Appendix 3

Responses from Mr Shawn Richard

1. **Trio Capital was the Responsible Entity for Astarra Strategic Fund and other funds. And was also the Trustee for 5 superannuation funds. Was this framework of corporate and managed funds entities established for the purpose of fraud?**

Trio Capital's Framework as Responsible Entity (RE) and Trustee was already in place when the business was acquired in 2003. My understanding was and still is that this type of framework is typical / normal within the financial industry.

Upon reflection, the establishment of the Astarra Strategic Fund (ASF) as fund of hedge fund may have allowed for my employers to take advantage of the lack of transparency that comes with dealing in the hedge fund industry.

2. **What checks did this framework go through in order for it to be established?**

During the negotiations and immediately following the acquisition of Trio Capital, we were made aware of many of the ASIC and APRA regulatory requirements relating to operating Trio Capital. In my personal experience, the majority of any direct dealings with regulatory matters were handled by the compliance manager and the directors. If any of the regulatory matters concerned me, they were communicated to me by either the compliance manager or one of the directors.

In relation to becoming a director and responsible officer of Trio Capital following the acquisition, I remember being required by either the compliance manager or a director to supply the following:

- criminal background check
- bankruptcy check
- CV
- Evidence of PS 146 qualifications
- Conflict on interest register

When the ASF was established, I believe that the RE performed all normal and usual checks which relate to establishing a managed fund. This included legal and tax sign off.
Since the ASF was established as Australian based hedge "fund of funds", the checks and balances mostly related to AAM's activities in Australia.

I will expand more on the above comment throughout the document.

3. To your knowledge, what discussions were held between fund directors and the RE / trustees, and the custodians and RE/trustees, before monies were transferred in the overseas funds located in tax havens in the Caribbean?

As a director of Astarra Asset Management (AAM), all discussions with the RE/ 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 agreement 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 email the RE an instruction to invest in a particular fund which they then forwarded to the custodian for execution on the same day.

Since I never had any direct communication with the custodian, I am unable to confirm any discussions between the RE / trustee and the custodian relating the transfer of monies. I can only confirm that when AAM sent instructions to Trio Capital for execution, they would often be processed on the same day.

4. To your knowledge, what discussions were held between fund directors and trustees, and the custodians and trustees before the monies on the offshore accounts were used to purchase shares in US companies from foreign companies controlled by Mr, Flader?

As mentioned in Question 3, The RE and Trustee fully relied on the investment management agreement virtually giving them no on-going role in relation to the investment decisions of AAM. Although the investment management agreement detailed many checks and balances to be executed by AAM, any monitoring of such checks and balances were not performed by the RE and the Trustee.

In my experience, Australian based fund managers (including REs and trustees) who invest in other overseas funds, are not involved in the decision making process of the underlying assets purchased by the overseas manager.

5. **The judgment of Garling J in Regina v Shawn Darrel Richard (2011) NSWSC866 states that you took active steps to conceal from trio and Trio investors your relationship with Mr. Flader, the existence of the interrelated network of companies and investment funds and your personal gains from the activities of Trio. What were these steps and what information did you provide to auditors, custodians and trustees, financial advisors and the Trio investment committee? Did any of these gatekeepers ask for further verifying information?**

In relation to the above mentioned concealments, please refer the statement of facts which was executed prior to my sentencing.

In relation to gatekeepers asking for further information:
Auditors:
From 2005-2008, the majority of the audit process was dealt with between the RE / trustee and Trio Capital in Albury.
During the audit process they asked AAM a few basic questions about our process and accepted our verbal representations. One of their only formal requirements was to reconcile the valuations received from overseas managers with Trio's valuations.
Following the GFC, the audit process of 2009 improved dramatically and their requirements were much more detailed, stringent and relevant

Custodians:
I can confirm that I, as a director of AAM, never had any direct communication with the custodian.

Trustee/RE:
Any further verifying information was the standard periodic regulatory checks and updates. The Trustee and RE had given authority to its investment committee in relation to performing all the appropriate checks and balance for AAM and the ASF.

Investment committee:
The investment committee asked from time to time for information relating to the ASF and additional information relating to the underlying investments made by the 3rd party managers. They however accepted the lack of transparency due to the fact that ASF was a hedge fund of fund and that lack of transparency was normal within the hedge fund industry.

6. Did you select or influence the appointment of the directors of companies within the Trio Group? To your knowledge, did Mr. Flader?

Prior to 2005, I was a director of Trio and some of its related entities. At that time I played a role in the selection of other directors. Once I was no longer a director of Trio Capital in 2005, I was not involved with the selection or influence of any of the directors of Trio Capital and I am not aware that Mr. Flader did either.

In other words none of the directors of Trio Capital at the time of its collapse were chosen by me nor were they known to me prior to their appointment

7. How difficult was it to establish the fraudulent investment scheme? Did any of the regulatory checks and balances, including those listed below, make the perpetration of the fraud more difficult? Did it make it easier?

- **Obtaining an AFSL**
- **Anti-money laundering / Proceeds of Crime checks**
- **PDS**
- **Trustees**
- **Custodians**
- **Auditors**
- **Directors**
- **Financial advisers**
- **Research Houses**
- **APRA**
- **ASIC**

Participating in aspects of the scheme did not make the above mentioned regulatory checks and balances overly difficult to overcome. The main reason for this is that the vast majority of all checks and balances relating to Trio Capital and more specifically the ASF, was mainly relating to the fund's activities within Australia.

Therefore, the establishment of the ASF as a fund that invests in other overseas hedge funds resulted in the standards checks and balances becoming significantly diluted once investment funds left Australia which is where I believe the main contributing factors leading to Trio Capital's collapse occurred.

8. From your experience, what were the weak points in Australia's financial services regulatory framework?

- Upon reflection, one of the weaknesses in Australia's financial services regulatory framework was the general lack of understanding of the hedge fund space and its many complexities in terms of different structures and strategies.

  More specifically, the main problems with funds such as the ASF, which invested in other hedge funds, is the general acceptance throughout the whole financial industry that certain hedge funds can be exempt from offering the same required transparency as all other asset classes.
  In other words, once the manager invests with a 3rd party fund manager, many layers of scrutiny, checks and balances disappear.

  For example:

  - Still today, many fund of funds are only required to disclose their overall investment methodology in terms of selecting 3rd party fund managers.

  - The majority of them are unable to disclose the list of assets purchased and held by the 3rd party manager and get away by explaining the "type" of asset.

  - Some of them do not even disclose which managers they have selected.

  <u>This makes it very difficult for all relevant parties to make the necessary checks and balances in order to confirm whether the Australian manager is delivering on its stated strategy, risk profile and liquidity guidelines. It also makes it difficult to detect any dishonest conduct.</u>

  Although there are many successful hedge funds that do the right thing and offer great alternatives to traditional investments, considering the above observations would make it difficult in some cases to distinguish between good and bad.

- The APRA guidelines on superannuation liquidity requirements within the funds management industry is not scrutinised enough. Other than with Trio Capital, I have seen many examples including retail and industry superannuation funds which do not meet the APRA's minimum liquidity requirements. They simply do a good job at convincing the regulator that they do. This was proven during the GFC and still today I'm confident I could easily identify superannuation funds that would fail the liquidity test.

9. Did the Trio funds deliberately target self-managed superannuation funds and / or APRA regulated funds?

As with most fund managers, our goal was to establish relationships with the financial advisers who are the gatekeepers to investors. Since all advisors had different types of clients all with different risk profiles, we simply structured most of the Trio products including the ASF for it to receive both super and non-super investments.
Although the funds did receive both super and non-super monies, it became apparent that the majority of the financial planners recommended their clients to invest superannuation monies more so than non-super monies into our funds.

In other words, we targeted all types of investments including superannuation funds and APRA regulated funds as well as non super.

10. Given your experience and knowledge of the inner workings of Trio Capital, in what way do you consider Australia's financial services regulatory framework should be altered to increase the security Australian investors and superannuation funds.

- Unless the industry can force a dramatic increase in the transparency within certain areas of the hedge fund industry, there perhaps should be enforced limits or even prevention of exposure which superannuation funds can have into certain hedge funds.
  As previously mentioned, if fund of hedge funds are unable to show the list of underlying assets purchased by a 3rd party manager, it will always be very difficult for all relevant parties to make the necessary checks in order to confirm whether the Australian manager is delivering on its stated strategy, risk profile and liquidity guidelines as well as detect fraud.

- Stricter scrutiny regarding superannuation liquidity guidelines. Especially if the combination of hedge funds, private equity, fixed interest and unlisted property funds make up more than 25% of a superannuation portfolio which is often the case.
  (Note: just because a PDS says they are liquid, it doesn't mean they are. The liquidity status represented in a PDS usually assumes minimal redemptions and does not account for unusual events causing larger redemptions like we saw in the GFC)

Additional commentary

For the sake of providing clarity on an issue I feel is important, I wish to respectfully ask that you consider the following observations and commentary regarding the government compensation scheme relating to the ASF.

Through media reports, I understand that the government had agreed to provide compensation for certain superannuation investors of the ASF.

Although I haven't read the specific legislation which relates to the scheme, it seems that SMFS are excluded from being eligible in receiving compensation when fraud has occurred with their investments. I imagine this law was written with a basic assumption of the type of investor profile that constitutes a SMSF investor.

Having met hundreds of financial planners and/or accountants, I have seen for myself that there are 2 kinds of SMFS investors:

A Investors who are investment savvy, who wish to take control of their own investments and who have the skills to determine the risks of their investments.

B Investors setting up an SMSF simply because their accountant or financial planner had advised them to do so.
These people have no investment expertise and employ a financial planner to guide and advise them on all investments. They are 100% reliant on the financial planner's advice exactly the same as investors without an SMSF.

In relation to the ASF, I strongly believe that 95% of all investors had 1 thing in common; they were all 100% reliant on the advice of their financial planner to invest their superannuation monies into the ASF. The only difference is the fortune and misfortune of some investors having been advised on which vehicle to use to gain access to the fund.

In the specific case of the ASF, if the government has considered it appropriate to compensate superannuation investors, it should perhaps consider the circumstances mentioned above in relation to SMSF investors into the ASF.

I also wish to mention that I am aware of some SMSF investors who, on the advice of their financial planner, not only invested in the ASF but also used margin facilities to invest into the ASF, doubling their exposure.

Supplementary Remarks

In my previous submission, I communicated various observations and commentary regarding the collapse of Trio Capital.

Upon reflection into my first submission, I wish to provide additional commentary in order to avoid causing any potential misunderstandings.

In my opinion, financial planners should not be blamed in relation to the collapse of Trio Capital.

Financial planners along with their clients all had a justified expectation that the ASF had gone through multiple layers of checks and balances by all relevant industry participants prior to the product being made available to the public.

Additional layers of checks and balances were also performed by the financial planners. For example in my experience, financial planners relied on reputable research houses to conduct detailed due diligence on the ASF prior to any consideration.

Therefore, if a financial planner requires a product to have a minimum "recommended' rating by the research house before it makes it on an approved list, combined with all the many expected checks and balances by all the other industry participants which relate to a financial product, I find it difficult to lay much blame on a financial planner when a product fails.

On the subject of SMSFs, I also wish to clarify that in my opinion; financial planners were not at fault for recommending their clients to invest through an SMSF. I was simply making the point that in my opinion, SMSF clients did not have any material advantage compared to the other investors who received compensation from the government scheme.