



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission (ASIC) by:

TONY MAHER (FORMERLY KNOWN AS PAUL ANTHONY GRESHAM)

Address known to ASIC

1. Definitions

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

AFM means Astarra Funds Management Pty Limited ACN 098 220 467 (formerly Tolhurst Funds Management Pty Limited).

AFSL means Australian financial services licence.

Anderson means Cameron Anderson.

ARP means ARP Growth Fund ARSN 112 315 036, a managed investment scheme registered in Australia.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth).

Corporations Act means the *Corporations Act 2001* (Cth).

CPP means Corporate Pension Planning Pty Limited ACN 002 339 700.

Flader means Jack W. Flader Jr, a US citizen residing in Hong Kong.

Gresham means Tony Maher (formerly known as Paul Anthony Gresham).

Huntleigh means the Huntleigh Investment Fund Limited (which later changed its name to Exploration Fund Limited), a foreign mutual fund registered in Saint Lucia.

Littauer means Matthew Littauer, deceased.

PPARP means Professional Pensions ARP Limited, a company licensed as a professional fund in the British Virgin Islands.

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PPM means Private Placement Memorandum.

PPPST means Professional Pensions PST, a pooled superannuation trust regulated under the *Superannuation Industry (Supervision) Act 1993*.

PSTM means PST Management Pty Limited ACN 077 522 242.

Richard means Shawn Darrell Richard (Richard was a director of Trio Capital Limited from 5 November 2003 to 15 November 2005 and Wright Global Investments Pty Limited from 12 July 2001 to 16 September 2009).

SGUT means the Silverhall Gillieston Unit Trust, a private property trust.

SIS Act means the *Superannuation Industry (Supervision) Act 1993* (Cth).

Sutherland means James (Jim) Campbell Sutherland.

Trio means Trio Capital Limited (In Liquidation) ACN 001 277 256 (formerly Tolhurst Capital Limited and later Astarra Capital Limited).

Trust Company means Trust Company of Australia Limited ACN 004 027 749 or its wholly owned subsidiary, The Trust Company (Superannuation) Limited ACN 006 421 638 (formerly Trust Company Superannuation Services Limited).

WGAM means Wright Global Asset Management Pty Limited ACN 105 796 754.

WGI means Wright Global Investments Pty Limited ACN 097 478 487, AFSL No 225058.

2. ASIC's role

2.1. Under section 1 of the ASIC Act, ASIC is charged 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.

3. Gresham's business

3.1. From about 1982, Gresham operated a business assisting clients in managing their own personal superannuation funds. The business initially focused on the administration of superannuation funds which involved the preparation of taxation returns and financial statements. As set out below, Gresham later expanded his business to include investment management services including the provision of investment advice.

3.2. Gresham conducted his business through a number of corporate entities which he controlled and was a director, including:

- (a) CPP (deregistered in July 2005); and
- (b) PSTM.

- 3.3. PSTM ceased trading in about July 2010 after it was placed into external administration.
- 3.4. A majority of Gresham's clients had been clients since the 1980's and 1990's. At all times Gresham was the main point of contact for these clients.

4. Professional Pensions PST

- 4.1. In 1984, Gresham established the PPPST (formerly called the CPP Superannuation Investment Pool). The purpose of the PPPST was to facilitate access to professionally managed wholesale investment funds for small to medium superannuation funds. CPP was the administrator of the CPP Superannuation Investment Pool.
- 4.2. Initial investors in the PPPST were self managed superannuation funds operated by clients of Gresham.
- 4.3. In 1995, following the introduction of the SIS Act, PPPST became regulated as a Pooled Superannuation Trust. At this time:
 - (a) Trust Company of Australia Limited, a company independent of Gresham, was appointed trustee (in 1999, a wholly owned subsidiary of Trust Company of Australia Limited replaced it as trustee); and
 - (b) CPP:
 - (i) continued as administrator; and
 - (ii) became the investment manager of PPPST and provided research and advice to Trust Company concerning the selection of underlying investments.
- 4.4. In 1997, PSTM replaced CPP as the investment manager and administrator of PPPST.
- 4.5. From its inception in 1984 until 2004, PPPST invested in wholesale managed funds. By 2004, PPPST had largely invested in a portfolio of listed equities, bonds and cash that was managed by a large fund manager based in Australia.

5. Acquisition of Trio and the requirement for an AFSL

- 5.1. In 2003, Gresham became aware that impending changes to the Corporations Act meant that his business was required to operate under an AFSL from 11 March 2004. Accordingly, Gresham made enquiries about becoming an authorised representative of an AFSL holder. In the course of these enquiries, Gresham was referred to Richard and Littauer who were directors of WGI, a company which held an AFSL.
- 5.2. Richard and Littauer advised Gresham of their interest in acquiring an already established superannuation funds management business based in Albury, New South Wales, named Tolhurst Capital Management Pty

Limited (which later changed its name to AFM) and its subsidiary, Tolhurst Capital Limited (which later changed its name to Astarra then Trio). WGAM, a company controlled indirectly by Richard and Littauer, was to acquire the shares of AFM to affect the purchase.

- 5.3. At the time of the proposed acquisition, Trio was already the trustee of a number of superannuation funds and the responsible entity of a number of managed investment schemes.
- 5.4. To assist Richard and Littauer in the acquisition of AFM and Trio, Gresham raised approximately \$900,000 from his clients and loaned these monies to WGAM for commercial terms.
- 5.5. In November 2003, the acquisition of AFM and Trio by WGAM was completed. The directors of WGAM (including Richard, Littauer, and Anderson) became directors of AFM and Trio.
- 5.6. In about early 2004, Gresham met Flader, Sutherland and York through his relationship with Richard and Littauer.
- 5.7. In about February 2004, Gresham and PSTM became authorised representatives of WGI.

6. Change in investment strategy

- 6.1. In about late 2003, Gresham considered changing the investment strategy of PPPST to include alternative investments such as property, derivatives and offshore hedge funds.
- 6.2. In about January 2004, PSTM in its capacity as investment manager of PPPST, recommended to Trust Company that PPPST's investment strategy be changed to include alternative investments. In February 2004, Gresham began writing to PPPST's unit holders regarding a plan to change the investment strategy of PPPST to include exposure to such alternative investments.
- 6.3. Gresham was subsequently advised by Trust Company that it was reluctant to change the current investment strategy of PPPST or to approve investments in such alternative investments.
- 6.4. Gresham then commenced steps to have Trust Company replaced as trustee of PPPST by Trio. Richard and Littauer had advised Gresham that Trio would allow PPPST's investment strategy to be changed to incorporate alternative investments.
- 6.5. The following events subsequently took place:
 - (a) On 11 March 2004, WGI replaced PSTM as investment manager of PPPST. The directors of WGI at this time included Richard and Littauer.
 - (b) From 11 March 2004, PSTM continued to perform the investment management role of PPPST in its capacity as authorised

representative of WGI. PSTM continued to send information to unit holders about their investment in PPPST.

- (c) PSTM continued as administrator of PPPST.
 - (d) Following a request by Gresham, on 11 June 2004 Trust Company resigned as trustee of PPPST and appointed Trio as the new trustee.
- 6.6. Gresham did not advise all unit holders of PPPST of the changes referred to in 6.5 above prior to them taking place.
- 6.7. The new trustee (Trio) and investment manager (WGI) of PPPST had common directors, namely Richard and Littauer.

7. Investments made by PPPST

- 7.1. On 14 April 2004, PPPST invested \$4.75 million in SGUT. Gresham recommended this investment following discussions he had with Anderson.
- 7.2. At the time of the investment, Anderson was a director of:
- (a) the trustee of SGUT;
 - (b) SGUT's joint manager; and
 - (c) the proposed new trustee of PPPST, Trio and its parent company, AFM.
- 7.3. Gresham did not disclose to Trust Company or to PPPST's unit holders:
- (a) that Anderson was a director of Trio;
 - (b) that Anderson and Gresham had an agreement that if SGUT achieved a certain profit level that Gresham would receive a financial benefit; and
 - (c) that Anderson gave PSTM units in SGUT for no consideration which resulted in PSTM receiving payments of about \$450,000 during the financial year ending 30 June 2007.
- 7.4. In July and October 2004, PPPST invested \$4.75 million and \$1.5 million respectively in Huntleigh, a foreign mutual fund registered in Saint Lucia. The investment was recommended by Gresham following discussions he had with Richard and Littauer. Gresham was aware that Richard and Littauer were related to Huntleigh. In determining whether the investment was appropriate for unit holders in PPPST, Gresham primarily relied on oral assurances provided to him by Richard and Littauer.
- 7.5. According to the PPM of Huntleigh:
- (a) Huntleigh invested in highly speculative derivative strategies;
 - (b) Huntleigh was a newly formed company with no prior operating history; and

- (c) there was no market for shares in the fund which could only be disposed of by way of redemption.
- 7.6. Gresham did not disclose to Trio or unit holders in PPPST that Gresham had an informal agreement with Richard and Littauer which provided for payments being made to Gresham in relation to PPPST's investment in Huntleigh. Gresham subsequently received payments totalling in excess of \$250,000 from Richard and/or Littauer as a result of this agreement.
- 7.7. In October 2004, PPPST redeemed existing investments to the value of approximately \$37 million and in December 2004 reinvested this amount in shares in PPARP. This investment was made by Trio on the recommendation of Gresham.
- 7.8. PPARP was a company licensed as a professional fund in the British Virgin Islands. PPARP had the following features:
- (a) investors were invited to invest in PPARP through the purchase of non-voting, redeemable shares;
 - (b) the investment advisor (an entity associated with York that was responsible for executing the investment strategy and selecting the investments of PPARP) was issued with the only voting share;
 - (c) the shares in PPARP were subject to restrictions on transferability and resale;
 - (d) there was no public market for the shares in PPARP; and
 - (e) there was no restriction on the types of investments and trading activities that PPARP could undertake.
- 7.9. Gresham, York, and Sutherland were all at various times directors of PPARP:
- (a) York was a director from October 2004 to November 2004;
 - (b) Gresham was a director from October 2004 to May 2008; and
 - (c) Sutherland was a director from November 2004 to May 2008.
- 7.10. An entity associated with York was the sole shareholder of PPARP from October 2004 to May 2008.
- 7.11. From December 2004, PPARP represented PPPST's largest single investment.
- 7.12. The investment in PPARP was made by Trio on the recommendation of Gresham. In making this recommendation, Gresham relied on the PPM of PPARP and the information given to him by York.
- 7.13. Gresham did not disclose to Trio or unit holders in PPPST that he had an informal agreement with York which provided for payments to Gresham in relation to PPPST's investments in PPARP. Gresham received

payments totalling in excess of \$1.5 million which he understood to be as a result of this agreement.

8. Gresham's clients moved to ARP

8.1. During the first half of 2007, Trio:

- (a) determined to terminate PPPST effective from 29 June 2007;
- (b) established ARP, a managed investment scheme, to be an alternative investment vehicle to PPPST;
- (c) became the responsible entity of ARP;
- (d) appointed PSTM as the investment manager of ARP; and
- (e) offered unit holders in PPPST equivalent units in ARP.

8.2. In about early 2007, Gresham, through PSTM, recommended that unit holders in PPPST transfer their investment to ARP. A majority of PPPST unit holders agreed to transfer their investment from PPPST to ARP, with the balance redeeming their investment. On 2 July 2007, an in-specie transfer of assets was affected between PPPST and ARP. As a result of this transfer (and like PPPST), PPARP became ARP's largest single investment.

8.3. PSTM, now in its capacity as investment manager of ARP, sent information to unit holders about their investment in ARP (similar to what it did in relation to PPPST).

9. Gresham's valuation of ARP's investment in PPARP

9.1. Gresham, as a director of PSTM, provided Trio with month end valuations of each ARP investment. Gresham obtained the valuation amount for each investment from the fund manager and/or administrator of that investment.

9.2. However, from 1 August 2007, Gresham stopped receiving monthly valuations from both the investment adviser and the administrator of PPARP. The reason for this was that unit pricing of both funds in which PPARP invested had been suspended. Accordingly, from 1 August 2007 to 30 September 2009, Gresham himself purported to prepare month end valuations of the PPARP investment (**the Gresham Valuations**).

9.3. PPARP's assets were investments in two other funds which, in turn, had interests in complex swap contracts. The value of these swap contracts was determined by a number of factors, only one of which was the value of certain hedge funds (**the Hedge Funds**).

9.4. However, the Gresham Valuations were not valuations of ARP's investment in PPARP, rather they were purported valuations of the Hedge Funds.

9.5. In undertaking the purported valuations of the Hedge Funds, Gresham used historical data (June 2007 valuations) of the Hedge Funds to which

he made adjustments to reflect monthly fluctuations in the hedge fund market generally.

- 9.6. Gresham did not at any time disclose to Trio or the ARP investors the methodology he was using to prepare the Gresham Valuations.
- 9.7. In the period August 2007 to May 2008, Gresham provided the Gresham Valuations directly to Trio.
- 9.8. Gresham did not disclose to Trio that he was personally preparing the Gresham Valuations until 30 May 2008.
- 9.9. On 30 May 2008, Gresham and Sutherland resigned as directors of PPARP and a new administrator was also appointed.
- 9.10. From June 2008 to September 2009, Gresham provided the Gresham Valuations to the new administrator of PPARP in the knowledge that:
 - (a) the administrator of PPARP would forward the Gresham Valuations to Trio; and
 - (b) Trio had not been informed that the administrator was receiving and relying upon the Gresham Valuations.
- 9.11. From June 2008 to September 2009, Gresham was also aware that:
 - (a) unit pricing of the funds in which PPARP invested had been suspended indefinitely;
 - (b) PPARP could not redeem any units from the funds in which it had invested; and
 - (c) ARP was experiencing severe liquidity problems.

10. Management Fees – PSTM

- 10.1. From August 2007 to September 2009, Trio used the Gresham Valuations to calculate the unit price of ARP and also to calculate the management fees payable to PSTM for its services in relation to ARP.
- 10.2. In the period from 2 July 2007 to 30 June 2009, PSTM received approximately \$1.2 million in management fees in relation to ARP.

11. Liquidation of ARP

- 11.1. On 16 December 2009, Trio was placed into voluntary administration by its directors.
- 11.2. On 19 March 2010, the administrators of Trio sought and obtained orders in the Supreme Court of New South Wales for the winding up of ARP.
- 11.3. On 22 June 2010, Trio was placed into liquidation.
- 11.4. As at October 2011, information available to the liquidator of Trio suggested that the estimated return to the unit holders of ARP will be nil.

12. ASIC's investigation

12.1. ASIC commenced its investigation into Gresham on 23 March 2010 into suspected contraventions of the Corporations Act.

13. ASIC's concerns

13.1. ASIC is concerned that Gresham failed to disclose the following information to all PPPST unit holders until after the occurrence of each particular event, being:

- (a) the change of investment strategy for PPPST;
- (b) the change in trustee of PPPST from Trust Company to Trio; and
- (c) the change in investment manager of PPPST from PSTM to WGI.

13.2. ASIC is concerned that Gresham failed to adequately address conflicts of interest in respect of investments recommended by him in respect of PPPST. In particular, ASIC is concerned that Gresham:

- (a) received financial benefits in respect of investments in SGUT, Huntleigh and PPARP that were not disclosed to the trustee or investors of PPPST;
- (b) did not undertake due diligence to assess the suitability of some investments for PPPST in circumstances where the investments were associated with certain directors of Trio; and
- (c) showed favour to SGUT, Huntleigh and PPARP knowing that he may receive a financial benefit pursuant to the undisclosed agreements he had with Anderson, Richard/Littauer and York.

13.3. ASIC is concerned that the provision of the Gresham Valuations in the period from August 2007 to September 2009 may have constituted misleading and/or deceptive conduct by Gresham as:

- (a) Gresham did not disclose to Trio until 30 May 2008 (other than Richard) that he was undertaking the Gresham Valuations;
- (b) Gresham was purporting to value PPARP when in fact he was estimating the value of the Hedge Funds using historical data adjusted for monthly movements in the hedge fund market generally;
- (c) the methodology used to calculate the Gresham Valuations meant that the valuations had no reasonable basis;
- (d) Gresham did not disclose to Trio that he had no reasonable basis on which to calculate the Gresham Valuations;
- (e) Gresham knew the information would be used by Trio to calculate the unit price of ARP; and

- (f) Gresham knew the information would be used by Trio to calculate management fees due to PSTM.

14. Acknowledgement of concerns

14.1. Gresham acknowledges ASIC's concerns as set out in paragraphs 13.1 to 13.3 above.

15. Undertakings

15.1. Under section 93AA of the ASIC Act, Gresham has offered, and ASIC has agreed to accept as an alternative to exercising its powers under section 920A of the Corporations Act, the following undertakings:

- (a) Gresham permanently undertakes to not provide any financial services from the time of acceptance of this undertaking by ASIC; and
- (b) Gresham permanently undertakes not to take part in the management of a corporation.

15.2. Without in any way limiting the undertaking in paragraph 15.1 above, Gresham permanently undertakes, from the time of acceptance of this undertaking by ASIC not to:

- (a) do any act or engage in any conduct as a representative of an Australian Financial Services Licensee;
- (b) hold himself out as a representative of an Australian Financial Services Licensee;
- (c) carry on a business in relation to financial products or financial services within the meaning of section 761A of the Corporations Act either directly or indirectly as a director, partner, manager, servant or agent;
- (d) hold out that he is in any way authorised to provide a particular financial service or services that he is any way authorised to provide financial services generally; or
- (e) apply to ASIC under section 913A of the Corporations Act for an AFSL.

15.3. Gresham undertakes to provide all documents and information as requested by ASIC from time to time for the purposes of assessing Gresham's compliance with the terms of this enforceable undertaking.

16. Acknowledgements

16.1. Gresham acknowledges that ASIC:

- (a) may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- (b) may from time to time publicly refer to this undertaking; and

(c) will make this undertaking available for public inspection.

16.2. Further Gresham acknowledges that:

- (a) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order or damages in relation to any contravention that is the subject of ASIC's concerns in this enforceable undertaking or any other conduct; and
- (b) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.

16.3. Gresham acknowledges that ASIC had reason to be concerned as to the alleged facts and has offered an enforceable undertaking in the terms of section 15 above.


16.4. Gresham acknowledges that this undertaking has no operative force until accepted by ASIC, and Gresham and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.



.....
Tony Maher (formerly known as Paul Anthony Gresham)

Dated: ..27/1/12.....

Accepted by the Australian Securities and Investments Commission under section 93AA of the ASIC Act by its duly authorised delegate:



.....
Chris Savundra

Delegate of Australian Securities and Investments Commission

Dated:1/1/12.....

