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Sunday 31 January 2021

21-012MR ASIC succeeds in winding-up Mayfair 101 debenture issuer

Following an application by ASIC, the Federal Court has ordered the winding up of M101 Nominees Pty Ltd, which issued secured debentures promoted by Mayfair 101 known as M Core Fixed Income Notes.

This is the first final outcome arising from ASIC's court actions issued against Mayfair 101 Group companies and their director James Mawhinney. In this action, ASIC sought to protect the assets of M101 Nominees and the interests of M Core noteholders in circumstances where:

- the product issuer had informed current investors of a liquidity event;
- there appeared to be insufficient funds to repay investors; and
- external administrators appointed to other products issued by the Mayfair 101 Group had raised concerns about how the investments had been dealt with to the detriment of investors.

On 29 January 2021, the Court ordered that M101 Nominees be wound up on just and equitable grounds, and appointed Said Jahani and Philip Campbell-Wilson of Grant Thornton as liquidators, after having previously appointed them as provisional liquidators in order to preserve the assets of the company pending the determination of ASIC's winding up application ([20-205MR](#)).

M101 Nominees raised approximately \$67 million from investors during 2019 and 2020 based on representations that funds invested would be fully secured, when they were not. M101 Nominees stopped repaying funds to investors in March 2020 and froze interest payments to investors from June 2020.

On 24 September 2020, the provisional liquidators concluded that:

- M101 Nominees had been insolvent since it began in October 2019;
- the business model of M101 Nominees was unsustainable because it was raising funds from M Core noteholders on a short-term basis (predominantly 6-12 months) and on-lending to a related entity, Eleuthera Group Pty Ltd, for a term of 10 years. On this basis, M101 Nominees would not have adequate funds to repay noteholders as their investments fell due;
- distributions and redemptions paid to M Core noteholders were funded from money raised from other M Core noteholders, or to a lesser extent, from investors in unsecured debentures promoted by Mayfair 101 known as M+ Fixed Income Notes;
- the security provided to the Security Trustee on behalf of the M Core noteholders holds little value as it specifically excluded real estate assets, which were the only tangible assets held by the Mayfair 101 Group entities and trusts giving the security; and
- the realisable value of M101 Nominees' assets is negligible and insufficient to repay M Core noteholders' investments.

The defendants consented to the orders made by the Court. The Court will publish reasons for its decision at a later date.

The Mayfair 101 Group owes approximately \$211 million to those who invested in its various products, including the M Core Fixed Income Notes, M+ Fixed Income Notes, the IPO Wealth Fund, IPO Capital and Australian Property Bonds.

ASIC Acting Chair, Karen Chester stated, 'ASIC moved decisively early last year, directly and then ultimately through the courts, to restrain Mayfair from promoting these allegedly misleading products and to protect not only potential new investors but also the interests of existing investors. This action is one of several we have underway (under our project True to Label) targeting fund managers not doing the right thing by investors. Especially those fund managers preying on unsophisticated investors, such as older Australians and retirees in regional Australia.'

ASIC is also seeking orders that Mr Mawhinney, be permanently restrained from certain activities, including advertising any financial product and soliciting funds in connection with any financial product ([20-205MR](#)). That matter will be heard by the Court on 15 February 2021.

Download

[Court order](#)

Provisional liquidators' [report](#) dated 24 September 2020.

Background

On 3 April 2020, ASIC commenced separate proceedings in the Federal Court against companies in the Mayfair 101 group, including M101 Nominees, alleging that those companies made statements in advertisements that were false, misleading or deceptive ([20-080MR](#)).

On 16 April 2020, following an application by ASIC, the Federal Court made interim orders restraining Mayfair Wealth Partners Pty Ltd (trading as Mayfair Platinum) and Online Investments Pty Ltd (trading as Mayfair 101) from promoting their debenture products, including the M Core Fixed Income Notes, and prohibiting the use of specific words and phrases in their advertising ([20-092MR](#)).

The matter is set down for trial commencing on 15 February 2021.

ASIC has a [dedicated webpage for Mayfair 101 group investors](#).

ASIC's Moneysmart [website](#) has information on investing, including on debentures, secured notes and unsecured notes.

Investors in the M Core Fixed Income Notes can contact the liquidators by email to M101@au.gt.com. The liquidators will also publish updates on their website [here](#).

Editor's note:

On 4 February 2021, the Court published its [reasons for judgment](#) in relation to the orders made on 29 January 2021 that M101 Nominees Pty Ltd be wound up.

In the judgment, Justice Anderson stated "I am satisfied that there is ample evidence to justify a lack of confidence in the conduct and management of M101 Nominees' affairs. I am satisfied, based upon the evidence relied upon by ASIC, that there is a risk to the public interest that warrants protection and that such protection can best be provided by ordering the winding up of M101 Nominees. I am also satisfied, based on the evidence and, in particular, the Provisional Liquidators' Report, that M101 Nominees has at all times been and remains insolvent."

Editor's note 2:

ASIC's application for permanent injunctions against Mr Mawhinney was heard by Justice Anderson on 16 February 2021. The matter will return to Court on 9 March 2021 for closing submissions.

Editor's note 3:

Closing submissions were heard by Justice Anderson on 9 March 2021 in relation to ASIC's application for permanent injunctions against Mr Mawhinney. Judgment has been reserved.

Editor's note 4:

On 19 April 2021, the Court delivered its judgment in relation to ASIC's application for permanent injunctions against Mr Mawhinney (refer [21-076MR](#)).