

Attention:

James Shipton (Chairman)

Karen Chester (Deputy Chair)

Rhys Bollen (Senior Executive Leader, Investment Managers)

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16 March 2021

Dear ASIC representatives,

**OPEN LETTER RE IMPACT OF ASIC'S INVESTIGATION ON MAYFAIR 101 INVESTORS**

As you are aware two major cases commenced by your organisation targeting the Mayfair 101 Group and myself personally have just concluded, pending a final ruling of Justice Anderson.

Mayfair 101 is compelled to write to you to seek an urgent explanation of the following questions on behalf of our investors –

**1. Prosecution for a crime that was never committed**

ASIC made an ex parte application against a Mayfair 101 company based on allegations of misconduct. You constructed fictitious evidence for the purposes of advancing your claim, rather than basing your case on fact.

You subsequently admitted in the final hearing that you do “not allege conscious dishonesty” and “never have”. This conflicts with the allegations in your claim and the serious injunctions you were awarded based on fabricated evidence.

Despite all this, ASIC has continued to press the Federal Court for me to be banned for life from any form of capital raising or receiving the benefit of any financial instrument.

There was no misappropriation of funds, no fraud, no theft, and no charges brought against me for any offence. Rather than ASIC admitting that you got your assessment wrong, you pressed even harder to strike me out for life.

This is an obvious abuse of power.

- (a) How does ASIC justify prosecuting an individual for maximum penalties when the individual has not actually breached any laws?
- (b) Why has ASIC not admitted that it got its assessment of Mayfair 101 wrong from the outset rather than pressing harder to the point of fabricating evidence?

- (c) Does ASIC think the Federal Court would have awarded injunctions or wound up the company to the detriment of 126 noteholders if it had told the Court it “did not allege conscious dishonesty” from the outset?

**2. The real issue which ASIC overlooked**

Your staff's chosen course of action has wrongly devastated the lives of over 570 investors who invested over \$210 million with Mayfair 101. Indeed our business was not perfect and Mayfair 101 admits there were things which could have been improved or done better. These included enhancements to the areas of corporate governance, structure and risk management.

For example, ASIC was evidently uncomfortable with Mayfair 101 being a sole director and sole shareholder business, despite this being perfectly legal. Steps were already being taken to address governance across the Group prior to ASIC's intervention. It did not justify a brazen attack on our business and investors.

- (a) What other courses of action did ASIC evaluate that would have not had such a dire impact on noteholders?
- (b) Why didn't ASIC choose a path that would have minimised its impact on our investors, e.g. arranging a meeting to discuss ASIC's concerns?

**3. No interview**

Despite ASIC's advising the Federal Court, ASIC has never interviewed Mayfair 101's management in relation to its investigation. At the ex parte hearing you told the Federal Court you would interview me within 4 weeks of your application to wind up M101 Nominees Pty Ltd in August 2020. You never followed through with this.

- (a) Why have you never interviewed any of Mayfair 101's management including myself?
- (b) Why did you tell the Federal Court in written submissions that you would interview me but not follow through?
- (c) Why have you maintained I have failed to cooperate with ASIC when I have been available for an interview prior to, and post, your initial application in April 2020, and have responded in full to every notice issued by ASIC?

**4. No evidence of failed investments**

In the period since Mayfair 101 started raising funds from the public in 2015 just one investment the Group made has been written off. The investment was c\$1.3 million representing <1% of our overall portfolio. No investor lost money as a result of this investment not working out. It impacted our balance sheet, not our investors.

- (a) How can ASIC justify putting our investors at risk without any evidence of a failed investment strategy?
- (b) How does ASIC explain its submissions to court that our investment in acquiring (not developing) Australian real estate is “highly speculative” and “high risk” when real estate is considered a relatively conservative, liquid and stable asset class?

(c) Why has ASIC never asked about the financial position of the Group?

#### 5. No regard for the law

In the final hearing you submitted my conduct is “indicative of serious irresponsibility and disregard for his legal obligations”. I refute this claim. It is ASIC itself who has shown a total disregard for the law and has been irresponsible in the way it has prosecuted its case.

You have attempted to prosecute ASIC’s case based on non-existent laws.

Every single investor in M Core, M+ and Australian Property Bonds is a compliant investor within the terms of the Corporations Act. Mayfair 101 acknowledged its legal obligations by complying and abiding by them. Prosecuting Mayfair 101 and unjustly affecting its investors for compliance with investor laws is incomprehensible.

- a) Why did ASIC’s submissions refer to assessing a level of “sophistication” of investors when
  - a) the law does not require us to, b) our license does not allow us to, and c) investors decided to invest based on their own due diligence?
- b) Why has ASIC through its representatives made a series of public statements in which they reference Mayfair 101 whilst specifically referring to changing wholesale investor laws, all at the expense of Mayfair 101’s investors. Most recent examples of this behaviour include:

- (a) Karen Chester said in her address published 18 November 2020<sup>1</sup>:

*“Our action against the Mayfair 101 Group for misleading marketing targeting unsophisticated wholesale investors resulted in an interim injunction against the promotion of the debentures in April 2020...”*

There is no mention of “unsophisticated wholesale investors” in the Corporations Act. It is not possible to break a law that does not exist.

- (b) Rhys Bollen of ASIC was quoted in a Professional Planner article saying:

*“It does mean we’re taking on cases where we haven’t in the past,” he says. “Mayfair [101] is an example; it is a wholesale product and we felt it was clear that it was marketing itself to unsophisticated rather than wholesale customers.”<sup>2</sup>*

Mayfair 101’s advertising was compliant. Investors who did not qualify as wholesale clients were turned away.

- (c) Grant Thornton’s provisional liquidators report<sup>3</sup> alleged a potential breach of director’s duty for “*failing to advise unsophisticated investors of the risks of the products being offered*”.

<sup>1</sup> <https://asic.gov.au/about-asic/news-centre/speeches/getting-on-with-it/>

<sup>2</sup> <https://www.professionalplanner.com.au/2020/11/outdated-sophisticated-investor-rules-increase-asics-load/>

<sup>3</sup> [https://www.grantthornton.com.au/globalassets/1.-member-firms/australian-website/creditors-documents/gtal\\_2020\\_m101---provisional-liquidators-report-final.pdf](https://www.grantthornton.com.au/globalassets/1.-member-firms/australian-website/creditors-documents/gtal_2020_m101---provisional-liquidators-report-final.pdf)

The report went on to say *“Whilst M Core noteholders typically met the legal definition of a ‘sophisticated investor’, their characteristics frequently were more reflective of a retail investor.”*

No law exists that requires any director in my position to undertake such an evaluation. Mayfair 101 only accepted compliant investors.

We note that Grant Thornton failed to interview a single Mayfair 101 investor to justify the statement in its report. How is it that Grant Thornton could make such a statement when no investors were interviewed by them?

- (d) The Australian Financial Review and its journalists Jonathan Shapiro and Liam Walsh have published countless articles about wholesale investor laws in Australia aimed at discrediting and defaming Mayfair 101.

These journalists and the AFR are accomplices in ASIC’s plight to change wholesale investor laws through the media rather than standard legislative reform procedures. The AFR and their journalists clearly got their assessment wrong, which is astounding given the number of investors that rely on their publication daily to make investment decisions. I am bemused at how they won a Clarion Award for their “Dunked: Behind Mayfair 101”<sup>4</sup> story.

Note: Mayfair 101 has messages from a Telegram account (@cashiskingoz) which sought to incite and frame me for misappropriating investor monies<sup>5</sup>. This type of activity shows the desperate lengths certain individuals have gone to in their quest to prove themselves right, rather than relying on fact.

#### 6. **No transfer to the British Virgin Islands**

ASIC told the Federal Court in written and oral submissions that investor monies had been transferred to the British Virgin Islands. Neither I nor any Mayfair 101 entity have ever held a bank account in any offshore jurisdiction including the British Virgin Islands.

No such transfer of investor monies ever occurred. Your submission to the Federal Court was fabricated and perjurious.

- a) Why did ASIC fabricate the submission to the Federal Court that I transferred funds to the British Virgin Islands when you had no evidence of this?
- b) What authority does ASIC have to deliberately mislead the Federal Court by making this and other false statements?

#### 7. **Failure to disclose a key financing facility to the Federal Court**

ASIC was aware of a financing arrangement with Napla Pty Ltd prior to its ex parte application to the Federal Court on 13 August 2020. When in default this facility compromises the noteholder’s security position. ASIC chose not to mention this facility to the Federal Court despite being aware of it.

<sup>4</sup> <https://twitter.com/MawhinneyJames/status/1359816697566228481>

<sup>5</sup> <https://twitter.com/MawhinneyJames/status/1371051311966253062>

Mayfair 101's noteholders have written to ASIC requesting that ASIC takes action to set aside the Napla facility given its predatory interest rates.

- a) Why did ASIC fail to disclose the Napla facility (a key material agreement) to the Federal Court given an ex parte application requires full and frank disclosure of the defendant's position?
- b) What was the purpose of omitting the Napla facility from the materials ASIC filed with the Federal Court when it commenced proceedings?
- c) Why did ASIC's research fail to identify the materiality of the Napla facility to the injunctions it requested?
- d) What risk assessment did ASIC do prior to commencing proceedings?
- e) What steps will ASIC be taking to set aside the Napla facility given its impact the investment of 126 noteholders?

**8. Ponzi Scheme mischaracterisation**

You alleged Mayfair 101 has been operating multiple Ponzi schemes for the purpose of obtaining freezing orders and an international travel ban. Ponzi schemes have no underlying assets and they recruit through family and friends (ASIC's own MoneyWatch website even says this). Ponzi schemes have fraudulent intent as an essential component.

None of those components existed in Mayfair 101. You even admitted I "never was" dishonest, which means you knew from the outset that there was no Ponzi scheme in operation.

Our business is a debt-funded group. Any debt funded business that is in its asset acquisition phase is reliant on introducing new debt to replace maturing debt. It is not until the assets are ultimately realised that the debt is repaid. This is standard practice.

Furthermore, it is common when borrowing that the quantum of funds includes a component for investment and capital management which includes the interest payable to the investor/funder. This is completely legal. It occurs daily in the where debt funds are raised by companies particularly those within the real estate and property development industries. Mayfair 101 disclosed to investors it would be using funds for "capital management" purposes on the advice of its lawyers.

- a) Why did ASIC accuse advise the Federal Court Mayfair 101 was operating a Ponzi scheme when ASIC knew it wasn't such a scheme?
- b) Did ASIC intentionally lie to the Federal Court about Mayfair 101 being a Ponzi scheme, or do you concede that ASIC's assessment was flawed given none of the essential components of a Ponzi scheme existed?
- c) What consideration was given to the impact on Mayfair 101's investors of obtaining injunctions stopping old investors from redeeming by being replaced by new investors?
- d) What compensation does ASIC intend paying for this highly defamatory and harmful mischaracterisation of Mayfair 101 and its impact on our investors?

#### 9. Reliance on conflicted liquidator reports

The reports of Dye & Co and Grant Thornton have clearly and publicly shown to be flawed. They do not accurately reflect the state of affairs of the companies, yet ASIC relied on these to prosecute its case. These reports contain falsified information – copious amounts of it. Both firms were incentivised to write reports critical of Mayfair 101 because it won them the appointment as liquidator and the support of ASIC.

This practice is hardly independent nor is it conducive to the production of an accurate, complete and fair report, particularly where its findings have a direct impact on investors. This is an impingement upon Mayfair 101's investors and it needs to be explained as to:

- (a) Why were these reports not written with input from Mayfair 101's management, the people who best understood the operations of each company?
- (b) Why did ASIC not make any attempt to scrutinise or verify the information contained within these reports before relying on it?
- (c) Why did ASIC not stop Dye & Co's application to have Mayfair 101's response to the provisional liquidators report<sup>6</sup> struck out of the Court book in the IPO Wealth matter? Was it so that ASIC could assist Dye & Co in silencing us from exposing the glaring errors in the report?
- (d) What action does ASIC intend on taking to investigate the errors in these reports?

#### 10. Inconsistent approach to regulation

ASIC recently commenced proceedings against La Trobe Financial for misleading and deceptive conduct. An essential component of any misleading and deceptive conduct case is whether there is a reasonable basis for the representation to be made. At the time we made our representations Mayfair 101 had no reasonable basis to expect that a) COVID-19 would grip the world, and b) ASIC would seek injunctions to stop us accepting new customers.

- (a) Why did ASIC not impose capital raising injunctions on La Trobe Financial?
- (b) If your cases against both Mayfair 101 and La Trobe Financial are genuine, why not take a uniform approach?
- (c) Is it because ASIC has since learned of the severe ramifications of stopping a term-based investment product business from accepting new customers?
- (d) If so, why were our investors guinea pigs for ASIC's experiment?

#### 11. Compensating our investors

ASIC's misguided and inexplicable actions have caused hundreds of millions of dollars' worth of damage to our business and underlying investments. All steps we have taken since ASIC's intervention in April 2020 have been designed to protect our investments for the benefit of our investors, yet ASIC has even used these steps to suggest ill-intent. Your assessment of Mayfair 101's intentions and actions is just so fundamentally flawed.

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<sup>6</sup> <https://www.mayfair101.com/post/response-to-provisional-liquidators-report>

- (a) What comfort can ASIC give our remaining investors that it won't cause further damage to our Group?
- (b) How does ASIC plan on compensating Mayfair 101's investors for the irreparable damage it has caused?

Mayfair 101 has always been prepared to meet to discuss and address any issues that ASIC has. We requested a mediation in order to resolve your issues, however you applied to Court to deny us of this opportunity to talk to you simply because we didn't have legal representation.

ASIC has sought to silence and deny Mayfair 101 at every opportunity.

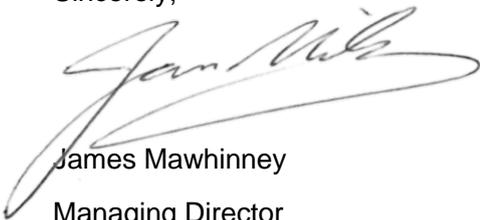
You failed to understand or acknowledge the impact of COVID-19 upon the group when it was decided to suspend redemptions, then only months later publicly encourage fund managers to do the same thing<sup>7</sup>.

Your actions show no understanding and little remorse for the impact on Mayfair 101's investors.

Mayfair 101 cannot believe that an Australian Government department, who is required to operate as a role model for others, would go to such lengths to defame, damage and devastate an Australian business that is responsible for the life-savings of so many investors.

On behalf of our investors and members of the public that are also looking for answers, I look forward to your prompt and detailed reply.

Sincerely,



James Mawhinney  
Managing Director  
Mayfair 101 Group

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<sup>7</sup> <https://twitter.com/MawhinneyJames/status/1362943569422475267>