



ASIC

Australian Securities & Investments Commission

Westpoint compensation proceedings: FAQs for investors

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The Australian Securities and Investments Commission (ASIC) has decided to take legal action on behalf of investors in the Westpoint Group seeking compensation for their failed investments.

ASIC believes the legal action, which will occur over a number of phases, should benefit up to 85% of the approximately 4300 investors in Westpoint products where there were losses.

The first phase of ASIC's legal action involves two types of claims.

- First, ASIC will seek damages from directors and officers of various mezzanine companies within the Westpoint group. These proceedings will allege that the directors and officers misapplied funds. While ASIC is yet to fully formulate and quantify these claims, at this stage ASIC has identified potential claims of up to \$245 million. If these claims are successful, the compensation obtained is paid to the company and is then distributed by the liquidator of the company to all creditors of the company, including investors.
- Secondly, ASIC will seek compensation from a number of financial advice businesses (advisers) on behalf of clients of those businesses. These proceedings will allege that, in selling Westpoint products, the advisers did not comply with their Australian financial services licences or with the law. If these claims are successful, ASIC will seek a determination from the Court regarding the compensation to be paid in relation to each investor who is covered by the proceedings.

The second phase of ASIC's legal action will involve actions against a further financial adviser as well as a claim against State Trustees Limited, the trustee of an unsecured mezzanine note issue by Market Street Mezzanine Ltd (In Liquidation) pursuant to a prospectus lodged with ASIC.

ASIC will seek compensation from State Trustees Ltd on behalf of investors who:

- hold or have held mezzanine notes issued by Market Street Mezzanine Ltd (In Liquidation) pursuant to a prospectus lodged with ASIC; and
- who have not had their investment repaid in full.

These proceedings will allege that State Trustees Ltd breached its duty to the mezzanine note holders and failed to comply with its obligations under the Corporations Act.

It is currently anticipated that the action against State Trustees Ltd will only be on behalf of investors who invested in mezzanine notes issued by Market Street Mezzanine Ltd (In Liquidation) pursuant to a prospectus lodged with ASIC.

Market Street Mezzanine Ltd also engaged in fundraising through the issue of promissory notes with a face value of \$50,000. While ASIC is still formulating its claim, on the basis of information currently available to ASIC, it is unlikely that the action against State Trustees Ltd will be on behalf of promissory note holders.

This document aims to help Westpoint investors understand the implications of the first and second phases of legal action. It has been revised to address questions investors have raised with ASIC.

1. When and how will ASIC advise me of the proceedings and to obtain my consent (in the event that consent is required for any proceedings)?

- ASIC will be writing to investors requesting basic information, and will communicate with investors regularly both by direct correspondence and through announcements on ASIC's website. ASIC will seek investors' consent, if required, by writing to investors directly.

2. Am I covered by ASIC's compensation proceedings and is there anything I need to do?

- You will be covered by ASIC's compensation proceedings if you are in one or more of these categories:
 - directors' and officers' proceedings (Category A)
 - adviser proceedings (Category B)
 - trustee proceedings (Category C).
- The directors' and officers' proceedings (Category A) are against the directors and officers of the following Westpoint companies:
 - Ann Street Mezzanine Pty Ltd
 - Bayshore Mezzanine Pty Ltd
 - Bayview Heritage Mezzanine Pty Ltd
 - Cinema City Mezzanine Pty Ltd
 - Market Street Mezzanine Limited
 - Market Street Mezzanine No 2 Pty Ltd
 - Mount Street Mezzanine Limited
 - York Street Mezzanine Pty Limited.
- ASIC expects that, if successful, the proceedings against the directors and officers will benefit all investors in the above named companies.
- The adviser proceedings (Category B) are on behalf of investors who received advice from any of the following advisers:
 - Bongiorno Financial Advisers Pty Ltd and Bongiorno Financial Advisers (Aust) Ltd
 - Dukes Financial Services Pty Ltd and Dukes Financial Services Australia Pty Ltd (In Liquidation)
 - Glenhurst Corporation Pty Ltd
 - Masu Financial Management Pty Ltd
 - Professional Investment Services Pty Ltd
 - Strategic Joint Partners Pty Ltd

- The trustee proceeding (Category C) will be on behalf of investors who hold or have held mezzanine notes issued by Market Street Mezzanine Ltd (In Liquidation) pursuant to a prospectus lodged with ASIC and who have not had their investment repaid in full.
 - At this stage, a number of legal issues relating to the compensation proceedings are being settled which will determine whether ASIC can seek compensation on your behalf.
 - If you think you may be covered by ASIC's compensation proceedings you should provide us with your details. We will then contact you to complete a short survey which will assist us to determine whether you are covered by the proceedings, as well as keep you updated on the progress of the proceedings. You can provide us with your details by calling ASIC Infoline on 1300 300 630.
 - ASIC's inquiries into the role and conduct of advisers, apart from those named above, is ongoing. We are examining further proceedings against advisers and you may be covered by those proceedings. ASIC will provide further information about these potential proceedings before the end of the year.
- 3. Will there be a particular cut off date/s for Westpoint investors to join any of the proceedings, and if so, what are such dates? Will I be able to join proceedings after they have commenced?**
- The particular dates/s for Westpoint investors to join any of the proceedings will depend on a number of legal issues which are currently being settled. It is possible that the decision will not need to be made until well into 2008. ASIC will communicate with investors regarding important dates.
- 4. Will I be liable for any costs whether or not the proceedings are successful?**
- Westpoint investors involved in the proceedings **will not** have to pay any costs regardless of whether the proceedings are unsuccessful or not. A related issue is the position where judgment is obtained, including an order that the Licensee pay ASIC's costs, but there are insufficient funds to meet both the investors' claims and ASIC's costs. ASIC is still determining its position in regard to costs should proceedings be successful and will advise investors of this shortly.
- 5. If ASIC's compensation proceedings are successful, will there be any money and how much?**
- If ASIC's action against the directors and officers is successful, ASIC expects the potential amount of damages to be up to \$245 million. Whether the directors and officers will be able to fully pay any compensation order made by the Court will depend on a number of factors, including their financial capacity and the insurance arrangements, if any, they have in place. The range of freezing orders ASIC has sought, covering approximately \$54 million in assets, should enhance the enforcement of any claim.
 - If ASIC's actions against the five advisers are successful, ASIC expects the potential amount of damages to be up to \$63.2 million. Whether the advisers will be able to fully pay any compensation order made by the Court will depend on a number of factors, including their financial capacity and the insurance arrangements, if any, they have in place.
 - If ASIC's action against State Trustees is successful, ASIC expects the potential amount of damages to be up to approximately \$20 million. It

should be noted that ASIC is yet to fully formulate and quantify the claim and accordingly the amount of damages claimed may be more or less.

6. I have joined a class action. Can I receive money from both the class action and ASIC's compensation proceedings?

- If you have already joined a class action against one of the advisers referred to above, you will not be covered by ASIC's compensation proceedings against those advisers.
- However, ASIC's actions against directors and officers of the mezzanine companies will, if successful, result in compensation being paid to the liquidators of those companies. This will benefit all investors in those companies regardless of whether they are represented in the class action proceedings or not. Further, if you hold or have held Mezzanine Notes issued by Market Street Mezzanine Ltd pursuant to a prospectus lodged with ASIC you may still be covered by ASIC's action against State Trustees Limited.

7. If ASIC tries to sue the same adviser being sued in a class action, doesn't that mean less money for the members in the class action?

- If ASIC's compensation proceedings are successful the Court will make orders that the adviser pay compensation to those investors covered by the proceedings. Similarly, if the class action is successful, the adviser will be ordered to pay compensation to members of the class action.
- Whether the adviser will be able to fully pay any compensation ordered will be determined by a number of factors, including the financial capacity of the defendants to the proceeding and the insurance arrangements, if any, they have in place. These issues will be clarified as part of the proceedings.

8. How would ASIC decide how to split up any compensation among investors? Should investors who received more monthly interest payments be treated the same as those who received less interest before Westpoint failed?

- ASIC has decided to bring three types of claims: claims against directors and officers of mezzanine companies within the Westpoint group, claims against advisers and claims against State Trustees Limited. Any compensation that is obtained would be dealt with differently under each type of claim.
- The claims against the directors and officers will be brought on behalf of the relevant mezzanine companies. If ASIC is successful in those proceedings any compensation obtained is paid to the company. This money then becomes part of the pool of funds that the liquidator of the company can distribute amongst all of the creditors of the company, including investors, under the usual winding up process.
- The claims against the advisers are brought on behalf of investors who were advised by those advisers. If ASIC is successful in these proceedings, ASIC will be seeking a determination from the Court regarding the compensation to be paid in relation to each investor who is covered by the proceedings. The amount claimed for each investor will be different, and will depend on that investor's circumstances. In broad terms, the measure of damage that can be claimed for investors, is the amount of any lost capital together with lost income on that capital.

- The claims against State Trustees Limited will be brought on behalf of investors who hold or have held Mezzanine Notes issued by Market Street Mezzanine Ltd pursuant to a prospectus lodged with ASIC. If ASIC is successful in this proceeding, ASIC will be seeking a determination from the Court regarding the compensation to be paid in relation to each investor who is covered by the proceeding. The amount claimed for each investor will be different and will depend on that investor's circumstances. In broad terms, the measure of damage that can be claimed for investors, is the amount of any lost capital together with lost income on that capital.

9. When will ASIC be commencing the proposed section 50 proceedings, and will the proceedings all be commenced at the same time?

- ASIC is working towards commencing the proceedings against individual licensees by the end of 2007. The proceedings will not necessarily be commenced at the same time.
- ASIC is working towards commencing the proceedings against Strategic Joint Partners Pty Ltd and State Trustees Limited by the end of March 2008.

10. Will the proceedings against the directors of the Westpoint companies be run at the same time as the proceedings against licensees?

- As indicated above, ASIC is working towards commencing the proceedings as soon as possible. It is likely that the proceedings against the directors will be filed on different dates to the licensee proceedings, they may be filed in different courts and will likely follow different court timetables.

11. How long does ASIC anticipate the proceedings to take in the event that settlements are not made prior to determination?

- Litigation of this sort can take some time to be resolved. However, ASIC expects that all parties to the compensation proceedings will approach the litigation in a sensible and efficient manner. Court procedures should also assist in the efficient disposition of the proceedings.

12. If ASIC receives an offer from the people it is suing to settle a compensation action, do investors get a say on whether it should be accepted?

- ASIC will retain the final say on whether a settlement offer should be accepted in relation to both the actions against the directors and officers and against the advisers. In relation to the director actions, ASIC may discuss any offer of settlement with the liquidators.
- In relation to the trustee and adviser actions, ASIC will not accept an offer of compensation without informing investors of the settlement proposal and seeking their views on the settlement proposal. At this stage, ASIC has not determined the process by which it will inform and obtain the views of investors.
- In the some cases the Court may also have to approve a settlement proposal before it can go ahead.

13. I have already accepted a settlement for my complaint against my adviser. Does that mean I won't receive anything if ASIC successfully sues my adviser for compensation?

- In most cases, your adviser would have required you to give up the right to sue them in return for a settlement payment. Generally, this means that you cannot be part of ASIC's compensation proceedings in relation to that adviser.
- However, there are a number of legal issues concerning the compensation proceedings which are being settled, including the position of investors who may have accepted a settlement offer from their adviser. ASIC is not able, at this time, to say whether an investor who has accepted such an offer will be part of the compensation proceedings. Clients of the advisers against whom ASIC proposes to commence proceedings will receive further specific information about this issue.

14. Will ASIC be including any authorised representatives (AR) as defendants in any of the proceedings (in addition to licensees), and if so, can complainants join a proceeding only in relation to an authorised representative?

- The 5 proceedings announced by ASIC will generally be against the licensees, though ASIC reserves the right to join authorised representatives where it considers it necessary to do so. Therefore, complainants who were clients of the licensee will generally be able to join in the proceedings whether or not any AR is named.

15. Why isn't ASIC taking action against my adviser/and or the part of Westpoint I invested in?

- As announced by ASIC on 23 August 2007, ASIC is examining any potential wrongdoing by former directors and officers of Westpoint in their management of the group of companies as well as the role and conduct of advisers.
- These proposed actions relate to 8 of those projects. There were some 4300 investors who invested in Westpoint products where there were losses. Some investors invested in more than one Westpoint product and some of the investments were in products that were regulated.
- At this stage, these proposed actions will not cover approximately 15% of Westpoint investors who made losses. Approximately \$29 million in losses (10% of investors) are in the regulated investment products of North Sydney Financial and Paragon Apartments (issued through prospectuses) and the Westpoint Income Fund (a registered scheme). The balance is in relation to unregulated investment products (Paragon Commercial Syndicate, part of Paragon Apartments, Renaissance Mezzanine and Warwick Cinema Syndicate). ASIC is reviewing the position in relation to those products.
- These investigations are continuing and will help ASIC determine whether further compensation actions are commenced. It is anticipated ASIC will make any further announcements on this before the end of the year.

16. My adviser has gone into administration. Will ASIC be taking action against licensees who have gone into administration?

- ASIC is aware that a number of licensees have gone into either liquidation or voluntary administration. While ASIC can bring legal proceedings against these licensees, it must first obtain either the consent of the administrator or the leave of the Court. ASIC has been and continues to

work closely with the liquidators and administrators of those licensees to ensure all available assets, including the proceeds of insurance policies, are made available to compensate clients. ASIC is also considering potential recoveries against third parties where appropriate.

17. Does ASIC's compensation action affect any returns from the liquidation process I may receive as a creditor?

- Yes. ASIC's proceedings on behalf of the mezzanine companies have the potential to increase the money available to the liquidators of those companies to distribute to all creditors, including investors.

18. How will ASIC keep me informed about the progress of compensation proceedings that relate to my investment?

- ASIC will provide regular updates on the Westpoint proceedings on its website at <http://www.asic.gov.au/westpoint> and will also write to investors.

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