Chapter 4

The view of the regulators on the collapse of Trio Capital

Introduction

4.1 This chapter presents the view of the three main regulatory agencies—the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulatory Authority (APRA)—on the collapse of Trio Capital. It details the regulators':

- key responsibilities in the oversight of the financial system;
- involvement in the Trio Capital case;
- apportionment of blame for the collapse of Trio;
- evidence that they communicated in their oversight of Trio; and
- suggestions to tighten the regulatory framework.

4.2 The chapter also presents the views of the Australian Taxation Office (ATO).

The key regulatory and oversight institutions

4.3 The following section outlines the responsibilities of APRA, ASIC and the ATO.

Australian Securities and Investments Commission

4.4 As chapter 1 noted, the regulatory framework for managed investment schemes and responsible entities was introduced in 1998 under Chapter 5C of the Corporations Act. It is a requirement that the Responsible Entity holds an Australian Financial Services Licence (AFSL) in operating the scheme, as part of providing a financial service under Chapter 7 of the Act.[1] It is ASIC's regulatory responsibility to grant and monitor AFSLs, oversee the registration of managed investment schemes, as well as risk based monitoring of conduct obligations under the *Corporations Act 2001*.[2]

4.5 Under the Corporations Act, responsible entities must meet minimum financial requirements to operate a managed investments scheme. ASIC's Regulatory Guide 166 states these requirements. They include that responsible entities must:

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1 KPMG, *Submission 69*, p. 6.

2 ASIC, *Submission 51*, p. 16.

- be solvent at all times;
- have total assets that exceed total liabilities;
- have sufficient cash resources to cover the next three months' expenses with adequate;
- cover for contingencies;
- provide an audit report for each financial year, including information about compliance with ASIC's financial requirements; and
- hold at all times minimum net tangible assets calculated on a sliding scale with a minimum requirement of $50,000 and a maximum of $5 million.[3]

4.6 The regulation of financial services providers has been designed to maximise market efficiency, with minimal regulatory intervention to protect investors.[4] As ASIC told the committee:

> The fundamental policy settings of the FSR [Financial Services Regulatory] regime were developed following the principles set out in the Financial System Inquiry Report 1997 (the Wallis Report). These principles are based on 'efficient markets theory', a belief that markets drive efficiency and that regulatory intervention should be kept to a minimum to allow markets to achieve maximum efficiency. The 'efficient markets theory' has shaped both the FSR regime and ASIC's role and powers.[5]

4.7 In describing the approach to regulation, ASIC stated:

> ...the underlying philosophy accepts that regulation is necessary to deal with factors that prevent the market operating efficiently (e.g. fraudulent conduct by market participants, information asymmetries and anticompetitive conduct). However, that regulation should be the minimum necessary to respond to market failures.[6]

4.8 Further, ASIC's submission noted that it 'seeks to balance investor protection with market efficiency', that consumer protection is afforded through conduct regulation and disclosure regulation and that:

> Efficiency, flexibility and innovation in the financial services industry are promoted by ensuring that these rules are at the bare minimum.[7]

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3 ASIC, *Regulatory Guide 166: Licensing, Financial requirements*, May 2012, http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/RG166a.pdf/$file/RG166a.pdf (accessed 1 April 2012).

4 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, p. 7.

5 ASIC, *Submission 51*, p. 4.

6 ASIC, *Submission 51*, p. 12.

7 ASIC, *Submission 51*, p. 13.

4.9 ASIC sees its role as 'an oversight and enforcement body', adding:

> The FSR regime is largely self-executing: Australian Financial Services licensees and other participants are expected to comply with the conduct and disclosure obligations in the law. ASIC oversees compliance with these obligations and then takes appropriate enforcement action when there is non-compliance. ASIC's power to take action ahead of non-compliance is limited. [8]

4.10 In support of its role in relation to financial services regulation, ASIC uses a number of regulatory tools including: engagement with industry and stakeholders, surveillance, guidance, education, deterrence and policy advice.[9]

4.11 ASIC also has a role beyond the FSR regime.

> It also has responsibilities outside financial products and services regulation. ASIC is the corporate regulator, overseeing approximately 1.85 million Australian companies and their directors and officers. ASIC also regulates auditors, registered liquidators and credit providers.[10]

4.12 ASIC's role in relation to the collapse of Trio Capital was around the supervision of aspects that fall under the Corporations Act regime. These include amongst other things regulation of the responsible entity, supervision and regulation of the AFSL regime, supervision of the managed investment scheme environment, and regulation of compliance plan and risk management arrangements.

Australian Prudential Regulation Authority

4.13 Trio was a trustee holding a registrable superannuation entity licence under the *Superannuation Industry (Supervision) Act 1993*. As such, some of Trio's operations came under APRA's regulation.

4.14 APRA is the other key regulator involved in financial regulatory framework in Australia, and is 'the national regulator of prudential institutions—deposit takers, insurance companies and superannuation funds'.[11] In its submission to the inquiry, described its role and approach to supervision as follows:

> APRA's role is to promote prudent behaviour by superannuation funds through a robust prudential framework of legislation and prudential guidance which aims to ensure that risk-taking is conducted within reasonable bounds and that risks are clearly identified and well managed.

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8 ASIC, *Submission 51*, p. 15.

9 ASIC, *Submission 51*, p. 15.

10 ASIC, *Submission 51*, p. 15.

11 Mr Jeremy Cooper, ASIC, *The integration of financial regulatory authorities – the Australian experience*, paper presented to 30th Anniversary Conference, 4 September 2006, p. 5.

> Unlike the banking and insurance sector, APRA does not have the power to issue prudential standards for superannuation funds.[12]

4.15 In supervising its financial institutions, including superannuation funds, APRA has developed a risk-based approach under which institutions facing greater risks receive closer supervisory attention. This enables APRA to deploy its resources in a targeted and cost-effective manner. The risk-based approach involves:

- licensing only those institutions that are likely to be able to meet their financial promises under all reasonable circumstances;
- regularly analysing the financial condition of institutions and reviewing their risk management to assess their relative risk of failure and whether they meet prudential requirements;
- responding to these assessments by tailoring APRA's supervisory activities to the risk profile of the institutions; and
- if necessary, taking enforcement action to protect the interests of beneficiaries or to make it clear that illegal or materially imprudent behaviour will not be tolerated.[13]

4.16 APRA's role in relation to Trio was as the regulator of registrable superannuation entities under the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

Australian Taxation Office

4.17 As chapter 1 discussed, the ATO also has a role as a regulator in relation to self-managed superannuation funds (SMSFs).

> The ATO administers the relevant superannuation laws for SMSFs, works with trustees to help them meet their obligations and verifies compliance. The ATO does not provide financial or investment advice, and does not undertake a prudential role similar to that undertaken by the Australian Prudential Regulation Authority (APRA).[14]

4.18 The Reserve Bank of Australia described the roles of the three regulators in relation to the SIS Act succinctly as follows:

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12 APRA, *Submission 41*, p. 5. The committee notes that the Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Bill 2012 introduces the power for APRA to make prudential standards, amends section 52 of the Superannuation Industry (Supervision) Act 1993 to expand the duties for registrable superannuation entity (RSE) licensees, applies new trustee duties to RSE licensees of an RSE that offers a MySuper product and applies duties to the directors of corporate trustees. The committee reported on the provisions of this bill in March 2012.

13 APRA, *Submission 41*, pp 5–6.

14 ATO, *Submission 27*, p. 2.

> APRA regulates the superannuation funds' compliance with the prudential regulation and retirement income provisions of the *Superannuation Industry (Supervision) Act 1993*, while ASIC has responsibility for the other provisions. The Australian Taxation Office has responsibility for the regulation of excluded funds (i.e. funds that have less than five members).[15]

4.19 These three regulators, in addition to the gatekeepers described in detail in chapter 5 of this report, play an important role in shaping the events around the collapse of Trio Capital.

The regulators' view of the Trio Capital collapse

4.20 The remainder of this chapter presents the regulators' view of the collapse. Two points are clear. The first is both ASIC and APRA apportion significant blame for the collapse of Trio Capital on the gatekeepers, in particular the auditors. The second point is that, notwithstanding the role of these gatekeepers, there are lessons for both regulators including their communication with each other.

APRA's view

4.21 APRA gave verbal evidence to the committee on 30 August 2011 and 4 April 2012. At the first of these hearings, the Deputy Chairman, Mr Ross Jones, told the committee that before suspending Trio in December 2009, APRA had been seeking improvements in the management of superannuation funds by this trustee 'for a number of years'.

4.22 Indeed, APRA conducted no fewer than five prudential reviews of Astarra Capital between April 2004 and June 2009. Mr Greg Brunner, General Manager of Actuarial Market and Insurance Risk Services at APRA, gave the committee an overview of these reviews:

> We undertook a prudential review in April 2004 with the management and the board to set off some of the discussions about the trustees' application for a variation of instrument of approval. In November 2005 we held a prudential review which involved meetings with management and the trustee directors. This review covered a broad range of risk areas and involved discussion of the trustees' preparation for licensing. This was in the period in the run-up to the beginning of licensing for our registrable superannuation entities, the new licensing regime that had been put in place for superannuation funds. We had some preliminary discussions with the trustees about that...
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> That was in November 2005. Then we conducted a prudential review in several stages between November 2006 and December 2006. This involved a review of the administration systems, an investment review and meetings,

15 Reserve Bank of Australia, website, http://www.rba.gov.au/fin-stability/reg-framework/apra.html , (accessed 1 November 2011)

> again, with board and management. The flavour of those was that they were fairly comprehensive reviews. Our prudential reviews involve detailed discussions not only with the trustees but usually with management as well, and sometimes other staff, within the fund. The next prudential review was held in August 2008. That one examined strategy, risk management, governance, investments and liquidity. Again it was quite a broad-ranging review at that time. Finally, a prudential review was held in June 2009 which examined governance, strategy and investments, including valuations and liquidity. They were the reviews.[16]

4.23 APRA's Deputy Chairman Mr Ross Jones told the committee that it was at APRA's request that the trustee directors 'had begun to address deficiencies in the valuation processes'. He noted that 'APRA had no reason to believe that the trustee directors were untrustworthy'.[17]

4.24 APRA pointed out that in 2007 and 2008, the relevant Trio funds had received audit signoffs. In 2008 and 2009, APRA sought further information from Trio regarding the valuations of certain investments. However, Trio's response was that as some of these assets were in unlisted overseas trusts, there would be delays in getting valuations.[18] APRA told the committee that when the relevant information was not received by mid-2009, it conducted a further prudential review to seek more information. In October 2009, when the trustee had not supplied APRA with all the information requested, 'an investigation was commenced'. In December 2009, APRA issued a 'show cause' letter asking why Trio Capital should not be suspended or removed as a trustee. An acting trustee, ACT Super, advised APRA that it would be submitting an application for compensation under Part 23 of the SIS Act.[19]

4.25 On 30 August 2011, APRA told the committee that it was currently supervising the trustee ACT Super and was also examining former directors of Trio. It noted that in addition to the enforceable undertaking (EU) against Ms Natasha Beck, it expected further EUs 'over the next weeks and months'.[20] As of late March 2012, APRA had obtained a further five EUs from Trio directors: Mr Rex Phillpott (15

16 Mr Greg Brunner, Actuarial Market and Insurance Risk Services, Australian Prudential Regulation Authority, *Committee Hansard*, 4 April 2012, p. 9.

17 Mr Ross Jones, Deputy Chairman, Australian Prudential Regulation Authority, *Committee Hansard*, 30 August 2011, p. 33.

18 Mr Ross Jones, Deputy Chairman, Australian Prudential Regulation Authority, *Committee Hansard*, 30 August 2011, p. 33.

19 Mr Ross Jones, Deputy Chairman, Australian Prudential Regulation Authority, *Committee Hansard*, 30 August 2011, p. 33.

20 Mr Ross Jones, Deputy Chairman, APRA, *Committee Hansard*, 30 August 2011, p. 40.

years), Mr David Andrews (10 years), Mr Keith Finkelde (six years), Mr David O'Bryen (five and a half years) and Mr John Godfrey (no expiry date).[21]

APRA's focus on trustees and governance

4.26 APRA told the committee that its main focus is on the conduct of trustees, not verification by auditors. It is APRA's responsibility under the superannuation legislation to ensure that superannuation trustees conduct their affairs with the appropriate level of fitness and propriety.[22]

4.27 APRA also noted that as a prudential regulator, its supervisory activities and processes are not based on the expectation that fund operators have engaged in fraudulent activity.[23] APRA does not look for fraud, nor does it routinely value underlying assets. Instead, up to a point, it relies on auditors for that function. APRA's oversight of the Trio funds was in relation to the valuation of the underlying assets in which the investments were made. Again, asset valuation is not APRA's core business.

4.28 Mr Jones described APRA's supervision of Trio Capital as 'active supervision' involving 'the standard collection of information but, more importantly, it involves on-site visits to the fund, an examination of the fund's investment policies and so on'.[24] He described APRA's regulatory approach in the case of Trio as follows:

> For a number of years we had had concerns—certainly not concerns about fraud, but we had concerns about the quality of the trusteeship of this fund—and for a number of years we had been trying to get the fund to improve the quality of its governance processes. That was what I would loosely describe as active supervision. You tend to find that, if you have circumstances with particular funds where you have some reservations about their activities, you tend to engage in a more intrusive and more intensive supervisory process than you might do with funds that you have a greater degree of confidence in. That was probably the case with this fund for a number of years.[25]

APRA and the auditors

4.29 The main theme of APRA's evidence to the committee was that, in a case like Trio, it is reliant on auditors to check the accuracy of the information that is supplied

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21 APRA, Enforceable Undertakings Register, http://www.apra.gov.au/CrossIndustry/Pages/EnforceableUndertakings.aspx, (accessed 30 April 2012).

22 Mr Ross Jones, Deputy Chairman, Australian Prudential Regulation Authority, *Committee Hansard*, 30 August 2011, p. 41.

23 Mr Ross Jones, Deputy Chairman, APRA, *Committee Hansard*, 30 August 2011, p. 33.

24 Mr Ross Jones, Deputy Chairman, Australian Prudential Regulation Authority, *Committee Hansard*, 30 August 2011, p. 34.

25 Mr Ross Jones, Deputy Chairman, APRA, *Committee Hansard*, 30 August 2011, p. 34.

to it. APRA told the committee that 'in all probability', the Trio fraud may have occurred 'well before 2009'. It also stressed that in 2007 and 2008, the fund received 'an unqualified audit sign-off'.[26] The strong implication is that the auditors should have detected the fraud and that APRA was reliant on the accuracy of the auditors' information and findings. As Mr Keith Chapman, Executive General Manager of APRA's Supervisory Support Division, told the committee:

> ...at the end of the day, what can anybody do to determine that the bit of paper/unit certificate/share script you have been given is actually a real document? We certainly do not get down to that level of detail. We tend to work our way down, as Mr Jones has indicated, from the trustee board to governance processes to, 'What are you doing underneath that?' and 'How do you verify?' The closest the system would get in that regard would probably be the external audit sign-off, but even then, as you know, the external audit does not go through and verify every single item of the accounts. It is done on a reasonableness basis.[27]
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> ...in a normal situation when we talk to people we would get something like a spreadsheet. We say, 'What have you got your assets invested in?' It would be something like a spreadsheet which shows the sectors. Usually in the normal circumstance we would not go down to the individual holdings. We would do that where we had concerns that it was not a reasonable spread of exposure or diversification. To actually get to a situation where we are validating the assets I would suggest is when we have got to the end of the line which is what happened here...[28]
>
> The only process in the system where assets are validated at the specific level you are referring to is when the auditor does it and even then as I said the audit is still helicopter like rather than getting down to the nitty-gritty.[29]

4.30 The committee put to APRA that its prudential supervision role will not be effective if the information supplied to it by trustees is false. Mr Jones responded:

> Particularly, say, in the case of offshore investments, if the information that is supplied to APRA is false and, further, if it has been signed off and

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26 Mr Ross Jones, Deputy Chairman, Australian Prudential Regulation Authority, *Committee Hansard*, 30 August 2011, p. 38. Chapter 5 notes that in February 2012, ASIC accepted an enforceable undertaking from WHK auditor Timothy Frazer for his role in audits into the ASF conducted in 2008 and 2009.

27 Mr Keith Chapman, Executive General Manager, Supervisory Support Division, Australian Prudential Regulation Authority, *Committee Hansard*, 30 August 2011, p. 34.

28 Mr Keith Chapman, Executive General Manager, Supervisory Support Division, Australian Prudential Regulation Authority, *Committee Hansard*, 30 August 2011, p. 33–34.

29 Mr Keith Chapman, Executive General Manager, APRA, Proof Committee Hansard, 30 August 2011, p. 35.

> approved by auditors, it would be very unlikely that APRA would have an independent ability to detect—[30]

4.31 In the case of Trio, however, APRA emphasised that the trustee was unable to supply the information on the nature of the investments: it had not falsified this information.[31] In this context, significantly, APRA queried whether it had given 'too much forbearance to the trustees' and gave the following response:

> In retrospect you can always reach a different conclusion but what I would say is that in all the other instances of our supervision over all the years—and I am not trying to hide away from the fact that this one went wrong—this process we have gone through that we have been describing has actually got the right result. We have had changes in trustee behaviour and changes in asset allocation.[32]

4.32 Crucially, APRA told the committee that it will take a closer look at the audit relationship:

> Looking back in retrospect, if you ask the trustees for valuations and details and they say, 'We're having difficulty getting to it,' and the auditor has signed off, you probably should haul the auditor in and have a serious heart-to-heart with the auditor about how they are doing that process. But that is certainly one of the areas that we have taken out of this, looking back: when do we make those sorts of calls?[33]

4.33 APRA also noted in its evidence that the government's Stronger Super reforms will impose additional duties on the directors of a trustee to act honestly and in the best interests of beneficiaries. It noted that APRA will be given a general prudential standards making power in relation to superannuation.[34] Further, as part of the Stronger Super reforms, APRA anticipated that it will have greater capacity to collect statistical data. While it doubted that this capacity would enable an assessment of stock by stock holdings, APRA did expect that the level of statistical detail would be looking at an investment option level.[35]

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30 Mr Ross Jones, Deputy Chairman, Australian Prudential Regulation Authority, *Committee Hansard*, 30 August 2011, p. 34.

31 Mr Ross Jones, Deputy Chairman, Australian Prudential Regulation Authority, *Committee Hansard*, 30 August 2011, p. 35.

32 Mr Keith Chapman, Executive General Manager, Supervisory Support Division, Australian Prudential Regulation Authority, *Committee Hansard*, 30 August 2011, p. 35.

33 Mr Keith Chapman, Executive General Manager, Supervisory Support Division, Australian Prudential Regulation Authority, *Committee Hansard*, 30 August 2011, p. 42.

34 In March 2012, the committee examined the provisions of the Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Bill 2012.

35 Mr Keith Chapman, Executive General Manager, Supervisory Support Division, Australian Prudential Regulation Authority, *Committee Hansard*, 30 August 2011, pp 42–43.

Committee view

4.34 The committee highlights the fact that, despite having suspicions about the conduct of the trustees in 2005, it was not until 2009 that APRA issued a 'show cause' letter and eventually suspended the trustee. The committee makes the following two observations that may explain this significant delay.

4.35 First, as a prudential regulator, APRA does not look for fraud. By its own admission, in the case of Trio, its concern was not fraud but the quality of the trusteeship which, on a risk-based assessment, appeared not to be of great urgency. In this context, the committee also draws attention to APRA's statement that it has got 'the right result' in terms of changing trustee behaviour and asset allocation. This comment seems highly peculiar, even insensitive, given the significant losses suffered by investors and APRA's role as a prudential regulator.

4.36 Second, the committee recognises that the Trio case did require APRA to undertake tasks it did not normally undertake. APRA does not routinely value underlying assets but instead relies on auditors to examine individual holdings. The committee accepts that ultimately, APRA must rely on the auditors for accurate and reliable information on the presence of assets and their value. It also notes APRA's point that in 2007 and 2008, the relevant Trio funds did receive audit signoffs.

4.37 However, APRA should not be exonerated for its lack of action in the oversight of Trio Capital. The committee is concerned that APRA did not pick up key events that shaped the Trio fraud. These were the purchase of Tolhurst in November 2003 and the replacement of the Trust Company as the trustee of Professional Pensions Pooled Superannuation Trust in June 2004. The fact that these events roughly coincided with APRA's first prudential review of Astarra in April 2004, and were not identified as problematic, does raise serious questions about the quality of APRA's prudential reviews.

4.38 The committee also believes that questions must be raised as to why APRA delayed suspending Trio Capital when Trio could not value its assets in 2008. It does seem strange that a trustee can be subject to 'active supervision' over a period of six years and yet, when essential information was not forthcoming at the end of this period, the regulator did not act quickly.

4.39 To the committee's mind, the trustee's tardiness in responding to fairly basic information should have raised fundamental concerns. APRA should have acted more decisively, sooner. For a risk based supervisor—as APRA is—the inability of a trustee to provide basic valuation information should have raised strong concerns.

4.40 Trio investors' criticisms of APRA's role are discussed further in Chapter 5.

ASIC's view

4.41 In its submission to the inquiry, ASIC stated that it had conducted a review of its interactions with Trio Capital. The review 'confirmed that ASIC performed its role under the current financial services regulatory regime in relation to these events'.[36]

4.42 The specific detail of ASIC's involvement with the Trio Capital collapse is currently confidential.[37] Significantly, given APRA's view (paragraph 4.29), ASIC believes that it was not until December 2009 that the directors of the Astarra Strategic Fund ran the fund for fraudulent purposes. ASIC explained:

> ...I had examined Mr Richard very early in the piece and, basically, for ASIC to go away all he had to do was provide indisputable evidence of the veracity and worth of these investments. As time went by, the longer it took and nothing was forthcoming, the more confident I became, but there was never any situation where someone put on the table to me that this was a blatant fraud upfront. It took about three months, I would estimate. I had travelled to Hong Kong and interviewed people over in Hong Kong and it was after that, and that was in December 2009, that I became confident that the investments were not there. This is in the context of the Astarra Strategic Fund.[38]

4.43 In its submission to this inquiry, ASIC set out its enforcement action since commencing its investigation of Trio in 2009. This included:

- action taken against Mr Shawn Richard leading to his sentence of three years and nine months' imprisonment (with a minimum of two years and six months);
- an EU from Kilara Financial Solutions, which had recommended that retail clients switch their superannuation holding into the fund My Retirement Plan, for which Trio was the responsible entity;
- EUs with former Trio directors Mr Phillpott and Ms Beck;
- the suspension of the AFSL held by Seagrims Pty Ltd for three years;
- EU with former Trio Chairman and director Mr Andrews preventing him from acting in any role in the financial services industry for nine years; and
- EUs with former Trio directors Mr Finkelde and Mr O'Bryen preventing them from acting in any role in the financial services industry for four years.[39]

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36 ASIC, *Submission 51*, p. 11.

37 ASIC, *Submission 51*, p. 11. The committee took evidence in-camera from ASIC on 6 September 2011.

38 Mr Glen Unicomb, Senior Executive Leader, ASIC, *Committee Hansard*, 6 September 2011, p. 10.

39 ASIC, *Submission 51*, p. 18.

4.44 Mr David McGuinness, Senior Executive Leader at ASIC, gave the committee a brief chronology of ASIC's investigation into Trio Capital:

> In mid-2009, in the course of work we were doing in relation to hedge funds—in particular what we call the 'red flags project'—we identified some potential issues with Astarra and Trio. That was in about mid-2009. Shortly thereafter, in September 2009, we received a credible complaint that was directed to the former chairman.[40] The day after that complaint was received, members of ASIC met with Shawn Richard and compliance staff of Trio, and 10 days thereafter, I think—on approximately 2 October 2009—ASIC commenced using its formal powers and commenced a formal investigation. That then led to a collaborative approach with APRA in relation to investigating and taking action. Within a month or thereabouts, I think, we issued stop orders in relation to PDSs issued by Trio, and when it was appropriate to do so—I think it was in December 2009—we took steps, again in collaboration with APRA, to cancel the AFSL, or Australian financial services licence, of Trio. In between October and December 2009, we established, under the current chair, a task force of various parts of ASIC representing those from our stakeholder team areas that deal with investment fund managers, superannuation and investment banks, for example, and those that were conducting the hedge fund review, along with people from our financial adviser team and our deterrence teams.[41]

4.45 ASIC's Chairman, Mr Greg Medcraft, told the committee that by the time it had received a formal complaint about Mr Richard, the Commission already had narrowed down Trio as one of a number of hedge funds that it considered of high risk. ASIC's 'proactive surveillance' of the hedge fund sector began in response to the Bernie Madoff case in the United States. Mr Medcraft explained that in identifying the high risk hedge funds:

> We excluded those that were domestically managed, for example. We were really honing in—given the fact that the Madoff experience was through a series of overseas entities—on those which we considered to indicate higher risk...We were not focused on fraud. We were focused on verifying existence and value of assets. If you remember, the existence and value of assets was the issue with Madoff.[42]

4.46 In terms of ASIC's key interest in Trio Capital, the Chairman told the committee it was in the first instance concerned with whether the assets existed and secondly, whether the valuations were correct.[43]

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40 Mr Medcraft confirmed in evidence to the committee that the date of the complaint was 21 September 2011.

41 Mr David McGuinness, Senior Executive Leader, ASIC, *Committee Hansard*, 6 September 2011, p. 2.

42 Mr Greg Medcraft, *Committee Hansard*, 6 September 2011, p. 4.

43 Mr Greg Medcraft, *Committee Hansard*, 6 September 2011, p. 4.

ASIC's criticism of gatekeepers

4.47 ASIC's Chairman, Mr Greg Medcraft identified the role of gatekeepers as the main problem in the oversight of Trio. He told the committee:

> ...what happened in Trio and ARP—is a good example of what I think is gatekeeper failure. It does start with the responsible entities: the directors and the executors of the responsible entities, the investment manager, the compliance committee, the compliance plan audit, the research houses, the custodians, the advisers. What we had here was that, if you want, chain of gatekeepers. Many of those gatekeepers clearly came up short...
>
> Gatekeepers provide a key role in our regulatory system and when they fail in their role this can have serious consequences for investors, such as we have seen with what happened with Trio and Astarra. One of the most challenging tasks for a regulator is to identify so-called bad apples in industry, particularly when they are engaged in outright dishonest conduct. Gatekeepers are often the first in line in terms of defending against bad behaviour by perpetrators of issues in the system. Therefore, improving the regulation of gatekeepers is the key to ensuring the integrity of our system, and I think you will see that reflected in our forward work program...for example our work around research houses and custodians. [44]

4.48 Mr Medcraft added that this focus on the role of gatekeepers does not abrogate ASIC of its responsibilities as an oversight body. He told the committee that ASIC engages with industry and conducts surveillance, guidance, education, enforcement action and policy advice to government to serve the interests of retail investors. These activities were also emphasised in ASIC's submission.

4.49 ASIC told the committee that it was not aware that Trio's correspondence with APRA on 23 October 2008 had been passed on to ASIC. The Trio letter noted that it did not have available valuations for the Exploration Fund Limited. A search of ASIC's internal systems 'could not come up with information about such a referral'.[45]

Improving compliance plans and the role of auditors

4.50 Underpinning ASIC's criticism of gatekeepers in the Trio case is its broader concern with managed investment scheme compliance plans, auditors and committees. Its concerns with the current system of compliance plans are threefold:

- the requirements in section 601HA of the Corporations Act relating to the content of compliance plans are set at a high level rather than requiring detail on specific matters. As a result, ASIC argued that the plans are 'not being as effective as may have been intended'[46] and 'if someone has conducted the

44 Mr Greg Medcraft, *Committee Hansard*, Sydney, 6 September 2012, p. 1.

45 Mr John Price, Senior Executive Leader, ASIC, *Committee Hansard*, 6 September 2011, p. 5.

46 ASIC, *Submission 51*, p. 35.

audit of the particular compliance plan, that is almost enough to get you over the line. There is no sort of detail about the work that needs to be done';[47]

- the liability for the responsible entity and its directors attaches to any contravention of the compliance plan, rather than material contraventions. ASIC claims that this can result in generic compliance plans with low standards, while still meeting the requirements of section 601HA; and
- the Corporations Act requires a compliance plan audit to be done, but does not impose any qualitative standards by which a compliance plan auditor must conduct their audits.[48]

4.51 In terms of compliance committees, ASIC highlighted that:

- there are no current legislative requirements as to experience, competence or qualifications for compliance committee members;
- there is also no regulatory or member oversight of the appointment of compliance committee members; and
- the Corporations Act does not specify many governance arrangements in relation to the proceedings of the compliance committee.[49]

4.52 ASIC told the committee that currently, the law 'seeks to treat all contraventions of compliance plans by officers of a responsible entity equally'. Minor breaches are treated the same as more serious breaches. ASIC argued that:

> ...it would be more sensible for the law to focus on material breaches rather than those minor breaches, because the way the law is constructed at the moment it almost drives people to go back to compliance plans at a very high level. They are concerned, and I can understand why they are concerned, about their own liability, but the way the regime works as a whole is that it is not operating in an optimal fashion to make sure that there is a strong compliance culture within responsible entities and there is a good system of checking around responsible entities.[50]

4.53 ASIC suggested several areas of possible reform to the role of auditors and compliance committees. It noted that in cases where an auditor fails to conduct a compliance plan audit in accordance with the assurance standards, 'there would appear to be a prima facie case for ASIC to pursue the auditor in the CALDB'.[51] One of the striking features about the Companies, Auditors and Liquidators Disciplinary Board (CALDB), however, is how few matters ASIC does in fact refer to the Board. APRA

47 Mr John Price, Senior Executive Leader, ASIC, *Committee Hansard*, 6 September 2011, p. 5.

48 ASIC, *Submission 51*, p. 35.

49 ASIC, *Submission 51*, p. 35.

50 Mr John Price, Senior Executive Leader, ASIC, *Committee Hansard*, 6 September 2011, p. 5.

51 ASIC, *Submission 51*, p. 45.

has not referred one. Chapter 5 discusses the views of the Board about its role and workload.

4.54 Indeed, ASIC recognised in its submission that the assurance standards that are relevant to a compliance plan audit do not have the force of law. As such, there is no precedent for a successful action against a compliance plan auditor. ASIC suggested that the government could consider:

> (a) an approval process for compliance plan auditors so that ASIC has the powers to remove or impose conditions on such approval; and
>
> (b) civil liability provisions for compliance plan audits.[52]

4.55 ASIC also identified possible reforms to improve compliance arrangements to increase the effectiveness of compliance plans, auditors and committees. In terms of compliance plans, it suggested:

- reviewing the effectiveness of the role of the compliance plan in the compliance framework;
- setting more detailed requirements for compliance plans; and
- introducing an approval process for compliance plan auditors and civil liability provision for compliance plan audits.[53]

4.56 In terms of compliance committees, ASIC noted that government could consider minimum requirements for these committees and their membership.[54]

4.57 The committee encourages ASIC to pursue its forward program of activities in relation to compliance arrangements (see chapter 7). The committee will monitor the implementation of these changes as part of its statutory parliamentary responsibility to oversee ASIC's work.

Granting AFS licences

4.58 Chapter 6 of this report canvasses various criticisms of ASIC by Trio Capital investors, not the least of which is that ASIC was responsible for granting Mr Richard an AFSL. In this context, perhaps the most significant aspect of ASIC's evidence was its criticism of the AFSL regime. In particular:

> ASIC's ability to protect investors by restricting entry into, or removing participants from, the financial services industry who might cause or contribute to investor loss is limited under the current FSR regime. This is because the current FSR regime:

52 ASIC, *Submission 51*, p 45.

53 ASIC, *Submission 51*, p 46.

54 ASIC, *Submission 51*, p 46.

- sets the threshold for obtaining an AFS licence relatively low and the threshold for cancelling an AFS licence relatively high; and
- focuses on the licensed entity rather than the directors, employees or other representatives.[55]

4.59 In terms of the threshold for obtaining and retaining a licence, ASIC noted that it 'must' grant an applicant a licence unless it can prove that certain statutory criteria are not met. Mr Price added:

> Perhaps unsurprisingly it is very difficult to prove that someone will not comply with their legal obligations in the future, because quite simply people do not go round sending emails saying, 'It is my intention not to comply with the obligations in the future.' The PJC recommendation from the Storm and Opes Prime inquiry was to change that particular provision broadly speaking to one that would say: 'ASIC may ban a person or it may not grant a licence if the person is not likely to comply with its obligations in the future.'[56]

4.60 In the Future of Financial Advice (FoFA) legislation, currently before the Parliament, the government essentially adopted the Parliamentary Joint Committee on Corporations and Financial Service's 2009 recommendations.[57] The Act amends the relevant sections of the Corporations Act to give ASIC greater discretion in granting and cancelling AFSLs.[58] The Explanatory Memorandum to the *Corporations*

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55 ASIC, *Submission 51*, p. 21.

56 ASIC, *Committee Hansard*, 6 September 2011, p. 8.

57 See Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia*, November 2009, recommendation 6, p. 139 and recommendation 8, pp 140–141.

Recommendation 6: The committee recommends that section 920A of the Corporations Act be amended to provide extended powers for ASIC to ban individuals from the financial services industry.

Recommendation 8: The committee recommends that sections 913B and 915C of the Corporations Act be amended to allow ASIC to deny an application, or suspend or cancel a licence, where there is a reasonable belief that the licensee 'may not comply' with their obligations under the licence.

58 http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r4689_first-reps/toc_pdf/11217b01.pdf;fileType=application%2Fpdf#search=%22legislation/bills/r4689_first-reps/0000%22

Section 913B(1)(b) now states: ASIC has no reason to believe that the applicant ~~will not comply with~~ is likely to contravene the obligations that will apply under section 912A if the licence is granted;

Section 915(C)(1)(aa) now states: ASIC has reason to believe that the licensee ~~will not comply with~~ is likely to contravene their obligations under section 912A;

Section 920A(1)(ba) now states: ASIC has reason to believe that the person ~~will not comply with~~ is likely to contravene their obligations under section 912A;

Amendment (Future of Financial Advice) Bill 2011 stated that these amendments clarify that ASIC is not required to believe as a matter of certainty that the person will contravene the obligations in future. It added:

> In the 10 years since the introduction of the Financial Services Reform Act, interpretation of this provision has tended to a view that ASIC is required to believe, as a matter of certainty, that the person will contravene the obligations in future. Such a standard would be so onerous that it could result, in practice, in ASIC never being able to refuse a licence using this part of the test. This new formulation is designed to ensure that ASIC can more appropriately account for the likelihood or probability of a future contravention.[59]

4.61 ASIC's submission supported the amendments, noting that the change:

> ...would overcome some of the difficulty ASIC currently experiences when trying to assess whether an applicant will comply with its obligations and meet its licence conditions before it has commenced business. The proposed slightly lower standard (i.e. 'may not comply' or 'is not likely to comply') would enable ASIC to consider a wider range of matters than currently permitted and minimise this difficulty.[60]

4.62 In terms of how these amendments may have influenced the Trio case, Mr Price commented:

> Were those sorts of additional protections in place when the Trio matter was happening, or in another hypothetical matter, it may well have enabled ASIC to act at an earlier stage. But would that have prevented investor loss? I cannot tell you the answer to that. Even if ASIC makes a decision not to grant a licence or to remove someone from the industry there are appeal rights to the Administrative Appeals Tribunal and they do not always agree with the position that we adopt on these matters. Quite rightly, they put high regard on the fact that, if ASIC decides to exclude someone from an industry, that deprives them of their livelihood.[61]

4.63 The second point in paragraph 4.58 (above) notes ASIC's concern that the current licensing system is based on the entity, rather than individual directors,

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Section 920A(1)(d) now states: ASIC has reason to believe that the person is not of good fame or character; (This subsection had been repealed.)

Section 920A(1)(da) now states: ASIC has reason to believe that the person is not adequately trained, or is not competent, to provide a financial service or financial services;

Section 920A(1)(f) now states: ASIC has reason to believe that the person ~~will not comply with~~ is likely to contravene a financial services law.

59 Explanatory Memorandum, Corporations Amendment (Future of Financial Advice) Bill 2011, p. 22.

60 ASIC, *Submission 51*, p. 28.

61 Mr John Price, Senior Executive Leader, ASIC, *Committee Hansard*, 6 September 2011, p. 5.

employees or other representatives. In its submission to this inquiry and to the committee's inquiry into the FoFA legislation, ASIC drew attention to the fact that:

> Under the Corporations Act, a person or entity that carries on a financial services business in Australia must obtain an AFS licence from ASIC covering the provision of the relevant financial services, unless an exemption applies. A key exemption is for those who provide services as a representative of a licensee. Essentially, representatives are employees, directors, authorised representatives (including corporate authorised representatives) of the licensee. ASIC does not approve representatives. In addition, a person acting as an employee or agent is not themselves treated as providing the financial service of operating a registered management investment scheme.
>
> This means that the AFS licensing regime generally focuses on the AFS licensee, rather than the directors, employees or agents in relation to operating a registered management investment scheme or other representatives of that entity. However, officers involved in the decision making of a licensee are subject to tests of good fame and character (e.g. police checks) when a licence is granted. Also on grant of a licence, and at other times in surveillance, there is assessment of key persons nominated by the licensee for the relevant financial service business.[62]

4.64 In terms of Trio Capital, therefore, ASIC emphasised:

> ...we did not register Mr Richard. The relevant person being licensed here was Trio, not Mr Richard...
>
> The history is that the body that would become Trio already had a licence at the start of the financial services reform. Under the laws that were in place of the financial services reforms, which were around 2002 to 2004, anyone who had formerly had a licence basically got a licence under the new regime. Mr Richard became a director of that entity that already had a licence. As to your question about Mr Richard and what was known about Mr Richard, certainly I have read in a number of other submissions some concern perhaps about Mr Richard and what he may have done in the past. The critical question for us is: what concrete evidence do we have in respect of a particular person? That is question 1. Question 2 is: even if we have concrete evidence against a particular person, of what relevance is that ultimately to the fact that someone already has a licence and is in our regime and so forth?[63]

4.65 ASIC noted in jurisdictions such as Hong Kong, Singapore and the United Kingdom, there is more focus on the individual during the licensing process. However, it did not support a requirement to approve all individuals involved in the financial services industry, believing the costs would outweigh the benefits. ASIC did

62 ASIC, *Submission 51*, p. 22; see also ASIC, *Submission 28*, PJC inquiry into the Corporations Amendment (Future of Financial Advice) Bill 2011, pp. 7–8.

63 ASIC, *Committee Hansard*, 6 September 2011, p. 7.

suggest that a more complete register of advisers providing financial advice on Tier 1 financial products would enhance its efficiency conducting regulatory checks.[64]

Suitability of managed investment schemes

4.66 A further issue raised by ASIC in both its submission and in verbal evidence to the committee is whether there should be regulations and restrictions on investments in registered managed investment schemes. Currently, neither the *Australian Securities and Investments Commission Act 2001* nor the Corporations Act imposes any restrictions on the investment strategy of registered managed investment schemes. ASIC noted that in some international areas, there are discussions about whether those who manufacture financial products should have an obligation to ensure that the investment is not going to be unsuitable for the final investor.[65] It also stated that in Australia, restrictions had previously been in place:

> Before June 2007, registered managed investment schemes were prohibited from investing in managed investment schemes that were not registered under Ch 5C of the Corporations Act. The restrictions were intended to prevent a responsible entity from establishing or investing in unregistered managed investment schemes, including foreign collective investment structures, to avoid the protections for scheme assets that normally apply to registered managed investment schemes. ASIC provided limited exemptions to allow certain investments in managed investment schemes to be held, even though the managed investment scheme receiving the investment was not a registered managed investment scheme in a number of circumstances.
>
> The restrictions were removed by legislative amendment in recognition of registered managed investment schemes increasingly seeking to diversify their investments and that such investments are not generally made for the purpose of avoiding regulation. The restriction on what a registered managed investment scheme may invest in proved difficult to maintain in light of commercial pressures to allow many legitimate foreign investments.[66]

Committee view

4.67 The committee notes the various points that ASIC has made in relation to the limitations and restrictions on its role and believes that these are legitimate concerns. It therefore welcomes the recent FoFA reforms to sections 913, 915 and 920 of the Corporation Act lowering the threshold for ASIC to refuse and to revoke an AFSL. On the matter of ASIC's power to register an entity rather than an individual director,

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64 ASIC, *Submission 51*, p. 31. Tier 1 products exclude most general insurance products, basic deposit products, consumer credit insurance, non-cash payment products and First Home Saver Account deposit accounts.

65 Mr John Price, Senior Executive Leader, ASIC, *Committee Hansard*, 6 September 2011, p. 9.

66 ASIC, *Submission 51*, pp 86–87.

there does appear to be a strong case to establish a register of employee representatives in the financial services industry.

4.68 As with APRA, the committee has concerns at the length of time it took for ASIC to detect fraudulent activity in Trio. It is particularly concerned that communication between ASIC and APRA was lacking in the months from late 2008 to mid 2009. ASIC's Chairman has emphasised that given the goal of 'efficient markets' and rectifying asymmetries of information, it is important for investors to have clear disclosure of the assets in a portfolio.[67] Yet, it seemed that APRA had not communicated to ASIC its requests for Trio to provide information. As a result, when ASIC commenced its active surveillance of hedge funds in June 2009, it did not seem aware that Trio was not providing the prudential regulator with basic facts about the existence of assets and their value. This information should have been communicated.

4.69 The committee is aware that the Memorandum of Understanding between ASIC and APRA contains sections on mutual assistance and coordination, information sharing and unsolicited assistance. The committee encourages the regulators to continuing sharing information, even where a request for the information has not been received.

The Australian Taxation Office's view

4.70 The third regulator is the ATO, which has responsibility for ensuring that investors in SMSFs comply with the SIS Act. The role of the ATO is to register SMSFs, to ensure they have an investment strategy and that they meet the basic prudential requirements set out in the SIS Act. In this context, the Commissioner of the ATO, Mr Michael D'Ascenzo, described the ATO's regulatory role as:

> to provide some assistance to trustees and approved auditors in relation to their obligations under the SIS Act and help them to comply with a range of obligations under the SIS Act and the Income Tax Assessment Act. What is I think critically different between what we do and what a regulator like APRA does is that APRA looks at the prudential requirements – in other words, the level of risk-taking that trustees of larger funds would undertake – whereas, for self-managed super funds, the ATO's obligation is to ensure that they have an investment strategy but the nature, effectiveness and risk of their investment is really a matter for the trustees, subject to certain rules in the law which say that certain investments are not able to be entered into.[68]

4.71 The ATO monitors SMSFs compliance mainly through the receipt of self-managed super fund annual returns. These returns include an income tax return, a regulatory return with details of fund assets and fund management issues, and a

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67 Mr Greg Medcraft, *Committee Hansard*, 6 September 2011, p. 6.

68 Mr Michael D'Ascenzo, Commissioner, Australian Taxation Office, *Committee Hansard*, 23 September 2011, p. 33.

member contribution statement. In addition, the ATO noted that each SMSF is required to obtain an independent annual audit of the fund. Where there is a contravention, the auditor lodges an auditor contravention report with the ATO. The ATO told the committee that through this process, it also 'audits the auditors'.[69]

4.72 One of the key criticisms of the ATO from many SMSF investors in Trio Capital was that they were unaware they were investing in an SMSF. Of those who were aware, many were not familiar with their obligations and the regulatory protections (see chapter 6). Mr Brett Peterson, Acting Deputy Commissioner Superannuation at the ATO, told the committee: 'we send every trustee (of an SMSF) a letter welcoming them and outlining their responsibilities and pointing them to the range of support material we have'. He added that before a trustee or a fund can be registered, the ATO required the trustee to sign a declaration to certify that they understand the range of rules that apply to the management of an SMSF. Mr Peterson told the committee: 'I have never had anybody say to me that they were not even aware they had a fund. That is quite surprising'.[70]

4.73 The ATO told the committee that it is aware that the vast majority of SMSF investors lodge their registration 'through some kind of agent'. This is potentially a problem. Notwithstanding their name, SMSFs are often not managed by the trustee but by financial advisers and other intermediaries. In the case of a significant number of witnesses who gave evidence to this inquiry, it does appear that the key messages about trustees' obligations and exposures to risk—and even their participation in an SMSF—are not being properly communicated to trustees, either through the declaration form or through ATO guidance material.

4.74 The committee is concerned at the lack of knowledge of 'mum and dad' SMSF investors (see chapter 6). The ATO Commissioner recognised that while there is a 'vast difference' in the understanding and capabilities of trustees, the ATO provides 'a lot of information' and educational material to help SMSFs understand their obligations. This information was in response to ATO research conducted 'a number of years back' which showed there were 'quite a number of trustees who did not understand their obligations'.[71]

4.75 The ATO's submission to this inquiry contained only one passing reference to Trio. The committee did ask the ATO, in relation to Trio, whether the ATO requires documentary evidence from managed investment schemes to verify that the tax it is receiving from entities is the correct amount. The Commissioner replied:

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69 Mr Brett Peterson, Acting Deputy Commissioner Superannuation, ATO, Committee Hansard, 23 September, 2011, p. 34.

70 Mr Brett Peterson, Acting Deputy Commissioner Superannuation, ATO, Committee Hansard, 23 September, 2011, p. 35.

71 Mr Michael, D'Ascenzo, Commissioner, ATO, Committee Hansard, 23 September, 2011, p. 35.

> We would not have any specific information other than what is provided in the particular taxpayer's return or the fund return. It then becomes a question of whether our analytics and risk assessment procedures identify that group or that company as requiring further attention. So really unless there is some indicator that enables us to discern that what they have said in their return is incorrect, we would not know until we did an investigation. And we would not necessarily do an investigation until we had some indication that this was a high-risk company.[72]

4.76 In an answer to a question on notice, the ATO provided a breakdown of asset allocations in SMSFs. In June 2011, overseas managed investment schemes accounted for only 0.08 per cent of total Australian and overseas assets in SMSFs ($341 million of $418.5 billion).[73]

Is some fraud inevitable?

4.77 The regulators contended that even with the best regulatory system, it will be difficult to detect and intercept all fraud. Mr John Price, Senior Executive Leader at ASIC, told the committee that:

> ...if someone is minded to commit a fraud, whatever regulatory system you have in place may find it difficult if that person is determined and wilful to commit that fraud.[74]

4.78 APRA also noted that in cases where those committing fraud have established complex and elaborate systems to conceal and deceive, the role of the gatekeepers is difficult. It put this argument as follows:

> I think the real issue here is that, in a broad sense—without getting into details about Trio—if two or three people deliberately set up a very obscure process to commit a fraud, what are the chances that a lot of well-meaning but not necessarily inquiring people, be it the auditors, the board or other gatekeepers, can detect that problem? What we try to do is get the trustees to take a proper look at what it is they are doing... [I]t comes back in the real sense to whether there is a process that can be adopted to stop the couple of people deliberately setting up a fraudulent process and/or catch that soon thereafter with the gatekeepers. That is the significant challenge in this whole process.[75]

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72 Mr Michael, D'Ascenzo, Commissioner, ATO, Committee Hansard, 23 September, 2011, p. 36.

73 Received 4 November , 2011. Available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=corporations_ctte/trio/submissions.htm

74 Mr John Price, Senior Executive Leader, ASIC, *Committee Hansard*, 6 September 2011, p. 6.

75 Mr Keith Chapman, APRA, *Committee Hansard*, 30 August 2011, p. 38.

4.79 In a similar vein, APRA commented that its anticipated new power to set prudential standards for superannuation funds was not a protection against all fraud. The Deputy Chair, Mr Ross Jones, told the committee:

> I certainly would never dare say that standards-making powers would eliminate fraud. If you have a set of individuals who are actively engaged in fraudulent activity, I do not believe that standards-making powers would make enough difference. We have seen examples of fraud in other industries here and overseas where you have quite substantial regulatory strengths and powers. It must reduce the likelihood of fraud, but I do not believe it can ever reduce fraud to zero.[76]

4.80 APRA made the broader point that there have been very few superannuation frauds in the past 20 years, with Trio Capital 'only the second major fraud'.[77] Mr Jones commented that to minimise their tax liability, many funds make overseas investments. He noted that often, these investments are in infrastructure assets which are 'not easily identifiable and quantified'.[78]

Committee view

4.81 The committee takes no exception to the general comment that no regulatory system can deter all fraud. That said, where fraudulent activity does occur, it is incumbent on the regulators to inquire what went wrong and what could be done to close any loopholes. This also applies to governments and their consideration of whether there is a need to amend the law.

4.82 The committee also believes that ASIC and APRA must exercise particular vigilance in their responsibilities to regulate and oversee superannuation investments and overseas managed investment schemes. The Australian superannuation pot is one of the largest in the world and, given the camouflage provided by the long-term nature of these investments, is potentially a ripe target for unscrupulous operators. In terms of overseas managed investment schemes, while they account for only a fraction of total Australian and overseas investments in SMSFs, they demand the regulators' full attention given their complexity and cross-jurisdictional component.

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76 Mr Ross Jones, Deputy Chair, APRA, *Committee Hansard*, 30 August 2011, p. 36.

77 Mr Greg Brummer, General Manager Actuarial, Market and Insurance Risk Services, Supervisory Support Division, APRA, *Committee Hansard*, 30 August 2011, p. 39.

78 Mr Ross Jones, Deputy Chair, APRA, *Committee Hansard*, 30 August 2011, p. 39.