

## **Regulation of Large Retiree and Future Retiree Funds**

Letters to the Editor  
BRW

Dear Editor

Having my own self-managed fund, I note that your article in BRW BT's Crossing of the Abyss echoed a recent letter I sent to Joe Hockey, and concerns I expressed to Rob Ferguson when BT was a corporate football a month ago, because I was a BT investor.

My concerns also arise from recent experience I have had in an investor's committee (elected under federal corporations law) set up to look after investors, many of them old, infirm and of limited means, for whom a failed mortgage broker held beneficial interests in group mortgages. These people naturally are looking at alternate investments and these include the big range of pooled investment funds now available and growing daily. They include bank guaranteed schemes based in the Cook Is tax haven with links to the Bermuda tax haven.

A very large number of Australians now have their future tied up in these large funds, so effective and continuing audit of their management over many years becomes crucial. They have in large degree replaced the banks. As the BT saga illustrated, to treat them like any other company subject to a corporate takeover, could have disastrous repercussions. Their critical points are loss of investor confidence (causing a run) and loss of key senior management. It is tempting to think that a mutual fund, as NM and AMP were, provides greater protection of investor funds against corporate takeover, but the head of NRMA has described how easy that could be. Given the difficulties we had in unravelling the beneficial interests of Just 400 investors, when I started looking at custodial services for private funds offered by some financial advisers recently, I tried to imagine what it would be like to sort out if something went wrong with their systems or management, especially where they buy into wholesale funds, where the investor funds must be held beneficially. One custodial service said it didn't talk directly to adviser's clients, even though investors have been repeatedly warned not to hand over large sums of money without a thorough check. This custodial service holds a billion dollars on \$5m professional liability (a little more than for my small business) for any one claim, Another service, more willing to talk, carries \$50m indemnity for any one claim on holdings of four billion.

Problems can arise from poor management, or from deliberate misfeasance. Professional indemnity insurance will cover negligence, but not deliberate misfeasance. Only a fidelity can do that. I am not reassured about federal government prudential regulation of these funds given that ASIC staff in the Perth office have been halved even though the Managed Investments Act has been introduced. (APRA notwithstanding).

In relation to misfeasance I believe a national fidelity fund is needed. We owe young people today setting aside savings and those making super levy contributions an A grade guarantee that it will be there when they want it.

I think we have some way to go locally in financial services regulation before we race off inviting more financial institutions here.

Yours sincerely

Geoff Taylor

26<sup>th</sup> July 1999

Also need independently held lists of fund investors.

**COPY**

Mr. Joe Hockey  
Minister for Finance.

**SALE OF BT and SUPER INVESTMENTS THREAT**

De Mr Hockey,

I recently wrote to you about pooled mortgages and the Global debacle. Of more concern and of potentially far greater impact given the scale of the funds pooled is the corporate football that BT (in which my family and I venture to say many others have investments) has become.

A second issue again in the context of Deutsche Bank is the endorsement of Flexiplan as a way to appoint a trustee to take over the management of small private super funds. Deutsche have told me that in a due diligence they [...] on Flexiplan it got the best at 69%. Deutsche's gaming investments manager is also advocating Australia move into e-betting, which is probably not all that dissimilar to the activities of high risk hedge funds.

Given the lack of a fidelity fund and the \$50000 bond which was required to be posted in WA to be a mortgage broker handling \$62m of investors money, what bonds and what fidelity fund exist for managers like Flexiplan or BT if their management fails? Users of Flexiplan must convert existing shares into beneficially held shares held by Perpetual Trustees at present, although under the MI Act changes as explained to me by ASIC on Friday, Flexiplan becomes both promoter and trustee, just as BT has. In the case of Global, when the crunch came, at least most mortgage lenders had recourse to a land title as an independent negotiable instrument. What happens to the beneficial owners of shares in Flexiplan in the event of corporate failure? They would have all their eggs in one basket, and the same problem, many times magnified, of identifying other investors so that they could take joint action. In relation to BT, probably the most critical crunch point is continuing first class management. At the moment this very much looks under threat. As the Minister responsible I ask what action you intend to take to protect a large number of existing and future superannuants with funds in BT. A debacle there would make the Global and Grubb debacles small time indeed.

In this context one must seriously question:

- (a) the extent to which foreign ownership of key funds like this ( and e.g NML, and MMI) is desirable from the point of view of Australian government control
- (b) the conversion of mutual funds holding Australians savings into public companies subject to the risks that the present BT takeover has brought to the surface.

Thankyou

Yours sincerely  
Geoff Taylor