



ASIC

Australian Securities & Investments Commission

Summary of letter sent to holders of Australian Financial Services licence concerning Westpoint

April 2006

Mr Jeffrey Lucy, Chairman of the Australian Securities and Investments Commission (ASIC) has written to each holder of an Australian Financial Services Licence whom ASIC believes has clients who invested in Westpoint (AFS holders).

In his letter, Mr Lucy stated:

There is no general presumption on ASIC's part that all consumer complaints about Westpoint are well founded. Nevertheless ASIC believes that AFS holders should prepare to receive complaints.

ASIC expects all complaints received by AFS holders in relation to advice about Westpoint products will be dealt with promptly, fairly and effectively in accordance with the requirements of each AFS holder's licence.

In ASIC's view, fair handling of complaints requires AFS holders:

- to ensure AFS holders' internal dispute resolution process (IDR) is readily accessible to complainants;
- to follow fully the IDR process;
- to provide genuine assistance to complainants in formulating their complaints, including providing them with information relevant to their investment and the history of their contact with you;
- to assess each complaint properly;
- to communicate to each complainant clearly and fairly;
- to make a clear decision supported by the material that is fair, reasonable and genuine especially where numerous complaints are made out of the same or similar factual circumstances, and
- to cooperate fully with any referrals to your external dispute resolution process (EDR) which, in most cases, is the Financial Industry Complaints Service (FICS);

ASIC will pay close attention to will be the number of referrals made to FICS that are determined in favour of the consumer. A high percentage of decisions upheld by FICS in favour of the complainant may indicate:

- the IDR procedures are not working well;
- AFS holders are not providing a fair deal to consumers; and/or
- action by ASIC is necessary to ensure the genuine interests of consumers are addressed fairly and not placed at further risk.

ASIC expects that AFS holders to be able to resolve most consumer complaints through the IDR process. This will be important in those cases where the amount of the loss is higher than the monetary claims limit of \$100,000 under the FICS process.

FICS is able to deal with claims greater than \$100,000 if both the AFS holder and the complainant consent. ASIC encourages AFS holders to consent to FICS dealing with all claims referred to it in the interests of fairness and to maximise the number of effective resolutions of claims without resort to expensive litigation.

ASIC expects that AFS holders will notify their respective insurers about complaints they may receive. ASIC would like to be notified if any difficulty arises in respect of any claims AFS holders may make under a relevant policy of insurance.

ASIC will monitor the progress of complaints and outcomes to assure ourselves, and the public, that complaints are being fairly handled. ASIC will act in cases where we find weaknesses.

In appropriate cases, ASIC may need to consider further action to ensure consumers receive fair and appropriate outcomes from the use of IDR and EDR procedures.

Mr Lucy has also written to the chairs of relevant financial services industry associations in which he requested them to play a leadership role in helping their members resolve investor complaints fairly. In particular, Mr Lucy requested that the industry associations:

- publicly and privately support both the internal dispute resolution processes of your members and the external dispute resolution scheme (which, in most cases will be FICS); and
- proactively support their members:
- to address genuine shortcomings that may be revealed by the experiences of affected consumers; and
- to cooperate fully with ASIC.

Mr Lucy also said ASIC expects AFS holders will respond appropriately to genuine complaints quickly and consistently. This is particularly important given the significant losses incurred by retail investors, the potential for mass litigation against a large number of members and the potential adverse effect on confidence in the financial services industry.

This document is published by the
Australian Securities & Investments Commission (ASIC)
Level 18, 1 Martin Place, Sydney NSW 2000, AUSTRALIA.
Website: www.asic.gov.au

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