



Report of the APRA Inspector pursuant to section 284 of the *Superannuation Industry (Supervision) Act 1993*

Investigation of the following superannuation entities in respect of which Trio Capital Limited (in liquidation) acted as trustee:

- Astarra Personal Pension Plan;
- Astarra Pooled Superannuation Trust;
- Astarra Superannuation Plan;
- Employers Federation of NSW Superannuation Plan;
- My Retirement Plan; and
- Professional Pensions Pooled Superannuation Trust.

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A. Introduction

APRA's role and powers

1. The Australian Prudential Regulation Authority (**APRA**) has the functions and powers set out in the *Australian Prudential Regulation Authority Act 1998 (APRA Act)* and the *Superannuation Industry (Supervision) Act 1993 (SIS Act)*.
2. Pursuant to the SIS Act, APRA is responsible for the supervision of the prudent management by RSE Licensees of certain superannuation funds and pooled superannuation trusts.

Investigation Report

3. I am an Inspector appointed by APRA to conduct investigations under Division 4 of Part 25 of the SIS Act in relation to the affairs of superannuation entities.
4. On 16 October 2009 APRA commenced an investigation in relation to the whole of the affairs of the following superannuation entities:
 - a) Astarra Personal Pension Plan ABN 74 351 127 106 (**APPP**);
 - b) Astarra Pooled Superannuation Trust ABN 71 340 939 814 (**APST**);
 - c) Astarra Superannuation Plan ABN 43 724 394 795 (**ASP**);
 - d) Employers Federation of NSW Superannuation Plan ABN 31 061 350 115 (**EFNSW**); and
 - e) My Retirement Plan ABN 23 732 008 457 (**MRP**);

(collectively, the **Trio Superannuation Entities**).

Trio Capital Limited ACN 001 277 256 (in liquidation) (**Trio**) was the trustee of the Trio Superannuation Entities during the period from 5 November 2003 until 16 December 2009 (the **Relevant Period**).

5. On 25 October 2011 APRA also commenced an investigation in relation to the whole of the affairs of the Professional Pensions Pooled Superannuation Trust ABN 27 659 128 466 (**PPPST**). Trio was the trustee of the PPPST from 11 June 2004 until 2 July 2007.
6. The investigations referred to above are collectively referred to in this Report as the **Investigation**.
7. I have had carriage of the Investigation since March 2010.
8. I have prepared this Report in accordance with section 284 of the SIS Act.
9. This Report is now being prepared as:
 - a) in October 2013 APRA concluded its planned enforcement action arising from the Investigation in relation to former directors of Trio;
 - b) in late 2014 ACT Super Management Pty Limited ACN 073 947 690 (**ACT Super**), as acting trustee of the Trio Superannuation Entities, decided not to submit an application seeking financial assistance under Part 23 of the SIS Act for losses sustained by the Trio Superannuation Entities in relation to the investment in Silverhall Residential Property Holdings Pty Limited (now known as Ualan Property Holdings Pty Limited) ACN 111 842 543 (in liquidation) (**SRPH**);
 - c) in May 2015 the liquidators of Trio published reports indicating that their investigations are finalised, there are no further expected recoveries and steps will be taken to wind up Trio and various managed investment schemes that it operated within the next 6 months; and

- d) ACT Super is taking steps to finalise the winding up of the Trio Superannuation Entities.
10. Given that APRA's concerns were resolved by the acceptance by APRA of enforceable undertakings from 13 individuals who were former directors Trio during the Relevant Period and Trio was suspended and later removed as Trustee of the Trio Superannuation Entities, it has not been necessary to make any findings in this Report, including any findings of contraventions by Trio or any individuals.
 11. Pursuant to section 283(1) of the SIS Act, copies of the transcripts of the examinations of individuals conducted pursuant to section 270(d) of the SIS Act, details of which are set out at Annexure 3, are attached to this Report.
 12. Pursuant to section 284(3) of the SIS Act a copy of this Report will be provided to ACT Super as acting trustee of the Trio Superannuation Entities.
 13. Pursuant to section 284(4) of the SIS Act a copy of this Report will be given to the Australian Securities and Investments Commission (ASIC).

B. Executive Summary

14. At the time of its collapse in December 2009 Trio was a trustee holding a registrable superannuation entity (RSE) licence under the SIS Act. Trio was also the holder of an Australian Financial Services Licence (AFSL) issued by ASIC which authorised it, as a responsible entity, to operate managed investment schemes registered under the *Corporations Act 2001* (Corporations Act).
15. Trio, and a number of companies associated with Trio, have been placed in administration or liquidation, or have been wound up. The Trio collapse has also been the subject of intense public and government scrutiny.

The Investigation

16. APRA commenced the Investigation in October 2009. Shortly after commencing the Investigation, APRA froze the assets of the Trio Superannuation Entities. In December 2009 APRA removed Trio as the trustee of the Trio Superannuation Entities and appointed ACT Super as acting trustee.
17. The Investigation was a complex investigation and a major undertaking, with APRA's planned enforcement action in relation to former directors of Trio proceeding for over four years. It involved significant internal APRA and external resources as well as close liaison with other regulatory agencies such as ASIC, various liquidators including the liquidators of Trio, and ACT Super as acting trustee. The complexity of the Investigation was heightened by the dual role played by Trio as trustee of superannuation entities and responsible entity of managed investment schemes, as well as the complex investment structure adopted by Trio.

Focus of the Investigation

18. In conducting the Investigation APRA focussed on the conduct of Trio in its capacity as trustee of the Trio Superannuation Entities and PPPST. ASIC's investigation, consistent with its remit, focussed on the conduct of Trio in its capacity as responsible entity, as well as other areas such as the conduct of the investment manager of the Astarra Strategic Fund ARSN 115 962 368 (formerly the Alpha Strategic Fund) (ASF), financial planners and the ASF auditor.
19. The Investigation focussed on six investments made by Trio, on behalf of members of the Trio Superannuation Entities and the PPPST, in parties that were related to Trio and totalled approximately \$150 million.

20. As reported by ACT Super and Stephen Parbery, Nicholas Martin and Mark Robinson of PPB Pty Limited ACN 130 343 252 trading as PPB Advisory (**PPB**) (as liquidators of Trio) in the updates to members and unitholders, all of the money invested in the:
- a) ASF;
 - b) Exploration Fund Limited (formerly known as Huntleigh Investment Fund Limited) (**EFL**);
 - c) MARQ Property Trust (now known as Ualan Property Trust) (**MARQ Property Trust**);
 - d) SRPH; and
 - e) Professional Pensions ARP Limited, a company incorporated in the British Virgin Islands (**PPARP**), was lost or unable to be recovered. ACT Super has reported that the Millhouse IAG Private Equity Trust No 1 ABN 87 177 977 093 (**MPET1**) and Millhouse IAG Private Equity Trust No 2 ABN 14 646 639 266 (**MPET2**) investments are close to being finalised and it is not expected that there will be any returns to investors. It was determined by the relevant Minister for the purposes of the SIS Act in granting financial compensation that funds invested in the ASF were lost due to fraudulent conduct.
21. APRA's focus in the Investigation was on both the conduct of Trio as a corporate trustee and the conduct of individual directors of Trio, covering a six year period from November 2003 to December 2009. This focus on individual directors was consistent with the SIS Act provisions, which APRA administers, in regard to trustee director responsibilities. These trustee director responsibilities impose obligations on individual directors to exercise a reasonable degree of care and diligence to ensure that Trio met its covenants in respect of its role as trustee in the course of Trio's operations and management, including the making of investment decisions.

Outcome of the Investigation

22. As a result of the Investigation, APRA identified concerns that Trio had failed to conduct adequate due diligence in relation to the Related Party Investments (as defined later in this Report), made the investments on terms that were more favourable to the related parties than had the investments been at arm's length and failed to adequately monitor the performance of the investments. APRA also identified concerns that Trio's directors failed in their duties and functions under the SIS Act, and did not act in the best interest of members.
23. As a result of the Investigation, APRA accepted enforceable undertakings from 13 individuals who were Trio directors during the Relevant Period in lieu of commencing disqualification proceedings. The enforceable undertakings effectively removed these individuals from holding senior roles in the APRA-regulated superannuation industry for various periods of between 3 years 6 months and 15 years, with one of these enforceable undertakings having no expiry date.
24. The acceptance of the enforceable undertakings from Trio's former directors was considered to be an effective regulatory response and an appropriate alternative to court based disqualification proceedings as it allowed APRA to achieve a more expeditious, certain and cost-effective resolution of its concerns.

Part 23 Applications for Financial Assistance

25. In 2011 and 2012, pursuant to Part 23 of the SIS Act, the Minister determined grants of financial assistance of approximately \$55 million and \$16.7 million respectively, totalling \$71.7 million, for losses associated with the investments by the Trio Superannuation Entities in the ASF as a result of fraudulent conduct.

26. In August 2012 and April 2014 ACT Super prepared a draft application seeking financial assistance under Part 23 for losses by the Trio Superannuation Entities relating to SRPH. APRA did not support that draft application as, unlike the ASF losses, the SRPH losses were not clearly related to fraud, but, in APRA's view, were the result of poor business decisions. ACT Super decided not to submit the application to the Minister.

C. Background

27. Trio was incorporated on 5 March 1975.
28. In 1998, prior to the establishment of APRA, the Insurance and Superannuation Commission (ISC) approved Trio to act as a trustee under the SIS Act.
29. On or around 5 November 2003 the ownership structure of Trio changed. The company was purchased by entities associated with Shawn Richard and David Millhouse among others. Unlike in the banking, general and life insurance industries, approval of the Treasurer, or APRA as the Treasurer's delegate, is not required for a substantial change in ownership or control of an RSE Licensee.¹
30. From 5 November 2003, and during the Relevant Period, Trio was the trustee of the Trio Superannuation Entities.
31. A list of persons who were directors of Trio during the Relevant Period is at Annexure 1.
32. Trio was the trustee of the PPPST from 11 June 2004.
33. Trio was also the holder of an AFSL issued by ASIC which authorised it, as a responsible entity, to operate managed investment schemes registered under the Corporations Act. When the Investigation commenced, Trio was the responsible entity of 24 registered managed investment schemes. Set out at Annexure 2 is a list of the Trio managed investment schemes that were relevant to the Investigation.
34. Following the introduction of RSE licensing requirements for trustees of RSEs, APRA granted Trio an RSE Licence under section 29D of the SIS Act on 22 May 2006.
35. The PPPST ceased to be a pooled superannuation trust within the meaning of the SIS Act on 2 July 2007. Units in the PPPST (which was renamed ARP Sub-Trust No 1) were transferred to the ARP Growth Fund ARSN 112 315 036 (**ARP Growth Fund**), and the majority of unitholders in the PPPST were issued units in the ARP Growth Fund.

D. Conduct of the Investigation

Commencement of the Investigation and initial action

36. ASIC commenced an investigation of the affairs of Trio on 2 October 2009. ASIC's investigation included the operation of the ASF and the affairs of Astarra Asset Management Pty Limited ACN 113 940 953 (in liquidation) (**AAM**).
37. On 16 October 2009, ASIC issued a stop order in relation to the product disclosure statements for ASF, Astarra Conservative Fund, Astarra Balanced Fund, Astarra Growth Fund, Astarra Covered Call

¹ The *Financial Sector (Shareholdings) Act 1998* limits an entity's holding in an authorised deposit-taking institution, general insurer or life insurer (or holding company of one of these) to 15% unless approved by the Treasurer or APRA as the Treasurer's delegate.

Fund and Astarra International Covered Call Fund, which were managed investment schemes operated by Trio. Further details of these funds are set out in Annexure 2.

38. Also on 16 October 2009, APRA commenced the Investigation pursuant to section 263(1) of the SIS Act into the whole of the affairs of the Trio Superannuation Entities. The Investigation was expanded to include the whole of the affairs of the PPPST on 25 October 2011. In conducting the Investigation APRA focussed on the conduct of Trio in its capacity as trustee of the Trio Superannuation Entities and the PPPST, as well as the conduct of individual directors of Trio.
39. APRA commenced the Investigation as it appeared to APRA that Trio may have contravened the SIS Act, including in relation to investments made by the Trio Superannuation Entities in the ASF and the EFL. The concerns of APRA included that Trio had not conducted adequate due diligence in relation to the Related Party Investments (as defined later in this Report) and was not able to provide adequate valuations of the investments.
40. On 21 October 2009, APRA issued directions pursuant to section 264(3) and 264(4) of the SIS Act to Trio and Astarra Funds Management Pty Limited ACN 098 220 467 (in liquidation) (AFM) to freeze the assets of the Trio Superannuation Entities. These directions to freeze assets were extended on a number of occasions. APRA also issued notices, under sub-regulation 6.36(2) of the *Superannuation Industry Supervision Regulations 1994*, of suspension of the obligations of the trustee to roll over or transfer amounts under regulation 6.34. The effect of the directions and notices was to preclude the Trio Superannuation Entities from accepting contributions and rollovers, making benefit payments or transfers to other funds or allowing investment switching.
41. On 21 October 2009, ASIC issued a stop order on the product disclosure statements for ASP, APPP, MRP and three related sub-funds of MRP. The effect of the stop orders was to prevent new issues of interests in the schemes and superannuation funds to investors.
42. On 16 December 2009, APRA suspended Trio as the trustee of the Trio Superannuation Entities pursuant to section 133(1) of the SIS Act for a period of six months. As noted in APRA's media release dated 17 December 2009, APRA suspended Trio as a result of numerous breaches of the conditions of its RSE Licence. This suspension was subsequently extended until 16 June 2010. Trio was removed as trustee of the Trio Superannuation Entities on 16 June 2010 pursuant to section 133(1) of the SIS Act.
43. On 16 December 2009, APRA appointed ACT Super as acting trustee of the Trio Superannuation Entities for a period of six months pursuant to section 134(1) of the SIS Act. Pursuant to section 138(1) of the SIS Act, APRA vested the assets of the Trio Superannuation Entities in ACT Super. ACT Super was reappointed as acting trustee on 16 June 2010 pursuant to section 134(2) of the SIS Act and will hold that position until the position of trustee is no longer required when the Trio Superannuation Entities have been wound up.
44. The role of an acting trustee under the SIS Act is to replace a trustee suspended or removed by APRA. On appointment, ACT Super became responsible for all of the operations of the Trio Superannuation Entities. Some of the key activities ACT Super has performed in regard to the Trio Superannuation Entities include the preparation and submission of Part 23 applications, winding up and rolling over members balances to new superannuation funds, and ongoing communications with members and regulators.
45. At the time of appointment of ACT Super as acting trustee, APRA issued a media release dated 17 December 2009 which noted that:
 - a) total assets under management by the Trio Superannuation Entities and registered managed investment schemes, for which Trio was the responsible entity, had a book value of approximately \$426 million; and

- b) of the total of \$426 million, the Trio Superannuation Entities held assets that had a book value of approximately \$300 million on behalf of approximately 10,000 superannuation members.

The book value of these assets included the capital invested by members in the various investments and reported returns.

- 46. On 17 December 2009 ASIC suspended the AFSL held by Trio.

Scope of the Investigation

- 47. I had carriage of the Investigation on behalf of APRA from March 2010, and was appointed Inspector on 23 August 2010 so as to conduct examinations pursuant to section 270 of the SIS Act.

Related Party Investments

- 48. The Investigation focussed on six investments made by Trio, on behalf of members of the Trio Superannuation Entities and the PPPST, in parties that were related to Trio and totalled approximately \$150 million, namely:

- a) the ASF;
- b) the EFL;
- c) MARQ Property Trust;
- d) MPET1 and MPET2;
- e) SRPH; and
- f) PPARP;

collectively referred to in this Report as the **Related Party Investments**.

- 49. As reported by ACT Super and PPB in updates to members and unitholders, all of the money invested in the ASF, EFL, MARQ Property Trust, SRPH and PPARP was lost or unable to be recovered. ACT Super also reported in a significant event notice dated 23 October 2014 that MPET1 and MPET2 investments are close to being finalised and it is not expected that there will be any returns to investors. It was determined by the relevant Minister for the purposes of the SIS Act in granting financial compensation that funds invested in the ASF were lost due to fraudulent conduct.

Period of conduct

- 50. APRA focussed on the Related Party Investments covering a six year period from November 2003 to December 2009. As noted further below, the Investigation:
 - a) initially focussed on the conduct in the period from January 2006 to December 2009 in respect of investments made in the ASF and the EFL; and
 - b) later focussed on the conduct in the period from November 2003 to December 2005 and also on the other investments, namely MARQ Property Trust, MPET1, MPET2, SRPH and PPARP.

Focus on Trio as trustee and Trio's directors

- 51. The Investigation focussed on the conduct of Trio as a corporate trustee of the Trio Superannuation Entities and PPPST as well as the conduct of individual directors of Trio. In particular, APRA considered whether the individual directors had met the covenants imposed pursuant to section 52(8) of the SIS Act (as it was in force during the Relevant Period) to exercise a reasonable degree of care and diligence for the purposes of ensuring that Trio met its covenants in respect of its role as trustee

in the course of Trio's operations and management. This included the decisions to place funds on behalf of the Trio Superannuation Entities and the PPPST in the Related Party Investments.

Material gathered during the Investigation

52. During the course of the Investigation, APRA gathered information from a number of different sources and means. APRA exercised a range of investigation powers under the SIS Act, including:
 - a) issuing approximately 80 notices requiring production of books pursuant to section 269 of the SIS Act. In excess of one million documents were produced in response to these notices;
 - b) issuing nine notices requiring reasonable assistance pursuant to section 270(c) of the SIS Act;
 - c) conducting 24 examinations of individuals pursuant to section 270(d) of the SIS Act; and
 - d) conducting interviews with other relevant people.
53. APRA also gathered a range of relevant information and documents from ASIC, ACT Super and PPB.
54. In its investigation of Trio, ASIC had obtained numerous documents through its compulsory powers to obtain documents. ASIC also conducted a number of compulsory examinations of relevant people under section 19 of the *Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act)*. APRA and ASIC exchanged relevant information and documents relating to the Investigation in accordance with each agency's legislative framework and the applicable Memorandum of Understanding between APRA and ASIC.
55. APRA worked closely with, and received information from, ACT Super during the Investigation. ACT Super ascertained amounts invested by Trio in related party transactions and the values ascribed to those investments. ACT Super provided extensive material in support of applications for financial assistance under Part 23 of the SIS Act. Between November 2011 and March 2012 ACT Super conducted examinations of 14 individuals, including former directors of Trio, to gather information for the purposes of determining whether an application for financial assistance should be made in relation to the losses in the investment in SRPH.
56. On 16 December 2009 Neil Singleton, Stephen Parbery and Nicholas Martin of PPB were appointed joint liquidators of Trio (referred to in this Report as **PPB**). As liquidators, PPB maintained responsibility for 24 registered managed investment schemes of which Trio was responsible entity, including the ASF. In July 2010, PPB conducted public examinations. PPB also conducted public examinations of a number of individuals jointly with ACT Super between November 2011 and March 2012. PPB also conducted further public examinations in December 2012 to gather information for the liquidation.
57. APRA also obtained information relevant to the Investigation from the applications submitted in October 2010 and May 2012 by ACT Super to the Minister seeking grants of financial assistance under Part 23 of the SIS Act for losses relating to the ASF. The applications were lengthy documents and included extensive supporting material.
58. While APRA was conducting the Investigation there was also a concurrent government inquiry which culminated in the publication of the following reports:
 - a) in May 2012 a Parliamentary Joint Committee published a report on its *'Inquiry into the collapse of Trio Capital'*; and
 - b) in April 2013 the Treasury published a report titled *'Review of the Trio Capital fraud and assessment of the regulatory framework'*.

Complexity of the Investigation

59. The Investigation was a complex investigation and involved significant internal APRA and external resources. APRA's planned enforcement action in relation to former directors of Trio proceeded for over four years. The complexity of the Investigation was heightened by a number of factors including:
- a) the dual role played by Trio as trustee of the Trio Superannuation Entities and as responsible entity of managed investment schemes;
 - b) the complex investment structure adopted by Trio, in which the Trio Superannuation Entities made investments through many, and in some cases multiple, managed investment schemes operated by Trio;
 - c) the nature, extent and complexity of the various related party relationships involved in the Related Party Investments;
 - d) the length of the period to be considered, namely a six year period from November 2003 to December 2009;
 - e) the need for concurrent investigations to be conducted by both APRA and ASIC, given the dual trustee and responsible entity role that Trio had and the range of potential contraventions under the SIS Act and the Corporations Act. The management of these concurrent investigations required coordination and close collaboration with ASIC;
 - f) the review and analysis of the transcripts and material arising from the extensive public examinations conducted by ACT Super as acting trustee and PPB as liquidators of Trio, which included the examinations of individuals who were also examined by APRA and which traversed issues that were also focussed on during the Investigation; and
 - g) the appointment of liquidators to many of the parties involved with the Related Party Investments, with the associated difficulties in identifying and accessing company records.

E. APRA's concerns

60. During the Investigation APRA identified concerns that Trio and its directors may have contravened the SIS Act. In particular, APRA identified concerns that the directors had failed to comply with sections 52, 55 and 109 of the SIS Act².

Relevant legislative provisions

61. Section 52 of the SIS Act imposed covenants on Trio to:
- a) exercise, in relation to all matters affecting the Trio Superannuation Entities and the PPPST, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with the property of another for whom the person felt morally bound to provide (section 52(2)(b)); and
 - b) perform its duties and exercise its powers in the best interests of the beneficiaries of the Trio Superannuation Entities and the PPPST (section 52(2)(c)).

² Legislative references in Section E of this Report are to the various sections of the SIS Act that were in force during the Relevant Period.

62. Pursuant to section 52(8) of the SIS Act, each of the directors of Trio was subject to a covenant to exercise a reasonable degree of care and diligence for the purposes of ensuring that Trio carried out the covenants referred to in section 52(2), including those covenants referred to in the preceding paragraph.
63. A contravention of the covenants referred to in section 52 constitutes a contravention of section 55(1) of the SIS Act.
64. Section 109 of the SIS Act prohibited Trio from making or maintaining investments unless:
 - a) Trio dealt with the other party to the transaction at arm's length: section 109(1)(a); or
 - b) if the other party was not at arm's length, Trio dealt with the other party on terms that were no more favourable than if the parties were dealing at arm's length: section 109(1)(b) and 109(1A).
65. Sections 109(1) and 109(1A) are civil penalty provisions as defined by section 193 of the SIS Act. Sections 196 and 202 provide for civil and criminal consequences for contravening or being involved in a contravention of sections 109(1) and 109(1A) of the SIS Act.
66. Under section 194 of the SIS Act, a person who is involved in a contravention of a provision of the SIS Act is taken to have contravened that provision.

Investments with parties related to Trio

67. APRA's concerns related to decisions made by the Trio directors to invest funds on behalf of the Trio Superannuation Entities and the PPPST in the six Related Party Investments that totalled approximately \$150 million.
68. Details of how these parties were related to Trio are set out in the Enforceable Undertakings accepted by APRA which are listed at Annexure 1 and are summarized below:
 - a) ASF: Mr Richard, the CEO and director of AAM, the appointed investment manager for the ASF, was through a series of corporate entities, the ultimate owner of Trio;
 - b) EFL: Mr Richard, the CEO and director of the delegated investment manager of the EFL, Wright Global Investments Pty Limited ACN 097 478 487 (in liquidation) (**WGI**), was the owner of Trio and a director of Trio at the time investments were made in the EFL;
 - c) MARQ Property Trust: Mr Cameron Anderson and Mr Michael Anderson were directors of Marq Property Pty Limited ACN 121 576 163 (**Marq Property**), which was the trustee of MARQ Property Trust and also directors of Marq Capital Pty Limited ACN 113 913 474 (**Marq Capital**), which was the authorised representative of WGI for the purpose of accepting the PPPST's investments;
 - d) MPET1 and MPET2:
 - i) Mr Millhouse was a director of Trio at the time investments were made in MPET1 and MPET2;
 - ii) Astarra Nominees (Australia) Pty Limited ACN 003 983 917 (in liquidation), (**Astarra Nominees**) and Astarra Securities Pty Limited ACN 109 078 319 (in liquidation) (**Astarra Securities**), acted as trustees of MPET1 and MPET2 respectively, and WGI acted as investment manager;
 - iii) Millhouse IAG Limited ACN 091 881 097 (in liquidation) (**MIAG**) acted as an authorised representative of WGI for the purposes of the MPET1 and MPET2, and Mr Millhouse was a director of MIAG; and
 - iv) Various of the Trio directors were directors of Astarra Nominees and Astarra Securities;
 - e) SRPH:
 - i) Mr Cameron Anderson, Mr Michael Anderson and Mr Richard were directors of SRPH at the time investments were made in SRPH;

- ii) Mr Cameron Anderson and Mr Michael Anderson were also directors of various subsidiary project companies of SRPH;
 - iii) Trio appointed WGI and Silverhall Asset Management Pty Limited ACN 108 352 441 (now known as ACN 108 352 441 Pty Limited) (in liquidation) (**SAM**) as investment managers for SRPH and SAM was appointed as authorised representative of WGI for the purpose of undertaking investments by Trio into SRPH;
 - iv) Mr Cameron Anderson, Mr Michael Anderson and Mr Hallinan were directors of SAM;
- f) PPARP:
- i) PST Management Pty Limited ACN 077 522 242 (in liquidation) (**PSTM**) was the authorised representative of WGI, which was the investment manager of the PPPST; and
 - ii) Mr Paul Anthony Gresham (now known as Tony Maher) was a director of PSTM, a director of PPARP and had made recommendations to the Trio Board regarding investing the PPPST into PPARP.

APRA's concerns

69. In respect of the Related Party Investments and as a result of the Investigation, APRA identified concerns in respect of decisions by Trio to make and maintain these investments and failures to cause Trio to cease or redeem the investments. This included concerns that:
- a) the investments had been made on the basis of insufficient due diligence and in the absence of independent recommendations;
 - b) the investments were not at arm's length and were on terms more favourable to related parties than would reasonably be expected had they been at arm's length; and
 - c) there was inadequate monitoring in connection with the performance of the related party investment managers and in respect of the related party investments.
70. In light of the above, APRA identified concerns that Trio and its directors may have contravened sections 52, 55 and 109 of the SIS Act and did not act in the best interests of members.
71. Further particulars of APRA's concerns in relation to each of the Related Party Investments and the manner in which each individual director may have failed to comply with their duties as a director of a superannuation trustee are set out in the Enforceable Undertakings accepted by APRA. These are listed at Annexure 1 and can be found on APRA's public website at www.apra.gov.au.

F. Regulatory action by APRA

72. Under section 126H(1) of the SIS Act, APRA may apply to the Federal Court of Australia (**Federal Court**) for an order to disqualify an individual from being or acting in certain positions in relation to superannuation entities if:
- a) that person contravened the SIS Act; and/or
 - b) was a responsible officer of a body corporate at the time the body corporate contravened the SIS Act.
73. APRA may accept an enforceable undertaking under section 262A of the SIS Act as an alternative to applying to the Federal Court for a disqualification order under section 126H of the SIS Act. APRA will only accept an enforceable undertaking when it believes that doing so will achieve an effective and appropriate regulatory outcome having regard to the significance of the issues, the nature and seriousness of the alleged contraventions or failures, and if APRA believes the undertaking will be complied with.

74. In response to APRA's concerns, APRA accepted enforceable undertakings from 13 individuals who were directors of Trio during the Relevant Period as an alternative to the commencement of proceedings in the Federal Court for disqualification orders in each case. A list of Trio directors during the Relevant Period and, where relevant, the enforceable undertakings they provided to APRA, is set out at Annexure 1. The enforceable undertakings effectively removed these individuals from holding senior roles in the APRA-regulated superannuation industry for various periods of between 3 years six months and 15 years, with one of these enforceable undertakings having no expiry date.
75. The Investigation was initially focussed on the conduct of Trio directors from January 2006 to December 2009 in respect of investments made in the ASF and the EFL.
76. Between July 2011 and March 2012, six former Trio directors offered, and APRA accepted, enforceable undertakings precluding them from holding specified roles in the superannuation industry for varying periods.
77. The Investigation then focussed on the conduct of earlier Trio directors and also on the other investments, namely MARQ Property Trust, MPET1, MPET2, SRPH and PPARP.
78. In respect of these matters, seven other former Trio directors (including David Millhouse) offered, and APRA accepted, enforceable undertakings between March 2012 to October 2013 in relation to the relevant investments of concern.
79. Initially David Millhouse was not prepared to offer an enforceable undertaking to APRA. On 12 August 2013, APRA commenced proceedings in the Federal Court seeking disqualification orders in respect of Mr Millhouse under section 126H of the SIS Act. Ultimately, on 29 October 2013, Mr Millhouse decided to offer an enforceable undertaking, which APRA accepted in lieu of pursuing the Federal Court proceedings.
80. Some of the Trio directors on the board during the Relevant Period did not provide APRA an enforceable undertaking. In respect of these directors:
- a) Mr Richard was incarcerated on 12 August 2011 for dishonesty offences and is thereby already a 'disqualified person' under section 120 of the SIS Act;
 - b) Stephen Harrison and Ian Johnson left the Trio board prior to the making of the decisions to invest in the Related Party Investments of concern;
 - c) at the time the Investigation commenced, Matthew Littauer and Michael Grace were deceased; and
 - d) Robert Horgan was a director of Trio for approximately 2 and a half months from 17 December 2004 to 9 March 2005. Despite extensive searches, APRA could not locate Mr Horgan and it is believed that he resides overseas. Should APRA become aware that Mr Horgan has returned to Australia and is seeking appointment to a senior role in an APRA-regulated institution, APRA will consider whether any regulatory action should be taken in relation to Mr Horgan.
81. Apart from the Trio directors referred to in the preceding paragraph, all Trio directors who were on the board during the Relevant Period have entered into enforceable undertakings with APRA.

G. Outcome of Investigation

82. The enforceable undertakings accepted by APRA from the 13 former directors of Trio are appropriate resolutions of the matters between these former directors and APRA. The enforceable undertakings remove from the industry, for specified periods of time, individuals in respect of whom APRA had identified concerns that they had not met the standards expected of directors of corporate trustees responsible for regulated superannuation entities.

83. The acceptance of enforceable undertakings as an alternative to court based disqualification proceedings allowed APRA to achieve a more expeditious, certain and cost-effective resolution of its concerns.
84. APRA also procured undertakings from the former Trio directors that, prior to seeking any senior role in the future, the individual will complete a course or training relating to the duties of a trustee of an RSE, including the duties imposed pursuant to the SIS Act and best practice in managing investments and investment managers. In addition to complying with this undertaking, should any of the former directors seek an appointment to an APRA-regulated institution, they will also need to meet the fit and proper requirements imposed on all individuals that hold positions of responsibility in APRA-regulated institutions pursuant to Prudential Standards CPS 520/SPS 520 *Fit and Proper*.
85. In summary the regulatory outcomes achieved through the Investigation were as follows:
 - a) Trio was removed as trustee of the Trio Superannuation Entities, and ACT Super was appointed as acting trustee;
 - b) Trio's assets were frozen to protect members' interests;
 - c) the Minister granted financial assistance to members of the Trio Superannuation Entities under Part 23 of the SIS Act in relation to losses associated with the ASF; and
 - d) 13 former Trio directors entered into enforceable undertakings with APRA, acknowledging APRA's concerns and agreeing not to hold specific roles in the industry for appropriate periods.

H. Regulatory action by ASIC

86. ASIC regulates Australian companies, financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit-taking and credit. Consistent with its remit, ASIC's investigation focussed on the conduct of Trio in its capacity as responsible entity, as well as other areas such as the conduct of the ASF investment manager, financial planners and the ASF auditor.
87. As a result of ASIC's investigation, a number of people have either been jailed, banned from providing financial services, disqualified from managing companies or have agreed to remove themselves from the financial services industry for various periods. Further details of action taken by ASIC in respect of Trio can be found on ASIC's website www.asic.gov.au.

I. Part 23 applications for financial assistance

Part 23 of the SIS Act

88. Pursuant to section 227 of the SIS Act, the object of Part 23 is to make provision for the grant of financial assistance to certain superannuation entities that have suffered loss as a result of fraudulent conduct or theft.
89. Under the SIS Act a 'pooled superannuation trust' and a 'self-managed superannuation fund' are not eligible to make a Part 23 application for assistance.
90. Under section 230A of the SIS Act, the Minister is required to seek advice from APRA in relation to a Part 23 application.

ACT Super ASF application October 2010

91. In October 2010, ACT Super submitted an application seeking a grant of financial assistance under Part 23 of the SIS Act for losses sustained by the relevant Trio Superannuation Entities arising from the investment in the ASF.
92. On 8 December 2010, ACT Super published a significant event notice which noted that prior to its appointment as acting trustee, the ASF was reported as having a value of approximately \$125 million. ACT Super estimated that the Trio Superannuation Entities owned just under half of the units issued in the ASF.
93. ACT Super estimated that the Trio Superannuation Entities had suffered an eligible loss of \$55 million. On 30 October 2012, ACT Super published a significant event notice which noted that the application for compensation of \$55 million reflected:
 - a) The capital invested³ into the ASF by the ASP, APPP, EFNSW and MRP;
 - b) A reasonable return on the capital invested, represented by the 10 year Australian Government bond rate;
 - c) The costs associated with investigating the activities of Trio and the preparation of the Part 23 application for financial assistance; and
 - d) Incidental costs that have been borne by the ASP, APPP, EFNSW and MRP that would not have occurred but for the fraudulent conduct or theft that led to ACT Super's appointment as acting trustee.
94. The Minister sought APRA's advice on the application in accordance with section 230A of the SIS Act. APRA supported the application and considered the Trio Superannuation Entities had suffered an 'eligible loss' as a result of fraudulent conduct or theft.
95. On 13 April 2011, the Minister determined the grant of financial assistance of approximately \$55 million, for losses associated with the investments by Trio superannuation members in the ASF and an allowance for costs of the acting trustee.

ACT Super ASF application May 2012

96. In May 2012, ACT Super submitted an additional application under Part 23 for a further \$16.7 million associated with the ASF, which comprised the following:
 - a) further losses to members;
 - b) incurred acting trustee costs; and
 - c) projected acting trustee costs and expenses.
97. APRA supported the application. In September 2012, the Minister determined a further grant of financial assistance of approximately \$16.7 million, making a total of approximately \$71.7 million.

SRPH draft applications August 2012 & April 2014

98. In August 2012, ACT Super prepared a draft application seeking financial assistance under Part 23 for losses relating to SRPH, which APRA reviewed in depth. As a consequence of APRA's comments on

³ In a significant event notice published by ACT Super on 13 April 2011 it was noted that this comprised the 'net contributions' made by members that were invested into the ASF; that is superannuation contributions less withdrawals, roll-overs or payments out from the ASF.

that draft application, ACT Super provided a further draft Part 23 application to APRA in April 2014. APRA did not support that draft application as, unlike the ASF losses, the SRPH losses were not clearly related to fraud but, in APRA's view, were the result of poor business decisions. ACT Super decided not to submit the application to the Minister.

99. On 24 November 2014, ACT Super published a significant event notice which noted that the SRPH investment was different to the ASF in that:
- a) although the entirety of the SRPH investment has now been lost, the original investments made by the Trio Superannuation Entities can, at least, be traced into a series of property developments in Australia;
 - b) market conditions in the Australian property market, in the 2008-2009 period in particular, contributed to the failure of the SRPH property investments;
 - c) no criminal proceedings were commenced against the directors of Trio (or any other party) in relation to SRPH; and
 - d) accordingly no admissions of civil or criminal liability have been elicited in relation to SRPH from any party.

Other ASF applications in 2011

100. In August 2011 the trustee of another RSE unrelated to Trio submitted an application seeking financial assistance for losses relating to the ASF totalling approximately \$64,000. APRA did not support the application on the basis that it did not meet the requirement of the SIS Act that the loss caused a substantial diminution of the fund leading to difficulties in the payment of benefits. The Minister did not grant the application.
101. In September 2011, the liquidator of a responsible entity of a managed investment scheme also unrelated to Trio submitted an application seeking financial assistance for losses relating to the ASF. APRA did not support the application as the loss was not suffered by a regulated superannuation fund, as is required by the SIS Act. The Minister did not grant the application.



Jennifer Balding
Inspector
Senior Manager - Resolution & Enforcement
APRA
7 April 2016

Definitions

In this Report, the following definitions are used:

AAM means Astarra Asset Management Pty Limited ACN 113 940 953 (in liquidation).

ACT Super means ACT Super Management Pty Limited ACN 073 947 690.

AFM means Astarra Funds Management Pty Limited ACN 098 220 467 (in liquidation).

AFSL means Australian Financial Services Licence.

APPP means Astarra Personal Pension Plan ABN 74 351 127 106.

APRA means the Australian Prudential Regulation Authority.

APRA Act means the *Australian Prudential Regulation Authority Act 1998*.

ARP Growth Fund means ARP Growth Fund ARSN 112 315 036, a managed investment scheme under the Corporations Act to which Trio acted as responsible entity.

APST means Astarra Pooled Superannuation Trust ABN 71 340 939 814.

ASF means Astarra Strategic Fund ARSN 115 962 368 (formerly the Alpha Strategic Fund), a managed investment scheme under the Corporations Act to which Trio acted as responsible entity.

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

ASIC means the Australian Securities and Investments Commission.

ASP means Astarra Superannuation Plan ABN 43 724 394 795.

Astarra Nominees means Astarra Nominees (Australia) Pty Limited ACN 003 983 917 (in liquidation), the trustee of Millhouse Private Equity Trust No 1.

Astarra Securities means Astarra Securities Pty Limited ACN 109 078 319 (in liquidation), the trustee of Millhouse Private Equity Trust No 2.

Corporations Act means the *Corporations Act 2001*.

EFL means the Exploration Fund Limited (formerly known as Huntleigh Investment Fund Limited).

EFNSW means Employers Federation of NSW Superannuation Plan ABN 31 061 350 115.

Federal Court means the Federal Court of Australia.

Investigation means the investigations commenced by APRA on 16 October 2009 in relation to the whole of the affairs of the Trio Superannuation Entities and on 25 October 2011 in relation to the whole of the affairs of the PPPST.

ISC means the Insurance and Superannuation Commission.

Marq Capital means Marq Capital Pty Limited ACN 113 913 474, an authorised representative of WGI.

Marq Property means Marq Property Pty Limited ACN 121 576 163, the trustee of the MARQ Property Trust.

MARQ Property Trust means MARQ Property Trust, now known as Ualan Property Trust, a property trust managed by Marq Capital.

MIAG means Millhouse IAG Limited ACN 091 881 097 (in liquidation), an authorised representative of WGI.

MPET1 means Millhouse IAG Private Equity Trust No 1 ABN 87 177 977 093.

MPET2 means Millhouse IAG Private Equity Trust No 2 ABN 14 646 639 266.

MRP means My Retirement Plan ABN 23 732 008 457.

PPARP means Professional Pensions ARP Limited, a company incorporated in the British Virgin Islands.

PPB means PPB Pty Limited ACN 130 343 252 trading as PPB Advisory.

PPPST means Professional Pensions Pooled Superannuation Trust ABN 27 659 128 466, a pooled superannuation trust registered under the SIS Act.

PSTM means PST Management Pty Limited ACN 077 522 242 (in liquidation), an authorised representative of WGI.

Related Party Investments means collectively the investments by the Trio Superannuation Entities and the PPPST in the ASF, the EFL, MARQ Property Trust, MPET1 and MPET2, SRPH and PPARP.

Relevant Period means the period from 5 November 2003 until 16 December 2009.

RSE means registrable superannuation entity under the SIS Act.

RSE Licence means a registrable superannuation entity licence under the SIS Act.

SAM means Silverhall Asset Management Pty Limited ACN 108 352 441 (now known as ACN 108 352 441 Pty Limited (in liquidation)), an authorised representative of WGI.

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

SRPH means Silverhall Residential Property Holdings Pty Limited (now known as Ualan Property Holdings Pty Limited) ACN 111 842 543 (in liquidation).

Trio means Trio Capital Limited ACN 001 277 256 (in liquidation), which was known as Tolhurst Capital Limited from 5 February 2002 until 6 May 2004; Astarra Capital Limited from 7 May 2004 until 30 September 2009; and Trio Capital Limited from 1 October 2009.

Trio Superannuation Entities means collectively:

- (a) Astarra Personal Pension Plan ABN 74 351 127 106 (**APPP**);
- (b) Astarra Pooled Superannuation Trust ABN 71 340 939 814 (**APST**);
- (c) Astarra Superannuation Plan ABN 43 724 394 795 (**ASP**);
- (d) Employers Federation of NSW Superannuation Plan ABN 31 061 350 115 (**EFNSW**); and
- (e) My Retirement Plan ABN 23 732 008 457 (**MRP**).

WGI means Wright Global Investments Pty Limited ACN 097 478 487 (in liquidation) AFSL No. 225058.

Annexure 1 - List of persons who were directors of Trio during the Relevant Period and Enforceable Undertakings accepted by APRA

Copies of the enforceable undertakings can be found on APRA's public website: www.apra.gov.au

Name of individual	Period of directorship	Date of APRA EU (if relevant)	Period in EU (if relevant)
Stephen James Harrison	6 September 1991 to 18 March 2004	Left Trio Board prior to Related Party Investments	N/A
Ian Meredith Johnson	17 January 2002 to 18 March 2004	Left Trio Board prior to Related Party Investments	N/A
Matthew Littauer	5 November 2003 to 2 December 2004	Deceased	N/A
Michael Grace	5 November 2003 to 17 December 2004	Deceased	N/A
Terrence Hallinan	5 November 2003 to 17 December 2004	27 June 2013	8 years
Lorenzo Patrick Macolino	5 November 2003 to 17 December 2004	28 June 2013	8 years
David Guy Millhouse	5 November 2003 to 12 October 2005	29 October 2013	10 years
Shawn Darrell Richard	5 November 2003 to 15 November 2005	N/A- 'disqualified person' under section 120 SIS Act	N/A
Cameron Patrick Anderson	5 November 2003 to 15 November 2005	4 July 2013	12 years
Robert William Horgan	17 December 2004 to 9 March 2005	Unable to be located; regulatory action will be considered if Mr Horgan returns to Australia and seeks appointment to a senior role in an APRA-regulated institution	N/A
John Alan Godfrey	4 February 2005 to 27 June 2007	5 March 2012	Unlimited
Michael James Anderson	24 March 2005 to 12 October 2005	4 July 2013	4 years

Rex-John Phillpott	12 October 2005 to 5 January 2010	6 September 2011	15 years
David Ronald Andrews	15 November 2005 to 15 January 2006 and 13 July 2006 to 18 January 2010	6 September 2011	10 years
Kurt William Groeneveld	15 November 2005 to 24 April 2007	17 October 2013	3 years 6 months
John Gerard Owen Harte	16 January 2006 to 31 May 2008	4 July 2013	4 years
Keith Rex Finkelde	24 April 2007 to 17 December 2009	19 September 2011	6 years
David O'Bryen	27 June 2007 to 17 December 2009	27 October 2011	5 years 6 months
Natasha Beck	18 June 2008 to 17 December 2009	1 July 2011	4 years

Annexure 2 - Table of the Trio Managed Investment Schemes relevant to the Investigation

No	Description
1	Asttar Wholesale Portfolio Service (formerly known as Astarra Property Pool and Tolhurst Property Pool) ARSN 092 297 526 (registered 26 April 2000)
2	Astarra Overseas Equities Pool (formerly known as Tolhurst Overseas Equities Pool) ARSN 092 296 850 (registered 26 April 2000)
3	Astarra Australian Equities Pool (formerly known as Tolhurst Australian Equities Pool) ARSN 092 301 347 (registered 26 April 2000)
4	ARP Growth Fund (formerly known as Absolute Covered Call Fund and Astarra Covered Call Fund) ARSN 112 315 036 (registered 4 January 2005)
5	Astarra Conservative Fund (formerly known as Astarra Diversified Fund Number 1 Pool and Tolhurst Diversified Fund Number 1 Pool) ARSN 092 298 130 (registered 26 April 2000)
6	Astarra Balanced Fund (formerly known as Astarra Diversified Fund Number 2 Pool and Tolhurst Diversified Fund Number 2 Pool) ARSN 092 301 132 (registered 26 April 2000)
7	Astarra Growth Fund (formerly known as Astarra Diversified Fund Number 3 Pool and Tolhurst Diversified Fund Number 3 Pool) ARSN 092 298 005 (registered 26 April 2000)
8	Asttar Portfolio Service (formerly known as Astarra Diversified No 4 Pool and Tolhurst Diversified No 4 Pool) ARSN 092 297 311 (registered 26 April 2000)
9	Astarra Strategic Fund (formerly known as the Alpha Strategic Fund) ARSN 115 962 368 (the ASF) (registered 9 September 2005)
10	MARQ Capital Diversified Direct Property Fund (formerly known as MARQ Capital Residential Property Fund and Astarra Residential Property Fund) ARSN 112 315 009 (registered 4 January 2005)
11	Millhouse IAG Private Equity Fund (formerly known as Astarra Private Equity Fund) ARSN 112 314 931 (registered 4 January 2005)
12	Astarra International Covered Call Fund ARSN 135 473 522 (registered 3 March 2009)

Annexure 3 - Examination Transcripts

[Copies of examination transcripts and details of the individuals who were examined have been removed from the public version of this Report.]



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