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Our Ref: ENF2014/20008  
Your Ref: FOI 285

8 December 2014

[Redacted]

email: [Redacted]

Dear [Redacted]

### **Freedom of Information Request**

I refer to your request under the *Freedom of Information Act 1982* (FOI Act) numbered 285 dated 10 November 2014 as follows:

Regarding the 6000 GCSL documents that cannot be released due to the MofU ....Please provide ASIC's / liquidator's report / assessment of the above mentioned documents.

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

I have identified documents which come within the scope of your request. These documents are listed in the Schedule to this letter.

### **Relevant legislation**

Section 45 provides:

- (1) *A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.*
- (2) *Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:*
  - (a) *a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or*

(b) *an agency, the Commonwealth or Norfolk Island.*

Section 47G(1) of the FOI Act provides that:

- (1) *A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:*
- (a) *would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or*
  - (b) *could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*

### **Decision**

I have decided to release the document marked **Release** on the attached schedule.

I have decided not to release the document marked **Exempt** on the attached schedule on the grounds that the document is exempt from release for the reasons set out below.

#### *Documents exempt under s45*

Section 45(1) of the FOI Act provides that a document is exempt if its disclosure would found an action by a person for breach of confidence. An agency can keep confidential information which has been communicated to it in circumstances giving rise to the obligation of confidence. An obligation of confidentiality may be express or implied. The information in these documents was provided to ASIC upon the understanding that ASIC would preserve its confidentiality.

#### *Documents exempt under s47G*

Section 47G(1) conditionally exempts the release of a document which would or could reasonably be expected to affect an organisation in respect of its lawful business, commercial or financial affairs.

Client confidentiality is a key aspect of an organisation's business. If this organisation is unable to maintain client confidentiality then this could undermine client confidence in that organisation and lead to a loss of business.

Where a document is conditionally exempt, the document ought to be disclosed unless the balance of the public interest is in favour of maintaining the confidentiality. In relation to document numbered 2 in the attached schedule, I find that the public interest in the disclosure of information is outweighed by the public interest in maintaining the confidentiality of this document, as the release of this document could reasonably be expected to adversely affect an organisation in the carrying on of its lawful business.

**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:

1. 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
2. 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.
3. 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

**Schedule of Documents**

No	Description of document	Date	No of pages	Decision on access	Relevant section
1.	PPB further explanatory memorandum to unitholders	4 August 2010	17	Release	
2.	Report	September 2013	35	Exempt	45, 47G(1)



S02097395



**FURTHER EXPLANATORY MEMORANDUM TO  
UNITHOLDERS**

**TRIO CAPITAL LIMITED (IN LIQUIDATION) (formerly Astarra Capital Limited)**

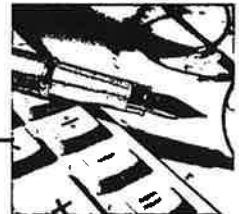
**ACN 001 277 256**

**As Responsible Entity For**

**Astarra Strategic Fund (formerly Alpha Strategic Fund)**

**ARSN 115 962 368**

**4 August 2010**



**RecoveryForensicsAdvisory**



**Glossary of Terms**

**AAM** means Astarra Asset Management Pty Limited (In Liquidation) (formerly Absolute Alpha)

**Absolute Alpha** means Absolute Alpha Pty Limited (now AAM)

**Administrators** means Voluntary Administrators, Stephen Parbery, Neil Singleton and Nicholas Martin

**ASF** means Astarra Strategic Fund (formerly Alpha Strategic Fund ARSN 115 962 368)

**ASIC** means the Australian Securities and Investments Commission

**AUD** means Australian Dollars

**Court** means the Supreme Court of New South Wales

**DPA** means Deferred Purchase Agreements

**EMA** means EMA International Limited

**Explanatory Memorandum** means the Explanatory Memorandum to unitholders of the Astarra Strategic Fund dated 19 April 2010 and 24 June 2010

**Flader** means Jack Flader

**Global Consultants** means Global Consultants and Services Limited ("GCSL")

**GST** means Goods and Services Tax

**Liu** means Eugene Liu

**Liquidators** means Stephen Parbery, Neil Singleton and Nicholas Martin

**MIS or Schemes** means Managed Investment Schemes

**RE** means Responsible Entity

**Richard** means Shawn Richard

**Tailwind** means Tailwind Investment Fund

**The Act** means *Corporations Act 2001* (Cth)

**Trio or the Company** means Trio Capital Limited (In Liquidation) (formerly Astarra Capital Limited)

**USD** means United States Dollars

**WGI** means Wright Global Investments Pty Ltd

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## Warning

The Liquidators were appointed Administrators of TRIO on 16 December 2009 and Liquidators of TRIO on 22 June 2010 and the information contained in this Further Explanatory Memorandum is based on the investigations undertaken to date, and which are not complete. There may be information which the Liquidators have not yet uncovered and whilst the information provided has been prepared with due care, and it is believed to be true, further information may come into the possession of the Liquidators as a result of further investigations which may necessitate a qualification or change to the information provided herein.

## 1 Background

This Further Explanatory Memorandum updates the information contained in the Explanatory Memorandum dated 19 April 2010 and Further Explanatory Memorandum dated 24 June 2010.

As per the Notice to Unit holders dated 24 June 2010, a meeting of Unit holders of the ASF has been convened for 11 am on Tuesday 10 August 2010. The meeting will be held at the following location:

The Smith Room  
Wesley Conference Centre  
220 Pitt Street  
SYDNEY NSW 2000.

We request that unit holders attending the meeting arrive approximately 30 minutes prior to the commencement time to register.

At Sections 3 – 5 of this report is a summary of the examinations of Richard and Liu conducted by the Liquidators in the Supreme Court of New South Wales (Court) before Senior Registrar Musgrave from 13 to 16 July 2010 inclusive (Examinations).

### 2.1 Court Applications Preceding the Examinations

Section 597(4) Corporations Act 2001 requires the examination of a person summonsed to be examined about a corporation's examinable affairs to be in public except to such extent as the Court considers that, by reason of special circumstances, it is desirable to hold the examination in private.

On 7 July 2010, the Liquidators made an application to the Court requesting that the part of the Examinations that involved questions about documents the subject of a confidentiality undertaking given by the Liquidators to ASIC be held in private. These documents were documents obtained by the Liquidators from ASIC under an Order for Production served on ASIC by the Liquidators (Documents) (as referred to in Explanatory Memorandum and Further Explanatory Memorandum). The application was heard by the Court before Barrett J on 12 July 2010. Barrett J granted the liquidator's application and made orders that any part of the Examinations in which questions relating to the Documents were asked and answered take place in private. A copy of the judgment of Barrett J can be obtained from the PPB website at [www.ppb.com.au](http://www.ppb.com.au)

The effect of this order was that the Court was closed to the public for that part of the Examinations that involved questions about the Documents.

On 12 July 2010 Richard made an application to the Court that his entire Examination be heard in private on the basis of information contained in a confidential affidavit that he filed in Court. Liu also made an application to the Court that his entire Examination be

heard in private. No evidence was filed in support of Liu's application. Both applications were heard before Barrett J at the same time as the Liquidator's application referred to above. The application's brought by Richard and Liu were dismissed.

A further application was made to the Court on 13 July 2010 by Richard on the basis that the Liquidators did not have standing to bring the public examinations. This application was heard before Senior Registrar Musgrave and was dismissed.



Richard gave evidence that he had been sent to Australia to establish a funds management business by his former employer in Taiwan, Matthew Littauer and Jack Flader, a business associate of Matthew Littauer who resided in Hong Kong.

Richard gave evidence that the ultimate beneficial owner of the entities in the Trio Group including Trio and AAM was Jack Flader. He gave evidence Jack Flader was also the ultimate beneficial owner of WGI. AAM was a corporate authorised representative of WGI.

*A corporate structure diagram for Trio, AAM and WGI showing the ownership structure for each entity is set out in Annexure A.*

Although Richard was a director of Trio until November 2005 and a director of AAM he gave evidence that he was given directions in respect of those activities firstly by Matthew Littauer until his death in 2004 and then by Jack Flader.

Richard gave evidence that he allowed false information about his qualifications and employment history to be included in promotional material for the ASF because he was told to do so by Matthew Littauer and Jack Flader.

He gave evidence that Mark Bouderau, the director and shareholder of EMA was a school friend of his and had no skills or qualifications to direct money placed into EMA from the ASF.

*Note: Documents obtained by the Liquidators show that EMA was a company which was established in the British Virgin Islands to operate as the counterparty to a series of deferred purchase agreements (DPAs). These DPAs were entered into between EMA and AAM in its capacity as investment manager of the ASF. EMA was contractually bound to invest the balance of the purchase price paid to it for each DPA in a specified fund located offshore (Underlying Fund). The value of the contractual rights obtained*

*from EMA was determined by the performance of EMA's investment in the specified Underlying Fund. The Underlying Funds were incorporated in the Cayman Islands and St Lucia. The contractual rights obtained under the DPAs constituted the primary investments of the ASF.*

Richard gave evidence that the investment decisions made by AAM as investment manager of Trio as the responsible entity of the ASF to invest in the various Underlying Funds through the series of DPAs were made at the direction of Jack Flader, despite the disclosures in the various product disclosure statements that the investment manager had adopted various strategies to determine appropriate investments.

Richard gave evidence that the investment strategy of the ASF was to do whatever Jack Flader wanted it to do.

Richard conceded when questioned that he was a mere "puppet" of Jack Flader.

Richard also gave evidence that the Underlying Funds into which EMA purported to invest were controlled by Jack Flader.

Senior Counsel for the Liquidators put a series of DPA transactions to Richard. The documents evidencing these transactions indicated that shortly after the date of those DPA transactions a significant amount of money would be transferred into an account in the name of AAM in Australia (AAM Account) from an account in the name of Global Consultants and Services Ltd (**Global Consultants**) in Hong Kong (**Global Consultants Account**). Jack Flader is a director of Global Consultants. Richard admitted to the Court that over time he saw a relationship between the moneys being sent out of Australia (from ASF) and money coming back from Global Consultants (to AAM). Richard gave evidence that at the time of the transactions he did not consider there was anything wrong with this as he trusted Jack Flader.





Richard gave evidence that the moneys transferred into the AAM Account from the Global Consultants Account were moneys paid by Jack Flader to fund the business of AAM in Australia.

Richard admitted to the Court that he personally received some payments from the AAM Account.

Richard also admitted to having personally received payments totalling a couple of million dollars from Jack Flader which were deposited into an account Richard maintained in Liechtenstein.

Richard gave conflicting evidence as to the reasons the payments were made to the bank account in Liechtenstein.

*Note: Documents obtained by the Liquidators show that there were 50 DPA transactions in the period 15 February 2006 to 29 September 2009 (Relevant Period). Approximately US\$35 million was transferred from investor funds in the ASF into an account in the name of EMA with Standard Chartered Bank in Hong Kong (EMA Account) to acquire contractual rights from EMA conferred by approximately 44 of these DPAs. Further documents obtained by the Liquidators show that there were 32 separate transfers from the EMA Account to the Global Consultants Account in amounts totalling approximately US\$26.2 million.*

*Documents obtained by the Liquidators further show that deposits were made to the AAM Account over the relevant period which were particularised as payments from "Global Consulta" totalling appropriate AUD\$7.6 million. The Liquidators believe this is a reference to Global Consultants.*

*The MYOB accounting file of AAM obtained by the Liquidators show that the deposits into the AAM Account particularised as transfers from "Global Consulta", were reflected as movements against a loan account in the name of Century Investment Holdings Ltd. Effectively, each time a deposit was received from "Global*

*Consulta" this created a liability owing to Century Investment Holdings Ltd by AAM. As at 23 December 2009, the balance of this loan account outstanding to Century Investment Holdings Ltd was AUD\$7.5 million. The accounting records of AAM further show that withdrawals and transfers from the AAM Account supposedly made to or on behalf of Richard were reflected as credits to the loan account in favour of Century Investment Holdings Ltd. The effect being, that each time such payments were made by AAM, the loan owing to Century Investment Holdings Ltd was reduced. Between 1 July 2007 and 23 December 2009 (no records held by the liquidator for any periods prior to this date), AAM payments applied to this loan account totalled approximately AUD\$5.7 million. These payments include:*

- a) *Payments directly to Richard*
- b) *Payments directly to Liu*
- c) *Payments to third parties eg MARQ Asset Management Pty Ltd, Silverhall Holdings Pty Ltd, Residential Mortgage Fund, Seagrims Pty Ltd, Titanium Planners Pty Limited etc; and*
- d) *ATM withdrawals*

*Century Investment Holdings Ltd is the parent company of AAM.*

Richard gave evidence that after a conversation he had with Jack Flader in either 2007 or 2008 he became aware that the ASF funds that were transferred into the EMA Account were not being directly invested into the Underlying Funds. Rather those funds were being paid at the direction of Jack Flader and Jack Flader was then placing stock which he owned into the Underlying Funds at an equivalent value. The value of this stock was determined by Jack Flader or an entity controlled by Jack Flader. Richard gave evidence that Rex Philpott, the then Managing Director of Trio, was aware of this. Richard also gave evidence that he did not consider there to be anything wrong with this as he trusted Jack Flader at the time.





**PPB**

## Summary of Evidence Given by Shawn Richard in his Public Examination

3

Richard also gave evidence that AAM made a number of payments to financial planners including payments totalling \$840,000 to Tarrantis Financial Planners, a loan to Seagrims and a loan to Professional Alliance. The payments to Tarrantis Financial Planners were described by Richard as a marketing allowance.

Richard also gave evidence that Trio's auditors did not seek information from him but they had access to Jack Flader through Global Consultants.

When questioned, Richard was unable to give any information to the Court as to the existence or whereabouts of the assets of the Underlying Funds. He suggested that the Liquidator should approach every one of Global Consultants offices offshore, particularly in Belize. Richard gave evidence that he had not spoken to Jack Flader since September 2009.

Richard prefaced his answers to most questions put to him in course of his examination (both public and private) with the word "privilege". This means that the answers given to questions put to Richard by Senior Counsel for the Liquidators cannot be used against him in any subsequent criminal proceedings.



Together we unlock value

Liu gave evidence that he had worked for Matthew Littauer in New York. He came to Australia in about 2004 to assist Matthew Littauer establish a business in Australia.

Liu gave evidence that after Matthew died he worked for Shawn Richard. He described his job as looking at investments and investment structures. Liu gave evidence that he was unaware of his obligations as a director of AAM. Liu gave evidence that he had responsibility to prepare risk management policies but it was just a broad framework. He gave evidence when questioned that he had no means of checking the current market value of the investments of the ASF and relied upon information provided by the administrators of the funds. In the case of the investment for the Exploration Fund the value was determined by Mr Frank Richard Bell an associate of Jack Flader as a "fair value". In the case of the investment of the ASF in the Tailwind Fund Liu gave evidence that there was an appearance of a conflict of interest (because AAM was the investment manager of the Tailwind Fund) but he did not consider it was improper.

Liu prefaced his answers to most questions put to him with the word "privilege". This means that the answers given to questions put to Liu by Senior Counsel for the Liquidators cannot be used against him in any subsequent criminal proceedings.

The Liquidators are unable to provide information as to that part of the examinations that proceeded in private in accordance with the Orders made by Barrett J. However, that part of the transcript of the examinations which took place in private will be able to be used in any subsequent proceedings providing its used in a way in those subsequent proceedings in which it can be kept confidential.

If the evidence given by Richard at his public examinations before Senior Registrar Musgrave in the Court on July 13-16 inclusive is to be accepted then the following conclusions maybe drawn from his evidence:

1. Jack Flader and/or entities controlled by him controlled the purported investments made by the ASF;
2. Jack Flader and/or entities controlled by him were the recipients of at least US\$26.2 million which had been purportedly "invested" on behalf of the ASF by acquiring contractual rights from EMA;
3. Jack Flader and/or entities controlled by him controlled the Underlying Funds into which EMA purported to invest; and
4. Jack Flader and/or entities controlled by him either sold to or gave to the Underlying Funds stocks or shares at values determined by Mr Flader or entities controlled by Mr Flader.
5. Rex Philpott, Managing Director of Trio, may have had some level of knowledge of Jack Flader and his involvement as outlined above.
6. The financial auditors of the ASF did not seek information from Richard in his capacity as director of the appointed ASF Investment Manager, AAM. However, they did have access to Jack Flader via Global Consultants.

It appears to the Liquidators that the contractual rights obtained by Trio from EMA by investing in the DPAs (excluding those DPAs which relate to the Tailwind Fund) are either worthless or of nominal value only.



The examinations of Messrs Richard and Liu the Liquidators propose the following go forward strategy:

#### 1. Unravelling the Deferred Purchase Agreement Structure:

The investment structure adopted by the ASF to invest in underlying hedge funds is complex. The liquidators are currently considering best course of action to crystallise the losses that the Liquidators believe have been incurred. The two potential outcomes appear to be:

- a) The liquidators instruct EMA to "call up" the DPA's and redeem the purported "investments" in each underlying hedge fund.
- b) The liquidators seek to set aside the DPA's

Both options have significant difficulties particularly from jurisdictional issues and may impact whether claims can then be made against other third parties who may have received benefit from the investors monies initially provided.

The liquidators are continuing to work with ASIC to assist in determining the most appropriate strategy to optimise the position for unit holders of the ASF.

#### 2. Potential Claims Against Third Parties:

The Liquidators are also considering the potential claims that can be made against third parties once the losses of the ASF have been crystallised. These claims included:

- Trio;
- The financial auditors of the ASF and other schemes;
- The compliance auditors of the ASF and other schemes;

- AAM;

- Wright Global Investments Pty Ltd (WGI) in its capacity as the licence holder under which AAM was its appointed Corporate Authorised Representative (CAR); and

- Directors of Trio.

It is important to note that unit holders of the ASF are not the only unit holders to have suffered losses. Several other schemes of which Trio was the Responsible Entity have also suffered losses and accordingly claims against some of the above mentioned parties may also include claims in respect of other schemes.

To assist with our further investigations, the liquidators have obtained dates from 1 - 5 November 2010 to undertake further public examinations in the Supreme Court. Whilst it has not yet been determined who the liquidators will examine at that point in time it is likely that the parties referred to above are likely to be the focus of our investigations:

The liquidators are also considering how the various insurance policies available will impact the potential claims outlined above.

Discussions have also commenced with specialist litigation funders to determine whether there may be any causes of action which they are prepared to fund on a success fee basis.

In regards to the claim against WGI, whilst it is the Liquidators view that Trio is likely to have a potential claim for the losses the Liquidators believe have been incurred, they are not aware of the current financial circumstances of WGI.



3. **Unlocking Value in the Underlying Investments of the Tailwind Fund:**

The liquidators are continuing to work with the liquidators of AAM and parties associated with the Tailwind Fund to unlock the value of the underlying investments. To date approximately \$400,000 has been realised from the underlying investments, however, further work is required to ensure the net funds after costs of realisation are returned to the ASF.

4. **Further investigations regarding other "Unusual Transactions"**

Our investigations to date and evidence provided by Richard during his public examinations has identified certain "unusual transactions" that the liquidators intend pursuing. It is our initial view that a relationship exists between the transactions and funds of the ASF provided through the DPA structure.

The Liquidators have served notices to produce on the parties that were the recipient of the funds to gain a better understanding of the nature of the transactions and whether the liquidators may have a claim for recovery.

The intention of the Liquidators is to focus their strategy on those issues that may result in recovery of monies for the benefit of unit holders. Many of the potential areas of recovery involve complex difficulties and jurisdictional issues and will require significant further investigations.

We will continue to keep unit holders updated on developments and progress of each of the above matters.

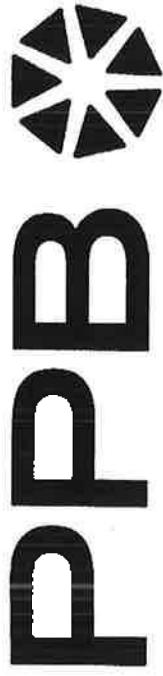
DATED: 4th day of August 2010



Neil G Singleton, Stephen J Parbery and Nicholas J Martin  
Liquidators of  
Trio Capital Limited (In Liquidation)







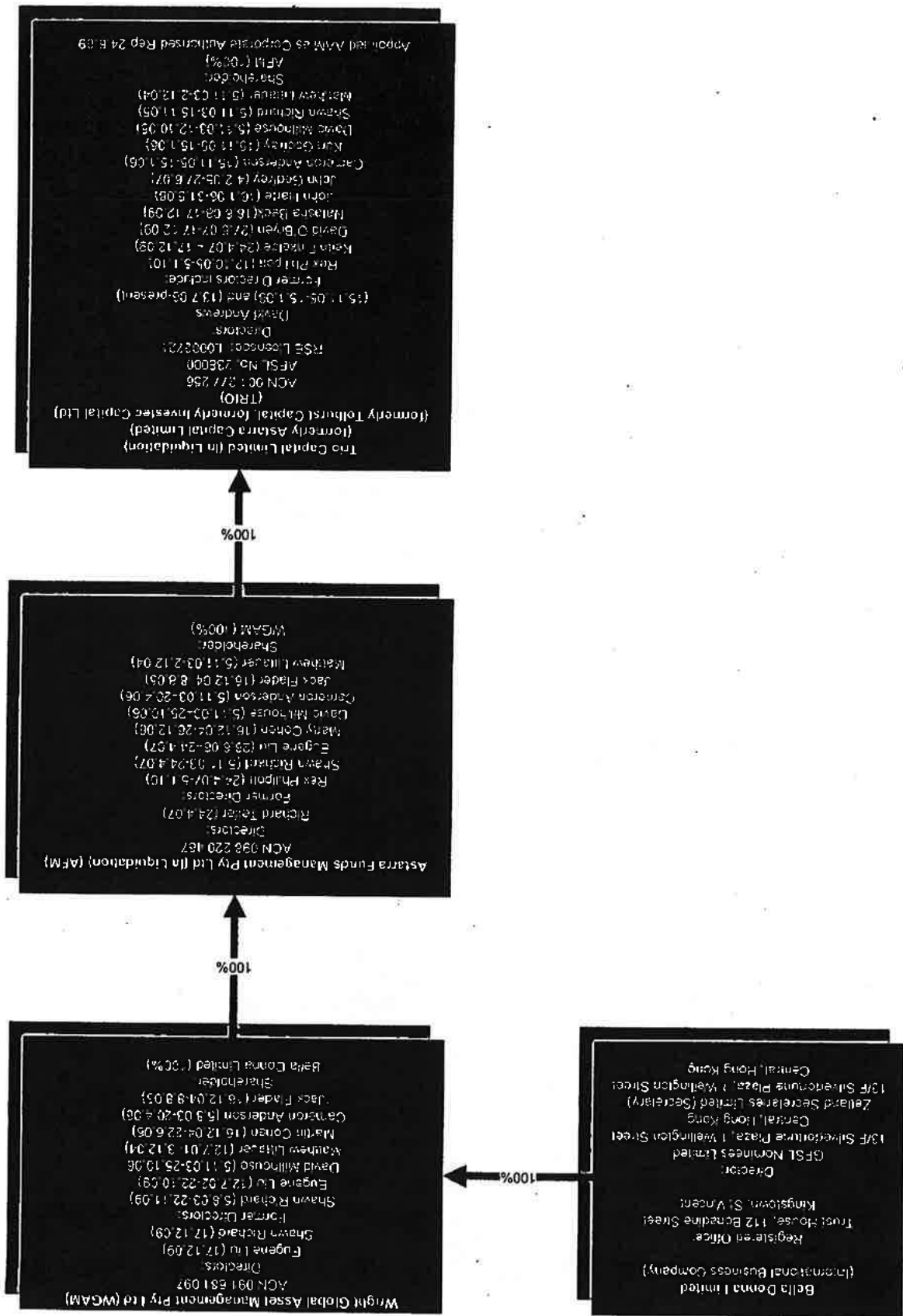
**FURTHER EXPLANATORY MEMORANDUM TO UNITHOLDERS**

**TRIO CAPITAL LIMITED (IN LIQUIDATION) (formerly Astarra Capital Limited)**  
**ACN 001 277 256**  
**As Responsible Entity For**  
**Astarra Strategic Fund (formerly Alpha Strategic Fund)**  
**ARSN 115 962 368**

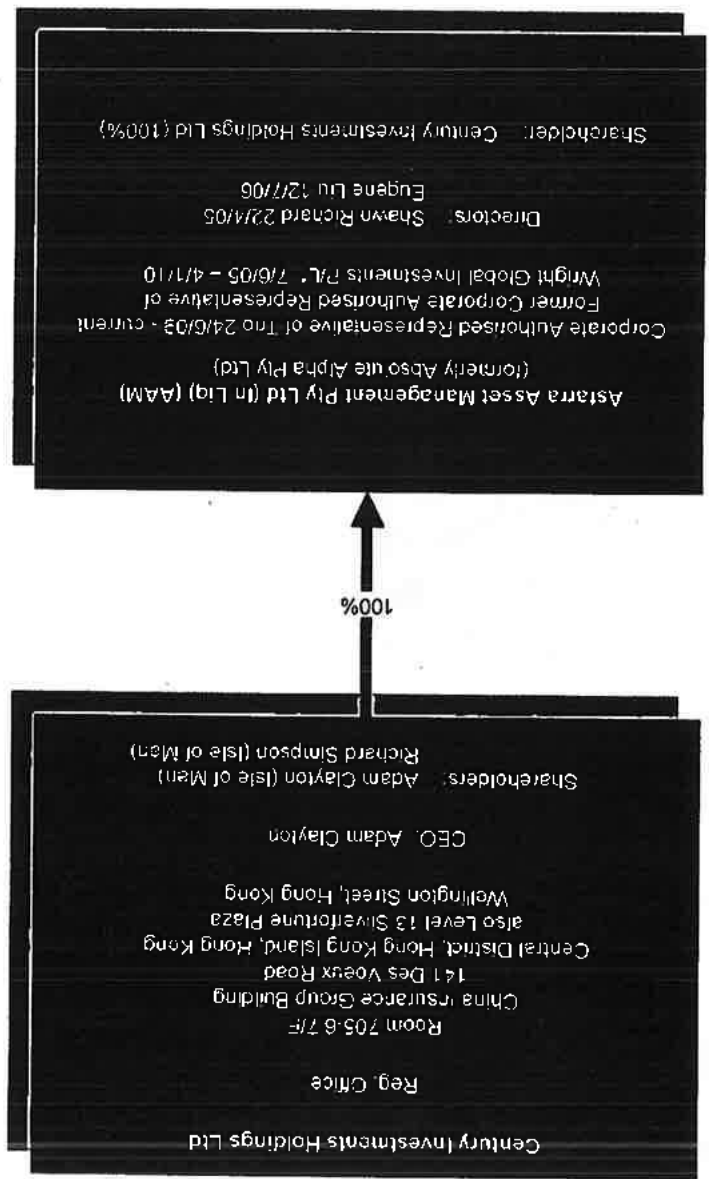
**ANNEXURE A**

**TRIO Organisation Chart**  
**AAM Organisation Chart**  
**WGI Organisation Chart**

# TRIO Organisation Chart



**AAM Organisation Chart**



**\* WGI Organisation Chart**

