



ASIC

Australian Securities & Investments Commission

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Your Reference: 361/02

Mr Patrick Walker
Executive Director
Department of Consumer and Employment Protection
Locked Bag 14 Cloisters Square
PERTH WA 6850

Dear Pat

MEZZANINE FINANCING

I refer to your letter dated 2 August 2002 in which you raised concerns about a type of financing referred to as "mezzanine financing". By way of example, you provided ASIC with a copy of an Information Memorandum issued by 297 Murray Street Pty Ltd in respect of the Pacific International Apartments development promoted by Westpoint Management Limited ("297 Murray Information Memorandum").

In ASIC's letter to the Finance Brokers Supervisory Board dated 8 April 2002, ASIC advised that in the ordinary course promissory notes are not the subject of regulation under the Corporations Act 2001 (C'th) ("CA"). ASIC also advised that it was possible, though unlikely, that the issue of a promissory note could be part of a managed investments scheme.

In view of the risks posed to consumers by this type of investment, ASIC is seeking a definitive view from Senior Counsel on whether "mezzanine financing" of the kind illustrated by the 297 Information Memorandum comprises a managed investment scheme within the CA.

I note that on 21 August 2002 The Hon John Kobelke MLA issued a media statement outlining the risks to consumers of this type of investment. I also note that Mr Kobelke has advised State Parliament that he has raised this issue with the Commonwealth Treasurer with a view to seeking law reform.

ASIC also has concerns about mezzanine investing schemes generally, and has information on its investor protection website about the risk associated with such investments. The relevant web address is: <http://fido.asic.gov.au>, and then search for "mezzanine".

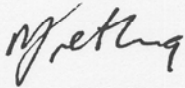
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Department of Consumer and Employment Protection

Quite coincidentally, the August edition of ASIC News carried an article on the risks involved in mezzanine investing schemes. I enclose a copy of this newsletter for your information.

I will advise you of the outcome of this advice as soon as it is to hand.

Yours sincerely



Michael Gething
Regional Commissioner