

# **ACT Super Management Pty Limited**

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18 March 2010

Dear Member

**Astarra Superannuation Plan ABN 43 724 394 795**

**Astarra Personal Pension Plan ABN 74 351 127 106**

**My Retirement Plan ABN 23 732 008 457**

**The Employers Federation of NSW Superannuation Plan ABN 31 061 350 115**

**Astarra Pooled Superannuation Trust ABN 71 340 939 814**

**(collectively "the Funds")**

## **1. Introduction**

As members will be aware, ACT Super Management Pty Ltd ("ACT Super") was appointed as the Acting Trustee of the Funds by APRA on 16 December 2009 pursuant to Section 134(1) of the Superannuation Industry (Supervision) Act 1993 ("the Act").

On the same date, Neil Singleton, Steve Parbery and Nicholas Martin of PPB were appointed Voluntary Administrators of Trio Capital Limited ("Trio"). Trio was the former trustee of the Funds. Trio remains the Responsible Entity ("RE") of the managed investment schemes ("the schemes") into which the vast majority of the money received by the Funds was invested.

I refer to the previous communications and Significant Event Notices issued by ACT Super.

This notice provides an update to members on the status of the activities of the Acting Trusteeships.

## **2. Status of the schemes into which the Funds have invested**

As advised previously, the Funds have invested the vast majority of the cash received from members into 13 schemes, for which Trio remains as RE. It is the view of the Acting Trustee that the status of these schemes needs to be clarified before the position of Funds and their future can be determined.

The Acting Trustee has been working with PPB in relation to these schemes. PPB has made an application to Court for the following schemes to be wound up:

- + Astarra Strategic Fund ("ASF");
- + Astarra Wholesale Portfolio Service ("AWPS"); and
- + Astarra Overseas Equities Pool ("AOEP").

PPB is also seeking to wind up two other schemes, in which the Funds have no investments.

The winding up application is to be heard on Friday 19 March. ACT Super supports the winding up of these schemes, given the exposure of these schemes to the impaired and/or illiquid assets, being ASF, Ualan property developments and Millhouse overseas private equity investments.

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Some members have raised concerns about the need for these schemes to be wound up and the effect of such orders on asset values. Should the Court make the winding up orders sought by PPB, it will be the role of PPB to wind up by the schemes by converting all assets into cash and distributing the proceeds to the unitholders of each scheme. There is no timeframe within which the winding up needs to be completed and the decision to wind up the schemes does not require an immediate fire sale of all assets. Rather the assets can be realised in an orderly manner within timeframes that are appropriate to maximise the value of the assets. Given the illiquid nature of some of the investments, such a process could take several years to complete.

In relation to the remaining ten schemes, they have either no exposure to the impaired and/or illiquid assets or have a very limited exposure to ASF. As such, PPB and ACT Super have been undertaking a process to see if these schemes can be transitioned to an alternative RE. The relevant schemes are:

- + Astarra Capital Protected Pool;
- + Astarra Cash Pool;
- + My Income Plan;
- + My Growth Plan;
- + Astarra Australian Equities Pool;
- + Astarra diversified Fixed Interest Pool;
- + Astarra Wholesale Property Fund;
- + Astarra Conservative Fund;
- + Astarra Growth Fund;
- + Astarra Balanced Fund.

The process to determine whether a transition of these schemes to an alternative RE is possible has been underway for approximately one month. We expect to shortly receive final proposals from potential new REs. PPB and ACT Super will discuss these proposals and if appropriate, PPB will seek to convene meetings of unitholders to consider and vote on any proposals received. We would expect that any transition to a new RE for these schemes, should it occur, to take place around the end of April.

### **3. Status of the Funds**

As set out in our previous correspondence to members dated 19 February 2010, there are two broad options available to ACT Super in relation to the future of the Funds and their members:

- + the winding up of the Funds with members' balances being rolled over to either:
  - superannuation funds nominated by individual members; or
  - a single superannuation fund selected by ACT Super (a successor fund transfer); and
- + ACT Super retiring as trustee of the Funds and appointing a new trustee..

Given that we expect to know the likely future status of the schemes within several weeks, ACT Super has commenced the process of considering which of the above options is likely to be in the best interests of the members of each superannuation fund taken as a whole.

There are a number of factors that are relevant to such a decision some of which include:

- + the tax status of the funds and the ability to preserve any carried forward tax losses that might apply;

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- + the number of members that have insurance arrangements within each fund;
- + the need to realise the assets of each fund under each option;
- + the infrastructure supporting the Funds and the viability of the existing arrangements were the funds not to be wound up;
- + the need to employ an interim unit pricing methodology;
- + whether there will be an application for a grant of financial assistance under Part 23 of the SIS Act (see below); and
- + the cost and timing of each of the options and the administrative tasks associated with each of them.

Given the above factors, ACT Super is considering whether it would be preferable to effect a successor fund transfer to an alternative fund for the following superannuation funds:

- + Astarra Superannuation Plan;
- + Astarra Personal Pension Plan; and
- + My Retirement Plan, including Seagrims, TIC and Titanium.

We note that the Employers Federation of NSW Superannuation Plan is a defined benefit fund with a small number of members and accordingly, will be subject to different considerations. Our approach to this fund will be determined shortly. The unitholders in the Astarra Pooled Superannuation Trust are superannuation funds. The assets of this Trust will be realised and distributed to the superannuation funds.

A number of key issues relevant to the successor fund option are:

- + the requirement under superannuation law that a successor fund provides members with equivalent rights to benefits the members enjoyed in the original fund;
- + the potential ability under this option to preserve carried forward tax losses;
- + the ability to maintain member insurance coverage;
- + whether members who may not wish to transfer to the successor fund nominate another fund before the transfer or after the transfer;
- + ACT Super intends to conduct a tender process to identify a successor fund. As part of such a process, ACT Super will invite a number of potential funds to put forward proposals. The process will determine:
  - whether the assets can be transferred in specie (ie as is) or whether it will be necessary to convert all the assets into cash;
  - the proposed investment options, fee structures and administrative arrangements for members in the new fund.

Should a successor fund transfer not be possible for the above funds, then we believe that it would be appropriate for all members to rollover their individual balances to alternative funds selected by the member (or to an Eligible Rollover Fund in the event that a member does not nominate an alternative fund). This will require all assets to be converted into cash to facilitate the rollovers.

## 4. Unit pricing

Unit pricing for the Funds is necessary to enable the Acting Trustee to:

- + determine the value of each member's interest in the relevant fund;
- + facilitate pension payments and hardship payments; and

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- + facilitate the transfer of members' interests to an alternative trustee.

Historically, unit pricing for the Funds has been derived from the unit prices set for the schemes. Since ACT Super's appointment in December 2009, unit pricing has not been routinely undertaken for the schemes or the Funds by Trio staff given the inability to properly value the impaired and/or illiquid assets. PPB has indicated that at this time they are unlikely to be in a position to open the good schemes or establish unit pricing having regard to their limited role as Temporary Responsible Entity and the restrictive terms of Trio's AFSL. Further, PPB do not intend to set unit prices for the three problematic schemes to be wound up as once a winding up order is obtained, unit pricing is no longer relevant with unitholders simply receiving distributions of cash as part of that process. In the meantime, however, PPB will shortly be in a position to provide ACT Super with an estimated Statement of Financial Position in respect of each of the Schemes.

Given this, ACT Super now needs to implement a new pricing mechanism that:

- + sets interim unit prices in the superannuation funds based on the current value of the non-problematic assets and values the impaired and/or illiquid assets at nil or a minimum value;
- + enables members to continue to be paid pensions and to transition to new arrangements based on these interim prices; and
- + allows for amounts to be credited to the benefit of members or paid to members' new superannuation funds into the future to the extent that the impaired and/or illiquid assets realise amounts over time or if compensation is received as a result of an application for a grant of financial assistance under Part 23 of the SIS Act (see below).

Such a mechanism is likely to require Court sanction and may require the involvement of specialist consultants with expertise in unit pricing. We will update members further on this process as the mechanism is developed.

## 5. Application for a grant of financial assistance

Under Part 23 of the *Superannuation Industry (Supervision) Act 1993* ("the SIS Act") a trustee may make an application to the Minister for a grant of financial assistance to the extent that an APRA regulated superannuation fund suffers a loss as a result of fraudulent conduct or theft that has caused substantial diminution of a fund leading to difficulties in the payment of benefits.

At this stage, it is too early to say whether there will be sufficient evidence to support such an application and if an application is made, what compensation, if any, the Minister may determine to grant to the Funds. We will keep members updated on developments.

## 6. Other activities of the Acting Trustee

In addition to the above matters, the Acting Trustee is attending to the following:

- + completion of the financial statements and audit of the Funds for the year ended 30 June 2009;
- + lodgement of the 2009 taxation returns for the Funds;
- + dealing with members' hardship and compassionate claims;
- + regular liaison and reporting to APRA on the status of the Funds;
- + regular liaison with PPB in relation to the schemes;
- + dealing with the Funds' investments in Ualan, a property company with a number of individual property developments along the east coast of Australia;

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- + dealing with the Funds' investments in two Millouse unit trusts, which have invested into a number of companies, predominantly in Germany

## **7. APRA freeze orders and portability relief**

As reported previously, on 21 October 2009, APRA issued Trio, as the former trustee of the Funds, with a freeze order under section 264 of the SIS Act. The effect of the freeze order was to restrict the acceptance of new contributions and rollovers into the Funds, to prevent investment switches and to restrict payments from the Funds.

The freeze order was due to expire on 19 February 2010. For the reasons set out in our letter of 19 February 2010, ACT sought, and was granted, a one month extension to the freeze order to 19 March 2010.

It has been agreed with APRA that the freeze order will be lifted on 19 March 2010. However, for the reasons set out earlier in this letter, ACT Super is not yet in a position to allow members to transfer their balances to alternative trustees.

Accordingly, ACT Super has written to APRA and sought relief from the requirements under the SIS Act to rollover or transfer a member's balance to an alternative trustee within 30 days of receiving a request to do so ("portability relief"). ACT Super has sought portability relief to 1 July 2010. APRA has agreed to this request.

Following the granting of this relief, ACT Super will not be:

- + accepting any further contributions to the Funds as the PDSs relating to the Funds have been withdrawn;
- + accepting any investment switches;
- + making any rollover payments to alternate funds until the portability relief expires or is revoked; or
- + making any benefit payments other than:
  - regular pension payments;
  - payments on hardship and compassionate grounds;
  - accepted death and TPD claims.

During this period, the Funds will continue to generate investment returns, which will be credited to members' accounts.

We understand the impact that the above process will have on some members. However, we believe that the strategy that we are adopting is in the best interests of the members of each fund as a whole. Were we not to have taken this action, it is likely that there would have been significant requests for rollovers of entitlements from members that would have likely led to the immediate sale of all assets, the winding up of all schemes and the winding up of the Funds.

## **8. Pension and hardship payments**

The Acting Trustee has to date paid all pension payments due for January, February and March in full. We do not anticipate any issues with the payment of pensions in the future.

We note that prior to and following our appointment, there was a \$5,000 cap imposed on monthly pension payments by APRA. That cap will now be removed on all pension payments in the future.

The Acting Trustee has processed a number of hardship payments and will continue to make these and other benefit payments where the applications meet the assessment criteria. We note

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that a number of hardship claims were made by members who were entitled to pensions prior to those pension payments being made. Members who wish to continue to pursue such hardship claims should resubmit their claims.

## **9. General**

The Acting Trustee will provide further updates to members in due course.

In the meantime, members, members seeking further information can phone the Trio contact centre on the following numbers:

- Astarra Superannuation Plan and Personal Pension Plan  
1800 064 694
- Astarr Superannuation Service  
1300 616 898
- My Retirement Plan  
1300 367 111
- Seagrims Retirement Plan  
1300 233 151
- TIC Super  
1300 960 090
- Titanium Retirement Fund  
1300 121 501
- The Employers Federation of NSW Superannuation Plan  
(02) 6041 9300

Yours faithfully



Mike Hill  
Director  
ACT Super Management Pty Ltd