

20 August 2011

Mr B Ripoll MP  
Chairman  
Parliamentary Joint Committee on Corporations and Financial Services  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email

Dear Sir

### **Parliamentary Enquiry into Collapse of Trio**

Please treat this letter as a formal submission to the above named Committee on behalf of myself, family, long term friends, acquaintances, employees, family of employees, long term clients, current clients and former clients of my financial services business Tarrants Financial Consultants (in liquidation) Pty Ltd.

As advisor to 220 people who trusted me with their lifetime savings and future financial well being, they have now lost approximately \$25 million as a direct result of my financial advice by including ASF into our client portfolios.

The hardship, frustration, despair and heartache endured by these people is not able to be captured by words on pieces of paper or understood by those unaffected.

The sleepless nights, worry, nervousness, disbelief and anger are the side effects to the reality that financial security has been lost, assets sold, and replaced with uncertainty and angst.

Some people have taken on a second job, others are working overtime, some have extended retirement for another 5 or 10 years, some have returned to work and others are not as fortunate.

All have had their mental and/or physical health affected with at least one suffering a heart attack.

Most have had marital problems with at least one couple divorcing.

As a self employed Accountant and Financial Advisor for in excess of 23 years, the people my advice has affected include people from all walks of life, some known to me personally, all known to me professionally.

Myself and my immediate family lost	\$499,230
A 46 year old widow of a friend of mine lost	\$495,155
A former school teacher of mine lost	\$235,308
A cricket club coach lost	\$43,686
A mine manager lost	\$415,017
A longstanding friend of some 35 years lost	\$300,456
A school friend of mine lost	\$5,093
A cricket friend of mine lost	\$260,525
A son of a friend of my family spanning nearly 40 years lost	\$407,453
A former cricket captain of mine lost	\$260,525
Employees of mine lost	\$296,290
A nurse that cared for my dying mother in law lost	\$157,166
A sole parent who works at the local newspaper lost	\$34,604
A paraplegic who lost	\$602,183
A local policeman lost	\$15,000
A life member of a rival cricket club lost	\$129,837
A former President of the local football club lost	\$140,538
A paramedic lost	\$126,670
A local Subway franchisee lost	\$45,705
A local menswear shop proprietor lost	\$66,409
A former union leader lost	\$98,117
A current union leader lost	\$342,148
A local coal miner lost	\$144,450
A local steelworker lost	\$115,605
A neighbour of mine lost	\$268,837

The list goes on and on.

Advice related to my clients is not only limited to the Illawarra but including Sydney, Brisbane, Melbourne, Adelaide and Darwin.

Whether these clients were conservative retirees or assertive or aggressive wealth accumulators trying to maximise whatever savings they could afford to grow the remainder of their working lives' pay packets, they all had one thing in common. And that was they trusted me to advise them.

They also had something else in common. They trusted the financial regulatory framework in the most sophisticated financial market place in the world.

This framework was overseen and controlled by government watch dogs APRA and ASIC.

Despite the sophistication of our financial system overseen by ASIC and APRA we are all horrified to learn that our money was sent all over the world from the British Virgin Islands to Hong Kong to Belize to Anguilla and to the Cayman Islands and to Lichtenstein and to oblivion.

This was not made known to us in the Product Disclosure Statement. We were content in the knowledge that the Trustee and Custodian were NAB and ANZ and the auditors were KPMG and we had four Research House Reports, as well as 3.5 years of trading performance monthly reports, as well as verbal recommendations from other advisors using the fund to go with numerous presentations at industry conferences.

We were also content in the knowledge that ASIC and APRA licensed, regulated and monitored the investment.

This was a conservative investment with up to 70% in fixed interest contracts away from stock markets in freefall.

This was a flight to safety ironically with only 30% in equity markets including a short selling fund as one of up to 16 underlying managers in this Fund of Funds investment style.

The Astarra Strategic Fund (ASF) had a 14.1% performance statistic since inception with a volatility factor of only 2.8% of particular importance when working on geared portfolios.

Research ranked its risk factor alongside government bonds.

The research describes a powerful search engine ranking up to 8500 investment hedge funds on a monthly basis.

We were provided with a list of 47 funds of particular interest and a final list of up to 16 funds were to be chosen and re-evaluated monthly.

For us it was a switch from a single theme single manager hedge fund to a multi theme multi manager hedge fund. This conservative style and internally diversified investment was, we believed, a significant reduction in risk for clients.

Despite research reports to the contrary, Shawn Richard has pleaded guilty to knowing that the internal diversification strength was untrue and in fact, someone called Jack Flader in Hong Kong ran and controlled all the underlying funds negating the diversification theory.

However, frauds of such mammoth proportions are rarely effected without the co-operation or indifference or incompetence of other parties.

## **Auditors**

The first place to look when fraud is discovered is the audit process. In this case, we had WHK, the fifth largest audit firm in Australia as the external auditor, and KPMG, one of the largest in the world, as the internal compliance auditor.

Both internal and external auditors KPMG & WHK signed off that systems internally were all working properly and that assets and performance of the fund were fairly stated, giving a true and fair view.

The auditor's opinion was unqualified and compliant with Australian Accounting Standards, the Corporations Regulations, as well as, with International Financial Reporting Standards.

The Internal Compliance Plan was audited by KPMG in September 2006, September 2007, September 2008 and September 2009.

The audit report spells out the Director's responsibilities for the Compliance Plan:

"The directors' of the responsible entity are responsible for the design, documentation, operation and maintaining of the compliance plans in operation and the compliance measures. Including the internal control systems, policies and procedures which they contain. The directors' assertions regarding the design and operation of the compliance plans have been acknowledged in the attached directors' declaration."

"In our opinion:

Astarra has complied with each of the compliance plans in operation for the year ended 2008."

All four internal compliance reports are signed off and unqualified. The 2009 audit report was lodged with ASIC 3 weeks prior to the investment being frozen by ASIC.

Auditor's opinion:

"In our opinion, in all material aspects:

- a) Astarra Capital Limited has complied with each of the compliance plans for the Schemes listed in Appendix 1 for the period ended 30 June 2009; and
- b) The compliance plans continue to meet the requirements of Part 5C.4 of the Corporations Act 2001 as at that date."

It would appear to me that there must have been a breach of S601HS(H) of the Corporations Act.

The auditors represented that they had prepared their reports with due care and diligence and this representation would now appear to be false.

Unless there is some evidence of the auditor's raising with ASIC concerns that Trio was unable to determine the value of its funds that I'm unaware of, I can't see how this is not a serious contravention of the Act.

A claim of negligence against the auditors must surely be possible for a breach of duty of care and/or that the auditor's engaged in misleading and deceptive conduct.

However, despite these audit reports and opinions, it would appear that neither APRA nor ASIC nor Scotland Yard nor Interpol nor PPB Receivers and Managers, Shawn Richard nor \_\_\_\_\_ can our money be uncovered or a single trace found.

## **Directors and Office Holders Responsible**

The directors must also be guilty of not keeping proper financial records, another serious contravention of the Act.

I read with interest the Director's declaration that the Astarra Strategic Fund's Financial Statements give a true and fair view of the financial position, performance, operations and cash flows and also complying with Australian Accounting Standards, Corporations Regulations and with International Financial Reporting Standards.

However, the enforceable undertakings that ASIC has agreed to with \_\_\_\_\_, CEO, Director, Secretary and Member of the Risk and Compliance Committee at TRIO and Director and Secretary of Trio's parent entity Astarra Funds Management, and Mr \_\_\_\_\_, Chairman of the Board of Trio, Chairman of the Trio Investment Committee and member of the Trio Risk and Compliance Committee, tell a very different story.

It has now become apparent that EMA International, a company domiciled in the British Virgin Islands outsourced its obligations under the Deferred Purchase Agreement (DPA) to its contractual rights to the assets to Jack Flader in Hong Kong. The enforceable undertaking now reveals:

- The DPA did not assign legal or beneficial interest in the assets to either Astarra as the investment manager, Trio as the Responsible Entity or to the Custodian.
- Jack Flader organised asset valuations.
- The Directors of Trio did not organise independent valuations as required by the Corporations Act and Astarra Strategic Fund Constitution and ASF Compliance Plan.
- The Directors of Trio did not consider valuation methodology for valuing the rights to assets under the DPA.
- The Directors of Trio participated in decision making to transfer units from ARP Growth to ASF, yet knew nothing about liquidity issues causing the problem or called for any due diligence to justify the transfer.
- The Directors of Trio did not monitor or conduct any due diligence on the Compliance Plan.
- The Directors of Trio did not monitor or supervise the role of EMA as to the DPA.

- The Directors of Trio did not obtain due diligence reports regarding EMA or its associates in GCSL run by Jack Flader.
- The Directors of Trio did not monitor or supervise Shawn Richard or Astarra as investment Manager.

Yet the responsible officers of a managed investment scheme have even more responsibility to investors than Directors of Corporations have to shareholders. Section 601FD(1)(c) says that if there is a conflict between the members interests and the interests of the responsible entity, priority must be given to the members interests.

The enforceable undertakings demonstrate that investors were afforded no duty of care whatsoever despite:

Section 601 FD (1)(f)(i)  
 Section 601 FD (1)(f)(iii)  
 Section 601 FD (1)(f)(iv)  
 Section 601 FC (1)(j)  
 Section 296 (i)  
 Section 297  
 Section 601 FD (1)(b)  
 Section 601 FD (1)(c) of the Corporations Act (2001).

Section 601 FD of the Corporations Act (2001) sets out various duties for officers of a responsible entity of a Managed Investment Scheme (MIS). These duties include:

- To take all steps that a reasonable person would take if they were in the officers position, to ensure that the responsible entity complied with:
  - the Corporations Act;
  - the Constitution of the MIS;
  - the Compliance Plan of the MIS.
- To exercise the degree of care and diligence that a reasonable person would exercise if they were in the officer's position;
- To act in the best interests of the members of the MIS and if there is a conflict between the members' interests and the interests of the responsible entity, give priority to the members' interest;
- To ensure that the property of the ASF was valued at regular intervals appropriate to the nature of the property;
- To require unit prices to be based on valuations and to be independently verifiable;
- To require the Responsible Officer or CFO and Fund Accountant to ensure that unit prices were calculated in accordance with the Constitution and the Guide to Good Practice of Unit Pricing;

- g) Require Trio's officers to comply with the provisions of the ASF Compliance Plan in relation to due diligence, monitoring and supervision of agents, contractors or external service providers and their insurance; and
- h) Require Trio's officers to comply with the provisions of the ASF Compliance Plan in relation to the selection and performance of fund managers, including to ensure that Trio's Investment Committee undertook a quarterly review and reported its findings to the board regularly.

So the indifference and incompetence of the directors of ASF and the disregard for the Corporations Law have created a fertile environment for a fraud to grow and prosper.

## **Trustees and Custodians**

It remains to be seen whether ASIC will take any action against the big end of town. The National Australia Bank and ANZ were Trustees and Custodians of these investor assets, yet obviously did not have control or custody of anything of value.

I suspect they will rely on the Deferred Purchase Agreement (DPA) and argue that dollar value was not transferable until a future event. However, no responsible entity could hold a lease agreement out to have value without an inspection of the asset to justify existence and value. What is a lease unless it is a deferred purchase agreement?

The pivotal roles played by a Trustee and Custodian have been completely removed with no safekeeping function at all. It seems they held a Deferred Purchase Agreement but no proof of existence or value of investor assets.

This is not what is expected by investors from 2 of the 4 pillars of the Australian Financial system, no matter what excuse they come up with.

The role of the Custodian is of particular interest.

Under the initial Scheme Compliance Plan of 21 August, 2005, Permanent Trustees Australia Limited was listed as the Custodian of the Scheme Assets. Permanent Trustees Australia Limited was replaced by ANZ on or before 22 August, 2007. In 2009, ANZ sold its Custodian Services business and the custody agreement appears to have been terminated from early January 2009. National Australia Trustees Limited replaced ANZ on 6 February, 2009.

It was a condition of Trio's Financial Services Licence that any custodial agreement be in writing. The Inquiry should seek to review this agreement in an attempt to determine if the Custodian's both ANZ and NAB could have performed their role properly.

Statements by Shawn Richard suggest that the custodian's authorised the transfer of Trio Capital funds without sufficient consideration as to where they were going. NAB would simply receive a request from the investment manager to transfer funds to EMA in the British Virgin Islands and transfer the funds knowing it would never be in a position to confirm the value of rights provided in return.

Without seeing a copy of the agreements between the custodian and Trio, I can't determine if this behaviour is questionable or outrageous. I believe that the Inquiry will find that the custodian "rubber stamped" these transfers enabling the physical theft of the funds in return for nothing of value.

Furthermore, Trio Administrator PPB has indicated that the Trio custodian account held assets for both the MISs' and superannuation funds without any clear accounting separation. This uncertainty relating to the custodial accounts, specifically the inability of Trio to identify the level of exposure to other schemes and super funds had to ASF, appears to have been, in my opinion, a significant underlying reason as to why Trio directors appointed Administrators shortly after APRA suspended their licence in December 2009.

Quite a debacle from the pillars of our financial system.

The attention to detail displayed by these banks in extracting every single dollar from us in bank charges, in account keeping fees, in signatures on forms and pieces of paper is only surpassed by the obtuseness and indifference shown in allowing \$180 million to flow out of Australia with nothing of value offered in return.

I suppose the bank officers were so rapt up in calculating precisely the bank charges involved on the transfers, they forgot about the safety of \$180 million!

Here the banks were caught up in the detail and missed the point. Is anyone really surprised?

They secured their bank fees but forgot to secure our capital.

## **Research Houses**

Now to Research Houses. Only a chorus of denials at this stage. What a sorry state of affairs when the investing public cannot rely on no less than 4 research houses reports.

Firstly, in March 2006, Van Mac Global Hedge Fund Consultants issued a 10 page report for financial advisors only.

The Astarra Strategic Fund was given:

- A performance rating of 4.5 stars out of a maximum of 5 stars representing high performance relative to its peers;



- A risk rating of 5 stars from a maximum of 5 stars representing the best risk relative to its peers;
- A skill rating of 4 stars out of a maximum of 5 stars; and
- Overall, the Van Mac rating was "Highly Recommended".

The Van Mac opinion of the ASF was:

"a diversified, multi-strategy, multi-manager hedge fund. The managers which the fund will be investing are all Tier 1 type managers with impressive track records. Importantly, while ASF has only offered this program within Australia since March 2003, the current management team has managed these strategies since 1996. In addition to a solid performance record since inception, the managers have demonstrated a strong degree of flexibility in altering investment strategies to suit market conditions. Given the poor performance of the global equity markets in recent years, absolute return funds have become increasingly popular as an alternative investment option for institutional investors. Absolute return managers continue to outperform the traditional markets on volatility and risk adjusted measures."

"These results attest to the main goals of absolute return managers; capital preservation combined with achieving attractive risk adjusted returns."

Van Mac conclusions:

"The Managers of ASF are an experienced, motivated and stable team with an excellent track record in US equities and equity linked products. The use of multiple investment styles provides an extra diversification effect that protects the portfolio from short term performance of individual styles. The fund should provide returns that are not correlated to the general equity market and will help investor's diversify a portfolio of high beta investments. A focused and uncomplicated approach to research and portfolio management which can be easily leveraged to investors benefit."

"The ASF has a very competitive fee structure compared to its peer group."

The opinions expressed in the report are understood to be made on the basis of research or knowledge or special skill of the research house making the recommendation. The failure of the Van Mac to carry out objective research to verify the opinions expressed suggests negligence in my opinion.

An implied representation exists that the report prepared by Van Mac will not be negligent. If the report is negligent, that representation is misleading and deceptive and breaches the misleading and deceptive conduct provisions relating to financial products and services.

Secondly, in April 2007, \_\_\_\_\_ of the Strategic Research Unit of Van Eyk Research produced a 10 page report "Portfolio Construction Using Hedge

Fund of Funds". In the report, chose an active manager ASF as a top tier hedge fund manager with a consistent excess return and below average volatility history. "Excellent fund manager portfolios such as this significantly increase the efficiency of performance in the process of constructing portfolios."

"It is worth noting that during the latter half of 2005 when hedge funds managers were posting negative returns, the ASF was returning in excess of 25% per annum and has not to date posted a negative return since inception. As such, manager selection is the single most important criteria when designing a portfolio."

"To put the consistent performance issue in a clearer context, the next chart shows the excess performance of ASX compared to the Tremont Hedge Fund Index. The chart shows that excess return over the index is significant and consistent. Additionally, since early 2006, the fund has preformed with less volatility."

"If, however, we combined ASF with long short funds and the Composite Hedge Fund Index, it creates a less efficient portfolio and as such, the optimal contributions of funds would be the ASF with Global Macro Funds. Market Neutral Funds as substituting for the long short funds and the Composite Hedge Fund Index."

"ASF is positively correlated with long short funds and the Composite Hedge Fund Index, however, this correlation is quite volatile. We can make use of this diverse data in the portfolio construction process by substituting the long short funds and Composite Hedge Fund index with ASF. This will preserve the diversification effect and hence, increase portfolio return and risk efficiency."

"By adding in an incremental cushion of 5%, of the Tremont Hedge Index or the ASF for fixed income assets there is an immediate impact of lowering the overall volatility and increasing the return of a balanced portfolio. However, the effect of the addition of the new asset class is significantly more pronounced with ASF as the fund manager of choice. As such, the Sharpe Ratio of the balanced fund also increased significantly."

"One of the conclusions of this report was that portfolio risk and return is significantly improved by using a top tier active Hedge Fund of Fund Manager like ASF."

The last sentence of the report says "Van Eyk is not paid by product issuers for producing reports."

Promotional material distributed by ASF described Dr Smith as an "Asset Consultant".

"Dr Smith headed the team at Van Eyk Research Ltd that designed, built and managed the Van Eyk "Blue Print" Alternative Hedge Fund of

Fund portfolio. Furthermore, he also headed the Asset Consulting team at Van Eyk Research, which through his hedge fund experience was well known for specialist hedge fund design and management to institutional clients. As such [redacted] has managed and built many hedge funds for clients for a number of years and has also been a central figure in the research and rating of hedge funds during this period at Van Eyk research. [redacted] is also active in the research of hedge fund of funds design and management and has contributed many papers and presentations on this subject. In addition, [redacted] has vast experience in portfolio management of hedge funds through his active and leading role on several client investment committees.

[redacted] brings to ASF his knowledge, expertise and experience in recognising quality hedge funds and delivering hedge fund portfolios using his own models and methodologies that are recognised and sought throughout the industry."

Based on these opinions, I think Van Eyk has also acted negligently in that it has not carried out objective research to verify the opinions expressed. As with the Van Mac report, the Van Eyk report is not only negligent, but also amounts to misleading and deceptive conduct.

It is also significant that Van Eyk was represented on the investment committee of the Responsible Entity, a matter which is not disclosed in the report. This would appear to be a conflict of interest whether actual or perceived.

The next Research House was Aegis which in October 2007, produced a 16 page report where on page 1, it stipulates that:

"Aegis, its officers, employees and its related bodies corporate have not and will not receive, whether directly or indirectly, any commission, fee, benefit or advantage, whether pecuniary or otherwise in connection with making any statements and/or recommendation contained in this report. Under no circumstances has Aegis been influenced, either directly or indirectly in making any statements and/or recommendations contained in this report."

Aegis has assigned the Fund with a "recommended" rating.

"The fund provides exposure to a portfolio of hedge fund managers with a multi manager, multi strategy focus. Whilst the manager employs a multi strategy approach, the Fund has a relative value strategy bias, given the managers' previous experience. The Fund aims to generate positive returns in both rising and falling markets, and, as such, has a low correlation with equity markets, providing diversification benefits to an investment portfolio."

"The manager employs a robust and stringent process to select the portfolio constituents. To date the fund has performed strongly, with only one month of negative performance. The most prominent weakness of the fund is that this is the first fund managed by ASF.

However, we note the extensive experience of the management team in the alternative investment industry."

"The Funds portfolio is concentrated with six hedge funds at present, with scope to increase to ten-fifteen hedge funds as the fund grows".

"The Fund has returned 13.7% on an annualised basis and exhibited volatility of 3.2% which is consistent with the Funds return objective."

"Aegis views the fund as suitable for investors who are seeking to diversify their investment portfolio with an alternative investment that is uncorrelated to equity markets."

Who wouldn't be seeking alternative investments when share markets are in unprecedented free fall?

"The investment team consists of 7 members, two of whom are long term members of the investment team (Shawn Richard and )."

"Shawn Richard is the founder and CEO of ASF. Shawn has over 10 years experience in global financial markets, with the majority of that focused on alternative investments. Previous to his current position, Shawn was involved in the structuring and analysis of derivative instruments working with a number of large hedge fund managers in the US, and provided risk management strategies to financial institutions in Asia."

" is the Chief Investment Strategist of ASF. is involved in the development and evaluation of strategic asset plans, modelling tools and the investment risk process. Prior to the ASF, was involved with the financial modelling and analysis of hedge fund strategies and was involved in providing arbitrage strategies to hedge funds."

The Astarra Investment Team:

<b>NAME</b>	<b>ROLE</b>	<b>YEARS OF INDUSTRY EXPERIENCE</b>
	CEO	10
	Chief Investment Strategist	9
	Asset Consultant	20
	Specialist Derivatives Consultant	10
	Asset Consultant	12
	Investment Analyst	4
	Specialist Quantitative Analyst	17

"ASF has outperformed the Hedge Fund Research Inc. Fund of Funds (HFRIFOF) Composite Index since inception, generating an annualised return of 13.7% with a lower volatility."

"The Fund has outperformed the S&P 500 Index on a total return basis since inception, generating a combined return of 13.7% with substantially less volatility than the benchmark with a standard deviation of 3.2%."

It appears from the opinions expressed in the report that Aegis has relied heavily on the PDS and has not undertaken any independent research or investigations. Like the other reports, this report also has an odour of negligence and misleading and deceptive conduct. In short, the report seems to take Astarra Asset Management's (AAM) word for things rather than undertake any independent investigation.

Fourthly, we have Research House Morningstar ranking the Astarra Diversified Model Portfolios against their competitors.

<b>MORNINGSTAR RANKINGS</b>			
	<b>1 YEAR</b>	<b>3 YEAR</b>	<b>5 YEAR</b>
Astarra Conservative	1/95	1/89	1/69
Astarra Balanced	1/60	1/56	1/38
Astarra Growth	1/39	1/37	1/25

Why am I now fighting off Professional Negligence Claims?

I would have thought that any advisor not recommending these funds would be negligent, not me.

## **Promotional Material**

The promotional material presented by ASF officers describes ASF's exclusive use of:

"a proprietary database, one of the largest of its kind and has been carefully constructed to identify and eliminate the significant biases inherent in published hedge fund returns enabling us to construct accurate and reliable hedge fund Indexes. This gives us critical advantage in our screening process contributing to our success in outperforming our benchmark on a risk adjusted return basis over the long term."

"Our proprietary system combines:

- a database of approximately 18,500 hedge fund track records (10,000 inactive and 8,500 active hedge funds) at the end of December 2007;
- Automatic scoring/ranking algorithms; and,
- Quantitative information collected on each individual manager through the selection process."

Combined with such a powerful search engine, database, and backgrounds provided compelling reading.

Shawn Richard

*Chief Executive Officer*

"Shawn Richard is the founder of Absolute Alpha and a key member of the investment team. Shawn has been involved in financial markets since 1996 and had been specialising in alternative investments for more than 8 years, both offshore and in Australia. Over this time, Shawn has established relationships with some of the most exclusive hedge fund managers around the globe."

"Shawn's offshore experience in alternative investments includes among others, structuring and analysis of derivative instruments with some of the largest private hedge funds in the United States. Shawn was also part of a small team of professionals providing risk management services to Asian institutions and regional banks in relations to their exposure in equities."

"Shawn is one of the first investment advisers to advocate the covered call strategy. Prior to founding Absolute Alpha, Shawn has held and continues to hold, various senior positions, including directorships of companies, both in Australia and overseas."

"Shawn holds a bachelors degree in Finance from the University of Moncton."

*Chief Investment Officer*

" is the Chief Investment Strategist of Absolute Alpha. As Chief Investment Strategist, is involved in the development and evaluation of asset strategic plans, development and modelling of analytic tools, reviewing and analysing investment data to formulate investment strategies, and the investment risk management process. Prior to joining Absolute Alpha, worked with the Asset Management team of Pacific Continental Securities and World Financial Capital Markets in the US and Asia. In these roles, performed extensive financial modelling and valuation analyses of various hedge fund strategies. also led a team of arbitrage specialists who provided structured product deal flow to many of the largest hedge funds in the industry."

" holds a degree in economics from Trenton State College in NJ."

## *Asset Consultant*

' has worked in the funds management and investment advice industry for more than 12 years in a number of senior positions. These included; as the CIO and Director for Investec Australia where he managed a successful structured equity fund and a number of alternative fund-of-fund hedge fund strategies. Additionally, headed the team at Van Eyk Research Ltd that designed, built and managed to Van Eyk 'Blue Print' Alternative hedge fund-of-fund portfolio. Furthermore, he also headed the Asset Consulting team at Van Eyk Research which, through his hedge fund experience was well known for specialist hedge fund design and management to institutional clients. As such, has managed and built many hedge funds for clients for a number of years and has also been a central figure in the research and rating of hedge funds during this period at Van Eyk Research."

' is also active in the research of hedge fund-of-fund design and management and has contributed many papers and presentations on this subject. In addition, has a vast experience in portfolio management of hedge funds through his active and leading role on several client investment committees."

' brings to Absolute Alpha, his knowledge, expertise and experience in recognising quality hedge funds and designing hedge fund portfolios using his own models and methodologies that are recognised and sought throughout the industry."

"Mr has been involved in hedge funds for more than 20 years and is a senior asset consultant and member of Absolute Alpha's investment committee. Currently, he is the President of Paradigm Global Advisors, a well established hedge fund manager based in NY with FUM in excess of \$500M and he is also the Chairman of Inc., a financial services firm, founded in 1991."

"Prior to this, held various senior positions, including, President of Ladenburg Thalmann Asset Management, Director at Ladenburg Thalmann, Inc., one of the oldest members of the New York Stock Exchange, President of Laidlaw Asset Management, Chairman and Chief Investment Officer of Howe & Rusling, Laidlaw's Management Advisory Group, President of Rodman and Renshaw's Advisory Services, and President of LaSalle Street Corporation, a wholly-owned subsidiary of Donaldson, Lufkin & Jenrette."

' has been a leadership instructor at the US Naval Academy, Chairman of the US Naval Academy's Honour Board and is a former

marine Corp officer. He is a frequent speaker at financial seminars and has appeared on "The Today Show" and "Good Morning America" discussing financial markets."

' is a graduate of the US Naval Academy and has an MB from the University of Oklahoma."

### *Investment Analyst*

"Mr has over four years experience working with alterative investments, including hedge funds, fund of funds, and real estate. Prior to joining Absolute Alpha, he was the Vice President of the Marketing and Structuring Department of Paradigm Global Advisors, LLC, a NY based hedge fund manager, responsible for business development, investor relations and structured product initiatives and also served as secretary of the Paradigm Multi Strategy Fund I, LLC a registered investment company."

"Mr attended Duke University where he obtained a BA in Political Science and a Certificate in Markets and Management."

I personally witnessed industry conference presentations onshore and offshore on no fewer than 8 occasions prior to recommending the fund.

PowerPoint presentations presented by Shawn Richard and/or his officers include hedge fund philosophy of:

- Consistent positive returns in all market conditions.
- Minimum volatility.
- Minimum risk.

PowerPoint presentations presented by Shawn Richard and/or his officers include ASF update:

- Established 5 year track record of managing Australian investor's assets.
- Average annual return of 13.6% and standard deviation of 4.25%.
- Currently managing approximately \$250 million of client assets.
- "Recommended" research rating from top agencies both domestic and off shore.
- Extensive global network with branch offices in New York and Hong Kong.
- Rolling average since inception:

14.15%
1 year: 10.12%
2 year: 12.31%
- Annualised volatility 2.28%



## Astarra Industry Presentations

Included in the presentation in Macau on Thursday, 3rd April, 2008, at 12.15 pm time slot, is the following graph comparing ASF with MSCI and fine print underneath claiming to be prepared by Van Eyk research.

### ASF vs MSCI



#### Growth of \$10,000 Invested (net of ongoing fees)



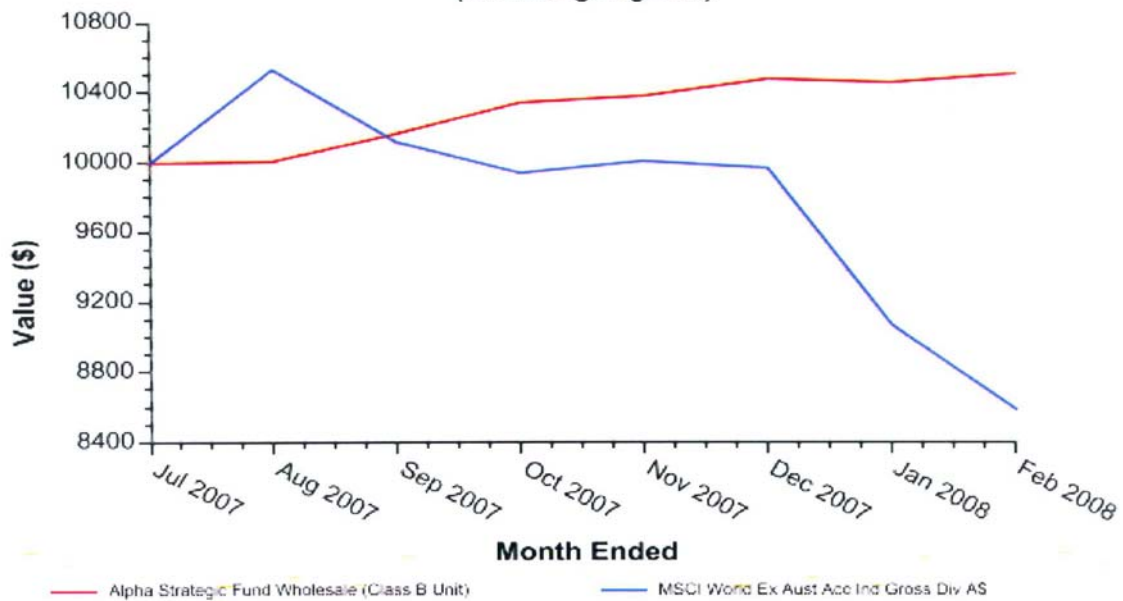
To the extent that this report constitutes general advice, this advice has been prepared by Van Eyk Research (ABN: 99 010 664 632 AFSL: 237917) with data sourced from Morningstar Research Pty Ltd (ABN: 83 062 096 342, AFSL: 243161) and does not take into account your obligations, financial situation or needs. Before acting on any advice, you should consider the appropriateness of the advice, having regard to your financial situation and needs. We recommend you obtain financial, legal and taxation advice before making any financial investment decisions. All potential investors should obtain a Product Disclosure Statement relating to the product and consider the Statement before making any decision about whether to acquire the product.

Followed by the following graph comparing ASF to MSCI through the GFC, again claiming in the fine print to be prepared by Van Eyk research.



## Current Financial Year

**Growth of \$10,000 Invested**  
(net of ongoing fees)



To the extent that this report constitutes general advice, this advice has been prepared by Van Eyk Research (ABN: 99 010 664 632 AFSL: 237917) with data sourced from Morningstar Research Pty Ltd (ABN: 83 062 096 342, AFSL: 243161) and does not take into account your obligations, financial situation or needs. Before acting on any advice, you should consider the appropriateness of the advice, having regard to your financial situation and needs. We recommend you obtain financial, legal and taxation advice before making any financial investment decisions. All potential investors should obtain a Product Disclosure Statement relating to the product and consider the Statement before making any decision about whether to acquire the product.

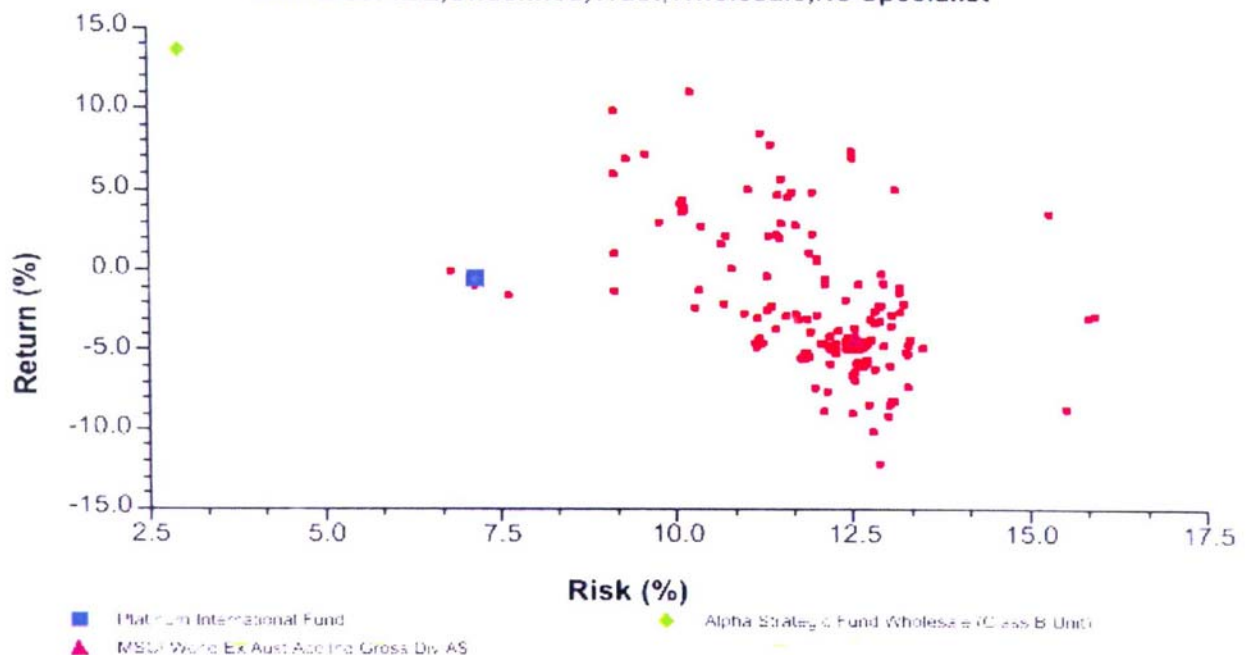
Followed by the following graph comparing a universe of international funds and their risk and return profiles. The MSCI and Platinum International and ASF as at February 2008, again claiming in the fine print to be prepared by Van Eyk Research.

## Performance comparison

**bsolute**  
A I D U A

### 24 Month Risk / Returns as at Feb 2008

Universe: IEQ,Undefined,Trust,Wholesale,No Specialist



To the extent that this report constitutes general advice, this advice has been prepared by Van Eyk Research (ABN: 99 010 664 632 AFSL: 237917) with data sourced from Morningstar Research Pty Ltd (ABN: 83 062 096 342, AFSL: 243161) and does not take into account your obligations, financial situation or needs. Before acting on any advice, you should consider the appropriateness of the advice, having regard to your financial situation and needs. We recommend you obtain financial, legal and taxation advice before making any financial investment decisions. All potential investors should obtain a Product Disclosure Statement relating to the product and consider the Statement before making any decision about whether to acquire the product.

This table is effectively saying that ASF had rolling returns since inception of 14.1% per annum at government bond risk because 70% of the fund was in investments of a fixed interest nature.

It shows the Platinum International Fund from which we made the switch of client investments showing approximately a nil percent return with considerably more risk.

I note with no sense of accomplishment whatsoever that the latest Platinum performance figures are -7.2% for the last twelve months ended 31 July 2011, and a five year performance of 1.35% each year for those five years.

In conclusion, the presentation says:

"We can potentially capture most of the benefits of certain hedge funds strategies without being subjected to some of the rules associated with individual hedge fund managers such as:

- Cost;
- Liquidity;
- Transparency;
- Inability to short; and
- Sometimes honesty."

Further promotional material states Astarra Funds Management was established in 1992.



#### ASTARRA FUNDS MANAGEMENT

Established in 1992, Astarra has built its reputation on designing and managing model portfolios on behalf of clients with a view of delivering the most efficient exposure to all asset classes. Astarra also provides a range of financial solutions for investors and fund managers Australia-wide which includes:

- Investment management services
- Administration services
- Custodial Services by ANZ Custodian Services
- Risk & Compliance
- Fund Accounting and Unit Pricing

*In 2003, Astarra was one of the first Australian fund managers to actively adopt the University of Yale and Harvard's model portfolio theory.*

*Since then, Astarra's Balanced & Conservative Funds were top quartile performers with less risk than its peer group.*



Please note the second last paragraph referencing the Universities of Yale and Harvard. Another nice touch.

Based on the published financial reports of ASF, such as the 2008-2009 Annual Report lodged with ASIC, Trio and its directors appear to have failed to maintain proper financial records. The report contains broad descriptions of various valuation techniques, together with very little detail of the value of the assets.

The section of the Report headed "Financial Instruments Overview" purports to identify the risks, assets, risk and management techniques for dealing with those risks. Trio receives the quarterly management reports from the schemes investment manager (AAM) which then form the basis of the Investment Committee's report to the directors. This is the only activity undertaken by Trio in this regard.

The scheme's financial records and the records of the AAM appear to be one and the same. The annual report does not make any reference to the records of AAM. It seems that investor's funds of approximately \$118 million are managed at a distance from Trio. It is difficult to see how, and to what extent, Trio can be said to have maintained financial records which explained its financial transactions.

With what we know now, three years since I made the decision to invest, these people had more front than a barn.

The gaoling of Shawn Richard, the involvement of Scotland Yard and Interpol, the understanding that this fraud has now been committed on three continents only goes to show that this is nothing else but organised crime on an international scale.

To me it is inconceivable that \$180 million can simply vanish. Eliot Ness tracked down Capone's millions in the 1920's with a HB Pencil, calculator and magnifying glass and yet in 2011, with massive computerised search engines, bank and government computerised databases, platforms and systems as well as ASIC's capability and resources, there is apparently no trace of our money.

If there has been \$180 million in cash withdrawals, than why not tell us?

If there has been \$180 million in transfers to blind trusts in Switzerland that can't be accessed, then why not tell us?

There must be an audit trail no matter which countries are involved, tax haven or not, British Virgin Islands, Belize, Cayman Islands, St Lucia, Liechtenstein, Sydney or Albury, it shouldn't matter.

If this is not the case, why are any of my clients paying tax?

Why wouldn't I advise clients to transfer their funds to the British Virgin Islands and to the Caribbean for no tax liability?

It would seem that you've only got to use KPMG, WHK as auditors and ANZ and NAB as Trustees and Custodians and the money can vanish and everyone will sign off saying they've done their jobs.

I'd rather take our chances with the Wickenby investigators than with Jack Flader.

If ASIC were as committed to finding our money as they are to banning advisors around Australia, we might just get our money back.

It seems to me that ASIC is minutely scouring every sentence, paragraph and Statement of Advice (SOA) presented by a financial advisor and yet the Fund Manager can say and do anything they see fit with no accountability whatsoever.

It is far too easy to kick the small advisor at the end of the advice chain.

It is too easy to judge any decision the advisor reaches in real time only to be accused of false and misleading information with the benefit of hindsight.

Of particular interest is that in June 2008, we invested a dozen or so clients into the Astarra Advantage Series Capital Protected Funds. This investment was supposed to be invested into Hedge Funds, Emerging Markets and Commodities. The fund never got off the ground and 12 months on, Shawn Richard closed down the fund. Yet each client received their money back and a little bit more to go with it! What a nice touch.

## **Advisors**

I am very concerned that the recommendations of this Inquiry could be influenced by the current perception that it was only greedy or shonky advisors who were incentivised to invest client's money based on marketing allowances or other commercial benefits that were caught in this trap.

This is certainly not the case with me.

It was not my practise to seek marketing fees from Fund Managers. Asset based fees have been charged to my clients directly from their cash management accounts monthly since 1994 with as little as possible received from Fund Managers.

In fact prior to the acceptance of the Astarra Marketing Allowance my practice received 98.16% of its income directly from clients only.

Even insurance commissions were paid to a trust account and rebated to clients, and lesser fees than commissions received, charged directly to clients.



The facts are that I established and operated the Tarrants Corporate Group, a 100% locally owned family business which has employed three generations of my family including ten different family members and operated successfully for nearly 23 years without a single problem with any regulatory body.

Prior to this fraud I employed 70 local people and turned over nearly \$10 million per annum.

The Tarrants Corporate Group was a unique business in that it provided Accountancy, Taxation, limited Legal and Financial Services, being fully integrated under one roof and with one single owner, and established from the ground up.

This family owned business was actively expanding interstate with serviced offices and clients in every capital city.

We have avoided fund managers wherever possible over the years and ran mostly direct shares.

Prior to the GFC, one aspect of our practice was our Private Clients Division which traded actively in Australia, Hong Kong, Singapore, Taiwan and London share markets using a purely performance based fee structure for up to 20% of the portfolios.

We also advised on direct local property as well as property within a 5 kilometre radius of our capital cities, Sydney, Melbourne, Brisbane and Adelaide rather than invest indirectly through listed or unlisted property trusts.

Property developer rebates received were all rebated to clients.

Not a single employee was paid anything other than a salary. No bonuses or percentages were paid to anyone other than myself.

We were 100% independently owned by me and as free from influence as anyone could be I would have thought.

I even rebated to my clients \$360,000 worth of shares given to me by the Fund Manager of Platinum when the company, Platinum Asset Management Ltd, floated on the ASX. How many other advisors gave back to their clients, their share allotments?

So it was when markets were in free fall in April 2008 after an industry conference that I decided to switch to ASF which held up to 70% of funds in fixed interest contracts and supposedly, with government bond risk levels as per Van Eyk Research.

To access the ASF we needed to change platform providers and with the assurance of Shawn Richard and the new platform provider that "only one form and one signature would be required per client".

Well nothing could have been further from the truth.

The changeover process was a nine step process per client involving the establishment of new bank accounts, identifications, assets and liabilities and income positions per client, to affect the margin loans. The PDS expired along the way, not to mention the client education seminars, question answering and sign ups.

This process took five months for a staff of 22 working full time as well as 873 hours of overtime and 511 client face to face interviews.

All while markets were in free fall. A massively costly exercise and yet a cost borne by the practice, not the clients.

Shawn Richard and I had discussions during April 2008. Shawn had offered a marketing allowance of 2.2% on the ASF until Christmas only and 1.1% in the capital protected investment. Neither offer had been accepted despite business being written in the protected products in June 2008.

In fact, I had called for a report from one of our external compliance providers in the August 2008 to determine what exactly needed to be done for us to move from 98% fee for service to 100% fee for service and become only the 12th business in Australia to be able to be genuinely independent. This was our focus.

However, by the end of September 2008 with the market at 3,200 basis points and still falling, I entered into commercial arrangements with Shawn Richard, due to his misleading statements as to the ease of which the ASF could be integrated into our portfolios.

Shawn Richard offered to compensate us for the significant cost incurred by the firm during the dark days of 2008.

These arrangements were necessary to avoid putting off approximately 30 to 40 employees as the GFC hit us harder than most because we had fixed wages only and no bonus or percentage wage structure in place.

There were two types of commercial payments agreed to. Firstly, there were cost recovery payments for the turmoil of five months administration as detailed above. Cost recovery payments were arms length, legal and not required to be disclosed to clients under the Financial Services Law.

The second payment was a marketing allowance and when this payment commenced in late April 2009, full disclosure to clients was made in each SOA. In fact, 449 disclosures were made to about 220 clients.

The marketing allowance was documented in our Financial Services Guide (FSG), it was on our website, it was in the SOAs, it was disclosed in my business tax returns.



However there were a handful of SOAs only due to human error that did not have disclosure which should have.

Marketing allowances are not illegal, in fact, they are widespread in the industry and some dealerships earn the bulk of their revenue from them each year.

For an independently owned practice with no bank or insurance company to call upon in the biggest crisis of our time, I had been forced to contribute \$100,000 per month for 14 months in order to keep all 70 employees employed and service levels maintained and panic selling avoided. As we know, banks don't hand out umbrellas in the rain.

These commercial payments were not an incentive to invest in ASF as they were not agreed to until six months after our client interviewing began. You can't have an incentive in reverse.

These payments were certainly not a secret.

However, according to press reports, Shawn Richard described payments to me as secret in a public examination. Unfortunately, I have been unable to obtain a copy of the transcript to ascertain the content and context of these comments.

One possibility is that it was incorrect reporting. Another is that it was a deliberate strategy to pass pressure from him and onto me.

One thing is for sure, and that is that Shawn Richard and I never had a conversation about what I would disclose to clients.

So as a consequence of [redacted] articles in the Sydney Morning Herald and [redacted] of the Illawarra Mercury, I have been branded a criminal in receipt of illegal secret commissions around Australia based on the comments, accurately recounted or not, of a man now in gaol for dishonesty.

Neither journalist even rang to ask if Shawn's comments were true. Neither journalist rang to let me know I'd be splashed all over the papers the next day as a criminal.

Yet they both won journalistic awards for their reporting.

In fact, [redacted] of the Illawarra Mercury was provided with seven opportunities to attend my office and spend a whole day going through everything from research to SOA's and yet was not interested.

It was only when I was under a legal disadvantage and being investigated by ASIC that she was interested in my opinion.

In fact, it is with more than a tinge of irony that I remember back to the days as a ten year old when I would ride my push bike to the bottom of Balgownie

Road, where I would sell the Illawarra Mercury to passing motorists at the Caltex Service Station at 4.30 in the morning, before I am guessing, was even born, and when the Illawarra Mercury was less than 10 cents a copy.

Consequently, the fraud has been turned into a Wollongong Witch Hunt rather than the international fraud and organised crime that it is.

A proud Illawarra family business employing 70 local people is now struggling to employ 15 people with no reputation left at all.

It is hard enough for an advisor to be caught up in the biggest financial meltdown in 100 years, let alone to have a fraud perpetrated on him at the same time, let alone front page stories of secret commissions and illegal behaviour.

Three of my companies are now in liquidation and if it wasn't for a small band of fiercely loyal clients, I'd be bankrupt by now as well.

However, my point is that payments to advisors no matter how much publicity they have received are not the point of issue. The point of issue is the clients and their current circumstances due to this fraud.

Each client sought advice in good faith. Clients did not complain throughout the GFC. To be struck down by a fraud at the same time is beyond belief and financially ruinous.

Our aggressive and assertive investors weathered the GFC and our geared clients' portfolios were liquid enough to cope, with only 7% of clients required to contribute to their portfolio during the biggest crisis in 100 years with the majority of those instances where client's did not follow my advice strictly.

When the ASF was frozen it took the margin lender only two days to reduce the value of the investment in the margin loan facility to nil. This caused hundreds of margin calls with client portfolios having no capacity to deal with the calls.

The knock on effect was that clients' who could not contribute cash to portfolios had to sell their blue chip Australian shares to cover the margin calls until some had no blue chip shares left, only the loans which were left over.

So what the GFC was unable to do to our client portfolios was achieved by this fraud and its flow on consequences.

Even our conservative portfolios have been forced into a state of disrepair with the combined force of the GFC and the fraud. Many of these clients being forced to sell down capital to live who would otherwise have lived off the interest and dividends with no capital reduction required at all.

We have conducted extensive modelling on client portfolios and the results show that if the ASF was not a fraud and its value was retained in the portfolios by extrapolating out the portfolio performance, we had determined that no margin calls would have been necessary to client portfolios from day one where our advice was strictly followed.

This was despite the uncertainty in Europe; the bail out of Greece; the concern for economies of Portugal, Ireland, Greece and Spain; the rumours around the Italian economy; the risk of the de-coupling of the Euro; the continued risk of a double dip recession in the US; the downgrading of the US Credit Rating from AAA to AA+; as well as, a tsunami in Japan.

I am sure our clients would view the world very differently if they had not been subjected to the volume of margin calls and enormous emotional and financial strain caused by the fraud at ASF.

## **The role of ASIC and APRA**

This entire scenario of devastation was only made possible by the incompetence and indifference of ASIC and APRA.

Let's have a clear look at our corporate watchdogs in action.

ASIC is responsible for the administration of the following legislation as well as the relevant regulations made therein:

- Corporations Act 2001;
- Australian Securities and Investments Commission Act 2001;
- Superannuation Industry Supervision Act (SIS) 1993; and
- Retirement Savings Accounts Act 1997.

ASIC is Australia's corporate, markets and financial services regulator. ASIC contributes to Australia's economic reputation and well being by ensuring that Australia's financial markets are fair and transparent, supported by confident and informed investors and consumers.

ASIC is an independent Commonwealth Government Body. They are set up under and administer the Australian Securities & Investments Commissions Act (ASIC Act) and they carry out most of their work under the Corporations Act.

The ASIC Act requires them to:

- Maintain, facilitate and improve the performance of the financial system and entities in it;
- Promote confident and informed participation of investors and consumers in the financial system; and
- Make information about companies and other bodies available to the public as soon as practicable.

ASIC's priorities are:

- Assist and protect retail investors and consumers in the financial economy;
- Build confidence in the integrity of Australia's capital markets;
- Facilitate international capital flows and international agreement;
- Manage the domestic and international indicators of the Global Financial turmoil; and
- Lift operational effectiveness and service levels for all ASIC shareholders.

As the financial services regulator they licence and monitor financial services business to ensure that they operate effectively, honestly and fairly.

In a letter to Mr Jeffrey Lucy, Chairman of ASIC from the Treasurer Peter Costello in February 2007, Mr Costello sets out the Government's Statement of Expectations of ASIC. Mr Costello confirms the Government's commitment to providing appropriate safeguards for consumers.

"A key role for ASIC is to ensure the integrity of the market. ASIC will deter improper and illegal conduct."

Interestingly:

"at an investment level, ASIC shall continue to develop and maintain strong working relationships with its corporate regulators in overseas jurisdictions".

The Treasurer Peter Costello points out that:

"The Government has provided ASIC with significant funding resources in recent years, confirming its capability and capacity to carry out its statutory mandate."

The response from ASIC to the Treasurer and cc'd to John Howard, the Prime Minister on page 6 confirms:

"ASIC is committed to ensuring all its staff, whether employed under the Public Service Act 1999 or otherwise, uphold the APS values and adhere to the APS Code of Conduct."

The letter concludes:

"ASIC looks forward to continuing to contribute to economic growth and the well being of the Australian community by delivering effectively on its responsibilities."

We can conclude that both politicians and the Chairman of ASIC were under no illusions as to the expectations of ASIC by the Government.

We also know that ASIC is charged under Section 1 of the ASIC Act with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

So with all this intent, both verbally and statutorily, I think there are serious questions to be answered by ASIC and APRA as to how it was that a 27 year old Canadian tourist can be provided with one of 13 of the most sophisticated financial services business licences available in Australia. The same license provided to our big 4 banks I'm led to understand. Particularly when it is now revealed that he didn't even have a university degree.

Specifically, the Corporations Act 2001, Section 912A and 912B contain the licensing provisions ensuring the licensee:

"have available adequate resources (including financial, technological and human resources) to provide the financial services covered by the licence to ...."

How could the licence have been granted when nine years later, Shawn Richard would still be unable to meet the requirements of these sections and still be unqualified with any completed tertiary education?

APRA has admitted investigating ASF in 2005 and 2006 and again in 2008. At this time, we now understand, unit prices were not available for some of the underlying funds. APRA did nothing about this problem other than to notify ASIC who also did nothing about this problem.

The most upsetting part of all of this scandal is that these unit pricing issues were known to the Government agencies right at the time I was advising my clients to invest in this fund.

This information should have caused alarm bells to ring around Australia and stop trading orders applied until unit prices were official and auditors, trustees, custodians and directors put on immediate notice.

The fund should have been immediately prevented from accepting any new monies at this stage while the investigation was continued.

APRA's silence and ASIC's non action, have forced the ASF to breach Section 1041E of the Corporations Act because without accurate underlying unit prices, the ASF published unit price could not have been correct.

#### Corporations Act 2001 - Section 1041E

##### False or Misleading Statements

- 1 A person must not (whether in this jurisdiction or elsewhere) make a statement, or disseminate information, if:
  - a) the statement or information is false in a material particular or is materially misleading; and
  - b) The statement or information is likely:

- i. to induce persons in this jurisdiction to apply for financial products; or
- ii. to induce persons in this jurisdiction to dispose of or acquire financial products; or
- iii. to have the effect of increasing, reducing, maintaining or stabilising the price for trade in financial products on a financial market operated in this jurisdiction; and

c) when the person makes the statement, or disseminates the information:

- i. the person does not care whether the statement or information is true or false;
- ii. the person knows, or ought reasonably to have known, that the statement or information is false in a material particular or is materially misleading.

Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)). For defences to a prosecution based on this subsection, see Division 4.

Note 2: Failure to comply with this subsection may also lead to civil liability under Section 1041I. For relief from liability under that section, see Division 4.

(2) For the purpose of the application of the Criminal Code in relation to an offence based on subsection (1), paragraph (1)(a) is a physical element, the fault element for which is as specified in paragraph (1)(c).

(3) For the purposes of an offence based on subsection (1), strict liability applies to subparagraphs (1)(b)(i), (ii) and (iii).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Interestingly, civil action for loss or damage for contravention of Section 1041E is:

- (1) A person who suffers loss or damage by conduct of another person that was engaged in contravention of section 1041E, 1041F, 1041G or 1041H may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention, whether or not that other person or any person involved in the contravention has been convicted of an offence in respect of the contravention.

I believe that both ASIC and APRA can be described as being a "person involved in the contravention".

Both Government agencies had knowledge and failed to act or raise the alarm.

This failure exposed investors to catastrophic risk from 2008 onwards.

ASIC's obligations concerning Managed Investment Schemes (MIS) are set out in Part 5C of the Corporations Act 2001.

A MIS must be registered with ASIC if there are more than 20 members, or if the scheme was promoted by a person or associate who was, when the scheme was promoted, in the business of promoting MIS (s601ED(1)).

In order to become registered, a MIS must lodge an application for registration with ASIC (s601EA). The following documents must be lodged with ASIC in support of the application:

- a) a copy of the scheme's constitution;
- b) a copy of the scheme's compliance plan; and
- c) statement signed by the directors of the proposed RE.

ASIC must register the scheme within 14 days (unless the application/scheme does not comply) (s601ED(1)). Once registered, ASIC must issue the scheme with an ARSN (s601EB(2)) and must keep a record of the registration of the scheme (s601EB(3)).

The Responsible Entity (RE) must be a public company that holds an Australian Financial Services Licence (AFSL) authorising it to operate a MIS (s601FA).

The RE must report to ASIC any breach of the Corporations Act 2001 by the MIS (s601FC(l)).

Under s601FF of the Act, ASIC may check whether the RE of a registered scheme is complying with the scheme's constitution and compliance plan and with this Act and the RE must do all they can to assist ASIC in their check. I note that the Act provides that ASIC "may" check whether the scheme but does not require ASIC to check.

ASIC is responsible for the granting of AFSLs. Under s913B of the Act, ASIC can only grant an AFSL to a company if there is no reason to believe that any of its responsible officers are not of good fame or character. Or, if ASIC has reason to believe that any of the officers are not of good fame or character, it can grant a licence if it is satisfied that the applicant's ability to provide the financial services covered by the licence would nevertheless not be significantly impaired.

When determining whether a person is not of good fame or character, ASIC must have regard to:

- a) Any conviction of the person, within 10 years before the application was made, for serious fraud;
- b) Whether the person has held an AFSL that was suspended or cancelled;
- c) Whether a banning order or disqualification order has previously been made against the person; and
- d) Any other matter ASIC considers relevant.

The RE must lodge with ASIC its' constitution and inform ASIC of any modification to its' constitution (s601GC(2)&(3)).

A copy of the scheme's compliance plan that is lodged with ASIC must be signed by all directors and the RE (s601HC). ASIC may direct the RE to modify the compliance plan and the RE must lodge their modified compliance plan with ASIC within 14 days of modifications being made (s601HE).

ASIC may direct the RE to give it information contained in the compliance plan (s601HD).

If the compliance plan is audited, ASIC must be notified (s601HG).

The compliance committee must report to ASIC if they are of the view that the RE has breached the Act or the constitution of the MIS (s601JC(c)).

I would ask what enquiries were made by ASIC prior to registering the Trio scheme. Presumably the constitution and compliance plan were critically analysed. Did any alarm bells ring? Were any questions asked or further information sought?

I would ask what matters did ASIC take into account when deciding to grant Trio Capital an ASFL?

APRA supervises regulated superannuation funds but does not supervise self managed superannuation funds (SMSFs). APRA issues licences to regulated superannuation funds and purports to subject them to ongoing supervision to ensure that they are managing risks prudently and meeting prudential requirements and it identifies institutions that are unwilling or unable to do so.

APRA issues the trustees of registered superannuation entities with licences known as RSE licences. After an institution is licensed by APRA, APRA asserts that it is then subject to ongoing supervision to ensure it is managing risks prudently and meeting prudential requirements. APRA also claims that it will identify institutions that are not managing risks prudently and are failing to meet prudential requirements.

The SIS Act requires trustees to establish a Risk Management Strategy (RMS) which relates to risks specific to the trustee and a Risk Management Plan (RMP) which relates to risks specific to the fund.



Part 2A of the SIS Act sets out requirements for the licensing of trustees and groups of individual trustees.

A licence will only be granted if APRA are satisfied that:

- a) The applicant will comply with the RSE licence law and will comply with the conditions imposed on the licence (under s29E); and
- b) The trustees meet the requirements relating to fitness and propriety under Part 3 of the SIS Act.

If APRA considers that there is evidence to demonstrate that a person fails such a test of fitness or propriety then it may apply to the Federal Court for orders qualifying the person from action as such a reasonable officer (Part 15).

It is a licence condition for each trustee that its' RMS satisfies the legislated requirements and that the trustee comply with its terms.

Once an RSE licence has been issued, an application may be made to be a registered RSE under s29L. As with the application for a license, APRA sets out certain requirements such as the need for a Risk Management Plan (Division 5) and similar offence provisions under Division 6.

The operating standards which an RSE must adhere to are set out in Part 3 of the SIS Act. These include standards such as persons who may contribute to the funds, the funding and solvency of the funds and the financial position of the funds.

Part 4 of the SIS Act outlines the accounts, audit and reporting obligations for RSE's. Such records and accounts must be kept in a way which ensures they are correctly recorded and explain the transactions and financial position of the entity. Each year the trustee of an RSE is to provide an audit report to APRA.

The duties of trustees and investment managers of registered superannuation entities are set out in Part 12 of the SIS Act. Included are duties to:

- a) Establish arrangements for dealing with enquiries or complaints;
- b) Seek information from investment manager;
- c) Keep minutes and records; and
- d) Notify the regulator of significant adverse events.

APRA has the power to suspend or remove a trustee and to appoint acting trustees under Part 17.

Part 25 outlines the provisions relating to the monitoring and investigating of superannuation entities. Information APRA requests must be provided under s255 and the regulator may require the production of books and access to the premises.

APRA promotes that its role is to ensure the RSEs have properly identified and managed the risks associated with various investments. It is unclear what information APRA requires regulated funds to provide it with in relation to specific investments that they intend to make.

Consequently, what APRA actually does to assess specific investments is also unclear. For example, did APRA review the PDS for Trio Capital? Did APRA form an opinion that the Trio investment was risky? Did it believe that each of the regulated funds that invested in Trio Capital has appropriately managed this risk? The enquiry ought to investigate precisely what analysis was carried out by APRA.

Perhaps APRA gave no consideration at all to the risks associated with the decision of certain regulated funds to invest in Trio Capital. On one view, the collapse of Trio was due to the theft or fraud of those responsible for the scheme. If this view is accepted, then even if APRA gave proper consideration to the risks associated with the investment, it may have made no difference to the ultimate collapse of the scheme.

Arguably, it is unsatisfactory for only those who invested in Trio Capital through RSE's to receive compensation. The justification put forward for the decision to compensate investors in Trio who invested through regulated funds is that those funds were subject to the supervision of APRA. Presumably, the extension of this is that APRA failed in its supervisory role. However if one accepts that the losses were as a result of fraud and theft then this justification no longer holds up.

It is important to note that the fraud and theft did not occur at the level of management of either the regulated or self managed funds. It occurred at product level. This makes it irrelevant whether a fund was self managed or regulated. The Trustees of the superannuation funds are not responsible for the fraud. With this in mind, it is difficult to understand the basis for distinguishing between regulated and SMSFs when providing compensation.

I would ask what consideration APRA gave to the risks associated with the Trio investment and ask what it could have done, if anything to prevent investors from losing their money. If the Inquiry forms an opinion that there is nothing further that APRA could have done then what is the rationale for denying compensation to those who invested through SMSFs or non superannuation monies invested directly?

Similarly, I would argue that ASIC should be asked what it could have done to avoid this fraud occurring? If the fraud could have been prevented by ASIC officers doing their job, then here rests the liability. If ASIC couldn't have prevented the fraud by doing their jobs then again what is the rationale in denying compensation to those who invested in a non superannuation environment?

Non superannuation monies are just as important as superannuation monies. They still represent life savings to investors.

In fact, I would go as far as saying that the fact that ASIC withdrew Trio's AFSL licence is crucial to this question of compensation for super and non superannuation investments. One of the reasons that ASIC withdrew the PDS was that it did not comply with the Act in that it did not contain the information required.

I would argue that for this very reason, the ASF licence should never have been issued in the first place and this nightmare for everyone concerned would not have occurred.

I believe advisors can put their hand on their heart and say they could not have foreseen this fraud. However, I doubt that ASIC and APRA can do the same when unit pricing "was unavailable" in 2008 and yet no warnings or action occurred to alert the investors.

There are similarities here between the Victorian bushfires and the Queensland floods, Government officials had knowledge and failed to act on that knowledge and the result has been devastating.

This has been nothing less than a financial tsunami for affected investors.

I don't think we need new preventative legislation but it is crucial that Government watchdogs do their job and the Corporations Law be enforced. That is all that was required in this instance.

So it is with a heavy heart that I accept responsibility for the decision to invest in the ASF and the ensuing ruinous position of client portfolios this decision caused.

However, I will stand my ground in the firm belief that the cause of these losses lies at every stage of the advice chain and was an unforeseeable event at advisor level.

It is not right that I live with the loss of tens of millions of dollars of my client's life time savings, when the investment was licensed, monitored and regulated by ASIC and APRA, with NAB and ANZ as trustees and custodians, with KPMG and WHK as internal and external auditors, and rated with glowing reports from Van Mac, Van Eyk and Aegis and ranked by Morningstar, all underpinned by the financial bible, the Corporations Law.

I read in the financial press every week that the Government is determined to improve the standards of financial planners and this new concept of "professionalism" for our industry.

Well, you can make financial advisors as professional and qualified as you like, but in the current framework, an advisor can be as qualified and professional as possible but still find himself walking through a mine field.

With \$29 billion of failed or frozen investments in the last five years, who would give advice to clients?

This is a horrendous statistic.

It is not advisors who need to improve knowledge levels but the watchdogs and regulators who approve, licence and monitor these investments, who need to improve their knowledge and professionalism.

This is not Mexico or Cuba or the Tongan Islands.

We need a professional and robust framework to support professional and hardworking financial advisors. The provision of financial advice should not be a game of russian roulette with our reputations and the lifetime savings of our clients on the swing.

I would be among the most qualified and experienced owner, dealer and advisor in the country.

You don't grow to run three professional practices integrated under one roof with one owner and employ 70 people by being reckless or unprincipled or undisciplined.

Quite the contrary.

I can't remember when I didn't work an 80 hour week or had a holiday or slept for longer than four hours in any one night.

A friend of mine is a pharmacist and likes to brag that pharmacy is the most trusted profession. I have often agreed that it can't be too hard to sell band aids and pick up a 30% gross profit margin that does not need to be disclosed in dollar terms or percentage terms.

However, the reality is that every drug, medicine, tablet or band aid available in his shop is available in the one across the road or around the corner.

Every drug, tablet or medicine is supported by the Pharmacy Guild and medical boards, so if we find within years to come that Viagra causes brain tumours no one will point the finger at the local chemist for negligence or blame him for the loss of a life.

The professional associations and government departments would be responsible, not the practitioner.

However, in financial services the advisor needs to do his own research around the world and within Australia. He has no government support or industry association help or safety net if he gets it wrong.

Yet, the financial advisor has no more reason to see his client financially damaged than the pharmacist to see his customer medically damaged.

Every senior decision maker at ASIC or APRA who knew about the underlying unit price being unavailable and chose to do nothing, should immediately have their employment terminated, their assets sold and be publicly named and shamed as the financial advisors who recommended ASF have.

Then they should kiss their loved ones goodbye and prepare to spend the same time as Shawn Richard in protective custody.

Why should these nameless and faceless people continue on with no interruption to their daily lives?

This is intolerable when those with no knowledge of the underlying problems have been ruined and yet those with the knowledge escape untarnished.

How can the Government be serious about FOFA reforms and the need for clients to opt in and opt out, all in a bid to improve investor confidence in the financial services industry, if it were to allow investors to be ripped off to the tune of \$180 million under their very eyes, by an organised crime gang, whether it be APRA regulated superannuation, self managed superannuation or non superannuation investments made directly?

The ASF fraud is unlike every other investment failure. It is not like a WestPoint or a Basis Capital or an Opus Prime or an Australian Capital Reserve or a Great Southern, so the Government would not be creating a precedent in compensating all investors in ASF, through superannuation or held directly, outside of superannuation.

This is international organised crime quite intentionally perpetrated on thousands of investors around Australia.

The fraud and theft of \$180 million of investor monies was enabled by the incompetence of ASIC and APRA, the indifference of Research Houses, Internal Auditors, External Auditors, Custodians, Trustees and Directors of Trio and the unwitting cooperation of advisors and investors.

However, the role of ASIC and APRA in licensing this investment in what must be the most dubious set of circumstances, as well as the supervision and monitoring of the investment, is the cause of all that followed.

The admission by APRA and ASIC that their investigations revealed the underlying unit prices were unavailable only rubs salt into our gaping wounds when this knowledge should have been passed on as a matter of urgency.

Incredibly, the ASF head office was only 300 metres from ASIC's Sydney headquarters.

I believe the chain of causation is unbroken from the day ASIC licensed this criminal operation to the day it froze the investment causing massive investor losses.

Section 1041E-H provides the mechanism by which recovery can be made against "any person involved in the contravention". ASIC and APRA's involvement is significant and crucial to the damages caused ultimately to investors.

As far as damages are concerned there is a legal principle based on the example of a man with a thin skull involved in a car accident. The thin skull was a pre existing condition and crucial to the extent of the damages awarded. Similarly, ASF was a pre existing investment in the portfolio and played a crucial role in the stability and success of the portfolio.

Thereby creating the need not just for compensation but damages as well.

I agree with the comments from the Australian SMSF Members' Association when it labelled the lack of compensation for self managed superannuation fund and direct investors as an "appalling case of unfair discrimination".

I also agree that the position of Self Managed Superannuation fund Professionals' Association of Australia (SPAA) "we believe any investor in the market should be able to receive compensation for theft and fraud as it has inadvertently happened to them and they have done everything possible to be compliant".

I agree with the sentiments of NSW Supreme Court Judge, Justice Peter Garling, when he said he could not understand the principle whereby APRA regulated products were eligible for government compensation by self managed superannuation funds and direct investors were not.

"So the principle is, if you are bigger and regulated, you get compensation and if you are smaller and vulnerable, you don't?"

He continued;

"It is notorious that most SMSFs are small and less able to absorb investment losses .... and large regulated funds are more likely to be able to more readily resist and to recover from lost investments".

The only way forward is for this Inquiry to recommend to the Government that full compensation with damages be paid to all affected investors as a matter of urgency.

This is not a fight that mums and dads should now be responsible for and nor can they afford.

Every dollar that was invested either in a SMSF or a direct investment outside of superannuation, was invested slap bang in the middle of "the flags" as the ASF was licensed, monitored and supervised by ASIC and APRA.

I would like to quote Prime Minister Julia Gillard, in the Australian newspaper dated August 20, 2011, where she says:

"Exactly two decades into the compulsory super story we want to finish the job that Prime Minister Paul Keating, Bill Kelty and the union movement boldly started and give Australians real security in retirement."

I am sure the grandfather of our superannuation system, Paul Keating, would agree with Prime Minister Gillard's sentiments.

The Government needs to compensate investors immediately and then pursue the criminals and negligent parties to the end of the earth.

Regards

***Ross Tarrant***