

Chapter 2

The structure, operation and collapse of Trio Capital

Introduction

2.1 One of the key tasks before the committee in conducting this inquiry is to detail, publicly and systematically, the operation of Trio Capital and the events that led to its collapse. This chapter addresses that task. It is divided into five parts:

- the first looks at the structure and operation of Trio Capital, particularly the two fraudulent investments schemes for which Trio was the responsible entity;
- the second part focuses on the role of Mr Shawn Richard and Mr Jack Flader in orchestrating the Trio Capital fraud;
- part three notes the role of financial advisers in recommending the fraudulent Trio funds to investors, and raises the question of whether these investments were suitable for the type of investors;
- part four looks at how the Trio Capital fraud was uncovered and the response of the regulators, the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulatory Authority (APRA); and
- the final part of the chapter presents a chronology of the events in the Trio Capital story from 2003 to 2012. This timeline serves as a useful point of reference to recap the evidence of the chapter and to guide the reader through subsequent chapters.

The structure and operation of Trio Capital

2.2 The structure and operation of Trio Capital form a complex story. Over time, the names of holding and subsidiary companies changed, the operation of these companies traversed international jurisdictions, and there was considerable cross investment between superannuation funds which included complex investments in property development companies and overseas hedge funds.¹ All these factors complicate a clear explanation of what happened with Trio Capital.

2.3 Figures 2.1, 2.2, 2.3 and 2.4 (below) aim to show how the different parts of Trio Capital operated. Figure 2.1 represents the basic structure of Trio Capital, based on information contained in submitters' and witnesses' evidence to this inquiry. Figures 2.2, 2.3 and 2.4 are drawn from PPB Advisory's submission, and reproduced with permission. PPB is Trio Capital's administrator.

1 See the comments of Justice Peter Garling, *Regina v Shawn Richard* [2011] NSWSC 866, 12 August 2011, paragraph 28.

2.4 Trio Capital was both a licensed superannuation fund trustee and the 'responsible entity' for several managed investment schemes. Figure 2.1 (left box) shows that Trio Capital was the trustee of a series of superannuation funds: Astarra Personal Pension Plan; Astarra Pooled Superannuation Trust; Astarra Superannuation Plan; Employees Federations of NSW Superannuation Plan; and My Retirement Plan. These funds were regulated by APRA.² Investors in these funds were eligible for, and have received compensation (see chapter 3).

2.5 Figure 2.1 (right box) also shows that Trio Capital was the responsible entity for a number of managed investment schemes. Substantial amounts of money were invested in these schemes by the superannuation funds for which Trio Capital was the common trustee.³ The managed investment schemes of central interest in this inquiry are the Astarra Strategic Fund (ASF) and the ARP Growth Fund. The former was used fraudulently, while there are serious questions about the legitimacy of the latter.

2.6 Several hundred people invested their superannuation savings directly into these managed investment schemes through the use of a self-managed superannuation fund (SMSF), rather than through the APRA-regulated superannuation funds for which Trio was the trustee. As chapter 3 of this report explains, those who lost money in Trio's managed investment schemes through an SMSF are not eligible for compensation.

2.7 Trio generated income from charging fees to each of the managed investment schemes and superannuation funds in respect of which it acted as a responsible entity or trustee. Trio's principal expenses comprised management fees payable to Astarra Funds Management (its parent company) and to third parties—custodians, investment managers and financial planning groups.⁴

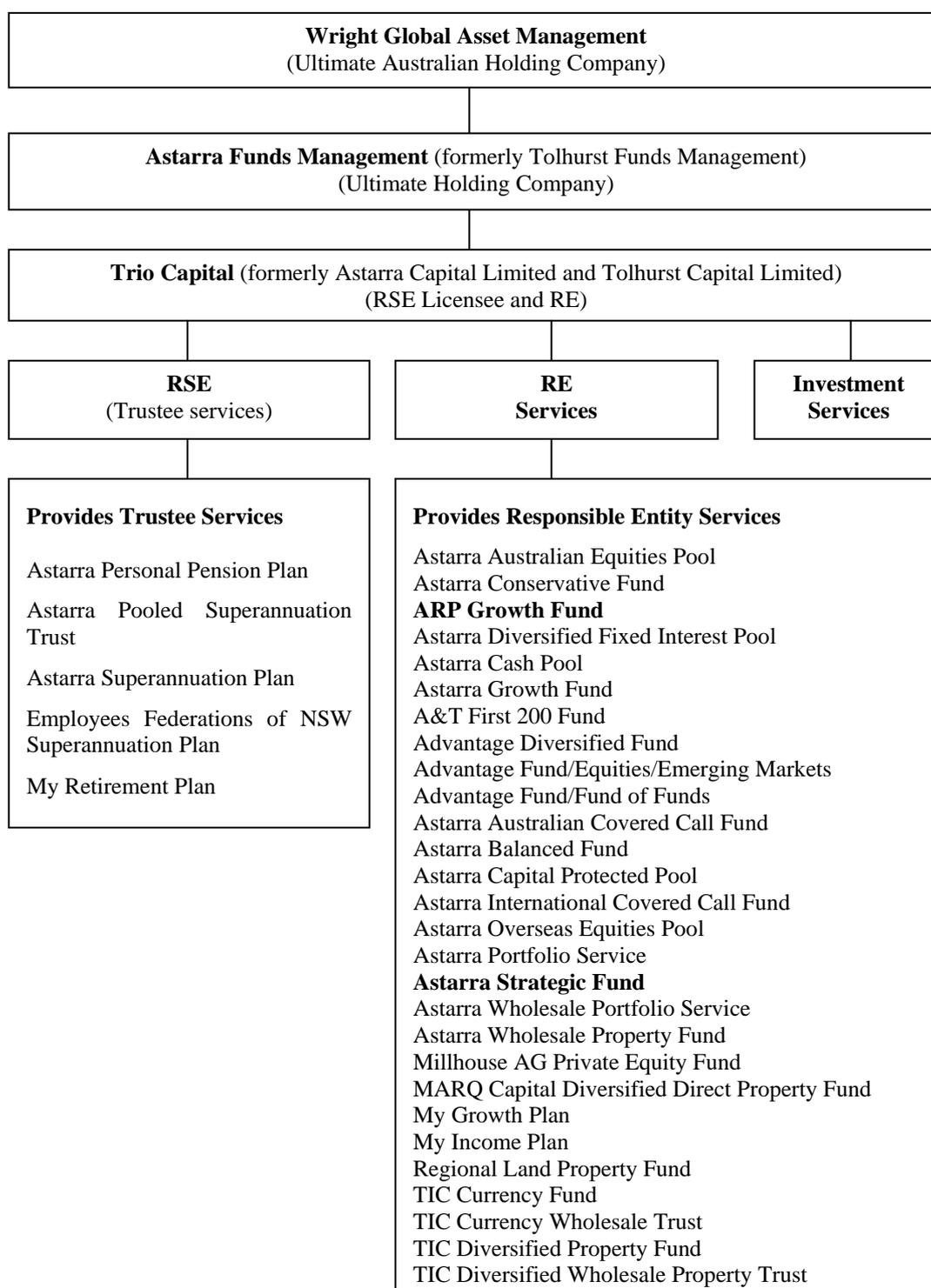
2.8 The majority of the managed investment schemes listed in Figure 2.1 were legitimate, providing appropriate returns to investors. However, the administrators' investigations concluded that five schemes had 'significant asset impairment'. These schemes were the ASF, ARP Growth Fund, Astarra Wholesale Portfolio Service, Astarra Portfolio Service and Astarra Overseas Equity Pool. There was some investment by Astarra Wholesale Portfolio Service, Astarra Portfolio Service and Astarra Overseas Equity Pool in the ASF which partly explains their asset impairment.

2 Funds choose to be regulated by APRA. An APRA-regulated fund must have a Registrable Superannuation Entity (RSE) licence.

3 *Report to creditors pursuant to section 439A of the Corporations Act 2001, Trio Capital Limited*, 8 April 2010, PPB, p. 12.

4 *Report to creditors pursuant to section 439A of the Corporations Act 2001, Trio Capital Limited*, 8 April 2010, PPB Advisory, *Submission 26*, p. 12.

Figure 2.1: Astarra Group Structure



2.9 The ASF was established as an Australian based hedge 'fund of funds'. Astarra Asset Management (AAM) was the investment manager of the ASF. A former director of AAM, who has now been jailed, described for the committee how the ASF operated:

...all discussions with the RE [responsible entity]/trustee relating to making investments were held at the very beginning, prior to the first investment being made. Following the establishment of the ASF, an investment management agreement between AAM and the RE was executed giving AAM the authority to invest monies according to the stated strategy and investment process, which was to invest in overseas hedge funds. Once the management was executed, the first investment as well as every other investment was executed without requiring any further discussions with the RE or Trustee.

In other words, the RE/Trustee was completely reliant on this management agreement for all aspects of the fund's activities and played no role in relation to any investment decisions other than passing on AAM's instructions to the custodian. The process for sending monies to overseas funds was for AAM to e-mail the RE an instruction to invest in a particular fund which they then forwarded to the custodian for execution on the same day.⁵

2.10 While the ASF and the ARP Growth Fund had a common responsible entity in Trio, and had similar investment strategies, the funds operated separately. Significant monies from these schemes were invested in the British Virgin Islands in hedge funds controlled by a Hong Kong based American lawyer, Mr Flader. When these hedge funds collapsed, Australian investors' funds disappeared. The committee understands that Mr Flader is well-known to the United States Securities and Exchange Commission (SEC).

2.11 PPB Advisory found that overseas hedge funds represented the largest losses to Trio investors:

The most significant losses to Trio investors relate to Category 3 investments (overseas hedge funds) which included:

- approximately \$123 million invested by the Astarra Strategic Fund (ASF) via Deferred Purchase Agreements in various overseas hedge funds; and
- approximately \$52 million invested by the ARP Growth Fund in Professional Pensions ARP Ltd.⁶

2.12 The ASF, with a value of approximately \$123 million, had more than 6000 members.⁷ The ARP Growth Fund, with a value of approximately \$53 million, was

5 Mr Shawn Richard, *Answers to questions on notice*, received 27 April 2012, p. 2.

6 PPB Advisory, *Submission 26*, p. 7.

represented by 74 unit holders.⁸ The Astarra Personal Pension Plan, Astarra Superannuation Plan, Employees Federations of NSW Superannuation Plan and My Retirement Plan had approximately 10 000 members. Of this number, over 5000 superannuation members were invested in the ASF.⁹

2.13 The principal focus of this inquiry has been on the operation of these two funds—the ASF and the ARP Growth Fund. The following sections examine how they were structured and operated by Trio and its directors.

Changing names

2.14 At the outset, the changing names of companies (and even people) involved in the Trio case needs to be clarified. The start of this story was in November 2003, when a reputable, mid-sized funds management business named Tolhurst Funds Management was purchased by Wright Global Asset Management Group (WGAM). The directors of WGAM, Mr Richard, Mr Matthew Littauer and Mr Cameron Anderson thereby became the directors of Tolhurst Funds Management. Tolhurst Funds Management was later renamed Astarra Funds Management. Tolhurst Funds Management had a subsidiary called Tolhurst Capital. In May 2004, Tolhurst Capital was renamed 'Astarra Capital'; in September 2009, Astarra Capital was renamed Trio Capital.

2.15 There were also name changes to the investment funds into which Trio, as the responsible entity, directed funds. In particular, AAM—the ASF's investment manager—was initially established as Absolute Alpha. The name changed in August 2009.

2.16 One of Trio's founding directors, Mr Cameron Anderson, owned a property development company called Silverhall. Silverhall was later renamed Ualan Property.

2.17 Even one of the key people involved in the Trio case changed his name. Mr Paul Gresham owned and controlled PST Management Pty Limited (PSTM), the company that acted as the investment manager of the ARP Growth Fund. ARP Growth Fund was a managed investment scheme run by Trio Capital. Mr Gresham recommended investments for ARP Growth Fund and its predecessor Professional Pensions Pooled Superannuation Trust (PPPST). Mr Gresham changed his name to Mr Tony Maher.

7 ASIC, 'Grant of financial assistance—Trio and Astarra investors', <http://www.asic.gov.au/asic/asic.nsf/byheadline/Grant+of+financial+assistance+-+Trio+and+Astarra+investors?openDocument> (accessed 17 April 2012).

8 Mr Ron Thornton, President, Association of ARP Unitholders Inc., *Committee Hansard*, 30 August 2011, p. 18.

9 ASIC, 'Grant of financial assistance—Trio and Astarra investors', <http://www.asic.gov.au/asic/asic.nsf/byheadline/Grant+of+financial+assistance+-+Trio+and+Astarra+investors?openDocument> (accessed 17 April 2012).

The Trio Directors' investments

2.18 Figure 2.2 adds to the information in Figure 2.1, focussing on the interaction of investments between the ARP Growth Fund and the ASF. It shows how the monies in these funds were invested by three of the founding directors of Trio Capital: Mr Richard, Mr Anderson and Mr David Millhouse.

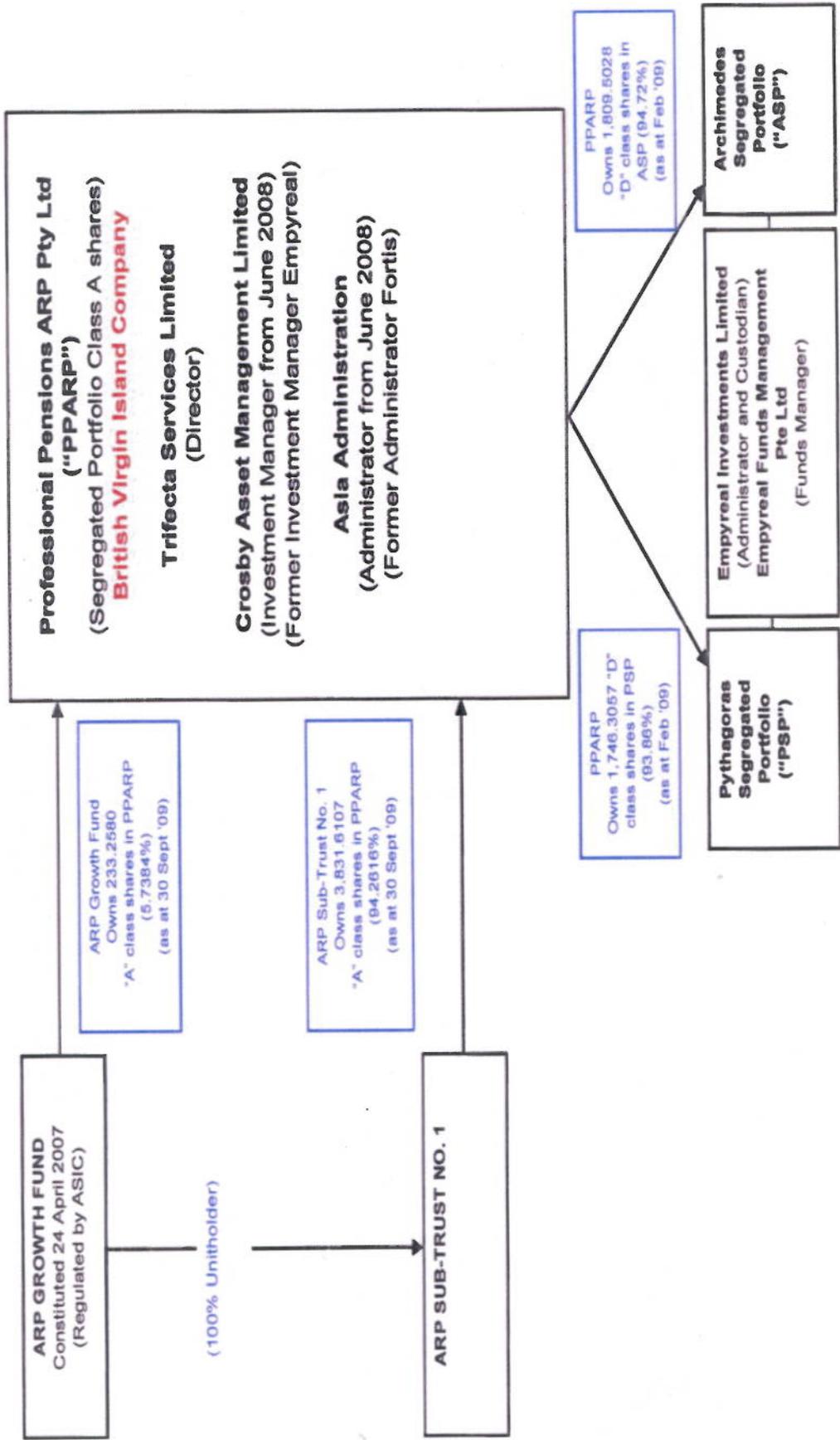
2.19 Figure 2.2 shows that the linkages between these funds and the involvement of Mr Richard and Mr Millhouse are relatively straightforward. Essentially, Mr Richard's influence came through investments in the underlying hedge funds of the ASF. Mr Richard was a director of AAM, the investment manager of the ASF. As explained more fully below, Mr Richard was jailed in August 2011 for engaging in dishonest conduct with respect to financial services.

2.20 Mr Millhouse's involvement was through the investment of Astar Wholesale Portfolio Service and Astar Overseas Equity Pool in Millhouse Private Equity Trusts. Mr Millhouse was a board member of the overseas entities that constituted the investment of this trust.

2.21 Figure 2.2 shows that Mr Anderson's involvement is considerably more complex, with monies from ARP Growth Fund and Astar Wholesale Portfolio Service being invested through Mr Cameron's property trusts and holdings, and through the ASF and the underlying hedge funds of the ASF. At the time of writing, this company was in liquidation and Mr Anderson was answering allegations that his company had charged the ARP Growth Fund and ASF exorbitant asset management fees.¹⁰

10 See Leonie Lamont, 'Ualan "loaded" super fees', *The Age*, 1 March 2012.

Figure 2.3: Investment Structure of PPARP an Investment of ARP Growth Fund



ARP Growth Fund and Mr Paul Gresham

2.22 As noted earlier, Mr Gresham (later Tony Maher) was the owner and controller of PST Management Pty Ltd. PST Management acted as the investment manager for PPPST. Mr Gresham induced PPPST investors to move their funds into ARP Growth Fund, a managed investment scheme. This Fund replaced PPPST in July 2007. This effectively shifted investors from an APRA-regulated fund in PPPST to a SMSF investing directly in the ARP Growth Fund.¹² As chapter 3 discusses, this has excluded ARP Growth Fund investors from the government's compensation package.

2.23 Mr Gresham identified and recommended investments for PPPST and later ARP. He arranged for unit holders in PPPST to invest through a special purpose British Virgin Islands investment fund called Professional Pensions ARP Limited (PPARP). This fund purchased shares in the Archimedes and Pythagoras Segregated Portfolios of Empyreal SPC Limited (Empyreal), which was licensed as a professional fund in the British Virgin Islands. Empyreal was managed by Mr Philip York, who negotiated a 'swap agreement' on behalf of these two portfolios with Bear Stearns.¹³

2.24 The February 2012 enforceable undertaking accepted by ASIC from Mr Maher (formerly Gresham) stated that he had received undisclosed payments of more than \$2 million arising from investments that he recommended for ARP and PPPST. The undertaking noted that in accepting these undisclosed payments, Mr Maher created a conflict of interest. In addition, the undertaking stated that Mr Maher was calculating on the value of ARP's investment in PPARP on his own and using a methodology that 'had no reasonable basis'. It was misleading for Mr Gresham not to disclose either of these matters to Trio because he knew that Trio would use these valuations to calculate the unit price of ARP.¹⁴ ASIC stated that he had failed to undertake due diligence in recommending some investments in ARP/PPPST in circumstances where he knew that he had a conflict of interest.¹⁵

2.25 The operation of the ARP Growth Fund is illustrated in Figure 2.3. In its submission to this inquiry, PPB Advisory described these arrangements as follows:

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

12 Mr Ron Thornton, President, Association of ARP Unitholders Inc, *Committee Hansard*, 30 August 2011, p. 19.

13 Mr Paul Gresham, *Submission 71*, p. 1.

14 Enforceable undertaking under section 93AA of the *Australian Securities and Investments Act 2001*, Mr Tony Maher (formerly known as Paul Anthony Gresham), p. 9.

15 Enforceable undertaking under section 93AA of the *Australian Securities and Investments Act 2001*, Mr Tony Maher (formerly known as Paul Anthony Gresham), p. 6.

On 1 August 2006, Pythagoras Segregated Portfolio (PSP) and Archimedes Segregated Portfolio (ASP) entered into a Structured Fund Derivative contract with Bear Stearns International Limited ("Bears"). These contracts are referred to as "Total Return Swaps" whereby Bears agrees to pay the Portfolio an amount equal to the total market value of a basket of "Shares or other forms of interests in hedge funds and managed futures accounts" ("Basket Value") and the Portfolio agrees to pay Bears an amount by which the initial Basket Value exceeds the cash collateral deposited by the Portfolio ("Floating Rate Notional amount"). The initial cash deposited by the Portfolio as collateral must represent at least 40% of the "Equity Notional Amount" i.e. the initial Basket Value. If the Basket Value declines, more collateral must be deposited, or alternatively, Bears may redeem any investment it may have made to hedge its synthetic exposure. Bears, however, are under no obligation to make investments in any fund forming part of the Basket. The Portfolio has no investment in any fund; its investment is the value of the derivative contract to which it is counterparty to Bears. Both contracts were terminated effective 30 September 2008.

Empyrean, in its capacity as Funds Manager, negotiated with JP Morgan to take over Bears obligations in March 2008.¹⁶

2.26 Notably, APRA argued that the funds in the ARP Growth Fund were lost due to the collapse of the investment bank and the global financial crisis rather than fraudulent activity:

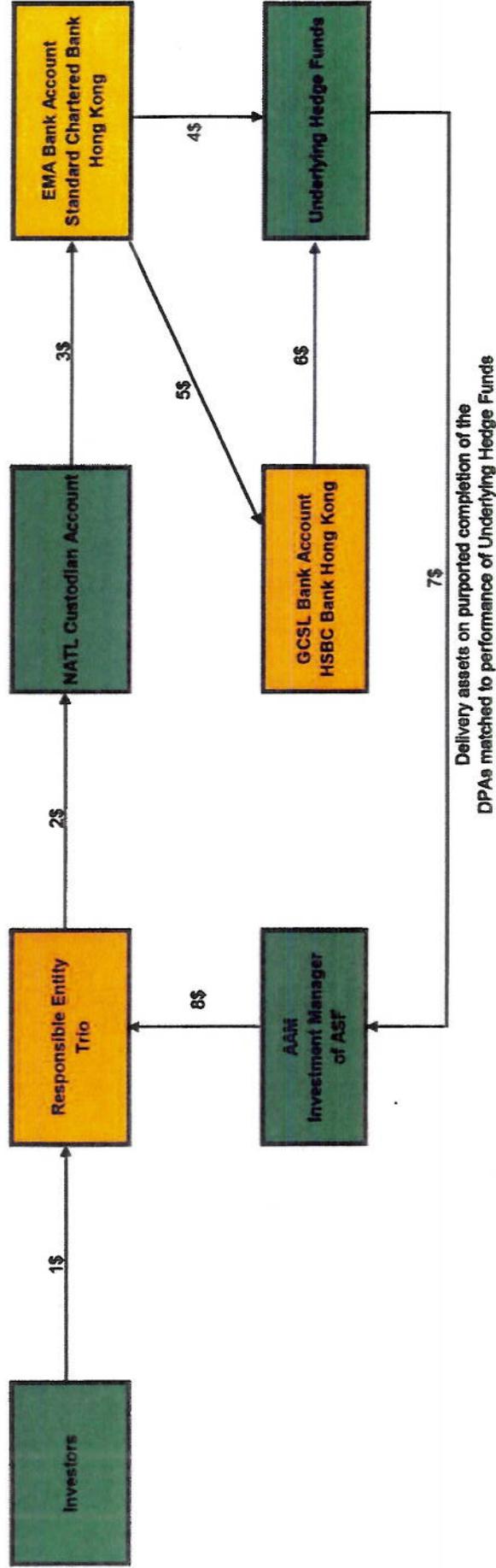
In the period June 2004 to July 2007, Trio was also the trustee of the Professional Pensions Pooled Superannuation Trust (PPPST). The PPPST was wound up in July 2007. Upon wind-up of the PPPST the members were provided with a new PDS and given the option to invest the redemption proceeds into the ARP Growth Fund, a managed investment scheme operated by Trio. This fund held substantial monies from self-managed superannuation funds (SMSFs), which were ultimately invested via a British Virgin Islands Segregated Mutual Funds Company in a number of derivative contracts with a US-based investment bank, Bear Stearns. These funds were lost due to the failure of Bear Stearns and the severe market movements during the Global Financial Crisis and not due to fraud.¹⁷

2.27 Chapter 8 of this report presents the evidence, and the committee's view, on the following questions: did the derivative contract between PPARP and Bear Stearns actually exist; were the ARP Growth Fund monies lost due to fraud or the collapse of Bear Stearns; and can the funds be recovered?

16 PPB Advisory, *Submission 26*, p. 8.

17 Australian Prudential Regulation Authority, *Submission 41*, p. 5. For a description of the issuance of the PDS, see Association of ARP Unitholders, *Submission 25*, p. 40.

Figure 2:4: Fund Flow Arrangements of the DPA Structure of the ASF



- 1\$ Application Monies
- 2\$ Investor Funds deposited into Trio Custodian Account
- 3\$ Purchase price of DPA's
- 4\$ Investment by EMA with proceeds of DPA's
- 5\$ Funds in EMA Bank Account transferred to GSL Bank Account
- 6\$ Possible investment into Underlying Hedge Funds
- 7\$ Possible delivery of delivery assets by EMA to AAIM
- 8\$ Possible delivery of delivery assets by AAIM to Trio

The flow of funds through the Astarra Strategic Fund

2.28 Figure 2.4 shows the flow of funds through the ASF. Investors paid money to Trio as the responsible entity, which then deposited the funds into a Trio Custodian Account. Trio initially appointed ANZ Custodian Services and then National Australia Trustees Limited (NATL). Their views of the collapse of Trio are presented in chapter 5.

2.29 The custodian's role was to pay the funds into the Hong Kong Bank Account of EMA International (EMA). The sole purpose of EMA was to allow the ASF, through its agent and investment manager AAM, to invest directly and indirectly in overseas hedge funds through a deferred purchase agreement (DPA).¹⁸ The DPA provided that investments were to be held offshore until AAM requested the delivery of those investments or their equivalent money's worth. AAM would then transfer the assets or the monies to Trio.¹⁹

2.30 In its submission, PPB Advisory explained that the ASF:

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

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

The monies paid to EMA to acquire the contractual rights were, according to the documentation, then to be invested by EMA in the Underlying Funds...²⁰

2.31 The link between the Exploration Fund Limited (EFL) and Trio Capital was explained as follows:

18 Under the terms of a Deferred Purchase Agreement, an investor will pay the purchase price on to acquire the delivery assets, which are typically listed shares or units. These assets are actually delivered some time later, often three to five years later. The number of delivery assets is determined by reference to the performance of a predefined underlying portfolio. See <http://www.mcofinancial.com/Dictionary/Deferred%20Purchase%20Agreements.pdf> (accessed 17 April 2012).

19 Australian Prudential Regulation Authority, *Submission 41*, p. 4.

20 PPB Advisory, *Submission 26*, p. 7.

The EFL was a company incorporated in Saint Lucia, West Indies and operated as a hedge fund, although at the time of the initial investment, EFL was newly formed and had no operating history. The EFL appointed a Saint Lucia company, Global Financial Managers Limited (GFML) as investment manager and GFML delegated its duties in relation to Australian investors to Wright Global Investments Pty Limited (WGI). Mr Shawn Richard was a director, secretary and general manager of WGI. Mr Richard was also a director of Trio from 5 November 2003 to 15 November 2005 and a member of Trio's Investment Committee from February 2004 to December 2005 and December 2008 to August 2009. Mr Richard, through various corporate entities, was the ultimate owner of Trio.²¹

Mr Shawn Richard, Mr Jack Flader and the Trio fraud

2.32 Having explained these structures and the flow of investment money, the obvious question arises: how were these arrangements used to perpetrate fraud? In his judgment on Mr Richard, Justice Peter Garling of the New South Wales Supreme Court, provided the following statement of facts:²²

- Mr Shawn Richard was, at various times, a director and the responsible officer and agent of Trio. Mr Richard was a director of Trio's immediate holding company, Astarra Funds Management Pty Ltd (AFM).
- The investment manager of the ASF, via agreements with Trio, was AAM. Mr Richard was a director of AAM. In addition, AAM was an authorised representative of Trio and Wright Global Investments Pty Ltd (WGI). Mr Richard was a director and the responsible officer of WGI.
- EMA was a 'special purpose vehicle' established to facilitate investments by the ASF in funds offshore. Mr Richard was in control of EMA.
- Mr Richard represented himself to investors as being the controller of Trio, WGI and AFM, when he was aware that these representations were false. The representation was false because at all times after July 2004, Mr Richard knew that Mr Jack Flader, a US citizen based in Hong Kong, was the ultimate controller of these entities and the business of the Trio Capital Group.
- Mr Richard used his positions with respect to Trio, WGI and AFM to arrange the transfer of Australian investors' monies from Trio Managed Funds in Australia, to overseas funds controlled by Flader ('Flader Controlled Funds'). The money was subsequently used to purchase shares in US companies at inflated prices, from foreign companies controlled by Flader ('Flader Vendor Companies'). The inflated share prices realised significant profits for the Flader Vendor Companies.

21 APRA, *Submission 41*, p. 4.

22 This statement has been abridged. *R v Shawn Darrell Richard* [2011] NSWSC 866 (12 August 2011), starting at paragraph 29.
<http://www.lexisnexis.com.au/legal/auth/bridge.do?rand=0.3590918380238468>

- The shares which were purchased were themselves only quoted on the Over-the-Counter Bulletin Board as unregulated US equity securities. This meant that they were vulnerable to share price manipulation, and often there was only restricted stock available for trading.
- From November 2006, when the directors of Trio became concerned and decided to cease its exposure to a particular Flader Controlled Fund (the EFL), Mr Richard participated in the creation of new offshore funds for Trio to invest in, all of which were controlled by Flader. He falsely represented to Trio and ASF investors that he was diversifying the portfolio to different investment managers from the original Flader Controlled Funds.
- The GSCL Group, of which Mr Flader was the Chief Executive Officer and Chairman, was the custodian of the assets of the Flader Controlled Funds at all material times. In addition, the GSCL Group, provided administration services to EMA.
- The only monies invested into the Flader Controlled Funds were those from the Trio Managed Funds, with two exceptions. The Australasian Conference Association Superannuation Trust and the Australian Baseball Federation Inc. directly invested in one of the Flader Controlled Funds.
- A large proportion of profits received by the Flader Vendor Companies, from the sale of shares purchased from Australian investors' monies deposited into the Flader Controlled Funds, were subsequently used to provide funds to Trio, WGI, AFM and AAM, by way of loans from other companies controlled by Flader ('Flader Funding Companies'). Mr Richard falsely represented to auditors of Trio, WGI, AFM and AAM that he controlled these funding companies.²³

2.33 Later in the judgment, it was noted that Mr Richard's counsel accepted that an adequate description of the scheme was that it was:

...a scheme designed to divert Australian investors' money from superannuation and managed investment funds into overseas hedge funds contrary to the interest of the investors in return for significant undisclosed payments.²⁴

2.34 PPB Advisory corroborated this description. The committee asked the company whether it had concluded there were no assets in the ASF because the underlying investments were a series of fraudulent hedge funds. It responded:

They are fraudulent. We have received certain information, as part of secrecy provisions, from other regulators that point in the direction of

23 *R v Shawn Darrell Richard* [2011] NSWSC 866 (12 August 2011), starting at paragraph 29. <http://www.lexisnexis.com/au/legal/auth/bridge.do?rand=0.3590918380238468>

24 *R v Shawn Darrell Richard* [2011] NSWSC 866 (12 August 2011), starting at paragraph 29. <http://www.lexisnexis.com/au/legal/auth/bridge.do?rand=0.3590918380238468>

where some of those funds may have ended up. As to whether there is a legal constructive trust argument to say those are the funds of the ASF, it is a very complex process. We certainly have not given up trying to recover the money. But it is not the money that was thought to have been invested through the structure as it was explained to the unit holders.²⁵

2.35 The committee queried whether the structure of the ASF and the ARP Growth Fund was broadly similar given the investment was through a couple of intermediaries with, in each case, at least one company located in the British Virgin Islands, and the underlying investment merely a contractual right to receive payment if certain things happened. The Director of PPB Advisory, Mr Brett Manwaring, responded:

Certainly, in the case of the ASF that is correct. In the case of the ARP Growth Fund, they do not even own the contractual rights. They are owned by a third interposing entity, whereby PPARP own shares in Empyreal. Empyreal is the party that owns those contractual rights. There are a whole series of parties that would need to be gone through, even to attach to those contractual arrangements. We have contacted all parties and sought to have the contractual rights assigned to us, as we understand we are the only investor. But, when you do not have voting rights, they can stand in the way of disclosing information.²⁶

The role of financial advisers

2.36 Investors in the ASF and the ARP Growth Fund generally fell into two groups. The first group invested via the APRA regulated superannuation funds, shown in Figure 2.1. Trio was the common trustee of these funds. There were approximately 10 000 members in the four Trio superannuation funds (excluding the Astarra Pooled Superannuation Trust). Over 5000 of these superannuation members invested in the ASF and will receive (or have received) compensation (see chapter 3).

2.37 The second group invested via SMSFs. ASIC states that there are around 690 direct investors in the ASF not eligible for compensation (i.e.: not within an APRA regulated superannuation fund). Of this number, there were around 285 SMSFs. The others were individuals, corporations or trusts.²⁷ There were 74 unit holders in the ARP Growth Fund, all of which were SMSFs.

2.38 SMSF investors in the ASF and the ARP Growth Fund were typically recommended these investments by financial advisers. A Wollongong-based adviser, Mr Ross Tarrant, recommended the ASF to 220 of his clients. In his words, 'they have

25 Mr Brett Manwaring, Director, PPB Advisory, *Committee Hansard*, 30 August 2011, p. 54.

26 Mr Brett Manwaring, Director; Mr Mark Robinson, Partner, PPB Advisory, *Committee Hansard*, 30 August 2011, pp 54–56.

27 ASIC, 'Grant of financial assistance—Trio and Astarra investors', <http://www.asic.gov.au/asic/asic.nsf/byheadline/Grant+of+financial+assistance+-+Trio+and+Astarra+investors?openDocument> (accessed 23 April 2012).

lost approximately \$25 million as a direct result of my financial advice by including ASF into our client portfolios'.²⁸ In November 2011, ASIC banned Ross Tarrant for seven years for breaching financial services law.²⁹ Mr Tarrant is appealing this decision.

2.39 Mr Gresham, operating on Sydney's north shore, recommended the ARP Growth Fund to his clients. As noted earlier, the enforceable undertaking accepted by Mr Gresham stated that he had received undisclosed payments of more than \$2 million arising from investments that he recommended for ARP and PPPST. For example, the undertaking noted that Mr Gresham did not disclose to Trio or unitholders in PPPST that he had an informal agreement with Mr Richard and Mr Littauer. This agreement provided for payments to be made to him in relation to PPPST investment in Huntleigh Investment Fund (later the EFL).³⁰

2.40 Unlike other financial advisers who recommended Trio investments, Mr Gresham had had involvement with the key players in the Trio fraud. The undertaking accepted by Mr Gresham made clear that he had known Mr Richard, Mr Littauer and Mr Anderson since 2003, when he assisted them raise funds, loaned on commercial terms from his clients, to enable WGAM to purchase Tolhurst Funds Management. The undertaking also states that Mr Gresham met Mr Flader and Mr York in early 2004 through his relationship with Mr Richard and Mr Littauer.³¹

2.41 The committee believes that Mr Gresham's recommendation to invest in the ARP Growth Fund was based either on a deliberate attempt to defraud his clients, or at the very least to concentrate on enriching himself while wilfully disregarding the evidence that the investment scheme into which he was putting his clients' money was fraudulent.

2.42 The committee does not know with certainty why these advisers recommended their clients use Trio products, but the evidence suggests that their recommendations were influenced by the high commissions paid by Trio. Chapter 5 of this report examines the views of financial planners who recommended Trio Capital to their clients; chapter 6 canvasses various criticisms of their role.

28 Mr Ross Tarrant, *Submission 35*, p. 1.

29 ASIC listed the ban on an online register but did not disclose the decision publicly.

30 Enforceable undertaking under section 93AA of the *Australian Securities and Investments Act 2001*, Mr Tony Maher (formerly known as Paul Anthony Gresham), p. 6.

31 Enforceable undertaking under section 93AA of the *Australian Securities and Investments Act 2001*, Mr Tony Maher (formerly known as Paul Anthony Gresham), pp 3–4.

The suitability of the Trio funds as an investment

2.43 For the committee, the overwhelming impression from the preceding discussion is of the complexity of the Trio Capital investment structure. It raises the following questions:

- was Trio an appropriate investment for 'mum and dad' investors with little knowledge or understanding of the investment structure, operation and risk?
- are complex managed investment schemes with multi-layered structures suitable for retail investors given the higher levels of risk and the difficulty for retail investors to understand and monitor the investment?

These are legitimate and important questions, notwithstanding the deliberate fraudulent activity of Mr Richard and Mr Flader, among others.

2.44 This issue of the suitability of the Trio schemes in turn raises important questions about the role of financial advisers in recommending Trio to their clients. First, and most obviously, did financial advisers understand the Trio investment structure and the risks involved? Second, did financial advisers understand that the various Trio schemes were linked through Trio as the responsible entity, or were they deceived on this as part of the Trio fraud?

2.45 The committee considers that multi-layered managed investment scheme structures are difficult for all but the most sophisticated and attentive retail investor to understand. Moreover, investors themselves will not be aware of their ultimate exposure and the risks of their investment. As ASIC explained:

It is not an uncommon practice in the industry that a registered managed investment scheme invests in another managed investment scheme to gain particular exposure to underlying assets in a cost effective way (e.g. a retail feeder fund investing in wholesale funds that has greater economies of scale). It is therefore not necessarily unsuitable for retail investors to be indirectly invested in intermediary investment vehicles.

However, the multiple layer structure may create difficulties in identifying an investor's ultimate exposure through an investment and the extent of exposure to a particular financial product or type of financial product that may arise indirectly through multiple investment vehicles. The risks associated with multiple layer investment can be exacerbated where multiple layer investment occurs in foreign jurisdictions where regulatory oversight is not as thorough.³²

2.46 ASIC contrasted the position of an investor making a direct investment, with one investing in a managed investment scheme managed by a responsible entity:

The suitability of an investment to an investor depends on the personal circumstances of the investor, including, for example, the risk appetite of

32 ASIC, *Submission 51*, pp 90–91.

the investor, the risk profile of the investor's investment portfolio, the investor's investment horizon, the investor's ability to understand the risk characteristics of the product taking into account any advice the investor receives, and the investor's capacity to track the performance of the financial product, personally or through an adviser.

In a direct investment situation, it is important that an investor makes an assessment of the product in light of these risk factors before investing, and then throughout the life of the investment.

However, when an investor invests in a registered managed investment scheme managed by a responsible entity, or a professional investment manager acting on the responsible entity's behalf, the investor relies on the responsible entity to assess the risks of the particular financial products that the managed investment scheme invests in (the underlying assets) and implement strategies to manage such risks, consistent with any disclosures to the investor (e.g. by diversification). The investor still needs to assess the suitability of an investment in the registered managed investment scheme and, for this purpose, will generally be given a PDS.³³

2.47 As ASIC pointed out, in many circumstances it will be perfectly appropriate for a retail investor to invest in a managed investment scheme. It noted that an investment in some assets through a registered managed investment scheme may be suitable for a retail investor, even in cases where direct investment by the retail investor is unsuitable. ASIC also noted that the complexity of the financial product, and the difficulty for the retail investor to monitor the investment, may be of lesser importance than the investor's confidence in the performance of the responsible entity.³⁴

2.48 PPB Advisory queried the suitability of Trio for the type of investors it attracted. It observed that:

- The...hedge fund investments are extremely complex involving numerous interposing parties and several overseas jurisdictions...
- The structure of the hedge fund investments and the type of investors involved are in our view, incongruent.
- Trio (the other directors) did not appear to fully understand the nature of the investments or the risk profile.³⁵

2.49 A combination of lack of understanding and deliberate misconduct led to poor governance arrangements. The Trust Company, which was the replacement responsible entity for some of the Trio funds, observed that:

33 ASIC, *Submission 51*, p. 89.

34 ASIC, *Submission 51*, p. 89.

35 PPB Advisory, *Submission 26*, p. 8.

...the former operators of the Trio funds did not appropriately deal with conflicts of interests that emerged in their capacity as:

Trustee of superannuation funds;

Responsible entity of registered schemes; and

Associates of the investment manager appointed to the Trio funds.

...We observed little evidence to suggest that these conflicts were adequately managed with the degree of appropriate caution a reasonable fiduciary would exercise discharging their obligations.

The proven dishonest conduct by those responsible for the investment management of the Astarra Strategic Fund coupled with the enforceable undertakings offered by the directors of Trio Capital would prima facie demonstrate a lack of robust compliance and governance arrangements within Trio Capital.³⁶

Committee view

2.50 It does seem likely that the complexity of the Trio structure was to some extent intentional, so as to camouflage the fraudulent activity. A key element of the scheme was to move the funds of Australian investors overseas, making it much harder for Australian auditors to verify the existence of the funds; for Australian liquidators to recover any remaining funds; and for Australian authorities to investigate and to pursue those who have carried out criminal conduct.

2.51 From a retail investor's point of view, this complexity of the Trio investment structure required investors to place their trust in the competence and judgment of the responsible entity. In this context, the role of financial advisers and planners in recommending Trio to investors is a matter that warrants close scrutiny. The committee finds it very difficult to see how the various Trio investment options were appropriate investments or an appropriate mix and spread of investments of different risk classes to provide for everyday Australians' retirement needs. Later chapters of this report argue that, to some extent, these financial advisers and planners should bear some blame for their role in recommending Trio as a suitable investment for 'mum and dad' investors.

The collapse of Trio Capital and the regulatory response

2.52 This section looks at how the Trio Capital fraud was uncovered and the response of ASIC and APRA. Chapter 4 examines the mindset and the rationale of the regulators in investigating the Trio fraud.

36 The Trust Company, *Submission 29*, p. 3.

Alerting the authorities

2.53 In September 2009, Mr John Hempton, Chief Executive Officer at Bronte Capital Management and a former Treasury official, wrote a letter to ASIC Chairman, Mr Tony D'Aloisio. The letter alerted ASIC to the suspiciously smooth returns achieved by the ASF in the context of a turbulent financial environment. He argued in the letter that while it was possible that the ASF was a fraud, there was no proof of that. Mr Hempton's letter resulted in ASIC launching an investigation into the activities of certain Trio funds (see Table 2.2 above and chapter 4).

2.54 Mr Hempton wrote on his blog: 'there was no genius in my letter – everything could be found (fairly easily) on the internet – and the original tip-off came from a reader of my blog – who noticed links with a story I wrote up in March 2009'.³⁷ Nonetheless, the blog clearly shows Mr Hempton's persistence and insight in bringing his concerns to the attention of the media and ASIC. In early January 2010, he wrote the following:

Six months ago a reader pointed me to a fund of hedge funds (called Absolute Alpha) based in Australia. I looked – and within forty minutes I became very concerned – but could not prove harm to the fund's investors. I tipped off the Sydney Morning Herald. The journalists at the Herald worked hard at the story but alas they too could not prove harm. Indeed a major bank misled them as to whether the assets were in (their) safe custody. The bank confirmed the assets were in custody – a statement they have now withdrawn. Obviously with a reputable third party vouching for the assets any hypothesis of harm was going to be hard to sustain. The Herald published nothing.³⁸

2.55 He continued:

I however remained suspicious – but could not easily do anything. For there to be something desperately wrong either the bank had to be a party or grossly negligent as to their custody of the assets. Absolute Alpha was a boutique fund manager loosely associated with – and partly owned – by a superannuation wrap provider called Astarra. Astarra is now called Trio. The wrap provider did all the superannuation compliance and in turn (claimed to) invest funds with other fund managers – mostly reputable managers. The relationship between Trio and some of the funds in which they were supposed to invest is complex.

37 Mr John Hempton, 'A dark privatised social security story: Astarra, the missing money and how examining a fund manager owned by Joe Biden's family led to substantial regulatory action in Australia', *Bronte Capital*, 2 January 2010, <http://brontecapital.blogspot.com.au/search?q=trio> (accessed 17 April 2012).

38 Mr John Hempton, 'A dark privatised social security story: Astarra, the missing money and how examining a fund manager owned by Joe Biden's family led to substantial regulatory action in Australia', *Bronte Capital*, 2 January 2010, <http://brontecapital.blogspot.com.au/search?q=trio> (accessed 17 April 2012).

The amount of money in Absolute Alpha was probably under 100 million. There were plenty of things that did not look right – but I did not think there was much I could do about it.

So I let it go – though I did not forget about it.

Later I tried to log into Absolute Alpha's website and it was dead. This (falsely) indicated my worst fear.

Again I alerted the Herald.

Alas it was not so simple. Absolute Alpha it seems had taken over the funds management of all the money in the Astarra wrap. They had renamed themselves Astarra. Astarra later renamed itself Trio. Astarra's website boasted of a billion dollars in funds under management...

Anyway I wrote a letter to...ASIC laying out all my concerns and (implicitly) the method for testing my concerns were false. [I sincerely hoped I was wrong – and hoped the regulator would prove me incorrect by identifying and valuing the assets. I still sincerely hope all the money turns up in the British Virgin Islands.]³⁹

2.56 Mr Hempton did note that ASIC's actions in responding to his tip-off were 'exemplary'. He argued in his blog that ASIC did what the SEC in the US could not and 'act on a "Markopolos letter" within weeks'.⁴⁰ Mr Hempton explained that unlike the SEC in the Madoff case, ASIC did attempt to confirm the existence and value of the assets. Indeed, ASIC Chairman, Mr Greg Medcraft, made a point of highlighting these efforts in his evidence to the committee (see chapter 4). Mr Hempton noted that in putting a stop on all Astarra funds, ASIC acted to protect investors.

Regulatory action and enforceable undertakings

2.57 Chapter 4 of this report details the regulatory response to the tip-off from Mr Hempton. It also explains the mindset of the regulators in investigating Trio and the coordination of their activities.

2.58 It is useful here to sketch the regulators' actions. Table 2.1 (below) notes that ASIC commenced its investigation into the conduct of Trio officers on 2 October 2009. A fortnight later, it issued an interim stop order on Trio preventing offers, issues, transfers or sales of interests in the ASF and other managed investment schemes for which Trio was the responsible entity. In November 2009, ASIC froze pension payments and withdrawals from ARP Growth Fund.

39 Mr John Hempton, 'A dark privatised social security story: Astarra, the missing money and how examining a fund manager owned by Joe Biden's family led to substantial regulatory action in Australia', *Bronte Capital*, 2 January 2010, <http://brontecapital.blogspot.com.au/search?q=trio> (accessed 17 April 2012).

40 In 2005, Mr Harry Markopolos wrote to the Securities and Exchange Commission in the United States pointing out issues with Madoff Investments, run by Bernie Madoff.

Table 2.1: Enforceable undertakings

Date	Person / Company	Condition of EU	Agency accepting EU
March 2012	Mr John Godfrey	No expiry date	APRA
Feb 2012	Mr Paul Gresham / Tony Maher	Permanent ban	ASIC
Feb 2012	Mr Timothy Frazer, WHK auditor	3 years	ASIC
Sept 2011	Mr Keith Finkelde	6 years	APRA
Aug 2011	Mr Keith Finkelde	Prevented from any role in financial services for 4 years	ASIC
Aug 2011	Mr David O'Bryen	Prevented from any role in financial services for 4 years	ASIC
Aug 2011	Mr David Andrews	Prevented from any role in financial services for 9 years	ASIC
July 2011	Mr Rex Phillipott	15 years	ASIC
July 2011	Ms Natasha Beck	2 years	ASIC
Sept 2011	Mr David Andrews	10 years	APRA
Oct 2011	Mr David O'Bryen	Five and a half years	APRA
July 2011	Seagrims Pty Ltd, Peter and Anne-Marie Seagrim	suspension of the AFSL for 3 years	ASIC
June 2011	Kilara Financial Solutions	Commitment to modify aspects of compliance	ASIC

Sources: ASIC, Enforceable undertakings register, <http://www.asic.gov.au/asic/asic.nsf/byheadline/Enforceable+undertaking+register%3A+list?openDocument> and APRA Enforceable undertakings register, <http://www.apra.gov.au/CrossIndustry/Pages/EnforceableUndertakings.aspx> (accessed 1 May 2012)

2.59 APRA had conducted several prudential reviews of Trio between 2004 and 2009. In mid-2009, when information requested from Trio was not forthcoming, it conducted a further prudential review to ascertain the existence of overseas assets. When this information was not provided, APRA commenced an investigation in October 2009.

2.60 On 2 December 2009, APRA issued a 'show cause' letter on Trio as to why it should not be suspended or removed as trustee. On 17 December, APRA suspended Trio's licence as the trustee of its four superannuation funds and one pooled superannuation trust. APRA suspended Trio's licence as a result of numerous breaches of Trio's licence conditions, including:

[F]ailure to provide the auditors reports for 2009; failure to submit quarterly returns due 5 November 2009; failure to adhere to custodial requirements; failure to exercise care, skill and diligence and failure to act in the best interests of beneficiaries; and failure to demonstrate due diligence on the

investment in the Exploration Fund Limited (EFL); and not being unable to satisfy APRA's concerns regarding the valuation of superannuation assets.⁴¹

A chronology of key events

2.61 Table 2.2 is a basic chronology of events relating to the operation and collapse of Trio. The timeline commences in early 2003, when ASIC issued an Australian Financial Services Licence to the ultimate Australian holding company, Wright Global Asset Management. It ends in March 2012, when APRA entered into an enforceable undertaking from another Trio Director, Mr John Godfrey.⁴² The key events in Table 2.2 are:

- the purchase of Tolhurst Funds Management by Wright Global Asset Management in November 2003;
- the replacement of the Trust Company for Trio as the trustee of PPPST in June 2004;
- the registration of the ASF on 28 August 2005 and the ARP Growth Fund on 1 July 2007;
- Mr John Hempton's letter to ASIC Chairman, Mr Tony D'Aloisio, on 16 September 2009, alerting ASIC to potentially fraudulent activity in the ASF (see below);
- ASIC's investigation of the conduct of Trio from October to December 2009 (see chapter 4);
- APRA's suspension of Trio's licence as the trustee of four superannuation funds and one pooled superannuation trust on 17 December 2009 (see chapter 4);
- the winding up of the ARP Growth Fund in April 2010;
- the resolution of creditors to place Trio Capital into liquidation in June 2010;
- the government's decision in April 2011 to provide nearly \$55 million in compensation for investors in APRA-regulated superannuation funds that were under the trusteeship of Trio Capital (see chapter 3); and
- the jailing of former Trio director Mr Richard in August 2011.

41 APRA, *Submission 41*, p. 4.

42 APRA, Enforceable Undertakings Register <http://www.apra.gov.au/CrossIndustry/Pages/EnforceableUndertakings.aspx> (accessed 1 May 2012).

Table 2.2: Trio timeline⁴³

Date	Event
Early 2003	ASIC issues Financial Services Licence to Wright Global Asset Management (WGAM)
2003	Mr Shawn Richard and Mr Anthony Littauer advises Mr Paul Gresham of their interest in acquiring a funds management business in Albury named Tolhurst Funds Management (later Astarra Funds Management) and Tolhurst Capital Limited (later Astarra Capital then Trio Capital)
November 2003	WGAM purchases Tolhurst Funds Management. Mr Shawn Richard, Mr Matthew Littauer and Mr Cameron Anderson (directors of WGAM) become directors of Tolhurst Funds Management
24 February 2004	PST Management Ltd becomes an authorised representative of Wright Global Investments Pty Ltd [controlled by Mr Jack Flader].
Early 2004	ASIC issues an Australian Financial Services Licence to Tolhurst Capital
May 2004	Tolhurst is renamed Astarra Funds Management. From May 2004 until September 2009, Trio operates as 'Astarra Capital Limited'
11 June 2004	Following a request by Paul Gresham, Trio becomes trustee of Professional Pensions Pooled Superannuation Trust (PPPST), replacing the Trust Company
2005	Morningstar commences publishing quantitative star ratings for some of the funds managed by Trio Capital Ltd (then known as Astarra Capital Ltd)
28 August 2005	Astarra Strategic Fund (ASF) is registered by Trio as a MI scheme through ASIC. Mr Shawn Richard is a director of Absolute Alpha, the investment manager of the ASF.
September 2006	KPMG conducts an audit of Astarra's Internal Compliance Plan
2006–2007	Research house Van Mac provides a report on Absolute Alpha giving it a 5 star rating
17 May 2007	Astarra Capital issues a product disclosure statement for ARP Growth Fund: Astarra is the Responsible Entity and PST Management Ltd is the Investment Manager. Both were linked to Jack Flader.
29 June 2007	Professional Pensions Pooled Superannuation Trust (PPPST) is wound up.
1 July 2007	The ARP Growth Fund is created to replace PPPST. Astarra Capital was also the Trustee of PPPST. Mr Gresham induced PPPST investors to reinvest in ARP.
September 2007	KPMG conducts an audit of Astarra's Internal Compliance Plan
30 May 2008	Mr Gresham resigns as a Director of PPARP and a new administrator is appointed
June 2008	Morningstar enters into a licensing agreement with Astarra Capital in June 2008, by which Morningstar is granted to Astarra Capital a non-transferrable, non-exclusive license to publish Morningstar Ratings on three of Astarra Capital's funds

⁴³ Based on information in submissions provided by ASIC, APRA, PPB Advisory, ARP Unitholders, Mr Colin Warne, the enforceable undertaking accepted by Mr Paul Gresham and the ASIC and APRA websites.

Date	Event
September 2008	KPMG conducts audit of Astarra's Internal Compliance Plan
October 2008	APRA unsuccessfully seeks information about the valuation of Trio funds
6 February 2009	National Australia Trustees Limited is appointed by Trio as custodian, replacing ANZ Custodian Services
August 2009	Absolute Alpha is renamed as 'Astarra Asset Management' (AAM)
September 2009	KPMG conducts an audit of Astarra's Internal Compliance Plan
September 2009	Astarra Capital is renamed Trio Capital
16 September 2009	Mr John Hempton writes to the Chairman of ASIC expressing his concerns about the Astarra Strategic Fund
2 October 2009	ASIC commences an investigation into the conduct of Trio officers in relation to suspected contraventions of section 601FD of the Corporations Act
16 October 2009	ASIC issues an interim stop order on Trio preventing offers, issues, transfers or sales of interests in the ASF and certain other MI schemes for which Trio was the RE
November 2009	Pension payments and withdrawals from ARP Growth Fund are frozen by ASIC
2 December 2009	APRA issues a 'show cause' letter on Trio as to why it should not be suspended or removed as trustee
16 December 2009	Directors of PPB Advisory resolve to place Trio Capital and other associated companies (Astarra Funds Management Pty Ltd and ASI Pty Ltd) into voluntary administration.
17 December 2009	APRA suspends Trio's licence as the trustee of its four superannuation funds and one pooled superannuation trust
19 March 2010	Administrators approach the Supreme Court of NSW to have the following managed investment schemes wound up due to exposure to impaired assets: Astarra Wholesale Portfolio Service, Astarra Portfolio Service, Astarra Overseas Equities Pool, ASF and the ARP Growth Fund
April 2010	Report from liquidators PPB Advisory
April 2010	ARP Growth Fund is wound up by a court order issued by Justice Palmer
22 June 2010	Trio Capital is placed into liquidation by resolution of creditors
July 2010	PST Management is placed into liquidation
July 2010	Public examinations are undertaken in respect of Shawn Richard and Eugene Liu regarding the ASF.
29 July 2010	Initial report by PPB Advisory is lodged with ASIC regarding investigations into breaches by directors and officers of Trio Capital in relation to the ARP Growth Fund
3 August 2010	Ten schemes with minimal or no exposure to impaired assets are transitioned to Trust Company as the replacement Responsible Entity

Date	Event
7 December 2010	Mr Richard pleads guilty to two charges of dishonest conduct in the course of carrying on a financial services business and admits to a third charge of making false statements in relation to financial products.
13 April 2011	The Hon. Bill Shorten MP, Minister for Superannuation and Financial Services, issues a determination under Part 23 of the SIS Act, for a grant of \$54,994,079 to be paid to the acting trustee ACT Super for payment to the members.
18 May 2011	PPB issues a report noting its investigations into the role of KPMG and WHK in auditing Trio Capital
24 June 2011	ASIC accepts an enforceable undertaking from Kilara Financial Solutions Pty Ltd (Kilara) to modify aspects of its compliance culture and to remedy past compliance concerns in the provision of financial advice to retail clients. Kilara recommends that retail clients switch their superannuation holding into another fund, My Retirement Plan, which invested in either My Income Pool or My Growth Pool. Trio was the responsible entity for My Retirement Plan.
July 2011	Mr Richard is formally convicted of dishonest conduct in relation to the Trio fraud.
4 July 2011	ASIC issues a media release stating that ASIC will hold the gatekeepers to account. ASIC enters into enforceable undertakings with former directors of Trio, Mr Rex Phillipott and Ms Natasha Beck, preventing them from working in the financial services industry for 15 years and two years respectively. APRA also accepts enforceable undertaking from Ms Beck.
5 July 2011	ASIC announces that it has suspended the AFS licence held by Seagrims Pty Ltd (Seagrims) until 27 November 2011. Mr Peter Seagrim and Ms Anne-Marie Seagrim, both of Port Augusta, who are the directors and responsible managers of Seagrims, are banned by ASIC from providing financial services for three years.
11 August 2011	ASIC enters into an enforceable undertaking with former chairman and director of Trio, Mr David Andrews, preventing him from acting in any role within the financial services industry for nine years. With the exception of a small private company in which Mr Andrews is sole director, Mr Andrews also agrees not to act as a director of any corporation for nine years.
12 August 2011	Justice Garling sentences Mr Richard to a total of three years and nine months imprisonment with a minimum term of two years and six months
24 August 2011	ASIC enters into enforceable undertakings with former Trio directors, Mr Keith Finkelde and Mr David O'Bryen, preventing them from taking part in the management of companies and providing financial services for four years each.
6 September 2011	APRA accepts enforceable undertakings from Mr Rex Phillipott for a period of 15 years and Mr David Andrews for a period of 10 years.
12 September 2011	APRA accepts enforceable undertakings from Mr Keith Finkelde for a period of six years.
27 October 2011	APRA accepts enforceable undertakings from Mr David O'Brien for a period of five and a half years.
1 February 2012	ASIC accepts an enforceable undertaking from Mr Gresham, permanently preventing him from working in the Aust'n financial services industry or managing a corporation.

Date	Event
10 February 2012	ASIC accepts an enforceable undertaking from ASF auditor, Mr Timothy Frazer of WHK. Mr Frazer will not act as a registered company auditor for three years.
5 March 2012	APRA accepts an enforceable undertaking with no expiry date from Mr John Godfrey, a former director of Trio. Mr Godfrey was a non-executive director of Trio from February 2005 until June 2007. He was also Chairman of the Board from June 2005 to February 2007.
