

Premium Income Fund

NSX Release: 3 November 2009



Wellington

ASIC Proceedings Update

Australian Securities and Investments Commission v Michael King, Craig White, Guy Hutchings, David Anderson, Marilyn Watts Octaviar Administration Pty Ltd (In Liquidation) Octaviar Castle Pty Ltd and the former responsible entity of the Premium Income Fund

Reference is made to the release of 2 November 2009 made by Wellington Capital Limited as responsible entity of the Premium Income Fund in relation to the proceedings commenced in Supreme Court of Queensland by ASIC.

Annexed is a release made by the ASIC in relation to those proceedings.

Further announcements will be made as the proceedings progress.

For further information please contact:

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Monday 2 November 2009

AD09-214

ASIC COMMENCES CIVIL PROCEEDINGS AGAINST FORMER OFFICERS OF MFS GROUP

The Australian Securities and Investments Commission (ASIC) has commenced civil proceedings in the Supreme Court of Queensland against three subsidiary companies of the formerly listed MFS Ltd (now known as Octaviar Ltd (in Liquidation)) and four former officers and one manager of MFS Investment Management Ltd.

The proceedings relate to the use of \$147.5 million in funds of the Premium Income Fund (PIF), for which MFS Investment Management Ltd ('MFSIM', now known as Managed Investments Ltd) was the responsible entity at the relevant time.

In taking this action, ASIC is addressing the core obligations of a responsible entity and its directors and officers to operate the fund with care and diligence, and in the best interest of the fund's members.

The defendants in the matter are:

- **Michael Christodoulou King** of Canungra, Queensland, former Chief Executive Officer (CEO) and Director of MFS Ltd;
- **Craig Robert White** of Holland Park West, Queensland, former Deputy CEO (and for a short period, CEO) and director of MFS Ltd and MFSIM;
- **Guy Hutchings** of Paddington, NSW, former CEO and director of MFSIM;
- **David Mark Anderson** of Robina, Queensland, former CFO and Company Secretary of MFS Ltd;
- **Marilyn Anne Watts** of West Pennant Hills, NSW, former fund manager of MFSIM;
- **Managed Investments Ltd** (formerly known as MFSIM and Octaviar Investment Management Ltd);
- **Octaviar Administration Pty Ltd** (formerly MFS Administration Pty Ltd) (In Liquidation); and
- **Octaviar Castle Pty Ltd** (formerly MFS Castle Pty Ltd and MFS Investment Holdings No 17 Pty Ltd).

ASIC is seeking orders for declarations of contraventions, pecuniary penalties, compensation and disqualifications from managing corporations.

A schedule of allegations and orders sought in relation to each defendant is attached.

The transactions:

ASIC alleges that in November 2007, officers of MFSIM caused PIF to transfer \$130 million to MFS Administration Pty Ltd so that MFS Administration could use those funds to pay financial obligations of other MFS Ltd subsidiaries, including \$103 million owed to Fortress Credit Corporation (Australia) Pty Ltd by MFS Castle Pty Ltd.

ASIC also alleges that in December 2007, officers of MFSIM caused PIF to transfer \$17.5 million to MFS Pacific Finance Ltd, a New Zealand registered company (now known as OPI Pacific Finance Ltd (Receivers and Managers Appointed)).

ASIC further alleges that in about January 2008, officers and the fund manager of MFSIM created and used false documents, relating to the use of the \$147.5 million.

As a result of the funds being transferred, ASIC alleges that the PIF suffered a loss of \$147.5 million.

Background:

MFS Ltd was a publicly listed company with interests in financial services, travel and leisure and child care businesses.

MFSIM was an unlisted public company and wholly owned subsidiary of MFS Ltd (now in Liquidation). MFSIM was the responsible entity for six unlisted managed investment schemes, including the PIF and the Maximum Yield Fund ('MYF'). MYF is also relevant to the current civil penalty proceedings.

The PIF was an unlisted managed investment scheme which offered investments to retail and wholesale investors through a Product Disclosure Statement.

Wellington Capital Ltd took over as responsible entity of the PIF in late 2008. PIF units have since been listed on the National Stock Exchange.

Defendant	Alleged contravention*	Orders sought
Michael King	Section 601FC(5) (duties of a responsible entity) Section 601FD(3) (duties of officer of responsible entity) Section 209(2) (related party transactions) in relation to the payment of \$103 million to a related party not for the benefit of PIF members	Pecuniary penalty (max: \$200,000 per breach) Compensation of \$103 million Disqualification from managing corporations
Craig White	Section 601FC(5) (duties of a responsible entity) Section 601FD(3) Section 209(2) Section 344(1) in relation to the payment of \$147.5 million to a related party not for the benefit of PIF members and the creation of false documents	Pecuniary penalty (max: \$200,000 per breach) Compensation of \$147.5 million Disqualification from managing corporations
Guy Hutchings	Section 601FC(5) Section 601FD(3) Section 209(2) Section 344(1) in relation to the payment of \$17.5 million to a related party not for the benefit of PIF members and the creation of false documents	Pecuniary penalty (max: \$200,000 per breach) Compensation of \$17.5 million Disqualification from managing corporations
David Anderson	Section 601FC(5) Section 601FD(3) Section 209(2) Section 344(1) in relation to the payment of \$147.5 million to a related party not for the benefit of PIF members and the creation of false documents	Pecuniary penalty (max: \$200,000 per breach) Compensation of \$147.5 million Disqualification from managing corporations
Marilyn Watts	Section 601FC(5) Section 601FD(3) Section 344(1) in relation to the creation of false documents	Pecuniary penalty (max: \$200,000 per breach) Disqualification from managing corporations
Managed Investments Ltd	Section 601FC(5) In relation to the payment of \$147.5 million to a related party not for the benefit of PIF members and the creation of false documents	Pecuniary penalty (max: \$200,000 per breach) Compensation of \$147.5 million
Octaviar Administration Pty Ltd	Section 601FC(5) Section 601FD(3) Section 209(2) In relation to the payment of \$130 million to a related party not for the benefit of PIF members	Pecuniary penalty (max: \$200,000 per breach) Compensation of \$130 million

Octaviar Castle Pty Ltd	Section 601FC(5) Section 601FD(3) Section 209(2) In relation to the payment of \$130 million and \$103 million to a related party not for the benefit of PIF members.	Pecuniary penalty (max: \$200,000 per breach) Compensation of \$103 million
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* All contraventions are of the Corporations Act 2001 (Cwth).