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Committee Secretary
Parliamentary Joint Committee on Corporations and
Financial Services
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Canberra ACT 2600

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Submission to the Inquiry into the collapse of Trio Capital
And other related matters

Dear Sir/Madam

The following constitutes my Submission to the Parliamentary Inquiry into the Trio collapse. I have noted the 11 Terms of Reference and do not propose to address all terms as the Association of ARP Unit holders Incorporated (an Incorporated Association representing unit holders in the ARP Growth Fund) have lodged a submission dealing with all terms of reference on which I also rely.

The Association has also made detailed submissions to:

- The Future of Financial Advice Options Paper – 21 February 2011,and
- Submission to the Statutory Compensation Review – 22 May, 2011.

which should also be referenced as part of the Committee's Inquiry.

I am a trustee of a self managed superannuation fund, that being Don Fox Planning Retirement Plan (DFPRP) which is an investor in the ARP Growth Fund (ARP). Trio Capital Ltd (Trio) is the responsible entity (RE) for ARP with the investments for ARP managed by Mr

Trio Capital's RE licence was suspended by ASIC in November 2009 and PPB Partners (PPB) were appointed by ASIC as administrators for all of Trio's operations.

On the 16th October 2009 I received from Trio the DFPRP transaction summary report for the period ending at 31 August, 2009 along with the investment report for the same period from PST, all reports indicating the value of ARP's investments were in excess of $65 million dollars.

As of 31/08/09 my closing balance in the fund was $793,190.54. This amount represented approximately 30% of DFPRP the remaining 70% being a combination of property and cash.

The ARP investment was the sole source of pension payments to my wife and myself. The last payment was made in August 2009. Since this date we have relied

on interest from cash investments, property rentals or reducing capital to maintain reasonable living standards. This clearly can't last as all capital will be eroded.

The initial investments in Superannuation by DFPRP commenced on 28 February 1989 with an investment of $100,000 in Professional Pensions PST on the advice of Mr , a fund manager.

The Superannuation Industry (Supervision) Act 1993 (SIS) came into effect on 1 July 1994. I made application for DFPRP to become a registered fund by the due date of 31 March 1995.

It is my understanding that Part 23, Section 229 of SIS Act 1993, contained no provision that precluded SMSF's from compensation from a loss suffered as a result of fraudulent conduct or theft.

Part 23 of the SIS Act 1993 was reviewed in 2003 with the Government accepting the view that SMSF's should <u>not</u> be eligible for financial assistance.

In 2007 the Government made further significant changes to the legislation whereby amounts of up to $1 million could be added to superfunds, the cut off date being 30 June 2007.

As the DFPRP fund was 'top heavy' with property investments, 2 commercial properties were sold and the proceeds of $800,000 deposited in the fund by the due date to balance the fund with a mix of cash, property and invested funds. Following a further meeting with Mr , fund Manager, $650,000 was deposited in the ARP Growth Fund.

During the period June 2006/June 2009 substantial funds were added to the fund bringing the total to over $910,000 to provide a source of funds for pension payments on retirement and for life.

On 30th March 2007 I received advice from Astarra Capital Ltd (appointed Trustee of Professional Pensions PST) of changes to update the investment vehicle from a pooled Superannuation Trust to a managed Investment Scheme.

I agreed to transfer our investment to the New Growth Fund in June 2007 on the basis that Mr role as investment manager was unchanged and that Astarra was simply taking over the responsibility of day to day administration. I opted for a medium risk investment strategy.

All of my fund investments have followed discussions with Mr of PST (and other entities) and indeed prior to further substantial investments during June 06/June 09 further discussions were held with Mr regarding the spread of invested funds, yields and safety of funds invested.

At no stage during my investments through Mr was I advised of legislative changes which would put my investments at risk. I now acknowledge that my fund (DFPRP) is a SMSF as defined in Section 17A of the SIS Act and is not eligible for compensation.

I am aware of proposed changes in response to the Cooper Review which come into effect on 1 July 2012 which will amend legislation for SMSF's to hopefully eliminate fraudulent conduct or theft.

Committee's Findings

My objectives are that the Committee finds and makes recommendations to the Government/Treasurer that:-

A. SMSF's have been unfairly and discriminatorily disadvantaged.

B. That the Government provide compensation for SMSF;'s by means of an ex gratia payment; retrospective legislation or Compensation for Detriment caused by Defective Administration (CDDA Scheme).

C. Legislative changes are enacted to ensure SMSF's have improved levels of regulatory protection to eliminate fraudulent conduct or theft.

Response of Terms of Reference

Terms of Reference 1 & 3

A. SMSF's have been unfairly and discriminated disadvantaged.

When the initial investment by DFPRP was made in 1989 I understand no regulation applied to differentiate between APRA regulated funds and SMSF's. Whilst DFPRP is a SMSF by definition with funds composed of cash, property and invested funds (the latter ARP growth) such a balance was sought on the basis of Government policy and financial advice I do have a knowledge of the property market however my knowledge of share investment is limited and hence the decision to invest in ARP Growth as fund manager for part of DFPRP. Clearly these invested funds were not personally managed by me.

My investments were made and based on the same documentation and product disclosure statements as others at the time but now some are deemed to be investors in APRA regulated funds receiving 100% compensation for losses incurred whereas SMSF's are not subject to the same compensation.

My investments were made in good faith on the recommendation of Mr and I had no personal involvement in the investment of funds by the manager of ARP Growth.

Surely, the legislative changes in 2003 could not have envisaged such an outcome nor discrimination. Indeed, had there not been such changes made, APRA Regulated Funds and SMSF's would have both been in the same vulnerable position today.

Terms of Reference 2, 4, 5 & 6

B. That the Government provide compensation for SMSF's by means of an ex gratia payment; retrospective legislation or compensation under the CDDA scheme.

Trio investors in APRA regulated funds received $55 million (100%) compensation for losses. The remaining two TIO hedge funds not compensated (SMSF's) have approximately $120 million invested (ARP Growth $54 million). The legislative changes in 2003 which led to the differing circumstances whereby compensation is payable to one fund and not the other even though both were based on the same documentation and product disclosure could not have been the intended outcome.

The present Government policy in respect to guarantees for funds invested in Banks, Building Societies, Credit Unions and the like of up to $1 million following the GFC does not discriminate against investors.

Whilst the Trio fraud appears to be an isolated case to date and granted there could be others, such be limited by imminent legislative changes following the St John inquiry.

The quantum of unit holders not compensated ($120 million approximately) should be considered for an ex gratia payment or specific clause retrospective legislation due to the special circumstances of fraud and the likely introduction of legislative changes to improve the level of protection for investors and the introduction of a compensation fund supported by industry contributions.

The Committee should also investigate the roles of APRA and ASIC to determine whether any actions or omissions in dealing with the Trio collapse were as a result of defective administration and whether there are grounds for compensation under the CDDA scheme.

Terms of Reference 7 and 8

C. Legislative changes are enacted to ensure SMSF's have improved levels of regulatory protection to eliminate fraudulent conduct or theft.

The St John inquiry will likely make recommendations for legislative changes to provide protection against fraud and theft. Other changes may include a compensation scheme for investors.

The Association of ARP unit holders have made the following submissions.

- 21/02/11 – Submission to the Future of Financial Advice Options Paper, and
- 22/05/11 – Submission to the Statutory Compensation Review.

Both Submissions examined the shortfalls in legislation, compensation for consumers and made specific recommendations for improved levels of protection especially for SMSF's.

These documents should be accessed by the Committee. I support the recommendations in both.

Summary

May I congratulate the Government on the opportunity given to those of us whose lives have been significantly impacted financially together with our health and lifestyles, to be given an opportunity to make a submission to the Parliament Inquiry into the Trio collapse.

We all need compensation for our losses which were no fault of our own and guarantees that legislative changes will be quickly enacted to ensure consumers are protected against fraud with adequate compensation measure included.

I seek an opportunity to address the Committee.

Yours faithfully

Don Fox
On behalf of DFPRP