

National Manager Crime Operation

NYCO s47F 4/3/13
 Reassignment decisions required.

s47C(1)



s47C(1)

REF: CMS 2013/ 3575 DAT:

FROM : National Manager Crime Operations

LOCATION : Crime Operation

SUBJECT : ES TRIO CAPITAL

security:

s47F 27/2
 DLO

MFAC

Note comment + direction provided by DCO. This is

sensitive so might be to manage a sensitive story.

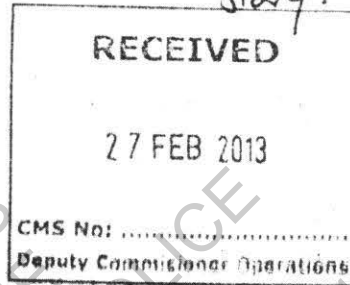
- NM CO NM SOC
- MSOC MCO
- MIN MSR
- MCA MPS
- Coordinator SOC Coordinator CO
- Coordinator CA Coordinator SR
- Coordinator INT Coordinator PS

DCO

COMMISSIONER

s47F

4/3/13



Other:

Forwarded for : (please cross relevant box)

- Discuss / Advice Report Information / File
- Draft Reply for my signature Attention Signature
- Reply Direct Clearance Information/Consideration

DEADLINE : PRIORITY

Comments : s47F ^{MF} THIS ATTACHED COPY IS THAT PROVIDES THE LATEST SIT REP WHICH THEORETICALLY FOLLOWS OUR RECOMMENDATION THIS MORNING RE

s47E(d), s37(1)(a)

THIS WILL GET VISIBILITY IN THE ASIC SO IMPORTANT WE UNDERSTAND OUR POSITION.

IN SHORT, ASIC HAVE FORWARDED FOR OUR VIEW OF REMOTE RESEARCH + BASED ON INFORMATION PROVIDED RE DATE, LEGAL RECOMMENDATION + CASE

s47E(d)

s47E(d)

s37(2)(b)

National Manager Crime Operation

s47F

NMCO 27/2/13
 AFP Web site www.afp.gov.au



AFP

AUSTRALIAN FEDERAL POLICE

Crime Operations

PROTECTED

DATE	26/02/2013	Ref: CMS 2013/3578	Other Ref:
FROM	Manager Fraud & Anti-Corruption		
LOCATION	Crime Operations EBB		
SUBJECT	Executive Brief - Trio Capital		
DEADLINE		<input checked="" type="checkbox"/> PRIORITY	

<input type="checkbox"/> Commissioner	<input type="checkbox"/> DC O	<input type="checkbox"/> DC NS	<input type="checkbox"/> DC COS
<input checked="" type="checkbox"/> NM CO	<input type="checkbox"/> NMSOC	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> M SR	<input type="checkbox"/> M SOC	<input type="checkbox"/> M FAC	<input type="checkbox"/> M COR
<input type="checkbox"/> NC SR	<input type="checkbox"/> NC PS	<input type="checkbox"/> NC FAC	<input type="checkbox"/> NC COR

Forwarded for :

<input checked="" type="checkbox"/> Approval	<input type="checkbox"/> Comment	<input type="checkbox"/> Clearance
<input type="checkbox"/> Attention	<input type="checkbox"/> Report	<input type="checkbox"/> Filing
<input type="checkbox"/> Discussion/Advice	<input type="checkbox"/> Draft reply for	<input type="checkbox"/> Information

NCFAC,

Please see attached Executive Brief providing an overview and recommendations in regard to AFP consideration of alleged offences committed by US Citizen Jack Flader in connection with the collapse of Trio Capital.

Regards

s22(1)(a)(ii)

Matt Heather
Team Leader
Fraud & Anti-Corruption

Title/Name:	NCFAC R. PIKE			
Date/Initial:	26/2/13 s47F			

*MFAC, Background briefing re TRIO matter attached. Recommendations supported.
NCFAC s47F R. PIKE*

*NMCO,
I agree with the recommendations and support the AFP.*

s47F

s37(2)(b)

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FOI-2



AFP
AUSTRALIAN FEDERAL POLICE

Minute

Addressee NMCO through MFAC

Title Referral from ASIC regarding TRIO collapse

Action required:

For approval of recommendations

Deadline:

1 March 2013. ASIC are required to respond to the Parliamentary Joint Committee (PJC) in early March 2013.

Reasons for proposed actions:

Background

On 17 December 2009, ASIC and APRA commenced an investigation into Trio Capital (Trio) following an allegation by an independent fund manager of irregular investment returns of Trio during the Global Financial Crisis. As a result APRA issued a suspension of Trio as the trustee of four superannuation funds and one pooled trust - these funds held about \$300 million on behalf of 10,000 investors.

Trio was a funds management group based in Albury, NSW and provided a complex suite of managed investment funds which were heavily marketed through several financial advisers in Australia. These financial planners earned fees and commissions based on investments into Trio funds. Money was invested in the Trio funds either by APRA regulated Australian Superannuation funds or Self Managed Superannuation Funds (SMSF).

It is alleged that financial advisers provided recommendations to clients due to high commissions which were paid by Trio. It is further alleged that the complex structure of the Trio scheme was designed to conceal fraudulent activity. The ASIC investigations discovered that investors' money was channelled into financial entities and then distributed to different companies in places such as the British Virgin Islands, Liechtenstein and Curacao.

These companies are alleged to have been controlled by United States citizen Jack Flader and he is alleged to have instructed Australian-based controllers of the Trio funds to transfer the money offshore. It is understood that Mr Flader then invested this money through the purchase of US shares from other companies which are that alleged to have been controlled by Mr Flader.

s22(1)(a)(ii)

The method of purchasing these shares was through the Over the Counter Bulletin Board trading system, that is used for shares not listed on a stock exchange such as the Nasdaq. This type of trading is used for very low volume traded stocks and as such can be vulnerable to price manipulation.

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FOI-3

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s37(1)(a)

The ASIC investigation resulted in an Australian Citizen, Shawn Richard, being charged and pleading guilty to two charges of dishonest conduct and one charge of making a false statement pursuant to the *Corporations Act 2001*. Mr Richard represented himself to investors as being the controller of Trio and was involved in the preparation of the Product Disclosure Statement and used his position as a director of Trio to move investor's funds offshore. On 12 August 2011 Mr Richard was sentenced to two years and 6 month imprisonment, followed by one year and three months good behaviour.

In May 2012, the Parliamentary Joint Committee (PJC) on Corporations and Financial Services published its report into the collapse of Trio. As part of its findings the PJC recommended the AFP, in cooperation with ASIC, pursue criminal investigations into key figures responsible for the Trio collapse, notably Mr Flader.

s22(1)(a)(ii)

In June 2012, members of the AFP met with ASIC and were subsequently provided information relating to the case for review.

s22(1)(a)(ii)

Review of ASIC Material regarding Flader

s33(a)(iii), s33(b)

The material provided by ASIC, including a statement taken from Mr Richard by ASIC in January 2013, does not provide sufficient information to support an investigation into any *Criminal Code Act 1995* offences in respect to Mr Flader.

s22(1)(a)(ii)

The AFP is, however, continuing to offer support to ASIC in respect to facilitating offshore inquiries which require police to police assistance.

Intelligence Probe

s37(2)(b)

s22(1)(a)(ii), s37(2)(b)

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Asset Recovery

ASIC have provided funding to a commercial liquidator s47G(1) which has conducted investigations into the status of lost funds. To date, s47G(1) have not been successful in locating any missing money and ASIC have been advised that any identification of funds by s47G(1)s now unlikely.

s47C(1)

s22(1)(a)(ii)

Resource implications:

The AFP will dedicate sufficient resources to conduct post-ACC report enquiries in a timely manner and ongoing assistance to ASIC, including utilising the International Network.

Consultation

CACT Canberra, Legal, ASIC

Expected Reaction:

The AFP's response to the PJC recommendations will be closely monitored by the PJC, the media and the citizens who lost their savings through this scheme.

In summary, the AFP: 1) have responded to ASIC's requests for assistance to their investigation through agency assistance warrants, review of selected material and some ongoing overseas inquiries, 2) have contributed to the ACC-led intelligence probe and 3) will action any information stemming from the Intelligence probe within our jurisdiction. s22(1)(a)(ii)

Recommendations:

1.

2.

s37(2)(b)

3.

s22(1)(a)(ii)

Matt Heather
Team Leader

26 February 2012

AFP Web site: <http://www.afp.gov.au>

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3

FOI-5

Australian Federal Police - Production
Case Note: (150757581) Meeting with ASIC & CACT

Case Note

ID: 150757581
Date Created: 15 Mar 2013 14:03
Title: Meeting with ASIC & CACT
Note Type: GENERAL
Applies To: HEATHER, Matthew s47F
Details:

About 11.00am on 13 March 2013, I conducted a meeting with Supt Nick McTaggart (CACT), Joe Kouper, Penny Beck and David Luft (ASIC).

The following was discussed and agreed:

- Supt McTaggart advised there was no active POCA file with the AFP CACT team

s37(2)(b), s47E(d)

- ASIC members stated that significant financial inquiries have been conducted regarding the movement of Trio funds and there are currently no identified assets. ASIC members further stated that it is believed that all Trio investments have become worthless.

- Supt McTaggart asked ASIC officers whether any other individuals (other than Flader or Richard) are suspected to have unlawfully benefited from the Trio Collapse. s22(1)(a)(ii)

- ASIC members advised that various financial advisors had received commissions however these were not considered to be unlawful or available for POCA considerations. Supt McTaggart agreed with this advice.

s22(1)(a)(ii)

s33(b)

- ASIC further advised that they were of no evidence which could be used substantiate offences committed by Flader. ASIC have sought counsel advice on material which is relevant to Flader's actions. AFP will be advised of this advice once received and further assistance may be sought from the AFP. s22(1)(a)(ii)

- ASIC will arrange for bankruptcy statements pertaining to Shawn Richard to be provided to AFP.

s22(1)(a)(ii)

Matt Heather
F/A 11630

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Australian Federal Police - Production
Case Note: (150757581) Meeting with ASIC & CACT

Involvements:

Case ID	Log #	Title	Created By	Date Created
5060122	94	ASIC REFERRAL - TRIO CAPITAL LTD & JACK FLADER	AFP11630	15 Mar 2013 14:03

Attachments:

No Attachments.

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Australian Federal Police - Production
Case Note: (150755198) Follow up meeting with CACT

Case Note

ID: 150755198
Date Created: 13 Mar 2013 09:04
Title: Follow up meeting with CACT
Note Type: GENERAL
Applies To: HEATHER, Matthew s47F
Details:

On 12/03/2013, F/As Heather and Tawton met with T/L CACT Jared Taggart and financial analyst.

We discussed the Trio Capital matter, including the information provided by ASIC during 2013.

F/A Taggart provided further advice regarding the very limited avenues available to pursue proceeds of crime or money laundering in regard to Flader.

s22(1)(a)(ii)

s47C

s47C

s22(1)(a)(ii)

s37(2)(b), s47E(d)

Matt Heather
T/A Fraud & Anti-Corruption

Involvements:

Case ID	Log #	Title	Created By	Date Created
5060122	92	ASIC REFERRAL - TRIO CAPITAL LTD & JACK FLADER	AFP11630	13 Mar 2013 09:04

Attachments:

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Australian Federal Police - Production
Case Note: (150746751) Meeting with CACT

Case Note

ID: 150746751
Date Created: 01 Mar 2013 13:33
Title: Meeting with CACT
Note Type: GENERAL
Applies To: HEATHER, Matthew s47F

Details:

About 11.00 this date a meeting was held between MFAC Champion, NCFAC Pike and me with representatives from the AFP CACT. Present from CACT were Supt McTaggart, F/A Josh O'Connor and Chris Sutton.

The following was discussed:

s22(1)(a)(ii)

Update provided by me regarding the alleged conduct of Jack Flader, the ASIC investigation and

s33(b)

s22(1)(a)(ii)

Supt McTaggart advised that CACT were in a position to assist with further evaluation of civil POCA action under the new CACT litigation function, with regard to all Trio related entities (not limited to Flader).

s22(1)(a)(ii)

Future action:

-F/A Heather to seek the s47G(1) report from ASIC in regard to their inquiries to locate funds.

-F/Heather to convene a meeting in Sydney with ASIC, MFCA and Supt McTaggart to further consider civil based approaches under POCA

s22(1)(a)(ii)

s37(1)(a)

Matt Heather
TL FAC

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Case Note: (150746751) Meeting with CACT

Case ID	Log #	Title	Created By	Date Created
5060122	86	ASIC REFERRAL - TRIO CAPITAL LTD & JACK FLADER	AFP11630	01 Mar 2013 13:33

Attachments:

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Australian Federal Police - Production
Case Note: (150745623) Advice recieved from CACT

Case Note

ID: 150745623
Date Created: 28 Feb 2013 12:31
Title: Advice recieved from CACT
Note Type: GENERAL
Applies To: HEATHER, Matthew s47F

Details:

From: O'Connor, Josh
Sent: Wednesday, 25 July 2012 11:37 AM
To: Heather, Matthew
Subject: RE: Trio advice [SEC=UNCLASSIFIED]

Hi Matt

This accords with my understanding of what NCCA said.

The only thing might be to change the last dot point to:

s47C(1)

Josh



FEDERAL AGENT JOSH O'CONNOR

CRIMINAL ASSETS CONFISCATION TASKFORCE
SERIOUS & ORGANISED CRIME
Tel +61(0) 2 61314040 Ext 144040
www.afp.gov.au
<<http://www.afp.gov.au>>

From: Heather, Matthew
Sent: Wednesday, 25 July 2012 11:26 AM

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Australian Federal Police - Production
Case Note: (150745623) Advice recieved from CACT

To: O'Connor, Josh
Subject: Trio advice [SEC=UNCLASSIFIED]

Hi Josh,

Thanks for the discussion with Nick. The Following is my understanding:

s47C(1)

Please add any information I missed or clarify any misunderstanding on my behalf.

Regards



AFP
AUSTRALIAN FEDERAL POLICE

MATTHEW HEATHER

A/ NATIONAL COORDINATOR HUMAN TRAFFICKING
CRIME OPERATIONS
Tel +61(0) 2 61313184
www.afp.gov.au
<<http://www.afp.gov.au>>

Involvements:

Case ID	Log #	Title	Created By	Date Created
5060122	80	ASIC REFERRAL - TRIO CAPITAL LTD & JACK FLADER	AFP11630	28 Feb 2013 12:31

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Australian Federal Police - Production
Case Note: (150745623) Advice recieved from CACT

Attachments:
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Australian Federal Police - Production
Case Note: (150586254) Preliminary Advice from CACT

Case Note

ID: 150586254
Date Created: 07 Aug 2012 11:29
Title: Preliminary Advice from CACT
Note Type: GENERAL
Applies To: HEATHER, Matthew s47F
Details:

On 25 July 2012, I conducted a meeting with Supt McTaggart and F/A Josh O'Connor from the AFP CACT regarding this matter.

The Following is was discussed and relevant to the AFP evaluation of the matter:

- Based on the information currently available there are no viable proceeds of crime actions in regard to the conduct of Flader or funds controlled by Trio.
- Any new information, pertaining to criminal conduct of Flader, specifically fraud conducted either explicitly or complicity, which may be provided from ASIC or s37(1)(b) will need to be able to be independently corroborated. This will need to be sufficient to meet the test of 'balance of probabilities' in regard to civil proceeds action. Further, there would need to be some information regarding the location and control of any assets illegal obtained as a result of this conduct. s22(1)(a)(ii)

s47E(d)

Matt Heather
F/A 11630

Involvements:

Case ID	Log #	Title	Created By	Date Created
5060122	24	ASIC REFERRAL - TRIO CAPITAL LTD & JACK FLADER	AFP11630	07 Aug 2012 11:29

Attachments:

No Attachments.

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