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Dr Jane Thomson
Committee Secretary
Senate Economics References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

MACQUARIE

Dear Dr Thomson

Inquiry into causes and consequences of the collapse of listed retailers in Australia

Thank you for your invitation to make a submission to the Inquiry.

The Australian retail sector is highly competitive with a wide range of participants including listed and unlisted companies. All participants seek to optimise and grow their businesses through new offerings and innovations including recently, online services. Due to the high level of competition in the sector, retailers continuously adopt different strategies to gain market share. These may or may not always be successful.

Australia is fortunate to have an effective and efficient capital market providing equity to companies operating in a range of sectors including retail. In 2015, close to $50 billion was raised on the ASX; of this amount over $583 million was raised for nine retail companies. In recent years, Macquarie Group Limited (Macquarie) has raised capital for a large number of companies including retailers seeking to grow and improve their operations and has advised companies on mergers and acquisitions.

The current regulatory framework governing corporate activity, including in the retail sector, has developed over many years, responding to opportunities and risks that arise from time to time. This framework will continue to evolve in response to change. Macquarie believes the current legislative framework regarding corporate transactions, including takeovers, provides an effective and well understood process that well serves investors and consumers. The framework includes the roles of the Takeovers Panel, ASIC, FIRB and the ACCC which, in their respective spheres, seek to promote the public and national interest. Any changes to legislative or regulatory frameworks inevitably prompt discussion about unforeseen outcomes and additional costs to businesses and consumers.

With regard to the appointment of external administrators, previous Senate Committees and Inquiries have examined this topic, including the Inquiry into the Role of Liquidators and Administrators in 2010, and the Productivity Commission's 2015 report on Business Set-Up, Transfer and Closure.

Most recently, the Federal Government included proposals in its Innovation Statement for insolvency law reform to reduce the number of companies that enter administration, and the consequent impact of such events on secured and unsecured creditors. These include introducing a 'safe harbour' regime for directors and making 'ipso facto' clauses unenforceable, in both cases when a company is undertaking a restructuring.

We understand that insolvency and the appointment of an administrator or liquidator to a retail business can impact consumers in a number of ways, including: termination of warranty protection over goods previously purchased; loss of value of prepaid / gift cards and deposits paid for goods not yet delivered; loss of loyalty points and loss of prepaid access or other rights (eg annual gym membership or annual store card fee).

Establishment of a separate trust account, as suggested in the Inquiry's terms of reference, may be an effective means of providing consumers with greater protection. If the trust was properly established and administered, the cardholder may have a much higher likelihood of being repaid in the event of insolvency. These types of structures are used effectively in the real estate and legal professions and while applicability to the retail sector would require some further analysis, in principle it may provide an appropriate safeguard for consumers.

A trust account structure does however impose at least two burdens on the issuing retailer. The first is on the management of the business, through the increased cost and complexity of managing the trust, including costs of establishing and maintaining the trust and separate cash handling processes and bank accounts. The second is the increased expense of funding the business as the retailer is no longer able to effectively use some or all of the cash funds from its gift cards for its working capital requirements. So the benefit of regulation to some consumers will need to be weighed against the cost to retailers and other consumers.

We hope these observations are of use to the Committee.

Kristine Neill
Global Head of Corporate Communications and Investor Relations
Macquarie Group