



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.

February 2006, Issue 2

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

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1. What is happening with the company at the centre of Westpoint, Westpoint Corporation Pty Ltd?

The Federal Court in Perth has ordered the winding up of Westpoint Corporation Pty Ltd. The Australian Securities and Investments Commission (ASIC) applied to wind up the company on grounds of insolvency.

The court appointed PPB as liquidators of the company.

ASIC believes Westpoint Corporation is responsible for arranging, managing and co-ordinating Westpoint's property projects as well as holding money for other group companies.

ASIC was concerned that Westpoint Corporation was unable to pay its debts, including its obligations under the guarantees given to the mezzanine companies to make good expected shortfalls in the repayment of amounts owed to investors.

2. Have any other Westpoint companies been placed in external administration?

A provisional liquidator has been appointed to Westpoint Management Limited. Westpoint Management is the trustee of the 60 Market Street and 297 Murray Street Trusts, and responsible entity of the Paragon Commercial Syndicate, the Warnbro Fair Syndicate and the Westpoint Income Fund.

The Supreme Court has appointed PPB as provisional liquidators to Westpoint Management following consultation between ASIC, the receivers and managers over parts of the company's property, and PPB.

Under the orders, the provisional liquidators are required to provide a report to the Court and to ASIC regarding the winding up of the company, as soon as reasonable and in any event, within two months of the orders. ASIC will review that report to help it determine the future of the company's Australian Financial Services Licence and its status as responsible entity of the managed investment schemes.

A summary of the status of various Westpoint Group companies appears below.

3. Where has the money gone?

Instead of going into individual property development projects as Westpoint investors were led to believe, ASIC alleges investors' money was pooled and used by Westpoint for various purposes of the group.

The intermingling of investors' funds must now be unravelled by the receivers and liquidators of various Westpoint entities. This will take some time.

4. What happens to investors whose money is locked up in Westpoint schemes?

Investors' money remains tied up in the schemes pending the determination by liquidators of the most effective way to sell the assets in an orderly process. This process is likely to take some time.

5. Why didn't ASIC act earlier to regulate the Westpoint Group and prevent the loss of investors' money?

ASIC commenced action against Westpoint companies in 2004 when it became concerned that they were operating outside the provisions of the Corporations Law. ASIC sought a determination by the court that Westpoint was promoting a financial product and a managed investment scheme.

ASIC's appeal from the original court decision was heard recently. The court's decision in these proceedings will determine ASIC's jurisdiction over the activities of Westpoint and the avenues it can pursue in respect of Westpoint directors and the financial planners and advisers involved.

6. Can it happen again?

Investors should be aware that if they put their money into high interest products they are accepting high risk. Some investment schemes are deliberately structured so that they fall outside the provisions of the Corporations Act. Those schemes, many without an approved product disclosure statement or prospectus, carry the highest risk.

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 also asked the court to find that investors have been misled. This litigation is yet to be resolved and is currently being considered by the Western Australian Court of Appeal. This action will identify whether ASIC has jurisdiction over investments offered by Westpoint and will determine what actions ASIC can pursue.

Winding up

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 of 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 successfully applied for the winding up of Westpoint Corporation Pty Ltd on the basis that the company is insolvent. PPB has been appointed as liquidators of Westpoint Corporation. PPB are also the liquidators of Westpoint Constructions.

The Supreme Court of Western Australia has appointed PPB as provisional liquidators of Westpoint Management Limited.

The creditors of the following companies have also voted to appoint PricewaterhouseCoopers as liquidators:

- 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

The creditors of the following companies have voted to appoint Ferrier Hodgson as liquidators of:

- North Sydney Finance Ltd
- Emu Brewery Mezzanine Ltd

KordaMentha are acting as receivers of:

- Westpoint Corporation Pty Ltd;
- Warnbro Shopping Centre – Westpoint Corporation
- certain assets of Westpoint Management Ltd
- Bayshore Port Melbourne Pty Ltd
- Paragon Commercial Syndicate
- other special purpose vehicles within the group

Deloitte have been appointed receiver of:

- The property at 60 Market St Melbourne

Ferrier Hodgson are receivers of:

- Scots Church Development Pty Ltd
- certain assets of Westpoint Construction Pty Ltd

Lodgement of 2005 accounts

The following Westpoint Group companies or investment schemes have lodged their financial accounts for the year ended 30 June 2005, as a result of court orders obtained by ASIC:

- Emu Brewery Mezzanine Ltd,
- North Sydney Finance Ltd,
- Chocolate Factory (Winthrop) Ltd,
- Paragon Apartments Ltd,
- Bayview Port Melbourne Ltd,
- Warnbro Fair Syndicate,
- Paragon Commercial Syndicate, and
- Westpoint Income Fund.

The court has also ordered the following three companies to lodge audited 2005 accounts:

- Westpoint Corporation Pty Ltd,
- Westpoint Constructions Pty Ltd,
- Scots Church Development Ltd.

ASIC is considering the enforcement of these court orders in view of the fact that liquidators and receivers are now in control of these companies.

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. The responsible entity

of the fund, Westpoint Management, is now under the control of provisional liquidators.

Production of books

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

- Scots Church Development Limited,
- Bayshore Port Melbourne Pty Ltd,
- North Sydney Development Pty Ltd,
- North Sydney Finance Pty Ltd, and

ASIC is working with the liquidators and receivers of these companies regarding compliance with the notices.

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