

TO : The Hon. J. Howard, Prime Minister of Australia

FROM : Graham MacAuly, President of the Westpoint Investors Group  
35/118 Karimbla Road  
Miranda NSW 2228  
02 9525 2396 0411 141 888 gmac@ihug.com.au

DATE : 31 May 2007

Subject: **The need for a new financial regulatory system with consumer protection.**

Dear Prime Minister,

I wish to acquaint you with the following facts.

Despite Mr. D'Aloisio's high-sounding words this week at the Senate Estimates Committee, we need a new financial regulatory system. He made statements at odds with the facts. It is obvious the incumbent ASIC management did not brief him correctly on many aspects of ASIC history.

**Q1. Who misinformed Mr. D'Aloisio and why?**

The SMH of 31/05/2007 reports: *Asked why it had taken three collapses for the commission to get serious about Westpoint-style schemes, Mr D'Aloisio responded: "The simple answer is that I wasn't there."* While Mr. D'Aloisio lavishly lauded Mr Lucy, his statement implying the collapse of Westpoint, Fincorp and ACR would not have happened under his reign indicates he has far superior powers to those of Mr Lucy. Given the longevity of the three companies, Mr. D'Aloisio would need to have been ASIC Chairman from its inception.

**Q2. From Mr. D'Aloisio's admission on the failures within ASIC, why did Mr. Lucy not take the necessary action?**

His claim the unregistered component of the marketplace amounts to about \$8 billion of the \$534 billion investment marketplace, and only \$1 billion of this had been investor loss might be true. However, he fails to mention the myriad of small company failures with losses less than \$100 million that have already taken place, and that the \$1 billion to date is 12.5% of the unlisted, unrated marketplace. He answered NO in response to the question of whether the \$7 billion category was in danger of collapse, in contradiction to many others who claim otherwise. Well-known advocate, Denise Brailey, has publicly stated three of the twelve companies on her list of likely failures have now collapsed. It also contradicts Mr. Lucy's statement in InfoChoice of 21/12/2005: *Jeffrey Lucy, chair of the Australian Securities and Investments Commission, said that investors may have between \$3 billion and \$5 billion in mezzanine funding vehicles similar to those operated by Westpoint.* He was obviously referring to future likely failures.

**Q3. Given the strength of Mr. D'Aloisio's conviction there will be no more failures, how will ASIC retain any credibility if there are?**

In a conversation in Sydney last year, Denise Brailey told me she had discussions with ASIC in 2005 concerning methodologies for implementing investor education, yet Mr. D'Aloisio has it on his agenda to research. Where is all the research ASIC should have carried out on this matter over the years? He also mentions investigating the role of trustees. Mr J. Cooper spent the last two years investigating this subject, and produced his report a month ago.

**Q4. Who briefed Mr. D'Aloisio on this matter, and why haven't they provided him with the relevant information?**

In stating only a small number of investors lost large sums of money, Mr D'Aloisio fails to realise two important facts: many investors believed they were minimising risk when they invested in multiple products across different companies, and that a sum of \$20,000 might not have major significance for a large investor, but it is a very large sum of money for many small investors.

**Q5. Does Mr. D'Aloisio have any knowledge of "mum and dad" investors?**

**Q6. Did he discuss this matter with any senior ASIC personnel before making the statement?**

The belief ASIC acknowledged Westpoint Mezzanine products legal, with a licenced Investment Bank promoting the product, and KPMG as auditors, heavily swayed many investors. In 2000, ASIC took no action against the Westpoint Mezzanine model, which the WA Supreme Court found had always been an unregistered MIS. Nor did they take any punitive action against the illegal "Kebbel Bank", which operated under the noses of APRA and ASIC for a number of years in order to extract money from the investing public, until 2006. ASIC admits it became aware of problems in Westpoint in 2003 and of "cat and mousing with their lawyers, Freehills, for months (Hansard). However ASIC never informed the investing public of its concerns.

**Q7. Given the obvious implication ASIC misled both investors and planners in the Westpoint matter, can Mr. D'Aloisio give any valid reason why he should not recommend to Parliament that Westpoint Investors should receive an ex gratis payment for their loss of capital and income?**

ASIC took Fincorp to task on no less than six occasions, one of them for a deliberately false and misleading statement. Short-term stop orders litter ACR history. Despite ASIC's knowledge of the problems in the three companies, they failed to remove any of their AFSL licences.

**Q8. Can Mr. D'Aloisio explain why each of these companies did not have their AFS licence removed, and under what circumstance does ASIC remove an AFS licence.**

Mr. D'Aloisio's performance this week proves he has little idea of what has occurred in the past, and no detailed plans on how ASIC might be repaired. A National Nine web page of Tuesday May 29 21:37, AEST with the heading, *Regulators 'timid on insider trading'*, reports of ASIC's absence of statistics in this important area. Then there is ASIC's abysmal record in the prosecution rate versus complaints, as contained in January 2007 report by the Auditor general.

**Q9. Mr Prime Minister, how can ASIC protect financial consumers, or regulate effectively, when it does not know what is dynamically happening in the marketplace it controls?**

The current Australian Financial Regulatory System is an abject failure., beyond repair by the current ASIC management. Australia urgently needs a new, and effective form of regulation if it is to regain investor confidence. **I respectfully suggest it is time to merge APRA and ASIC - and to create a new independent body to protect financial consumers.**

Mr. Howard, I believe the importance, and validity of my questions, requires immediate public answers. I do not believe the investing public will accept political spin, or future promises . Nor .will we accept it is the Treasurer's job. He has already failed to provide any answers to reasonable questions. With respect Sir, as the Prime Minister, it is your responsibility to ensure responsible answers to the questions in this document.

---

Graham MacAulay