

NOTICE OF FILING

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Details of Filing

Document Lodged: Concise Statement
File Number: VID228/2020
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v
MAYFAIR WEALTH PARTNERS PTY LTD & ORS
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 14/08/2020 9:08:19 AM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form NCF1

Amended Concise Statement

No. _____ of 2020

Federal Court of Australia
District Registry: Victoria
Division: General


**IN THE MATTER OF MAYFAIR WEALTH PARTNERS PTY LTD
ACN 168 878 779**

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

MAYFAIR WEALTH PARTNERS PTY LTD AND OTHERS
Defendants

A. IMPORTANT FACTS GIVING RISE TO THE CLAIM

1. The First Defendant, Mayfair Wealth Partners Pty Ltd trading as Mayfair Platinum (**Mayfair**), promotes financial products, being promissory notes called “M+ Fixed Income Notes” and “M Core Fixed Income Notes”, to investors in Australia (the **Mayfair Products**). The Second Defendant, M101 Holdings Pty Ltd (**M101 Holdings**), issues the M+ Fixed Income Notes. The Third Defendant, M101 Nominees Pty Ltd (**M101 Nominees**), issues the M Core Fixed Income Notes.
2. The Fourth Defendant, Online Investments Pty Ltd trading as Mayfair 101 (**Online Investments**), participates in the marketing of the Mayfair Products. Online Investments is the holding company of Mayfair and operates a website (www.termdepositguide.com) which promotes and markets the Mayfair Products.
3. The application form for the M+ Fixed Income Notes referred to providing a “Fixed Income ... term-based investment opportunity.”

AMENDED on 13 August 2020 pursuant to the Order of Justice Anderson made on 13 August 2020

Hugh Copley, Solicitor, ASIC, 13 August 2020

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, the plaintiff
Prepared by (name of person/lawyer)	Hugh Copley, Litigation Counsel
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(include state and postcode)	Attention: Hugh Copley

4. The application form for the M Core Fixed Income Notes described the product as “secured promissory notes” and referred to it as a “Fixed Income ... secured, asset-backed, term-based investment opportunity”.
5. The Mayfair Products are and were during the Relevant Period (being from 3 July 2019) marketed and promoted by the defendants in a number of ways, including via Mayfair’s websites www.mayfairplatinum.com.au and www.mayfair101.com, as well as the website www.termdepositguide.com, newspaper advertising and online advertising, including the use of sponsored link internet advertising with specific ‘adwords’.
6. The marketing and promotional material for the Mayfair Products included the following words and expressions:
 - (a) “term deposit alternative”;
 - (b) “term investment” and “fixed term”;
 - (c) “certainty” and “confidence”; and / or
 - (d) “capital growth”.
7. The sponsored link internet advertising is conducted via the Google AdWords program and Bing Ads program, and included the use of:
 - (a) meta-title tags such as “term deposit rates – best term deposit options”;
 - (b) domain names such as “term deposit guide”; and
 - (c) ‘adwords’ for sponsored searches including “bank deposits” and “term deposits”.
8. The Mayfair Products were marketed to wholesale but inexperienced investors, at least a substantial subset of whom were unlikely to understand the significant risk associated with the Mayfair Products.
9. By engaging in the conduct in paragraphs 2 to 8, the defendants, in the course of trade or commerce, made representations to consumers that the Mayfair Products were comparable to, and of similar risk profile to, bank term deposits (**Bank Term Deposit Representations**).
10. The Bank Term Deposit Representations were as to future matters and the defendants did not have reasonable grounds for making them. In this regard, ASIC relies on s 12BB of the *Australian Securities and Investments Commission Act*

2001 (Cth) (**ASIC Act**) and s 769C of the *Corporations Act 2001* (Cth) (**Corporations Act**).

11. Alternatively, the Bank Term Deposit Representations were false, misleading or deceptive or likely to mislead or deceive consumers because:
 - (a) the Mayfair Products are debentures and dissimilar in nature and risk profile to bank term deposits;
 - (b) the Mayfair Products are not sufficiently similar to a term deposit for the purposes of comparison;
 - (c) the Mayfair Products have a significantly higher risk profile than bank term deposits;
 - (d) the Mayfair Products lack the prudential regulations that apply to bank term deposits;
 - (e) the Mayfair Products are not the subject of any bank or other guarantee;
 - (f) investors in the Mayfair Products might not receive interest and / or capital repayments;
 - (g) at maturity and after a valid withdrawal notice, Mayfair could elect to extend time for repayment to investors for an indefinite period of time.
12. By engaging in the conduct in paragraphs 2 to 8, the defendants, in the course of trade or commerce, made representations to consumers that on maturity the principal would be repaid in full (**Repayment Representation**).
13. The Repayment Representation was as to a future matter and the defendants did not have reasonable grounds for making it. ASIC refers to and repeats paragraph 10.
14. In the alternative to paragraph 13, the Repayment Representation was false, misleading or deceptive or likely to mislead or deceive consumers because:
 - (a) investors in the Mayfair Products might not receive capital repayments at maturity or at all; and
 - (b) at maturity and even after a valid withdrawal notice, Mayfair could elect to extend time for repayment to investors for an indefinite period of time.

15. The marketing and promotional material for the Mayfair Products included statements that the products were specifically designed for investors seeking “certainty and confidence in their investments”.
 16. By engaging in the conduct in paragraph 15, the defendants, in the course of trade or commerce, made representations to consumers that the Mayfair Products carried no risk of default (**No Risk of Default Representations**).
 17. The No Risk of Default Representations were as to future matters and the defendants did not have reasonable grounds for making them. ASIC refers to and repeats paragraph 10.
 18. In the alternative to paragraph 17, the No Risk of Default Representations were false, misleading or deceptive or likely to mislead or deceive consumers because:
 - (a) investors in the Mayfair Products may not receive interest and / or capital repayments,
 - (b) at maturity and after a valid withdrawal notice, Mayfair could elect to extend time for repayment to investors for an indefinite period of time;
 - (c) investors could lose some or all of their principal investment;
 - (d) the matters set out in paragraph 10 above.
 19. The marketing and promotional material for the Mayfair Products included statements that the Mayfair Products provided “income and capital growth opportunities”.
 20. By engaging in the conduct in paragraph 19, the defendants, in the course of trade or commerce, made representations to consumers that the Mayfair Products provided capital growth opportunities (**Capital Growth Representations**).
 21. The Capital Growth Representations were as to future matters and the defendants did not have reasonable grounds for making them. ASIC refers to and repeats paragraph 10.
 22. In the alternative to paragraph 21, the Capital Growth Representations were false, misleading or deceptive or likely to mislead or deceive consumers because the Mayfair Products carried no capital growth opportunities for investors.
- 22A. The marketing and promotional material for the M Core Fixed Income Notes included statements that the M Core Fixed Income Notes were:

- (a) “supported by first-ranking, unencumbered asset security”;
- (b) “secured by a pool of assets in respect of which first-ranking, registered security interests have been granted. The assets are otherwise unencumbered, and are made up of Australian real estate, assets held by Mayfair 101 Group entities, and cash from investors held in the Issuer’s dedicated M Core Fixed Income bank account. Such cash will only be used where there is dollar-for-dollar secured asset support.”; and
- (c) “the assets are revalued at least yearly to ensure dollar-for-dollar secured asset support for each dollar of M Core Fixed Income notes.”

22B. By engaging in the conduct in paragraphs 4 and 22A, the defendants, in the course of trade or commerce, made representations to consumers that the M Core Fixed Income Notes were fully secured financial products (**Security Representations**).

22C. The Security Representations were as to a future matter and the defendants did not have reasonable grounds for making it. ASIC refers to and repeats paragraph 10.

22D. In the alternative to paragraph 22C, the Security Representations were false, misleading or deceptive or likely to mislead or deceive consumers because:

- (a) funds invested in M Core Fixed Income Notes were lent to Eleuthera Group Pty Ltd and not secured by first-ranking, unencumbered asset security or on a dollar-for-dollar basis or at all;
- (b) funds invested in M Core Fixed Income Notes were used to pay deposits on properties prior to any security interest being registered;
- (b) funds invested in M Core Fixed Income Notes were used to purchase assets that were not secured by first-ranking, unencumbered asset security.

B. RELIEF SOUGHT FROM THE COURT

23. ASIC seeks:

- (a) declarations of contravention against the defendants as set out in its Originating Process;

- (b) orders pursuant to ss 12GBA and 12GBCA of the ASIC Act that the defendants each pay a pecuniary penalty in respect of their contraventions of s 12DB(1)(a) and (e) in such amount as the Court considers appropriate;
- (c) orders pursuant to s 12GD(1) of the ASIC Act and / or s 1101B and / or s 1324 of the Corporations Act restraining the defendants from publishing the false, misleading or deceptive statements comprised of the:
 - i. Bank Term Deposit Representations, being representations to consumers that the Mayfair Products are comparable to, and of similar risk profile to, bank term deposits;
 - ii. Repayment Representations, being representations to consumers that on maturity the principal would be repaid in full;
 - iii. No Risk of Default Representations, being representations to consumers that the Mayfair Products carried no risk of default; ~~and~~
 - iv. Capital Growth Representations, being representations to consumers that the Mayfair Products provided capital growth opportunities; and
 - v. Security Representations, being representations to consumers that the M Core Fixed Income Notes were fully secured financial products.
- (d) orders pursuant to s 12GLA(2)(c) and (d) and s 12GLB(1) of the ASIC Act requiring the defendants to make corrective disclosures and to publish corrective advertising;
- (e) costs; and
- (f) such further or other relief that the Court considers appropriate.

C. PRIMARY LEGAL GROUNDS FOR RELIEF

24. By engaging in the conduct described above, the defendants contravened s 1041H(1) of the Corporations Act and ss 12DA(1) and 12DB(1)(a) and (e) of the ASIC Act.

D. ALLEGED HARM

25. The Mayfair Products were marketed to inexperienced investors and exposed investors to a greater level of risk than bank term deposits.

26. For the M+ Fixed Income Notes, as at 1 April 2020:
- (a) 185 investors have invested;
 - (b) the total amount invested is \$72,959,818.00;
 - (c) 63 investors have reinvested their funds at the end of the investment term (representing \$13,913,129.90);
 - (d) 16 investors have redeemed their investment (representing \$3,978,531.76); and
 - (e) 12 investors have not been able to redeem their investments at the maturity date (representing \$4,400,428.69).
27. For the M Core Fixed Income Notes, as at 1 April 2020:
- (a) 96 investors have invested;
 - (b) The total amount invested is \$67,587,852.07;
 - (c) no investors have reinvested their funds at the end of the investment term;
 - (d) 6 investors have redeemed their investment (representing \$1,603,879.87); and
 - (e) No investors have not been able to redeem their investments at the maturity date.

Date: ~~3 April 2020~~ 13 August 2020

This concise statement was prepared by J P Moore QC and C van Proctor of Counsel.



Signed by Hugh Copley

Solicitor for the Plaintiff

Certificate of lawyer

I, Hugh Copley, certify to the Court that, in relation to the Concise Statement filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~3 April 2020~~ 13 August 2020



Signed by Hugh Copley

Lawyer for the Plaintiff