

Our Ref: ENF2014/7956

Your Ref: 154

16 May 2014

Dear [REDACTED]

Request under the Freedom of Information Act 1982 for access to documents

I refer to your request under the Freedom of Information Act 1982 (FOI Act) received by this office on 21 April 2014 in which you sought:

ASIC's preparation material and key contributors in finding extent of losses incurred in Trio Capital and the losses due to fraud and the losses due to market conditions.

I am the authorised decision-maker for the purposes of section 23 of the FOI Act.

Decision

ASIC does not have documents which categorise "the losses due to fraud and the losses due to market conditions".

I have identified a document which comes within the scope of part of your request. I attach statement of facts of Shawn Darrell Richard dated 3 December 2010, which sets out details of Shawn Richard's misconduct and the financial consequences of that misconduct.

Review Rights

I provide you with the following information as required by section 26 of the FOI Act.

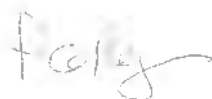
In the event that you are dissatisfied with the decision:

You may, within 30 days after the day on which you have been notified of this decision, apply in writing to ASIC for a review of my decision by another ASIC officer under section 54B of the FOI Act. This request should be addressed to me or to the Senior Manager, Administrative Law GPO Box 9827 SYDNEY or by email to foirequest@asic.gov.au

You may apply in writing to the Australian Information Commissioner for a review of my decision under section 54N of the FOI Act. Correspondence should be addressed to the Office of the Australian Information Commissioner at GPO Box 2999 Canberra ACT 2601 OR GPO Box 5218 Sydney NSW 2001.

You may lodge a complaint to the Australian Information Commissioner in respect to the conduct of ASIC in the handling of this request. Correspondence should be addressed to the Office of the Australian Information Commissioner - GPO Box 2999 Canberra ACT 2601 OR GPO Box 5218 Sydney NSW 2001 GPO Box 5218 Sydney NSW 2001.

Yours faithfully



Paula O'Regan
(Authorised decision-maker under subsection 23(1) of the FOI Act)
for the Australian Securities and Investments Commission

Statement of Shawn Darrell Richard

I, Shawn Darrell Richard, of Unit 1, 100 Bower Street, Manly NSW 2095 say as follows

- 1 Attached and marked "A" is a Statement of Facts relating to the offences to which I admit.
- 2 I have read and understand the facts which are asserted in the document marked "A".
- 3 I admit the truth of the facts asserted in the document marked "A".
- 4 I understand that the Statement of Facts marked "A" will be tendered by the Crown as the factual basis relied upon to establish my guilt in respect of the offences against s1041G of the *Corporations Act 2001* appearing in the document marked "A" and as the basis for my admitting the offence against s1041E of the *Corporations Act 2001* also appearing in the document marked "A".
- 5 I understand that a court attendance notice will be filed in the Local Court of New South Wales containing the three charges referred to in the document marked "B". I also understand that in the Local Court of New South Wales, in relation to the charge against s1041E of the *Corporations Act 2001*, a certificate pursuant to s166 of the *Criminal Procedure Act 1986 (NSW)* will be filed identifying that charge as a related matter and that upon my arraignment for sentence in a superior court on the two charges against s1041G of the *Corporations Act 2001*, the charge against s1041E will be placed on a schedule pursuant to s16BA of the *Crimes Act 1914*.
- 6 The charges against s1041G of the *Corporations Act 2001* identified in the document marked "B" are the charges to which I intend pleading guilty in the Local Court of New South Wales and upon arraignment in a superior court. The charge against s1041E of the *Corporations Act 2001* identified in the document marked "B" is the charge which I intend to admit in the Local Court of New South Wales which will be placed on a schedule pursuant to s16BA of the *Crimes Act 1914* upon my arraignment in a superior court.
- 7 I make these admissions having received legal advice.
- 8 I understand the consequences of making these admissions and that they can be tendered as evidence against me.
- 9 I have executed this document and made these admissions freely and voluntarily and acknowledge that no inducement has been held out to me to execute it or to make these admissions.


Shawn Darrell Richard


Witness

Dated:

3 December 2010

Glen Uncomb

"A"

SHAWN DARRELL RICHARD

STATEMENT OF FACTS

NOTE:

A summary of the Key Entities appears behind Tab 1.

All references to dollar figures in the Statement of Facts are references to Australian dollars unless indicated otherwise.

OVERVIEW

1. At all relevant times:

- a. Shawn Darrell Richard ("**Richard**") was carrying on a financial services business. He did this in a number of different capacities, namely as:
 - (i) a director of Astarra Asset Management Pty Ltd ("**AAM**"), an authorised representative of Wright Global Investments Pty Ltd ("**WGI**") and Trio Capital Ltd ("**Trio**");
 - (ii) a director or officer of Astarra Funds Management Pty Ltd ("**AFM**"), Trio and WGI;
 - (iii) a responsible officer for Trio and WGI;
 - (iv) an agent for Trio, and
 - (v) the investment manager of the Astarra Strategic Fund ("**ASF**").
- b. In carrying out his duties in respect to the capacities specified in (a) above, Richard acted under the ultimate control and instruction of Jack W. Flader ("**Flader**"), a US citizen based in Hong Kong.
- c. In order to facilitate the Scheme defined in paragraph 2 below, Richard represented himself to investors as being the controller of Trio, WGI and AAM, in circumstances where Richard was aware that these representations were false in that Flader was the ultimate controller of these entities.

2. From July 2004 onwards, Richard knowingly put into effect Flader's instructions relating to the operation of a scheme ("**the Scheme**") whereby Richard used his positions in respect to AAM, Trio, WGI and AFM, to arrange the transfer of Australian investors' monies from managed investment schemes and superannuation funds (collectively the "**Trio Managed Funds**") for which Trio was the responsible entity or trustee, respectively, to overseas funds controlled by Flader, namely:

- a. Exploration Fund Ltd ("**Exploration Fund**");
- b. Pacific Capital Multi-Arbitrage Fund Ltd ("**Pacific Fund**");
- c. SBS Dynamic Opportunities Fund Limited ("**SBS Fund**"), and
- d. Sierra Multi-Strategy Fund Ltd ("**Sierra Fund**"),
(collectively the "**Flader Controlled Funds**")

in order to purchase shares in US companies ("**US Shares**") from foreign companies controlled by Flader ("**Flader Vendor Companies**"), at prices which realised significant profits for the Flader Vendor Companies.

- 3 In furtherance of the Scheme, AAM received over \$5.3 million from the operation of the Scheme and Richard received over \$1.3 million in payments for participating in the Scheme. The payments to Richard were in addition to his disclosed net annual salary of \$113,426 paid to him by AFM.
- 4 To date, the liquidators of ASF have been unable to recover any of the Trio Managed Funds that were invested with the Flader Controlled Funds.

Investment in Flader Controlled Funds

- 5 At all relevant times the only monies invested into the Flader Controlled Funds were monies sourced from the Trio Managed Funds, with the exception of two investors who made a direct investment into the Exploration Fund through Richard, namely Australasian Conference Association Superannuation Trust – Australia ("**ACAST**") and the Australian Baseball Federation Inc.
- 6 The prices of the US Shares purchased by the Flader Controlled Funds were quoted on the Over-the-Counter Bulletin Board ("**OTCBB**") or 'Pink Sheets' which are both electronic quotation systems for some unregulated US equity securities not listed on the NASDAQ stock exchange or a national securities exchange.
- 7 Shares traded in such markets as OTCBB and Pink Sheets are usually thinly traded microcap stocks and are generally avoided by both retail and institutional investors. These share prices have the potential to be easily manipulated and there exists a potential for fraud.
- 8 The US Shares purchased by the Flader Controlled Funds were often restricted stock. Restricted stock is not fully transferrable until certain conditions have been satisfied and as a consequence it typically sells at a discount from the market for unrestricted stock.

Loans from Flader Controlled Funds

- 9 In furtherance of the Scheme a large portion of the profits realised from the sales of the US Shares by the Flader Vendor Companies to the Flader Controlled Funds was used to fund the businesses of Trio, WGI, AFM and AAM, by way of loans from other companies controlled by Flader (the "**Funding Companies**").
10. Richard was aware that the monies being loaned to Trio, WGI, AFM and AAM by the Funding Companies comprised part of the monies that had been invested by the Trio Managed Funds into the Flader Controlled Funds

Richard's misleading conduct and non-disclosures to investors, Trio, AAM, WGI, AFM and ASF

11. In his dealings with the auditors of Trio, WGI, AFM and AAM, Richard also falsely represented that he controlled the Funding Companies loaning the monies to Trio, WGI, AFM and AAM, in circumstances where he was aware that these companies were actually controlled by Flader.
12. At no relevant time did Richard disclose to investors in the Trio Managed Funds or to Trio, the nature of his relationship with Flader, the existence of the Scheme, that he was personally benefiting from the operation of the Scheme or that he was operating a personal bank account in Liechtenstein in order to receive personal payments from the operation of the Scheme and to avoid disclosure to these parties. Some of the payments received into Richard's overseas bank account were subsequently used in furtherance of the Scheme.
13. When engaging in email correspondence concerning:
 - a. dealings in shares involving the Flader Vendor Companies, and
 - b. the Flader Controlled Funds.

Richard used email addresses that were not connected with Trio, WGI, AFM and AAM, including the email address shawny@ekit.com ("**Ekit Address**") and shawn_richard@hotmail.com ("**Hotmail Address**") in order to avoid disclosure of this correspondence from these entities.

14. Furthermore, following concerns raised by Trio's investment committee about the Trio Managed Funds' exposure to a particular Flader Controlled Fund, the Exploration Fund, and a subsequent ban in August 2006 placed by that committee upon further investment in the Exploration Fund, Richard participated in the creation of 3 new funds, namely SBS Fund, Sierra Fund and the Pacific Fund (collectively "**the New Funds**") all of which were also controlled by Flader.
15. In furtherance of the Scheme, from November 2006 onwards, Richard misled Trio's investment committee and ASF investors in respect to the nature of the investments being made on behalf of ASF by representing that he was diversifying the ASF's investment portfolio by arranging for ASF to obtain financial exposure to the New Funds which he represented were under the control of different investment managers, in circumstances where he was aware that, like the Exploration Fund, the New Funds were all controlled by Flader and they all held US Shares, derivatives, foreign exchange agreements and fixed interest investments purchased through dealings with Flader related companies.
16. Also, between at least April 2007 to 5 October 2009 Richard was aware that the assets held by the Flader Controlled Funds, in particular the Exploration Fund, were illiquid, of questionable value and that it was necessary for new monies from ASF to be made available in order for the Exploration Fund to meet redemption requests.

17. Despite Richard's knowledge of both the asset composition and the illiquidity of the assets held by the Flader Controlled Funds, which were of questionable value, in furtherance of the Scheme Richard:
 - a. arranged the transfer of new monies from the ASF into the New Funds, knowing that some of these monies were going to be used to enable the Exploration Fund to meet its outstanding redemption requests; and
 - b. arranged for the ASF to purchase shares in the Exploration Fund directly from a party who wanted to redeem their investment from that fund.
18. Richard also knew that a substantial portion of the value of the Flader Controlled Funds was attributable to the derivatives, foreign exchange agreements and fixed interest investments (collectively referred to as "**Non-equity Investments**") held by the funds and that some of these counterparties to these financial instruments were Flader Vendor Companies or another of the Flader Controlled Funds.
19. AAM and Richard did not take any steps to verify whether the financial instruments setting up these Non-equity Investments had ever been executed or whether the counterparties to these instruments had the financial capacity to honour their obligations if called upon.
20. Furthermore, Richard knew that the administrators for the Flader Controlled Funds were also under Flader's control and he also knew that at no time were the assets held by these funds independently valued.
21. As a result of Richard's awareness of the operation of the Scheme, the illiquidity of the Flader Controlled Funds and the related party transactions between Flader Vendor Companies and the Flader Controlled Funds, Richard knew, from at least 10 April 2007, that the valuations of the Flader Controlled Funds provided to Trio were materially misleading.
22. Furthermore, Richard made materially misleading statements about AAM's procedures employed in respect to the ASF in the allocation of assets, selection of underlying investment managers and the conduct of due diligence and monitoring, in circumstances where he knew these procedures were not carried out.

ASF Investment Structure

23. From 15 February 2006, ASF purchased financial exposure to offshore based funds by investing in deferred purchase agreements ("**DPAs**") with EMA, a special purpose vehicle incorporated in the British Virgin Islands specifically for the purpose of entering into DPAs with ASF.
24. The ASF made investments with EMA via agreements titled Master Deferred Purchase Agreement ("**Master DPA**") and Supplemental Deferred Purchase

Agreements ("**Supplemental DPAs**"). Trio obtained independent professional advice in respect to the investment structure.

25. Each Supplemental DPA was prepared by and executed by AAM and then sent to EMA for execution.
26. Each Supplemental DPA identified the underlying asset (the "**Reference Asset**") that ASF was purchasing a financial exposure to and the dollar amount of that exposure. In practical terms, the Reference Asset and exposure for each Supplemental DPA was recorded as shares in an identified underlying fund for a stipulated total purchase price, where the total purchase price was the amount of ASF monies being invested under that particular Supplemental DPA.
27. Under the ASF investment structure, in accordance with independent professional advice, ASF did not obtain a legal entitlement to the Reference Asset named in the Supplemental DPAs, instead AAM as investment manager of ASF and agent for Trio obtained a contractual right to require EMA to deliver the 'Delivery Asset' (defined as units in a Trio managed investment scheme that had AAM as investment manager and essentially the same mandate as the ASF) upon completion of each individual Supplemental DPA contract.
28. The value of the Delivery Asset was to be determined by the value of the Reference Asset, which in turn was to be calculated by reference to the date that AAM notified EMA that it wanted to complete a specific Supplemental DPA contract.
29. After execution of a Supplemental DPA, Trio instructed the relevant custodian for the ASF to transfer funds into an account in the name of EMA held with Standard Chartered Bank in Hong Kong ("**EMA's Bank Account**").
30. Before the Master DPA was executed, between 9 September 2005 (the date that ASF was registered) and 15 February 2006 (the date the Master DPA was executed), Trio had made investments on behalf of the ASF by directly purchasing units in the underlying funds, on the instructions of Richard with the approval of Trio.
31. There were no audited accounts ever prepared for EMA. Draft audited accounts of EMA for the period 3 January 2006 until 30 June 2009 were prepared by a Hong Kong based accounting firm but this audit was not completed.
32. Prior to about 1 June 2006 EMA's administration services, including custodial services and the operation of EMA's Bank Account, were provided to EMA by Zetland Financial Group Ltd. At that time Flader held a senior management position with this company and oversaw the management of EMA's affairs.
33. After about 1 June 2006 Flader ceased to be employed by Zetland Financial Group Ltd and he then established Global Consultants and Services Ltd ("**GCSL**"). After GCSL's incorporation it then took over responsibility for EMA's administration services, including custodial services and the operation of

EMA's Bank Account.

34. GCSL is a subsidiary of the GCSL Group of Companies Ltd (which together with its other subsidiaries is referred to as the "**GCSL Group**").
35. The GCSL Group is in the business of creating international corporate structures and has offices in Hong Kong, Anguilla, Belize, Cook Islands, Samoa, Shanghai and Singapore. The GCSL Group provides a range of services including the incorporation of companies, company secretarial services, fiduciary services and administration services.
36. At all relevant times Flader was the Chief Executive officer and Chairman of the GCSL Group.

Investment in Underlying Funds

37. Upon receipt of the monies from ASF, EMA purchased shares in the underlying funds, being the Reference Assets identified in the Supplemental DPAs, and Richard was aware of this.
38. The underlying funds that EMA purchased shares in were:
 - a. Exploration Fund, a fund domiciled in St Lucia;
 - b. SBS Fund, a fund domiciled in the Cayman Islands;
 - c. Pacific Fund, a fund domiciled in the Cayman Islands;
 - d. Sierra Fund, a fund domiciled in Anguilla;
 - e. Atlantis Capital Markets Cayman LDC, a fund domiciled in the Cayman Islands, and
 - f. Tailwind Investment Fund Ltd, a fund domiciled in the Cayman Islands.

As previously indicated, the funds referred to in the above subparagraphs (a) to (d) inclusive are collectively referred to as the "**Flader Controlled Funds**".

39. Out of the \$52,605,494 of ASF monies invested directly into underlying funds by EMA (excluding an in-specie transfer of Exploration Fund shares to the value of \$55,930,486 from other Trio Managed Funds into ASF which occurred on 30 June 2009), \$45,473,494 (86.4%) was invested into the Flader Controlled Funds.
40. Flader and Richard both participated in the creation of the Flader Controlled Funds.
41. The offering memorandum for each of the Exploration Fund, Pacific Fund and SBS Fund were all drafted with Richard's direction in furtherance of the

Scheme

42. At all relevant times the GCSL Group was the custodian of the assets of the Flader Controlled Funds.
43. At all relevant times the Flader Controlled Funds were controlled by Flader, and the fund directors, investment managers and administrators all acted under Flader's instruction.
44. The Exploration Fund was established as an exclusive investment vehicle for the Trio Managed Funds.
45. The only parties who ever made investments in the Exploration Fund were EMA, the Trio Managed Funds (including the ASF) and two other entities, namely the Australian Baseball Federation Inc and ACAST.
46. Between July 2004 and October 2006 Trio Managed Funds invested US\$29,326,817 in Exploration Fund shares. This sum included \$10,573,494 of ASF monies that was invested by EMA in relation to 5 Supplemental DPAs between March 2006 and October 2006.
47. From 1 November 2006 until 30 September 2009, on Richard's direction, ASF monies were sent to EMA in accordance with Supplemental DPAs as follows:
 - a. 9 Supplemental DPAs, with the Reference Asset being Sierra Fund shares, to a total value of \$7.4 million;
 - b. 14 Supplemental DPAs, with the Reference Asset being shares in Pacific Capital Markets Cayman LDC, to a total value of \$14.2 million, and
 - c. 13 Supplemental DPAs, with the Reference Asset being SBS Fund shares, to a total value of \$13.3 million.
48. Pacific Capital Markets Cayman LDC is a Cayman Islands company that is a different entity to the Pacific Fund and never traded. Despite the 14 Supplemental DPAs which named shares in Pacific Capital Markets Cayman LDC as the Reference Asset, the \$14.2 million provided to EMA under these Supplemental DPAs was instead used to purchase shares in the Pacific Fund.
49. The only party that ever made investments into the Sierra Fund, Pacific Fund or SBS Fund was EMA using ASF monies.
50. On around 27 August 2009, AAM requested that EMA change the Reference Asset in 9 Supplemental DPAs by substituting Sierra Fund shares (with an original purchase price of \$7.4 million) for Exploration Fund shares, pursuant to a Supplemental DPA dated 27 August 2009.
51. On 1 September 2009 the administrator for the Exploration Fund confirmed receipt of \$10,381,759 from EMA and the issue of 37,112 Exploration Fund shares valued at \$279.74 per unit (being of equivalent value). This total amount

represented the internally recorded value of the Sierra Fund shares held by EMA as at that date.

52. There were never audited accounts prepared for any of the Flader Controlled Funds. An accountant based in the US was engaged to prepare audited accounts for the Exploration Fund for the year ended 31 December 2008 but these accounts were never finalised.

CHARGE NO. 1: DISHONEST CONDUCT

S.1041G(1) OF THE CORPORATION ACT 2001 (CTH)

In contravention of subsection 1041G(1) of the *Corporations Act 2001 (Cth)* ("**Corporations Act**"), Richard in the course of carrying on a financial services business in Sydney, engaged in the dishonest conduct detailed in circumstances 'A' and 'B' below, where he arranged for over \$16.2 million of ASF and Astarra Superannuation Plan monies to be invested into Flader Controlled Funds in circumstances where AAM then received payments of over \$5.3 million to fund AAM's ongoing business in furtherance of the Scheme and Richard received payments of over \$1.3 million. To date, the liquidators of ASF have been unable to recover any of the ASF and Astarra Superannuation Plan monies invested into the Flader Controlled Funds.

CHARGE NO.1: CIRCUMSTANCE 'A'

In furtherance of the Scheme, on 15 November 2005 Richard, as agent for Trio and as a director of AAM, the investment manager of ASF, provided a financial service in that he arranged for ASF to deal in a financial product by applying for shares in the Exploration Fund to the value of \$3 million. Also, on 18 November 2005, Richard as agent for Trio and as a director of WGI, the investment manager of Astarra Superannuation Plan, provided a financial service in that he arranged for Astarra Superannuation Plan to deal in a financial product by applying for shares in the Exploration Fund to the value of \$3.559 million. In relation to these financial services provided by Richard, he engaged in dishonest conduct in that, at the times that he arranged for these investments by ASF and Astarra Superannuation Plan, respectively, he paid reckless disregard as to whether these investments were in the best interests of these entities as he knew that part of the \$6.559 million invested in Exploration Fund shares was to be used to purchase shares in Yarraman Winery Inc ("**Yarraman**") from Flader Vendor Companies, and that he was then to receive monies as a result of these investments. On about 14 December 2005 the Exploration Fund purchased Yarraman shares to the value of US\$1.75 million using part of the monies transferred on 15 and 18 November 2005. As a result of this share transaction and as a consequence of Richard having arranged for ASF and Astarra Superannuation Plan to invest a total of \$6.559 million in the Exploration Fund, Richard arranged a payment of US\$817,580 (about \$1,086,830 as at 14 December 2005) from a company controlled by Flader into a Curacao bank account from which he personally benefitted.

The payment of US\$817,580 was dishonestly received as Richard knowingly:

- (a) failed to avoid or otherwise disclose his conflict of interest in respect to investments in the Exploration Fund, contrary to the duty he owed to Trio as its agent;
- (b) did not act in the best interests of ASF or Astarra Superannuation Plan in arranging their investments in the Exploration Fund, contrary to the duties he owed to the members of these entities as the agent for Trio, and
- (c) profited from his position in relation to the affairs of Trio by his receipt of these payments, in circumstances where he did not disclose, and actively concealed these payment from Trio, contrary to the duty he owed to Trio as its agent.

A diagrammatic representation of these transactions are attached at Tab 2.

Relevant Background:

See paragraphs 12, 13 and 23 to 52 above.

Relevant Facts:

53. At all relevant times:

- a. Richard was a director of AAM and operated the business of AAM from premises in Sydney.
- b. Trio was the responsible entity for ASF, a scheme registered with the Australian Securities and Investments Commission on 9 September 2005, and had appointed AAM as the investment manager for ASF.
- c. Trio, as the responsible entity for ASF, owed ASF the duties outlined in section 601FC of the Corporation Act.
- d. Richard was represented as the ultimate beneficial owner of Trio.
- e. Richard was named as the responsible person in respect to Trio's AFS Licence.
- f. Richard, as a director of AAM, was also an agent for Trio, and owed Trio the common law duties implied by the agency relationship to avoid conflicts of interest and not to profit from his position in relation to the affairs of Trio, in circumstances where he had not first obtained the fully informed consent of Trio.
- g. Richard had the actual and ostensible authority to carry out investment management activities for ASF, on behalf of, and as agent for Trio, and did in fact engage in such activities in relation to the affairs of Trio.

- h. Trio's investment committee did not select the underlying investment managers or funds which were to be allocated ASF monies. This task was carried out by AAM.
54. Richard was also:
- a. a director of Trio until 15 November 2005, and
 - b. a member of Trio's investment committee until 29 November 2005
55. On 15 November 2005, Richard, in his capacity as agent for Trio and as a director of AAM, the investment manager of ASF, provided a financial service in that he arranged for ASF to deal in a financial product by applying for Exploration Fund shares to the value of \$3 million.
56. On 15 November 2005, on Richard's direction, the sum of \$3 million was transferred by ANZ, as custodian for ASF, to the bank account of the Exploration Fund in order to invest in Exploration Fund shares.
57. At all relevant times:
- a. Richard was a director of WGI and operated the business of WGI from premises in Sydney.
 - b. Trio was the trustee and custodian for Astarra Superannuation Plan, a superannuation fund, and had appointed WGI as one of the investment managers for Astarra Superannuation Plan.
 - c. Trio and WGI, as the trustee and investment manager of Astarra Superannuation Plan respectively, owed Astarra Superannuation Plan the duties outlined in Part 12 of the *Superannuation Industry (Supervision) Act 1993 (Cth)* ("SIS Act").
 - d. Richard, as a director of WGI, was also an agent for Trio, and owed Trio the common law duties implied by the agency relationship to avoid conflicts of interest and not to profit from his position in relation to the affairs of Trio, in circumstances where he had not first obtained the fully informed consent of Trio.
 - e. Richard had the actual and ostensible authority to carry out investment management activities for Astarra Superannuation Plan, on behalf of, and as agent for Trio, and did in fact engage in such activities in relation to the affairs of Trio.
 - f. Trio's investment committee met monthly in order to monitor the performance of investments made by Astarra Superannuation Plan and to decide which investment managers were to be allocated funds by Astarra Superannuation Plan for new investments.

58. On 18 November 2005, Richard, in his capacity as agent for Trio and as a director of WGI, the investment manager of Astarra Superannuation Plan, provided a financial service in that he arranged for Astarra Superannuation Plan to deal in a financial product by applying for Exploration Fund shares to the value of \$3.559 million.
59. On 18 November 2005, on Richard's direction, the sum of \$3.559 million was transferred by ANZ, as custodian for Astarra Superannuation Plan, to the bank account of the Exploration Fund in order to invest in Exploration Fund shares.
60. At all relevant times Richard was aware that companies controlled by Flader had obtained large shareholdings in Yarraman Winery Inc ("**Yarraman**") for very little consideration as a result of a funding agreement arranged by Flader.
61. On or about 14 December 2005 the Exploration Fund purchased 1,093,750 Yarraman shares from Flader Vendor Companies at a total of cost of US\$1,750,000.
62. On 14 December 2005 Richard was advised by email from Jacqueline Cheung ("**Cheung**"), who at the time of the email was employed by Zetland Financial Group Ltd, of the Exploration Fund's purchase of Yarraman shares totalling US\$1.75 million. The email advised Richard that monies received from the share sales were to be apportioned as follows:
- a. US\$105,000 (6% of the total) was to be paid to Carl Meerveld and Richard Bell both of whom were, at various times, directors of the Exploration Fund;
 - b. US\$4,950 was to be paid to 'Zetland O/S' (the ultimate recipient of these monies is not known), and
 - c. US\$817,580 was to be paid to Richard.
63. The apportionment of US\$817,580 represented 46.7% of the monies received from the total sale price of the Yarraman shares to the Exploration Fund on or about 14 December 2005.
64. On or about 14 December 2005, as a consequence of Richard having arranged for ASF and Astarra Superannuation Fund to invest a total of \$6.559 million in the Exploration Fund, Richard arranged a payment of US\$817,580 (about \$1,086,830 as at that date) from a company controlled by Flader into a Curacao bank account from which he personally benefitted.
65. At all relevant times, Richard knew that he had a conflict of interest in that:
- a. he had been involved in the creation of the Exploration Fund which had been set up in furtherance of the Scheme;
 - b. part of the \$6.559 million invested in the Exploration Fund by ASF and Astarra Superannuation Plan was to be used to purchase Yarraman shares.

from Flader Vendor Companies;

- c. after the purchase of these Yarraman shares by the Exploration Fund, monies were to be transferred to Richard or bank accounts under Richard's control by companies controlled by Flader, and
 - d. the purchase of the Yarraman shares by the Exploration Fund and the receipt of the US\$817,580 into a Curacao bank account from which he personally benefitted, were connected.
66. As a result of Richard's knowledge referred to in the preceding paragraph, when arranging the investments in the Exploration Fund by ASF and Astarra Superannuation Plan, he paid reckless disregard as to whether the investments into the Exploration Fund were in the best interests of ASF or Astarra Superannuation Plan.
67. At no time did Richard disclose to Trio
- a. his conflict of interest in respect to the investments in the Exploration Fund, or
 - b. that he personally received monies from companies controlled by Flader as a direct result of the investments by ASF and Astarra Superannuation Plan into the Exploration Fund.
68. At all relevant times, Richard avoided disclosing to Trio his receipt of the monies from companies controlled by Flader, through his use of private email accounts and overseas bank accounts which were not otherwise connected with AAM, Trio, WGI, AFM or ASF.

CHARGE NO.1: CIRCUMSTANCE 'B'

Between 1 July 2008 and 30 June 2009:

- (a) Richard, as agent for Trio and as a director of AAM, the investment manager of ASF, provided a financial service in that he arranged for ASF to deal in a financial product by entering into 13 separate Supplemental DPA's with EMA ("**Funding DPAs**") to the total value of \$9.65 million. In relation to this financial service provided by Richard to Trio, he engaged in dishonest conduct in that, at the time that he arranged for these investments by ASF, he paid reckless disregard as to whether these investments were in the best interests of ASF and he knew that part of the \$9.65 million was to be paid to AAM to fund AAM's ongoing business in furtherance of the Scheme and that he would personally receive approximately \$250,000 for his own personal benefit.
- (b) In accordance with the Funding DPAs, Trio authorised the transfer of \$9.65 million of ASF monies into a bank account controlled by GCSL.

- (c) Out of the \$9.65 million of ASF monies, Richard received at least \$606,042 into his bank account in Liechtenstein which he then transferred to AAM, and AAM directly received \$4,750,499 from GCSL (being \$5,356,541 in total).
- (d) Out of the ASF monies transferred to AAM by GCSL and Richard, Richard ultimately received \$252,794 for his own personal benefit.

The payments totalling \$5,356,541 to AAM, of which Richard personally received \$252,794 for his own personal benefit, were dishonestly received as Richard knowingly:

- (e) failed to avoid or otherwise disclose his conflict of interest in respect to the Funding DPAs, contrary to the duty he owed to Trio as its agent;
- (f) did not act in the best interests of ASF in arranging the Funding DPAs, contrary to the duties he owed to the members of ASF as the agent for Trio, and
- (g) profited from his position in relation to the affairs of Trio by his receipt of these payments, in circumstances where he did not disclose, and actively concealed, these payments from Trio, contrary to the duty he owed to Trio as its agent.

A diagrammatic representation of this transaction is attached at Tab 3.

Relevant Background:

See paragraphs 12, 13 and 23 to 52 above.

Relevant Facts:

- 69. Refer to paragraphs 53 and 54 above.
- 70. During the period 1 July 2008 to 30 June 2009, Richard, in his capacity as agent for Trio and as a director of AAM, the investment manager of ASF, provided a financial service in that he arranged for ASF to deal in a financial product by entering into 13 separate Supplemental DPA's with EMA ("**Funding DPAs**") to the total value of \$9,650,000. The Reference Assets identified in the Funding DPAs were shares in the Sierra Fund, Pacific Fund and SBS Fund.
- 71. At the time when he executed the Funding DPAs, Richard had a conflict of interest as he was aware that a portion of the ASF monies sent to EMA was then going to be paid to AAM (via EMA and GCSL) to fund AAM's ongoing business and that he was also to receive some funds for personal use.
- 72. As a result of Richard's knowledge referred to in the preceding paragraph, when arranging the Funding DPAs, he paid reckless disregard as to whether these investments were in the best interests of ASF.
- 73. Between 1 July 2008 to 30 June 2009

- a. AAM received \$4,750,499 directly from GCSL with the consent of Richard, and
- b. Richard received at least \$606,042 from companies controlled by Flader into Richard's LGT bank account in Liechtenstein

as a consequence of Richard having arranged the Funding DPAs (collectively the "AAM Monies").

- 74. In furtherance of the Scheme, between 1 July 2008 to 30 June 2009 Richard transferred to AAM the aforementioned \$606,042 he had received into his LGT bank account in Liechtenstein.
- 75. At all relevant times Richard was aware that the AAM Monies were derived from ASF investor funds that had been placed with EMA in accordance with the Funding DPAs.
- 76. From the AAM Monies, Richard authorised payments of at least \$252,794 which were for his own personal benefit, \$67,788 of which constituted rental payments for his personal residence.
- 77. At no time did Richard disclose to Trio or ASF:
 - a. his conflict of interest in respect to the Funding DPAs; or
 - b. that \$5,356,541 of the \$9.65 million in ASF monies paid to EMA pursuant to the Funding DPAs was transferred to AAM; or
 - c. that \$252,794 of the AAM Monies were used for his own personal benefit.
- 78. At all relevant times Richard avoided disclosing to Trio the receipt of the monies by AAM and himself, from GCSL and companies controlled by Flader through his use of private email accounts and his overseas bank account which were not otherwise connected with AAM, Trio, WGI, AFM or ASF

CHARGE NO.2: DISHONEST CONDUCT

S.1041G(1) OF THE CORPORATION ACT 2001 (CTH)

In contravention of subsection 1041G(1) of the Corporations Act, Richard in the course of carrying on a financial services business in Sydney, engaged in the dishonest conduct detailed in circumstances 'A' to 'D' below and arranged for over \$10.4 million of ASF monies to be invested into Flader Controlled Funds in furtherance of the Scheme, in circumstances where Richard knew that over \$9.7 million of those monies was to be used to purchase the assets of, or shares in, the Exploration Fund that were not otherwise convertible to cash. To date, the liquidators of ASF have been unable to recover any of the ASF monies invested into the Flader Controlled Funds.

CHARGE NO.2: CIRCUMSTANCE 'A'

In furtherance of the Scheme, on 8 October 2007 and 12 December 2007 Richard, as agent for Trio and as a director of AAM, the investment manager of ASF, provided financial services in that he arranged for ASF to deal in financial products by entering into 2 separate Supplemental DPA's with EMA to the value of \$1.5 million and \$2.2 million, respectively (totalling \$3.7 million) (the "**ACAST Redemption DPAs**"). From these ASF monies, on 12 October 2007 and 19 December 2007, payments of \$1,494,191 and \$1,655,488, respectively, (totalling \$3,149,679) were received by Mercer Investment Nominees Ltd in redemption of an investment made by the Australasian Conference Association Superannuation Trust – Australia ("**ACAST**") in the Exploration Fund.

In relation to these financial services provided by Richard, he acted dishonestly in that contrary to the interests of the ASF, he knew that most of the ASF monies transferred to EMA were to be used to meet the redemption request made by ACAST Pty Ltd, on behalf of ACAST, that had been outstanding since 10 April 2006 in respect to shares in the Exploration Fund, which shares were not otherwise convertible to cash if not for the ASF monies made available by the ACAST Redemption DPAs. Despite having this knowledge, Richard did not disclose this, or his conflict of interest in respect to the ACAST Redemption DPAs, to Trio or ASF. Furthermore, Richard paid reckless disregard as to whether the ACAST Redemption DPAs were in the best interests of ASF.

A diagrammatic representation of this transaction is attached at Tab 4.

Relevant Background:

See paragraphs 12, 13 and 23 to 54 above.

Relevant Facts:

79. At all relevant times ACAST Pty Ltd was the trustee for ACAST, a superannuation fund.
80. On 19 October 2005 ACAST made a \$3 million investment into the Exploration Fund.
81. On or prior to 24 October 2005 Richard was advised by email from Zetland Financial Group Ltd (a company previously associated with Flader that provided administration and custodial services), that the Exploration Fund had received US\$2,242,475 and that the balance in the account was US\$2,277,405. This sum of US\$2,242,475 represented the monies invested by ACAST into the Exploration Fund and Richard was aware of this.
82. As a result of the \$3 million investment by ACAST into the Exploration Fund, ACAST was allocated 15,827 Exploration Fund shares (the "**ACAST Investment**").

83. On 10 April 2006 ACAST Pty Ltd wanted to redeem all of the ACAST Investment and notified this intention to Richard (the "ACAST Investment Request").
84. On 10 May 2006 Richard sent an email to Carl Meerveld, a former director of the Exploration Fund, asking him to draft a letter in response to the ACAST Redemption Request and include a statement that:
- "...due to the fact that [ACAST's] investment is still recent and the fact that [Exploration Fund] are fully invested, that the implemented strategies will prevent [Exploration Fund] to provide ACAST with any liquidity until DEC at a minimum..." (sic)*
85. On or about 11 May 2006 ACAST received a letter from Professional Administration St Lucia Ltd ("PAL"), the administrator of the Exploration Fund at that time, which included the statement requested by Richard in the preceding paragraph.
86. On 29 June 2006 the holder of the ACAST investment was changed to Mercer Investment Nominees Ltd ("Mercer") as trustee of the Mercer Super Trust.
87. In about mid-October 2006, and again on 27 November 2006, Richard advised Mercer that the redemption of the ACAST Investment was expected to be processed around May/June 2007.
88. On 15 May 2007 Richard sent Mercer a portfolio valuation statement issued by PAL which valued the ACAST Investment, as at 30 April 2007, at \$3,876,956.
89. In May 2007 Richard advised Mercer that it should be receiving a redemption amount of \$1.5 million from the ACAST Investment in August 2007. Mercer did not receive any payment in respect to the ACAST Investment in August 2007.
90. On 12 September 2007 Richard advised Mercer that it should receive \$1.5 million in about 14 days as a part of the redemption of the ACAST Investment and that the balance of the redemption was to be paid in around late November 2007. Mercer did not receive any payment in respect to the ACAST Investment in September 2007.
91. On 8 October 2007 Richard, in his capacity as agent for Trio and as a director of AAM, the investment manager of ASF, provided a financial service in that he arranged for ASF to deal in a financial product by entering into a Supplemental DPA with EMA to the value of \$1.5 million, with the Reference Asset being SBS Fund shares. On 9 October 2007, in response to this Supplemental DPA, \$1.5 million was transferred to EMA's bank account.
92. On or about 12 October 2007, the SBS Fund purchased shares in Yarraman and IDate Corporation Inc ("IDate") at US\$2.20 per share and US\$1.00 per share, respectively, from the Exploration Fund for a total amount of US\$348,000, and

a further US\$997,700 was paid by the SBS Fund to Exploration Fund for future stock purchases.

93. No monies were received by Mercer in respect to the ACAST Investment redemption request until 12 October 2007. On that date US\$1,345,700 was paid into the Mercer Super Trust bank account by GCSL. The amount received into the Mercer Super Trust bank account was \$1,494,191.
94. The monies received by Mercer on 12 October 2007 were part of the same ASF monies that had been paid into EMA's bank account pursuant to the Supplemental DPA dated 8 October 2007 and Richard was aware of this fact.
95. On 2 November 2007 Mercer received from PAL the payment instructions and a redemption confirmation statement advising that 5,834 shares in the Exploration Fund had been redeemed by Mercer on 1 September 2007 at a price of US\$204.5520 per share.
96. On 7 December 2007 Mercer sent Richard a letter advising him that if the redemption of the ACAST Investment remained outstanding, Mercer may commence legal action.
97. On 12 December 2007 Richard, as agent for Trio and as a director of AAM, the investment manager of ASF, provided a financial service in that he arranged for ASF to deal in a financial product by entering into a Supplemental DPA with EMA to the value of \$2.2 million, with the Reference Asset being SBS Fund shares. On the same date, in response to this Supplemental DPA, \$2.2 million was transferred to EMA's bank account.
98. In December 2007, the SBS Fund purchased 1 million shares in IDate, at US\$1.25 per share, from the Exploration Fund for a total amount of US\$1,250,000.
99. On 19 December 2007 the Mercer Super Trust bank account received \$1,655,488 in final payment of the balance of the ACAST Investment.
100. The monies received by Mercer on 21 December 2007 were part of the same ASF monies that had been paid into EMA's bank account pursuant to the Supplemental DPA dated 12 December 2007 and Richard was aware that without these ASF monies the ACAST Investment was not otherwise convertible to cash.
101. At all relevant times between 8 October 2007 and 21 December 2007 Richard was aware that:
 - a. shares in the Exploration Fund were not otherwise convertible to cash without new monies being made available by ASF;
 - b. most of the \$3.7 million in ASF monies transferred to EMA pursuant to the ACAST Redemption DPAs was to be used to make payments to Mercer in

respect to the shares held in the Exploration Fund as part of the ACAST Investment;

- c. in order to make the payments to Mercer, part of the ASF monies were used to purchase otherwise illiquid assets from the Exploration Fund, namely Yarraman and IDate shares, and
 - d. if the Exploration Fund failed to redeem the ACAST Investment, it could jeopardise the ongoing operation of the Scheme described in paragraph 2 above.
102. As a result of Richard's knowledge referred to in the preceding paragraph, when arranging the ACAST Redemption DPAs, he paid reckless disregard as to whether these investments were in the best interests of ASF.
103. At no time did Richard disclose to Trio or ASF
- a. his conflict of interest in respect to the ACAST Redemption DPAs, or
 - b. that \$3,149,679 of the \$3.7 million in ASF monies paid to EMA pursuant to the ACAST Redemption DPAs was paid to redeem the ACAST Investment.

CHARGE NO.2: CIRCUMSTANCE 'B'

In furtherance of the Scheme, on 14 December 2007 Richard, as a director of AAM, provided a financial service to Mercer in that he arranged for Mercer to deal in a financial product, being the redemption of the ACAST Investment. In relation to this financial service provided by Richard, he engaged in dishonest conduct in that he made false representations to Mercer, in that he confirmed that the \$1,655,500 redemption value reflected the full value of the balance of the ACAST Investment in the Exploration Fund as at 30 November 2007, in circumstances where he knew that this amount was \$982,899 less than the value of the ACAST Investment as reflected in the internal records of the Exploration Fund (being \$2,638,399). Despite having this knowledge, Richard did not disclose this, or his conflict of interest in respect to the Exploration Fund, to Mercer

Relevant Background:

See paragraphs 12 and 13 above.

Relevant Facts:

104. On 12 December 2007
- a. Richard sent an email to Cheung, who at the time of the email was an employee of GCSL, instructing her to create a statement reflecting the amount of \$1,655,500 as the "net assets" of the ACAST Investment and "*Don't put amount of units or NAV*". On the same day Cheung emailed Richard a draft of the letter he had requested on PAL letterhead for his

review

- b. Cheung sent Richard an email stating, in part:

"It's not that good saying the balance as at 30 Nov is that equivalent AUD1.6m, it's much more prefer in the way (sic) that they accept to get that AUD1.6m for giving up their holdings.

May cause issue when do the audit." (sic)

105. On 13 December 2007 Richard sent an email to Mercer that attached a letter on PAL letterhead dated 12 December 2007 stating, in part:

"We are pleased to confirm the availability of the balance of assets held in your account for the amount of AUD \$1,655,500 (balance as at 30 November 2007)..

This final redemption of your holdings in the Exploration Fund Limited will be completed and your account closed at the date of money being transferred received (sic) by you.

Please sign and confirm the acceptance of the above..."

This equated to \$165.6656 per share for each of the remaining 9,993 Exploration Fund shares making up the remaining balance of the ACAST Investment.

106. Richard, in all his dealings with Mercer in respect to the redemption of the ACAST Investment, acted in his capacity as a director of AAM.
107. On 14 December 2007 Mercer sent an email to Richard asking how the final redemption amount of the ACAST Investment had been determined and seeking confirmation that Mercer was receiving the "true value and not discounted as this redemption is not being paid early".
108. On 14 December 2007 Richard sent an email response to Mercer's email referred to in the preceding paragraph which advised, in part, that:

"The final redemption amount which was communicated to you was simply the net value of the account as at Nov 30, 2007....

...the manager made the decision to redeem the full amount to Mercer immediately while redemption requests from other investors still remain on hold due to the current lack of liquidity.

In summary Mercer will receive the net and true value of it (sic) Nov 30 Valuation."

109. On 17 December 2007 Mercer signed the letter on PAL letterhead that had been sent by Richard on 13 December 2007, and forwarded a copy to Richard by

facsimile

110. At the time Richard sent the email of 14 December 2007 he was aware that the internal valuation records of the Exploration Fund valued the ACAST Investment at a price that was \$982,899 more than he was representing to Mercer and that his representation was false.
111. Portfolio valuations sent by PAL to other investors in the Exploration Fund in December 2007 represent that the price of the Exploration Fund shares as at 30 November 2007, as recorded in the internal valuation records, was \$264.0248 per share. This is over 37% more than the \$165.6656 per share that was paid to Mercer. Therefore Mercer was underpaid for the balance of the ACAST Investment by an amount of \$982,899.
112. In furtherance of the Scheme, at no time did Richard disclose to Mercer:
 - a. his conflict of interest in respect to the Exploration Fund, or
 - b. that the value of the balance of the ACAST Investment paid to Mercer was \$982,899 less than the value of the ACAST Investment as reflected in the internal records of the Exploration Fund.

CHARGE NO.2: CIRCUMSTANCE 'C'

In furtherance of the Scheme, between 22 May 2008 and 18 June 2008, Richard, as agent for Trio and as a director of AAM, the investment manager of ASF, provided financial services in that he arranged for ASF to deal in financial products by entering into 3 separate Supplemental DPA's with EMA to the total value of \$2.3 million ("ARP Redemption DPAs"). Out of the \$2.3 million of ASF monies transferred to EMA between 22 May 2008 and 18 June 2008, payments totalling \$2,157,900 were received by the ARP Growth Fund in redemption of its Exploration Fund shares, via Astarra Professional Pensions PST Super Fund and Astarra Professional PST Pensions Fund.

In relation to these financial services provided by Richard, he acted dishonestly in that contrary to the interests of ASF, he knew that part of the ASF monies transferred to EMA were to be used to make redemption payments to the ARP Growth Fund in respect to shares it held in the Exploration Fund, which shares were not otherwise convertible to cash. When arranging the ARP Redemption DPAs, Richard paid reckless disregard as to whether the ARP Redemption DPAs were in the best interests of ASF.

Relevant Background:

See paragraphs 12, 13, 23 to 54 and 79 to 112 above, as well as paragraphs 113 to 118 below.

113. On 21 November 2007, in order to meet the objectives of Trio's Investment Committee to reduce manager specific risk and marginally increase exposure to

traditional equity managers, Richard agreed at a meeting of Trio's Investment Committee that:

- a. a \$5 million redemption request was to be placed with the Exploration Fund, and
 - b. the monies redeemed were to be invested in a new fund (that was not one of the Flader Controlled Funds).
114. Richard did not submit the \$5 million redemption request to the Exploration Fund in writing. No part of this redemption request was ever paid without new monies being made available by ASF.
115. On 30 July 2008 Trio's Investment Committee resolved to improve the overall liquidity position of Astarra's Overseas Equity Portfolio by placing a \$4.2 million redemption request on the Exploration Fund.
116. Prior to 1 August 2008, Trio had sent requests to AAM seeking the redemption of amounts totalling \$4.2 million from the Exploration Fund.
117. On 1 August 2008 Richard Telfer ("**Telfer**"), the Chief Financial Officer of Trio and a member of Trio's Investment Committee, sent an email to Richard advising, in part, that Trio's Investment Committee had resolved to redeem \$4.2 million from the Exploration Fund.
118. Richard did not submit the \$4.2 million redemption request to the Exploration Fund in writing. No part of this redemption request was ever paid without new monies being made available by ASF.

Relevant Facts:

119. At all relevant times Paul Gresham ("**Gresham**") was a representative for the ARP Growth Fund. In February 2008 the ARP Growth Fund had over \$6 million invested in the Exploration Fund.
120. The investment by the ARP Growth Fund was recorded by the Exploration Fund as being part of the investment held in the names of Astarra Professional Pensions PST Pensions Fund ("**PST Pensions Fund**") and the Astarra Professional Pensions PST Super Fund ("**PST Super Fund**").
121. From 27 February 2008 Gresham, on behalf of the ARP Growth Fund, made a number of requests to Richard and AAM to redeem shares in the Exploration Fund.

Redemption Payment No.1

122. On 22 May 2008 Richard, in his capacity as agent for Trio and as a director of AAM, the investment manager of ASF, provided a financial service in that he arranged for ASF to deal in a financial product by entering into a Supplemental DPA with EMA to the value of \$500,000, with the Reference Asset being Sigma

Fund shares. On 23 May 2008, in response to this Supplemental DPA, \$500,000 was transferred to EMA's bank account.

123. In June 2008, the Sierra Fund purchased 383,200 shares in IDate from the Exploration Fund at US\$1.25 per share for a total of US\$479,000.
124. On 2 June 2008 the sum of US\$478,958.50, being the redemption proceeds of 1,809 Exploration Fund shares, was paid into the ANZ custodial account for PST Super Fund. On 3 June 2008 the sum of \$499,900 was then paid from this account into the ANZ custodial account for ARP Growth Fund.
125. The monies received by the ARP Growth Fund on 3 June 2008 were part of the same ASF monies that had been paid into EMA's bank account pursuant to the Supplemental DPA dated 22 May 2008, and Richard was aware that without these ASF monies the ARP Growth Fund's investment in the Exploration Fund was not otherwise convertible to cash.
126. A diagrammatic representation of this transaction is attached at Tab 5.

Redemption Payment No.2

127. On 17 June 2008 Richard, in his capacity as agent for Trio and as a director of AAM, the investment manager of ASF, provided a financial service in that he arranged for ASF to deal in a financial product by entering into a Supplemental DPA with EMA to the value of \$1,000,000, with the Reference Asset being SBS Fund shares. On 19 June 2008, in response to this Supplemental DPA, \$1,000,000 was transferred to EMA's bank account.
128. In June 2008, the SBS Fund purchased 610,560 shares in IDate from the Exploration Fund at US\$1.25 per share for a total of US\$763,200.
129. On 20 June 2008 the sum of US\$763,200, being the redemption proceeds of 2,893 Exploration Fund shares, was paid into the ANZ custodial account for PST Super Fund. On 25 June 2008 the sum of \$800,000 was then paid from this account into the ANZ custodial account for ARP Growth Fund.
130. The monies received by the ARP Growth Fund on 25 June 2008 were part of the same ASF monies that had been paid into EMA's bank account pursuant to the Supplemental DPA dated 17 June 2008, and Richard was aware that without these ASF monies the ARP Growth Fund's investment in the Exploration Fund was not otherwise convertible to cash.
131. A diagrammatic representation of this transaction is attached at Tab 6.

Redemption Payment No.3

132. On 17 June 2008 Richard, in his capacity as agent for Trio and as a director of AAM, the investment manager of ASF, provided a financial service in that he arranged for ASF to deal in a financial product by entering into a Supplemental DPA with EMA to the value of \$800,000, with the Reference Asset being

Pacific Fund shares. On 19 June 2008, in response to this Supplemental DPA, \$800,000 was transferred to EMA's bank account.

133. In July 2008 the Pacific Fund purchased 681,600 IDate shares at US\$1.25 per share from the Exploration Fund for a total amount of US\$852,000.
134. On 15 July 2008 the sum of US\$852,000, being the redemption proceeds of 3,180 Exploration Fund shares, was paid into the ANZ custodial account for PST Super Fund. On 17 July 2008 the sum of \$858,000 was then paid from this account into the ANZ custodial account for ARP Growth Fund.
135. The monies received by ANZ on behalf of the ARP Growth Fund on 17 July 2008 were part of the same ASF monies that had been paid into EMA's bank account pursuant to the Supplemental DPA dated 17 June 2008, and Richard was aware that without these ASF monies the ARP Growth Fund's investment in the Exploration Fund was not otherwise convertible to cash.
136. A diagrammatic representation of this transaction is attached at Tab 7.

Redemption Payments Nos.1 to 3

137. At all relevant times between 22 May 2008 and 18 June 2008 Richard was aware that:
 - a. shares in the Exploration Fund were not otherwise convertible to cash without new monies being made available by ASF;
 - b. part of the \$2.3 million in ASF monies transferred to EMA pursuant to the ARP Redemption DPAs was to be used to make payments to the ARP Growth Fund in respect to the shares it held in the Exploration Fund;
 - c. in order to make the payments to the ARP Growth Fund, part of the ASF monies were used to purchase assets that were not otherwise convertible to cash from the Exploration Fund, namely IDate shares, and
 - d. if the Exploration Fund failed to redeem the ARP Growth Fund in respect to its investment in the Exploration Fund, it could jeopardise the ongoing operation of the Scheme described in paragraph 2 above.
138. As a result of Richard's knowledge referred to in the preceding paragraph, when arranging the ARP Redemption DPAs, he paid reckless disregard as to whether these investments were in the best interests of ASF.

CHARGE NO.2: CIRCUMSTANCE 'D'

In furtherance of the Scheme, between 28 August 2008 and 31 March 2009, Richard, as agent for Trio and as a director of AAM, the investment manager of ASF, provided financial services in that on 10 occasions he arranged for ASF to deal in financial products by purchasing shares in the Exploration Fund directly from ARP Growth Fund to the total value of \$4.43 million. In relation to these financial services

provided by Richard, he acted dishonestly in that contrary to the interests of the ASF he knew that the ARP Growth Fund wanted to redeem its shares in the Exploration Fund and that shares in the Exploration Fund were significantly overpriced and were not otherwise convertible to cash if not purchased by ASF.

Relevant Background:

See paragraphs 12, 13, 23 to 54 and 79 to 138 above.

Relevant Facts:

139. On 10 occasions between 28 August 2008 to 31 March 2009 Richard, in his capacity as agent for Trio and as a director of AAM, the investment manager of ASF, provided financial services in that he arranged for ASF to deal in financial products by purchasing Exploration Fund shares, on behalf of ASF, directly from the ARP Growth Fund.
140. On each occasion, Richard arranged the purchase of the shares on behalf of ASF, by emailing Trio with instructions to purchase the Exploration Fund shares directly from the ARP Growth Fund for a stipulated amount of money.
141. On each occasion, when providing ASF with the financial services relating to the purchase of the Exploration Fund shares from the ARP Growth Fund, Richard knew that the ARP Growth Fund wanted to redeem its shares in the Exploration Fund and that these shares were not otherwise convertible to cash.
142. In response to each email from Richard, Trio instructed the custodian of ASF to transfer the amount of money stipulated by Richard directly to the custodian of the ARP Growth Fund in payment of its Exploration Fund shares, on behalf of the ASF. Exploration Fund shares to the value of \$4.43 million were purchased from the ARP Growth Fund by ASF under this process.
143. These investments made on behalf of ASF were not made in accordance with the procedures set out in ASF's Product Disclosure Statement dated 15 February 2006. Contrary to the established procedure, no Supplemental DPAs were entered into to reflect these investments by ASF in the Exploration Fund shares until 30 June 2009.
144. At all relevant times between 28 August 2008 and 31 March 2009 Richard was aware that:
 - a. shares in the Exploration Fund were not otherwise convertible to cash unless purchased by ASF, and
 - b. if the Exploration Fund failed to redeem the ARP Growth Fund's investment, it could jeopardise the ongoing operation of the Scheme described in paragraph 2 above.
145. As a result of Richard's knowledge referred to in the preceding paragraph, when arranging the ASF's purchase of shares in the Exploration Fund from the ARP

Growth Fund, he paid reckless disregard as to whether these investments were in the best interests of ASF.

CHARGE NO.2: CIRCUMSTANCE 'E'

In furtherance of the Scheme, from 1 November 2006 until 30 September 2009 Richard, as agent for Trio and as a director of AAM, the investment manager of ASF, provided financial services in that he arranged for ASF to deal in financial products by entering into 36 Supplemental DPA's with EMA to a total value of \$34.9 million (which sum includes the 13 Funding DPAs totalling \$9.65 million referred to in paragraph 70 above), with the Reference Assets being shares in the New Funds. In relation to these financial services provided by Richard to ASF, he engaged in dishonest conduct in that he knew that:

- (a) Trio's investment committee had placed a ban on further investment into the Exploration Fund;
- (b) he had participated in the creation of the New Funds;
- (c) there was no diversification achieved by the ASF obtaining a financial exposure to the New Funds pursuant to the Supplemental DPAs, as the New Funds were essentially the same type of investment as the Exploration Fund, and
- (d) the New Funds had all been created and operated in order to give Trio's investment committee and ASF the false appearance of diversification within ASF's investments and at no time did Richard advise Trio's investment committee or ASF as to the true state of affairs.

Relevant Background:

See paragraphs 12, 13 and 23 to 54 above.

Relevant Facts:

- 146. On 16 August 2006, as a result of concerns about the lack of available information concerning the Exploration Fund and concerns about the lack of diversity in both investments and investment managers within the alternative asset class, Trio's investment committee placed a ban upon any of the Trio Managed Funds investing any new monies into the Exploration Fund.
- 147. On 4 October 2006 Richard was notified of the decision by Trio's investment committee to redeem all monies held by the Trio Managed Funds in the Exploration Fund. This decision was subsequently replaced with a ban by Trio's investment committee on the investment of new monies into the Exploration Fund.
- 148. In response to the ban by Trio's investment committee on new monies being paid into the Exploration Fund and the proposed redemption of all monies from that fund, both GCSL Group and Richard arranged for the creation of the New

Funds (being Sierra Fund, Pacific Fund and SBS Fund) in furtherance of the Scheme.

149. From 1 November 2006 until 30 September 2009, Richard, in his capacity as agent for Trio and as a director of AAM, the investment manager of ASF, provided financial services in that he arranged for ASF to deal in financial products by entering into 36 Supplemental DPAs with EMA to a total value of \$34.9 million, with the Reference Assets being shares in the New Funds. Pursuant to these Supplemental DPAs, \$34.9 million of ASF monies was sent to EMA and was used to purchase shares in the New Funds.
150. In fact there was no diversification achieved by ASF investing in the New Funds because, like the Exploration Fund:
- a. the named administrator companies for each of the New Funds had been established by the GCSL Group and had delegated their administrative responsibilities to the GCSL Group;
 - b. the named investment manager companies and directors for the New Funds had all been arranged by GCSL Group;
 - c. the New Funds were under the ultimate control of Flader, in that the named fund directors, investment managers and administrators all acted under Flader's instruction, and
 - d. each of the New Funds held a small range of the same types of assets.
151. At all relevant times Richard was aware that there was no diversification achieved by ASF's investments in the New Funds and that these funds had all been created in order to give Trio's investment committee and ASF the false impression of diversification within ASF's investments, but at no time did Richard disclose this information to Trio's investment committee or ASF.

SCHEDULED CHARGE – FALSE STATEMENTS

S.1041E(1) OF THE CORPORATION ACT 2001 (CTH)

In contravention of subsection 1041E(1) of the Corporations Act, Richard engaged in the following conduct:

SCHEDULED CHARGE: CIRCUMSTANCE 'A'

In furtherance of the Scheme from 10 April 2007 until 30 September 2009 Richard, in the course of carrying on a financial services business in his capacity as a director of AAM, which was at all relevant times the investment manager of ASF, made materially misleading statements about the value of ASF's Supplemental DPAs with EMA, that were included in valuation statements provided to Trio. At the time that Richard made the statements about the value of ASF's Supplemental DPAs with EMA, he knew that the value attributed to these investments was materially

misleading as he was aware of:

- (a) related party dealings between the Flader Controlled Funds and Flader Vendor Companies;
- (b) the large financial exposure of the Flader Controlled Funds to Flader Vendor Companies in respect to fixed interest instruments, foreign exchange agreements, zero coupon bonds and derivatives;
- (c) an amount of \$817,580 being paid to Richard after the Exploration Fund had purchased shares in Yarraman, using monies sent by ASF and Astarra Superannuation Plan to the Exploration Fund on Richard's recommendation or instruction;
- (d) the valuation methodology adopted concealed the fact that the recorded value of the assets held by the Flader Controlled Funds was significantly overstated, and
- (e) that the Exploration Fund's assets were not otherwise convertible to cash .

As a result of this knowledge, Richard was aware that the valuation statements provided to Trio materially over-inflated the true value of ASF's Supplemental DPAs with EMA. Richard was also aware that the materially misleading statements he made were included in valuation statements provided to Trio and was likely to have the effect of inducing Trio to apply for, and acquire, further financial products through Supplemental DPAs with EMA.

Relevant Background:

See paragraphs 12, 13, 23 to 54 and 79 to 151 above as well as paragraphs 152 to 167 below.

Relevant Background:

152. At all relevant times the GCSL Group provided administration services to the Flader Controlled Funds. These administration services included the preparation of the valuation statements for the assets owned by the Flader Controlled Funds.
153. The portfolio of assets held by each of the Flader Controlled Funds consisted of:
- a. US Shares;
 - b. derivatives, such as put option agreements or warrants, associated with the US Shares held ("**Derivatives**");
 - c. foreign exchange agreements, and
 - d. fixed interest instruments, such as zero coupon bonds which accumulate interest at a fixed rate until the redemption date.

154. The counterparties to nearly all of the transactions or financial instruments entered into by the Flader Controlled Funds were Flader Vendor Companies or another of the other Flader Controlled Funds.
155. At all relevant times, the US Shares held by the Flader Controlled Funds were a very limited selection, and many were common across the Flader Controlled Funds.
156. The US Shares held by the Flader Controlled Funds of which Richard was aware, were all thinly traded or largely illiquid stock.
157. The illiquidity of the US Shares meant that the last trade price could be easily manipulated.
158. The internal valuation statements for the Flader Controlled Funds record that the Derivatives were of considerable value but they had nevertheless been entered into between the Flader Controlled Funds and Flader Vendor Companies for minimal or no consideration, contemporaneously with the Flader Controlled Funds recognising a decline in the value of the US Shares, which were the same US Shares covered by the Derivative agreement.
159. An example of this occurred in July 2006 where, contemporaneously with the internally recognised price of shares held in Advanced Medical Institute Inc ("AMI") falling from US\$2.50 to US\$2.00, the Flader Controlled Funds were allegedly able to obtain put stock options for AMI shares, then valued at US\$2,552,047, for no cost.
160. Another example of this occurred in April 2008 where, contemporaneously with the internally recognised price of Yarraman shares held falling from US\$2.25 to US\$1.50, the Flader Controlled Funds were allegedly able to purchase put stock options for Yarraman shares, then valued at US\$558,432, for an outlay of only US\$6,570.
161. Similarly in September 2008 where, contemporaneously with the internally recognised price of IDate shares held falling from US\$1.25 to US\$0.10, the Flader Controlled Funds were allegedly able to obtain put stock options for IDate shares, then valued at US\$3,613,611, for no cost.
162. These Derivatives permitted the Flader Controlled Funds to require the counterparty, being Flader Vendor Companies, to purchase at a set price (the "Strike Price"), those US Shares identified in the agreement. The Strike Price was usually set at the highest price that had been paid by the Flader Controlled Funds for those US Shares that were the subject of the Derivative agreement.
163. Therefore the effect of the Derivatives was that they effectively preserved the value of the investments held by the Flader Controlled Funds in those US Shares that were covered by these Derivative agreements.
164. In respect to the zero coupon bonds held by the Exploration Fund:

- a. they first appeared in the internal valuation statements in November 2007, which was around the time that the global financial crisis was increasing in intensity;
 - b. the bonds yielded 18%, but as these were zero coupon bonds, the interest was accumulated so no payment needed to be made by the bond issuer until the bonds were redeemed;
 - c. they appear to have been purchased at a cost of about US\$18.9 million using monies made available from the exercise of put stock option agreements and foreign exchange agreements already held by the Exploration Fund;
 - d. the total value of the Exploration Fund at the time it purchased these bonds was allegedly about US\$61.4 million, and
 - e. from November 2007 onwards these bonds contributed significantly to the Exploration Fund's reported investment returns.
165. Richard was aware of the reliance by the Flader Controlled Funds upon the fixed interest instruments, foreign exchange agreements, zero coupon bonds and Derivatives (collectively referred to as the "**Non-equity Investments**") in order to maintain or increase the value of those funds and that Flader Vendor Companies were the counterparties to these financial instruments.
166. The Non-equity Investments were usually not formally executed by the Flader Controlled Funds or the counterparties, being Flader Vendor Companies, and Richard was unaware whether these counterparties had the capacity to meet their financial obligations to the Flader Controlled Funds.
167. Furthermore, Richard knew that the administrators of the Flader Controlled Funds were also under Flader's control and he also knew that the assets of the Flader Controlled Funds had not been independently valued.

Relevant Facts:

168. From 5 June 2006 onwards, Trio received a schedule setting out the valuation of each of the Supplemental DPAs ("**EMA Valuation Statement**") at the end of each month.
169. From 5 June 2006 until 6 May 2008, the EMA Valuation Statements were prepared and sent by Richard to Trio on AAM letterhead.
170. From 2 June 2008 until 3 March 2009 the EMA Valuation Statements sent to Trio were on GCSL letterhead.
171. From 3 April 2009 until 5 October 2009 the EMA Valuation Statements sent to Trio were on EMA letterhead.

172. After 6 May 2008, Richard still prepared and approved the content of the EMA Valuation Statements knowing that this information was then going to be provided to Trio
173. At all relevant times Richard was aware of:
- a. related party dealings between the Flader Controlled Funds and Flader Vendor Companies;
 - b. the large financial exposure of the Flader Controlled Funds to Flader Vendor Companies in respect to the Non-equity Investments;
 - c. an amount of US\$817,580 that was received by Richard after the Exploration Fund had purchased shares in Yarraman, using monies sent by ASF and Asatarra Superannuation Plan to the Exploration Fund on Richard's recommendation or instruction;
 - d. monies that were paid to AAM and Richard using ASF monies sent to EMA;
 - e. the valuation methodology applied by GCSL Group when valuing the assets held by the Flader Controlled Funds, and
 - f. the Exploration Fund's assets were not otherwise convertible to cash.
174. From at least 10 April 2007 onwards, being 12 months after ACAST Pty Ltd requested the redemption of the ACAST Investment referred to in paragraphs 82 and 83 above, Richard was aware that the EMA Valuation Statements were materially misleading in that they materially over-inflated the true value of ASF's Supplemental DPAs with EMA.
175. The EMA Valuation Statements were likely to have the effect of inducing Trio to apply for, and acquire, further financial products through Supplemental DPAs with EMA, and Richard was aware of this.

SCHEDULED CHARGE – CIRCUMSTANCE 'B'

In furtherance of the Scheme between 15 February 2006 and 31 August 2009, Richard in the course of carrying on a financial services business in his capacity as a director of AAM, which was at all relevant times the investment manager of ASF, made materially misleading statements in a product disclosure statement for ASF and in questionnaire responses relating to ASF, to the effect that AAM:

- (a) applied qualitative and quantitative analysis to allocate assets to ASF's investment portfolio;
- (b) selected the underlying investment managers of funds invested in by ASF by applying qualitative and quantitative analysis, and

- (c) carried out due diligence and monitoring in respect to the investment managers of the underlying funds invested in by ASF,

in circumstances where he was aware that these statements were materially misleading, in that the processes outlined were not carried out by AAM, or if performed, were deliberately manipulated to confirm a pre-determined selection or decision. At the time that Richard made these statements he knew that these statements were likely to induce Australians to apply for financial products, namely units in ASF.

Relevant Background:

See paragraphs 12, 13, 23 to 54 and 146 to 151 above.

Relevant Facts:

176. On 15 February 2006, Trio issued a Product Disclosure Statement ("PDS") for ASF (then called Alpha Strategic Fund). The PDS included statements to the effect that:
- a. AAM, an authorised representative of WGI, had been appointed as the investment manager of the ASF and acts as an agent of the ASF.
 - b. AAM had consented to the references made to it in the PDS and accepted the accuracy of the statements made in the PDS about, and descriptions of, the investment management of the ASF.
 - c. AAM determined ASF's composition and weightings and then allocated assets (under a DPA arrangement) to the investment portfolio using both qualitative and quantitative analysis.
 - d. AAM chose its underlying investment fund managers by using both qualitative and quantitative analysis, involving a proprietary analytical model which included a detailed screening process and its own internal rating system.
 - e. Investment manager due diligence, selection and monitoring were part of the proprietary model that the AAM investment team used in advising ASF.
 - f. If considered appropriate by ASF, a DPA was entered into by AAM, as agent of Trio, and EMA whenever an investment is made with an investment manager in offshore global markets.
177. The use of the PDS by Trio was notified by Trio to ASIC on 17 February 2006 and this PDS remained in use and was provided to potential investors in ASF until 31 August 2009.
178. The statements outlined in subparagraphs 176 (c) to (e) above (the "AAM Statements") were included in the PDS with the approval of Richard.

179. Statements to the same effect as the AAM Statements were also contained in questionnaire responses (the "Questionnaire Statements") sent by Richard to the Investment & Financial Services Association Ltd, Aegis Equities Research and financial planners.
180. The AAM Statements and Questionnaire Statements were all made by Richard with the intention of inducing Australian investors to apply for units in ASF and were likely to have this effect.
181. At all relevant times Richard was aware that the AAM Statements and Questionnaire Statements were materially misleading as Richard was aware that AAM, in respect to its dealings with ASF, did not:
- a. apply any qualitative and quantitative analysis to allocate assets to ASF's investment portfolio;
 - b. choose underlying investment managers by applying any qualitative or quantitative analysis involving a proprietary analytical model which included a detailed screening process and its own internal rating system, or otherwise, or
 - c. carry out any due diligence or monitoring of investment managers,
- and, if AAM did perform any of these tasks, they were deliberately manipulated to confirm a pre-determined selection or decision.
182. Furthermore, at all relevant times Richard was aware that the named investment managers of the Flader Controlled Funds had been selected based solely upon their previous relationships with Flader and Richard, and upon their willingness to act under the instructions of Flader.

TAB 1

KEY ENTITIES

Trio Capital Ltd

1) Trio Capital Ltd ("Trio") was:

- (a) known as Astarra Capital Ltd from 7 May 2004 until 30 September 2009;
- (b) known as Tolhurst Capital Ltd until 6 May 2004
- (c) the holder of a Registrable Superannuation Entity Licence;
- (d) the trustee of five superannuation entities;
- (e) the holder of an Australian Financial Services Licence since 1 February 2004 ("AFS Licence");
- (f) the holder of a securities dealers licence from 7 November 1991 until 1 February 2004;
- (g) the responsible entity for 25 managed investment schemes and 6 unregistered managed schemes (collectively the "Trio Managed Funds");
- (h) placed into voluntary administration on 16 December 2009, and
- (i) put into liquidation on 22 June 2010.

Astarra Funds Management Pty Ltd

2) Astarra Funds Management Pty Ltd ("AFM") was

- (a) known as Tolhurst Funds Management Pty Ltd until 6 May 2004;
- (b) the immediate holding company of Trio;
- (c) the provider of premises and staff to Trio;
- (d) a corporate authorised representative of Trio;
- (e) wholly owned by Wright Global Asset Management Pty Ltd ("WGAM") is now wholly owned by Bella Donna Ltd ("Bella Donna"), a St Vincent company;
- (f) placed into voluntary administration on 16 December 2009, and
- (g) put into liquidation on 10 June 2010.


Wright Global Investments Pty Ltd

3) Wright Global Investments Pty Ltd ("WGI") was:

- (a) known as the World Financial Group Australia Pty Ltd until 16 March 2003;
- (b) the holder of an AFS Licence since 18 February 2003, and
- (c) wholly owned by Astral Investments Ltd ("Astral"), a Hong Kong company.

Astarra Strategic Fund

4) Astarra Strategic Fund ("ASF") was


- (a) a managed investment fund registered with ASIC on 9 September 2005;
 - (b) offered pursuant to a product disclosure statement ("PDS") that was lodged with ASIC and was dated 15 February 2006;
 - (c) known as Alpha Strategic Fund until 2 June 2009;
 - (d) later offered pursuant to a PDS dated 31 August 2009 and Supplementary PDS dated 28 September 2009, both of which were lodged with ASIC;
 - (e) one of the Trio Managed Funds for which Trio was the responsible entity;
 - (f) wound up by the Court on 19 March 2010.
- 

- 5) The ASF invested in these funds via agreements titled Master Deferred Purchase Agreement ("**Master DPA**") and Supplemental Deferred Purchase Agreement ("**Supplemental DPA**").
- 6) The Master DPA was entered into on 15 February 2006. The parties to this Master DPA were Astarra Asset Management Pty Ltd, EMA International Ltd and ANZ Nominees Ltd. The latter signing as custodian for Trio.
- 7) Australia and New Zealand Banking Group Ltd ("**ANZ**") were named as the custodian of the ASF in the PDS dated 15 February 2006. ANZ also signed a custody agreement with Trio on 26 June 2006.
- 8) On 12 February 2009 ANZ was replaced as custodian of the ASF by National Australia Trustees Ltd.
- 9) A Deed dated 17 February 2009 to amend the Master DPA was signed by Astarra Asset Management Pty Ltd and Trio but not EMA International Ltd ("**Amending DPA Deed**"). The purpose of the Amending DPA Deed was to include Trio as a party to the Master DPA and remove ANZ Nominees Ltd.
- 10) Pursuant to the Master DPA and Supplemental DPA's, EMA International Ltd invested funds from Trio in the underlying funds at the instruction of Astarra Asset Management Pty Ltd.

Astarra Asset Management Pty Ltd

- 11) Astarra Asset Management Pty Ltd (In Liquidation) ("**AAM**") was:
 - (a) incorporated on 22 April 2005 for the purpose of acting as the investment manager for many of the Trio Managed Funds;
 - (b) known as Absolute Alpha Pty Ltd until 8 July 2009
 - (c) an authorised representative of Trio from 24 June 2009;
 - (d) an authorised representative of WGI from 7 June 2005 until 4 January 2010;
 - (e) an authorised representative of Solutions Wealth Strategies Pty Ltd from 21 February 2006 until 15 August 2008;
 - (f) appointed the investment manager of the ASF under an Investment Management Agreement with Trio dated 2 March 2007 and again under a new agreement dated 28 September 2009;
 - (g) wholly owned by Century Investment Holdings Ltd ("**Century**"), a British Virgin Islands ("**BVI**") company, and
 - (h) wound up on 22 December 2009.

Zetland Financial Group Ltd

- 12) Zetland Financial Group Ltd, a BVI company based in Hong Kong, was associated with Pacific Continental Securities Ltd ("**Pacific Continental**"), a Delaware based company banned by the UK regulators for its cold calling activities in the UK. Pacific Continental had been selling stocks in high-risk US based start-up ventures, including shares in US companies that had been restructured by the Zetland Financial Group Ltd or its subsidiaries (collectively called the "**Zetland Group**").
 - 13) Both Shawn Darrell Richard ("**Richard**") and Eugene Liu ("**Liu**"), were directors of AAM, had been employed by Pacific Continental in its Asia-based offices.
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- 14) Matthew Littauer ("**Littauer**") had also been employed by Pacific Continental before becoming a director of Trio, WGI and WGAM. Littauer was murdered in December 2004.
- 15) James Campbell Sutherland ("**Sutherland**") was the Chairman of the Zetland Group
- 16) Jack W. Flader, Jr ("**Flader**") was a director of companies within the Zetland Group.
- 17) In late 2003 WGAM purchased Trio using monies provided by a number of entities including Zetland Corporate Services Ltd which was part of the Zetland Group.

The GCSL Group of Companies Ltd, GCSL Ltd, Global Consultants and Services Ltd, Global Corporate Consultants Ltd

- 18) The GCSL Group of Companies Ltd and its subsidiaries (collectively called the "**GCSL Group**") is in the business of creating international corporate structures and has offices in Hong Kong, Anguilla, Belize, Cook Islands, Samoa, Shanghai and Singapore. The GCSL Group provide a range of services including:
 - (a) the incorporation of companies in all those jurisdictions that it has offices as well as Seychelles, BVI and Nevis;
 - (b) company secretarial services including the provision of a registered office, company filings and maintaining company records;
 - (c) fiduciary services involving the provision of directors and nominee shareholders , and
 - (d) administration services including the handling of bank accounts, brokerage transactions, general bookkeeping and executing agreements on behalf of clients.
- 19) Flader was the Chief Executive officer and Chairman of the GCSL Group

EMA International Ltd

- 20) EMA International Ltd ("**EMA**") was:
 - (a) a special purpose vehicle incorporated in BVI, and
 - (b) established for the purpose of the ASF investing in underlying funds offshore.
- 21) At all relevant times Richard was in control of EMA
- 22) On 9 February 2006, Marc Boudreau, a Canadian citizen, was appointed as sole director of EMA and was the sole shareholder. Mr Boudreau is an associate of Richard and at all times acted under Richard's instructions in respect to EMA.
- 23) On 1 June 2006 an agreement was entered into between EMA and GCSL Ltd for GCSL Ltd to provide administration services to EMA. The agreement was signed on behalf of GCSL Ltd by Flader. GCSL Ltd terminated this agreement on 5 November 2009.
- 24) GCSL Ltd is a subsidiary of the GCSL Group.
- 19) Despite the agreement of 1 June 2006, most of the EMA's administration services, including custodial services and the operation of EMA's bank account, were provided

to EMA by Global Consultants and Services Ltd ("GCSL") (a different entity to GCSL Ltd but still part of the GCSL Group).

Exploration Fund Ltd

20) Exploration Fund Ltd ("**Exploration Fund**") had:

- (a) been incorporated in St Lucia as a private mutual fund company on 8 October 2003 by the Zetland Group;
- (b) been known as the Strategic Opportunity Fund Ltd until 23 March 2004 when it changed its name to the Huntleigh Investment Fund Ltd;
- (c) been known as the Huntleigh Investment Fund Ltd until 29 January 2007 when it changed its name to the Exploration Fund Ltd;
- (d) offered 3 classes of shares to investors (A, B and C);
- (e) Frank Richard Bell ("**Bell**") as a director from 8 October 2003 until 20 September 2004 and again from 12 January 2005;
- (f) Carl Meerveld ("**Meerveld**") as a director from 20 September 2004 until 29 January 2005;
- (g) Global Financial Managers Ltd, a St Lucia company, named as its investment manager;
- (h) Zetland Administration Ltd, a subsidiary of the Zetland Group, named as its administrator from about 1 December 2003 to 3 January 2006;
- (i) Professional Administration Ltd, a St Lucia company, named as its administrator between about 3 January 2006 to 23 March 2009, but all administration work was delegated to the GCSL Group;
- (j) New Century Administration Ltd, a St Lucia company, became its named administrator, from about 23 March 2009 but all administration work was delegated to the GCSL Group, and
- (k) Lichter, Yu & Associates of California USA named as its accountants.

SBS Dynamic Opportunities Fund Ltd


21) SBS Dynamic Opportunities Fund ("**SBS Fund**") had:

- (a) Volun International Ltd, a Liberian company, as its sole shareholder and director;
- (b) Cheshire Asset Management Ltd, an Anguillan company, named as its investment manager;
- (c) Hereford Administration Ltd, a Belize company, named as its administrator but all administration work was delegated to the GCSL Group, and
- (d) a bank account with Finab Bank in the Cayman Islands.

22) Richard did at times sign correspondence on behalf of the SBS Fund.

Pacific Capital Multi-Arbitrage Fund Ltd

23) Pacific Capital Multi-Arbitrage Fund Ltd ("**Pacific Fund**"), a fund domiciled in the Cayman Islands, that had:

- (a) Ample Success International Ltd, a BVI company, as its sole shareholder and director;
 - (b) Discretionary Investments Ltd, a Nevis company, named as its investment manager which in turn identified Roman Lyniuk ("**Lyniuk**") as its key investment professional;
- 

- (c) ZFR Administration Ltd, a Cook Islands company, named as its administrator but all administration work was delegated to the GCSL Group;
- (d) a bank account with Finab Bank in the Cayman Islands, and
- (e) the same registered address in the Cayman Islands as the SBS Fund, namely Genesis Building, 3rd Floor, P.O.Box 32338 SMB, Grand Cayman, Cayman Islands.

Sierra Multi-Strategy Fund Ltd

24) Sierra Multi-Strategy Fund ("Sierra Fund"), a fund domiciled in Anguilla, that had:

- (a) Meerveld as its sole director;
- (b) ECI Managers Ltd, an Anguillan company, named as its investment manager;
- (c) Aerowest Administration Ltd, an Anguillan company, named as its administrator but all administration work was delegated to the GCSL Group;
- (d) the same registered address in Anguilla as ECI Managers Ltd and Cheshire Asset Management Ltd, namely 201 Rogers Office Building, Edwin Wallace Rey Drive, George Hill, Anguilla.

KEY PERSONS:

Shawn Darrell Richard

25) Shawn Darrell Richard ("**Richard**") was:

- (a) a director of:
 - (i) Trio from 5 November 2003 until 15 November 2005;
 - (ii) AFM from 5 November 2003 until 24 April 2007;
 - (iii) WGI from 12 July 2001 until 16 September 2009;
 - (iv) WGAM from 17 December 2009, and
 - (v) AAM from 22 April 2005;
 - (b) a responsible person in respect to the AFS Licences held by:
 - (i) WGI from 18 February 2003, and
 - (ii) Trio from 5 March 2004;
 - (c) an authorised representative of Solutions Wealth Strategies Pty Ltd from 21 February 2006 until 4 January 2010, and
 - (d) a member of:
 - (i) Trio's investment committee until 29 November 2005 and was re-appointed on 10 December 2008 until 5 August 2009, and
 - (ii) AAM's investment committee at all relevant times.
- 26) At all relevant times, Richard represented that he was a director and owner of Bella Donna, Astral and Century. Bella Donna being the ultimate holding company of Trio and AFM, Astral being the ultimate holding company of WGI and Century being the ultimate holding company of AAM.
- 27) At all relevant times Richard was carrying on a financial services business in this jurisdiction within the terms of s 1041G of the *Corporations Act 2001*.

Jack W. Flader, Jnr

28) Flader was:

- (a) an employee of the Zetland Group prior to establishing the GCSL Group;
- (b) a director of the Hong Kong based Zetland Administration Ltd;
- (c) the Chief Executive officer and Chairman of the GCSL Group;
- (d) the principal of GCSL Ltd, and
- (e) a director of AFM and WGAM from 16 December 2004 until 8 August 2005.

29) Flader was employed by the Zetland Group until 28 April 2006 when he left to set up GCSL and the GCSL Group which employed a number of persons who had formerly worked for the Zetland Group. The GCSL Group started operations on 1 May 2006 and is based in Hong Kong.

30) Flader, through his control of the GCSL Group, also controlled a number of companies incorporated in a variety of overseas jurisdictions including Cayman Islands, Hong Kong, Anguilla, Belize, Cook Islands and BVI (the "**Flader Controlled Companies**").

Frank Richard Bell

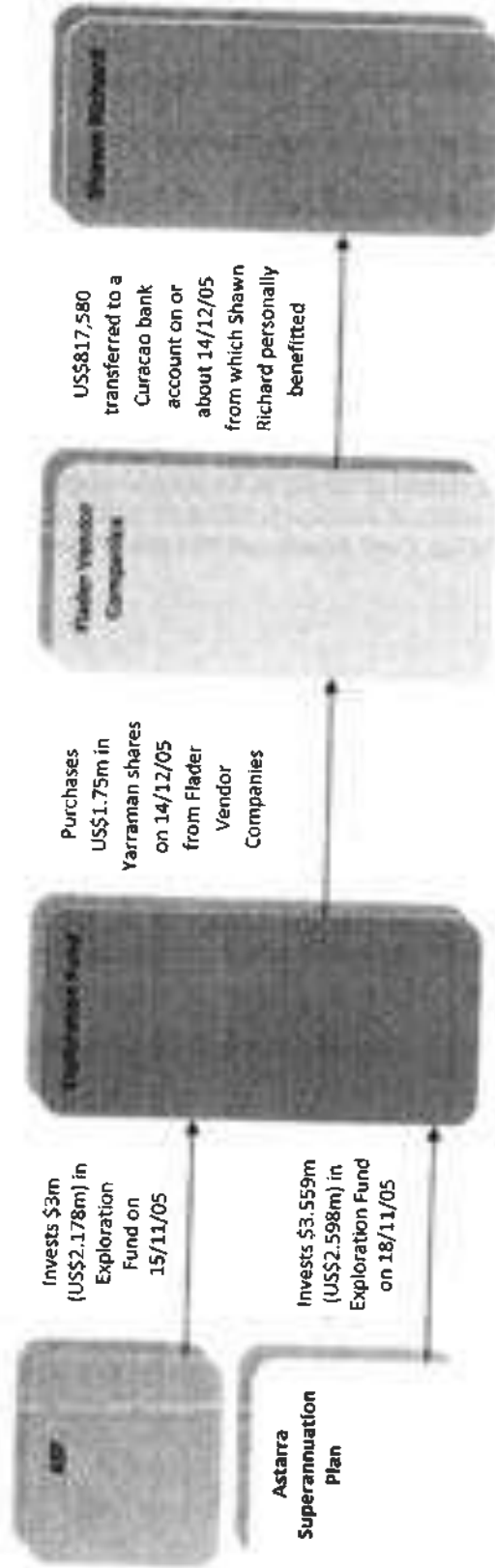
31) Frank Richard Bell ("**Bell**") was:

- a) sole director of the Exploration Fund Ltd until September 2004 when he was replaced by Carl Meerveld ("**Meerveld**");
- b) again a director of the Exploration Fund Ltd from January 2005;
- c) permanently banned from associating with any North American Securities Dealer ("**NASD**") member firm in a principal capacity for securities law breaches, and
- d) a director of WGI from July 2001 until September 2006.

TAB 2

CHARGE NO. 1: CIRCUMSTANCE 'A'

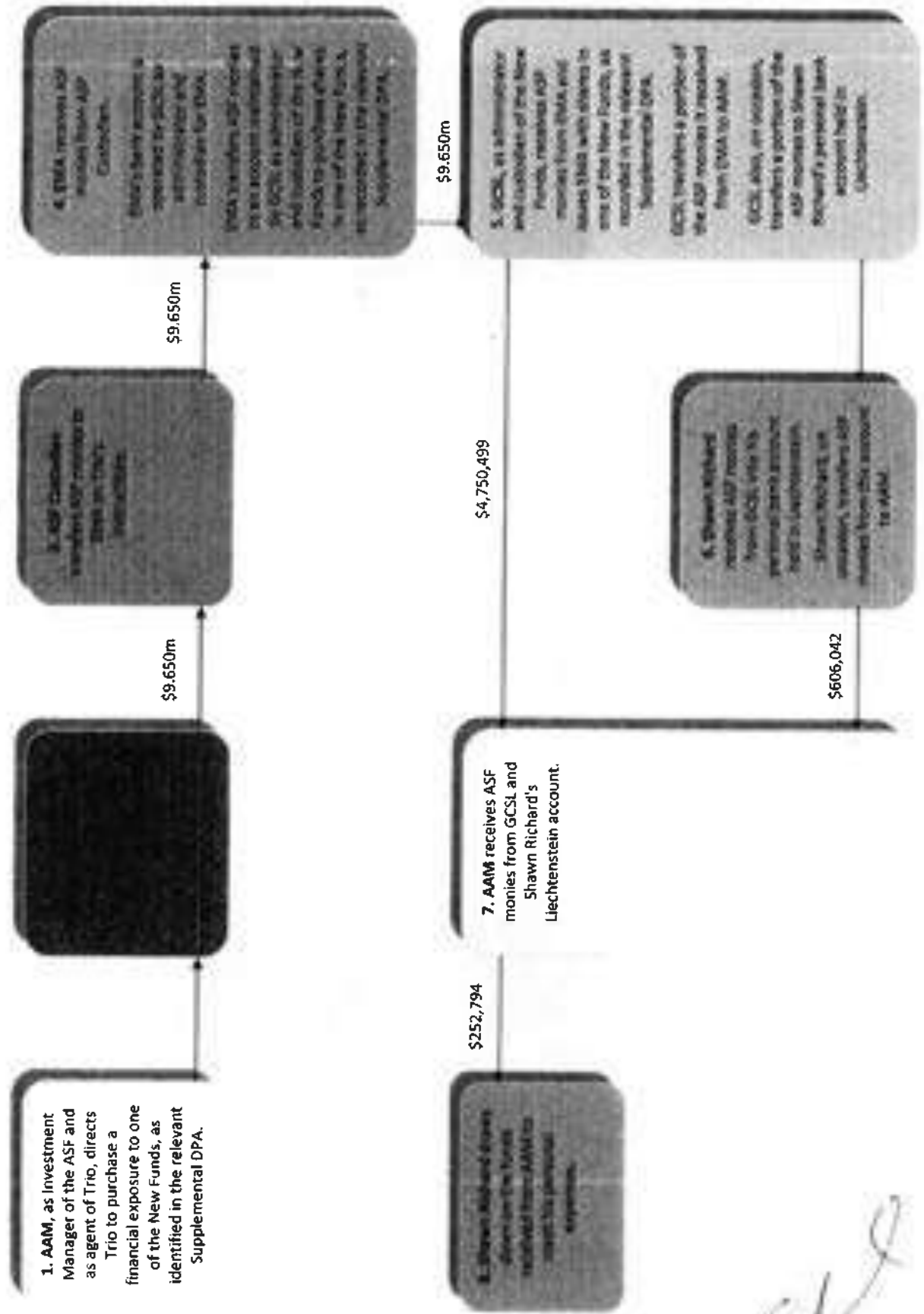
Section 1041G(1) of the Corporations Act 2001 (Cth)



SL

CHARGE NO.1: CIRCUMSTANCE 'B'

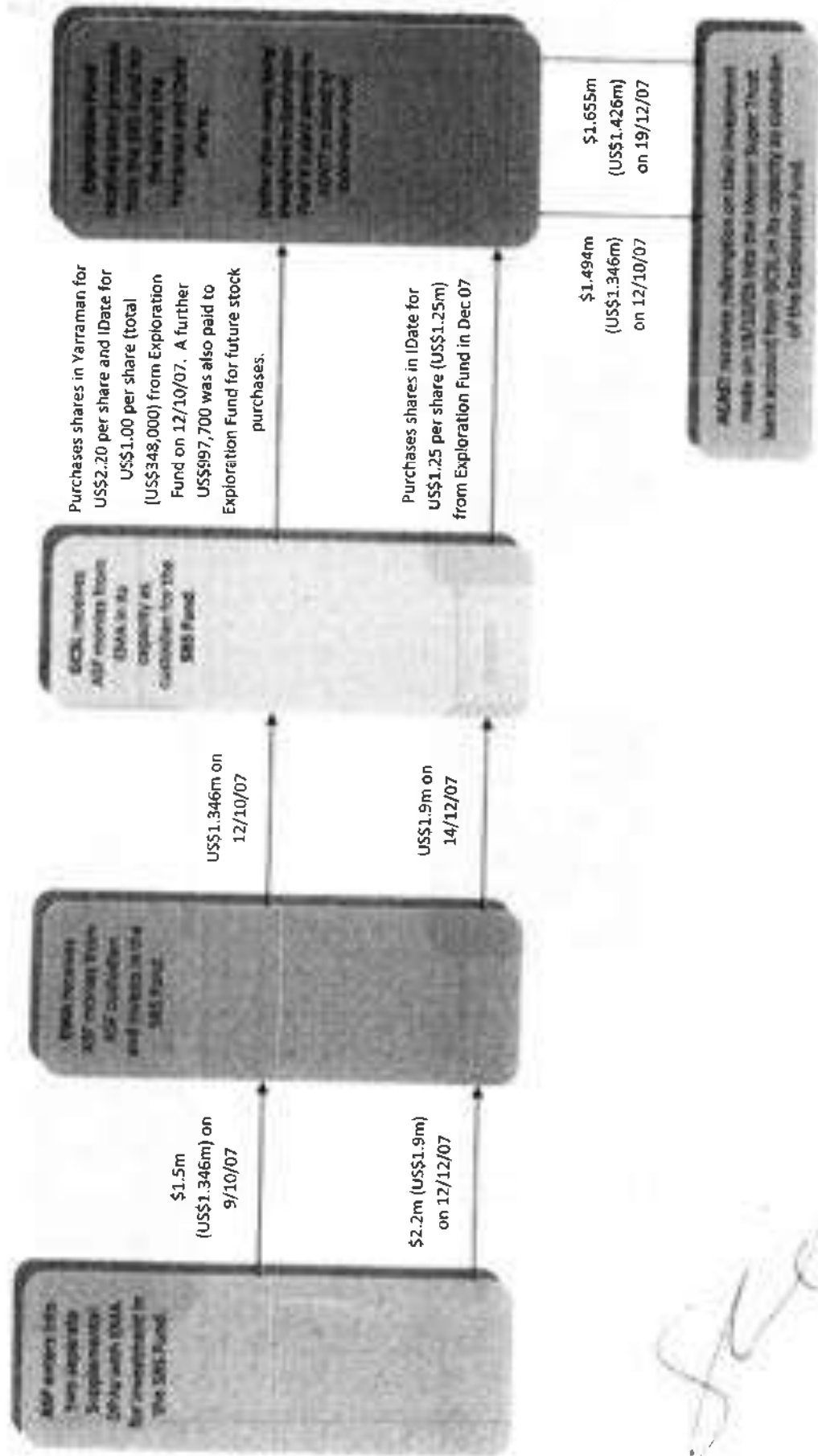
Section 1041G(1) of the Corporations Act 2001 (Cth)



TAB 4

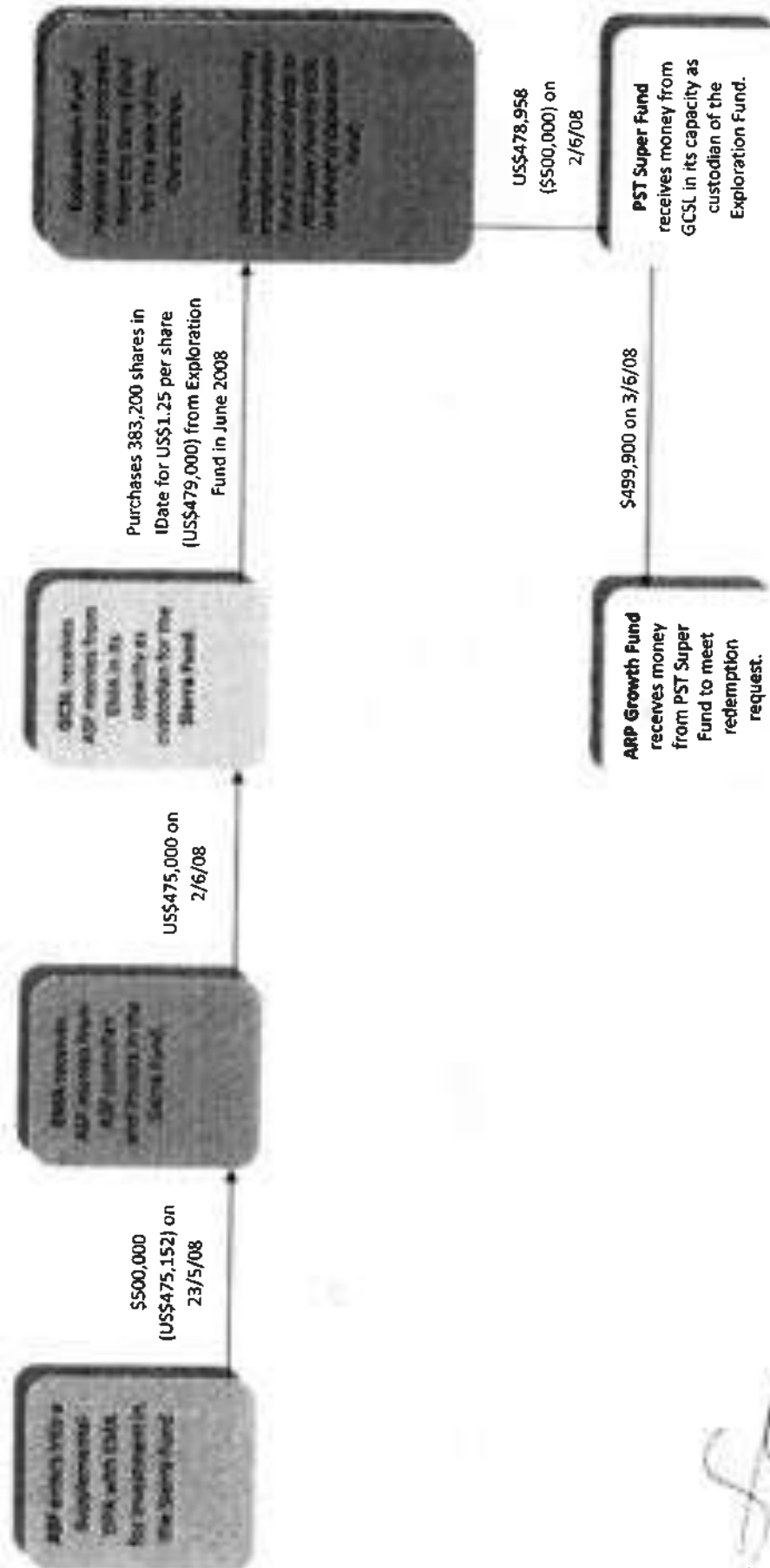
CHARGE NO.2: CIRCUMSTANCE 'A'

Section 1041(d)(1) of the Corporations Act 2001 (Cth)



TAB 5

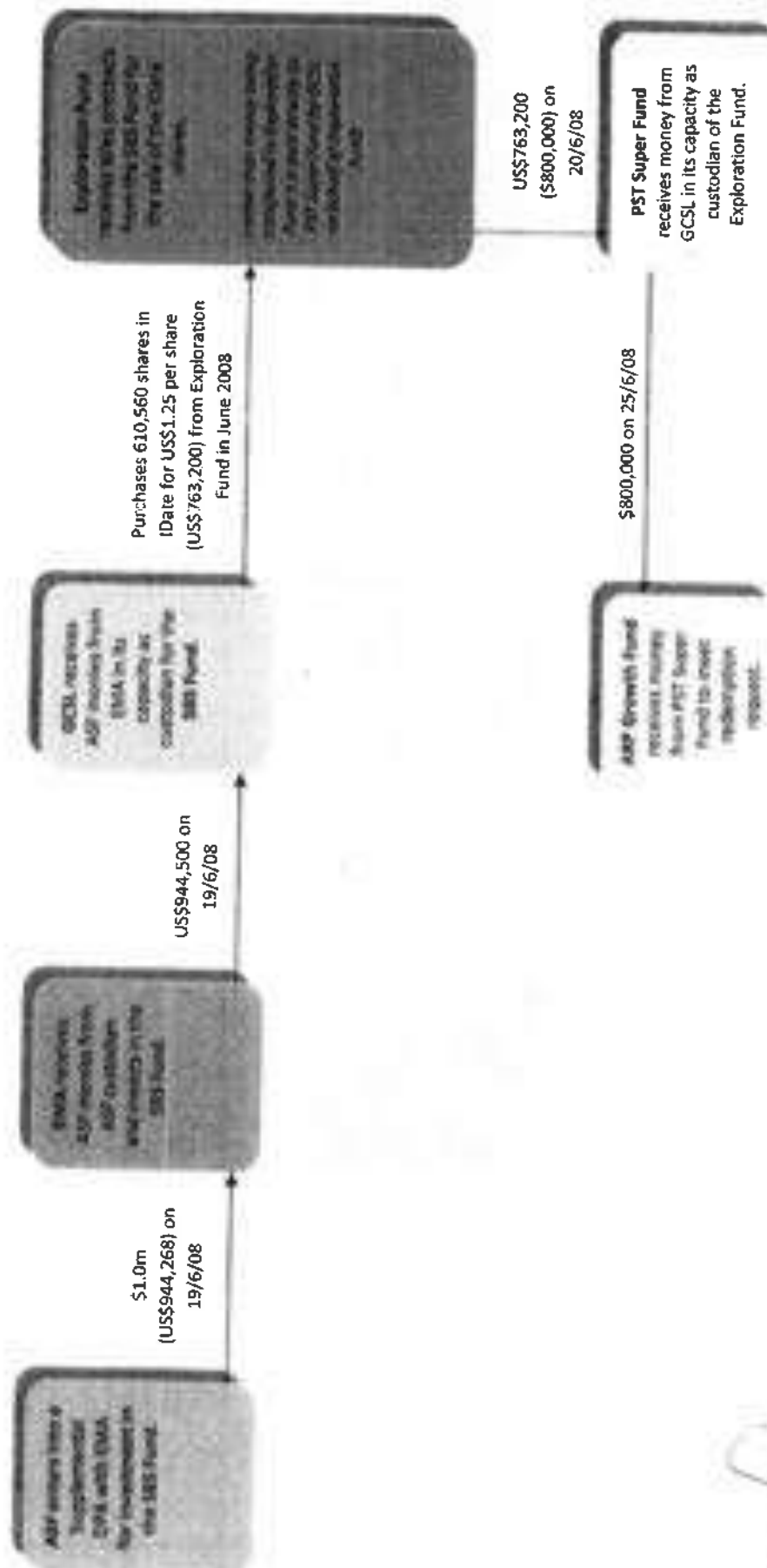
CHARGE NO. 2: CIRCUMSTANCE 'C': Redemption Payment No. 3
Section 1041(G)(1) of the Corporations Act 2001 (Cth)



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TAB 6

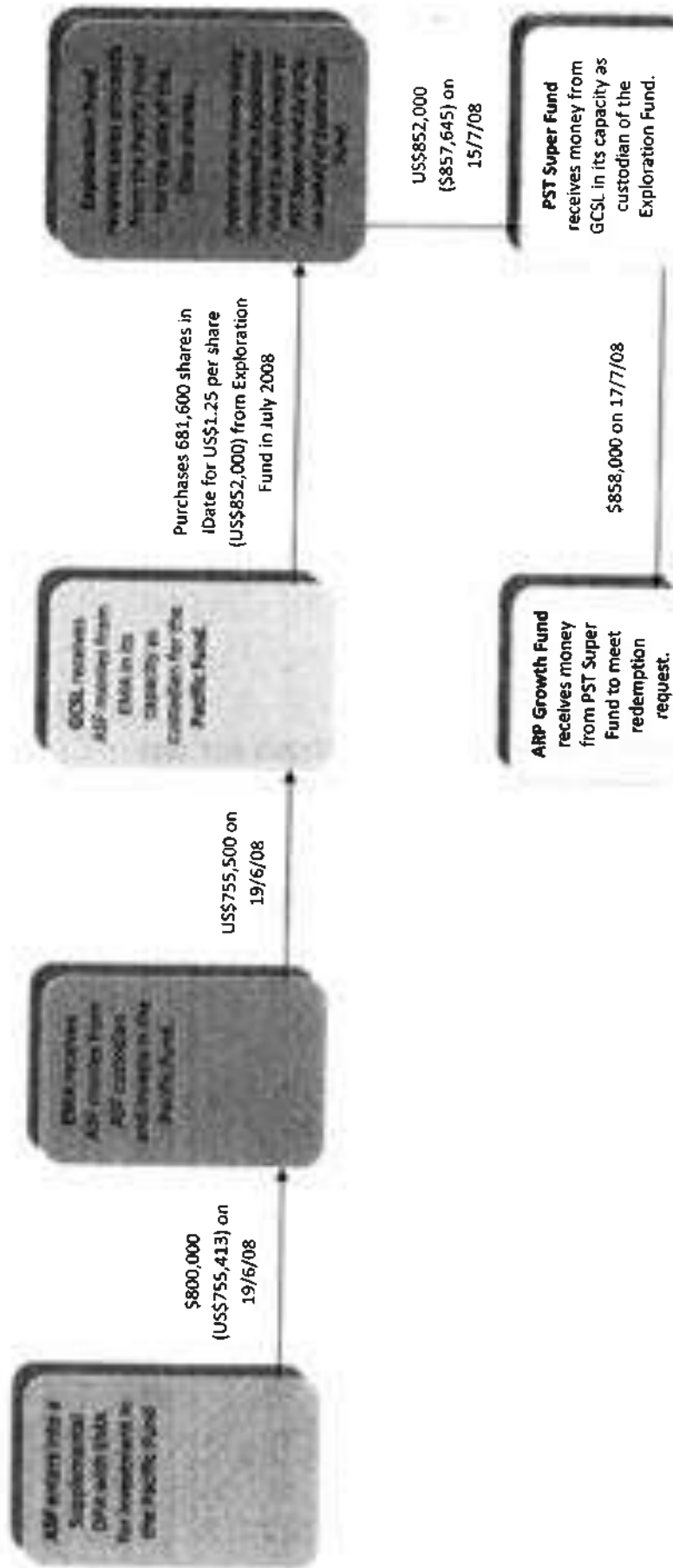
CHARGE NO. 2: CIRCUMSTANCE 'C': Redemption Payment No. 1
 Section 1041G(1) of the Corporations Act 2001 (Cth)



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CHARGE NO. 2: CIRCUMSTANCE 'C' Redemption Payment No. 3

Section 1041G(1) of the Corporations Act 2001 (Cth)



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"B"

CHARGE 1 – s 1041G(1) CORPORATIONS ACT 2001

Shawn Darrell Richard between about 15 November 2005 and about 30 June 2009 at Sydney in the state of New South Wales did in the course of carrying on a financial services business engage in conduct in relation to a financial service knowing that conduct to be dishonest.

CHARGE 2 – s 1041G(1) CORPORATIONS ACT 2001

Shawn Darrell Richard between about 8 October 2007 and about 30 September 2009 at Sydney in the state of New South Wales did in the course of carrying on a financial services business engage in conduct in relation to a financial service knowing that conduct to be dishonest.

CHARGE 3 – s 1041E(1) CORPORATIONS ACT 2001

To be placed schedule in accordance with s16BA Crimes Act 1914 on arraignment

Shawn Darrell Richard between about 15 February 2006 and 30 September 2009 at Sydney in the state of New South Wales did make statements which were materially misleading, and known by him to be materially misleading, that were likely to induce persons in Australia to acquire financial products.

Shawn