

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

1 June – 3 June 2010

Question: BET 334

Topic: Frozen Funds

Hansard Page: Written

Senator EGGLESTON asked:

- **During last estimates, ASIC stated that it had set up a task force to handle the issue of frozen funds. Can ASIC provide an update on this task force? How many funds have been unfrozen as a result of the work conducted by the task force? What budget has been provided to the taskforce?**

(Question 1)

- **I refer to the freezing of the investment fund Astarra Diversified Funds, which were frozen by ASIC in October 2009. Can ASIC explain the reasons why it chose to freeze that fund last year and the processes it undertook? (Question 2)**
- **The initial time frame of the freeze was initially indicated to clients by ASIC as being one month. Why is the fund still frozen? Can ASIC now detail when the fund will be unfrozen? (Question 3)**
- **ASIC removed the trustee company Trio as the Responsible Entity for Astarra Diversified Funds. All other funds for which Trio Capital was the Responsible Entity have been frozen as well. For what reasons did ASIC feel it was necessary to freeze all assets managed by Trio? (Question 4)**

Answer (Question 1):

The frozen funds taskforce includes representations from ASIC stakeholder teams including Investment Managers and Superannuation, Investment Banks, Chief Legal

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Office, Financial Advisors, Consumers and Retail Investors, Corporations and Misconduct & Breach Reporting was established in August 2009 to develop measures with industry to address the illiquidity of frozen pooled mortgage funds and to determine whether any additional regulatory guidance was required. It is now completing projects on foot. It will continue to monitor the frozen funds situation and can escalate its involvement if appropriate, but it is otherwise in wind down. The taskforce was not provided a separate budget.

It is important to remember that ASIC does not freeze funds, nor does it have the power to unfreeze funds (by returning capital to investors). A frozen fund will continue to be frozen until such time as the scheme can satisfy all redemption requests within the time specified in its constitution for doing so. Most funds continue to make offers for partial returns of capital as cash becomes available.

The achievements of the frozen funds taskforce include:

- The taskforce encouraged key participants in the mortgage industry to produce liquidity for members, including making regular withdrawal offers with available cash and restructuring schemes to produce liquidity. Most funds that froze during the Global Financial Crisis are still frozen and will continue to be so until all redemption requests can be satisfied within the time specified in the constitution for doing so;
- The taskforce recommended ASIC grant relief for individual schemes, enabling those schemes to return cash more quickly;
- The taskforce recommended ASIC reduce the burden of the 'illiquid withdrawal provisions' through rolling relief. In 2009, ASIC modified the law to simplify the procedure for periodic withdrawal offers out of available cash. Responsible entities of frozen mortgage schemes were allowed to apply to be able to make 'rolling' withdrawal offers, subject to certain conditions. Under a 'rolling' withdrawal offer, the responsible entity makes a withdrawal offer, open for a calendar year, to all investors in the scheme. The responsible entity nominates the dates upon which the withdrawal offer will be paid (e.g. at the end of each

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quarter) and a member may lodge a standing withdrawal request at any time, in respect of future withdrawal opportunities during the year: Media Release (09-269MR) *ASIC grants conditional relief to improve access to capital for investors in frozen mortgage funds*;

- The taskforce obtained Commission approval for the introduction of hardship relief. ASIC modified the *Corporations Act* to allow responsible entities to return some capital to certain members in exceptional circumstances. The terms of the hardship relief modification allow responsible entities to apply if the member is unable to meet reasonable and immediate family living expenses, experiencing circumstances warranting compassion e.g. medical costs for serious illness, funeral expenses or to prevent foreclosure or if there is permanent incapacity: ASIC Media Release (MR 08-214) *ASIC facilitates withdrawals from frozen funds*;
- In August 2009, the taskforce obtained Commission approval to amend the cap on hardship withdrawals for each member to \$100,000 per calendar year, expanded the number of hardship withdrawals per calendar year to four and extended the grounds for hardship to cover a beneficiary of a deceased estate of a member where the beneficiary is suffering hardship and to a person unemployed for at least three months without other means: ASIC Media Release (09-148MR) *ASIC expands relief for hardship withdrawals from frozen mortgage funds*;
- The taskforce prepared Information Sheet 111 *Information for investors in frozen funds* which is available on the ASIC website for investors. The information sheet explains to investors the reasons for freezing schemes and details options for investors to retrieve their funds from frozen schemes;
- The taskforce is conducting pro-active surveillance on aggressive mortgage funds to ensure that these funds are still being operated in the best interest of members (one fund operator has agreed to wind up their fund as a result and others may follow);
- The taskforce has obtained Commission approval to consult on amended benchmarks for regulatory guide 45 *Mortgage schemes—improving disclosure for retail investors* and regulatory guide 46 *Unlisted property schemes—improving*

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disclosure for retail investors. These papers will be released in approximately 2 months.

Answer (Questions 2, 3 & 4):

Astarra Asset Management Pty Limited (*Astarra*) had been appointed by Trio Capital Limited (Trio) to act as asset manager for a number of schemes.

It is important to distinguish the freezing of funds as a consequence of the 'illiquid' provisions in the Corporations Act and the suspension of activities that occurred in relation to Astarra and Trio as a consequence of APRA and ASIC suspending Trio's licenses.

The issue concerning the Astarra Strategic Fund (*ASF*) and Trio is the alleged misappropriation of around \$120 million of superannuation and retail money through offshore hedge funds invested in by a registered managed investment scheme. Trio Capital was unable to satisfy ASIC or APRA as to the existence of the scheme assets. As a consequence, APRA froze the assets of all the superannuation funds held by Trio and various third party service providers that have control over the assets of the superannuation funds.

Trio's superannuation trustee license and AFS license were suspended upon Trio appointing PPB as their voluntary administrators. As a consequence of suspension of the licenses, the administrator 'froze' Trio's schemes. APRA appointed an acting trustee, ACT Super Management Pty Limited to manage the Trio schemes until another trustee could be appointed. The AFS licence suspension permitted PPB to continue to operate the Trio schemes until the schemes could be transferred to a permanent alternative trustee. 10 of the schemes have recently been transferred to a new trustee, Trust Co, with the balance to be wound up. It is now a matter for Trust Co to determine when to permit withdrawals from the schemes and to 'unfreeze' the schemes it now manages.

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