by what they informed the PJC in 2011,

*'In order to be added to the Morningstar database, a fund must have a product disclosure statement registered with the Australian Securities & Investments Commission. Morningstar's database contains audit checks, although Morningstar ultimately relies on fund managers and their agents providing accurate information.'*⁹⁰

In addition to what turned out to be allegedly meaningless promotional material by research houses and star rating firms, the ASF Product Disclosure Statement was also found to be a misleading document. Only later after the fraud was uncovered was it discovered that the PDS had misled investors. For starters, the PDS failed to disclose the personal benefits that some of the Trio operators obtained by the funds investments. The PJC did not acknowledge or examine that the PDS was compiled (by lawyers) and approved (by ASIC).

From each and every expectation gap, consumers ended up carrying the blame. The PJC found,

⁸⁷ PJC Report 2012 *Op. cit.* page 34 ref. Mr John Hempton, 'A dark privatised social security story: Astarra, the missing money and how examining a fund manager owned by Joe Biden's family led to substantial regulatory action in Australia', Bronte Capital, 2 January 2010, <http://brontecapital.blogspot.com.au/search?q=trio> (accessed 17 April 2012).

⁸⁸ PJC Report 2012 *Op. cit.* page 123

⁸⁹ PJC Report 2012 *Op. cit.* page xxiii

⁹⁰ Submission by Morningstar to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the Collapse of Trio Capital and Any Other Related Matters August 2011 page 5

*'There is a reasonable expectation among investors that research houses will verify the data upon which their reports and ratings are based. Again, this is not the case.'*⁹¹

7) Level of Disclosure

The Trio victims relied on governance of the Australian financial system to allow only acceptable law abiding products but the PJC found,

*'ASIC has noted that, compared to the United States and Europe, the level of underlying portfolio disclosure of managed investment schemes in Australia is very limited. Both ASIC and Morningstar have suggested there should be disclosure at asset level for registered managed investment schemes to help investors assess both the type of financial products they are exposed to, and the extent of that exposure.'*⁹²

The PJC saw a possible area for reform, concerning the disclosure requirements of Manage Investment Schemes (MISs). In the case of the Trio fraud, the PJC write,

*'The question has arisen during this inquiry as to whether the regulators, the auditors, the research houses, the financial advisers and investors themselves would all benefit from better disclosure by the managed investment schemes of their asset portfolio holdings.'*⁹³

From what ASIC informed the PJC, it is evident that ASIC was aware of disclosure weaknesses that disadvantaged consumers in managed investment schemes (MIS). Mr Medcraft explained the issue of the underlying portfolio level of disclosure,

*'... the system is about efficient markets, and efficient markets are about making sure that there is not an asymmetry of information.'... 'if you cannot actually find out what is in the underlying portfolio, it is a key weakness in terms of not having that information available to investors.'*⁹⁴

ASIC did not inform consumers that they had no rights to information on the portfolio holdings in a MIS.

The Parliamentary investigation into the Trio fraud had no committee members with forensic accountancy backgrounds. The committee overlooked the international Trio operators who exploited the weaknesses of the Australian financial system and instead found reason in the 'expectation gaps' to point the blame at consumers. The PJC failed to inform the public about:

- why the overseas Trio operators were not questioned;
- why vital information was not given to PJC Inquiry;
- why the APRA-regulated financial advisors were not named in the same way that SMSF financial advisors were highlighted;
- why the whereabouts of the missing \$194.5m is protected under 'national security' legislation;
- why ASIC and APRA's role in governing Trio and its entities is and continues to be a secret; and
- maybe the committee can explain in hindsight – why ASIC withheld vital information from the committee.

⁹¹ PJC Report 2012 *Op. cit.* page xxiii

⁹² PJC Report 2012 *Op. cit.* page 124

⁹³ PJC Report 2012 *Op. cit.* page 134

⁹⁴ PJC Report 2012 *Op. cit.* page 134 ref Mr Greg Medcraft, Committee Hansard, 6 September 2011, p. 6.

1.5 FAILURE shift blame.

The comments made by Mr Shorten and ASIC in blaming the financial advisors and DIY investors over the Trio fraud are flawed on a number of levels, for example:

- (i) Consumers could not have taken defensive action against organised international crime gangs targeting superannuation or considered legislation protection against fraud because there was no information, warnings or guidance available prior to September 2009;
- (ii) It is a nonsense argument to suggest that 4 financial advisors out of 155 are responsible for the loss of their client's investments, while the other advisors who had clients in the same Trio fraud are blameless. There is no evidence to suggest that DIY investors knew they were investing in a fraudulent scheme. Of the 690 DIY investors 415 were direct investors and 285 investors were in self-managed superannuation funds (SMSFs). Over 6,090 investors were affected by the Trio fraud.⁹⁵ To blame 4 out of 155 advisors and blame 8% of investors is nonsense;
- (iii) One sector of the market is blamed for their loss to a crime. But the information about the crime and about the systemic failure is covered up. The public are denied an accurate account of what happened and denied information about ASIC's interactions with Trio and its entities;
- (iv) Enough information has become available to show that the investigations into Trio by (1) ASIC; (2) the Parliamentary Joint Committee; and (3) the assigned liquidator are flawed. ASIC failed to question the overseas Trio operators; the committee did not know about or have access to vital information; and the liquidator had limited resources and faced difficulties in accessing information in overseas jurisdictions. All of the above investigations failed to recognise the international Trio operators' histories;
- (v) Gatekeepers, custodians, auditors and research houses, the entire Australian financial system failed to detect 'fraud' but the victims and their financial advisors were blamed by the Minister Bill Shorten. The cover up of what happened around Trio raises questions about vested interests in the \$31 billion per year superannuation financial services industry; and
- (vi) Trio demonstrates that ASIC and APRA are not responsible or accountable for compelled superannuation. Meanwhile the government has its eye on the savings pool for use in large-scale long-term projects. It is well understood, that where there is no transparency, a system is wide open for corruption.

One of the greatest legal figures in recent history did not suggest that victims of fraud should be blamed. Lord Denning's knowledge shines when he states,

⁹⁵ The Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital May 2012 p xvii. (PJC Report).

'Fraud unravels everything...once it is proved it vitiates judgments, contracts and all transactions whatsoever'⁹⁶

Mr Shorten is wrong, the Trio victims cannot be held responsible for being victims of a crime. The PJC Report notes that financial advisors were paid hefty commissions by recommending Trio to their clients,⁹⁷ but no one other than Mr Tarrant was revealed. ASIC initially went after about 4 financial advisors that had directed their self-managed clients into Trio products. Those 4 financial advisors were named in the press but not a word was mentioned about the other 151 financial advisors.

The financial advisor accused of accepting commissions became the media focus, which moved the attention away from the ASIC licensed and APRA regulated and governed Trio Capital scheme running a fraud. Unknown to the public, the marketing allowance helped in the transferring of clients into the new fund. Mr Tarrant disclosed the marketing allowance to over two hundred clients but due to error, failed to disclose to 6 or 8 clients. Mr Tarrant was charged over failing to disclose to those 6 or 8 clients.

Mr Tarrant argues that he was made into a scapegoat because the crime happened outside ASIC's jurisdiction and left ASIC powerless. ASIC could not show it was powerless after a massive fraud because that would send fear into the Australian financial market.

There are political forces at work surrounding the Trio fraud, like the alleged directive from Mr Shorten's office to prosecute Mr Tarrant, as he was the financial advisor who encouraged the AWU Officers Election Fund ABN 30 450 889 656 (slush fund) to invest in the Trio scheme.

Michael Smith recognised the forces around the AWU slush fund because, '(f)or years Bob Kernohan had been the victim of the Julia Gillard, Bill Ludwig Ludwig and Bill Shorten's smear campaign'.⁹⁸ The AWU Officers Election Fund is perceived as central to ASIC and Mr Shorten's handling of Trio.

In September 2015 VOFF received under Freedom of Information a heavily redacted document from the Australian Federal Police (AFP). The document consisted of 17 pages and had a 3-page section in the document headed AFP Minute and titled 'Referral from ASIC regarding TRIO collapse'. The document notes,

'It is alleged that financial advisors provided recommendations to clients due to high commissions which were paid by Trio. It is further alleged that the complex structure of the Trio scheme was designed to conceal fraudulent activity. The ASIC investigations discovered

⁹⁶ LAZARUS ESTATES LTD -V- BEASLEY; CA 1956 Denning LJ, Lord Parker LJ
<http://swarb.co.uk/lazarus-estates-ltd-v-beasley-ca-1956/>

⁹⁷ PJC Report page 153

⁹⁸ If Ralph Blewitt is charged in the AWU Scandal, GILLARD will be charged too. Here's why. 25 February 2017
<http://www.michaelsmithnews.com/2017/02/if-ralph-blewitt-is-charged-in-the-awu-scandal-gillard-will-be-charged-too-heres-why.html>

*that investors' money was channelled into financial entities and then distributed to different companies in places such as the British Virgin Islands, Liechtenstein and Curacao*⁹⁹

On page 3 of the same AFP document, under 'Recommendations' there are three points, - the first is of interest here, because the AFP make a recommendation, they write,

'Inform ASIC that the material provided to the AFP to date does not contain sufficient information to initiate an investigation into Mr Flader for Criminal Code Act 1995 offences'.

The minute section is dated 26 February 2012.

Did ASIC have more information or were they using their discretion in the same way it chose not to inform the PJC of the GCSL documents?

Was ASIC withholding information in the same way it did from the NSW Supreme Court?

By 2012 it is apparent that ASIC had no interest in pursuing the alleged perpetrators of the Trio fraud. Was it incompetence or did ASIC cover-up weakness or apparent inability to pursue the matter into international jurisdictions?

The AFP document released under Freedom of Information helps VOFF piece together evidence. The information illustrates ASIC's focus on financial advisors and not enough information to assist the AFP to go after the 'ultimate controller' of the Trio scheme.

The blaming of DIY investors, in the context of the Global Financial Crisis, was the result of industry superannuation funds doing poorly with management fees eating into investor's savings and the option of going into a self-managed fund with lower fees becoming very attractive.

Mr Shorten's decision to grant compensation for the APRA-supervised funds under Part 23 of the Superannuation Industry (Supervision) Act 1993 (SIS Act) removed any need for a proper investigation into the Trio crime, removed any genuine attempt to claw back the proceeds of crime and reeked of political opportunism, favouring the ALP's union links to industry superannuation funds. Mr Shorten presented self-managed superannuation funds as dangerous, which put a stop to, or slowed down the exodus.

A Minister of the Crown is required under the 2014 Code of Conduct for Ministers to take all reasonable steps that decisions are to be unaffected by bias or irrelevant considerations.¹⁰⁰

Mr Shorten's remarks about financial advisors and SMSF investors caught up in the Trio fraud appear to show little consideration for accuracy or non-bias. Mr Shorten blamed:

SMSF trustees for putting money into a troubled fund;

⁹⁹ Received documents from AFP September 29th 2015 in response to VOFF FOI No. 373.

¹⁰⁰ http://www.dpac.tas.gov.au/_data/assets/pdf_file/0016/53503/Code_of_Conduct_for_Ministers.PDF

DIY investors for going outside flags;
DIY investors for their lack of skill;
SMSF trustees for having greater choice;
SMSF trustees for taking greater risk; and
Blamed the SMSF trustees because 'they are responsible for their own choices.'

"Investing between the flags" is a term ASIC used to guide and encourage investors in the financial market to invest safely. In March 2009, the then ASIC Deputy Chairman, Jeremy Cooper, at the SPAA National Conference in referring to "swimming between the flags" Mr Cooper said, *'We want investors to understand when they are:*

- *swimming between the flags – investing in bank deposits, diversified blue chip shares, vanilla managed funds and other investments with known risks or with professional advice...'*¹⁰¹

Investors in Trio were between the flags. They did have a professional financial advisor.

In December 2009 ASIC's previous Chairman Tony D'Aloisio launched the free practical guide to investing for retail investors, titled 'Investing between the flags'. Tony D'Aloisio said *'It's just a metaphor but when you go swimming at the beach, you will reduce the risk of drowning if you swim between the flags, similarly, when you invest, you will reduce the risk of losing your money if you adopt the investing behaviors identified in this guide which has been developed over a long period of time.'*¹⁰²

'Investing between the flags'¹⁰³ sets out the legal requirements for investing between the flags. After the Trio fraud occurred, Trio investors checked those requirements with their investments in Trio and found they had followed each and every recommendation made by ASIC. The Trio investors were investing their superannuation and direct investments in exactly the way the law required.

The Trio fraud was discovered in September 2009. Six months later Mr Shorten commenced using the term "swimming outside the flags" when discussing the Trio fraud. Mr Shorten likened the Trio investors to beachgoers swimming outside the flags.

"The swimming may be better [outside the flags], but it is more risky and you don't have a lifeguard watching over you," he said.¹⁰⁴

¹⁰¹ Jeremy Cooper, Deputy Chairman 'Helping retail investors' 2009 SPAA National Conference, Adelaide 2009 Page 3
[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/SPAAspeech-110309.pdf/\\$file/SPAAspeech-110309.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/SPAAspeech-110309.pdf/$file/SPAAspeech-110309.pdf)

¹⁰² 09-244MR Investing between the flags - Tuesday 8 December 2009.

<http://www.asic.gov.au/asic/asic.nsf/byheadline/09-244MR+Investing+between+the+flags?openDocument>

¹⁰³ 'Investing between the flags' published February 2011 (64 pages) (ASIC publication).

[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/InvestingBetweenTheFlags.pdf/\\$file/InvestingBetweenTheFlags.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/InvestingBetweenTheFlags.pdf/$file/InvestingBetweenTheFlags.pdf)

¹⁰⁴ Hasham, Nicole Trio fallout: DIY investors 'swimming outside flags' 14 Apr, 2011

<http://www.illawarramercury.com.au/news/local/news/general/trio-fallout-diy-investors-swimming-outside-flags/2133491.aspx>

The Australian public related to the flags at the beach metaphor. Once Mr Shorten suggested that the self-managed superannuation fund (SMSF) trustees were 'swimming outside the flags' most Australians would recognise they were doing something wrong, something that is frowned upon in Australia's beach culture. Australians would have sided with Mr Shorten's comment, recognising that it is unacceptable to swim outside the flags.

Whenever Mr Shorten mentioned anything about Trio he would criticize SMSF investors, accusing they were swimming outside the flags and that they had sacrificed investment security for higher risk, higher benefit investments.¹⁰⁵ During the period the PJC were investigating the collapse of Trio, Mr Shorten went on national radio and television, claiming SMSF investors in Trio were "beyond the flags" and "outside the flags".¹⁰⁶ & ¹⁰⁷ *'Unlucky Wollongong investors who missed out on a Federal Government bailout package were "swimming outside the flags" and risking their life savings'.*¹⁰⁸

Mr Shorten claimed, *'If you metaphorically swim outside the flags for APRA regulated funds that is a choice that if we're going to ask the whole of the superannuation industry to bear the cost of compensation which we are then the current policy for that is the people that should be eligible for that should be ones who belong to funds which submit themselves to APRA supervision of trustees'.*¹⁰⁹ (The Trio victims perceive Mr Shorten's comment as asserting that the victims are a burden on the community and that they don't deserve anything for their own wrongdoing).

On 16th May 2012 Mr Shorten said on ABC Radio, *'People who invested in APRA regulated funds have been compensated, but there are some hundreds of people who swam beyond the flags, who weren't in APRA regulated funds'.*¹¹⁰ Mr Shorten's incorrect and misleading statement gives the impression that by being on the wrong side of the flags is why victims remain uncompensated.

In the same radio interview, Stephen Parbery, a founding Partner of PPB Advisory, noted *'It is unfortunate that the relevant minister appears to have tried to sweep this under the carpet by saying things like, "I've compensated people who - in one category, but everybody else was, in essence, in his words, 'swimming outside the flags'." That is not an accurate characterisation of what happened'.*¹¹¹

Mr Shorten blamed one sector of the market for being outside the flags despite the Supreme Court of New South Wales on 12 August 2011, found, *'The Crown submitted that this was a case which indicated*

¹⁰⁵ Illawarra Mercury (Investors 'caught outside flags') by Nicole Hasham 14.4.2011 pp 4&5

¹⁰⁶ <http://www.abc.net.au/worldtoday/content/2012/s3425783.htm>

Government compensates most Trio Capital losses, Ashley Hall reported this story Wed, February 8, 2012 12:26:00

¹⁰⁷ abc 730 report Trio fraud story -April 18 2012.

¹⁰⁸ *ibid.*

¹⁰⁹ Sympathy for burnt TRIO capital clients Apr 13, 2011.

<http://www.abc.net.au/news/stories/2011/04/13/3190435.htm>

¹¹⁰ Rebecca Baillie Australian Broadcasting Corporation Broadcast: 16/05/2012.

<http://www.abc.net.au/7.30/content/2012/s3504474.htm>

¹¹¹ *ibid*

"...a very high degree of criminality not previously encountered by Australian Courts." It also submitted that the criminality demonstrated in the case " ...approaches the very worst category of offences of their nature."

Despite the courts' finding, ASIC made the Trio matter and the disappearance of money appear that it was the result of 'poor financial advice.' Mr Shorten and ASIC used the terms, 'collapse', 'bad advice' and investors were 'swimming outside the flags'. Such terms distanced the regulator from its role and how it failed to carry out a background check of the international Trio Capital architects that came to Australia to set up business within the Australian financial system.

The public were left with the impression from Mr Shorten's 'flags' analogy that the uncompensated Trio investors had deliberately disobeyed rules and regulations to swim "outside the flags". It is inexcusable that Mr Shorten was running a politicization campaign at the same time he was executing his Ministerial duties. His politicizing the 'crime' was achieved by these inflammatory, invective and highly offensive comments aimed at the uncompensated victims, who were doing exactly the same as the compensated victims. Mr Shorten's claim that, "they are responsible for their own choices"¹¹² - suggests that the Trio victims made a conscious decision to venture outside of the flags.

ASIC, by failing to correct Minister Shorten publicly, also discredited the SMSF sector of the market and ignored the crime. While under Mr Shorten's watch, ASIC failed to ensure the market operated legally and seemingly supported the actions of Minister Shorten. ASIC are yet to clarify if they agree with Mr Shorten's characterisation of the Trio Capital Fraud as "swimming outside the regulatory flags". Given these were the flags of ASIC's making, surely this deserved clarification for investors.

Mr Shorten's comments achieve clout for the union industry funds but add nothing to the understanding about how or why the biggest superannuation theft in Australia's history happened. Mr Shorten stated, *"I believe in caveat emptor; Latin for "let the buyer beware" meaning you need to take responsibility for your own decisions, if you buy something without doing your homework, well, you're an adult, that's your responsibility."*¹¹³

As a minister making public statements, the public rely on the information to be accurate. But in the case of Trio, Mr Shorten's comments are often inaccurate and misleading. Harvard Business School Professor D. Quinn Mills says, "let the buyer beware" is a poor warning for investors. Mr Mills makes this claim in the context of his systematic analysis of both the Internet stock bubble and the Enron

¹¹² <http://www.theaustralian.com.au/business/year-director-ban-on-former-trio-ceo-rex-philpott/story-e6frg8zx-1226087486466>

15-year director ban on former Trio CEO Rex Philpott by ANDREW MAIN, The Australian July 05, 2011

¹¹³ The Assistant Treasurer Bill Shorten's article "Clean-up time for financial advisers" (Telegraph 6 May '11 p34)

scandal.¹¹⁴

Stephen James Parbery in the capacity as one of the liquidators of Trio Capital Limited, Astarra Fund Management Pty Limited, and ASI Administration Pty Limited was well placed to have an in-depth understanding of the Trio fraud. May 16th 2012 on ABC Radio Stephen Parbery said,

"It is unfortunate that the relevant minister appears to have tried to sweep this under the carpet by saying things like, 'I've compensated people who - in one category, but everybody else was, in essence, in his words, 'swimming outside the flags'.' That is not an accurate characterisation of what happened".¹¹⁵

Mr Shorten's comments have no credibility. He differentiates between people struck down by exactly the same fraud. Mr Shorten said the industry fund "victims who are victims through no fault of their own" ... but the self-managed investors ventured "directly into troubled funds".¹¹⁶

Investigative journalist Stewart Washington asked whether DIY super investors, who account for a third of the \$1.3 trillion in Australian superannuation savings were aware of their lack of a safety net, Mr Shorten said: *"I would say they are going to become a lot more aware."*¹¹⁷

The victims of the Trio crime find Mr Shorten's answer to Stewart Washington an insult. The victims perceive it is an unacceptable comment, made by a Minister of the Crown.

Mr Shorten's handling of the Trio fraud continually demonstrated that he fails to respect evidence-based information about the crime. He also fails to respect that "victims of crime" do have rights under The Victims of Crime Act 1994 and the Victims Rights and Support Act 2013. The Trio victims deserved the opportunity to provide the court with a 'Victim Impact Statement' but ASIC and Mr Shorten did nothing to see that the victims exercised their right.

VOFF perceive Mr Shorten's use of Part 23 was used as a way to destroy market competition between the APRA-supervised superannuation funds and SMSFs. That Part 23 assisted some victims but not others, served as an ideal market-signal to deter superannuation newcomers from opening a SMSF account. Thus directing more customers to the union managed funds. Similarities of Mr Shorten's union bias can be found elsewhere, such as:

¹¹⁴ D. Quinn Mills - Buy, Lie, and Sell High: How Investors Lost Out on Enron and the Internet Bubble, 2002.

¹¹⁵ Rebecca Baillie Australian Broadcasting Corporation Broadcast: 16/05/2012.

<http://www.abc.net.au/7.30/content/2012/s3504474.htm>

¹¹⁶ Washington, Stuart SMH 'Fraud victims get \$55m back, but some left empty-handed' April 13, 2011

<http://www.smh.com.au/business/fraud-victims-get-55m-back-but-some-left-emptyhanded-20110412-1dcpn.html>

¹¹⁷ Stuart Washington 'Largest government payout of \$55m for Trio super fraud' April 13 2011

<http://www.theage.com.au/business/largest-government-payout-of-55m-for-trio-super-fraud-20110412-1dcm5.html?skin=text-only>

- i) The AWU National Secretary kept quiet about the Australian Workers' Union slush Fund;¹¹⁸
- ii) AWU - Cleanevent deal that cost 5000-odd workers as much as \$400 million;¹¹⁹ and
- iii) Attempt to destroy the small business trucking industry by forcing the little guys to join the trucking giants.¹²⁰

Senator Mathias Cormann echoes a similar concern to the Trio victims when he stated,

'Bill Shorten's problem is that he continues to let his union bias get in the way of his responsibility as a Minister to act in the public interest. 'It's the forgotten families of Australia who are being asked to pay the price for Bill Shorten's shameless union bias'.¹²¹

Mr Shorten's alleged union bias was noted in a letter by VOFF dated August 2017 to the Hon Michaelia Cash. Her Chief of Staff, Ben Davies, replied on 6th September 2017 saying, *"the actions of Mr Shorten when he was the Minister responsible for Superannuation consistently fell short of the standards of unbiased conduct that Australians are entitled to expect."*

Blaming the self-managed investors over the loss of their savings in Trio is like blaming the people travelling in buses and cars killed in Hiroshima in August 1945, suggesting they died because they were not wearing seat-belts. The fact that seat belts were unavailable until the 1970s is akin to the knowledge about Part 23 made available after September 2009. Ignoring that the atomic bomb destroyed Hiroshima city and mostly every living creature, is like Mr Shorten and ASIC are blind to the Trio fraud. The 140,000 deaths in Hiroshima had nothing to do with seat-belts, the disappearance of retirement savings from Trio was no caused by consumer's using self-managed funds or because they used financial advisors.

ASIC regulate Financial Advisors. They operate under and the Corporations Act. One hundred and fifty five financial advisors invested in Trio. The Professional Pensions Pooled Superannuation Trust (PPPST) is an example of a conservative industry fund that chose to invest in Trio. The PPPST became victim to the Trio crime. The fraud is not about one particular financial advisor. The NSW Supreme Court identified 'fraud' in the Trio scheme.

The Financial System Inquiry (FSI) lumped Trio Capital with examples of collapsed funds. VOFF argue

¹¹⁸ <http://tinyurl.com/y7d3jxlg>

¹¹⁹ Anthony Klan 'Cleanevent staff lost \$400m under deal by Bill Shorten's AWU' July 8, 2015

<http://tinyurl.com/hwqmqae>

¹²⁰ Grace Collier Union, Gillard rules driving owner-truckers out of business March 5, 2016

<http://tinyurl.com/l9nsuxw>

¹²¹ Shorten to blame for workers' super losses 09/06/11

<http://www.liberal.org.au/Latest-News/2011/06/09/Shorten-to-blame-for-workers-super-losses.aspx>

that that's misleading. The FSI state,

*'Retail investment failures following the GFC, including high-profile cases such as Storm and Trio, highlighted concerns with financial advice regulation.'*¹²²

Further on,

*'A number of collapses have led to significant consumer losses, including Storm Financial, Trio Capital, Opes Prime, Westpoint and Commonwealth Financial Planning. In some cases, consumers received partial compensation; however, a significant proportion of losses remain uncompensated.'*¹²³

Was the FSI Committee misled by the misleading information disseminated by ASIC and Mr Shorten? The inference that Trio collapsed or was a market failure, investors 'outside the flags' and 'poor financial advice' et cetera, add nothing to educating Australia about **a crime that subverted the Australian financial system.**

Mr Shorten said in the wake of the Trio Capital debacle, the Federal Government was working to ensure SMSF investors knew that no compensation safety net existed.¹²⁴

VOFF know of over two hundred investors affected by the Trio fraud. Mostly all had never heard about Part 23. Some professional businesses that had operated in the Australian financial system for twenty years did not know about Part 23.

Mr Shorten orchestrated the events that followed in the wake of the Trio fraud, like the directive from his office for ASIC to prosecute Mr Tarrant, advice to Sharon Bird MP, Federal Member for Cunningham - to keep VOFF at arms length. Sharon Bird also said to VOFF victims, 'not everyone invested in Astarra'.¹²⁵

Stephen Jones, MP, Federal Member for Whitlam, made many disingenuous, inaccurate and misleading remarks against Mr Tarrant. Like, *'The reason these people lost their money is because they followed some very poor financial advice'*¹²⁶ and *'What sort of financial advisor in their right mind would encourage someone to put their entire life savings into a single asset?'*¹²⁷

Mr Jones repeatedly and publically blamed the victims for their losses due to fraud. He never acknowledged in his public comments that the PJC Report said, *'the fraud specifically and principally*

¹²² Financial System Inquiry Interim Report July 2014 page 1-20

¹²³ Financial System Inquiry Interim Report July 2014 page 3-83

¹²⁴ NICOLE HASHAM Trio rescue package brings joy, heartache APRIL 12 2011
<http://www.illawarramercury.com.au/story/635150/trio-rescue-package-brings-joy-heartache/>

¹²⁵ Meeting with VOFF delegation in Sharon Bird's Office, Wollongong July 13, 2012

¹²⁶ Thompson, Angela Illawarra Mercury Trio anger spills over as victims protest 16th February 2013

¹²⁷ Ibid.

*targeted superannuation savings, and appears to be designed to take advantage of vulnerabilities in the superannuation system.'*¹²⁸

Due to Mr Jones' repeated public claims, on February 22nd 2013 over fifty VOFF members hand delivered a defamation action against Mr Jones. VOFF did not proceed with the matter.

Senator Deborah O'Neill, Member of the Australian Parliament for Robertson, made inaccurate and misleading comments not only in the media but also during the Estimates Hearing, in Canberra (February 25th 2015). Deborah O'Neill asked ASIC,

*"I have made it my mission to ask and put on the record at estimates on every occasion so far that I have been able to be here; what is happening with Trio? Could we get an update of what is available to be said in the public domain, because those people are still very much suffering from the impact of bad financial advice?"*¹²⁹

It is an irresponsible and misleading comment for Ms O'Neill to make, to ignore the fact that a serious financial crime against the Australian financial system had occurred and simply focuses on financial advice, as if this was the catalyst that led to the suffering of 6,090 Australians that were exposed to the Trio fraud.

Deborah O'Neill's statement is misleading to the Senate Estimates and all Australians but not to ASIC. Her statement aligns and echoes the disingenuous, inaccurate and misleading comments made by the other Labor members in line with what Bill Shorten was disseminating and saying about Trio.

The Trio fraud is an example of a crime that was not properly investigated. Nor were the rights of the victims of crime respected, as required under the victims of crime legislation.

¹²⁸ PJC Report May 2012 page 146

¹²⁹ Proof Committee Hansard Senate Economics Legislation Committee Estimates 25 February 2015 Canberra page 98

2.1 VOFF History

Superannuation has resulted in people discovering they uninvitedly and unexpectedly became an victim of financial crime. A link can be made between the unexpectedness of financial crime and road accidents. The multi talented late William Plowden,¹³⁰ author of *The motor Car and Politics: 1896-1970* recognised in the 1960s that the unexpectedness of a road accident was a factor why people were not a political force in regards to road safety,

*'the victims of accidents and their families are politically weak in two ways. First, as members of this "interest" they have no existence until it is too late; only occasionally do small groups of local residents agitate for action to prevent anticipated accidents. Secondly, they share with other consumers groups the crushing weakness of being evenly distributed throughout the community, both geographically and sociometrically. It is thus almost impossible for the survivors to organise themselves effectively.'*¹³¹

Plowden's insight fits a time before Google. The Victims of Fraud (VOFF) are less fragmented and the Internet offers global research in cyber space.

VOFF are standing up to the system that allows the victims of financial crime to be denied any legal rights. Victims of financial fraud can and did throw money at lawyers but in the Trio example, to throw good money after bad achieved little. Citizens in the 21st Century deserve better. Victims of financial crime should not be dragged through the trauma and political nonsense that the Trio victims had to endure with all the disingenuous comments fired at investors and financial advisors, particularly in view that Australians are compelled into superannuation.

The Trio fraud victims waited for seven years for the Australian government to acknowledge the systemic failure of the Australian financial system and consider restitution. During the wait VOFF weathered several political storms. Around the time the Trio fraud was discovered (September 2009) it was also the start of the transitions evolving Kevin Rudd PM to Julia

¹³⁰ Jenkins, Kate Innovative, radical international adviser on government policy, he had a lifelong association with the LSE July 6th 2010

<http://www.theguardian.com/education/2010/jul/05/william-plowden-obituary>

¹³¹ Plowden, William. *The Motor Car and Politics 1896-1970* The Bodley Head London 1971 p390

Gillard PM, back to Mr Rudd then to the Tony Abbott and over to Malcolm Turnbull as Prime Minister.

The Australian government during this period, focused on its own internal damage control, including the need by both sides of government to attend the Independent Commission Against Corruption (ICAC) hearings. It appears to have been no concern to government that due to weaknesses in the Australian financial system, people lost their retirement savings.

VOFF's fight to see justice and to ensure the same financial loss does not happen to other Australians prompted a VOFF delegation to meet with the Minister for Superannuation, Bill Shorten in 2012.

At the meeting VOFF provided the Minister with a list of questions aimed at ASIC, APRA and the Australian Tax Office (ATO) concerning the safety of the Australian financial system. Mr Shorten later informed VOFF that the questions were very important and he provided each agency with a copy of the questions. He said he is personally looking after it and assured us we would get the answers. We are still waiting.¹³²

In May 2013 VOFF applied under the FOI Act for the document containing the answers to our questions. A brief summary of VOFF - Treasury correspondence is provided below to illustrate the difficulty sometimes experienced in Australia to access information under the Freedom of Information Act.

VOFF FOI Number 42 Request dated May 28th 2013 to Treasury.

(01) VOFF requests the answers to our questions. The *'VOFF Questions to the Minister for Financial Services and Superannuation, APRA, ASIC and ATO'* were delivered to the Minister, Bill Shorten at a meeting on July 5th 2012. Mr Shorten informed VOFF a week later that he regarded the questions as very important and gave them to Treasury to answer. VOFF request a copy of the answers under the FOI Act.

(02) May 30th 2013 from Treasury

Treasury require a thirty-day extension because they are busy.

(03) July 8th 2013 from Treasury

Charge of \$87.00.

¹³² The questions VOFF provided the Minister.
<http://www.mysuperrights.info/issue-9-voff-questions.php>

(04) July 15th 2013 to Treasury

Cheque for \$87.00

(05) July 31st 2013 to Treasury

Enquire if they received cheque and where are documents?

(06) August 2nd 2013 from Treasury

Refused access to documents on the grounds that no documents exist.

(07) August 3rd 2013 to Information Commissioner (IC)

Complained about our missing money.

(08) August 11th 2013 to Treasury

Asked where is our money?

(09) August 12th 2013 from Treasury

Wanted VOFF to send bank details for refund.

(10) August 22nd 2013 to Treasury

Provide bank details.

(11) August 30th 2013 from Treasury.

A refund of the charges paid in relation to the abovementioned FOI request was processed on Tuesday 27 August 2013. Regards FOI Team

VOFF's complaint lodged with the Information Commissioner was withdrawn.

William Thompson from Melbourne joined the VOFF delegation that met with the minister. He flew up for the meeting and directly after the meeting he boarded his return flight back to Melbourne. Mr Thompson added significantly to the questions VOFF provided to the minister. His 26-year career with the Australian Tax Office (ATO), gave him an understanding of how important the AUSTRAC data is in money transactions. In 2010, Mr Thompson provided certain material to the Inspector General of Taxation, pursuant to what was then a Section 15 Notice (is now a Section 9 Notice) to furnish information but he never received any response.

Mr Thompson has attempted more than once to blow the whistle about money laundering issues but his impression is that federal agencies seem quite keen on burying their mistakes. In June 2017 Mr Thompson saw Kelly O'Dwyer at a Melbourne Law School event about the proposed protections for whistleblowers.

Kelly O'Dwyer said there have been "...five official reviews regarding Trio, or aspects of Trio's collapse..." but Mr Thompson noted that none of the reviews - especially the PJC Trio Inquiry, made any reference to what had happened to potentially dozens, scores or perhaps even hundreds of AUSTRAC reports - possibly even specific Suspect Transaction Reports. Mr Thompson is concerned that during all

the years while Trio siphoned \$millions from Aussie retirees super fund deposits, transferring the money to offshore tax havens, the AUSTRAC reports didn't raised any red flags.

Mr Thompson sent a submission dated November 2nd 2011 to the PJC Inquiry. Tim Bryant's letter dated November 4th 2011 acknowledged Mr Thompson's submission. That was the last Mr Thompson ever heard about his submission. The PJC Report released in May 2012 did not list Mr Thompson among the 77 that are listed in Appendix 1 at pages 157 to 160. No one from the office of the Parliamentary Joint Committee on Corporations and Financial Services informed Mr Thompson as to why his submission was not accepted. Important information in Mr Thompson's submission did not appear in the PJC Report.

After the PJC released its report, Mr Thompson saw the PJC's failure to point a finger specifically at blatant failures by oversight agencies as evidence of a deliberate cover-up. VOFF submitted an FOI to the Parliamentary Joint Commission in June 2017 seeking information about Mr Thompson's submission.¹³³

The PJC replied June 23rd 2017 and refused any information under s 46(c) of the FOI Act.

During the 2013 pre-election period, VOFF campaigned in the electoral seat of Throsby, canvassing issues about the safety and fairness of superannuation. The area is known for its rusted on Labor supporters. VOFF's street campaigning and door knocking made a noticeable swing of voters.

In June 2013, a VOFF delegation travelled to Canberra and met with three Liberal ministers, Senator Connie Fierravanti-Wells, Senator Mathias Cormann and Mr Paul Fletcher MP. The meeting suggested and agreed that an independent investigation into the unresolved Trio issues would be more efficient and expedient (where time is an important factor as Trio has elderly victims) than a protracted government inquiry.

When the Tony Abbott Government took office (18th September 2013), VOFF was invited to present the government with a submission arguing a case for compensation. VOFF's Submission (46 pages) presented the case for compensating the Trio victims without discrimination. The document was hand delivered (29th January 2014) to the office of The Assistant Treasurer, Senator Arthur Sinodinos.

A few weeks later, before VOFF received a reply, the Independent Commission Against Corruption (ICAC) required Mr Sinodinos to face a corruption inquiry in respect to his salary from Australian Water Holdings (AWH). It is fair to say that the government's focus was on its own damage control.

¹³³ VOFF FOI 460 PJC – Thompson's submission June 14th 2017.

In September 2015, a VOFF delegation met with some of the Senate crossbenchers in Canberra to propose compensation, paid by clawing back the stolen money under the Proceeds of Crime Act.

VOFF promised to send the Senators further information but shortly after the meeting, the government went through a reshuffle, VOFF refrained from sending the information. Unfortunately we did not meet our promises to the Senators.

Along our journey for justice, VOFF have received in 2012, support from the ABC 7.30 Report when a two-part story went to air. Several journalists and online financial news publications have kept the Trio story alive. In 2016, the documentary filmmaker David Blackall from the University of Wollongong produced a short documentary about Trio. VOFF was disappointed the government didn't consider the suggestions made in May 2013 by Senator Mathias Cormann,

'...the recent Trio fraud – we do think that there are a series of unique circumstances which justify a closer look at what government could and should do in that circumstance. Essentially, there are people who invested through Trio who didn't invest in particularly risky investments. They channelled their funds into investment schemes that were licensed by ASIC, that were supposed to be scrutinised by ASIC and APRA and others. There was, in our view, a comprehensive failure of regulators to do their job. As you know, the Parliament has had a pretty comprehensive inquiry into all of this. That inquiry reported a long time ago. It took Bill Shorten way too long to respond to it. His response was inadequate. Some people domestically have gone to jail, but the government is not really through its law enforcement agencies doing anything to pursue the highly sophisticated international criminals that went out to defraud Australians saving for their retirement through pretty sophisticated schemes.

In all of the circumstances, we do believe that there is a case for the government to look more closely as to whether there would be some justification for a level of compensation, if not for the full amount of the loss, but at least a level of compensation. That is certainly something that I hope that Bill Shorten will look at in the not too distant future. That's certainly my message to him that I would like him to do that but I'm happy to explore this further with you directly.¹³⁴

The government's silence about an independent investigation into the unresolved issues surrounding Trio and about compensation were blasted away by the release of the Minister for Small Business, Assistant Treasurer, The Hon Kelly O'Dwyer MP's press release and letter to VOFF on the same day, April 1st 2016. Kelly O'Dwyer's April 1st letter and press release brings memories of ASIC's *April Fool's Day Millennium Bug Insurance cyber-scam* and its *April Fools Day Joke*.

The opening line stated,

'After careful and extensive consideration, the Minister for Small Business and Assistant Treasurer, Kelly O'Dwyer MP, has advised two groups of investors in the now collapsed Trio Capital, that the Government will not provide further compensation.'¹³⁵

¹³⁴ Senator Mathias Cormann, Shadow Assistant Treasurer
Shadow Minister for Financial Services and Superannuation Senator for Western Australia
Transcript Speech and Q&A Ceda Superannuation Update Forum
(Committee For Economic Development Of Australia) 7 MAY 2013 Hilton Hotel, Sydney

¹³⁵ <http://kmo.ministers.treasury.gov.au/media-release/032-2016/>

The next line said, 'The government has already provided \$71.7 million in compensation to eligible investors.' This comment is misleading because Australian superannuation APRA-regulated funds all contribute to meet this cost. The press release failed to disclose that an administration fee of about \$17m was paid to distribute the monies between funds.

The proceeding sentences say,

'The investor groups are made up of direct investors and Self Managed Super Fund (SMSF) trustees, and neither of these groups are covered by the compensation framework under the Superannuation Industry (Supervision) Act 1993 (SIS Act).

'Because they are not covered by the SIS Act, in good faith the Government considered whether there were any other relevant contributing factors to the losses suffered by these investors, which would call for compensation to be paid,' Minister O'Dwyer said.'

It is a shock reading the above as clearly the author has not read the VOFF submission delivered to Mr Sinodinos. Also the next line, without one single piece of evidence about the financial regulators, states,

'The Government considered the action taken by the financial regulators, ASIC and APRA, and is satisfied that in relation to the collapse of Trio, both regulators carried out their roles and responsibilities appropriately, in accordance with the law and the regulatory framework.'

ASIC demonstrate incompetence by not knowing whether the Paul Richard Bell who ASIC jailed in Queensland is also the Frank Richard Bell that ASIC allowed into the Australian financial system to handle superannuation savings under the Trio scheme. How can ASIC's uncertainty about the 'Bells' and all the other failures that VOFF highlight be *'in accordance with the law and the regulatory framework'*?

The next line of the April 1st press release states, *'Trio collapsed in 2009 and there have been five of official reviews regarding Trio, or aspects of Trio's collapse over the last six years.'*

VOFF know of two inquiries/reviews but not five.

VOFF FOI 428 request to Treasury April 4th 2016 requested the three official reviews that have Trio, or aspects of Trio's collapse in their terms of reference, but not, *'The PJC Report May 2012'*; or the *'Treasury Review of the Trio Capital Fraud and Assessment of the Regulatory Framework'*.

Treasury's reply April 18th 2016 said it established approximately 1,000 documents which come within the scope of our request but refuse under section 24 and 24AA of the Act as it is "too much work".

VOFF in letter dated April 25th 2016 to Treasury, provided a list of financial reviews post Trio,

1. the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital (2012);
2. the Richard St. John Report on Compensation arrangements for consumers of financial services (2012);
3. the Treasury's Review of the Trio Capital fraud and assessment of the regulatory framework (2013);

4. the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry (2014);
5. the Financial System Inquiry chaired by Mr David Murray (2014); and the final Report to Creditors (and supplementary reports) prepared by Trio Capital's liquidator, PPB Advisory (2015).

The scope of VOFF's FOI request was aimed at the Richard St. John Report; the Inquiry to lift the professional, ethical and education standards; and the Murray Inquiry.

VOFF requested the document to show that Trio Capital was in the "term of reference" - expected to be one page in length in each case, the total of three pages. The three reports in question had no publicly available information showing they had any relationship with Trio Capital.

April 29th 2016 Treasury replied saying no documents exist.

Serious financial crime issues deserve accuracy. Not used as part of some propaganda machine like ASIC's press releases that are often like a spiel reeking of self-promotion,

*'As a result of ASIC investigations, more than 13 people have been jailed, banned from providing financial services, disqualified from managing companies or have agreed to remove themselves from the financial services industry for a total of more than 50 years.'*¹³⁶

Returning to the April 1st press release, the last part notes,

'On behalf of the Government I wish to express my sympathies to all investors affected by the Trio collapse, and to acknowledge the significant financial and personal stress that the collapse has caused them and their families, including to those who lost their entire retirement savings. Although the recent Financial System Inquiry considered that Australia's financial system and regulatory architecture does not require wholesale change, the Government is further strengthening the financial system to improve consumer outcomes. The Government has also established the multi-agency Serious Financial Crime Taskforce to disrupt and deter financial crimes,' Minister O'Dwyer said.

VOFF argue that some of the legislation changes made were absolutely necessary after the weaknesses in the system were exploited. Also the need to establish a body that deals specifically with serious financial crime is a reflection on ASIC's limitations and indifference it brought to the Trio crime. The victims of the Trio crime have not received justice. The victims have been thrown into the too-hard basket. The financial system underwent many changes as a direct consequence of the systemic failure of the Australian financial system seen in the Trio fraud.

Prior to September 2009, the financial market was not informed about part 23 of the SIS Act. Post September 2009, after the Trio fraud was discovered (September 17th 2009) Part 23 of the SIS Act was dusted off and brought into the light. After September 2009 the regulators joined ranks in attacking

¹³⁶ <http://kmo.ministers.treasury.gov.au/media-release/032-2016/>

SMSFs. In addition to nonsense comments like, “swimming outside the flags”, an X-ASIC staffer joined in, claiming, “you can't have your cake and eat it too”. The X-ASIC staffer now manages a large superannuation fund – his competition is SMSFs. The attack against one sector of the market is an example of victimization.

ASIC took six months from the time Trio was considered a potential Ponzi to realising Trio's assets were missing. The Part 23 solved the lost assets for over 90% of the victims and consequently closed the need for a proper investigation of the crime. Part 23 closed the need to understand exactly how the weaknesses in the financial system were exploited or why ASIC's limitations in international jurisdictions rendered it powerless to respond to the serious financial crime. The Trio fraud was not the type of 'fraud' the authors of Part 23 considered when they drafted the legislation in 1993. The Part 23 authors had no knowledge of the MIS structure or its weaknesses or the limitations in ASIC's powers to function in international jurisdictions.

The Trio fraud was 100% avoidable. It is a reasonable expectation to expect that the financial regulator remember the names of people who had previously come to its attention in regards to having a connection with a massive fraud against the Commonwealth. It was not just a matter of forgetting names that appear on documents. ASIC went to Hong Kong to the offices to secure 100,000 documents from the same people. It is unacceptable that ASIC let the same people purchase a trust fund in Australia that eventually became the Trio Capital Limited operation. ASIC failed to keep an eye on what they were up to.

Was it in ASIC's interests not to let out the details of how the entire system was found to be wanting? The Trio fraud took advantage of the blind spots in the ASIC regulated managed investment scheme. It is perceived Mr Shorten and ASIC made scapegoats of financial advisers they wanted to 'bring down' and justice was denied to hard-working Australians due to the systemic failure of the Australian financial system.

2.2 SUPERANNUATION

Superannuation in Australia is partly compulsory and is further encouraged by the government's supported tax benefits that enable people to accumulate funds to provide them with income in retirement. – Wikipedia.

Yet superannuation account holders and direct investors exposed to the largest superannuation fraud in Australian history were targeted in a politicisation campaign that denied justice to one sector of the financial market.

In 2007 Prime Minister P J Keating in a paper about the story of superannuation said,

*'The first move towards universal access under the newly shaped superannuation provisions came as part of the then government's Accord with the Australian Council of Trade Unions. Led by Bill Kelty, the Australian Council of Trade Unions (ACTU) and its constituent unions had participated in a series of wage settlements designed to restrain wages growth following the unsustainable increases presided over by the earlier Fraser government.'*¹³⁷

Mr Keating as early as 1989 urged the trade union movement to use the billions of dollars generated, by superannuation over the next 20 years, to increase its own industrial clout... and that the development of union-run superannuation funds would give the union movement "institutional muscle" to supplement its already substantial industrial strength.¹³⁸

Considering Mr Keating made such claims in 1989 it is surprising that The Australian Council of Social Service¹³⁹ put forward a proposal as to the purpose of superannuation in 2016. However the purpose needed to be written into law and the ACSC in their submission to the Superannuation Objective Bill in 2016 suggested,

*'The purpose of superannuation is to ensure that as many people as possible can attain an adequate income in retirement, higher than the Age Pension, through an acceptable level of compulsory saving, and fair and sustainable taxation support.'*¹⁴⁰

It is alarming that superannuation is only now being acknowledged for its purpose. In 2014 The Financial System Inquiry looked at the *Government prerequisites* of the financial system and the FSI pointed out that,

'Competitive markets need to operate within a strong and effective legal and policy framework provided by government. The characteristics required for the financial system to contribute effectively to sustainable economic growth are:

- *Predictable rule of law with strong property rights, providing certainty of contract; protection from fraudulent, predatory and anti-competitive behaviour; and access to redress.*¹⁴¹

¹³⁷ P J Keating The Story of Modern Superannuation 31 October 2007
Australian Pensions and Investment Summit

¹³⁸ Michael Millett Sydney Morning Herald *Keating sees super as union shield* Sept 28, 1989 page 4.

¹³⁹ Australian Council of Social Service 23 December 2016 Superannuation (Objective) Bill 2016 Submission 35 page 2

¹⁴⁰ BILLS DIGEST NO. 69, 2016-17 2 MARCH 2017 Superannuation (Objective) Bill 2016 page 11

One thing that the Trio fraud demonstrated was that there was no predictable rule of law concerning the crime, the investigation, the apprehension of alleged collaborators that had a role in the fraud or the clawing back of the unjust enrichments. Rather what occurred with Trio was a politicisation of the Trio crime. Rules of the union movement seemed more apparent, such as bullying and intimidation, rather than the rule of law.

The Trio fraud is a demonstration of union power. The Superannuation Objective Bill acknowledges the purpose of superannuation as supplementing retirement income; The Murray Report acknowledges the *"protection from fraudulent, predatory and anti-competitive behaviour" as basic government prerequisites*; and Mr Keating wanted superannuation to strengthen union "institutional muscle" and this is what occurred with Trio.

Mr Keating wanted compulsory super as a new Australian industry. During the 1990s, the government emphasised beneficial relationships between superannuation, national savings and investment. It is only possible for superannuation to have a positive effect in terms of aging – i.e. for an increasingly large group of retirees to live comfortably off their savings – if those savings are invested in a manner that improves productivity and economic growth.¹⁴² & ref.

According to Craig Isherwood, National Secretary of the Citizens Electoral Council of Australia, 'Superannuation was never intended to fund retirements...' Keating intended to fund the world's investment funds and *"invest funds across the world in toll roads, airports, power utilities, water utilities, bridges across great rivers, skyways, skyscrapers, tunnels through the world's mountains, and wind farms across its plains."*¹⁴³

The \$2.6 trillion superannuation pool is like the government's own huge Automated teller machine with multi billions of dollars available for investing in large-scale long-term projects. The government would simply need to inform a \$100 billion industry fund management board about an opportunity to invest, say \$10 billion, into a freeway construction and the government would have its answer within days. On the other hand, trying to convince thousands of individual self-managed superannuation fund (SMSF) trustees of the same opportunity would be time consuming and involved extensive costly administration.

¹⁴¹ David Murray, Financial System Inquiry Final Report November 2014 (Murray Report) page 10

¹⁴² 10 Journal of Australian Political Economy No 53 - Superannuation Policy

Commentary on an Interview with Paul Keating, former Prime Minister

Bryan (this volume, pp. 100-114) explores the paradox of a whole community 'in retirement' trying to live off the surplus of a shrinking (or non-existent) younger working class.

¹⁴³ Media Release Citizens Electoral Council of Australia 24 May 2012. Reference to two books, *Unfinished Business: Paul Keating's interrupted revolution* by David Love and *Paul Keating, Prime Minister* by Edna Carew.

http://cecaust.com.au/main.asp?sub=releases&id=2012_05_24_Protect_Retirement.html

The government's access to multi-billion dollar funds is a plausible reason why the APRA-regulated funds are the only superannuation funds covered by the Part 23 of the Superannuation Industry (Supervision) Act 1993 (SIS Act). Legislation could easily impose the APRA-regulated boundaries to all superannuation funds and provide all funds with the SIS Act fraud protection. APRA's role in the market does not require it to selectively administer its duties to one group and not another. Nor are ASIC and APRA assigned to destroy the democratization of superannuation by disadvantaging every type of investment other than APRA-regulated superannuation funds.

The Trio fraud provides a real-world example, illustrating little to no interest by the government to solve the Trio crime. On the other hand, an all out attack against the financial advisors who had self-managed clients in Trio and a scaremongering of consumers away from SMSFs is the message that ASIC, Treasury and the Australian Tax Office (ATO) articles carry, for example,

- ASIC 'is worried self-managed funds are a giant train wreck about to happen following the sector's explosive growth';¹⁴⁴
- ASIC in 2013 said half of do-it-yourself schemes maybe uncompetitive considering SMSFs needed assets of at least \$500,000 to make them cost-effective;¹⁴⁵
- The ATO warned SMSF trustees that the ATO could enable a fine of 93 per cent of part of their retirement savings if a trustee exceeds the contribution caps;¹⁴⁶
- Moreover Treasury state that SMSFs might offer more flexibility and potentially greater returns, but remind they also carry greater risks;¹⁴⁷ and
- Warnings of risk and property spruikers, ASIC say, 'if an SMSF member loses money due to theft or fraud they do not have access to any special compensation schemes' nor do they 'have access to the Superannuation Complaints Tribunal to resolve disputes'.¹⁴⁸

The above articles are just some of many that show a bias towards APRA-supervised funds and scare any new consumer from starting a SMSF.

Why is there not a single positive article by government praising the benefits of SMSF for the consumer?

Why the disincentive?

¹⁴⁴ Durie, John The Australian 'Red lights flashing as self-managed super soars' July 12, 2013.
<http://www.theaustralian.com.au/business/opinion/red-lights-flashing-as-self-managed-super-soars/story-e6frg9io-1226677888913>

¹⁴⁵ afr 'Self-managed super is costly for some: ASIC' Sep 25 2013
<http://www.afr.com/business/banking-and-finance/financial-services/selfmanaged-super-is-costly-for-someasic-20130925-j0e98>

¹⁴⁶ Christine St Anne Morningstar 20 Aug 2013
<http://www.morningstar.com.au/smsf/article/traps-avoid/6103?q=printme>

¹⁴⁷ SMH 'Dangers rising on self-managed super, says Treasury head' November 29, 2012.
<http://www.smh.com.au/business/dangers-rising-on-selfmanaged-super-says-treasury-head-20121128-2ae9s.html>

¹⁴⁸ <https://www.moneysmart.gov.au/superannuation-and-retirement/self-managed-super-fund-smsf>

The government is able to use and lose the superannuation pool without accountability or responsibility. If the APRA-supervised pool disappears due to fraud, the in-built compensation mechanism kicks in, costing the government nothing. The APRA- supervised funds never need to know what happened if money disappears. If SMSFs money disappears in a fraud, consumers want to know what happened. The government's message for the APRA- supervised funds,

The levy is imposed on APRA-regulated superannuation entities, which collectively hold \$740 billion in assets in the \$1.32 trillion superannuation industry. In the current case the total cost of the levy is very small relative to total fund assets (less than one hundredth of a basis point).¹⁴⁹

It's a message that doesn't satisfy SMSFs when the \$194.5m lost in the Trio fraud, is regarded by APRA as insignificant - less than one hundredth of a basis point. In the Trio matter, Mr Shorten blamed the SMSFs for placing their savings into troubled funds. The mum and dad superannuation funds and direct investors in Trio are supposed to investigate and know there was fraudulent activity despite ASIC, APRA, the auditors, the ATO, ANZ and NAB banks being unable to detect fraud. Will mum and dad superannuation funds be expected to know other potential events that may lead to the loss of their savings, such as when the government might pull the plug on a large-scale investment project like the East West Link? The scrapping of the East West Link project cost the taxpayers \$1.1 billion.¹⁵⁰

Benjamin Preiss and Timna Jacks article in the Age about a large-scale long-term investment project, raises concerns if the backing in the future comes from superannuation funds to invest in such projects. How can the investors be well informed about where their money is being invested when in the case of the West Gate Tunnel it appears that government politicians are left in the dark over what is going on. Preiss and Jacks write,

"The release of a 1500-page contract for the \$6.7 billion West Gate Tunnel project on the final business day of the year has seen the state government accused of attempting to dodge scrutiny of the controversial plan.

The toll road, linking the West Gate Freeway at Yarraville with CityLink at Docklands, now faces a roadblock in the Victorian Parliament with the Opposition warning it will vote to revoke planning approvals.

What is the West Gate Tunnel project?

With a price tag of \$5.5 billion and a promise to reduce congestion, the West Gate Tunnel project is an ambitious one. But does it stack up?

¹⁴⁹ APRA Submission to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital 24 August 2011 page 7

¹⁵⁰ Jean Edwards East West Link: Cost of scrapping project more than \$1.1 billion, auditor-general says 9 Dec 2015 <http://www.abc.net.au/news/2015-12-09/auditor-general-reports-on-east-west-link-costs/7012618>

*The contract, released quietly on Friday, details tolling requirements for the tunnel, including an additional "administration fee" if a driver fails to pay tolls on time. It shows there will be key performance indicator benchmarks that Transurban will need to meet or face additional payments to the state.'*¹⁵¹

The contract apparently fails to spell out exactly everything clearly. There is the possibility that the project intends to raise revenue through other activities. The government released the contract while much of Victoria was in shutdown. The West Gate Tunnel contracts has been praised as "setting new standards for transparency, but at the same time, a message was sent to Transurban warning "at the earliest available parliamentary opportunity" it would vote against the planning scheme amendment, which is required for the project to proceed. Others slammed the government for releasing the contract "under the cover of the Christmas New Year period" calling it "a secret government". There is no possible way that mum and dad superannuation account holders can know all the background to what is going on and what may or may not happen concerning a large-scale long-term investment project.

The High Court Of Australia in regards to superannuation said,

*'Because of the potentially lengthy time periods over which superannuation savings are accumulated, it was natural, and it is now in many instances mandatory, for a trust mechanism to be employed. These funds have increasingly come under detailed statutory regulation. The government considers that the taxation advantages of superannuation should not be enjoyed unless superannuation funds are operating efficiently and lawfully'.*¹⁵²

The Australian citizens who were exposed to the Trio fraud lost large sums of money. Their government had encouraged them to save for retirement. They followed statutory regulations and requirements to invest in APRA and ASIC regulated, licenced and governed funds in the Australian financial market. Two things these people did wrong: 1) trust the Australian financial system; and 2) trust that ASIC and APRA were carrying out their roles, ensuring that those operating in the financial system are operating lawfully.

¹⁵¹ B. Preiss T. Jacks Andrews government accused of dodging scrutiny as \$6.7 billion West Gate Tunnel contract quietly released Dec 30 2017

<http://www.theage.com.au/victoria/67-billion-west-gate-tunnel-contract-released-20171229-h0bc4z.html>

¹⁵² High Court Of Australia Finch v Telstra Super Pty Ltd [2010] HCA 36 20 October 2010 M5/2010

2.3 Harm caused by fraud.

The Trio scheme was governed, licenced and regulated by ASIC and APRA. This gave consumers the confidence that the Trio fund was endorsed and legitimised by the regulators. Prior to September 2009, (before the Trio fraud was discovered) consumers had no knowledge that the Australian financial system was in prime condition for predatory fraudsters. Consumers were uninformed, misinformed and unprepared for any predatory behavior of the likes of Trio. No warning or guidance existed before Trio to inform consumers of sophisticated financial crime that outsmarts the laws of the country the fraud targets. Then after the Trio fraud, the victims discover that ASIC and APRA will not release information about the crime or about their actions and inactions.

Richard Brody and Kent Kiehl, note that the public does not have a clear perception of white-collar crimes and its consequences. They argue,

*'that in order for public perception to change, an accurate depiction of white-collar crime and its dangers must be presented in such a way that the general public understands' and are 'able to identify the problem with the commission of a particular offense. It is only then that they might be able to realize the true harm that can result from white-collar crimes.'*¹⁵³

The harm likely to result from financial regulatory bodies ineffectiveness to do their job is now better understood than a decade ago. For example, James Goold Cutler Professor of Law, William & Mary Law School note that grief of someone whose loved one died without warning as seen in the World Trade Center story - has similarities to someone whose money has disappeared in a Ponzi scheme such as the experience of Bernie Madoff's victims.¹⁵⁴

The grief experienced from the Trio fraud was a contributing factor that caused two people to end their lives by suicide. It's not ASIC or APRA's role to acknowledge suicide due to financial hardship in the Australian financial market or to inform the Trio perpetrator of the outcome resulting from his criminal actions. Two deaths caused by Trio, like many of the other unresolved issue about the Trio fraud, will most likely remain unacknowledged.

ASIC say it is finished investigating Trio and state that there are no outstanding issues. VOFF argue, by ignoring the grief caused by the Australian financial system letting down ordinary Australians who were doing their best to be good Australian citizens, places very little value on human life. Two loving hard-working citizens were crushed and affected so badly by experiencing losses in Trio that they took

¹⁵³ Richard G. Brody and Kent A. Kiehl, From white-collar crime to red-collar crime University of New Mexico, Albuquerque, New Mexico, USA 2014 page 12 ref. Rosenmerkel (2001, p. 325)

¹⁵⁴ Barnard, Jayne W., "The Year of Magical Thinking: Fraud, Loss, and Grief" (2014). Faculty Publications. Paper 1719. <http://scholarship.law.wm.edu/facpubs/1719>

their lives. Due to the Trio crime being politicised, some of the victims were subjected to bullying victimization and blamed for their loss.

ASIC appear not to act in the best interest of Australian consumers. It made no steps to improve legislation so it can prevent another Trio type fraud from destroying more lives. ASIC's legal team need to propose a Corporation Manslaughter Act as introduced in the United States, the United Kingdom, Canada and Hong Kong. Under the Corporation Manslaughter Act, victim(s) of financial crime would receive justice by seeing company directors compelled to face their legal responsibility and predatory fraudsters made accountable for the harm they cause victim(s).

In 2011 ASIC commissioned a study by Susan Bell Research¹⁵⁵ to examine the social impact of investors not being fully compensated when they suffer financial loss because of their licensee's misconduct. Although the survey recognized that victims do suffer catastrophic impact due to financial loss, the report fails to acknowledge predatory fraud, fails to mention 'crime' and only refers to the word 'fraud' on two points that have nothing to do with the type of insidious fraud as seen with Trio. It is an insult to the Trio victims that experienced the systemic failure of the Australian financial system to have their grief compared to the Susan Bell Research study.

The *ASIC REPORT 240, Compensation for retail investors: the social impact of monetary loss May 2011*¹⁵⁶ makes not a single mention of 'Trio'. The research examined the impact of financial loss but the 81-page report adds nothing to the understanding of the impact caused by predatory fraudsters.

ASIC's history in dealing with victims of crime demonstrates a form of contempt against honest hard-working Australians. According to ASIC's 2002 Report about unlicensed international cold-calling scams, consumers exposed to financial fraud in the Australian financial market are labelled financially illiterate or gullible fools.

Leading up to 2002 ASIC ran the ASIC's '*Gull Awards*' competition *where the public is invited to share their experiences of financial fraud and dishonesty*.¹⁵⁷ The competition rewards the best fraud story with a '*Gull of the Month*' award.

A year before the cold-calling report was published, Sean Hughes, Director ASIC Enforcement and compliance in March 2001 said,

¹⁵⁵ Nicole Hasham Investors gutted by financial losses - study. 30 May, 2011

<http://www.illawarramercury.com.au/news/local/news/general/investors-gutted-by-financial-losses-study/2178201.aspx>

¹⁵⁶ ASIC REPORT 240, Compensation for retail investors: the social impact of monetary loss May 2011

¹⁵⁷ ASIC REPORT 14 - International cold calling investment scams June 2002 page 45 ref. A list of these press releases is provided in Appendix D. To peruse the Gull Awards, go to: www.fido.asic.gov.au (scroll down to Gull Awards in Hot topics section on right menu panel).

*'ASIC has taken a fairly aggressive position on education to drive home the message that consumers should not be tripped up by their own gullibility.'*¹⁵⁸

'The strategy had its most public exposition in what has become known as the April Fool's Day Millennium Bug Insurance cyber-scam, which was designed to educate consumers about the risks of investing on the internet. On 1 April 1999, ASIC set up a scam website offering a fake investment scheme in an effort to highlight the willingness of people to invest in companies about which they know nothing. Exposed a month later, ASIC's April Fools Day Joke had succeeded in convincing more than 1400 people to seek out further investment information from the "site" and 233 people pledged over \$4 million to our scheme.

*'Allied with that hoax, in May 1999, ASIC launched the 'Gull Awards' which is located on the ASIC website. The Gull Awards feature precautionary, but eye-catching, tales of money and deceit and continue to alert consumers to investment scams and how to avoid them. The ASIC website now includes 'Internet Safety Checks' that highlight basic checks which should be made by consumers before investing in internet-based schemes. These tips include checks to ascertain whether a company exists, whether or not it has issued a prospectus, whether the people involved hold an investment adviser's or dealer's licence or a proper authority from a licensed dealer.'*¹⁵⁹

Another 2002 ASIC publication titled 'Hook, line & sinker' explained that *'Cold calling operators therefore need to be understood as sophisticated fraudsters who make concerted efforts to appear as (and even mimic) legitimate operators'*.¹⁶⁰ ASIC suggest that in the case of unsophisticated consumers, *'....the cold callers' success was probably due, at least in part, to the relative lack of sophistication in financial, technological, legal and/or regulatory literacy of their targets.'*¹⁶¹

ASIC's Gull Awards draw no distinction between 1) fraud where diligent investors should have seen the warning signs; 2) investors affected by a sophisticated fraud (like Trio) that deceived ASIC, APRA, the banks, auditors and research houses.

ASIC's Gull Awards is a classic example of victimisation, where the people that become exposed to a financial fraud are automatically regarded as 'gullible'. Blaming the victims of 'fraud' for their predicament is contrary to Lord Denning's understanding, *'Fraud unravels everything...once it is proved it vitiates judgments, contracts and all transactions whatsoever'*¹⁶²

Perhaps amusing is that the Gull Awards *'entrant of the most outrageous, far-fetched or unbelievable scam will win \$50'*.¹⁶³

¹⁵⁸ Sean Hughes Director ASIC Enforcement and compliance seminar 27 – 28 March 2001 Melbourne http://download.asic.gov.au/media/1310209/ACCC_speech.pdf

¹⁵⁹ Sean Hughes seminar 27 – 28 March 2001 Melbourne pp 20 to 21

¹⁶⁰ REPORT 15 Hook, line & sinker: Who takes the bait in cold calling scams? June 2002 page 26 <http://download.asic.gov.au/media/1338350/HookLineSinkers.pdf>

¹⁶¹ Ibid.

¹⁶² *Lazarus Estates Ltd v. Beasley*; CA 1956 Denning LJ, Lord Parker LJ <http://swarb.co.uk/lazarus-estates-ltd-v-beasley-ca-1956/>

¹⁶³ <http://mailman.anu.edu.au/pipermail/link/1999-August/040356.html>

Consumers want to see ASIC properly regulate and govern the financial system, not use resources to trap and catch gullible investors.

William K. Black, author of *The Best Way to Rob a Bank Is to Own One* says “fraud is deceit”¹⁶⁴ and the CEO’s who use a company as a fraud vehicle are able to cause greater losses than all other forms of property crime combined. Company CEO’s who use their position to operate fraudulent schemes are regarded as “financial super-predators”. Prof Black refers to such crime as “control fraud”.¹⁶⁵ Black also says,

*‘Control frauds are a disaster on many different levels. They produce enormous losses that society (already poor in many instances) must bear. They corrupt the government and discredit it. They inherently distort the market and make it less efficient.’*¹⁶⁶

In 2014 ASIC said that Australia is a paradise for white-collar crime.¹⁶⁷ The harm caused by financial fraud does not appear to be understood by ASIC.

Harm caused by white-collar crime is 14 times the amount of blue-collar crime¹⁶⁸ and 18 times more costly than street-crime.¹⁶⁹

As of the 30 June 2017, there are over 14.8 million¹⁷⁰ superannuation account holders, compelled into superannuation, or following the Australian government’s advice to save for their retirement through voluntary contributions. Consumers deserve better than to be victimised and consumers deserve that the regulatory framework provides at least a reasonable level of security. Trio is an example and illustration of gross negligence in the provision of such security.

Predatory fraudsters destroy families, destroy marriages, destroy friendships and destroy lives and they need to be held accountable and responsible for the consequences of their actions. There is ample evidence around the world to argue that financial hardship can lead to suicide.¹⁷¹

The Corporate Manslaughter Act as found in the United States, United Kingdom, Canada and Hong Kong specifically has powers to respond to serious financial fraud.

¹⁶⁴ The Journal interview Bill Moyers and William K. Black. April 3, 2009

<http://www.pbs.org/moyers/journal/04032009/transcript1.html>

¹⁶⁵ Black, William K. ‘When Fragile becomes Friable: Endemic Control Fraud as a Cause of Economic Stagnation and Collapse’

Institute for Fraud Prevention IDEAS Workshop: Delhi, India

Financial Crime and Fragility under Financial Globalization December 19-20, 2005

¹⁶⁶ Black op. cit. p 10

¹⁶⁷ Sue Lannin ASIC boss says Australia a paradise for white collar crime 22 Oct 2014

<http://www.abc.net.au/news/2014-10-22/asic-boss-says-australia-a-paradise-for-white/5832040>

¹⁶⁸ Megan Graham White Collar Crime and the United States University of New Hampshire

¹⁶⁹ <https://www.bcsdschools.net/cms/lib010/SC01916775/Centricity/Domain/4845/Ch.%207%203-5.pdf>

¹⁷⁰ <https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Super-statistics/Super-accounts-data/Super-accounts-data-overview/>

¹⁷¹ Ross Levine An autopsy of the US financial system: accident, suicide, or negligent homicide 2010

<http://www.emeraldinsight.com/doi/abs/10.1108/17576381011085421>

The 2004 attempt by the former Senator Nick Xenophon to find justice for asbestos related diseases and liabilities was considered unnecessary because there are sufficient and adequate legal systems were found to be in place to deal with the consequences of a workplace death. Recently it was suggested the territory government should introduce corporate manslaughter laws to improve accountability for deaths in custody.¹⁷²

In 2010 the Senate accepted the need for strong national industrial manslaughter laws.¹⁷³

Australia must recognize that financial fraud can result in harm and the Trio fraud was a factor in the deaths by suicide of two people. It is a sad indictment on the Australian financial system that the victims of the Trio fraud were subject to bullying victimization by comments suggesting they were 'swimming outside the flags' and 'you can't have your cake and eat it too.'

Among the 6,090 Trio victims, many families had a loving family member whose life was cut short by the grief caused from the consequences of the serious financial fraud.

See paper, Grief from fraud, see "*The year of magical thinking: Fraud, Loss and Grief*" that examines parallels between financial loss due to fraud and the death of a loved one.¹⁷⁴

¹⁷² Katie Burgess Ex-chief minister Jon Stanhope wants corporate manslaughter laws for government JULY 17 2017 <http://www.canberratimes.com.au/act-news/exchief-minister-jon-stanhope-wants-corporate-manslaughter-laws-for-government-20170717-gxcq1q.html>

¹⁷³ Kevin Jones Industrial Manslaughter mentioned in Australia's Parliament February 26, 2010 <https://safetyatworkblog.com/2010/02/26/industrial-manslaughter-mentioned-in-australias-parliament/>

¹⁷⁴ Barnard, Jayne W., "The Year of Magical Thinking: Fraud, Loss, and Grief" (2014). Faculty Publications. Paper 1719. <http://scholarship.law.wm.edu/facpubs/1719>

Further superannuation pains.

On June 13th 2017 a VOFF delegation met with the Save Our Super founder Jack Hammond QC.¹⁷⁵

Save Our Super *'believes that major changes to the existing rules of the Australian superannuation system should not be made unless, at the same time, appropriate grandfathering provisions are included in the legislation.*

"Grandfathering provisions" are qualifying clauses within legislation which exempt those people already involved in the activity with which the legislation deals'.¹⁷⁶

The 'Save Our Super' group's dissatisfaction with the unfair legislative changes introduced by the Malcolm Turnbull government was aired on ABC 7.30 April 24th 2016 with Jack Hammond and Kelly O'Dwyer, Financial Services Minister, presenting their views about the legislation changes. The reporter Andrew Probyn says,

'The Government argued that only the very rich were affected and with Labor support, the changes passed Parliament last November, including a 15 per cent tax on earnings for super nest eggs worth more than \$1.6 million.

Kelly O'Dwyer: Superannuation isn't simply a revenue grab. It is about making sure the system is sustainable. It is about making sure that it is fair and, above all, it is about making sure that it is flexible and it is about making sure that we look after all Australians, not just a few.

Andrew Probyn: One of those angered is Jack Hammond, a barrister who lives in Ms O'Dwyer's leafy suburban seat of Higgins who quickly moved to set up the 'Save our Super' group.....

Jack Hammond QC: It is not rich people intervening to protect themselves. It's people who have relied on promises of government over decades, who have done nothing more than obey the law and then on budget night without any forewarning, you are suddenly sprung with a completely changed policy.

The way in which it is framed is, this will only affect a few wealthy people. How puerile, really'.¹⁷⁷

Save Our Super group pointed out to VOFF that they found the cover of the Grattan Institute's publication titled 'Super tax targeting'¹⁷⁸ offensive. The document is about stripping tax benefits from superannuation and the cover displays the image of pigs.

¹⁷⁵ From Save Our Super website, Our People.

<http://saveoursuper.org.au/about-us/>

¹⁷⁶ Grandfathering provisions December 13, 2016

<http://saveoursuper.org.au/>

¹⁷⁷ Andrew Probyn, Kelly O'Dwyer fights for her career while on maternity leave 25 April 2017

<http://www.abc.net.au/news/2017-04-24/kelly-odwyer-fights-for-her-career-while-on/8468526#>

¹⁷⁸ <https://grattan.edu.au/wp-content/uploads/2015/11/832-Super-tax-targeting.pdf>

The pigs in question are the bronze sculptures known as 'A Day Out' and are in the Rundle Mall, Adelaide. VOFF wrote to the South African sculptor Marguerite Derricourt, letter dated June 15th 2017 informing her that the Save Our Super group found the Grattan Institute's use of the pigs on the 'Super tax targeting' cover offensive.

Marguerite replied in email dated June 20th 2017, thanking VOFF for the interesting letter. Marguerite said,

'I had actually spotted the article as people often send me information regarding the pig sculpture.

My original concept behind the pigs was a fairly simple one - that of a group of farm animals on the loose in a city shopping mall.... My sculpture was intended to have a liberating message and also bring a bit of wit and whimsy into Rundle Mall....'

'I understand that pigs are associated with greed and can symbolise all sorts of things. Many people think that they represent politicians with their lack of principles and corporate greed in the private sector. I am fond of my pigs and sympathetic to these intelligent and misunderstood animals but understand their symbolic meanings can have many variations.

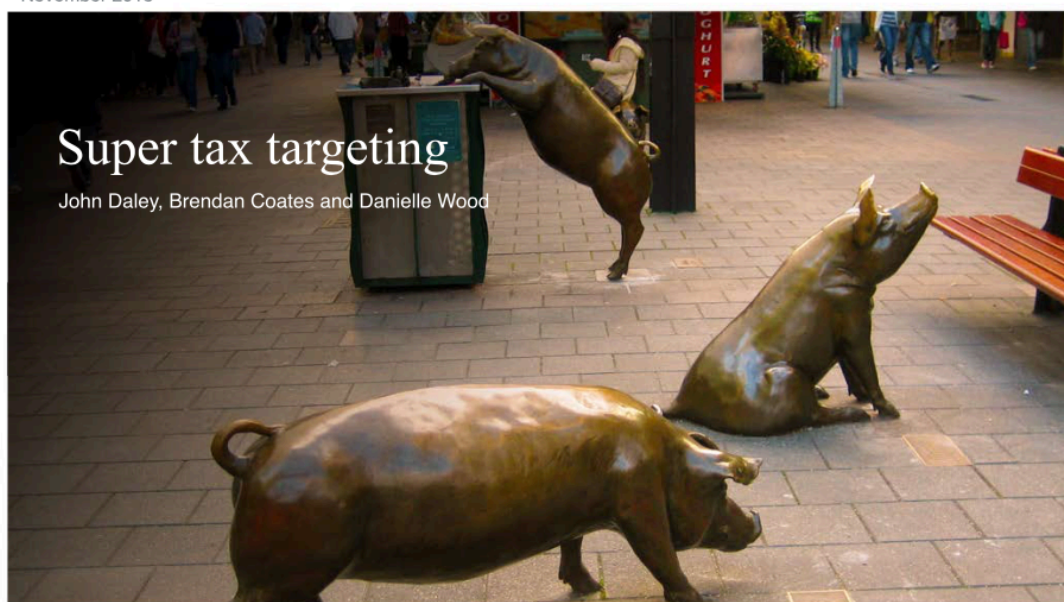
I hope this goes some way to explaining "A Day Out".

Kind regards,

Marguerite

GRATTAN
Institute

November 2015



On June 22nd 2017 VOFF emailed the Adelaide Council to find out if they know that their 'A Day Out' sculpture is featured on the cover of one of the Grattan Institute's publications. An immediate reply said, *'Thank you for your email regarding a publication that includes an asset of the City of Adelaide. A work request has been raised and has been forwarded to Edward James, our Public Art Consultant for actioning and a response'*. Kind regards, Cassandra Customer Service Officer.

VOFF is awaiting a reply.

June 22nd 2017 Jack Hammond thanked VOFF for our porcine research and added, *'We and many other self-funded superannuants believe that the Grattan Institute's use of those bronze pigs on the cover of their publication was not an attempt at humour. It was a none-to-subtle insulting implication that Australians whom had followed the government's super rules and had substantial super savings were, nonetheless, greedy pigs with their snouts in the trough. By way of example, the Institute's publication summary states:'*

"Summary

*Tax breaks for superannuation contributions and earnings should be targeted more tightly at their policy purpose. The current system is expensive and unfair. Superannuation tax breaks mean that less tax is paid on super savings than is paid on other forms of income. These tax breaks should only be available when they serve a policy aim. Although the \$2 trillion superannuation system does not have legislated aims, most believe it should encourage savings to supplement or replace the Age Pension. Yet superannuation tax breaks often go well beyond this purpose and their costs are unsustainable. The tax breaks reduce income tax collections by more than \$25 billion a year. More than half the benefits flow to the wealthiest 20 per cent of households who already have enough resources to fund their own retirement, and whose savings choices aren't affected much by tax rates. Of the \$33 billion in post tax contributions each year, around half are made by just 200,000 people who already have at least \$500,000 in super.... [T]he changes would reduce the tax breaks far more for a lot of rich old men....."*¹⁷⁹

Thanks again for your informative research.

Regards,

Jack

¹⁷⁹ See page 2,
<https://grattan.edu.au/wp-content/uploads/2015/11/832-Super-tax-targeting.pdf>

Kelly O'Dwyer said in an ABC 7.30 Report interview, superannuation... 'is about making sure the system is sustainable. It is about making sure that it is fair, ...and it is about making sure that we look after all Australians, not just a few'.¹⁸⁰

The Trio fraud, which affected superannuation, is a clear demonstration that the system is not fair. Testimony to this unfairness is the fact that the Trio victims cannot find out what happened to their money or find out about ASIC's interactions with Trio and its entities or about what actions/inactions ASIC took to keep Australian superannuation safe. There is no transparency and anything damaging to the superannuation image seemingly gets covered up.

Trio is an example of an unfair financial system that doesn't benefit all Australians. In responding to Trio, ASIC compromised its independence by carrying out a directive from the Minister for Superannuation Mr Shorten's office. ASIC followed orders to prosecute the financial advisor who had recommended the Trio investment to the AWU Officers Election Fund. The action against one financial advisor out of 155 is perceived by VOFF as Mr Shorten's revenge. The attack against Mr Tarrant was revealed when an ASIC operative mentioned to ASIC witnesses, during the court case against Mr Tarrant, "that ASIC are going to take him down", (or words to that effect).

ASIC charged Mr Tarrant with breaching the Corporations Act and consequently, financial advice became the catchword in the Trio fraud. ASIC's attack of Tarrant distracted attention away from the fraud against the entire financial system. Much of the information disseminated by Mr Shorten and ASIC surrounding the Trio fraud is incorrect, inaccurate and misleading. ASIC kept details of the fraud away from the public, the PJC inquiry and the NSW Supreme Court. ASIC only provided limited information to the assigned liquidator. ASIC's silence, omissions and inactions benefited the perpetrators as they managed to remain out of the picture. The perpetrator, Shawn Richard, who was jailed for his lies, became ASIC's key witness.

Australians were misled about the Trio fraud. Mr Shorten and ASIC ignored the evidence of the crime, and ignored the systemic issues. Finding a scapegoat in one sector helped established distinctions, which showed the APRA-supervised funds to be safe while their competitors, were deemed unsafe.

¹⁸⁰ Andrew Probyn, Kelly O'Dwyer fights for her career while on maternity leave 25 April 2017
<http://www.abc.net.au/news/2017-04-24/kelly-odwyer-fights-for-her-career-while-on/8468526#>

3.1 Official documents about the Trio fraud.

(a) *The Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital May 2012 (204 pages).*

It has been six years since the release of the PJC Report, now there is evidence to argue that the PJC's investigation was flawed. i) ASIC withheld vital evidence from the PJC inquiry; ii) submission by a public servant with inside knowledge was ignored; and iii) some committee members made misleading comments that attacked and discredited the self-managed trustees and their financial advisors caught up in the fraud.

Many victims of the Trio fraud gave evidence at a PJC hearing in good faith thinking the purpose of the hearing was to learn about the fraud and perhaps the impact that the fraud had on consumers. Many consumers were shell-shocked by the fraud. Personal accounts said they were naïve not to recognise that the hearing was about covering up the government's failures and that made it necessary to turn 690 Australians into sacrificial lambs.

Apart from politicizing the crime, the PJC's work does provide unsurpassed information about the Trio funds.

(b) *The 'Review of the Trio Capital Fraud and Assessment of the Regulatory Framework' by Treasury 26th April 2013 (24 pages).*

Treasury's review is heavily peppered with misinformation. To learn about the background of the misleading statements, VOFF submitted 22 FOIs to Treasury.¹⁸¹ The final outcome was that VOFF received no documents. VOFF was unable to learn how Treasury reached the conclusions it presented in its Treasury Review. Here are some of Treasury's statements and comments by VOFF.

Treasury write, *'Notwithstanding the conduct of some financial planners in Australia who appear to have been influenced by high commissions in recommending their clients into Trio Capital products, the fraud largely took place in off shore hedge funds.'* (Page 5)

This statement is misleading and seamlessly connected a separate issue with the crime event. No financial adviser was charged over accepting high commissions.

¹⁸¹ The VOFF FOIs are numbers 106 to No 118.

Treasury write, *'The impact of the Trio Capital collapse has had a significant and detrimental impact on a number of Australian investors.'* (Page 5)

No surveys were conducted or data collected to assess whether the funds that lost \$10,000 suffered more or less than the funds that lost double or even many times that amount.

Treasury write, *'The extent of personal losses suffered by investors was greatest amongst SMSFs. In some instances SMSF trustees had 100 per cent exposure to the fraudulent assets.'* (Page 5)

The information is not a fact. It's more to do with discrediting the self-managed superannuation funds while at the same time, promoting the APRA-supervised funds. The Bernard Madoff investment scandal saw about 24,000 victims¹⁸² lose 17.5 billion dollars.¹⁸³ That equals an average loss of \$729,166. The Trio fraud saw 6,090 victims lose 194.5 million dollars, which equals an average loss of \$31,937. The Madoff Ponzi losses per head are much greater than Trio but they were not attacked. The hundreds of international banks that lost the largest amounts money in the Madoff scam, did not come under the same type of discrediting attack as seen against the Trio's SMSF investors. Some Troll-like commentators lashed out at the people that fell victim to Madoff's Ponzi scheme. Four of Madoff's victims took their own life by suicide¹⁸⁴ including Madoff' son Mark. As of the 19th December 2017, Trustee of the Madoff matter has recovered 73% of \$17.5 billion in lost principal.¹⁸⁵

In the Trio fraud, not a single cent was recovered.

Treasury write, *'Overall, regulated superannuation funds had lower exposures to the fraudulent MIS due to higher levels of investment diversification — as required by APRA — than their SMSF counterparts.'* (Page 5)

Treasury's argument is based on the amount of money a fund had invested in Trio. Treasury is inferring that the funds that had lower exposures were operating more appropriately than the funds that had a greater exposure. No literature supports this approach to investigating the impact of a crime. Treasury fail to properly acknowledge that whatever amount is lost is significant to each investor.

Treasury write, *'In their supervision of Trio Capital there was no evidence to alert the Australian*

¹⁸² Jill Disis Madoff victims set to receive \$772 million payout Nov 9, 2017

<http://money.cnn.com/2017/11/09/news/bernie-madoff-government-payments/index.html>

¹⁸³ Erik Larson Madoff Victims Near Full Recovery of Principal With Payout 19 December 2017

<https://www.bloomberg.com/news/articles/2017-12-18/madoff-victims-near-full-recovery-of-principal-with-new-payout>

¹⁸⁴ Arden Dier 4th Person Connected to Madoff Commits Suicide, Father of four jumped from NY hotel Mar 28, 2017

<http://www.newser.com/story/240439/4th-person-connected-to-madoff-commits-suicide.html>

¹⁸⁵ Erik Larson 2017 Op cit.

Prudential Regulation Authority (APRA) or the Australian Securities and Investments Commission (ASIC) that there was a fraud occurring.’ (Page 5)

Treasury fail to acknowledge that ASIC travelled to Hong Kong in 2002 to secure 100,000 documents in relation to a massive fraud against the Commonwealth case. The address where ASIC secured the documents was the offices of Jack Flader and James Sutherland. Fast-forward to 2011 and the Trio fraud matter, Justice Garling in the NSWSC, named Jack Flader as the ‘ultimate controller’ of the Trio scheme. ASIC had involvement with Flader in 2002 and his name was on ASICs company registration database to purchase the Trio fund, giving ASIC plenty of evidence to alert that a potential fraud was about to unfold.

The Treasury Review found *‘that some SMSF trustees had an insufficient understanding and knowledge of the risks pertaining to their investments. Inadequate financial advice may have been a contributing factor.’* (Page 15)

Treasury’s Review carried an unfounded attack against the SMSFs Trio victims but failed along with ASIC and Mr Shorten to acknowledge the high level of financial skills held by some of the people that had SMSFs who were exposed to Trio. They also failed to acknowledge that some of the Trio perpetrators were not questioned.

(c) The report by liquidator **PPB Advisory, Astarra Strategic Fund, Update to Unit Holders, May 2015, (32 pages)** provides details about Trio’s underlying funds and some of the overseas managers that operated Trio’s underlying funds.

(d) ASIC accepted 10 **Enforceable Undertakings (EU)** and APRA accepted 9 EU. Critics see EUs as an easy way to get results without going to court. EU also ensures information remains undisclosed and failings by ASIC and APRA kept out of the public domain.

(e) Court hearings in the **NSW Supreme Court and the Administrative Appeals Tribunal** of Australia, concerning the liquidation of Trio’s funds; two Trio operators and two financial advisors faced charges of breaching the Corporations Act. However, the founding members of the Trio scheme, the ‘ultimate controller’ and Trio’s underlying overseas operators were not compelled to attend court.

(f) Some of the Trio operators living in Australia were questioned under **section 19 of the ASIC Act**, but the information from this process is not publicly available.

3.2 FAILURE Paul Richard Bell and Frank Richard Bell

The Thailand based cold calling scam operator Paul Richard Bell came to Australia for a visit in 2001 and ASIC orchestrated his arrest.¹⁸⁶ In October 2001 ASIC obtained a court order preventing Paul Richard Bell from leaving Australia.¹⁸⁷ ASIC's Media Release (November 2001) said,

'American citizen Paul Richard Bell today pleaded guilty in the Brisbane Magistrates Court to 21 charges laid by the Australian Securities and Investments Commission (ASIC) in relation to his activities as a cold-caller operating out of Thailand and the Philippines.

*Mr Bell, an American citizen, was known to Australian investors as Dr Richard King. He was employed by Thailand-based International Asset Management (IAM), and Philippines-based Trident International, companies that sold overseas shares through cold calling.'*¹⁸⁸

The Financial Markets Authority (New Zealand) (FMA) published an alert in October 2000 about Trident International, naming Richard Bell.¹⁸⁹ ASIC published warnings in its international cold calling report¹⁹⁰ and also in ASIC MoneySmart¹⁹¹ about International Asset Management (IAM) and Trident International. Tony Hetherington, writing for the United Kingdom, Mail on Sunday mentions IAM,

*'The National Securities Market Commission (in Spanish: Comisión Nacional del Mercado de Valores) (CNMV) warned in 2003 against the Spanish arm of Pacific Continental, linking it to a notorious unlicensed share dealing firm in Asia, called International Asset Management (IAM). Hetherington said, IAM's website was hosted by an Internet company called Momentum, American lawyer Jack Flader was a director. Also Jack Flader was major shareholder of unlicensed brokers pushing shares in a communications company called eSat.'*¹⁹²

In July 2015 VOFF requested from the United States Securities and Exchange Commission (SEC) the Form 144 to sell over 60,000 eSat shares filed by Jack Flader in 2000. Thomson

¹⁸⁶ ASIC MR 01/263 'ASIC welcomes Thai cold calling action' 27 July 2001

<http://asic.gov.au/about-asic/media-centre/find-a-media-release/2001-releases/01263-asic-welcomes-thai-cold-calling-action/>

¹⁸⁷ ASIC MR 01/361 4 October 2001

<http://asic.gov.au/about-asic/media-centre/find-a-media-release/2001-releases/01361-asic-obtains-court-order-against-cold-caller/>

¹⁸⁸ ASIC MR 01/396 9 November 2001

<http://asic.gov.au/about-asic/media-centre/find-a-media-release/2001-releases/01396-cold-caller-convicted/>

¹⁸⁹ <http://www.fma.govt.nz/keep-updated/warnings-alerts-and-scams/names-of-firms-and-individuals-to-be-wary-of/>

¹⁹⁰ ASIC REPORT 14 International cold calling investment scams June 2002 page 6

¹⁹¹ <https://www.moneysmart.gov.au/scams/companies-you-should-not-deal-with/unlicensed-companies-list/t/trident-international>

¹⁹² Hetherington, Tony Dark legacy of Pacific Continental crops up overseas 4 March 2010

<http://www.thisismoney.co.uk/money/midasextra/article-1690232/Dark-legacy-of-Pacific-Continental-crops-up-oversees.html>

Reuters on Demand sent the two-page Form 144 in August 2015. On the Form is Jack Flader's address and signature.¹⁹³

ASIC were instrumental in sending Paul Richard Bell to jail but failed to check the background of the companies connected to PR Bell. Had ASIC checked they would have discovered the link to Jack Flader, seen Flader's address on the eSat 144 form and recognised it is the same address on the holding company registered with ASIC in 2001 and is on ASIC's company register database. It's the same holding company that went on to purchase the Trio Capital fund in 2003; the same Hong Kong address where ASIC travelled to in 2002 to obtain 100,000 documents to help solve a case involving fraud against the Commonwealth; and had ASIC recognised that sSat address and the address where ASIC collected the 100,000 documents were linked to its company registry database, then the Trio fraud could have been prevented before it started.

Other names that appear when searching for information about Paul Richard Bell are Danny Sterk and Stephen Robert Casciola.¹⁹⁴ Research into Sterk and Casciola shows that the Securities and Exchange Commission, Thailand (SEC Thailand) filed criminal complaint against Sterk and Casciola on the ground that they conspired to conduct unlicensed securities businesses in Thailand and engaged in fraudulent activities against foreign investors.¹⁹⁵ The SEC share the information internationally with financial regulatory authorities, but ASIC appear reactionary only.

ASIC demonstrate it is not pro-active against organised fraudulent crime. From VOFF's perspective, it appeared ASIC learnt nothing from the jailing of Paul Richard Bell. VOFF endeavoured to learn about the Paul Richard Bell court hearing. A search for Paul Richard Bell's court hearing started in September 2015 and continued into 2017. VOFF corresponded with the Brisbane Magistrate Court; the Brisbane Criminal Registry; the Queensland State Archives; Auscript, the University of Wollongong and the State Library Canberra. Court listing details existed but no written summary or transcript was found.

In November 2015, Auscript provided the following details:

¹⁹³ VOFF's reference VOFF FOIA No 370

¹⁹⁴ http://www.crimes-of-persuasion.com/boilerrooms/international_asset.htm

¹⁹⁵ SEC News Release No. 32/2001 Friday, October 19, 2001

http://capital.sec.or.th/webapp/webnews/printnews.php?preview=Y&cboType=S&lang=en&news_id=&news_yy=2001&news_no=32&sdate=&edate=

Jurisdiction: MAG-DJAG

Presiding: CJ Taylor M

Matter Number: 57588/2001

Matter: Paul Richard Bell v. Commonwealth Director of Public Prosecutions

Hearing Date: 09/11/2001

The Brisbane Magistrate Court

In February 2017, the University of Wollongong Outreach Librarian carried out a search for the Paul Richard Bell v. CDPP case. The national library service was unable to find the hearing or summary of the case.

In June 2017 the Brisbane Criminal Registry said,

'I advise that the Court files from 2001 have been destroyed in accordance with the destruction and disposal schedule, that Court disposes of files after 15 years.

I have been advised that all requests for transcripts are made via Auscript regardless of when the hearing date occurred. Auscript contacts a Transcript Coordination Team in the Department of Justice to locate the recording due to being in 2001. I'm not able to confirm if this occurred in this instance. You may wish to re-contact Auscript to have them re-look into your request.'

In June 2017 Auscript said,

'..we do not have records prior to 2013 and rely on The Department of Justice to supply recordings or transcripts for any orders we receive for information prior to this time.

As with your order, Auscript have contacted The Department of Justice to obtain the relevant information however were advised that the master tape can not be located.

This would align with the advice from the court registry who have advised that the files have been destroyed.

Unfortunately we do not have our own independent records and are unable to assist any further.

In June 2017 VOFF wrote to the Law Society Library and asked if it's possible that the case is published in a law journal or the hearing or summary is archived somewhere? It is difficult to understand why the record of a unique court hearing would be destroyed and removed from Australia's history.

VOFF received an automated acknowledge and our email remains unanswered.

November 27 2017 The National Library of Australia said,

'In terms of the destruction of information from a court case, I would have assumed that at least essential documents and records would have been preserved in archival format. However, I'm not sure of the specific requirements for legal record keeping in Queensland. You could check with an organisation such as Legal Aid Queensland to get a sense of how rare or often situations like this have been noted. Failing that, you could also speak to Queensland's Legal Services Commission.'

VOFF tried to access a copy (transcript) of Bell's hearing through the Freedom of Information process. Two FOIs requests were sent:

- 1) December 1st 2015 to ASIC. December 22nd 2017 ASIC refused saying the document is not in ASIC's possession or the document does not exist.¹⁹⁶
- 2) December 1st 2015 to the Queensland CDPP. The CDPP letter dated December 18th 2017 refused on the basis that the document does not exist.¹⁹⁷

Information about Paul Richard Bell is more compelling when it is considered that ASIC introduced uncertainty as to whether Paul Richard Bell aka Dr Richard King might be indeed the Frank Richard Bell that was one of the international brokers that operated the Trio Capital scheme.

ASIC's Section 19, according to Justin Brereton, is one of the most common and effective investigative tools used by ASIC to conduct compulsory examinations.¹⁹⁸

The examiners in the October 2009 Section 19 examination of a Trio director, wanted to know about the identity of Paul Richard Bell and Frank Richard Bell and whether they were one person. The examiners asked more questions about the Bells than any other person mentioned during the examinations. More questions were raised about Bell's identity than other issue. ASIC's questioning about Bell's identity covers 16 pages of the Section 19 transcript.

The man ASIC arrested, took to court and sent to prison but didn't know his identity?

How could ASIC let another man (who maybe the same man they sent to jail) return to Australia and be allowed to handle Australian superannuation savings?

¹⁹⁶ VOFF FOI No 416 (VOFF's reference) dated December 1st 2015.

¹⁹⁷ VOFF FOI No 417 (VOFF's reference) dated December 1st 2015.

¹⁹⁸ Justin Brereton, Barrister ASIC deterrence and its approach to securities litigation page 10

ASIC's curiosity of whether two identities are one, shows a lack of skill to solve a crime that affected 6,090 honest hard-working Australians. While ASIC floundered over its uncertainty about the two Bells, other more serious questions were never raised, such as, where did the missing \$194.5m go?

Who designed the fraudulent Trio scheme?

Why did ASIC waste time asking a Trio director what Paul Richard Bell looks like? Why didn't ASIC ask the police or the Department of Immigration and Border Protection? Why didn't ASIC access the information in 2009 about Paul Richard Bell in the Brisbane court as the document would have still existed at that time?

It's six years since the Trio Section 19 Examinations wasted taxpayers' money, let down the Trio victims, as there is no evidence that the investigations added any understanding about the Trio crime. The limited depth in the Section 19 Examinations can be seen by no follow up in regards to ASIC's concern about Bell's identity. For instance, a Freedom of Information request to ASIC dated July 11th 2017, requested what ASIC found concerning Frank Richard Bell and Paul Richard Bell. On August 10th 2017 ASIC refused under 24A(1)(b)(ii) of the FOI Act. Meaning that ASIC took all reasonable steps to search / did not find / or the document does not exist.¹⁹⁹ Does this suggest ASIC returned to its office after questioning about the Bell mystery, leaving the mystery unsolved?

There is a history of fraudsters that have used aliases, such as the alleged mastermind of charity fraud gang, Christopher Ellingburg, with a history of fraud stretching back to the 1980s, has up to 18 aliases and changed his name 10 times.²⁰⁰ In 2015 The Securities and Exchange Commission charged a known securities fraudster with conducting a new scheme since his release from prison by using fake names to solicit investors while hiding his criminal past.²⁰¹

On August 15th 2017 VOFF revised and expanded its Freedom of Information request to ASIC concerning information about Frank Richard Bell / aliases Paul Richard Bell and Dr King. The new request included photographs, and/or comments / observations made by ASIC or by

¹⁹⁹ VOFF FOI 461 to ASIC (VOFF's reference) July 11th 2017.

²⁰⁰ Adam Holmes Alleged mastermind of charity fraud gang, Christopher Ellingburg, has 18 aliases, court told June 1 2017 <https://tinyurl.com/yc2sppay>

²⁰¹ Press Release Convicted Fraudster Using Aliases Charged Again for Defrauding Investors Dec. 18, 2015 <https://www.sec.gov/news/pressrelease/2015-285.html>

third party. On September 1st 2017 ASIC refused under 24AB of the FOI Act, saying our request would involve too much work.

ASIC's response to the FOI suggests that ASIC do not know to this day whether the two men are one. It is of concern that ASIC still don't know who he is because during the same period he was registered with ASIC in Australia he was barred from operating in the financial services industry in the United States. It is doubtful ASIC was aware that Frank Richard Bell had repeatedly breached security laws in the United States while he remained manager of Trio funds and registered on ASIC's company register database. ASIC grossly let down the Trio victims.

Frank Richard Bell #1425780.

An active history of run-ins with the law, his presence with operating the Trio Capital scheme should have been a warning to ASIC that something "dodgy" was happening.

Richard Bell's name as signatory can be found on SEC documents of various companies, such as New World Financial, Inc. (NWF) owned by Matthew Littauer and the Global Beverages Inc that is linked to Flader.

Bell is also the signatory of Huntleigh Investment Fund Ltd., and Global Beverages, Inc. [formerly Yarraman Winery, Inc.]²⁰²

Stewart Washington said Bell is a veteran British broker. Born 29 August 1940 in London, UK. The Financial Industry Regulatory Authority (FINRA) BrokerCheck Report shows he has "Regulatory Events 4" and "Customer Dispute 1". He has had disciplinary action by the United States FINRA and that he is not currently registered with any FINRA firm.

The FINRA BrokerCheck Report states that FR Bell was previously registered with 15 FINRA firms. Two firms linked to Littauer, Eugene Liu and Shawn Richard are:

- New World Financial, INC. (CRD# 47747) - Marbella, Spain
05/2000 - 04/2004 and
- Pacific Continental Securities Corporation (CRD# 2398) - Beverly Hills, CA
10/1998 - 11/2001

²⁰² [http://www.secinfo.com/\\$/SEC/Name.asp?S=richard+bell](http://www.secinfo.com/$/SEC/Name.asp?S=richard+bell)

Frank Richard Bell was the subject of disciplinary action by the United States Financial Industry Regulation Authority (USFIRA) that resulted in a number of sanctions and adverse findings against him.²⁰³

FR Bell was with Pacific Continental Securities Corporation from October 1998 to November 2001. Source FINRA.

The British arm of PCS UK collapsed in June 2007 and investor losses from dodgy stocks exceeded £300 million. The Financial Services Authority found PCS had acted without integrity between 2005 and 2007. Pacific Continental's shares were owned by a Delaware company and controlled by Zetland Financial Group, registered in the British Virgin Islands. The ultimate owner was James Sutherland (Jack Flader's business partner).

Concerning the Trio Capital scheme, FR Bell did not inform investors that he was behind the Exploration Fund that handled Trio funds. FR Bell was not questioned by ASIC over his involvement in the Trio matter.

Australians with superannuation or investments in the Australian financial market had no idea that ASIC is not required to run checks on brokers. The Trio brokers were able to arrive unchecked, be part of the Trio operation and depart unchecked after \$70m disappeared from the Exploration Fund under their management.

FINRA, SEC and NASD have been a valuable source to access criminal matters, regulatory actions, civil judicial proceedings, or arbitrations and civil litigations that Frank Richard Bell faced before and even during the period he was managing Trio's underlying funds.

On March 19, 1997, The Commodity Futures Trading Commission (CFTC) issued a report of investigation concerning the conduct of Merrill Lynch, Pierce, Fenner & Smith, Inc. The investigation concerned the conduct of Richard Bell, who, while an associated person (AP) of Merrill Lynch but outside his employment, operated an unregistered commodity pool/"Ponzi" scheme that raised approximately \$16 million from investors. The report, the first of its kind issued by the Commission, indicates that Merrill Lynch received several inquiries regarding Bell, but did not follow up other than by interviewing Bell. The report concluded that information regarding an employee's outside business activity can be relevant to an assessment of the employee's ability to do his job and the employer's discharge of its

²⁰³ Trio Capital Limited (Admin App) v ACT Superannuation Management Pty Ltd & Ors [2010] NSWSC 941 (25 August 2010)Justice Palmer

obligation to provide proper supervision. The report expressed the Commission's belief that Merrill Lynch's inadequately inquired into Bell's activities. Merrill Lynch did not admit the facts or conclusions stated in the report because the Commission had not previously considered the level of inquiry required of a registrant regarding outside activities, the Commission, in its discretion, determined to issue the report instead of bringing an enforcement action.²⁰⁴

Firms Fined, Individuals Sanctioned

In 2003 World Financial Capital Markets, Inc. and Frank Richard Bell, submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$100,000—\$40,000 of which was jointly and severally with Bell—required not to post any research reports on its Web site for two years, and required to provide NASD with its revised Anti-Money Laundering (AML) Compliance Procedures within 30 days of the effective date of the AWC. The firm is also required to hire an outside consultant within 60 days of the effective date of the AWC to conduct independent testing to determine if the firm's AML procedures are in compliance with NASD Rule 3011.

Bell was barred from association with any NASD member in a principal capacity and suspended from association with any NASD member in any capacity for eight months.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm sold shares of equity securities to foreign customers through persons not registered with the firm. The findings also stated that none of the firm's registered representatives had contact with the customers prior to the transactions and failed to receive written authorization from the customers to accept the orders from unregistered persons. NASD also found that the firm, acting through Bell, knowingly accepted customer orders and recorded transactions in this manner, improperly exercising discretion in the customers' accounts, and created and maintained inaccurate books and records. In addition, the findings stated that the firm, at the direction of Bell, posted research reports on issuers that contained exaggerated, unwarranted, or misleading statements and failed to disclose material facts. Moreover, the findings stated that the firm's supervisory systems and procedures failed to adequately set forth procedures and systems reasonably designed to achieve compliance with federal securities laws and NASD rules regarding publishing and

²⁰⁴ Report of Investigation in the Matter of Merrill Lynch, Pierce, Fenner & Smith, Inc. (March 19, 1997) <http://www.cftc.gov/anr/anrenf97.htm>

distributing research reports and the handling of customer orders placed by third persons or discretionary trading. Furthermore, the findings stated that the firm and Bell failed to establish and implement policies and procedures reasonably designed to detect and cause the reporting of suspicious transactions: failed to establish and implement policies, procedures and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and implementing regulations thereunder: failed to provide for independent testing for compliance by member personnel or a qualified outside party and failed to provide for ongoing training for appropriate personnel.

The banning of Bell became effective November 24, 2003. Bell's suspension began January 5, 2004, and concluded September 4, 2004. (NASD Case #CAF030057).

2004 Ruling: Bell, acting for WFCM and PCS ordered to pay \$US67,000. During this same 2004 suspension period FR Bell was listed on ASIC's company registration database.

2005 FINRA Dispute Resolution, against Richard Bell et al New World Financial, Inc. (A.K.A. Pacific Continental Securities, Corp. World Financial Group, Inc. & World Financial Capital Markets, Inc.).

2005 Regulatory action initiated by NASD against Pacific Continental Securities Corp. Alleged respondent failed to comply with an arbitration award or settlement agreement or fees or to satisfactorily respond to an NASD request to provide information concerning the status of compliance. Sanctions Ordered - Suspension.

2008 Regulatory action initiated by FINRA alleged Bell failed to comply with an arbitration award or settlement agreement or to satisfactorily respond to FINRA request to provide information concerning the status of compliance. Sanctions Ordered – Suspension.

2008 ruling, NWF and several staff, including Bell, were ordered to pay \$378,000 for breaches of fiduciary duties and securities laws.

October 1998 to November 2001 Bell was with PCS Corp. The British arm of PCS UK collapsed in June 2007 and the investor losses from “dodgy” stocks exceeded £300 million. The Financial Services Authority found PCS had acted without integrity between 2005 and 2007. Pacific Continental's shares were owned by a Delaware company and controlled by Zetland

Financial Group, registered in the British Virgin Islands. The ultimate owner was James Sutherland.

Bell was not investigated by ASIC over his role in managing the underlying Trio funds and he did not help out with the inquiry. Bell was director of Exploration Fund Limited from October 8th 2003 until September 20th 2004 and again from January 12th 2005 to date (2015?).²⁰⁵ It is important to acknowledge that it was never disclosed to Australian investors that Frank Richard Bell was handling their savings. Also in Australia, Australian investors have no right to know who handles their money.

According to the Australian Financial Review, Huntleigh and Exploration Funds were managed or directed by Frank Richard Bell and Carl Meerveld. About \$75 million of Exploration Fund assets and a link found between the Exploration Fund and a sophisticated network of investment companies and funds under investigation by regulatory authorities in the United States, Europe and Anguilla.²⁰⁶ Global Financial Managers Ltd, a St Lucia company was the investment manager of the Exploration Fund.²⁰⁷

Frank Richard Bell worked at Pacific Continental Securities, World Financial Capital Markets, and in Spain at New World Financial. In 2006, Spanish authorities issued a public warning that New World Financial was not licenced to sell shares to the public. In July 2009, Bell was named in a warning by Hong Kong watchdogs over unauthorised dealings made in the name of a company called Smith Moore & Co.²⁰⁸

United States SEC documents for the period 2005 to 2006, show Richard Bell (meaning Frank Richard Bell) as signatory on Huntleigh Investment Fund Ltd²⁰⁹ & ²¹⁰ (May 4th 2006) and as Managing Director (December 6, 2005).²¹¹ Also on the same SEC documents can be found Advanced Medical Institute Inc., Alexandria Australia and Yarraman Winery, Inc., Nevada, United States.

Justice Palmer in the New South Wales Supreme Court noted that Frank Richard Bell has been

²⁰⁵ Astarra Strategic Fund, Update to Unit Holders May 2015 PPB Advisory page 18

²⁰⁶ Duncan Hughes Trapped in the global tentacles of Trio May 15 2010

<http://www.afr.com/business/trapped-in-the-global-tentacles-of-trio-20100514-ivjih>

²⁰⁷ PPB Advisory Astarra Strategic Fund Update to Unit Holders May 2015 page 18

²⁰⁸ Tony Hetherington Dark legacy of Pacific Continental crops up overseas 4 March 2010

<http://www.thisismoney.co.uk/money/midasextra/article-1690232/Dark-legacy-of-Pacific-Continental-crops-up-oversees.html>

²⁰⁹ <http://www.secinfo.com/d12TC3.vYaz.f.htm?Show=1#1>

²¹⁰ <http://www.sec.gov/Archives/edgar/data/0001096620/000114420405039581/0001144204-05-039581-index.htm>

²¹¹ <http://www.sec.gov/Archives/edgar/containers/fix240/1346763/0001144204-05-039585.txt>

the subject of disciplinary action by the United States Financial Industry Regulation Authority that resulted in a number of sanctions and adverse findings against him.²¹² Sanctions against FR Bell consist of several FINRA and NASD reports.

In 2010 Frank Richard Bell faced a murder complaint over the deaths of two teenagers in Cebu, Philippines. Bell was accused of hitting the motorcycle driven by a 19-year-old Filipino-American and his 16-year-old cousin but Bell denied the allegations. Bell alleged that the two men on a motorcycle cut in front and fired five shots from a gun at his vehicle.²¹³

According to PPB Advisory, Frank Richard Bell while in a jail in the Philippines, sent information about the underlying Trio funds. Bell was in fear of his life, as he believed Jack Flader was behind the shots fired at his car. The information helped PPB understand the underlying funds.²¹⁴ Trio has a dark past, its founder, Matthew Littauer was murdered in 2004 in Tokyo and the murder remains unsolved. Shawn Richard while inside Silverwater prison in Australia said he feared for his safety. Mr Richard said Jack Flader had tried to organise the murder of his old business partner, James Sutherland.

The information Bell sent to PPB advanced the understanding of the Trio fraud. Whether the information was FR Bell's insurance against his executioner(s) remains unknown.

VOFF wanted to see the information FR Bell sent to PPB. In October 2015 VOFF requested from ASIC the documents Frank Richard Bell sent to PPB / ASIC between February 2010 to September 2010, about and concerning Trio's underlying funds.²¹⁵ ASIC refused stating that the document does not exist.

ASIC has demonstrated in its handling of Trio that it doesn't recognise how sophisticated predatory financial fraudsters operate. Most of the information that has assisted VOFF in understanding how the Trio fraud was orchestrated has come from international sources. The United States Financial Industry Regulatory Authority, Inc. (finra) [not-for-profit organization authorized by Congress to protect America's investors by making sure the broker-dealer industry operates fairly and honestly] produce reports about brokers and companies, these have proved helpful to VOFF. The BrokerCheck Report of Frank Richard Bell (15 pages)

²¹² Trio Capital Limited (Admin App) v ACT Superannuation Management Pty Ltd & Ors [2010] NSWSC 286 (16 April 2010)

²¹³ Briton faces murder charge anew By Ador S. Mayol

<http://newsinfo.inquirer.net/tag/frank-richard-bell>

²¹⁴ June 17th 2015 PPB held a meeting in the State Library, Sydney

²¹⁵ VOFF FOI 407 to ASIC October 28th 2015 (VOFF reference)

details his working history and the disclosure events, show the actions taken when securities law were breached.

There is very little information available about FR Bell in Australia other than what was provided by investigative journalists who were reporting about Trio. ASIC's database for company registration has the following documents:

(1) ASIC's Current & Historical Company Extract,

Wright Global Investments Pty Limited

Name: Richard Bell (meaning Frank Richard Bell)

Address: Unit 2008, 348-354 Sussex Street - Sydney NSW 2000.

Born: 29/08/1940, London -United Kingdom.

Appointment date: 12/07/2001

Cease date: 13/09/2006.

On same document among the many names are Eugene Liu, Shawn Richard, and Matthew Littauer.

(2) ASIC Application for registration as an Australian company, the proposed name is World Financial Group Australia Pty Ltd – Application lodged 12/07/2001.

Registered office 79A George Street, The Rock NSW 2000

Director and Secretary Details

Name: Bell, Richard.

Address: 5135 Fifty Fifth Street Circle West, Bradenton Florida, USA.

Birth details: 29/08/1940 London United Kingdom.

Office: Director

On same document are: Littauer, M., Hong Kong and Richard, S., Canada.

Justice Palmer in the New South Wales Supreme Court referred to Frank Richard Bell's troubled past. Also Frank Richard Bell was referred to in a case against Eugene Liu. First in a question to Mr Liu, *'And you say that at one - you had a conversation with Richard Bell that suggested to you that Mr Flader was controlling things. When - when was that conversation?'* and secondly at section 104 where the court states,

Mr Liu described the "due diligence" he undertook in respect of Mr Richard Bell and Mr Carl Meerveld, who were the managers for the Sierra, Pacific, SBC and Exploration Funds, in his

private examination on 24 June 2010. Mr Liu's background checks for Mr Meerveld consisted of a Google search and a reference from Mr Flader. His checks for Mr Bell consisted of reviewing his NASDA broker check record that outlined his employment record and disciplinary history. Mr Liu worked with Mr Bell at World Financial Capital Markets. According to Mr Liu's evidence in his examination on 26 April 2010, he was satisfied that Mr Bell was appropriately qualified even though his NASDA broker check disclosed that Mr Bell had a poor compliance record and he had been banned from running a brokerage firm. Neither Mr Bell nor Mr Meerveld had experience in fund management. Mr Liu was asked whether he was concerned about this in his private examination of 26 April 2010. He did not directly respond to this question and his response, as recorded a page 126 of his transcript of evidence, is confusing and difficult to understand.²¹⁶

An accurate account of the Trio fraud includes Frank Richard Bell's troubled working history. Why did ASIC let him be part of a financial scheme that handled Australian superannuation and investments?

Throughout the legal cases regarding the Trio matter, Frank Richard Bell is mentioned 7 times. On the other hand, Mr Tarrant and his financial business are mentioned in the same court documents 853 times. The Parliamentary Joint Committee Inquiry does not mention Frank Richard Bell, but refers to Tarrant 35 times.

Why ignore a key Trio operator that has a troubled working history yet be preoccupied with 2 or 3 financial advisors out of the 155? Despite Justice Palmer, in the NSW Supreme Court stating, *'Yet even a competent and responsible financial adviser would have heard no warning bells sounding for these Schemes.'*²¹⁷

VOFF relate to the difficulties the cold-calling victims experienced in 2001. The Trio fraud in 2009 saw ASIC uninterested to investigate properly, failed to question the overseas Trio operators, failed to follow the money trail and was uninterested in using its power under section 50 of the ASIC Act to launch a restitution case on behalf of the victims to claw back the missing money under the Proceeds of Crime Act. Similarities appear with the Brinton Group. For example, in the 2001, ASIC joined law enforcement and financial regulators from Canada, Hong Kong, Japan, New Zealand, Philippines, Thailand, the Netherlands, Singapore, South Africa, and USA to assist the Royal Thai Police in arresting, 84 foreigners operating cold calling

²¹⁶ Eugene Liu v. Australian Securities and Investments Commission [2014] AATA 817 Tribunal Ms J L Redfern, Senior Member

²¹⁷ Trio Capital Limited (Admin App) v ACT Superannuation Management Pty Ltd & Ors [2010] NSWSC 286 (16 April 2010)

firms in Bangkok. ASIC was part of the joint international operation, to help close down cold calling firms from Thailand to Indonesia.²¹⁸

The 2001 Thai cold calling scam became known as the “Brinton Group”, netting about £120m.²¹⁹ In 2002 *The Australian Brinton Group Recovery Association (ABGRA)* decided to launch a civil suit to stop the Hong Kong banks from returning frozen assets back into the hands of the Brinton Group executives (as the Thai authorities had dropped all criminal charges).²²⁰

ABGRA wrote to ASIC seeking urgent assistance to launch a criminal investigation and lay charges against the perpetrators. ASIC replied to ABGRA saying,

“After the raids in Thailand in 2001, ASIC assessed the potential options for taking further regulatory action in relation to cold calling organisations including but not limited to, The Brinton Group. Careful consideration was given to the evidence available and all legal issues, and we obtained external advice on these issues in 2001. It is very difficult to take effective enforcement action in these matters because the acts occurred in a number of different countries/jurisdictions including Australia, Thailand, Hong Kong, USA and Canada, Consideration has also been given to the statements of Australian investors, other sources of admissible evidence, jurisdictional problems and the prospects of recovery. In cases such as these there are many obstacles to civil or criminal actions being successful.

After reviewing the external legal advice, consideration was given by ASIC's National Enforcement Co-ordination Committee as to whether any enforcement action could be taken. It was decided that it was not feasible to take such action, and the investigation was closed.”²²¹

ASIC’s letter to ABGRA gives the impression the regulator doesn’t want to get involved. ASIC acted the same with Trio. A fraud against the Commonwealth, such as, *CDPP v. Hart*, gets immediate action from ASIC but civil crimes are ignored. When the Commonwealth is defrauded, ASIC has no obstacles. Such double standards are the subject of VOFF Press Release May 21st 2017.²²²

ABGRA were unable to access documents of their own money transactions deposited in Standard Chartered and Hong Kong Banks in Hong Kong in 2001-2. ASIC informed the

²¹⁸ ASIC - Report 14. International cold calling investment scams. June 2002. Pages 47 & 48.

²¹⁹ Spillius, Alex ‘Thais charge Britons over £120m scam’ 27 Jul 2001

<http://www.telegraph.co.uk/news/worldnews/asia/thailand/1335542/Thais-charge-Britons-over-120m-scam.html>

²²⁰ Mayes, Andrea ‘Civil move over Thai scam’ July 11 2002

<http://www.theage.com.au/articles/2002/07/10/1026185064444.html>

²²¹ Cox, Adrian The performance of the Australian Securities and Investments Commission Submission 91 dated 16 Sept 2013 p16

²²² <http://www.mysuperrights.info/resources/May21%2C2017-VOFF%20Press%20Release.pdf>

Australian Brinton Group Recovery Association (ABGRA),

*'...it has received external legal advice from a legal firm in Hong Kong stating that ASIC has no standing to take civil or criminal proceedings in Hong Kong. According to the advice ASIC received, the law in Hong Kong states that only the contracting parties to a contract have standing to initiate civil proceedings in Hong Kong. Further, the Hong Kong Courts will not enforce the criminal law of another jurisdiction, including offences under Australian law.'*²²³

The Australians who lost money to cold calling were powerless to act, despite one of the ABGRA members having been an employee at the company in Hong Kong, Acceptor Professional Directors Limited ("Acceptor"), where the fraud was perpetrated. *'His duties at Acceptor were to review all the transactions for this case and prepare a detailed report on what the alleged fraudsters had done and where they transferred all the investor money'*.²²⁴

ABGRA already knew,

*'The alleged fraudsters in this case used offshore companies and bank accounts in Hong Kong to accept "investments" which were supposed to be being made on the "London Money Markets" but in actual fact large proportions of their money were retained by the alleged fraudsters and portions of it were paid back to other investors as "so-called" returns on their investments.'*²²⁵

ABGRA member Adrian Cox noted that ASIC found no evidence of "key figures" that made misleading statements to Australian victims and they found no possible offences under various legislations including the Crimes Act. But Cox claims,

*'Such evidence would not really be necessary under Commonwealth or State Crimes acts for charges relating to theft and fraud If ASIC already had bank statements showing transfers of investor funds to personal bank accounts of "key figures" in the Brinton group and If ASIC also had copies of signed service agreements by "key figures" of the Brinton Group showing they In fact owned all these companies which investors were being told they were investing in, but which were in fact being used for theft and fraud, and which is information that the Hong Kong police held and could easily have been provided to ASIC upon request, under Hong Kong's Mutual Legal Assistance in Criminal Matters Ordinance.'*²²⁶

The Brinton Group, were scammed by unlicensed operators, power selling unregulated stock. The Trio fraud was a regulated Australian company, licenced and overseen by ASIC and APRA. Notwithstanding such differences, ASIC's response to both crimes is similarly dismissive.

²²³ Cox, Adrian The performance of ASIC Submission number 91 dated 16 Dec 2013 p17

²²⁴ Cox, Adrian The performance of ASIC Submission number 91.02 dated 30 September 2013 p1

²²⁵ *ibid.*

²²⁶ Cox, Adrian The performance of ASIC Submission number 91 dated 16 Dec 2013 p7

Adrian Cox of ABGRA in a submission to the government, says ASIC's MoneySmart website is misleading when it answers, "Why overseas scammers target Australians".

*'Many scams come from companies based overseas. These scams target Australians because ASIC does not have international jurisdiction to investigate and prosecute them.'*²²⁷

*Cox claims, "Not only is the above quoted statement a false representation to the Australian people of ASIC's true legal powers, it also represents an outrageous invitation to international fraudsters to come in and take even more money from Australian retirees and other investors. To make such false statements to people who have been defrauded of life savings by such fraudulent activity is an absolute disgrace and to attribute the fraud problem to such a false legal position is unconscionable."*²²⁸

Cox made his point known to the Australian government in 2013 in a submission to the performance of ASIC. ASIC's response to the Brinton Group scam is itself a scam. ASIC can be seen as having a foot in both camps. ASIC decide on the outcome of any given situation. In the Brinton Group case, ASIC expressed concern about the impact the Brinton Group scam had on individual consumers, but ASIC consistently stated its limitations and ability to tackle scams across borders, which is why consumers "should deal with licenced Australian advisers".²²⁹

Well Trio fraud victims did have licenced Australian advisers. But ASIC found another excuse suggesting self-managed investors were not in APRA-supervised superannuation funds. It's this type of flexibility where ASIC can avoid and distance itself from a crisis, that is perceived as dishonest.

²²⁷ Cox, Adrian The performance of ASIC Submission number 91.04 dated 16 Dec 2013 p2

²²⁸ *ibid.*

²²⁹ Cox, Adrian The performance of ASIC Submission number 91 dated 16 Sept 2013 p18

3.3 FAILURE No background checks.

ASIC failed to carry out background checks on the following:

- Wright Global Investments Pty Ltd 097 478 487, registered in July 2001.

Among the names listed are:

Shawn Darrell Richard - Appointment date: 12/07/2001 Cease date: 16/09/2009

Matthew Littauer - Appointment date: 12/07/2001 Cease date: 03/12/2004

Eugene Liu - Appointment date: 10/07/2006 Cease date: 05/01/2009 and

Richard Bell - Appointment date: 12/07/2001 Cease date: 13/09/2006

The Members fund listed is:

Name: Astral Investments Limited Org No.: 134 393 392

Address: Suite 18b 148 Connaught Rd Central, Hong Kong

- World Financial Group Australia Pty Ltd 097 478 487 registered in 2001.

(Note it is same company number) Three names are mentioned on the ASIC registration form.

Bell, Richard – office Director

Littauer, Matthew – office Director

Richard, Shawn – office Director and Secretary.

Shareholding Astral Investments Ltd

13F Silver Fortune Plaza

1 Wellington St., Hong Kong

- Wright Global Asset Management Pty Ltd (WGAM) 105 796 754

Registration Date: 05/08/2003

Among the names listed are:

Eugene Liu - Appointment date: 17/12/2009 Cease date: 08/01/2012

Shawn Darrell Richard - Appointment date: 17/12/2009 Cease date: 19/01/2011

Jack Flader - Appointment date: 16/12/2004 Cease date: 08/08/2005

Address: 13th Floor, Silver Fortune Plaza, 1 Wellington Street, Central, Hong Kong

Matthew Littauer - Appointment date: 05/11/2003 Cease date: 02/12/2004

Previous Members

Name: Bella Donna Limited

WGAM purchased Tolhurst Funds Management in November 2003.²³⁰

Had ASIC checked the Shareholding Astral Investments Ltd in Hong Kong, it would have found

ASTRAL INVESTMENTS LIMITED CR No: 0747585

²³⁰ PJC Report p 19.

Date of Incorporation: 21-Feb-2001

Registered Office: SUITE 18B 148 Connaught Rd Central, Hong Kong

Presentor's Name & Address – Gemini Financial Services Nominees Limited and Gemini Corporate Services Ltd

16/F Silver Fortune Plaza, 1 Wellington Street, Hong Kong.

The names, Matthew Nguyen Littauer and Frank Richard Bell,

On another D2 Form for Austral Investment Limited dated 2003 is the address:

Zetland Secretaries Limited

16/F Silver Fortune Plaza, 1 Wellington Street, Hong Kong.

The address 16/F Silver Fortune Plaza, 1 Wellington Street, Hong Kong was the sellers' address when Jack Flader put on the United States Securities and Exchange Commission Form 144 dated 4/20/00 for the 65,828 eSat shares.

Investigative journalist Stuart Washington notes that,

'In one link, Astarra Asset Management is wholly owned by a Hong Kong company called Century Investments Holdings.

No such company exists on the Hong Kong companies register, but it gives its address as Level 13, Silver Fortune Plaza, 1 Wellington Street, Central Hong Kong.

*This is the same address used until late 2008 by a company called Zetland Financial Group, reported in the British press as the ultimate owner of PCS. James Sutherland is named as Zetland's owner.'*²³¹

The International Consortium of Investigative Journalists (ICIJ) Offshore Leaks Database have provided some transparency to the information that is often hidden away from the public. A search of the panama papers for the address: 13th Floor, Silver Fortune Plaza 1 Wellington Street Central Hong Kong finds several companies with Zetland among them but that was never a secret.²³² What ASIC could have discovered is that financial authorities in other countries, such as the United Kingdom which followed links from the troubled Pacific Continental Securities to C/o 13/F Silver Fortune Plaza, 1 Wellington Street, Central, Hong Kong.

Another source for information is from the Global Intelligence Files, WikiLeaks. It has an email dated, 2005-05-30 from Carl P. Meerveld who was the Managing Director of Global Financial Managers Limited. His contact address is C/o 13/F Silver Fortune Plaza, 1 Wellington Street, Central, Hong Kong.²³³

²³¹ Stuart Washington Astarra and the case of the missing \$118 million JANUARY 11 2010
<http://www.smh.com.au/business/astarra-and-the-case-of-the-missing-118-million-20100110-m0my.html>

²³² <https://offshoreleaks.icij.org/nodes/233935>

²³³ <https://search.wikileaks.org/gifiles/emailid/485847>

The above companies, names and addresses are just tip of the iceberg of what ASIC could have discovered in the early beginnings of Trio before the damage set in. The main point here is that ASIC already had information available before traveling to Hong Kong in 2002 to subpoena 100,000 documents from Jack Flader and James Sutherland's Hong Kong offices. The offices were named Zetland. The documents gathered from Zetland assisted CDPP in the Queensland tax fraud case ***Commonwealth Director of Public Prosecutions (CDPP) v. Steven Irvine Hart***. Zetland provided documents that enabled the court to charge Hart with nine offences of defrauding the Commonwealth.²³⁴ & ²³⁵

When ASIC travelled to Flader and Sutherland's Hong Kong based office, the Zetland website in about 2002 informed that James Sutherland founded the Zetland Financial Group in 1987 and that Jack Flader joined the Zetland Financial Group in 1997. Flader and Sutherland are both mentioned in the CDPP v Hart case, curiously Flader is mentioned as "Flader" – no Christian name. See VOFF Press Release 21.05.2017.²³⁶

²³⁴ Commonwealth Director of Public Prosecutions v Hart [2010] QDC 457 (30 November 2010)

²³⁵ CDPP v Hart & Ors; Yak 3 Investments P/L as t/tee for Yak 3 Discretionary Trust & Ors v Commonwealth of Australia [2013] QDC 60 (2 April 2013)

²³⁶ <http://www.mysuperrights.info/media-release-p3.php>

3.4 FAILURE Millennium Financial Ltd.

VOFF are concerned over the 2001 and 2002 New Zealand Securities Commission's web site warnings about the unlicensed Millennium fund.²³⁷ The 2001 post contained a list of 15 people; the 2002 list had 17 names. Among the names for 2001 were Gary Artzt and Jon Lopresti, they were employees at Matthew Littauer's company New World Financial (NWF). The 2002 list in addition to Artzt and Lopresti also included Greg Rullo, and Shawn Richard. Rullo and Shawn Richard had also worked with Littauer.

The appearance of Shawn Richard's name on the New Zealand web site pre-dates his commencement with the Trio scheme in Australia and offers an insight into that he was one of the unlicensed operators operating out of the Philippines based Millennium.

The United Kingdom Financial Services Authority (FSA) in 2003 warned about Millennium²³⁸ and in 2002 the United States SEC acted against the Millennium Financial Ltd. ("Millennium") noting that *'Millennium purports to be an international securities and financial consulting firm headquartered in the Montevideo Free Trade Zone in Uruguay, with offices in Brazil, Mexico, Singapore, and Switzerland. In fact, Millennium conducts some of its activities from or through the United States'*²³⁹

The SEC also stated,

1. This case involves an ongoing worldwide scheme by Defendant Millennium to defraud investors through the offer and sale of purported pre-initial public offering ("pre-IPO") stock of at least three U.S. companies on the basis of false and misleading statements. Millennium has engaged in boiler room tactics and, among other things, has falsely told investors that (i) it is an offshore "international securities and financial consultancy firm" with offices in Brazil, Mexico, Singapore and Switzerland; (ii) a particular U.S. company would have an IPO within a time frame that typically ranged from one to five months in the future; (iii) investors who purchased pre-IPO stock could sell their shares at a profit before the IPO; (iv) the IPO offering

²³⁷ source <http://www.siliconinvestor.com/readmsg.aspx?msgid=16875210>

OVERSEAS BROKERS, Since August 2000 the Securities Commission has published on this web site details of overseas brokers who have targeted people in New Zealand who do not hold a New Zealand broker's licence or futures dealer authorisation and, on the information available to the Commission, do not comply with New Zealand law, in particular, the Investment Advisers (Disclosure) Act 1996 or the Securities Amendment Act 1988, when purporting to act for New Zealand people.

The brokers have not provided evidence to the Commission that they are registered in their home jurisdiction to undertake this type of securities business.

Millennium Financial Group

23rd Floor, Tower 1, The Enterprise Center

6766 Ayala Avenue, Makati City 1200 PHILIPPINES

Associated individuals: Richard Arrowsmith, Gary Artzt, G. Edward Buell, Ben Cattaneo, Nica Gelera, Ray Gordon, Jon Jones, Jon Lopresti, Matthew McAllister, George Mitchell, Lenny Mazzola, Joseph Paterno, Shawn Richard, Gregory Rullo, Ken Sheffield, Romson Velez, and Robert Velis.

The above brokers came to the Commission's notice.

²³⁸ <http://www.fsa.gov.uk/library/communication/pr/2003/129.shtml>

²³⁹ <https://www.sec.gov/litigation/complaints/comp17528.htm>

*price would be substantially higher than the cost of the pre-IPO shares; and (v) the stock price would increase substantially yet again in post-IPO trading. In fact, Millennium did not have offices in Brazil, Mexico, Singapore and Switzerland, no IPO occurred within the time that Millennium represented, there was no market in which to sell the pre-IPO stock at a profit, and there was no basis for claiming that the pre-IPO stock would substantially rise in value.*²⁴⁰

The United States froze the assets of the international fund Millennium for operating a boiler room scam that had targeted ordinary mum and dad investors and the ‘Commission acknowledged the cooperation and assistance of the regulatory and law enforcement officials of several foreign jurisdictions in connection with this matter’.²⁴¹

Who are the “several foreign jurisdictions in connection with this matter” as noted by SEC? The SEC also note that,

*‘Documents filed in support of the Commission's Complaint further allege that Millennium has solicited investors on a worldwide basis. Investor funds have come from Australia, Belgium, Denmark, England, France, Germany, Greece, Guernsey, Indonesia, Ireland, Italy, Luxembourg, Malaysia, The Netherlands, New Zealand, Portugal, Saudi Arabia, Scotland, Singapore, Sri Lanka, Sweden, Switzerland, the United States, and the United Arab Emirates. The majority of the known investors are from the United Kingdom and Ireland.’*²⁴²

Was ASIC carrying out its role under the “ASIC Act” ?

- *maintain, facilitate and improve the performance of the financial system and entities in it*
- *promote confident and informed participation by investors and consumers in the financial system*
- *administer the law effectively and with minimal procedural requirements*
- *enforce and give effect to the law*
- *receive, process and store, efficiently and quickly, information that is given to us*
- *make information about companies and other bodies available to the public as soon as practicable.*²⁴³

²⁴⁰ *ibid.*

²⁴¹ Securities and Exchange Commission v. Millennium Financial, Ltd., and Newpont Fiduciaries & Nominees, S.A., Civil Action No. 02 CV 3901 (MBM) (S.D.N.Y.) (filed May 22, 2002)
<https://www.sec.gov/litigation/litreleases/lr17528.htm>

²⁴² *ibid.*

²⁴³ <http://www.asic.gov.au/about-asic/what-we-do/our-role/> accessed Aug 9th 2015

In June 2002 ASIC published a warning about Millenium²⁴⁴ (Note spelt with one "n") and lists the company name as, 'Millenium Financial Group'. ASIC published a list of companies, warning that the companies could be operating unlicensed, cold calling, boiler room type scams. ASIC did not list any of the people who were operating the Millenium Financial Group / Millennium Financial Ltd.

Investigative journalist Stuart Washington in 2010 noted that in 2001 the New Zealand Securities Commission named Shawn Richard as being an associate of the unlicensed broker Millenium Financial that operated in the Philippines. Washington adds that, the warning was subsequently removed from the NZ Securities Commission website at the same time Mr Richard's and the Trio fraud was discovered. The Securities Commission could not provide a reason for its removal.²⁴⁵

At an ASIC Oversight, Mr Tanzer said, "...We speak a lot to our counterparts in the UK and New Zealand and to a degree in places like Singapore and Hong Kong and so on."

- Did ASIC learn why Millennium warning was removed from the New Zealand Securities' website?
- Did ASIC know that the New Zealand Securities Commission website named Shawn Richard?
- Where did ASIC get the information about Millennium for ASIC's Cold-Calling Report 14?
- Did ASIC know Australians contacted SEC about Millennium Financial Ltd?
- Did ASIC assist the Australian consumers that needed to alert the United States?

VOFF tried to educate itself through the following Freedom of Information requests:

- VOFF FOI 255 dated September 25th 2014, to the Minister of Finance New Zealand²⁴⁶ sought the list the unlicensed brokers who operated in the Philippines who came to the attention the then NZ Securities Commission and were listed as warnings on the NZ Securities Commission's web site.

October 15th 2014 the request was transferred to the Minister of Commerce and Consumer Affairs. The request was transferred to the Financial Markets Authority for consideration.

October 16th 2014 the Minister of Finance provided a link to view the requested document.²⁴⁷ See document on VOFF website.²⁴⁸

- VOFF FOI 382 dated August 20th 2015, to ASIC regarding the Millennium warning.²⁴⁹

VOFF sought from ASIC the document / email correspondence / fax or telephone transcript of warning about Millennium in 2002 sent from ASIC to SEC and also all correspondence / documentation / phone transcript received by ASIC from the SEC concerning Millennium. ASIC's reply dated September 11th

²⁴⁴ REPORT 14 International cold calling investment scams June 2002. Millenium Financial Group is listed No 53 of 82 p.55.

²⁴⁵ [http://www.smh.com.au/business/how-investors-in-trio-backed-the-wrong-horse-with-\\$426-million-Stuart-Washington-March-27-2010](http://www.smh.com.au/business/how-investors-in-trio-backed-the-wrong-horse-with-$426-million-Stuart-Washington-March-27-2010)

²⁴⁶ VOFF FOI number 255 dated September 25th 2014 to MoF

²⁴⁷ <https://fyi.org.nz/request/2055-minister-of-finance?nocache=incoming-7018#incoming-7018>

²⁴⁸ <https://tinyurl.com/yd7xzx5s>

<https://tinyurl.com/yd5mb36b>

²⁴⁹ VOFF FOI 382 ASIC – Millennium warning, August 20th 2015.

2015 said, Doc does not exist.

- VOFF FOI 383 dated August 21st 2015, to SEC concerning the Millennium alert.²⁵⁰

VOFF requested under the Freedom of Information Act (FOIA) copy of SEC 2002 correspondence that alerted about Millennium and also the SEC correspondence acknowledging the cooperation and assistance of the regulatory and law enforcement officials of several foreign jurisdictions, regarding Millennium.

September 25th 2015 SEC provided two files. The court, orders to freeze Millennium's Assets²⁵¹ and a cover letter.

- VOFF FOI 402 dated September 30th 2015, to ASIC regarding ASIC's 2002 Report titled 'REPORT 14 International cold calling investment scams June 2002'.²⁵²

VOFF requested the source for the 2002 list of cold calling firms. ASIC said October 26th 2015 that the request is too broad, and would require too much work.

VOFF revise FOI in November 11th 2015 but ASIC still refused November 27th 2015 citing too much work.

- VOFF FOI 459 dated May 25th 2017, to ASIC regarding the spelling of 'Millenium'.²⁵³

VOFF requested an ASIC or third party document that confirms the spelling of the 'Millenium' (as spelt in ASIC's publication, 'REPORT 14 International cold calling investment scams June 2002')²⁵⁴ or 'Millennium' as spelt in SEC documents.

Also VOFF sought the source for ASIC's information about Millenium or Millennium.

ASIC letter dated June 27th 2017 refused saying, that requests may be refused if documents cannot be found, do not exist or have not been received. I am satisfied that all reasonable steps have been taken to find the documents.

ASIC said,

'our email clarified that you are seeking the source of the report that alerted ASIC about Millennium Financial Group being a boiler-room operation. We were alerted about Millennium Financial Group and cold-calling activity by two misconduct reports in late 2000. I have included more information about these misconduct reports and my searches below.

1. Report of misconduct received 2 October 2000

I searched for the physical file for this report of misconduct. Unfortunately, our physical file does not have a copy of the report of misconduct on it or further information about the source.

²⁵⁰ FOI 383 SEC – Millennium alert, August 21st 2015.

²⁵¹ <http://www.mysuperrights.info/resources/15-06151-FOIA%20Enclosures.pdf>

²⁵² http://download.asic.gov.au/media/1339370/International_Cold_Calling_report.pdf

²⁵³ VOFF FOI 459 ASIC – Millenium, May 25th 2017

²⁵⁴ http://download.asic.gov.au/media/1339370/International_Cold_Calling_report.pdf

Instead, the physical file includes documents about a different company and it does not relate to cold-calling.

I also searched our electronic records. The information that we have electronically about this misconduct report shows that an Australian resident contacted us about calls they were receiving. The calls were about US investments and the misconduct reporter wanted to know if the company was legitimate. We do not have a copy of the report of misconduct that we received saved electronically.

2. Report of misconduct received 17 November 2000

I searched for the physical file for this report of misconduct and our records show that it was destroyed in 2009.

I also searched our electronic records. The information that we have electronically about this misconduct report suggests that they called ASIC after they received numerous phone calls from an offshore broker about investment opportunities. We did not record calls to our Customer Contact Centre in 2000.

We do not have other documents from the misconduct reporter saved electronically.'

Unfortunately the effort that ASIC applied in the above search throws no new light on the troubling questions that hang over the Millennium Financial group.

Millennium Financial, Ltd., is not the only company to have red flags. New World Financial (NWF), and Pacific Continental Securities UK (PCS) had warnings posted by financial regulatory authorities in Spain, Europe, Hong Kong and New Zealand. Authorities around the world between 2002 to 2004, raised red flags or they had warned the operators, sometimes forcing the operators to leave the country. Authorities such as,

- The Netherlands Authority for the Financial Markets (AFM);
- The Financial Supervision Commission of the Isle of Man (FSC);
- The Austrian Financial Market Authority (FMA);
- The Comisión Nacional del Mercado de Valores (CNMV) Spain;
- Financial Markets Authority (New Zealand) and
- The Securities & Futures Commission of Hong Kong.

ASIC mirrored the warning about Millennium in its publication Report 24, but evidently, did not look into the background of the company.

3.5 FAILURE Matthew Nguyen Littauer's sudden death. CRD#2027330

ASIC failed to gather sufficient information to establish a fit and proper person test concerning Matthew Littauer. He was an international broker, let into the Australian financial system, where he set up structures that ultimately handled Australian superannuation and investment money. Australians that were encouraged by the government – to save for their retirement, were targeted.

Had ASIC investigated Littauer's background, they would have found connecting companies and employees that had often flouted the law. Littauer came to the attention of the Federal Bureau of Investigation (FBI) - they had a dossier on Matthew Nguyen Littauer.

After the discovery of the Trio fraud, ASIC demonstrated that it doesn't have an adequate legal framework for identifying fraud; tracing the money trail; or the ability to confiscate improperly gained assets. Consumers could not have found out that Mr Richard was lying to ASIC because consumers are not privy to see documentation such as his applications for a licence. ASIC and APRA independently found irregularities in the way the Trio directors managed Trio Capital but failed to communicate with each other and took no action. Had ASIC done a basic check on Trio's characters with their counterparts around the world, ASIC would have received a flood of concerns and warnings.

For example, Shawn Richard and Eugene Liu had worked out of the PCS offices based in Taiwan. Jack Flader, James Sutherland, Matthew Littauer and Frank Richard Bell operated globally with offices based in the United States, United Kingdom, Europe, the British Virgin Islands, Philippines, Australia, New Zealand, and Hong Kong. Jack Flader, James Sutherland and Carl Meerveld were based in Hong Kong. Matthew Littauer and Frank Richard Bell appear to have been based in the United States from late 1990s to about 2002. There are many United States documents with their signature or they were present during numerous court hearings.

April 27 2014 VOFF's FOIA to FBI requested documented information about Mathew Littauer. VOFF received a 37 pages FBI dossier on October 16th 2014. The dossier had considerable redaction and many pages were denied. The FBI dossier includes correspondence from the Immigration and Customs Enforcement (ICE), stating that Littauer is a subject of an ongoing investigation in the Philippines as he was identified as being involved in a telemarketing stock Boiler Room scam.

The dossier questions a possible link between Littauer's murder and the murder of the American citizen Christopher Andrew Coppola who was stabbed to death in Manila. Coppola had reportedly been employed by a Pastrana boiler room in Manila. The Tokyo metropolitan Police and the Foreign Police Co-operation Homicide Investigation unit were interested in comparing the type of knife used in Coppola's murder to that of Littauer.

The FBI took the potential link seriously as a 5 page article 'Laws and Raids Fail to Thwart Boiler Room Activities' by Sheila Samonte-Pesayco is included in the dossier. Samonte-Pesayco names some of the biggest global scammers such as Pangasinense Amador Apungan Pastrana, Regis Possino, Sherman Mazur and Adnan Khashoggi.

In 2015 VOFF sent a request to INTERPOL which was forwarded to the FBI and new information about the murder investigation was located. May 4th 2015 an 8-page document²⁵⁵ said two DNA samples were found at the crime scene. DNA not belonging to Littauer was sent to Interpol Washington by the FBI for a requested search against INTERPOL's DNA database. Interpol required certification that the DNA samples were carried out by qualified agents. It appears no further correspondence (dated March 2012) proceeded past that point. According to the FBI, Littauer was *"involved in illegal stock exchange business based in Hong Kong. Therefore, it is highly possible that this murder was caused by foreigner for some kind of money trouble"*.

At the time of his murder Littauer's name remained active on ASIC's database.

Wright Global Investments Pty Ltd, was appointed 12/07/2001 and ceased 03/12/2004;

World Financial Group Australia, Littauer was Office Director; and

Wright Global Asset Management Pty Ltd, was appointed in 05/11/2003 and ceased in 02/12/2004.

His cessation dates coincide with his sudden death.

Littauer death remains an unsolved murder of a businessman. The Japanese and American police, including the US embassy and the expat communities of Westerner living in the East, would have learnt about Littauer's murder. Some would have known of his connection with Australia yet ASIC appears to have remained uninformed. Littauer's name was simply removed from ASIC company registration documents.

²⁵⁵ Littauer FBI document VOFF FOI 338 Feb 23 2015 (8 pages)

<http://www.mysuperrights.info/resources/May4%2C2015-from%20FBI.pdf>

Littauer - Interpol Washington document VOFF FOI 338 Feb 23 2015 (19 pages)

<http://www.mysuperrights.info/resources/2015-082%20%28Matters%29%20Response%20Letter.pdf>

3.6 FAILURE Littauer's background.

ASIC failed dismally when it comes to Littauer. In August 2002 The National Association of Securities Dealers (NASD) fined Littauer \$20,000 for breaches of US Security law.²⁵⁶ Littauer submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Littauer consented to the described sanctions and to the entry of findings that he allowed a member firm to open new customer accounts using his representative number with the firm for public customers whose new accounts were solicited by persons not registered with the firm. The findings also stated that Littauer allowed the firm to use his representative number on transactions for public customers that were solicited by persons not registered with the firm and who provided the firm with instructions for the transactions. NASD also found that the firm did not have written authorization from the customer that was approved by a principal of the firm, authorizing the firm to accept the trade authorization from the unregistered person, and Littauer failed to speak with the customers about the transactions prior to their execution.

Furthermore, NASD found that Littauer's actions of allowing the firm to use his registered representative number in this manner caused the firm to create and maintain inaccurate books and records reflecting that Littauer was the registered representative for the customers who solicited the new accounts and transactions. Littauer's suspension began August 18, 2003, to the close of business September 17, 2003. (NASD Case #CAF030037)

During this same period that Littauer was suspended by NASD, Littauer remained active on ASIC's database.

Wright Global Investments Pty Ltd, was appointed 12/07/2001 and ceased 03/12/2004;

World Financial Group Australia, Littauer was office director; and

shortly after his NASD suspension, Littauer was appointed with Wright Global Asset Management Pty Ltd in 05/11/2003 and ceased in 02/12/2004.

Matthew Littauer was murdered December 3rd 2004 at his office in Tokyo, Japan. Cause of Death is Homicide, shock and severe blood loss due to stab wounds. According to the Liaison Bureau, Interpol Hong Kong, (in the FBI dossier) Littauer was stabbed at least 11 times.

The dates of 2000 and 2001 in the heavily redacted FBI document suggests that Littauer was under surveillance well before the date of his murder.

Littauer was the owner of the Trio Capital fund.

²⁵⁶ <http://www.finra.org/sites/default/files/DisciplinaryAction/p007442.pdf>

At 6 years old he escaped from Vietnam the day Saigon fell and was adopted by a Larchmont couple in USA. Littauer's nephew Col. Nguyen Be was a former leader in the Army of the Republic of Vietnam who helped organize a US backed resistance movement known as the Revolutionary Development Program, or "the black pajama program".

Littauer came to the attention of the regulatory authorities in the United States for security law breaches.

"Littauer has his fingerprints on stockbroking cheats and swindles date back to the Internet boom of the late 1990s."²⁵⁷

Summary of Littauer's fallout with the law.

1997 Nevada incorporated firm called Styx Group Inc., now listed by 'NevadaCorporates' as "Permanently Revoked" Matthew was President his wife was Treasurer.²⁵⁸

1999 Littauer was one of the respondents in the 'NASD Disputes' for Pacific Continental Securities Corporation (PCS).

2001 Littauer was one of the Respondents in the 'NASD Dispute Resolution' for PCS and World Financial Group, Inc. (NWF).

2002 NASD fined New World Financial Inc., \$12,500.00 for acting through an individual, it failed to maintain its minimum Net Capital Requirement despite its Financial and Operations Principals (FINOP'S) knowledge that the firm required a significant capital infusion.

2003 World Financial Capital Market (WFCM) fined \$100,000.00 for reports prepared by an unregistered person that contained exaggerated, unwarranted, or misleading statements and failed to disclose material facts.

2003 NASD fined Littauer \$20,000 for breaches of US Security law.

2005 (the late) Littauer's New World Financial Inc. (NWF) was terminated.

2006 (the late) Littauer's New World Financial Inc. (NWF) was expelled.

2006 NWF failed to pay fines in connection with NASD complaint. Firm's membership was revoked.

2006 NASD Case allegations for account activity-breach of fiduciary duty, account activity-omission of facts and unauthorized trading. Sum requested was \$1,114,634.00. Sum awarded was \$377,955.01.

Pacific Continental Securities Corp, (USA) had a United Kingdom branch called Pacific Continental Securities (UK) Limited that was embroiled in UK's largest pension fund fraud discovered in 2007 with losses of over 300 million pounds sterling.

In 2004 – 2006 regulatory authorities in Europe issue warning alerts against NWF.

Littauer's company NWF CRD#47747.

Littauer, Matthew Nguyen, owner of New World Financial Inc.

²⁵⁷ Stuart Washington 'Murder, intrigue and missing millions' January 11, 2010

<http://www.smh.com.au/business/murder-intrigue-and-missing-millions-20100110-m0s1.html>

²⁵⁸ <http://www.corporationwiki.com/p/2ceu0c/styx-group-inc>

Alternate Names:

World Financial Capital Markets Inc.;

World Financial Group, Inc. and

World Financial.

This firm was formed in California on 06/16/1998.

Main office: Avenida Ricardo Soriano 34, 10th Floor, No. A, Marbella, Spain 29600.

Business based: Honolulu, HI. Employer Location: New York, NY.

NWF Inc., Formed in California 06/16/1998. Terminated 12/31/2005.

FINRA expelled NWF Inc., in 06/2006.

New World Financial books were maintained by Huntleigh Securities Corporation, 7800 Forsyth Blvd 5th Floor, St Louis, MO 63105.

NWF Inc., Disclosures (total 3)

Disclosure 1 of 3 - Firm failed to pay fines and/or costs of \$9,472.38 in connection with NASD complaint CAF030057. Date initiated 01/27/2006.

Firm's membership in the association has been revoked as of June 29, 2006 pursuant to NASD Rule 8320.

NWF Inc., Disclosure 2 of 3 - NASD Docket/Case number CAF030057. Date Initiated: 11/07/2003. Fine \$100,000.00.

Sanction details, without admitting or denying the allegations, World Financial Capital Markets consented to the described sanctions and to the entry findings. Therefore, the firm is censured, fined \$100,000, \$40,000 of which is jointly and severally required to provide the Dept. of enforcement and District 10 its revised anti-money laundering compliance procedures within 30 days of acceptance of this AWC. Call for all of the firm's records to be delivered to NASD by 30 days. The firm posted on its web site research reports prepared by an unregistered person that contained exaggerated, unwarranted, or misleading statements and failed to disclose material facts; failed to disclose in research reports that the companies had an agreement to provide the firm with shares of its securities in consideration for research services; the firm's supervisory systems and procedures failed to adequately set forth procedures and systems reasonably designed to achieve compliance with Federal Security Laws and NASD Rules with respect to publishing and distributing research reports.

NWF Inc., Disclosure 3 of 3 - National Association of Securities Dealers, Inc. Case number C10020113. Date Initiated: 11/25/2002. Monetary/Fine 12,500.00.

Without admitting or denying the allegations, the respondent member consented to the entry of findings that, acting through an individual, it failed to maintain its minimum NET CAPITAL

REQUIREMENT despite its FINOP'S knowledge that the firm required a significant capital infusion. A fine of \$2,500.00 paid by World Financial on December 23, 2002. A fine of \$10,000.00 paid by a control affiliate on December 23, 2002. The control affiliate was suspended from any association with any NASD member firm for ten business days beginning January 6, 2003: and was suspended from serving as a financial and operations principle for 60 business days beginning January 6, 2003.

NWF Inc., Arbitration Award - Award/Judgment

Brokerage firms are not required to report arbitration claims filed against them by customers: however, BrokerCheck provides summary information regarding FINRA arbitration awards involving securities and commodities disputes between public customers and registered securities firms in this section of the report.

The full text of arbitration awards issued by FINRA is available at www.finra.org/awardsonline.

NWF Inc., Arbitration Disclosure

1 of 1 - NASD Case Initiated: 01/23/2006. Case number: 05-06360. Allegations: Account activity-breach of fiduciary duty, Account activity-omission of facts; Account activity-suitability; Account activity-unauthorized trading. Sum of all relief requested: \$1,114,634.00. Sum of all relief awarded: \$377,955.01.

Matthew Littauer can be found as a signatory on company documents signed on behalf of PCS Inc. such as the SEC document titled "Vpgi Corp - 'S-3' on 7/20/98 - EX-99.1". At page 3 of 5 Matthew Littauer, President of Pacific Continental Securities Corporation (a California Corporation) signed an "Entire Agreement" with Pat Custer, President of UniView Technologies Corp (a Texas Corporation) dated 6/3/98.²⁵⁹

Detail of Littauer's history sourced from legal actions:

1999 NASD Disputes: Littauer and Richard Bell were part of the respondents for Pacific Continental Securities Corporation (PCS). Claimant asserted the following causes of action: improper business conduct and trading practices; fraud; misrepresentations and deceit; unauthorized transactions; unsuitability; failure to supervise; breach of fiduciary duties; breach of the implied covenants of good faith and fair dealing. Also are negligence; violations of the Exchange Act and the Securities Act of 1933; and violations of the NASD Rules of Fair Practice.²⁶⁰

2001 Littauer's company New World Financial Group was forced by the Philippine authorities to Cease

²⁵⁹ <http://www.secinfo.com/dN1Gy.7z.7.htm>

²⁶⁰ Statement of Claim filed: August 20, 1999 Case Number: 99-03856

and Desist²⁶¹

2001 NASD Dispute Resolution, Littauer was one of the Respondents for PCS and World Financial Group, Inc. (NWF). Some of the points in the Case Summary are: Fraud; Negligence; Breach of Contract; Breach of Fiduciary Duty; Respondent Superior; Violation of NASD Conduct Rules; Violation of California Corporate Securities Law; Violation of California Consumer Legal Remedies Act; and Punitive Damages.²⁶²

Littauer also owned and was president of New World Financial Inc. (NWF).

NWF was formed in 1998 in California, terminated in 2005 and expelled by Financial Industry Regulatory Authority (FINRA) in 2006.

Littauer's NWF operated a branch in Europe where its illegal trading came to the attention of the following supervisory authorities:

- The Netherlands Authority for the Financial Markets (AFM);
- The Financial Supervision Commission of the Isle of Man (FSC);
- The Austrian Financial Market Authority (FMA) and
- The Comisión Nacional del Mercado de Valores (CNMV) Spain.

They all issued warnings against NWF.

CNMV named NWF operators Gary Steven Artzt, Gregory Scott Rullo and Raiza Tulan. The FMA suggested that the regulatory warnings by CNMV, the Isle of Man and the Netherlands authorities, had caused NWF to shift its business to Austria. FMA said this was evident from enquiries and complaints they received. The FMA warned investors against financial service transactions with NWF as they were offering financial services via the Internet and telephone, such as the brokerage of the purchase of securities or the opening of accounts, without holding the necessary official approval.²⁶³

Note, Littauer's employees (Artzt, Rullo and Tulan) worked alongside Shawn Richard in the Philippines in early 2000.

Littauer was connected with Pacific Continental Securities Corp, (PCS Corp) a firm that formed in California in 1960, with main office in Beverly Hills, CA. PCS Corp was terminated or withdrew registration on: 11/09/2001. Littauer is not mentioned on the "FINRA brokercheck report" however he is mentioned in NASD hearings. Frank Richard Bell is listed as the Compliance Officer of PCS Corp.

PCS Corp (USA) had a United Kingdom branch called Pacific Continental Securities (UK) Limited. Shawn Richard and Eugene Liu worked for PCS UK: Liu based in the USA and Richard was based in Taiwan.

²⁶¹ Republic of the Philippines Department of Finance, Security and Exchange Commission Compliance and Enforcement Department (April 10 2001)

²⁶² NASD Dispute Resolution Statement of Claim filed: October 26, 2001 Case Number: 01-05745

²⁶³ <http://www.fma.gv.at/en/about-the-fma/media/press-releases/press-releases-detail/article/fma-veroeffentlicht-investorenwarnungen-zu-barlow-ramsey-und-zu-new-world-financial.html>

PCS UK used the Hong Kong address used by Zetland. Prior to 2006 Jack Flader and his business partner James Sutherland were based in the same Zetland office address.²⁶⁴

As already mentioned, in 2004-6 authorities from Spain, the Isle of Man, the Netherlands and Austria warned about NWF. Duncan Hughes in the Australian Financial Review noted that St Lucia-based Exploration Fund and Huntleigh Investment Fund were either managed or directed by Frank Richard Bell and Carl Meerveld are New World Financial, and fund manager, Global Financial Managers, were used to sell stocks owned by Huntleigh. Like their Australian counterparts, investors from the UK, Sweden, Denmark, Poland and Austria have learnt how easy it is for their assets to disappear into a maze of overseas funds.²⁶⁵

In 2001 and 2002 the New Zealand authorities posted warnings of the unlicensed Millennium Financial (MF) potentially a boiler room scam and listed the MF brokers.²⁶⁶ Some of the people operating out of MF are linked with NWF. In 2003 Matthew Littauer purchased the reputable Tolhurst trust fund in Australia, later in 2004 it became Astarra Capital and was named Trio Capital in October 2009. Littauer's colleagues Shawn Darrell Richard, Frank Richard Bell & Eugene Liu helped manage and run the Trio Capital fund.

Freedom of Information (FOI) requests to the United States Federal Bureau of Investigation (FBI), Securities and Exchange Commission (SEC), the Financial Services Authority United Kingdom (FSA) and New Zealand Securities Commission assisted in being able to present a clearer picture of Matthew Littauer and the principals behind the Trio Capital Limited scheme.

Littauer's NASD Disputes.

(1) Stipulated Award - NASD Dispute Resolution, Inc.

Wang Tai-Jan, (Claimant) vs. Pacific Continental Securities Corporation, Jay Allen, Richard Bell, Gregory Rullo, and Matthew Littauer, (Respondents). Case Number: 99-03856. Hearing Site: New York, New York. Statement of Claim filed on or about: August 20, 1999.

Case Summary.

Claimant asserted the following causes of action: improper business conduct and trading practices; fraud; misrepresentations and deceit; unauthorized transactions; unsuitability; failure to supervise; breach of fiduciary duties; breach of the implied covenants of good faith and fair dealing; negligence; violations of the Exchange Act and the Securities Act of 1933; and violations of the NASD Rules of Fair

²⁶⁴ Hetherington, Tony 'Dark legacy of Pacific Continental crops up overseas' 4 March 2010.

<http://www.thisismoney.co.uk/money/midasextra/article-1690232/Dark-legacy-of-Pacific-Continental-crops-up-oversees.html>

²⁶⁵ Hughes, Duncan Trapped in the global tentacles of Trio May 15 2010

<http://www.afr.com/business/trapped-in-the-global-tentacles-of-trio-20100514-ivjih>

²⁶⁶ <https://www.sec.gov/litigation/complaints/comp17528.htm>

Practice. Claimant's claim involved the stock of Harrison Digicom, Inc., Teledata World Services, Inc., Winfield Capital Corp., and TCI Music Inc.

Unless specifically admitted in their answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the claims are barred by the doctrine of unclean hands; Claimant knew prior to opening the subject account the type and kind of investment strategy that would be employed; Claimant's claims are barred by the doctrines of waiver, estoppel, ratification, and assumption of risk; all risks were fully explained to Claimant, who thereafter knowingly, willingly, and voluntarily assumed market risks inherent in such investment activities; Claimant failed to use the requisite due diligence in monitoring, managing, and handling his account and investments; Claimant failed to reasonably and/or properly mitigate his damages; the damages for which Claimant seeks to hold Respondents liable resulted, in whole or in part, from Claimant's acts and omissions; Claimant's alleged damages were caused by his own conduct or negligence, for which he is more than 50% responsible; Claimant, through his own conduct, has waived any and all entitlement to relief against Respondents; Claimant knew at all times of the transactions in the account and of the profits and losses incurred therein, but failed to act or change his investment strategy; any breach of contract by Respondents did not constitute a substantial deviation from the applicable contract or contracts so as to constitute a legal violation or default thereunder; and there is no cause of action for breach or violation of the rules and regulations of the New York Stock Exchange, National Association of Securities Dealers, Inc., or any of the other self-regulatory organizations.

(2) Award - NASD Dispute Resolution.

In the Matter of the Arbitration Between;

Doug P. Barnes, Doug P. Barnes & Jerri P. Barnes, as Joint Tenants with Rights of Survivorship and Barnes Living Trust, Claimants v. Pacific Continental Securities Corp., World Financial Group, Inc., James A. Allen, George F. Balmer, Craig J. Summa, Matthew N. Littauer, Frank R. Bell, Rocco A. Mongelli and Robert J. Wesolowski, Jr., Respondents. Case Number: 01-05745. Hearing Site: San Francisco, California. Statement of Claim filed: October 26, 2001.

Case Summary.

Claimants alleged that the above-referenced dispute involves investments in Uniforms for America, Inc. and Global Access Pagers, Inc. Claimants also alleged the following claims:

- 1) Violation of Securities Exchange Act of 1934;
- 2) Violation of California and New York Common Law;
- 3) Fraud;
- 4) Negligence;
- 5) Breach of Contract;
- 6) Breach of Fiduciary Duty;

- 7) Respondent Superior;
- 8) Violation of NASD Conduct Rules;
- 9) Violation of California Corporate Securities Law;
- 10) Violation of California Consumer Legal Remedies Act; and
- 11) Punitive Damages.

Respondents denied Claimants' allegations of wrongdoing and denied any liability to Claimants. Respondents also asserted affirmative defenses.

Award.

After considering the pleadings, testimony, and evidence presented at the hearing and the post- hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1) Respondent James A. Allen is solely liable for and shall pay to Claimants, the sum of \$7,410.00 in compensatory damages plus interest at the rate of 10% per annum from September 1, 2000 until payment of this award amount.

2) Respondents Rocco A. Mongelli, Frank R. Bell, Craig J. Summa and Pacific are jointly and severally liable for and shall pay to Claimants, the sum of \$66,685.00 in compensatory damages plus interest at the rate of 10% per annum from September 1, 2000 until payment of this award amount.

3) Respondents James A. Allen, Rocco A. Mongelli, Frank R. Bell, Craig J. Summa and Pacific are jointly and severally liable for and shall pay to Claimants, the sum of \$150.00 as reimbursement for 50% of Claimants filing fee.

4) All claims by Claimants against Respondents, World Financial, Matthew N. Littauer and Robert J. Wesolowski, Jr. are denied.

5) Claimants' claims for punitive damages are denied.

6) Except as mentioned in paragraph 3 above, each party shall bear all other respective costs, including attorney's fees.

7) All other relief not expressly granted is denied.

Fee Summary.

1. Claimants are charged with the following fees and costs:

Initial Filing Fee = \$ 300.00.

Less Payments = \$(1,425.00).

Refund Due Claimants = \$(1,125.00).

2. Respondent Pacific is charged with the following fees and costs:

Member Fees = \$ 4,600.00.

Less Payments = \$(0.00).

Balance Due NASD-DR = \$ 4,600.00.

3. Respondent World Financial is charged with the following fees and costs:

Member Fees = \$4,600.00.

Less Payments = \$ 0.00.

Balance Due NASD-DR = \$(4,600.00).

4. Respondents Pacific, World Financial, James A. Allen, George F. Balmer, Matthew N. Littauer and Frank R. Bell are charged jointly and severally with the following fees and costs:

Adjournment Fees = \$ 1,125.00.

Less Payments by World Financial = \$(1,125.00).

Balance Due NASD-DR = \$ 0.00.

5. Respondents James A. Allen, Rocco A. Mongelli, Frank R. Bell, Craig J. Summa and Pacific are charged jointly and severally with the following fees and costs:

Forum Fees = \$13,500.00.

Less Payments = \$(0.00).

Balance Due NASD-DR = \$13,500.00.

All balances are payable to NASD Dispute Resolution and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

In 2003 Littauer was fined \$20,000 by NASD for breaches of US Security law and was suspended from operating in the financial services but this did not stop him from starting a business in Australia. Legal action surrounding companies and operators that later formed Trio demonstrate that Littauer, Eugene Liu, Shawn Richard and Frank Richard Bell had worked together in either NWF or PCS before operating Trio. Australia offered them a new regulatory freedom, away from the attention of the US regulators. Littauer and Shawn Richard were directors and acting Compliance Officer of Trio Capital, Liu was director and Chief Investment Strategist and Frank Richard Bell was director of the Exploration Fund Limited. Two characters from the US firms NWF and PCS, Gary Artzt and Jon Lopresti worked alongside Shawn Richard in the Manila based firm Millennium Financial in 2001 and 2002. Artzt, Lopresti and Shawn Richard did not hold a New Zealand broker's licence or futures dealer authorisation, they did

not comply with New Zealand law, in particular, the Investment Advisers (Disclosure) Act 1996 or the Securities Amendment Act 1988, when purporting to act for New Zealand people.²⁶⁷

As early as 2004, APRA found Shawn Richard had a “conflict of interest”. The Trio directors came to APRA’s attention 4 or 5 times over the next four years. In 2006 APRA found the Trio directors were a “bunch of incompetents”. ASIC never carried out background checks.

Matthew Littauer was 34-years-old and operating a consulting firm in Tokyo when late Thursday night his employees, 31 year old male and 34 year old female, heard shouts and running footsteps in the hallway and when they went to look, their boss was lying near the elevator, with about 10 stab wounds, dying.

²⁶⁷ <http://www.siliconinvestor.com/readmsg.aspx?msgid=16875210>

3.7 Marbella, Spain

Marbella is Spain's southern Mediterranean city on the Costa del Sol with the Sierra Blanca Mountains as backdrop and popular with tourists. Over the last decades it has served as the temporary home for brokers learning how to swindle innocent people of their hard earned money.

Charles Frederick "Charlie" Wilson a member of the Great Train Robbery gang, lived in Marbella, Spain until he was shot dead by a hit-man on a bicycle in 1990.²⁶⁸

James Sutherland and Jeffrey Revell-Reade came under the attention of the Spanish authorities in 2003 for running boiler room scams and connections with Pacific Continental Securities (PCS) but it took authorities another four years before PCS was closed down.²⁶⁹

From 2004 to 2005 Matthew Littauer's New World Financial firm set up a branch in Spain with its office in Marbella. Greg Rullo & Gary Artzt operated NWF until moved on by the Spanish Financial Authorities.²⁷⁰ The Austrian Financial Market Authority and the Netherlands Authority for the Financial Markets also warned about NWF.²⁷¹

March-June 2014 Jeffrey Revell-Reade appeared before the Southwark Crown Court along with 8 other people for operating the Madrid based fraudulent scam that sold penny stock to British retirees. One thousand investors in Britain lost \$126.4 million. Over six thousand Australian investors lost about between \$123m to \$194.5m in Trio. Nine individuals were convicted in two trials, the last of which concluded on 6 June 2014 at Southwark Crown Court. Revell-Reade was sentenced to eight and a half years in prison.

The Hon Judge Gledhill QC in 2014 when he handed down the sentences in the Revell-Reade trial, commented,

"Many investors lost every penny they had... the consequences of those losses have been dreadful and in some consequences catastrophic.

"Even in the process of one firm dying and another being born, deceit and fraud were employed.

"Some believe fraud is a victimless crime; this case proves the fallacy of that."

A confiscation investigation is being conducted and any orders for compensation and / or costs will be dealt with in due course.

²⁶⁸ [https://en.wikipedia.org/wiki/Charlie_Wilson_\(criminal\)](https://en.wikipedia.org/wiki/Charlie_Wilson_(criminal))

²⁶⁹ Hetherington, Tony 'Dark legacy of Pacific Continental crops up overseas' 4 March 2010.

<http://www.thisismoney.co.uk/money/midasextra/article-1690232/Dark-legacy-of-Pacific-Continental-crops-up-oversees.html>

²⁷⁰ http://fraudforum.newtech.fi/index.php?t=tree&goto=40&rid=0#page_top

²⁷¹ <http://boards.fool.co.uk/would-this-be-the-new-world-financial-you-11054359.aspx>

*The investigation was assisted by the City of London Police, the National Crime Agency, the Financial Conduct Authority (FCA) as well as overseas law enforcement partners and regulators, including in New Zealand, Hong Kong and the US."*²⁷²

How different is the involvement by law enforcement in the Revell-Reade case compared to Trio.

An investigation into Revell-Reade's activities started four years before he was called to stand trial in 2014. In the years leading up to the trial, the Serious Fraud Office (SFO) requested that the London media refrain from writing or printing any articles about Revell-Reade that might jeopardize any possible court trial that may arise in the future. During this same period, ASIC granted a financial service licence to Revell-Reade.

Investigative journalist Stuart Washington in 2010 in the Sydney Morning Herald (SMH) revealed that Revell-Reade acquired licences to operate in the Australian financial market. The SMH's BusinessDay asked ASIC whether Revell-Reade and Sutherland could be regarded as being of "good fame and character", the necessary test to become a financial services licensee in Australia. ASIC replied:

"Neither person is a director or an officer of an AFSL holder under ASIC's jurisdiction."

Asked whether companies owned by the pair could be regarded as of good fame and character, ASIC replied:

*"At the time the licence was issued, [the company] met the licence conditions."*²⁷³

Two years after Revell-Reade was locked away (he spent 12 months in jail prior sentencing) ASIC released a media statement (May 21st 2015) saying,

*"ASIC has permanently banned Australian Jeffrey Revell-Reade from providing financial services in Australia following his conviction over a £70 million fraud in Great Britain."*²⁷⁴
*'ASIC's ban protects Australian consumers. It will prevent him from ever working in financial services in Australia again.'*²⁷⁵

In 2010 (well before he was arrested) Revell-Reade said he "admits to receiving a bit of bad press", as he is the subject of a court application by Serious Organised Crime Agency (SOCA) in Britain concerning the freezing of assets from the sale of his house in Wimbledon, South London, under proceeds-of-crime laws. SOAC action against Revell-Reade was based on his "boiler rooms" involvement. Revell-Reade's response was, "I feel I have been drawn into an unnecessary case, and [I'm] a bit of a victim, actually.

²⁷² <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/two-sentenced-in-70m-boiler-room-fraud-trial-----.aspx>

²⁷³ Washington, Stuart 'No concerns' about pair despite British links February 8th 2010

<http://www.smh.com.au/business/no-concerns-about-pair-despite-british-links-20100207-nkvi.html>

²⁷⁴ <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2015-releases/15-119mr-asic-permanently-bans-australian-mastermind-of-uk-fraud/>

²⁷⁵ <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2015-releases/15-119mr-asic-permanently-bans-australian-mastermind-of-uk-fraud/>

The authority found Revell-Readé recklessly or deliberately misled customers between 2005 and 2007 but Revell-Readé's answer to this was that he had dealt only with institutions, not private individuals, as an "introducer" of stocks. "I can't be held responsible for what happens thereafter."²⁷⁶

In April 18th 2016 Revell-Readé reappear before the Southwark Crown Court. The *R v Anthony May and Jeffrey Revell-Readé* trial was a Confiscation Hearing.²⁷⁷ Some of the proceeds to be confiscated are Revell-Readé's £37million from the frauds, three apartments in Marbella, Spain, a £5million luxury home in Wimbledon, South-West London, and £13,000 Rolex and Cartier watches. Revell-Readé spent a lot of money on hiring private jets and living the Wolf of Wall Street lifestyle.²⁷⁸

A possible connection between Revell-Readé and the Astarra Strategic fund is the purchase of 50,000 Multi-Tech International Corp shares in 2009.²⁷⁹ According to the Security Exchange Commission (SEC) Form 8-K dated May 6, 2004, Revell-Readé acquired 60,000,000 shares of Multi-Tech International Corp for \$440,000 and placed Revell-Readé as 75% owner of the Company.²⁸⁰ It is unknown whether Astarra purchased the Multi-Tech shares directly or indirectly from Revell-Readé. To learn if the transaction report contains the name of Revell-Readé VOFF sent a Freedom of Information to ASIC in October 2015 requesting information on the purchase of 50,000 shares in Multi-Tech International Corp (Date of Share Certificate 29/05/2009).²⁸¹

ASIC failed to acknowledge FOI.

In a new FOI²⁸² to ASIC in February 2016 VOFF requested information about the purchase of Multi-tech International Corp stock and copy of the Share Certificate. On March 30th 2016 ASIC cited, document lost or does not exist referring to Section 24A(1) of the FOI Act.

On October 31st 2015 VOFF wrote to Southwark Crown Court enquiring how to obtain a copy of the Southwark Crown Court hearings (March to June 2014) transcript. On November 2nd 2015 the court let VOFF know that a third party will need to let the court know the following: who you are and the reason you are requesting a transcript. Once your request is received, your request will then be sent to the Judge for their direction. Once we received the outcome of the judge's direction (i.e. if he grants or denies your request) we will contact you.

²⁷⁶ Washington, Stuart SMH OZ Group Man Still Calls Australia Home March 24th 2010
<https://www.investsmart.com.au/investment-news/oz-group-man-still-calls-australia-home/13035>

²⁷⁷ <https://beta.sfo.gov.uk/court-calendar/page/2/>

²⁷⁸ Hetherington, Tony Jail for £70million boiler room share fraudsters we exposed 9 June 2014
<http://www.thisismoney.co.uk/money/experts/article-2651479/TONY-HETHERINGTON-jail-70m-fraudsters-exposed-Mail-Sunday.html>

²⁷⁹ PPB Astarra Strategic Fund Update to Unit Holders May 2015 page 19.
<https://www.ppbadvisory.com/uploads/i175-ASF-Unit-Holders-Update-Report-May-2015.PDF>

²⁸⁰ SEC Form 8-K dated May 6, 2004.
<http://www.sec.gov/Archives/edgar/data/1083743/000090901204000375/t301055.txt>

²⁸¹ VOFF FOI 406 to ASIC – reg. 50,000 shares in Multi-Tech International Corp

²⁸² VOFF FOI 425 to ASIC reg. Purchase Multi-tech February 24th 2016.

On November 5th 2015 VOFF provided information about the SEC Form 8-K and the Multi-Tech International Corp purchase by Astarra.

On November 6th 2015 Southwark Crown Court informed that VOFF's request went before HHJ Gledhill QC, who granted permission to have a transcript of the trial of R V Revell-Reade T20127056.

However, the letter from the court pointed out that 1. the trial was many weeks long and the cost of the transcripts will be many, many thousands of pounds. You would have to pay the cost yourself. 2. The Judge does not recall any mention of the Astarra Strategic Fund during the trial, and there was very little reference to Multi-Tech International. He doubts that the transcripts would be of much, or indeed any, use to you.

The Judge's recollection of no mention of Astarra and that little attention was paid to Multi-Tech International during the trial of Revell-Reade is indication that no one represented or fought for the rights of the Australian investors. There was enough evidence to see that one group of fraudsters used Australian superannuation and investment money, to purchase worthless penny stock from another group of fraudsters. There is evidence that they each had a history in trading in worthless penny stock.

Where was ASIC?

Why didn't ASIC have a representative at the Southwark Court trial in London considering it was Australians that were apparently the target of the Revell-Reade owned worthless Multi-Tech International stock?

The victims of the Trio crime would like to know:

How much was paid by Astarra Strategic to purchase the 50,000 shares?

Who were the beneficiaries of the transaction?

Who decided and initiated the purchase?

Did the Trio directors know that Revell-Reade was mostly the owner of Multi-tech?

What was the relationship between the Trio directors that had influence in the purchase and Revell-Reade?

Why didn't ASIC put a claim in for part of the proceeds of crime that was clawed back from the luxury homes that were owned by Revell-Reade?

Mr Medcraft's 50 days spending a quarter of a million dollars on overseas trips during 2013 didn't allow for time to serve Australians, despite being chairman of International Organisation of Securities Commissions (IOSCO) that he claims it's important and benefits Australia.²⁸³

²⁸³ Pat McGrath ASIC releases details of chairman's travel expenses January 14, 2014
<http://www.abc.net.au/pm/content/2013/s3925389.htm>

Europe Correspondent Nick Miller, in an article about the Jack Flader and James Sutherland's trial in 2016 at the Southwark Crown Court, describes a 2001 meeting at a golfing resort in Marbella where Matthew Littauer helped Revell-Reade set up the boiler room operation that would eventually sting 1000 Brits out of £70 million. Littauer introduced Revell-Reade to Flader and Sutherland at the same meeting.²⁸⁴

Flader and Sutherland faced the charge laid by the Serious Fraud Office (SFO) of 'entering into or becoming concerned in a money-laundering arrangement, contrary to Section 328 of the Proceeds of Crime Act 2002'²⁸⁵ and after a nine-week trial, the Southwark Crown Court jury acquitted Sutherland and Flader of laundering the proceeds from the scheme that targeted more than 1,000 investors in the U.K., according to the U.K. Serious Fraud Office.

The Trio fraud in Australia, with all the connections of Flader and Sutherland was not even an item that got a mention in the London trial. The jury had no knowledge of Flader and Sutherland's history.

In December 2014 at the National Press Club event in Canberra, Mr Medcraft said '*It's absolutely broken my heart to see what financial advisers have done to people and what they often continue to do to people*'.

²⁸⁶

Mr Medcraft and ASIC failed to distinguish between - failure due to financial advice or failure due to systemic issues. The Australian financial system allowed a fund, regulated and overseen by both ASIC and APRA, to exploit weaknesses and funnel money into jurisdictions, beyond ASIC's and APRA's reach. ASIC covered up vital information about the fraud. The final result was a scaremongering message by vested interests in the 32 billion dollar per year financial services industry. A legitimate sector of the financial system, operating legitimately and following a legitimate process was damned.

²⁸⁴ Nick Miller Busting the boiler room March 28, 2016

<http://www.theage.com.au/business/markets/busting-the-boiler-room-20160323-gnpuxj.html>

²⁸⁵ <https://beta.sfo.gov.uk/cases/james-sutherland-jack-flader/>

²⁸⁶ Julie May VOFF labels Medcraft outburst "sickening" 09 Dec 2014

<http://www.financialobserver.com.au/articles/voff-secretary-labels-medcraft-outburst-sickening>

**Expanded Reference of some of the people mentioned in this document.
Names are in Alphabetical order.**

Bell, Frank Richard

Frank Richard Bell was the subject of disciplinary action by the United States Financial Industry Regulation Authority (USFIRA) that resulted in a number of sanctions and adverse findings against him.²⁸⁷ FR Bell was with Pacific Continental Securities Corporation October 1998 - November 2001.²⁸⁸ The Financial Services Authority found the British arm of PCS UK acted without integrity between 2005 and 2007 and collapsed in June 2007 with investor losses from dodgy stocks exceeding £300 million. PCS's shares were owned by a Delaware company and controlled by Zetland Financial Group, registered in the British Virgin Islands. The ultimate owner was James Sutherland. The investors in Trio were not informed that FR Bell was behind the Exploration Fund which handled Trio funds. Bell was not questioned by ASIC over the Trio matter.

Cormann, Mathias MP

Cormann demonstrated an interest to find out why money disappeared from Trio. Cormann asked Ross Jones of APRA *"Did the ATO ever communicate to APRA that Mr Flader had been involved in a fraudulent scheme that the ATO had discovered and successfully prosecuted to the extent that Mr Flader's Australian associate was jailed for seven years?"*

Mr Jones answered "No" adding *"We checked our files, and we have no communication from the ATO on that."*²⁸⁹

The fraudulent scheme referred to by Cormann is mentioned the court case Commonwealth Director of Public Prosecutions v Hart [2010] QDC 457 (30 November 2010. In CDPP v. Hart the defendant was charged with nine offences of defrauding the Commonwealth. In about 2002 ASIC travelled to Hong Kong to retrieve 100,000 documents from the Zetland Offices, a business that belong to Jack Flader and James Sutherland. The same address and names were already on ASIC's company registration documents lodged in 2001. That same 2001 company eventually purchased the Tolhurst trust fund that became Trio Capital.

Flader, Jack W. Jr.

Attorney and Counsellor at Law of The State Bar of California. From 2004 to 2006 Flader was James Sutherland's business partner in Zetland Financial. In 2006 he was the Chief Executive Officer and Chairman of Global Consultancy Services Limited (GCSL) which was the custodian of the assets for the Trio scheme. Wright Global Investments Pty Ltd (WGI) was set up in Australia in 2001 and Wright Global Asset Management Group (WGAM) was registered on 05/08/2003 and by November 2003 had

²⁸⁷ Trio Capital Limited (Admin App) v ACT Superannuation Management Pty Ltd & Ors [2010] NSWSC 286 (16 April 2010) Palmer J

²⁸⁸ FINRA BrokerCheck Report FRANK RICHARD BELL CRD# 1425780 Report #93332-65779

²⁸⁹ Hansard, Senate Estimates, Canberra APRA 29th May 2012 Page 178)

purchased Tolhurst Funds Management. He assisted with setting up the Trio scheme across multiple jurisdictions. Flader has been around several funds where hundreds of millions of dollars disappeared. In 2011 Justice Garling in the NSW Supreme Court called Flader the “Ultimate controller of Trio”.²⁹⁰

Fletcher, Paul MP,

won the seat of Bradfield at the 2009 federal by-election. In his early career, Paul worked as a management consultant, a corporate lawyer for Mallesons Stephen Jaques, and a corporate strategist for TNT Limited. From 1996 to 2000, he worked as Chief of Staff to Minister for Communications Richard Alston, a Liberal Party politician.²⁹¹ He was recognised by VOFF as fighting for the rights of his constituents, the ARP Growth clients of Paul Gresham, who were exposed to the Trio fraud. On an ABC 7.30 segment about the Trio fraud, he rebutted Mr Shorten’s remarks about suggesting the Trio victims were ‘swimming outside the flags’.

Frazer, Timothy Steven

Russian accountant WHK Audit & Risk Assessment. According to his Enforceable Undertaking, Frazer started with the Trio scheme on August 23rd 2004. There are unsupported suggestions that Trio brought Timothy Frazer to Australia. Apparently Cameron Anderson was associated with him and was responsible for offering him the job with Astarra. There is no confirmation whether Frazer had just returned to Australia or Cameron contacted him in Russia. The audit for the Astarra Capital Limited, the responsible entity of Alpha Strategic Fund for the financial year ended June 30th 2008 is signed by Frazer of WHK Audit & Risk Assessment. Frazer signed under KPMG dated at Albury May 7th 2007, the Charles Sturt University Branch of the National Tertiary Education Industry Union for the years ended 30 June 2003 and 30 June 2004. The documents were lodged in the Industrial Registry on 8 August 2007.

Garling, Peter Justice.

Admitted to the bar of the Supreme Court of NSW in 1979, Barrister Peter Garling SC was appointed a Supreme Court judge in 2010. He headed an inquiry into acute care services in NSW public hospitals following the death of schoolgirl Vanessa Anderson at Sydney’s Royal North Shore Hospital in 2005. She was taken to the hospital after being hit in the head by a golf ball.

Garling has been involved in a number of significant court cases, the Thredbo landslide, the Waterfall and Glenbrook rail accidents and the collapse of HIH.²⁹²

²⁹⁰ Regina v Shawn Darrell Richard [2011] NSWSC 866 (12 August 2011)

²⁹¹ <http://www.abc.net.au/tv/qanda/mp-profiles/bbfd.htm>

²⁹² Garling appointed Supreme Court judge May 27, 2010

<http://www.smh.com.au/breaking-news-national/garling-appointed-supreme-court-judge-20100527-wh49.html>
Regina v Shawn Darrell Richard [2011] NSWSC 866 (12 August 2011)

Justice Garling writes, “I accept, as does the Statement of Facts, that Mr Flader was the architect and ultimate controller of the scheme”. He also noted the absence of ‘victims’ or understood the impact they suffered.

Hart, Steven Irvine,

accountant, who became embroiled in a tax minimization scheme that was meant to save taxpayers large amounts of tax.²⁹³ Hart carried out his business with James Southerland and Jack Flader at their Hong Kong based firm ‘Zetland’.

ASIC, AFP, ATO, CDPP and the Commonwealth appointed forensic accountant, Mr Vincent secured 100,000 documents²⁹⁴ from Sutherland’s Hong Kong based UOCL, European Grand Assurance Ltd (EGA) and Merrell in about 2002.

Hart’s passion is aircraft and flying and as an experienced pilot he performs advanced aerobatics. His considerable collection is mainly “war birds” – that is, planes built for military purposes. Among the collection, a de Havilland DH82 Tiger Moth, a 50 VH-YAX, Aerovod L-39C, Yak 3 Fighter, Red Yak 50, North American Trojan T-28 VH-AVC and an American Decathlon. Hart has two aeroplane hangars at Archerfield Airport.

Littauer, Matthew Nguyen

Born Nguyen Nhat Thai on April 16, 1969 in Saigon, Vietnam, fled during the fall of Saigon and in September 1975, he was adopted by the American Littauer family living in Larchmont.

Littauer purchased the reputable Tolhurst trust fund in November 2003 and its name was changed to Astarra Capital Limited in 2004 to Trio Capital Limited October 1st 2009.

Matthew Littauer was killed December 2nd 2004.²⁹⁵

Medcraft, Greg,

joined as ASIC Commissioner in February 2009. He started his career as a Chartered Accountant with KPMG. Prior to ASIC, he was Chief Executive Officer and Executive Director at the Australian Securitisation Forum (ASF). He worked in investment banking at Société Générale, becoming the Managing Director and Global Head of Securitisation, based in New York. He was elected by the IOSCO Board in May 2012 as its Chair and also a member of the Financial Stability Board, which reports to the G20.²⁹⁶

²⁹³ CDPP v Hart & Ors; Yak 3 Investments P/L as t/tee for Yak 3 Discretionary Trust & Ors v Commonwealth of Australia [2013] QDC 60

²⁹⁴ CDPP v Hart & Ors; Yak 3 Investments P/L as t/tee for Yak 3 Discretionary Trust & Ors v Commonwealth of Australia [2013] QDC 60 (2 April 2013)

²⁹⁵ Hughes, Bill The Journal News December 7, 2004 <http://www.freerepublic.com/focus/f-news/1295583/posts>
<http://www.thejournalnews.com/newsroom/120704/a01p07bankerslay.html>

²⁹⁶ <http://asic.gov.au/about-asic/what-we-do/our-structure/asic-senior-executives/>

The US government investigated bank Société Générale over massive transactions involving subprime home mortgages. The bank was accused in the US of breaking corporate laws and engaging in misconduct.²⁹⁷

From 2007 to 2014 Jeffrey Revell-Reade was under surveillance by UK's Serious Fraud Office. He was investigated for his part in a boiler-room fraud that operated out of Spain between 2003 and 2007. The fraud ripped-off British investors for about 70 million pounds or about 124 million dollars. Revell-Reade was jailed in March 2014 to serve eight and a half years in prison. During the period he was under surveillance, the SFO informed The Mail on Sunday to take down more than 40 investigative reports from its website in case the articles influence the jury in the event of a trial.²⁹⁸ The SFO investigation extended globally, from United Kingdom, United States, Hong Kong and New Zealand and the warning went out for newspapers in UK not to say anything about the investigation as that could influence a potential trial. During this same period, ASIC issued Jeffrey Revell-Reade with "three financial services licences."²⁹⁹

Meerveld, Carl – manager of Global Financial Managers that managed Exploration Fund and Sierra Fund, that on paper was meant to manage Astarra Strategic money. About \$80 million was seen going into Exploration Fund and a few months later apparently the liquidators found no trace of the money. ASIC never questioned Meerveld although he did offer his assistance to ASIC.³⁰⁰ Flader and Meerveld's history and association dates back over twenty years, both operating out of Hong Kong. The link below is a 24 page Open Letter to the Australian and Guernsey authorities concerning Mr Meerveld's role in Trio.³⁰¹

Millhouse, David,

director of Trio and member of the Trio Investment Committee from November 2003 to October 2005. In 2003 Millhouse investment sunk money into the acquisition of Tolhurst. He became a director on the same day as former directors Shawn Richard and Matthew Littauer. He was also a director and owner of one of Trio's investment managers, Millhouse IAG Limited (MIAG). During his tenure on the board of Trio, Mr Millhouse approved around \$85m of investments without adequate due diligence; were not at

²⁹⁷ Nick McKenzie, Richard Baker and Simon Mann 'Questions being asked over ASIC chief's previous role' November 11, 2011. <http://www.smh.com.au/national/questions-being-asked-over-asic-chiefs-previous-role-20111110-1n9nz.html#ixzz1n6spWvea>

²⁹⁸ Tony Hetherington 'Jail for £70million boiler room share fraudsters we exposed' 9 June 2014. <http://www.thisismoney.co.uk/money/experts/article-2651479/TONY-HETHERINGTON-Jail-70m-fraudsters-exposed-Mail-Sunday.html>

²⁹⁹ Stuart Washington 'ASIC clears duo for finance licences' February 8, 2010 <http://www.theage.com.au/business/asic-clears-duo-for-finance-licences-20100207-nkth.html>

³⁰⁰ <http://www.mysuperrights.info/resources/VOFF%20Press%20Release%20Sept%2025%202017.pdf>

³⁰¹ VOFF Open Letter to Australian & Guernsey July 2017 - 5. Trio Justice

arm's length and were more favourable to the related parties than would reasonably be expected had they been at arm's length.³⁰²

O'Neill, Deborah MP

At a Senate Estimates Deborah O'Neill MP asked ASIC,

*'I have made it my mission to ask and put on the record at estimates on every occasion so far that I have been able to be here; what is happening with Trio? Could we get an update of what is available to be said in the public domain, because those people are still very much suffering from the impact of bad financial advice?'*³⁰³

O'Neill's question asserts that the suffering of 6,090 Australian citizens who had their savings stolen from Asatrra Strategic / Trio Capital is due to bad financial advice. Such a claim is not evidence based. From the 155 financial advisors who placed investors money into the Trio funds, not a single advisor was arrested for theft. It's an unsupported claim, to suggest people lost money in an international fraud because of 'bad financial advice'.

Deb O'Neill was part of the PJC inquiry into the Collapse of Trio Capital. When the PJC released its Report (May 16th 2012) Ms O'Neill said to media, self-managed investors have greater choice which comes with greater risk and they have to take responsibility for their choice – they are adults. Her statement to the media did not reflect the overall findings of the PJC Report, as the inquiry did recognise the systemic failure of the financial system.

Phillpott, Rex,

former assistant commissioner at the Australian Taxation Office. Phillpott was director and chief executive of Trio Capital from October 2005 to the end. Phillpott was involved in the investments into offshore hedge funds, without being aware of the valuation methods used to value the funds. Mr Phillpott was also instrumental in the 2009 transfer of \$50 million in one of Trio's hedge funds, the Exploration Fund, into its successor hedge fund, Astarra Strategic. He did this "notwithstanding that he was aware of liquidity problems with the Exploration Fund and concerns about the lack of information being provided by the Exploration Fund". Phillpott agreed to a 15-year ASIC ban from acting as a director or working in any role in the financial services industry.

Provini, Charles was the chief executive of Paradigm Global (owned by Hunter Biden) was Astarra's US asset consultant. Provini was a leadership instructor at the U.S. Naval Academy, Chairman of the U.S. Naval Academy's Honour Board and is a former Marine Corp. officer. He is frequent speaker at financial seminars and has appeared on "The Today Show" and "Good Morning America" discussing financial

³⁰² APRA Enforceable Undertaking.

³⁰³ Estimates Hearing, Canberra February 25th 2015

markets. He is one of the oldest members of the New York Stock Exchange. His BrokerCheck Report CRD# 1037471 has a number of companies listed but Paradigm Global or Astarra's Absolute Alpha are not mentioned. His current NATCORE TECHNOLOGY, INC. is mentioned.³⁰⁴ Another document of Pacific Capital Markets, New York, NY and Cayman has Charles Provini listed as Registered Office 646 247 5278 beside Roman Wasly Lyniuk. Provini and Lyniuk had positions with Pacific Capital Markets.³⁰⁵

Revell-Reade, Jeffrey

Australian-born, became regarded as an international Wheeler Dealer. In 2004, the Financial Mail reported that Reade as being behind a New Zealand share racket. Revell-Reade was the owner of SMA Consultants and Endeavour Securities - granted financial services licences by ASIC³⁰⁶ and the patriotically titled Oz Group, which administers \$540 million in Australian superannuation money. According to the British Financial Services Authority, Revell-Reade was the controlling figure identified in a report into Pacific Continental Securities. Revell-Reade faced court action by the British Serious Organised Crime Agency and sought orders to freeze £3 million (\$5.2 million) from the sale of his house in Wimbledon, South London, under proceeds-of-crime laws. Reade and Sutherland are linked in company filings to companies used in "boiler room" activities internationally, particularly through stockbroker Pacific Continental Securities that failed in Britain in 2007.

Richard, Shawn Darrell

Had 10 years experience before he became director of Trio Capital. He gained experience in operating Millennium Financial and Pacific Continental Securities (PCS). He was a manager with PCS in Taiwan 1996 to 2000, working alongside Littauer. After Littauer's death in December 2004, Richard relied on Jack Flader for assistance. Richard was Astarra Asset Management (Trio) director and Astarra Strategic investment manager from 5th Nov 2003 until 15th Nov 2005. Justice Garling found Richard guilty of serious crimes of a high order and sentenced to about 30 months imprisonment.³⁰⁷

Shorten, Bill MP

Minister for Financial Services & Superannuation (14 September 2010 - 1 July 2013) on the 13th April 2011, he announced that the 5,350 industry fund investors will be fully compensated for their losses in Trio but not the 690 DIY investors. Mr Shorten managed to use part 23 of the SIS Act to distinguish a difference between people affected by the same crisis. Rather than acknowledging what evidently was a systemic failure of the Australian financial system, Mr Shorten used part 23 to assist the union run industry funds while destroying their competition - the DIY funds. Mr Shorten accepted that the

³⁰⁴ www.finra.org/brokercheck

³⁰⁵ <http://home.comcast.net/~pacificcapmarkets/directory.htm>

³⁰⁶ Stuart Washington Penny stocks trail leads to super February 2, 2010

<http://www.smh.com.au/business/penny-stocks-trail-leads-to-super-20100201-n8we.html>

³⁰⁷ Regina v Shawn Darrell Richard [2011] NSWSC 866 (12 August 2011)

industry funds were affected by “fraud” but he blamed the self-managed trustees for “*swimming outside the flags*”³⁰⁸ and they “*placed their money directly into troubled funds*”.³⁰⁹

VOFF are concerned about how Trio was handled by Mr Shorten, in light of allegation over corrupt trade unions and slush funds;³¹⁰ ripping off the Cleaners in backroom deals;³¹¹ and the trap to destroy Aussie truckies,³¹² particularly concerning that there are no signs that the Trio crime was investigated thoroughly.

Sutherland James, Campbell

Scottish accountant. Contributed one million to the purchase of Trio. Sutherland and Flader were Optech directors 2002 to 2005 based in Hong Kong Zetland Office.

Sutherland has lived in Hong Kong for more than twenty years and founded the Zetland Fiduciary Group in 1987.

In 2007 Sutherland was embroiled in racketeering charges along with Flader and the Jeeves Group before the California Northern District Court which found Citibank employee Charles Cathcart had offered a '90 per cent loan' scheme through the company Derivium where Sutherland and Flader helped investors avoid US \$234 million in tax. The US Government found that Sutherland and Flader's Hong Kong base Optech Company was the sole lender for the 90 per cent loan transactions'.³¹³

Tarrant, Ross,

owner of family business that came under attack after the Trio fraud was uncovered. By bringing charges against a financial advisor, the understanding of the fraud was muddled because the public were left with the message that people lost their money because financial advisors received commissions. The public were misled and the misinformation stuck. ASIC did not retract its incorrect comments. Going after Mr Tarrant shifted the focus away from the systemic failure of the financial system. The uncompensated victims remain under a shadow of doubt after Mr Tarrant was charged by ASIC.

³⁰⁸ Sympathy for burnt TRIO capital clients, April 13th 2011

<http://www.abc.net.au/news/stories/2011/04/13/3190435.htm>

"Mr Shorten says the Government has no power to help those people who were not in an APRA regulated fund.

"If you metaphorically swim outside the flags for APRA regulated funds that is a choice that if we're going to ask the whole of the superannuation industry to bear the cost of compensation which we are then the current policy for that is the people that should be eligible for that should be ones who belong to funds which submit themselves to APRA supervision of trustees," he said."

³⁰⁹ Washington, Stuart 'Largest government payout of \$55m for Trio super fraud' April 13, 2011

<http://www.smh.com.au/business/largest-government-payout-of-55m-for-trio-super-fraud-20110412-1dcm5.html>

³¹⁰ Emsley, Nadine The Royal Commission into Trade Union Governance and Corruption March 16, 2016

<http://www.kreissonlegal.com.au/news/the-royal-commission-into-trade-union-governance-and-corruption/>

³¹¹ Bolt, Andrew Herald Sun Workers taken to the cleaners June 15, 2015

<http://www.heraldsun.com.au/news/opinion/andrew-bolt/workers-taken-to-the-cleaners/news-story/b50ca66a3471f733d1e96d1f07bd3dec>

³¹² Peacock, Matt Australian Broadcasting Corporation 13/04/2016

Truckies to descend on Canberra to campaign against a minimum pay rate

<http://www.abc.net.au/7.30/content/2015/s4442768.htm>

³¹³ Washington, Stuart 'Aussie super thief caught up in US fraud' 11/08/2010

<http://www.stuff.co.nz/timaru-herald/business/4012208/Aussie-super-thief-caught-up-in-US-fraud>

Unicomb, Glen,

forensic accountant (20 years) for ASIC³¹⁴ and his three months investigation of Astarra strategic (September 2009 to December 2009) took him to Hong Kong. Mr Unicomb said, *'I had a lot of sleepless nights being involved in this because at the end of the day I had examined Mr Richard very early in the piece and, basically, for ASIC to go away all he had to do was provide indisputable evidence of the veracity and worth of these investments. As time went by, the longer it took and nothing was forthcoming, the more confident I became, but there was never any situation where someone put on the table to me that this was a blatant fraud upfront. It took about three months, I would estimate.'*³¹⁵

Mr Unicomb is a now Managing Director in the Forensic Accounting and Advisory Services practice of FTI Consulting, and is based in Sydney, Australia.³¹⁶

Villavert, Florissa,

with a background of more than 15 years experience as a technical and compliance professional in the financial services industry, she became Head of Legal Compliance for Trio Capital management. She also had connections with Silverhall BT and Royal Sun Alliance, both considered as major wealth management organisations in Australia. Villavert's earlier career as Assistant Director of Compliance commenced with the former Insurance and Superannuation Commission, made her highly appropriate for the Trio team, she knew what the Government Regulators required. Villavert's key expertise includes industry and regulatory knowledge, and the ability to apply that knowledge in a strategic and practical manner to meet business needs. Villavert is a Solicitor with degrees in Business, Law and a Master of Laws in Financial Services.

³¹⁴ <http://www.kordamentha.com/our-people/glen-unicomb>

³¹⁵ Official Committee Hansard, Parliamentary Joint Committee on Corporations and Financial Services, Collapse of Trio Capital, 6 September 2011 Sydney Page 10.

³¹⁶ <http://www.fticonsulting-asia.com/our-people/glen-unicomb>