



**ASIC**  
Australian Securities &  
Investments Commission

<b>Committee</b>	Senate Economics References Committee
<b>Inquiry</b>	Inquiry into Sterling Income Trust
<b>Question No.</b>	001
<b>Reference</b>	Spoken, 16 November 2021, Hansard page 9
<b>Committee member</b>	Senator Scarr

## Question

**Senator SCARR:** In my mind, I'm drawing a distinction. On the one hand, there's the regulator seeing a PDS which doesn't dot the i's and cross the t's and saying, 'You need to tweak your disclosure around'—x and y—or 'There's this complication that needs to be beefed up.' There's that sort of amendment to a PDS. But, to me, this falls into another category. I haven't seen the PDS and the detail of what was lacking in the PDS. Maybe you could take that on notice, to give me a better feel for how it was lacking.

**Mr Longo:** We can definitely do that.

## Answer

### 1. What was lacking or defective in the earlier PDSs?

As set out in our Submission, we are not a merits regulator (see paragraph 16). We dealt with the PDSs before us in relation to the Sterling Income Trust.

ASIC had a number of concerns about the three PDS in use in mid-2017. We attach the statement of concerns issued to Theta together with the interim stop order (see **annexure**). The stop orders were based on the following concerns:

- Income Units & Growth Units PDS
  - Omission to fully and clearly disclosure extent and effect of the related party transactions and conflicts of interests
  - Omission of information about significant risks
  - Misleading disclosure and omissions relating to the Sterling Income Support Agreement
  - Misleading disclosure and omissions relating to Target Returns
  - Material on Income Units may be misleading and is not presented in a clear, concise and effective manner
  - Material on Growth Units may be misleading and is not presented in a clear, concise and effective manner
  - Material on Financial Information may be misleading
  - Disclosure about related party transactions and conflicts of interests are not presented in a clear, concise and effective manner
- Management Company Units PDS
  - Disclosure about related party transactions and conflicts of interests are not presented in a clear, concise and effective manner

- Omission of information about significant risks
  - Omission of Financial Information
  - Omission of information about Sterling First
  - Misleading references to redemption
  - Omission of information and misleading statements about Stirling New Life Leases
- Development Units PDS
  - Omission to fully and clearly disclose extent and effect of the related party transactions and conflicts of interests
  - Omission of information about significant risks
  - References to Target Returns
  - Omission of information about loans
  - Misleading references to Stirling New Life Leases

To form these views, we needed to collect information and evidence, and analyse the documents. This necessarily took some time.

The law requires the product issuer to ensure that the PDS is compliant. Given ASIC is not a merits regulator it is not for ASIC to determine whether or not it is possible for a product issuer to prepare a compliant PDS for a particular product. The law does not ban risky products – provided that proper disclosure is given, the product would be able to be sold.

ASIC imposed a stop order in relation to the then current PDSs in mid-2017 and published a [media release](#) announcing the stop order. It was then for the product issuer (Theta) to review the situation with its lawyers and work out what to do next – whether to modify the product, prepare a properly compliant PDS or close the product. In the end, they decided to prepare a new PDS, as they were entitled to do.

ASIC did not and does not approve PDSs. It was Theta's responsibility to ensure the PDS they prepared was adequate.

## **2. Should ASIC have taken different or stronger action because of the PDS deficiencies?**

### **a. The August 2017 stop order**

The overall timeline is set out on page 31 of the Submission.

In light of the situation facing tenant-investors and the material available to ASIC as at March – August 2017, ASIC's view was that the issue of stop orders over the Sterling Income Trust PDSs would be the fastest and most effective way for ASIC to protect potential future tenant-investors. ASIC acted reasonably promptly to obtain the evidence and grounds necessary for stop orders, which were issued on 9 August 2017.

In our view, a stop order was the most efficient and timely approach to prevent further sales of interests in the Sterling Income Trust unless and until the disclosure issues were resolved. This is a power ASIC can itself exercise, and does not involve an application to the court. In our view, a court injunction to stop further sales would not have been any quicker.

An application for an injunction also requires ASIC to prepare and the court to consider evidence and submissions from the parties. Although the questions whether there is a serious question to be tried and where the balance of convenience lies will not circumscribe the court's consideration in an application for an interim injunction under s 1324(4), the interests of justice will always require that those questions be examined carefully when restrictions are sought to be imposed before the case has been properly examined by the court, even where the protection of the public is said to be involved: see per Young J (as his Honour then was), in *Corporate Affairs Commission (NSW) v Lombard Nash International Pty Ltd* (1986) 11 ACLR 566.

Injunctions would have required the necessary and admissible supporting evidence that we simply did not have at the time. Restrictions on a company that a party seeks to impose before a court has properly examined a case will always require careful consideration on whether there is a serious question to be tried.

For this reason, and because at the time ASIC was becoming concerned that the scheme may actually be insolvent, in early 2018 ASIC focused on gathering enough evidence to take action against Theta as the responsible entity to close the scheme down. We remain of the view this was the right thing to prioritise at the time in this matter and in view of the other enforcement matters that ASIC was also undertaking at that time.

We did not, at this time, have any complaints from tenant-investors who were unhappy with their tenancy or investment or evidence of investor losses. At that time, key aspects of the SNLL arrangement later found to be problematic (e.g. the non-recourse arrangement in the Payment Direction Deed) in the later Supreme Court case, had not yet come to light.

In taking injunctive action, ASIC needs to be cautious not to precipitate investor losses where investor outcomes may still be uncertain.

“Appointment of a receiver over a person's assets is in any circumstances an extraordinary step for the court to take, though it may be justified when associated with the allegation of misappropriation of property, particularly, though not necessarily exclusively, fraudulent.” (Australian Securities and Investments Commission v Adler (2001) 38 ACSR 26).

In short, broadly speaking, seeking interim injunctions or the appointment of receivers or liquidators in the period after March 2017 would have been unlikely to succeed.

We undertook telephone interviews with at least 44 tenant-investors during this time, to better understand how they had entered into the SNLL arrangement and what they understood of it. We attach a copy of the script and interview guide used by the ASIC team for these interviews [**see annexure**].

#### What requirements must ASIC satisfy before issuing a stop order?

ASIC cannot simply issue a stop order immediately based on a suspicion or a report of misconduct alone. Under the law, ASIC must have good grounds for issuing a stop order, and must provide procedural fairness to affected persons (here, Theta and Sterling Income Trust) prior to the issue of a final stop order. An interim stop order can generally only last for 21 days before a final stop order must be made. As a result, ASIC must have gathered

sufficient evidence and articulated its grounds for the stop order prior to the issue of even an interim stop order.

Under the law, before issuing a final stop order, ASIC must hold an administrative hearing and give a reasonable opportunity for any interested persons to make verbal or written submissions to ASIC on whether the final stop order should be made. The hearings must be conducted in accordance with general principles of procedural fairness, such as where the decision maker has an open and impartial mind, and where findings of fact are made on a sound basis.

These requirements reflect the policy that ASIC should not be able to intervene to stop businesses' operations without having good grounds for doing so and after having provided procedural fairness to those businesses. ASIC action, including stop orders, can have devastating effects on businesses. While in this case Sterling Income Trust has proven to cause devastating losses for investor-tenants, ASIC must proceed on the basis that not all of the businesses which it investigates are in breach of the law.

For these reasons, it is critical for ASIC to thoroughly investigate each report of misconduct and ensure it has credible evidence prior to issuing a stop order (or indeed prior to taking any compliance or enforcement action).

#### What steps did ASIC take before issuing stop orders in relation to Sterling Income Trust?

Between 27 March 2017 and the issue of the interim stop order on 9 August 2017, ASIC reviewed the materials provided by DMIRS. ASIC also obtained and reviewed further materials including obtaining and reviewing PDSs which were not publicly available. ASIC had numerous discussions with DMIRS and undertook surveillance of Sterling Income Trust activities. On 9 August 2017, having gathered the necessary evidence and persuaded an impartial ASIC delegate that an interim stop order was necessary, ASIC issued an interim stop order. Theta acknowledged the interim stop order on 10 August 2017, and ASIC also notified DMIRS of the interim stop order and asked it to contact ASIC if they became aware of any new investors in the Sterling Income Trust.

ASIC then had 21 days to obtain a final stop order, including after holding an administrative hearing outlined above. Following further investigations, including stopping a Sterling seminar scheduled for 21 August 2017, ASIC issued a final stop order on 29 August 2017 and subsequently published a media release publicly announcing the stop order. Theta had at that point consented to the final stop order. The effect of the stop orders was that any offers, issues, sales or transfers of the interests in the Sterling Income Trust under the PDSs were prohibited while the final stop order remained in force.

#### **b. the replacement PDS**

First, it is important to note that ASIC did not endorse or otherwise approve the PDS issued by Theta on 27 October 2017 (the replacement PDS). This is discussed in further detail at ASIC's response to Senator Pratt's QoN no 17, which sets out the circumstances in which ASIC provided comments on a draft PDS on 22 September 2017, prior to its issue on 27 October 2017. Those comments were expressly stated to be not exhaustive, and subject to

Theta's obligations to ensure that the PDS complied with Corporations Act requirements. ASIC reserved its right to take action if required.

Theta engaged with ASIC and Theta took steps to correct the PDS. Theta was represented by reputable solicitors who were closely engaged with the process. Those solicitors also provided assurances to ASIC regarding Theta's due diligence process. ASIC provided its 22 September 2017 comments on the basis that they were not exhaustive and that Theta had the responsibility of ensuring that any revised PDS was compliant.

The adequacy or otherwise of a PDS can be a complex question. Consideration of the broader context and underlying documents is required. ASIC has to request a PDS it wishes to review, as they are not lodged with us – and sometimes we need issue notices to obtain them. The complexity of the issues pertaining to the PDS is demonstrated by the detailed judgment in *ASIC v Theta Asset Management Limited* [2020] FCA 1894 regarding the Sterling Income Trust PDSs.

ASIC's broader focus at that time was the solvency of the Sterling Income Trust, having received Theta's audited financial statements on 29 September 2017 which raised a "material uncertainty" over the Sterling Income Trust's ability to continue as a going concern. ASIC took proactive steps in respect of these issues and on 30 April 2018 Theta closed the Sterling Income Trust to new investors and informed ASIC that the Second PDS was no longer in use.

Otherwise, we refer to our answer to Question Notice 17 provided to Senator Pratt on 15 November in respect of the comments provided by ASIC to Theta in respect of the revised PDS on 22 September 2017.

### **c. The Silverlink fundraising**

Based on ASIC's further investigations in relation to suspected criminal conduct, ASIC believes that the Sterling Group actively concealed from ASIC fundraising through Silverlink companies. On 13 April 2018, ASIC was made aware by DMIRS that the Sterling Group had begun to promote preference shares in two Sterling Group companies, SilverLink Investment Company Limited and Silver Link Securities Limited (together, Silverlink).

At that time, ASIC's view was that it did not have sufficient evidence to challenge the Sterling Group's promotion of the issue of shares in Silverlink. Between April 2018 and June 2018, ASIC took steps to obtain and consider evidence against Silverlink and the Sterling Group in respect of the Silverlink investment and in the context of ASIC's broader investigation against the Sterling Group. These steps included obtaining and considering information and documents from DMIRS and other sources (including under a section 33 Notice served on DMIRS on 6 June 2018).

This investigation culminated in a meeting on 22 June 2018 with Robert Marie (director of Theta), Ray Jones (director of some Sterling Group entities, including Silverlink) and their solicitor, who was a partner of a national law firm.

At the meeting, ASIC advised Sterling that the new Silverlink offering on the website appeared to be illegal in circumstances where there was no prospectus and Silverlink was

not an AFSL holder. The law firm partner confirmed that that Silverlink investment option had been removed from the Sterling Group website on 18 May 2018. Mr Jones, a director of Silverlink, conceded it should never have been on the website because there was no prospectus and Silverlink was not an AFSL holder. Following the meeting, ASIC took steps to confirm that removal from the website had occurred.

In the days following this meeting, Sterling expressed its intention to shut down the Sterling Income Trust MIS. On 2 July 2018, Sterling sent a letter to SNL investor-tenants which gave an undertaking to fully remediate investor-tenants if they wanted to terminate their Sterling New Life Lease [see **annexure**]. ASIC obtained that letter on 4 July 2018. The letter was addressed to “Sterling New Life Tenant’s” generally, but ASIC later learned that it had not been sent to Silverlink investors. Further, in late June 2018, Sterling’s communications with ASIC omitted the Silverlink tenant-investors from a list of Sterling New Life Lessees.

In its further investigations, ASIC has since obtained an email dated 24 July 2018 which was sent internally to a SNLL sales representative which specifically referred to concealing Silverlink from ASIC.

On 4 December 2018, ASIC received a referral from Tenancy WA that Sterling had nevertheless proceeded to raise funds through the offer of investments in Silverlink. Upon becoming aware of this information ASIC quickly took action to obtain formal written undertakings from the directors of Silverlink to cease accepting funds for Silverlink investments. This was obtained on 17 December 2018, less than two weeks after ASIC received the further intelligence from Tenancy WA.

Aspects of the above conduct have been referred to the CDDP for the CDDP's consideration. Further details of ASIC's response in December 2018 are set out at paragraphs [171]-[202] of the ASIC submission.

## **Annexures**

1. Copy of ASIC statement of concerns sent to Theta Asset Management, 9 August 2017.
2. “Investors questions” – ASIC interview guide, June 2018.
3. Letter from Sterling Group to SNLL tenant-investors, 2 July 2018.

**Australian Securities and Investments Commission**

**STATEMENT OF CONCERNS**

**Grounds for hearing pursuant to subsection 1020E(4) of the *Corporations Act 2001***

**Theta Asset Management Limited ACN 071 807684**

**Product Disclosure Statements for interests in the Sterling Income Trust  
ARSN 158 828 105**

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**A. BACKGROUND**

1. Theta Asset Management Limited ACN 071 807 684 (**Theta**) holds Australian Financial Services Licence Number 230920 (**AFSL**). Theta has issued a Product Disclosure Statement (**PDS**) for each investment option of the Sterling Income Trust ARSN 158 828 105 (**Fund**) comprising Development Units, Income Units & Growth Units and Management Company Units. The PDS issued for Development Units is dated 20 May 2016 (**Development Units PDS**), the PDS issued for Income Units & Growth Units is dated 31 January 2017 (**Income Units & Growth Units PDS**), the PDS issued for Management Company Units is dated 20 May 2016 (**Management Company Units PDS**) (collectively, **the Theta PDSs**).
2. The Australian Securities and Investments Commission (**ASIC**) has reviewed the Theta PDSs and formed a view that, for the reasons set out in this statement of concerns they are defective.

**B. PDS REQUIREMENTS**

Relevant Law

3. Under subsection 1020E of the *Corporations Act 2001* (**Act**) where ASIC is satisfied that a PDS for a financial product is defective, ASIC may order that

specified conduct in respect of the financial product to which the PDS relates must not be engaged in while the order is in force. A financial product is defined in section 764A of the Act to include an interest in a managed investment scheme.

4. A PDS may be defective if, among other matters:
  - (a) there is a misleading or deceptive statement in the PDS; or
  - (b) there is an omission from the PDS of material required by section 1013C, other than material required by sections 1013B or 1013G,  
  
(paragraph 1020E(11)(a) and paragraphs 1022A(1)(a)&(b) of the Act).
5. Section 1013C of the Act requires a PDS to disclose:
  - (a) the statements and information required by section 1013D;
  - (b) the information required by section 1013E; and
  - (c) the information required by other provisions of Subdivision C, Division 2, Part 7.9 of the Act.
6. Subsection 1013D(1) of the Act requires a PDS to include specified statements and such of the specified types of information as a person would reasonably require for the purpose of making a decision, as a retail client, whether to acquire the financial product. The specified types of information relevantly includes:
  - (a) information about any significant benefits to which a holder of the product will or may become entitled, the circumstances in which and times at which those benefits will or may be provided, and the way in which those benefits will or may be provided (paragraph 1013D(1)(b));
  - (b) information about any significant risks associated with holding the product (paragraph 1013D(1)(c)); and
  - (c) information about other significant characteristics or features of the product or of the rights, terms, conditions and obligations attaching to the product (paragraph 1013D(1)(f)).



7. Section 1013E of the Act requires that a PDS contain any other information that may reasonably be expected to have a material influence on the decision of a reasonable person, as a retail client, whether to acquire the product.
8. The information included in the PDS must be disclosed in a clear, concise and effective manner (subsection 1013C(3) of the Act).
9. The information in the PDS must also be kept up to date (section 1012J of the Act).
10. Subsection 769C of the Act provides that for the purposes of Chapter of the Act, if:
  - (a) a person makes a representation with respect to any future matter, and
  - (b) the person does not have reasonable grounds for making the representation,the representation is taken to be misleading.

## **C. ASIC'S CONCERNS**

### **Income Units & Growth Units PDS**

#### Omission to fully and clearly disclosure extent and effect of the related party transactions and conflicts of interests

11. There are significant conflicts of interests that exist in relation to the Fund including those in respect of the various roles undertaken by Sterling First (Aust) Limited (**Stirling First**) and its wholly owned subsidiaries and the related party transactions outlined in the financial reports for the Fund for the financial year ended 30 June 2016.
12. We are concerned that the extent and risk of the relevant conflicts of interests have not been fully, prominently and adequately disclosed in the PDS. We do not consider the information outlined on pages 9 and 29 of the PDS is sufficient.

#### Omission of information about significant risks

13. We are also concerned that significant risks have not been adequately highlighted in the PDS including:
- (a) regulatory risks relating to the provision of financial services;
  - (b) the multi-class risk outlined on page 19 of the PDS;
  - (c) risks relating to overreliance and relating to the agreement with the investment manager;
  - (d) trustee risk; and
  - (e) risks relating to conflicts of interests arising from related party agreements.

Misleading disclosure and omissions relating to the Sterling Income Support Agreement

14. Page 17 of the PDS outlines the Sterling Income Support Agreement. We are concerned that the material creates the misleading impression that distributions are guaranteed.
15. In addition, we consider that material information about the Sterling Income Support Agreement has been omitted, including:
- (a) reasons why the agreement is considered necessary;
  - (b) how the pool of money required to be maintained by Sterling Corporate Services Pty Ltd (SCS) is funded. If it is funded by SCS, we consider that information about the financial position of SCS must be included;
  - (c) the benefits received by SCS from the agreement;
  - (d) whether the agreement will provide support to other investment options of the Fund; and
  - (e) the risk that income support may not be available under the agreement.

Misleading disclosure and omissions relating to Target Returns

16. We are concerned that the Target Returns outlined of 9.25% p.a for Income Units and 12.0% p.a for Growth Units may be misleading. In particular, the assumptions used and any contingencies allowed for appear unclear.
17. We consider forecast target returns as prospective financial information or information about expectations or predictions of future performance and should only be included in the PDS if there are reasonable grounds for the forecast returns. Prospective financial information should be accompanied by:
  - (a) full details of the assumptions used;
  - (b) the time period covered by the prospective financial information;
  - (c) prominent disclosure that the risk that the predictions in the prospective financial information will not be achieved; and
  - (d) an explanation of how the prospective financial information was calculated.

Material on Income Units may be misleading and is not presented in a clear, concise and effective manner

18. We have the following concerns in relation to the presentation of material in the PDS about Income Units:
  - (a) the emphasis on past returns of 9.25% p.a may create a misleading expectation that a return of 9.25% p.a will be achieved going forward. We do not consider the small print disclaimers are sufficient to remove this expectation;
  - (b) that the diagram on page 14 and summary on page 15 in relation to the income generated by the Income Units are overly complex and not outlined in a clear, concise and effective manner to enable investors to understand the Rental Management Agreements (**RMA's**), material contracts and revenue generated from the RMA's; and

- (c) that information about the ability for RMA's to be terminated, rates of attrition of RMA's and impact on the revenue of the Fund is not prominently outlined.

Material on Growth Units may be misleading and is not presented in a clear, concise and effective manner

- 19. We have the following concerns in relation to the presentation of material in the PDS about Growth Units:
  - (a) the summary and table on page 16 in relation to the income generated by the Growth Rights are overly complex and not outlined in a clear, concise and effective manner to enable investors to understand what comprises Rental Management Growth Rights, the differences between Income Units and Growth Units, the material contracts and the income generated by the sale of RMA's; and
  - (b) that the example provided for illustrative purposes may be misleading as it is unclear what assumptions have been made in calculating the example.

Material on Financial Information may be misleading

- 20. On page 13 the PDS outlines that audit reviewed accounts for the six month period ending 31 December 2016 will be able to be downloaded from the website [www.sitfund.com.au](http://www.sitfund.com.au) (the **Website**) in due course. We are concerned this reference is misleading as the accounts for the period ending 31 December 2016 are not currently available on the Website.

Other Concerns

- 21. We are concerned that there are a number of references in the PDS that appear incorrect, incomplete or outdated:
  - (a) on page 9 of the PDS it states that the Fund will not borrow and the Income Trust may borrow from banks at commercial arm's length terms to assist with the acquisition of Rental Management Income Rights. If the

Income Trust is part of the Fund it appears misleading to outline that the Fund does not borrow;

- (b) on page 11 of the PDS there is a profile of the Managing Director of Theta. However, no information is provided about the other directors or senior management of Theta to assist investors to understand key personnel and their experience;
- (c) on page 12 of the PDS there is a reference to the SCS as Investment Manager of the Fund but no information is provided about the directors or senior management of SCS to assist investors to understand key personnel and their experience; and
- (d) the material on distribution and RMA's on pages 14 to 16 of the PDS appears outdated.

### **Management Company Units PDS**

Disclosure about related party transactions and conflicts of interests are not presented in a clear, concise and effective manner

- 22. There are significant related party transactions and conflicts of interests that exist in relation to the Fund. These include the various roles undertaken by Sterling First and its wholly owned subsidiaries and the related party transactions outlined in the financial reports for the Fund for the financial year ended 30 June 2016.
- 23. We are concerned that the extent and risk relating to related party transactions and conflicts of interests have not been fully, prominently and adequately outlined in the PDS. We do not consider the information outlined on pages 9 and 26 of the PDS is sufficient.

Omission of information about significant risks

- 24. We are concerned that significant risks have not been adequately highlighted in the PDS including:

- (a) the risks relating to the underlying investment, for example, competition, reliance on material contracts being entered into or maintained, control risk, external administration risk;
- (b) the multi-class risk outlined on pages 18 and 19 of the PDS;
- (c) regulatory risks;
- (d) risks relating to overreliance and relating to the agreement with the investment manager;
- (e) trustee risk; and
- (f) risks relating to conflicts of interests arising from related party agreements.

#### Omission of Financial Information

25. We are concerned that the PDS does not appear to include any financial information about the Fund to assist investors to understand the Fund's financial position. We do not consider the information on page 26 is sufficient.

#### Omission of information about Sterling First

26. The underlying assets of the Management Company Units are shares in Sterling First. We are concerned that the following material information has been omitted about Sterling First:
- (a) information about the financial position and prospects of Sterling First. The PDS does not include information about the assets, liabilities, revenue and expenses Sterling First;
  - (b) information about the board and senior management of Sterling First;
  - (c) information about the terms of the preference shares issued by Sterling First; and
  - (d) information about the substantial shareholders of Sterling First.

### Misleading references to redemption

27. The summary of Management Company Units on page 3 of the PDS highlights that there are redemptions for cash or shares. Page 6 the PDS also outlines that after issue of Management Company Share Units, members can redeem their investment in cash, or for a distribution in specie of the underlying shares, or a combination of both.
28. We consider these references create the misleading impression that investors can redeem their investment on request. As the Fund is illiquid, any redemption of interests must be undertaken in accordance with Part 5C.6 of the Act. Any limitations on the ability to redeem appear separately in the PDS.

### Omission of information and misleading statements about Stirling New Life Leases

29. The PDS appears to place emphasis on the Sterling New Life Leases (SNLL's) offered by Sterling First when it is outlined on page 16 that Stirling First also has a number of operating divisions. We are concerned that a detailed description of the operating divisions and the revenue generated from each division has not been outlined.
30. We are also concerned that the PDS does not appear to provide balanced disclosure in relation to the SNLL's which may be misleading. There are a number of references to the benefits of the SNLL's but the PDS does not outline any of the relevant disadvantages and risks.
31. Pages 14 and 15 the PDS outlines the financial impact comparison between SNLL's and alternative options. We are concerned that:
  - (a) this information does not appear relevant to all investors in the Fund as some investors are not making a decision to acquire a SNLL;
  - (b) the financial information is based on hypothetical assumptions which may be misleading. For example, the calculations for SNLL's appear to assume that the costs associated with the lease will be met by the investment in the Fund and that surplus income will be reinvested without any contingency for failure of the Fund to generate this required level of

income or loss of capital. In addition, the calculations in Table 2 do not appear to reflect the impact of any capital growth that may be generated from direct strata acquisition compared to returns in the Fund.

#### Other Concerns

32. We are concerned that there are a number of references in the PDS that appear incorrect, incomplete or outdated:
- (a) there are various references in the PDS to First Mortgage Units and the First Mortgage Trust (for example, pages 5 and 12). These references appear outdated as the Fund's financial report for the financial year ended 30 June 2016 outlines that in November 2016, 100% of unit holders of First Mortgage Units were redeemed;
  - (b) on page 9 and 19 of the PDS it states that neither the Fund nor its wholly owned sub trust, the Management Company Share Trust, will borrow. The Income Units & Growth Units PDS on page 9 outlines that the Income Trust may borrow and a Macquarie Bank Facility is in place. If the Income Trust is part of the Fund then it appears misleading to outline that the Fund does not borrow and to omit information about the borrowing facility and impact on investors;
  - (c) on page 5 of the PDS a diagram of the Fund Structure has been included which refers to the Sterling Seniors Property Trust Development Sub-Trust[s] and Rental Management Australia Rent Roll which are not included in the Detailed Fund Structure diagram on page 12 of the PDS;
  - (d) on page 11 of the PDS there is a profile of the Managing Director of Theta. However, no information is provided about the other directors or senior management of Theta to assist investors to understand key personnel and their experience; and
  - (e) on page 12 of the PDS there is a reference to the SCS as Investment Manager of the Fund but no information is provided about the directors or



senior management of SCS to assist investors to understand key personnel and their experience.

### **Development Units PDS**

#### Omission to fully and clearly disclosure extent and effect of the related party transactions and conflicts of interests

33. There are significant conflicts of interests that exist in relation to the Fund including those in respect of the various roles undertaken by Sterling First and its wholly owned subsidiaries and the related party transactions outlined in the financial reports for the Fund for the financial year ended 30 June 2016.
34. We are concerned that the extent and risk of the conflicts of interests have not been fully, prominently and adequately outlined in the PDS. We do not consider the information outlined on pages 11 and 27 of the PDS is sufficient.

#### Omission of information about significant risks

35. We are concerned that significant risks have not been adequately highlighted in the PDS including:
- (a) the risks relating to the underlying investment, for example, construction/development risks, security risk including lower ranking security, economic risks, credit assessment risk, credit risks and concentration of loans;
  - (b) the multi-class risk outlined on page 19 of the PDS;
  - (c) reliance on material contracts being entered into or maintained;
  - (d) regulatory risks;
  - (e) risks relating to overreliance and relating to the agreement with the investment manager;
  - (f) trustee risk; and

- (g) risks relating to conflicts of interests arising from related party agreements.

#### References to Target Returns

- 36. We are concerned that the Target Return outlined of 20% p.a may be misleading. In particular, it is unclear whether the interest rate will be a fixed interest rate of 22% p.a for all loans, whether the interest rate takes into account the risks associated with the particular loan and whether since April 2016 monthly distributions have been made.
- 37. We consider forecast target returns as prospective financial information or information about expectations or predictions of future performance and should only be included in the PDS if there are reasonable grounds for the forecast returns. Prospective financial information should be accompanied by:
  - (a) full details of the assumptions used;
  - (b) the time period covered by the prospective financial information;
  - (c) prominent disclosure that the risk that the predictions in the prospective financial information will not be achieved; and
  - (d) an explanation of how the prospective financial information was calculated.

#### Omission of information about loans

- 38. The PDS outlines that funds raised through the issue of Development Units will be used to advance loans. We are concerned that the PDS does not prominently outline material information about the loans including:
  - (a) the number and types of loans entered into and current status of the loans;
  - (b) whether loans are primarily for the purpose of providing property acquisition and construction funding to build residential homes in connection with SNLL's or for other purposes;
  - (c) how borrowers are sourced and whether they are related parties;

- (d) whether the interest rates with borrowers are fixed or variable and whether interest is capitalised;
  - (e) the term of the loan and what happens if a loan is repaid early or is not repaid by its maturity date;
  - (f) whether independent valuations will be undertaken in respect of the underlying security or the valuations will be undertaken by Sterling First or its subsidiaries; and
  - (g) what if any steps will be taken in the event of default.
39. Page 9 of the PDS outlines photographs taken on 1 February 2016 in relation to a project completing July 2016. We consider that this information is outdated and should be removed.

#### Misleading references to Stirling New Life Leases

40. The PDS does not appear to provide balanced disclosure in relation to the SNLL's which may be misleading. There are a number of references to the benefits of the SNLL's but the PDS does not outline any of the relevant disadvantages and risks.
41. As the purpose of the loans are outlined to be acquisition and construction funding to build residential homes in connection with SNLL's, we are also concerned that information has been omitted about the number of SNLL's entered into, the number of properties for SNLL's subject to borrowing via the Fund and implications for investors if demand for SNLL's does not exist.

#### Other Concerns

42. We are concerned that there are a number of references that appear incorrect, incomplete or outdated:
- (a) there are various references in the PDS to First Mortgage Units and the First Mortgage Trust (for example, pages 5 and 15). These references appear outdated as the Fund's financial report for the financial year ended

30 June 2016 outlines that in November 2016, 100% of unit holders of First Mortgage Units were redeemed;

- (b) on page 5 of the PDS a diagram of the Fund Structure has been included which refers to the Sterling Seniors Property Trust Development Sub-Trust[s] and Rental Management Australia Rent Roll which are not included in the Detailed Fund Structure diagram on page 15 of the PDS;
- (c) on pages 7 and 11 of the PDS it states that neither the Fund nor the Property Development Trust will borrow. The Income Units & Growth Units PDS on page 9 outlines that the Income Trust may borrow and a Macquarie Bank Facility is in place. If the Income Trust is part of the Fund then it appears misleading to outline that the Fund does not borrow and to omit information about the borrowing facility and impact on investors;
- (d) on page 13 of the PDS there is a profile of the Managing Director of Theta. However, no information is provided about the other directors or senior management of Theta to assist investors to understand key personnel and their experience;
- (e) on page 14 of the PDS there is a reference to the SCS as Investment Manager of the Fund but no information is provided about the directors or senior management of SCS to assist investors to understand key personnel and their experience; and
- (f) on page 16 of the PDS the financial information outlined about distributions and the financial statements of the Fund is outdated.

#### **D. CONCLUSIONS IN RELATION TO THE THETA PDSs**

43. Based on the concerns outlined above, ASIC considers that:

- (a) there may be misleading and deceptive statements in the Theta PDSs;
- (b) there may be omissions from the Theta PDSs of material required by sections 1013C and 1013E of the Act; and

- (c) the disclosure in the Theta PDSs may not be presented in a clear and concise manner,

and the Theta PDSs may be defective as defined in paragraph 1020E(11)(a) and subsection 1022A(1) of the Act.

**Dulce Asensi**

as a delegate of the Australian Securities and Investments Commission

**9 August 2017**

## INVESTORS QUESTIONS

Legend: Sterling Income Trust

Date:

Time:

Investor Name:

Email Address (if they have one):

### Introduction Guide:

Introduce yourself and Explain to them that ASIC has an investigation into a number of concerns we have as to the promotion and sale of Sterling New Life Lease Properties to a number of "elderly" people and from information and records we have obtained on our Investigation it would appear that you have taken up a Sterling New Life Lease and that we have a team of people making telephone calls to all of these people including you and what we would appreciate is if we could take 10-15 minutes of your time to ask you a number of questions as to how you came to take up a Sterling New Life lease and that will assist us in terms of our ongoing Investigation.

You may need to explain who and what ASIC is and does - ASIC is the Government Regulator and we have a Consumer and Investor Protection role for all consumers of Financial Products and Services and in this case looking at the Sterling New Life leases.

1. How did you get introduced to or become aware of Sterling and how much money did you put in/invest? (ad in papers, attends seminar, etc)
2. How did you get the money together to put in/invest (ie , Cash, Super, sell house – if so, who sold the house)?
3. Have you been happy/unhappy with your dealings with Sterling and if not why ?
4. Are you happy/unhappy with the property you have leased? if not, why not
5. Did you understand when you signed up to a Sterling New Life lease that you were making a "financial investment" into the SIT?
6. Do you understand or can you explain how the SIT investment and lease works ?
7. Who did you deal with at Sterling (Phil Lucks, Kevin Gibbs, Blair Armstrong, Ryan Jones, Brian Ruzich, etc ) ?
8. Did you get given a PDS or a Thick set of documents or a big booklet called a "Pre Contractual Disclosure Booklet"? and did you read the document/s and understand them?
9. Do you recall if you were aware of your right or told by Sterling to go away and get independent legal/acctg/financial advice? Did you take any independent advice?(Did you read this in the PDS, etc)
10. Were you told or made to understand that if you wanted to leave the Lease that you could get your full investment/capital back? and if so who told you that? or how did you come to know/understand that?
11. Were you aware or told that there was any RISK or potential that you could lose some or all of your capital/investment in the SIT? Did you read that in any of the documents you were given?
12. Do you recall having been sent a letter by Sterling in March this year that advised that your \$1 Unit had now dropped to 85 cents ? - Do you understand what that means ? (ie - you have lost

15 cents in each dollar invested) NOTE THAT THIS LOSS ONLY APPLIES TO THE INVESTORS THAT HAVE INCOME UNITS

13. Have you asked Sterling to end the arrangement, ie terminate your lease, return your money, etc ? and if so, what have you been told ? Would you like ASIC to assist/help you with this ?
14. Generally, if necessary we can say that in August last year that we put a Stop Order on the PDS/Leases as we had concerns about inadequate disclosure of risks and conflicts of interests, omission of material information about the investment.. .. etc (On a Case by Case basis use your judgement call with each investor and if they have an email address (most won't as they are elderly and not technologically proficient), ask them if they want us to send them a link and screen shot of the Stop Order, etc)
15. Anything else that you would like to tell us about Sterling/Your lease or Your Investment ? (On a case by case basis, You may want to ask if they have another family member - a son or daughter, etc that we may want to talk to in terms of assisting us or who might want to talk to us, especially if they had some involvement with Sterling and taking up of a lease and get their contact details, etc)



Sterling First Projects Pty Ltd

ACN 162 801 425

Licensed Real Estate Agent WA RA68744

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PO Box 478 South Perth WA 6951

T: 08 6102 7265 F: 08 6315 2690

info@sterlingfirst.com.au

2 July 2018

Dear Sterling New Life tenant

**Sterling New Life**

You will have been called over the last few days by your Sterling New Life Consultant advising that ASIC personnel have called (and continue to call) a selection of our Sterling New Life (SNL) tenants.

As our Consultants would have explained to you, it is ASICs responsibility to review investment products. There is understandably increased activity in this area by ASIC in light of the current Banking and Financial Services Royal Commission.

Whilst we welcome prudent regulatory oversight, what did concern us was the feedback provided by some of our SNL tenants who were called, as to the alarmist methods that some of the ASIC personnel used in trying to generate reactions. Once made aware, we became concerned that this approach may have caused emotional distress for some of you, we therefore instructed our solicitor to speak directly with ASIC in this regard, informing them of our concern.

You are aware that as a Sterling New Life tenant, you have invested in the Sterling Income Trust (SIT) in either the Income Units, Growth Units or Development Units (or a combination) from which the rental on your home is paid.

As you will know from the product disclosure statement (PDS), the price of the units can go up or down over time, and therefore the cash value of your investment. The Development Units and Growth Units are currently priced at \$1.00. The Income Units, which are largely exposed to the WA rental market are now at 86¢ per unit, up from a low of 85¢ as advised in our letter dated 22 March 2018. The early signs of recovery are reflective of the improving WA rental market and recent rent roll acquisitions on the east coast. As the rental management portfolio expands further we are hopeful that the unit price will recover, however no one can guarantee this.

For your interest, the attached article published in the Weekend Financial Review on 30 June 2018 highlights that many successful investors and experienced financial commentators are pointing to rent rolls as a sound investment for the future.

The Rent Roll that underpins the Sterling Income Trust has grown over the last 12 months from 2,200 managements to currently just over 3,900 managements, and the fund is well placed to take advantage of the opportunities outlined in the attached article.

Given that we cannot guarantee the future unit price, for your peace of mind we now undertake to make up any capital shortfall, should one arise, when you end your Sterling New Life tenancy and redeem your investment. For example, if you invested \$200,000 in the Sterling Income Trust, and upon redemption are only entitled to \$180,000 based on the unit price at the time, Sterling will contribute a further \$20,000, bringing the redemption



amount back up to \$200,000. The amount will be the original Sterling Income Trust investment amount, excluding initial fees. As you may be aware, Sterling is working towards a listing on the ASX which will further enhance Sterling's financial position.

If you are concerned that you elected to not obtain independent (personal) advice before you entered into your Sterling New Life, or simply wish to obtain further advice, please call Sandi Regis in our office on 1300 665 890 or your consultant and we can help arrange for independent financial or legal advice so you can completely review your situation.

If you have any questions at all, please do not hesitate to contact us on 1300 665 890.

Yours faithfully,

***Ray Jones***

# Agencies with renters are in the box seat for growth

## Property management The unsung hero of the services business.

Michael Bleby

A wave of consolidation is coming to Australia's highly fragmented residential real estate market as the many agents who joined the industry in recent years find the end of the boom tough going.

As fewer homes hit the market and prove harder to sell - particularly in Sydney and Melbourne where the boom was strongest - agencies with strong rental management businesses are emerging as the hunters.

These usually larger agencies are able to borrow against their property management revenue streams to buy out rivals.

Movement has begun with Sotheby's Mornington Peninsula-based franchise buying its Melbourne parent.

"I do think there is definitely opportunity for stronger firms to buy up," says industry veteran Charles Tarbey. "A good time to grow your business is when everybody else is leaving it. The competition's less and the opportunities are greater."

It's an industry that has boomed with the residential market. Over the five years to June 2017, the number of fully licensed real estate agents grew 53 per cent in NSW, to 26,737.

Victoria saw a 25 per cent jump to 13,320 and Queensland a 23 per cent

increase to 13,885, figures from the state licensing bodies show.

Property management is the unsung hero of the residential property services business. The pedestrian business of managing landlords' properties - collecting rent, calling plumbers and overseeing lease renewals or finding new tenants - is not as sexy as sales but it is lucrative.

And they are valuable assets. In 2011, Mr Tarbey paid \$18.7 million to purchase Wentworth Holdings' 8000-strong rent roll. In 2014, developer Paul Little's business paid almost \$61 million to acquire ASX-listed Real Estate Corp, the owner of the RUN-branded real estate business, which owned the largest independent rent roll in the country, managing 15,000 properties. McGrath has almost

## It's an industry that has boomed with the residential market.

7500 properties under management of its corporate-owned outlets.

It's logical that in a nation of mum-and-dad property investors, there's money in managing those properties.

In fact, while commissions and charges from property sales account for just over two-thirds of the industry's annual \$16.3 billion revenue, residential property management makes up the second-largest component.

At 11.5 per cent of the total it is more than twice the value of commercial

property management, IBISWorld figures show.

Jason Rose, agency LJ Hooker's head of network business growth, expects the consolidation he has seen in WA to come to eastern state markets as smaller agencies are bought up.

"From a property management point of view, you need around 300 properties to be a viable business, just because of the cash required to fund the business side of things," Rose says. "Anything below that, in a lot of cases, business owners have bought themselves a job versus actually being a business."

But even if consolidation is likely, firms that want to expand may not be able to borrow as much against the value of their rent rolls as they have in the past. Traditionally, banks have offered 60 per cent LVR terms on loans, but Tarbey doubts that will remain the case. "I'm not sure that banks' valuation of rent rolls is as strong because of the situation with regard to the banking royal commission and affordability issues."

There's another issue - the hangover that many firms have to work their way through first, and that will slow the pace of any consolidation, he says.

"But I do think those larger firms have their own challenges when it comes to sales divisions and I'm not sure whether many of them would be in a position to do this because they have other issues to deal with right now..." Tarbey says.

So who are the biggest? That's not clear. Ray White and LJ Hooker, the country's largest agency networks in a highly fragmented market, have large rent rolls, but as in the case of Ray White, its collective book of 550,000-plus properties under management is in the hands of its franchisees. Macquarie Bank research from 2016 says the average agency manages 563 properties, up from 375 in 2009.

Commissions charged by property managers varied from 5.5 per cent in Sydney to 8.5 per cent in Perth.

Ray White Head of Property Management Emily Sim takes a different view to her counterparts. There's no automatic reason agencies would sell out to others.

"I'm sure there are willing buyers," Sim says. "I think they're just assuming that a harder sales market will produce a lot of willing sellers. I don't see any evidence of that."



Charles Tarbey: "A good time to grow your business." PHOTO: LUIS ASCUI

Zach aged seven.



New Academic Street

## Top architects don't go

### Design

Michael Bleby

Victoria's top architect won on Friday not by designs that buildings and major work and urban

RMIT University project, which a concrete building Swanton Street that became public informal spaces for top awards for urban architectural interior and sustain

The Lyons-led Victorian Architecture overall design as well the Melbourne Museum need for design becoming more use of their existing in a big way with "I'm sure there are willing buyers," Sim says. "I think they're just assuming that a harder sales market will produce a lot of willing sellers. I don't see any evidence of that."

The project, which is complete, connects

**Australian Securities and Investments Commission**

**STATEMENT OF CONCERNS**

**Grounds for hearing pursuant to subsection 1020E(4) of the *Corporations Act 2001***

**Theta Asset Management Limited ACN 071 807684**

**Product Disclosure Statements for interests in the Sterling Income Trust  
ARSN 158 828 105**

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**A. BACKGROUND**

1. Theta Asset Management Limited ACN 071 807 684 (**Theta**) holds Australian Financial Services Licence Number 230920 (**AFSL**). Theta has issued a Product Disclosure Statement (**PDS**) for each investment option of the Sterling Income Trust ARSN 158 828 105 (**Fund**) comprising Development Units, Income Units & Growth Units and Management Company Units. The PDS issued for Development Units is dated 20 May 2016 (**Development Units PDS**), the PDS issued for Income Units & Growth Units is dated 31 January 2017 (**Income Units & Growth Units PDS**), the PDS issued for Management Company Units is dated 20 May 2016 (**Management Company Units PDS**) (collectively, **the Theta PDSs**).
2. The Australian Securities and Investments Commission (**ASIC**) has reviewed the Theta PDSs and formed a view that, for the reasons set out in this statement of concerns they are defective.

**B. PDS REQUIREMENTS**

Relevant Law

3. Under subsection 1020E of the *Corporations Act 2001* (**Act**) where ASIC is satisfied that a PDS for a financial product is defective, ASIC may order that

specified conduct in respect of the financial product to which the PDS relates must not be engaged in while the order is in force. A financial product is defined in section 764A of the Act to include an interest in a managed investment scheme.

4. A PDS may be defective if, among other matters:
  - (a) there is a misleading or deceptive statement in the PDS; or
  - (b) there is an omission from the PDS of material required by section 1013C, other than material required by sections 1013B or 1013G,  
  
(paragraph 1020E(11)(a) and paragraphs 1022A(1)(a)&(b) of the Act).
5. Section 1013C of the Act requires a PDS to disclose:
  - (a) the statements and information required by section 1013D;
  - (b) the information required by section 1013E; and
  - (c) the information required by other provisions of Subdivision C, Division 2, Part 7.9 of the Act.
6. Subsection 1013D(1) of the Act requires a PDS to include specified statements and such of the specified types of information as a person would reasonably require for the purpose of making a decision, as a retail client, whether to acquire the financial product. The specified types of information relevantly includes:
  - (a) information about any significant benefits to which a holder of the product will or may become entitled, the circumstances in which and times at which those benefits will or may be provided, and the way in which those benefits will or may be provided (paragraph 1013D(1)(b));
  - (b) information about any significant risks associated with holding the product (paragraph 1013D(1)(c)); and
  - (c) information about other significant characteristics or features of the product or of the rights, terms, conditions and obligations attaching to the product (paragraph 1013D(1)(f)).

7. Section 1013E of the Act requires that a PDS contain any other information that may reasonably be expected to have a material influence on the decision of a reasonable person, as a retail client, whether to acquire the product.
8. The information included in the PDS must be disclosed in a clear, concise and effective manner (subsection 1013C(3) of the Act).
9. The information in the PDS must also be kept up to date (section 1012J of the Act).
10. Subsection 769C of the Act provides that for the purposes of Chapter of the Act, if:
  - (a) a person makes a representation with respect to any future matter, and
  - (b) the person does not have reasonable grounds for making the representation,the representation is taken to be misleading.

## **C. ASIC'S CONCERNS**

### **Income Units & Growth Units PDS**

#### Omission to fully and clearly disclosure extent and effect of the related party transactions and conflicts of interests

11. There are significant conflicts of interests that exist in relation to the Fund including those in respect of the various roles undertaken by Sterling First (Aust) Limited (**Stirling First**) and its wholly owned subsidiaries and the related party transactions outlined in the financial reports for the Fund for the financial year ended 30 June 2016.
12. We are concerned that the extent and risk of the relevant conflicts of interests have not been fully, prominently and adequately disclosed in the PDS. We do not consider the information outlined on pages 9 and 29 of the PDS is sufficient.

#### Omission of information about significant risks

13. We are also concerned that significant risks have not been adequately highlighted in the PDS including:
- (a) regulatory risks relating to the provision of financial services;
  - (b) the multi-class risk outlined on page 19 of the PDS;
  - (c) risks relating to overreliance and relating to the agreement with the investment manager;
  - (d) trustee risk; and
  - (e) risks relating to conflicts of interests arising from related party agreements.

Misleading disclosure and omissions relating to the Sterling Income Support Agreement

14. Page 17 of the PDS outlines the Sterling Income Support Agreement. We are concerned that the material creates the misleading impression that distributions are guaranteed.
15. In addition, we consider that material information about the Sterling Income Support Agreement has been omitted, including:
- (a) reasons why the agreement is considered necessary;
  - (b) how the pool of money required to be maintained by Sterling Corporate Services Pty Ltd (SCS) is funded. If it is funded by SCS, we consider that information about the financial position of SCS must be included;
  - (c) the benefits received by SCS from the agreement;
  - (d) whether the agreement will provide support to other investment options of the Fund; and
  - (e) the risk that income support may not be available under the agreement.

Misleading disclosure and omissions relating to Target Returns

16. We are concerned that the Target Returns outlined of 9.25% p.a for Income Units and 12.0% p.a for Growth Units may be misleading. In particular, the assumptions used and any contingencies allowed for appear unclear.
17. We consider forecast target returns as prospective financial information or information about expectations or predictions of future performance and should only be included in the PDS if there are reasonable grounds for the forecast returns. Prospective financial information should be accompanied by:
  - (a) full details of the assumptions used;
  - (b) the time period covered by the prospective financial information;
  - (c) prominent disclosure that the risk that the predictions in the prospective financial information will not be achieved; and
  - (d) an explanation of how the prospective financial information was calculated.

Material on Income Units may be misleading and is not presented in a clear, concise and effective manner

18. We have the following concerns in relation to the presentation of material in the PDS about Income Units:
  - (a) the emphasis on past returns of 9.25% p.a may create a misleading expectation that a return of 9.25% p.a will be achieved going forward. We do not consider the small print disclaimers are sufficient to remove this expectation;
  - (b) that the diagram on page 14 and summary on page 15 in relation to the income generated by the Income Units are overly complex and not outlined in a clear, concise and effective manner to enable investors to understand the Rental Management Agreements (**RMA's**), material contracts and revenue generated from the RMA's; and

- (c) that information about the ability for RMA's to be terminated, rates of attrition of RMA's and impact on the revenue of the Fund is not prominently outlined.

Material on Growth Units may be misleading and is not presented in a clear, concise and effective manner

- 19. We have the following concerns in relation to the presentation of material in the PDS about Growth Units:
  - (a) the summary and table on page 16 in relation to the income generated by the Growth Rights are overly complex and not outlined in a clear, concise and effective manner to enable investors to understand what comprises Rental Management Growth Rights, the differences between Income Units and Growth Units, the material contracts and the income generated by the sale of RMA's; and
  - (b) that the example provided for illustrative purposes may be misleading as it is unclear what assumptions have been made in calculating the example.

Material on Financial Information may be misleading

- 20. On page 13 the PDS outlines that audit reviewed accounts for the six month period ending 31 December 2016 will be able to be downloaded from the website [www.sitfund.com.au](http://www.sitfund.com.au) (the **Website**) in due course. We are concerned this reference is misleading as the accounts for the period ending 31 December 2016 are not currently available on the Website.

Other Concerns

- 21. We are concerned that there are a number of references in the PDS that appear incorrect, incomplete or outdated:
  - (a) on page 9 of the PDS it states that the Fund will not borrow and the Income Trust may borrow from banks at commercial arm's length terms to assist with the acquisition of Rental Management Income Rights. If the



Income Trust is part of the Fund it appears misleading to outline that the Fund does not borrow;

- (b) on page 11 of the PDS there is a profile of the Managing Director of Theta. However, no information is provided about the other directors or senior management of Theta to assist investors to understand key personnel and their experience;
- (c) on page 12 of the PDS there is a reference to the SCS as Investment Manager of the Fund but no information is provided about the directors or senior management of SCS to assist investors to understand key personnel and their experience; and
- (d) the material on distribution and RMA's on pages 14 to 16 of the PDS appears outdated.

### **Management Company Units PDS**

Disclosure about related party transactions and conflicts of interests are not presented in a clear, concise and effective manner

- 22. There are significant related party transactions and conflicts of interests that exist in relation to the Fund. These include the various roles undertaken by Sterling First and its wholly owned subsidiaries and the related party transactions outlined in the financial reports for the Fund for the financial year ended 30 June 2016.
- 23. We are concerned that the extent and risk relating to related party transactions and conflicts of interests have not been fully, prominently and adequately outlined in the PDS. We do not consider the information outlined on pages 9 and 26 of the PDS is sufficient.

Omission of information about significant risks

- 24. We are concerned that significant risks have not been adequately highlighted in the PDS including:

- (a) the risks relating to the underlying investment, for example, competition, reliance on material contracts being entered into or maintained, control risk, external administration risk;
- (b) the multi-class risk outlined on pages 18 and 19 of the PDS;
- (c) regulatory risks;
- (d) risks relating to overreliance and relating to the agreement with the investment manager;
- (e) trustee risk; and
- (f) risks relating to conflicts of interests arising from related party agreements.

#### Omission of Financial Information

25. We are concerned that the PDS does not appear to include any financial information about the Fund to assist investors to understand the Fund's financial position. We do not consider the information on page 26 is sufficient.

#### Omission of information about Sterling First

26. The underlying assets of the Management Company Units are shares in Sterling First. We are concerned that the following material information has been omitted about Sterling First:
- (a) information about the financial position and prospects of Sterling First. The PDS does not include information about the assets, liabilities, revenue and expenses Sterling First;
  - (b) information about the board and senior management of Sterling First;
  - (c) information about the terms of the preference shares issued by Sterling First; and
  - (d) information about the substantial shareholders of Sterling First.

### Misleading references to redemption

27. The summary of Management Company Units on page 3 of the PDS highlights that there are redemptions for cash or shares. Page 6 the PDS also outlines that after issue of Management Company Share Units, members can redeem their investment in cash, or for a distribution in specie of the underlying shares, or a combination of both.
28. We consider these references create the misleading impression that investors can redeem their investment on request. As the Fund is illiquid, any redemption of interests must be undertaken in accordance with Part 5C.6 of the Act. Any limitations on the ability to redeem appear separately in the PDS.

### Omission of information and misleading statements about Stirling New Life Leases

29. The PDS appears to place emphasis on the Sterling New Life Leases (SNLL's) offered by Sterling First when it is outlined on page 16 that Stirling First also has a number of operating divisions. We are concerned that a detailed description of the operating divisions and the revenue generated from each division has not been outlined.
30. We are also concerned that the PDS does not appear to provide balanced disclosure in relation to the SNLL's which may be misleading. There are a number of references to the benefits of the SNLL's but the PDS does not outline any of the relevant disadvantages and risks.
31. Pages 14 and 15 the PDS outlines the financial impact comparison between SNLL's and alternative options. We are concerned that:
  - (a) this information does not appear relevant to all investors in the Fund as some investors are not making a decision to acquire a SNLL;
  - (b) the financial information is based on hypothetical assumptions which may be misleading. For example, the calculations for SNLL's appear to assume that the costs associated with the lease will be met by the investment in the Fund and that surplus income will be reinvested without any contingency for failure of the Fund to generate this required level of

income or loss of capital. In addition, the calculations in Table 2 do not appear to reflect the impact of any capital growth that may be generated from direct strata acquisition compared to returns in the Fund.

#### Other Concerns

32. We are concerned that there are a number of references in the PDS that appear incorrect, incomplete or outdated:
- (a) there are various references in the PDS to First Mortgage Units and the First Mortgage Trust (for example, pages 5 and 12). These references appear outdated as the Fund's financial report for the financial year ended 30 June 2016 outlines that in November 2016, 100% of unit holders of First Mortgage Units were redeemed;
  - (b) on page 9 and 19 of the PDS it states that neither the Fund nor its wholly owned sub trust, the Management Company Share Trust, will borrow. The Income Units & Growth Units PDS on page 9 outlines that the Income Trust may borrow and a Macquarie Bank Facility is in place. If the Income Trust is part of the Fund then it appears misleading to outline that the Fund does not borrow and to omit information about the borrowing facility and impact on investors;
  - (c) on page 5 of the PDS a diagram of the Fund Structure has been included which refers to the Sterling Seniors Property Trust Development Sub-Trust[s] and Rental Management Australia Rent Roll which are not included in the Detailed Fund Structure diagram on page 12 of the PDS;
  - (d) on page 11 of the PDS there is a profile of the Managing Director of Theta. However, no information is provided about the other directors or senior management of Theta to assist investors to understand key personnel and their experience; and
  - (e) on page 12 of the PDS there is a reference to the SCS as Investment Manager of the Fund but no information is provided about the directors or

senior management of SCS to assist investors to understand key personnel and their experience.

### **Development Units PDS**

#### Omission to fully and clearly disclosure extent and effect of the related party transactions and conflicts of interests

33. There are significant conflicts of interests that exist in relation to the Fund including those in respect of the various roles undertaken by Sterling First and its wholly owned subsidiaries and the related party transactions outlined in the financial reports for the Fund for the financial year ended 30 June 2016.
34. We are concerned that the extent and risk of the conflicts of interests have not been fully, prominently and adequately outlined in the PDS. We do not consider the information outlined on pages 11 and 27 of the PDS is sufficient.

#### Omission of information about significant risks

35. We are concerned that significant risks have not been adequately highlighted in the PDS including:
- (a) the risks relating to the underlying investment, for example, construction/development risks, security risk including lower ranking security, economic risks, credit assessment risk, credit risks and concentration of loans;
  - (b) the multi-class risk outlined on page 19 of the PDS;
  - (c) reliance on material contracts being entered into or maintained;
  - (d) regulatory risks;
  - (e) risks relating to overreliance and relating to the agreement with the investment manager;
  - (f) trustee risk; and

- (g) risks relating to conflicts of interests arising from related party agreements.

#### References to Target Returns

- 36. We are concerned that the Target Return outlined of 20% p.a may be misleading. In particular, it is unclear whether the interest rate will be a fixed interest rate of 22% p.a for all loans, whether the interest rate takes into account the risks associated with the particular loan and whether since April 2016 monthly distributions have been made.
- 37. We consider forecast target returns as prospective financial information or information about expectations or predictions of future performance and should only be included in the PDS if there are reasonable grounds for the forecast returns. Prospective financial information should be accompanied by:
  - (a) full details of the assumptions used;
  - (b) the time period covered by the prospective financial information;
  - (c) prominent disclosure that the risk that the predictions in the prospective financial information will not be achieved; and
  - (d) an explanation of how the prospective financial information was calculated.

#### Omission of information about loans

- 38. The PDS outlines that funds raised through the issue of Development Units will be used to advance loans. We are concerned that the PDS does not prominently outline material information about the loans including:
  - (a) the number and types of loans entered into and current status of the loans;
  - (b) whether loans are primarily for the purpose of providing property acquisition and construction funding to build residential homes in connection with SNLL's or for other purposes;
  - (c) how borrowers are sourced and whether they are related parties;

- (d) whether the interest rates with borrowers are fixed or variable and whether interest is capitalised;
  - (e) the term of the loan and what happens if a loan is repaid early or is not repaid by its maturity date;
  - (f) whether independent valuations will be undertaken in respect of the underlying security or the valuations will be undertaken by Sterling First or its subsidiaries; and
  - (g) what if any steps will be taken in the event of default.
39. Page 9 of the PDS outlines photographs taken on 1 February 2016 in relation to a project completing July 2016. We consider that this information is outdated and should be removed.

#### Misleading references to Stirling New Life Leases

40. The PDS does not appear to provide balanced disclosure in relation to the SNLL's which may be misleading. There are a number of references to the benefits of the SNLL's but the PDS does not outline any of the relevant disadvantages and risks.
41. As the purpose of the loans are outlined to be acquisition and construction funding to build residential homes in connection with SNLL's, we are also concerned that information has been omitted about the number of SNLL's entered into, the number of properties for SNLL's subject to borrowing via the Fund and implications for investors if demand for SNLL's does not exist.

#### Other Concerns

42. We are concerned that there are a number of references that appear incorrect, incomplete or outdated:
- (a) there are various references in the PDS to First Mortgage Units and the First Mortgage Trust (for example, pages 5 and 15). These references appear outdated as the Fund's financial report for the financial year ended

30 June 2016 outlines that in November 2016, 100% of unit holders of First Mortgage Units were redeemed;

- (b) on page 5 of the PDS a diagram of the Fund Structure has been included which refers to the Sterling Seniors Property Trust Development Sub-Trust[s] and Rental Management Australia Rent Roll which are not included in the Detailed Fund Structure diagram on page 15 of the PDS;
- (c) on pages 7 and 11 of the PDS it states that neither the Fund nor the Property Development Trust will borrow. The Income Units & Growth Units PDS on page 9 outlines that the Income Trust may borrow and a Macquarie Bank Facility is in place. If the Income Trust is part of the Fund then it appears misleading to outline that the Fund does not borrow and to omit information about the borrowing facility and impact on investors;
- (d) on page 13 of the PDS there is a profile of the Managing Director of Theta. However, no information is provided about the other directors or senior management of Theta to assist investors to understand key personnel and their experience;
- (e) on page 14 of the PDS there is a reference to the SCS as Investment Manager of the Fund but no information is provided about the directors or senior management of SCS to assist investors to understand key personnel and their experience; and
- (f) on page 16 of the PDS the financial information outlined about distributions and the financial statements of the Fund is outdated.

#### **D. CONCLUSIONS IN RELATION TO THE THETA PDSs**

43. Based on the concerns outlined above, ASIC considers that:

- (a) there may be misleading and deceptive statements in the Theta PDSs;
- (b) there may be omissions from the Theta PDSs of material required by sections 1013C and 1013E of the Act; and



- (c) the disclosure in the Theta PDSs may not be presented in a clear and concise manner,

and the Theta PDSs may be defective as defined in paragraph 1020E(11)(a) and subsection 1022A(1) of the Act.

as a delegate of the Australian Securities and Investments Commission

**9 August 2017**

## INVESTORS QUESTIONS

Legend: Sterling Income Trust

Date:

Time:

Investor Name:

Email Address (if they have one):

### Introduction Guide:

Introduce yourself and Explain to them that ASIC has an investigation into a number of concerns we have as to the promotion and sale of Sterling New Life Lease Properties to a number of "elderly" people and from information and records we have obtained on our Investigation it would appear that you have taken up a Sterling New Life Lease and that we have a team of people making telephone calls to all of these people including you and what we would appreciate is if we could take 10-15 minutes of your time to ask you a number of questions as to how you came to take up a Sterling New Life lease and that will assist us in terms of our ongoing Investigation.

You may need to explain who and what ASIC is and does - ASIC is the Government Regulator and we have a Consumer and Investor Protection role for all consumers of Financial Products and Services and in this case looking at the Sterling New Life leases.

1. How did you get introduced to or become aware of Sterling and how much money did you put in/invest? (ad in papers, attends seminar, etc)
2. How did you get the money together to put in/invest (ie , Cash, Super, sell house – if so, who sold the house)?
3. Have you been happy/unhappy with your dealings with Sterling and if not why ?
4. Are you happy/unhappy with the property you have leased? if not, why not
5. Did you understand when you signed up to a Sterling New Life lease that you were making a "financial investment" into the SIT?
6. Do you understand or can you explain how the SIT investment and lease works ?
7. Who did you deal with at Sterling (Phil Lucks, , Ryan Jones, Brian Ruzich, etc ) ?
8. Did you get given a PDS or a Thick set of documents or a big booklet called a "Pre Contractual Disclosure Booklet"? and did you read the document/s and understand them?
9. Do you recall if you were aware of your right or told by Sterling to go away and get independent legal/acctg/financial advice? Did you take any independent advice?(Did you read this in the PDS, etc)
10. Were you told or made to understand that if you wanted to leave the Lease that you could get your full investment/capital back? and if so who told you that? or how did you come to know/understand that?
11. Were you aware or told that there was any RISK or potential that you could lose some or all of your capital/investment in the SIT? Did you read that in any of the documents you were given?
12. Do you recall having been sent a letter by Sterling in March this year that advised that your \$1 Unit had now dropped to 85 cents ? - Do you understand what that means ? (ie - you have lost

15 cents in each dollar invested) NOTE THAT THIS LOSS ONLY APPLIES TO THE INVESTORS THAT HAVE INCOME UNITS

13. Have you asked Sterling to end the arrangement, ie terminate your lease, return your money, etc ? and if so, what have you been told ? Would you like ASIC to assist/help you with this ?
14. Generally, if necessary we can say that in August last year that we put a Stop Order on the PDS/Leases as we had concerns about inadequate disclosure of risks and conflicts of interests, omission of material information about the investment.. .. etc (On a Case by Case basis use your judgement call with each investor and if they have an email address (most won't as they are elderly and not technologically proficient), ask them if they want us to send them a link and screen shot of the Stop Order, etc)
15. Anything else that you would like to tell us about Sterling/Your lease or Your Investment ? (On a case by case basis, You may want to ask if they have another family member - a son or daughter, etc that we may want to talk to in terms of assisting us or who might want to talk to us, especially if they had some involvement with Sterling and taking up of a lease and get their contact details, etc)



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2 July 2018

Dear Sterling New Life tenant

**Sterling New Life**

You will have been called over the last few days by your Sterling New Life Consultant advising that ASIC personnel have called (and continue to call) a selection of our Sterling New Life (SNL) tenants.

As our Consultants would have explained to you, it is ASICs responsibility to review investment products. There is understandably increased activity in this area by ASIC in light of the current Banking and Financial Services Royal Commission.

Whilst we welcome prudent regulatory oversight, what did concern us was the feedback provided by some of our SNL tenants who were called, as to the alarmist methods that some of the ASIC personnel used in trying to generate reactions. Once made aware, we became concerned that this approach may have caused emotional distress for some of you, we therefore instructed our solicitor to speak directly with ASIC in this regard, informing them of our concern.

You are aware that as a Sterling New Life tenant, you have invested in the Sterling Income Trust (SIT) in either the Income Units, Growth Units or Development Units (or a combination) from which the rental on your home is paid.

As you will know from the product disclosure statement (PDS), the price of the units can go up or down over time, and therefore the cash value of your investment. The Development Units and Growth Units are currently priced at \$1.00. The Income Units, which are largely exposed to the WA rental market are now at 86¢ per unit, up from a low of 85¢ as advised in our letter dated 22 March 2018. The early signs of recovery are reflective of the improving WA rental market and recent rent roll acquisitions on the east coast. As the rental management portfolio expands further we are hopeful that the unit price will recover, however no one can guarantee this.

For your interest, the attached article published in the Weekend Financial Review on 30 June 2018 highlights that many successful investors and experienced financial commentators are pointing to rent rolls as a sound investment for the future.

The Rent Roll that underpins the Sterling Income Trust has grown over the last 12 months from 2,200 managements to currently just over 3,900 managements, and the fund is well placed to take advantage of the opportunities outlined in the attached article.

Given that we cannot guarantee the future unit price, for your peace of mind we now undertake to make up any capital shortfall, should one arise, when you end your Sterling New Life tenancy and redeem your investment. For example, if you invested \$200,000 in the Sterling Income Trust, and upon redemption are only entitled to \$180,000 based on the unit price at the time, Sterling will contribute a further \$20,000, bringing the redemption

amount back up to \$200,000. The amount will be the original Sterling Income Trust investment amount, excluding initial fees. As you may be aware, Sterling is working towards a listing on the ASX which will further enhance Sterling's financial position.

If you are concerned that you elected to not obtain independent (personal) advice before you entered into your Sterling New Life, or simply wish to obtain further advice, please call your consultant and we can help arrange for independent financial or legal advice so you can completely review your situation.

Yours faithfully,

***Ray Jones***

# Agencies with renters are in the box seat for growth

## Property management The unsung hero of the services business.

Michael Bleby

A wave of consolidation is coming to Australia's highly fragmented residential real estate market as the many agents who joined the industry in recent years find the end of the boom tough going.

As fewer homes hit the market and prove harder to sell - particularly in Sydney and Melbourne where the boom was strongest - agencies with strong rental management businesses are emerging as the hunters.

These usually larger agencies are able to borrow against their property management revenue streams to buy out rivals.

Movement has begun with Sotheby's Mornington Peninsula-based franchise buying its Melbourne parent.

"I do think there is definitely opportunity for stronger firms to buy up," says industry veteran Charles Tarbey. "A good time to grow your business is when everybody else is leaving it. The competition's less and the opportunities are greater."

It's an industry that has boomed with the residential market. Over the five years to June 2017, the number of fully licensed real estate agents grew 53 per cent in NSW, to 26,737.

Victoria saw a 25 per cent jump to 13,320 and Queensland a 23 per cent

increase to 13,885, figures from the state licensing bodies show.

Property management is the unsung hero of the residential property services business. The pedestrian business of managing landlords' properties - collecting rent, calling plumbers and overseeing lease renewals or finding new tenants - is not as sexy as sales but it is lucrative.

And they are valuable assets. In 2011, Mr Tarbey paid \$18.7 million to purchase Wentworth Holdings' 8000-strong rent roll. In 2014, developer Paul Little's business paid almost \$61 million to acquire ASX-listed Real Estate Corp, the owner of the RUN-branded real estate business, which owned the largest independent rent roll in the country, managing 15,000 properties. McGrath has almost

## It's an industry that has boomed with the residential market.

7500 properties under management of its corporate-owned outlets.

It's logical that in a nation of mum-and-dad property investors, there's money in managing those properties.

In fact, while commissions and charges from property sales account for just over two-thirds of the industry's annual \$16.3 billion revenue, residential property management makes up the second-largest component.

At 11.5 per cent of the total it is more than twice the value of commercial

property management, IBISWorld figures show.

Jason Rose, agency LJ Hooker's head of network business growth, expects the consolidation he has seen in WA to come to eastern state markets as smaller agencies are bought up.

"From a property management point of view, you need around 300 properties to be a viable business, just because of the cash required to fund the business side of things," Rose says. "Anything below that, in a lot of cases, business owners have bought themselves a job versus actually being a business."

But even if consolidation is likely, firms that want to expand may not be able to borrow as much against the value of their rent rolls as they have in the past. Traditionally, banks have offered 60 per cent LVR terms on loans, but Tarbey doubts that will remain the case. "I'm not sure that banks' valuation of rent rolls is as strong because of the situation with regard to the banking royal commission and affordability issues."

There's another issue - the hangover that many firms have to work their way through first, and that will slow the pace of any consolidation, he says.

"But I do think those larger firms have their own challenges when it comes to sales divisions and I'm not sure whether many of them would be in a position to do this because they have other issues to deal with right now..." Tarbey says.

So who are the biggest? That's not clear. Ray White and LJ Hooker, the country's largest agency networks in a highly fragmented market, have large rent rolls, but as in the case of Ray White, its collective book of 550,000-plus properties under management is in the hands of its franchisees. Macquarie Bank research from 2016 says the average agency manages 563 properties, up from 375 in 2009.

Commissions charged by property managers varied from 5.5 per cent in Sydney to 8.5 per cent in Perth.

Ray White Head of Property Management Emily Sim takes a different view to her counterparts. There's no automatic reason agencies would sell out to others.

"I'm sure there are willing buyers," Sim says. "I think they're just assuming that a harder sales market will produce a lot of willing sellers. I don't see any evidence of that."



Charles Tarbey: "A good time to grow your business." PHOTO: LUIS ASCUI

Zach aged seven.



New Academic Street

## Top architects don't go

### Design

Michael Bleby

Victoria's top architect won on Friday not by designs that buildings and major work and urban

RMIT University project, which a concrete building Swanson Street that became public informal spaces for top awards for urban architectural interior and sustain

The Lyons-led Victorian Architecture overall design as well the Melbourne Museum need for design becoming more use of their existing in a big way with "I'm sure there are willing buyers," Sim says. "I think they're just assuming that a harder sales market will produce a lot of willing sellers. I don't see any evidence of that."

The project, which is complete, connects