



ASIC

Australian Securities & Investments Commission

Information bulletin for Westpoint Group investors

This bulletin is designed to tell Westpoint Group investors some key things about the status of the Australian Securities and Investments Commission's (ASIC) legal proceedings relating to the Group.

January 2006, Issue 1

You can also read this on our website at www.asic.gov.au

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1. What legal proceedings has ASIC taken?

ASIC has started a number of legal proceedings against various companies in the Westpoint Group. Some of these proceedings were started as early as mid 2004 and some of the proceedings are more recent.

The proceedings cover a number of issues including the failure by some companies in the Westpoint Group to offer investors investments that were regulated under the *Corporations Act 2001* and the failure by some of them to lodge financial accounts for the financial year ended 30 June 2005.

ASIC has also successfully sought the winding up of two Group companies, York Street Mezzanine Pty Ltd and Ann Street Mezzanine Pty Ltd and has had a liquidator appointed to each of these companies. A third winding up application against Westpoint Corporation Pty Ltd is still before the Federal Court.

In addition, the directors of a number of Group companies have also placed those companies into voluntary administration.

A more detailed summary of the actions ASIC has taken to date in relation to the Westpoint Group is attached to this bulletin.

2. Why has ASIC taken winding up action against some Westpoint Group companies?

ASIC has acted to protect the interest of investors in the Westpoint Group.

ASIC was concerned that the York Street project was insolvent and that more than 900 investors were at serious risk of losing up to \$75 million of their money. Another concern for ASIC was that investors in these companies were being asked to rollover their investments into other Westpoint companies without adequate disclosure of the risks of doing so.

ASIC was also concerned that York Street had sent misleading or deceptive information to its promissory notes holders and has placed before the court evidence that Westpoint Management Ltd was knowingly involved in the misleading conduct by York Street.

ASIC took action against Ann Street Mezzanine Pty Ltd because it was concerned that the Ann Street project was insolvent even though the company had raised about \$72 million from investors between September 2002 and September 2005. ASIC was also concerned that the company had made little progress in construction work on the project site in Brisbane.

ASIC was concerned to ensure that the assets of the affected companies were preserved for the benefit of existing investors and that no new investors put their money into insolvent projects.

3. What about the failure of Westpoint to produce financial statements for 2005?

A number of Westpoint Group companies failed to lodge accounts for the financial year ended 30 June 2005. These companies ignored ASIC demands to lodge these accounts. ASIC took action against these companies to ensure that they lodged their accounts which provide investors and creditors with important financial information about the Westpoint Group.

As a result of legal action by ASIC, the Federal Court has ordered that accounts be filed for all but one of the non-complying companies.

Eight Group companies lodged their accounts with ASIC in December 2005. Three more have applied to the court for an extension of time. That application is still before the court.

4. What will happen to my investment in the Westpoint Group?

There are 10 main property projects operated by the Westpoint Group. ASIC has taken action in respect of seven of these projects and is monitoring the other three.

PricewaterhouseCoopers and Ferrier Hodgson have been appointed as a liquidators or voluntary administrators for a number of Group companies and will consider what action they can take to recover and distribute funds to investors and creditors.

If a liquidator or voluntary administrator has been appointed to the company you lent money to (ie had a debenture or promissory note from) you should notify them of your interest so that you receive information about the status of your investment.

The liquidator or the voluntary administrator will be able to give you an assessment of what return you might receive. They may also be able to advise you on what other recovery options are available.

ASIC is not able to provide advice based on people's individual circumstances. A lawyer or an accountant may be able to assist you.

5. What will happen to the Westpoint directors and those who recommended investments in Westpoint?

ASIC is continuing to investigate the affairs of the Westpoint Group and it would be inappropriate to speculate on any possible outcome or action that may arise as a result of that process.

ASIC will thoroughly consider the role and conduct of not only the directors, but also of the advisers who have recommended the Westpoint Group to investors.

6. What should I do if I think I have information that may be able to assist ASIC's Westpoint investigation?

It may not be necessary for ASIC to speak to every creditor or investor. The best way to assist is to contact the ASIC Infoline on 1300 300 630.

Summary of action taken to date

Unregulated investments

Litigation was started in 2004 in the Supreme Court of Western Australia between ASIC and

- Emu Brewery Mezzanine Ltd, and
- Bayshore Mezzanine Pty Ltd

concerning whether certain investments offered to investors in those companies were regulated under various parts of the *Corporations Act 2001*. ASIC has also asked the court to find that investors have been misled. This litigation is yet to be resolved and is currently due to go before the Western Australian Court of Appeal on 20 February 2006.

Winding ups

In November and December 2005, ASIC brought applications in the Federal Court in Perth seeking the winding up of:

- York Street Mezzanine Pty Ltd, and
- Ann Street Mezzanine Pty Ltd,

and the appointment of a provisional liquidator to the companies to safeguard the interests the holders of promissory notes. The court has ordered that these companies be wound up and has appointed PricewaterhouseCoopers as the liquidators.

ASIC has also applied for the winding up of Westpoint Corporation Pty Ltd on the basis that that company is insolvent. This matter is still before the Federal Court.

PricewaterhouseCoopers are also acting as voluntary administrators of:

- Mount Street Mezzanine Pty Ltd
- Bayshore Mezzanine Pty Ltd
- Bayview Heritage Mezzanine Pty Ltd
- Market Street Mezzanine Ltd, and
- Market Street Mezzanine No.2 Pty Ltd

Ferrier Hodgson are acting as administrators of:

- North Sydney Finance Ltd
- Emu Brewery Mezzanine Ltd

The administrators were appointed by the directors of those companies.

Lodgement of 2005 accounts

ASIC also applied to the Federal Court for orders seeking the lodgement of the financial accounts for the year ended 30 June 2005 by the following Westpoint Group companies:

- Emu Brewery Mezzanine Ltd,
- North Sydney Finance Ltd,
- Market Street Mezzanine Ltd,
- Chocolate Factory (Winthrop) Ltd,
- Paragon Apartments Ltd,
- Westpoint Corporation Pty Ltd,
- Westpoint Constructions Pty Ltd,
- Scots Church Development Ltd, and
- Bayview Port Melbourne Ltd,

and by three managed investment schemes operated by Westpoint Management Ltd:

- Warnbro Fair Syndicate,
- Paragon Commercial Syndicate, and
- Westpoint Income Fund.

The court has ordered these companies (with the exception of Market Street Mezzanine Limited which is under voluntary administration) and schemes to lodge audited 2005 accounts.

Stop order

In October last year, ASIC also stopped the Product Disclosure Statement (PDS) issued by Westpoint Income Fund. The order stops the fund from raising any money under the PDS.

Production of books

ASIC also has applications before the court to enforce compulsory notices for the production of documents by:

- Westpoint Management Limited,
- Scots Church Development Limited,
- Graeme John Rundle,
- Bayshore Port Melbourne Pty Ltd,
- North Sydney Development Pty Ltd,
- North Sydney Finance Pty Ltd, and
- Westpoint Constructions Pty Ltd.

This bulletin is published by the
Australian Securities & Investments Commission (ASIC)
Level 18, 1 Martin Place, Sydney NSW 2000, AUSTRALIA.
Website: www.asic.gov.au

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