

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Supplementary Budget Estimates
2014 - 2015

Department/Agency: APRA

Question: SBT 4288-4289

Topic: Trio Capital collapse - acting fund trustee

Reference: Hansard page no. 90-91 - 22 October 2014

Senator: Williams, John

Question:

Senator WILLIAMS: I am getting a lot of complaints about Trio Capital, along with Timbercorp and Great Southern and many other financial products that turned to tears. With regards to Trio Capital collapse, would you please provide me with the terms of appointment when you appointed ACT Super Management Pty Ltd on 16 December 2009 as acting trustee of the funds? Would you be able to do that on notice?

Mr Byres: I do not know whether Mrs Rowell would have anything she could say at this point.

Mrs Rowell: We will have to take that on notice.

Senator WILLIAMS: That will be fine. Would you confirm that you also approved the fees to be charged to investors be changed to an hourly rate and that this was undertaken without the knowledge or approval of the investor? I believe it is supposed to be on a commission rate, and in came the trustee and it went to an hourly rate. Next question: are the acting trustees, ACT Super, acting as trustees or liquidators?

Mrs Rowell: There is a separate liquidator. ACT Super is appointed as an acting trustee, and there is a separate liquidator, but we can confirm that on notice as well.

Senator WILLIAMS: I question how an acting trustee can charge such exorbitant hourly rates, which impact on their available funds. Anyway, those hourly rates are nothing new. Has APRA sanctioned the acting trustees, ACT Super, to refuse paying investors their unimpaired, unencumbered and cleared funds, which have now been retained by them since their appointment in 2009? There is unimpaired, unencumbered money there, but it is not going out to the investors and it has been locked up since 2009.

Answer:

The Australian Prudential Regulation Authority (APRA) formally appointed an acting trustee, with conditions, to each of the five affected APRA-regulated entities, four superannuation funds and one pooled superannuation trust. The secrecy provisions of the *Australian Prudential Regulation Authority 1998* (section 56) prevent the terms of appointment from being provided. APRA is able to offer a briefing about the appointment in a closed session.

Normally, a trustee's fees are based on the fund's membership size, contributions received, asset size or a combination of these. Generally, an acting trustee's role is very specific, requiring different subject matter skill sets to a normal trustee. These skills include forensic accounting, restructuring, recovery, investment, liquidity, actuarial, legal, superannuation and

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administration skills. Such skill sets are generally only available in medium and upper tier accounting or insolvency firms.

In circumstances where the former trustee has been suspended or removed, an acting trustee takes on the role without knowing the actual condition of the fund or what subject matter expert skill sets it will require, at any given time, to complete all the responsibilities towards the fund/s and beneficiaries. Where the precise scope and depth of work is unknown these entities only offer an hourly charge rate for service.

When appointing a trustee APRA confirms that they have the required subject matter skill sets. APRA also takes steps to ensure the acting trustee only utilises the level of staff required to complete the various tasks.

The Acting Trustee in this instance, after negotiations with APRA, charges a discounted hourly rate and has not requested a review of the rate since the contracts were signed in December 2009.