

Our Ref: TRIOCAPT:MJR:BM:BM

19 August 2011

Attention: Committee Secretary

Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
CANBERRA ACT 2600

By Email: corporations.joint@aph.gov.au

Dear Sir

**TRIO CAPITAL LTD (FORMERLY ASTARRA CAPITAL LIMITED)
(IN LIQUIDATION) ("TRIO CAPITAL")**

Please find attached submission on behalf of the Liquidators of Trio Capital Ltd (formerly Astarra Capital Limited) for purposes of the Parliamentary Inquiry into the collapse of Trio Capital and other related matters.

By way of background we provide the following timeline chronology of key events since our involvement:

- 16 December 2009 – Directors resolved to place Trio Capital and other associated companies (Astarra Funds Management Pty Ltd and ASI Pty Ltd) into Voluntary Administration. Stephen Parbery, Neil Singleton and Nicholas Martin of this office were appointed as Joint and Several Administrators;
- 19 March 2010 – Administrators approached the Supreme Court of NSW to have the following Schemes wound up due to exposure to impaired assets:
 - Astarra Strategic Fund
 - Asttar Wholesale Portfolio Service
 - Asttar Portfolio Service
 - Astarra Overseas Equity Pool; and
 - ARP Growth Fund

The Administrators appointed to Trio Capital were appointed by the Supreme Court to wind up each of the above Schemes.

- 22 June 2010 – Trio Capital placed into Liquidation by resolution of creditors
- July 2010 – Public examinations undertaken in respect of Shawn Richard and Eugene Liu regarding the Astarra Strategic Fund
- 3 August 2010 – 10 schemes with no or minimal exposure to impaired assets transitioned to Trust Company as Replacement Responsible Entity
- 12 July 2011 – Neil Singleton retires as Joint Liquidator and replaced by Mark Robinson. Stephen Parbery and Nicholas Martin remain as Joint and Several Liquidators

- 29 July 2011 – Initial report lodged with ASIC regarding investigations into breaches by Directors and officers of Trio Capital in relation to the ARP Growth Fund

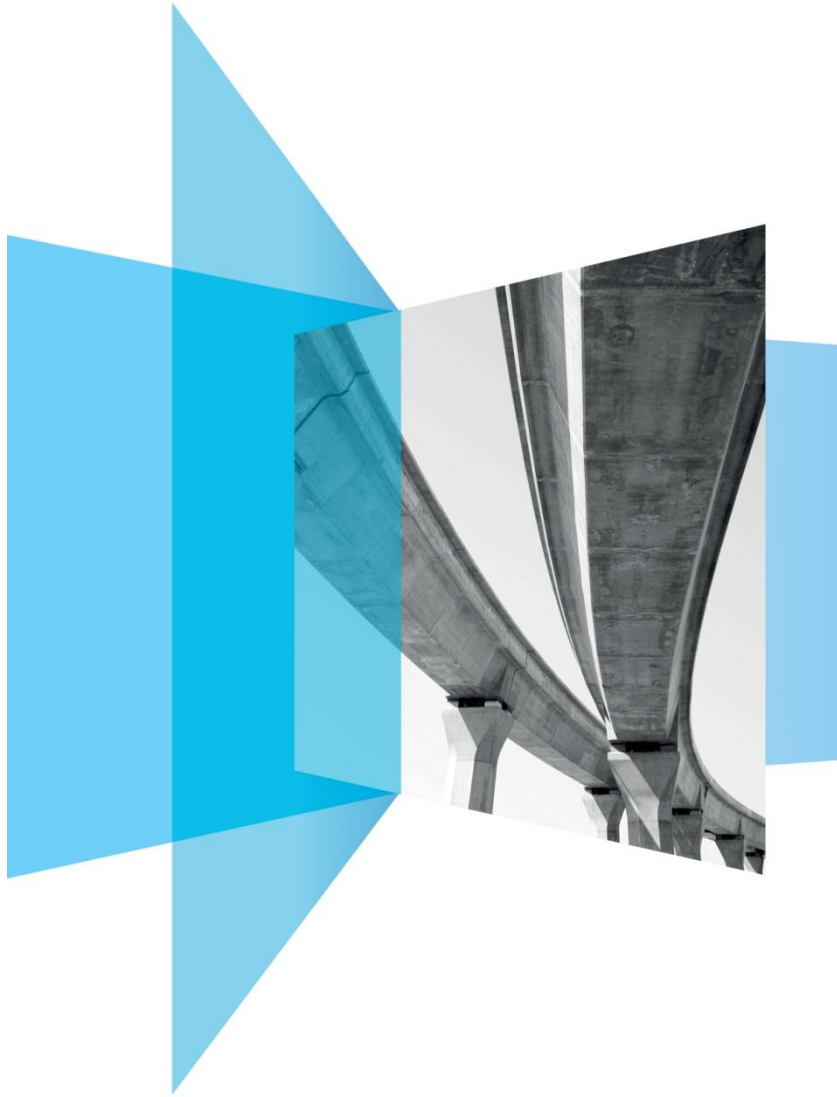
Our submission provides eight (8) key findings and six (6) key recommendations with supporting information to our key findings resulting from our investigations for consideration by the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the collapse of Trio Capital and other related matters.

Should you have any queries in regards to the attached or require any further information, please do not hesitate to contact Brett Manwaring of this office.

Yours faithfully

M J Robinson

Joint and Several Liquidator
Trio Capital Ltd (formerly Astarra Capital Limited)



Trio Capital Ltd (In Liquidation) ("Trio")

Senate Submission

19 August 2011



Key Findings and Recommendations

Key Findings

Finding 1 – Investment Types

The types of investment vehicles, funds and other products involved in Trio can be divided into three (3) main categories:

1. Investments in Australian listed shares, funds and term deposits (“Category 1 Investments”);
2. Investments in privately listed Australian and overseas enterprises (“Category 2 Investments”);
3. Investments in overseas hedge funds (“Category 3 Investments”).

Finding 2 – Expensive Fee Structures

The fees charged to manage Category 1 Investments appear expensive compared to the type of investments involved due to the structures created which included:

- Trio acting as Trustee of various Superannuation and Pension Schemes/Plans charging fees to the major underlying investors;

- Trio acting as Responsible Entity of various schemes charging fees to manage the established Schemes;
- Trio and other parties acting as Investment Managers of various schemes charging fees to manage the investments;
- Underlying third party platform managers charging fees to manage individual investment platforms.

Finding 3 – Conflicts of Interest

The majority of Category 2 Investments were with companies connected to or ultimately controlled by parties involved in the establishment of Trio being:

- Shawn Richard
- Cameron Anderson; and
- David Millhouse

Every investment has suffered impairment, the majority of which have resulted in nil recoveries to investors.

Key Findings and Recommendations *continued*

Please refer **Annexure A** for further details of the links between the founding Directors of Trio, Investment Managers engaged by Trio and underlying investments of the Schemes that suffered significant impairment.

Finding 4 – Overseas Hedge Funds Represent the Largest Losses

The most significant losses to Trio investors relate to Category 3 investments which included:

- Approximately \$123M invested by the Astarra Strategic Fund (ASF) via Deferred Purchase Agreements in various overseas hedge funds; and
- Approximately \$52M invested by the ARP Growth Fund in Professional Pensions ARP Ltd

Finding 5 – Lack of Transparency

There was a significant lack of transparency to the investors of what comprised the underlying investments.

Finding 6 - Lack of Due Diligence

There was a significant lack of due diligence undertaken in regards to the value, existence and realisable value of the

underlying investments by Trio in its various capacities and the officers and directors of Trio.

Finding 7 – Inadequate Insurance

Existing insurance coverage requirements of Responsible Entities and Investment Managers are inadequate and are not representative of the underlying risk profile of the investments.

Finding 8 – Payments to Financial Planners

Financial planners received both disclosed and apparent undisclosed payments from parties promoting investments of the various Trio schemes.

Key Recommendations

Recommendation 1 – Heightened Standards for Operators

Criteria should be established regarding required qualifications, background and experience of directors and officers of Responsible Entities, Investment Managers and Fund Managers.

Key Findings and Recommendations *continued*

Recommendation 2 – Greater Disclosure on Fees

Greater disclosure requirements in regards to who receives fees and allowances including a limitation on the number of interposing parties between investor funds and the ultimate underlying investments.

Recommendation 3 – Greater disclosure on Prior Relationships and Conflicts of Interest

Requirement for full disclosure in relation to prior relationships and conflicts of interest between directors, shareholders and officers of Responsible Entities, Investment Managers, Fund Managers and proposed investments.

Recommendation 4 – Greater Controls on Overseas Investments

Significant enhancement of controls relating to overseas investments including but not limited to:

- limitation on the number of interposing parties;
- full disclosure to investors of ALL fees that are or may be payable (including success fees) to all parties in the

investment chain;

- full disclosure of any prior associations between ALL parties in the investment chain;
- inability to invest in any jurisdictions where Australian authorities do not have existing information sharing agreements with the relevant regulators in those jurisdictions; and
- requirement for International Financial Reporting Standards compliant audited accounts on all overseas investments

Recommendation 5 – Greater Referencing by Research and Rating Agencies

Greater referencing by research and/or rating agencies when providing analysis of a funds' performance including:

- upfront disclosure of any financial payments received;
- source information relied upon; and
- independent checks/verifications undertaken

Key Findings and Recommendations *continued*

Recommendation 6 – Enhancement of Insurance Requirements

Enhancement of insurance requirements and required coverage levels of Responsible Entities, Investment Managers and Fund Managers.

Supporting Information to Key Findings

1. Investment Types

Information pertaining to the investment types was obtained from the relevant records of Trio reconciled against each funds' Custodians records.

2. Fee Structures

The fees charged by the Responsible Entity and Investment Manager of each fund is defined by the Constitution and Product Disclosure Statement (PDS) of each Scheme, noting that the fees disclosed in the PDS cannot exceed fees allowed under the Constitution.

In the case of Trio, there were 10 schemes whose predominant investments were Australian listed shares, funds and term deposits. Fees charged to members were as follows:

Establishment Fees – Generally 4%

RE Issuer Fees – Generally 2%

RE and Investment Manager Fees – Between 1.05% - 2.33%

Withdrawal fees – 0% to 6%

Performance Fees – Up to 20%

Based on our review the above fee structures appear excessive compared to the types of investments involved.

3. Conflicts of Interest

By way of background, according to ASIC records the founding directors of Trio, then known as Astarra Capital, were:

Shawn Richard
Cameron Anderson
David Millhouse

Through our investigations we have found direct links between the above individuals, some of the appointed Investment Managers to various Trio schemes and underlying investments. These links are represented diagrammatically at **Annexure A**.

Details are as follows:

3.1 Shawn Richard

- Director and controller of Astarra Asset Management Pty Ltd (AAM) the appointed Investment Manager of the Astarra Strategic Fund (ASF), a Managed Investment Scheme which Trio was the Responsible Entity;
- ARP Growth Fund, a Managed Investment Scheme which Trio was the Responsible Entity, issued a debenture to AAM for \$1.5 million resulting in nil recovery;
- Has pleaded guilty to 2 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.

Please refer to **Annexure B** "Enforcable Undertaking of Shawn Darrell Richard" for further details.

There have been minimal asset recoveries from the investments of the ASF. Total losses are estimated to be in excess of \$100 million.

3.2 Cameron Anderson

- Director of various companies in the Silverhall Property Group who were appointed by Trio as the initial manager of the property investments of Asttar Wholesale Portfolio Service (AWPS), a Managed Investment Scheme which Trio was the Responsible Entity. Losses to unit holders from the investments in the underlying property assets exceed \$13 million;
- Director of the Trustee of the Marq Property Trust, an investment of the ARP Growth Fund. Resulting losses to unit holders from these investments exceed \$1.5M;
- The debenture to AAM referred to in section 3.1 of this report was initially issued to one of the Silverhall entities, a company of which Mr Cameron Anderson was a director. Trio moved the debenture due to concerns over the solvency of the Silverhall entity;

Supporting Information to Key Findings *continued*

- A company of which Mr Anderson was a director was the recipient of in excess of \$2 million from one of the underlying hedge funds of the ASF. No funds have been recovered.

3.3 David Millhouse

- Member of the Supervisory Board of the overseas entities that were the underlying investments of the Millhouse Private Equity Trusts which AWPS and AOEP were significant unit holders. Total funds invested by AWPS and AOEP were approximately \$10 million and to date no funds have been recovered.

3.4 Summary

Following the establishment of Trio Capital, formerly Astarra Capital, the three founding directors whilst resigning from their position as Directors of Trio Capital, were intrinsically linked to various investments of 5 Trio Schemes. The Administrators investigations concluded that all 5 schemes had significant asset impairment resulting in each scheme being wound up through the Supreme Court on 19 March 2010.

The books and records of Trio Capital do not show that Trio adequately disclosed the above mentioned relationships to unit holders of each scheme.

Up until the time of our appointment as Administrators on 16 December 2009, the value attributed to the various investments referred to above were grossly overstated. Since our appointment there has been minimal recoveries from the investments. Total losses to unit holders exceed \$120 million.

4. Investments in Overseas Hedge Funds

The predominant investments of the ASF and ARP Growth Fund were direct and indirect investments in overseas hedge funds. Total investments at the time of our appointment were recorded in the books and records of Trio as \$123 million and \$52 million respectively.

The structures established to enable the investments were extremely complex involving numerous interposing parties from several overseas jurisdictions, the majority of which were established tax havens.

Below is a summary of the investment structures based on information gathered by the Liquidators during the course of our investigations:

4.1 Investments by the ASF

The investments of the ASF comprised of a series of contractual rights obtained by a British Virgin Islands registered entity, EMA International Limited (EMA), to receive certain delivery assets in the future. The value of those delivery assets would be determined by the performance of five underlying off-shore hedge funds (the Underlying Funds) being:

- Exploration Fund Limited (EFL)
- Tailwind Investment Fund (Tailwind)
- SBS Dynamic Opportunities Fund Ltd (SBS)
- Pacific Capital Markets Cayman LDC (Pacific)
- Atlantis Capital Markets Cayman LDC (Atlantis)

The monies paid to EMA to acquire the contractual rights were, according to the documentation, then to be invested by EMA in the Underlying Funds detailed above.

These contractual rights arise from a Master Deferred Purchase Agreement entered into between EMA and AAM in its capacity as Investment Manager and agent of Trio Capital in respect of the ASF and a series of Supplementary Agreements to the Master Deferred Purchase Agreement (the DPA Arrangements).

Attached as **Annexure C** is a diagrammatic representation of the contractual arrangements between the parties as they were to operate under the DPA Arrangements.

Supporting Information to Key Findings *continued*

Attached as **Annexure D** is a diagrammatic representation of how funds were to flow under the DPA Arrangements.

The only recoveries realised by the Liquidators from the above investments have been from Tailwind which was domiciled in Australia.

The Liquidators have been unable to verify the existence or value of the investments of the other underlying hedge funds. Please also refer to the Enforceable Undertaking of Shawn Darrell Richard attached as **Annexure B** for further details.

4.2 Investments by the ARP Growth Fund

The major direct and indirect investment of the ARP Growth Fund were units in Professional Pensions ARP Limited (PPARP), a company registered in the British Virgin Islands.

The investment structure of PPARP is complex. Please refer to **Annexure E** for a diagrammatic representation of the structure.

In terms of the background to the structure of the investment, we provide the following summary based on the original documentation entered into by the various parties.

On 1 August 2006 Pythagoras Segregated Portfolio (PSP) and Archimedes Segregated Portfolio (ASP) entered into a Structured Fund Derivative contract with Bear Stearns International Limited ("Bears"). These contracts are referred to as "Total Return Swaps" whereby Bears agrees to pay the Portfolio an amount equal to the total market value of a basket of "Shares or other forms of interests in hedge funds and managed futures accounts" ("Basket Value") and the Portfolio agrees to pay Bears an amount by which the initial Basket Value exceeds the cash collateral deposited by the Portfolio ("Floating Rate Notional amount"). The initial cash deposited by the Portfolio as collateral must represent at least 40% of the "Equity Notional Amount" i.e. the initial Basket Value. If the Basket Value declines, more collateral must be deposited, or alternatively, Bears may redeem any investment it may have made to hedge its synthetic exposure. Bears, however, are under no obligation to make investments in any fund forming

part of the Basket. The Portfolio has no investment in any fund, its investment is the value of the derivative contract to which it is counterparty to Bears. Both contracts were terminated effective 30 September 2008. Empréal, in its capacity as Funds Manager, negotiated with JP Morgan to take over Bears obligations in March 2008.

No funds have been realised by the Liquidators to date from the above investment. Further the Liquidators have been unable to verify the existence or value of the underlying assets of the investment. Accordingly, we currently estimate the realisable value as nil. The reported value of unit holders investments by Trio at the time of our appointment was approximately \$52 million.

4.3 Summary

- The above mentioned hedge fund investments are extremely complex involving numerous interposing parties and several overseas jurisdictions.
- The investors of the ASF and ARP Growth Fund were a mix of Registered Super and Pension Funds, which Trio was also the Trustee, and private investors, mainly Self Managed Super Funds.
- The structure of the hedge fund investments and the type of investors involved are in our view, incongruent.
- Trio did not appear to fully understand the nature of the investments or the risk profile.

Please also refer to Sections 5 and 6 of this report for further details regarding our key findings in relation to:

- The apparent lack of transparency to the investors of what constituted the underlying investments; and
- Apparent lack of due diligence undertaken by Trio and its directors and officers in regards to the value, existence and realisable value of the underlying investments.

Supporting Information to Key Findings *continued*

5. Lack of Transparency

5.1 Structure of Investments

Based on our review of the books and records of Trio there was a clear lack of transparency of what comprised a significant portion of the underlying investments of various schemes.

Unlike Type 1 investments (investments in Australian listed shares, funds and term deposits) where there is readily available independent third party information to confirm the existence and value of each Trio managed schemes investment, this is not the case for Type 2 (investments in private companies) and Type 3 investments (investments in overseas hedge funds).

The Product Disclosure Statements of those funds which invested in Type 2 and Type 3 investments provide details of both:

- The proposed investment types; and
- The proposed parties with whom the investments will be made.

However, what they do not include are details of the parties behind the investments. Refer Section 3 of this report for direct links between the founding directors of Trio Capital, appointed Investment Managers and some of the underlying investments.

More importantly, by the very nature of the Type 3 investments, neither Trio or the underlying investors had transparency to what constituted the underlying investments.

The investment structures that were established in regards to the Type 3 investments involved numerous interposing parties across several overseas jurisdictions, The jurisdictions involved were largely tax haven countries that allow entities to be established that could have the following attributes:

- Different classes of shareholders whereby some shareholders have no voting rights; and/or

- Companies as directors to reduce the transparency of who were the underlying decision makers

Reporting provided to unit holders by the Responsible Entity was limited to provision of monthly unit pricing and annual audited accounts. There was no requirement to disclose either the methodology behind valuing of investments or the party engaged to provide valuation information.

5.2 Summary

The combination of the above factors created a lack of transparency to investors in regards to:

- What constituted each Schemes underlying investments;
- The parties involved in recommending underlying investments;
- Conflicts of interest;
- Methodology of valuation; and
- The nature and existence of each Schemes underlying investments

6. Lack of Due Diligence

6.1 Information Provided to Trio

Reporting provided to Trio Capital in its capacity as Responsible Entity of the Schemes regarding the value of Type 2 and Type 3 investments was in our view inadequate for the following reasons:

- No disclosure of the underlying valuation methodology adopted;
- Lack of independence between the parties providing valuation information and the underlying investments; and
- No details regarding how investments could be realised, over what time frame and appropriate strategies.

Supporting Information to Key Findings *continued*

6.2 Due Diligence Undertaken by Trio

A significant part of our investigations have focused on what due diligence Trio and its directors and officers undertook to satisfy obligations as Responsible Entity in regards to the existence, value and realisable value of underlying investments of the various Schemes.

Our investigations have concluded the following:

- There was a significant lack of inquiry by Trio regarding valuation methodologies of the underlying investments;
- Unit pricing obligations as outlined in Scheme Constitutions were not followed in all instances;
- Trio did not adequately supervise or monitor the performance of certain investment managers;
- Trio did not adequately assess the capabilities of various parties engaged to be Investment Managers or underlying Fund Managers of various Schemes to perform their roles;
- Independence checks were not undertaken;
- There was a lack of understanding of the investment strategies and structures and no attempts by Trio to enhance their understanding;
- Despite non compliance with repayment arrangements relating to loans provided to private companies, little if any attempts were made to recover funds.

We provide at **Annexure F**, Enforceable Undertaking entered into between the following Directors of Trio and ASIC acknowledging the above:

- Rex Philpott
- David Andrews
- Natasha Beck

6.3 Summary

Trio in its capacity as Responsible Entity and its directors and officers did not undertake appropriate due diligence in respect of the value, existence and realisable value of the underlying investments.

Further, Trio and its officers and directors did not undertake appropriate due diligence in regards to assessing the capabilities of various parties engaged to be investment and underlying fund managers, nor did they monitor the performance of these parties during their engagement.

7. Inadequate Insurance

Due to restrictions contained within Trio's insurance policies we are unable to disclose details of who the insurer was or the level of insurance cover held.

However, we do make the following observations:

- Minimum levels of coverage required by Responsible Entities and Investment Managers appear inadequate;
- Certain Investment Managers did not have insurance at the time Trio was placed into liquidation;
- The ability to claim against insurance policies is complex even in instances where a party has pleaded guilty to dishonest conduct that resulted in significant losses to a Trio Managed Investment Scheme.

Supporting Information to Key Findings *continued*

8. Payments to Financial Planners

During the course of our investigations, in particular public examinations of Mr Shawn Richard, it became apparent that certain disclosed and apparent undisclosed payments were made by third parties connected to Trio and the underlying Scheme investments to various financial planners who introduced investors to Trio schemes.

Mr Richard acknowledged that often third parties to which whom he was associated would make payments to financial planners to assist them with marketing Trio schemes. We are unaware that receipt of these payments were adequately disclosed by financial planners to their clients',

Unfortunately, as Mr Richard has not signed the transcript to the public examination we are unable to provide a copy which verifies the above. Further, as the payments were made by third party entities such as AAM, whom we are not the liquidator, we are unable to provide evidence of the payments.

**A. Interaction of
Investments
and Founding
Directors of
Trio**



**B. Enforceable
Undertaking of
Shawn Darrell
Richard**



**c. Contractual
Arrangements
of the DPA
Structure of
the ASF**



**D. Funds Flow
Arrangements
of the DPA
Structure of
the ASF**



**E. Investment
Structure of
PPARP an
Investment of
ARP Growth
Fund**



**F. Enforceable
Undertakings of:
David Andrews
Rex Phillipott
Natasha Beck**

