



**ASIC**

Australian Securities & Investments Commission

# **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

10. 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.
11. 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**).
12. 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.

13. 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.
14. 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 <sup>1</sup> \$72.669m <sup>2</sup>	N/a	\$5m–\$6.5m <sup>3</sup>	7 to 9 <sup>4</sup>
Bayshore Mezzanine Pty Ltd —Bayshore Port Melbourne	PN \$35.902m <sup>5</sup>	N/a	\$0	0 <sup>6</sup>
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 <sup>7</sup>	N/a		Nil <sup>8</sup>
Cinema City Mezzanine Pty Ltd —Cinema City development, 580 Hay Street, Perth	Unknown, \$2.852m raised <sup>9</sup>	N/a		Nil <sup>10</sup>
Emu Brewery Mezzanine Pty Ltd —Emu Brewery Development	PN \$12.376m <sup>11</sup>	MN \$12.911m	\$24.573m <sup>12</sup>	99.6 <sup>13</sup>
Market Street Mezzanine Ltd —Market Street, Melbourne	PN \$25.256m <sup>14</sup>	MN \$17.919m via Prospectus <sup>15</sup>		Nil <sup>16</sup>

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

<sup>2</sup> ASIC Form 524 to 20 June 2006

<sup>3</sup> Deduced from total investors and likely dividend

<sup>4</sup> PWC report to creditors of Ann Street Mezzanine dated 13 February 2007

<sup>5</sup> PWC second meeting of creditors 27 January 2006

<sup>6</sup> PWC Case Profile last updated 9 November 2006

<sup>7</sup> PWC report to creditors of Bayview Heritage Mezzanine Pty Ltd dated 24 January 2006

<sup>8</sup> PWC letter to creditors of Bayview Heritage Mezzanine Pty Ltd dated 12 December 2006

<sup>9</sup> PWC report to creditors of Cinema City Mezzanine Pty Ltd dated 7 June 2006

<sup>10</sup> PWC notice to creditors of Cinema City Mezzanine Pty Ltd dated 7 September 2006

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

<sup>12</sup> Ferrier Hodgson Case Profile of Emu Brewery Mezzanine last updated 25 May 2007

<sup>13</sup> Ferrier Hodgson Case Profile of Emu Brewery Mezzanine last updated 25 May 2007

<sup>14</sup> 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 <sup>17</sup>	N/a		Nil <sup>18</sup>
Mount Street Mezzanine Ltd —Mount Street, North Sydney	PN \$41.79m <sup>19</sup>	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 <sup>20</sup> Unsecured Notes via Prospectus	\$0–\$4.861m <sup>21</sup>	0 to 32.7 <sup>22</sup>
Paragon Apartments Limited —Paragon Apartments, 811 Hay Street Perth	N/a	\$4m via Prospectus <sup>23</sup>		Unknown
Warwick Entertainment Centre Pty Ltd —Warwick Entertainment Centre, Perth (entertainment based shopping centre)	\$13m unitholders, not PN <sup>24</sup>	N/a		Unknown
York Street Mezzanine Pty Ltd —Scots Church Development on York Street, Sydney	PN \$92.16m <sup>25</sup>	N/a	\$17.6m–\$21.3m <sup>26</sup>	17 to 23 <sup>27</sup>
Westpoint Management Ltd				Nil

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

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

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

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

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

<sup>20</sup> Ferrier Hodgson report to creditors of North Sydney Finance Ltd dated 15 December 2006

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

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

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

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

<sup>25</sup> PWC report to creditors of York Street Mezzanine Pty Ltd dated 31 August 2006

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

<sup>27</sup> 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 <sup>28</sup>
ATF 297 Murray Street Trust —residential and commercial properties at 297 Murray Street, Perth		None outstanding <sup>29</sup>		Not applicable <sup>30</sup>
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 <sup>31</sup>	\$3.5m plus book debts (possibly \$2.5m) less Centreways claim (\$2.3m) <sup>32</sup>	Unknown, pending receipts of funds from receivers and related party; estimate 0 to 20 <sup>33</sup>
Formerly ATF Warwick Cinema Syndicate Trust	\$4.25m unitholders, not PN <sup>34</sup>			Unknown <sup>35</sup>
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 <sup>36</sup> Units on issue from Prospectus <sup>37</sup>	\$21.32m - \$31.98m <sup>38</sup>	2 to 3 times initial investment subject to Option issue <sup>39</sup>

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

<sup>29</sup> As advised by Liquidator

<sup>30</sup> As advised by Liquidator

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

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

<sup>33</sup> 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

<sup>34</sup> PPB report to creditors of Westpoint Management Ltd dated 17 January 2007

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

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

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

<sup>38</sup> 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 <sup>40</sup>		Unknown <sup>41</sup>	Unknown <sup>42</sup>
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 <sup>43</sup>	\$2.199m–\$7.692m <sup>44</sup>	Low end of range of 20 to 70 <sup>45</sup>
<b>TOTAL</b>	<b>\$335.438m</b>	<b>\$86.863m</b>	<b>\$74.392m–\$100.606m</b>	

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 companies<sup>46</sup>.

<sup>39</sup> PPB report to creditors of Westpoint Management Ltd dated 17 January 2007

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

<sup>41</sup> As advised by Liquidator

<sup>42</sup> As advised by Liquidator

<sup>43</sup> 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

<sup>44</sup> Deduced from total investors and likely dividend

<sup>45</sup> 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.]

<sup>46</sup> Westpoint Corporation Pty Ltd, PPB Report to Creditors dated 24 November 2006