



Questions for APRA at Senate Estimates Hearing, 28th May 2012

1. What were APRA's regulatory checks, investigations and findings prior to approving operating licenses to Trio Capital, and more specifically the Astarra Strategic Fund in relation to its intended investment strategy, investment structure, liquidity levels and process for redemptions? When was this carried out, and by whom exactly, and what checklists were utilised?
2. In 2005 APRA forced Shaun Richard from the board of Trio Capital because of alleged conflict of interest arising from his roles as both owner and investment manager for the fund." (Ref: SMH article "'Raised Concern" on hedge funds by Stuart Washington July 5, 2011). This appears to suggest that Mr Richard did not know the regulations surrounding ownership and management of a fund? Why did this not trigger a deeper investigation by APRA at this point?
3. In 2006 APRA had direct involvement with another Trio fund, ARP Growth, forcing it outside the superannuation entities it regulates."(SMH "'Raised Concern" on hedge funds by Stuart Washington July 5, 2011). As Richard and his connection with Trio made seeming blunders in 2005 and again in 2006, serious enough to come to the attention of APRA - forcing it to act, why was this not enough reason to more deeply investigate these related entities and the persons operating them?
4. Did APRA understand that Trio Capital / Astarra Strategic Fund was essentially a 'fund of hedge funds' at the time prior to approved licenses being issued, and that its primary intent was to utilise offshore 3rd party fund managers? If not, why was this not understood by APRA?
5. Why is there so little transparency in the regulatory oversight of hedge funds, specifically 'fund of fund' types?
6. Prior to approving these licenses, why did APRA not seek out and request Trio Capitals / Astarra Strategic Fund list of underlying assets in these 3rd party hedge funds, and demonstrable proof of the valuations of those assets?



7. The Federal Government publishes documents relating to operating a self managed super fund and it says in part “*you need to make sure all investment decisions are made according to the investment strategy of your fund*”. Those documents also clearly state the consequences for non compliance, and this can include prosecution. However, if SMSF’s invest in APRA, ASIC and ATO approved funds where those same regulatory authorities have not thoroughly checked where, what type, proof of valuation and liquidity of offshore or 3rd party investments which is fundamental to SMSF’s making ‘informed’ investment decisions, why should SMSF’s be held to account and accept losses incurred by fraud and deception with no recourse for recovery against those same regulatory authorities for poor oversight, or against insurance provisions?
8. Why were investors not advised that ANZ had stood down as trustee and the reasons for it, so that investors could make informed decisions regarding continuing to invest or seek redemption if their individual risk profile changed as a result?
9. When APRA changed and upgraded the risk profile of Trio Capital / Astarra Strategic Fund, was ASIC and the ATO advised? When did this occur? Why is it that investors were not promptly informed so that those same investors could make informed decisions regarding continuing to invest or seek redemption if their individual risk profile changed as a result?
10. When APRA upgraded the risk profile of Trio Capital and informed the relevant directors and trustee, however APRA did not inform the investors. This is then highly likely those who were the perpetrators of the fraud were made aware of this action by APRA. Therefore, this approach by APRA could be seen by the investors as a process that benefited fraudsters over the investors. Does APRA recognize the anguish this action caused investors left in the dark?
11. Note: If APRA and ASIC have no jurisdiction to follow the trail of ‘fund of fund’ types, then they need to be graded as potential high risk and due warnings need to be mandatory information made available to investors.



12. Why did APRA & ASIC not act with more diligence and haste when valuation irregularities as early as 2005 and again in n August 2008? Why were investors and their financial advisers not promptly provided information or updates regarding this matter, noting that it was exposed as a scam by Bronte Capital blogger John Hempton who raised the alarm in September 2009?

13. More specifically, why is there no framework to verify the legitimacy and valuation of 3rd party investment managers to check whether the Australian Fund Manager is delivering to its intended strategy, risk profile and liquidity guidelines?

14. Had there been more substantive checks carried out by APRA, the use of tax havens such as the Caribbean or the Cayman Islands could have raised the alarm regarding the legitimacy of 3rd party investments or the intended use of investor funds. In future, will APRA upon identifying the use of tax havens inform and communicate with investors, so that investors can assess the risk it may pose to their investment strategy?

15. High risk zones around the world need an appropriate category so the investor is clearly presented with the warnings. What is APRA's response on this?

16. SMSF are continually informed, particularly by the Minister responsible Bill Shorten, that SMSF's are not APRA regulated funds. What is the process by which APRA upon approving licenses to entities like Trio Capital passes on responsibility and oversight to the ATO? And what is that regulatory process from that point and how does APRA, ASIC & the ATO interact to ensure proper oversight and protection is provided to investors?

17. Note: Although the ATO hold the responsibility for 'regulating' SMSFs - however, to start and run a superannuation fund requires ASIC and APRA to issue licenses, and execute their role in the superannuation industry as they are required under legislation. Saying the ATO is responsible for a SMSF functioning and to eliminate ASIC and APRA involvement is near impossible under the present structures. The superannuation industry would need a complete overall if SMSF investors relied solely on the ATO. Until that



happens, the roles between the APRA, ASIC and ATO need to be understood more clearly by both the investor and industry and the opportunistic use of passing the blame needs to be prevented.

18. Is APRA holding any information on a subsidiary entity called “GCSL”. Investors request that this information be made freely available.
19. Does APRA hold evidence that investor funds were placed by GCSL in US equity investments? Is there an intention to carry out enquiries and investigations as to whether insider trading occurred if this was the case?
20. What improvements have APRA, ASIC and the ATO made in relation to internal processes, procedures and oversight in light of the Trio Capital fraud, that will improve the regulatory framework?
21. At the PJC hearing on April 4th 2012, APRA stated that they had other higher priorities than the Trio Capital matter. For what reason is this matter not one of APRA’s highest priorities given the serious nature of the allegations of poor regulatory oversight provided by APRA? Why is this so, and why would APRA not find the security of mum and dad investments their top priority?
22. At the same hearing (**Wednesday, 4 April 2012**) Senator Nick Sherry expressed his concern to APRA that there *“is absolutely no disclosure in any way, shape or form that an SMSF is not compensated in the event of theft and fraud from the sub-entity, the sub-investment entity. There is nothing there that relates to that”*.

At that same hearing, Mr Brunner **of APRA said** *“I would not have thought so. The part 23 arrangements clearly relate to APRA and supervised entities. I think when people step outside the APRA framework, there would be an expectation of understanding from us that people would understand that.”*

Senator Sherry, noted further along in the inquiry that *“very few, if any, SMSF trustees knew of the compensation provisions in this case—or, frankly, in previous cases where I have been a member of a committee conducting an inquiry: very few knew. Don't you think it would be*



appropriate that they be informed of that? At least as part of their consideration in setting up an SMSF, don't you think it is an appropriate risk issue that they should be aware of?"

23. VOFF and other SMSF holders and investors highlight this very troubling issue surrounding this theft of superannuation and direct investments and being denied compensation. The part that is most troubling is that it appears to happen time and again. APRA are requested to publish statistics relating to instances of investment fraud over the last 20 years.

We finish on the following quote from Senator Nick Sherry to APRA:

"I ask you to take it on notice to take these issues up with both the ATO and with ASIC, because I have been at a lot of committee hearings over the last 20 years and this issue has come up time and time again, and time and time again.....literally hundreds of people who are not compensable in the event of theft and fraud in the SMSF sector.