

To: Economics References Committee

25th October 2021.

Submission to Inquiry: Sterling Income Trust

I am a retired Company Administrator and Financial Controller, a mother, grandparent and soon to be great-grandparent with an interest in having a say in government inquiries, policies and legislations that will affect current and future generations of Australians.

I thank the Committee for the opportunity to make this submission which addresses the Committee's Terms of Reference:-

- a. the Australian Securities and Investments Commission's oversight of the Sterling Income Trust;
- b. the need for legislative and regulatory reform to prevent such losses in the future;
- c. access to justice and redress for victims of the Sterling Income Trust Collapse;
- d. the novelty of the products of the Sterling Income Trust;
- e. why the scheme collapsed and where the money went; and
- f. any related matters.

Initially, I respectfully refer the Committee to its former inquiry into the "Performance of the Australian Securities Commission" and the government's response dated October 2014. Both the government and ASIC agreed to implement the following 8 recommendations in the Committee's Report, and which are relevant to this Sterling Inquiry.

Were they adopted and adequately implemented? I don't believe so.

Recommendations 2, 5, 6, 10, 18, 19, 20, 38

It is apparent from the information that has now been revealed by the victims of Sterling, the Banking & Finance Consumers Support Association (BFCSA) and other investigators, that ASIC has failed to adequately perform its function as a regulator.

Given the 6 year timeline of events, ASIC took far too long to act on complaints, failed to investigate the people behind Sterling's novel 'rent for life' scheme, failed to issue warnings about the product, failed to stop sales of the product earlier and also failed to stop them from selling under a new company structure (ie Silver Link).

Important timeline of events sourced mainly from ASIC, government information, and the BFCSA:-

2015 The first complaint about Sterling is made to ASIC as acknowledged to BFCSA.

March 2017 WA's Consumer Protection office investigates complaints against Sterling, goes undercover to attend Sterling's seminar and notifies ASIC of its concerns.

18th September 2017 - ASIC initially issues an Interim Stop Order to amend 5 defective Product Disclosure Statements issued by Theta Asset Management (the company responsible for Sterling). Ultimately Theta agrees to a final Stop Order.

1st November and 19th December 2017 - Once the Stop Order was issued, 2 new companies are registered under the name Silver Link Securities Pty Ltd and Silver Link Investment Company which sold a further 38 restructured tenancies, raising nearly \$7 million.

December 2018 - It takes ASIC a year to become aware that sales of the 'rent for life' scheme continue under a different company name.

May 2019 - Voluntary Administrators appointed to the Sterling Group (Ferrier Hodgson - subsequently taken over by KPMG).

May/June 2019 - Both Silver Link companies also go into Administration and subsequent Liquidation (KPMG).

December 2019 - 4 years since the first complaint was raised, ASIC takes court proceedings against Theta Asset Management (the company responsible for Sterling). It takes nearly a year to get a result.

March 2020 - Theta Asset Management enters voluntary liquidation (Worrells Solvency & Forensic Accountants).

19th November 2020 - Federal Court orders \$2 million fine to Theta and \$100,000 fine to Managing Director, Robert Patrick Marie, who is also disqualified from managing corporations for 4 years

May 2021 - Under new legislation ASIC places another 4 year ban on Theta Managing Director, Robert Patrick Marie.

To address the terms of reference, I would like to make the following points:-

1. The BFCSA reports an acknowledgement that complaints about Sterling First to ASIC commenced in 2015. Any investigation of its Directors, two of whom were involved in previous financial collapses, would have rung alarm bells. The founding Director, Ray Jones, had only been discharged from bankruptcy that same year.

Instead, during the following 2 years as complaints rose ASIC took a wait and see' approach before issuing a 'kid gloves' interim Stop Order, noting on its own website: "*ASIC acknowledges the cooperative approach taken by Theta in responding to its concerns*".

2. What comes out of the Administrator's report of Sterling is quite clear. Their report stated that failure was due to:-

*"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 the most simple terms and in my assessment, the people running Sterling's scheme paid themselves as much money as they could, any way that they could, from as many vulnerable elderly people as they could.

3. In total, Sterling raised \$16,749,974 from 63 elderly renters and subsequently nearly \$7 million from 38 others via the new Silver Link companies.

3. The Managing Director of Theta Asset Management (who were the responsible entity), Robert Marie's 4 year ban and \$100,000 fine is a slap on the wrist. What about the others involved? Why haven't all the Director's been charged with criminal fraud?

4. At the Parliamentary Joint Committee on Corporations and Financial Services Public hearing on 15 July 2020 ASIC's in their answer to Questions on Notice they revealed media information that under the government's 'Assetless Administration Fund' *“ASIC has given corporate investigator KPMG \$440,000 to fund an inquiry into the role of directors of the failed Sterling First Property Group including Ray Jones, his son Ryan Jones and Simon Bell.”*

Has KPMG produced a report of their findings and actions? The Committee has the power to request any such documents, since this is taxpayer funded.

5. ASIC issues the following statement following the Federal Court judgement:-  
*"ASIC will not seek recovery of the penalty against Theta, as doing so would decrease the funds available for distribution by the Liquidator of Theta to its creditors".*

Why is ASIC not seeking to recover a \$2 million Federal Court imposed fine to resource or recoup its own investigations? It certainly ensures what funds are available go to the 'big end of town.... the lucrative payments to the liquidators, KPMG, and to the secured creditor, Macquarie Bank?

6. Not one of the unsecured elderly creditors will get compensation via the liquidator, KPMG. That is a certainty.

7. Additionally, the Australian Financial Complaints Authority, who have also received complaints from the tenants of Sterling First, is 'sitting' on all the complaints they receive on insolvent companies like Sterling, awaiting what is covered by the government's introduction of a 'compensation scheme of last resort'.

This compensation scheme was recommended more than 3 years ago in the Financial Services Royal Commission Report of February 2019 (Recommendation 7.1). It likely is being 'stripped' of any meaningful compensation with restrictive limits on who can apply.

8. Whilst ASIC produces a Regulatory Guide 168 titled 'Disclosure: Product Disclosure Statements (and other disclosure obligations)' issued October 2011 it includes the following Disclaimer:-

*"This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations. Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements."*

This is just not good enough - With this Sterling First case, deficiencies of 5 Product Disclosure Statements were only detected, investigated and remained unresolved 2 years after the product was already sold. There need to be measures in place before it becomes an ASIC issue. See (9) below.

9. I request that the Committee recommend mandatory/legislative controls: At a minimum, before any financial products are allowed to be marketed or sold to the public, there should be a mandatory/legislative requirement for the Product Disclosure Statements to be vetted and signed off by an independent body certifying that they comply with the Corporations Act.

Surely this is a 'no brainer' in ensuring pre-compliance of Product Disclosure Statements with the Corporations Act and thus saving ASIC the time, money and resources to 'negotiate' on deficient PDSs after sales have already occurred, as in the Sterling First case.

Finally, I would respectfully request that the Committee conduct public hearings to fully understand the experience of the elderly victims of Sterling what justice and redress they require.

Yours sincerely,

Monica Mesch.

Attachment:

Australian Government Response to the Senate Economics References Committee Report:  
Performance of the Australian Securities and Investment Commission October 2014