



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this enforceable undertaking are offered to ASIC by:

Timothy Steven Frazer
WHK Audit & Risk Assessment
491 Smollett Street
Albury NSW 2640

1. Dictionary

Unless the contrary intention appears:

AAM means Astarra Asset Management Pty Limited (ACN 113 940 953), the investment manager of the Astarra Strategic Fund (ARSN 115 962 368);

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

ASF means Astarra Strategic Fund (ARSN 115 962 368) which prior to 3 June 2009 was known as the Alpha Strategic Fund;

ASIC means the Australian Securities and Investments Commission;

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

Australian Auditing Standards means the auditing standards in force from time to time pursuant to section 336 of the Corporations Act;

CALDB means the Companies Auditors and Liquidators Disciplinary Board;

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

EMA means EMA International Limited;

EFL means Exploration Fund Limited;

GCSL means Global Consultants and Services Limited;

Liu means Eugene Liu, who has been a director of AAM since 12 July 2006;

Mr Frazer means Timothy Steven Frazer;

Richard means Shawn Darrell Richard, who was a director of AAM (from 22 April 2005 to 19 January 2011), AFM (from 5 November 2003 to 24 April 2007) and WGAM (from 5 August 2003 to 22 October 2009 and from 17 December 2009 to 19 January 2011);

Trio means Trio Capital Limited (ACN 001 277 256) which prior to 1 October 2009 was known as Astarra Capital Limited;

WGAM means Wright Global Asset Management Pty Limited (ACN 105 796 754);

WHK means WHK Audit & Risk Assessment;

2008 Audit means the audit of the 2008 Financial Report of ASF for the year ended 30 June 2008;

2009 Audit means the audit of the 2009 Financial Report of ASF for the year ended 30 June 2009;

2008 Financial Report means the Financial Report of ASF for the year ended 30 June 2008; and

2009 Financial Report means the Financial Report of ASF for the year ended 30 June 2009.

2. ASIC's role

- 2.1 Under section 1(2) 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.
- 2.2 ASIC is also responsible for the registration of company auditors under Part 9.2 of the Corporations Act. Auditors registered under Part 9.2 of the Corporations Act must satisfy specified educational and practical experience standards, and, in forming an opinion about whether financial statements audited by them comply with Australian Accounting Standards and present a true and fair view, must comply with Australian Auditing Standards and Professional Conduct Standards as promulgated by the Institute of Chartered Accountants in Australia.
- 2.3 ASIC is empowered to bring disciplinary proceedings pursuant to section 1292(1) of the Corporations Act in the CALDB against registered company auditors who have failed to adequately and properly carry out the duties of an auditor.

3. Details of Mr Frazer

- 3.1 Mr Frazer is, and has been continuously since 23 August 2004, registered as an auditor under the Corporations Act. Mr Frazer's registration number is 273727.
- 3.2 At all relevant times on and from 1 April 2008, Mr Frazer was and is a partner of WHK.
- 3.3 At all relevant times on and from 1 April 2008, WHK was the audit firm engaged by Trio to carry out the 2008 Audit and the 2009 Audit.

4. Mr Frazer's role

- 4.1 Mr Frazer was the auditor responsible for the conduct of the 2008 Audit and 2009 Audit.
- 4.2 Mr Frazer was the lead auditor, as defined in section 324AF(1) of the Corporations Act for the 2008 Audit and the 2009 Audit.
- 4.3 Mr Frazer signed an unqualified audit opinion in respect of the 2008 Financial Report on 24 September 2008.
- 4.4 Mr Frazer signed an unqualified audit opinion in respect of the 2009 Financial Report on 28 September 2009.
- 4.5 Section 307A(2) of the Corporations Act provides that if an audit firm conducts an audit of the financial report for a financial year, the lead auditor must ensure that the audit is conducted in accordance with Australian Auditing Standards.

5. ASF

- 5.1 ASF is a managed investment scheme registered under section 601EB of the Act. The responsible entity for ASF was Trio. Following an investigation by ASIC, on 16 October 2009, ASIC issued an interim stop order in respect of ASF's Product Disclosure Statement. Trio was placed in voluntary administration on 16 December 2009 and subsequently in liquidation on 22 June 2010. On 19 March 2010, Justice Palmer of the Supreme Court of New South Wales ordered that ASF be wound up.
- 5.2 ASF purported to provide investors with consistent long-term capital appreciation in both rising and falling market conditions. Over the long term, ASF was purportedly aiming to produce returns closely matching equity markets with less volatility risk.

- 5.3 Trio, in its capacity as responsible entity of ASF, appointed AAM (then known as Absolute Alpha Pty Ltd) as the investment manager of ASF. Trio and AAM entered into an agreement to this effect on 2 March 2007 (but stated to operate from 26 August 2005). In this role, AAM was to invest and manage ASF for and on behalf of Trio. Richard and Liu were directors of AAM throughout the period during which the 2008 Audit and the 2009 Audit were being conducted.
- 5.4 ASF purchased financial exposures to various offshore based hedge funds domiciled in tax haven jurisdictions including the Cayman Islands, St. Lucia, and Anguilla. ASF did this by investing through EMA, a special purpose investment vehicle incorporated in the British Virgin Islands. These offshore based hedge funds were administered by entities domiciled in the Cook Islands, Belize and St. Lucia.
- 5.5 The offshore based hedge funds were privately managed investment funds that employed a specific investment strategy.
- 5.6 EMA used an administration services provider, GCSL, which provided to Trio (then known as Astarra Capital Limited) a confirmation of the value of ASF's investment portfolio as at 30 June 2008 and 30 June 2009. GCSL's activities were carried out in Hong Kong.
- 5.7 The liquidators of Trio, in a report to creditors dated 24 June 2011, advised that the underlying investments of ASF (which as at 31 July 2010 were reported by the liquidators to have a value of approximately \$123 million) appear to have nil value.
- 5.8 The balance sheet included in the 2009 Financial Report shows that almost all of ASF's assets as at 30 June 2009 and as at 30 June 2008 were made up of investments in offshore global markets, specifically hedge funds. The balance sheet showed that investments in the underlying offshore based hedge funds as at 30 June 2009 totalled approximately \$114.691 million (representing 96% of

total assets of \$118.997 million) and as at 30 June 2008 totalled \$42.015 million (representing 98% of total assets of \$43.016 million).

- 5.9 As at 30 June 2008 EMA did not prepare an audited financial report. Mr Frazer relied on an Australian based audit firm to verify the existence and value of the underlying offshore based hedge funds.
- 5.10 The balance sheet in the draft financial statement of EMA as at 30 June 2009 shows a liability to ASF and a corresponding asset for the value of its underlying "Available-For-Sale Investments", namely the value of investments in the offshore based hedge funds where it had placed ASF investor monies. The notes to the financial statements record that, as at 30 June 2009, approximately \$114.567 million was invested with six different offshore based hedge funds, with the value of each of these determined by the fair value of its underlying investments as reported by the administrators of each of the offshore based hedge funds.
- 5.11 EMA appointed a Hong Kong based auditor to audit EMA for the period from its incorporation on 3 January 2006 to 30 June 2009. Within the investments of EMA was a major investment in EFL. EFL in turn appointed a USA based auditor to verify the fair value of its investments as at 30 June 2009 and to report to EMA.
- 5.12 As at 30 June 2009, EMA's Hong Kong based auditor was responsible for verifying the existence and valuation of the investments held by EMA. Mr Frazer relied on the work of the Hong Kong based auditor in relation to the existence and valuation of EMA's investments. The Hong Kong based auditor also appeared to have relied on the USA based auditor of EFL as to the existence and valuation of approximately \$74.907 million out of the total investments of EMA as at 30 June 2009 of approximately \$114.567 million. At the time of signing the 2009 Audit, Mr Frazer had a draft completion memorandum by EMA's Hong Kong based auditor and had not been provided with the final completion memorandum (although he had received assurances from EMA's Hong Kong based auditor that the final completion memorandum

would be issued shortly thereafter). The draft completion memorandum noted that the USA based auditor had not completed its audit of EFL. Mr Frazer had received correspondence from EFL's auditors confirming that nothing had come to their attention regarding further adjustments regarding the carrying value of EFL's investments. At the time of signing the 2009 Audit, Mr Frazer had not received final audit clearances for EMA and EFL as to the existence and valuation of ASF's investments.

6. ASIC's concerns in relation to the 2008 Audit and 2009 Audit

- 6.1 ASIC is concerned that with respect to the 2008 Audit and the 2009 Audit, Mr Frazer failed to carry out or perform adequately and properly the duties of an auditor within the meaning of section 1292(1)(d)(i) of the Corporations Act in that he did not, as lead auditor of the 2008 Audit and the 2009 Audit, ensure that each of the audits was conducted in accordance with Australian Auditing Standards by reason of the matters referred to in paragraphs 6.2, 6.3 and 6.4 below.
- 6.2 In respect of the 2008 Audit, ASIC is concerned that Mr Frazer failed to ensure that:
- i) sufficient appropriate audit evidence was obtained in relation to the existence and valuation of investments; and
 - ii) a sufficient understanding of ASF and its environment, including the operations of EMA and GCSL and the investments they made, in order to identify, assess and respond to risks of material misstatement, was obtained.
- 6.3 In respect of the 2009 Audit, ASIC is concerned that Mr Frazer failed to ensure that:
- i) sufficient work was performed to adequately consider the professional competence of the other auditors upon whom the principal auditor (Mr Frazer) relied in the context of the specific assignment;

- ii) the work of other auditors was adequate for the principal auditor's purposes in the context of the specific assignment; and
- iii) a disclaimer of opinion was expressed on account of the fact that the work of the other auditor on whom the audit relied in relation to the existence and valuation of investments had not been concluded as at the date of issuance of Mr Frazer's opinion.

6.4 In respect of the 2008 Audit and the 2009 Audit, ASIC is concerned that Mr Frazer failed to ensure that each audit was planned and performed with an attitude of professional scepticism.

7. Acknowledgement by Mr Frazer of ASIC's concerns

7.1 Mr Frazer notes but does not admit the factual matters in paragraph 5 above. Mr Frazer acknowledges but does not admit ASIC's concerns as detailed in paragraph 6 above.

7.2 In accepting the commitments contained in this enforceable undertaking, ASIC notes that:

- a) Mr Frazer was not aware that a number of individuals who controlled or were associated with the underlying offshore based hedge funds that were located in overseas localities:
 - i) had previously held roles with Trio and its parent companies, WGAM and AFM; and/or
 - ii) were associated with Richard, a director of AAM, the investment manager of ASF;

- b) in relation to the investments held by ASF for the 2008 Audit, Mr Frazer relied on the work of a major Australian based audit firm in relation to the existence and valuation of those investments;
- c) in relation to the investments held by ASF for the 2009 Audit, Mr Frazer relied upon the work of two other audit firms in relation to the existence and valuation of those investments;
- d) Mr Frazer also relied upon representations from the management of ASF that ASF had systems and controls in place to monitor the conduct of AAM and Richard in relation to the ASF investments including various offshore investments.

8. Undertakings

8.1 Under section 93AA of the ASIC Act, Mr Frazer has offered, and ASIC has agreed to accept, as an alternative to ASIC making an application to CALDB for an order under section 1292(1) of the Corporations Act, the following undertakings:

- a) that for a period of three years ("period of suspension") commencing on the date of acceptance by ASIC of this enforceable undertaking, Mr Frazer will not perform any duty or function which requires registration as an auditor under the Corporations Act and, for the avoidance of any doubt, this includes acting as a review auditor as defined in section 324AF(2) of the Corporations Act;
- b) Mr Frazer will participate in an additional **15** hours of continuing professional education on audit related matters during the period of suspension, in addition to the mandatory requirements of the Institute of Chartered Accountants in Australia;
- c) Mr Frazer will submit the first three audits conducted by him following the period of suspension that are required to be conducted by a registered

company auditor under the Corporations Act, within fourteen days of completion of the relevant audit, for review by a registered company auditor approved by ASIC, such auditor to provide a statement in writing whether in that person's opinion the relevant audit in question has been conducted in accordance with Australian Auditing Standards as at the date of the relevant audit;

- d) Mr Frazer will provide the statement referred to in paragraph c) above to ASIC within fourteen days of completion of the review, which must occur within sixty days of referral to the reviewer;
- e) within fourteen days after the conclusion of the period of suspension, Mr Frazer will provide ASIC with a statutory declaration that attests that he has not engaged in any activities during the period of suspension that require registration as an auditor under the Corporations Act and that he has fully complied with the undertaking contained in paragraph b) above;
- f) Mr Frazer will provide all documents and information requested by ASIC from time to time for the purpose of assessing his compliance with the terms of this enforceable undertaking within fourteen days of receiving the request; and
- g) Mr Frazer will pay the costs of compliance with this enforceable undertaking.

9. Acknowledgements as to operation of this enforceable undertaking

9.1 Mr Frazer 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) will make this enforceable undertaking available for public inspection; and

- c) may from time to time publicly refer to this enforceable undertaking.


9.2 Further, Mr Frazer acknowledges that:

- a) ASIC's acceptance of this enforceable 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 in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct;
- b) this enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this enforceable undertaking or arising from future conduct;
- c) this enforceable undertaking has no operative force until accepted by ASIC;
- d) should ASIC form the view that Mr Frazer has failed to comply with this enforceable undertaking, ASIC may take additional action including (without limitation) seeking court orders under section 93AA of the ASIC Act requiring him to comply with the terms of this enforceable undertaking; and
- e) ASIC may pursuant to section 127(4)(d) of the ASIC Act refer documentation relating its investigation that led to ASIC's acceptance of this enforceable undertaking to relevant prescribed professional disciplinary bodies.

10. Notifications to ASIC

10.1 Any written notification to ASIC pursuant to this enforceable undertaking is to be provided to:

The Senior Executive Leader, Financial Reporting and Audit
ASIC
Level 5, 100 Market Street
SYDNEY NSW 2000.

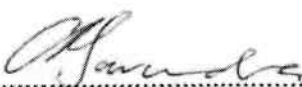


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Timothy Steven Frazer

Dated: 13 January 2012

**Accepted by the Australian Securities and Investments Commission under s93AA
of the ASIC Act by its duly authorised delegate:**



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Christopher Savundra

Delegate of Australian Securities and Investments Commission

Dated: 6 February 2012