

Chairperson for the Victims of Financial Fraud (VOFF)
Mr David Bridge
3 Eliza Court
Horsley, NSW 2530
Email: davegb5@hotmail.com
Telephone: 0421 588 658
Tuesday 20th June, 2012

Regarding: V.O.F.F. Position and Comments to the Minister for Financial Services and Superannuation.

To the Hon. Bill Shorten, Minister for Financial Services and Superannuation

Dear Minister,

The "Victims of Financial Fraud" (V.O.F.F.) wish to confirm that it will attend the upcoming meeting with you, Mr. Greg Medcraft and Mr. Ross Jones on the 5th July, 2012.

However, we provide advanced notice that V.O.F.F. consider your often quoted "outside the flags" comments are a significant barrier if the meeting outcomes are going to be considered constructive and going some way towards addressing the shortcomings in the financial regulatory oversight outlined in the PJC Report that you as the Minister, are responsible for.

V.O.F.F. has assumed you are referring to ASICs "Investing Between the Flags" document. If so, we draw your attention to the "Between the Flags Checklist" on pages 46 to 49 inclusive.

We would consider that in the circumstances that existed at the time of investing in Trio Capitals various products, each and every one of those checklist items would for the reasonably minded investor, have been met.

Reasonably minded investors have included those in industry, retail and self managed super, as well as direct investors. As you know, all investor types are represented in the Trio fraud.

However, there has been a distinction drawn between investor types, where none exists. Self managed and direct investors have been very unfairly singled out as basically, we should have known better. That is the defense being used, and quite frankly, it is a very poor and totally unacceptable one given this has been the largest fraud committed to date in Australian superannuation history.

That is, it would have been considered that in the mind of the investor, they would have assumed that APRA and ASIC would fully, competently and comprehensively carry out their regulatory oversight accountabilities. We would also consider that any prudential reviews would be carried out in a similar manner and irregularities swiftly, immediately and effectively dealt with and communicated to the relevant stakeholders, including ASIC, advisors and investors.

Further, any reasonably minded investor would assume that Trio's Directors, custodians such as ANZ and the NAB, and auditors such as KPMG would do their job fully, competently and comprehensively.

One would also assume that if our financial regulators allowed rating agencies to operate by only using accurately obtained information that is comprehensively checked and reported to and conveyed to investors, informed decisions would be made.

Ditto for ASIC licensed financial planners and so called professional advisors in industry, retail, self managed and direct investors. Where has been ASIC's proactive leadership and oversight of professional advisors?

Reasonably minded investors would also assume that the changes brought about by the Superannuation Safety Amendment Act 2004, which as major regulatory changes are summarized as below:

- Trustees were required to be licensed by APRA by June 2006 if they wished to remain trustees of APRA regulated superannuation entities.
- A mandatory risk management framework was introduced for both the trustee and funds under trusteeship.
- New operating standards covering fitness and proprietary, adequacy of resourcing and outsourcing.

We would like you as the Minister responsible, APRA and ASIC to show where this has been effective in safeguarding investor's money. How did it come to pass then that Trio Capital investors were defrauded of their money?

It is also disingenuous for some to claim that the financial system is inherently safe. One or any failure, is one too many. To make such comments leads one to believe acts of fraud or theft, occasional or otherwise, is thus deemed acceptable to those who make such comments.

The PJC report makes clear that this oversight failed at every level. The system regulators, APRA and ASIC when found to have been comprehensively asleep at the wheel, thus cannot and must not be allowed to abrogate responsibility to the victims, particularly when it is so bluntly directed at self managed and direct investors.

Yet, somehow, self managed and direct investors have been singled out as now being accountable for their monetary losses. ASIC simply claim that we should have known we weren't covered for fraud.

APRA claim that self managed super is not APRA regulated. However, when making such statements in the media, APRA fail to point out that they provided licenses for Trio and it's personnel to operate in the Australian financial system, plus they carried out five prudential reviews, and failed to quickly act nor communicate with ASIC and stakeholders when irregularities were found. They also continually fail to clarify that ASIC allowed the Trio Capital to operate their MIS in Australia. Therefore, they and ASIC approved Trio Capital and its products to operate in Australia, and thus make available for any investor type to invest in them.

If John Hempton could spot the symptoms of something not being right and the potential then for fraudulent activity to occur, why couldn't APRA and ASIC with the backing of all its resources and regulatory powers?

Certain individuals and the modus operandi for defrauding Australian investors of their funds came to the attention of the ATO and others more than a decade ago, but still, the Trio Capital criminals made a mockery of the Australian financial system.

On the basis of the above, it is totally irrelevant whether or not self managed and direct investors are covered by Section 23 of the SIS Act 1993.

Any reasonably minded investors of any type, would have expected that the system was in place, and a faith that those entrusted with those responsibilities would carry this out thoroughly, competently and comprehensively. Risk based decisions are made every day on that premise.

We did not invest in a product outside the Australian financial framework. It was marketed as a safe, conservative investment suitable for the market conditions at the time. APRA and ASIC approved the Trio Capital people and its products to operate within the Australian financial framework. We had a level of trust that the watchdogs were diligent and fully awake at the wheel.

To use your terminology, APRA and ASIC said it was safe to swim at this beach, and the flags were set up. However, when the APRA and ASIC lifeguards fell asleep, no one was protecting the industry, retail, self managed and direct investors swimming in the water. When the sharks did come, discrimination was used to determine which swimmers would be rescued. This left self managed and direct investors in the water at the mercy of the sharks. And the comments used were, you should have known that there are sharks in the water, so you are at fault.

Based on all the above comments, any fair minded investor would see that with all these levels of oversight and protections in place, and a faith and trust that it was being competently carried out, it was not an unreasonable investment risk.

However, Minister, you have consistently angered us with your outside the flags comments, and that is disrespectful both to us and the PJC process. By those comments, you had made your mind up well before the PJC reported its findings and recommendations.

We have been further angered and disrespected by our local members Stephen Jones and Sharon Bird and their silence and general lack of support for their affected constituents.

We can assure you that we have commenced and mobilized a campaign against the Federal Government. We have only just begun and we can report to you the several hundred people with whom we have made contact in the Throsby electorate thus far, have heard our message. And it is equally fair to report to you that the mood in this so called Labor Party heart land, is venomous to say the least.

Our campaign will shortly begin in Cunningham. If necessary, we will campaign right up until the next election, including on polling day if need be.

As it stands, other than Stephen Jones speaking in Parliament about this matter in mid 2011, we have had no support whatsoever from the Gillard Government, particularly from yourself, and local members Stephen Jones and Sharon Bird.

Therefore, V.O.F.F. has no choice but to agitate for the outcomes we both require and demand, which is compensation without discrimination, ensuring APRA and ASIC are held accountable for significantly improved performance, and all criminals brought to justice.

We will however, actively (vocally, publically) voice our support for that Party, of any political persuasion which demonstrates true and genuine leadership and resolve the afore mentioned demands without delay.

In respect to full restitution of all investor funds, namely self managed and direct investors, implementing a levy system for MIS / Managed Funds and amending Section 23 of the SIS Act is not without merit. Such a scheme could also allow retrospective application to all Trio Capital investors. When the levies are of sufficient size, the Government could be reimbursed funds that it would pay to immediately to compensate Trio investors without discrimination.

Notwithstanding the complexities of such a scheme, the related issues of such a scheme can be resolved. Leaders of genuine national stature can rise above, work through and resolve such complexities and have in place fair and equitable means of restitution for theft and fraud, particularly when the watchdogs have been shown to have been so comprehensively lacking in their oversight responsibilities.

Unfortunately, it seems this Government via your actions and comments is extending its class warfare to the financial system by sending market signals that self managed funds are unprotected and therefore unsafe, thereby promoting union backed industry funds.

For someone who is rumored to seek one day the office of Prime Minister, no Australian wants to hear that something was too hard to overcome. You have it within your power to resolve the imbalance of restitution if you truly want to.

Self managed superannuation is here to stay, and instead you are working towards alienating 700,000 self managed trustees holding one third of national superannuation assets.

All Australians would expect any Federal Government to govern in the national interest including investors of all persuasions who honestly invest within the Australian regulatory framework.

We make this request on the basis that VOFF have suffered severe financial disadvantage due to the Trio Capital fraud, and the actions and inaction of APRA and ASIC as outlined in the PJC Report into this matter.

We also point out that many people report that that having written to you personally on this matter, they are angered by not receiving any reply.

On that basis, V.O.F.F. reserve the right to issue this correspondence to the growing list of journalists and media outlets reporting on this matter.

We also anticipate and expect that the Federal Opposition will apply an appropriate accountability on you, as the Minister responsible.

On behalf of VOFF we thank you in anticipation of your future support on this matter, and to our meeting on the 5th July, 2012.

Yours Faithfully,



David Bridge
Chairperson – V.O.F.F.

Cc:

Hon. Julia Gillard, MP Prime Minister of Australia
Mr. Tony Abbott, MP Leader of the Federal Opposition
Mr. Stephen Jones, MP
Ms Sharon Bird, MP
Ms Deb O'Neill, MP
Mr. Kevin Rudd, MP
Senator Mathias Cormann
Senator Concetta Fierravanti-Wells
Mr. Paul Fletcher, MP
John Telford - Secretary V.O.F.F.