

LETTER TO: The Minister of Commerce,

Copied to:

The Prime Minister, The Minister of Justice

Retirement Commissioner (Diane Maxwell)

LETTER FROM: Ross Asset Management Investors Group (RAMIG)

Care of: Bruce Tichbon, Email bruce@rosssupport.co.nz

DATE 24/9/14

Dear Sir/Madam,

This letter is written on behalf of the 400+ members of RAMIG. A draft has been circulated to all RAMIG members for comment and input, prior to this final copy being sent to you.

The RAM debacle is but one of many financial market disasters that have befallen the people of NZ in recent years, and collectively these disasters have greatly damaged the financial investment markets, destroyed investor confidence, and needlessly ruined the lives of far too many investors who would have been spared so much agony if NZ had better and fairer control of its financial markets. Worst hit have been widows, retired couples and small investors.

The Scale of the Problems – The Reserve Bank states that 45 NZ finance companies collapsed in the 4 years to mid-2010, destroying about \$6 billion of investments. Only a small percentage of the lost money has been recovered in most cases. The scale of these losses is huge, about 25% of the value of the current NZ superannuation fund.

171,000 investors lost money in the recent finance collapses, showing that the immense suffering we have seen caused by RAM is but a drop in the bucket. Investor confidence measuring only a miserable 59% in a recent FMA survey (it must be made better than 90%). This lack of confidence is reflected in the incredibly low levels of investment in the NZ financial markets, helping to drive excessive investment into property which for now ranks in people's minds as a far lower risk investment, with far better recovery if things go wrong. It is hardly surprising that listed capital in Australia, as a proportion of GDP, is three times higher than NZ.

Robbed Investors Are Subject to Extreme Indignity – Not only have so many investors been robbed of huge sums, in many cases the result of their life's work, but the indignities continue after that.

Fraudsters seem to get incredibly light sentences in relation to the size of their crimes [Comment 1 below], and they are often able to negotiate secret deals with the authorities which seem to get them off the hook in most instances. Experience shows these secret deals with fraudsters or other affected parties are not a sign of pragmatism or cost effective outcomes, but a sign of a weak

regulatory and property rights regime that is generally incapable of delivering transparency and a fair and just outcome to robbed investors.

Fraudsters seem to be often able to retain significant assets, such as homes worth millions of dollars [Comment 2 below]. Fraudsters' property rights seem to be protected (as well as wives, and hence the fraudster, in the case of David Ross), whereas the property rights of their robbed investors seem to be too often destroyed, particularly by the Companies Act 2003.

Recovery rates for robbed investors have been obscenely low (typically 10-15%), taken years, and fees from receivers and liquidators (that investors must pay) are typically in the many millions of dollars. Investors seem abandoned by the finance industry, which seems to take little or no part in tidying up the messes they help to create.

The indignity for RAM investors goes on and on. Despite warnings being given to the authorities 3 years before the collapse of RAM, no action was taken. RAM investors it seems must pay tax on the money stolen from them. David Ross was given enormous credibility when the FMA licensed him as a financial adviser, a qualification that proved to be tragically superficial. Basic information about what really went on is withheld from investors and the media. Further, because a comprehensive forensic analysis of David Ross's business activities has not been done, there is the possibility that any hidden money has not been found, and will never be recovered.

We Want a Fair and Just Outcome – There are crippling problems with unwinding the RAM debacle that demand some form of action from government.

We have a confusing situation because RAM investors have received so little information to inform them what is really going on. However, from events and information supplied to date it is obvious that the bulk of the money stolen by David Ross lies in the hands of the investors who made a profit out of the RAM fraud. We have also been informed by the liquidator that there is no NZ law that ensures victims can effectively reclaim a reasonable proportion of their money from those who received the stolen money. The recipients of the stolen money are known to the authorities, the exact sums paid out are known to the authorities and when they were paid out is known to the authorities.

The principal test required for the return of money to the person it was stolen from seems to be that the recipient had knowledge the money was obtained illegitimately. The test is highly limited, the claw back period potentially only 2 years (when the RAM Ponzi lasted 20 years) and the amount that is expected to be recovered a tiny fraction of the \$115 million that is understood to be stolen.

Please picture the position of investors who Ross encouraged to invest money so that he could immediately pay out others. It seems if it cannot be proven the recipient had knowledge, then the property rights and ownership of the losing investor seem destroyed by slight of law. This unfair and unjust situation seems to be created principally by the Companies Act 2003, which has transferred ownership of the stolen investments to David Ross's company, to redistribute largely as David Ross chose.

We must ask why government has effectively destroyed our property rights in this way, and does the government support the fraudulent transfer of one party's assets to another party without

reasonable hope of recovery? Why is there no law in this country to reasonably unwind a Ponzi in a fair and just manner? The injustice that has been created and not addressed is profound.

Lack of Industry Assistance – It is shocking to investors that the finance industry does not assist in unwinding messes like the RAM Ponzi. We are aware that the USA has had legislation in place for 44 years (the Securities Investor Protection Act 1970 or SIPA) which requires an industry fidelity fund to help unwind frauds and failures. A lawyer's fidelity fund operates in NZ under the Lawyers and Conveyancers Act 2006

SIPA also provides insurance cover to small investors. The USA clearly aimed the legislation at protecting 'widows, retired couples and small investors'. These same investors seem to have been ignored in this country, and the tragic results of this neglect are evident in the financial carnage that has occurred recently, and the low levels of investment and investor confidence in NZ.

It is chilling that the Madoff investors in the USA have been told they can expect to recover almost all of the stolen money (US\$18 billion). The US has an ambulance at the bottom of the cliff (SIPA) that is working well, greatly highlighting the lack of such investor protection legislation in NZ.

Are NZ Investors Protected From the Next Big Bust? – Knowing that major financial collapses now occur every decade or so we must anticipate that the next big one will happen in roughly 4 years' time (about 2018 - 10 years after the Global Financial Crisis), and that another rash of financial collapses will follow. The NZ government has put in place the Financial Markets Conduct Act 2013, apparently as a 'fence at the top of the cliff' but what assurance can the government give that it will really protect investors, or will it simply move fraudsters to other mechanisms, leaving widows and retired couples to be subject to similar disasters yet again. We note that similar 'top of the cliff' legislation in the US (Sarbanes Oxley Act 2002) failed to protect against the GFC and stop/detect the Madoff Ponzi or other frauds. Auditors have consistently failed to detect fraud, usually no one finds out till the fraudster runs out of money (as with Ross and Madoff). Finance companies in NZ that collapsed in the 2008 bust were audited but the auditors failed to detect the problems, and the auditors have been sued extensively (eg with the auditors Strategic Finance and Capital and Merchant Finance), although these provided little relief to investors.

In summary we wish to ask you the following questions please?:

1* Are you satisfied that NZ has appropriate legislation to recover a realistic amount of investor's stolen money following a Ponzi scheme such as RAM, and provide a fair and just outcome? What is a reasonable claw back period (say 6 years)?

2* Can you please tell us what you consider a fair and just unwinding mechanism is for a Ponzi in NZ, particularly in terms of what should happen to money stolen from one investor and given to another by the fraudster? Do you consider it fair and just that those investors who have made money may be able to keep their identity and the stolen amounts they have gained secret from the public?

3* Can you please explain why the government has apparently destroyed the property rights of investors, leaving them potentially unable to recover their stolen money?

4* Do you consider the proportions of money recovered from the many collapses is adequate, and that the recovery fees charged to investors is appropriate for the recoveries achieved?

5* Can you please explain why NZ does not have legislation similar to what has been in place in USA for 44 years, to protect 'widows, retired couples and small investors'? Why does NZ still dump the problems of financial collapses onto victimised investors and let the finance industry for the most part walk away?

6* Do you appreciate the crisis for investors in NZ that is caused by the instability of the financial markets, and the poor recovery and weak protection regime for the large number of NZ investors who are impacted by financial failures and fraud?

7* Why have RAM investors been made to wait nearly 2 years to discover they have no property rights, and there is no proper Ponzi law in NZ? We are forced to pay millions for professionals and agencies who should have told us this information on day one.

8* Can we ask that you initiate an immediate independent investigation of the issues raised.

David Ross is no longer the problem. The real problems now are the unfair and ineffective NZ regulatory environment, which greatly increases effective investor risk. Liquidators cannot solve these problems, and waiting more years to prove this is damaging to the robbed investors.

Financial structures and safeguards in NZ are not sufficiently robust to support a modern economy, and RAM and the many other fraud cases are surely proof of this.

Please act now to solve the problems and restore investor confidence. We await your reply with interest.

Yours sincerely,

Bruce Tichbon

For Ross Asset Management Investors Group

Comment 1 – David Ross received a sentence of 10 years 10 months (of which he will probably serve on half) while Bernard Madoff, who served a comparable crime for the size of country, received a sentence of 150 years.

Comment 2 – David Ross appears to have retained access to a family home worth approximately \$3/4 million. In the case of the directors of Strategic Finance, which lost investors \$368 m (16.1% recovered) one director retains a house worth \$7.1m and another retains a house worth 4.1m and a third director retains a house worth \$1.95 m.