

Parliamentary Joint Committee on Corporations and Financial Services

ASIC 24th November 2010

PJC - QoN 1

Topic: Storm Financial

Senator BOYCE—I have some questions that relate to a report in the *Age*.

CHAIRMAN—Do they relate to Storm?

Senator BOYCE—Yes, Storm and Macquarie. There is a suggestion that there was a secret alliance between Macquarie and Storm Financial. You would have seen the report, I imagine.

Mr D'Aloisio—Yes.

Senator BOYCE—Could you comment on that report, please.

Mr D'Aloisio—With the investigations ASIC is carrying on, I think ASIC is well across the work that it has done and the discussions that have occurred between various lenders and others involved in the so-called Storm scheme. We are aware of some of the email traffic and so on that is referred to in that article, and we can say that our people—our investigation team—would have looked at that material. What inferences they drew from it and what action we may take as a result are an operational matter for ASIC.

Senator BOYCE—It would also be something that you would speak on if you were pursuing it, isn't it? You would say, 'We are investigating Macquarie further in this area,' or, 'We are intending to prosecute someone in this area.'

Mr D'Aloisio—Can we get the announcement out on Friday and see if that answers your question.

Senator BOYCE—This is very frustrating.

Mr D'Aloisio—I am sorry. I truly am, but there is a process. In terms of who we are and the way we act, we need to follow that process. I would have liked to have been able to talk to you further because it is a parliamentary joint committee, but we have made decisions, we have a process to go through tomorrow and we will announce on Friday morning.

Mr ANTHONY SMITH—What you are really saying is that you are midway through a process, so you are quite restricted in what you can say. With respect to the article that the

deputy chair refers to, essentially it is not new news.

Mr D'Aloisio—No. I can check more specifically with the team, but my recollection from reading it and from the initial discussion I had at the time was that there were no new facts or material in that that we were not aware of.

Senator BOYCE—That was one of my questions. I was going to ask you when you became aware of these allegations about a secret alliance.

Mr D'Aloisio—We do not use the term 'secret alliance'. The material that is referred to, we are aware of.

Senator BOYCE—When did you become aware of that material?

Mr D'Aloisio—I would have to take that on notice and give you an answer, but I think it would have been during the pretty thorough investigation that our team has been engaged in.

Answer:

A. The media reports in the *Age* refer to numerous documents, some of which are not sufficiently described in order for ASIC to confirm whether or not they are documents of which ASIC is aware. However, to the extent that the material referred to in the reports includes a document dated December 2004 entitled "Working in Alliance", this material was first produced to ASIC on 2 July 2009. ASIC is not in a position to disclose the contents of this document.

ENDS

Parliamentary Joint Committee on Corporations and Financial Services

ASIC 24th November 2010

PJC - QoN 2

Topic: Investigation conversion

Senator BOYCE—I have some questions in this area. Just to go back to the investigations and the cases before the courts, what would be the conversion rate, for want of a better word?

How many investigations end up before a civil or criminal court?

Mr D'Aloisio—I do not have that figure. We could have a look at it.

Ms Gibson—It would be a lot less than half.

Mr D'Aloisio—Let us give that as an indicator.

Senator BOYCE—I have another question you might have to take on notice. What is the average success rate of 91 per cent if we put it into dollar terms? What percentage of the legal budget was spent on civil cases you won or civil cases you lost and ditto for criminal cases?

Mr D'Aloisio—Again, I would have to take that on notice.

Answer:

Of those investigations completed in 2009/2010, 29% resulted in either the launching of civil proceedings or with a brief being accepted by the CDPP. A further 20% of investigations resulted in the commencement of administrative actions and 8% were finalised by way of enforceable undertakings or negotiated outcomes.

In terms of Senator Boyce's second question, the investigations that ASIC undertake often span several years and therefore it is difficult to try and draw a direct correlation of results achieved during 2009/10 against the expenditure from the investigation budget for that year.

ENDS

Parliamentary Joint Committee on Corporations and Financial Services
ASIC 24th November 2010
PJC - QoN 3

Topic: **Frozen funds**

Mr ANTHONY SMITH—Without taking up the time of the committee, if you would be able in the coming weeks—it is not urgent—to provide any further information on notice about percentages or with respect to how those processes are working, that would be useful if there is any more, just to give us a bit of an update.

Mr D'Aloisio—We can give you a table that sets out what was frozen and what has been subject to hardship relief.

Mr ANTHONY SMITH—That would be great.

Mr Medcraft—No problem. We can do that.

Answer:

We provide below a table detailing the number of schemes that were frozen and hardship statistics in respect of them.

Table 1:	Statistics
<u>Summary - ALL FROZEN FUNDS</u>	
Estimated Total Number of Schemes that were Frozen	93
"Unfrozen" Schemes - Restructured, in the process of being wind down or wind up and/or deregistered	20
Remain Frozen but offers periodic withdrawal	32
Remain Frozen and offers no withdrawal (primarily comprised of frozen property schemes)	23
Number of schemes applied for hardship relief	83
Hardship Relief - Total Number of Application Received as at Dec 2010	6452
Hardship Relief - Total Number of Application Paid as at Dec 2010	4726
Hardship Relief - Total Amount Paid under Hardship Relief as at Dec 2010 (\$million)	155
Total Amount Paid under Hardship Relief as a % to total AUM	0.7%

ENDS

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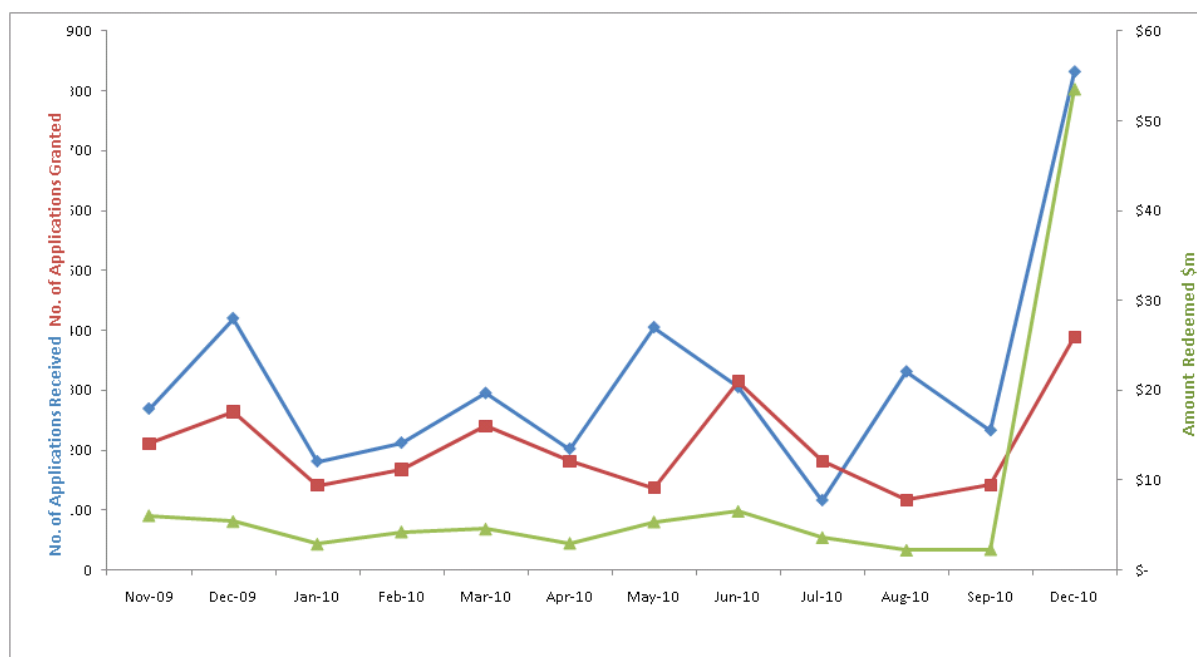
Topic: **Frozen funds**

Senator BOYCE—Following up on that, Mr Medcraft, you mentioned roughly 5,400 hardship applications and 4,200, I think, that had been approved. That is since the funds were frozen. What can you tell us about the rate of those applications? Are they slowing or increasing?

Mr Medcraft—I do not have that available. I will take it on notice and we can come back to you with that information.

Answer:

Below is a table that tracks hardship relief applications received, granted and redeemed over the last 12 months. Other than in the last quarter of 2010, when there was a significant spike in the number of applications received, and the amount paid, primarily attributable to Colonial, there is no significant trend demonstrating an increase or decrease in the number of applications received or paid.



Note: The significant rise in hardship reliefs in the last quarter was due to a significant increase in the hardship relief applications received, granted and redeemed by Colonial First State Mortgage Income Fund. Colonial redeemed \$47m in the last quarter. The Scheme is in the process of liquidating its assets and will be wound up in due course.

Parliamentary Joint Committee on Corporations and Financial Services

ASIC 24th November 2010

PJC - QoN 5

Topic: Superannuation early access

Mr ANTHONY SMITH—Just while we are talking hardship provisions in that respect, can I take you to another area you administer, which is early access to superannuation funds in hardship cases. I know there is a limit to what you can provide and you get lots of requests, but I was hoping you could give us an update on that.

Mr D'Aloisio—Mr Smith, do you mean illegal early-access schemes?

Mr ANTHONY SMITH—No, I mean where people seek early access and apply—

CHAIRMAN—Where people apply for early access to their superannuation under the hardship provisions.

Mr ANTHONY SMITH—Yes.

Mr D'Aloisio—You would like statistics on what sort of—

CHAIRMAN—If you could just give us an update.

Mr D'Aloisio—Okay. Can I take that on notice as well? We cannot do that this evening.

Mr ANTHONY SMITH—Sure.

Answer:

ASIC does not have available any statistics on the number of requests made in relation to the early access of superannuation on hardship grounds or the amount of benefits paid to members as a result of successful hardship applications. APRA is responsible for administering the release of superannuation on compassionate grounds. Members apply directly to APRA for the release of benefits on compassionate grounds.

Parliamentary Joint Committee on Corporations and Financial Services

ASIC 24th November 2010

PJC - QoN 6

Topic: Westpoint

CHAIRMAN—Before we move off the topic of deterrents and some of the major actions I have a couple of quick questions. One is in terms of Opes Prime. You have in your annual report that you have recovered \$253 million in compensation for Opes Prime creditors and you have also brought criminal charges against directors. I am looking for an answer in terms of outcome. On page 22 it says that earlier this year ASIC also brought criminal charges against the directors of Opes Prime Stockbroking Ltd for breaching their duties as directors. Can you give me a very brief update on where that is at?

Mr D'Aloisio—In relation to the civil part of that we work with the liquidators for the mediation of the recovery of the \$253 million, as we said there. Charges have been laid against three of the Opes Prime directors, Laurie Emini, Julian Smith and Anthony Blumberg, and a committal hearing has now been scheduled for February 2011.

CHAIRMAN—And I have the same question on Westpoint in terms of prosecution.

Mr D'Aloisio—With Westpoint we have taken banning actions in relation to a number of advisors and in relation to proceedings. You will have to bear with me; I am not sure what is public and what is not at the moment. Can I take that on notice?

Answer:

Part A – Criminal Action

- On 10 September 2010, Graeme Rundle, the former Chief Financial Controller of the Westpoint Group of companies, was committed for trial in the Downing Centre Local Court, Sydney, in relation to two criminal charges brought by ASIC. The trial is scheduled to commence on 9 May 2011 for 3 to 4 weeks in the District Court of NSW. It is alleged that in May 2004, Mr Rundle made false statements to a financial institution in support of an application for a \$71 million credit facility to fund a Westpoint building project known as the Scots Church Development on York Street in Sydney. Each offence carries a maximum penalty of five years' imprisonment.
- Former promoter of Westpoint products, Mr Neil Burnard, has been convicted by a jury in the District Court of New South Wales on 9 criminal charges in relation to the raising of investor funds. Mr Burnard was found guilty of obtaining financial advantage for various Westpoint mezzanine companies and was sentenced on 20 June 2008. He was fined \$50,000 and sentenced to twelve months imprisonment, fully suspended on condition that he be of good behaviour. On 10 December 2008 an appeal by the CDPP in relation to leniency of sentence as well as an appeal by Burnard against conviction was heard in The Supreme Court of NSW. On 10 February 2009, the New South Wales Court of Criminal Appeal upheld the conviction of Mr Burnard. The Court exercised its discretion and did not intervene in the sentence.

- There is a 1 criminal brief still under consideration by the CDPP. ASIC continues to assist the CDPP in its consideration of this brief.

Part B – Bannings

Actions against financial advisers

- 23 licensed financial advisers, 4 unlicensed advisers and one corporate entity have been banned for periods between 3 years and life.
- One financial adviser has also been disqualified as a company director following action taken by ASIC arising from his conduct in relation to Westpoint products.
- One adviser, Annamieke De Boer, pleaded guilty to a criminal charge in relation to stealing, and was sentenced to 12 months imprisonment, suspended for 2 years.

ASIC has taken criminal action against a number of unlicensed advisers for providing financial advice:

On 17 April 2009, Keith Rowntree was convicted and sentenced in relation to providing financial advice without holding an Australian financial services licence.

- On 22 March 2010, Mr Barry William Silver was convicted and sentenced to six months imprisonment, with an order that he be released after entering a \$1,000 good behaviour bond for three years after pleading guilty to an ASIC charge of aiding and abetting his company Lancer Group Pty Ltd in carrying on a financial services business without holding an Australian financial services (AFS) licence. As a result of his conviction, Mr Silver is also automatically disqualified from managing corporations for five years.
- On 9 November 2009 Mr Russell Barry Collins-McBride, was sentenced to six months imprisonment, fully suspended upon entering into a recognisance to be of good behaviour for three years on a charge brought by ASIC. Mr Collins-McBride pleaded guilty to aiding, abetting, counselling and procuring Power Financial Planning Pty Ltd (Power FP) to carry on a financial services business without an Australian financial services licence.
- On 24 November 2010, Mr Stephen McArdle, a former director of Power Financial Planning Pty Ltd, was sentenced to 12 months imprisonment after being found guilty of aiding and abetting the company to provide financial services without an Australian financial services licence. This is the maximum penalty that could have been imposed by the Magistrate. Mr McArdle will be released after serving a minimum of 6 months jail. Upon release, Mr McArdle will be subject to a good behaviour bond.
- Power Financial Planning, one of a number of companies operating under the Power Loan banner, pleaded guilty in the Magistrates' Court of South Australia on 20 August 2010 to carrying on a financial services business without an AFS licence. The company was also convicted today and fined the maximum penalty of \$33,000. The Court also ordered that \$10.3 million be paid by Power Financial Planning and Mr McArdle as compensation to investor

ENDS

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PJC - QoN 7

Topic: Frozen funds

Mr FLETCHER—I am just looking at a letter that a constituent of mine received from Colonial First State in relation to their mortgage fund which essentially explains that the fund is frozen but says ‘while markets have improved, the fundamental issues that led to suspension of these funds remain’. In other words, there is nothing in this communication that gives any sense that the position is expected to improve at some point. Is it ASIC’s view that the position will improve at some point?

Mr Medcraft—I think the Colonial First State fund has actually announced that the fund is going to be wound up over a period of time, if that is the one you are referring to. In fact, what they are going to do is they do not intend to get it to the point of starting new money; they are essentially going to wind it down over a number of years and return the money back to the investors.

Mr FLETCHER—Has that been communicated to investors, do you know?

Mr Medcraft—I believe it has, but I can take that on notice and check. It was publicly announced to the market and I believe it was communicated to investors exactly what the strategy was in relation to it. We could take that on notice and come back to you.

Mr FLETCHER—I would appreciate that.

Answer:

Colonial has advised ASIC that it originally issued letters to its investors on 15 February 2010, and publically announced on 16 February 2010 by way of press release, that Colonial was proposing to wind up the Mortgage Income Fund.

ENDS

Parliamentary Joint Committee on Corporations and Financial Services

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PJC - QoN 8

Topic: Credit

Senator BOYCE—How many complaints have you had to date, Mr D'Aloisio?

Mr D'Aloisio—I do not think I have got the statistics.

Senator BOYCE—If you could just give us that on notice—

Mr D'Aloisio—Between 1 July and 31 October, we received 747 credit—

Senator BOYCE—Is there any way we can quantify those; what characterised them?

Mr D'Aloisio—Not in the material I have, but we could see if we can break it up.

Senator BOYCE—Thank you. One other question: have you seen any trends yet emerging of people trying to work out how to get round providing credit but not registering or—

Mr D'Aloisio—No, I have not got any examples but, as I said, part of the work that the team

has identified in the next 12 months is to focus on the areas at the margins to make sure that, where they should be licensed, they are licensed or registered. Again, I can ask the question of the team and give you further information.

Answer:

Question 1:

How many credit complaints have ASIC received to date (since taking over as national credit regulator on 1 July 2010)?

Answer:

In the five months from July – November 2010 ASIC received 999 credit complaints, averaging 200 matters per month.

Question 2:

Is there any way we can quantify those; what characterised them?

Answer:

Complaints were received from both consumers and industry. Although complaints were received in relation to wide ranging issues, reports of unlicensed credit activity (approximately 13% of complaints) and complaints about the debt collection and debt recovery process (approximately 29% of complaints) were frequently reported concerns. With rising interest rates and exit fees highly

publicised in the media, we also received complaints about fees, interest rates and associated perceived unfair/unjust credit contract terms (approximately 12% of complaints).

Question 3:

Have you seen any trends yet emerging of people trying to work out how to get round providing credit but not registering?

Answer:

ASIC has not identified any avoidance trends that have arisen in response to the new regulatory scheme. However, we are aware of practices used by lenders in order to avoid application of the previous state and territory credit laws including sham pawnbroking transactions and sham sales of goods on a purchase back basis. The new National Consumer Credit Code includes a number of enhancements over the Uniform Consumer Credit Code, formerly administered by the states and territories. The enhancements close some of the avenues previously used for avoidance and include tightening of the provisions governing the use of business purpose declarations, broadened definitions of payments that constitute interest and charges, the inclusion of real property sold under terms contracts and an extension of the meaning of consumer credit to include credit for residential investment purposes.

ASIC has a surveillance program to identify entities who have failed to register or obtain a license under the National Consumer Credit Protection Act 2009. ASIC's approach is generally to press entities to regularise their position, and obtain a license. Whilst it has generally not been necessary we will take enforcement action in appropriate circumstances. One area we have identified entities that may be operating unregistered and unlicensed is in the provision of consumer leases, typically for white goods and electrical appliances. There appears to have been some misapprehension amongst some providers of consumer leases as to whether their activities were regulated under the previous state laws which has flowed on in relation to the new national laws. We are in the process of identifying entities in this position and ensuring they rectify the situation.