

Inquiry	Parliamentary Joint Committee on Corporations and Financial Services
Agency	Australian Securities and Investments Commission
Question No.	021
Reference	Spoken, 18 June 2021, Hansard page reference 56 and 57
Committee member	Senator Pratt

Questions

Page 56

Senator PRATT: In relation to Sterling Group, there was some money given to KPMG, some \$440,000, to examine the cases of a couple of— I'm just going to find the correct piece of paper; sorry, I've just put it aside. It was covered in an earlier question I asked on notice, but I want to find out if you've had anything reported back to you on that.

Ms Armour: Yes, there was money made available to the liquidators of the Theta companies. They have provided a report back to us on matters that are relevant to our investigation. It has assisted our investigation, and we are building that into the work we're doing on that matter.

Senator PRATT: What does that report say?

Ms Armour: Firstly, I don't know what that report says; the team that is managing the investigation is looking at it. Secondly, it is relevant to an investigation and I would prefer it if we could complete our investigation, because it may become relevant to decisions about legal proceedings. I think it would be preferable if we could get to the stage of making our decisions there before we go into the detail.

Senator PRATT: Is there anything in that report from a regulatory point of view that you're able to make us aware of?

Ms Armour: I don't have the detail of what's in that report, other than it is helpful and relevant for our investigation. So, in general terms, I would expect there is material that is relevant from a regulatory perspective.

Senator PRATT: Can you take on notice what you are able to tell us about that report? I understand that it may be relevant to legal proceedings. So you've got good value for money from that report?

Ms Armour: Yes. My briefing is that it has been helpful for our investigation.

Senator PRATT: It was some \$440,000-odd, so it would have to be a fairly in-depth report looking at the structure of the entities and where the money went—and why, I would hope.

Ms Armour: I really don't have any additional information that I can helpfully provide at this stage, I'm sorry.

Senator PRATT: I asked ASIC some time ago, in March this year, about the business model for Sterling Group. It was found to be 'a business model focussed on property investment involving the aggregation of rent rolls' et cetera. They had said that they'd created 'an innovative, genuine

alternative', incubating these new products, and that they had 'over 3,600 properties under management with operations in WA, Victoria and Queensland'. The scheme was found to be particularly complex, but when I asked why it had failed there wasn't a particularly clear answer to that. Is there any further advice as yet about that?

Ms Armour: I don't have any further advice on that at this stage. I'm happy, though, to take that on notice and see whether there's any additional information that we can provide to you.

Senator PRATT: Okay. Are you aware, in relation to coming to these hearings, that Sterling's come up any number of times—

Ms Armour: Absolutely.

Senator PRATT: and that it's a good thing to be prepared for?

Ms Armour: Absolutely. We are aware, and we are very aware of the difficult position for particularly the elderly investors in the schemes and in the Silverlink proposal.

Senator PRATT: Have you had discussions with the government about the Compensation Scheme of Last Resort?

Ms Armour: I believe ASIC has had conversations with government on that. I might defer to some of my colleagues, who might be closer to that.

Ms Chester: I'm happy to do so, and I think we are on the *Hansard* as having said this. ASIC of course is a huge supporter of CSLR. It's the final realisation of the vision of the Ramsay report, and it is relevant to your concerns around Sterling. As part of the government's response to the Hayne review, CSLR was considered by a

Page 57

group, with Treasury as the chair, called the Financial Services Royal Commission Implementation Steering Committee, of which I was a member representing ASIC. Also on that committee is Treasury and APRA. We have discussed CSLR in that context and, as you'd know, there's been a deferral by the government to deal with CSLR. We understand that it's still on the radar and that it is to be happening, but it's been pushed out for budgetary reasons. I'd suggest that the status of CSLR is a question that is probably better put to Treasury, but I understand that they are getting close to doing some consultation.

Senator PRATT: My understanding, based on my last discussion with ASIC and others, was that a scheme was to be announced in the middle of this year. But now we hear that it's for consultation. I will follow that up with Treasury.

Ms Chester: I think that would be the best thing to do.

Senator PRATT: And you say that's for budgetary reasons.

Ms Chester: I think it would be better if you put those questions to Treasury, given that they chair that steering committee, and they will be better placed to fully articulate the issues at hand, particularly given that they're in constant dialogue with the Treasurer's office about it, not us.

Senator PRATT: We had some discussion in earlier questions today about disclosure and prospectus. What are you able to tell us in relation to disclosure and prospectus when it comes to the Sterling Group?

Ms Armour: We've probably covered this before, but I'm very happy to repeat what we've covered. We began looking into the activities of the Sterling Group in March 2017 and we prohibited the offer of units in the Sterling Income Trust in August 2017 by issuing some stop orders. The trust was closed by its then responsible entity, Theta, in April 2018, and the responsible entity decided to wind it up in August 2018. There was a second vehicle for fundraising, which we became aware of I believe in December 2018. That vehicle was issuing redeemable preference shares through two subsidiary companies in this group referred to as Silverlink. No fundraising documentation had been lodged with us, which we say was necessary for that fundraising to occur, so we convened meetings with the directors. When we discovered it in December 2018 we took immediate steps to stop further fundraising and subsequently met with the directors of the Sterling Group. In May 2019 they appointed voluntary administrators to the group.

Senator PRATT: So in the context of what ASIC was talking about in needing more powers in disclosure to prevent vulnerable consumers from falling prey to complex trust arrangements and investment arrangements, particularly as in this case, where particular consumers were targeted—they were not institutional investors that were targeted—is this relevant to the discussion that you were having before about that?

Ms Armour: It's slightly different, because this was a managed investment scheme, where at least the fundraising in the Sterling Income Trust was a managed investment scheme and that is done under a different procedure. There is a product disclosure statement, a PDS, and it's a different document, but some aspects of the same issues apply. We are not a merits based regulator in relation to that; it's, again, about disclosure and whether or not there is any misrepresentation in the material that's provided. But we are—

Senator PRATT: And was there misrepresentation in the material that was provided?

Ms Armour: There was, but we did have concerns about the product disclosure statement. I understand that the initial concerns were addressed but then there became further subsequent concerns, which led to us actually prohibiting the offer of units. So we have slightly different powers.

Senator PRATT: Okay, so I don't quite understand how they would have been addressed in the first instance and then end up going into liquidation, because it would show that the fundamentals weren't there, particularly in such a short period of time, for the investment base actually to be there for what they were arguing they were investing in.

Ms Armour: I'm very happy to come back to you with details of the initial issues that we looked at. But I must say, the job that parliament has set for us in relation to these things is not to give any accreditation or approval or validation to a business model; that is not the job. But I'm very happy to come back to you with the details of what we initially looked at and then what were the matters that formed the basis for us to prohibit the offer of the units.

Senator PRATT: Okay, but misleading or deceptive conduct—

Ms Armour: It is just statements, not conduct, so it's looking at what the document itself says.

Senator PRATT: I'm thinking of other parts of the Corporations Act.

Answers

In response to the question of whether ASIC got value from the AA fund KPMG report, this report has assisted ASIC's investigation, including its current ongoing investigation. ASIC continues to investigate the roles and conduct of several parties at various points in time during the operation of the Sterling Group of Companies, including in relation to the promotion of the Silverlink Preference Shares.

In response to why the Sterling Group business model failed, in the Ferrier Hodgson (now known as KPMG) Sterling Group Voluntary Administrators report dated 30 May 2019 it was stated under the headings "How did the Groups Business Trade" and "What do the administrators consider were the underlying causes of the Group's failure" that:

"There have been continued losses across the majority of entities within the Sterling Group driven by the current pricing structure relating to the assignment of RMA;s income rights, the disparity between the rental income and the interest expense on the RPIT properties and the rent payable to the SNL leases, The complexity of the organisational and operational structure which ultimately resulted in higher operational costs and a level of dysfunctionality. Uncommercial pricing structure under the Master Deed of Assignments which as a result of a reduction in rental income failed to reflect the cost to run the rental management agreements business (putting it into a loss making position) and the reliance on capital raising to fund operations."

In response to what were the issues of concern that ASIC had with the Product Disclosure Statements for the Sterling Income Trust (SIT), on 7 August 2017 ASIC issued an interim stop order on Product Disclosure Statements issued by Theta Asset Management Ltd (Theta) for the following three investment options in SIT:

- (a) Development Units dated 20 May 2016;
- (b) Income Units & Growth Units dated 31 January 2017; and
- (c) Management Company Units dated 20 May 2016 (collectively, the PDSs).

The interim stop order was made due to concerns ASIC held about the PDS's, including inadequate disclosure of risks and conflicts of interests, omission of material information about the investment, presentation of prospective information about target returns, and outdated and incorrect references.

Theta subsequently consented to a final stop order being made by ASIC on 31 August 2017. As a result, no offers, issues, sales or transfers of interests in SIT could be made under the PDSs while the final stop order was in force.

On 27 October 2017 Theta issued a new PDS for Growth and Income Units in the SIT.

On 30 April 2018 Theta issued a cease to use notice in respect of the PDS issued on 27 October 2017.

On 27 August 2018 Theta lodged a Notice of Winding up for the SIT with ASIC.