



ASIC

Australian Securities & Investments Commission

Updated statements 23 August 2007

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These statements update those made by Mr Tony D'Aloisio, Chairman, Australian Securities Commission to the Senate Standing Committee on Economics on 30 May 2007

Updated Statement on the Westpoint Group of companies

23 August 2007

This statement updates the statement about Westpoint made by Mr Tony D'Aloisio, Chairman, Australian Securities and Investments Commission to the Senate Standing Committee on Economics on 30 May 2007.

Background

1. The Westpoint Group collapsed in early 2006 after proceedings commenced by ASIC in November 2005 in relation to two companies in the Group.
2. Since commencing investigations in relation to the Westpoint Group of companies in 2005, ASIC has undertaken 62 investigations and has commenced 29 proceedings to preserve assets or place travel restrictions on persons of interest and wind up companies to stop misconduct and preserve assets.
3. ASIC has taken actions to preserve assets, prevent 5 key individuals from leaving the country and wound up 18 companies within the Group.
4. ASIC has commenced investigations against former directors and officers in the Westpoint Group, the former auditors of the Group, financial service licensees, authorised representatives of those licensees and unlicensed operators.
5. Those investigations are continuing.
6. After a joint investigation with the West Australian Police, former financial adviser, Annemieke De Boer has been charged with stealing.

Update since 30 May 2007

7. ASIC has continued to work with administrators of various companies within the Westpoint Group to preserve assets, assist with investigations for recoveries and secure, image and provide access to all relevant documents within the Westpoint Group. Asset preservation orders have been maintained and continue to operate.
8. ASIC has referred 2 criminal briefs to the CDPP in relation to unlicensed operators and a brief to an ASIC delegate for potential banning.
9. ASIC has commenced investigations against a further 6 licensees and 5 authorised representatives who advised on Westpoint products, with 16 briefs currently before ASIC delegates for potential banning.

Maximizing returns to investors

11. ASIC has taken action to preserve assets of between \$13–\$54 million against 13 individuals and companies. These orders have been maintained since March 2006.
12. ASIC has prepared a table for the Westpoint Group related mezzanine companies (presently in liquidation) setting out the total amount raised from investors that remains outstanding and the estimated returns to creditors from the liquidations. This information has largely been sourced from liquidator reports to creditors published prior to 3 August 2007 (**see table attached**).

13. This table does not take into account any potential recoveries that may be available from parties associated with the Group and the products it provided to retail investors.
14. ASIC is examining any potential wrongdoing by former directors and officers of Westpoint in their management of the group of companies. In addition, ASIC is examining the role and conduct of related parties and advisers and has been discussing these matters with the liquidators of a number of the 'mezzanine' companies, licensees and lawyers, who already represent a large number of investors in recovery proceedings.
15. This will facilitate ASIC's determination of whether actions for compensation (eg under section 50 of the ASIC Act) are available. ASIC expects to make decisions on these by 31 October 2007.

Estimated returns from liquidations—Westpoint Group

The Westpoint Group related mezzanine companies (presently in liquidation) are set out in the table below including the total amount raised from investors that remains outstanding and the estimated likely return to creditors if any. It should be noted that it may be some time before any distributions can be made to investors with some of the projects as in some cases the administrators are either finalising arrangements with the relevant receivers and managers or waiting for assets to be sold.

Company and Development Project	Total Creditors/Investors		Amount Available to Distribute to Investors	Estimated Likely Dividend (Cents in the dollar)
	Promissory Notes	Mezz. Notes/ Regulated Fundraising		
Ann Street Mezzanine Pty Ltd —Ann Street, Brisbane	PN \$77.53m ¹ \$72.669m ²	N/a	\$5m–\$6.5m ³	7 to 9 ⁴
Bayshore Mezzanine Pty Ltd —Bayshore Port Melbourne	PN \$35.902m ⁵	N/a	\$0	0 ⁶
Bayview Mezzanine Pty Ltd —Bayview Port Melbourne	Nil. We understand all funds raised were repaid or redeemed.	N/a	N/a	N/a
Bayview Heritage Mezzanine Pty Ltd —Bayview Heritage	PN \$16.362m ⁷	N/a		Nil ⁸
Cinema City Mezzanine Pty Ltd —Cinema City development, 580 Hay Street, Perth	Unknown, \$2.852m raised ⁹	N/a		Nil ¹⁰
Emu Brewery Mezzanine Pty Ltd —Emu Brewery Development	PN \$12.376m ¹¹	MN \$12.911m	\$24.573m ¹²	99.6 ¹³
Market Street Mezzanine Ltd —Market Street, Melbourne	PN \$25.256m ¹⁴	MN \$17.919m via Prospectus ¹⁵		Nil ¹⁶

¹ PWC report to creditors of Market Street Mezzanine No.2 Pty Ltd dated 25 January 2006

² ASIC Form 524 to 20 June 2006

³ Deduced from total investors and likely dividend

⁴ PWC report to creditors of Ann Street Mezzanine dated 13 February 2007

⁵ PWC second meeting of creditors 27 January 2006

⁶ PWC Case Profile last updated 9 November 2006

⁷ PWC report to creditors of Bayview Heritage Mezzanine Pty Ltd dated 24 January 2006

⁸ PWC letter to creditors of Bayview Heritage Mezzanine Pty Ltd dated 12 December 2006

⁹ PWC report to creditors of Cinema City Mezzanine Pty Ltd dated 7 June 2006

¹⁰ PWC notice to creditors of Cinema City Mezzanine Pty Ltd dated 7 September 2006

¹¹ Ferrier Hodgson report to creditors of Emu Brewery Mezzanine Ltd dated 11 January 2007 (per RATA)

¹² Ferrier Hodgson Case Profile of Emu Brewery Mezzanine last updated 25 May 2007

¹³ Ferrier Hodgson Case Profile of Emu Brewery Mezzanine last updated 25 May 2007

¹⁴ PWC report to creditors of Market Street Mezzanine Ltd dated 25 January 2006, page 21

Company and Development Project	Total Creditors/Investors		Amount Available to Distribute to Investors	Estimated Likely Dividend (Cents in the dollar)
	Promissory Notes	Mezz. Notes/ Regulated Fundraising		
Market Street Mezzanine No. 2 Pty Ltd (formerly 297 Murray Street Ltd) —388-394 Flinders Lane, Melbourne	PN \$9.96m ¹⁷	N/a		Nil ¹⁸
Mount Street Mezzanine Ltd —Mount Street, North Sydney	PN \$41.79m ¹⁹	N/a		Unknown
North Sydney Finance Ltd Westpoint Management Ltd as Trustee of unsecured note holders —Mount Street, North Sydney	N/a	Deb Note \$0.100m Unsec Note \$12.245m Westpoint \$0.125m Other unsec <u>\$2.307m</u> \$14.777m ²⁰ Unsecured Notes via Prospectus	\$0–\$4.861m ²¹	0 to 32.7 ²²
Paragon Apartments Limited —Paragon Apartments, 811 Hay Street Perth	N/a	\$4m via Prospectus ²³		Unknown
Warwick Entertainment Centre Pty Ltd —Warwick Entertainment Centre, Perth (entertainment based shopping centre)	\$13m unitholders, not PN ²⁴	N/a		Unknown
York Street Mezzanine Pty Ltd —Scots Church Development on York Street, Sydney	PN \$92.16m ²⁵	N/a	\$17.6m–\$21.3m ²⁶	17 to 23 ²⁷
Westpoint Management Ltd				Nil

¹⁵ PWC report to creditors of Market Street Mezzanine Ltd dated 25 January 2006, page 21

¹⁶ PWC report to creditors of Market Street Mezzanine Ltd dated 17 May 2006 and 12 June 2007

¹⁷ PWC report to creditors of Market Street Mezzanine No.2 Pty Ltd dated 25 January 2006

¹⁸ PWC report to creditors of Market Street Mezzanine No.2 Pty Ltd dated 25 January 2006 and 12 June 2007

¹⁹ PWC report to creditors of Market Street Mezzanine No.2 Pty Ltd dated 25 January 2006

²⁰ Ferrier Hodgson report to creditors of North Sydney Finance Ltd dated 15 December 2006

²¹ Ferrier Hodgson Circular to Creditors of North Sydney Finance dated 20 April 2007, page 13.

²² Ferrier Hodgson Case Profile of North Sydney Finance Ltd last updated 25 May 2007.

²³ PPB report to creditors of Westpoint Management Ltd dated 17 January 2007, page 41

²⁴ ASIC Form 507 Report as to Affairs for Warwick Entertainment Centre Pty Ltd dated 17 March 2006

²⁵ PWC report to creditors of York Street Mezzanine Pty Ltd dated 31 August 2006

²⁶ PWC Case Profile of York Street Mezzanine last updated 20 March 2007, page 8

²⁷ PWC Case Profile of York Street Mezzanine last updated 23 July 2007

Company and Development Project	Total Creditors/Investors		Amount Available to Distribute to Investors	Estimated Likely Dividend (Cents in the dollar)
	Promissory Notes	Mezz. Notes/ Regulated Fundraising		
ATF 60 Market Street Trust —60 Market Street, Melbourne	N/a	N/a		Nil ²⁸
ATF 297 Murray Street Trust —residential and commercial properties at 297 Murray Street, Perth		None outstanding ²⁹		Not applicable ³⁰
RE for Paragon Commercial Syndicate —Paragon CBD retail arcade and office complex, 160 St Georges Terrace, Perth		\$12.255m public unit holders and \$3.345m units retained by Westpoint Management (Centreways) Pty Ltd (total \$15.6m); Managed Investment Scheme via Prospectus ³¹	\$3.5m plus book debts (possibly \$2.5m) less Centreways claim (\$2.3m) ³²	Unknown, pending receipts of funds from receivers and related party; estimate 0 to 20 ³³
Formerly ATF Warwick Cinema Syndicate Trust	\$4.25m unitholders, not PN ³⁴			Unknown ³⁵
Formerly RE for Warnbro Fair Syndicate —owns Warnbro Fair Shopping Centre approx. 50 km south of Perth CBD, and owns land adjoining the shopping centre	N/a	\$10.66m ³⁶ Units on issue from Prospectus ³⁷	\$21.32m - \$31.98m ³⁸	2 to 3 times initial investment subject to Option issue ³⁹

²⁸ PPB report to creditors of Westpoint Management Ltd dated 17 January 2007, page 47

²⁹ As advised by Liquidator

³⁰ As advised by Liquidator

³¹ PPB Investor Relations Update Westpoint Management, Responsible Entity for Paragon Commercial Syndicate dated 31 July 2006 and 8 March 2006

³² PPB report to creditors of Westpoint Management Ltd dated 17 January 2007, page 36

³³ PPB Investor Relations Update Westpoint Management, Responsible Entity for Paragon Commercial Syndicate dated 7 February 2007, and PPB report to creditors of Westpoint Management Ltd dated 17 January 2007

³⁴ PPB report to creditors of Westpoint Management Ltd dated 17 January 2007

³⁵ PPB report to creditors of Westpoint Management Ltd dated 17 January 2007, page 40

³⁶ PPB Investor Relations Update Westpoint Management, Responsible Entity for Warnbro Fair Syndicate dated 16 May 2006

³⁷ PPB Investor Relations Update Westpoint Management, Responsible Entity for Warnbro Fair Syndicate dated 17 February 2006

³⁸ Deduced from total investors and likely dividend

Company and Development Project	Total Creditors/Investors		Amount Available to Distribute to Investors	Estimated Likely Dividend (Cents in the dollar)
	Promissory Notes	Mezz. Notes/ Regulated Fundraising		
The Paragon Apartment Trust —developed Paragon Apartments in a 50:50 JV with Paragon Apartments Ltd	\$4m in units, not PN ⁴⁰		Unknown ⁴¹	Unknown ⁴²
Westpoint Income Fund (Westpoint Management Ltd act as RE) —managed investment scheme developed to invest in property based projects		\$10.996m units on issue as equity ⁴³	\$2.199m–\$7.692m ⁴⁴	Low end of range of 20 to 70 ⁴⁵
TOTAL	\$335.438m	\$86.863m	\$74.392m–\$100.606m	

The above table doesn't include the deficiency in assets to repay creditors of Westpoint Corporation Pty Ltd. The liquidators of Westpoint Corporation Pty Ltd in their report dated 24 November 2006 state that at this stage they are unable to provide an estimate of the potential return to creditors however, their report at pages 34 to 38 indicates their estimate of the realisable value of assets will mean that any return to unsecured creditors will be minimal. The liquidators estimate of unsecured creditors totalling \$360.297 million includes \$275.175 million of guarantees for the debts of the mezzanine companies⁴⁶.

³⁹ PPB report to creditors of Westpoint Management Ltd dated 17 January 2007

⁴⁰ PPB report to creditors of Westpoint Management Ltd dated 17 January 2007, page 42

⁴¹ As advised by Liquidator

⁴² As advised by Liquidator

⁴³ PPB Westpoint Income Funds Meeting of Members 6 December 2006, and PPB report to creditors of Westpoint Management Ltd dated 17 January 2007, page 26

⁴⁴ Deduced from total investors and likely dividend

⁴⁵ PPB Investor Relations Update Westpoint Management, Responsible Entity for the Westpoint Income Fund dated 25 May 2007 [This is an estimate only and the liquidators are concerned that issues may arise that could alter this estimated return.]

⁴⁶ Westpoint Corporation Pty Ltd, PPB Report to Creditors dated 24 November 2006

Updated Statement on Fincorp

23 August 2007

This statement updates the statement about Fincorp made by Mr Tony D'Aloisio, Chairman, Australian Securities and Investments Commission to the Senate Standing Committee on Economics on 30 May 2007.

Background

1. The Fincorp group of companies is made up of 21 corporate entities. The group specialised in property development and property investments raising funds from the public to carry out these activities.
2. The key legal aspects of the structure are as follows:
 - (a) Fincorp Investments Ltd (Administrators Appointed) (Fincorp) raised moneys from the public through 'first ranking notes' and 'unsecured notes'. First ranking notes were notes issued by Fincorp secured over its assets by a floating charge. Unsecured notes were notes issued by Fincorp but not backed by any charge or other security.
 - (b) Fincorp lent the moneys it raised from the public to other companies in the group. Fincorp's main asset is 'loans receivables' from those companies. This asset is the asset subject to the floating charge which secures the first ranking notes. Those companies in turn used the borrowings from Fincorp to develop properties and make property investments. The floating charge did not extend over the assets of those companies.
 - (c) Companies in the group which were engaged in property development and investment also raised first mortgages against those properties (e.g. from banks) to a limit set by Fincorp. Those mortgages have priority over repayment of borrowings from those companies to Fincorp. In effect, those first mortgages rank ahead of the first ranking notes and the unsecured notes.
3. Administrators (KordaMentha) were appointed on 23 March 2007.
4. KordaMentha summarised amounts owing on that date as follows:
 - (a) amounts owing to secured note holders \$178m;
 - (b) amounts owing to unsecured noteholders \$23m.

There were 8,102 investors in Fincorp in first ranking notes and unsecured notes.

Update since 30 May 2007

5. ASIC has taken a number of steps designed to achieve its investigation objectives of:
 - (a) maximising returns to noteholders; and
 - (b) assessing the availability of potential third-party claims for compensation and other remedies in respect of wrongdoing, including criminal prosecution.
6. In working towards these objectives, ASIC has continued to work closely with KordaMentha. This has enabled ASIC to be briefed on matters such as the continuing status of the administration and issues of concern identified by the Administrators. This work has assisted ASIC to obtain evidence and helped it to prepare material to seek asset preservation orders.
7. ASIC has also issued notices to various parties requiring production of records to assist its investigation.

Maximising returns to noteholders

8. On 25 July 2007 a statutory meeting of Fincorp creditors was held with KordaMentha at which the creditors approved the process for the sale of Fincorp's property assets totalling approximately \$204m to Becton and AV Jennings which was estimated by the administrator to produce a return to secured noteholders of \$0.50 in the dollar and up to an equivalent return of \$0.55 in the dollar for those noteholders who elected to invest some or all of their return in the Becton Office Fund.
9. KordaMentha confirmed in its statutory report that it was estimating a nil return to unsecured noteholders absent any successful recovery action resulting from their continuing investigations and subsequent litigation.
10. In pursuit of the objective of maximising returns to noteholders, ASIC has successfully applied for a number of freezing orders to ensure the assets of various individuals and companies associated with Fincorp are not shifted or dissipated to the detriment of creditors and investors.
11. On 5 July 2007 ex-parte asset preservation orders were obtained by ASIC in the Supreme Court of New South Wales in relation to the former directors of Fincorp Investments Limited, the spouses of some of the directors and companies associated with those individuals and certain entities, including Macarthur Investments Group Pty Ltd.
12. The orders restrain the defendants from removing any assets from NSW or Australia, and from selling, charging or mortgaging any assets or otherwise disposing or dealing with their assets save for reasonable living and other expenses.
13. On 16 July 2007, the Supreme Court continued the asset preservation orders for varying periods.
14. On 24 July 2007, the Supreme Court made orders by consent for the proceeds of the proposed sale by Macarthur Investments Group Pty Ltd of a Camden property to be placed in a separate interest-bearing account. The funds will be held until agreement is reached between ASIC and Macarthur regarding the proper distribution of those funds or a further court order is made.
15. On 13 August 2007 the Supreme Court continued the orders, by consent, against a number of the defendants.
16. On 14 August 2007, following application by former Fincorp directors Mr Graeme Byers and Mr Craig Stubbs, the Supreme Court refused to overturn the freezing orders already made in relation to their assets and made further orders continuing the asset preservation orders against each of them until 15 October 2007.

Potential third-party claims for compensation and other remedies

17. ASIC has undertaken a review of the Statutory Report to Creditors released by KordaMentha on 18 July 2007. The Administrators have identified a number of potential actions in their report. The asset preservation orders obtained by ASIC will assist in any action against the former directors.
18. ASIC is examining (as is KordaMentha) any potential wrongdoing by former directors and officers of Fincorp in their management of the group of companies and compliance with prior court orders and undertakings. In addition, ASIC is examining the role and conduct of related parties and advisers.
19. This will facilitate ASIC's determination of whether actions for compensation are available.

Updated Statement on Australian Capital Reserve

23 August 2007

This statement updates the statement about Australian Capital Reserve Limited (Administrators Appointed) (ACR) made by Mr Tony D'Aloisio, Chairman Australian Securities and Investments Commission to the Senate Standing Committee on Economics on 30 May 2007.

Background

1. ACR is a property development financier that used a similar business model to that of Fincorp.
2. The key legal structure of ACR, and the securities it issued, is as follows:
 - (a) ACR raised money from the public through 'Deposit Notes'. Deposit Notes are unsecured notes issued by ACR, the repayment of principal and interest of which rank behind repayment of secured debt by ACR and equally with other unsecured loans owed by ACR.
 - (b) ACR on-lent the money it raised from the public to the Estate Property Group, which comprises over 26 companies. ACR's main asset is 'loan receivables' from companies in the Estate Property Group (EPG), which was worth \$339 million as at 30 April 2007. EPG in turn used the borrowings from ACR to develop properties and make property investments, mainly in the residential property market. ACR's loans to EPG were secured by first or (more commonly) subsequent mortgages. Where a subsequent mortgage is taken, repayment priority of the ACR loan is behind the first-ranking mortgage loan. ACR would only lend to EPG, according to its prospectus, up to 85% of the security value of the properties that secured the loan.
 - (c) EPG, which owns 21 property developments, raised first mortgages against up to 18 of those properties (e.g. from banks) as at May 2007. The mortgages have priority over repayment of borrowings from those companies to ACR.
3. ACR was placed into voluntary administration, along with the companies in the Estate Property Group, on 28 May 2007. Representatives of McGrathNicol were appointed as administrators of both ACR and the Estate Property Group. ACR had issued approx \$330 million of Deposit Notes to approximately 7000 investors.

Update since 30 May 2007

4. The first meetings of creditors were held on 4 June 2007. At this time the Trustee exercised its vote in relation to ACR to have PricewaterhouseCoopers appointed administrator of ACR.
5. Since the commencement of the administration, ASIC has worked closely with both McGrathNicol and PricewaterhouseCoopers. It has also made its own inquiries about the affairs of the companies.
6. The administrators have concentrated on strategies to realise the best return for noteholders and creditors. ASIC has been in discussions with the administrators on the options available. ASIC will continue these discussions leading up to the next creditors meeting in early September at which a formal proposal will be put to the creditors.

7. ASIC is also making inquiries in relation to the affairs of ACR and working with the administrators on potential avenues for further investigation. In particular, ASIC is reviewing:
 - (a) the advertising undertaken by ACR;
 - (b) disclosure by ACR to investors and prospective investors;
 - (c) investments made subsequent to the date of the interim stop order placed on ACR's final prospectus on 9 March 2007;
 - (d) valuations obtained by ACR and EPG for the development properties; and
 - (e) related party transactions.
8. ASIC's inquiries are continuing, as are those of the administrators. Further information will be provided in the administrator's report to creditors. The second meetings of the creditors is due to be held on or before 13 September 2007.