

12 June 2008

**Re: Project Transform, Independent Expert Reports and the Australian Securities and Investment Commission (ASIC)**

Dear Sir or Madam

I am a grower investor in a number of 2005 Great Southern MIS schemes.

I have attached correspondence I have received from ASIC in relation to a number of complaints I made regarding the conduct of Duncan CALDER and Jason HUGHES (KPMG Corporate Finance (Australia) Limited) in relation to a number of Independent Expert Reports (IER) they prepared for Great Southern Managers Australia Limited (GSMAL) during the Project Transform transactions.

You will note that the independent directors of GSMAL confirmed that they had the benefit of these IER's and that they were satisfied of their integrity, particularly in the context of RG 111.

CALDER and HUGHES quote extensively from the regulatory guidelines contained within ASIC's Regulatory Guide 111 (RG111) to support their opinions in their IERs.

The basis for the Independent Expert Reports, that the transactions were fair (and therefore in the best interests of growers as a whole), became flawed once Great Southern Limited's (GSL) share price fell below 50 cents per share. In the context of RG 111.10, the offers to MIS investors were never fair. CALDER and HUGHES specifically make no mention of RG111.10 in their IER.

Furthermore, CALDER and HUGHES specifically stated that they could not argue a "not fair but reasonable" position in their supplementary Independent Expert Reports.

In maintaining their "fair and reasonable" opinion in the IERs, in the face of overwhelming objective evidence that GSL's offers were not, I have complained that CALDER and HUGHES engaged in misleading and deceptive conduct, contrary to provisions of the *Corporations Act 2001*.

In this context, I am concerned with the responses that my complaints have drawn from ASIC. ASIC has repeatedly stated that it will “take no action” in relation to my complaints. You will note that ASIC’s responses have come from the most senior levels.

In these circumstances, I am uncertain as to why the *Corporations Act 2001* was ever enacted, if its custodian and enforcer, ASIC can simply choose not to enforce it.

Please use ASIC’s responses as you see appropriate.

**Dr Simon Evans**

Hugh McLernon

Bruce Dennis

Ben Whitwell

Martin Jones

✓ Bernie Ripoll, MP

Senator Christine Milne

IMF (Australia) Limited

Dennis & Co

Slater & Gordon

Ferrier Hodgson

Chair, Joint House Inquiry

The Greens

Perth

Sydney

Sydney

Melbourne

Canberra

Canberra



GREAT SOUTHERN

MANAGERS AUSTRALIA LIMITED

■

2 December 2008

Dear Dr Evans

**Re: Project Transform and & MIS Investors' offers**

I note receipt of your recent correspondence, received on 1 December 2008, and your comments therein.

I confirm that the GSMAL Independent Directors are acting in the best interests of investors and that we do have the benefit of the Independent Expert Reports. Notwithstanding your comments we are satisfied of the integrity of these reports, including in the context of ASIC RG111.

Further to this I refer you to the recent announcement (copy attached) by the GSMAL Independent Directors on 30 November 2008, available from Great Southern's website (<http://www.great-southern.com.au/Projectinvestors.aspx>), which provides an update on the views of the GSMAL Independent Directors on the Proposal given the decision to adjourn the investor meetings on 1 December 2008. It is anticipated that a supplementary explanatory memorandum and supplementary GSL prospectus will be released to investors on the Great Southern website by 9 December 2008.

I will be available to discuss any further issues you may wish to raise once you have digested this additional material.

Yours sincerely

David Mahon for

Steven Cole  
Independent Chairman

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Telephone (08) 9320 9700 or 1800 258 348 Facsimile (08) 9321 9288 Website [www.great-southern.com.au](http://www.great-southern.com.au)

GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED ABN 80 083 825 405  
AUSTRALIAN FINANCIAL SERVICES LICENSEE 240788





**ASIC**

Australian Securities & Investments Commission

Our Reference: 1578/09

23 January 2009

Level 24, 120 Collins Street  
Melbourne VIC 3000  
GPO Box 9827 Melbourne VIC 3001

Telephone: (03) 9280 3200  
Facsimile: (03) 9280 3444

Dear Mr Evans

I refer to your correspondence dated 13 January 2009 and to our telephone discussion on the same day.

You complained to ASIC about the Independent Expert report prepared by KMPG Corporate Finance (Aust) Pty Ltd in relation to the offer made by Great Southern Ltd ('GSL') to exchange unitholders interests in managed investment schemes managed by Great Southern Managers Australia Pty Ltd ('GSMAL') for GSL securities ('the Proposal').

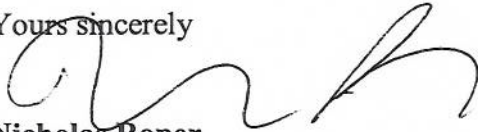
I advise that after carefully considering the matters regarding the Proposal, including the Supplementary Explanatory Memorandum dated 16 December 2008 and the Updated Independent Experts Report issued by GSMAL on 13 January 2009, ASIC has decided that we will not take any further action.

It is noted that ASIC Regulatory Guides do not create an obligation to conform with guidelines therein. The statutory requirements relating to disclosure documents are found in the Corporations Act 2001.

Although we have decided not to investigate your complaint at this time, you are not prevented from pursuing any civil remedies otherwise available to you. Your legal adviser can provide you with more information about what other options may be open to you to pursue this matter privately.

If you have any questions in relation to this letter please contact me on 03 9280 3206.

Yours sincerely

  
**Nicholas Roper**  
**Misconduct & Breach Reporting**



**ASIC**

Australian Securities & Investments Commission

Our Reference: 6462/09

26 February 2009

Level 24, 120 Collins Street  
Melbourne VIC 3000  
GPO Box 9827 Melbourne VIC 3001

Telephone: (03) 9280 3200  
Facsimile: (03) 9280 3444

Dear Dr Evans

**KPMG CORPORATE FINANCE (AUST) PTY LTD (ACN 007 363 215),**

I refer to your letter dated 11 February 2009 addressed to Mr John Bligh, CEO of the Australian Securities & Investments Commission (ASIC). I advise that Mr Bligh resigned from ASIC, effective 31 January 2009. There is no longer a CEO role following changes implemented by the Executive Chairman in response to a recent strategic review.

Your letter has been forwarded to me, as I am a Senior Analyst in the Escalated Matters Team within Misconduct & Breach Reporting. We have taken your letter to be a request that ASIC review its initial decision not to commence an investigation into your complaint.

ASIC confirms that it will review its initial decision including the issues you have raised in your request for review, which will be conducted from our Melbourne office.

ASIC will contact you again in due course with the outcome of its review, however in the mean time, if you have any questions please contact me on 03 9280 3577.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Fiona McCord'.

**Fiona McCord**  
**Misconduct & Breach Reporting**  
**Stakeholder Services**





**ASIC**

Australian Securities & Investments Commission

Our Reference: CCU-09\0113

9 April 2009

**JEREMY COOPER**  
Deputy Chairman

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Dear Dr Evans

### **Treatment of your complaints regarding Great Southern Limited**

As the Melbourne-based Deputy Chairman of ASIC, I am responding to your letter dated 5 March 2009 raising issues with ASIC's treatment of your complaints about the contractual scheme of arrangement proposed by Great Southern Managers Australia Limited (GSMA) in August 2008 and revised in November 2008.

As confirmed to you by Fiona McCord in a letter dated 29 February 2009, we have reviewed our response to your complaints and the issues that you have raised.

### **Background to your complaints**

GSMA, as the responsible entity of eight managed investment schemes, sought member approval to redeem members' interests in these schemes in exchange for shares in its listed parent company, Great Southern Limited. If approved, this transaction would have resulted in GSMA taking control of the hardwood plantation and beef cattle assets held in these schemes.

In order for scheme members to consider the merits of the transaction, GSMA proposed to send members a notice of meeting which would include an explanatory memorandum, an independent expert report and a prospectus. GSMA sought licensing relief from ASIC to enable its independent directors to provide general financial product advice to members, in the form of a recommendation to vote in favour of the transaction.

In granting licensing relief, ASIC imposed a condition that ASIC review such documentation before it was sent to scheme members to ensure that clear, concise and effective disclosure was made of the risks and benefits of the transaction.

### **ASIC's review of your complaints**

On 24 November 2008, you complained to ASIC that the independent experts reports should have considered whether the consideration offered under the schemes was fair to the relevant members in line with ASIC's guidance in Regulatory Guide 111: *Content of expert reports* and that the independent expert reports were misleading or deceptive. You raised similar complaints again in January and February.

ASIC reviewed the independent experts reports and scheme documentation before they were sent to scheme members.

As a result of this review, ASIC successfully obtained additional disclosure of the risks and benefits of the transaction in these documents.

ASIC continued to monitor the transaction and reviewed supplementary disclosure made by the responsible entity in late 2008 and forced additional disclosure before these documents were sent to scheme members.

The scheme meetings to consider the transaction occurred on 19 January 2009. Of the eight schemes, only the members of two schemes approved the transaction.

Based on your complaints, we have reviewed this matter and we confirm our decision not to take any further action.

#### **Additional issues raised in your letter dated 5 March 2005**

In your letter to ASIC dated 5 March 2009, you asked us to address some further issues about your perception of ASIC.

#### **Perceived preferential treatment for complaints from the "big end of town"**

ASIC does have certain regulatory priorities aimed at maintaining and building confidence in the integrity of our markets and protecting retail investors and consumers. We assess each complaint on its merits in order to determine whether the conduct complained of falls within our jurisdiction and, if so, whether and what action is warranted. We weigh up a number of considerations in coming to this conclusion, including whether the matter falls within our regulatory priorities. I can assure you that ASIC does not hesitate to take action against both the small and big ends of town, as is demonstrated in the summary of ASIC actions included in our most recent Annual Report.

#### **ASIC's regulatory guides**

ASIC's regulatory guides are not law. The purposes of ASIC's regulatory guides are to give guidance to regulated entities about how ASIC will exercise its powers, how ASIC interprets the law and the principles underlying ASIC's approach. Regulated entities often seek guidance from us to give them regulatory certainty.

ASIC applied the principles in Regulatory Guide 111 to its review, which resulted in supplementary independent experts reports being issued to unitholders on 16 January 2009. The independent expert agreed to make changes that satisfied our concerns.

#### **Enforcement of the *Corporations Act 2001***

ASIC has set up two deterrence teams specifically focussing on corporate governance issues. These teams will investigate and take appropriate deterrence action for breaches of corporate governance standards. Our current action against the directors of James Hardie is an example of our work in this area.

Yours sincerely



Jeremy Cooper  
DEPUTY CHAIRMAN





**ASIC**

Australian Securities & Investments Commission

Our Reference: CCU-09\0184

JEREMY COOPER  
Deputy Chairman

Level 24, 120 Collins Street, Melbourne  
GPO Box 9827 Melbourne VIC 3001

30 April 2009

Telephone: (03) 9280 3308  
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Email: jeremy.cooper@asic.gov.au

Dear Mr Evans

Thank you for your letter dated 17 April 2009 addressed to the Complaints Department of the Australian Securities and Investments Commission (ASIC), requesting a statement of reasons under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR).

Having considered your request, ASIC's opinion is that the decision not to commence a formal investigation under the *Australian Securities & Investments Commission Act 2001* (the ASIC Act) is not a decision that is reviewable under the ADJR Act.

**ASIC has discretion to investigate matters brought to its attention, not an obligation.**

Section 13 of the ASIC Act provides ASIC may make such investigations as it thinks expedient for the due administration of the corporations legislation where it has reason to suspect a contravention of the corporations legislation may have been committed.

#### *The ADJR Act*

Section 13 of the ADJR Act says that a person may apply for a written statement of reasons in relation to a decision. However, section 13(11) says that classes of decision set out under Schedule 2 of the ADJR Act are excluded from the ambit of the Act.

Clause (e) and (f) of Schedule 2 of the ADJR Act set out the following classes of decisions as being decisions to which the obligation to provide a statement of reasons does not apply:

Decisions relating to the administration of criminal justice, and, in particular:

- (i) decisions in connection with the investigation, committal for trial or prosecution or prosecution of persons for any offences against a law of the Commonwealth or of a Territory...



Decisions in connection with the institution or conduct of proceedings in a civil court, including decisions that relate to, or may result in, the bringing of such proceedings for the recovery of pecuniary penalties arising from contraventions of enactments, and, in particular:

- (i) decisions in connection with the investigation of persons for such contraventions...

On at least this basis, ASIC has no obligation to provide a statement of reasons as to why it has exercised its discretion not to formally investigate your complaint.

I refer you instead to my letter of 9 April 2009 in which I addressed the concerns you raised in your previous correspondence with ASIC.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jeremy Cooper', written in a cursive style.

**Jeremy Cooper**  
**Deputy Chairman**



**ASIC**

Australian Securities & Investments Commission

Our Reference: CCU-09\0268

5 June 2009

TONY D'ALOISIO  
Chairman

No.1 Martin Place, Sydney  
GPO Box 9827 Sydney NSW 2001  
DX 653 Sydney

Telephone: (02) 9911 2002  
Facsimile: (02) 9911 2010

Dear Dr Evans

### **Complaint – Independent Expert Report**

Thank you for your letters dated 7 and 22 May 2009. You have requested a statement of reasons under the *Administrative Decisions (Judicial Review) Act 1977* (the ADJR Act), following ASIC's decision to take no further action regarding your complaint about the independent expert report prepared by KPMG for Great Southern Managers Australia Limited (GSML).

You have alleged that KPMG's independent expert report was misleading and deceptive. In letters dated 23 January 2009 and 9 April 2009, ASIC said that it did not intend to take any further action in relation to your complaints at that time.

### **Project Transform**

As you know, GSML, as the responsible entity of eight managed investment schemes, sought member approval to redeem members' interests in these schemes in exchange for shares in its listed parent company, Great Southern Limited.

The transaction was conducted by way of a contractual arrangement. It did not automatically fall within ASIC's role to review the relevant contractual documentation under the *Corporations Act 2001*.

The transaction came to ASIC's attention as GSML sought licensing relief to enable its independent directors to provide general financial product advice to members, in the form of a recommendation to members to vote in favour of the transaction.

In granting licensing relief, ASIC imposed a condition that ASIC should be given the opportunity to review the documentation that was proposed to be sent to members in connection with the transaction. The purpose of this was to allow ASIC to monitor whether there was clear, concise and effective disclosure of the risks and benefits of the transaction.

ASIC asked for and obtained additional disclosure of the risks and benefits of the transaction in these documents before they were sent to members. In relation to the eight independent expert reports, ASIC obtained additional disclosure, including the following:

- Prominent disclosure of the independent expert's assessed high-end value of the interests being surrendered compared to the shares being issued under the proposed transaction.
- Prominent disclosure that the independent expert's assessment of whether the consideration offered was fair, was based on the independent expert's assessed low-end value of the interests being surrendered and why.
- That historical prices and trading patterns of Great Southern Limited shares are not necessarily indicative of future prices of those shares and that previous share prices therefore may not be indicative of future trading prices. This was particularly relevant given the proposed transaction itself might significantly change the profile of the register of the company and the value of its shares.
- Reasons as to why the independent expert did not use another valuation methodology, other than a discounted cash flow methodology, to value a member's interests in the scheme.

ASIC continued to monitor the transaction and, after Great Southern Limited announced its full year 2008 financial results, GSML adjourned the meetings and issued supplementary information. ASIC obtained additional disclosure in the supplementary explanatory memorandum. Supplementary independent expert reports were issued on 12 January 2009.

As you are aware, since then, Great Southern Limited and a number of its subsidiaries have been placed into voluntary administration, and receivers and managers have been appointed to some of those companies. ASIC is closely monitoring the voluntary administration and receivership and is considering what, if any, regulatory action it may take in relation to these matters generally. It is not appropriate at this stage for ASIC to comment any further.

#### **ADJR Act**

I confirm Mr Cooper's view that ASIC is not required to provide you with a statement of reasons for its decision to take no further action.

The ADJR Act makes it clear that an entitlement to request a statement of reasons only arises if there is a "decision" within the meaning of section 3 of the ADJR Act and the person seeking that statement is a person aggrieved by the decision.

A decision not to inquire further into a matter is not a 'decision' within the meaning of section 3(1) of the ADJR Act. ASIC's decision not to inquire into the issues you raised does not have the necessary effect on any of your legal rights or obligations.

If you remain dissatisfied with ASIC's actions in this matter you may seek to make a complaint to the Commonwealth Ombudsman. The Ombudsman's office may be contacted on 1300 362 072 or at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

Yours sincerely



Tony D'Aloisio  
Chairman