

**7<sup>th</sup> June 2009**

**Committee Secretary**

**Parliamentary Joint Committee on Corporation And  
Financial Services**

**PO Box 6100  
Parliament House**

**Canberra ACT 2600, Australia**

**Dear Secretary,**

**Submission to Joint Committee,**

**We represent a group of people who invested in the Premium Income Fund for capital preservation and regular monthly income, and have suffered greatly, both financially and emotionally as a result of recent events. The vast majority of investors entrusted irreplaceable retirement and Superannuation Fund capital in the Premium Income Fund because they did not wish to expose their funds to the perils of a trading market. Following the shameless deceit and deception by the Directors of Octavier our Fund has now been brought to the brink of collapse. We would now like to pose a number of questions to the Commission on why this tragedy has been allowed to occur.**

**Questions arising from The Public Perception .**

**If there were no criminals there would be no need for police. If corporate criminals did not exist there would be no need for ASIC. Public accountability demands ASIC perform to the same public expectations. The open accountability common for police forces should be applied to ASIC, with the same type of independent reviews of performance.**

**What measures of accountability does ASIC conform to and what changes would ASIC see as being desirable to dispel a perception that ASIC is beholden to the investment industry, rather than the policeman of that industry?**

***There is one important element of performance often ignored by politicians and public servants and that is Time. Organizational goals need to be expressed in terms of not only money but time as well, to be valuable. The mere expenditure of more money means little unless it is attached to a time frame and associated reporting points and deadlines.***

***Time spent designing a really incisive set of performance criteria for ASIC's performance to be measured against would be time well spent. Specifically, there are many performance specifics not covered by ASIC in its Annual Report which should be covered. E.g.:***

***How many complaints were received Vs number investigated fully Vs number resolved successfully. Other similar measures of failure or inability to pursue issues brought to ASIC's attention (such as PONZI Scheme Promoters not prosecuted; overseas scam artists whose bank accounts were not frozen by their governments; etc.)***

***For a specific example of non-performance by ASIC, please refer to the summary below of the Premium Income Fund fraud, whose perpetrators have not yet been prosecuted.***

***The sums involved in corporate crime vastly exceed those of common criminal activity. The penalties, however, do not. The public could be excused for being confused and perplexed by the nature of the law (The Corporations Act). The shadowy thief (person or corporate entity), having been caught and successfully prosecuted faces little hardship in proportion to the gravity of the impact of their offence on others, compared with common criminals. Their assets are not threatened because they have been transferred to relations; the threat of a tiny jail term is no deterrent. The "Alan Bonds" of this world are emboldened by the difficulty of prosecution, the inefficiencies of prosecution and consequent time delays.***

### ***A Specific Example – The Premium Income Fund Fraud.***

***There have been numerous written appeals and information provided to ASIC over a 18 month period; which we include with this submission, requesting an investigation to bring those responsible for the Premium Income fraud to justice.***

***The Premium Income Fund declared purpose was to provide a secure monthly income for investors who are in the main retirees. The Fund purportedly had a balanced and diversified structure in order to protect investors'. We have provided ASIC with irrefutable evidence demonstrating that the Funds composition was fatally compromised by***

**serious breaches of the Corporation Act and potential criminal activity. Under these circumstances we wish to understand why directors have not been brought to justice .**

### **The Premium Income Fund Fraud.**

**The responsibility of the Australian Securities and Investment Corporation is to police actions by investment corporations which may contravene the Corporations Act. Since September 2008 when ASIC successfully prosecuted the Responsible Entity of the PIF (Wellington Capital) for deceptive and misleading conduct regarding a proposal circulated to investors, nothing further has been done by ASIC to prosecute the offenders for unlawful actions.**

**During Nov. and Dec.2007 the Responsible Entity of Premium Income Fund drew down \$200mil from a loan facility it had with the Royal Bank of Scotland. Under direct instruction from Directors of Octavier these funds were illegally placed into a number of Octavier related party entities . These entities were then cynically used as surrogates to siphon the money from the Premium Income Fund back into the parent Company to repay a 100 million debt owed to the Fortress Credit Corporation.**

**Please see appended flow chart and supporting information, that demonstrates precisely how these funds were transferred back into Octavier over a two day period, from 28<sup>th</sup> Nov 2007 to the 30<sup>th</sup> Nov 2007.**

**The loan breached a Bank covenant that the loan to value ratio of the \$954 Million could not exceed 20%. The fund was instantly placed in jeopardy when The Royal Bank of Scotland demanded repayment of its loan. The Premium Income Fund was then forced to fire sale its assets . Distributions were frozen and eventually redemptions were frozen in Feb 2008 and have not resumed since that time.**

**It is alleged that the RE did not act in accordance with section 601FD(1) of the Corporations Act by drawing down the debt and by authorising the money to be used in a number of ways giving that money a value of nil to unit holders of the Premium Income Fund. It is alleged they did not take due care or carry out their duties in accordance with the following section 601FD(1) of the Corporations Act:**

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- **“Act honestly; and Exercise the degree of care and diligence that a reasonable person would exercise if they were in the officer’s position; and**
- **Act in the best interest of members and, if there is a conflict between the members’ interests and the interests of the RE, give priority to members ’ interests; take all steps that a reasonable person would take, if they were in the officer’s position, to ensure that the RE complies with**

*the Corporations Act, any condition on the RE's Australian Financial Services Licence, the RE's constitution and the RE's compliance plan. "*

***What actions have ASIC initiated to prosecute the directors and office bearers of the MFS Premium Investment Fund?  
When will ASIC commence court proceedings against them?***

**Questions relating to Wellingtons Capital takeover of the Premium Income Fund .**

*Wellington Capital gained control of the Premium Income Fund from Octaviar on the 2<sup>nd</sup> May 2008. They then commenced legal action on behalf of the fund for \$147 million in loans unlawfully made or acquired by the fund through the period November and December 2007. The CEO, Ms .Hutson has stated categorically that these investments are now worthless.*

*She also said that the three parties that have legal action commenced against them, Octaviar, Octaviar Administration and OPI Finance Pacific, **forced** the previous Responsible Entity to; "acquire a package of loans without any security".*

*The previous Responsible Entity had its own board of directors and its own independent compliance committee and these people must act together in any decision.. No one is **forced** to undertake a transaction unless some form of unlawful activity has taken place.*

*Once a RE uncovers a breach of the Act, the RE is required under S601FC(I), report to ASIC any breach of this Act that:*

*"(i) relates to the scheme; and  
(ii) has had, or is likely to have, a materially adverse effect on the interests of members; as soon as practicable after it becomes aware of the breach."*

***Why has ASIC failed to respond to clear evidence of breaches of the Corporation Act and potential criminal activity, after this evidence was disclosed by Wellington Capital. ?***

**Questions relating to appeals to ASIC for full and open disclosure of other alternatives available to Premium Income Fund Investors other than a proposed liquidation at 14 cents per unit**

***In August 2008 Wellington Capital issued an Explanatory Memorandum to unit holders for a vote which would give them a mandate to takeover the Premium Income Fund***

***This Explanatory Memorandum document did not disclose the full constitutional changes that Wellington had planned. No other options, such as an orderly wind up were offered. It was repeatedly stated that if the proposals were not accepted Wellington would be forced to liquidate the Fund, and unit holders would receive 14c per unit.***

***The only alternatives offered by Wellington Capital were to forfeit investors rights to redemption. ; impose an onerous removal fee of 2% of the NTA valuation and make other changes that significantly impaired the ability of investors to ever replace Wellington Capital as the Responsible Entity. The fund would then be listed on an illiquid secondary exchange called the Newcastle Stock Exchange (NSX)***

***Wellington used a very heavy handed promotional campaign to convince unit holders, that if they voted in favor of these changes , they would receive quarterly distributions, be able to participate in a buy back proposal and would eventually receive back the full \$1 unit value in their investments.***

***Many investors were intimidated into believing that no other options were available. Repeated appeals were then made; requesting ASIC to allow investors the democratic right to an informed ,impartial and objective decision, and that alternatives, other than liquidation at 14 cents, were in fact available under the Corporation Act.***

***This could have included Receivership and a controlled and orderly sale of the assets over a 3 to 5 year period . This option had it been publicly disclosed, would have been infinitely preferable to the many retired investors over the age of 65,with a limited life expectancy, than being locked- in to an illiquid and moribund secondary exchange for the remaining few years of their life.***

***We have included one of our appeals to ASIC ,with this submission, for the Joint Parliamentary Enquiry to peruse.***

***Why did ASIC sanction misleading and deceptive material being sent to investors which was clearly in breach of the full and open disclosure provisions of the Corporation Act.? Why did ASIC not fully inform investors that other alternatives were available, including receivership under the existing provisions of the Corporation Act?***

### **The current state of the Premium Income Fund.**

***The 2008 PIF Annual Report shows that the Fund is not liquid. More than \$350mil was written off the value of assets in 2007/08 (more than 64% of this was investments in Octaviar Entities). More than 35% of security investments on the books at balance date are still investments in Octaviar entities.***

***A \$352mil loss was recorded for the year and it is more than likely that the current year will result in a loss. It is not considered possible that distributions will be paid in 2009, and any future distributions can only be made with the sale of the funds few remaining assets..***

***The current price for Premium Income Fund Units on the Newcastle Stock Exchange is 5.6 cents; a 96% loss in value to investors ,and there are few buyers, even at that price.***

### **The end result**

***The investments of 10.400 Australians have been ruined . Many peoples lives have now been permanently destroyed . The sums stolen are very large and the evidence in most part publicly available. Numerous former self funded, retired investors have suffered immense hardship and suffering .A great number of these people will be forced to live on Center Link benefits for the remainder of their lives, thereby creating a lasting burden on the social security system of this country for years to come.***

***The parlous state of the Premium Investment Fund and the dishonest and unlawful activities of the management warrants immediate ASIC investigation and appropriate court action. What more does it take for ASIC to investigate and initiate court action to protect investors from corporate crooks?***

***Christopher J Robinson  
President Premium Income Fund Initiative***