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## Disciplinary and Other NASD Actions

REPORTED FOR JANUARY

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this Notice is current as of the end of December 2003.

### Firm Expelled, Individual Sanctioned

Kesco Securities Corp. (CRD #104243, Ft. Myers, Florida) and Scott Fine (CRD #2303062, Registered Principal, Ft. Myers, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was expelled from NASD membership and Fine was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Fine sent limited partnership partners e-mails and caused Schedule K-1 partnership tax documents that were inaccurate to be issued to partners. The findings also stated that the firm, acting through Fine, provided inaccurate information to NASD during an examination regarding the schedule of transactions assigned to an investor in the limited partnership. NASD also found that the firm and Fine failed to respond to NASD requests for documents and testimony. (NASD Case #C07030080)

### Firms Fined, Individuals Sanctioned

Balfour Investors, Inc. (CRD #7382, New York, New York) and Carl Goldfarb (CRD #4263003, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$37,000, \$15,000 of which was jointly and severally with Goldfarb. Goldfarb was suspended from association with any NASD member in any capacity for nine months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Goldfarb, prepared substitute new account forms to replace missing account forms requested by NASD and provided them to NASD without affirmatively indicating that the forms were not original, that the names on the "preparer" signature lines had been added to some of the forms without authorization or consent of those whose names were added, and the firm and its personnel lacked documentary confirmation that the substitute forms contained the same customer information, investment objectives, and risk exposure information as contained on the missing forms. The findings also stated that the firm permitted individuals to act as limited representative-equity traders and to execute transactions without being so registered. NASD also found that the firm failed to preserve for a period of not less than three years, the first two in an accessible place, brokerage order memoranda and confirmations of those orders. In addition, NASD found that the firm failed to report to NASD's Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>SM</sup>) the firm's sell transactions in high-yield securities to public customers.

Goldfarb's suspension began January 5, 2004, and will conclude at the close of business October 4, 2004. (NASD Case #C10030103)

World Financial Capital Markets, Inc. (CRD #47747, New York, New York) and Frank Richard Bell (CRD #1425780, Registered Principal, Bradenton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$100,000—\$40,000 of which was jointly and severally with Bell—required not to post any research reports on its Web site for two years, and required to provide NASD with its revised Anti-Money Laundering (AML) Compliance Procedures within 30 days of the effective date of the AWC. The firm is also required to hire an outside consultant within 60 days of the effective date of the AWC to conduct independent testing to determine if the firm's AML procedures are in compliance with NASD Rule 3011, and to implement the consultant's recommendations no later than 30 days from the issuance of the consultant's findings and recommendations. Bell was barred from association with any NASD member in a principal capacity and suspended from association with any NASD member in any capacity for eight months.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm sold shares of a security to foreign customers through persons not registered with the firm. The findings also stated that none of the firm's registered representatives had contact with the customers prior to the transactions and failed to receive written authorization from the customers to accept the orders from unregistered persons. NASD also found that the firm, acting through Bell, knowingly accepted customer orders and recorded transactions in this manner, improperly exercising discretion in the customers' accounts, and created and maintained inaccurate books and records. In addition, the findings stated that the firm, at the direction of Bell, posted research reports on issuers that contained exaggerated, unwarranted, or misleading statements and failed to disclose material facts. Moreover, the findings stated that the firm's supervisory systems and procedures failed to adequately set forth procedures and systems reasonably designed to achieve compliance with federal securities laws and NASD rules regarding publishing and distributing research reports and the handling of customer orders placed by third persons or discretionary trading. Furthermore, the findings stated that the firm and Bell failed to establish and implement policies and procedures reasonably designed to detect and cause the reporting of suspicious transactions; failed to establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and implementing regulations thereunder; failed to provide for independent testing for compliance by member personnel or a qualified outside party; and failed to provide for ongoing training for appropriate personnel.

Bell's bar became effective November 24, 2003. Bell's suspension began January 5, 2004, and will conclude September 4, 2004. (NASD Case #CAF030057)

## Firms and Individuals Fined

Financial West Group (CRD #16668, Westlake Village, California) and Jeffrey Keith Rose (CRD #1008563, Registered Principal, Las Vegas, Nevada) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the firm and Rose consented to the described sanctions and to the entry of findings that the firm, acting through Rose, failed to report, and to timely report, reportable events including customer complaints. The findings also stated that the firm, acting through Rose, failed to amend Uniform Applications for Securities Industry Registration or Transfer (Forms U4) and a Uniform Termination Notice for Securities Industry Registration (Form U5) to reflect certain reportable events within 30 days after learning of the facts or circumstances regarding these events. The findings further stated that the firm, acting through Rose, failed to establish, maintain, and enforce written procedures identifying the individual(s) responsible for ensuring the timely filing of Rule 3070 reports and amendments to Forms U4 and U5. (NASD Case #C02030070)

Greystone Securities Corporation (CRD #37792, Springfield, Missouri) and Alan Kent Suiter (CRD #1217290, Registered Principal, Nixa, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$13,000, jointly and severally. Without admitting or denying the allegations, the firm and Suiter consented to the described sanctions and to the entry of findings that the firm, acting through Suiter, permitted registered representatives to perform duties as registered persons for compensation, while their registration status was inactive due to their failure to timely complete the Regulatory Element of NASD's Continuing Education Requirements. The findings also stated that the firm, acting through Suiter, failed to establish, maintain, and enforce written supervisory procedures designed to fulfill its obligation to comply with the Regulatory Element of NASD's Continuing Education Requirements. The findings further stated that the firm, acting through Suiter, participated in a private placement contingency offering, failed to deposit investor funds in an appropriate escrow account before the minimum contingency was met, and released funds to the issuer before the minimum contingency was met, rendering false and misleading the representations in the placement memorandum that investor funds would be released only if the minimum contingency was met and would be returned if it was not reached. (NASD Case #C04030063)

based on the findings that the respondents effected trades in a public customer's accounts by interpositioning their firm between the customer and the market and taking intra-day trading profits on riskless principal transactions. The findings stated that the respondents caused their member firm to send trade confirmations to a customer that failed to disclose the firm's intra-day trading profits on the transactions the respondents effected. The findings also stated that Martinez failed to give the customer best execution when he caused the firm to take trading profits on these principal trades, and failed to provide the customer with best execution when he executed trades at prices less favorable than the prevailing inter-dealer price at the time of the trade. The findings also included that the respondents failed to make and keep, or caused their firm to fail to make and keep, accurate records of each of the customer's orders showing the orders' terms and conditions. NASD found that Martinez reported or confirmed riskless principal transactions as principal transactions without submitting, or causing his firm to submit, either a clearing-order report with a capacity indicator of "riskless principal" or a non-tape, non-clearing report with a capacity indicator of "riskless principal."

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #CAF040052)

Hung The Nguyen (CRD #2532462, Registered Representative, Orlando, Florida) was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Nguyen reassociates with any NASD member following the suspension noted above, or before he requests relief from any statutory disqualification. The sanctions were based on the findings that Nguyen failed to disclose to his member firm his activities relating to an outside securities account. (NASD Case #E072004087801)

Frank Peter Quattrone (CRD #1312126, Registered Principal, Los Altos Hills, California). The United States Securities and Exchange Commission (SEC) set aside the NAC's decision barring Quattrone from association with any NASD member in any capacity for failing to appear for an on-the-record testimony. (NASD Case #CAF030008)

## Complaints Filed

NASD issued the following complaints. Issuance of a disciplinary complaint represents NASD's initiation of a formal proceeding in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Melissa A. Licht (CRD #4470617, Registered Representative, Pittsburgh, Pennsylvania) was named as a respondent in an NASD complaint alleging that she took blank checks pertaining to an account her supervisor owned, made the checks payable to herself for a total amount of \$8,500, forged her supervisor's signature on the checks, and endorsed and deposited them into her personal bank account without her supervisor's authorization or consent. The complaint alleges that Licht failed to respond to NASD requests for information. (NASD Case #2005002708301)

George Ellis Brown McMahon III (CRD #3055065, Registered Representative, Waldorf, Maryland) was named as a respondent in an NASD complaint alleging that he received checks from public customers for investment purposes, negotiated the checks but did not invest the money as the customers instructed. The complaint also alleges that McMahon failed to respond to NASD requests for information or documents. (NASD Case #2005003051001)

Scott Thomas Powers (CRD #2255877, Registered Representative, Danvers, Massachusetts) was named as a respondent in an NASD complaint alleging that he accepted a \$25,000 bank check from a public customer for investment purposes and deposited the funds into a bank account, but did not use the funds to purchase securities and has not repaid the customer. The complaint alleges that Powers failed to respond to NASD requests for information and documents. (NASD Case #2005002808001)

**Firms Expelled for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320**

May, Davis Group Inc.  
New York, New York  
(June 29, 2006)

World Financial Capital Markets Inc.  
(nka New World Financial, Inc.)  
Marbella, Spain  
(June 29, 2006)

**Firms Suspended Pursuant to NASD Rule 9553 for Failure to Pay Arbitration Fees**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Benson York Group, Inc.  
Melville, NY  
(July 5, 2006)

Stipek Securities, LLC  
Santa Anna, CA  
(July 5, 2006)

**Firm Suspended Pursuant to NASD Rule Series 9554 for Failure to Comply with an Arbitration Award or a Settlement Agreement**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Stipek Securities, LLC  
Santa Ana, California  
(July 18, 2006)

**Individuals Revoked for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320**

Christopher John Borgo  
Boca Raton, Florida  
(June 29, 2006)

Jeffrey Stuart Goldberg  
Hillside, New Jersey  
(June 29, 2006)

Marc Alan Levy  
Boynton Beach, Florida  
(June 29, 2006)

**Individuals Barred Pursuant to NASD Rule 9552(h)**

Russell Rodney Cloward  
West Jordan, Utah  
(July 24, 2006)

E. James Pritchett  
Metairie, Louisiana  
(July 31, 2006)

Claude St. Jean  
Tampa, Florida  
(July 31, 2006)

Richard Wolfe Weinberg  
Oxnard, California  
(July 17, 2006)

**Individuals Suspended Pursuant to NASD Rule 9552(d)**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Mohammed Kariuki Ali  
Hackensack, New Jersey  
(July 5, 2006)

Faith Yvette Dove  
Bronx, New York  
(July 31, 2006)

David Lee McMillan  
Bullhead City, Arizona  
(July 17, 2006)

Omar Rodriguez  
Perth Amboy, New Jersey  
(July 17, 2006)

**Individuals Suspended Pursuant to  
NASD Rule 9552(d)**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Richard Steven Blumstein  
Fort Lauderdale, Florida  
(July 7, 2008 – September 15, 2008)

Mark Allen Butler  
Chicago, Illinois  
(September 29, 2008)

John Joseph Callahan Jr.  
Lagrangeville, New York  
(September 2, 2008)

Charles Roland Douglass Jr.  
Union, South Carolina  
(September 8, 2008)

John Munsuk Lee  
Fort Lee, New Jersey  
(September 15, 2008)

Pamela Louise Mirabella  
Salem, Massachusetts  
(September 29, 2008)

Denise L. Wilms  
Eastpointe, Michigan  
(September 2, 2008)

**Individuals Suspended Pursuant to  
NASD Rule Series 9554 for Failure to  
Comply with an Arbitration Award or  
Settlement Agreement**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Christopher W. Becker  
Marlton, New Jersey  
(September 15, 2008)

Frank Richard Bell  
Bradenton, Florida  
(September 11, 2008)

Ernesto J. Casco  
Miami, Florida  
(September 11, 2008)

Thomas Anthony Gallo  
Shrewsbury, New Jersey  
(April 11, 2006 – September 17, 2008)

David Michael Homer  
Los Gatos, California  
(September 12, 2008)

Jose Rafael Mirabal  
Weston, Florida  
(September 11, 2008)

Genie Paul Ramos  
Jersey City, New Jersey  
(September 11, 2008)

David Alexander Ricca  
Clifton, New Jersey  
(September 11, 2008)

Joseph John Sherrick Jr.  
Mount Airy, Maryland  
(September 24, 2008)

Jason Scott Woessner  
Boca Raton, Florida  
(September 15, 2008)

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# Astarra Strategic Fund

## Monthly Return Report July 2009

Delivering  
results  
when it  
matters most!



### Performance Overview

The Astarra Strategic Fund ('ASF') July returns remained consistent with our objectives with Class A retail units returning 0.84% and Class B wholesale units up at 0.94%. Return streams continued smoothly with annualised risk / volatility from inception at 3.29% and 3.20% for A and B Class units respectively.

The story of the month was definitely the equities market with the S&P/ASX 200 up at 7.31% and the MSCI World ex Aust (Net Div) (AUD) up at 5.47%. In Australia all sectors had a good month with Materials, Industrials and Banks leading the way. Improving consumer and business confidence and some good news from the Fed kept the US markets on a positive.

Hedge Funds benefitted from equity strategies and continuing strength in the fixed income space delivering their best 7 months in 10 years. Lagging strategies included CTA/Managed Futures, Merger Arbitrage and Market Equity.

Astarra Asset Management our conservative approach may see us miss out on some of the upside from equity bounces but our commitment to a defensive approach to fixed income and equity strategies continues to meet our investor profiles for consistent positive returns at low to medium risk.

The Astarra Strategic Fund will not chase returns and shoot the lights out but will continue to manage and control portfolio risk and volatility. Our commentary focuses on market instability and unpredictability in these uncertain times.

### Percentage Returns

|                                      | Class A   | Class B   |
|--------------------------------------|-----------|-----------|
| APIR                                 | TOL0056AU | TOL0055AU |
| Unit Files                           | 100663    | 100663    |
| Cumulative Return since inception    | 47.24%    | 50.68%    |
| Rolling average since inception p.a. | 6.87%     | 6.55%     |
| 1 month                              | 0.84%     | 0.90%     |
| 3 months                             | 2.98%     | 3.15%     |
| 6 months                             | 6.14%     | 6.54%     |
| 1 year                               | 6.00%     | 6.77%     |
| 2 year average p.a.                  | 7.10%     | 7.83%     |
| 3 year average p.a.                  | 6.28%     | 6.20%     |
| Compounded monthly return            | 0.86%     | 0.92%     |
| Highest monthly return               | 8.58%     | 9.38%     |
| Negative months [Out of 45 months]*  | 3         | 3         |
| Annualised volatility @ 2005         | 3.29%     | 3.20%     |

### Performance History: % Net Returns

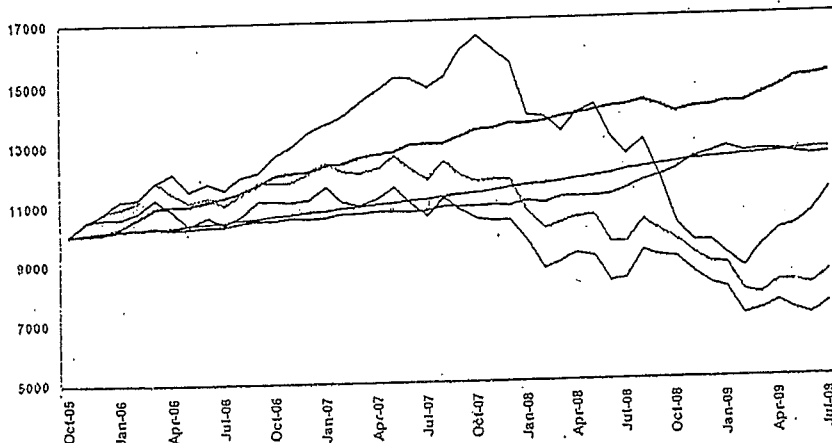
#### Class A: Retail

|       | Aug   | Sep    | Oct    | Nov   | Dec    | Jan   | Feb   | Mar   | Apr    | May   | Jun   | Jul   | Rolling average 12 months |
|-------|-------|--------|--------|-------|--------|-------|-------|-------|--------|-------|-------|-------|---------------------------|
| 08/09 | 1.05% | -1.24% | -1.76% | 1.00% | -0.18% | 0.67% | 0.07% | 1.64% | -1.34% | 2.09% | 0.03% | 0.84% | 6.00%                     |
| 07/08 | 0.02% | 0.54%  | 1.73%  | 0.28% | 0.17%  | 0.32% | 0.16% | 0.96% | 0.47%  | 0.63% | 0.52% | 0.25% | 8.21%                     |
| 06/07 | 1.26% | 2.26%  | 2.30%  | 0.67% | 0.36%  | 1.58% | 0.43% | 1.29% | 0.79%  | 0.66% | 1.81% | 0.19% | 14.44%                    |

#### 3: Wholesale

|       | Aug   | Sep    | Oct    | Nov   | Dec   | Jan   | Feb   | Mar   | Apr   | May   | Jun   | Jul   | Rolling average 12 months |
|-------|-------|--------|--------|-------|-------|-------|-------|-------|-------|-------|-------|-------|---------------------------|
| 08/09 | 1.10% | -1.19% | -1.68% | 1.06% | 0.24% | 0.72% | 0.12% | 1.67% | 1.48% | 2.15% | 0.08% | 0.90% | 6.77%                     |
| 07/08 | 0.07% | 1.59%  | 1.73%  | 0.38% | 0.09% | 0.21% | 0.51% | 1.02% | 0.53% | 0.96% | 0.52% | 0.30% | 13.50%                    |
| 06/07 | 1.31% | 2.30%  | 2.33%  | 0.74% | 0.45% | 1.62% | 0.49% | 1.33% | 0.84% | 0.71% | 1.82% | 0.25% | 15.11%                    |

ASF Growth of \$10K v Key Australian & Global Equity Indices  
October 2005 to July 2009



- Alpha Strategic Fund Wholesale (Class B Unit)
- UBS Bank Bank Bill Index
- UBS Comp All Mats
- MSCI World Ex Australia Net Div Reinv \$A
- Standard & Poors 500 Price Index (AS)
- S&P/ASX 300 Accumulation Index



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# Astarra Strategic Fund

## Monthly Return Report July 2009

Delivering  
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matters most!



### Is the turnaround in markets sustainable?

With many industry professionals now making the argument for a rebounding economy, nearly just as many are delivering a strong argument against such a reality. Unfortunately we will only confirm whose predictions are correct when history delivers the answer years from now.

Although many economic indicators seemed to have improved in recent months, one can't help but wonder whether our biggest economies can sustain this recovery after stimulus measures and easy-credit policies have run their course. Can governments and economies recover from the debt they have created?

To provide insight as to why this question will remain unanswered for a while, we thought we would display some of the perceived facts backing both arguments:

#### Sustainable recovery argument

- Recent improvements in many of the world's developed country's GDP figures
- Unemployment rate is falling
- Commodity prices have stabilised
- Recent better than expected rise in U.S. home sales
- Emerging economies showing signs of improvement
- Central banks maintaining stimulus and low interest rates



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#### Un-sustainable recovery argument

- Employment numbers and their future impact to the economy could be far worse than what is being reported
- Unprecedented level of US debt at 11 trillion and 13-14% of GDP
- Rising inflation and the risks of a double dip recession
- Small to medium size businesses cannot access credit
- No evidence of the lift in consumer spending as stimulus effect slows down.
- China's false economy and looming asset bubbles.

It is quite remarkable how both arguments present compelling evidence that would cause investors confusion as to the direction of future markets.

What is even more important to understand is the reality that no fundamentals can accurately predict how humans react to different sources of information and that the only prediction that we are willing to make is that investors will continue to be emotionally involved and therefore over-react on both sides. It is this over-reaction that causes market and pricing inefficiencies, and these inefficiencies are what Astarra Asset Management look to profit from.

If you would like further information please visit our website [www.astarra.com](http://www.astarra.com), contact us on (02) 9233 9800 or email one of your Senior Managers for Astarra:

Head of Distribution  
Peter Wood [pwood@astarra.com.au](mailto:pwood@astarra.com.au)  
General Manager  
Sean McIntyre [smcintyre@astarra.com.au](mailto:smcintyre@astarra.com.au)

Head Office: Level 53, MLC Centre  
19-29 Martin Place  
Sydney NSW 2000  
Fax: (02) 9233 9810  
Email: [enquiries@astarra.com.au](mailto:enquiries@astarra.com.au)

#### IMPORTANT INFORMATION

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### Performance Overview

The Alpha Strategic Fund (ASF) continued its profitable streak against all the trends globally by posting positive returns in November of 0.28% for its retail class and 0.38% for the wholesale class. November's strong performance against the indexes but generally mediocre performance leaves us far from disappointed when witnessing the entire hedge fund industry suffering one of its worst monthly performances in over 3 years.

The HFR Global Hedge Fund Index returned -2.41% mainly dragged down by the Equity Hedged and Event Driven suffering -3.67% and -2.97% respectively. According to HFR, only 1 hedge fund strategy (Equity market Neutral) performed slightly positive delivering 0.15%

The strong ASF performance against the indexes in November can be mainly attributed to 3 main factors:

- Recent deployment of a large cash position into profitable short-medium term opportunities (discussed in previous monthly summaries regarding our desire to be over-weight in cash awaiting opportunities)
- Overweighting strategies that benefit from volatile markets and increased risk spreads
- Strong performance from allocation to PIPES strategies

The strong performing strategies were off set by weak performance in equity related strategies mainly internationally.

### Performance History: % Net Returns

#### Class A: Retail

|      | Jan   | Feb   | Mar   | Apr   | May   | Jun   | Jul   | Aug   | Sep   | Oct   | Nov   | Déc   | Rolling average 12 months |
|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|---------------------------|
| 2007 | 1.58% | 0.43% | 1.29% | 0.79% | 0.66% | 1.81% | 0.19% | 0.02% | 1.54% | 1.73% | 0.28% | -     | 11.17%                    |
| 2006 | 0.85% | 2.58% | 3.66% | 1.25% | 0.62% | 1.08% | 1.04% | 1.26% | 2.26% | 2.30% | 0.67% | 0.36% | 19.43%                    |
| 2005 | -     | -     | -     | -     | -     | -     | -     | -     | -     | -     | 0.20% | 0.32% | 0.52%                     |

#### Class B: Wholesale

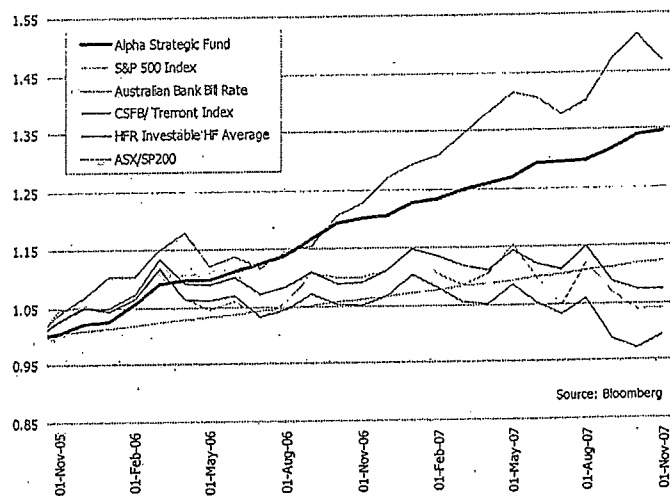
|      | Jan   | Feb   | Mar   | Apr   | May   | Jun   | Jul   | Aug   | Sep   | Oct   | Nov   | Dec   | Rolling average 12 months |
|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|---------------------------|
| 2007 | 1.62% | 0.49% | 1.33% | 0.84% | 0.71% | 1.82% | 0.25% | 0.07% | 1.59% | 1.73% | 0.38% | -     | 11.85%                    |
| 2006 | 0.50% | 2.80% | 3.39% | 0.58% | 0.07% | 1.38% | 1.08% | 1.31% | 2.30% | 2.33% | 0.74% | 0.45% | 18.24%                    |
| 2005 | -     | -     | -     | -     | -     | -     | -     | -     | -     | -     | 0.61% | 1.56% | 2.18%                     |

### Key Statistics

|                                    | Percentage Returns |         |
|------------------------------------|--------------------|---------|
|                                    | Class A            | Class B |
| Cumulative Return since Inception: | 32.98%             | 34.54%  |
| Rolling average since inception:   | 14.67%             | 15.32%  |
| 1 month:                           | 0.28%              | 0.38%   |
| 3 months:                          | 3.58%              | 3.74%   |
| 6 months:                          | 5.67%              | 5.96%   |
| 1 year:                            | 11.17%             | 11.85%  |
| 2 years:                           | 15.20%             | 15.64%  |
| Compounded monthly return:         | 1.15%              | 1.19%   |
| Highest monthly return:            | 3.66%              | 3.39%   |
| Positive Months*:                  | 100%               | 100%    |
| Annualised volatility:             | 2.20%              | 2.22%   |
| Sharpe Ratio:                      | 2.32               | 2.30    |

\*Based on pre-distribution NAV, distributions exceeded earnings in select periods.

### Indices Comparison (Since ASF inception - \$AUD)

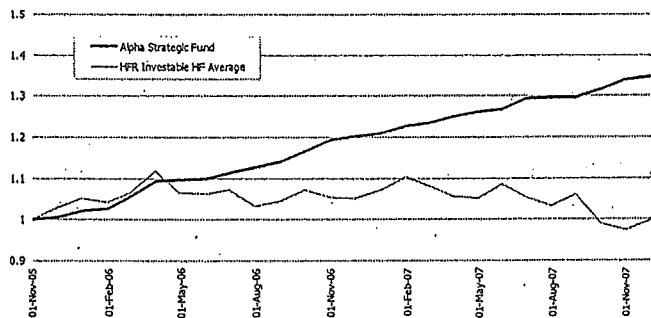


Source: Bloomberg

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### Embracing a new era

The common belief that a hedge fund's return is made up of beta + alpha is not contested. However evidence is proving that we need to look more closely at the components of "Alpha" and quantify whether it is attributable to skill, luck or perhaps other types of beta (*Alternative Beta*).



There exists a misconception that alpha always equals skill. But by the strict definition of alpha, "the excess returns above the market", that is not always the case. For example, when a fixed interest arbitrage manager who passively allocates to carry trade strategy outperforms a directional small caps manager during a bear market, is this the result of skill? Should we pay performance fees to the fixed interest manager? Understanding alternative beta will help us understand more in detail the true value of a hedge fund manager and whether or not we could obtain exposure to the same risk factors more effectively and more cheaply.

Recent academic analysis suggests that for certain hedge fund strategies, only a small portion of a manager's return is derived by skill. Therefore, the main sources of returns are the risk premia derived from a diverse array of "alternative beta" factors. "Alternative Beta" refers to the return derived from exposures to systematic risk factors (such as volatility risk, credit spreads, or liquidity risk) common to each hedge fund strategy.

### What does this mean?

In recent years, evidence using more than 30 years of data, has identified a number of replication strategies capable of capturing up to 95% of the average return of many popular hedge fund strategies which concludes that we are beginning to be able to capture most of the benefits of certain hedge fund strategies without being subjected to some of the risks associated with individual hedge fund managers.

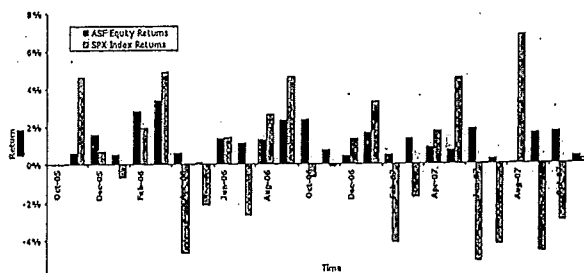
These recent developments and the availability of replication products entering the market place will certainly challenge and test the true value of Fund of Hedge Funds (FoHF). Although we believe many FoHFs will not be in a position to take advantage of these future benefits, it will be difficult to justify ignoring the issue. We believe the future skills required will be to deliver these benefits to investors and to access the use of replication products to capture alternative beta exposure more efficiently combined with pure skilled-based alpha generating managers where the returns cannot be replicated.

Again, Absolute Alpha is well positioned on being an industry pioneer who embraces a portfolio construction methodology tailored to obtain the most effective exposure to its desired risk factors whilst overcoming many of today's hedge fund problems such as cost, liquidity and transparency.

### What are we doing going forward?

The fund has been looking carefully at its allocations over recent quarters with such strong volatility pounding its way in.

In keeping with our conservative approach we will look to outperform using a range of alternative beta style strategies generally associated with lower fees to assist our investors. Our focus is not to change the proven strategies we have in place but rather further diversify into areas where we may gain some additional advantages over the markets and our peers. Our constant monitoring of managers that have failed in the past constantly leaves us with an advantage over the market allowing us to monitor what styles may or may not fall out of favour with market conditions.



If you would like further information please visit our website [www.absolutealpha.com.au](http://www.absolutealpha.com.au), contact us on (02) 9233 9800 or email your corresponding Absolute Alpha Business Development Manager:

**Head of Distribution NSW QLD**  
Peter Wood peter@absolutealpha.com.au  
Sean McIntyre seanm@absolutealpha.com.au  
Hugo Driemeyer hugo@absolutealpha.com.au

**Head Office:** Level 53, MLC Centre  
19-29 Martin Place  
Sydney NSW 2000  
**Fax:** (02) 9233 9810

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### Performance Overview

The Alpha Strategic Fund (ASF) continues to deliver consistent absolute returns for our investors with another positive month in June returning 0.68% and 0.63% for wholesale and retail units respectively. Our continued conservative approach to leverage and directional beta strategies delivered strong, positive annual returns of 8.84% (wholesale) and 8.14% (retail) this financial year, clearly outperforming most traditional and hedge fund managers in Australia.

In markets characterised by continued tight credit, increasing energy and commodity prices, falling consumer confidence and consumption, falling corporate earnings, higher risk of inflation and potentially recession in some of the biggest global economies, managers skill will be easily measurable. Managers relying on high levels of leverage, complex strategies and instruments have been hit the hardest and should remain troubled in the near future.

ASF's risk profile is well below internal targets and fixed interest at 2.02 and 2.11 for our wholesale and retail funds. Going forward we believe value and opportunity is presenting itself in additional allocations within equity based and TA / Macro managers.

The Alpha will continue to search for, and invest with the best managers in specific and focused trading strategies who can navigate their way through current markets, who can exploit the inefficiencies, who are properly hedged and can meet our strict requirements in relation to risk and return.

### Key Statistics

|  | Percentage Returns |         |
|--|--------------------|---------|
|  | Class A            | Class B |
| Cumulative Return since Inception      | 38.55%             | 40.70%  |
| Rolling average since inception p.a.   | 13.01%             | 13.67%  |
| 1 month                                | 0.63%              | 0.68%   |
| 3 months                               | 2.05%              | 2.20%   |
| 6 months                               | 3.15%              | 3.55%   |
| 1 year                                 | 8.14%              | 8.84%   |
| 2 year average p.a.                    | 11.72%             | 12.40%  |
| Compounded monthly return              | 1.02%              | 1.07%   |
| Highest monthly return                 | 3.66%              | 3.39%   |
| Negative months [Since Nov 2005 (32)]* | 1                  | 1       |
| Annualised volatility                  | 2.11%              | 2.02%   |
| Sharpe Ratio                           | 0.42               | 0.79    |

\*Based on pre-distribution NAV, distributions exceeded earnings in select periods.

### Performance History: % Net Returns

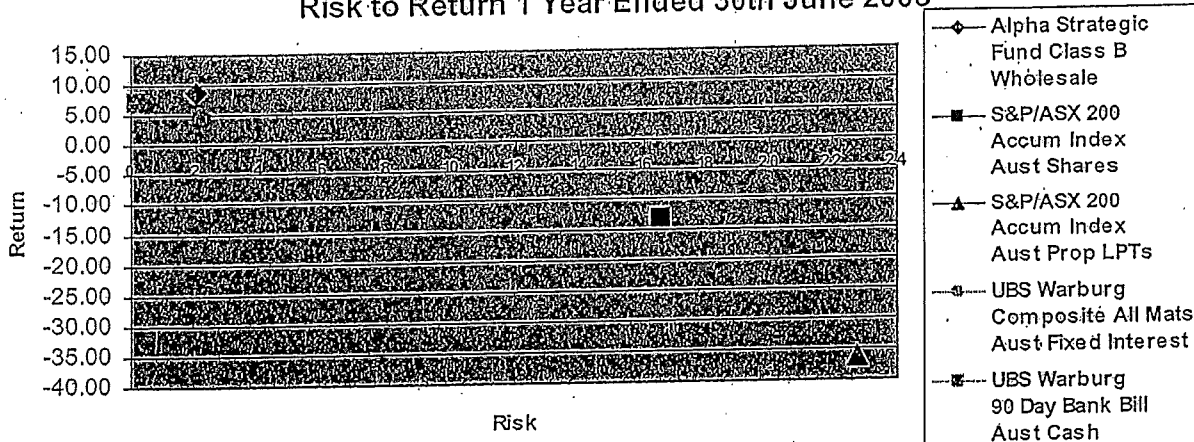
#### Class A: Retail

|       | Jul   | Aug   | Sep   | Oct   | Nov   | Dec   | Jan    | Feb   | Mar   | Apr   | May   | June  | Rolling average 12 months |
|-------|-------|-------|-------|-------|-------|-------|--------|-------|-------|-------|-------|-------|---------------------------|
| 07/08 | 0.19% | 0.02% | 1.54% | 1.73% | 0.28% | 1.01% | -0.35% | 0.46% | 0.96% | 0.48% | 0.93% | 0.63% | 8.14%                     |
| 06/07 | 1.02% | 1.26% | 2.26% | 2.30% | 0.67% | 0.86% | 1.58%  | 0.45% | 1.29% | 0.79% | 0.66% | 1.81% | 15.41%                    |
| 05/06 | 0.22% | 0.22% | 0.22% | 0.22% | 0.22% | 0.22% | 0.22%  | 0.22% | 0.22% | 0.22% | 0.22% | 0.22% | 0.22%                     |

#### Class B: Wholesale

|       | Jul   | Aug   | Sep   | Oct   | Nov   | Dec   | Jan    | Feb   | Mar   | Apr   | May   | June  | Rolling average 12 months |
|-------|-------|-------|-------|-------|-------|-------|--------|-------|-------|-------|-------|-------|---------------------------|
| 07/08 | 0.25% | 0.07% | 1.59% | 1.73% | 0.38% | 0.99% | -0.21% | 0.51% | 1.02% | 0.53% | 0.98% | 0.68% | 8.84%                     |
| 06/07 | 1.08% | 1.31% | 2.30% | 2.33% | 0.74% | 0.45% | 1.62%  | 0.49% | 1.36% | 0.84% | 0.71% | 1.82% | 16.07%                    |
| 05/06 | 0.22% | 0.22% | 0.22% | 0.22% | 0.22% | 0.22% | 0.22%  | 0.22% | 0.22% | 0.22% | 0.22% | 0.22% | 0.22%                     |

### ASF & Aust Traditional Asset Classes Risk to Return 1 Year Ended 30th June 2008



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### Expectations of higher inflation can increase expectations of higher interest rates

Economists and the media, but most importantly the Australian people continue to share the perception that inflation is growing and will continue to do so in the short to medium term domestically and globally, representing our greatest economic risk.

The exponential growth in oil, energy and food prices have raised expectations of continued higher inflation which could result in increased wage demands further fuelling increased prices and the very real possibility of another interest rate increase.

Higher interest rates, increased prices of consumables and a higher Australian dollar all result in less consumer spending. This then drives lower corporate earnings, lower business investment and results in money flows to other assets like commodities which in turn drives the prices higher, demand slows and we start the cycle over again.

Some members of the media, economists and market experts have even begun to use the "R" word for other economies, rather than just about the US.

### Risk management is the key to managing investors' performance anxiety

#### Q. Are Multi-Manager, Multi-Asset, Diversified Funds the answer for advisers?

There is no definitive answer to this question but decisions should be made according to the key risks and drivers of portfolio construction that will provide capital stability, and absolute returns at lower volatilities in all market conditions.

Success and skill in building successful portfolios is generally better measured in declining markets on a 12 - 24 month rolling average.

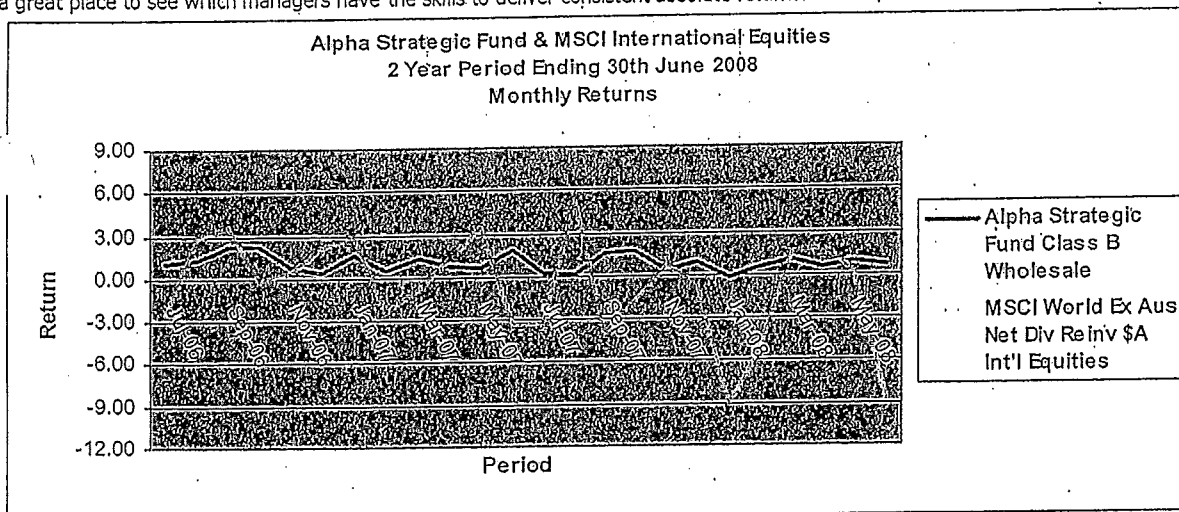
For advisers the key drivers could be categorised with the internal drivers being; time management, systems and expertise with external drivers being clients focus on capital stability and consistency of returns over the long term.

Professional fund managers spend most of their time identifying risk to return deliverables, performing extensive manager due diligence and selection, applying detailed risk and correlation methodologies for asset allocation utilising sophisticated systems, then following up with structured active management to manage risk and return in changing market conditions. Even with all these systems, processes and expertise many managers are still incapable of delivering absolute returns.

Some advisers and dealer groups see their portfolio construction as key strengths and value add for their businesses and tend to invest time and money in developing the pre-requisite systems and resources to try and compete with professional managers. Other advisers may recognise their strength as investing time and expertise in developing strategies that provide comprehensive yet streamlined advice for their clients.

Clients will generally be happier and more likely to adopt a strategy that preserves capital with consistently lower volatility and absolute returns over the long term.

Advisers looking for multi-manager funds are then faced with finding the right manager that can deliver on their clients' requirements. A bear market is a great place to see which managers have the skills to deliver consistent absolute returns.



If you would like further information please visit our website [www.absolutealpha.com.au](http://www.absolutealpha.com.au), contact us on (02) 9233 9800 or email your corresponding Absolute Alpha Business Development Manager:

**Head of Distribution NSW** Peter Wood [peter@absolutealpha.com.au](mailto:peter@absolutealpha.com.au)  
**QLD** Sean McIntyre [seanm@absolutealpha.com.au](mailto:seanm@absolutealpha.com.au)  
 Hugo Driemeyer [hugo@absolutealpha.com.au](mailto:hugo@absolutealpha.com.au)

**Head Office:** Level 53, MLC Centre  
 19-29 Martin Place  
 Sydney NSW 2000  
**Fax:** (02) 9233 9810

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Page 245-577 exempt section 38, 45 and 47E(d)



New South Wales  
Supreme Court

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**CITATION :** Trio Capital Limited (Admin App) v ACT Superannuation Management Pty Ltd & Ors [2010] NSWSC 286

**HEARING DATE(S) :** 19 March 2010

**JUDGMENT DATE :** 16 April 2010

**JURISDICTION :** Equity Division  
Corporations List

**JUDGMENT OF :** Palmer J

**DECISION :** Schemes wound up on just and equitable ground.

**CATCHWORDS :** CORPORATIONS – MANAGED INVESTMENT SCHEME – WINDING UP – JUST AND EQUITABLE – Responsible entity insolvent – funds of Schemes probably lost in fraudulent investments – Schemes inherently improvident – considerations of public policy.

**LEGISLATION CITED :** Corporations Act 2001 (Cth) – s 168, s 436A, s 447D, s 601FS, s 601KA, s 601KB, s 601KE, s 601NC, s 601ND

**CATEGORY :** Principal judgment

**CASES CITED :** Capelli v Shepard [2010] VSCA 2  
PWL Ltd, Re [2008] WASC 232  
Rubicon Asset Management Ltd, Re (2009) 74 ACSR 346

**PARTIES :** Stephen James Parbery, Neil Singleton & Nicholas Martin in their capacity as Joint and Several Administrators of Trio Capital Limited (Administrators appointed) and others as defined in the schedule. (Plaintiffs)  
ACT Superannuation Management Pty Ltd (First Defendant)  
Z. Rocksandic representing Millhouse IAG Private Equity Fund (Second Defendant)  
R. & B. Thornton, trustees for Raid Provident Fund and representing ARP Growth Fund (Third Defendants)  
G. & K. Kolsky, representing Astar Portfolio Service (Fourth Defendants)  
Silverhall Holdings Pty Ltd, representing MARQ Capital Diversified Property Fund (Fifth Defendant)

Huntley Management Pty Ltd, responsible entity of  
MillhouseLAG Private Equity Fund (Sixth Defendant)

FILE NUMBER(S) : SC 2010/011359

COUNSEL : A.S. Bell, R. Foreman (Plaintiffs)  
I.M. Jackman SC (First Defendant)

SOLICITORS : Norton Rose (Plaintiffs)  
Clayton Utz (First Defendant)  
Addisons, submitting appearance (Second Defendant)  
Kemp Strang, submitting appearance (Third Defendants)  
Bartier Perry (Fourth Defendants)  
A.J. Jefferies (Fifth Defendant)  
Piper Alderman (Sixth Defendant)

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2010/011359 Trio Capital Limited (Admin Appointed) v  
ACT Superannuation Management Pty Ltd & Ors

## JUDGMENT

16 April, 2010

### Introduction

1 On 19 March 2010, I made orders pursuant to s 601ND(1)(a) *Corporations Act* 2001 (Cth) ("the Act") for the winding up of five managed investment schemes ("the Schemes") for which the responsible entity is Trio Capital Limited (Administrators Appointed) ("Trio"). I said that I would give detailed reasons for my decisions as soon as practicable. These are my reasons.

2 Trio applied for an order pursuant to s 601ND of the Act directing it to wind up the Schemes on the just and equitable ground. In the alternative, the administrators of Trio (who are also the administrators of Astarra Funds Management Pty Limited ("AFM") and ASI Administration Pty Limited ("ASI") and the Plaintiffs in the proceedings) sought a direction pursuant to s 447D of the Act that they would be justified in winding up the Schemes pursuant to either s 601NC of the Act or the respective constitutions of each of the Schemes.

3 The Schemes that were the subject of this application were:

- Astarra Strategic Fund ("ASF");
- Astar Wholesale Portfolio Service ("AWPS");
- Astar Portfolio Service ("APS");
- Astarra Overseas Equities Pool ("AOEP"); and
- ARP Growth Fund ("ARP Growth").

4 These reasons draw heavily on the narrative of facts set out in the careful and thorough written submissions of the Administrators. However, I have added my own observations on inherent vices in the administration of the Schemes which constitute a grave risk to the security of the investors' money entrusted to them, much of it superannuation funds. These vices militate



heavily in favour of winding up the Schemes in the public interest, so that whatever of their assets are now salvageable can be realised without delay and the Administrators, in conjunction with ASIC, can accelerate their investigation into how funds were lost and who is responsible for the losses.

### Background

5 Prior to the middle of December 2009, the Trio, AFM and ASI (collectively the Trio Companies) were involved in the business of funds management and administration in relation to both superannuation funds and non-superannuation investments through various managed investment schemes. There was a considerable degree of cross-investment amongst the schemes and superannuation funds.

6 Prior to 16 December 2009, Trio was:

- the holder of a Registrable Superannuation Entity Licence; and
- the trustee of five superannuation entities ("the Trio Super Funds").

7 On 16 December 2009:

- APRA suspended Trio as trustee of the Superannuation Entities for a period of six months;
- ACT Superannuation Pty Ltd (ACT Super) was appointed as the acting trustee of the Trio Super Funds; and
- the Plaintiffs were appointed as voluntary administrators of Trio pursuant to s 436A of the Act.

8 Prior to 17 December 2009:

- Trio was the holder of an Australian Financial Services Licence ("AFS Licence");
- Trio was the responsible entity for twenty-five managed investment schemes registered under the Act and the trustee of three unregistered managed investment schemes.

9 On 17 December 2009, ASIC suspended the AFS Licence held by Trio but specified that the licence continued in effect for certain limited purposes.

10 Trio remains the responsible entity of twenty-one registered managed investment schemes under Chapter 5C of the Act and the trustee of three unregistered managed investment schemes ("Trio MISs").

11 On 8 January 2010, the Court ordered that the period within which the Administrators must convene the second meeting of creditors of the Trio Companies be extended up to and including 9 April 2010, that the second meeting of creditors be held at any time during the convening period (as extended) or the period five business days thereafter.

12 On 19 February 2010, the Court gave a s 447D direction in relation to the return of capital in

the AWPS to permit ACT Super to make certain monthly pension payments.

13. On 26 February 2010, the Court:

- granted leave to file an application for the winding up of the Schemes; and
- ordered that notice of the application be given to all members of the Schemes by letter.

14 Notice of this application has been given to the unitholders of the Schemes as required by the orders of the Court.

15 ACT Super is the largest unitholder in AWPS and AOEP. ACT Super is also a unitholder in ASF, although there is uncertainty as to the number of units that ACT Super holds in ASF. ACT Super supports the application to wind up the Schemes of which it is a unitholder.

#### Applicable principles

16 Section 601ND(1)(a) of the Act provides the Court may, by order, direct the responsible entity of a registered scheme to wind up the scheme if the Court thinks it is just and equitable to make the order. Trio, as responsible entity of the Schemes, has standing to apply for the order; s 601ND(2)(a).

17 In *Re PWL Ltd* [2008] WASC 232, at [43], E.M. Heenan J said of the just and equitable ground in s 601ND(1)(a) of the Act:

*"The phrase 'just and equitable' is broad and designed to accommodate a multiplicity of situations. It is not possible to define the phrase in exhaustive terms. In each case it will be a question of fact for determination upon the evidence relating to the scheme or corporation put before the court. Re Tivoli Freeholds Ltd [1972] VR 445 at 468; and Ebrahimi v Westbourne Galleries Ltd [1973] AC 360 at 374. A determination of whether or not it is just or equitable to wind-up the entity will not depend upon particular factual categories. Re Straw Products Pty Ltd [1942] VLR 222 at 223."*

18 However, his Honour accepted that:

*"... generally, it is just and equitable to order the winding-up of a registered managed investment scheme pursuant to s 601ND(1)(a) of the Act if it is insolvent. Re Orchard Aginvest Ltd (as responsible entity for the Primary Agribusiness Fund) [2008] QSC 002. Further, it is just and equitable for the court to intervene and to wind-up a registered scheme where the original arrangement as set out in the prospectus of the scheme has broken down: ASIC v Knightsbridge [2001] WASC 339 (at [63]-[64])."*

19 Similarly, in *Re Rubicon Asset Management Ltd* (2009) 74 ACSR 346; [2009] NSWSC 1068 at [21], [23]-[25], McDougall J said:

*"[21] There is a number of decisions that make it clear that the court may order a managed investment scheme to be wound up on the just and equitable ground because the scheme is insolvent ..."*

[23] *In addition, the court may wind up a managed investment scheme on the just and equitable ground if it is in the public interest to do so. See Australian Securities and Investments Commission v Knightsbridge Managed Funds Ltd [2001] WASC 339.*

[24] *As Pullin J pointed out in that case, the public interest may justify the winding up of a managed investment scheme if the scheme has broken down or if the protection of investors requires that the scheme be wound up. ...*

[25] *In addition, a scheme may be wound up on the just and equitable ground if the responsible entity is insolvent, so that it cannot to continue to perform its functions, and (I think) if no responsible entity can be found to replace it."*  
See also *Capelli v Shepard* [2010] VSCA 2 at [80]-[96], in particular at [95] and at [102]-[104].

### Facts common to the Schemes

20 The following matters are common to all of the Schemes:

- the responsible entity of the Schemes, Trio, is in administration;
- Trio appears to have a deficiency of assets (i.e. its liabilities are greater than its assets);
- at present, the Schemes have to bear both the issuer fees that Trio can charge the Schemes and also (to the extent the assets of Trio are insufficient) the costs and expenses of the administrators directly attributable to the administration of each Scheme;
- ASIC has suspended Trio's AFS Licence until 17 June 2010 (albeit that ASIC has specified that the AFS Licence continues in effect for certain purposes, in particular providing services "of a kind that an entity appointed as a temporary responsible entity of a registered scheme might provide". For example, Trio is not able to issue new units in any of the Schemes;
- none of the Schemes is a "liquid" scheme, as defined s 601KA of the Act, which means that Trio must not allow a unitholder to withdraw from any of the Schemes otherwise than in accordance with the relevant constitution and s 601KB to s 601KE of the Act;
- Trio has no employees and depends on AFM for all services. AFM is also in administration;
- no entity has indicated that it is willing to act as responsible entity of the Schemes. Section 601FS(1) of the Act provides that (subject to s 601FS(2), in particular s 601FS(2)(d)) "If the responsible entity of a registered scheme changes, the rights, obligations and liabilities of the former responsible entity in relation to the scheme become rights, obligations and liabilities of the new responsible entity". Given the problems referred to below, it is highly improbable that any reputable entity will agree to become the responsible entity of the Schemes.

### Improvident schemes and the public interest

21 I have set out below in more detail the circumstances relevant to the particular Schemes. The reader will be struck by the frequency of the words "purported" and "apparently" and by the inability of the Administrators, despite their diligent investigations, to state their findings with any assurance. This is because so much of the activity of these Schemes has been deliberately cloaked in obscurity by the promoters.

22 A large proportion of the Scheme funds has not been used to acquire readily identifiable assets located in easily accessible jurisdictions. Rather, the funds have been invested in purchasing from an entity whose substance is impossible to ascertain an unsecured promise to deliver assets. Those assets comprise interests in investments whose existence, nature and value are, likewise, impossible to ascertain by any convenient means because they are managed or administered by companies incorporated in the British Virgin Islands, Anguilla, St Lucia, the Cayman Islands, Belize, the Cook Islands and Nevis. Anyone even slightly acquainted with the commercial world knows that if one wants to conduct financial operations as far away as possible from the scrutiny of tax authorities, investment regulatory authorities and investors themselves – in short, if one wants to conduct financial operations dishonestly or illegally – then it is to these jurisdictions that one goes to incorporate puppet companies with puppet directors in order to operate fraudulent schemes and to move money around the world in secrecy.

23 In this case, much of the money invested in the Schemes came from superannuation funds. The very prospect that a person's superannuation fund – intended to provide for secure retirement – could be invested in a scheme associated in any way with companies or entities incorporated or administered in jurisdictions such as the British Virgin Islands, Anguilla, St Lucia, the Cayman Islands, Belize, the Cook Island and Nevis would have sounded deafening warning bells to any responsible and competent financial adviser that there was a very high prospect that the funds would simply disappear into the ether – as has almost certainly happened in this case.

24 Yet even a competent and responsible financial adviser would have heard no warning bells sounding for these Schemes. The Product Disclosure Statements for the ASF issued on 31 August 2009 and 28 September 2009 do not disclose that ASF funds were to be invested under a Deferred Purchase Agreement ("DPA") in the purchase of "Delivery Asset Parcels" from a company called EMA International Limited ("EMA"), whose office is a post office box in Roadtown, Tortilla, in the British Virgin Islands, and whose sole director is a Canadian, Mr Marc Boudreau who, according to his lawyer, knows nothing about the administration of EMA. The Disclosure Statements do not disclose that EMA is "administered" by GCSL Limited, a company incorporated in Anguilla but apparently carrying on its activities in Hong Kong. They do not disclose that the Deferred Purchase Agreement with EMA, although replete with more than three dozen definitions occupying five closely typed pages, does not enable anyone to understand exactly what is comprised in a "Delivery Asset Parcel".

25 What the Product Disclosure Statements for ASF do state, however, is that:

*"The investment strategy [for the Fund] is based on identifying and executing alternative approaches to traditional asset classes such as fixed income and equities. The Investment Managers multi-strategy/multi-asset style aims to achieve the most effective exposure to its desires [sic] strategies either directly or indirectly through underlying managers. The Fund may utilised Deferred Purchase Agreements in investing in underlying managers."*

26 That means no more or less than that the Fund can be invested in anything at all, no matter how foolish and risky – and that, indeed, is what the Deed establishing the Fund provides in Clause 8.1 in permitting the fund manager to "invest in anything it chooses ... subject to what it tells investors from time to time (for example, in the scheme's disclosure statement)". What Trio

told investors about ASF's investment strategy in the Product Disclosure Statements in August and September 2009 was nothing more than gibberish.

27 I make these observations because, as I noted at the beginning of this judgment, one of the reasons a managed investment scheme may be wound up on the just and equitable ground is that it is in the public interest to do so. A consideration of the public interest in relation to any particular scheme requires the Court to examine the purpose of the investment scheme, and to ascertain whether that purpose has broken down and become impracticable or, even if it has not broken down, whether the scheme ought to be terminated for the protection of its existing investors or for the protection of the public in the future. A scheme which solicits money from the public, including money from individuals' superannuation schemes, and invests those funds in "assets" which are not immediately and transparently identifiable and which cannot be valued by readily ascertainable and generally accepted measures is one which, in the public interest, ought to be wound up even if it is not demonstrably insolvent. Such a scheme is inherently improvident; it is an invitation to dishonesty by its promoters. The Court should not sanction its continuation.

#### ASF

28 A large amount of the funds of the other Schemes was invested directly or indirectly in ASF. ASF was said to be a "fund of funds", i.e. it was supposed to mirror the investment performance of various overseas hedge funds. The purported valuation of the ASF as at 31 August 2009 was approximately AUD\$120 million. As at 16 December 2009 there were outstanding redemption requests against the ASF of AUD \$114,413,760.

29 The returns of overseas hedge funds were supposed to be mirrored via the major "asset" of the ASF, namely a series of contractual rights to receive "Delivery Assets" arising pursuant to Deferred Purchase Agreements. The overseas hedge funds are referred to in the DPAs as the Underlying Funds.

30 The DPAs purported to operate under the terms of a Master Deferred Purchase Agreement dated 15 February 2006 ("Master DPA"). The counterparties to the Master DPA appear to have been:

– Astarra Asset Management Pty Limited (in liquidation) ACN 113 940 953 ("AAM") as investment manager for the ASF; and

– EMA International Limited, a special purpose vehicle incorporated in the British Virgin Islands purportedly for the purpose of entering into the Master DPA and performing activities in connection with the Master DPA.

31 Pursuant to the DPAs, EMA gave a contractual promise to AAM (as investment manager for the ASF) to deliver assets corresponding to the value of the performance of the overseas hedge funds.

32 AAM is in liquidation. EMA is no longer administered by anyone. Prior to 5 November 2009, EMA's operations under the DPA were apparently administered by GCSL Limited, a company incorporated in Anguilla, pursuant to an Administration Agreement dated 20 July 2008 ("Administration Agreement"). By notice dated 5 November 2009, GCSL terminated the Administration Agreement.

33 The company secretary of EMA was Global Secretaries (HK) Ltd, a company incorporated under the laws of Hong Kong. Global Company Secretaries resigned from this role on 5 November 2009.

34 Since February 2006, the sole director of EMA appears to be a Canadian citizen called Marc Boudreau. In response to a request by the Administrators that Mr Boudreau make himself available for a meeting, EMA's (external) solicitor indicated that, on his understanding, *"it is unlikely to be of much assistance to you as in practice, EMA appointed GCSL Limited of Hong Kong to administer the whole of the operations under the Master Deferred Purchase Agreement and all the investments in the Underlying Funds were implemented by GCSL Limited personnel"*.

35 While it was functional, EMA purportedly invested in the following Underlying Funds:

- Exploration Fund Limited, a fund apparently domiciled in St Lucia with an administrator and investment manager also apparently domiciled in St Lucia;
- Tailwind Investment Fund, a fund apparently domiciled in the Cayman Islands with an administrator apparently domiciled in the Cayman Islands and AAM as its investment manager. AAM was appointed by Trio as its investment manager for the ASF. In that capacity, it was one of the parties to the Master DPA. That is, it appears that AAM has caused funds from ASF to be invested in an Underlying Fund managed by AAM;
- SBS Dynamic Opportunities Fund Limited, a fund apparently domiciled in the Cayman Islands with an administrator apparently domiciled in Belize and an investment manager apparently domiciled in the Cayman Islands;
- Pacific Capital Markets Cayman LDC, a fund apparently domiciled in the Cayman Islands with an administrator apparently domiciled in the Cook Islands and an investment manager apparently domiciled in Nevis;
- Atlantis Capital Markets Cayman LDC, a fund apparently domiciled in the Cayman Islands with an administrator apparently domiciled in the United States and an investment manager apparently domiciled in the Cayman Islands.

36 The Administrators' investigations strongly suggest that EMA's "investment" in the Underlying Funds is a fraudulent scam. For example:

- Mr Frank Richard Bell (Mr Bell) is a director of Exploration Fund Limited. Mr Bell has been the subject of disciplinary action by the United States Financial Industry Regulation Authority which resulted in a number of sanctions and adverse findings against him;
- Atlantis was struck from the Cayman Island register of companies as at 31 December 2003 (well before EMA purportedly invested in it);
- prior to the appointment of the Administrators, Trio attempted unsuccessfully to obtain audited financial accounts from Exploration Fund Limited as at 30 June 2009. The auditor appointed to audit the Fund, Lichter Yu & Associates, withdrew from the audit;
- none of EMA, AAM or the Underlying Funds have provided valuations for the Underlying Funds or the assets held by the Underlying Funds since 3 September 2009;
- on 31 October 2009, 3 of the 5 Underlying Funds (namely Exploration Fund,

Limited, SBS Dynamic Opportunities Fund and Pacific Capital Markets Cayman LDC) notified EMA that they had resolved to suspend trading and to initiate steps to proceed with a compulsory redemption EMA's interest in the Fund. The notifications are in virtually identical form; they state – apparently as one of the reasons for the compulsory redemption – that it had come to the attention of the Underlying Funds that there was an investigation by ASIC, which had resulted in considerable media attention;

– since receipt of the written notifications, there has been no indication as to when the proceeds of the redemptions will be paid.

37 ASIC is continuing to investigate the ASF with the assistance of overseas regulators. However, the current status of ASIC's investigations are unknown.

38 In summary, the Administrators have not been unable to determine whether the supposed investments of the Underlying Funds actually exist and whether the investments in the DPA contracts are recoverable.

#### AWPS

39 ACT Super (which holds over 92% of the units in AWPS) has requested the administrators to make an application to wind up the AWPS. The circumstances of AWPS, so far as they are presently known, are as follows.

40 Over 6% of the units in AWPS are held by APS (APS being one of the Schemes that is the subject of this application).

41 At least 35.3% of the total assets of AWPS are unlikely to be realised for book value. In particular:

– AWPS holds 9,306,000 units in the ASF (representing 13.7% of the total unitholding of the ASF). For the reasons set out above, the value of its unitholding in the ASF is unknown;

– AWPS has investments in Ualan Property Holdings Pty Ltd (UPH) with a book value of \$9,054,000 and loans to UPH with a book value of \$4,722,037. The true value of these investments and loans appears to be considerably lower.

– UPH is a property investment and development company that has seven current property development projects operated through separate special purpose vehicle companies. Of the existing developments, five have reached practical completion and sales have commenced whilst two consist of vacant land yet to be developed.

– All UPH projects have separate external financiers with total exposure of approximately \$28 million as at end December 2009. UPH is reliant upon its shareholders, including AWPS, for funding to meet its monthly holding costs. For example:

on or about 18 February 2010, following agreement with ACT Super, \$80,000 was advanced to UPH to meet immediate costs which, if not paid, could have reduced significantly the recoverable value of one of the developments;

on or about 1 March 2010, following agreement with ACT Super, a further amount of \$175,000 was advanced to UPH to meet interest payments for

February 2010 to the secured creditors of the properties to ensure that UPH did not default in its obligations to those secured creditors;

42 AWPS holds units in Millhouse Private Equity Trust No 1 ("MPET#1") with a book value of \$1,726,000 and units in Millhouse Private Equity Trust No 2 ("MPET#2") with a book value of \$1,726,000. The trustee of MPET#1 is Astarra Nominees (Australia) Pty Ltd (Nominees). The trustee of MPET#2 is Astarra Securities Pty Ltd ("Securities"). AFM is a shareholder in both Nominees and Securities and Millhouse IAG Limited is the investment manager of MPET#1 and MPET#2.

43 MPET#1 and MPET#2 have invested equally in five overseas entities which appear to be primarily pharmaceutical research and development companies and telecommunication companies. One of those entities was placed into the German equivalent of receivership by its management in 2009 and appears to have no assets. Another of those entities is currently under external administration.

44 On 12 May 2009, Trio issued a request to redeem 7.4 million of the units for each trust. The redemption request was issued to Millhouse IAG Limited. That redemption request was deferred for a period of up to twenty-four months as allowed under the Constitution of each fund on the basis that it would be detrimental to other unit holders.

45 AWPS also owns 57.6% of the units in the AOEP (which is another one of the Schemes that is the subject of this application). As shown below, the investments of the AOEP consist predominately of units held in both ASF, MPET#1 and MPET#2.

#### APS

The investments of the APS consist of over 6% of the units in AWPS and cash in the amount of approximately \$75,000. Accordingly, the uncertainty as to the value of the AWPS assets directly affects the value of the APS assets.

#### AOEP

46 ACT Super (which holds at least 30% of the units in AOEP) has requested the administrators to make an application to wind up the AOEP.

47 Over 57% of the units in AOEP are held by AWPS. The investments of the AOEP consist predominately of units held in both MPET#1, and MPET#2, together with units in the ASF. For the reasons given above, the value of those assets cannot presently be ascertained.

#### ARP Growth

48 The assets of the ARP Growth consist of the following, the majority of which appear to be wholly or partly irrecoverable:

- a loan to Ualan Property Pty Ltd with a current balance of \$501,812 which appears to be irrecoverable;
- a direct investment in Professional Pension ARP Limited (PPARP) (a fund manager in the British Virgin Islands) with a book value of \$3,011,212; and
- units in the ARP Sub-Trust No. 1 with a book value of \$54,779,660. The ARP



Sub-trust No 1 has the following investments:

- a direct investment in PPARP with a book value of \$49,464,000;
- a direct investment in Ualan Property Trust (formerly the MARQ Property Trust) with a book value of \$1,575,000;
- a secured loan to AAM with a book value of \$1,007,000;
- a direct investment in ASF;
- cash holdings of \$42,000.

49 PPARP represents, directly or indirectly, the majority of the assets of ARP Growth. PPARP is about to be placed in liquidation – if this has not already occurred.

### Conclusion

50 In summary:

- there are strong reasons to believe that a substantial part of the funds of AFS were invested fraudulently and have been lost;
- the other four Schemes have substantial investments, direct and indirect, in AFS;
- Trio, the responsible entity for all Schemes, is almost certainly insolvent and cannot continue to conduct business;
- it is improbable that any substantial and reputable financial institution will agree to replace Trio as responsible entity for the Schemes;
- the major unitholder, directly and indirectly, in the Schemes desires their winding up;
- the Schemes cannot continue in operation and it is in the interests of their investors that the remaining assets be realised and distributed as quickly as possible;
- it is in the public interest that inherently flawed and improvident Schemes be terminated, and that investigations into their losses be accelerated.

51 For these reasons, I made the orders winding up the Schemes on the just and equitable ground.

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