

TREASURY MINISTERIAL SUBMISSION

PDR No. MS16-000541

2 March 2016

Minister for Small Business and Assistant Treasurer

cc: Treasurer

TRIO CAPITAL DECISION ON MATTERS OF COMPENSATION

Timing: To provide certainty and clarity to investors, it is recommended the Government finalise a decision on this matter as soon as possible.

Recommendation that you:

- **agree** to reject calls for Government intervention to compensate self-managed superannuation funds (SMSFs) and direct investors for losses as a result of the Trio Capital collapse.

Agreed/Not Agreed

Signature: /...../2016

- That you **agree** to write to claimants informing them of this decision (a draft letter for this purpose is at Attachment A). As requested, we have also provided a draft media release (Attachment B).

Agreed/Not Agreed

Signature: /...../2016

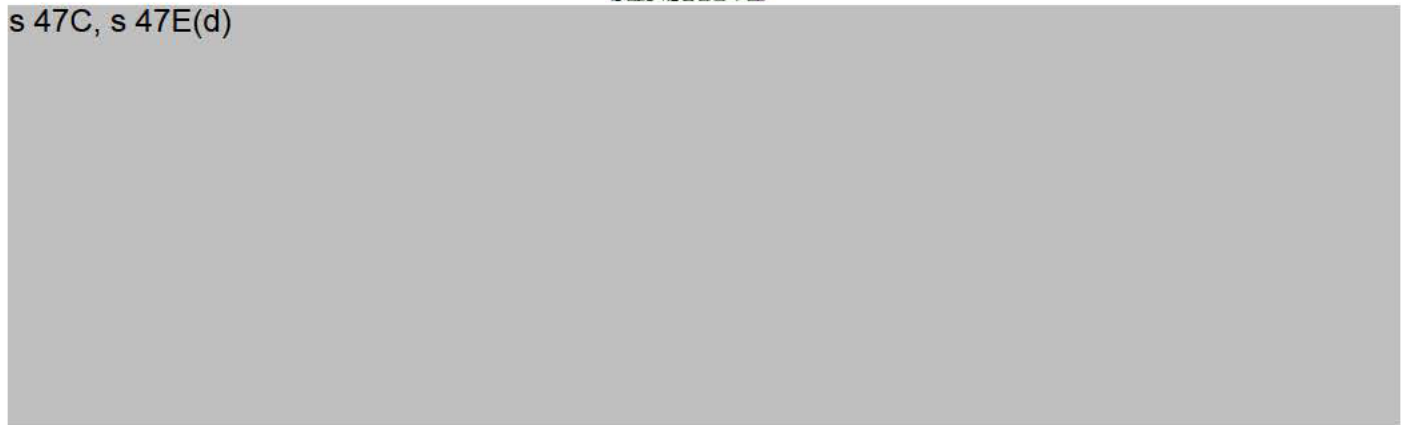
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- The process of compensating members of APRA-regulated funds for Trio-related losses is complete, as ACT Super Management Pty Limited (the Acting Trustee of a number of Trio superannuation entities) has elected not to apply for Part 23 compensation in relation to Ualan Property Holdings Pty Limited. Trio's liquidator has finished its investigation with financial support from the ASIC Assetless Administration Fund. There is no prospect of any return to ARP investors.
- There is no special case for Government intervention to compensate other investors for losses incurred due to the collapse of Trio Capital. This position is consistent with the approach adopted in relation to other corporate and financial collapses. There is no evidence that APRA or ASIC failed to carry out their responsibilities appropriately in relation to Trio.

~~PROTECTED~~

~~SENSITIVE~~

s 47C, s 47E(d)



- The Department of Finance has advised that the Government cannot rule-out in advance applications for an Act of Grace payment in relation to Trio. Claimants may still make applications for such payments to the Minister for Finance and these would be assessed on a case-by-case basis. For this reason, we recommend you consult with the Minister for Finance before announcing this decision.

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Ian Beckett
Principal Adviser
Retirement Income Policy Division

Contact Officer

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Consultation: ASIC, APRA and Department of Finance.

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ATTACHMENT – ENFORCEMENT ACTION TAKEN BY REGULATORS**Actions taken by ASIC and outcomes following investigation into Trio Capital**

The following table sets out the enforcement actions undertaken by ASIC. In summary ASIC's actions have resulted in:

Outcome	Number
Enforceable undertakings	9
Bans (as a result of an enforceable undertaking or otherwise)	9
Convictions (resulting in jail)	2
Financial Services licenses cancelled/suspended	1
Overseas enforcement action	ongoing

Date	Person and Role	Outcome	Review/ Appeal	Sentence	Current Status	Publication
24 June 2011	Kilara Financial Solutions Financial planning firm	Enforceable Undertaking to address compliance issues	NA	No sanction	Matter concluded	ASIC Media Release 11-122AD <i>Kilara Financial Solutions enforceable undertaking</i> (24 June 2011) ASIC's Register of Enforceable

Date	Person and Role	Outcome	Review/ Appeal	Sentence	Current Status	Publication
						Undertakings
1 July 2011	Rex Phillpott Director of Trio Capital Ltd	Enforceable Undertaking not to provide financial services or to manage a corporation	NA	15 years ban	In force	ASIC Media Release 11-133MR <i>Former directors of Trio Capital prevented from working in the financial services industry</i> (4 July 2011) ASIC's Register of Enforceable Undertakings
1 July 2011	Natasha Beck Director of Trio Capital Ltd	Enforceable Undertaking not to provide financial services or to manage a corporation (except for 1 company)	NA	2 years ban	Matter concluded	ASIC Media Release 11-133MR <i>Former directors of Trio Capital prevented from working in the financial services industry</i> (4 July 2011) ASIC's Register of Enforceable Undertakings
5 July 2011	Peter and Anne-Marie Seagrim Financial planners	Banned from providing financial services, with the AAT reducing the ban to 6 months	AAT – On 31 August 2012 the AAT reduced the ban from 3 years to 6 months	6 month ban	Matter concluded	Seagrim v Australian Securities and Investments Commission [2014] AATA 817 ASIC Media Release 11-134MR <i>ASIC Acts: Seagrims licence suspended and directors banned</i> (5 July 2011)

Date	Person and Role	Outcome	Review/ Appeal	Sentence	Current Status	Publication
						ASIC's Register of Banned and Disqualified Persons
10 August 2011	David Andrews Director of Trio Capital Ltd	Enforceable Undertaking not to provide financial services or to manage a corporation (except for 1 consultancy company)	NA	9 years ban	In force	ASIC Media Release 12-294MR <i>Update on Trio Investigation</i> (29 October 2013) ASIC's Register of Enforceable Undertakings
12 August 2011	Shawn Richard CEO of investment manager of Astarra Strategic Fund	Convicted of 2 breaches of s1041G Corporations Act (dishonest conduct in carrying on a financial services business). One charge of breach of section 1041E (false or misleading statements) taken into account for sentencing purposes.	Supreme Court of New South Wales – on 12 August 2011, Richard was sentenced by the Court following his guilty plea.	3 years and 9 months jail with a minimum term of 2 years and 6 months	Richard was released from prison in January 2014	R v Shawn Darrell Richard [2011] NSWSC 866 ASIC Media Release 11-169MR <i>Former Astarra investment manager sentence to jail</i> (12 August 2011)
24 August 2011	Keith Finkelde Director of Trio Capital Ltd	Enforceable Undertaking not to provide financial services or to manage a	NA	4 years ban	In force	ASIC Media Release 11-133MR <i>Remaining Trio former directors excluded from financial services industry for four years</i> (24 August

Date	Person and Role	Outcome	Review/ Appeal	Sentence	Current Status	Publication
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24 August 2011	David O'Bryen Director of Trio Capital Ltd	Enforceable Undertaking not to provide financial services or to manage a corporation (other than the trustee of his self-managed superannuation fund)	NA	4 years ban	In force	ASIC Media Release 11-133MR <i>Remaining Trio former directors excluded from financial services industry for four years</i> (24 August 2011) ASIC's Register of Enforceable Undertakings
19 September 2011	Seagrim's Financial planning firm	Suspend then cancel (at the firm's request) the Australian Financial Services Licence	NA	Licence suspended then cancelled (at firm's request)	Matter concluded	ASIC Media Release 11-134AD <i>ASIC Acts: Seagrim's licence suspended and directors banned</i> (5 July 2011) ASIC's Register of Australian Financial Services Licence
25 November 2011	Ross Tarrant Financial planner	Banned from providing financial services	AAT – On 20 December 2013 the AAT upheld the ban imposed by the ASIC delegate.	7 years ban	In force	Tarrant v Australian Securities and Investments Commission [2013] AATA 926 Tarrant v Australian Securities and Investments Commission [2015]

Date	Person and Role	Outcome	Review/ Appeal	Sentence	Current Status	Publication
			Full Court of the Federal Court – On 6 February 2015 the Full Court dismissed Mr Tarrant's appeal of the AAT's decision.			FCAFC 8 ASIC Media Release 15-017 <i>Federal Court dismisses appeal from banned Wollongong Financial planner</i> (10 February 2015) ASIC's Register of Banned and Disqualified Persons
1 February 2012	Tony Maher (Paul Gresham) Director of investment manager for ARP Growth Fund	Enforceable Undertaking not to provide financial services or manage a corporation	NA	Permanent ban	In force	ASIC Media Release 12-15MR <i>Former ARP Growth Fund operator prevented from participating in financial services, managing corporations</i> (1 February 2012) ASIC's Register of Enforceable Undertakings
10 February 2012	Timothy Frazer Auditor of Astarra Strategic Fund	Enforceable Undertaking not to provide audit services	NA	3 years	In force	ASIC Media Release 12-22 MR <i>Astarra Strategic Fund auditor prevented from auditing companies for three years</i> (10 February 2012) ASIC's Register of Enforceable Undertakings
6 March	Eugene Liu	Banned from providing	AAT – On 31 October 2014 the	Permanent	In force	Liu v Australian Securities and Investments Commission [2014]

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2013	Chief Investment Strategist for the Astarra Strategic Fund and director of investment manager	financial services	AAT upheld the decision to permanently bank Liu from the financial services industry.	nt ban		<p>AATA 817</p> <p>ASIC Media Release 13-041 MR <i>Former Astarra investment manager permanently banned from financial services industry</i> (6 March 2013)</p> <p>ASIC's Register of Banned and Disqualified Persons</p>
27 June 2014	Tony Maher (Paul Gresham) Director of investment manager for ARP Growth Fund	Convicted of 20 breaches of section 178BA Crimes Act (repealed) (obtaining monies by false statement)	District Court of New South Wales – On 27 June 2014 Maher was sentenced by the Court following his guilty plea.	25 months with 15 months to serve	Maher is currently serving his jail term	<p>ASIC Media Release 14-144 MF <i>Former investment manager jailed</i> (27 June 2014)</p>

Action taken by APRA: list of enforceable undertakings accepted by APRA

Name	ARPA acceptance date	Expiry date of undertaking
Millhouse, David Guy	29 October 2013	28 October 2023
Groeneveld, Kurt William	17 October 2013	16 April 2017
Harte, John	4 July 2013	3 July 2017
Anderson, Cameron Patrick	4 July 2013	3 July 2025
Anderson, Michael James	4 July 2013	3 July 2017
Macolino, Lorenzo Patrick	28 June 2013	27 June 2021
Hallinan, Terrence	27 June 2013	26 June 2021
Godfrey, John Alan	5 March 2012	No expiry date
O'Bryen, David	27 October 2011	26 April 2017
Finkelde, Keith Rex	12 September 2011	11 September 2017
Phillpott, Rex John	6 September 2011	5 September 2026
Andrews, David Ronald	6 September 2011	5 September 2021
Beck, Natasha	1 July 2011	30 June 2015

APRA's website has further information including a copy of each undertaking and can be accessed at: <http://www.apra.gov.au/CrossIndustry/Pages/EnforceableUndertakings.aspx>.

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	Astarra Strategic Fund	conduct in carrying on a financial services business). One charge of breach of section 1041E (false or misleading statements) taken into account for sentencing purposes.	on 12 August 2011, Richard was sentenced by the Court following his guilty plea.	term of 2 years and 6 months	January 2014	ASIC Media Release 11-169MR <i>Former Astarra investment manager sentence to jail</i> (12 August 2011)
24 August 2011	Keith Finkelde Director of Trio Capital Ltd	Enforceable Undertaking not to provide financial services or to manage a corporation	NA	4 years ban	In force	ASIC Media Release 11-133MR <i>Remaining Trio former directors excluded from financial services industry for four years</i> (24 August 2011) ASIC's Register of Enforceable Undertakings
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10 February	Timothy Frazer	Enforceable Undertaking	NA	3 years	In force	ASIC Media Release 12-22 MR <i>Astarra</i>

2012	Auditor of Astarra Strategic Fund	not to provide audit services				<p><i>Strategic Fund auditor prevented from auditing companies for three years (10 February 2012)</i></p> <p>ASIC's Register of Enforceable Undertakings</p>
6 March 2013	Eugene Liu Chief Investment Strategist for the Astarra Strategic Fund and director of investment manager	Banned from providing financial services	AAT – On 31 October 2014 the AAT upheld the decision to permanently ban Liu from the financial services industry.	Permanent ban	In force	<p>Liu v Australian Securities and Investments Commission [2014] AATA 817</p> <p>ASIC Media Release 13-041 MR <i>Former Astarra investment manager permanently banned from financial services industry</i> (6 March 2013)</p> <p>ASIC's Register of Banned and Disqualified Persons</p>
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