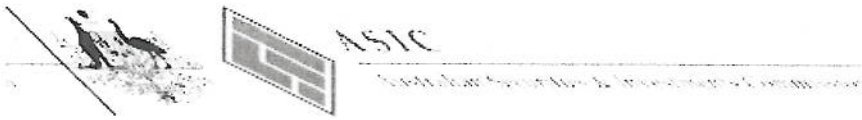

12-116MR ASIC provides update on Trio

Tuesday 5 June 2012

ASIC today provided an update on the work relating to the collapse of Trio Capital.

Enforcement

ASIC has taken enforcement action on Trio against a range of gatekeepers. This includes directors of Trio, its investment manager, various financial planners who recommended Trio and Trio's auditor.

As a result of ASIC's continuing Trio investigations more than 10 individuals have either:

- been jailed. Trio investment manager Shawn Richard has been jailed for 3 years and nine months with a minimum of 2½ years to serve,
- been banned by ASIC from providing financial services,
- been prevented from managing corporations,
- been prevented from acting as a registered auditor; or
- agreed to remove themselves from the financial services industry.

These individuals have either been jailed, banned by ASIC from providing financial services, disqualified from managing corporations or have agreed to remove themselves from participating in the financial services industry for a combined total of more than 50 years.

ASIC inquiries into Trio are continuing.

Jack Flader

Jack Flader is allegedly the ultimate controller of the Trio group. Based on inquiries about Trio to date, ASIC believes there is currently insufficient evidence to prove a breach by him of Australian law.

ASIC will provide relevant information relating to Mr Flader to the Australian Federal Police and the Australian Crime Commission.

ASIC continues to communicate with overseas regulatory agencies in relation to the Trio matter.

ARP Growth Fund

ASIC is investigating the conduct of persons relating to the failure of the ARP Growth Fund, a fund associated with Trio.

ASIC's investigations indicate the reasons for ARP Growth Fund's losses appear different from those of the Astarra Strategic Fund, another Trio fund.

To date, the documents in ASIC's possession show the ARP Growth Fund failed following

substantial investment in an offshore fund that had exposure to collateralised, leveraged credit default swap agreements. The investments failed during the global financial crisis.

Financial planners

ASIC has conducted a specific and detailed investigation into the advice by financial planners to investors in Trio Capital using a risk-based approach. We have taken regulatory action against a number of financial planners where there have been breaches of the law. Some of these actions are ongoing.

Trio liquidator

ASIC is providing funding under the Assetless Administration Fund to the Trio liquidator to enable investigation of the Trio collapse.

Forward plan

In 2010, ASIC also set out a forward plan to improve the conduct of gatekeepers in this area. ASIC has:

- increased the financial requirements that apply to managed investment schemes;
- conducted regulatory reviews of the custodian industry. We will soon issue a report that highlights the need for clear disclosure about the role of custodians; and
- reviewed compliance plan arrangements for managed investment schemes.

ASIC is also strengthening the regulatory requirements applying to hedge funds and research houses.

Background

A pro-active ASIC surveillance into hedge funds, involving assessing funds against indicators of potential fraud, identified possible concerns with a Trio fund in mid 2009.

That information together with a subsequent complaint about Trio allowed ASIC to take quick regulatory action in relation to the Trio companies.

ASIC continues to conduct regular reactive and proactive surveillances to identify hedge fund manager fraud. Our proactive surveillance tools include analysing fund returns to identify outlying investment performance.

The Parliamentary Joint Committee on Corporations and Financial Services (PJC) commenced an inquiry into the Trio collapse in June 2011 and ASIC made a comprehensive submission to that Inquiry setting out its role, forward plan of work to help strengthen the financial system and suggestions for law reform.

The PJC Inquiry report into Trio was released on 16 May 2012. ASIC is considering the report's recommendations.

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