

Investment Advisers: A Case Study
Gideon Investments Pty Limited - Morison Guildford &
Associates Limited

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TABLE OF CONTENTS

1.	<i>Introduction</i> _____	3
2.	<i>The offer of securities by Gideon Investments Pty Limited and related companies</i> _____	5
	Michael Bastion _____	5
	The Scheme _____	6
	The GHF Trading Trust Deed _____	8
	The GHF Trading Trust Management Deed (the Management Agreement) _____	8
	Confidential Information Memorandum _____	9
	Was the offer of securities made in New Zealand in accordance with New Zealand law? _____	10
	Australian law _____	12
3.	<i>Morison Guildford and Associates Limited</i> _____	13
	Directors of Morison Guildford _____	15
4.	<i>Morison Guildford's relationship with Gideon: Obtaining investors and administration</i> _____	15
	New Zealand Investors _____	20
	Comments _____	21
5.	<i>Banking arrangements</i> _____	23
	Wairarapa Building Society _____	23
	Bank of New Zealand _____	23
	National Bank _____	25
	Interest _____	25
6.	<i>Due diligence and monitoring of Gideon</i> _____	26
	Offer documents _____	26
	Financial statements and audit _____	27
	Ongoing monitoring _____	28
	Comments _____	28
7.	<i>Remuneration of Morison Guildford and other benefits</i> _____	31
	Comments _____	33
8.	<i>Payments from the Morison Guildford Gideon Investments Client Account</i> _____	34
	Spaincroff Holdings Limited _____	34
	Telfer Properties Martinborough Limited _____	36
	Loan to Morison Guildford _____	37
	Authority for Payments _____	38
9.	<i>Did Morison Guildford act as investment advisers, investment brokers, issuers or promoters in regard to Gideon or associated companies?</i> _____	40
	Offer of securities to the public _____	40
	Issuers _____	40
	Promoters _____	40
	Investment Advisers _____	40
	Investment Brokers _____	41
10.	<i>Liability questions</i> _____	43
11.	<i>Summary of conclusions</i> _____	44
12.	<i>Referrals</i> _____	46

1 Introduction

1.1 On 25 January 2001, the Securities Commission decided to undertake a formal review into an issue of securities by Gideon Investments Pty Limited (“Gideon”) or associated companies. The review covered the promotion of the securities and advice given about them, and in particular looked at the role of Morison Guildford and Associates Limited (“Morison Guildford”). On 15 March 2001 terms of reference were settled. A copy of the terms of reference is attached at appendix “A”.

1.2 The review followed a request by the Commission on 18 August 2000 to the Registrar of Companies for him, or any person authorised by him, to exercise his powers under section 67(1) of the Securities Act 1978 in respect of:

- Any promoter, investment adviser, or investment broker in New Zealand in respect of securities of which Gideon is the issuer.
- Any director, officer, or employee in New Zealand of Gideon.
- Any director, officer, or employee in New Zealand of any promoter, investment adviser or investment broker in respect of securities issued by Gideon.
- Any person in New Zealand who holds documents relating to any money or other property that is managed, supervised, controlled, or held in trust by Gideon, or any such promoter, investment adviser or investment broker.
- Morison Guildford.
- Any director, officer, or employee of Morison Guildford.
- Any person who holds documents relating to any money or other property that is managed, supervised, controlled, or held in trust by Morison Guildford.

1.3 Section 67 of the Act empowers the Registrar of Companies to require documents to be provided for inspection. On 21 December 2000 the Commission received a report from the Registrar on his inspection.

1.4 The Commission sought information from a number of parties including:

- The liquidator of Gideon.
- His representatives in New Zealand and Hong Kong.
- The Australian Securities and Investments Commission.
- The Hong Kong Securities and Futures Commission.
- The Registrar of Companies.
- New Zealand investors in Gideon.

- New Zealand banks with which Morison Guildford held accounts.
- Morison Guildford.

1.5 The information we received included the liquidator's reports, letters from investors, bank account details, bank staff file notes and information from Morison Guildford. This included information obtained at recorded interviews with the directors of Morison Guildford, Andrew Morison and Michael Phillip Guildford, conducted by staff at the Commission offices. Morison and Guildford were represented by their lawyer Scott Barker of Buddle Findlay throughout the interview. We also interviewed a number of Gideon investors.

1.6 The Quorum of Commission Members responsible for dealing with the review was:

- Ms J Diplock
- Mr C A N Beyer
- Ms E M Hickey
- Ms J M G Perry
- Ms C A Quinn

2. The offer of Securities by Gideon Investments Pty Limited and related companies

- 2.1 Gideon is a company that was incorporated in Sydney, New South Wales, Australia. It has not been registered on the overseas companies' register in New Zealand. Throughout the period under review Michael James Bastion and Maureen Catherine Bastion were both the shareholders and the directors of Gideon.¹
- 2.2 On periodic trips to New Zealand, in particular to the Hawke's Bay and Masterton areas, Bastion met with prospective investors to promote investment funds managed by Gideon. Bastion often made contact with prospective investors through introductions from Morison Guildford, a firm with which he established close links, and also possibly from existing investors.²
- 2.2 On 29 March 2000, following the death of Bastion on 16 March 2000, Gideon was placed in liquidation in Australia by the Supreme Court of New South Wales. G T Hancock, previously of Grant Thornton and now at Stockford Limited, was appointed as liquidator.
- 2.3 On the basis of the information we have, there have been numerous breaches of securities law relating to Gideon.

Michael Bastion

- 2.4 Bastion was the managing director of Gideon.³ The only other director was his wife Maureen. We have no evidence to suggest Mrs Bastion's involvement in the affairs of Gideon extended beyond a limited administrative role.
- 2.5 Bastion was born in Takapuna, New Zealand on 26 May 1961. His qualifications included a Bachelor of Science degree, majoring in Geology, from Canterbury University New Zealand, obtained in May 1983. The Christchurch Teachers College also awarded him a diploma in teaching in November 1983.⁴
- 2.6 Bastion started his working career as a school teacher. Later he held positions with Barclays Bank, O'Connor Grieve and Co, Barclays DeZoete Wedd and Lehman Brothers.⁵
- 2.7 Bastion's first contacts with Morison Guildford were in the mid-eighties, through Andrew Morison, a shareholder and director of the company. At that time, Bastion was a currency dealer and an equities trader. Bastion had been involved in professional work for friends of Morison.
- 2.8 The liquidator's report said he was informed that Bastion had become a heavy user of drugs, particularly cocaine, in the twelve months prior to his death.⁶

¹ Liquidator's Report to Investors dated 9 November 2000, page 3.

² Letter from G T Hancock to the Commission dated 5 July 2001.

³ Introduction to Gideon document. Liquidator's Report to Investors dated 9 November 2000, page 13.

⁴ Liquidator's Report to Investors dated 9 November 2000, page 13.

⁵ Liquidator's Report to Investors dated 9 November 2000, page 14.

- 2.9 On the basis of the information we have, it appears that Bastion engaged in fraudulent behaviour in his position as the managing director of Gideon.

The Scheme

- 2.10 Gideon appears to have presented itself as a trustee and management company for an investment vehicle described as the GHF Trading Trust. The trust deed is dated 1 August 1993 (for a description see paragraphs 2.22 to 2.25). However, the liquidator was unable to find a signed copy of the deed. On legal advice the liquidator sought directions and orders from the Court as to whether a trust existed. The Supreme Court of New South Wales ruled that the liquidator was “*justified in recognising the existence of an express trust created on or around 1 July 1994*”.⁷
- 2.11 According to a letter from the liquidator to New Zealand investors dated 12 May 2000, approximately 180 New Zealand investors placed a total of more than A\$5,300,000 with Gideon. A large proportion of these investors were based in the Wairarapa. In addition, at least another 120 investors in Australia and Hong Kong placed about A\$20,000,000 with Gideon.⁸ The liquidator revised these estimates in a report to investors dated 9 November 2000, in which he said that although the final amount deposited by investors was not known, it was estimated to be between \$30 million and \$35 million. This same report referred to a “*Report as to Affairs*” which said that \$40,000,000 was owing to “*unsecured creditors*”.⁹ This figure was not broken down into investors and other types of creditors. In any case a substantial sum of money was invested in the scheme.
- 2.12 The “*Report as to Affairs*” was provided to the liquidator by the surviving director (as required under Australian law). It lists all the assets and liabilities of the company on the date the official liquidator was appointed. It noted an estimated shortfall between assets and liabilities of A\$35,617,739. This was a preliminary indication of the amount that would remain outstanding to investors and other creditors after all remaining assets were liquidated and distributed.
- 2.13 Michael Phillip Guildford, a shareholder and director of Morison Guildford, described the development of Gideon in the following way.

*“He – Michael - was working for other companies, and he had a few friends who wanted to invest money, and I understand that these friends said: ‘you’re good at investing, why don’t you do it for us’, and that’s how I understand it started. And, he thought that he could do it quite well for them, and so he formed the Gideon Trust as the vehicle for his friends and others to place money into - friends really - to place money into as the investment vehicle, and then he would trade on the sharemarket and other markets similar”.*¹⁰

⁶ Liquidator’s Report to Investors dated 13 March 2001.

⁷ Judgement issued on 6 October 2000. See page 8 of the liquidator’s Report to Investors dated 9 November 2000.

⁸ Letter from the liquidator to investors dated 12 May 2000.

⁹ Liquidator’s Report to Investors dated 9 November 2000, page 23.

¹⁰ Guildford interview transcript page 7.

- 2.14 Morison described Gideon as a “speculative investment”¹¹. He commented on the structure of Gideon as follows:

“We're familiar enough with the conventional unit trust industry to know the various custodian requirements; so, what have you. And, this was at the other end of the scale completely because, although it was a unit trust, as we understood, we knew very well that it was dependent on the integrity of a person regardless of, if you've got a unit trust or otherwise, an investor was reliant on the integrity of the human being, or an individual to make or break this thing.”¹²

- 2.15 Morison considered the honesty or dishonesty of the manager to be the important factor in Gideon’s performance.

“The vehicle of the unit trust was really a mechanism in order to legitimise the - and to legalise the entity, but at the end of the day it was up to Bastion's integrity as to what he did with the funds in the unit trust. He was the manager of the trust.”¹³

- 2.16 As noted below it is doubtful that there was a unit trust, at least under New Zealand law.

- 2.17 A quarterly trading results investment report was sent to investors. This attributed a monthly return on investors’ funds, expressed as a percentage return on invested capital. On the basis of these reports, if true, investors would have earned 51.5% for the year ending June 1998 and 41.8% for the year ending 1999.¹⁴

- 2.18 For the most part investors appeared to let their investments roll over and did not seek periodic payments whether of capital or income. Those people in New Zealand who required periodic income advised Bastion, who would forward the required funds into a Morison Guildford bank account, from which Morison Guildford disbursed the income. Similar procedures applied for those investors requiring a refund of their investment.

- 2.19 The types of investments open to Gideon under the document called the GHF Trading Trust Management Deed (see paragraphs 2.26 to 2.33) were equities, bonds, currency and futures.¹⁵

- 2.20 According to the liquidator, Bastion treated investors’ funds, once banked into the Gideon bank account, as his own. The liquidator said there was some evidence of share trading, but in the main funds were used to acquire interests in property, thoroughbred racehorses in various countries and to pay for Bastion’s lifestyle.¹⁶

¹¹ Morison interview transcript page 9

¹² Morison interview transcript page 10

¹³ Morison interview transcript page 10.

¹⁴ Liquidator’s Report to Investors dated 9 November 2000 (Annexure B).

¹⁵ Clause 4 of the Gideon management agreement.

¹⁶ Letter from G T Hancock to the Commission dated 5 July 2001.

- 2.21 According to the liquidator, between December 1994 and March 2000 Bastion's personal expenditure taken from the various bank accounts relating to Gideon was about A\$7,169,199.61, or an average of A\$1,370,200 a year.¹⁷

The GHF Trading Trust Deed

- 2.22 The liquidator's Report to Investors dated 9 November 2000 described a document bearing the date 1 August 1993 and entitled the "*GHF Trading Trust*".¹⁸ The liquidator noted that he had been unable to locate a signed copy of that document. However, as noted above, the Court has ruled that the liquidator was justified in recognising the existence of an express trust on the terms in that document.
- 2.23 The settlor under the document was Christopher Charlton, with a settlement sum of A\$100. The trustee was Gideon. The initial unit holders were:
- Richard Hodgkinson
 - Harold E Hodgkinson
 - Amanda Stewart Pty Limited
 - Peter Bartholemew
 - Man Pag Pty Limited
 - Michael Bastion.
- 2.24 Christopher Charlton also acted as the company's accountant.
- 2.25 The ultimate distribution date was noted as 29 June 2050. The GHF Trust was created under New South Wales law. The Trust deed annexed an application form. It was noted that the minimum application was for 50,000 by A\$1.00 units.

The GHF Trading Trust Management Deed (the Management Agreement)

- 2.26 A deed was signed between Gideon (called "the trustee" in the deed) and the investors (called "the unit holders" in the deed). The deed set out Gideon's powers to exercise management and control of the "trust fund", described as the GHF Trading Trust, and the remuneration payable to Gideon for the provision of its management services. The dates noted below are from a sample deed. They were added in pen to the deed and were adjusted for each investor in accord with the date of investment. We note some key clauses from the deed.
- 2.27 Clause 4 of the deed said:

"The Trustee shall have no power to invest the Trust fund other than in equities, bonds, currency markets and futures without the consent in writing first and had obtained from at least three quarters of the Unit Holders holding at least three quarters of the total issued units other than the Appointor, or entity under the control of the Appointor."

- 2.28 Clause 5 of the deed said:

¹⁷ Liquidator's Report to Investors dated 13 March 2001 pages 8 and 9.

¹⁸ Liquidators' Report to Investors dated 9 November 2000.

“Subject to the provisions of Clauses 7 and 9 hereof, the Trustee shall have no discretion to make any loan to any person, or to distribute either capital or income or to allow any benefit or advantage to any person or corporation other than to Unit Holders in accordance with the proportion that the number of units held by each Unit Holder bears to the total issued units.”

- 2.29 Clause 6 said Gideon must provide the Unit Holders with *“a management report and financial statement as to the results of investments made by the Trustee at quarterly intervals.”*
- 2.30 Clauses 7 and 9 said the trustee (Gideon) should be paid 15% of the gross profits, as certified by the trust’s accountants in 1999, and 25% of the gross profits, as certified by the trust’s accountants in 2000.
- 2.31 Clause 8 said that if Gideon incurred losses as a result of its investment activities in the year ended 31 March 1999, Gideon *“shall from its own funds and resources deposit into the Trust Fund by way of non-interest bearing advance an amount equivalent to such losses”*. No repayment of such loan advance was allowed to be made other than from profits derived from the investment activities of Gideon.
- 2.32 Clause 10 said if Gideon incurred losses as a result of its investment activities in the year ended 31 March 2000, Gideon should from its own funds deposit into the trust fund, by way of non-interest bearing loan advance, an amount equal to 25% of such losses. No repayment of such loan advance might be made other than from profits derived from the investment activities of Gideon.
- 2.33 Clause 11 said Gideon should use its best endeavours to ensure that financial statements relating to its investment activities were provided to Unit Holders within one month of the June 30 year end.

Confidential Information Memorandum

- 2.34 The liquidator’s report notes a *“Confidential Information Memorandum”* describing Gideon and its activities for a potential investor who was considering whether to take a 40% stake in the company’s issued capital for A\$2,000,000. Half of this sum was to be paid on 30 June 1994, with the balance to be paid in four equal monthly instalments over the following four months. The liquidator did not have information as to whether this transaction was completed. The memorandum said:

“Broadly speaking, the company has categorised its investments into the investment groups:

- A) *Horses*
- B) *Funds Management*
- C) *Dealing*
- D) *Investments*
- E) *Gaming and Entertainment*

The company has access to sufficient cash scenarios to operate and had further developed its base plan to outline the actual positions taken to date. These business ventures are largely:

- A) *Bloodstock and Thoroughbred Industry (Horses)*
- B) *Financial Management (Funds Management)*
-Hedge funds and management of financial portfolios for clients
- C) *Broking and Consulting (Dealing)*
- D) *Investments* *-Property Trust and Direct Real Estate*
-Equity in Corporate Entities
-Joint Ventures – Primary Industry
-Strategic Investment Planning

- E) *Licensed gaming and betting activities and other entertainment areas, including joint arrangements involving VIC TAB, ACT TAB, and VITAB.*

*The company's business plan is to continue to concentrate on the opportunities afforded by these entities and to expand where necessary in complementary activities.*¹⁹

- 2.35 There was no Gideon horse fund. There was no Gideon gaming and entertainment fund. However, it is clear that the activities of Gideon as managed by Bastion went outside the investment mandate in the management agreement. In regard to the content of the management deed the liquidator said: “*my investigations to date reveal that all of these clauses were breached regularly*”²⁰.

Was the offer of securities made in New Zealand in accordance with New Zealand law?

- 2.36 We consider that Gideon made an offer of securities to the public for subscription. We consider that this offer was not made in accordance with New Zealand law.

Type of securities

- 2.37 Interests in the Gideon fund might have been either interests in a unit trust or participatory securities. If not a unit trust, they would by definition have been participatory securities. The definition of unit trust in New Zealand is contained in the Unit Trusts Act 1960. Gideon did not comply with that Act. Although the Supreme Court of New South Wales found that the liquidator was justified in recognising the existence of an express trust, the fund was for the most part not administered as a trust. The matter is therefore in some doubt.

Offer to the public

- 2.38 The offer of securities issued by Gideon was clearly made to the public, as that term is used in the Securities Act 1978. In a letter to New Zealand investors dated 12 May 2000, the liquidator said there were about 180 New Zealand investors. We have

¹⁹ Liquidator's Report to Investors dated 9 November 2000 page 16,

²⁰ Liquidator's Report to Investors dated 9 November 2000 page 18.

corresponded with some of the investors. We found no reason to conclude that they were not members of the public in relation to Gideon.

Offer documents

2.39 Whether the offer was of interests in a unit trust or of participatory securities, it is clear that the necessary legal steps were not followed. There was no registered prospectus or investment statement as required by the Securities Act. There was no deed of participation and no statutory supervisor. There was a document called a trust deed. This might not have been signed and was not lodged with the Registrar of Companies, as is required for unit trusts under section 9 of the Unit Trusts Act. Gideon was not an eligible trustee under that Act.

Accounting records, financial statements etc

2.40 Gideon does not appear to have kept proper accounting records, as required under section 53 of the Securities Act.

2.41 Financial statements were not prepared or audited as prescribed by the Securities Act 1978 and the Financial Reporting Act 1993.

2.42 Section 20 of the Unit Trusts Act provides that in every year the manager of each unit trust must file a report with the Registrar of Companies. This must include:

(a) *A list of the names and addresses of all persons who on the 31st day of March of that year, or such other date as the District Registrar may approve, were unit holders of the unit trust, which list shall show the extent of the interests held by every such unit holder.*

(b) *A statement setting out the number and dates of distributions to unit holders in respect of each unit of interest in the unit trust during the immediately preceding 5 years, the amount of each such distribution, and the extent to which each such distribution consisted of anything other than dividends, interest, or bonuses, with particulars of the nature and amount of the other components.*

2.43 No report was filed under the Unit Trusts Act.

2.44 Section 20(2A) of the Unit Trusts Act says financial statements sent to the Registrar of Companies in accordance with the Financial Reporting Act 1993 must have attached the following information for the period covered by the financial statements:

- A summary of purchases and sales of property under the unit trust.
- A list of all the investments of the unit trust.
- Particulars of costs.
- The estimated market value, as at that date, of the investments and other property.

2.45 This information was not provided to the Registrar.

Australian Law

2.46 We note that the liquidator's Report to Investors dated 9 November 2000 said the activities carried on by Gideon comprised a managed investment scheme. The report also said the following sections of the Corporations Law appeared to have been breached²¹:

- Section 232 relating to the duties and liabilities of directors.
- Sections 601ED(5), 601FC, 601FD, 726, 780 and 806 relating to managed investment schemes, fund raising and trading in securities.
- Section 591 relating to failure to keep proper accounting records.
- Sections 596 and 1264 relating to fraud.
- Section 866 relating to failure to keep a trust account.

²¹ Liquidator's Report to Investors dated 9 November 2000 pages 7 to 8.

3. Morison Guildford & Associates Limited

3.1 Morison Guildford is a company that was incorporated on 10 October 1989 with its registered office in Masterton. The directors are Andrew Morison and Michael Phillip Guildford, both of Masterton.

3.2 As at 2 October 2000, 100 shares were on issue and there were five shareholders. The shareholders in Morison Guildford and the number of shares held by them were as follows:²²

- Margaret Robin Guildford (19)
- Michael Phillip Guildford (19)
- Andrew Morison (19)
- Catherine Morison (19)
- Spaincroff Holdings Limited (24)

3.3 Guildford has described the background to the company in the following terms:

“Andrew and I joined forces 11 years ago, formed Morison Guildford & Associates. Previous to that we were separate National Mutual agents. We run a fire and general broking business, which is - the majority of our business is the farming area. We also sell risk insurance for a number of companies. That is our main - that is the main business we are in.

So, basically, we are insurance salesmen I suppose, hence the term "insurance brokers". Now, our business is mainly insurance, or mostly insurance in fact.”²³

3.4 Morison informed the Commission that the firm also offered superannuation services to some clients. We asked Morison if Morison Guildford did any work in relation to life policies with an investment element. Morison stated:

“Yes, that’s all there; was when we started out in this business. The industry’s changed so much that, from having an option of three types of policies, you now have a book full. So, yes, we’re in by default in having an involvement in cash accumulation policies.”²⁴

3.5 A compilation of the financial statements prepared for Morison Guildford for the year ended 31 March 2000 and dated 21 December 2000 said Morison Guildford’s principal business is the sale of insurance / investment products.

3.6 We requested copies of Morison and Guildford’s investment adviser disclosure documents. We received copies of leaflets prepared²⁵ for each of Morison and

²² New Zealand Companies Office database search dated 2 October 2000.

²³ Guildford interview transcript pages 4 to 5.

²⁴ Morison interview transcript page 2.

²⁵ We asked Morison Guildford when these were prepared. Their solicitors replied “MGAL loaded the disclosure statements onto the computer some years ago so they could produce one if requested. Not one request has been made. The date on this advice would be that when it was run, which in this case was some time last month. MGAL cannot be more precise.”

Guildford “to satisfy the requirements of the Investment Adviser (Disclosure) Act 1996” and recording that they provide services in the following areas:

“SUPERANNUATION

I provide opinions on a variety of products as well as a range of retirement savings plans to enable you to plan the income you receive when you retire.

FINANCIAL PROTECTION

I am able to advise you on a variety of insurance products to help ease financial stress during times of injury, illness or death. These can include term insurance, which provides a lump sum of money should a person die, income protection which recognises that the ability to earn an income is a person’s most important asset, and trauma insurance which is designed to help with financial recovery by providing a lump sum payment in the event of a number of specified serious illnesses or injuries.

HEALTH INSURANCE

I can advise you about a range of health insurance plans which can be adapted to meet client’s changing lifestyles.

I provide this service using the products and resources of Sovereign, Aetna Health, and Tower Health.

GENERAL

Where required I can provide or arrange for suitable professional advice and service in associated areas of concern.

This may include:

- *Fire and general insurance*
- *Other financial services e.g mortgages”*

- 3.7 The leaflets also said that the intention of the Investment Advisers (Disclosure) Act was to “provide increased protection for the New Zealand investor and implies an even higher level of professionalism for the industry I represent”.
- 3.8 The leaflets said Morison and Guildford did not charge a fee for providing advice. They said they might receive remuneration in the form of commissions and benefits from each of AXA, Royal and Sun Alliance, Sovereign, Tower Life and Health, and Cigna Life. No reference was made in the leaflets to Gideon.
- 3.9 It appears that these leaflets were never distributed.²⁶ They were not provided to any investor in Gideon.

²⁶ Letter from Buddle Findlay to the Commission dated 26 June 2001.

Directors of Morison Guildford

Michael Guildford

- 3.10 Michael Phillip Guildford was born on 13 November 1951 in Masterton. He has a secondary school education. In response to a question about what qualifications he has that are relevant to his work as an investment adviser he said: “*Well none, except 25 years experience with an insurance company*”.
- 3.11 Guildford joined National Mutual Life, now AXA New Zealand Limited, in January 1977 as a life underwriter and has had a relationship with the company ever since.
- 3.12 Guildford’s investment adviser disclosure leaflet said he received legislation training from National Mutual in 1994 and that he had “*business insurance accreditation*”.
- 3.13 Guildford said he first met Bastion through Morison in 1995 or 1996.²⁷ Guildford understood Bastion had been a sharebroker and had held various positions in companies related to banking. Guildford said he did not have detailed knowledge about Bastion’s business experience. He knew Bastion had been a teacher and had obtained “*a degree in teaching*”.

Andrew Morison

- 3.14 Andrew Morison was born on 19 May 1949 in Wellington. He gives his occupation as an insurance broker. According to his investment adviser disclosure leaflet, Morison has acted as an insurance broker for 27 years. Morison said National Mutual has run a number of specialist courses in which individuals from Morison Guildford took part.
- 3.15 Morison’s investment adviser disclosure leaflet said he had also received legislation training from National Mutual in 1994 and that he had “*business insurance accreditation*”.
- 3.16 Morison first met Bastion through mutual friends in the 1980s.²⁸

²⁷ Guildford interview transcript page 6

²⁸ Morison interview transcript page 3.

4. Morison Guildford's Relationship with Gideon and Gideon Investors: Obtaining Investors and Administration

- 4.1 A large number of Morison Guildford clients invested in the Gideon scheme. Morison said about 120 of the firm's clients would have invested in Gideon. Morison Guildford would have between 1000 and 1500 clients, he said.²⁹ According to Guildford, Morison Guildford collected about A\$5 million for Gideon.³⁰
- 4.2 Morison Guildford's initial involvement with Gideon arose after Morison visited Bastion in Sydney in 1995. He spent a few hours with Bastion discussing Morison Guildford's insurance business. Bastion told Morison about the Gideon scheme. At that stage Gideon had been running for more than a year. According to Morison, Bastion was boasting about Gideon's success. Bastion said he wanted to cash up his life insurance policy and place the resulting money in Gideon because it outperformed anything that could be achieved by a life policy.

"That was when our curiosity was aroused, and we were with friends at the time who were with us in Sydney and who were party to our discussions about this over dinner, and that's when the germ was created."³¹

- 4.3 At a certain point in time Morison Guildford became more involved in aspects of Gideon's activities. Morison commented that interest grew from Bastion's friends, and Morison and Guildford's friends who knew Bastion. After about 12 months Bastion suggested there should be a more formal relationship *"because it was going to be a long-term one and there was a reasonable flow of funds coming through, and we could formalise something"*.³²
- 4.4 Morison commented on how the relationship was formalised:

"It was never formalised by any agreements or agencies, it was formalised by discussions saying, we will handle any incoming funds for you at this end, and he said, that's fine, it makes it a lot easier for him if [there is] just one contact point, and we acted as a point of contact for anyone who chose to become involved, and also for incoming stuff, and also as a mail box for correspondence which he was sending out to individual investors. We used to receive it and distribute it for him."³³

- 4.5 When signing up investors, Morison Guildford provided investors with a copy of the management agreement. Investors would sign that and Morison or Guildford would witness their signatures.
- 4.6 Morison Guildford would receive money from investors for Gideon and make payments to investors from Gideon, generally by cheque. They would deposit the money into the Gideon account controlled by them. The funds would then be transferred into the bank account controlled by Bastion. The management agreement

²⁹ Morison interview transcript page 10.

³⁰ Guildford interview transcript page 13.

³¹ Morison interview transcript page 6.

³² Morison interview transcript page 7.

³³ Morison interview transcript page 7.

would then be sent to Bastion, who would sign it and issue a certificate based on the amount of money invested.

4.7 Guildford commented on Morison Guildford's record keeping in regard to Gideon:

“Q: What records do you keep with regards to the investment?”

A: We kept a spreadsheet.

Q: Detailing each individual investor?”

A: Yes.

Q: Would you match up any refunds against that spreadsheet?”

*A: Yes.”*³⁴

4.8 We are informed that Morison Guildford would put the certificate number for each investor on the spreadsheet.

4.9 Morison said Morison Guildford was a point of receipt for investors' funds and a point where the fund could be discussed. Bastion sent quarterly reports on the Gideon fund to Morison Guildford. Initially the reports referred to companies in which Gideon was alleged to have invested. Later the reports became general discussions about the world economy without reference to the actual investments made by the fund. Either way, the Commission considers they were inadequate as reports of the activities of the fund. They did not contain financial information except for a percentage figure for the fund's alleged returns. They were clearly not intended to meet any statutory reporting requirements and were not financial statements as required under clause 6 of the Management Deed (see paragraph 2.29 above). A sample copy of the reports is attached at appendix "B". Morison Guildford showed these quarterly reports to potential investors and forwarded them to existing investors.

*“if they wanted to invest money they were given the quarterly reports, the trust deed, that was available to look at. They were given the agreement, they were given returns of the fund over the last four years approximately. They were given various newsletters that Mike used to send out.”*³⁵

4.10 Guildford commented on Morison Guildford's role on behalf of Bastion and Gideon.

“Well, we were really a - the go-between. We were a facility for his - people who wanted to invest with him to - he needed - he - we would receive - be able to give them the information, like in the reports, or the deed, or the returns, and then we were a collection area for him. Then we would then put any funds that were invested into his account, bank account. So, really we were a collection, a collection facility for him, and that was just through a friendship

³⁴ Guildford interview transcript pages 20 to 23.

³⁵ Guildford interview transcript page 9.

thing. Andy was his mate, I suppose, and I'm Andy's partner. That's where we stand."³⁶

- 4.11 From time to time people who had not been clients of Morison Guildford approached them about investing with Gideon. Morison Guildford would provide them with copies of the reports Bastion had sent out, information about the returns that could be obtained, and copies of the agreement and deed.³⁷
- 4.12 Guildford personally invested in Gideon. He told clients and prospective investors that he had done so. If prospective Gideon investors asked him why he invested he replied that this was because of the fund's growth. He showed prospective investors material he had received from Bastion. He considered that the material he passed on showed a positive picture.
- 4.13 Morison said he did not invest in Gideon.
- 4.14 A BNZ diary note prepared by Noel Fussell, business manager, Wairarapa, dated 5 April 2000 said:

*"Both Andy and Mike invested in a firm in Hong Kong over recent years called Gideon Investments. This investment was producing substantially better returns than anything else that could be earned in New Zealand. However, the principal of this investment firm Michael Bastion took his own life two weeks ago in Hong Kong and it now looks as if there may well be some fraudulent activity within the fund. Andy and Mike estimate that they would have had an estimated \$300,000 invested in this fund and there is now a real risk that these funds will be lost. Andy will keep me informed."*³⁸

- 4.15 Morison Guildford said this diary note misunderstood the position. They said the \$300,000 referred to was their estimate of the value of units in the Gideon Hedge Fund Trading Trust that they believed had been allocated to them by Bastion.³⁹ We comment on this at chapter 7.
- 4.16 Both Morison and Guildford often spoke to Bastion on the telephone, Morison more so than Guildford. They would report to Bastion on a monthly basis about the amount of new investments.
- 4.17 We asked Guildford whether it would be fair to say that some of the investors regarded Morison Guildford as an agent of Gideon in their district.

A: "Right, I'm happy to answer that. Some of the investors would be - see us as helpful.

Q: In organising both the investment and the recovery of the investment?

³⁶ Guildford interview transcript page 12

³⁷ Guildford interview transcript page 12 and Morison interview transcript pages 6 to 8

³⁸ BNZ diary note created by Noel Fussell, business manager, Wairarapa, dated 5 April 2000.

³⁹ Response on behalf of Morison Guildford and Associates Limited, Andrew Morison and Michael Guildford to Securities Commission interim draft report, page 2.

A: *Correct.*⁴⁰

- 4.18 Morison commented on the typical process that occurred when talking to somebody who was considering investing in Gideon.

A: *“Well, at any time the people who made enquiry were people we knew. There were no strangers. Without exception, I think they were always people we knew, because it seemed to come - the enquiry would come from dinner table conversations. Investors were talking about it amongst their own circle of friends, and the enquiries would regularly come from that source. And, obviously it's hard to - there wasn't a general pattern, because no two people are the same, have the same way of doing things, but I suppose on average you could - their enquiry was, because they had heard the performance, about the performance of the Gideon thing, they obviously were keen to find out from us a little bit more detail about how the - what sort of things he invests in, what sort of structure he operates under, what is involved in getting in, what is involved in getting out, what are the rules, how much does he charge, and that was probably about as much as anyone wanted to know.*

Q: *So, what was the next step, assuming a person was interested in investing, or taking it further?*

A: *The entry dates were for some quite a long time, at the beginning of every month there would be a deemed entry point for anyone who wanted to jump on. From 1999 it was by Bastion's request, limited to once every six months. So, given that the bulk of the investors probably came in under the once a month entry rule, there was a management agreement which we had copies of, which they would sign, and we would complete and put their full name on it and their date of entry. We'd set out the charging structure and the reporting obligations of Bastion, and they would write a cheque out to Gideon. We would send the agreement off to be stamped and witnessed, or signed by Bastion, and keep a copy for the client, and that was about it. In due course a certificate would be issued to verify their investment, and that was it.”⁴¹*

- 4.19 In a letter to Gideon investors dated 14 July 1999, Morison Guildford said Bastion had set up an Asian fund that was separate from the GHF Trading Trust. The letter said:

“Under the GHF Trust Deed, Mike can only invest in the Australiasian (sic) markets. He is confident that the time is right to ‘come back’ to Asia and has a fund for this purpose. He has a number of substantial investors already in the Asian fund, and if you wish to discuss transferring any of your GHF holding into the Gideon ‘Asia’, please give us a call, as a decision needs to be made this month. This could be a unique way of enjoying some diversification within Gideon.”⁴²

⁴⁰ Guildford interview transcript page 21.

⁴¹ Morison interview transcript page 14.

⁴² Letter from Morison Guildford to investors dated 14 July 1999.

- 4.20 This letter and other letters dated 14 July 1998 and 14 June 1999 from Morison Guildford to Gideon investors, attaching reports from Gideon, invited further investment with Gideon. For example, the letter to investors dated 14 June 1999 said:

“This letter is to advise that those wishing to make a further investment into Gideon will be welcome but there will be only two intakes during the year, being July and January.

Please call either Mike or Andy if you would like to discuss otherwise we will be in touch around mid July with information on the past year’s performance.”⁴³

- 4.21 Most of the correspondence between Morison Guildford and investors was in a standard form. The content of each letter on a particular date to a particular investor was identical to the letters sent out to other investors on that date. The letters from Morison Guildford were all on Morison Guildford letterhead. They attached a copy of material supplied by Bastion.

New Zealand Investors

- 4.22 We wished to find out from investors in Gideon how they had come to invest in the funds. We wrote to the majority of Gideon investors in New Zealand, who were identified in Morison Guildford’s records, in order to better understand the circumstances of their investment and the nature of the service provided by Morison Guildford. We excluded investors with shared addresses and in some cases shared surnames. We sent out 104 letters and received 21 responses. We decided to meet some of the investors who responded, in particular nine whose experiences appeared to raise questions about securities market practice or possible non-compliance with the law. We interviewed each investor separately and in private. A prior draft of this report included summaries of what these investors said to the Commission in writing. In commenting on that draft, solicitors for Morison Guildford contested the accuracy of what was said by many of them. Those comments were put to the investors during the interviews. We summarise the statements made to us in the following paragraphs. We do not name the people involved although, with the consent of the investors, most were identified to the lawyer representing Morison Guildford. There is a clear pattern in the separate explanations of the investors’ dealings with Morison Guildford. There are a number of inconsistencies between the statements made to us by Morison Guildford and the statements made by investors. We have not sought to definitively resolve the conflicting versions.

- 4.23 In conducting the interviews we had a particular interest in the following questions:

- (a) The identity of the investors.
- (b) Their relative experience in investment.
- (c) Their previous association with Morison Guildford.
- (d) The extent to which they relied on Morison Guildford in deciding to invest.

⁴³ Letter from Morison Guildford to investors dated 14 June 1999.

- (e) The source of money for investment in Gideon.
- (f) The effect on life insurance policies held.

4.24 Of the 9 investors we interviewed:

- (a) None were professional investors.
- (b) Most had previous associations with Morison or Guildford, and trusted and relied on their judgement. One was a close relative.
- (c) On virtually all occasions, Morison Guildford commenced the discussions about Gideon.
- (d) In eight cases, Morison Guildford identified the surrender of existing life policies that were on Morison Guildford's insurance books as a source of money for reinvestment.
- (e) In those eight cases we were told Morison Guildford drew attention to Gideon and suggested that the Gideon funds would provide investors with a better return than their existing life policies.
- (f) In seven cases, the investors were encouraged to take out further life insurance as well.
- (g) Five of the people we spoke to understood that the investment in Gideon was guaranteed, or that some form of insurance cover had been taken out over Bastion's life for their benefit.
- (h) Six said they were told there was a minimum amount for investment in Gideon.

Comments

4.25 We consider that Morison Guildford and its directors advised a number of potential investors in New Zealand to put money into Gideon. Most of those investors were already known to the directors of Morison Guildford. Some individuals were encouraged to surrender existing policies and to invest the proceeds into Gideon.

4.26 It appears that in many cases Morison Guildford took a three-step approach when soliciting clients for Gideon:

- (a) Advice was given to the client to surrender an existing insurance policy.
- (b) Advice was given to invest with Gideon.
- (c) Advice was given to buy more insurance.

4.27 Morison Guildford would have obtained a commission for selling the new insurance policies and expected to be paid for promoting the Gideon funds. We discuss the issue of payment for Morison Guildford's role with Gideon in chapter 7.

- 4.28 In regard to paragraph 4.24(g) above, Morison Guildford say that there were 2 insurance policies taken out with AXA and Cigna over Bastion's life which yielded NZ\$3.5 million for the benefit of creditors of Gideon.⁴⁴
- 4.29 We consider that Morison Guildford was actively involved in soliciting new investors for Gideon in New Zealand and undertook an intermediary administrative role for Gideon and Gideon investors in New Zealand. This included a role in administering the flow of funds for New Zealand investors, the maintenance of bank accounts, and the depositing and withdrawing of funds. Morison Guildford also acted as a central distribution point for information from Gideon to New Zealand investors. Morison Guildford said 120 investors affected by the Bastion fraud had invested money in some way via Morison Guildford (out of approximately 180 New Zealanders who invested with Gideon).⁴⁵ Aside from Bastion, who introduced a smaller number of New Zealand investors to Gideon directly, we are not aware of any other firm or persons involved in soliciting investors for Gideon. As noted at paragraph 2.11, the liquidator has estimated that the total amount invested with Gideon by New Zealanders was \$A5,300,000⁴⁶ and Guildford has estimated that Morison Guildford raised about A\$5,000,000.
- 4.30 We have received letters from some investors other than those interviewed that suggest in their cases Morison Guildford took a lesser role. It appears that the degree of involvement of Morison Guildford in obtaining monies for Gideon varied with different investors.
- 4.31 Morison Guildford had an extensive relationship with Bastion through the life of the Gideon funds. In addition, as noted below, Bastion (or Gideon or a Gideon fund) was for a time a significant shareholder in Morison Guildford.
- 4.32 Important questions for the Commission were:
- (a) Whether interests in any Gideon fund were offered for subscription to the public in New Zealand and whether these interests were securities for the purpose of the Securities Act 1978.
 - (b) Whether Morison Guildford or its directors acted as investment advisers or investment brokers, as these terms are defined in the Investment Advisers (Disclosure) Act 1996, in respect of any Gideon fund.
 - (c) Whether Morison Guildford or its directors were "promoters" of any Gideon fund for the purpose of the Securities Act 1978.
 - (d) If yes to (b) or (c), whether Morison Guildford and its directors complied with the law.

We consider these questions in chapter 9 below.

⁴⁴ Letter from Buddle Findlay to the Commission dated 8 May 2002.

⁴⁵ Response on behalf of Morison Guildford and Associates Limited, Andrew Morison and Michael Guildford to Securities Commission draft interim report, page 9.

⁴⁶ We note, however, that Morison Guildford say at least \$2 million was put into Gideon by 2 other New Zealand investors who had no connection with them (letter from Buddle Findlay dated 8 May 2002).

5. Banking Arrangements

5.1 Morison Guildford would receive funds from investors in Gideon. These funds were placed in accounts that were in Gideon's name but that could only be operated by either Morison or Guildford. Later the funds were transferred into an account in the name of Gideon at the National Bank of New Zealand controlled by Bastion. From there Bastion would periodically transfer funds to the Gideon bank account held at Citibank in Sydney. The Morison Guildford bank accounts were not audited.⁴⁷ The following banking arrangements were in place.

Wairarapa Building Society, Masterton (client no: 263672)

- 5.2 An account with this building society was used from 6 April 1998 to 11 August 1999.
- 5.3 Investors' funds were paid into the account. The account name was Gideon Investments. However, Morison Guildford was the organiser of the account and authorised all payments from it. Alex Tulloch, general manager of the Wairarapa Building Society treated ownership of the funds deposited in such "*trust accounts*" as resting with the firm concerned, in this instance Morison Guildford.⁴⁸ Morison and Guildford dispute that this correctly reflects the legal position. Irrespective of that, this does appear to have applied to the operation of this account. Neither Gideon nor Bastion had authority to operate the account. The building society did not need authority from Bastion for Morison Guildford to operate the account. Morison Guildford would transfer investors' funds from this account to account number: 06 0287 0346817 000. This was an account held by Gideon with the National Bank in Auckland
- 5.4 We note there are transactions from the account that appear to be withdrawals of interest. Morison said that interest earned on funds in the account was withdrawn for Morison Guildford's own use.⁴⁹ We comment on this later in this report in chapter 7.

Bank of New Zealand, Masterton (account: 688-0184919-000)

- 5.5 This account was actively used from 11 August 1999 to 28 April 2000. According to Morison it was a trading account set up in July 1999 to receive a deposit from Bastion. The deposit was to fund several withdrawals requested by investors at the time.⁵⁰
- 5.6 From August 1999, investors' funds were paid into the BNZ account. The account name was Gideon Investments Client Account – Business Advantage Chq A/c. The address was The Partners, Gideon Investments, Client Account, PO Box 350, Masterton. This is Morison Guildford's PO Box. Both Morison and Guildford were cheque signatories to this account. As with the Wairarapa Building Society account neither Gideon nor Bastion had authority to operate it. No authority from Bastion was needed by the bank for Morison Guildford to operate the account. However, in practice it appears that transfers and deductions from the account were made upon

⁴⁷ Guildford interview transcript page 20.

⁴⁸ Letter from Andrew Tulloch, General Manager, WBS to the Commission dated 28 May 2001.

⁴⁹ Morison interview transcript page 17.

⁵⁰ Morison interview transcript page 16.

Bastion's instruction. Funds would be transferred to Gideon by cheque into the Gideon National Bank account in Auckland.

5.7 The following transactions are noted for this account:

Date	Cheque no.	Payee/Markings	Amount
16/09/99	000020	Telfer Properties	24,000.00
19/10/99	000022	Morison Guildford	1,500.00
19/10/99		Wairarapa BS	83,965.90
21/10/99	000023	Morison Guildford	4,000.00
21/10/99	000025	MG s/pc	85,000.00
21/10/99	000026	AM s/pc	51,000.00
10/11/99	000027	AM s/pc	9,000.00
16/11/99	000028	AM s/pc	25,000.00
29/11/99	000029	AM	6,000.00
20/12/99	000033	MG share p/c	26,000.00
20/12/99	000034	AM share p/c	26,000.00
20/12/99	000035	Telfer Properties	48,000.00
10/01/00		Morison Guildford	144.00
28/01/00	000041	Morison Guildford	5,000.00
28/01/00	000042	Morison Guildford	5,000.00
31/01/00	000044	AM	25,000.00
31/01/00	000045	MG	25,000.00
23/02/00	000046	Cash	2,000.00
29/02/00	000047	AM	10,000.00
01/03/00	000048	MG	10,000.00
23/03/00	000049	Cash	1,000.00
			<u>\$471,609.90</u>

5.8 Here MG refers to Guildford and AM refers to Morison. References to s/pc and share p/c are markings made in pencil by Morison Guildford on a copy of the account records. These appear to denote deductions relating to the sale of shares in Morison Guildford by Morison, Guildford and their wives. The actual purchaser is unknown. The nominal purchaser, Spaincroff Holdings Limited, does not appear to exist. Morison and Guildford have stated that they considered this to be a purchase of shares by Bastion.⁵¹ However, it is clear that investors' monies paid into Gideon's BNZ account for investment in the Gideon funds were used to provide money for part of the purchase. There is no written record of the reasons why Gideon money was used for this purpose. Morison and Guildford said Bastion had instructed them by telephone to make the withdrawals. They said Bastion told them he would place his own funds in Gideon, in a like sum to the amount that he had instructed Morison and Guildford to withdraw, to make good investors' funds in Gideon.⁵² There is no corroboration of this. We understand from the liquidator that there had been no reimbursement of this money by Bastion or Morison Guildford as at the date he took

⁵¹ Guildford interview transcript page 27 and Morison interview transcript page 20.

⁵² Response on behalf of Morison Guildford and Associates Limited, Andrew Morison and Michael Guildford to Securities Commission draft interim report, page 6.

office. Morison and Guildford said they and their wives had offered to buy their respective shares back from Spaincroff at the price paid for them⁵³.

- 5.9 Part payment for the sale of those shares was made by cheque, payable to AM and MPG (which appears to refer to Andrew Morison and Michael Guildford). The liquidator said the balance of the share purchase price had been paid by cheque from an unrelated account sometime earlier, and did not appear to have been paid from this account.⁵⁴ We do not have further details of the cheque. We discuss this transaction and other payments from the account further in chapter 8 of this report.
- 5.10 On 31 August 2000, NZ\$65,148.46 was still held in the account. We are informed that the balance remaining in the account was transferred to the liquidator on 16 May 2001 and amounted to A\$51,494.29.⁵⁵

National Bank Gideon account (account number: 06 0287 0346817 000)

- 5.11 Money from the Wairarapa Building Society account, and later from the BNZ account, was transferred to a National Bank Gideon account. This account appears to have been operated solely by Bastion.⁵⁶
- 5.12 Guildford commented on why there were two separate accounts - a Gideon account at the National Bank and a Morison Guildford / Gideon account at the BNZ.

“The Gideon account at the National Bank was Mike Bastion's account for Gideon investment funds which he had - well, I presume he had - well, he operated it. The reason we had the Gideon account at the BNZ was that, money that was - that people wanted to invest with Gideon would sometimes come in over a month at different stages, and what we would do is put it into that account and then write one cheque to put into the Gideon National Bank account.”⁵⁷

- 5.13 According to Guildford the money was transferred monthly into the National Bank Gideon account on Bastion's instructions to streamline the administration of the incoming funds.⁵⁸

Interest

- 5.14 Interest was payable on the BNZ and Wairarapa Building Society accounts. The interest was withdrawn by Morison Guildford for their own use.⁵⁹ Morison said:

“we probably from time to time took a few hundred dollars out, of interest, for our own use. But the interest that was being accumulated was minimal, it wasn't there long enough.”

⁵³ Response on behalf of Morison Guildford and Associates Limited, Andrew Morison and Michael Guildford to Securities Commission draft interim report, page 6.

⁵⁴ Letter from the liquidator to the Commission dated 5 July 2000.

⁵⁵ Letter from the liquidator dated 27 February 2002.

⁵⁶ Guildford interview transcript page 17.

⁵⁷ Guildford interview transcript page 18.

⁵⁸ Guildford interview transcript page 19.

⁵⁹ Morison interview transcript pages 17 to 18.

6. Due Diligence and Monitoring of Gideon

- 6.1 Morison Guildford had a clear interest in the ongoing affairs and management of the Gideon schemes. They gave advice in respect of the schemes. They provided administrative and support services.
- 6.2 We consider the due diligence process Morison Guildford undertook in regard to Gideon.

Offer documents

- 6.3 The Gideon offer of securities was made without the requisite offer documents. No investment statement was prepared for the Gideon offer. No prospectus was registered. There was no trustee or statutory supervisor in the manner required under New Zealand law for a contributory scheme or unit trust. Neither Morison nor Guildford saw or asked to see an investment statement, a prospectus or a deed of participation. There was a trust deed but it was not in the form required by New Zealand law and was not registered with the Registrar of Companies.
- 6.4 We raised the matter of offer documents with Guildford.

A: I knew there wasn't a prospectus because it was - I believed it was a private fund, so I knew there was no prospectus.

Q: Could you tell us what you mean by a "private fund"?

A: Well, it was a fund which was run by Michael Bastion, and he basically chose who the members were.

Q: Is that right?

A: I presumed that's how he felt about it. Like, he - I understand the unit trusts that a company would have, and anyone can go in and say, I would like to have 1,000 units. Correct?

Q: Probably, yes.

A: In this case Michael - if someone wanted to invest, and he didn't want them to invest, he wouldn't take them on.

Q: Were any of the people who invested, who wanted to invest, after getting in touch with Morison Guildford, ever told that they were not acceptable as investors?

A: Not - none of the people I dealt with.

Q: And they would be accepted as investors on your say so, would they?

*A: Yes.*⁶⁰

- 6.5 The Securities Act 1978 provides that if an offer of securities is made to the public a prospectus complying with the Act and Regulations must be registered with the Registrar of Companies and an investment statement must be provided to investors before they subscribe. The prospectus includes all material information and the investment statement provides an investor with key information about an offer.
- 6.6 Morison said he checked his understanding of the legal position in respect of Gideon with a senior representative of a large entity involved in the investment sector and got confirmation of his understanding that documentation under the Act was not necessary.⁶¹ We have spoken with the person. We do not consider it likely that Morison received advice of the nature described or that if he had it would have been a basis for concluding that securities law did not apply.

Financial statements and audit

- 6.7 The ongoing health of a company can to some degree be monitored by examining its periodic financial statements and other accounting information, and its annual report. Some people are reassured by the knowledge that the financial statements have been audited.
- 6.8 We asked Morison whether he had ever discussed with Bastion who were his accountants, who were his auditors and who were his professional advisers. Morison said he was told that Bastion's accountants, first in Sydney and later in Hong Kong, cross-checked his figures at the end of every year. Morison said Bastion gave an impression that the accountants were keeping an eye on what was going on.

“Q: Did you ever see annual financial statements of the Gideon company or separate accounts of the Gideon funds?”

*A: In the very early stages he had a summary of position of the fund. That was, I think, for the first couple of years, and then - but every year after that a statement was issued to each investor showing them their individual position. But no, not a summary of the fund position after those first couple of years. But he assured us all, we always understood that the month after the so-called close of the trading year was spent with the accountants getting the reconciliation of the fund carried out before statements were issued to individuals.”*⁶²

- 6.9 That impression was never questioned by Morison.

⁶⁰ Guildford interview transcript pages 13 to 14.

⁶¹ Response on behalf of Morison Guildford and Associates Limited, Andrew Morison and Michael Guildford to Securities Commission draft interim report, page 6.

⁶² Morison interview transcript pages 5 to 6.

- 6.10 Morison said during the interview he never asked for copies of annual financial statements.⁶³
- 6.11 Similarly, Guildford did not ask who Gideon’s auditors were or who were the accountants Gideon relied on for advice in making investment decisions. Guildford did not see financial statements for the fund annually. Guildford said he did ask to see a statement of the composition of the fund and the answer from Bastion was “we must do it”.
- 6.12 Provision was made in the management agreement for annual financial statements to be provided to investors. We asked Guildford about this.

“Q: Did any of your clients or people who invested with your help ever ask for copies of the annual or half-yearly statements of the fund?”

A: No.”⁶⁴

Ongoing monitoring

- 6.13 Morison said he had ongoing telephone discussions with Bastion, talking on the phone once or twice a week:

“He would ring us regularly, we would ring him regularly. We would be discussing a whole host of topics, but he was keeping us well informed about how his investment performance was going. He would be curious to know what incoming funds were being lined up. There was just administrative matters occasionally, but most of all how he was heading.”⁶⁵

- 6.14 We asked whether there was any further monitoring of Gideon by Morison Guildford beyond the telephone discussions they had with him. Morison said:

“No, there was nothing, apart from talking to him on the phone or when he visited here, and he would visit New Zealand a couple of times a year and would want to see the clients, want to see the investors and talk to them, and talk to them about how everything was going. There was no ducking away.”⁶⁶

Comments

- 6.15 We raise questions later in this paper (see chapter 9) about the status of Morison Guildford and its directors in relation to the Gideon offer. For the moment we limit ourselves to observing that the provisions about investment statements and prospectuses are central to securities law. They are based on the principle of disclosure - that investors should have access to all material information about an offer of securities to enable them to make a considered decision on whether to invest.

⁶³ Morison interview transcript page 6. Morison now says that he checked in 1996 or 1997 with external accountants in Sydney and was told that they were awaiting details of the final months trading before finalising the accounts.

⁶⁴ Guildford interview transcript page 24.

⁶⁵ Morison interview transcript page 12

⁶⁶ Morison interview transcript page 13.

Whatever their status, Morison Guildford and its directors should have been well aware of this.

- 6.16 Promoters have responsibilities for offer documents under the Securities Act 1978. Investment advisers should be aware of the requirement for offer documents. We were surprised that the lack of offer documents was not questioned.
- 6.17 We also consider that an investment adviser takes on a number of responsibilities when he or she decides to give advice about a particular offer of securities. The content of those responsibilities will vary according to the role the investment adviser undertakes in regard to the offer. The common law and equity impose responsibilities.
- 6.18 While ultimately it is for the Courts to decide what responsibilities an investment adviser holds in law, we consider that depending on the particular circumstances an investment adviser recommending investment in a particular investment fund:
- Should undertake some analysis of the investment. This would include analysis of the offer documents, and annual and other periodic reports and financial statements.
 - Should, if conventional offer documents are not available, ask why not.
 - Should, if there is an ongoing role in obtaining investors for a particular investment fund, establish some form of ongoing monitoring and analysis of the investment's performance.
- 6.19 Further responsibilities might arise if the adviser acts as a fiduciary.
- 6.20 If the investment adviser was so involved in the offer of securities that he was instrumental in formulating the plan or programme pursuant to which the offer is made, then he might also be a promoter for the purposes of the law. If so further responsibilities arise. However on the evidence available to us we do not consider that Morison Guildford were promoters.
- 6.21 We conclude in chapter 9 that Morison Guildford acted as investment advisers and consider that they should have taken the steps outlined above. It is possible that the nature of the Gideon fund, and Bastion's involvement with it, would have been revealed had they done so. This might have led to Morison Guildford ceasing to raise money for the Gideon fund and perhaps would have enabled an attempt to be made to regain investors' money while Bastion was still alive.
- 6.22 As to the suggestion made by Morison Guildford that: "*Bastion's conduct over the five year period leading up to his death would tend to indicate that if documentation had been requested by a third party, such as MGAL or an investor, it might simply have been fraudulently generated to satisfy any enquiry*"⁶⁷, given the requirement for

⁶⁷ Response on behalf of Morison Guildford and Associates Limited, Andrew Morison and Michael Guildford to Securities Commission draft interim report, page 6.

registration and the content required by the Securities Act, we reject this suggestion as untenable.

7. Remuneration of Morison Guildford and other benefits

Commission on Gideon investments

- 7.1 We received from the liquidator of Gideon, a copy of a letter dated 12 September 1996 from Morison Guildford to Bastion signed by Guildford. The letter said:

“Further to our chat during your visit last month regarding our fee for placing clients’ funds with Gideon. The formula we agreed on is acceptable and the most equitable for all parties.

I.e. First year of any investment – Three percent of gross increase in clients unit numbers as at 31/6 each year.

Year Two and each successive year of any investment – Five percent of gross increase in clients unit numbers as at 31/6.

The manner in which we are paid may vary from year to year, but initially we would prefer that you purchase units in our company name in the Gideon Fund...”⁶⁸

- 7.2 A letter from Morison Guildford to Gideon investors dated 16 August 2000 said:

“There have been questions raised by some investors regarding commission payments that we received from Bastion. Prior to 1997 we did not receive any reward from Bastion. In 1997 Bastion suggested that we receive some form of reward. We then reached an agreement with Bastion under which we would receive units in the trust as commission payments. However, no units were issued to us.”⁶⁹

- 7.3 A Bank of New Zealand Masterton branch memorandum dated 23 October 2000 said:

“As regards the income side of their operation they agreed that they have taken their eye off the ball. They were finding that attracting funds into Gideon Investments and the commissions paid more profitable than the commission they could achieve from life and health insurance. As a result their commissions received for life and health insurance decreased from \$411,942 to \$303,907 in 2000. However their fire and health division showed a pleasing increase to \$113,496, up from \$78,508 in 1999.

Following the collapse of Gideon Investments not only did Morison Guildford lose the commissions due to them for this past financial year, the amount not known, but both Mr Morison and Mr Guildford indicated that between them they personally had about \$300,000 invested with Gideon which is now likely to be lost to them.”⁷⁰

⁶⁸ Letter from Morison Guildford to Bastion dated 12 September 1996.

⁶⁹ Letter from Morison Guildford to Gideon investors dated 16 August 2000.

⁷⁰ Bank of New Zealand Masterton branch memorandum dated 23 October 2000.

- 7.4 A formal statement from an investor said: *“Mike also confirmed that he would earn a commission from selling the unit trusts to me, being 4% of the 20% success fee that the unit trust would charge me”*⁷¹
- 7.5 In response Guildford said he was supposed to receive this *“by way of units in GHF, as opposed to any cash payment. Michael Bastion had offered this 4%, represented in units to me. On enquiry following his death ...I discovered that no units had in fact been provided to me despite the offer.”*⁷² Morison Guildford accordingly question the accuracy of the BNZ memorandum quoted at paragraph 7.3.
- 7.6 This does, however, show that Morison and Guildford already believed they had earned \$300,000 in Gideon units.
- 7.7 We are informed Morison and Guildford told the liquidator that Bastion had arranged for a company to be registered in the British Virgin Islands for them and had opened a bank account in Hong Kong to be used by this company. The British Virgin Islands company, Hanny Enterprises Limited, was incorporated for the purpose of receiving either fees or commissions. Morison Guildford claimed that no fees or commissions were paid by this company to Morison Guildford.
- 7.8 We contacted Tom Corkhill, the Hong Kong agent of the Gideon liquidator. According to Corkhill, Hanny Enterprises had two shares on issue, which were registered to their nominee company Jobrenco Limited. Each share was held on trust for Morison and Guildford respectively. The sole director of Hanny was Grant Thornton’s nominee company Chaparral Limited.
- 7.9 Corkhill said that according to their records, Hanny Enterprises never undertook any transactions and was annulled by the British Virgin Islands company registry in November 2000 for non-payment of government fees.

Sale of interest in Morison Guildford

- 7.10 In addition Morison and Guildford and their wives sold a 24% interest in Morison Guildford to Bastion or Gideon, which was funded by Gideon investors.
- 7.11 In the opinion of the writer of a Bank of New Zealand Masterton branch memorandum (see paragraph 8.4 below), a reasonable valuation of the Morison Guildford business - assuming the purchase was securing a genuine interest - was about NZ\$450,000 to \$500,000. 24% of this is \$112,500 to \$125,000, substantially less than the price paid of \$368,000.
- 7.12 Morison Guildford told us the value of NZ\$450,000 to \$500,000 was arrived at by Morison and Guildford themselves as follows:
- (a) *“For the life/risk component of the business, applied by AXA and other insurance companies, to calculate a purchase price as a buyer of last resort.*

⁷¹ Formal statement made on 27 October 2000, page 4.

⁷² Formal statement of Guildford made on 15 December 2001, page 5.

This formula is based on the premium commission income generated by that business.

- (b) *For the fire and general component of the business, based on industry norms.*⁷³

7.13 By way of further explanation Morison and Guildford said they received advice that *“the consideration need not be tied to a strict valuation of the business. A willing buyer and willing seller could agree to whatever value they wished”*⁷⁴. However, the question remains as to the motivation for paying a price not connected to the value of the business. We comment further on this at chapter 8.

7.14 In any event this payment represents a significant benefit to Morison and Guildford and their respective families for their association with Bastion.

Personal use of Gideon money

7.15 According to Morison, interest was taken out of the Wairarapa Building Society and BNZ bank accounts for Morison Guildford’s own use. Morison Guildford implied that the interest payments were used to offset expenses, such as copying and mailouts to investors, and in maintaining regular contact with Bastion.

7.16 Further, Morison Guildford borrowed money from the fund. This loan appears to have been made interest free with no security. We comment further on this at chapter 8.

Commission on new insurance policies

7.17 As noted above, it appears that Morison Guildford advised many investors to take out new insurance policies when they were advised to invest with Gideon. Morison Guildford would have received commissions from the insurance companies for this.

Comments

7.18 It is clear that whether or not Morison Guildford actually received remuneration or other rewards for securing investors in Gideon, they had agreed to an arrangement under which they would receive remuneration by way of allocated units. They believed they already had units allocated to them for this and had an ongoing expectation (until Bastion’s death) that they would receive further units for soliciting additional investment money.

7.19 An investment statement that accords with Schedule 3D of the Securities Regulations 1983 has to disclose information about the types of charges that might be payable from the scheme that might affect returns to subscribers.

⁷³ Response on behalf of Morison Guildford and Associates Limited, Andrew Morison and Michael Guildford to Securities Commission interim draft report, page 7.

⁷⁴ Response on behalf of Morison Guildford and Associates Limited, Andrew Morison and Michael Guildford to Securities Commission interim draft report, page 8.

- 7.20 Under the Investment Advisers (Disclosure) Act 1996, if a request is made to an investment adviser for any of the information detailed in section 4, disclosure must be made in writing of that matter and all other matters outlined in section 4. These matters include whether the adviser or an associated person has a direct or indirect pecuniary or other interest in giving investment advice to the investors and if so, the nature of that interest.
- 7.22 While we have no evidence that a request for such information was made to Morison or Guildford, if they were investment advisers and such a request was made, they would have been obliged to disclose any remuneration or other interest they received directly or indirectly from giving investment advice on Gideon that was reasonably likely to influence them in giving advice. We note that the investment adviser disclosure leaflets provided to us by Morison and Guildford did not refer to Gideon or any remuneration derived from their role with Gideon.

8. Payments from the Morison Guildford Gideon Investments Client Account

8.1 Several payments made by Morison Guildford from the BNZ Gideon Investments Client Account were not to the Gideon National Bank account. These payments relate to Spaincroff Holdings Limited, Telfer Properties Martinborough Limited and Morison Guildford. We have questioned Morison and Guildford about these payments.

Spaincroff Holdings Limited

8.2 Towards the end of 1999 Spaincroff Holdings acquired 24 shares in Morison Guildford, representing 24% of the company's issued capital, for consideration of NZ\$368,000. The four shareholders each sold an equal number of shares. Guildford said he considered Bastion had bought the shares.⁷⁵ Morison said he considered either Gideon or Bastion personally had bought them.⁷⁶

8.3 A facsimile dated 1 September 1999 attaches four share transfer forms for signature by Bastion. Each transfer form records consideration of NZ\$92,000. This adds up to a total payment of NZ\$368,000, or about A\$300,000 for 24% of Morison Guildford's shares.

8.4 We note that according to the BNZ Masterton branch memorandum dated 23 October 2000, Morison Guildford's insurance business was valued on the basis of the premiums generated, and indications were that the business would have a value of around NZ\$450,000 to \$500,000. This placed a value of up to \$120,000 on the 24% interest.⁷⁷ We note, however, Morison Guildford's comment at paragraph 7.12 on how the sale price was arrived at.

8.5 A letter to the New Zealand agents for the liquidator dated 30 June 2000, on Morison Guildford letterhead and signed by Morison, said:

*"The 1999 withdrawals were notified to Katy Byrnes and MJB via email of the spreadsheet from which you took a copy."*⁷⁸

8.6 The letter also enclosed a copy of a bank statement from what appears to be Morison's personal account. This showed receipt of \$150,000 "*being part payment from Spaincroff Holdings Ltd for shares in Morison Guildford*" (presumably part payment for both his and his wife's sale of shares) and "*statements showing deductions from 'incoming funds', as instructed by MJ Bastion as part payment for shares.*"⁷⁹

8.7 It appears that no due diligence was undertaken by Bastion on Morison Guildford before the share purchase was made.

⁷⁵ Guildford interview transcript page 27.

⁷⁶ Morison interview transcript page 20.

⁷⁷ BNZ Masterton branch memorandum dated 23 October 2000.

⁷⁸ Letter to the New Zealand agents for the liquidator dated 30 June 2000, from Morison Guildford.

⁷⁹ Letter from Morison to New Zealand agents for the liquidator dated 30 June 2000.

- 8.8 There is no record of Spaincroff Holdings Limited being registered in New Zealand. The liquidator said he has undertaken extensive research to find a jurisdiction in which this company has been registered, without success. The liquidator suspects the company was not registered in any jurisdiction. Morison Guildford has not been able to clarify whether the company has been registered in any jurisdiction.
- 8.9 The liquidator said the address for Spaincroff that appears on the share transfer form is a previous address for Bastion's sister.
- 8.10 Morison Guildford's letter to Gideon investors dated 16 August 2000 said:

“For what we thought were sound commercial reasons, we wanted to secure a long term association with Michael Bastion. We agreed to sell 24% of Morison Guildford and Associates Ltd to a company called Spaincroff Holdings Limited.

Spaincroff Holdings Limited was to be a shareholder. It was never intended that Bastion be involved in the business. At the time we felt there were at least 10 years of good business association to be enjoyed and ‘locking’ Bastion into our business made good sense.”⁸⁰

- 8.11 We asked Morison and Guildford about Spaincroff Holdings. Morison told us that Bastion authorised Morison Guildford to make a payment to themselves from the BNZ Gideon Investments Client Account, but the communication from Bastion was not in writing. Morison said the purpose of the payment was to give Bastion a personal shareholding in Morison Guildford.⁸¹ Guildford said a first payment was paid by bank draft into Morison's personal account and a second was made from the BNZ Gideon Investments Client Account.⁸²

Telfer Properties Martinborough Limited

- 8.12 Money from the BNZ Gideon Investments Client Account appears to have been invested with a company named Telfer Properties Martinborough Limited. Telfer Properties is a company that developed and now operates a function/accommodation venue in Martinborough. It owns the complex. Morison was a promoter of it with his wife and Anthony Ractliffe, who was also an investor with Gideon. Morison's wife is a director of the company. The company sought capital from investors, some of whom were Gideon investors.
- 8.13 We asked Morison about payments to Telfer Properties. He told us that a payment was made from the BNZ Gideon Investments Client Account to Telfer Properties to pay for part of a share purchase by Bastion.

“A: That was taken from incoming funds as authorised by Bastion. He took a holding in Telfer Properties to the value of \$96,000, which he had paid half of some probably six months or more earlier. He direct credited it through to the Telfer account, and he authorised us to take the balance of his investment,

⁸⁰ Letter to Gideon investors from Morison Guildford dated 16 August 2000.

⁸¹ Morison interview transcript pages 18 to 20.

⁸² Guildford interview transcript pages 28 to 29.

which was \$48,000, from incoming funds in late 99 which he undertook to settle at the other end.

Q: So, you were settling a Bastion transaction with Gideon money?

A: Yes."

...

"A: The payment that we deducted from the incoming funds to pay for the second - Bastion's second payment to Telfer Properties, I may not have made it clear; it was on the same basis that we took the balance of the payments out for the purchases of Morison Guildford, it was to be contra'd at his end.

Q: Yes, you've said you've got no evidence to demonstrate that.

*A: No, there isn't."*⁸³

Loan to Morison Guildford

8.14 A file note from Noel Fussell at the BNZ dated 14 August 2000 said:

"Last year Morison Guildford borrowed from Gideon some \$87,000 and they are now required to repay this. However, they will not be repaying it to Australia but rather the funds will be held in trust with their solicitor Phillips Fox.

*This was the first time Morison Guildford borrowed money from Gideon and they were expecting to do a divvy up at the end of June with their commissions due which would have taken care of this loan. However, as we now know, this has all turned to custard."*⁸⁴

8.15 We asked Morison about the loan.

"A: That was - with the aid of hindsight it makes you squeal a bit, but we asked Bastion if we could deduct casual payments to help us through a small patch of liquidity, which we would account for at June, at the end of the trading year, and that amounted to \$87,000 which has since been repaid as well.

Q: When was that repaid?

A: We paid it.

Q: When was that?

⁸³ Morison interview transcript pages 24 to 25.

⁸⁴ File note from Noel Fussell at the BNZ dated 14 August 2000.

A: When?

Q: Yes, yes?

A: Oh, some months ago to Phillips Fox trust account until the ownership of the funds was established. There was a question mark over who was the rightful owner of the funds, whether it was Gideon, New Zealand investors or some other entity which - but they - on legal advice we - Phillips Fox suggested they hold it until the ownership was identified.

Q: When was that loan taken out?

A: When?

Q: Yes?

A: Probably in a few payments over a period of four or five months. I can't be specific about when, but over - probably from October through till January/February, for 99/2000.

Q: That was out of the BNZ account?

A: Yes. And that's been fully accounted for and reconciled.”⁸⁵

- 8.16 There is no documentation for the loan. It appears that the loan was interest free and there appears to have been no security for the loan.
- 8.17 We are informed that an amount of A\$71,721.16 which appears to be the equivalent of NZ\$87,000 was transferred to the liquidator of Gideon from the Phillips Fox Trust Account on 7 May 2001.⁸⁶ There was no provision for interest in this payment in respect of the period of the loan.

Authority for Payments

- 8.18 We asked Morison and Guildford to provide us with any correspondence from Bastion instructing Morison Guildford or its directors to withdraw funds from either the Bank of New Zealand “Gideon Investments Client Account” or the Wairarapa Building Society “Gideon Investments” account.
- 8.19 Their solicitors, Buddle Findlay, replied on their behalf saying:

“Our clients have informed us that they are unable to provide the following documents for the reasons outlined below:

- (a) any correspondence from Bastion instructing Morison Guildford or its directors to withdraw funds from either of the Bank of New Zealand*

⁸⁵ Morison interview transcript pages 28 to 29.

⁸⁶ Letter from the liquidator to the Commission dated 27 February 2002.

“Gideon Investments Client Account” or the Wairarapa Building Society “Gideon Investments” account for:

- (i) Payment for shares in Morison Guildford and Associates Limited that were transferred to Spaincroff Holdings Limited;*
- (ii) Payment for shares in Telfer Properties Martinborough Limited*

With regard to (i) and (ii) deductions from the BNZ account for the payment of shares were made under verbal instructions from Michael Bastion;

- (iii) Loans to Morison Guildford or its directors*

Loans were made with Michael Bastion’s verbal authority. These loans have since been repaid;

- (iv) Any other withdrawals of monies not being transfers to the Gideon National Bank account or repayments to investors*

Other payments made on behalf of clients were all done with their knowledge and verbal consents;

- (b) Any correspondence with investors notifying them of any one or more of those withdrawal*

No such correspondence exists.”⁸⁷

⁸⁷ Letter from Buddle Findlay to the Commission dated 1 June 2001.

9 Did Morison Guildford act as investment advisers, investment brokers, issuers or promoters in regard to Gideon or associated companies?

Offer of securities to the public

9.1 We have no doubt that there has been an offer of securities to the public for subscription. The circumstances of Gideon's initial contracting with investors, whether directly or through Morison Guildford, constitute an offer to the public for subscription. The contract clearly involves the issue of securities, whether of a category in the explicit list in section 2D(1) of the Securities Act, in particular a unit in a unit trust, or a participatory security.

Issuers

9.2 The Securities Act 1978 defines the issuer in regard to participatory securities or unit trusts as the manager. This would be Gideon. We do not consider that Morison Guildford was an issuer of the securities.

Promoters

9.3 Promoter means a "*person who is instrumental in the formulation of a plan or programme pursuant to which the securities are offered to the public*".

9.4 A distinction must be made between "*promoting*" as used in its colloquial sense and being a promoter under the Securities Act.

9.5 A promoter for the purposes of the Securities Act is a person who is instrumental in the formulation of a plan or programme pursuant to which securities are offered to the public.

9.6 On the basis of the evidence available to us, we have concluded that Morison Guildford and Morison and Guildford were not promoters. The evidence does not suggest they were instrumental in the formulation of a plan to offer the securities in New Zealand as promoters.

Investment advisers

9.7 The definition of an investment adviser under the Investment Advisers (Disclosure) Act 1996 includes "*a person who, in the course of the person's business or employment gives investment advice*". The definition of investment adviser excludes the issuer or promoter of the securities to which the advice relates. The definition also excludes a person who only transmits investment advice relating to the particular securities. We consider that there is sufficient evidence to show that Morison Guildford and its directors were investment advisers.

9.8 We have seen two examples of statements prepared by Guildford consisting of a comparison of the prospective returns from existing insurance policies and prospective returns from Gideon. These were prepared for persons who subsequently invested with Gideon.

- 9.10 Other evidence that Morison Guildford acted as investment advisers includes:
- Statements from investors that they relied on advice from Morison Guildford when deciding to investment with Gideon.
 - Morison Guildford’s investment adviser disclosure statements.
 - Morison Guildford’s suggestions to clients that they transfer money from existing insurance policies to Gideon.
 - A compilation of financial statements for Morison Guildford stating that Morison Guildford’s principal business is the sale of “*insurance / investment products*”.
 - The activities of Morison Guildford in soliciting funds for Gideon.
- 9.11 We consider that Morison Guildford and its directors were acting as investment advisers. The firm and its directors did not distribute disclosure statements at the time. However, under section 4 of the Investment Advisers (Disclosure) Act 1996, an investment adviser need only supply a disclosure statement at the request of investors. There is no evidence from the investors we communicated with that any request was made.
- 9.12 If Morison Guildford and its directors acted as investment advisers they would have had an ongoing interest in the affairs and management of the scheme. An investment adviser is likely to have a duty of care and a fiduciary duty towards persons to whom he or she is recommending investments in securities. These duties are likely to require an investment adviser to have a sufficient basis, through some form of due diligence, for recommending investment in a particular security. There are a number of steps that a person recommending investment in a particular offer of securities might be expected to take, by way of due diligence, before making a recommendation, particularly where there is a continuing relationship between the issuer and the adviser. These include:
- Checking the qualifications and experience of the investment manager.
 - Ensuring that the prescribed offer documents exist.
 - Analysing the offer documents.
 - Analysing the financial statements.
- 9.13 If an investment adviser has an ongoing role in relation to an investment product it would be prudent for the adviser also to consider periodically the adequacy of the annual and other periodic reports on performance of the investment fund, and to form an opinion that a basis for making the recommendations remains.

Investment brokers

- 9.14 Section 2 of the Act defines “investment broker” as meaning “*a person (whether or not the person is also an investment adviser) who in the course of his or her employment receives investment money or investment property*”. The definition excludes “*a person who only transmits investment money or investment property [to an issuer] without being able to apply the money or property for any other purpose*”.

- 9.15 From the records provided, investors made payment to Gideon via Morison Guildford. The funds were held in accounts in the name of Gideon, but over which Morison and Guildford had authority. Funds were usually then transferred into a bank account held by Gideon with the National Bank in Auckland.
- 9.16 From notes made on the bank statements, it appears that Morison Guildford was acting under instructions from Gideon in relation to those funds. Investors' funds can be traced going into the account, and when added together equal the lump sums paid to Gideon on a regular basis.
- 9.17 One exception to this is the purchase of shares in Morison Guildford, where funds were not paid to Gideon's National Bank account, but instead were paid to Morison and Guildford and their spouses, although it appears with the consent of Bastion.
- 9.18 The matters that indicate Morison Guildford acted as an investment broker are:
- Control of the Gideon account. Morison Guildford claims to have acted upon the instruction of Bastion in transferring funds for Gideon.
 - The interest from the Gideon account held by Morison Guildford was applied for the benefit of Morison Guildford (or to offset costs incurred in communicating with Bastion and investors in Gideon).
 - Money was taken out of the Gideon account and placed with Telfer Properties Martinborough Limited. Morison Guildford claims that this was as instructed by Bastion.
 - Money was taken out of the Gideon account to pay for shares in Morison Guildford for Spaincroff. Morison Guildford claims that this was as instructed by Bastion.
 - Money was taken out of the Gideon account as a loan to Morison Guildford. Morison Guildford claims that this was authorised by Bastion.
- 9.19 Morison Guildford did not comply with section 3 of the Investment Advisers (Disclosure) Act relating to the disclosure of information as an investment broker.

10 Liability Questions

10.1 The Commission does not have the power to make rulings on application of the law. This is for the Courts. However with that caveat, we raise the following questions of liability relating to Morison Guildford.

Civil liability

10.2 We consider that questions arise about a possible breach of fiduciary duty and duty of care given the circumstances and manner in which investment advice was given, and the manner in which investors' funds were applied by Morison Guildford - whether or not they were acting on the instructions of Bastion.

Criminal liability

10.3 Money was withdrawn from the Gideon Investments Client Account by Morison Guildford on a number of occasions for the benefit of people other than investors. This includes money withdrawn in regard to:

- Spaincroff Holdings Limited.
- Telfer Properties Martinborough Limited.
- A loan to Morison Guildford.
- Interest incurred on money in the account.
- A number of other unexplained withdrawals.

10.4 We have considered these payments and the possible potential criminal implications. We have conferred with the Serious Fraud Office. After careful review the Serious Fraud Office has informed us that there is insufficient evidence for them to take any action.

Securities Act and Investment Advisers (Disclosure) Act liability

10.5 We have considered whether Morison Guildford may be liable as a promoter of Gideon. The evidence available to us does not support that conclusion.

10.6 Questions of liability arise in regard to Morison Guildford's possible role as an investment broker. This matter will be forwarded to the Registrar of Companies for his further consideration.

11 Summary of Conclusions

- 11.1 Morison Guildford has been extensively consulted in the preparation of this report and has made a number of submissions on it. However, it should be noted that the work of the Commission is not based on an adversarial Court process and the Commission does not have the power to make definitive findings on questions of law in its general review work.
- 11.2 We consider that Bastion's actions have caused harm to a significant number of people. It seems clear that he committed fraud on a major scale. We do not consider that either Morison or Guildford was aware of Bastion's fraud. However, we consider that persons in an intermediary investment advisory role have certain obligations to those who invest money on their advice or with their assistance. On the basis of the information that has been available to us we consider that Morison Guildford's conduct was incompetent and irresponsible. They appear to have taken a key role in obtaining investment money from New Zealanders for Gideon. They did not question the lack of offer documents. Their formal evaluation and monitoring of Gideon was close to non-existent and certainly fell short of what might reasonably be expected of a firm offering investment advisory and broking services to the general public.
- 11.3 Regardless of whether the actions of Morison Guildford in withdrawing money from the Gideon Investments Client Account might have breached sections of the Crimes Act, we consider that the way in which Morison Guildford withdrew the funds was inappropriate. They appear not to have told investors that they were withdrawing funds. They were unable to point to any records or written instructions from Bastion to support their assertions that the withdrawals were made on Bastion's instructions. Moreover, clause 5 of the management agreement expressly prohibited loans being made by the trustee of Gideon from the fund (see paragraph 2.28). Morison Guildford had copies of this agreement. In the circumstances, the incompleteness of their records is highly inappropriate. They appear to have been indifferent to the interests of their clients and to the manner in which client money was applied.
- 11.4 Regarding remuneration, Morison and Guildford clearly believed that they were receiving a reward for their activities in soliciting funds for Gideon. This was not generally disclosed to investors. They were also receiving commission by advising investors to take out new insurance policies. This might be an example of churning, advising and helping to give effect to excessive turnover of policies for the purpose of bringing in commissions.
- 11.5 This report has been prepared as a review of market practice. We think the matters in this report highlight a number of deficiencies in the behaviour of people committed to representing the general public. While we do not regard this as a typical case, we have encountered a number of other situations where important deficiencies have occurred in the operation of investment advisory businesses.
- 11.6 We have recently made recommendations to the Government on regulation of investment advisers. We think that the events outlined in this report provide an example of the type of matters that our recommendations are intended to help address. In particular these events illustrate the value of rules about mandatory investment adviser disclosure, and rules about recommending illegal offers of securities.

- 11.7 We add that our report also highlights the need for investors in New Zealand to act with prudence in making their investment decisions. Investors have a right to certain information under the existing securities and investment adviser laws. We have no evidence that Gideon investors sought to obtain this information. We think they should have done so.

12. Referrals

12.1 We are referring this report for consideration by the following persons and organisations:

- The Minister of Commerce.
- Investors in Gideon.
- The Registrar of Companies.
- The Financial Planners and Insurance Agents Association.
- The Insurance and Savings Ombudsman.

Appendix "A"

Ref: 300-140 / #24672

TERMS OF REFERENCE: MORISON GUILDFORD AND ASSOCIATES LIMITED

Pursuant to sections 10 and 18 of the Securities Act 1978, the Securities Commission has decided to review the facts and circumstances of the issue and promotion of and the giving of investment advice about securities issued by Gideon Investments Pty Limited ("Gideon") or any associated company including in particular the role of Morison Guildford and Associates Limited ("Morison Guildford"). The period of the inquiry is from March 1996 to 16 March 2000. The Commission wishes to consider:

- (a) whether the offer of securities issued by Gideon or any associated party was made in New Zealand in accordance with New Zealand law,
- (b) whether Morison Guildford and/or its directors acted as investment advisers, investment brokers, issuers or promoters in regard to Gideon or any associated company,
- (c) whether Morison Guildford complied with the law relating to investment advisers,
- (d) the steps Morison Guildford took to meet its duty of care and fiduciary duty in giving advice to its clients about investment with Gideon,
- (e) whether it is desirable to clarify and/or amend the law relating to investment advisers,
- (f) any other matters material to the inquiry;

and to decide whether the Commission should comment on these matters to any appropriate body, publish a report or take any other action.

Subject to the Commission's discretion to amend the terms of reference as it may consider fit.

15 March 2001

GIDEON INVESTMENTS

Gideon Investments Pty Limited ACN 060 230 037 – Level 20, 25 Bligh Street, Sydney 2000
Telephone 61 2 9223 5422 – Facsimile 61 2 9231 4885

28 June 1998

Dear Clients

Hawks, doves and bears

We have talked about the "Goldilocks" economy before. Well it appears Goldilocks has wrong-footed the bears again. That at least is the message emerging from the US in their first quarter growth numbers, where growth was above expectations and inflation was negligible. The story of the economy that is neither too hot nor too cold moves from one happy chapter to another.

In Europe, meantime, the tale is the more ancient one of the tortoise and the hare. But here too, the message is relatively cheery. Unperturbed by the Asian crisis, continental Europe – the tortoise to the US hare in the present economic cycle – has seen domestic demand take over as the chief impetus behind first quarter economic growth. This week its main equity markets were either hitting new peaks or standing within spitting distance of them.

The problem for me however, is that on closer inspection the picture for the US and Europe is not quite as rosy as appears at first sight. On the American side, the bullish case for equities rests on the assumption that corporate earnings are in robust shape. But the pointers are largely in the other direction.

Corporate profits for the first quarter are stagnant. At the same time inventories are accumulating fast and the external trade deficit is widening. A profits squeeze in the developed world is an obvious and natural consequence of the Asian crisis. It is hard to see

why the US should be immune. As for Europe, recent data suggests that business confidence in Germany and France is faltering.

The big questions for equities are nonetheless concentrated in the Anglo-American markets, where there is growing concern over the weaker earnings outlook. Company profit warnings are coming thick and fast, while analysts are downgrading corporate earnings forecasts in large numbers.

Much still hinges on the future path of the Japanese currency, for a weakening Yen is the chief means by which Japan exports deflationary pressure around the world. The recent Japan-US intervention succeeded briefly in stabilising the Yen but by the end of this week the currency had returned to the status quo.

That is a measure of the bearishness of Japan. But the pessimism has yet to percolate through to equity valuations in the West. With each new profit warning or earnings downgrade, investors simply turn their attention elsewhere in search of another growth story. And despite the possibility, or by now perhaps the probability, of a worsening of debt problems in Asia, the bank stocks that have played such an important part in powering the bull market still have their supporters.

Overall the risk in equities is becoming even more daunting. The point will come when Goldilocks finds broken glass and tin tacks in the porridge.

In the next two weeks the end of the year accounts will be finalised. While we have a solid performance in April/May, June has not been so good. Without being exact, the return should still be approximately 43%-45%. All clients will have to make a decision as to whether they wish to roll over their profits or have them paid out. The sooner we are aware of your requirements the easier it will be to organise. Accordingly, could you ensure that you either fax or write to my Sydney office as soon as possible. I hope everyone has been satisfied with the year and I look forward to catching up with as many of you as possible in the next couple of months.

FIRST QUARTER PERFORMANCE 17.4%

SECOND QUARTER PERFORMANCE 23.1%

THIRD QUARTER PERFORMANCE 4.3%

FOURTH QUARTER PERFORMANCE

April

May

June

CUMULATIVE TOTAL

Yours faithfully

Mike Bastion