

TO : Ms. J. Hutchinson, Advisor

CC : All members of parliament.

CC : The Media

FROM : Graham MacAulay, President Westpoint Investors Group
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
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DATE : 25 July 2007

Subject **Inaccuracies in your letter of 16/07/2007 to Mr.**

Dear Ms. Hutchinson,

Mr. xxxxxx has given me permission to use your reply to him of 16/07/2007.

Please allow me to address the many factual errors in your document.

A short history of the Westpoint saga is as follows.

1. Denise Brailey in 2000 approached ASIC on the matter of a proposed Information Memorandum.
ASIC were very aware of the Westpoint model.
2. In 2000, ASIC issued a reply document to Freehills, the Westpoint lawyers, in reference to a proposed Information Memorandum.
If Westpoint raised funds via an MIS without a proper Prospectus being lodged, then ASIC ought to have stopped the use of Information Memorandums in 2000, when first notified of their existence.
3. Denise Brailey, on TV, has made the claim she flew to Brisbane in 2001 and spoke with the Queensland Commissioner and their Barrister and the National Director of FSR (answerable to Mr Lucy), who agreed the Westpoint Mezzanine model was an MIS, and people would lose their money.
Further proof ASIC knew of the Westpoint Mezzanine model.
4. Hansard records ASIC's Mark Steward as stating discussions took place with the West Australian Government concerning Westpoint in 2001.
Although ASIC knew people were going to lose money, they failed to take any action, or refer the matter to the Minister.
5. In 2002 the West Australian Government wrote the first of their five letters to ASIC/The Treasury.
ASIC took no action on any of these letters, nor did they disclose their existence to potential investors.

6. Mr. J. Lucy has admitted ASIC first became concerned about Westpoint in 2003. **Please see attachment Lucy_Contradictions.pdf for how Mr. Lucy contradicted himself on ASIC's concerns with the Westpoint Model at Senate Estimates Committee hearings.**

Further, as Mr. Lucy was the Deputy Chairman of ASIC, ASIC Commissioners must have briefed him on Westpoint matters well before 2003. All indications are Mr. Lucy made the serious breach of misleading parliament. The only alternative is ASIC Commissioners failed to inform him of very serious matters that demanded his attention. That would in itself be a serious condemnation of their performance, as they did not choose to inform of his error after he made the statement.

7. ASIC took Westpoint to court in 2004 with Bayshore Mezzanine and Emu Brewery test cases for all Westpoint Mezzanine companies. The judge ordered ASIC to write to investors so they might have the opportunity to co-join the case. **ASIC chose to write only to the 256 investors of the two test cases, and ignored the remainder of almost 4000 investors equally affected, who had invested in identical investments run by Westpoint using the same business Model and structure.**
8. ASIC Media Release 04 157 of 2004 includes the statement: *The Bayshore Mezzanine action was commenced shortly after ASIC issued a letter of demand in April 2004 to Westpoint's solicitor that companies in the Westpoint group cease all promissory note fundraising.*
If, as you claim, ASIC could not take action against Westpoint in 2000, how could they now make such a direction when there had been no change in legislation?

Legal opinion, including such respected authorities as IMF's Hugh McLernon, claim ASIC always had the power to intervene at any time.

9. It is true the WA Court handed down its judgement in 2004. The salient facts you so conveniently forgot to mention are as follows.
- i). ASIC did not take Westpoint to court until mid 2004.
A judgment in late 2004 could hardly be classed as tardy.
 - ii). There were a number of judgements, with each side winning some and losing others.
 - iii). It was the Judge who mentioned the matter of Westpoint being an unregistered MIS.
ASIC, in its appeal, asked the Court to rule on whether the Westpoint Mezzanine model was a Managed investment Scheme.
11. In 2006 the WA Supreme Court found the Westpoint Mezzanine products had always been unregistered MIS's.
This judgement proves beyond doubt ASIC, by its failure to take action, looked on as planners knowingly or un knowingly sold illegal products to Westpoint Investors. Under law, those planners are responsible for losses incurred by investors because they misled them. In turn, the planners relied on ASIC for their information. ASIC misled both the planners and the investing public.

Can you please indicate the person(s) who advised you ASIC did not investors, and were their specific legal reasons for rejecting the claim.

Add to the above to the many opportunities ASIC had to inform investors, but didn't. **The lack of ASIC non-disclosure of pertinent information denied investors the opportunity of making informed decisions.**

Given the above, I wonder how the regulators, and the press around the world, will view ASIC's performance

You mention the Hon. P. Dutton (the Australian Assistant Treasurer) asked you to reply to Mr. xxxxxxx. As you speak for the Australian Government's position on his matter, could you please advise me of who supplied you with the briefing contained in your letter. Was it from either Treasury or the Office of the Prime Minister?

I eagerly await your answers raised in reference to your document. I am sure the media will be interested in both your document and your answers.

Graham MacAulay