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August 21st 2014

The discovery of the Trio Capital fraud in 2009 illustrates what can be expected from the Australian Securities and Investments Commission (ASIC) in the event of a major financial fraud. In the case of Trio Capital, ASIC escaped responsibility and accountability over Shawn Richard operating an Australian Financial Services Licence (AFSL) under fake credentials and ASIC and the Australian Prudential Regulation Authority (APRA) escaped accountability over their failure to act or inform each other of their concerns about the incompetence shown by the Trio Capital directors between 2005 to 2009. As a direct result of the regulator's actions and omissions the fraudulent Trio Capital scheme went ahead unchallenged.

Serious financial crime appears to be handled differently internationally compared to Australia. In the United Kingdom earlier this year, Revell-Reade and his gang were brought to justice after the Serious Fraud Office (SFO) carried out its investigation into the Spanish based "boiler-room" scam. The SFO did not suggest an investigation 'not in the public interest' because it was the victim's carelessness that caused the harm or did they say its too hard because some of the alleged criminals live abroad. The SFO did not stand by while scathing remarks were made about the victims, nor did they make damning or misleading remarks about the victims. On the contrary, the SFO supported the victims in media releases and acknowledged the impact the crime had on the victims.

In Australian, ASIC's investigation did not round up any international gang. The Trio victims were not in a boiler-room scam but had invested in an APRA and ASIC regulated fund, given the green light by ASIC and APRA, had the ANZ and NAB bank as custodian, including sound reports by WHK and KPMG auditors. Despite the Trio victims following the rules and doing everything by the book, the victims were treated like the criminals.

The then Minister of Superannuation, Bill Shorten mislead the public by saying that SMSF trustees were swimming outside flags. ASIC's own publication titled "s*wimming between the flags*" outlines the between the flags regulations, which demonstrated conclusively that Mr Shorten was incorrect. ASIC stood by and did nothing.

In the United States of America serious financial crime is handled more scientifically than in Australia. Take for example the direct and straightforward questions at the Senate Hearing when the senator asked the ENRON directors;

1. What Happened?
2. Who is responsible for it happening?
3. Are we able to prevent it from happening again?

The United States Freedom of Information Act (FOIA) appears to embrace the same straight forward approach and upholds the principles behind freedom of information. In Australia the Victims of Financial Fraud (VOFF) sought information from the Federal Bureau of Investigation (FBI) and the Securities and Exchange Commission (SEC), the respondent did not discourage VOFF's application. The US government departments

were prompt to acknowledge and handle VOFF's FOIA requests. Almost the opposite can be said about ASIC and APRA's efficiency.

Prior to 2009 (Trio fraud discovered September 2009) ASIC in its claim of ensuring the financial markets are transparent, failed to inform the market that the financial system is not what it seems. After September 2009 the Parliamentary Joint Committee that held an inquiry into the Trio fraud discovered that the banks, the regulators and the auditors do not present the credibility or security that the market expected. The PJC inquiry discovered that there was an "expectation gap" about what the market expected from the regulators, the banks and the auditors. For example, the market assumed: the Australian Financial Services Licence (AFSL) represented a level of expertise and responsibility. But before 2009 ASIC had no choice other than to issue an AFSL to whoever applied, even to shady directors;

WHK and KPMG auditors – KPMG considered that there is an 'expectations gap' between what the public believes is the work of a compliance plan auditor, and the work that by law he or she is actually required to perform. The auditors cite the limitations on their role and that the primary responsibility for detecting fraud rests with the responsible entity. They note that auditors can only obtain reasonable assurance that a financial report is free from material misstatement, whether caused by fraud or error; [1]

NAB and ANZ banks as Custodians. There is an expectation in the public mind that custodians will act to protect and secure the underlying investment. By contrast, Trio's custodian, the National Australia Trustee Limited, has noted that the custodian does not have the expertise to question underlying values of either domestic or offshore funds; [2]

APRA 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. APRA does not look for fraud, nor does it routinely value underlying assets; [3]

The market had the wrong expectation about ASIC as the "regulator" because ASIC sees itself as the "educator" rather than regulator. Ordinary mum and dad investors expect security because the market is governed and regulated by ASIC and APRA. However, we discovered after the Trio fraud that SMSFs operate in a different regulatory environment and ASIC and APRA have no obligations to inform SMSF trustees if the regulators suspect something is going wrong with a fund.

Another expectation gap is that ASIC is viewed as the investigator of fraud, the agent who goes after the criminals, claws back assets under the Proceeds of Crime Act 2002. But the Trio Capital fraud demonstrates that ASIC did not show much of an interest in solving the Trio crime, find the money trail or claw back any of the stolen money.

In 2011 Mr Shorten received confirmation that the Trio Capital fund was indeed a fraud. The evidence of the fraud was necessary to enact Section 23 of the SIS Act. This enabled compensation to be paid out to the 5,358 investors in union industry funds. Details about the fraud remain a secrete. DIY investors are denied access to information concerning our lost savings. We are prevented from discovering how the fraud happened. In

[1] Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital May 2012 ISBN 978-1-74229-543-5 page 97 and 123
[2] PJC Report op. cit. page 123
[3] PJC Report op. cit. page 71

addition, the DIY investors are accused of loosing money due to bad or poor financial advice.

There are a number of contradictions with to the same fund / same fraud. In trying to understand the basis for the many contradictions VOFF sought information through the Freedom of Information Act (FOI) process but without success.

It is hard to understand how the same fund can be called low risk for industry super but high risk for DIY super. It is hard to understand why the money managers in industry super who placed their clients into Trio Capital were not named, blamed and shamed but the independent financial advisors who placed their clients into Trio were. Another disparity occurred when Mr Shorten called the industry fund investors - victims for no fault of their own but said the DIY investors - placed their money into a troubled fund. Mr Shorten's disagreement about an identical situation suggests one group are victims and the other group villains. Villains deliberately put their savings into a dangerous fund. As ASIC is responsible for upholding the integrity of the financial market, it is distressing that ASIC stood by and permitted so many contradictions to survive. Such as:

For 5,358 industry fund investors Trio Capital is a: **Fraud**.
For 690 DIY investors Trio Capital is: **Poor financial advice**.

For industry fund investors - was a **low risk**.
For the DIY investors - was a **high risk**.

Industry fund investors - their money managers did **nothing wrong**.
The DIY investors - their independent financial planers **did wrong**.

The industry fund investors - are victims for **no fault of their own**.
The DIY investors - **placed money into a troubled fund**.

To put things into perspective, prior September 2009, there was no information about financial fraud (other than fraudulent behavior by an investor) and nothing about Section 23 of the SIS Act. ASIC, APRA and the Australian Tax Office's literature on starting / operating a superannuation fund had nothing about fraud or the SIS Act.

ASIC must be aware that the DIY sector had no stakeholders representing them when policy and laws were shaped. The DIY sector remain vulnerable due regulation and reform changes carried our without consulting SMSF trustees. There are about one million SMSF trustees, they have not been given the option to decide about their own investment security. No one has offered a compensation scheme such as the industry fund model (Part 23 of the SIS Act) or an Opt-in scheme. ASIC promote a competitive and stable financial system - they need to find ways to improve the safety for this group of DIY investors.

Post-September 2009 a flood of new material became available, warning about fraud and about Section 23 of the SIS Act. The alarming thing about this recent flood of information is the way ASIC present it as if it has been here from the start. This is like ASIC going to the alleged crime scene of the Malaysian Airlines MH17 site in Ukraine and dispersing parachutes among the debris. Followed by a media statement, "ASIC reminds passengers that it is their responsibility to reach for a parachute in distressing situations for their own protection".

After the downing of Malaysian Airlines flight MH17 over Ukraine the Abbott government called for an impartial investigation, mindful to steer clear of vested interests.

ASIC need to steer clear of vested interests when it is carrying out a financial fraud investigation. ASIC is responsible for upholding the integrity of the financial market and a straightforward and scientific impartial investigation of a financial crime, remaining clear of vested interests from the big end of town and the union super.

Ordinary mum and dad investors should be cautioned that things are not what they appear in the market place, as Trio Capital demonstrated. ASIC may embrace the financial stability, prudence and public confidence in the financial system, but recommendations need to address the disregard ASIC has about the ordinary people sector.

The Trio crime was never properly solved and without information it is not possible to avoid another. Amendments and reforms were introduced after the Trio fraud, necessary to fix the weaknesses in the financial system, but these fixes were not acknowledged by the regulators. Instead one group of victims were simple blamed and implicated while the actions and omissions by the regulators and the weaknesses in the system were pushed aside.

The Revell-Reade scam (mentioned earlier) came under surveillance by UK's SFO between 2007 to 2014. During this investigation period newspapers in UK were prevented from influencing a potential trial and were advised not to carry damning pictures or stories about the alleged crime.[4] During this same period, ASIC provided Revell-Reade with "three financial services licences". [5] Probably the same licence Trio Capital operated under. It begs the question whether the media are more tightly regulated concerning the dissemination of information as apposed to ASIC giving away citizens hard earned savings to alleged criminals.

Thank You

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[4] http://www.thisismoney.co.uk/money/experts/article-2651479/TONY-HETHERINGTON-Jail-70m-fraudsters-exposed-Mail-Sunday.html Tony Hetherington: Jail for £70million boiler room share fraudsters we exposed By Tony Hetherington Published: 8 June 2014

[5] http://www.theage.com.au/business/asic-clears-duo-for-finance-licences-20100207-nkth.htmlStuart Washington 'ASIC clears duo for finance licences' February 8, 2010