



**ASIC**

Australian Securities & Investments Commission

# Westpoint investors' meeting

**Thursday, February 23, 2pm**

**ASIC Level 18, No 1 Martin Place Sydney**

You can also read this on our website at [www.asic.gov.au/westpoint](http://www.asic.gov.au/westpoint)

## Opening comments

ASIC Chairman Jeffrey Lucy welcomed 60 Westpoint Group investors, saying it presented a good opportunity to hear investor concerns about the group first hand.

He said there are about 3,500 Westpoint investors and assured the meeting 'We are taking this very seriously indeed.'

Mr Lucy said that the information obtained from investors would provide valuable intelligence that would assist ASIC's investigation. At the same time investors could obtain a better understanding of their options for obtaining compensation.

The group was considered to be representative of investor concerns and was therefore used as a focus group.

Attending investors were provided with a document setting out the essential steps to obtain compensation for their losses, an information bulletin on the current position relating to Westpoint and a brochure setting out the dispute resolution and claims process under the Financial Industry Complaints Service.

## ASIC's current position

Jan Redfern, ASIC's Executive Director, Enforcement, gave an outline of the current position in relation to the Westpoint group, giving an outline of legal proceedings currently on foot, orders made to date and what they mean for the group.

Ms Redfern explained ASIC's work is just beginning, there were many complex issues to deal with and assured that the investigation into Westpoint's affairs has been given the highest priority.

Since November 2005 ASIC has commenced 26 proceedings against companies in the group. Ten proceedings have been successfully concluded including forcing Westpoint companies to file their 2005 accounts.

ASIC has also taken two schemes – York Street Mezzanine and Ann Street Mezzanine - to court over solvency concerns and liquidators

have since been appointed. Similar actions followed with respect to Bayshore Mezzanine and Westpoint Corporation.

Ms Redfern said that further action is being considered against other companies and assets and that ASIC is also looking at the position of directors, former company officers, advisers and auditors to determine what further action could be taken. However, she was reluctant to flag specific action being considered. Ms Redfern explained that ASIC had sought to regulate Westpoint in 2004 but that the company argued that because it issued promissory notes it was not required to meet regulatory and prospectus obligations.

The WA Supreme Court decided in November 2004 that promissory notes were not a financial product but that the Westpoint scheme was a managed investment scheme. Both ASIC and Westpoint appealed that decision which was heard earlier this week and a decision is pending. The decision is an important one involving complicated legal issues.

Mark Steward, ASIC's Deputy Executive Director explained the role of various liquidators, receivers and administrators who have been appointed to various companies. He explained the different roles of liquidators and receivers appointed by secured lenders and that liquidators take control of an insolvent company and gather information and assets and recover money. Receivers also realise assets on behalf of a lender and this often leads to complicating factors.

ASIC cannot influence the actions of liquidators or receivers. The main liquidators are PricewaterhouseCoopers who have been appointed to manage the mezzanine companies and PPB who have been appointed to manage the Westpoint management companies.

Mr Steward said that ASIC does not make decisions about the sale of assets or whether partly completed projects will be completed before they are sold to produce a better return to creditors.

He added that it was difficult to say how long the asset realisation process would take. He said liquidators would be seeking details from investors of the circumstances of their investment and to obtain a proof of debt. He explained that secured creditors have a first hold over Westpoint's assets.

## **Next steps**

Ms Redfern also addressed the meeting on ASIC's next steps as well as providing information to investors about the complaints process and who to contact if they found themselves facing financial difficulties.

Ms Redfern said the Westpoint investigation is high priority, multi-faceted and resource intensive for ASIC. It will consider a range of legal actions against other parties against whom there might be liability.

She said ASIC is looking to obtain assistance from investors for information about Westpoint's distribution network, what they were told about their investment and when. ASIC will publish an investor questionnaire on its website within the next two weeks which will enable investors to tell their stories confidentially. This information will assist in the planning of the investigation and investors will be provided to investors on the progress of the investigation.

Investors were urged to read the circulated information bulletin regarding options to obtain compensation.

## Investor presentations

Investors said they are hurting badly - what had happened was a 'real human tragedy'. People are losing their homes and are under great stress. They wanted to know how ASIC would help them get their money back.

Issues raised by investors included:

- Some investors don't have access to a computer and therefore cannot get information off the ASIC website.
- Getting information on how the Financial Industry Compensation Service works and whether they could apply to FICS if they dealt with an unlicensed adviser.
- Whether all financial advisers have professional indemnity insurance cover and what they can do about advisers who are no longer in business.
- Does ASIC have the power to force advisers to provide insurance details?
- Is ASIC doing anything about former Westpoint directors and advisers setting up new companies and continuing to sell investment products?
- What will ASIC do to get my money back?
- High liquidator fees eating into Westpoint's assets and why couldn't ASIC pay for the liquidators' fees?
- ASIC press releases and warnings were not reaching them because they did not get into the press or because they did not see them on the website.
- The ASIC website is difficult to navigate.
- They were not aware that ASIC had sufficient concerns about Westpoint to take the Group to court in 2004. Had they known, they may have looked at their investments in a different light.
- ASIC needs to better communicate its concerns about investment schemes to investors who are unaware of them until it is too late.
- A number of investors indicated that they had been introduced to Westpoint by On.Line Super and Keibel. Some investors said they were also contacted by telephone to make further investments in other Westpoint schemes or to roll over their money into Westpoint.
- Whether ASIC is taking any action to prevent people associated with Westpoint from leaving the country.
- Self managed super funds should be given information or warnings about risky investments by the Tax Office.
- Some investors were encouraged to invest in Westpoint when they approached mortgage brokers for loans.
- Is any action being contemplated against Westpoint's auditors, KPMG?

- Investors sought a time frame for the investigation because some feared they would lose their homes, having borrowed to invest in Westpoint.
- Why didn't ASIC act sooner? Wasn't it ASIC's role to make sure that financial advisers were not promoting this product?
- Did ASIC receive a letter in 2002 from the Consumer Affairs Minister?

## **ASIC'S responses to these concerns**

### **Recovery for investor losses**

ASIC is committed to helping investors recover losses. This may involve ASIC working with the liquidators and financial service providers where necessary.

ASIC referred to a document handed out to investors during the meeting called the *'Essential Information if you are concerned about the financial advice you received to invest in Westpoint'*.

Investors were urged to get their paperwork together so that they could lodge a claim first with their licensed adviser, and if this fails, with FICS. FICS can be contacted for their brochure on 1300 780 808.

Details of the dispute resolution process were provided. ASIC expects licensees to deal with complaints from clients fairly, equitably and quickly. Over the past five years, ASIC has obtained compensation and freezing orders against assets in a sum exceeding \$500 million to assist consumers, investors and creditors and would consider taking action in this case if required.

ASIC is pressing financial advisers to agree to increasing compensation to investors under the FICS process beyond the \$100,000 cap in certain circumstances.

ASIC will appeal to lenders on behalf of borrowers who have mortgaged their homes to invest in Westpoint for a moratorium for borrowers who cannot meet their loan commitments.

Investors in financial trouble were urged to approach Centrelink for assistance and ASIC indicated it would speak to senior Centrelink staff to appraise them of the issues. ASIC will also liaise with the Australian Tax Office in relation to early release of super to financially stressed Westpoint investors. Financial counsellor information would also be made available through ASIC's Infoline on 1300 300 630 and FICS on 1300 780 808.

ASIC is writing to licensees to appraise them of their dispute resolution obligations. ASIC said a number of legal actions are being contemplated.

### **Liquidation**

ASIC does not pay for the costs of liquidation but would certainly look at any issues in relation to fees charged by liquidators if complaints are made. ASIC would be speaking to the liquidators on a regular basis about issues that might arise for further investigation. While it is acknowledged that liquidators would be required do a lot of work in the early stages to secure books and records and examine the operations

of the various companies, the detailed investigations into the conduct of directors and officers of related companies would be undertaken by ASIC.

### **Consumer communication**

ASIC acknowledged that it was difficult to communicate these messages but indicated it would be looking at different communications strategies in future. It will also examine different ways of communicating with Westpoint investors, particularly those who did not have Internet access. ASIC drew attention of investors to FIDO ([www.fido.gov.au](http://www.fido.gov.au)) which contains investor warnings.

### **Why didn't ASIC act sooner?**

ASIC did receive a letter from the WA Minister for Consumer and Employment Protection in 2002. That letter raised the issue that there appeared to be a gap in the Corporations Act in relation to Promissory Notes. Notwithstanding this, ASIC decided that the better view was that these products should be regulated. However ASIC was not able to simply issue a direction to Westpoint not to issue these products.

Westpoint disputed ASIC's claims and ASIC ran the test case in 2004 to resolve these issues. At the time of that test case ASIC was not aware of any solvency problems with the group. However, when it became aware of these issues in 2005 an investigation was commenced into the affairs of the group and proceedings were taken.

ASIC does issue some general warnings on a regular basis, but it is not ASIC's role to provide financial advice to consumers and investors. This is the role of investment advisers. They must know the product and their client.

### **Action against directors and related companies**

ASIC confirmed it was looking at these issues and would be taking action against directors and officers where appropriate. This particular aspect was being considered as a matter of urgency.

### **Class action**

Investors were urged to take their time in deciding whether to join a class action to recover money. They were urged to seek redress first against their adviser and FICS before taking the class action route because once legal action commences it may close off the FICS compensation route.

Legal action can take more time and be more expensive than seeking compensation through the industry scheme.

### **Future briefings**

ASIC indicated that another meeting would be held in approximately three months to update investors to hear their feedback.

A Westpoint page has been set up on the ASIC website to update investors. This will be regularly updated. It can be found at [www.asic.gov.au/westpoint](http://www.asic.gov.au/westpoint).

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