My name is Graham MacAulay. Thank you for the opportunity to participate.

Please Note: This document contains hyperlinks, which may not be immediately accessible in my submission. The opening page of the website www.WestpointInvestorsGroup.com contains the hyperlinked words submission to the Inquiry headed by Labor MP, Bernie Ripoll. This hyperlink will take you to a copy of the document below, and allows full access to the hyperlinks.

The presidency of the Westpoint Investors Group has provided me with the opportunity to discuss the experiences of a large number of Westpoint investors, and to converse with numerous investors in other failed companies. All of them relate remarkably similar experiences. The majority of those to whom I have spoken report they dealt with small to medium size companies.

The contents of the following points are very easy to substantiate.

- Planners tended to sell products returning the greatest profit to the company/planner rather than providing clients with products that best met the client's interest. Put simply, greed in obtaining maximum commission excluded all other considerations.

- Aware of ASIC's lack of monitoring, timely intervention, and its reticence to prosecute with vigour, planners knew the likelihood of prosecution was low. Many of them took advantage of ASIC's sloth and knowingly broke the law. They knew if they were challenged, they would receive only a slap on the wrist. In the unlikely event the law might force them to repay investor losses, they could liquidate their company and start a new one immediately. A number of them took this course of action

- Dishonest planners claimed products were "safe", when they knew they were not.

- Almost none of the investors to whom I spoke received plans spreading income and risk across segments of the marketplace. Almost universally, the investors received advice to invest in high-risk products that returned high interest – and returned maximum commission to the planner.

- It is my understanding the law states a planner must declare their commission at the time of sale. I have yet to hear of a single case in which this occurred – nor of ASIC taking any punitive action in this matter. In the case of Westpoint Investors, Richard Beck received 10% of all investments. Had most of us known this, we would never have invested in Westpoint. Such a high commission dramatically alters the company's ROI required to make a project viable.

- Planners often misrepresented themselves. An extreme example is Neil Burnard, who claimed he was a director of Kebbel Investment Bank – an organisation that never held any form of banking licence. He openly carried out this facade for so long in full public view without action by either APRA or ASIC that both investors and planners believed the company was a genuine merchant bank.

- Many companies promoting their products held an AFSL – but did not promote any products other than their own. It is impossible for a "one product planner" to provide unbiased comparative advice.

- With no legislation barring anyone from calling themself a planner, many planners legally operated in the unlisted/unrated area without possessing an AFSL. The average investor, knowing tradesmen, accountants, doctors, etc., needed the appropriate qualification, assumed the same restriction held for planners. In the majority of cases this error of did not matter.

- A lack of training and knowledge of markets, products, and analysis, on the part of planners ensured bad advice for their clients.

- Honest, diligent, planners and investors share a common disadvantage: the false validity of the data emanating from the marketplace. The recent failure of Timbercorp is an excellent example. That company's year-end balance sheet indicated solid strength, yet a few months later the administrator claimed it to be hopelessly insolvent. No one can make informed decisions using manifestly flawed data.

- A surprising fact is that the vast majority of planners held Personal Indemnity Insurance (PII). In the case of Westpoint, planners were unable to call on it because of the wording of the policy. [From the outset the Government should have prescribed the wording of PII policies].

- Planners (and companies) advertised products in the mainstream media. Even where the advertising entity had doubts about the products it was advertising, it refrained from refusing the advert because of possible legal action on the part of the advertiser.

- My wife and I heard Alan Jones advertise Online Super on radio 2GB for some time before we became involved. Throughout the period of our involvement (2003 – 2005), Online Super never held an AFSL in its own right but relied on the AFSL's of other entities, and for extended periods did not possess AFSL cover. This concept of using someone else's AFSL leaves much to be desired.

- Unknown to its clients until the liquidator brought the matter to investors' notice at a liquidation meeting, the principal of Online Super was a discharged bankrupt who had changed his name by deed poll. I wonder how many other investors unknowingly invested with a previous bankrupt who changed his name.

- The lack of an AFSL and the failure of Online Super both meant many investors could not lodge a claim with FICS – the recovery scheme promoted heavily by the then ASIC Chairman, Jeff Lucy.

- The standard required to become an AFSL holder has never been high (see The 2009_06_25_TheAustralian and 2009_06_25_MoneyManagement), so it should be of no surprise so many investors received poor planning advice.

A major plank of the Howard Government's reason for the creation of ASIC was investor protection. For the decade of ASIC's existence, its record of investor protection has been abysmal. Neal Prior, a past financial editor of the West Australian, once wrote of "ASIC's reign of error". Rather than a protector of the investor, ASIC, with its lack of will to carry out its assigned duty, lack of monitoring, and lack of early intervention, have been a major agent of investor destruction. Its non-prosecution of wrongdoers has allowed those with criminal intent to pillage and rape investors in the marketplace at will.

Every segment of the Australian Financial Investment System has suffered cataclysmic failure for an extended period of time. It is obvious that such failure has little to do with the Global Financial Crisis. The reason why this has occurred is simple when viewed from a systems viewpoint.

By definition, a system is a set of integrated components (subsystems) working together to achieve a defined set of goals. Where feedback mechanisms exist, system components do not operate in isolation. If one examines the components of the financial investment marketplace one finds none of the segments (subsystems), except one, have common linkages between them. That exception is the regulator. The regulator performs two major functions: the prosecution of any marketplace transgressor, and the monitoring and immediate repair of any subsystem not functioning as designed. To say ASIC has failed both of these assigned duties is the politest of euphemisms.

Legislative amendment to the current marketplace laws may be necessary in the modern world. However, rigid application of existing laws would have prevented the destruction of many Australian lives, and greatly lessened the burden on taxpayers for pension payments and the associated ancillary welfare and their associated medical costs.

Should you disagree with the above harsh criticism of ASIC, I refer you to Senator Sherry's letter of 30/07/2007 to me. I also refer you to an email sent to ASIC's Westpoint contact. On the matter of prosecutions I refer you to the article 2008_05_12_Crikey. Prior to that, in January of 2007 the Auditor General criticised ASIC for its low prosecution rate. How many major villains has ASIC put in jail since then? I can't name any. The Auditor General also criticised ASIC in 2006 [The SMH 27_01_2006] and claimed it was responsible for driving planners to become unlicenced planners because of long delays in obtaining an AFSL. The website www.WestpointInvestorsGroup.com provides further specific examples of ASIC failure.

We desperately need the open inquiry Senator Sherry promised. That inquiry should be a Royal Commission with the widest possible powers.