

# DRAFT ADVISORY

## FORMER ASTARRA INVESTMENT MANAGER PLEADS GUILTY TO DISHONEST CONDUCT

The former director of investment manager Astarra Asset Management Pty Limited (AAM) Mr Shawn Richard has pleaded guilty to two charges of dishonest conduct in the course of carrying on a financial services business and admitted a third charge of making false statements in relation to financial products. The charges had been laid following an investigation by ASIC.

Mr Richard, 35, appeared at Sydney's Downing Centre Local Court today to face ASIC allegations that he dishonestly received undisclosed payments in his role as investment manager of the Astarra Strategic Fund (ASF) and Astarra Superannuation Plan (ASP) and that he knowingly made materially misleading statements about the value of investments made by the ASF.

ASIC's investigation began on 2 October 2009 and looked at conduct between 2005 and 2009.

ASIC alleged, among other things, that Mr Richard was involved in causing the ASF and ASP to place investor monies in overseas hedge funds, in circumstances where Mr Richard would personally receive a significant portion of the monies for his own benefit and for the benefit of his company, AAM. The monies Richard placed in the overseas hedge funds had been raised by the responsible entity of ASF, Trio Capital Limited (Trio). ASIC alleged that Richard and AAM received in excess of \$6.4 million in undisclosed payments.

ASIC also alleged that Mr Richard made materially misleading statements about the value of the ASF's investments in the overseas hedge funds, knowing that these statements were included in valuation statements provided to Trio and were likely to have the effect of inducing Trio to seek further investments in the hedge funds.

In October 2009, ASIC obtained Court orders restraining Mr Richard, who is a Canadian national, from leaving Australia.

Mr Richard has also entered into an enforceable undertaking with ASIC banning him for life from providing financial services.

The charges each carry a maximum penalty of 5 years' imprisonment or a \$220,000 fine, or both.

Mr Richard was granted bail subject to a number of conditions. Mr Richard was committed for sentence to the Supreme Court of NSW and is scheduled to appear for arraignment on 4 February 2011.

The Commonwealth Director of Public Prosecutions is prosecuting the matter.

Download a copy of the enforceable undertaking.

### Background

ASIC commenced an investigation of the ASF on 2 October 2009.

Trio was formerly known as Astarra Capital Limited and prior to that Tolhurst Capital Limited. Trio is one of around 26 entities that held a licence to act both as a superannuation fund trustee and the responsible entity of managed investment schemes.

As super fund trustee, Trio operated five super funds worth \$300 million and with 10,000 investors. Trio invested the superfund money it was entrusted in various proportions among the 17 active managed investment schemes Trio operated as responsible entity.

Trio's managed investment schemes were also available to non-super fund investments, and around \$126 million from around 700 investors was contributed among Trio's various managed investment schemes.

Trio also operated a superfund administration service, which provided back-office superannuation administration to its own, and five third party superannuation trustees.

Trio is now operated by Liquidators – PPB. The role that Trio played as a superannuation trustee has been moved to a McGrath Nicol entity (ACT Super).

On 19 March 2010, after an application from PPB, the NSW Supreme Court ordered that the following Trio schemes be wound up:

- Astar Wholesale Portfolio Service;
- Astar Portfolio Service (formerly known as Astarra Diversified No. 4 Pool);
- Astarra Overseas Equities Pool;
- Astarra Strategic Fund; and
- ARP Growth Fund.

Greg,

Attached is a memo, draft letter of comfort and draft EU concerning Shawn Richard.

The memo recommends that ASIC accept the EU from Shawn Richard and provide Richard with a letter of comfort in the terms set out in the documents attached.

It would be appreciated if you could review the documents and pass them on to Tony D'Aloisio with your recommendation as Tony has requested in his email below.

Initially Shawn Richard was attending ASIC to sign the relevant documents on Tuesday 30 November, however, due to personal circumstances relating to his legal representative, Mr Richard will now attend ASIC on Friday 3 December.

I am still negotiating with the CDPP and Mr Richard's barrister the date when Shawn Richard will

appear before the court and enter a guilty plea. I will advise you once that date has been settled.

Bearing in mind the Friday timetable for execution of documents, it would be appreciated if you could confirm whether yourself and Tony are in agreement with the recommendation by tomorrow afternoon as Mr Richard's barrister will need to review the letter of comfort and EU prior to attending on Friday.

Regards,  
Glen

Glen Uncomb | Senior Executive, Deterrence – Corporate Governance | ASIC | Sydney

## ENFORCEABLE UNDERTAKING

*Australian Securities and Investments Commission Act 2001*

*Section 934A*

The commitments in this undertaking are offered to  
the Australian Securities and Investments Commission (~~ASIC~~) by:

**SHAWN DARRELL RICHARD**

Address known to ASIC

### 1. Definitions

In addition to the terms defined elsewhere in this undertaking, the following definitions are used:

~~AAM~~ means Astara Asset Management Pty Limited (formerly Absolute Alpha Pty Limited)  
ACN 113 940 953;

~~AFM~~ means Astara Funds Management Pty Limited ACN 098 220 467;

~~ASF~~ means Astara Strategic Fund AFSN 115 962 368;

~~ASIC~~ means Australian Securities and Investments Commission;

~~ASIC Act~~ means the *Australian Securities and Investments Commission Act 2001* (Cth);

~~EMA~~ means ~~EMA International Limited~~;

~~Flader~~ means Jack W. Flader Jr.;

~~Flader Controlled Funds~~ means ~~Exploration Fund Limited, Sierra Multi-Strategy Fund Limited,  
PacifiCo Capital Multi-Arbitrage Fund Limited and SRS Dynamic Opportunities Fund Limited~~;

~~GCSL~~ means ~~Global Consultants and Services Limited~~;

~~Richard~~ means Shawn Darrell Richard (address known to ASIC);

~~The Act~~ means the *Corporations Act 2001* (Cth);

~~Trio~~ means Trio Capital Limited (formerly Astara Capital Limited) ACN 001 277 256;

## 2. Background

### 2.1. ASIC's role

2.1.1. Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its function and to exercise its powers so as to promote the confidence and informed participation of investors and consumers in the financial system.

### 2.2. Details of Conduct

2.2.1. 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 Asiatara Asset Management Pty Limited ("AAM"), an authorised representative of Wright Global Investments Pty Limited ("WGI") and Trio Capital Ltd ("Trio");
  - (ii) a director or officer of Asiatara 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 Asiatara 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. Plader ("Plader"), a US citizen based in Hong Kong.
- (c) In order to facilitate the Scheme defined in paragraph 2.2.2 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 Plader was the ultimate controller of these entities.
- 2.2.2. From July 2004 onwards, Richard knowingly put into effect Plader'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 Plader, namely:
- (a) Exploration Fund Limited ("Exploration Fund");
  - (b) Pacific Capital Multi-Arbitrage Fund Limited ("Pacific Fund");
  - (c) SRS Dynamic Opportunities Fund Limited ("SRS Fund"); and
  - (d) Sierra Multi-Strategy Fund Limited ("Sierra Fund"),
- (collectively the "Plader Controlled Funds")

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

2.2.3. 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 received from the operation of the Scheme and Richard also received monies in payments for participating in the Scheme. The payments to Richard were in addition to his disclosed net annual salary paid to him by AFM.

2.2.4. Out of the \$52,605,494 of ASF monies invested directly into underlying funds (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 Plader Controlled Funds.

2.2.5. To date, the liquidators of ASF have been unable to recover any of the Trio Managed Funds that were invested with the Plader Controlled Funds.

2.2.6. At all relevant times, the only monies invested into the Plader 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.

2.2.7. In furtherance of the Scheme a large portion of the profits realised from the sales of the US Shares by the Plader Vendor Companies to the Plader Controlled Funds was used to fund the businesses of Trio, WGI, AFM and AAM, by way of loans from other companies controlled by Plader (the "Funding Companies").

2.2.8. 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 Plader Controlled Funds.

2.2.9. 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 Plader.

2.2.10. At no relevant time did Richard disclose to investors in the Trio Managed Funds or to Trio, the nature of his relationship with Plader, the existence of the Scheme, that he was personally benefiting from the operation of the Scheme or that he was operating a personal overseas bank account 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

Comment [KG1]: Percentage used to pay financial advisors

Comment [TW 2]: Should not be added (on removal)

Comment [TW 3]: Should amount be disclosed

in furtherance of the Scheme.

2.2.9.2.2.10. Furthermore, following concerns raised by Trio's investment committee about the Trio Managed Funds' exposure to 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 Plader.

2.2.10.2.2.11. 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 Plader and they all held US Shares, derivatives, foreign exchange agreements and fixed interest investments purchased through dealings with Plader related companies.

2.2.11.2.2.12. Also, between at least April 2007 to 5 October 2009 Richard was aware that the assets held by the Plader 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.

2.2.12.2.2.13. Despite Richard's knowledge of both the asset composition and the illiquidity of the assets held by the Plader 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.

2.2.13.2.2.14. Richard also knew that a substantial portion of the value of the Plader 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 Plader Vendor Companies or another of the Plader Controlled Funds.

2.2.14.2.2.15. 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.

2.2.15.2.2.16. Furthermore, Richard knew that the administrators for the Plader Controlled Funds were also under Plader's control and he also knew that at no time were the assets held by these funds independently valued.

2.2.16.2.2.17. As a result of Richard's awareness of the operation of the Scheme, the illiquidity of the Plader Controlled Funds and the related party transactions between Plader Vendor Companies and the Plader Controlled Funds, Richard knew, from at least 10 April 2007, that the statements he made about the value of the Plader Controlled Funds that were included in valuation statements provided to Trio, were materially misleading.

2.2.17.2.2.18. 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.

2.2.18. The ASF made investments in the underlying funds with DMA International Limited ("DMA") via agreements titled Master Deferred Purchase Agreement ("Master DPA") and Supplemental Deferred Purchase Agreements ("Supplemental DPAs").

2.2.19. Before the Master DPA was executed, between 15 September 2005 (the date that ASF was registered) and 13 February 2006 (the date the Master DPA was executed), the 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.

2.2.20. DMA's administration services, including custody services and the operation of DMA's Bank Account, were provided to DMA by Global Custodians and Services Ltd ("GCSL"). At that time Plader held a senior management position with this company and oversaw the management of DMA's affairs.

2.2.21. Upon receipt of the monies from ASF, DMA purchased shares in the underlying funds identified in the Supplemental DPAs:

2.2.22. The underlying funds that DMA 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 Antigua;
- (e) Atlantic Capital Markets Cayman LDC, a fund domiciled in the Cayman Islands; and
- (f) Fathomed Investment Fund Ltd, a fund domiciled in the Cayman Islands.

2.2.23. Out of the ASF's monies invested directly into underlying funds by DMA (excluding an in-specie transfer of Exploration Fund shares from other Trio Managed Funds into

ASF which occurred on 30 June 2005, approximately 64 per cent of those monies were invested into the Flader Controlled Funds.

Comment (TW4): should not be italicised

2.2.24. Flader and Richard both participated in the creation of the Flader Controlled Funds.

2.2.25. 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.

2.2.26. At all relevant times the GCSL Group was the custodian of the assets of the Flader Controlled Funds.

2.2.27. At all relevant times the Flader Controlled Funds were controlled by Flader, and the fund directors, investment managers and administrators acted under Flader's instruction.

2.2.28. The Exploration Fund was established as an exclusive investment vehicle for the Trio Managed Funds.

## 2.3. ASIC's Investigation

2.3.1. ASIC has conducted an investigation into the conduct of Richard during the period from 9 September 2005 in relation to suspected contraventions of the Act.

## 2.4. ASIC's Concerns

2.4.1. As a result of its investigation, ASIC is concerned that Richard:

- (a) failed to avoid or otherwise disclose his conflict of interest in respect of the Scheme and investments in Flader Controlled Funds, contrary to the duty he owed to Trio as its agent;
- (b) did not act in the best interests of ASF or Astern Superannuation Plan or other Trio Managed Funds in assessing and arranging investments into Flader Controlled Funds, contrary to the duties he owed as the agent for Trio;
- (c) profited from his position in relation to the affairs of Trio by his receipt of 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;
- (d) knowingly made materially misleading statements about the value of ASF's Supplemental DPAs with BMA to the Flader Controlled Funds, knowing that those statements were included in valuation statements provided to Trio and were likely to have the effect of inducing Trio to apply for and acquire further financial products through Supplemental DPAs with BMA.

- (e) knowingly made materially misleading statements in a product disclosure statement for ASF and in questionnaire responses relating to ASF in circumstances where he knew – At the time that Richard made these statements he also knew that these statements were likely to induce Australian Investors to apply for financial products, namely units in ASF;

- (f) knowingly misled Trio's investment committee and ASF investors in respect to the nature of the investments being made on behalf of ASF; and

- (g) made false representations about the Funding Companies in his dealings with the auditors of Trio, WGL, AFM and AAM.

## 2.5. Acknowledgement of ASIC's concerns

2.5.1. Richard acknowledges ASIC's concerns as set out in paragraph 2.4.1 above.

## 3. Undertakings

3.1. Under section 93AA of the ASIC Act, Richard has offered, and ASIC has agreed to accept, as an alternative to ASIC exercising its power under section 920A of the Act, to make a binding order against Richard under to commence proceedings against him seeking, inter alia, a declaration under section 601FD of the Act the following undertakings:

3.1.1. Richard permanently undertakes not to provide any financial services for the time of acceptance of this undertaking by ASIC.

3.1.2. Without in any way limiting the undertaking in paragraph 3.1.1 above, Richard permanently undertakes, for the time of the acceptance of this undertaking by ASIC, not to:

- (a) do any act or engage in any conduct as a representative of an Australian Financial Services licensee;
- (b) hold himself out as a representative of an Australian Financial Services Licensee;
- (c) carry on a business in relation to financial products or financial services, within the meaning of section 761A of the Act, either directly or indirectly as a director, partner, manager, servant or agent;

(d) hold out that he is anyway authorised to provide a particular financial service or services that he is any way authorised to provide financial services generally, and/or

(e) apply to ASIC under section 913A of the Act for an Australian Financial Services Licence.

3.1.3. Richard undertakes to provide all documents and information, as requested by ASIC from time to time, for the purposes of assessing Richard's compliance with the terms of this enforceable undertaking.

#### 4. Acknowledgements

4.1. Richard acknowledges that ASIC:

- (a) may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- (b) may from time to time publicly refer to this undertaking; and
- (c) will make this undertaking available for public inspection.

4.2. Further, Richard acknowledges that:

- (a) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order or damages in relation to any contravention in relation to ASIC's concerns, or any other concerns arising from the conduct referred to in this undertaking, or any other conduct; and

- (b) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.

(b)

4.3. In particular, Richard acknowledges that ASIC intends to commence a criminal prosecution against him in relation to the conduct referred to in section 2.2 above and further acknowledges that in relation to those proposed criminal proceedings he intends to plead guilty to two offences against s.1041G of the Act and to admit, pursuant to s.16BA of the *Crimes Act 1914*, a third offence against s.1041E of the Act.

4.3.4.4. Richard in response to ASIC's concerns set out in paragraph 2.4.1 above, Richard has acknowledged that ASIC had reason to be concerned as to the alleged facts and have offered ASIC an enforceable undertakings in the terms of paragraph 2.4.4.3 above.

4.4.4.5. Richard acknowledges that this enforceable undertaking has no operative force until accepted by ASIC, and Richard and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

Signed: Shawn Darrell Richard

Dated:

Accepted by the Australian Securities and Investments Commission under section 93AA of the ASIC Act by its duly authorised delegate:

Signed:

Delegate of the Australian Securities and Investments Commission

Dated:



From: Glen Unicomb/Sydney/NSW/ASIC  
To: Tony D'Aloisio/Sydney/NSW/ASIC@ASIC  
Cc: Greg Medcraft/Sydney/NSW/ASIC@ASIC, Michael Dwyer <Michael.Dwyer@asic.gov.au>  
Date: 16/02/2010 07:10 PM  
Subject: Re: MEDIA UPDATE: Astarra/Trio [SEC=IN-CONFIDENCE]

---

Tony,

I have prepared a paper for consideration at the next Commission meeting.

The paper is with Sarah Goodman. Would you like me to send this to you in advance?

Although we need to gather further evidence, I consider there are reasonable prospects of establishing that the principal person of interest, Shawn Richard, has committed Corporations Act offences.

I have consulted with the CDPP on a preliminary basis and I have also had a conference with Shawn Richard's lawyers. Indications are that he may be prepared to cooperate with ASIC.

Regards,  
Glen

Glen Unicomb | Senior Executive, Deterrence – Corporate Governance | ASIC | Sydney

☎ +61 2 9911 5935 | 📠 +61 2 9911 2369 | 📠 +61 411 549 234 | ✉ glen.unicomb@asic.gov.au

Tony D'Aloisio      Confidential Communication Glen,

16/02/2010 09:26:48 AM

---

From: Tony D'Aloisio/Sydney/NSW/ASIC  
To: Glen Unicomb/Sydney/NSW/ASIC@ASIC  
Cc: Greg Medcraft/Sydney/NSW/ASIC@ASIC, Michael Dwyer/Melbourne/VIC/ASIC@ASIC  
Date: 16/02/2010 09:26 AM  
Subject: Re: MEDIA UPDATE: Astarra/Trio [SEC=IN-CONFIDENCE]

---

Confidential Communication

### About Trio

- Trio Capital (Trio) is one of around 30 entities that held a licence to act both as a superannuation fund trustee and the responsible entity of managed investment schemes.
- As super fund trustee, Trio operated 5 super funds worth \$300 million and with 10,000 investors. Trio invested the superfund money. It was entrusted in various proportions among the 17 active managed investment schemes Trio operated (as responsible entity). Trio's managed investment schemes were also available to non-super fund investments, and around \$126m from around 700 investors was contributed among Trio's various managed investment schemes.
- Trio employed Astarra Asset Management Pty Limited (Astarra) to act as asset manager of several Trio schemes, including the Astarra Strategic Fund (ASF). Astarra's directors are Shawn Richard and Eugene Liu. Astarra and Trio share the same ultimate parent company controlled by Shawn Richard.

### What has happened?

- ASIC had identified ASF as a fund of concern as part of a surveillance of the sector and also received a specific credible tip-off (in late September 2009). ASIC commenced an investigation at the end of September 2009.
- On 14 October 2009, ASIC obtained travel restraint orders from the NSW Supreme Court against the directors of the Astarra. These orders have effect until 22 February 2010.
- On 16 October 2009, ASIC issued an interim stop order on the Product Disclosure Statement (PDS) for the ASF, due to concerns about serious defects in the disclosure of investment strategy, risks and processes.
- On 21 October, ASIC issued interim stop orders on the Product Disclosure Statements for three nominated superannuation funds. ASIC later extended these interim stop orders in relation to the superannuation and managed investment Product Disclosure Statements. These stop orders remain in place.
- On 21 October, APRA issued notices to freeze the assets of all the superannuation funds held by the trustee and various third party service providers that have control over the assets of the superannuation funds. It later extended this order for three months, to 19 February 2010.
- On 3 December 2009, APRA issued a notice to Trio to show cause why APRA should not suspend its licence as trustee and, as Trio did not object, on 16 December it appointed an acting trustee, ACT Super Management Pty Limited. On the same date Trio appointed voluntary administrators - PPB.
- On 17 December 2009, ASIC suspended Trio's AFS licence. As part of the suspension, ASIC permitted PPB to continue to operate the Trio schemes for a period of 3 months. ASIC also permitted 2 subsidiaries of Trio to continue providing superannuation administration services (under the control of PPB).
- As part of the licensing action taken by ASIC and APRA, both regulators requested that information about the action was placed on Trio's website.

### What is happening now?

- Trio is now operated by voluntary administrators - PPB. The role that Trio played as a superannuation trustee has been moved to a McGrath Nicol entity (ACT Super).
- PPB have completed an initial investigation of each of the Trio managed investment schemes. They have resolved to apply to Court to have 6 schemes wound up, including the ASF.
- With the exception of 2 schemes that members have resolved to replace Trio as responsible entity, the assets of the remaining 20 managed investment schemes have been substantially accounted for. PPB are in discussions with a number of companies to see if they are prepared to take over as the responsible entity of these schemes.
- PPB have advised at 9 February 2010 that they "have not been able to establish the existence or value of the foreign assets of ASF". PPB will conduct public examinations of the directors of Astarra (Richards and Liu) on 23 and 24 March 2010.

### ASIC

- ASIC's investigations continue.



**Commission Paper - Trio Capital Limited Criminal Investigation-2.docx**  
**[SEC=IN-CONFIDENCE]**

Glen Unicombo Sarah Goodman

16/02/2010 07:04 PM

Cc: Greg Medcraft, James Hogan, Joe Kouper

Sarah,

Please see attached paper prepared by Deterrence concerning the Trio Capital Criminal Investigation for inclusion in the Commission papers.

Regards,  
Glen

Glen Unicombo | Senior Executive, Deterrence – Corporate Governance | ASIC | Sydney

+61 2 9911 5935 | +61 2 9911 2369 | +61 411 549 234 | [glen.unicomb@asic.gov.au](mailto:glen.unicomb@asic.gov.au)



- Commission Paper - Trio Capital Limited Criminal Investigation-2.docx

Regards,  
Glen

We have received a proposed enforceable undertaking from Blake Dawson, solicitors acting for Timothy Frazer, the auditor of the Astarra Strategic Fund for financial years ended 30 June 2008 and 2009. The principal terms of the enforceable undertaking include:

- Frazer not to do any work which requires him to be registered as an auditor for a period of 2 years;
- Frazer to submit to the first three audits conducted by him following the period of suspension to be reviewed by a senior auditor; and
- Frazer to have further training and continuing professional education on terms to be agreed.

At present, the key impediment to accepting the undertaking is that Frazer is understandably not prepared to admit liability as his insurers have indicated they would not give insurance coverage if such admissions were made.

We are in the process of negotiating a "middle ground" on this point such as "Frazer acknowledges and accepts ASIC's concerns but does not admit them".

After consultation with Financial Reporting & Audit (Doug Niven), we initially put to Frazer a period of suspension of 4 years. We may be able to reach agreement at 3 years.

Belinda mentioned you were going on leave on Friday so I would appreciate your views re the above before we settle the EU.

Glen Unicom  
Greg, we have received a proposed enforceable...

---

From: Glen Unicom/Sydney/NSW/ASIC  
To: Greg Medcraft/Sydney/NSW/ASIC  
Cc: Belinda Gibson <Belinda.Gibson@asic.gov.au>  
Date: 07/09/2011 03:48 PM  
Subject: Tim - EU Frazer - Auditor [SEC=IN-CONFIDENCE]

----- Original Message -----  
From: Glen Unicom  
Sent: 13/05/2011 12:31 PM ZET0  
To: Greg Medcraft  
Cc: Belinda Gibson  
Subject: Trio - Richard Sentencing [SEC=IN-CONFIDENCE]

Greg,  
We appeared before Justice Garling in the Supreme Court this morning re the sentencing of Shawn Richard.

His new Counsel, John Agius SC, made it clear to the Court that Richard is not back tracking on his guilty plea, or the agreed Statement of Facts.

He asked for an adjournment in order:

- for the new legal team to become familiar with the matter and he was concerned that the defence case required more work (eg: the ASIC statement doesn't adequately reflect the value of the assistance provided; needs statements about assistance provided to others such as the Trio liquidator, Richard's trustee in bankruptcy);
- to obtain a medical report about a neurological condition that has not to date been properly assessed.

The Crown did not oppose the application but pushed for the matter to be heard as soon as possible. The matter was adjourned to Friday, 22 July 2011. The Crown would have liked an earlier date but Justice Garling had very limited availability.

Regards,  
Glen

Belinda/Greg

I support the proposed letter to Frazer, the Trio/Astara Strategic Fund auditor. The proposed 4 year suspension has been agreed with Doug Niven. Do you think we should start with five years to facilitate our negotiation stance with Frazer?

---

From: Glen Unicom/Sydney/NSW/ASIC  
To: Belinda Gibson <Belinda.Gibson@asic.gov.au>, Greg Medcraft/Sydney/NSW/ASIC@ASIC  
Date: 17/03/2011 05:12 PM  
Subject: FW: Astara: Frazer [SEC=IN-CONFIDENCE]

Glen  
Glen Unicom | Senior Executive, Deference – Corporate Governance | ASIC | Sydney

+61 2 9911 5935 | +61 2 9911 2369 | +61 411 549 234 | [glen.unicomb@asic.gov.au](mailto:glen.unicomb@asic.gov.au)  
— Forwarded by Glen Unicom/Sydney/NSW/ASIC on 17/03/2011 05:08 PM —

From: George Boland/Sydney/NSW/ASIC  
To: Glen Unicom/Sydney/NSW/ASIC@ASIC  
Cc: Niesje Turney/Sydney/NSW/ASIC@ASIC, Eddie Poppel/Sydney/NSW/ASIC@ASIC  
Date: 17/03/2011 04:03 PM  
Subject: Astara: Frazer [SEC=IN-CONFIDENCE]

Glen, Fraser SOFAC has now been finalised and subject to instructions can now be forwarded to Frazer. Attached is letter to Frazer: as instructed by A&A, SOFAC indicates that ASIC is seeking 4 yrs suspension.

Regards

George

George Boland | Senior Specialist, Deterrence – Corporate Governance | ASIC | Sydney |

☎ +61 2 9911 2389 | 📠 +61 2 9911 2057 | 📧 GPO Box 9827 SYDNEY NSW 2001 | 📠 DX 653 SYDNEY | ✉ [george.boland@asic.gov.au](mailto:george.boland@asic.gov.au) [attachment "frazerletter.docx" deleted by Belinda Gibson/Sydney/NSW/ASIC] [attachment "FrazerSOFACV8.docx" deleted by Belinda Gibson/Sydney/NSW/ASIC]

12

---

From: Michael Parker/Sydney/NSW/ASIC  
To: Greg Madcrat/Sydney/NSW/ASIC@ASIC, Tony D'Aloisio/Sydney/NSW/ASIC@ASIC  
Cc: Glen Unicom/Sydney/NSW/ASIC@ASIC  
Date: 01/10/2009 10:58 AM  
Subject: Astarra [REDACTED] (SEC-IN-CONFIDENCE)

Tony and Greg,

**Astarra:** overnight we received information that looks extremely suspicious. I can come up and explain now, or at our weekly update.

Glen thinks this information is now sufficient for a full investigation, freezing passports etc, so we are going ahead with that.

[REDACTED]

Mike

Michael Parker | Senior Executive Leader | Investment Banks & OTC | ASIC | Sydney | +61 2 9911 2025 | [michael.parker@asic.gov.au](mailto:michael.parker@asic.gov.au)