

Parliamentary Joint Committee on Corporations and Financial Services

Australian Securities and Investments Commission

Answers to Questions on Notice

Public hearing: 28 February 2020

Question No: 005

Reference: Hansard page 39

Question:

Senator PRATT: I have some questions in relation to Sterling Group and the prosecution that has commenced there. I appreciate that it is before the courts, so please take me through what you can and can't talk about, noting of course that we are protected by parliamentary privilege here. I think the prosecution intent was announced in December, but in my last conversation with ASIC, and when Mr Gorman would have asked ASIC as well, ASIC seemed very reluctant to prosecute at that stage. What's changed?

Mr Price: I don't think that—

Senator PRATT: Maybe I am phrasing it wrongly, but what did change in that time?

Mr Price: The Sterling Group of companies was actually quite a complex corporate group. With any litigation it's very important to first establish whether the available evidence will support regulatory action—civil or criminal. There are quite important processes that need to be gone through in getting that information to the form that we think is ready to support such action on our part. We have given great priority to our investigation of these matters, because we are painfully aware that there are many vulnerable consumers who, unfortunately, have been caught up in these circumstances. We have been diligently pursuing that. On 11 December we did commence action in the federal court, which was really focused on the promotion and management of one part of the investment products offered by the Sterling Group and that's the sterling investment trust. There was a case management hearing on 25 February. I don't have an update as to what came out of that case management hearing. But in terms of—

Senator PRATT: If you would be able to take on notice providing an update to the committee—

Answer:

At the case management hearing held in the Federal Court in Perth on 25 February 2020, ASIC was granted leave by the Court pursuant to section 440D(1) of the Corporations Act 2001 (Cth) to maintain proceeding no. WAD 613 of 2019 against Theta Asset Management Ltd (the first defendant, being Responsible Entity of the Sterling Income Trust) despite it having gone into

administration since the commencement of the ASIC proceeding, on the conditions that:

- a. ASIC will not lodge a proof of debt in the winding up of the first defendant should the first defendant be placed into liquidation;
- b. ASIC is not entitled to enforce any judgment or order against the first defendant without leave of the court; and
- c. ASIC's interlocutory process dated 20 December 2019 is dismissed with no order as to costs.

At the case management hearing, the Court also ordered that:

- (i) the question of whether the defendants have contravened the Corporations Act as alleged by ASIC in the Originating Process dated 11 December 2019 and any Amended Originating Process is to be determined separately and in advance of any hearing on whether any relief should be granted, and if so the nature of the relief; and
- (ii) leave be granted to ASIC to file and serve an Amended Originating Process by 28 February 2020 to reflect that the first defendant is now in external administration.

The matter is due to return to the Court on 6 May 2020 for a further case management hearing.