

ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this undertaking are offered to
the Australian Securities and Investments Commission 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 Astarra Asset Management Pty Limited (formerly Absolute Alpha Pty Limited)
ACN 113 940 953;

AFM means Astarra Funds Management Pty Limited ACN 098 220 467;

ASF means Astarra 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);

Flader means Jack W. Flader Jr;

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

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

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

WGI means Wright Global Investments Pty Limited ACN 097 478 487;

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.

- 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.
- 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 Flader 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 Flader Controlled Funds.
- 2.2.6. 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").
- 2.2.7. 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.
- 2.2.8. 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.
- 2.2.9. 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 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 in furtherance of the Scheme.
- 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 Flader.

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.

2.3. 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 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) made materially misleading statements about the value of the Flader Controlled Funds, knowing that these 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;
- (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 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, WGI, 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.

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 my conduct described in this undertaking or arising from future conduct.

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.

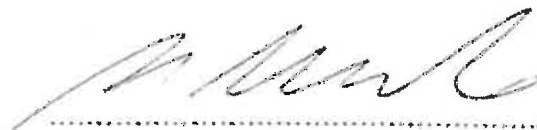
4.4. In response to ASIC's concerns set out in paragraph 2.4.1 above, Richard has offered ASIC enforceable undertakings in the terms of paragraph 3 above.

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.


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Signed: Shawn Darrell Richard

Dated: 3 December 2010

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


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Signed:

Delegate of the Australian Securities and Investments Commission

Dated: 3 December 2010