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JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

Reference: Oversight of the Australian Securities and Investments Commission

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JOINT STATUTORY COMMITTEE

ON CORPORATIONS AND FINANCIAL SERVICES

Wednesday, 17 June 2009

Members: Mr Ripoll *(Chair)*, Senator Mason *(Deputy Chair)*, Senators Boyce, Farrell, Marshall and Williams and Ms Grierson, Ms Owens, Mr Pearce and Mr Robert

Members in attendance: Senators Boyce, Farrell, Marshall, Mason and Williams and Ms Grierson, Mr Pearce and Mr Ripoll

Terms of reference for the inquiry:

To inquire into and report on:

Oversight of the Australian Securities and Investments Commission

WITNESSES

COOPER, Mr Jeremy, Deputy Chairman, Australian Securities and Investments Commission 1

D'ALOISIO, Mr Tony, Chairman, Australian Securities and Investments Commission 1

MEDCRAFT, Mr Greg, Commissioner, Australian Securities and Investments Commission 1

Committee met at 5.33 pm

COOPER, Mr Jeremy, Deputy Chairman, Australian Securities and Investments Commission

D'ALOISIO, Mr Tony, Chairman, Australian Securities and Investments Commission

MEDCRAFT, Mr Greg, Commissioner, Australian Securities and Investments Commission

CHAIR (Mr Ripoll)—I declare open this public hearing of the Parliamentary Joint Committee on Corporations and Financial Services. Today the committee is conducting a hearing into the Australian Securities and Investments Commission. Under section 243 of the Australian Securities and Investments Commission Act 2001, the corporations and financial services committee is required to oversee the functioning of ASIC. This hearing is part of that oversight.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. This gives special rights and immunities to people who appear before the committee. People must be able to give evidence without prejudice to themselves. Any act that disadvantages a witness as a result of the evidence given to a committee may be treated by the parliament as contempt. It is also contempt to give false or misleading evidence to a committee. Parliament has resolved that an officer of the Commonwealth shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy; it does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. If a witness objects to answering a question, the witness shall state the grounds upon which the objection is taken, and the committee will determine whether it will insist on an answer, having regard to the grounds claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. A request to give a particular answer in camera may also be made at any other time.

The corporations and financial services committee is currently conducting two inquiries, one into financial products and services, including the collapse of Storm Financial and others, and one into agribusiness managed investment schemes, including the recent collapses of Timbercorp, Great Southern and others. Public hearings for these inquiries will commence in the coming weeks, and the committee will have an opportunity to question ASIC on these collapses in detail at those forthcoming hearings. I invite you to make an opening statement.

Mr D'Aloisio—Thank you, Chairman. I will now formally introduce Greg as our new commissioner. He was appointed as commissioner to ASIC in December 2008. His responsibilities are around the investment banking, funds management and exchange market operators. Of course, prior to joining ASIC Greg was Chief Executive Officer and Executive Director of the Australian Securitisation Forum. He brings a great deal of experience to ASIC, having spent nearly 30 years in investment banking, including a decade on Wall Street. He left at the right time!

I would also like to take the opportunity to thank Jeremy Cooper, our Deputy Chairman. Jeremy finishes his term in July. He has been appointed to chair the superannuation review, now known as the Cooper review, and will be leaving ASIC. Jeremy has over the past five years made an outstanding contribution to ASIC over a really wide range of areas, most recently in the areas of retail investors. He has given really dedicated public service to Australia, and it is pleasing to see that Jeremy is continuing with this public service in a new and important role in the superannuation field.

CHAIR—If I may, at this point I welcome Mr Medcraft and congratulate him on his appointment to ASIC. I know he will make a great contribution, so welcome.

Mr Medcraft—Thanks, Chairman.

CHAIR—Mr Cooper, congratulations—or perhaps otherwise, depending on your view! Thank you for the service you have given to ASIC and the work that you have done. We wish you well in your future endeavours, so thank you.

Mr Cooper—Thank you.

Mr D'Aloisio—We last met in February, and I would like to briefly mention four things. First, since we met, the stock market has, I think, fared better. It reached its lowest point on 6 March, but by 27 May it had recovered some 21 per cent. That, along with the more positive international developments for financial markets, led us to lift the short-selling ban, and the market has reopened. Since it reopened, it has been working well in relation to covered short selling, particularly the gross disclosure. But, as we have said, if we believe that there are systemic issues or other issues that would concern us, we will not hesitate to reinstate the ban under the powers that we have and that have been confirmed in the more recent legislation.

Second, while the stock market has shown some positive signs, the destruction of shareholder and investor value has continued. To elaborate a bit on that, to date major company insolvencies such as those of ABC, Allco, Babcock and Brown, Great Southern, Octaviar and Timbercorp have resulted in a loss of value of around $23 billion, calculated from the peak market capitalisation of each of those entities. A further 11 entities have lost more than 90 per cent of their market capitalisation; the aggregate loss there is another $39 billion. They include the listed funds in Allco and Babcock and Brown. Twenty-three debenture issues have become insolvent, with a total of $3.1 billion of debentures on issue, including $1.8 billion in the unlisted, unrated debenture area, which is an area of particular concern for retail investors. So the total of those is around $73 billion. As the downturn in the real economy continues, the figure may well increase. Clearly the real estate sector remains a concern, particularly in relation to REITs and unlisted mortgage and property trusts. To put these collapses into perspective, losses from corporate collapses in the wake of the 1987 stock market crash were around $20 billion, which equalled about 5.4 per cent of the 1989 GDP. The figure of $73 billion which I have just mentioned is about 6.2 per cent of the 2008 GDP. Another way of looking at that loss in perspective is that, from November 2007 to April 2009, the Australian stock market itself lost some $617 billion in market value, which is equivalent to 52.2 per cent of GDP. These numbers, of course, do not tell the whole story of the pain that goes with the destruction of wealth, particularly for retail investors.

My third point is to provide an update in relation to Storm Financial. As I advised Senate estimates on 4 June, our investigations in relation to the collapse of Storm Financial are continuing. These investigations extend to possible action to recover compensation under section 50 of the ASIC Act against all involved, including financiers. We have set an internal objective for us to hopefully be able to make decisions on those matters by the end of August, but it is very much an internal objective. At Senate estimates on 4 June I also covered the actions of one of the banks, the CBA, in seeking certain releases from investors. The issue is one of fairness—whether the investors could make an informed decision at this point. We have been in discussions with the CBA. I am pleased to say that this afternoon the CBA has announced a moratorium on the repayment obligations of Storm customers, at least to 31 August. ASIC welcomes today's announcement by the CBA concerning that moratorium. We believe that it will remove the immediate pressure on Storm investors to accept the settlement deeds, which have been the source of recent publicity and were the subject of the discussion at Senate estimates. We also welcome the Commonwealth Bank's announcement that any borrowers who have previously entered into deeds of settlement with the Commonwealth Bank will not be prejudiced by any subsequent developments. That is my update on Storm.

My fourth point—and indeed I said I had four points but I actually have five—is in the area of corporate governance. Since we last met, the Supreme Court in New South Wales has handed down the James Hardy decision which focuses on the obligations of directors of public companies to keep the market properly informed. The decision is the first part of the process. The matter returns to the court in July for assessment of penalties and other submissions that defendants may wish to make.

My fifth and final point relates to the issues arising in relation to managed investment schemes, most notably the agricultural sector of managed investment schemes. This, as you know, is a more recent development, and I would like to spend just a little bit of time on this, knowing that the committee is looking at a separate inquiry, but there are some issues I feel I should cover at this point. As you know, managed investment scheme, or MIS, is really the generic term that is used to describe a variety of structures for the creation and operation of collective investment schemes or projects. It basically covers everything that involves an investor acquiring something other than a security—that is, a share or a debenture—or an interest in a prudentially regulated entity such as a term deposit. The sector includes things like managed funds; public unit trusts; ASX listed trusts such as Reed; common funds; limited partnerships; investment pools and clubs; cash management trusts; property trusts; property syndicates; mortgage trusts; service data schemes; agricultural schemes, including forestry, horticulture, viticulture; and alternative investments like film schemes and horseracing syndicates.

There are something in the order of 5,200 registered MISs in Australia operated by 674 licensed responsible entities. Statistics on total funds under management in these different types of MISs are not entirely reliable, but we estimate that it is likely to be around $350 billion. Registered managed investment schemes may be listed or unlisted. There are some 110 listed schemes, mostly investments in property and infrastructure assets. A key feature of an MIS or regime, with ASIC as a regulator, is that there is a licensing arrangement. The operator of a registered managed investment scheme—called a responsible entity, often referred to as an RE—needs to hold an AFS licence. ASIC must grant a licence to anyone who applies if ASIC has no

reason to believe that the application will not comply with the obligations of a licensee, or that its responsible officers are not of good character.

There is registration of the scheme. MISs offered to retail investors need to be registered with ASIC. The registration process does not involve ASIC approving or vetting these schemes. ASIC must register the scheme unless it appears that it does not have an appropriately licensed responsible entity or that its constitution or compliance plan do not comply with the law. There is what is known as monitoring disclosure. Interests in a registered managed investment scheme must be offered through a complying product disclosure statement. Unless the scheme is listed, there is no requirement for that PDS to be lodged with ASIC. ASIC does, on a risk assessment basis, look at PDSs and may from time to time require corrective disclosure. It can issue stop orders. ASIC also monitors conduct around the responsible entity and its officers are required by law to operate the scheme in the best interests of members and need to comply with the statutory duties, such as a duty of care. There are also restrictions on related party transactions.

The law has, however, a high level of self-regulation in it. It requires the responsible entity to come up with its own compliance plan for the scheme and to follow it. The adequacy of the plan and its compliance with it is reviewed by the board or, if the majority of the directors are not external, by a compliance committee. It is also subject to a separate audit. ASIC supervises the conduct of the responsible entity and its officers to check whether they are complying with their legal obligations. ASIC's obligations also extend to monitoring the schemes when they go into voluntary administration or liquidation. So, in that regard, ASIC's role is very much to assess events and ensure that, acting within its powers, the interests of members are being looked at. ASIC also has an active program of prosecuting illegal schemes—that is, schemes that have not complied with the registration requirements. By way of example, in 2007-08 ASIC acted against 56 managed investment schemes for illegally raising funds involving some 1,580 investors.

In summary, the MIS regulatory scheme really reflects the philosophy behind the Wallis report of allowing market efficiency to operate with oversight—that is, allowing the schemes to operate with a minimum of oversight and with a focus on disclosure and other market conduct, such as making sure there are not misleading and deceptive statements. That is the general position of MISs—how they operate and how they are licensed in our market. They are a significant part of the market, as the dollar figure indicated.

To update you on some specific managed investment schemes, I would like to talk about Timbercorp, Great Southern and City Pacific. ASIC's work in these areas is headed by Commissioner Medcraft and involves a number of ASIC stakeholder teams, including investment managers, headed by Pamela Hanrahan. It also involves other senior leaders in ASIC.

Going to Timbercorp and Great Southern, both Timbercorp's and Great Southern's core business was to structure and operate tax-deferred forestry and horticultural schemes. Timbercorp had approximately 18,400 investors, having raised around $1.095 billion. Great Southern had approximately 43,000 investors and raised about $1.8 billion. Both these scheme operators are now in voluntary administration. The effect of these collapses for investors is dependent upon the position of the scheme in which they have invested. Each has a number of schemes. In relation to Timbercorp, for example, the administrators have provided an initial view and have applied to the court to seek some direction as to whether they should wind up 21 horticultural schemes that they run. ASIC is involved in these proceedings and will seek to

ensure that the administrators are acting in the best interests of members. In relation to Great Southern, at this stage neither the administrators nor the receivers have had sufficient time to assess the position of the schemes. ASIC is looking at a range of regulatory issues around these collapses—issues such as the misuse of fees, whether there has been adequate disclosure, and governance.

In relation to City Pacific, that is the responsible entity for a mortgage fund previously valued at over $800 million with about 11,000 retail investors. It suspended its redemptions in March 2008 and ceased paying distributions in July 2008. Its portfolio of loans is seriously impaired. ASIC has responded to a breach by City Pacific of a condition to maintain a net tangible asset position of at least $5 million. On 11 June ASIC executed a deed of subordination between City Pacific and the CBA. Under the deed the CBA has agreed to subordinate $39 million of CPL's existing $100 million debt finance and that enabled it to come back into compliance with its licence conditions. ASIC has also taken steps to ensure that members have adequate information to make an informed decision at a members meeting which is to be held on 25 June to consider a resolution to replace City Pacific as the responsible entity in the fund.

I wanted to give you those two or three examples. I described the overall scheme and then described two or three examples of what has happened and what ASIC is doing to assist investors and creditors. A question has been asked, and a number of you may have received correspondence which says, 'Why doesn't ASIC replace the regulated entities?' As part of monitoring these schemes the difficult question for ASIC is whether to intervene and replace an RE or whether to allow it to continue. ASIC's approach is to assess each case on its merits. It is alive to the issue of potential conflicts of interest that an RE may be involved in, between the interests of creditors and the interests of members and its obligations to have the interests of members as the priority. In relation to that, ASIC today supported the administrators in the Supreme Court of Victoria in seeking direction to wind up the schemes that I mentioned earlier.

Thank you for the opportunity to make the opening statement. What I wanted to do, particularly with my last point, was to outline the MISs and how they are working, give you two or three examples of how we are working in relation to those schemes and talk about how the law works in this area. We recognise that we will have an opportunity to make fuller submissions to the committee in due course. That completes my opening statement.

CHAIR—Thank you. What I want to do tonight is run through a number of issues, specifically in terms of ASIC's structure and resources—getting an update about your staffing and structure, and also some budgetary issues. I want to look at the fallout from the global financial crisis, particularly in relation to regulation of short selling. I also want to look at hardship arrangements, specifically in terms of redemptions from frozen funds, and also some issues around credit rating agencies. In other areas, I want to look at market integrity matters, superannuation, financial literacy and professional indemnity insurance. I want to ask some questions also about BrisConnect, City Pacific, Kleenmaid, Timbercorp and Great Southern, and any other matters that might arise out our discussions here tonight.

As is always the case, there a number of senators and members who have other responsibilities as well as this particular hearing, so I might give the opportunity for Mr Pearce to ask some questions first and then Senator Mason, before we get into the substantive issues that I want to raise tonight.

Ms GRIERSON—Chair, is that statement tabled? Is it available to us?

CHAIR—Is it a written statement?

Mr D'Aloisio—It was off my notes.

Ms GRIERSON—That is all right. It is on the record.

CHAIR—Obviously it is on the *Hansard* record, but if you have a copy of it for us that would be useful.

Mr D'Aloisio—I am sorry, no. It is just notes.

CHAIR—Okay. That is fine. I am sure we will get back to some of those issues in our questioning.

Mr PEARCE—Mr D'Aloisio, I would like to start with the area of short selling. You will recall that the government introduced a bill in December of last year. That bill was largely a skeleton bill and the government stated at the time that implementation would depend on a set of regulations. It is my understanding that those regulations have not been tabled in the parliament at this point. Is that your understanding?

Mr D'Aloisio—That is my understanding.

Mr PEARCE—That bill was last December and here we are six months later and we still do not have the regulations. As you well know the market is very concerned about that from a certainty point of view. Have you been involved in the development of the regulations? Are you in consultation with the government on those regulations?

Mr D'Aloisio—As I said at Senate estimates, we have been asked—and, as you would be aware, it is a policy matter for government and Treasury has the running on the regulations and my understanding is that they are well advanced.

Mr PEARCE—But are you being consulted on them?

Mr D'Aloisio—We have been consulted and we have provided our views to the minister and to Treasury on those regulations—on the disclosure regimes open to the government, the options and what our view would be on the preferred options.

Mr PEARCE—Are you in a position at all to share with the committee the reason why we have not got the regulations some six months after.

Mr D'Aloisio—That is a matter you need to refer to the new minister, Mr Bowen.

Mr PEARCE—In your view, given that you are supervising the market, what impacts do you think that that delay in the regulations has had on the market.

Mr D'Aloisio—Our position as ASIC has been that we felt, when we put the short selling ban on, that we had the power and we were pleased that our powers were confirmed in the legislation that was passed at the end of last year. When we said we would reopen the market we did a variation under our powers to the Corporations Act to provide for gross disclosure on a daily basis, reported the next morning. We certainly saw that as necessary in reopening the market. We put that in place and reopened the non-financial stocks. The experience we had with the non-financial stocks with that form of reporting gave us confidence that we could also, at the appropriate time, reopen the financial stocks and continue with that form of disclosure. So, in a sense, while we would like to see, as you would, in terms of the certainty around the regulations that the government may have involved, we think the market has operated quite well with the gross disclosure arrangements that are currently in place.

Mr PEARCE—But I have had a lot of feedback from the market that there has been uncertainty because of the lack of regulations. Is that your observation?

Mr D'Aloisio—That is not my observation. That is really a matter for government.

Mr PEARCE—At the end of May you finally lifted the ban on financial stocks. What has been your observation since the lifting of the ban?

Mr D'Aloisio—If you take as an indicator the short selling that is reported and you look at the most shorted stocks by volume and by value each day, as we do, you are not seeing any pattern that short selling is causing issues for the market. Our assessment is that, when you look at the price movements of stocks that are shorted, some are going up and some are going down, so it gives us quite a degree of confidence that the market is operating with integrity and that it is working.

Mr PEARCE—Moving to the area of frozen funds. As you know the government introduced the bank guarantee. That caused some dislocation in the market in terms of, particularly, property trusts and mortgage trusts. As you know many of them froze their funds—their redemptions.

Mr D'Aloisio—That is correct.

Mr PEARCE—That continues to be the case. Many of those funds have been frozen and I am sure that all members of parliament have received correspondence from Australians who have been unable to access their funds as a result of the introduction of the government guarantee. What is your current assessment? I understand that a couple of hundred thousand Australians have been impacted by this. What is your current assessment about the freezing of redemptions and what impacts are you seeing?

Mr D'Aloisio—The actual freezing of the funds, as you know, was across a significant number, and clearly what then happens is that as and when money is available in the fund some redemptions can occur and they will pro rata them across all holders. That is going on. I have not got numbers on what the rate of redemptions are but I would guess that it would still be quite low in terms of looking at where it is at, but we can get those numbers for the committee.

On the second issue, pretty soon after the freezing of the funds took place we did provide relief for hardship—in other words, we made provision to enable the trustees to be able to deal

with hardship cases, subject to certain limits, so that people could access some of their funds. They did not have to do that on a pro rata basis; they could be selective. We understand there has been quite widespread use of that and it is working well. Again, we can get statistics for the committee on what the total value is of funds still frozen and what the hardship redemptions have been. I do not have them with me tonight but we can get them.

Senator BOYCE—When you give us those figures on the hardship redemptions, could you also tell us how many people took out right up to the cap, who redeemed as much as they were allowed to redeem, therefore suggesting that perhaps they would have redeemed more if they could have?

Mr D'Aloisio—Yes, we can do that.

Mr PEARCE—We have still got all these funds that are frozen. My question is: what do you think the short-term outlook is? Do you think they are going to continue to be frozen as they are at the moment or do you think it is going to improve?

Mr D'Aloisio—It is a market driven issue, isn't it. As markets recover—

Mr PEARCE—With respect, it is not. It is driven by an intervention. It was because of the introduction of the bank guarantee that the dislocation happened. That is why I think it is a reasonable question to ask you what your outlook for it is.

Mr D'Aloisio—I need to go back. First off, cause and effect is interesting. Yes, there was a bank guarantee and, yes, there was a freezing of redemptions, but freezing was going on before the guarantee as well so you need to look at market movement, at what was happening in the market. In terms of going forward, clearly you are looking at recovery, you are looking at the sorts of investments, mortgage trusts, property trusts. That is going to determine in part when the redemptions can start again.

The issue you are getting to is the new inflow of funds and how long it will take for new funds to flow into these things. That is a very difficult question for me to answer. That is really more of a Treasury question. Treasury will no doubt be looking at that and assessing how the confidence will rebuild in retail investors to come back into these funds. Our view would be that it is probably going to be a slow process, that investors have got to get confident to be putting their money back into the stock market and back into these forms of investment.

Mr PEARCE—Okay. You will of course know that the previous government established the Financial Literacy Foundation. That foundation was responsible for rolling out education programs across Australia and was doing a lot of other good work. Unfortunately, when this government came to office day it disbanded the literacy foundation and it has been merged into ASIC, as a unit within ASIC. Can you give us an overall summary of what that unit in ASIC now considers to be its main objectives and its charter and, in a nutshell, what it is actually doing?

Mr D'Aloisio—We are very pleased to have got the Financial Literacy Foundation, even though we had to absorb it in our funding, because it actually complements extremely well the consumer education role that we have been increasingly playing more recently, certainly in the last couple of years. We have looked at that fund. The Financial Literacy Advisory Board, which

Paul Clitheroe handles, is in place and they are advising us on projects. We are actively running project in schools with teachers and so on, which was a centrepiece of the work that was being done prior to it coming to ASIC, so we have continued that program. As part of the forward program, we have been looking at how we can build on it and continue to push it. From an ASIC perspective, we see it as a very important responsibility, and one that we are devoting resources to and will continue to do so. For example, in addition to what we are doing in the schools and with teachers, we are looking at the websites. ASIC has got a FIDO website and there is a money website that the Financial Literacy Foundation had. We are looking at how we merge those and how we expand the use of the electronic way of providing investor education.

It has brought home to us at ASIC that in actual fact we probably tended, in prior times, to look at consumer education and financial illiteracy. Retail investor education was probably even more the responsibility of ASX for example. What we have seen is a tremendous opportunity to bring those three streams together and really look very carefully at how we can, starting from schools and going right through, improve financial literacy. The sorts of programs and surveys we are doing about retail investors—why do they invest in certain products? what do they look at? do they check things?—are giving us a tremendous source of information to build the forward program. So we are quite excited about having it. We have not buried it, for example, in some other priority. It has remained a significant part of what we need to do going forward.

Senator MASON—I want to ask a couple of questions about the fascinating concept of rumourtrage. I have never come across this before and I am not an expert in corporate law at all. What is rumourtrage?

Mr D'Aloisio—Simply speaking, the term was coined—when I say coined, I mean it was used; I cannot recall when it was used for the first time—in relation to where you have aggressive short selling. Let us say, for example, you have a market that has lost confidence—there are a lot of issues going on, the stock market has lost confidence and prices are falling. Short sellers come in and say, 'Well, the market is going to fall so we will continue to shorten stocks and we will make money on shorting.' If that shorting is coupled with rumours—for example, false rumours that a particular entity might not be able to repay its debt—the downward pressure on its price is much greater. So rumourtrage really emerged as the false rumours that were allegedly associated with short selling—going back to around August, September, October of 2008. So that is where it emerged. The shorter story is that, then, rather than people saying, 'Well, what is ASIC doing about false rumours?', they started saying 'rumourtrage' and 'What is happening with rumourtrage?'

Senator MASON—I understand. It is a nebulous concept, and, if people were prosecuted for false rumours in politics, we would never get out of the place.

Senator WILLIAMS—We would all be in jail.

Senator MASON—We would all be in jail—indeed.

Mr D'Aloisio—There is a law against false rumours in the stock market.

Senator MASON—You set up Project Mint, I understand. That was the project you set up to address the issue of rumourtrage. Is that right?

Mr D'Aloisio—Yes.

Senator MASON—How long ago was that?

Mr D'Aloisio—That would have been back in September, October. In fact, it might even have been earlier. I can get that information exactly. But it goes back quite a way.

Senator MASON—I have the press releases here.

Mr D'Aloisio—Thank you.

Senator MASON—March of last year, ASIC launched it. So it was about 15 months ago.

Mr D'Aloisio—Just to refresh this: I said the main issues around rumourtrage were in September, October. We did have some issues, you now remind me, around March, April, but at that stage we did not ban short selling—

Senator MASON—Sure.

Mr D'Aloisio—That came later.

Senator MASON—But you launched Project Mint in March of 2008. Is that right?

Mr D'Aloisio—Yes.

Senator MASON—How many people are working on that?

Mr D'Aloisio—It varies. The hard work on Project Mint really moved when we got into that September, October period, when Lehman Brothers fell over—and short selling—and then we put the ban on short selling. It had a number of elements. It had the element of investigation of the false rumours themselves. The rumourtrage project was run by Commissioner Belinda Gibson. In that phase of its operation, it was around the issuing of notices, talking to brokers, looking at false rumours—for example, we would have looked at thousands and thousands of emails and issued notices and—

Senator MASON—How many emails?

Mr D'Aloisio—Thousands.

Senator MASON—So it is a big job.

Mr D'Aloisio—Probably, at that time, there might have been 10 or 15 people involved in various parts. There was a second phase to it. The second phase to rumourtrage was proactive—in addition to investigating, we also wanted to look at changing market behaviour, making the brokers and the dealers much more conscious about these issues and protecting the market. So it had those elements. That would have been another team at ASIC that would have progressed that. Now, in the latter stages a lot of those—

Senator MASON—So you have a lot of people working on this?

Mr D'Aloisio—Well, now we are moving into this phase a lot of those investigations have finished and they might have moved to other areas as well.

Senator MASON—So you have 15 people at least working on it under Commissioner Gibson.

Mr D'Aloisio—I can get more specific data for you; I am just going on memory here. But certainly it was a significant project because, as you will recall, the market was in a tailspin and there were real issues of concern about the integrity of the markets.

Senator MASON—Okay. It is a significant project with significant resources. How many successful prosecutions have you had emanating from Project Mint?

Mr D'Aloisio—In terms of that I think we have had one banning and one insider trading.

Senator MASON—What do you mean by banning?

Mr D'Aloisio—The banning of a broker, and also I think a—

Senator MASON—Would you ban him from ever practising again?

Mr D'Aloisio—I think it was five years.

Senator MASON—So he cannot work as a broker for five years. And the other one was?

Mr D'Aloisio—An insider trading prosecution which I think led to a 14 months jail sentence. I need to say that, as I said earlier, there are two aspects to this. There is the investigation leading to prosecution and so on. A lot of that is still going on. We are getting towards the end of the process but we are quite a way away from that. The other aspect of it is the actual improving the market behaviour and conduct that I talked about earlier.

Senator MASON—So the insider trading was prosecuted as a direct result of this Project Mint, is that right? I just want to make sure.

Mr D'Aloisio—I have to actually check. Yes, I think it was. It was certainly the same team.

Senator MASON—So it had considerable resources and we have had someone who has been banned for five years from practising as a stockbroker and someone who has been jailed. We are talking about significant resources. Are you happy with that outcome? We are talking about huge resources.

Mr D'Aloisio—I am extremely happy with the outcome because what you need to look at is two additional things: first, there is work in progress and there is more work to occur; secondly, the actual message to the market on insider trading and going for a jail sentence is an extremely important message for market integrity; and thirdly—

Senator MASON—Hold on. What evidence do you have that that has made any difference?

Mr D'Aloisio—I think you rely on experience.

Senator MASON—Have you stopped rumours in the market? I doubt it.

Mr D'Aloisio—There will always be rumours in the market

Senator MASON—That is what I was about to say.

Mr D'Aloisio—The question is whether there are false rumours and how you deal with them, and the market conduct side—that is, the actual improvement of market conduct—is, again, important and I think—

Senator MASON—But how do you know that has happened?

Mr D'Aloisio—I would put it this way—

Senator MASON—Give me some evidence.

Mr D'Aloisio—In looking at the way the market is operating at the moment, we are not getting anywhere near the level of complaints about false rumours as we did before the project or during the project.

Senator MASON—All right, but is that a function of a slightly rising market now or a market last year when the bottom was falling out of it? That is a bit clever. I am not sure that is an appropriate answer.

Mr D'Aloisio—I do not think so.

Senator MASON—There are totally different market conditions, aren't there? And they are changing all the time. Is that a better reflection of what is happening rather than Project Mint making a huge difference?

Mr D'Aloisio—I think Project Mint has made a difference and—

Senator MASON—How do you monitor—

Senator MARSHALL—Just before you go on, Senator Mason, there was a third factor you were going to tell us about before you were cut off, Mr D'Aloisio.

Mr D'Aloisio—Yes, I'm sorry. What the Senator has been asking is quite right because as commissioners we ask the question all the time. What is the outcome and what is the effect? Is market integrity improving? And it is difficult to point to a causal connection between a prosecution or an investigation and improved behaviour. But you do rely on experience over time. You do know that if you are active in enforcement, particularly with insider trading, you will actually improve market behaviour. You do know that if you are working with brokers and

they know you are on the beat and that you are monitoring e-mail flows and so on that that will impact and improve behaviour and add to the integrity of the markets.

Like you, we do not rest on our laurels. In our forward program and the resources we have put into insider trading, market manipulation, continuous disclosure—I have said this before to this committee and I have this said to Senate estimates—in the last two years in the restructure of ASIC, we have increased resources in that area significantly and the value and the outcomes that we are referring to will become even more evident in future meetings, as time goes by and we complete our investigations.

Senator MASON—You mentioned the word 'enforcement' before and monitoring. Do you wait for a complaint, or are you proactive? How do you do it?

Mr D'Aloisio—There are a number of ways. We have a complaints system; it could come in through complaints. The ASX is monitoring the market on a daily basis and would refer matters to us. We ourselves are monitoring the market and we would pick up things ourselves. There is a range of ways that we would pick up behaviour that we think needs to be looked at, whether it is in continuous disclosure, market manipulation or potential movements in prices that we think should be examined, inquiries made into or investigated.

Senator MASON—How many prosecutions have ever been successful under 1041E of the Corporations Act? How many have ever been successful under that?

Mr D'Aloisio—Could you remind me of what 1041E is?

Senator MASON—Yes, it is off your press release.

Mr D'Aloisio—That must be the false—

Senator MASON—False or misleading rumours, which is what we are talking about I think.

Mr D'Aloisio—I do not think there has been a prosecution under that section.

Senator MASON—I thought that might be the answer.

Mr D'Aloisio—But that is false statements. There are also insider trading, market manipulation and continuous disclosure issues that can arise as well. We can provide statistics to the committee on our track record on those matters.

Senator MASON—But you have not had a successful prosecution under there, that is your evidence. How do you decide the difference between a genuine comment and a rumour? A journalist, a commentator, a stockbroker or a financial adviser gives advice to certain people about taking their money out of a certain company. How do you decide what is false and misleading? As a prosecuting agency, how do you decide on something that strikes me as being very difficult?

Mr D'Aloisio—It is a question of evidence and fact.

Senator MASON—I know that.

Mr D'Aloisio—Our position is no different to what a DPP or others would need to do. Clearly you would see the movements that have occurred in share prices, for example. If the rumour is one of passing on confidential information, you would look at short selling. If the false rumour has led to substantial short selling, you would look at that. There are different techniques that our investigators use to form a view on, first, whether the rumour was false and, second, whether it was of a nature that may have affected the market or led to insider trading or market manipulation. It is no different to any investigation that you would make of a criminal or civil penalty offence. You start with the source of the information and you work out how it was made, by whom et cetera. Yes, it is difficult and it takes time and so on, but it is an important underpinning to the integrity of the market that we do that. As I said earlier, the fact that you are doing it, you are in the market seen to be doing it, has value in addition to successful prosecutions. I am not being defensive here; that is just a fact.

Senator MASON—No, it is hard to prove how much that is; it is extremely hard to quantify that. Let me give you an example. A director of Lehman Brothers gets up just before the crash and says, 'Our company is in fine fettle'. Is that a false rumour?

Mr D'Aloisio—I think that could be a misleading and deceptive statement.

Senator MASON—Yes. You see the problem here, don't you?

Mr D'Aloisio—Absolutely. Senator, you are saying it is a problem, but if you are inferring that ASIC cannot do anything about it, I disagree. The fact of the matter is that if there are false statements, misleading statements, if a company takes a particular course of action today and its share price is X and it rises and then tomorrow it announces a profit downgrade that it should have announced today, clearly you would look at that. The share movement would tell you that you need to look at that company as to whether it has complied with its continuous disclosure obligations. There are things that you look for in the way markets operate that give you a sense of whether you should investigate those matters further. Over a year we might look at 1,000 complaints or whatever but we may only end up acting on a few of those. We do not act on every single one. We also have the power to issue infringement notices where continuous disclosure obligations are breached and we have issued a number of those. We can act in those places.

Senator MASON—But you are happy that after 15 months of the project you have had one prosecution and someone who, in effect, has been disbarred as a stockbroker? That is a successful outcome for a commissioner and at least 15 staff, and it is a major project.

Mr D'Aloisio—The answer I have given, Senator—

Senator MASON—Is yes.

Mr D'Aloisio—no—is that I am happy with the progress we are making in terms of resources we have devoted to insider trading, market manipulation and continuous disclosure. In relation to rumourtrage and Project Mint, we are seeing improved behaviour in the market and there is further work to come.

Senator MASON—Mr D'Aloisio, how have you given this committee evidence that that project and rumourtrage—forget the other aspects, just rumourtrage—have changed market behaviour? Honestly, you have given no evidence of that at all.

Mr D'Aloisio—I could go back over it, Senator, but I think I have.

Senator MASON—I know you haven't.

Mr D'Aloisio—That is a matter for the committee.

CHAIR—Thank you very much, Senator Mason.

Senator BOYCE—I have one related question.

CHAIR—Before we get on to related questions, I have been more than indulgent in terms of breaking from where we are supposed to be. I would like to return the committee to where it should be. We have a lot of time; we have until 8.30 tonight to get through a whole range of issues. I am happy to sit here through to 8.30 tonight, longer if necessary, but hopefully not. So we will return to some more mundane issues and at least try to stick to the agenda we have before us so as to try to cover all of the areas that we are interested in. We will certainly come back to it.

Senator BOYCE—It is just one related question.

CHAIR—In 28 parts?

Senator BOYCE—In one part. In your view, is there any relationship between the level of rumourtrage and the reporting intervals for short selling, the time at which—

Mr D'Aloisio—You mean the disclosure requirements?

Senator BOYCE—Yes.

Mr D'Aloisio—The disclosure requirements that we have put in place are important so that if you are engaging in short selling, the market knows pretty quickly. I think that is helping with the integrity of the market. But I do not think there is a—

Senator BOYCE—So the quicker the reporting, the lower the rumourtrage—is that right?

Mr D'Aloisio—Yes.

CHAIR—What I propose to do is go through a number of issues to make sure that we get through the business, because there is a whole range of issues. There will be ample time in going through that to deal with all of those matters. At this point this might seem mundane, but I might go back to the starting point in just saying to Mr D'Aloisio that, since there have been a number of changes with ASIC recently—structural in terms of budget and with new commissioners being appointed—perhaps it would serve the committee well if he gave us some explanation as

to how that is progressing and also the particular areas of responsibility that each commissioner is now undertaking. Perhaps out of that we will get some discussion in those areas.

Mr D'Aloisio—When we last spoke, I talked about the strategic review being completed and how we have moved to the new structure. Just to remind the committee, in the new structure we have six commissioners. We then have 12 stakeholder teams and eight deterrence teams. Stakeholder teams are very much industry based and industry focused, such as investment banks, investment managers and superannuation financial advisers. Each of those teams roughly consists of about 30 professionals—that is, the people doing the front-end work. The obviously also have shared services support and so on. The eight deterrence teams have around 45 to 50 in each. There are about 20, but they are very loose teams in the sense that they are not silos. People work across teams, and jobs are allocated by particular matters that are current at the time when you bring the expertise in. So it is a very fluid structure. That is the financial economy and financial markets.

On the real economy side, which is another significant part of ASIC, we have resources around the registers that we run—the registration of companies and o on. So there is another significant team in that, including a Traralgon operation. But I will just stay for the moment with financial markets, which are no doubt more important to this committee. The senior leaders that have been appointed in those areas have come through both internal promotion and external recruitment. We have been very pleased with the seniority of the people we have recruited. It has turned out be a good market to have recruited in, in the sense of the changes that have been going on and people becoming available in the market. I think we have recruited nine or 10 externally and the rest have been promoted internally. We feel that that has given us a very significant leadership team to take ASIC forward.

There are six commissioners. We originally had three and the government added a further three, clearly with our support and recommendation. The reasons for adding the additional commissioners are around a broadening of skill sets available to the commission and indeed work load. An example of that is also the credit legislation which is coming into our area of responsibility. We felt that we needed additional commissioner power, if you like.

Ms GRIERSON—In particular. what expertise has been gained?

Mr D'Aloisio—Belinda has a legal and commercial background. Jeremy's is similar. Mine is probably more commercial than legal. In addition to that, Greg Medcraft, in his investment bank experience has broad experience of securitisation. Michael Dwyer has broad experience in insolvency, liquidations, accounts and audits. Dr Peter Boxall, the former secretary of the department, is coming in with his economic policy skills and broader skills in administration and policy development. When you look at it as a team, we feel that we have the skill sets that are needed for the difficult issues that come up. They inevitably do. Whether it is Timbercorp or James Hardie, they inevitably require legal, commercial and technical skills. So those skills are there. We are losing Jeremy.

Ms GRIERSON—I noted he had bipartisan praise and support in Senate estimates. Well done.

Mr D'Aloisio—The government has indicated that it will be looking at a replacement. Clearly the skill set we and no doubt the government would be looking at would be one which complements the group we have.

Ms GRIERSON—Mr Cooper has had carriage of the Storm Financial matters; is that right?

Mr D'Aloisio—Amongst other things, yes.

Ms GRIERSON—Who will take his place on that?

Mr D'Aloisio—The Storm matter is coming to me and Peter Boxall.

Ms GRIERSON—Can I just ask about your advisory panel that is in place now?

Mr D'Aloisio—That is the leadership structure. A very significant part of our review was to get us closer to the market and to be able to talk to stakeholders more freely, so each senior leader has a responsibility with industry groups. In addition to that, the commission itself has set up an external advisory panel. That panel is chaired by John Stuckey. Although I know that very well, I had a mental block on that; I hope he is not watching!

Ms GRIERSON—He will hear about it!

Mr D'Aloisio—It has a range of people drawn from banking, from consumers and from the stakeholders that we would have. Its role is not to advise on any consensus basis; it is really to be available there to the commission. Generally, what we are looking for is forthright, independent views from the advisory panel.

Ms GRIERSON—So is the process just a monthly meeting where they express those views or have you set them specific tasks?

Mr D'Aloisio—No. It meets two or three times a year. John Stuckey organises those meetings. He talks to panel members about issues and whether ASIC should be aware of them or whether we would not want input into them. In addition to that, we could either put the panel together ourselves or ask two or three panel members what they think of a particular issue.

Ms GRIERSON—So have they met yet?

Mr D'Aloisio—Yes, they have. They have met twice.

Ms GRIERSON—As a result of that, did they give you any advice formally?

Mr D'Aloisio—Yes. They were very forthright.

Ms GRIERSON—Has that been formalised? Can you tell me what area they were interested in at the first meeting?

Mr D'Aloisio—No. The advice is very informal. It is to promote discussion and get views on matters which we can then assess as commissioners and factor into the other advice and inputs that we get. So we do not formalise it and we do not attribute the comments.

Ms GRIERSON—But they are paid?

Mr D'Aloisio—No, they are not.

Ms GRIERSON—So they are voluntary.

Mr D'Aloisio—Yes, they are. We will reimburse travel expenses in some cases. For example, we have a member from Perth, so we think that it is reasonable that if we have a meeting in Sydney or Melbourne we should meet the out-of-pockets.

Ms GRIERSON—And you think that degree of informality is necessary to prompt a good dialogue.

Mr D'Aloisio—Yes. We think the informality is very important.

CHAIR—Mr D'Aloisio, we all understand that you have an enormous number of responsibilities and a wide-ranging body of work. With the recent changes, the doubling in size of the commission, the advisory panel and some extra funding, are you confident that that is a satisfactory place to be in order to deal with the whole variety of issues that are now before you?

Mr D'Aloisio—The commission reviews this regularly. We have a monthly commission meeting and strategy issues and resources are always discussed because of the number of matters and the significance of the matters. Take, for example, Storm Financial or Project Mint. They use significant resources, so we have to be very focused on using those resources. Our feeling at this point, going into next financial year, is that we are adequately resourced for what we need to do. The government has given us the additional resources in relation to credit and a number of other matters. As chairman, I feel confident that I can raise with government if we feel we do need additional resources. Whether we would get those or not is a matter to be discussed, but at this stage the commission feels that, in the foreseeable future, given what we have and what we think will happen, we do have adequate resources. As an agency, obviously resources are very important, but we are very keen to demonstrate—and I think we have been demonstrating—that when we ask for further resources we have got a genuine case. Our track record on credibility is very important to us.

CHAIR—I want to move on to the regulation of short selling. There are a number of issues in relation to the timing of decisions. In particular, I am interested in better understanding the trigger point for your decision to lift the ban on short selling on financial stocks. Could you give us a bit more information on that.

Mr D'Aloisio—There were four periods, from the beginning of March 2008, in the so-called short-selling story. The first was that March-April period when, you may recall, the stock market started to drop. There were a number of companies that were being severely hammered in relation to leverage at that point. At that point, our decision in relation to short selling was that we should let the market continue to operate. We did not feel that there were systemic or

integrity issues for the market that warranted the banning of short selling. We did say at the time to the government, as did the ASX, that we felt that there was sufficient indication that disclosure was going to be important, and the government agreed that it would bring in legislation for disclosure. That was the first phase.

The second phase was around the September-October period. You will recall the failure of Lehman Brothers and the real concerns about what was happening in the financial markets globally which led to very significant short-selling activity coupled with what we talked about earlier, rumourtrage. When we analysed that and looked at the systemic issues around mid September and looked at what other international market operators were doing, we made the decision to put in, what we called, a temporary ban or short-circuit ban at that point for 30 days really aimed at sorting out the rumourtrage issues and to see what the market did. We subsequently extended that, from memory, to November.

Ms GRIERSON—What was the international market doing?

Mr D'Aloisio—In the international market one-by-one they were all putting on bans. The difference was that a lot of the other markets were on financial stocks only and we put the bans on both financial and non-financial. The reason was that we felt the size of the Australian market was such and the rumour position was such that a total ban was needed. And a number of other regulators did the same as well. The big markets only did the financial stocks but we took the view that we needed a circuit-breaker and then in November reopen the non-financial stocks because we felt that the buyers and the confidence in the market had returned sufficiently for that. But on advice and discussion with other regulators, notably obviously the RBA, APRA and indeed the ASX, we decided to leave the ban on financials at least until the UK lifted its ban on the financials. That was in January 2009.

When January 2009 came around, if we were going to lift the ban, we timed it to be a week after the lifting by the FSA, if they were to lift it, as they said, on 18 January. Indeed they did lift on 18 January but at time what you also had was another very significant impact on the banks globally and there were serious issues as to whether those impacts on the banks were being driven by short selling, or whether they were driven by market volatility or whatever. We felt that as the picture was sufficiently uncertain we should err on the side of not taking a risk on systemic issues concerning the Australian financial stocks, so we extended the ban. That was the third phase. We said we would keep the ban to the end of May, but in mid May we felt that as the systemic issues, and again in discussions RBA and APRA, had eased sufficiently we should reopen the financial stocks.

Ms GRIERSON—In retrospect in relation to your initial decision to introduce the ban, what do you think now of your timing?

Mr D'Aloisio—I think with the benefit of hindsight it is difficult. Of course you would say it is fine because you put it on. But trying to discount that, we certainly believe that we made the right calls. We think that there is a trade-off between the systemic issues and confidence and leaving the ban on too long because it can affect price discovery and liquidity on the market, so we are very conscious of that. We felt that erring on the side of keeping the ban on for the systemic and confidence issues outweighed the benefits of price discovery and liquidity that would come from short selling. We monitored that and clearly we were very concerned. It was

difficult to figure out how much of the volatility and what was going on in the market was due to the ban or the lifting of the ban. We felt that, on balance, a cautious approach, as we said in our media releases, was warranted for the Australian markets. Indeed, we reopened the non-financials and did not have systemic issues and then reopened the financials and have not had systemic issues. That is not the proof, because I accept that there are a lot of other factors and the market is rising, as Senator Mason said earlier, so I am not suggesting that, but we think that we did make the right call. Certainly the discussion with this committee would be quite different had we reopened the financial stocks earlier and had there been a significant attack on two or three Australian financial institutions.

CHAIR—Could you maybe provide a bit of an update of the market's reaction since the lift of the ban.

Mr D'Aloisio—I think the market predicted that the ban would be lifted—in other words, they were assessing the systemic issues as well. The feeling in the market probably was that we would. The timing of it may have surprised the market a little bit in the sense that I think they were expecting it to be lifted on 31 May; we lifted it a week or so earlier. That was, again, because we felt the conditions were right. We always reserve the right to come in earlier if we want, so we came in a bit earlier. Other than that, I do not think there was any surprise in the market. There will be market commentators who say ASIC kept it on too long; there will be market commentators who will say to you that the ban should stay on forever and there should be no short selling. You have extreme views. We think we got it right. As to whether we could have acted a bit earlier or a bit later, I think the economists in the next 6, 12 or 18 months, when they do the analysis, will probably give you a better perspective on short selling. The interesting thing is that short selling is not off the agenda internationally. It is not off the agenda of other regulators. There is still concern about short selling and how it operates. It is not an issue that has gone away.

Senator BOYCE—When you say it is still on the agenda, do you mean the overall banning of it?

Mr D'Aloisio—Yes, the regulation of short selling and its banning, and regulators having the power to ban or introduce such things such as up-tick rules and down-tick rules, in trading terms, are very much still in discussion internationally.

Ms GRIERSON—What situations and conditions would prompt you to reimpose that ban?

Mr D'Aloisio—As a guide, you would go back to, say, September last year, if indeed you were to get another very significant impact on financial stocks. That could see that downward trend. What could happen is that where you get a significant attack on financial stocks in an environment where there is not the confidence of people to go into the market and buy long—in other words, you do not have normal market behaviour—the long buyers stay out of the market and you are really just leaving it for the short sellers to continually sell. There would have to be fairly extreme circumstances. The best guide that I could give is probably back to September or October last year. We have said to the market—

Ms GRIERSON—What was the market then—do you remember? What was it trading at then?

Mr D'Aloisio—It was hairy—I remember that.

Ms GRIERSON—It was a very rough ride.

Senator BOYCE—Do you and ASX have parallel interests in this area, in your view?

Mr D'Aloisio—I think ASX and us are extremely at one on the integrity of the markets. What really underpins the Australian stock market, derivatives, equities trading and everything else is particularly foreign institutional investors. We rely very heavily on institutional money coming in from outside. Clearly the integrity of the market—the fact that the market is clean, fair and information is disclosed—is extremely important to ASX and us.

Senator BOYCE—So is the number of trades, to the ASX.

Mr D'Aloisio—Yes. If you think about it, what really matters with an exchange and with trading is that you have lots of players buying and selling—optioning, if you like; stocks and buying and selling—and in that way you are getting price discovery and you get a fair price for that stock. Clearly, if you have good companies and good stock, what you do not want to do is hinder the cost of capital for them, because you want to keep the cost of capital as low as possible. You do not want to hinder the cost of capital for Australian companies by having a market that people are a bit uneasy about coming into because they think it does not have integrity or they think there is not disclosure, because then they feel that there is a false price. As buyers, they may be paying more than they otherwise would need to. That integrity issue is extremely important. By and large, ASX and we make similar judgments on issues. Our interests on insider trading, market manipulation and continuous disclosure are all aligned.

CHAIR—Are you satisfied that you do get enough information or adequate information from the ASX in terms of short selling or any other market—

Mr D'Aloisio—As you know, Chairman, we also have the role of assessing the ASX. We provide a yearly report to the minister which is then made public in relation to how ASX carries out its surveillance and how it works with us. We are due to have that report shortly, so we will comment on that. But, by and large—

Ms GRIERSON—How regularly do you report on it?

Mr D'Aloisio—Once a year.

Ms GRIERSON—Do you think that is appropriate during the current financial crisis?

Mr D'Aloisio—It is legislative.

Ms GRIERSON—Right, but you are obviously advising more regularly than that?

Mr D'Aloisio—No, it is just the overall assessment of ASX that is once a year. The actual market monitoring is daily. It is minute by minute.

Senator BOYCE—We have been talking about your assessment of the ASX. What is your assessment of their monitoring of false rumours in the market? Are they doing that well?

Mr D'Aloisio—We and the ASX have worked very closely on the so-called project Project Mint and we have relied very heavily on them. Eric Mayne, the head of the ASX MS company, and Commissioner Gibson, who heads this part of our area, are in regular contact, as indeed are a number of other layers below that. We work very closely and very well with them on monitoring the market on a daily basis.

Senator BOYCE—Are you comfortable with the level of information that the ASX is passing on to you in this area?

Mr D'Aloisio—We do not think the ASX is withholding any information. I think that what they collect, they provide to us.

CHAIR—Concerning market manipulation and short selling, which are the particular areas of weakness in the market where this could become a real issue? Is it the naked short selling or the covered short selling? What do you see as the areas that concern you the most?

Mr D'Aloisio—With the disclosure that is now in place and the way that the market is operating, I think what we are saying is that, overall, we do not have a concern with short selling at this point. I think that, with the steps we have taken and the way it is operating, we are comfortable.

Looking forward, what do you look for? I think false rumours coupled with short selling is a concern. You clearly worry about that in terms of the integrity of the market. Insider trading that could lead to short selling is a concern. Failure to disclose or withholding of information that could lead to short selling would be a concern.

There would be different fact situations that you would look at, but there is no specific one that is worrying us. Covered short selling is an important part of the market. We have said that covered short selling, with proper disclosure and reporting, can add to price discovery and liquidity in the market. Indeed, it is used for all sorts of trading and protecting of positions by traders globally, not just in Australia.

CHAIR—So is it fair to say that under normal market conditions short selling, in itself, with proper disclosure, with a properly operating market and oversight, is not necessarily a problem. It is a legitimate—

Mr D'Aloisio—Our view right through has been that, subject to the limited interventions that we feel may be needed from time to time such as we have demonstrated, there is a place for covered short selling in our markets and it can add to price discovery and liquidity.

Ms GRIERSON—The Corporations Amendment (Short Selling) Bill 2008 did legislate for a disclosure regime, which you, of course, would have advised on, but there were details to be set out in regulations, which have not yet been seen by parliament. There are negotiations between you and the department, I assume, and industry. There are suggestions that there are differences of opinion between what industry wants, what you want and what, I guess, we would want,

particularly regarding the time intervals relating to reporting on sales. Could you update us on what is happening in those negotiations, what the points of difference are and what will improve from the disclosure regime?

Mr D'Aloisio—I think that question really needs to be directed to Treasury and to the government. ASIC has provided input in relation to disclosure and reporting, as asked by government. But the regulations themselves, the form of disclosure and the timing of disclosure are policy matters for government. It is not appropriate for me to comment on those.

What I said earlier was that we put in place the gross disclosure provisions. We are comfortable that they are working. If the regulations that the government ultimately tables strengthen that, or whatever, that is a matter for government.

Ms GRIERSON—What time intervals do you recommend for reporting?

Mr D'Aloisio—We have given our views to the government. It is a matter for them.

Ms GRIERSON—Do you think it is user optimum?

Mr D'Aloisio—I do not know.

Ms GRIERSON—You will not be drawn!

CHAIR—I think that asking for opinion is going to make it exceptionally difficult for the chairman to put forward a personal view in relation to some of these matters.

Mr D'Aloisio—I cannot put a personal view.

Senator BOYCE—If and when the regulations are brought in—this is a nuts-and-bolts question—what does ASIC need to do in terms of any changes to your current system and any transitioning?

Mr D'Aloisio—It will depend on the form of disclosure. As you know, the primary disclosure at the moment is through the ASX and its reporting. Really, you have got disclosure at that level. Where there is additional disclosure and how that would be administered by ASX or ourselves, again that is a policy matter for government. ASIC will play whatever role the government decides in the disclosure and reporting regime.

Senator BOYCE—So there may or may not be some work there. I have another nuts-and-bolts question: if you thought that another temporary short selling ban should be reintroduced, if you make the announcement at one minute past five presumably that is enforced from then—or is there a time period which it would take you to put one in?

Mr D'Aloisio—The powers that ASIC have are to be able to put the ban on immediately. There is then a statutory instrument needed that follows it. The advice that we have is that so long as that statutory instrument is executed and filed before midnight that day then it will have effect back from the minute we made the—

Senator BOYCE—Okay, so you could go into the market at midday and say, 'Stop it now'?

Mr D'Aloisio—Yes, that is my understanding.

CHAIR—Can you say from this experience, having now gone through an incredible period of turmoil in the market and the ban being applied on short selling, that it has given ASIC some better instruction, as it were, in terms of picking up anything that might be done quicker or in the future? Or which has maybe given you some signposts along the way as to when things might be starting to develop, even under normal market conditions, where you might now see signals that you may not have picked up in the past because of this unusual experience that we have all had?

Mr D'Aloisio—Generally speaking, when we have major matters on at ASIC we do review and see what we learn from them and take it forward. I think we have learnt a number of things. Clearly, the need for us to be closer to the market, getting information and having our people there following it—both from ASX and ourselves—with dealers is extremely important. Greg Yanco's team—he is one of our senior leaders—has really got that very much as part of its focus, along with our market-watch team.

We have also, significantly, added to the research and investigation of the research capability within ASIC in terms of being able to analyse market data and information about what impact a ban may or may not have on bid asks, spreads and so on. Again, we would make use of that. I think the cooperation that we have and the way we work with APRA and RBA on issues where we may be concerned, or we may not have the wherewithal on systemic issues around banks and financial institutions, and the liaison and the meetings of the council financial regulators all help us in being more up with, or ahead of, the potential issues that could emerge from these areas. I think we have had an experience where we have learnt from it and we will make use of that experience.

CHAIR—Do you believe others in the market have perhaps learnt from it as well? Maybe this experience for people who might operate—

Mr D'Aloisio—I think the dealers, the brokers and those that operate in the markets are themselves much more careful. At the end of the day we all have the same interest. It is as much in the interest of the dealers and brokers that we have markets with integrity and that can attract trade, particularly internationally, because that improves their business. So I think all participants in the market have got a responsibility on these integrity issues and rumours and how you manage them. I am not suggesting by that that ASIC would just leave it to the market. We would clearly use our enforcement investigation powers as well.

CHAIR—I will just move to the issue of some hardship arrangements relating to redemptions from frozen funds and how it relates to the unlimited guarantee for deposits that the government has put in place. Could you just give us an update as to how that is progressing? I am not sure if you have got specific data, but if you have got data on numbers—

Mr D'Aloisio—As I said earlier, the hardship arrangements that I think we are talking about are those around the mortgage trusts, the unlisted property trusts and so on. I can get some statistics for the committee around how many of these funds have been frozen, where they are at

today, what hardship applications have come in, how they are being processed and what levels people are being paid out—if that covers it.

CHAIR—Is there enough confidence returning to the market that more of these funds should be unfrozen and accessed?

Mr D'Aloisio—It is really a market-driven issue. It is up to the trustee of a particular fund. As a general proposition you would have thought that if the market has improved you would see a gradual unfreezing. You are also getting redemptions from funds that are available. For example, if you are running a mortgage trust and you are collecting interest you can redeem some units. But I think it is really going to be a market-driven issue.

CHAIR—Can you explain if any of these funds are under any obligation to unfreeze their funds at any particular point, or can they indefinitely withhold access to their own funds?

Mr D'Aloisio—My understanding is that it does depend on the deeds. Generally speaking most of them would be frozen for at least six months and then they would review and they may well freeze again. It just depends on the particular fund. The legislative framework that is in place is very much aimed at ensuring that first-in, best-out does not occur. In other words, where these things become illiquid—which is the term that is used—there is a fairness process. The redemptions are frozen and then there is sort of a fairness process of pro rata distribution as funds become available, and if it is reopened it would be opened on some proper basis.

Ms GRIERSON—But you have no knowledge of what the liquidity levels are at the moment? Have they changed? Do we know if there is more confidence back there?

Mr D'Aloisio—No, we would have to look at that specifically, fund by fund. The nature of the funds are quite different—some might be heavily exposed in property, some may be heavily exposed in debt securities. They are very varied. It depends on the nature of the fund and on whether it is in a capital or an income fund and so on.

Ms GRIERSON—You capped the amount that people can take out. Was that a cap on the total of their investment or—

Mr D'Aloisio—In relation to the hardship cases we said it would be unfair to allow full redemption—even though they are hardship cases. It could be unfair to other unit holders. So we capped, from memory, about 50 per cent. I can get that number for you. We capped it at what we thought was a reasonable level in balancing hardship against fairness to the remaining unit holders that could not access the funds.

CHAIR—Is there any way of determining the reasonableness of these funds in terms of either extending the period where they freeze the funds or redemption of the funds? Is there any way of determining at what point some of these funds are perhaps taking advantage of the situation rather than legitimately trying to just preserve the fund itself?

Mr D'Aloisio—In our surveillance and overview of them we would have an eye out for that. Our compliance plans—our audit plans—would look at that. But it is an extremely difficult judgment. The trustees are appointed to manage these in the best interests of members so ASIC

would need to have pretty strong evidence that they are not acting in the best interests of all the members. But, in our compliance and surveillance programs if we feel that is the case we would then act.

CHAIR—So you are looking at that particular area and monitoring and keeping an eye on all these cases in terms of frozen funds?

Mr D'Aloisio—At the moment my knowledge is that we are monitoring them generally. Whether I need to check with our people whether they are specifically monitoring anyone that should have reopened that hasn't, I will take that on board and have a look at it.

CHAIR—Could you take that on notice in terms of providing us with some clarity?

Mr D'Aloisio—I will.

CHAIR—And also what the obligations are—what specific obligations these funds are under beyond their own determination.

Mr D'Aloisio—We can give you a briefing on that.

CHAIR—Yes, that is why I am asking you to take that on notice so that we can get a clearer picture of the process so that we can better understand at what point there might be an advantage being sought.

Senator BOYCE—If the trustees are of the view that the market has recovered to a reasonable extent, wouldn't it be in the funds' best interests to take the freeze off as quickly as possible because that encourages new funds into their funds?

Mr Medcraft—One of the things we have done is initiated discussions with IFSA to see what we can do to try to come up with some innovative solutions to try to unfreeze the funds. Clearly, as the chairman was saying, with the state of the markets at the moment—the property market—selling assets is not necessarily a good solution. But there are other things that we think could be looked at in terms of trying to unblock. Obviously, unblocking it—

Senator BOYCE—Can you tell us about some of those—

Mr Medcraft—Unblocking it also means that you can try to reopen the markets. So at this stage we are going to look to work with the industry to see what we can do to unblock it.

CHAIR—Is the decision to unblock a particular fund solely the power of that particular fund's board?

Mr Medcraft—Yes.

CHAIR—It is within their legal right.

Mr Medcraft—Yes.

Mr D'Aloisio—They have the overriding duty to act in the best interests—

CHAIR—But is it right that technically they could keep these funds frozen indefinitely? Does it depend on the individual fund or is it within their constitution—

Mr D'Aloisio—Technically that is right, but when you look at the pragmatic business and commercial side of this clearly it is in the interests of the fund managers and trustees to get these and the redemptions unfrozen, if you like, and get new money in and get the fund going as quickly as possible. I do not think that having a fund that is blocked and not getting new members—not growing and not investing—is in the best interests of the managers and trustees either, so I do not think there is an incentive to keep them blocked, or at least I do not see that there is an incentive that would keep them frozen. The question is: to unfreeze them you have got to be comfortable with the market and what you do not want to do, as Greg was saying, is have a run of redemptions because you have unfrozen. A whole lot of money would flow out and you would have to sell assets to meet those obligations and then new money has not come in. In that situation it might be not in the best interests to do that, because as you are forced to sell—and asset prices are going down—people realise there are forced sales going on for property and prices drop again, if you know what I mean. We can oversight, but really the people in the best position to make these judgments are the fund managers and the trustees. And of course you need to remember that the unit holders can call unit holders meetings as well and they can direct trustees and managers to take action. So it is not just ASIC that is looking after their interests; the members themselves can look after their interests.

Senator MARSHALL—Are we seeing a trend of late with investments of this nature as a result?

Mr D'Aloisio—Clearly, in part of the work that we are doing in going forward one of the areas that we are very concerned about is that we want to encourage and make sure that we are running the markets in a way that we can encourage retail investors to come back into the market. There has certainly been a significant move to term deposits and there is no doubt the confidence issues in relation to the stock market itself and around mortgage trusts, unlisted property trusts and other investments that we call 'linked market investments' has been knocked, and our view would be that it is probably going to take quite some time for confidence to come back into those markets.

Senator BOYCE—So we look forward for one for two offers for people who are prepared to invest three months ahead of the redemptions, do we?

Mr D'Aloisio—And we should give them a free set of steak knives as well.

Senator BOYCE—You have won me, Mr D'Aloisio.

Mr Medcraft—One of the potential solutions is that there are investors who basically want to get their money out and who are potentially willing to take a lower—

Senator BOYCE—A discount.

Mr Medcraft—Yes, a discount. If the assets have to be liquidated, they may want to take a discount—if that is what they want: liquidity. That is the issue about liquidity. I think that is the issue about these funds. There are also then people who want to take a long-term view and are willing to stay there and perhaps realise the assets at their full value over time. I think that is the sort of dilemma that we need to sit down and discuss with the industry—and see whether we can find a solution to try and unlock it for those who want to get liquidity while not disadvantaging those who are willing to stay there for long run when markets perhaps stabilise and asset value can be released over time. I think that is really what has to be looked at as an industry.

Senator BOYCE—And hopefully not skewing the market any further than it already is.

Mr Medcraft—And that also goes to the issue of rebuilding confidence. If it is properly restructured then hopefully you can rebuild that confidence and allow those businesses to get moving again.

CHAIR—Mr D'Aloisio, is there a situation where a conundrum exists between funds trying to, obviously, protect the interests of unitholders and possibly not unfreezing funds for an extended period of time where unitholders are sort of forced into a position of 'well, maybe we need to make a decision ourselves as unitholders in terms of the fact that maybe this will not be unfrozen in due course'. There are financial outcomes in either sense. I am thinking that there exists a bit of a conundrum in terms of how that might work. I am asking for your view here.

Mr D'Aloisio—I think, Mr Chair, clearly it is a bit like a having a house that you cannot sell that just sort of sits there—you worry about that investment: what it is going to be worth and when you can release it so you can engage in other investments and so on with your money. Clearly you are also running a risk that, because it is frozen, in fact you will be subjected to potential market falls or further risks in it being locked. So, yes, you have those risks and so on. But I think the question is: what is the alternative? The alternative of trying to unfreeze does lead to liquidations, and liquidations have other issues. So the judgement has to be made by the trustee and the manager. If unitholders are not happy, those judgements can be challenged. We ourselves in looking at the compliance and so on can look at the issues of conflict of interest and making sure that the trustees and managers are acting in the best interests of the unitholders.

We will take on board the point you are making and look at it more closely but I would be reasonably confident that the trustees and managers are trying to do the right thing here and trying to balance the interests. At the end of the day what is really of benefit to the members is that they are able to get the maximum amount of that capital out at some point. That is what they want, because that is what they have put in.

CHAIR—Yes, it is about the preservation of the value and preservation of the capital.

Mr D'Aloisio—In some cases they may have borrowed to put that capital in, because of the negative gearing aspect of our system. In that situation what you do not want is, for example, what happened in the case of Storm Financial—where forced liquidation triggered the repayment of loans and non tax deductible interest on those loans. So I think we are conscious of the issues and we will look at it more closely. At the moment we are not getting levels of complaints or concern that would cause us to need to act more aggressively on that issue.

CHAIR—And ultimately if matters got worse then it may just be a case that unitholders need to make decisions collectively in terms of what happens to their own fund based on where they see the value of their own assets and so forth.

Senator WILLIAMS—In relation to those funds that are frozen, there is no question that the reason they are frozen is that when the government underwrote those institutions under APRA, like the banks, credit unions and building societies, those under ASIC—debenture issuing companies et cetera—were not underwritten and hence people obviously pulled their money out of those institutions and put them into APRA ones, for security reasons; would you agree with that?

Mr D'Aloisio—I think there is evidence that would suggest that as the market went down clearly we assessed their investments and there would have been some freezing prior to the guarantee, but certainly once the guarantee was in place and you had the guarantees operating on the term deposits that probably must have accelerated the drive—

Senator WILLIAMS—Investors would have felt more secure.

Mr D'Aloisio—It would follow if that is the case.

Senator WILLIAMS—Investors would have felt more secure by having their funds invested in a society or an institution that was underwritten by the government.

Mr D'Aloisio—The other issue related to that was, if there had not been a guarantee, what would have happened? It is pretty hard to predict that there would not have been freezing of funds given where we were. It may not have been as extensive. It is an issue of judgment that will need to be made. But certainly if you remember at that time—March 2008 through to October 2008—there was considerable insecurity and lack of confidence in markets.

Senator WILLIAMS—For sure. And perhaps on that measure of judgment of what was underwritten the government perhaps should have looked at some of those debenture issuing companies who had real security and low LVR loans—perhaps they should have been underwritten as well and then we would not have seen a drift of funds out of one lot of companies into the other. Anyway, that is history.

Mr D'Aloisio—I think I can leave that as a policy matter. You can direct that to the Prime Minister and the Treasurer.

Senator WILLIAMS—When confidence returns and people start to invest in financial institutions such as AXA or Challenger again, you may see a lifting of a freeze on those companies; is that what you were saying earlier?

Mr D'Aloisio—It is an issue of confidence. As markets recover freezing will come off and, as Greg was saying, you will get the cycle going again. We are hopeful that investors will return to these products, because they have provided a significant amount of capital for the markets. The issue is that, if that capital is not provided by retail investors having confidence in these products, how will it be provided? Can the banks cope with providing that capital that would

otherwise have been provided in this form? These are difficult economic judgments and I am sure Treasury and government are across it. It is probably out of my competency.

Senator MASON—Senator Williams has sparked my interest. I am looking at ASIC's press release of Friday, 31 October 2008. Three hardship grounds are mentioned there: firstly, a member is unable to meet reasonable immediate family living expenses; secondly, compassionate grounds—medical costs for serious illness, funeral expenses, to prevent foreclosure; and, thirdly, in the case of permanent incapacity. I understand all that. What conditions apply? The hardship withdrawal cap will be the lesser of—and there are two conditions: the specific amount requested under the hardship withdrawal or request, and that is the specific amount requested by the member; and, secondly, $20,000 per member plus 50 per cent of the balance of the member's investment in the scheme. I understand how that works. You give an example there. If someone is simply after the maximum—that is, No. 2, $20,000 per member plus 50 per cent of the balance—what is the necessary connection between that and the hardship grounds? You could be a poor member—someone with not much money—or you could be someone with a hell of a lot of money. According to this, there is no flexibility to give some portion in between.

CHAIR—It is the specific amount requested.

Senator MASON—No, but that is specific by the member. If the member does not specifically request it, there is no flexibility. That is No. 2, and that does not necessarily relate to the hardship grounds in terms of money required. You have no flexibility, do you?

Mr D'Aloisio—What you are saying is: are you a hardship case? That is the first question. Secondly, if you are, you can get the $20,000 plus 50 per cent of your balance. I think that is what it says, from memory. Say, for example, I am permanently incapacitated and I have invested $200,000 in a frozen fund. I qualify on the hardship, so I draw out $20,000 plus 50 per cent of the balance, which would be $90,000, I think. So it would be $110,000. If Greg, on the other hand, had the same facts but he had invested $500,000, then the formula would apply in relation to that.

Senator MASON—But that is my point. There are hardship grounds. What determines the amount that you can make available is not dependent upon the level of hardship; it is dependent upon the investment.

Mr D'Aloisio—It is more arbitrary.

Senator MASON—Exactly. That is my point.

Mr D'Aloisio—But I think you needed to find a rule that was fair to have been able to get an amount out to deal with the hardship but at the same time leave sufficient skin in the game so that you are not disadvantaging anymore than you need to. You are continuing to take the risk with other investors as well who, because they do not have hardship, do not get the release of any funds. You could have come up with different formulae—that is the one we settled on. It seems to have been very well accepted by the industry but—

Mr Cooper—It is an interesting point. It is actually superimposed over an existing set of arrangements. So these trusts have got constitutions. They are very detailed about when you can get your money out and so on. The thing has frozen. This rule, however arbitrary it might be, has actually been put out there for the entire industry to use, often in conflict with what their constitutions actually said was the arrangement about who could get money out and when. So it just needs to be remembered that it was put forward in that kind of an environment.

Senator MASON—The point is that it is not sufficiently flexible such that the primary concern is compassionate grounds. It is a bit of a mix between compassionate grounds and, in a sense, the balance between that and market concerns about investors continuing to take risks where appropriate.

Mr D'Aloisio—You must establish hardship as a priority and then you get an amount out, and an amount is left in there so you have got skin in the game with other—

Senator MASON—But my point is that the amount is fixed in the formula. If you consider the hardship case it could be $20,000 or it could in fact be $10 million, couldn't it?

Mr D'Aloisio—We could look at the way that it has been put into practice and have a look at what ceilings are in place. I cannot answer that question actually.

Senator MASON—You can. If they are the rules, if you are considered to be a hardship case and there has been no assessment under the amount requested by the member under part 1—you are only looking at part 2—it is quite possible that you would be able to get $10,000 or, on the other hand, $10 million. It is quite right.

Mr D'Aloisio—As I said to the chairman, if we give you the stats on what is taken out and what the averages are, we will be able to answer that question more clearly.

Senator MARSHALL—It is unlikely that someone with $20 million in this sort of investment would be applying for hardship in the first place.

Senator MASON—My point is that it is not flexible.

CHAIR—Senator Mason, you have made your point: it is not flexible.

Mr D'Aloisio—We will come back to you with on what actually is withdrawn.

Mr Cooper—Senator, if I could make one final point. It was emergency relief, but the fund is of course free to craft whatever hardship relief provisions it wants for itself in the constitution, so there is no end of flexibility in that respect. This was an urgent piece of emergency relief for the entire industry.

Senator MASON—That is why I am pointing it out. I just picked it up—Senator Williams sparked my interest.

CHAIR—If we could move to credit rating agencies, obviously there is a lot of market reliance on these agencies and the information they provide and the decisions that are made in

relation to the information that is provided and so forth. As such, some reforms in terms of the treatment of credit rating agencies has been put in place in the form of their no longer being exempt from holding an Australian financial services licence. Could you give us a brief as to where that is at and how that is intended to operate?

Mr Medcraft—As you are well aware, Minister Sherry last year announced that they would be subject to licensing from 1 July this year and would be required to comply with the IOSCO code of conduct, which lays out fundamental requirements for training, procedures, review of ratings, publishing of criteria—the various elements that control the quality of ratings. In the first half of this year we actually worked with the rating agencies. At the same time, running parallel with that—as probably all of you are aware—there has been a lot of discussion internationally about rating agency regulation and supervision. In light of that, it was announced that we would delay until 1 January those new rules applying to them, basically to consider the developments that are happening elsewhere in the world. That is where we stand at the moment.

Ms GRIERSON—Do you think that is satisfactory? That is a six-month delay. Would you have made that time line anyway with some recommendations?

Mr D'Aloisio—We have taken the view, in looking at it, that the six months is not cast in stone, in the sense that, if we can get them in place earlier we will do so.

Ms GRIERSON—So, if there is global movement in that direction, you would move faster?

Mr D'Aloisio—In the global move, the central piece that everybody agrees with is that credit rating agencies should first be licensed and registered and, secondly, they should comply with what is known as the IOSCO code, which contains rules around the methodology they use for ratings and transparency and how they disclose on someone. There is pretty strong international agreement on those issues. There are then issues around how credit ratings agencies are supervised and some of the practices. The Europeans are moving towards a more prescriptive and controlling aspect—for example, to make the IOSCO code compulsory rather than a report if you do not comply. There are issues around whether rating agencies can provide advisory services. There are a number of issues that have come up in the way that they are looking at implementing. The United States has itself come through with a code and is looking at some prescriptive arrangements in addition to the IOSCO code.

Where Australia was moving—in the announcement that Greg referred to that was made last May—we were probably one of the first jurisdictions to announce the changes and what we were doing. We were quite comfortable at that time, and remained comfortable, that having a start date of 1 July 2009 was the way to go. In the consultations we have had and the government has had, what is becoming apparent with what is happening internationally is that we need to do a bit more consultation in relation to some of these international developments as to whether we need to recommend a stronger code, stronger licensing conditions, than we had. We have decided that, rather than quickly put it through, we will take the time to get this right. I can assure the committee that, in the meantime, we are monitoring and carrying out surveillance of credit rating agencies and we are very comfortable with the way that they are operating in Australia. So do not let me leave with you an impression that the delay is, in our view, going to create any sorts of systemic issues for Australia.

Ms GRIERSON—Does the delay also delay the annual compliance report from licensed entities?

Mr D'Aloisio—It would, in the sense that, if the licensing requirement is delayed, then the time for the first report would be delayed also.

Ms GRIERSON—Is that a good thing?

Mr D'Aloisio—No, because again what I think we are looking at as part of compliance is ongoing surveillance, not just the once-a-year reporting.

Ms GRIERSON—The annual compliance report is obviously different for these entities.

Mr D'Aloisio—It depends on the particular credit rating agency—what their activities are.

Ms GRIERSON—So what will be gained by—

Mr D'Aloisio—Some of them only operate in the wholesale market; some may operate in a retail market—it depends on the products they have and so on.

Ms GRIERSON—So what information—is it just the transparency and accountability that we are gaining or are you gaining anything else from it?

Mr D'Aloisio—Again, we can give the committee a shopping list, a fuller briefing on it, but, essentially, it is around the methodology it applies, how it approaches ratings, how it assesses products, what it discloses and what it charges.

Mr Medcraft—Training.

Mr D'Aloisio—Training. Thank you, Greg.

Ms GRIERSON—I think it is terribly important that we start anticipating and expecting that sort of information to be gathered and reported on, and delay in that, it seems to me—I would suggest that, if you move faster on the licensing situation, that should be phased in, no matter what.

Mr D'Aloisio—We will move as quickly as practicable, as I say. What you want to end up with, in terms of working with the government on it—and a lot of this is now ASIC—is a robust surveillance of credit rating agencies that is in line with world practice, because, basically, these credit rating agencies, certainly the three largest ones, operate out of the United States and into Europe and to the Australian markets. We want our system to really mirror the cooperation between us. Also, as part of the IOSCO work, there is in place—and we have agreed to—a surveillance code between regulators. So, as regulators, we will agree with, say, ECC, for example—if we take a particular credit rating agency in the United States—how we would carry out surveillance in Australia and how they would do it in the United States, and we would be able to cross-check and share information so that we are looking at a credit rating agency across jurisdictions. These are things that are all in train.

Ms GRIERSON—All these refinements, all these improvements all this new information that you will now have access to obviously raises expectations on your performance.

Mr D'Aloisio—Yes.

Ms GRIERSON—Do you feel that that is so? I would hate to think you got it wrong when you have so much more information available. Are you able to really well coordinate that information that is going to be coming in?

Mr D'Aloisio—I think our investment managers and investment banks teams, under Greg's jurisdiction, have the expertise we feel is necessary for them to do the surveillance and monitoring and for the exchange of information that we think is needed. The other thing to mention is, of course, that you are not looking at thousands of credit rating agencies; there are only a few of them and, of those, there are only three or four that have got the lion's share of the business. They know it. They know they are under the microscope across all jurisdictions, given what has occurred. And I think, in that way, the resource intensity at ASIC is probably less than it would be if, say, we were talking about insider trading or something of that nature.

Ms GRIERSON—So they did get it wrong. Were you aware they were getting some of it wrong?

Mr D'Aloisio—I think you have to leave that to the market and the analysis. Certainly there have been significant concerns at all levels of government, at G20 and other places, that the credit rating agencies did not get ratings correct. In their defence—not that I necessarily need to defend them—what they say is that, at the end of the day, a credit rating is an opinion and there is a due diligence process that should be undertaken by the issuers and people that rely on them. So you have that. But I think on balance there is an expectation, on behalf of all major regulators, that the regulation of credit rating agencies needs to be tightened and that the surveillance needs to be tightened.

Ms GRIERSON—I will just repeat: I would like to see that phased-in approach rather than a delayed approach.

Mr D'Aloisio—Thank you.

Senator WILLIAMS—Just on the credit ratings: obviously they had it very wrong, and I refer to many shire councils in New South Wales—where I live—had a lot of investments overseas and lost a lot of money. Yet the mayors and general managers et cetera tell me that they invested that money in AAA credit rated investments. How did they get it so wrong?

Mr D'Aloisio—There were AAA, BBB, CC—there were all forms of ratings. You need to bear in mind that it was also a time when the pursuit of yield, in particular with securitisation and so on, was such that there was a high demand for these products and that for a number of years it all seemed to work. It was really when you got the leverage in the asset values—

Senator WILLIAMS—Till the wheels fell off the cart.

Mr D'Aloisio—Till the wheels fell off, and that is where the issues were. With the benefit of hindsight in looking at them, the view is that there is a case to answer, firstly, in relation to the way the credit-rating agencies may have worked and, secondly, in relation to the due diligence by issuers, originators and investors, particularly the institutional level of investment that buys chunks of these products in a sense—if there is a securitisation of a billion dollars they might buy $200 million or $300 million of that. So that the due diligence that is required at that level could have been stronger as well. These are complicated issues but, on balance, it seems that the consensus view is that the credit-rating agencies should have done a lot better.

Ms GRIERSON—Were you aware of that? Did you have any inkling that these were out of kilter?

Mr D'Aloisio—Australia in lots of ways has been very fortunate because you did not have the subprime fallout and you have not had the collapses of the securitisation products that led—

Senator WILLIAMS—It is still coming. It is underway from first home owners—

Mr D'Aloisio—That is a matter for you, Senator. Just to finish that point, when you say 'were we aware of it', I think with the Australian market and the way that events have unfolded here, whether it is luck, good fortune, good planning or regulatory et cetera, Australia escaped a lot of the excesses. Certainly we did have some collateral debt obligations, CLOs and CDOs, as you mentioned earlier, with some of the councils.

Senator WILLIAMS—A lot of councils.

Mr D'Aloisio—There was exposure in that area, so that was an indicator. Whether that was a credit-rating agency issue, due diligence et cetera, I am not able to say.

Senator WILLIAMS—Let me just touch on that. Have you spoken to many of those financial planners and financial advisers who advised these councils to invest millions in these areas associated with subprime? Have you actually pulled them in and asked, 'On what grounds did you give this advice?'

Mr D'Aloisio—A lot of the investors you are talking about are what we would call reasonable sophisticated investors or investors who would actually have access to proper advice. I have to be careful here; councils are a very important part of our institution. But councils are not retail investors that the mums and dads and retirees are.

Ms GRIERSON—No, they generally have large accountancy firms and all the processes.

Mr D'Aloisio—They have access to advice. They are scrutinised in a very significant way by the councillors. They have audit committees. Does ASIC go in and deal with that? Certainly if councils approach us we will look at it, but, again, our priorities would not necessarily go to that wholesale part of the market.

Senator WILLIAMS—I am not referring to the council. I am referring, first of all, to those who put the high rating on those investments and, secondly, to those, whoever they were, who advised councils where to invest under these AAA rated investments in America. Of course, we

know the end result. I am not referring to questioning the councils themselves. I am pointing to those people who advised councils, who told councils how highly rated these CRAs were. I do not want you to question councils. I am asking: what have you done to question those people who gave the advice? In many cases they were obviously paid for the advice.

Mr D'Aloisio—We can look at it, but at the end of the day you are seeing litigation and people looking at their rights in those situations. Again, if we are talking about reasonably sophisticated investors, as a first response from ASIC we would let them sort it out in the market and look at their legal position and take action if they feel they have rights. We are not the guardian for all the potential wrongdoing or misbehaviour or breach of duty. At this stage, in this sophisticated area and looking specifically at the comments you are making, I would say that ASIC's approach has been to let the investors sort it out with their advisers and only get involved if we think that there are investors there who really need our protection because they do not have the wherewithal or the experience to be able to take these matters on. At this stage we have not initiated any action that would fit in that last category, as far as I am aware. In saying that, I am not suggesting—

Ms GRIERSON—Doesn't it also involve many universities in terms of investments?

Mr D'Aloisio—Yes.

Ms GRIERSON—So it is extensive and has an impact on publics and communities affected by those.

Mr Medcraft—Looking forward, ASIC is currently co-chairing, with the French equivalent, a global task force looking at the whole, at unregulated markets and products. We have just produced a discussion paper, which is a public document, that focuses initially on securitisation and credit default swaps. There are three sets of recommendations about securitisation, but there are three key ones which are relevant to our discussion tonight. Firstly, they go to disclosure of securitisation transactions and in particular to the level of due diligence that is being undertaken by the issuer of securitised products. Secondly, they go to credit-rating agencies or experts in terms of the level of due diligence they undertake and also the ongoing commitment they provide to securities, because sometimes they do not continue to provide support. Thirdly, they go to the issue of investor suitability, which I think is very relevant. One of the recommendations is that what perhaps needs to be looked at is the difference in definition between retail and wholesale and whether a better definition would consider sophisticated and unsophisticated investors—which could be in the case of councils—and also whether there should be an obligation on the part of sellers of financial instruments such as these to determine whether the party that is buying financial instruments really is suitable and has adequate education.

Ms GRIERSON—Did that discussion paper have a consultation—

Mr Medcraft—Sorry. I would like to say that the fourth recommendation is a requirement for what I call 'skin in the game'—that the issuers of these securities are required to hold back some level of retention. I would refer to the one on investor suitability. I am reasonably familiar with this because I was on the board of the local government investment service for many years.

Ms GRIERSON—So the discussion paper has been out for consultation?

Mr Medcraft—Yes. The consultation closed on Monday.

Ms GRIERSON—Did you actively seek responses from universities, local government?

Mr Medcraft—We had a consultation here in Australia with the stakeholders in the industry.

Ms GRIERSON—That is good.

Mr Medcraft—In addition, we consulted with industry groups around the world—in the last few weeks, in Europe. We will be releasing that paper either at the end of this month or early next month.

Ms GRIERSON—And those recommendations go to government?

Mr D'Aloisio—No. The program is that the work that IOSCO is doing and that ASIC is co-chairing, largely under Greg's leadership, with the French is to have this consultation paper in the form of a report that IOSCO, on the issues that Greg has mentioned, would put to the G20 in September. If the G20 endorses those reforms—and Australia, as you know, is an active member of the G20—then it would be a matter for government back in Australia as to how it implements them. Each jurisdiction of IOSCO that participates, and there are 95 regulatory agencies that participate, always reserves the right to implement all or part or some of the particular report and recommendations. They are matters for government. In developing this work and the work we are doing, we are working closely with Treasury, Minister Sherry was involved and now Minister Bowen will be involved. So these are not ASIC final issues; they are work that we are generating but, ultimately, it will be a policy matter for government.

Ms GRIERSON—We hope at our next hearing you are telling us all about the success of the G20. That will be excellent.

Mr Medcraft—I think it was very relevant given the issue raised. Having had a lot of involvement in local government, I am actually very sympathetic with your comments. I think the most important thing of this crisis is that, frankly, investors are blindly relying on rating agencies. The message, frankly, is that investors really need to do their own. They cannot rely on the agencies.

Senator WILLIAMS—You make a very good point there. Investors do rely on CRAs and the way they rate investments. You would not blame them for doing that if the CRA is doing a professional job, surely. Perhaps this is an opinion, Mr D'Aloisio, and you may not be able to answer it. We have seen the wheels fall off their cart, we have seen the billions lost, we have seen everything go wrong, and hindsight is a wonderful thing. Are you confident that with the changes in the future, whether they be regulations, legislations, licences or whatever, we can go forward in a situation where we will hopefully not see this again? I know it is a big question. I am just saying, surely the whole reason for these inquiries is to see—

Mr D'Aloisio—With the work that this committee is doing in relation to MIS and the work it is doing in relation to financial advice, clearly you are seeing what you would call stresses that have arisen out of the crisis we have gone through. No regulator can give you an opinion as to this will not happen again, because inevitably it is to do with the lessons you learn and

circumstances change. All we can do as a regulator is point up whether our regulatory system worked well going through the crisis, and the consensus seems to be that Australia's system has worked very well or reasonably well, depending on the view you might want to express.

Senator WILLIAMS—I would not say the CRAs have worked well.

Mr D'Aloisio—When you look at the losses and so on that have occurred and you put those in context of what has occurred overseas, Australia has performed better, relatively. There are the lessons that are coming out of—

Senator WILLIAMS—When in good shape.

Mr D'Aloisio—the work that obviously APRA are doing on prudential issues, the work that we are doing on the range of issues that we have been talking about today, the range of issues that we have been working on with IOSCO and the work of the G20. One of the key differences Over my professional life with this crisis and other crises, I have not seen over 40 years the amount of international effort. When I sit around a table of IOSCO or we are co-chairing, the actual brain power that is brought to bear on these issues I have not seen in my working experience. That gives me confidence that the regulators and policymakers who are working on these issues across a range of jurisdictions are really motivated to get it right to the extent that you can foresee. You have seen that with toxic assets, you have seen that in prudential and you are now seeing that in relation to the regulatory issues. The challenge for us as regulators is to continue to point up and work with government on where issues are that need to be addressed and then the challenge for government is to assess what changes it wants to make. You have seen over the last 12 months government announcing marginal lending changes, changes to short selling, and changes to credit and regulation of credit. All of that gives me confidence that we are focusing on the right issues, but there is no guarantee.

CHAIR—ASIC and Treasury, as well as a range of other organisations—banking and finance industry groups and others—have made four recommendations in terms of credit rating agencies. I want to draw your attention particularly to No. 1. I am making the crude assessment that, as it is the first recommendation, it is also the most important, perhaps. It revolves around investor education and addressing the over-reliance on credit ratings. I would like to make two points. One is that over-reliance on credit ratings says to me that people really should not rely on them at all, perhaps. I am interested in how much difference education in this area actually provides. How much difference would it make to both categories of investors—sophisticated and unsophisticated—by simply saying to them, 'Look, you shouldn't over-rely on credit rating agencies' ratings.' Where else do they turn? If all are providing similar information, at whatever range that information might be provided, then how can you rely on them at all? I think you get an idea of where I am heading with this question. If we educate people to, say, rely on them less and credit rating agencies do a better job—let's say that they all rate one, two or three pegs lower, but they are all consistently doing the same thing—what difference does it make?

Mr D'Aloisio—What we are saying in that recommendation is that you need to understand what the credit rating is about. It is giving you a view about the percentage chance of being repaid or not—there being a default. If you can understand that, you take it into account. It is actually an opinion about risk. You get lots of opinions about risk when you invest. This is another one. What we are saying is: 'If there has been a tendency to say, "It has been rated

AAA; therefore, it is safe as a bank," events have proven that not to be the case, so do not make that assumption.' Would the system be better without credit rating agencies? It is not really for us to be able to answer that. I think when they have performed, it is working, the methodology is known and transparency is there, credit rating agencies can add value to the decision making that is required to be made, because they can assemble information much more quickly in their models and methodology to be able to provide an opinion. I certainly would not be of the view that there is no role for credit rating agencies.

CHAIR—No, I am certainly not suggesting that. What I am trying to draw out is that some very good minds—Treasury, ASIC, the banking and finance industry groups—have led to four recommendations. The first one, I assume being the most important, is basically further education. The question that is in my mind is: when markets are running very strongly—let us say bull markets, when things are going very, very well—regardless of where things are rated, that there should be some consistency in terms of ratings. I do not expect that there would be a great differential between one credit rating agency to another. I am assuming they would be very, very similar.

Mr D'Aloisio—That is correct.

CHAIR—So whether they are all rating up at one level or slightly below that or slightly below that, in the end it really depends more on the markets. I am assuming that people who make investment choices do not completely and ultimately rely on just what a credit rating agency says—that they would look at other determinants.

Mr Medcraft—That is right.

CHAIR—Obviously we need to do more in this area, but I am just interested in your view in terms of how much difference education can truly make.

Mr Medcraft—I think education is very important but also I think, as one person commented in our international discussion, perhaps investors should do what they are paid to do, which is to analyse and conduct a proper due diligence on an investment. Frankly, part of this crisis was that investors often did not do their due diligence and did not do proper analysis of what they were investing in and they blindly relied on credit ratings.

Ms GRIERSON—I would like to draw your attention—

Mr Medcraft—They are a help, but they really cannot be set aside for undertaking—as was said in that comment—a proper, independent analysis of the risk you are taking.

Ms GRIERSON—I would like to link what you just said with former comments regarding all this brainpower that is now in place and all these very new, very much-needed regulations and interventions in a very coordinated way across agencies, which this government has moved very quickly and very responsibly on. Why wasn't this done before? Wasn't risk always there? I think investors have always thought that there was regulation, protection and safety for them because we had regulators and authorities that had a responsibility. I think it was a false expectation, and that has been borne out by the amount of regulations we have had to bring in to bear.

Mr D'Aloisio—Clearly, these are judgments that I think parliament needs to make and reflect on in terms of the policy issues. At the end of the day, ASIC is a regulator that has been dealt a series of cards in the Corporations Act and it is implementing those in accordance with that. The underlying policy of the Corporations Act, and the underlying policy of the various protections that are in place, was a system coming out of the Wallace inquiry of efficient markets—you regulate the conduct and disclosure. And, generally speaking, markets tended to be efficient. The benefits were seen as being low-cost to capital in the running of those markets, and that underpinning policy obviously worked for quite a long time.

Ms GRIERSON—We had growth for many years.

Mr D'Aloisio—At a big policy level the question now is: do you need to assess the balance in the light of what has occurred and regulate some of the areas more than others? I am not seeking to avoid your question. It is not an ASIC issue. This is fundamentally a government policy and parliament issue. At the end of the day, ASIC is—

Ms GRIERSON—I think there is some reliance on ASIC by government. I would say to you that we did have growth for many years and I am sure that many people, including investors, became complacent. Did ASIC become complacent? Did they identify risk proactively? Did they put advice and suggestions to the previous government? Did they ask for more resources?

Senator WILLIAMS—Certainly the latter!

Ms GRIERSON—I think they would have been mad if they had not.

Mr D'Aloisio—That is—without appearing overly defensive—a very difficult series of questions. But the oversight of ASIC by this committee over a number of years has probed those issues and looked at them. When I think back to when I took over as chairman and I looked at ASIC's performance, I think ASIC had been performing and doing the role that it should.

Ms GRIERSON—I have always thought you were under-resourced and that the expectations of you perhaps did not match reality. So we will continue that discussion some other time.

CHAIR—The third point raised as a recommendation from the roundtables is that the banks and industry bodies continue their efforts to encourage more informed investment decisions. Can you give us some idea of either what their continued efforts are or how they have been encouraging more informed decisions? It would seem to me to be sometimes at odds with what actually takes place in practice. It should be an imperative of the banks and other industry bodies to actually just accept and promote schemes and investments. I do not understand what 'more informed investment decisions' means. How much more informed could people possibly be, given that they are dealing with banks and industry bodies who should be the most informed?

Mr Medcraft—I think the thrust of that particular recommendation actually goes back to what I said earlier about investors needing to make sure that they basically do their own due diligence and make their own assessment of an investment.

CHAIR—We often say that education is important and that investors should do due diligence and make their own decisions, but the reality and the practicality of this is that you go to

someone to provide you that due diligence whether you are a sophisticated or an unsophisticated investor. You go to an industry body or an adviser or to the bank and you say, 'I am doing due diligence. I am going to pay you to actually provide that information.' If they cannot get it right then who can?

Mr D'Aloisio—There is no exact science here. We have to go back to the fundamentals: investment has risk. What you are seeking to do with all the strategies that you may run at a regulatory level or at a disclosure level is to try and minimise those risks by a better understanding and a better disclosure of those risks and using tools and assistance to enable you to assess those risks. Credit rating agencies is a tool to assist you in analysing risk. Indeed, it is not the only tool. As Greg says, there is due diligence and there are other things that you would do, a bit like when you are buying a house. You do not just rely on a particular report on a valuation; you do a lot of analysis yourself.

What we saw in this phase of development, high asset values and so on was that simply relying, for example, on a credit rating agency and it becoming the only tool carried with it a much, much higher risk. But the reality was that the people who took that risk were your largest institutions. They actually have the wherewithal to do a lot more due diligence assessment of risks, but they chose not to do that. It must have been a choice in some of these organisations. I think the institutional investors, the large investors, can look after themselves.

Mr Medcraft—In fact, it is almost a disadvantage for an institutional investor to have a rating at times, in that it tends to potentially lighten what they might do in terms of due diligence and analysis. I think many investors would acknowledge as a result of the crisis that perhaps they should have done more analysis and due diligence and that they blindly relied on rating agencies, which probably was not a good thing at the end of the day.

Mr D'Aloisio—My comment on them looking after themselves is really anchored in the way that the Corporations Act works. It works on the basis that, in terms of ASIC's regulatory powers and its approach, its prime focus is around the retail investor—the issues that we were talking about earlier. The structure of the legislation is that it was regarded as important to have a minimum of regulation around the institutional level of the market. So you have benefits that come from that, but it got to a point where there were greater risks for the system. I think the analysis that is going on internationally at the policy level and at the levels we talked about earlier, well outside ASIC's remit, is on whether or not there needs to be more regulation or a change at approach. That is essentially a very significant policy issue for government, as distinct from ASIC.

CHAIR—Mr D'Aloisio, my concern in this particular area is that Treasury, ASIC and a range of others have made four recommendations in trying to deal with this situation that we face. Only one of those at this particular point, as a recommendation to government to take some action, would be that credit rating agencies are now required to have an AFSL. Aside from that, there is an issue of education, which again we all think is important but in my view is not going to deliver any market change.

Mr D'Aloisio—Chair, with respect, you are missing a very fundamental condition to those licences. Yes, in a broad sense you only have to have an AFSL, but the next question is—

CHAIR—No, I am not trying to diminish the value of that.

Mr D'Aloisio—But what I am saying is: what does that mean? There are a series of conditions attached to those licences. One of the critical conditions to that licence is the compliance with the IOSCO code. The code itself is a series of propositions, very substantive and detailed, about methodology, about training, about how these credit rating agencies are to work, about how they are to be disclosed—the reports and so on—and the surveillance that would go with it. That is the centrepiece. The education, the due diligence and these other recommendations are important, but the centrepiece to this change is the conditions that attach to that licence, and those conditions bring the credit rating agencies much more directly under the supervision and direction of ASIC and its surveillance. That is the bit that we think will deliver better ratings. If you can couple better ratings, disclosure and transparency with an understanding by the people who use them that they are a tool, that they have limits and that they need to supplement them with other due diligence and other risk analysis, then we think that the credit rating agencies will play a useful role. So it is a bundle of reforms that go with the four points that you are referring to, Chair.

CHAIR—Broadly, I agree with you. I actually think that the most important one there is simply recommendation 2, which is that they ought to be properly licensed and then have to comply with a whole range of additional—

Mr D'Aloisio—Yes, that is the critical thing.

CHAIR—And everything that is involved in that.

Mr D'Aloisio—That is correct.

CHAIR—Attached to that, obviously education is important, as is encouraging more informed decisions. Everyone should play a better role and everyone should be more careful. But, in the end, it is really—

Mr D'Aloisio—Yes. It should not be blindly followed.

CHAIR—In the end, the same people, giving the same advice, are going to still rely on the same things. It has been referred to a number of times as people blindly relying on credit rating agencies. Surely that could not have been the sole determinant. Universities were mentioned. I am assuming they are fairly sophisticated and would not just jump into an investment and say, 'The credit rating is whatever, so therefore it is good; let's pour everything we've got into it.' I am assuming that a council with enormous resources and a duty of care for its ratepayers' funds would go beyond just saying, 'The credit rating agency says it is whatever—three-star, four-star or five-star.' Regardless of what the credit rating agency says, surely they must use other methods. While it is very important that we get that right and put pressure on them to provide better information, there must obviously be much more involved than just that bit of information.

Mr D'Aloisio—I think so. Any sensible major investment decisions that are made would look at a number of factors. Credit rating would be a key factor. Within the credit rating itself, you have got to look at the particular package of securities. Are they all AAA securities? Are they AAA, some B, some C? What is the equity component? What is the debt component? There are

a range of things that you would look at in forming a view as to what weight you would put on the credit rating. You would expect that you would look at a number of other factors before making a final decision to buy a package of securities or not buy them, or invest in a fund or not invest in a fund.

CHAIR—It is probably also fair to say that the market will have corrected the anomaly if people did rely too much on credit rating agencies, given that they did make so many mistakes. People will not be doing that in the future.

Mr Medcraft—I think one of the other aspects of rating agencies is that you have got to look at what the volatility of the rating could be when you are looking at the actual underlying rating, which is part of what has happened—the AAA and how it could be affected by events.

CHAIR—I want to turn to some market regulation issues and some market integrity measures. We have covered a range of those through our discussions already. In the area of rumourtrage, can ASIC explain the difficulties in that area and just how complex it is in terms of determining how you approach this specific area and just what is involved, just so we have a clear understanding of it. I know very little about this area, and I think most committee members know very little about this area. I would be very interested in just what is involved and how this deep this goes.

Ms GRIERSON—I think we know that we get contact from constituents all the time on international emails that have just gone around the world suggesting all sorts of things and people take it very seriously. We are dealing here with it every day in our offices, but we are seeing information and rumours out there in the market from traders that lead behaviours. I think you have acted on one. Have you suspended one trader under this?

CHAIR—Can we just go back to my question first, because that will divert from what I was actually asking.

Mr D'Aloisio—Markets trade on information, and the continuous disclosure insider trading laws are really aimed at ensuring that at any given time the market is properly informed in relation to market sensitive information. False rumours can affect the price of a stock, and therefore false rumours are illegal. False rumours that could lead to insider trading are illegal market manipulation. At any given stage, if, for example, I were to put out a release in relation to a particular stock that said, 'Buy stock X because I know they are about to make a takeover offer,' clearly that would be false. It would no doubt affect the price of stock because, if something is subject to a takeover, generally speaking, depending where it is at, the stock will rise. That would be an example of false rumour and also an example of insider trading.

CHAIR—Sorry, I will just interrupt you there. I am pretty clear on that side of it. I am actually asking to get a clearer idea in terms of the depth and complexity of how ASIC goes about trying to deal with this, given that you have got a Project Mint inquiry.

Mr D'Aloisio—First off, we have expanded considerably the enforcement teams and the investigative teams in market integrity. Secondly, we work closely with the ASX in relation to these rumours and other potential nondisclosures in the market. Thirdly, we have our MarketWatch team, which checks the market and what is going on and looks at rumours. We

even have a website where, if you feel that there is a false rumour and you want to tell us about it, you can give it to us anonymously. We look at the complaints we receive through our complaints system. So we have a range of tools and resources that go to assessing potential false rumours that of concern to us. We are also working with brokers to make sure that they monitor and control rumours that come across their desks and do not pass them on unless they can be substantiated. So, through a number of initiatives, ASIC is very active in rumourtrage, market rumours and so on.

CHAIR—I have two questions on superannuation. We have raised in the past the issue of superannuation funds using online calculators or other tools as an instrument to predict the future value of the fund. We understand there are limitations to that and that could actually confuse investors or people with funds. Could you give us a very brief update on any further work that has been done on that or where that is at?

Mr Cooper—Certainly—the Cooper review. I am speaking now as an ASIC witness.

Mr D'Aloisio—But he is speaking as ASIC.

Mr Cooper—In managed products generally, outside super, this has been an issue for some time—the tension between the usefulness of a calculator and the ability to stimulate interest in how much a particular investment might earn over time, and the potential for it to be misleading. That is an ongoing piece of work—on what assumptions you base the projections and so on. We have done a large amount of work on that both within and outside super. There is another project that touches quite closely on that desire to provide some form of information to super fund members about what their final retirement benefit might look like. When I say 'might', you are looking at a pretty long-term projection, of course. When you look at the sort of gyrations that we have been through over the last 18 months, you can see immediately the sort of difficulties that you might get into in trying to do that. So that is a long-term discussion. We have had a discussion paper out with industry for a while now about how that might be done. Again, I think ultimately there will be an answer to that and it will be beneficial to show people some kind of ballpark figure as to their ultimate superannuation, based on very long-term returns, data and so on. It is certainly a project that is laden with a lot of pretty complex issues.

CHAIR—Thank you. Following that, given that superannuation is not a voluntary act, and leaving to one side the fact that you cannot really predict the future and using calculators is complex, is there an opportunity to show what we do know, and that is that all funds either charge some fees or have certain costs? Could the costs to the holder of the funds be accurately predicted not only at any point in time but over a long period of time? It could be based on a particular figure—the fees based on, say, $100,000 worth of superannuation. Is there an opportunity to do that, to give people a very clear picture of the difference between funds or where their money would be best put depending on the type of fees that they would prefer to pay?

Mr Cooper—Certainly in terms of what ASIC does, at the front end, if I could call it that. In other words, when you are making a decision as to what superannuation fund you are going to invest in, the product disclosure statement will set out in some detail what fees are chargeable when you join the fund, what fees are likely to be chargeable on an annual basis and so on. The

difficulty is that that is quite complex, and of course it does not speak for all time; it just gives you an initial snapshot of the fees at that particular point in time.

APRA has been doing a lot of work on seeking to improve the transparency because you have fees at superannuation fund level and then you have fees depending on what investment option you are in. There are all sorts of different fees, some of which hit the fund at asset level, as they say, and some of which are charged at account level. So it is a very complex area, but there is certainly progress being made towards helping super fund members get that comparability. The difficulty is the sort of issues I have just outlined, and the fact that you have different types of superannuation products and you now have a lot of self-managed super fund members. The issues around their costs and fees are ultimately the same because they are trying to grow the pot of their super savings and not have them eroded by fees, but the comparability is very complex.

Ms GRIERSON—You have taken action against a husband and wife from Victoria. I think they pleaded guilty. Has that been concluded? It was regarding a superannuation product that they were—

Mr D'Aloisio—Can we take that on notice?

Ms GRIERSON—Okay.

Mr D'Aloisio—I recall the case; they did plead guilty—

Ms GRIERSON—I am just wondering if there are any others.

Mr D'Aloisio—but I cannot remember whether or not the case is concluded.

Ms GRIERSON—That case did attract media attention. Have there been any other people pursued?

Mr D'Aloisio—We will take that on notice if we may.

Ms GRIERSON—Good. What work have you been doing on improving the reliability of superannuation projections, making them a little bit more realistic?

Mr Cooper—As I have just explained, we are working on a project. At the moment superannuation funds do not have an obligation to, and generally do not, project the sorts of earnings you could expect. The government has just moved forward with regulations on showing people what they should expect on a long-term basis, what the kind of fund they are in—and we have been doing this for some time—should return over a rolling five- and 10-year basis. That is the kind of information that is of most use to super fund members.

Ms GRIERSON—Are a lot of people are going to receive their statements in the next few months. They are not going to have very realistic projections on them.

Mr Cooper—Yes, and, with the way the legislation is designed, what they will see and what they have been seeing is a 12-month look.

Ms GRIERSON—Yes, now that you have more access.

Mr Cooper—Yes. The longer you go back in time, the more you see that super is really a long-term game and that even the sorts of gyrations we have seen over the last 18 months or so will average themselves out over time.

Ms GRIERSON—They are averaging themselves out at less than bank deposit interest at present.

Mr Cooper—But that is market, you see. The point to understand here is that superannuation is not a separate asset class. It is a structure for long-term savings with tax advantages, but it looks to the market for earning returns.

Ms GRIERSON—So were the tax advantages granted by the previous Treasurer too generous?

Mr Cooper—No. We are talking about a very big pot of money here, and it seeks out returns from the market. Nobody could be happy about what the market has done over the last 18 months or so, but that is the reality of investing.

Mr D'Aloisio—The accumulative nature of these funds is such that in effect each member is a retail investor, and investment carries risk, long-term and so on. They are not defined benefit super funds where at the end of the day the risk is with the employer, who has to provide you a certain multiple of your salary. So, inevitably, long-term projections where you are trying to predict markets are going to be fraught with difficulty. If we go back five years, would we have predicted what has occurred? Without the benefit of hindsight, if we had we taken up this issue five years ago, would we have devised a program that would have predicted what has occurred?

Three or four years ago any sort of planning and projection on investment always used as the benchmark the 1987 crash, which generally speaking was 15 to 20 per cent. Generally speaking, no-one would have used a 45 per cent drop in the stock market. Yes, we could develop tools and we could try to project forward and give much greater clarity of risk and so on. What Jeremy is saying all makes good sense, and ASIC will work towards it. But, at the end of the day, I think members of super funds need to accept that and to understand that this is to do with risk and investment.

Ms GRIERSON—I think it is important to realise now that when governments have policies they can be quasi financial advice, really. When it is said that there are great advantages to put all your money in super, to salary sacrifice, to borrow against your mortgage, whatever, it is almost seen as financial advice. You would have to wonder if that was reckless.

CHAIR—If I can turn to financial literacy, which we have already raised as an issue, I want to try to understand the expectations of ASIC, or more broadly speaking, about what education can deliver. To put that into context for you, I am talking with particular reference to Storm. There are many others, but that is the one most in the media. Some investors in Storm were at the least sophisticated end of the scale and others were at the most sophisticated end—some were actually financial planners and qualified people; some ran financial planning and advisory firms themselves. Given that there was almost the 100 per cent range, from the person who

knows the absolute least to the person who should know the absolute most, and they came to the same decision in terms of their investments and took similar losses, how much can we expect education either to prevent that or just to satisfy the need for people to be able to say, 'Well, at least I knew it was coming'?

Mr D'Aloisio—Let me deal with retail investor education first and then moved to financial literacy, which is a much broader subject where you are seeking to provide the necessary tools at a much earlier stage in life so that people grow up understanding risk and how financial markets work. At the retail investor level, what we have seen in Australia over the last 10 years has been a significant growth of retail investors driven by asset value rises, superannuation and so on. These have been very well educated men and women who have been successful in a range of businesses to accumulate their wealth. What has occurred in some of the examples you are talking about is that the risks and the assessment of risks around those investment were probably not well appreciated. From example, often we have seen that a simple rule of diversifying your asset classes and risk is not followed, and retirees who might have put all their superannuation in a particular product, like a Westpoint. We have also seen that when retail investors have looked at issues such as debentures that might have carried, say, eight or nine per cent, they tended to look at the eight or nine per cent, did not ask the question about what was the risk of the repayment of the principal and tended to treat the debenture investments as if they were term deposits in a bank. So, from the surveys we have done, that has led us to say that we can make a little bit of a difference in targeting our education programs at the retail investor level around two or three simple concepts: asset diversification, risk reward premium, how you assess that. We think that will assist investors in making decisions in the retail investor area that we are talking about.

Then when you move from that and say, 'Given that this generation has got this, how do you actually instil similar skills and assessment in the next generation and the following generation.' This is where I think the financial literacy program comes in. It is really aimed much more at getting at the schools, the education programs—you have heard people like Paul Clitheroe speak about this, and other people at ASIC—to really get the teachers and the students on board in understanding the basic principles of financials. And not just investing but also financials like balance sheets and budgeting and planning your affairs and so on.

Again, it is a bit like the question that Senator Mason asked earlier: can you point to proof that that will make a difference? Intuitively that will make a difference but will it mean that investors in the future will make better investment decisions and not incur the sort of losses that happened with Storm or not? I do not know. I think we will minimise that risk but in the end, when you look at the behaviour in some of these investments and the way that retail investors have acted, sometimes they act just on the advice of a mate at the golf club: you know, 'I am in this investment and it is providing a good return and you should be in it.' Everyone has got the right to do that and they do it and sometimes those things come unstuck. A lot of the managed investment schemes that we see come unstuck sometimes are very area specific related. They might be up on the north coast in Queensland or—

Senator WILLIAMS—Just like Storm.

Mr D'Aloisio—So there are a lot of factors that come into play in that final decision. All we can do is work to put resources into a system. We think that through the sort of retail investor

financial literacy programs that we are talking about we will assist the community, but if an expectation is that we in our efforts can lead to a situation where you do not have Storm type issues, that is a big ask in the sort of efficient markets that we want and in the ability to keep the cost of capital low. In order to keep the cost of capital low, there is the commensurate side of this, which is that there has to be risk taking. In the structure, risk has to be taken in order for markets to operate efficiently and effectively. The judgment for policy makers is always going to be around where the balance is between protecting and saying to an investor, 'You can only invest in two products; you cannot invest in anything else because we do not trust that you are smart enough to invest in them.' That is a big call because it might protect that investor but it may have an overreaction for the long-term efficiency of the market. These are not ASIC issues; these are policy issues for you and for government.

CHAIR—In the area of education what I am trying to ascertain or better understand is that we do not end up in a situation where advice is given to government or bodies give advice to government that somehow education is a pathway to a solution. Given that those who are most educated in the markets and provide the advice—the accountants; for example, 85 per cent of MIS was provided on advice from accountants, who are highly qualified—no more education is ever going to solve that, or any other advice given from the most educated. If we cannot better educate the ones who give the advice, who are we educating?

Mr D'Aloisio—The biggest losses that have occurred have not been at the retail investor level; they have been at the institutional level.

CHAIR—Yes, absolutely, and that is exactly my point.

Mr D'Aloisio—I agree, but when you come to the retail investor—the more vulnerable sector and the sector that has been an important part of Australia's capital investment markets over the last ten years because it has added liquidity to the markets and it has made our markets much more attractive than they otherwise would have been—what we are saying is that, in relation to that group that ASIC does have responsibility for providing assistance to, we think that all the tools that we are using, including the tools of investor education and financial literacy, can play a part to assist that group. I have said in other fora that it is not an issue of talking about the disadvantaged; this is really aimed also at the mainstream retail investors, who are very intelligent men and women who just have not had the experience. They have run good businesses but they have not had the exposure and experience on investments but, with some assistance—asking the right questions, looking at asset diversification, looking at issues such as risk/reward premiums and those sorts of concepts—we think that group will benefit and will make better decisions in the future than they otherwise may have made or could make. So we think we can make a difference and we certainly think that a properly run financial literacy program that we are working towards can make a difference in the schools and in the generations coming through. Again, it is not going to avoid the issues, but it actually puts them in a better position to ask the right questions—that is all.

CHAIR—I accept that. I am just trying to make sure the terminology around education does not become a substitute for much tougher recommendations or advice in terms of what really needs to be done to prevent mistakes being made in the future.

Mr D'Aloisio—Your other inquiry on financial advisers is getting underway and we will talk there. In addition to the investor education and financial literacy I have talked about, if we can improve the quality of advice that is available and if we can improve the coverage of retail investors and others getting access to that advice in a range of areas, I think that would benefit this group. ASIC will do its part in improving the quality of advice and the availability of advice across a much broader range of investors. At the end of the day only 20 or 30 per cent, on some surveys of investors, get access to and take financial advice. In my view, that is a very low percentage for a market that relies so heavily on retail investors.

CHAIR—Perhaps the best education tool has already been applied—once bitten, twice shy. I think people have learnt a lot a lot in recent times.

Ms GRIERSON—The government has regulated to require a minimum standard of professional indemnity insurance. There is concern that that will weed out a lot of small players. Is that fair? Do you think the balance will be right, or do you think the market will be concentrated in the hands of a few?

Mr Cooper—As they say in the insurance industry, the market is hardening.

Ms GRIERSON—So it has already happened.

Mr Cooper—Yes. The willingness to write cover and the price of that cover are certainly under pressure. We are keeping in very close touch with what is happening, because it is, after all, a market solution, and when the market is pressurised that solution becomes more difficult to render. Is it forcing small players out of the market? We do not think so. It is right on the edge at the moment. If the market materially hardened further then there might be some smaller licensees that are unable to get cover. That has always been a potential in this policy, and we have always made it quite clear that we would be realistic and would assess the particular circumstances of licensees as and when that happened.

CHAIR—I have a couple of quick questions in the area of professional indemnity insurance. There are some issues around the access to indemnity insurance that organisations and people that are currently covered might have—

Mr D'Aloisio—You mean the investors?

CHAIR—Yes, through their adviser—and whether that coverage is going to be sufficient. There are some questions that I have about whether this will be a satisfactory cover. I understand that in 2010 there will be some changes, including an uncapping. Also around that issue, in your view how will insurance companies deal with this particular area? What does it mean for the future of private indemnity insurance?

Mr Cooper—The capping issue that you referred to I would imagine is the scheduled increase in the external dispute resolution scheme limits. That is relevant because we are pretty much talking about the investment advice sector, which is currently $150, 000. That will go up to $280,000, but not until 1 January 2012, which is roughly 2½ years away. We have put that down on the table and the market knows that that is coming. We think 2½ years is a pretty reasonable time for that to be absorbed, for the issues to be brought back to us, and potentially to you, and

for it to all settle down and be operable on 1 January 2012. We are reasonably confident, and so far there does not seem to have been too much resistance to that proposition. We have given a nice lead-in time for that to happen.

As for PI insurance itself, it is not a perfect solution to the sorts of issues we are trying to deal with. You have got the situation that the insurance is not directly accessible by the retail investor. It is insurance for the licensee. Very big people that are APRA regulated do not even need insurance, so it is generally the smaller to very small players who have got this sort of insurance. When difficulties occur, that can conflict with the usefulness of the policy—in other words, the conduct of the licensee, whether it is insolvency or misconduct of some sort. That would entitle the insurer to say, 'Sorry, we wrote this contract for you but you had certain obligations and you breached them, so we are not going to extend cover.' There are issues there. But at least, so far, it has been a reasonable market solution to the problem.

Mr D'Aloisio—Overall, the investors are better off with it.

CHAIR—Absolutely.

Mr D'Aloisio—The questions are a matter for the government. Are there better schemes, how would they work and who is going to fund them? Those are the issues.

Mr Cooper—There is one very interesting development. When I spoke about hardening the market, I spoke of it in negative terms. There is actually quite an interesting positive that has come out of it and that is that insurers are now looking a little bit more closely at what the risks actually are. There is now engagement: 'It seems as though that particular product has caused a lot of problems, and we do not think your systems are satisfactory. Therefore, we are not going to cover you for going forward in relation to that product.' There is not now more focus on exactly where these risks come from. The insurers have learnt more about the way financial products tend to have problems that go right across the board. That level of engagement about what is happening in the business of advisers is possibly quite a healthy thing.

CHAIR—Is there an opportunity in the future that private indemnity insurance could be used as some kind of guide or rating method to determine whether a product is a good product or a not-so-good product, according to what the insurance company believes the risk level is for that particular product?

Mr Cooper—It is interesting that margin lending has been singled out in the case of at least some advisers as being one of those products that insurers at the moment are not going to cover.

CHAIR—My concern is really for ordinary mum and dad investors because they are the least well placed to be able to protect themselves. Is it currently the case that, if they have been defrauded out of their investment or some other illegal activity took place or the company becomes insolvent, insurance companies generally will not cover their investment? Are there some issues in that area?

Mr Cooper—It is specific to the individual facts of the case, so it is hard to give an across-the-board answer about that. Where you are bordering on solvency and insolvency, that is where

you do get some difficult issues about the obligations to notify the insurer that the risks have increased.

CHAIR—I am asking you to make a sweeping statement here. The things that would be pure market failure versus things that may involve other activities in terms of the differentiation between where an insurance company may—

Mr D'Aloisio—In order to make a claim, you have to establish a failure or an act or omission on the part of the adviser. If you do not establish that, there is no cover. In terms of the adviser and the negotiations that occur with the particular professional indemnity insurance company, there may well be exclusions and carve-outs that could affect an individual claim. Clearly, ASIC's approach, in the policies it has put out, is to encourage a much more standardised PI policy for the industry but, at the moment, there are differences and you may think you are covered but in actual fact you might find that there is a carve-out. For example, a carve-out on fraud may be present. You are not covered and then, in that situation, if your rights are against a particular adviser and the adviser is in administration or bankrupt, you have got a problem. It is an inherent limitation on the system that currently applies.

Ms GRIERSON—I would like to move on to BrisConnections.

CHAIR—If there are no other questions in that area it might be best if ASIC gives us a short brief on BrisConnections first and then we will go to questions. I believe ASIC are doing some work in that area. Is that the case?

Mr Medcraft—There is a lot of work. I have been chairing a task force on BrisConnect for some months. By way of background the project was a $4.9 billion project, with $1.8 billion coming from equity and $3 billion coming from debt to do the initial construction. That $1.8 billion of equity was coming from $3 shares that were initially only paid to $1, so they were partly paid shares. In addition to that, the project was expected to pay distributions over the first 15 years which were themselves further funded by debt, so the debt on the project was projected to go from $4.9 billion to something like $7.7 billion. So the project was extremely highly geared both initially and in terms of ongoing distributions.

What happened? The launch was in July 2008. After launch the share price continued to decline; by November it had come down to about 1c. There was a reassessment of risk on these projects in the market, and we have comparables: the share price of ConnectEast, the Victorian toll road, fell by 55 per cent; and Rivercity, another toll road in Brisbane, fell 50 per cent. A fully paid share of $3 was then worth $1.50. You can understand why what happened with the BrisConnect part of it was a function of the fall in the market, in that you had a $3 share only paid to $1, which had notionally fallen, if you think comparably, back to $1.50.

We understand that a lot of people bought shares on the internet and claimed that they were uninformed of the fact that the shares were partly paid. Since then the ASX has required that as from 1 May investors have to sign an acknowledgment that they understand they are buying partly paid shares. That rule change was implemented. Even before that, in March, there was a stopping of straight-through processing and brokers were going back to ask investors if they knew what they were doing.

The other issues that have come up with BrisConnect have been what you could call governance issues. Everyone is aware of the calling by Mr Bolton and his associates of the meeting of investors to replace the RE and also to look to winding up the entity. ASIC intervened in the court case in Victoria to make sure that the investors' view was properly presented. We also intervened in Queensland on behalf of investors when Macquarie Bank tried to stop the meeting occurring. As you know, we also intervened to make sure, in the disclosure to investors about the meeting, that they were properly informed of what was going to happen. So we did take a number of steps to make sure that investors were properly informed.

As you know, the meeting occurred and it was decided that the motions were lost. As a result of that and the actions taken around parties such as Mr Bolton et cetera, we have been investigating those circumstances. That investigation is ongoing. We expect to make a decision about any action probably in the next four weeks. That gives you an outline of BrisConnect. There have been some changes in the partly paid share issue and the investigation in relation to Bolton. I do not know if there is anything else I can add.

CHAIR—Those who undertook proper due diligence in terms of their investment in BrisConnect would have relied on a number of bits of information, in particular the so-called independent report that was commissioned by BrisConnect into the possible revenue flows from toll takings and the number of vehicles that would use the roads in question. It is my understanding that not only was this report commissioned by BrisConnect but it was paid for by them and so forth. The report claimed that a certain number of vehicle movements would be on those roads. People have explained to me that over a 365-day period, seven days a week, 24 hours a day, if traffic was bumper to bumper you still could not achieve the flow-through traffic that was claimed in this report. Do we have any information on that? Is ASIC looking at that report and how it is possible?

Mr D'Aloisio—I think you can assume that, as Greg has said, ASIC is looking at the matter. Part of its remit would also be to look at the documents that are associated with this and assess whether there were proper disclosures and so on. So you can assume that we would, at an operational level, be looking at those sorts of issues, but I do not wish to comment on the statement you have made at this point.

CHAIR—It appears that, in a range of areas, companies that provide prospectuses or product disclosure statements or make other claims to meet obligations also provide so-called independent reports on the possible future revenues or earnings or success of their particular schemes. It is the case that sometimes it is just not possible at all to meet those stated claims, under any circumstance. What sorts of powers has ASIC got or what powers exist to take those people who write those reports to task?

Mr D'Aloisio—If we can take it outside the BrisConnect talk generally, ASIC has an extensive range of powers to act in relation to misleading and deceptive conduct either in a prospectus or in disclosure documents and bring about action for compensation and civil penalties. So there would be a range of penalties and actions that ASIC could pursue in a case where it felt that misleading and deceptive statements had been made.

Ms GRIERSON—I do not think I have ever seen a case where so many people behaved so badly and where that behaviour compounded damage to so many people. Is it fair or unfair to say: where the bloody hell were you? Did you become involved far too late?

Mr D'Aloisio—I think to say we became involved too late would be unfair. ASIC did get involved at the appropriate stages of it as it unfolded and is continuing to look at it. Your question goes to whether ASIC should have prevented this in some way.

Ms GRIERSON—Based on the prospectus misinformation, based on the model used to finance and invest.

Mr D'Aloisio—I think that is unfair. Regarding these prospectuses and infrastructure, whether it is BrisConnect or anyone else, there have been a range of them that have worked well. There are market related issues that impact. The leverage issue is clearly something that is not confined to BrisConnect. The leverage problem has been across a range of things. ASIC cannot just stop something because there is leverage. We have had this discussion in relation to Storm Financial, for example. We cannot simply say, 'Look, we think this thing is overleveraged. You shouldn't do it.' What we need to do is ensure that there has been proper disclosure. On the face of it, regarding the product disclosure statements and so on that BrisConnect put out, we would need to still prove that there were misleading and deceptive statements in there if we were going to take action. The notion that we could anticipate and prevent it is difficult. There is no way even now, with the benefit of hindsight, that BrisConnect have been stopped. It is just speculative.

Ms GRIERSON—So what are the best things that could come out of your investigation, do you think?

Mr D'Aloisio—The key thing that has come out—and ASIC has acted—has been getting a much clearer understanding of what 'partly paid units' means and what obligation is attached to it. That is something that I think a lot of investors missed. That is one. As for the other issues in terms of what may come out it and how investors may benefit from it in the future, it is too early to say. Our investigations are not progressed sufficiently to be able to give you benefit-of-hindsight examples of what we could change. Our investigations are just not progressed enough.

Ms GRIERSON—Will your investigation results be made public?

Mr D'Aloisio—Our investigations, if we decide to take action, ultimately of course will be. If not, we will simply report you that we have decided not to take action.

CHAIR—Will ASIC be looking at the structural arrangements and the relationship between the structural arrangements within BrisConnections and the underwriting partners and, further, any other related entities in terms of what took place?

Mr D'Aloisio—I think in a broad sense we will be looking at all those aspects, but again if you look at what has occurred you still need to prove potential wrongdoing by underwriters or by others involved. Simply because an asset has not performed is not of itself an indicator of wrongdoing. So in our inquiries, you can assume—as I said earlier—we will look at those issues.

Senator WILLIAMS—I want to go back your opening presentation, Mr D'Aloisio. With these Storm clients coming to some deed of settlement with the banks in relation to the financial mess, did you say that they can take legal action if necessary later on if some other evidence comes forward at a later date?

Mr D'Aloisio—The background of this was that, at Senate estimates, a discussion occurred about whether the CBA was looking at reaching settlement with these investors on the basis that they would be released from future liability. We have taken the view that, to enter into those arrangements, unless investors fully know what their potential rights may be—including that ASIC completes or at least significantly advances its case—it may prejudice those investors if they have released their rights. On the other hand, some investors might have wanted to say: 'We don't mind that. We'll still enter into these deeds with the Commonwealth.' In our discussions with the Commonwealth, where we have ended up and where the CBA have ended up in their own decision on this—which, as I said earlier, we support—is that they have said, 'It's probably better in the circumstances that, while we continue to talk to our customers, we suspend repayment of principal and interest, at least until the end of August.'

Senator WILLIAMS—I saw the media release today.

Mr D'Aloisio—In that way, we are able to continue with our investigations. If rights that investors have do emerge in that process, that either we can pursue or they can pursue, they are protected in the sense that then they can pursue those rights.

Senator WILLIAMS—Have you had an opportunity to have a look at that hearing of the Supreme Court of South Australia in relation to Mr Juvenivic that I tabled at the estimates?

Mr D'Aloisio—It is with my staff. I have not as yet. I will get back to you on that.

Senator WILLIAMS—If you could get your staff to call me sometime, I would like to have a discussion off the record with your staff. I would appreciate that.

Mr D'Aloisio—I will do that.

Ms GRIERSON—In your investigations, have you formed a view regarding BrisConnections board or management's knowledge of Mr Bolton's proxy votes, say?

Mr D'Aloisio—You would not be surprised by my saying that that is an operational matter that I do not wish to comment on. As Commissioner Medcraft said, we are looking at that in our investigations.

Ms GRIERSON—Is it fair to say that it was never anticipated that that would happen? Was it anticipated that that would happen?

Mr D'Aloisio—Again, I do not wish to comment on that; it is an operational matter for us.

Ms GRIERSON—Can you comment on the cooperation levels from the parties involved?

Mr D'Aloisio—It is the same answer.

Ms GRIERSON—What powers do you have with regard to investigating and making sure people are cooperative with you?

Mr D'Aloisio—There is no issue about that. There has been no suggestion of lack of cooperation. ASIC has extensive powers for investigation. Under section 19(33) there are a range of provisions. There is no suggestion here that Hardie are not cooperating.

Ms GRIERSON—I did ask you if there was cooperation; you are telling me that you have been having cooperation.

Mr D'Aloisio—We are getting the information that we need. The investigations are proceeding. But I am not prepared to go into the detail.

Ms GRIERSON—So you are confident that your investigations will be fully informed regarding the behaviours involved and therefore you will be able to take action accordingly?

Mr D'Aloisio—Speaking generally, if we do our job properly when we investigate, that is the position. And I have no reason to believe we will not do our job properly.

Ms GRIERSON—Good. Is there anything hampering you doing your job properly or getting a result from this that will inform better practice in the future?

Mr D'Aloisio—I am not aware of any in relation to this matter or indeed in relation to similar matters that we might be looking at.

Ms GRIERSON—Human nature is a wonderful thing!

Mr D'Aloisio—We have said in this committee, I think—or at least in Senate estimates—that in relation to some of the insider trading areas that we are dealing with we have suggested that we need more extensive powers around electronic surveillance. That is an example. I am not seeking to be coy about the earlier answer. That is an example where we feel that we probably do need a strengthening of our investigative powers. I do not wish to leave you with an impression that I think everything's cool.

Ms GRIERSON—How is your investigation going with Kleenmaid? Is that progressing well?

Mr D'Aloisio—Again, we have made clear that we are investigating that. That is an operational matter and it is a serious matter.

CHAIR—Mr D'Aloisio, I thank you and Mr Cooper and Mr Medcraft for your efforts tonight. You have agreed to take some questions on notice and the committee would appreciate it if answers to those could be returned to the secretariat by 31 July. I also thank the committee secretariat and Hansard.

Committee adjourned at 8.52 pm