Division/Agency: Australian Securities and Investment Commission
Question No: 017
Senator: Senator Pratt

Question:

Ms Armour: We did begin to take regulatory action from March 2017. We were actively examining the Sterling Income Trust and responding to concerns about that trust. We actually issued stop orders prohibiting the offer of units in that trust in August 2017. We were actively involved with the responsible entity in its decision on April 2018 to close that trust. We were taking regulatory steps at that earlier time. I don't know, Senator Pratt, whether that gives you information that assists.

Senator PRATT: Since those complaints first started coming in, there were a number of people who continued to make investments and lost money between 2017 and now. Can you comment on that?

Ms Armour: What did happen was that, after the Sterling Income Trust was wound up in August 2018, another fundraising mechanism was developed, which was through the sale of redeemable preference shares. That fundraising was not done through documentation that's required to be lodged with ASIC and, as a result, ASIC wasn't aware of that fundraising. Around $6.8 million was raised before ASIC became aware of that funding mechanism. When we did become aware, in late April 2019, we spoke with the directors of the relevant entity, and in May 2019 those directors appointed voluntary administrators of the relevant company.

Senator PRATT: To me, there's something there that doesn't add up, in the sense that you have said that there were concerns and that you were investigating but that the underlying problem in the business model was the product disclosure statement and also the drop in property values. Surely, though, when there's an investigation going on, it's extremely unethical and risky for that company to have started raising capital. When did you know you were dealing with a dodgy operator as opposed to a company that may just have had issues managing risk?

Ms Armour: As I've taken you through, we understood that we were dealing with an income trust that had not met the product disclosure obligations. In August 2017 we issued stop orders, we spoke with the responsible entity of the trust and they made a decision to close that trust. We didn't know that other parts of the group were doing a different fundraising. That wasn't something that we could necessarily know and, when we did become aware of that, we actually had that arrangement stopped as well.

Senator PRATT: To me, the thing that also doesn't add up here is that, when I spoke to ASIC in estimates some time after all of those things, ASIC were saying: 'This is not within our regulatory purview.' ASIC were very much arguing that, in their view, these products had fallen through their regulatory gap, because they saw them far more as a housing and rental type of agreement than as a financial product.

Ms Armour: That is correct. When we talked about the original business model, it had essentially grown from a real estate business model. What falls within our remit is the fundraising elements attached to that.

Senator PRATT: Could you take on notice what types of investigations or inquiries ASIC continues to make and which of its business relationships you're focusing on. I have been in estimates and in this committee a number of times when ASIC has argued that the preferred form of recourse for victims of this scheme was to make a complaint to AFCA.

Ms Armour: Absolutely.

Senator PRATT: ASIC did that extremely assertively, saying that not to make those complaints would be to the detriment of those complainants who had lost money. Nevertheless, since then, with a great many of the complaints there has been a court case that has found that it is legally outside their jurisdiction to have considered those complaints. Can you explain why that's the case and on what basis ASIC so proactively referred them to AFCA rather than taking responsibility themselves for the victims of that scheme?

Ms Armour: There seems to be a basic difference in expectations here. AFCA is a scheme for dealing with complaints and compensation. ASIC is the regulator of managed investment schemes and corporations.

Senator PRATT: Why would you refer people to AFCA if they're not eligible within their compensation scheme?

Ms Armour: When people are looking to obtain compensation, AFCA is one avenue they can go to receive compensation.

Senator PRATT: What are the other avenues?

Ms Armour: The other avenue is to pursue private rights in the court system.

Answer:

ASIC's ongoing investigation is into the role of officers, employees and agents of TSGC in the promotion and selling of the Sterling New Life lease (SNLL) to 101 elderly consumers (Elderly Investors), in conjunction with either an investment in the SIT (in the case of 63 Elderly Investors) or in Redeemable Preference Shares (RPSs) through two subsidiary companies (with the name Silverlink) (in the case of the remaining 38 Elderly Investors).