

THE HON PETER DUTTON MP

MINISTER FOR REVENUE AND ASSISTANT TREASURER

Mrs Margaret May MP
Member for McPherson
PO Box 291
PALM BEACH QLD 4221

Dear Uw Ma

Thank you for your representation of 28 March 2006 to the Treasurer on behalf of Mr and Mrs R and M Jones, 21 Leyshon Court, Bonogin, Qld 4213, concerning the Westpoint group of companies. Your letter was referred to me as the matter falls within my portfolio responsibilities. I apologise for the delay in replying to you.

I appreciate Mr and Mrs Jones' concerns about potential losses they may suffer on their investments in mezzanine finance schemes promoted by members of the Westpoint group (Westpoint). I can assure you that the Australian Securities and Investments Commission (ASIC) is following events closely to ensure that investors receive the full protection provided to them by the law.

I will now address the key points raised in Mr and Mrs Jones' letter.

ASIC failed in its duty to regulate Westpoint

It is important to understand that our legal system does not give ASIC the power to prudentially regulate companies such as Westpoint. Therefore, ASIC cannot intervene in a company's operations unless it has specific grounds for doing so as defined in the law.

For a considerable time ASIC did not have any such grounds. As late as 2005, Westpoint's directors confirmed that it was solvent and the audited financial statements did not indicate that there were any reasons to doubt this statement. It was only towards the end of that year that ASIC obtained specific evidence of potential insolvency which allowed it to intervene.

This is also the reason why ASIC was not able to act on general warnings, such as those reported to have been given by Ms Denise Brailey, that mezzanine financings including those offered by Westpoint were very risky. Such allegations by themselves do not provide ASIC with any legally valid reasons to act against the issuers of these products. However, ASIC did take action to alert people to the risks associated with mezzanine products.

Parliament House Canberra ACT 2600

Telephone: (02) 6277 7360 Facsimile: (02) 6273 4125

Email: Peter. Dutton. MP@aph.gov. au

Web: www.peterdutton.com.au



ASIC failed to take action against Westpoint on a number of matters

ASIC started taking action as early as 2003 against Westpoint's attempts to avoid the disclosure requirements stipulated in the law. When direct discussions with the company in 2003 and 2004 failed, it commenced formal court action in May 2004.

The documentation attached to Mr and Mrs Jones' letter states that ASIC took no action when certain Westpoint entities failed to lodge accounts. This is not the case. ASIC applied to the courts for orders directing the companies concerned to lodge audited accounts. In the case of Westpoint Construction, both the 2003 and 2004 accounts were lodged subsequent to such orders. In both cases the accounts claimed that the company was solvent, and in both cases, no qualifications to the accounts were made by the auditor.

ASIC failed to inform and warn investors

In 2003, ASIC started a general campaign warning investors against the risks of investing in high-yield debentures. Warnings of this nature were posted on ASIC's website in May 2003 and again in May 2004. A surveillance report on high-yield debenture prospectuses was released in February 2005. The accompanying media release stated that these debentures were risky instruments and that there was no guarantee that investors would get their money back.

ASIC also did its best to keep investors informed about its court proceedings against Westpoint. An announcement on the case was placed on ASIC's website in May 2004. Following a direction by the court, ASIC wrote to each investor in the Emu Brewery and Bayshore mezzanine financing schemes in June 2004 informing them of ASIC's concerns.

ASIC approved the issue of promissory notes

The correspondence indicates that Mr and Mrs Jones may be under the impression that ASIC approved or permitted the issue of promissory notes for the Westpoint mezzanine financings. Westpoint in fact deliberately structured its mezzanine financings as promissory notes in order to avoid the requirement to lodge prospectuses with ASIC. None of the Information Memorandums issued by Westpoint for its mezzanine financings were consequently lodged with ASIC.

ASIC started court action in 2004 seeking a ruling that the promissory notes issued should be accompanied by regulated disclosure documents that would have to be lodged with ASIC. This would have allowed ASIC to review these documents and take action to protect investors in case of deficiencies in their contents. The court ruling unfortunately contained some ambiguities, causing ASIC to appeal the judgment. A ruling on the appeal is expected in the near future.

ASIC generally does not pre-approve the contents of disclosure documents such as prospectuses. The law places the primary responsibility for complying with disclosure requirements on the entity issuing the document as well as its directors. Such entities and individuals may therefore also incur liability if a defective disclosure document is issued to the public. ASIC, as part of its market surveillance activities, examines disclosure documents when they are lodged to see if they comply with the law.

How is ASIC helping Westpoint investors?

ASIC is acting on behalf of the Australian Government to support Westpoint investors in a number of ways. For example, it is standing behind investors claiming compensation from financial advisers who gave them defective advice. ASIC is closely monitoring the response of these advisers to ensure that client complaints and claims for compensation are dealt with fairly and quickly

In addition, ASIC is also assisting the liquidators of the various Westpoint entities involved in recovering as many assets as possible for realisation and distribution to creditors such as Mr and Mrs Jones. For example, ASIC has recently succeeded in obtaining court orders freezing the assets of the main Westpoint directors, including group founder Mr Norman Carey, and forbidding them from leaving the country,

Such proceedings have the potential to lead to further recovery of funds due to creditors, although it is not possible at this stage to speculate on any specific outcomes due to the ongoing nature of ASIC's investigations and actions.

ASIC is currently collecting information from Westpoint investors through a questionnaire on its website. One of the main purposes of the exercise is to allow ASIC to assess how best to assist investors in recovering their losses. Therefore, I encourage Mr and Mrs Jones to help ASIC by completing the questionnaire, either through ASIC's website or by phoning 1300 736 419 to request a copy be mailed out to them.

I hope it is evident from this letter that ASIC has been applying its powers for some time to force Westpoint to act within the law and is now doing its best to assist investors in recovering the losses they may suffer on their investments.

Thank you for bringing this matter to my attention. I trust this information will be of assistance in responding to Mr and Mrs Jones.

Yours sincerely

IlipAwo.. &52~~~

PETER DUTTON