

Senate Standing Committees on Economics
Email: economics.sen@aph.gov.au
3 November 2021

To Committee Secretariat,

The Terms of Reference for the inquiry into the Australian Securities and Investments Commission's oversight of the Sterling scheme must respectfully recognise that there are other victims of financial crimes that can show ASIC was a major contributing factor for why they were exposed to misconduct, in particular the victims of the collapse of Trio Capital.

In 2008, like 6,090 other Australians, I invested in the managed investment scheme called Astarra Strategic Fund [regulated by ASIC]. The ASF was an Australian Prudential Regulation Authority (APRA)-regulated fund, meaning it was prudentially reviewed by APRA. When I started a mandated superannuation account there were no warnings to inform that ASIC and APRA do not carry out background checks or actively look for fraudulent conduct and money laundering. Nor was I, or other consumers, warned about the loopholes in legislation that fraudsters can easily exploit and siphon superannuation overseas to locations only known to the fraudsters.

Kenneth Hayne in the banking royal commission Final Report writes, *ASIC is charged with enforcing financial services laws on behalf of the community. One of ASIC's objectives is to 'take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth'.¹ Ref. The community is entitled to expect, and does expect, that financial services entities will comply with those laws.²*

Victims of the Trio fraud formed the group Victims of Financial Fraud, they saw that ASIC did not meet what the community is entitled to expect, [Trio operated unlawfully for 5-years]. The group wants to ensure Australia's largest superannuation fraud in history isn't repeated.

The following submission offers evidence of a serious financial crime. There are 10 pieces of evidence that show signs of an unhealthy and dishonest financial system. The official reports, *The Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital* (May 2012) and the *Treasury's Review of the Trio Capital fraud and assessment of the regulatory framework* (2013) make no mention of these 10 pieces of evidence.

Due to the omission of evidence and lack of transparency surrounding the Trio crime, the victims were denied the opportunity to engage a private investigator, take legal action against the perpetrators, or seek equitable or timely justice.

Is the purpose of omissions and a misleading official narrative meant to keep up appearances of a well-regulated financial sector and maintain consumer confidence?

¹ Final Report Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Vol. 1 Page 424 ref. ASIC Act s 1(2)(g).

² op cit Page 424

The Trio Capital fraud

Trio matter is closed.

Issues remain unresolved.

A Parliamentary inquiry and several court cases dealt with the matter.	The inquiry was compromised by ASIC withholding vital evidence.
Investors - exposed to the Trio fraud while in an APRA-supervised fund received compensation under Part 23 of the SIS Act, making an investigation unnecessary.	Investors not in APRA-supervised fund were denied a proper investigation of the crime and denied restitution.
Treasury said ASIC and APRA handled the Trio fraud matter appropriately - according to legislation.	Treasury's announcement was made while at the same time it held a document [not publicly available] damning ASIC.
One man was jailed over the Trio fraud.	The crime required collaboration but ASIC did not pursue or question people outside Australia that had a role in operating Trio.
ASIC and APRA entered into enforceable undertakings with the people that had a role in operating Trio.	EUs saw information about the crime remain hidden from public inspection.
ASIC's investigation is closed.	No attempt made to trace the stolen money or claw back under the proceeds of crime act.
The Trio matter is closed	The covering up of evidence and disseminating misinformation about the crime misled the public and the uncompensated victims were discredited.
The book is closed on Trio.	Despite systemic issues that required extensive legislation change to strengthen the system, consumers were told, "buyer beware".

Omissions.

1. Did ASIC give the police a red herring?

In correspondence to the Australian Federal Police (AFP), dated June 21st 2012, obtained under the Freedom of Information, ASIC write,

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 commissions which were paid by Trio. It is further alleged that the complex structure of the Trio scheme was designed to conceal fraudulent activity.³

ASIC focused on the commissions that it alleged several financial advisors earned for recommending Trio to their clients and the crime was not systematically investigated. In the same FOI release of documents, the AFP remarked about ASIC's letter, saying, '*the material provided by ASIC does not provide sufficient information to support an investigation into any Criminal Code Act 1995 offences...*'

No one was ever charged for receiving high commissions, yet the PJC Report and Treasury's review of the Trio fraud repeated the same misinformation,

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.⁴ & ⁵

Did ASIC throw the AFP a red herring?

2. Information about an important matter not disclosed.

The Hong Kong based company Global Consultants and Services Limited (GCSL), owned and operated by American lawyer Mr Jack Flader, received money from Australia destined for diversified international investments. In 2010, GCSL handed documents to the Hong Kong Securities & Futures Commission and ASIC received the documents under the Memorandum of Understanding (MoU). The documents remain exempt under the MoU and no one has learnt anything about their content or whether GCSL breached any laws.

The PJC Report has no mention of the GCSL documents. The Liquidator, PPB Advisory, had to take ASIC to court to gain access to the GCSL documents and even then, ASIC only provided part of the tranche. The level of protection ASIC afforded GCSL has left the consumers, who were robbed of their savings, in a void and worse off. A proper forensic investigation that followed the money trail would have wanted to examine the company where the money flow started. An obvious starting point but ASIC's stranglehold on information adversely affected the Trio victims and denied Australia the right to know what happened.

3. ASIC failed to provide evidence to the court.

Mr Carl Meerveld, based in Hong Kong was a manager of one of Trio's overseas underlying funds. In 2009 he moved to Guernsey and in 2010 offered to assist ASIC in the Trio fraud investigation. ASIC declined the offer. At the 2011 trial of Trio manager Shawn Richard, the NSW Supreme Court (NSWSC) said, 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.⁶

³ Victims of Financial Fraud FOI No 373 to the AFP July 28 2015 17 pages and 2 pages

⁴ The 'Review of the Trio Capital Fraud and Assessment of the Regulatory Framework' by Treasury 26th April 2013 P. 5.

⁵ PJC Report May 2012 page 153

⁶ Regina v Shawn Darrell Richard [2011] NSWSC 866 (12 August 2011) before Garling J.

ASIC failed to inform the NSWSC that two cooperative witnesses from overseas jurisdictions had offered assistance. As well as Mr Meerveld's offer, Mr Flader, in March 2010, provided the Sydney Morning Herald with information about Trio to set the public records straight. The NSWSC possibly overvalued the significance of Mr Richard's assistance to ASIC, because 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.⁷

4. ASIC didn't let the Guernsey authorities question Mr Meerveld.

In 2017, Guernsey residents contacted Trio victims. They were concerned of Mr Meerveld's connection with the Trio crime as he is named in Australian court documents, EUs and information by Trio's administrator PPB Advisory. PPB Advisory's document dated May 2015 shows the fund Mr Meerveld managed, Global Financial Managers Ltd transferred AU\$57m to the Exploration Fund. These securities disappeared from the Exploration Fund between that time and the time that the administrator gained access to the assets of the Exploration Fund in 2010.

The Guernsey residents pointed out a Fraud Act law that allowed the Guernsey authorities to question a Guernsey resident if that person had a connection to fraud anywhere in the world. The Guernsey authorities said no one in Guernsey lost money so it had no reason to question Mr Meerveld. But if ASIC made a request they would. The Trio victims contacted ASIC but ASIC refused to act.

5. Suspicious transaction report for a \$50m transfer?

The 2012 PJC Report pointed out that Trio's custodian *does very little to protect the funds of investors. It makes no independent checks before transferring money offshore. ... the custodian simply acts on the instructions of the responsible entity.*

It took the 2018 banking royal commission to show the Trio victims that banks do have obligations under The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act). The single transfer of \$50 million, to a foreign tax haven, was made through a bank. But there is no evidence that a suspicious transaction report was lodged. This is another issue that ASIC failed to investigate.

6. ASIC knew the Trio perpetrators before they built the Trio crime.

In 2002, two years before Mr Flader and Mr Sutherland purchased the Australian fund that became Trio, ASIC had visited their Hong Kong office. It wasn't a casual visit by any means. It involved ASIC joining force with the Tax Office, the Australian Federal Police and the Commonwealth Director of Public Prosecutions to travel to Hong Kong to secure 100,000 documents in relation to a Queensland man Mr Hart who faced charges in Australia for a massive fraud against the Commonwealth.⁸ ASIC wilfully shut its eyes to the seriousness of the event; wilfully and recklessly failing to make such inquiries as an honest and reasonable person would make.

What type of scheme did Mr Flader and Mr Sutherland offer if documentation helped secure a conviction and send Mr Hart to prison? Yet ASIC didn't check its own database where in 2001 Flader and Sutherland had registered a holding company with ASIC. In late 2003 the holding company purchased the fund that eventually became Trio in November 2004. ASIC wilfully and recklessly failed to notice that the same two men from HK were commencing an operation based in Australia.

7. ASIC wilfully blind to warnings from counterparts.

At the time when the Trio operators applied for an operating license from ASIC late 2003, ASIC's counterparts had already posted warnings about unlicensed operators in their countries. Given that ASIC held the details of

⁷ Ibid.

⁸ Commonwealth Director of Public Prosecutions v Hart [2010] QDC 457 (30 November 2010).

the people behind Trio, it could have discovered that the same people in the warnings were the people about to start the Trio scheme. Warnings came from these 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);
- The Comisión Nacional del Mercado de Valores (CNMV) Spain;
- Financial Markets Authority (New Zealand) and
- Securities & Futures Commission of Hong Kong.

Warnings in 2004 from Europe noted the United States registered New World Financial (NWF) had offices throughout Europe and was selling dud stock. The unlicensed Philippines based firm Millennium Financial was also selling dud stock. Owners and operators of these funds included Matthew Littauer, Shawn Richard, Frank Richard Bell, Jack Flader and James Sutherland. Their names were already in ASIC's database on the Wright Global Investments Pty Limited ACN 097 478 487, registered with ASIC in 2001, and Mr Richard's registration form dated 12/07/2001. That's three years before they purchased and established the Trio Capital scheme.

Evidence that ASIC received warnings from its counterparts can be seen in ASIC's *REPORT 14 International cold calling investment scams* dated June 2002. It names the Millennium boiler room. The New Zealand financial authorities website also named Millennium and listed the names of its operators. Mr Shawn Richard was named. In September 2009, when the Trio fraud was uncovered, Richard's name was removed. Investigative journalist Stewart Washington asked the NZ authorities why Richard's name was removed. He got no answer. Did ASIC play a part in this removal?

8. The Paradigm Global firm and James and Hunter Biden.

The first indication that there might be a problem with Trio was because of its link to the United States Paradigm Global firm based in New York. It was Mr John Hempton [Chief Investment Officer of Bronte Capital] who in 2010, and his knowledge of Paradigm's association with scams that led him to inform ASIC of his suspicions.⁹

Paradigm was owned and operated by James Biden [Joe Biden's younger brother], and Hunter Biden [Joe Biden's son]. After Mr Hempton presented his concerns, there is no evidence that ASIC followed up the connection between Trio and Paradigm or informed the NSW Police Force of potential money laundering by the family of the then Vice President of the United States. Why the very lead that sparked Mr Hempton's suspicions was not investigated remains an unresolved issue. Why Paradigm was of no interest to the regulators was not revealed. The lack of transparency around Trio has left many secrets hidden from public view. Information about Hunter Biden's ongoing money laundering issues only became available to the Trio victims in 2019 and 2020 due to Hunter Biden's laptop hard drive scandal.

9. Astarra's Product Disclosure Statement.

In early October 2021, The International Consortium of Investigative Journalists (ICIJ) wrote that an enabler allowed *corporate tax dodging and acted for notorious tycoons, arms makers and authoritarian regimes operating in the shadow economy ... has helped multinationals and the wealthy avoid taxes and scrutiny through the use of shell companies, trusts and complex structures in tax havens. These vehicles, shrouded in secrecy, hold vast riches – homes, yachts, stock and money that is sometimes of murky origin.*

What a surprise – the enabler is America's biggest law firm Baker McKenzie – the same law firm that produced the Product Disclosure Statement for the Astarra Strategic Fund (ASF) helped by Shawn Richard. With Baker McKenzie behind the ASF PDS added great kudos to support the products Mr Richard was offering. The ASF had the National Australian Bank and The Australia and New Zealand Banking Group Limited (ANZ) as

⁹ John Hempton Bronte Capital January 2, 2010
<http://brontecapital.blogspot.com/search?q=trio>

custodians. The Professional Audit, Tax, Advisory firm KPMG and the Accountancy and Finance Experts, WHK carried out ASF's auditing. The highly respected Morningstar and VanMac research firms, listed ASF as low risk, and awarded 4 and 5 stars (respectively) out of 5. Adding to the above security was the comfort that the ASF was an APRA regulated fund [prudentially reviewed by APRA] and licensed by ASIC. But consumer due diligence, and the quantitative and qualitative analysis conducted over a 4-year period by financial advisers, proved ineffective against an insidious fraud that deceived the entire financial system.

10. Misinformation misled the public.

On 1 April 2016, the Minister for Small Business and Assistant Treasurer Ms Kelly O'Dwyer released Treasury's media statement that stated,

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.¹⁰

The Government didn't mention the 8-page aide memoire document circulated within government, dated 10 December 2015 that was damning of ASIC.¹¹ That's 4 months before Ms O'Dwyer released the 1 April 2016 statement!

The government also failed to mention that an important inquiry by the Financial Sector Advisory Council (FSAC) into ASIC's performance was underway and was soon to release its findings. Four weeks after the 1st April statement, FSAC presented the Government with advice on the performance of the regulators, ASIC, APRA and the Reserve Bank, and on policies relating to the financial system, including potential areas for regulatory reforms. The 1 April 2016 is a landmark moment in the Trio story as the government closed the book on Trio. A significant moment based on misinformation that deceived the public and the Trio victims.

Systemic issues wrongly dumped on Consumers.

Caveat Emptor.

Minister Bill Shorten said in regards to the Trio victims,

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.¹²

'Caveat emptor' has no application where contract is induced by fraud' so is Mr Shorten's statement lawful?

Prof Brenda Marshall, Bond University, Faculty of Law writes,

In consumer transactions unfair practices are widespread. The existing law is still founded on the principle known as caveat emptor - meaning 'let the buyer beware'. That principle may have been appropriate for transactions conducted in village markets. It has ceased to be appropriate as a general rule. Now the marketing of goods and services is conducted on an organised basis and by trained business executives. The untrained consumer is no match for the businessman who attempts to persuade the consumer to buy goods or services on terms and conditions suitable to the vendor. The consumer needs protection by the law and this Bill will provide such protection. (Ref)¹³

ASIC is currently pushing 'caveat emptor' on consumers. Consumers are being held responsible for the conduct of bankers, auditors, systemic issues et cetera while ASIC evades its own accountability and responsibility.

¹⁰ Government decision on financial assistance relating to the collapse of Trio Capital <http://kmo.ministers.treasury.gov.au/media-release/032-2016/>

¹¹ Adele Ferguson Banking Bad, Published by Harper Collins Australia 2019 Page 183

¹² The Assistant Treasurer Bill Shorten's article "Clean-up time for financial advisers" (Telegraph 6 May '11 p34)

¹³ Marshall, Brenda (1995) "Liability for Unconscionable and Misleading Conduct in Commercial Dealings: Balancing Commercial Morality and Individual Responsibility," Bond Law Review: Vol. 7: Iss. 2, Article 3.

Available at: <http://epublications.bond.edu.au/blr/vol7/iss2/3> (Ref) Murphy L, Senate Parliamentary Debates, (1974) Vol. 60, 540-541.

ASIC followed a directive at any cost.

Financial adviser Mr Tarrant had recommended Trio products to the Australian Workers Union slush fund and as the money was lost in the Trio crime, the office of the then Minister of Superannuation Mr Shorten, gave ASIC a directive, to 'bring down' Mr Tarrant. In 2013 ASIC took Mr Tarrant to court on 14 concerns and alleged he received \$1m in illegal secret commissions. The figure was eventually worked out to be \$3,360 in (unintentional) undisclosed payments that were legal at the time.

Both ASIC and Mr Shorten turned an international fraud into an issue about poor advice. ASIC's 14 concerns were reduced to 4. ASIC's star witness, Shawn Richard, he was serving prison time for his dishonest role in operating Trio and attended court wearing prison greens, gave evidence in respect to 3 of the 4 counts. His word was accepted above 5 Australian citizens, some who had university degrees and skills in the financial services industry including the evidence offered by the financial adviser.

The Trio victims perceive Mr Shorten's directive to ASIC was retribution over the lost the AWU's war chest. That money would have been used to campaign Mr Shorten as the next Prime Minister of Australia.

Conclusion

The Trio fraud is a case study of regulatory failure, systemic issues, politicization, and victimization. Let an independent forensic fraud investigator check the following documents to weigh up the integrity of ASIC's handling of Trio:

1. ASIC's Appendix 4. It was delivered to the PJC inquiry in camera. In 2011 ASIC said, *When our inquiries and investigations are complete, we will review the appendix to assess the extent to which it can be made public.*

Despite receiving Appendix 4, the PJC called on ASIC and PPB Advisory in a recommendation *to pursue its investigation to a full conclusion and where necessary conduct examinations under oath of figures such as Mr Flader and others it considers necessary as part of the investigation.*

Appendix 4 remains exempt but its time to make it publicly available.

2. In 2013 ASIC said in its media release *that there is insufficient evidence to prove Mr Flader breached Australian law.* In late 2015 early 2016 ASIC wrote to the United Kingdom Serious Fraud Office about Jack Flader and James Sutherland. Did ASIC tell the SFO what it told the Australian public? Please make the correspondence publicly available.

3. What do ASIC do in regards to keeping Australian superannuation safe? What did ASIC do in regards to the Trio fraud investigation? Can ASIC explain how stolen money vanished? A summarization will be welcomed.

John Telford
Secretary
Victims of Financial Fraud
Email: johnt@1earth.net
Mobile: 0404 388 525