

Annexure D: ASIC correspondence with tenant-investors

	Document	Page numbers
1.	ASIC letter and attachment August 2019	1 – 4
2.	ASIC's dedicated Sterling website showing updates over the period 2018-2020	5 – 8

Update from ASIC regarding Sterling Group investigation

26 July 2019 Update

ASIC has received more than 100 letters addressed to ASIC Chair James Shipton over the past two weeks. Many of the letters refer to a demand from Ms Denise Brailey to the ASIC Chair to make a fund of \$26 million available to compensate those who have suffered loss as a result of investments promoted by the Sterling group of companies.

ASIC acknowledges the concerns of and uncertainty currently being experienced by those who have invested in investments promoted by the Sterling group of companies, particularly Sterling New Life tenants.

Unfortunately, ASIC is unable to assist in the manner requested. ASIC is not able to directly make funds available for the compensation of investors who have suffered loss.

ASIC has taken significant action with a view to protecting investors. For example, since ASIC's involvement:

- * the promotion of units in the Sterling Income Trust under the original Product Disclosure Statement has been prohibited
- * Theta Asset Management Ltd has taken action to wind up the Sterling Income Trust
- * the directors of the Sterling group of companies have resolved to appoint voluntary administrators to the companies. With creditors voting in favour of most of the companies (other than Rental Management Australia Pty Ltd and Acquest Property Pty Ltd) entering into liquidation on 10 June 2019, the liquidator has commenced gathering the assets of the companies available to meet creditors' claims. ASIC expects that the liquidators will investigate possible breaches of the law, for example by the directors of the companies, and report to ASIC on their findings.

Given its impact, ASIC has prioritised this matter so that it can take appropriate court action against those responsible, where there has been a breach of the laws it administers (such as the Corporations Act). ASIC will keep investors updated on any significant developments in relation to this work via the ASIC website.

ASIC will also continue working with the liquidators of the Sterling group of companies and the Western Australian Department of Mines, Industry Regulation and Safety (Consumer Protection Division) (which is responsible for the licensing and supervision of real estate agents and laws in relation to residential tenancies).

AVENUES OF ASSISTANCE FOR INVESTORS:

There are currently a number of avenues available to individual investors to protect their interests, including seeking compensation. It is important that investors consider pursuing these avenues at the earliest opportunity, as **delay in doing so may adversely affect investors' interests**.

For ease of reference, the avenues of assistance are:

FOR THOSE INVESTORS WHO HAVE INVESTED IN THE STERLING INCOME TRUST (SIT) OVERSEEN BY THETA ASSET MANAGEMENT LTD (THETA):

A letter dated 9 May 2019 from Theta to all investors in the SIT set out the rights of investors in the SIT and how to make complaints to Theta. In that letter Theta stated that its compliance manager would aim to resolve complaints within 45 days, but if you were not satisfied with its response you could lodge a complaint with the Australian Financial Complaints Authority (**AFCA**).

Further information about how to make a complaint about a financial firm can be found in ASIC Information Sheet 174 via the following link - <https://asic.gov.au/about-asic/contact-us/how-to-complain/disputes-with-financial-firms/>

It is important to be aware that AFCA will generally only be able to consider your complaint if it is made within six years after you first became aware, or 'should reasonably have become aware', that you suffered the loss you want to complain about; or if you have already complained directly to your financial firm through its internal dispute resolution (IDR) process, within two years of getting a response from your financial firm through that process. However, AFCA has advised that it will accept complaints about conduct of financial firms dating back to 1 January 2008 even if they would normally fall outside these time limits, provided those complaints are lodged between 1 July 2019 and 30 June 2020 (see the material on their website about [legacy complaints](#) for more information regarding this). AFCA may possibly extend its time limits outside this period, however you should not rely on this.

AFCA may provide a remedy if you have incurred loss that was caused by a financial firm's conduct. It may order that you be compensated for your loss to the extent AFCA holds the financial firm responsible for that loss. Further information on how AFCA deals with complaints and the relevant time limits can be found at <https://www.afca.org.au/>.

FOR INVESTORS WHO HAVE ENTERED INTO A STERLING NEW LIFE LEASE:

Macquarie Bank

After an approach by ASIC, despite having no legal obligation to do so, the secured creditor of the Sterling Group, Macquarie Bank, has made available Macquarie's Client Care Team to speak to Sterling New Life lease tenants / investors about their particular individual circumstances, to try to offer assistance where it can. Those tenants/ investors are able to access that assistance via the office of the liquidators of the Sterling group of companies, Ferrier Hodgson, on sterling@fh.com.au or 08 9214 1473. Macquarie Bank had no involvement in promoting Sterling New Life leases, but is making its Client Care Team staff available to try to offer assistance where it can to tenants in a vulnerable position. Landlords in a vulnerable situation are advised to consider contacting their own bank/ finance-provider, which will have a similar Client Care/Vulnerable Client team to Macquarie, and be in a better position to discuss with the landlord his or her individual circumstances.

FOR INVESTORS WHO HAVE ENTERED INTO A STERLING NEW LIFE LEASE AND AFFECTED LANDLORDS:

The Department of Mines Industry Regulation and Safety (Consumer Protection Division)

Advice on tenancy rights is available via (08) 6552 9232 and jan.fairfield@dmirs.wa.gov.au

Tenancy WA

Advice on tenancy matters is available via (08) 9221 0088 or locate a tenancy advocate at <http://www.tenancywa.org.au/find-a-tenant-advocate>

FOR ALL INVESTORS IN INVESTMENTS OFFERED BY THE STERLING GROUP OF COMPANIES:

Financial Counsellors' Association of Western Australia.

Free independent financial counselling and legal advice on (08) 9325 1617

Consumer Credit Legal Services

Provides legal advice and representation to consumers in WA in the areas of credit, banking and finance on (08) 9221 7066 and <https://cclswa.org.au/about-us/about-cclswa/>. There are time periods within which legal proceedings must be commenced. You should therefore seek legal advice to ensure that you will not be prevented from taking any legal action you might wish to take in the future due to these time limitations.

Anglicare WA

Offers a wide range of services, with almost 50 service locations across WA
Financial and general counselling services on 1300 11 44 46

COMMUNICATION OF THIS AND FUTURE UPDATES

1. Although no two investors will have had exactly the same dealings with the Sterling group or are currently in exactly the same circumstances, there are many issues of concern that are common to those who have written to ASIC. It is therefore ASIC's assessment that it is appropriate that all investors and their families who have written to ASIC over the past two weeks should receive the same information. It is hoped that taking this approach will avoid causing any confusion. It is for this reason that ASIC is sending copies of this same update to all who have written to our Chair over the past weeks. As Ms Brailey has separately written to ASIC to advocate on behalf of investors, ASIC will also send a copy of this update to Ms Brailey for her information and in response to the issues she has raised, and also to investors and their family members who have written to us.

Although there are strict legal restrictions on ASIC's ability to share information regarding its investigations, as stated above ASIC will provide such updates as it lawfully can in relation to any significant developments in its investigation via the ASIC website.



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

Office address (inc courier deliveries):
Level 1, 11 Mounts Bay Road,
Perth WA 6000

Mail address for Perth office:
GPO Box 9827,
Brisbane QLD 4001

Tel: +61 1300 935 075
Fax: +61 1300 729 000

www.asic.gov.au

Addressee details here

12 August 2019

Dear Sterling Group Investor/ Family Member

STERLING GROUP INVESTIGATION

I refer to your recent letter to ASIC Chair Mr James Shipton regarding the above. We have been asked to respond on behalf of Mr Shipton.

In response to your letter please find attached a document headed "**Update from ASIC regarding Sterling Group investigation**" that was published on the ASIC website on 26 July 2019.

ASIC will continue to provide updates on its website regarding any significant developments in its investigation.

Should you have any further information or correspondence you wish to provide to ASIC, you may do so using the email address of sterlingreports@asic.gov.au

Yours sincerely

The Sterling Investigation Team



ASIC
Australian Securities &
Investments Commission

Update from ASIC regarding Sterling Group investigation

14 May 2021 – ASIC banning outcome

ASIC has banned Mr Robert Patrick Marie for four years from providing any financial services. Mr Marie has also been banned from controlling an entity that carries on a financial services business and from performing any function involved in the carrying on of a financial services business in any capacity.

Mr Marie was the former managing director and responsible manager of Theta Asset Management Ltd (In Liquidation), the Responsible Entity of the Sterling Income Trust (SIT). The SIT, a registered managed investment scheme, was placed into external administration in 2019.

ASIC's investigation into the conduct of a number of entities and officers within the Sterling Group of companies continues.

Read the full ASIC Media Release [21-102MR](#) *Former managing director of responsible entity of Sterling Income Trust banned for four years*.

19 November 2020 – Federal Court penalty decision

On 19 November 2020, The Federal Court in Western Australia found Theta Asset Management Ltd (In Liquidation) and its Managing Director Mr Robert Marie contravened the Corporations Act on multiple occasions in authorising the issue of five defective Product Disclosure Statements for the Sterling Income Trust.

The Court has ordered Theta to pay a penalty of \$2,000,000 with respect to the declarations of contravention and ordered Mr Marie to pay a penalty of \$100,000. Mr Marie will also be disqualified for four years from managing corporations. ASIC will not seek recovery of the penalty against Theta, as doing so would decrease the funds available for distribution by the Liquidator of Theta to its creditors.

Read the full [ASIC Media Release 20-292MR](#) *Sterling Income Trust Responsible Entity and its Managing Director penalised*.

ASIC's previous media release announcing ASIC's Federal Court action against Sterling Income Trust responsible entity and its managing director is available here: [19-347MR](#). This media release details the key dates with the Federal Court in its 'Editor's notes'.

26 August 2020 – AFCA update

ASIC refers Sterling investors to an [AFCA update on its website](#).

ASIC draws investors' attention to Case No 667682 referred to in the AFCA update regarding a recent AFCA determination in respect of a Sterling investor, where AFCA determined compensation of \$118,957.60 was payable to the complainant (from the total aggregated investment contributions paid by the complainant of \$156,761.31, after allowing for deductions for rent benefits/savings).

Taking into account this latest advice from AFCA, ASIC remains of the view that it is in the interests of investors in the Sterling Group of Companies to lodge and maintain their complaints with AFCA. Further, investors who have a claim against Theta should also consider lodging a Proof of Debt with Theta's Liquidators.

15 April 2020 – AFCA update

ASIC refers Sterling investors to two media releases on the AFCA website.

27 March 2020 – '[Statement on Sterling Complaints](#)'.

ASIC notes AFCA's comments in that media release regarding:

- the recent withdrawal of a number of Sterling complaints; and
- the potential for these withdrawals to hamper complainants' potential access to any compensation scheme of last resort that is ultimately able to be established by the Federal Government (Compensation Scheme of Last Resort).

On 14 April 2020, AFCA provided a [further update](#) on its consideration of complaints relating to insolvent companies (such as Theta and most of the companies within the Sterling Group of Companies, including the Silverlink entities) and a Compensation Scheme of Last Resort being considered by the Federal Government.

ASIC notes the advice from AFCA:

'AFCA acknowledges that the COVID-19 pandemic has subsequently become the key priority and focus for the Government, and as a result it is unclear what the impact will be on the establishment of a compensation scheme of last resort.

Until there is certainty provided about the scope and timing of the Compensation Scheme, AFCA has reviewed and put in place appropriate arrangements for dealing with any complaints it receives against insolvent financial firms. AFCA will put a pause on processing complaints against insolvent firms, this includes existing and new complaints. AFCA will accept future complaints about insolvent financial firms, but we will hold them over until there is more clarity about the Compensation Scheme, and the parameters of the scheme.'

Taking into account this latest advice from AFCA, ASIC remains of the view that it is in the interests of investors in the Sterling Group of Companies to continue to lodge and maintain complaints with AFCA, as it is only by doing so that such investors could be considered for compensation under any potential future Compensation Scheme of Last Resort that is ultimately able to be established.

11 December 2019 – Civil proceedings commenced by ASIC

On 11 December 2019, ASIC commenced action in the Federal Court in Western Australia focused on the promotion and management of the Sterling Income Trust.

The action is against:

- Theta Asset Management Ltd (Theta), an Australian financial services licensee and responsible entity of Sterling Income Trust; and
- Robert Patrick Marie (Mr Marie), a director of Theta.

ASIC alleges that Theta and Mr Marie were responsible for authorising the issue of five Product Disclosure Statements for the Sterling Income Trust, failing to ensure that each of them was not defective. In particular, it is alleged that Theta and Mr Marie failed to ensure that they did not contain:

- misleading or deceptive statements; and
- omissions in respect to statements and information required to be disclosed.

ASIC also alleges multiple failures by Theta that are contrary to the compliance plan that Theta issued for the Sterling Income Trust.

Read the full [ASIC Media Release 19-347MR](#) *ASIC takes court action against Sterling Income Trust responsible entity and its managing director*.

Background

Of the 101 consumers who entered into Sterling New Life Leases, 63 of those Lessees invested in the Sterling Income Trust to generate funds to cover their rental expenses under such Leases. The remaining 38 Lessees did not invest in that Trust, rather they invested in Preference Shares offered by companies by the name of 'Silverlink' within the Sterling Group of Companies. Because Theta as Responsible Entity only had duties in relation to the Sterling Income Trust, the Court proceedings commenced by ASIC in the Federal Court are relevant to investors in the Sterling Income Trust but not relevant to investors in the Silverlink Preference Shares.

ASIC continues to investigate the roles and conduct of several parties at various points in time during the operation of the Sterling Group of Companies, including in relation to the promotion of the Silverlink Preference Shares. Consequently, it is expected that ASIC's investigation of other aspects of the conduct in this case, not covered by the current Court proceedings, will continue well into the new calendar year due to the requirement to gather evidence admissible in a court of law to support any further proceedings ultimately considered appropriate.

Avenues of assistance for investors

There are currently a number of avenues available to individual investors to protect their interests, including seeking compensation. It is important that investors consider pursuing these avenues at the earliest opportunity, as delay in doing so may adversely affect investors' interests.

For those investors who have invested in the Sterling Income Trust (SIT) overseen by Theta Asset Management Ltd (Theta):

A letter dated 9 May 2019 from Theta to all investors in the SIT set out the rights of investors in the SIT and how to make complaints to Theta. In that letter Theta stated that its compliance manager would aim to resolve complaints within 45 days, but if you were not satisfied with its response you could lodge a complaint with the Australian Financial Complaints Authority (AFCA).

Further information about how to make a complaint about a financial firm can be found in ASIC [Information Sheet 174](#) Disputes with financial firms.

It is important to be aware that AFCA will generally only be able to consider your complaint if it is made within six years after you first became aware, or 'should reasonably have become aware', that you suffered the loss you want to complain about; or if you have already complained directly to your financial firm through its internal dispute resolution (IDR) process, within two years of getting a response from your financial firm through that process.

AFCA may provide a remedy if you have incurred loss that was caused by a financial firm's conduct. It may order that you be compensated for your loss to the extent AFCA holds the financial firm responsible for that loss. Further information on how AFCA deals with complaints and the relevant time limits can be found at <https://www.afca.org.au/>.

For investors who have entered into a Sterling New Life lease:

Macquarie Bank

After an approach by ASIC, despite having no legal obligation to do so, the secured creditor of the Sterling Group, Macquarie Bank, has made available Macquarie's Client Care Team to speak to Sterling New Life lease tenants / investors about their particular individual circumstances, to try to offer assistance where it can. Those tenants/ investors are able to access that assistance via the office of the liquidators of the Sterling group of companies, Ferrier Hodgson, on sterling@fh.com.au or 08 9214 1473.

Macquarie Bank had no involvement in promoting Sterling New Life leases, but is making its Client Care Team staff available to try to offer assistance where it can to tenants in a vulnerable position. Landlords in a vulnerable situation are advised to consider contacting their own bank or finance-provider.

For investors who have entered into a sterling new life lease and affected landlords:

The Department of Mines Industry Regulation and Safety (Consumer Protection Division)

Advice on tenancy rights is available via (08) 6552 9232 and jan.fairfield@dmirs.wa.gov.au.

Tenancy WA

Advice on tenancy matters is available via (08) 9221 0088 or locate a tenancy advocate at <http://www.tenancywa.org.au/find-a-tenant-advocate>

For all investors in investments offered by the Sterling Group of companies:

Financial Counsellors' Association of Western Australia.

Free independent financial counselling and legal advice on (08) 9325 1617.

Consumer Credit Legal Services

Provides legal advice and representation to consumers in WA in the areas of credit, banking and finance on (08) 9221 7066 and <https://cclswa.org.au/about-us/about-cclswa/>. There are time periods within which legal proceedings must be commenced. You should therefore seek legal advice to ensure that you will not be prevented from taking any legal action you might wish to take in the future due to these time limitations.

Anglicare WA

Offers a wide range of services, with almost 50 service locations across WA Financial and general counselling services on 1300 11 44 46.