



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 by:

SHAWN DARRELL RICHARD

Address known to ASIC

1. Definitions

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

AAM means Astarra Asset Management Pty Limited (formerly Absolute Alpha Pty Limited)
ACN 113 940 953;

AFM means Astarra Funds Management Pty Limited ACN 098 220 467;

ASF means Astarra Strategic Fund AFSN 115 962 368;

ASIC means Australian Securities and Investments Commission;

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

Flader means Jack W. Flader Jr;

Richard means Shawn Darrell Richard (address known to ASIC);

The Act means the *Corporations Act 2001* (Cth);

Trio means Trio Capital Limited (formerly Astarra Capital Limited) ACN 001 277 256;

WGI means Wright Global Investments Pty Limited ACN 097 478 487;

2. Background

2.1. ASIC's role

- 2.1.1. Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its function and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

2.2. Details of Conduct

- 2.2.1. At all relevant times:

- (a) Shawn Darrell Richard ("**Richard**") was carrying on a financial services business. He did this in a number of different capacities, namely as:
 - (i) a director of Astarra Asset Management Pty Limited ("**AAM**"), an authorised representative of Wright Global Investments Pty Limited ("**WGI**") and Trio Capital Ltd ("**Trio**");
 - (ii) a director or officer of Astarra Funds Management Pty Ltd ("**AFM**"), Trio and WGI;
 - (iii) a responsible officer for Trio and WGI;
 - (iv) an agent for Trio, and
 - (v) the investment manager of the Astarra Strategic Fund ("**ASF**").
- (b) In carrying out his duties in respect to the capacities specified in (a) above, Richard acted under the ultimate control and instruction of Jack W. Flader ("**Flader**"), a US citizen based in Hong Kong.
- (c) In order to facilitate the Scheme defined in paragraph 2.2.2 below, Richard represented himself to investors as being the controller of Trio, WGI and AAM, in circumstances where Richard was aware that these representations were false in that Flader was the ultimate controller of these entities.

- 2.2.2. From July 2004 onwards, Richard knowingly put into effect Flader's instructions relating to the operation of a scheme ("**the Scheme**") whereby Richard used his positions in respect to AAM, Trio, WGI and AFM, to arrange the transfer of Australian investors' monies from managed investment schemes and superannuation funds (collectively the "**Trio Managed Funds**") for which Trio was the responsible entity or trustee, respectively, to overseas funds controlled by Flader, namely:

- (a) Exploration Fund Limited ("**Exploration Fund**");
 - (b) Pacific Capital Multi-Arbitrage Fund Limited ("**Pacific Fund**");
 - (c) SBS Dynamic Opportunities Fund Limited ("**SBS Fund**"), and
 - (d) Sierra Multi-Strategy Fund Limited ("**Sierra Fund**"),
- (collectively the "**Flader Controlled Funds**")

in order to purchase shares in US companies ("**US Shares**") from foreign companies controlled by Flader ("**Flader Vendor Companies**"), at prices which realised significant profits for the Flader Vendor Companies.

- 2.2.3. In furtherance of the Scheme, AAM received over \$5.3 million from the operation of the Scheme and Richard received over \$1.3 million in payments for participating in the Scheme. The payments to Richard were in addition to his disclosed net annual salary of \$113,426 paid to him by AFM .
- 2.2.4. Out of the \$52,605,494 of ASF monies invested directly into underlying funds (excluding an in-specie transfer of Exploration Fund shares to the value of \$55,930,486 from other Trio Managed Funds into ASF which occurred on 30 June 2009), \$45,473,494 (86.4%) was invested into the Flader Controlled Funds.
- 2.2.5. To date, the liquidators of ASF have been unable to recover any of the Trio Managed Funds that were invested with the Flader Controlled Funds.
- 2.2.6. In furtherance of the Scheme a large portion of the profits realised from the sales of the US Shares by the Flader Vendor Companies to the Flader Controlled Funds was used to fund the businesses of Trio, WGI, AFM and AAM, by way of loans from other companies controlled by Flader (the "**Funding Companies**").
- 2.2.7. Richard was aware that the monies being loaned to Trio, WGI, AFM and AAM by the Funding Companies comprised part of the monies that had been invested by the Trio Managed Funds into the Flader Controlled Funds.
- 2.2.8. In his dealings with the auditors of Trio, WGI, AFM and AAM, Richard also falsely represented that he controlled the Funding Companies loaning the monies to Trio, WGI, AFM and AAM, in circumstances where he was aware that these companies were actually controlled by Flader.
- 2.2.9. At no relevant time did Richard disclose to investors in the Trio Managed Funds or to Trio, the nature of his relationship with Flader, the existence of the Scheme, that he was personally benefiting from the operation of the Scheme or that he was operating a personal overseas bank account in order to receive personal payments from the operation of the Scheme and to avoid disclosure to these parties. Some of the payments received into Richard's overseas bank account were subsequently used in furtherance of the Scheme.
- 2.2.10. Furthermore, following concerns raised by Trio's investment committee about the Trio Managed Funds' exposure to the Exploration Fund, and a subsequent ban in August 2006 placed by that committee upon further investment in the Exploration Fund, Richard participated in the creation of 3 new funds, namely SBS Fund, Sierra Fund and the Pacific Fund (collectively "**the New Funds**") all of which were also controlled by Flader.

- 2.2.11. In furtherance of the Scheme, from November 2006 onwards, Richard misled Trio's investment committee and ASF investors in respect to the nature of the investments being made on behalf of ASF by representing that he was diversifying the ASF's investment portfolio by arranging for ASF to obtain financial exposure to the New Funds which he represented were under the control of different investment managers, in circumstances where he was aware that, like the Exploration Fund, the New Funds were all controlled by Flader and they all held US Shares, derivatives, foreign exchange agreements and fixed interest investments purchased through dealings with Flader related companies.
- 2.2.12. Also, between at least April 2007 to 5 October 2009 Richard was aware that the assets held by the Flader Controlled Funds, in particular the Exploration Fund, were illiquid, of questionable value and that it was necessary for new monies from ASF to be made available in order for the Exploration Fund to meet redemption requests.
- 2.2.13. Despite Richard's knowledge of both the asset composition and the illiquidity of the assets held by the Flader Controlled Funds, which were of questionable value, in furtherance of the Scheme, Richard:
- (a) arranged the transfer of new monies from the ASF into the New Funds, knowing that some of these monies were going to be used to enable the Exploration Fund to meet its outstanding redemption requests; and
 - (b) arranged for the ASF to purchase shares in the Exploration Fund directly from a party who wanted to redeem their investment from that fund.
- 2.2.14. Richard also knew that a substantial portion of the value of the Flader Controlled Funds was attributable to the derivatives, foreign exchange agreements and fixed interest investments (collectively referred to as "**Non-equity Investments**") held by the funds and that some of these counterparties to these financial instruments were Flader Vendor Companies or another of the Flader Controlled Funds.
- 2.2.15. AAM and Richard did not take any steps to verify whether the financial instruments setting up these Non-equity Investments had ever been executed or whether the counterparties to these instruments had the financial capacity to honour their obligations if called upon.
- 2.2.16. Furthermore, Richard knew that the administrators for the Flader Controlled Funds were also under Flader's control and he also knew that at no time were the assets held by these funds independently valued.
- 2.2.17. As a result of Richard's awareness of the operation of the Scheme, the illiquidity of the Flader Controlled Funds and the related party transactions between Flader Vendor Companies and the Flader Controlled Funds, Richard knew, from at least 10 April 2007, that the statements he made about the value of the Flader Controlled Funds that were included in valuation statements provided to Trio, were materially misleading.

2.2.18. Furthermore, Richard made materially misleading statements about AAM's procedures employed in respect to the ASF in the allocation of assets, selection of underlying investment managers and the conduct of due diligence and monitoring, in circumstances where he knew these procedures were not carried out.

2.3. ASIC's Investigation

2.3.1. ASIC has conducted an investigation into the conduct of Richard during the period from 9 September 2005 in relation to suspected contraventions of the Act.

2.4. ASIC's Concerns

2.4.1. As a result of its investigation, ASIC is concerned that Richard:

- (a) failed to avoid or otherwise disclose his conflict of interest in respect of the Scheme and investments in Flader Controlled Funds, contrary to the duty he owed to Trio as its agent;
- (b) did not act in the best interests of ASF or other Trio Managed Funds in assessing and arranging investments into Flader Controlled Funds, contrary to the duties he owed as the agent for Trio;
- (c) profited from his position in relation to the affairs of Trio by his receipt of payments, in circumstances where he did not disclose and actively concealed these payments from Trio, contrary to the duty he owed to Trio as its agent;
- (d) made materially misleading statements about the value of the Flader Controlled Funds, knowing that these statements were included in valuation statements provided to Trio and were likely to have the effect of inducing Trio to apply for and acquire further financial products;
- (e) knowingly made materially misleading statements in a product disclosure statement for ASF and in questionnaire responses relating to ASF in circumstances where he knew that these statements were likely to induce Australian investors to apply for financial products, namely units in ASF;
- (f) knowingly misled Trio's investment committee and ASF investors in respect to the nature of the investments being made on behalf of ASF; and
- (g) made false representations about the Funding Companies in his dealings with the auditors of Trio, WGI, AFM and AAM.

2.5. Acknowledgement of ASIC's concerns

2.5.1. Richard acknowledges ASIC's concerns as set out in paragraph 2.4.1 above.

3. Undertakings

3.1. Under section 93AA of the ASIC Act, Richard has offered, and ASIC has agreed to accept, as an alternative to ASIC exercising its power under section 920A of the Act, the following undertakings:

- 3.1.1. Richard permanently undertakes not to provide any financial services from the time of acceptance of this undertaking by ASIC.
- 3.1.2. Without in any way limiting the undertaking in paragraph 3.1.1 above, Richard permanently undertakes, from the time of the 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 Act, either directly or indirectly as a director, partner, manager, servant or agent;
 - (d) hold out that he is anyway authorised to provide a particular financial service or services that he is anyway authorised to provide financial services generally, or
 - (e) apply to ASIC under section 913A of the Act for an Australian Financial Services Licence.
- 3.1.3. Richard undertakes to provide all documents and information, as requested by ASIC from time to time, for the purposes of assessing Richard's compliance with the terms of this enforceable undertaking.

4. Acknowledgements

4.1. Richard 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.

4.2. Further, Richard 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 in relation to ASIC's concerns, or any other concerns arising from the conduct referred to in this 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 my conduct described in this undertaking or arising from future conduct.

4.3. In particular, Richard acknowledges that ASIC intends to commence a criminal prosecution against him in relation to the conduct referred to in section 2.2 above and further acknowledges that in relation to those proposed criminal proceedings he intends to plead guilty to two offences against s.1041G of the Act and to admit, pursuant to s.16BA of the *Crimes Act 1914*, a third offence against s.1041E of the Act.

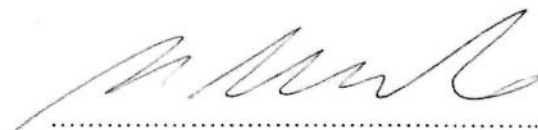
4.4. In response to ASIC's concerns set out in paragraph 2.4.1 above, Richard has offered ASIC enforceable undertakings in the terms of paragraph 3 above.

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


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Signed: Shawn Darrell Richard

Dated: 3 December 2010

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


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Signed:

Delegate of the Australian Securities and Investments Commission

Dated: 3 December 2010

