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ASIC

Australian Securities & Investments Commission

Infringement notice

section 12GXA of the *Australian Securities and Investments Commission Act 2001*

Day of issue: 16 April 2014

Unique identification code: A4065353

TO: Australian Mutual Holdings Limited ACN 115 182 137
Governor Phillip Tower
Level 40, 1 Farrer Place
Sydney NSW 2000

1. ASIC issues this infringement notice under section 12GXA of the *Australian Securities and Investments Commission Act 2001* (the *ASIC Act*).
2. ASIC has reasonable grounds to believe that you have contravened an infringement notice provision as follows:

From 19 June 2013 to 28 October 2013 (Relevant Period), you contravened paragraph 12DF(1) of the ASIC Act by, in trade or commerce, engaging in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of financial services.

Particulars

During the Relevant Period, you made representations in your product disclosure statement (PDS), being Australian Mutual Holdings Limited Trident Income Plus Fund (Income Fund) PDS dated 19 June 2013:

- (a) Page 2 of the PDS states "Custodian Australian Executor Trustees Limited ACN 007 869 794, Level 22, 207 Kent Street Sydney NSW 2000"; and
- (b) Page 15, paragraph 8.3 of the PDS also states "Custodian Agreement...The Custodian's obligations, under the agreement relate to the holding of the Fund's assets. We also have obligations under this document, such as placing the fund assets into the control of the Custodian...".

The representations were liable to mislead the public because Australian Executor Trustees Limited (AET) did not have custody of all of the Income Fund's assets. AET only held the cash assets of the Income Fund, while the majority of assets were held in Australian Mutual Holding Limited's trading account with Interactive Brokers LLC.

Penalty under this notice

3. The penalty payable under this notice in relation to the alleged contravention is \$10,200.

This penalty is payable to ASIC on behalf of the Commonwealth.

This penalty can be paid using one of the methods detailed in the enclosed invoice.

Consequences of complying with this notice

4. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):
 - (a) no proceedings (whether criminal or civil) will be brought against you by the Commonwealth or ASIC for the alleged contravention of the infringement notice provision or an offence constituted by the same conduct; and
 - (b) you will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.

Consequences of failing to comply with this notice

5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, and the notice is not withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 the consumer protection provisions of the Australian Securities and Investments Commission Act 2001 (ASIC Act) of the ASIC Act (whether criminal or civil) against you for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.
6. The maximum pecuniary penalty that a court may order you to pay for the alleged contravention is \$1.7 million.

Time for payment

7. The time for payment is:
 - (a) within 28 days after the day on which the notice is issued to you; or
 - (b) if ASIC extends, by notice in writing the compliance period for this notice, within that further period allowed.

Applying for more time to pay the penalty under this notice

8. ASIC may extend the compliance period for this infringement notice if ASIC is satisfied that it is appropriate to do so. The extension must not be for longer than 28 days.
9. If you wish to apply for an extension of time to pay the penalty specified in this notice, you should do so in writing within 28 days after the day the notice is issued to you (see paragraph 15).

Applying to have this notice withdrawn

10. Within 28 days after the day on which this notice is issued, you may apply to ASIC in writing to have this notice withdrawn.
11. Evidence or information that you or your representative gives to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against you or your representative in any proceedings (other than proceedings for an offence based on the evidence or information being false or misleading).

Withdrawal of this notice

12. ASIC may, by written notice given to you, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not you have applied to have this notice withdrawn.
13. A withdrawal notice must be given to you within the time for payment of this infringement notice to be effective.
14. If the withdrawal notice is given after you have paid the penalty specified in this infringement notice, ASIC will refund to you the amount paid under the infringement notice.

Requirements for applications

15. An application to have this notice withdrawn, or for more time to pay the penalty under this notice:
 - (a) must be in writing; and
 - (b) must include the unique identification code set out at the top of this notice; and
 - (c) must include your reasons for making the application; and
 - (d) may be made by forwarding your application to ASIC at the address in paragraph 16.
16. You may contact ASIC in relation to this notice by contacting:

Kirsty Magee

Australian Securities and Investments Commission

GPO Box 9827

SYDNEY 2000

or by facsimile: (02) 9911 2414

or by email: ACLInfringementNotices@asic.gov.au



Greg Tanzer

as a delegate of the Australian Securities and Investments Commission