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ASIC faces Westpoint grilling

By Simon Hoyle
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THE Australian Securities and Investments Commission faces some embarrassing questions in Senate estimates hearings over allegations it knew about problems with the Westpoint group but failed to act quickly enough to protect investors before the group collapsed.

Tasmanian Liberal Senator John Watson told the Senate late last week that between 4000 and 6000 investors in promissory notes issued by Westpoint faced losing a substantial portion of their savings, even though ASIC had been made aware years earlier of potential problems with the issue of promissory notes.

"Denise Brailey, president of the Real Estate Consumer Association Inc, stated in an article on 25 November, 2005 that she had passed a Westpoint information memorandum through to ASIC in 2001 raising concerns, particularly with the promotion of the promissory notes as capital safe because of the Westpoint guarantees via a second-ranking mortgage," Senator Watson said.

"ASIC did not take any action, and Westpoint set up a further 11 projects over the following four years. These are matters that I intend to raise with ASIC in the context of the next Senate estimates hearings."

The senator's comments come as a blow to ASIC, which has been trying to get on the front foot over the Westpoint collapse and criticisms of its role in it. On Friday, ASIC announced it had moved to freeze the assets of Westpoint's founder, and three other directors. It also took a Westpoint subsidiary to court in 2004.

Senator Watson acknowledged that promissory notes fell outside ASIC's jurisdiction but said ASIC knew there were potential problems with promissory notes and could have taken action.

"It was the abuse of the product that regulators should have been looking into," he said.

"The fact that it was offered to unsophisticated investors should attract a higher level of protection under the law and should be a focus of regulatory attention."

Senator Watson said the Westpoint fiasco had revealed problems not only with the regulator detecting and acting on risky promotions but "with the law as it currently operates".

"The ASIC chairman, Jeff Lucy, told investors at a recent presentation that the West Australian Government had in 2002 raised with it concerns about the apparent gap in the Corporations Act in

relation to promissory notes, yet ASIC did not take action in relation to the promissory notes for two years following the matter being brought to its attention.

"The fact that we are still waiting for the Supreme Court of Western Australia to rule on whether promissory notes issued by a Westpoint company were debentures or interests in a managed investment scheme is quite unsatisfactory and highlights a gap in the law that I believe should be addressed."

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