

DRAFT TERMS OF REFERENCE – REVIEW OF REGULATORS ACTIONS IN INVESTIGATING TRIO CAPITAL

Background

The PJC report into the collapse of Trio raised concerns about the actions of the regulators, in particular:

- the length of time it took regulators to detect the fraud;
- that regulators may have missed 'red flags' indicating that something may have been amiss with Trio; key events;
- the quality of prudential reviews;
- APRA's apparent excessive regulatory forbearance; and
- the lack of communication between regulators.

Aim of the review

The purpose of the review is ensure that APRA and ASIC acted legally and with propriety and complied with their responsibilities under the legislation.

In conducting the review, APRA and ASIC will make available relevant documents and will make available relevant staff involved in the Trio investigations.

The review will investigate whether there are issues with the administration of reviews, including prudential and risk based reviews [and make findings/any necessary recommendations to address any identified shortcomings. This should include the identification of improved practices and processes.]

Scope

To examine APRA and ASIC's conduct in undertaking their regulatory responsibilities with respect to the Trio investigation. In particular, the review should examine the administrative responsibilities of the regulators in accordance with their respective enabling Acts.

The review should focus on:

- the conduct of the reviews (including prudential and risk based reviews) and whether they were adequate;
- whether the process of reviews achieved their intended purpose were sufficiently rigorous;
- whether the reviews were conducted in a timely manner;
- the operation of existing information sharing arrangements between regulators in relation to Trio;
- [whether the regulators acted reasonably and appropriately and within the expectations of investors and superannuation fund members.]

The review should consider the above issues in the context of the material available to the regulators at the time they were investigating Trio.

The review would not be expected to examine policy matters or make recommendations in relation to the regulatory framework, but rather focus on administrative practices and processes.

Timing

To enable the Government to respond by the end of the year, the report should be completed within [two] months.

Reporting

Comment s22 This may have only been 12 months depending on timing of share transactions between controlled entities (assuming the Bear Stearns investment was just poor decision). I'm not aware of any allegations that the fraud occurred in 2004/05. Didn't APRA have audit reports for 2005/07 and 2007/08? ASIC would say that it responded quickly to Hempton (in addition to existing red flag).

Comment s22 Can't expect APRA to detect fraud in an entity it does not regulate. The 'charges' against APRA relate to competence of Trio as corporate RSE.

Comment s22 Again, would not have

Comment s22 In relation to Trio as RSE

Comment s22 Does this include ATO as well?

Comment s22 I'm sure APRA and ASIC did not break any laws. I think the issue is with the effectiveness of action in relation to Trio.

Comment s22 Need to cover regulatory action in lead-up to detection. Are we covering the subsequent investigation as well? This is an important threshold issue.

Comment s22 See comment above.

Comment s22 Not sure we can ask this – as we don't know what these are?

The report should be provided to APRA and ASIC. [The contents of the report may be made public and may be provided to the Government.]