Parliamentary Joint Committee on Corporations and Financial Services

Statutory oversight of the Australian Securities and Investments Commission

February 2011

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Duties of the Committee

Section 243 of the *Australian Securities and Investments Commission Act 2001* sets out the Parliamentary Committee's duties as follows:

(a) to inquire into, and report to both Houses on:

(i) activities of ASIC or the Panel, or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; or

(ii) the operation of the corporations legislation (other than the excluded provisions), or of any other law of the Commonwealth, of a State or Territory or of a foreign country that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); and

(b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; and

(c) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.

TABLE OF CONTENTS

Membership of Committee ..... **iii**

Duties of the Committee ..... **iv**

Chapter 1 - Statutory oversight **1**

Gathering evidence 1

Additional information 2

Chapter 2 - Issues raised with ASIC **3**

Expansion of ASIC's responsibilities 3

ASIC's response to Storm Financial 7

Issues arising from the Global Financial Crisis 8

Complaints-handling 11

Financial literacy 12

Appendix 1 - Public hearing **15**

Appendix 2 - Answers to questions on notice **17**

Abbreviations

ASIC	Australian Securities and Investments Commission
ASIC Act	*Australian Securities and Investments Commission Act 2001*
AUASB	Auditing and Assurance Standards Board
AASB	Australian Accounting Standards Board
CALDB	Companies Auditors and Liquidators Disciplinary Board
CAMAC	Corporations and Markets Advisory Committee
Corporations Act	*Corporations Act 2001*
FMA Act	*Financial Management and Accountability Act 1997*
FRC	Financial Reporting Council
IFRS	International Financial Reporting Standards

Chapter 1

Statutory oversight

1.1 The Parliamentary Joint Committee on Corporations and Financial Services was established by the Australian Securities and Investments Commission Act 2001. Section 243 specifies the committee's duties, which include:

> (a) to inquire into, and report to both Houses on:
>
> > (i) the activities of the Australian Securities and Investments Commission (ASIC) … or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed …

1.2 This report is presented in execution of the committee's duty under section 243(a)(i).

Gathering evidence

1.3 The committee held a public hearing on 23 June 2010 in Canberra to examine matters falling within ASIC's regulatory jurisdiction. On 19 July 2010 the Governor-General prorogued the 42nd Parliament and dissolved the House of Representatives. As a result of this, the committee was unable to furnish a report.

1.4 On 24 November 2010 the newly appointed committee of the 43rd Parliament held an oversight public hearing in Canberra.

1.5 This report reflects evidence taken at both of these hearings. The witnesses who gave evidence are listed in Appendix 1. A copy of the Hansard transcript from the hearing has been tabled for the information of the Parliament and is available on the committee's website.[1]

Additional information

1.6 A number of questions were placed on notice at both hearings. Those questions, and ASIC's responses to them, are published in Appendix 2.

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1 www.aph.gov.au/Senate/committee/corporations_ctte/asic/index.htm

Chapter 2

Issues raised with ASIC

2.1 The committee discussed a number of issues with ASIC at its oversight hearings on 23 June and 24 November 2010. These included:

- Expansion of ASIC's responsibilities;
- ASIC's response to the collapse of Storm Financial;
- Issues arising from the Global Financial Crisis (GFC):
    - Potential for a unique client identifier system
    - Freezing of investor funds
    - Regulatory reform;
- Complaints handling; and
- Financial literacy.

Expansion of ASIC's responsibilities

2.2 ASIC's regulatory responsibilities have increased over time. Recently, ASIC has assumed responsibility for the following functions:

- Market supervision;
- Regulation of consumer credit; and
- National Business Names Register.

Market supervision

2.3 On 1 August 2010 ASIC took over responsibility from the ASX for supervision of real-time trading on Australia's domestic licensed markets. The ASX has retained the 'issuers function, the listings function and the continuous disclosure function'.[1] To enable real-time trading supervision, ASIC has an integrated market surveillance system (SMARTS) in place, which mirrors the system used by the ASX. A number of ASX surveillance staff moved across to ASIC on 1 August:

> ...23 or about that number came from the ASX. We already had a number at ASIC who had been at ASX in the past and we have others with market experience.[2]

2.4 As noted in an earlier committee report, it was considered that the new arrangement would 'counter perceptions of conflict of interest faced by the ASX' in its dual role of market operator and watchdog. It was noted that the perception could be

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1 Ms Belinda Gibson, Deputy Chairman, ASIC, *Committee Hansard*, 24 November 2010, p. 24.

2 Ms Gibson, *Committee Hansard*, 24 November 2010, p. 24.

exacerbated when competition for domestic trading markets services is opened up. Had the change not been made, ASX would have had oversight of its competitors.[3]

2.5 Ms Belinda Gibson, Deputy Chair, ASIC, informed the committee that the transition from the ASX to ASIC went according to plan. She reflected positively on the process to-date:

> The integration process has gone well over the last four months and we are now at the position where we are monitoring the market real-time. We are assessing an average of about 300 alerts a day where there is some questionable activity or questionable conduct that requires greater analysis.[4]

2.6 Ms Gibson noted that, with respect to monitoring of broker conduct, 'the time from identification of a problem through to formal investigation has decreased' since ASIC took on this supervisory function. As she observed:

> That is a benefit of the change in supervision program. It is telescoping the analysis ASX did and the analysis we did into the one exercise.[5]

2.7 While it is expected that further efficiencies will be achieved, Mr Tony D'Aloisio, Chairman, ASIC, commented that it would take another six to twelve months before the benefits of the new arrangements can be fully assessed.[6]

2.8 The committee has noted that ASIC is consulting on reforms to market structure and surveillance; this was foreshadowed in one of the oversight hearings.[7] The consultation paper was released in November 2010. The media release for the consultation paper lists the following proposals for reform:

> **new controls to curb extreme price movements and to require transparent cancellation arrangements** – [ASIC's] response to the 'flash crash'
>
> **enhanced controls for direct electronic access and algorithmic trading** – in response to the increasingly pervasive role of technology
>
> **formal obligations on market participants** – to deliver best execution to clients
>
> **minimum disclosure about order and trade information** – to promote efficient price formation on markets and reduce incentives for trading to shift to ‘dark pools’
>
> **consolidation of market data across all execution venues** – to ensure whole of market transparency

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3 Joint Committee on Corporations and Financial Services, *Statutory Oversight of the Australian Securities and Investments Commission*, June 2010, p. 3.

4 Ms Gibson, *Committee Hansard*, 24 November 2010, pp 22–23.

5 Ms Gibson, *Committee Hansard*, 24 November 2010, p. 23.

6 Mr Tony D'Aloisio, Chairman, ASIC, *Committee Hansard*, 24 November 2010, p. 24.

7 Ms Gibson, *Proof Committee Hansard*, 23 June 2010, p. 11.

market operator cooperation on trading halts and related matters

better regulatory data on orders and trades – to ensure ASIC's market supervision keeps pace with market developments.[8]

2.9 The committee understands that discussions with stakeholders are continuing, but that there may be resistance to aspects of ASIC's proposals in some areas such as the regulation of dark pools.[9] Dark pool regulation is an important emerging policy issue, which is causing concern for regulators internationally,[10] and which the committee understands is also currently being examined by the International Organization of Securities Commissions (IOSCO), of which ASIC is a member.[11]

2.10 The committee has also noted the first market supervision report issued by ASIC since taking on market supervision responsibilities. The report states that the pattern of trade surveillance alerts is consistent with that received by the ASX prior to the handover of responsibilities.[12] The report does not indicate whether there have been changes in the number of cases that are subject to initial investigation (91) or referral to a Deterrence team (17), but states that the turnaround time has improved.[13]

Regulation of consumer credit

2.11 In 2008 the Council of Australian Governments agreed that the regulation of consumer credit would be transferred from the states to the Commonwealth. Dr Peter Boxall AO, Commissioner, ASIC, explained that:

> The states and territories have been operating under the Uniform Credit Code, and this has been enforced with varying degrees of rigour in terms of licensing and surveillance...[T]his is moving across to the Commonwealth, and ASIC will be responsible for the licensing and monitoring of credit providers.[14]

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8 ASIC, 'ASIC consults on equity market structure regulatory framework', Media release 10-227, 4 November 2010.

9 Eg. Patrick Durkin, 'ASIC presses brokers to report suspect clients', *Weekend Australian Financial Review*, 22–23 January 2011, p. 13.

10 Eg. Jacob Bunge, '2nd update: CBOE's Brodsky Seeks Review Of Dark-Pool Trading', *Wall Street Journal Business* online, 20 January 2011, http://online.wsj.com/article/BT-CO-20110120-716694.html (accessed 24 January 2011).

11 Technical Committee of IOSCO, *Issues Raised by Dark Liquidity – Consultation Report*, CR05/10, October 2010, http://www.iosco.org/library/pubdocs/pdf/IOSCOPD336.pdf (accessed 24 January 2011).

12 ASIC, *Report 227: ASIC supervision of markets and participants: August to December 2010*, January 2011, p. 4.

13 ASIC, *Report 227: ASIC supervision of markets and participants: August to December 2010*, January 2011, pp 8–9.

14 Dr Peter Boxall AO, Commissioner, ASIC, *Proof Committee Hansard*, 23 June 2010, p. 3.

2.12 In October 2009 the National Consumer Credit Protection Bill 2009 was passed. It established a new single, federal regulatory framework for the regulation of consumer credit and finance broking. This function requires ASIC to licence credit providers and monitor compliance with the *National Consumer Credit Protection Act 2009*.

2.13 ASIC explained that in order to make the changes known and understood by stakeholders it conducted 'Australia-wide roadshows' in regional areas as well as capital cities. Along with this ASIC has released several regulatory guides to assist industry in compliance with the new requirements.[15]

2.14 Mr D'Aloisio provided the committee with an update of registration and licence applications and further reported that:

> the team in the next 12 months will be looking at the margins to see if there are areas where people should have applied that did not and whether they need to take any action. We can get a fuller answer on this, but I tend to think it is very much at the margins, by and large, when you look at the number of registrations, we are not expecting that all those registrations are going to convert to licences. The take-up rate of the licences is probably going to be much less, which will give us a clearer picture of the number of real providers in the market going forward.[16]

National Business Names Register

2.15 From April 2011, ASIC will be responsible for the National Business Names Register, in effect taking over responsibility from the states and territories. The register will be an online service, hosted by the Australian Business Register, for registration of Australian Business Numbers and business names.[17]

2.16 ASIC informed the committee that the register is a 'significant project' that will increase ASIC's registered and related transactions.[18] The overall resource implications are being assessed:

> We are working on a workforce plan to identify the resource requirements that are going to be needed for the delivery of the business name service in the first three years post commencement with ASIC.[19]

2.17 ASIC advised that implementation of the register is on track for April 2011.[20]

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15 Mr D'Aloisio, *Committee Hansard*, 24 November 2010, p. 25.

16 Mr D'Aloisio, *Committee Hansard*, 24 November 2010, p. 25.

17 Mr D'Aloisio, *Committee Hansard*, 24 November 2010, p. 27.

18 Mr D'Aloisio, *Committee Hansard*, 24 November 2010, pp 27–28.

19 Mr D'Aloisio, *Committee Hansard*, 24 November 2010, p. 28.

20 Mr D'Aloisio, *Committee Hansard*, 24 November 2010, pp 27–28.

Consumer protection – additional powers

2.18 From 1 July 2010—as part of the new Australian Consumer Law—ASIC took on responsibility for administering laws to deal with unfair terms in consumer contracts for financial products and financial services.[21] ASIC was also given additional enforcement powers to deal with conduct that contravenes the consumer protection provisions of the ASIC Act.[22]

Committee view

2.19 At this stage, ASIC's adoption of the additional functions discussed above appears to have occurred relatively smoothly. The committee commends ASIC on its planning and management of these new arrangements.

2.20 The committee recognises that there are synergies between some of ASIC's functions, which give some room for re-directing internal expertise across functions on a needs basis. In the case of market supervision, expertise has also been transferred from the ASX to ASIC. At the same time, the committee notes that an expanding portfolio of responsibilities carries with it risk—in particular, the potential dilution of resources and expertise.[23] The committee will continue to track the progress of these new functions and their impact on the overall performance and resourcing of ASIC. It will talk to ASIC in 2011 about the equity market structure regulatory framework.

ASIC's response to Storm Financial

2.21 Since its 2009 report *Inquiry into financial products and services in Australia*, in which the committee considered the collapse of Storm Financial Ltd, the committee has followed ASIC's investigation into the collapse with considerable interest. Consequently, the committee asked ASIC to provide an update on this matter at the public hearing.

2.22 With an announcement pending on the Friday following the hearing and ASIC Board discussions still in progress prior to the announcement, ASIC was unable to provide the committee with a detailed update. However Mr D'Aloisio did assure the committee that Friday's announcement would be a 'definitive statement' on whether a commercial resolution has been achieved or whether there would be further investigation or litigation.[24]

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21 Mr D'Aloisio, *Committee Hansard*, 24 November 2010, p. 17.

22 Schedule 3 of the *Trade Practices Amendment (Australian Consumer Law) Act 2010* amends the *ASIC Act 2001* to provide ASIC additional infringement notice powers and power to issue public warnings notices. The new enforcement powers commenced on 15 April 2010.

23 A further potential risk is the re-direction of resources from one function to another in order, for example, to be seen to be achieving results by focusing on the softer target or to satisfy political priorities.

24 Mr D'Aloisio, *Committee Hansard*, 24 November 2010, p. 3.

2.23 The committee notes that ASIC duly announced on 26 November that it would bring civil penalty proceedings against directors of Storm Financial Ltd and would commence legal proceedings against various parties, including Commonwealth Bank of Australia Limited, Bank of Queensland Limited and Macquarie Bank Limited 'seeking compensation for investors arising out of the collapse of Storm', unless a settlement could be reached in a final three-week period.[25] No resolution was reached, so on 22 December 2010 ASIC announced that legal action had commenced.[26]

Issues arising from the Global Financial Crisis

Unique client identifier system

2.24 At the April 2010 hearings, the committee sought ASIC's view regarding the feasibility of a unique client identification system for the Australian market. ASIC advised that the issue is 'very, very significant', and undertook to provide further information at the June 2010 hearings.[27]

2.25 ASIC outlined the client, or broker, identification systems in Canada, the United Kingdom and the United States. Ms Gibson advised:

> There is no country in the world that has a unique client identifier system at the moment, in the sense that every time client A trades they have to tell their broker, whichever broker or intermediary it is: ‘My number is 572’, and that tracks through the market.[28]

2.26 Ms Gibson reported that the US Securities and Exchange Commission has estimated that implementing such a system in the United States would cost US$4 billion upfront, with annual ongoing costs in excess of US$2.1 billion. Under the US proposal, the main costs would fall to brokers and clients.[29]

2.27 ASIC informed the committee that preliminary discussions about implementing the system in the Australian market have occurred,[30] however additional consultation and analysis is required:

> The greater opportunity for us to talk to the market on this issue will be as we move into the consultations around competition for trading services. That would be the time to probably talk about this issue more. We need to be careful here. Our markets are operating well, have been operating well

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25 ASIC, 'ASIC announces intention to commence legal action', Media release 10-250, 26 November 2010.

26 ASIC, 'ASIC has commenced Storm legal proceedings', Media release 10-281, 22 December 2010.

27 Mr D'Aloisio, *Proof Committee Hansard*, 29 April 2010, p. 41.

28 Ms Gibson, *Proof Committee Hansard*, 23 June 2010, p. 7.

29 Ms Gibson, *Proof Committee Hansard*, 23 June 2010, p. 8.

30 Ms Gibson, *Proof Committee Hansard*, 23 June 2010, p. 9.

> and, if we are going to introduce a change such as this it needs quite a lot of thought and a lot of discussion.[31]

Freezing of investors' funds

2.28 In late 2008, in light of the GFC, a significant number of investors' funds were frozen. Under the *Corporations Act 2001*, managed investment schemes are required to freeze redemptions if the scheme ceases to be liquid. Therefore, the capacity for investors, who ordinarily have an ongoing or periodic right to redeem their investments, is suspended.

2.29 At its November 2010 hearing, the committee sought an update on this issue. Mr D'Aloisio explained that mechanisms were put in place to ease the burden on the unit holders:

> We allowed what we called hardship relief—that is, in certain circumstances, unit holders could withdraw their money ahead of other unit holders, otherwise, under an illiquid scheme you can only take it out in equal amounts...The funds themselves are trying to work through a way of, over time, rolling out these investments so that the unit holders get their money back dollar for dollar, but we think that is going to take two to five years to work its way through.[32]

2.30 Mr Greg Medcraft, Commissioner, ASIC, observed:

> Commercially, I think, it is in the industry’s best interests to try to get money back to those people who want their money as soon as possible, because otherwise investors basically are not investing in those mortgage funds. So there is quite a commercial driver there as well to try to win back confidence from investors.[33]

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31 Mr D'Aloisio, *Proof Committee Hansard*, 23 June 2010, p. 10.

32 Mr D'Aloisio, *Committee Hansard*, 24 November 2010, p. 14.

33 Mr Medcraft, *Committee Hansard*, 24 November 2010, p. 14.

2.31 ASIC provided the committee with a table containing statistics on the number of schemes that were frozen and hardship relief, including the number of hardship applications:[34]

Summary – All frozen Funds	**Statistics**
Estimated total number of schemes that were frozen	93
"Unfrozen" schemes – restructured, in the process of being wound down or wound up and/or deregistered	20
Remain frozen but offers periodic withdrawal	32
Remain frozen and offers no withdrawal (primarily comprised of frozen property schemes)	23
Number of schemes applied for hardship relief	83
Hardship Relief – total number of applications received as at Dec 2010	6452
Hardship Relief – total number of application paid as at Dec 2010	4726
Hardship Relief– total amount paid under hardship relief as at Dec 2010 ($ million)	155
Total amount paid under hardship relief as a % to total assets under management (AUM)	0.7%

Regulatory reform

2.32 Mr D'Aloisio summarised the reforms, which followed from the GFC, noting that on a domestic level the government has:

- Reformed the margin lending provision;
- Introduced the national credit regime; and
- Is in the process of reforming the financial advice area.[35]

2.33 Mr D'Aloisio noted that because of Australia's relatively robust systems, international reforms have had less of an impact on Australia. Nonetheless, reform has occurred in the following areas:

- 'Changes to short-selling and improved disclosure'; and
- Changes to the credit rating agencies.

34 ASIC Answer to Question on Notice #3, 24 November 2010.

35 Mr D'Aloisio, *Committee Hansard*, 24 November 2010, p. 13.

2.34 Along with this, there are currently proposals concerning improved disclosure, hedge funds and improved regulation of securitisation.[36]

2.35 Mr D'Aloisio observed that the areas of reform adequately capture or respond to the issues arising from the GFC:

> From an ASIC perspective, I think those two streams are addressing the sorts of issues that we have seen emerge. From our point of view, we have not at this stage made other suggestions to government outside those two streams on what is needed or what additional reform is needed.[37]

Complaints-handling

2.36 ASIC's complaints-handling responsibilities and processes were considered at the committee's oversight hearing on 25 November 2009. The committee noted that it would seek further information about ASIC's capacity to receive and resolve complaints.[38]

2.37 ASIC advised that it receives approximately 13,000 to 15,000 complaints per year. Following the commencement of ASIC's role in monitoring compliance with the National Consumer Credit Protection Act, from July – November 2010 ASIC received 999 credit complaints from both consumers and industry. The committee noted the general trend, reported in ASIC's 2009-10 Annual Report, for the number of complaints to increase per year. ASIC agreed that a future annual report will comment on the trends in complaints received.[39]

2.38 The committee sought information about whether ASIC has in place measures to continuously improve its complaints handling processes. Dr Boxall informed the committee that additional resources have been allocated to the complaints area in response to ASIC's new consumer credit responsibilities.[40] ASIC is continuing to monitor the resources required to respond to consumer credit complaints.[41] The committee was also informed that ASIC has opened a new, small call centre in Adelaide.[42]

2.39 ASIC also advised that new procedures to track and report complaints have been introduced, including revised call centre scripts in the market participant area. The committee was advised that the ASIC's analysis of the kinds of complaints

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36 Mr D'Aloisio, *Committee Hansard*, 24 November 2010, p. 13.

37 Mr D'Aloisio, *Committee Hansard*, 24 November 2010, p. 13.

38 Parliamentary Joint Committee on Corporations and Financial Services, *Statutory oversight of the Australian Securities and Investments Commission: February 2010*, p. 5.

39 Mr D'Aloisio, *Committee Hansard*, 24 November 2010, p. 26.

40 Dr Boxall, *Proof Committee Hansard*, 23 June 2010, pp 16–17.

41 Mr D'Aloisio, *Committee Hansard*, 24 November 2010, p. 25.

42 Dr Boxall, *Proof Committee Hansard*, 23 June 2010, p. 16.

received informs other areas of practice, including retail investor education and feedback provided at stakeholder meetings.[43] Dr D'Aloisio explained:

> the learning, development and experience are occurring both in the handling and in the output about how that information is used to try and improve the market and the market players.[44]

Committee view

2.40 It is essential that complaints continue to be appropriately addressed and accurately recorded. The committee notes with approval ASIC's commitment to continuously improve its complaints-handling process, and to use the information gained through the process to improve other areas of responsibility and service delivery. The committee notes the general trend for the number of complaints to increase per year. The committee would welcome explanation of the underlying cause of the trend.

Financial literacy

2.41 ASIC provides resources to help improve financial literacy. The committee was informed that ASIC's financial literacy program, which is developed in consultation with the Australian Government Financial Literacy Board (FLB), contains four streams:

> We have a number of targeted education initiatives which use the existing educational pathways. We have a number of tools, access to useful and independent tools that investors could use. We look at other ways to enhance the financial understanding, and finally we work with other groups like consumer groups to better educate.[45]

2.42 ASIC's financial literacy program are funded from within ASIC's general budget.[46] The direct cost of the financial literacy programs in 2009-10 was $4 897 915. This does not include associated support costs, such as IT, finance, corporate affairs and human resources.[47]

2.43 ASIC is 'the secretariat and facilitator' of the FLB.[48] The committee raised with ASIC the question of what populations need attention when targeting financial literacy activities. The committee notes that ASIC has undertaken to raise this for

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43 Dr Boxall, Mr D'Aloisio, Ms Gibson, *Proof Committee Hansard*, 23 June 2010, pp. 16–17.

44 Mr D'Aloisio, *Proof Committee Hansard*, 23 June 2010, p. 15.

45 Mr D'Aloisio, *Proof Committee Hansard*, 23 June 2010, p. 26.

46 Mr D'Aloisio, *Proof Committee Hansard*, 23 June 2010, p. 27.

47 ASIC Answer to Question on Notice #6, 23 June 2010.

48 ASIC Answer to Question on Notice #8, 23 June 2010

discussion at the next meeting of the FLB on 31 March 2011.[49] The committee was also informed that ASIC plans to expand the financial literacy program.[50]

2.44 ASIC coordinates its financial literacy work with a range of other bodies, particularly 'FaHCSIA, Centrelink, NICRI, Departments of Education, the Australian Defence Force, the ATO, ACCC and community and industry associations'. The committee was particularly interested in financial literacy amongst retirees, who may be investing large sums. ASIC has indicated that it is 'currently planning a guide to retirement, on which we are working closely with FaHCSIA and NICRI and may co-brand the publication'.[51]

2.45 Mr D'Aloisio explained that the services are reviewed, including through focus groups and feedback sessions, to determine their effectiveness in promoting financial literacy.[52] For example, monitoring of the FIDO website indicates that the service is an 'extremely well-used tool', with the website receiving approximately 1.5 million hits in 2008-09.[53] This grew by 50 percent to nearly 2.2 million hits in 2009-10. Beginning in March 2010, ASIC began to measure how many of the hits on FIDO pages were from new visitors. In March-June 2010, around three-quarters of visitors to the site were new.[54]

Mr Bernie Ripoll MP
Chairman

49 ASIC Answer to Question on Notice #7, 23 June 2010.

50 Mr D'Aloisio, *Proof Committee Hansard*, 23 June 2010, p. 30.

51 ASIC Answer to Question on Notice #9, 23 June 2010.

52 Mr D'Aloisio, *Proof Committee Hansard*, 23 June 2010, p 27–28.

53 Mr D'Aloisio, *Proof Committee Hansard*, 23 June 2010, p. 26.

54 ASIC Answer to Question on Notice #9, 23 June 2010.

Appendix 1

Public hearings

- **Thursday, 23 June 2010 – Canberra**

Australian Securities and Investments Commission (ASIC)

Mr Tony D'Aloisio, Chairman

Ms Belinda Gibson, Commissioner

Mr Shane Tregillis, Commissioner

Mr Peter Boxall AO, Commissioner

- **Wednesday, 24 November 2010—Canberra**

Australian Securities and Investments Commission (ASIC)

Mr Tony D'Aloisio, Chairman

Ms Belinda Gibson, Commissioner

Mr Greg Medcraft, Commissioner

Appendix 2

Australian Securities and Investments Commission answers to questions on notice

ASIC Oversight hearing, 23 June 2010

Question on notice 1

ASIC 1 (Proof Hansard p. 13) – Bank of Queensland

CHAIRMAN—I also want to raise the issue of recent reports regarding the Bank of Queensland's awareness of issues with Storm Financial in two branches in Townsville, the Kirwan branch and the North Ward branch. There are a number of issues that have come to light through the federal case in the Brisbane court that is currently underway. They are matters of public disclosure and documents. The committee is concerned enough that we are writing to the CEO of the Bank of Queensland to ask for further information and clarification in terms of what was provided to us as evidence and what we read in the media in relation to a specific report, and that is the internal risk review report that does exist. I understand that that report was provided to ASIC at a particular time period. I am seeking some further information from ASIC tonight in terms of that particular situation and what ASIC either intends to do or is doing, or what might happen out of that in the future.

Mr D'Aloisio—We are not in a position to give you advice or a view on that this evening. Clearly our team is across and will be across those issues. What I would like to do is to take it on notice and have a look at that and come back to you. I am happy to come back to you even before the next meeting, if you wish.

CHAIRMAN—That would be appreciated.

Mr D'Aloisio—They are difficult and sensitive issues and I would like to get a proper briefing and advice before I provide you with answers to those sorts of issues.

CHAIRMAN—I appreciate that and accept that, and I know that the rest of the committee will be of the same view. If you could provide that for us, given that we will not be having another oversight hearing for a number of months, and take perhaps 14 days, a fortnight, to get back to us with a response. That would be appreciated. Is that doable?

Mr D'Aloisio—Yes.

Response

ASIC understands that the reference to an "internal risk review report" prepared by the Bank of Queensland is to a document titled "Credit Risk Review – Review of Storm

Financial Limited introduced loans at North Ward Branch" (Feb 2009 Credit Risk Review), prepared in draft under the name of Jeff O'Sullivan, Senior Manager Credit Risk Review. The draft document is undated, however, ASIC understands that it was prepared in February 2009.

The Feb 2009 Credit Risk Review was received by ASIC on or about 20 July 2009 under notice served on the Bank of Queensland dated 25 June 2009. This document is relevant for ASIC's investigation, as is the evidence given in public hearings to the Committee by individuals including by Mr David Liddy, CEO of the Bank of Queensland, on 16 September 2009.

Arising out of its investigation into the collapse of Storm Financial Limited, the Bank of Queensland has produced to ASIC under notice other reports and documents which are also relevant to its investigation. As the Committee is aware ASIC's investigation is continuing.

Question on notice 2

ASIC 2 (Proof Hansard p. 18) – Interpreters

Ms OWENS—Do you do much work with interpreters?

Mr D'Aloisio—I cannot answer that specifically in the sense of looking at quantity. There is no doubt that our people have access to interpreter services where they are needed. We could look at that and give you a more specific answer. I know we have the services, that they are available, but the extent to which we use them and how we use them in particular cases we can look at and let you know.

Ms OWENS—That would be great. It will be good to compare similar organisations just to see what the reach is.

Response

ASIC does employ the use of interpreters as the need arises. We use the Department of Immigration and Citizenship's "Translating and Interpreting Service" exclusively. The frequency of our use averages about 18 times each month. Our utilisation for interpreters is supported by a wide range of key consumer publications in various languages – Arabic, Chinese, Greek, Italian, Korean, Russian, Turkish and Vietnamese.

ASIC's national Credit Outreach Team also uses interpreters. One of the key roles of the Credit Outreach Team is to work in partnership with Government and community agencies assisting them inform their clients about the new credit regime and how this impacts on consumers. Culturally and linguistically diverse communities are often confronted with many different types of credit issues and choices. They are often unaware of their rights and responsibilities. For this reason, we focus on this

community to increase their understanding about credit and debt. As a result we have facilitated community education sessions using interpreting services. Additionally we assist taking complaints from individuals from this target group using interpreter services.

Question on notice 3

ASIC 3 (Proof Hansard pp. 20–21) – Enforceable undertakings

Senator MASON—Who makes that decision?

Mr D'Aloisio—The decisions to enter an enforceable undertaking could be taken at a commission level or could be taken at an individual commissioner level or, depending on the delegated responsibilities, by a senior leader. It is not a—

CHAIRMAN—I ask you to get back to us, because this is probably a little bit more involved. I really do want a response from ASIC on this. There is a distinctive trend over the past decade. In 2001, there were 31; in 2002, there were 33; in 2003, there were 25; in 2004, there were 20; and in the last three years, the three years that you particularly now quote, there has been a very large drop-off in the number of enforceable undertakings. I just want to better understand why that is the case. I am sure there is a perfectly reasonable and logical explanation. It just seems that there is a trend and then there is a distinctive change. I am just trying to understand, because I agree with you that enforceable undertakings are a good tool. They are flexible. They provide a whole range of options. So, if there is a trend away from them—I am not sure; I am just looking at something that does not quite make sense to me, so that is why I am asking.

Mr D'Aloisio—We will take it notice—

CHAIRMAN—Yes, that is fine.

Response

The decline in the use of enforceable undertakings is a result of a number of factors.

- Since the global financial crisis, ASIC has focused more resources on larger and more complex matters. Generally for these matters, civil or administrative proceedings will often produce a more effective regulatory outcome than the use of an enforceable undertaking.

- In recent times, ASIC has concentrated on a smaller number of cases where retail investor/consumer interests or market integrity is most at risk. The reduction in the number of enforceable undertakings is a reflection of this approach.

- It should also be noted that an enforceable undertaking has to be given to ASIC by a person. ASIC cannot require the giving of an enforceable undertaking.

Question on notice 4

ASIC 4 (Proof Hansard p. 24) – Enforceable undertakings (breaches)

Senator BOYCE—We were talking earlier about the number of enforceable undertakings that you have done. Could you tell me how many undertakings in, say, the last three years have been breached.

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

Senator BOYCE—That is fine. Please take on notice how many have been breached—

Mr D'Aloisio—And what we have done about it?

Senator BOYCE—Yes, what you have done about it. That would be good—and whether court cases have come out of that.

Response

In the last three years, two undertakings have been breached.

1. Empower Invest Pty Ltd; Newcastle Palais Holdings Pty Ltd; Kenneth Watson; Brien Ernest Cornwell (accepted 9 May 2008).

ASIC became aware that clause 3.2 of the enforceable undertaking (EU) accepted 9 May 2008 which states that if any of the investors request a refund of monies they invested in the Palais Investment Trust and Newcastle Palais Unit Trust (the Schemes), Empower Invest Pty Ltd and Newcastle Palais Holdings Pty Ltd (the Companies) will refund all monies invested by that investor within 28 days of receiving notification from the investor, was not complied with. ASIC issued proceedings in the Supreme Court of New South Wales on 12 July 2010 to enforce the EU. In his judgment handed down on 30 August 2010, White J found in ASIC's favour:

(i) making a declaration that the Companies breached their undertakings; and

(ii) an order under s93AA(4)(a) of the Corporations Act 2001 directing the Companies to comply with the undertakings.

The defendants have not complied with White J's orders. ASIC subsequently filed proceedings to wind up the companies on 23 December 2010. The matter is listed to be heard on 7 March 2011.

2. GE Personal Finance Pty Ltd. Hallmark Life Insurance Company Ltd and Hallmark General Insurance Company Ltd (accepted 20 March 2006, withdrawn on 22 May 2008).

The EU accepted on 20 March 2006, required that inter alia, that an independent compliance expert undertake a review of GE Money's sales practices. This review, and information subsequently obtained by ASIC, indicated there were broader and more serious issues relating to GE Money's processes, and also breaches of the EU. As a response, ASIC accepted a withdrawal of the EU and in its place, imposed conditions on the Australian financial services (AFS) licences of GE Money's Hallmark companies. These additional licence conditions require the Hallmark companies:

- to engage an independent expert, over a period of up to 15 months, to review and assess the advice, sales, training, management and corporate governance processes in its branch network and make recommendations to correct any deficiencies, to ensure these processes are at an industry best practice level;

- to engage the same expert to assess the steps already taken by the Hallmark companies to compensate their customers and make recommendations as to any additional compensation steps that may be necessary;

- if the expert makes recommendations, to provide ASIC with an Action Plan to implement those recommendations; and

- to provide ASIC with full details of the compensation already paid to customers by means of a director's statutory declaration, by 18 July 2008.

Furthermore, the Hallmark companies are required to limit the insurance advice their staff provide to 'general advice' only and not 'personal advice'.

Question on notice 5

ASIC 5 (Proof Hansard p. 25) – Civil penalties

CHAIRMAN—I am happy for you to take this on notice. I am interested in ASIC's use of civil penalties, in particular, and the extent of those, and also whether ASIC's approach to enforcement revolves around an enforcement pyramid and how that might work. I am happy to get some sort of response on civil penalties and whether there is some sort of structure on how those decisions are made. Either now or on notice is fine.

Mr D'Aloisio—As to civil penalties, we will take it on notice and give you the statistics around those, but the civil penalty decision-making process is similar to the process I outlined earlier. As you say, we will give you the statistics on notice.

Response

In the 2009- 2010 financial year, ASIC completed five civil penalty proceedings.

In the 2008- 2009 financial year, ASIC completed one civil penalty proceeding.

In the 2007- 2008 financial year, ASIC completed three civil penalty proceedings.

Question on notice 6

ASIC 6 (Proof Hansard p. 27) – Financial literacy

Senator McLUCAS—You said you have absorbed that task [financial literacy] into your current budget. Do you allocate a certain amount of money to the delivery of that particular piece of work?

Mr D'Aloisio—We could probably extract that. I do not have those numbers but I could take it on notice. We do report what we spend on the retail investor-financial consumer area, so we could probably get more specific figures on that for you.

Response

ASIC's work on financial literacy includes:

- education pathways (eg school education)
- providing information and tools via publications and the FIDO & Understanding Money websites
- development of a new, single consumer website
- developing partnerships with other groups and outreach work

The direct cost of these financial literacy programs in 2009/10 was $4,897,915.

These figures do not include the wider support costs within ASIC (eg IT support, finance, corporate affairs, human resources, etc)

Question on notice 7

ASIC 7 (Proof Hansard p. 29) – Financial literacy – views of FLB

Mr D'Aloisio—We may be looking for differences that we do not really have. I agree with your statement. Our focus absolutely has been on the retirees and retail investors, as I have been saying in other parts of this meeting. But we have not stopped there.

We have gone further with the programs with the schools. I am happy to take that up with the Financial Literacy Board and get their views and pass your views to them.

Senator McLUCAS—If there is any further information—

Mr D'Aloisio—We will do that.

Response

The next meeting of the Australian Government Financial Literacy Board is scheduled for 31 March 2011. ASIC will ensure the question asked by Senator McLucas is tabled for discussion at the meeting.

Question on notice 8

ASIC 8 (Proof Hansard pp. 30–31) – Financial literacy – existence of, and cooperation with, other entities

Senator McLUCAS—I do not want to waste the time of the committee, but NICRI provide advice to the FIS officers of Centrelink. They do the training of the FIS officers. They have a 1800 number. They produce what they call 'one-pagers' which give pretty straight advice—for example, 'This is what a mortgage is.' I think it is very good information but they are a very small entity. I will give you their submission. It is a good submission. My question was: do you work with those sorts of entities to ensure that there is no overlap? But I will leave that one.

Mr D'Aloisio—I am happy to take that because I know we do work with a number of others and we have partnerships with a range of groups. It is probably better that we answer the specific and also outline to you who some of the other partners are that we are working with.

.....

Senator BOYCE—You might already be covering this in your answer on notice to Senator McLucas's question. Are you aware of other organisations, government bodies or regulatory authorities that are tasked with a formal role involving financial literacy, and how do you interact with them? Perhaps you could add that to the other questions.

Mr D'Aloisio—We will add it.

Response

Yes, ASIC regularly works with other agencies that have a role in financial literacy to ensure that there is no overlap and the collective impact of the work is maximised. Most of that partnership work is with FaHCSIA, Centrelink, NICRI, Departments of

Education, the Australian Defence Force, the ATO, ACCC and community and industry associations.

ASIC has an overall coordination role and a wider remit than the other agencies involved in financial literacy work. Its mandate requires it to assist and protect all consumers and retail investors, including retirees, young people, people of NESB, the indigenous community, low income earners, etc.

Other agencies engaged in financial literacy initiatives, such as for example FaHCSIA and NICRI, respond to defined groups and demographics and provide more detailed and personalised information to their particular audiences, focusing on the interaction of social security law and obligations with financial issues important to retirees and pre-retirees. Thus for example NICRI communicates primarily via a personalised phone service tailored to its particular community sector, while ASIC's call centre is a general high-volume inquiry service that covers all the myriad issues in ASIC's jurisdiction.

As part of its overall coordination role ASIC uses existing structures and partnerships to ensure its work has maximum impact across government, business and community organisations. For example, ASIC:

- is the secretariat and facilitator of the Australian Government Financial Literacy Board;

- participates in the SCOCA Education and Information Advisory Committee, with the ACCC and all state fair trading agencies, to ensure that consumer education efforts are coordinated and streamlined;

- coordinates ASIC's Consumer Advisory Panel, whose membership includes a range of consumer and retail investor organisations and individual consumer advocates and which meets quarterly to advise on emerging issues and provide input on consumer protection policies and activities. NICRI is represented on CAP, as are AFCCRA, the Council of the Ageing, National Seniors, ASA, AIA, CCLC, Legal Aid NSW and ICAN;

- has a Memorandum Of Understanding to develop financial literacy resources for the Australian Defence Force;

- maintains ongoing ties and exchanges information with other financial literacy stakeholders through its monthly Community of Practice meetings across Australia and New Zealand, which are attended by community organisations, government, industry associations and education agencies. NICRI is a member and attends the CoP meetings; and

- is a central generator of educational resources used by other agencies, such as Centrelink's Financial Information Service (FIS) as well as industry, schools, trainers and other service providers. For example, we are this year working

with Centrelink's FIS officers on a series of seminars using the Investing Between The Flags approach.

ASIC consults with a broad range of organisations on the content of our consumer publications, often including NICRI. For example we are currently planning a guide to retirement, on which we are working closely with FaHCSIA and NICRI and may co-brand the publication.

Our credit outreach team also works in partnership with other agencies to disseminate its messages about credit and responsible borrowing, for example the community welfare sector, consumer advocates, FaHCSIA, Centrelink, the Dept of Immigration and Citizenship and the Dept of Health and Ageing.

Question on notice 9

ASIC 9 (Proof Hansard p. 31) – Financial literacy – website visits

Senator McLUCAS—Of the 1.5 million hits on the FIDO website, does your back counter work out how many of them are new hits? Can you do that?

Mr D'Aloisio—Yes, they do that and again we can get an example of a report for you to look at. Our people do analyse that data quite significantly. They look at the pages that are hit and why, and then they do their follow-up. They have developed quite a lot of work that they do. I should add that we have, in addition to the website, service centres where you can search the site and ask questions. We encourage people to have a look at it and what it can offer.

Senator McLUCAS—So you would be able to provide us with the number of new hits in those 1½ million hits.

Mr D'Aloisio—We will get an example report to you.

Response

In the 2008/2009 financial year there were 1,456, 386 visits to the FIDO website. Because of the limitations with the web statistics provider we were using then, we cannot provide a figure for 'new hits' during that time.

For the 2009/2010 financial year there were 2,195,238 visits to the FIDO website. This is an increase of 50.7%.

From 1 March 2010 we changed our web statistics provider in order to get a better understanding of who uses the FIDO website and to get this in place prior to the launch of ASIC's new consumer website in 2011.

Here is a snapshot of FIDO users for the period 1 March 2010 to 30 June 2010.

- 859,469 visits
- 2,697,182 page views
- 660,490 new visitors (76.85%)
- 198,979 returning visitors (23.15%)
- 7,045 visits per day average

ASIC Oversight hearing, 24 November 2010

Question on notice 1

ASIC 1 (Hansard p. 3-4) – Storm Financial

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

CHAIRMAN—Do they relate to Storm?

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

Mr D'Aloisio—Yes.

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

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

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

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

Senator BOYCE—This is very frustrating.

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

Mr ANTHONY SMITH—What you are really saying is that you are midway through a process, so you are quite restricted in what you can say. With respect to the article that the deputy chair refers to, essentially it is not new news.

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

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

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

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

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

Response

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

Question on notice 2

ASIC 2 (Hansard pp. 8-9) – Investigation conversion

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

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

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

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

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

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

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

Response

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

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

Question on notice 3

ASIC 3 (Hansard p. 15) – Frozen funds

Mr ANTHONY SMITH—Without taking up the time of the committee, if you would be able

in the coming weeks—it is not urgent—to provide any further information on notice about

percentages or with respect to how those processes are working, that would be useful if there is

any more, just to give us a bit of an update.

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

subject to hardship relief.

Mr ANTHONY SMITH—That would be great.

Mr Medcraft—No problem. We can do that.

Response

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

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

Question on notice 4

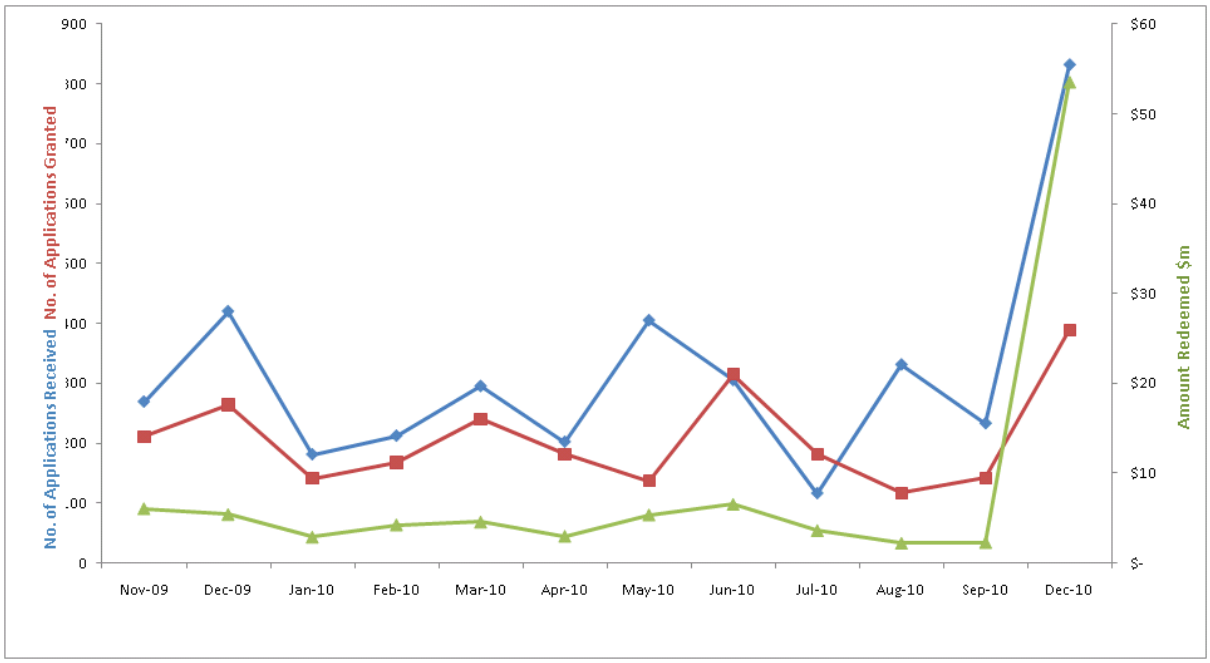
ASIC 4 (Hansard p. 15) – Frozen funds

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

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

Response

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



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

Question on notice 5

ASIC 5 (Hansard pp. 16-17) – Superannuation early access

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

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

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

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

Mr ANTHONY SMITH—Yes.

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

CHAIRMAN—If you could just give us an update.

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

Mr ANTHONY SMITH—Sure.

Response

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

Question on notice 6

ASIC 6 (Hansard p. 20) – Westpoint

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

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

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

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

Response

<u>Part A – Criminal Action</u>

- On 10 September 2010, Graeme Rundle, the former Chief Financial Controller of the Westpoint Group of companies, was committed for trial in the Downing Centre Local Court, Sydney, in relation to two criminal charges brought by ASIC. The trial is scheduled to commence on 9 May 2011 for 3 to 4 weeks in the District Court of NSW. It is alleged that in May 2004, Mr Rundle made false statements to a financial institution in support of an application for a $71 million credit facility to fund a Westpoint building project known as the Scots

Church Development on York Street in Sydney. Each offence carries a maximum penalty of five years' imprisonment.

- Former promoter of Westpoint products, Mr Neil Burnard, has been convicted by a jury in the District Court of New South Wales on 9 criminal charges in relation to the raising of investor funds. Mr Burnard was found guilty of obtaining financial advantage for various Westpoint mezzanine companies and was sentenced on 20 June 2008. He was fined $50,000 and sentenced to twelve months imprisonment, fully suspended on condition that he be of good behaviour. On 10 December 2008 an appeal by the CDPP in relation to leniency of sentence as well as an appeal by Burnard against conviction was heard in The Supreme Court of NSW. On 10 February 2009, the New South Wales Court of Criminal Appeal upheld the conviction of Mr Burnard. The Court exercised its discretion and did not intervene in the sentence.
- There is a 1 criminal brief still under consideration by the CDPP. ASIC continues to assist the CDPP in its consideration of this brief.

Part B – Bannings

Actions against financial advisers

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

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

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

- On 22 March 2010, Mr Barry William Silver was convicted and sentenced to six months imprisonment, with an order that he be released after entering a $1,000 good behaviour bond for three years after pleading guilty to an ASIC charge of aiding and abetting his company Lancer Group Pty Ltd in carrying on a financial services business without holding an Australian financial services (AFS) licence. As a result of his conviction, Mr Silver is also automatically disqualified from managing corporations for five years.
- On 9 November 2009 Mr Russell Barry Collins-McBride, was sentenced to six months imprisonment, fully suspended upon entering into a recognisance to be of good behaviour for three years on a charge brought by ASIC. Mr Collins-McBride pleaded guilty to aiding, abetting, counselling and procuring Power

Financial Planning Pty Ltd (Power FP) to carry on a financial services business without an Australian financial services licence.

- On 24 November 2010, Mr Stephen McArdle, a former director of Power Financial Planning Pty Ltd, was sentenced to 12 months imprisonment after being found guilty of aiding and abetting the company to provide financial services without an Australian financial services licence. This is the maximum penalty that could have been imposed by the Magistrate. Mr McArdle will be released after serving a minimum of 6 months jail. Upon release, Mr McArdle will be subject to a good behaviour bond.
- Power Financial Planning, one of a number of companies operating under the Power Loan banner, pleaded guilty in the Magistrates' Court of South Australia on 20 August 2010 to carrying on a financial services business without an AFS licence. The company was also convicted today and fined the maximum penalty of $33,000. The Court also ordered that $10.3 million be paid by Power Financial Planning and Mr McArdle as compensation to investor.

Question on notice 7

ASIC 7 (Hansard p. 22) – Frozen funds

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

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

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

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

Mr FLETCHER—I would appreciate that.

Response

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

Question on notice 8

ASIC 8 (Hansard p. 26) – Credit

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

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

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

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

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

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

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

Mr D'Aloisio—No, I have not got any examples but, as I said, part of the work that the team has identified in the next 12 months is to focus on the areas at the margins to make sure that, where they should be licensed, they are licensed or registered. Again, I can ask the question of the team and give you further information.

Response

Question 1

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

Answer

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

Question 2

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

Answer

Complaints were received from both consumers and industry. Although complaints were received in relation to wide ranging issues, reports of unlicensed credit activity (approximately 13% of complaints) and complaints about the debt collection and debt recovery process (approximately 29% of complaints) were frequently reported concerns. With rising interest rates and exit fees highly publicised in the media, we also received complaints about fees, interest rates and associated perceived unfair/unjust credit contract terms (approximately 12% of complaints).

Question 3

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

Answer

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

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