Supplementary submission to the Inquiry into the Collapse of Trio Capital

I am writing this supplementary submission to the Inquiry on behalf of my mother, Jacqueline Marie Fellows, and myself as the Trustees of Money Hill House Investment Provident Fund and Unit Holder of the ARP Growth Fund ARSN 112 315 036.

In its Interim Report of 24 November 2011, the Committee said that it was still considering a range of issues in relation to the collapse of Trio Capital, including

- The extext to which ASIC and APRA have successfully dealt with the issue of the ARP Growth Fund and the conclusion that it was the victim of market failure rather than fraud
- The extent to which the gatekeepers including auditors, custodians, research houses and financial planners have failed, particularly in the light of the comments of the Chairman of ASIC regarding ARP being a good example of gatekeeper failure, involving directors, executors of responsible entities, the investment manager, the compliance committee, the compliance plan audit, etc.

As I had not had the benefit of seeing the Enforceable Undertaking of Tony Maher, formerly know as Paul Anthony Gresham, to the Australian Securities and Investments Commission (ASIC) when I prepared my original submission to the Inquiry in August last year, I would like to address certain issues which I believe are relevant to the Committee's current considerations.

In Mr Maher's Enforceable Undertaking, it is immediately apparent that there were a number of areas involving significant conflicts of interests: viz,

- Lack of independence through cross directorships eg. in 2004
    - the same people – Shawn Darrell Richard and Matthew Littauer - were directors of the trustee (Trio), the investment manager, Wright Global Investments, (WGI) of the Professional Pensions PST and Wright Global Asset Management (WGAM) which acquired Trio
    - the same person – Cameron Anderson – was a director of Trio, WGAM and Silverhall Gillieston Unit Trust (SGUT) in which Professional Pensions PST (PPPST) invested
    - the same people – Richard and Littauer – were related to Huntleigh Investment Fund Limited in which PPPST invested
    - Gresham was a director of Professional Pensions ARP Limited and recommended that Trio invest in PPARP which was PPPST's largest single investment
- Undisclosed payments for recommending investments into related entities eg. in 2004
    - Gresham entered into an arrangement whereby he was to receive a financial benefit from SGUT if a certain profit level were achieved
    - Gresham had an informal agreement with Huntleigh which saw him receive in excess of $250,000 for making PPPST investments in Huntleigh
    - Gresham had an informal agreement with Paul York (a fellow director of PPARP) which provided for payments in relation to PPPST's investments in PPARP totalling in excess of $1.5 million
- Failure to disclose beneficial arrangements

- Gresham did not advise the Trust Company (when it was trustee of PPPST) or the PPPST unit holders of the cross directorships or his arrangement to be paid for making investments into SGUT
- Gresham did not advise Trio or the PPPST unit holders of informal agreement he had that he was to be paid for making investments into Huntleigh and PPARP

In my view, these conflicts of interest which ultimately contributed to the loss of the superannuation savings of myself and my late husband could not be described as "market failure". They were deliberately contrived arrangements to ensure that the perpetrators achieved handsome gains at the expense of the superannuation fund members, whose monies they were investing. The essential elements of independence and acting in the best interests of the fund members were contemptuously disregarded.

Under the Commonwealth Fraud Control Guidelines, there is a definition of fraud as follows:
"dishonestly obtaining a benefit, or causing a loss, by deception or other means.
There is a mental or fault element to fraud; it requires more than carelessness, accident or error".

The activities in which Gresham and others engaged, as shown above, clearly fall within the meaning of fraud.

Importantly, the above mentioned conflicts of interest all occurred during the time that APRA was the regulator of PPPST. In other words, the fraudulent activities were undertaken on APRA's watch. Accordingly, it seems manifestly unjust that the law - which provides for regulatory protection for superannuation funds which are controlled by APRA - does not recognise when the fraud commenced, as opposed to when it was discovered. It is clear that the fraud, which finally culminated in the collapse of Trio and the loss of our superannuation savings, started during the time when the PPPST was APRA controlled.

It was not until 27 March 2007 that my late husband and I received a letter from Paul Gresham advising as follows:
"*The PST was reviewed by the Australian Prudential Regulation Authority (APRA) last December. They concluded that the Trustee, namely Astarra Capital Limited, should take over more of the day to day administration. I agreed that clients would be more securely served by a larger organisation taking on full responsibility for the administration. In negotiating the extended role of the Trustee, we agreed that the Pooled Superannuation Trust (PST) structure had become redundant. Many clients, in particular pension funds, no longer benefit from the PST paying tax before distributing income and capital gains. Many PST's have been restructured as Managed Investment Schemes (MIS) regulated by ASIC, rather than both APRA and ASIC.*

The Trustee has therefore decided to terminate the PST, and offer clients a seamless transfer of their balance at 29 June 2007 to a new MIS titled the "Professional Pensions Fund" (the "Fund")".

In my view, these paragraphs were deliberately designed to purport that APRA was supportive of the PST structure being converted to a MIS structure. That was certainly the understanding that my late husband and I drew from Gresham's correspondence. We had no idea that in agreeing to Gresham's

'strong recommendation' that we accept the offer of transfer to the Fund, that we were removing ourselves from any protections that had previously been afforded us as an APRA controlled SMSF. We did not appreciate that there were any consequences whatsoever other than the issue, as Gresham explained it in his letter, of the taxation treatment of our SMSF.

Had we known for one moment that we were to be regarded as, from that stage onwards, 'investing beyond the flags' as Minister Shorten described it on The World Today programme on 8 February 2012, we would never have agreed to what we thought was an inconsequential restructure and a change from one vigilant regulator to another. We did not realise that, henceforth, we were to be treated as second class citizens in the event that we were to experience the unthinkable – superannuation fraud.

Again on The World Today programme on 8 February 2012, Minister Shorten said, when explaining why we would not receive any compensation for the loss of our superannuation savings from the Trio collapse:
"*They are not entitled because we have a regulatory protection scheme for people who are in superannuation funds which bind themselves to the APRA processes. Other people who made direct investments or investments beyond the flags don't receive the current compensatory mechanisms.*

I do believe that people when they set up self-managed superannuation funds do know the upsides and downsides of that particular asset class."

I would put to the Committee that we did not activate removing our SMSF from the APRA processes: indeed we simply put our trust in the strong recommendation from Gresham. We were never informed of the consequences of losing APRA control. We did not understand that a MIS was investing beyond the flags. We certainly did not know that fraud would subsequently be regarded as the 'upsides and downsides of that particular asset class'.

There were further fraudulent activities chronicled in Maher's Enforceable Undertaking. From 1 August 2007, Gresham stopped receiving monthly valuations from both the investment adviser and the administrator of PPARP, as the unit pricing of both funds in which PPARP invested had been suspended. From that time until 30 September 2009, Gresham prepared his own fictitious month end valuations of the PPARP investments which were based on historical data and his own creative adjustments to reflect the monthly fluctuations in the hedge fund market generally.

He did not at any time disclose to Trio or to the ARP investors that he had merely invented these valuations and that they were not based on reliable, current data. My late husband and I totally relied on these fictitious valuations, for the two years we received them, to determine our retirement income and plan our lives accordingly. Most distressingly, whilst Gresham was knowingly deceiving us, he was being paid $1.2 million in management fees through PSTM.

As ASIC observes in the Enforceable Undertaking, Gresham did not undertake the essential due diligence in assessing the suitability of some investments for PPPST in circumstances where the investments were associated with certain directors of Trio. Rather, in my view, he consciously

invested our superannuation savings in entirely inappropriate vehicles for the sole purpose of his own gain.

I can only conclude that my late husband and I were subjected to precisely the same fraudulent behaviour and activities as experienced by the other members of APRA regulated superannuation funds in the collapse of Trio Capital.

If the Committee reaches the same conclusion as myself, I can only ask that a way is found to afford justice to those people who have been denied compensation because of the legal technicality that they were not APRA regulated at the time of the fraud's discovery, albeit that they were so regulated at its commencement. Indeed, it was an integral part of the fraud itself that we were removed from the protection of APRA so that the regulator could not scrutinise the fraudulent activities that were being perpetrated.

Julia Fellows
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