



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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Ms Pothida Youhorn
A/g 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

4 June 2021

Dear Ms Youhorn

TRIO CAPITAL LIMITED (IN LIQUIDATION)

The Parliamentary Joint Committee on Corporations and Financial Services' email of 21 May 2021 has been forwarded to me for a response on behalf of the Australian Securities and Investments Commission (**ASIC**).

You have requested information concerning ASIC's investigation of Trio Capital Limited (in liquidation) (**Trio**) to respond to a letter from Mr John Telford, Secretary, Victims of Financial Fraud (VOFF) dated 22 March 2021, as well as an update on Trio.

I note that Mr Telford has referred in his letter to concerns raised by Guernsey residents in 2017 about Mr Carl Meerveld - who was connected to the Trio fraud - and various events in Guernsey involving Mr Meerveled, although Mr Telford states that he '*is not alleging any wrong doing by Mr Meerveld*'. Most of the information in Mr Telford's letter is material relating to Trio that is in the public domain and has already been considered by ASIC. Mr Telford's letter and this material do not raise any new allegations of misconduct or provide any new evidence in relation to Mr Meerveld or Trio that ASIC considers should be addressed.

Since 2014 ASIC staff have met with members of the VOFF organisation on numerous occasions and ASIC has responded to numerous letters and representations that Mr Telford, VOFF members and other investors have sent

to ASIC either directly or through Members of Parliament. This includes ASIC's responses to Mr Telford sent on 31 July 2014, 12 December 2017 and 7 March 2018, copies of which are enclosed. Given the large number of communications ASIC has not provided a response to all of Mr Telford's correspondence.

ASIC has concluded its investigations and enforcement actions relating Trio. A summary of the enforcement outcomes of ASIC's investigation is at Annexure A.

Yours faithfully,

Jennifer Balding
Senior Executive Leader
Corporations & Corporate Governance Enforcement

Annexure A

Overview of ASIC's Enforcement Outcomes

ASIC's enforcement outcomes include:

- Shawn Richard, former investment manager of ASF, being sentenced to 3 years and 9 months jail with a minimum of 2 years and 6 months. ASF was one of the managed investment schemes operated by Trio. Mr Richard pleaded guilty to two offences involving dishonest conduct in carrying on a financial services business. Mr Richard also admitted to making a false statement about a financial product.¹
- The sentencing of Tony Maher to 25 months jail with a non-parole period of 15 months. Mr Maher was the investment manager of ARP a managed investment scheme operated by Trio. Mr Maher pleaded guilty to 20 charges of making false or misleading statements to obtain a financial advantage.²
- The permanent banning of Eugene Liu, ASF's chief investment strategist, from providing financial services.³
- Enforceable Undertakings with five former Trio directors where they agreed not to be involved in the financial services industry or manage a company for between two and 15 years. The former directors are Natasha Beck, Keith Finkelde, David O'Bryen, David Andrews and Rex Phillpott.⁴
- An Enforceable Undertaking with planning firm Kilara Financial Solutions to address compliance issues.⁵
- An Enforceable Undertaking with Tony Maher (Paul Gresham) to never provide financial services or manage a company.⁶
- Suspending the licence of financial planners Seagrims, with this licence then being cancelled at the company's request on 19 September 2011.
- Banning Seagrims directors Peter Seagrim and Anne-Marie Seagrim for three years, with the AAT subsequently reducing the ban to 6 months.⁷
- An Enforceable undertaking with former ASF auditor Timothy Frazer, providing he would not act as a registered company auditor for three years.⁸

¹ [12-116MR](#) ASIC provides update on Trio.

² [14-144MR](#) Former investment manager jailed.

³ [13-041MR](#) Former Astarra investment manager permanently banned from financial services industry.

⁴ [11-133MR](#) Former directors of Trio Capital prevented from working in financial services industry; [11-166MR](#)

Trio former chairman and director agrees to nine year exclusion from financial services industry; [11-182MR](#)

Remaining Trio former directors excluded from financial services industry for four years

⁵ [11-122AD](#) Kilara Financial Solutions enforceable undertaking.

⁶ [14-144MR](#) Former investment manager jailed.

⁷ [11-134AD](#) ASIC acts re Trio: Seagrims licence suspended and directors banned

⁸ [12-22MR](#) Astarra Strategic Fund auditor prevented from auditing companies for three years

- Banning Ross Tarrant from providing financial services for 7 years, a ban that was subsequently upheld by the AAT. Mr Tarrant's appeal to the Full Court of the Federal Court was also unsuccessful.⁹
- Permanent banning of Jeffrey Revell-Reade from providing financial services in Australia.¹⁰

⁹ [15-017MR](#) Federal Court dismisses appeal by banned Wollongong financial adviser

¹⁰ [15-119MR](#) ASIC permanently bans Australian mastermind of UK fraud



ASIC

Australian Securities & Investments Commission

31 July 2014

Mr John Telford

Level 24, 120 Collins Street
Melbourne VIC 3000
GPO Box 9827 Melbourne VIC 3001

Telephone: (03) 9280 3200
Facsimile: (03) 9280 3444

Dear Mr Telford

Trio Capital Limited (ACN 001 277 256) (In Liquidation) ('Trio Capital')

Thank you for your letter dated 3 July 2014 concerning Trio Capital. Your letter advises that you are representing 690 investors in the Astarra Strategic Fund (ASF) who you state invested based on fraudulent, misleading representations and lost their investment. Trio Capital was the responsible entity for the ASF.

We understand that you have raised concerns about the differences between investing through self-managed superannuation funds (SMSFs) compared with industry superannuation funds or other superannuation funds regulated by the Australian Prudential Regulatory Authority (APRA), and the consequences for those SMSFs who invested in the ASF.

Your letter also raises concerns with the public reporting and commentary on the Trio Capital fraud. In particular, you believe statements in the public reporting and commentary that may reflect positively on investors from APRA-regulated superannuation funds compared with investors from SMSFs are misleading and unfairly promote one investment type over the other. In this regard, you point to comments from:

- the Final Report from the Inquiry by the Parliamentary Joint Committee on Corporations and Financial Services (PJC) into Trio Capital
- ASIC's evidence and submissions to the PJC Inquiry, as well as submissions to the Inquiry from others
- the Treasury report, *Review of the Trio Capital Fraud and Assessment of the Regulatory Framework*, and
- Members of Parliament, including the then Minister for Financial Services and Superannuation, the Hon Bill Shorten MP, and Mr Stephen Jones MP.

We understand that you would also like ASIC to re-investigate the Trio Capital fraud, as well as these statements in the public reporting and commentary.

ASIC position

ASIC acknowledges the financial difficulty and distress caused to investors in the ASF, particularly those who are not eligible for compensation from the government scheme.

As you are aware, the government scheme to provide compensation for the Trio Capital fraud to investors was set up under Part 23 of the *Superannuation Industry (Supervision) Act 1993 (SIS Act)*. Part 23 provides that the government may provide financial assistance to certain superannuation funds for losses caused by fraud or theft where the extent of the losses would mean that the superannuation fund would have difficulties in paying benefits. Part 23 applies only to investors in APRA-regulated superannuation funds; it does not extend to investors in SMSFs. This is a consequence of the current law; ASIC does not view this as a comment on SMSFs.

ASIC action in response to the Trio Capital fraud

ASIC has fully considered the concerns about Trio Capital and taken successful enforcement action. We have enclosed a summary of the enforcement outcomes that we have achieved. This information is also available from our website: www.asic.gov.au.

In this regard, our investigation was extensive, and we gathered information and evidence from a variety of sources to determine what regulatory actions ASIC would be able to pursue successfully in the circumstances. We did not merely rely on information from Mr Shawn Richard as you have suggested. We also consider that your suggestion that ASIC has only banned one planner out of approximately 155 does not reflect the actual enforcement outcomes that ASIC has achieved.

The extensive information and evidence we collected both before and after the conclusion of the PJC Inquiry does not give us cause to revisit our written submissions to the PJC Inquiry nor the evidence we gave to the PJC Inquiry.

Concerns about public reporting and commentary

In relation to your concerns about the public reporting and commentary on SMSF investing, we have considered the material you have provided. We have determined that this material does not suggest breaches of the misleading statement provisions that ASIC administers, and we are unable to pursue these matters further.

In addition, we note that ASIC Regulatory Guide 234 *Advertising financial products and services (including credit): Good practice guide (RG 234)* was intended to assist promoters and advertisers of financial products or credit to understand their statutory obligations. We do not consider that RG 234 applies to the examples of general media commentary and reporting that you have provided. This is because they are not advertisements from financial services or credit providers.

Information for people seeking to establish SMSFs

We understand that SMSF investors may have been distressed by the commentary about their investment choices. However, we note that the regulatory framework and consumer protections that apply to SMSFs and APRA-regulated superannuation funds differ.

Generally speaking, we note that:

- SMSFs, as with any financial product, may not be appropriate or suitable for all investors (for some investors, given their personal circumstances, investing in an APRA-regulated superannuation fund may be more appropriate)
- SMSF members are required to be trustees of the fund (or a director of a corporate trustee) and are legally responsible for the operation of the SMSF, this includes a requirement to have an investment strategy and to make investment decisions
- investing through an APRA regulated fund is likely to be more appropriate for an investor who does not want to be actively involved in managing their fund or who do not have the skills or experience to do so
- ASIC encourages people to seek personal financial advice from a licensed financial adviser. This is because:
 - advisers can play a significant role in assisting investors make informed decisions, including informing investors about the benefits and risks of investing in a given financial product, and
 - if investors, including SMSF investors, suffer loss as a result of bad, inappropriate, or misleading advice from a licensed financial adviser, they may be able to achieve compensation through pursuing dispute resolution or taking legal proceedings against the adviser.

ASIC's *MoneySmart* web site (www.moneysmart.gov.au) also contains general information for people who are considering establishing an SMSF. We have enclosed a copy of this information. *FIDO*, ASIC's previous consumer website, also made similar information available to consumers before the concerns arose for SMSFs that invested with Trio Capital.

Commonwealth Ombudsman

If you have concerns with ASIC's management of your matter or our enforcement action in response to Trio Capital, you can lodge a complaint with the Commonwealth Ombudsman.

The Commonwealth Ombudsman cannot review or re-determine ASIC's decision, but does have the power to investigate misconduct, or review the manner in which a decision has been made to ensure that it was done fairly and in accordance with the law.

The contact details for the Commonwealth Ombudsman are as follows:

Commonwealth Ombudsman
GPO Box 442
Canberra ACT 2601

Telephone: 1300 362 072
Website: www.ombudsman.gov.au

Yours sincerely

Warren Day
Senior Executive Leader
Assessment & Intelligence



ASIC

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12 December 2017

Mr John Telford

Dear Mr Telford

The Acting Chairman of the Australian Securities and Investments Commission (ASIC), Mr Peter Kell, has asked me to respond to your email and press release of 20 November 2017, *Open Letter to ASIC's Chairman James Shipton*.

ASIC has completed its investigation and enforcement action arising from the collapse of Trio Capital Ltd (in liquidation) (**Trio**) and we do not consider that there are any outstanding issues.

It is on the public record that the Australian Federal Police did examine whether to commence a separate investigation into Trio and decided not to do so.

ASIC took a range of regulatory and enforcement actions in response to the collapse of Trio with administrative action against financial planners only being a small component of that action.

In relation to enforcement action taken against financial planners, ASIC undertook a surveillance of financial planners who advised their clients to invest in certain Trio funds. This surveillance included reviewing client files to assess the advice provided. Where ASIC had reason to suspect that the advice provided by the financial planners breached the law that matter was referred to enforcement for further investigation.

Please see attached a copy of the Administrative Appeal Tribunal decision, *Tarrant and the Australian Securities and Investments Commission* [2013] AATA 926 (20 December 2013). As you are aware, Mr Tarrant was one of the financial planners who recommended to his client that they establish self managed superannuation funds and that those funds invest in the Astarra Strategic Fund.

The AAT's decision provides an overview of the legal requirements imposed on financial planners such as Mr Tarrant, when providing financial advice to their clients. It also sets out the reasoning of the Tribunal for affirming the decision of the ASIC delegate to ban Mr Tarrant from the financial services industry for 7 years.

For completeness I also attach the decision of the Full Court of the Federal Court of Australia, *Tarrant v Australian Securities and Investments Commission* [2015] FCAFC 8 (6 February 2015), which dismissed Mr Tarrant's appeal against the decision of the AAT.

Yours sincerely

George Stogdale
Senior Executive
Corporations and Corporate Governance Enforcement



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7 March 2018

Mr John Telford

Dear Mr Telford

Open Letter to Acting Chairman, Peter Kell, Victims of Financial Fraud

Commissioner Peter Kell, has asked me to respond to your email and open letter of 5 February 2018 on his behalf.

The points you have raised in your letter of 5 February 2018 have previously been addressed by the Australian Securities and Investment Commission (ASIC) most recently in my letter to you of 12 December 2017.

As set out previously:

- ASIC's undertook a range of enforcement actions arising from our Trio Capital investigations.
- These actions included the criminal prosecution of Shawn Richard and accepting Enforceable Undertakings from the directors of Trio.
- ASIC conducted a surveillance of a large number of financial planners who recommended their clients invest in funds operated by Trio.
- Arising from that surveillance a small number of matters were referred for investigation where there was a suspicion that they had breached their regulatory obligations.
- The decision of an ASIC delegate to ban Mr Ross Tarrant from the financial services industry for 7 years was subsequently reviewed by the Administrative Appeals Tribunal (AAT) and the delegate's decision was upheld.

- The Full Court of the Federal Court subsequently dismissed Mr Tarrant's appeal against the decision of the AAT.

I note that your letter of 5 February 2018 also refers to the decision to ban Peter and Anne-Marie Seagrim from providing financial services for a period of 3 years. This decision was also reviewed by the AAT with the ban varied to a period of 6 months. A copy of the AAT's decision, *Seagrim and Australian Securities and Investments Commission* [2012] AATA 583 (31 August 2012) is attached.

These decisions of the AAT and the Full Court of the Federal Court confirm that these three financial planners did not meet their regulatory obligations.

In relation to the provision of financial assistance to members of APRA regulated funds that invested in the Astarra Strategic Fund, this decision was made pursuant to Part 23 of the *Superannuation Industry (Supervision) Act 1993*. There is an express prohibition on self managed superannuation funds seeking compensation under these legislative provisions.

ASIC, the Australian Prudential Regulatory Authority and the liquidators of Trio have all concluded their investigations. The Trio Capital matter including the roles of the regulators has been the subject of a Joint Parliamentary Committee inquiry as well as a review by Department of Treasury.

ASIC staff have also met with members of your organisation on a number of occasions. We have also responded to various letters and representations that you, your members and other investors have sent to us either directly or through Members of Parliament.

In the circumstance we do not consider that there are any outstanding issues in relation to Trio Capital to be addressed.

Yours sincerely

George Stogdale
Senior Executive
Corporations and Corporate Governance Enforcement