COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

**Reference: Oversight of the Australian Securities and Investments Commission**

FRIDAY, 28 NOVEMBER 2008

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**JOINT STATUTORY COMMITTEE**

**ON CORPORATIONS AND FINANCIAL SERVICES**

**Friday, 28 November 2008**

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

**Members in attendance:** Senators Boyce and Mason and Ms Grierson 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**

**GIBSON, Ms Belinda, Commissioner, Australian Securities and Investments Commission..... 1**

**Committee met at 9.37 am**

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

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

**GIBSON, Ms Belinda, Commissioner, Australian Securities and Investments Commission**

**CHAIRMAN (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 Joint Committee on Corporations and Financial Services is required to oversee the functioning of ASIC. This hearing is part of that oversight.

I welcome to the hearing the Chairman and Deputy Chairman of ASIC and other ASIC officers. 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 committees. 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 Senate as a contempt. It is also a contempt to give false and 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 should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground 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. I invite you to make some opening remarks.

**Mr D'Aloisio**—I would like to make a short opening statement, Chairman. We last appeared before the committee on 18 June. At that appearance we gave an update on where we were against our priorities. In the opening statement I would like to give you a brief update on what has been happening since that time, and I will do that by looking at specific issues we are focusing on in market turmoil but also the issues we are progressing as part of our priorities that I talked about at our last meeting.

By way of general overview, we have been going through very difficult trading conditions internationally, but as a commission we are pleased that in Australia the markets continue to function well in terms of integrity. Clearly the returns and the volatility are there, but that is a function of market forces rather than issues to do with the regulatory regime. As I go through these points and in questions we can look at that further, if you wish.

Taking first a bunch of issues around market turmoil, market volatility, clearly since we last met short selling has been the major issue in the market in terms of our approach. The regulatory

regime under which we work is one that allows short selling, and it does that on the basis of a policy that liquidity and price discovery are important contributions that short selling can make. Within the constraints of that policy we administer the regulatory regime around short selling. In the period leading up to our last meeting we had taken the view that the way that short selling was operating in the market was not showing disorderly aspects that concerned us, hence we left the short selling to play out, although we and the ASX did say to government that there should be better disclosure of so-called covered short selling. The government has taken up that suggestion and currently has a bill before the parliament.

With the turmoil globally and the moves being made by other international regulators to ban short selling, particularly around financials, in mid-September we moved to ban both naked and covered short sales. At that time we said that we would put on a 30-day ban as a circuit-breaker for the market. The issues that were concerning us were the lack of confidence in the market, with buyers staying out and short sellers using strategies to push down prices, and also allegations of false market rumours. We felt that we needed a circuit-breaker to come into line with what was happening internationally. At the end of the 30-day ban we announced to the market a stepped reopening, with the non-financials to reopen, which they have, on 19 November and the financials, in line with the FSA in the UK, to reopen towards the end of January. That remains the setting.

We coupled the reopening of the market with a disclosure regime that requires short position covered shorts to be reported daily to the ASX. The ASX aggregates the information in relation to each stock and reports it to the market the next morning. In putting that regime in place, we feel it is important that there is a disclosure regime that is coupled with covered short selling. We believe that the naked short selling ban should remain and that the ban should remain on financials until January.

We have said to industry that over the next couple of months, leading up to the end of January, we will talk to them about the disclosure regime. As you would expect, a disclosure regime of this nature will necessarily have teething problems in the sense of how it reports system changes. We think it is a clear step in the right direction, but there are issues around whether reporting should be net or gross and whether daily reporting is needed, but we will talk to industry and the ASX over the next couple of months and particularly to the industry associations. We will also continue to talk to our fellow regulators—the RBA, APRA and Treasury in particular—and we hope through that to improve the disclosure regime for the market. So that is on short selling.

You will recall that in that same period a number of issues emerged about mortgage trusts. The freezing of redemptions in mortgage trusts occurred following the view that was taken by the trustees of those trusts on the outflow of funds. I think something in the order of 52 or so mortgage trusts have frozen redemptions, which affects about $30 billion of the $32 billion of that market. We introduced what we called a hardship relief regime that enables the trustees to apply to us and provide relief on hardship grounds by giving earlier access to money than otherwise would have been the case. We struck a formula of allowing partial redemption of units in hardship cases so that there was no unfairness to the remaining unit holders. We know that there have been a number of applications to the trustees and they have given this relief.

At this stage we do not have the numbers of how many hardship applications have been processed. From the work we have done, it looks quite low at this point, which is probably not

unexpected as it is just starting to operate. Also, people may well be taking a long-term view of their investment in these trusts and waiting to see what happens and how the trustees approach the issue of redemption.

Also in that period in the superannuation area we proposed to issue a no-action letter to relieve trustees of some of the heavier obligations to provide limited statements of advice to members of superannuation funds who may want to shift from one fund to another or who were concerned about going to government guaranteed cash rather than staying where they were so that people can make sensible decisions and assess those actions. It is fair to say that we have received about 15 inquiries for those non-action letters, again a reasonably low rate at this point.

Another major activity in between our meetings that has exercised our time is the so-called referrals for alleged misconduct and rumourtrage. Since January this year the ASX has referred to us some 90 instances of insider trading, market manipulation and market conduct. All of them have been actioned. Currently we have 12 of those matters before the court—two insider trading matters, five market manipulation matters, two on continuous disclosure, one on directors' duties, one on misleading statements and one on short selling—and another 11 matters before the Commonwealth Director of Public Prosecutions. Our work on rumourtrage, in the sense of coming down as hard as we can on false rumours in the market has continued, and our so-called Project Mint has extended its inquiries to deal with those investigations and those issues.

We have also continued with our enforcement cases. The key development on Westpoint since we last met is the commencement of the action against the auditors for some $300 million. We now have 17 actions before the court seeking to recover $549 million against total losses in Westpoint of $329 million. Those actions relate to directors, auditors, financial advisers and a trustee.

The James Hardie case has been progressing through the New South Wales Supreme Court. In the AWB case, where we commenced civil penalty proceedings against former directors of AWB in the Supreme Court of Victoria, the Supreme Court has stayed proceedings against five of the six defendants until the court knows whether the DPP intends to bring any criminal prosecutions against them. They are what we would call major cases.

In addition to that, our work on protecting retail investors has continued. We have done a lot more work around financial literacy and put in place a new disclosure regime for unlisted trusts and mortgage schemes. We have a concept of 'swimming between the flags', which was coined by our deputy chairman. That is an information campaign to help inform baby boomers in particular about investment basics and help them to identify where products may lie on a risk spectrum.

**Senator MASON**—You could do that for generation Y as well, Mr Chairman.

**Mr D'Aloisio**—Generation Y—yes, we should. But financial literacy is at the other end as well—

**Senator MASON**—Oh, I know.

**Mr D'Aloisio**—with the schools and the younger generation. We have also done work on facilitating international capital flows. The results we achieved with mutual recognition with the United States, the deal we did with China in facilitating inward investment in Australia, a collective investment agreement with the Hong Kong exchange to allow participation in each other's markets with a minimum of regulation, are all things that help the inflow of capital into Australia which is so important for our markets.

Last time I also spoke about our strategic review and said that it had been completed and the transition would occur on 1 September. We have now moved to the new structure. We collapsed two layers of management and have appointed 25 new senior leaders, nine of whom were recruited externally and 16 were promoted internally. In terms of gender we have 15 male and 10 female senior leaders. The government has also approved new commissioners for ASIC which it is in the process of appointing.

We are very pleased that the restructure is in place and with how we are positioned. ASIC now has new leaders and tremendous morale to get on and deal with the issues, and it has been good to do that because it is a time when everyone is busy. Unfortunately, because of the nature of the markets, there is a lot of work on, but I know I speak for the whole commission when I say that we have very good morale and dedication within ASIC, and that is very pleasing for us.

Looking ahead, in addition to the issues I have mentioned, credit rating agencies is a priority of the government that will occupy us. We agree with that priority and will be moving to remove the current exemptions of mid-CRAs not to hold AFSL licences. We will be also moving on requiring credit rating agencies to produce to ASIC annual compliance reports outlining in detail how the credit rating agencies have complied with the IOSCO code of conduct, which is a fundamental underpinning to the licensing regime.

The regulation of credit is another major issue for ASIC going forward. In early October, COAG agreed to a two-phase implementation plan for the transfer of the responsibility for regulation of credit with ASIC as the regulator. Phase 1 of that will begin in mid-2009 and phase 2 in mid-2010. We have, of course, significant experience already in credit regulation and have set up an internal project team to look at all aspects of taking it over from the states and how we will administer the licensing regime across Australia.

At the international level, ordinarily as a domestic regulator we would be concerned with domestic regulation. However, with the events that have occurred internationally, and particularly in the United States and in Europe, it has become more fundamental for ASIC through its good international credentials and its role on IOSCO, which comprises 95 per cent of the world's capital markets regulators, to be part of the reform agenda. At present our work on IOSCO will essentially be to advise government here and have input where we can on the reform agenda, which will necessarily unfold as we look back on what precipitated the crisis and what has occurred. We are involved in some specifics around that such as the short selling task force. We think it is important that short selling be treated as a global issue. Because different jurisdictions have different systems, different disclosure regimes and different prohibitions, in the heat of mid-September and in October the leading capital markets were taking different positions, which made it much more difficult for Australia to position its short selling regime.

Secondly, we have taken on the co-chairing of the task force on what is known as unregulated products. It is an important piece of work that will essentially be looking at issues such as credit default swaps and securitisation. As we look forward to the recovery in confidence of financial markets, securitisation is clearly a significant issue and we want to see those frozen markets reopen. For the regulators here, for IOSCO, the issue is to find the regulatory settings around that that will help restore confidence. Clearly, IOSCO as a regulator will not determine the fundamentals of whether and when securitisation reopens, but underwriting standards, how credit rating agencies work, their credibility around securitisation and disclosures are issues on which regulators can work to develop codes. I am using securitisation as an example of what again is a global or capital markets issue, not necessarily one just for Australia.

Credit rating agencies were involved in that work, and that complements the work we are doing in Australia. Also through IOSCO we will be keeping a close watch on work with international accounting standards and issues around fair value and off-balance-sheet vehicles, and we will, through IOSCO, but more importantly through the work Treasury does, keep abreast of those issues. There were four issues that you covered with us in the August oversight report that you commented on that I want to touch on briefly and then I will finish, Chairman.

**CHAIRMAN**—That is fine.

**Mr D'Aloisio**—The first of those was market regulation. The committee was of the view that ASIC needs to maintain a greater level of cooperation with the ASX to act on instances of insider trading and market manipulation to ensure that referrals and investigations continue to be a high priority. I can absolutely assure you that that is the position. We have worked hard in cooperation with ASX to deal with the referrals that we get, as I mentioned earlier, and in addition to add resources within ASIC to that sector, principally headed by Commissioner Belinda Gibson. The benefits of that work are coming through with the prosecutions and the referrals to the DPP that I talked about, and I think you will see more of the benefits of that going forward.

You made mention of protecting investment in property scheme collapses and expressed the hope that ASIC's more forward-looking strategy will better protect investors in the area of property scheme collapses. As I mentioned earlier, we have done significant work on unlisted, unrated debentures, mortgage trusts, unlisted property trusts and mortgage schemes, and clearly it is a priority.

We have also done significant work on Westpoint. Even though Westpoint is a collapse, and clearly money has been lost, we have done a lot of work to see what we can do for the investors in Westpoint. The third point you mentioned was financial planners and shadow shopping. You felt encouraged by our decision to conduct another shadow shopping exercise, although it was going to be later than you thought desirable. We think we should maintain our timetable on that. At the moment we think there are a lot of issues in the market that we need to deal with and we are not sure that in the current crisis situation that accelerating the shadow shopping is the way to go, but certainly it is for us to do.

You mentioned, finally, banking and credit regulation and educating consumers via the press. The committee was of the view that our Fido website is an important part, but you wanted to see us use press and other media as well. Within the retail investor consumer area ASIC now has

dedicated teams on financial literacy and a dedicated team on investor education. We think that through those teams we will do more to educate investors, and clearly things like seniors' magazines and the press will be part of the focus on getting across the message on what really are some fairly fundamental and simple principles about asset allocation, diversity of portfolio, understanding price reward premiums on products and the risk profile. They are easily stated, but when you look at the mistakes made by investors, time and again you come back to the two issues of incorrect asset allocation—not taking a proper risk, if you like, by spreading—and then not understanding clearly enough what the factors are, if something is offered at a particular rate of return higher than perhaps you could get from a term deposit, that lead to that and what then are the risks associated with that decision. Because products vary so much and there are so many products, the skills of being able to analyse and ask the basic questions are difficult to learn. As we said earlier with the young, we feel we can do it through financial literacy. The asset wealth of a sizable part of the population now has been reduced significantly by market forces, and these issues are even more critical as they seek to rebuild their wealth that has been impacted by the movements in the stock market.

Thank you for the opportunity to make an opening statement. We had not seen you since June, so I thought I would take the opportunity to update you on what has been going on at ASIC.

**CHAIRMAN**—Thank you, Mr D'Aloisio. We can probably begin by going through some of the ASIC strategic review mechanisms. You have stated, if I am right, that all the positions have been filled?

**Mr D'Aloisio**—All the 25 positions have been filled.

**CHAIRMAN**—Would you say that ASIC is well and truly through the process and now getting on with the four stated objectives that you had over the next three to five years?

**Mr D'Aloisio**—The way that we have put it, which I spoke about at a recent conference, is that we really think we have got a new ASIC now in the sense that we have very clear priorities and a very senior team. We were very pleased with the external recruitment process and now that we are filling other positions below the senior positions pleased with the applications we are getting. The number of applications are significant. We accept the fact that that is also to do with the current state of the financial markets, but we are going to take it as an opportunity to add skills and talent within ASIC as we fill vacant positions going forward. We have completed that, we are set up, we have the priorities, but, more important, as I said as I went through, is that people are achieving results.

**CHAIRMAN**—One of the objectives that you had was looking further ahead to assess your systemic risks. Could you perhaps give us a bit more information on that in particular and what you are doing to look at systemic risks.

**Mr D'Aloisio**—There are a number of aspects to it. The first and most important is that we have built a research unit and added to it within ASIC, headed by a chief economist, and a strategy unit that is focused on the longer term issues, both at a macro level and in relation to each of the stakeholder teams, the financial advisers, investment managers and so on, so that we have got additional research and input. Secondly, as part of that, we are looking at international developments and our participation on IOSCO. The work that that strategy group will do will

keep us, we think, much more ahead of what is happening internationally to feed in. Thirdly, we are in the process, as I said, as part of this of putting in place an external advisory panel, drawn from business and consumers, to be available to the commission on issues as they unfold.

**CHAIRMAN**—Is that advisory panel in place yet?

**Mr D'Aloisio**—We are at the stage of putting the chairman in place. We have been delaying—

**Senator BOYCE**—Who is that, Mr D'Aloisio?

**Mr D'Aloisio**—We will announce it. We are still finalising things. I am sorry, Senator, I do not mean to—

**Senator BOYCE**—No.

**Mr D'Aloisio**—It is just that it has not been completed, but we are hopeful we will announce that before Christmas. It is quite important to have that. Then we will put the members in place and have them available to us. Had it been in place with short selling we probably would have used it to get input. So we can see already that that is the right way for us to go. As part of their duties, each leader will have a responsibility in working with particular industry groups and associations and attending regular meetings so that they are abreast of what is happening in the market. We think that the combination of skill sets, and more importantly the way we are plugged into the market—plugged in internationally and the way we will use the advisory panel—will give us a much better feel for what is likely to come. I am sure you would understand, we are not going to pick a subprime mortgage problem. I hope we could, but the fact is—

**Ms GRIERSON**—We all wish we could.

**CHAIRMAN**—Yes, we all hope we do.

**Mr D'Aloisio**—But the fact is that if you are closer to it you are thinking about it, and I think the examples will come through. The way we responded to the mortgage trust issue, the way we dealt with the hardship issue and with short selling, I think it is fair to say, Jeremy, are steps that ASIC has not taken in the past. So we are seeing the benefits of what we are talking about, but we are the first to concede that with a new structure, a new approach, we are still to prove that it will all work and deliver that objective.

**CHAIRMAN**—Just on those issues that you raised, the subprime issues and the systemic risks that you say you are looking ahead to assess, could you just give us some specific examples of the progress of that?

**Mr D'Aloisio**—One of the advantages we have in the Australian market has been that we have had, and continue to have, a very good, robust regulatory regime and regulators have been across the issues. We have no systemic issues to disclose to you. As we go into recovery and look at what needs to be done going forward, and I mentioned earlier securitisation, the issues for us are now moving to how the regulatory regime adjusts internationally to those issues,

because the problems have come through, we are through the problem stage and are looking more now to recovery. So that is where our focus is.

**CHAIRMAN**—Apart from securitisation, you have identified other areas of potential systemic risk? I am particularly interested in where ASIC may have identified some specifics and if you are going to look further to ameliorating those areas or better understanding those areas.

**Mr D'Aloisio**—We are looking at credit rating agencies to see how we improve disclosure and the regulation of those agencies. Credit default swaps and securitisation are areas that I think we would look at to see what changes may need to be made in the way we have approached things. Coming back into the market, certainly the issues I talked of earlier relating to unlisted, unrated debenture areas and mortgage trusts are all issues of looking at and improving investor behaviour. That is the sort of work that we are doing.

**CHAIRMAN**—Not to harp on this point too much, but you are obviously not limited to those specific areas of what you identify as systemic risks. I am just trying to get a really good understanding of where ASIC sees systemic risks. It has already identified where problems could arise in the future and, therefore, is taking preliminary action to assess those areas and make sure that we maybe do have a better understanding or can react earlier if there are any particular areas, because it is very specific in terms of what might be systemic.

**Ms Gibson**—To build on that slightly, we are talking with a lot of other international regulators and local regulators, looking for those events that might yet hit our shores and those events that might occur as the rebuild happens. That involves at the retail level looking for where, if you like, the bad guys might reappear, where money might come out, where there is a shortage of money, where that money might be found to go, and also looking at where a fallover might happen. It is important to have your eyes open across the board, I think.

**CHAIRMAN**—Sure.

**Mr Cooper**—Some people say that the monetary policy easing that happened at the beginning of this decade in the US is at the very centre of the world crisis. I suppose if we saw lower interest rates in Australia we would be looking very carefully at investor behaviour to see whether there were not similar signs of excessive speculation and gearing. So that would be something we would be watching very closely.

**Senator BOYCE**—So you are actually monitoring what is happening with mortgage defaults at the moment, are you?

**Mr Cooper**—It would not be so much defaults; it would be looking at, for example, an increase in margins and—

**Senator BOYCE**—No, sorry, a default demonstrates a borrowing problem. That is why I am using that figure.

**Mr Cooper**—Yes.

**Mr D'Aloisio**—I think it is more with APRA and with the RBA. As part of the Council of Financial Regulators, we would be across those issues largely through the RBA and APRA.

**Ms GRIERSON**—What was ASIC's role in the development of the bank deposit guarantee policy?

**Mr D'Aloisio**—The deposit guarantee is a government matter, a policy matter for government. ASIC's role, as part of the Council of Financial Regulators, is essentially around the administering of the arrangements that are put in place.

**Ms GRIERSON**—Would it be tracking it and giving any feedback on its operation?

**Mr D'Aloisio**—We see our role as being, now that it is in place, first in the broad area of misleading and deceptive conduct and making sure that the products that have the guarantee and those that do not are clearly differentiated, for example, so that there is no misleading conduct in the market in the way that the guarantee may be administered. Secondly, we are looking, as I said earlier, at the mortgage trust area to see where we can assist with hardship relief if areas of those markets have their assets frozen for a period. So our work is very much centred on looking at how the market is handling the guarantee and responding.

**Ms GRIERSON**—As members of parliament, we get feedback very quickly from lending institutions, and building societies particularly have some concern about the 30 per cent differential in fee for deposits over $1 million. Can you explain to me the rationale for such a big differential in the fee?

**Mr D'Aloisio**—That is a question that really needs to be directed to the RBA, Treasury and government. It is not a policy matter for ASIC.

**Ms GRIERSON**—All right. The other concern they raise, which is a concern for all of us, is the very strict reporting regime. We are talking about daily calculations, daily reporting. What is your view at the moment on regulation, the movement towards regulation and the impact this will have on our institutions? Can we get the balance right?

**Mr D'Aloisio**—Again, that is a matter for the government, Treasury and the RBA, which are administering the scheme on a day-to-day basis. ASIC is not administering the scheme.

**Ms GRIERSON**—You were looking at a reform agenda. What other areas will you be looking at in terms of a reform agenda and making recommendations regarding regulations?

**Mr D'Aloisio**—The main area for us, as I said, is to input to government on the work that IOSCO is doing through our membership of IOSCO, the fellow regulators. Again, as I said earlier, the areas are around what developments are occurring internationally on short selling, on unregulated products, such as securitisation and so on, and—

**Ms GRIERSON**—And what is your feeling already about that? Do you think there is a change in the mood, a willingness to cooperate and intervene?

**Mr D'Aloisio**—It is early days in the sense that three sets of debates are going on: what you would call the big macro debate about free enterprise and free markets at the political level; principles of regulation as to transparency, openness of markets and so on; and then there are some specific issues that are being looked at. It is too early to call whether there would be any significant change in the global regulatory architecture. What you saw in the G20 was a move to say that existing institutions should be strengthened to have more authority on the development of rules because it is recognised that what happens in one capital market can significantly impact another. But there is no move at the moment at that regulatory architecture level to set up regulatory bodies that would have jurisdiction over a number of countries, but there is talk about strengthening existing institutions, creating oversight bodies, say for example, for credit rating agencies. So there is that debate and it has a way to go to develop.

The specific issues that are emerging from a regulatory perspective are around the issues, which I will not repeat, I mentioned earlier that IOSCO is running. I have been chairman for 18 months now, and in that time the big change internationally is that bodies like IOSCO and the IMF et cetera recognise the seriousness of this crisis and are very focused on the issues. IOSCO has held a number of meetings in between the main meetings of September and February on short selling as well as a serious meeting the other night on the issues I spoke about earlier, the agenda. So you are seeing a commitment by fellow regulators in the IOSCO sense, and I think this will apply across—

**Senator BOYCE**—So international cooperation.

**Mr D'Aloisio**—And it is building very rapidly.

**Ms GRIERSON**—That is the hope, isn't it?

**Mr D'Aloisio**—For Australia it is quite important that we are there, because we have a small market, and what you do not want is not to know what the settings are so that government can assess whether it will take those settings into account when it formulates policy.

**Ms GRIERSON**—Can we come back to that small market? There has been a lot of suggestion and speculation regarding ASX's market supervision responsibilities and the view that some of those responsibilities would be best shifted to ASIC or that there should be a competition model in terms of our market. I think that there is perhaps now some concern that there has been a conflict of interest with ASX. What is your view on how that is best managed and the best way forward?

**Mr D'Aloisio**—We have an existing regime that we are working with and, as I said earlier, we are working well with the ASX and adding our own resources in relation to insider trading, market manipulation and supervision of the markets. Even though our markets have gone through significant turmoil, we have been pleased that overall our systems are working well, our counterparty risk and the way it is managed and settlements are occurring on time, so there are a lot of positives that we have.

On the issue you have raised on whether there should be change, it will not be unexpected for me to answer on the basis that that is a matter for government. The government has made it clear

that both the competition issue and the supervisory aspects are policy matters for it, and on that basis it is really a government issue.

**Ms GRIERSON**—But I assume you would be doing some analysis and making recommendations to government?

**Mr D'Aloisio**—It is on the public record that we have advised government on competition licensing, and that is with Minister Sherry.

**Ms GRIERSON**—Thank you.

**Senator MASON**—I have some general questions, Mr D'Aloisio, on the annual report. I know my colleague Senator Boyce has questions on more contemporary regulatory issues, and she will get to that in a minute. But can I start by asking a few general questions in relation to the annual report? Last night the Senate was sitting very late. I had the joy of flicking through your annual report, in particular, the—

**Mr D'Aloisio**—I can buy you something else if you—

**Senator MASON**—Yes, it is a sad life, isn't it!

**Mr D'Aloisio**—It is a nice report.

**Senator MASON**—I congratulate you on it because you have a survey on consulting in it—

**Mr D'Aloisio**—Yes.

**Senator MASON**—of ASIC stakeholders. Just generally, are you happy with the outcomes of that—with the results?

**Mr D'Aloisio**—No.

**Senator MASON**—No, I did not think you would be.

**Mr D'Aloisio**—No.

**Senator MASON**—But I want to congratulate you on your bravery in publishing it.

**Mr D'Aloisio**—We have put the whole report on the website. The report here has extracts.

**Senator MASON**—When I was flicking through it last night I noticed, for example, ASIC's overall performance and the matter of 'efficiently administering the law with a minimum of procedural requirements.' In a sense, that leads into questions that Senator Boyce will be asking shortly, and for legislators that is a key question—'efficiently administering the law with a minimum of procedural requirements'. Only 30 per cent of respondents said that ASIC did that well or very well, 30 per cent were neutral, and 40 per cent said that was poor or very poor.

Again, I congratulate you on your bravery in putting the survey results in the report and thank you for it. But for the parliament that oversights your commission it is not a good result, is it?

**Mr D'Aloisio**—No. But let me talk to it in a positive sense.

**Senator MASON**—Sure.

**Mr D'Aloisio**—Feedback is important if you are going to make changes. We did a strategic review of the organisation and made changes that we felt were needed but we felt that we needed a base, and the best base is to talk to your customers or to your stakeholders.

**Senator MASON**—Stakeholders, yes.

**Mr D'Aloisio**—When you look at that and at the particular issue of efficiency, what have we done about it? Clearly, in the way that we have now set up our—

**Senator MASON**—I am going to come to that, but tell us what have you—

**Mr D'Aloisio**—Firstly, it is essentially about training to develop skills and the development of people so that they are much more in tune with the market and understand what is happening so they can give a quick response. Secondly, in terms of systems and processes, ASIC registers 1.3 million companies a year and licenses 11,000 people, and we are using technology to allow people to deal with us more efficiently. We would like to get to the point, through investment in technology and the way we manage our stakeholder customer base, of enabling small businesses to deal with ASIC interactively through the website. They will go through their own ASIC portal to update documents and, if there is a fee to be paid, they can pay the invoice electronically by credit card. By pushing the efficiencies in that way, looking underneath the technology that is behind it, we think we will make small gains in efficiency and savings for a lot of people, and that is a significant contribution to being able to deal with the issues you have raised in our real economy.

**Senator MASON**—Sure.

**Mr D'Aloisio**—On the financial economy side, each year we process a significant number of applications for relief, waiver and so on. Clearly, what we are applying there, in addition to technology to help us manage that information and share the experience so that we can respond more quickly, is training and development of our people. As part of the strategic review, we have made a significant investment in upgrading leadership training and development, because the sort of value proposition we are trying to get with our people, given that we are a regulator, is the creation of an environment in which their credentials develop when they work at ASIC so that they become more valued by the market. That has a risk that we could lose them but, on the other hand, it means we can attract people as well, and that is what we are trying to achieve. That training and development and improvement in technology will take place over the next two, three, four or five years. If we did a survey tomorrow I do not suggest that you would see much of a change in the score, but in two years time, when we intend to do another survey, I would expect to see the sorts of things that I have just spoken about pushing up satisfaction quite significantly.

**Senator MASON**—It is the way to go. I have marked so many of these results. I will not go through them all but, for example, on the item 'Focus on outcomes rather than process,' only 26 per cent agreed that you focus on outcomes rather than process, 37 per cent were neutral and 37 per cent disagreed. That is not very good, is it? I think it is pretty terrible. Only 20 per cent agreed, 30 per cent were neutral and 50 per cent disagreed with the proposition, 'You are confident the person you're dealing with has sufficient authority to make a decision.' That is two in 10 saying they are confident that the person they are dealing with has sufficient authority to make a decision.

**Mr D'Aloisio**—I will pick the good ones.

**CHAIRMAN**—Maybe the question to ask Mr D'Aloisio is: do you believe the review and the structural changes you have made will set you on the right path to turn this around?

**Mr D'Aloisio**—Absolutely. As a commission, the three of us have had our strategic review unit, we brought in an external management consulting firm and we have pored over these survey results. I should add that it was not just that testing. We ran exactly the same survey with our staff at exactly the same time and measured the gaps between staff perception and stakeholder perception. There is no question that our stakeholder—

**Senator BOYCE**—How was the staff survey, Mr D'Aloisio?

**Mr D'Aloisio**—Our staff thought we were doing better than the results showed. There was quite a gap in a number of them. That has become a very important exercise in the learning that I talked about earlier. If there is this gap and we think we are better, why are we not communicating that to our stakeholders, our customers, and part of the work we are doing going forward is in relation to that. The recruitment of the leaders, the stakeholder teams and the external advisory panel, as I said earlier, are significant changes made in ASIC with the objective of improving the role that we play. Ultimately we should be judged against, and we have said it to staff, the contribution we make to maintaining and improving confidence in the integrity of the financial markets of Australia.

**Senator MASON**—I agree, but your role will be much expanded given the global financial crisis, and what you do to improve the success of the market becomes highly important. All of us would accept that. But this survey was carried out before the onset of the global financial crisis, and the results are not flattering. I am concerned about whether you can hack the pace of your new responsibilities given the results of this report. I hope so!

**Mr D'Aloisio**—I am absolutely confident that we have improved significantly since that survey was done and that we will deliver on the priorities and the things that we have set out to do.

**Senator MASON**—You said that in two years you will do a follow-up survey putting similar questions to stakeholders, so that parliament can track—

**Mr D'Aloisio**—Yes.

**Senator MASON**—the stakeholders' answers.

**Mr D'Aloisio**—And the results of that will be made available as well.

**Ms Gibson**—Chairman, one thing we have not touched on is our re-education program. We have had to turn our staff from processors to—

**Mr D'Aloisio**—You are talking of me, I think.

**Ms Gibson**—to thinking about the market first. We are doing a lot of leadership training of staff at the most senior level and trailing that through the organisation so they can look at something and say: 'Does this matter? Why does it matter? What can we do to make a difference?' That is going to take time, but certainly less than the two years. There is a mindset to change.

**Senator MASON**—We do not have much time, Ms Gibson. I suppose my point is that we do not have much time, given what has happened and the new legislation on short selling. That is what concerned me late last night when I was reading the report.

**Ms Gibson**—We have approved a number of training programs and things to go ahead, and we just have to rely on that as best we can.

**Mr D'Aloisio**—Certainly when we embarked on the review last year, we always said it was parallel tracks, if you like. We were implementing as we went as well and we kept our eye on keeping things going. It was not surprising that when we clicked over on 1 September that things just kept moving because we were very conscious of the fact that, even before the crisis, we did not want a situation where there was any gap in our regulatory role while the new arrangements took effect, and there has not been a gap. We have not dropped the ball on any issue because of the strategic review.

**Senator MASON**—Thank you, Mr D'Aloisio.

**Senator BOYCE**—Just following up on that, since you have undertaken the strategic review you have had two fairly major pieces of work in terms of the disclosure regime around short selling and the oversight and regulation of redemptions in the mortgage trusts. What other new work has the current situation thrown up for you?

**Mr D'Aloisio**—In terms of government, at this point the Financial Literacy Foundation has been passed to us and the credit regime and the credit rating agencies. Whether there are others we will see, but we are comfortable that we can and have factored those things into our forward program.

**Senator BOYCE**—That was going to be my next question. On a reduced budget and reduced staff and then more on top of that, you are still comfortable that you can cover it?

**Mr D'Aloisio**—The current position with our budgets is that we said to government that for the 2008-09 year we felt confident that we could work within the existing budget settings. Recently, through the Prime Minister's allocation for this financial year, we were allocated an additional $10 million for the crisis work. That is being used—

**Senator BOYCE**—So that is short selling and redemptions, basically?

**Mr D'Aloisio**—That will be used for that. For this financial year we have enough resources to do what we want to do, and our NPP proposal for the next three to four years is currently with government. In addition to that, again through the Prime Minister's allocation, or the Treasurer's allocation, an additional $20 million has been set aside for next year, even before we go through that NPP process. As a commission, we feel that we have the resources at this point to be able to do what we are doing. The government has allocated and approved a specific amount of money for credit over and above the numbers—

**Senator BOYCE**—For monitoring credit rating agencies?

**Mr D'Aloisio**—No, I am sorry, for the credit legislation that we will get.

**Senator BOYCE**—Okay.

**Mr D'Aloisio**—And that has been approved. So the funding for that is over and above—

**Senator BOYCE**—And how much is that?

**Mr D'Aloisio**—I think the government has announced it but I will need to check it for you, Senator. I think it is of the order of $70 million, but we might check that.

**Mr Cooper**—It is very close to that—yes.

**Mr D'Aloisio**—Over four years.

**Senator BOYCE**—Okay.

**Mr D'Aloisio**—So at this stage, subject to the outcome of the so-called NPP process that is going through at the moment, we feel that we have the resources and the restructure to perform our functions in the turmoil that we have.

**Senator BOYCE**—You certainly have a heavy workload.

**Mr D'Aloisio**—I should add there, Senator, as I said earlier, that we are fortunate to be recruiting at a time when we can get good people. So we want—

**Senator BOYCE**—People's minds may well be focused on a stable job environment at the present time.

**Mr D'Aloisio**—We are seeking, clearly, to take full advantage of that, and we are ramping up recruitment in order to do that.

**Senator BOYCE**—I have some questions about the hardship provisions and also quite a lot of questions on insider trading, but if someone else wants to jump in—

**CHAIRMAN**—I might. In a related area, can you give us some idea of the international experience on short selling and how you are gleaning information from what is happening abroad?

**Mr D'Aloisio**—Chairman, the fact that IOSCO has set up a task force to look at the international issues indicates the complexity of short selling and the difficulty of being able to measure the effect of bans, no bans and the turnover and liquidity of markets in what is an extreme time of volatility. What I extract out of what has occurred and what is happening internationally is a concern that markets are not operating in a way that allows buyers and sellers to trade freely. For example, buyers might be staying out of the market because they are concerned about volatility, but short selling coupled with rumours can actually depress prices further. In the case of financials, that is an extremely worrying issue. If the stock price of a financial gets to a particular level it runs a risk of being rerated for credit purposes, so it might drop from AA to something else. That, of course, is your worst nightmare because that then precipitates—

**CHAIRMAN**—A further decline.

**Mr D'Aloisio**—a further decline, and, of course—

**Senator BOYCE**—A spiral.

**Mr D'Aloisio**—if you are the short seller, you keep shorting the stock. I think international regulators have recognised that and in certain times of volatility have made changes and there have been bans. Different jurisdictions have gone different ways. It is very complex because there are ways of getting around a short selling ban through derivative trading and options trading. But the first principle is that it is an issue and it needs to be monitored by regulators.

**CHAIRMAN**—Is disclosure the key here to how we deal with—

**Mr D'Aloisio**—At the moment there are differing views on disclosure. Fundamentally, if you put sunlight on something you can see what is going on, and not being able to see the short positions that are taken is a concern. I think there is almost universal agreement that there needs to be disclosure. How you disclose or do you disclose net positions, gross positions; do you do it daily, do you do it weekly? Those are issues that are still to be worked through. We have suggested a regime where it is done daily, but, clearly, we will work with industry on that over the next period.

**Ms GRIERSON**—Are you recommending gross volumes be looked at as well?

**Mr D'Aloisio**—At the moment it is gross, but net volumes are being looked at very carefully, so that intraday trade is netted off to give the net position. There is a lot going for that, and we will look at that as well. Going back to your question, Chairman, they are the principles that you can extract from what is happening internationally. There is absolutely no doubt that there is opposition. In the Senate estimates or the evening I talked to the bill I talked about the man in the street and hedge fund operating. The hedge fund operator and those whose strategy is short selling clearly want it in the market and would prefer the least amount of disclosure, not because they are devious but because that best protects their trading position.

**CHAIRMAN**—It is easier for them.

**Mr D'Aloisio**—At the other end of the spectrum, companies are concerned that they will be unfairly targeted, and if disclosure is coupled with false rumours it will be an unfair reflection on the work they are doing to sustain their share price. So there will not be unanimity. I think we have got the settings right and that the legislation that the government is putting through will back those arrangements. Globally at the moment the concerns are stopping arbitrage where one market closes and the funds move to another—the gaps between the regulatory regime and the disclosure regime—and why we do not as a bunch of jurisdictions at least suggest a common approach to disclosure, although it would be up to government ultimately as to whether to adopt the suggestion. The other issue that is in the background with disclosure is the debate going on at the international level about whether the so-called up-tick rule should be reintroduced. Again, IOSCO and others will look at that over the coming period.

**CHAIRMAN**—Is it in the view of ASIC, given the market volatility here and internationally, that more market manipulation, market abuse or other factors would come into play? Is that something that you have on your horizon, on your radar?

**Mr D'Aloisio**—Perhaps Ms Gibson could talk about it.

**Ms Gibson**—In the period before September there were a lot of unfounded rumours that they had risen to an untenable level. There is some talk in this market where things are so volatile and it is hard to know whether it is down or up when some people go short for a very long time, and that seems more risky than perhaps it was earlier. We have to be very alert to manipulation, and false rumours seem to be the issue here. Where funds are particularly trying to maintain their values or sustain a report of profitability we also have to look out for manipulative activities that might be seeking to prop a price. So there is perhaps more incentive to do so in this difficult market.

**Senator BOYCE**—Sorry, more incentive to do what, Ms Gibson?

**Ms Gibson**—More incentive for people to engage in illegal conduct perhaps to maintain their market valuations for the purposes of their funds and so on.

**Mr D'Aloisio**—If I could follow on from Belinda's comments, that is because of market volatility and dropping; a natural pressure is exerted on companies to continue to perform. Clearly that pressure is quite intense on valuations, insider trading and market manipulation. A regulator has to be much more alert and astute because continuous disclosure to the market puts more intense pressure on economists, chief executives, senior people and boards.

**Senator BOYCE**—Presumably that will heighten as well as we move towards the end of the financial year.

**Mr D'Aloisio**—It really will depend on the economic conditions.

**Senator BOYCE**—Have you done any work on the market effect of daily public disclosure of short—

**Mr D'Aloisio**—We will, and we are. Because of the ban on short selling, initially when the market reopens turnover will increase. At the moment, as one would expect, it has probably increased six or seven per cent. So, yes, it will add liquidity turnover.

**Senator BOYCE**—No, I am not talk being about that but the actual—

**Mr D'Aloisio**—In terms of a disclosure—

**Senator BOYCE**—Yes.

**Mr D'Aloisio**—the issues—

**Senator BOYCE**—What potential is there for that to drive market as well as disclose the market, so to speak?

**Mr D'Aloisio**—I think it is too early in the sense of the number of days since we have reopened and had the disclosure regime. It is probably a question for us to look at, but we would need a few months of data to be able to form a view. By providing information to the market, participants in that market will interpret that data and make their judgements about what it means about a particular stock. On the one hand you will have the view: 'Given that that shorting is going on, I might short too.' On the other hand, you might have the view: 'Given that shorting is going on, I do not think that is right. I think I will be a buyer rather than a seller.' We really are not in a position to predict at this point.

**Senator BOYCE**—So it becomes a secondary set of signals, does it not?

**Mr D'Aloisio**—It becomes a new signal to the market, yes.

**Ms Gibson**—It is a different one.

**Senator BOYCE**—What effect is that likely to have on the market?

**Mr Cooper**—I think in a general—

**Senator BOYCE**—I suppose in some senses it is a reasonably pure signal that you get at the present time, is it not?

**Mr Cooper**—It was an activity that was already going on. It had sunlight on it.

**Mr D'Aloisio**—In other words, is the market better by not having it disclosed or having it disclosed? We are saying that it is better to disclose it and let the traders sort it out rather than holding the information and then the market is not aware of how much of the trading that has gone on is covered by borrowed stock.

**Senator BOYCE**—Has the view been put to you at all that you should collect this information but not necessarily disclose it publicly?

**Mr D'Aloisio**—Yes, that is a view.

**Senator BOYCE**—And what is your response to that?

**Mr D'Aloisio**—Our response to that is this: first, it is an issue that we will discuss further over the next few weeks, but we did not feel that that was the way to go. We think the best place for these statistics to go is to the market operator, the ASX, and we would share the individual shorting figures that are there. We think that the aggregate figures that are being made available only to the ASX and to ASIC should be made available to the market because, as a regulator, what do we do with those figures? How do we interpret those figures and then provide them to the market? What additional skill set do we need, then, to decide whether or not the disclosure of those numbers is important for the market? We feel that the market should make those choices. At the moment the disequilibrium is that covered short selling goes on in the market but the rest of the market does not know the extent of the short selling of a particular stock or what percentage of its capital is being shorted. We think that the best place to put that information is in the market, not for it to be held by ASIC and then for ASIC to decide when it will choose to release that data. Indeed, I could envisage coming to this committee and being asked the question: 'Well, you are holding all this data. What are you doing with it?' In order to answer that, we would have to say, 'Well, unless we have a panel of experts who can try to read this and work out what goes to the market, what do we do with it?'

**Ms GRIERSON**—Do you think that would be welcomed? Are you getting feedback on that initiative? Do you think that will happen?

**Mr D'Aloisio**—I think those who are operating short positions would prefer that the information is kept confidential because it has the potential to disclose—

**Senator BOYCE**—Because it does not affect other markets.

**Mr D'Aloisio**—their trading tactics. I entirely understand why they would like it kept that way.

**Ms GRIERSON**—But the risk—

**Mr D'Aloisio**—But the issue is a bit like—

**Ms GRIERSON**—does not fall with them; the risk—

**Mr D'Aloisio**—We have had this debate—

**Ms GRIERSON**—with everyone else.

**Mr D'Aloisio**—We had this debate when the so-called continuous disclosure provisions were inserted in the Corporations Act requiring listed companies to disclose immediately a market impact event. There was a lot of concern about companies being able to run strategies, to keep them to themselves until they could tell the market. We have found the balance for that, and the continuous disclosure regime works very well. We are looking at similar disclosure here with

short selling. We do not say that it is perfect at this stage, but we have made a significant move in the right direction and we need to refine it.

**Senator BOYCE**—Do you have any sense at all of what this might achieve in terms of the way the market functions?

**Mr D'Aloisio**—Just simply that you will have more information to allow you to make decisions.

**Senator BOYCE**—But that will cause changes in behaviour. Have you thought about what those changes in behaviour will be?

**Mr D'Aloisio**—People could take positions, short positions, not take them, buy stock. I am just trying to think of an analogy with a home option, where you have more information—

**Senator BOYCE**—Know what the bid before is.

**Mr D'Aloisio**—about the market, about who has got money, who has not, and you are really providing—

**Senator BOYCE**—But that is coming back to why—

**Mr D'Aloisio**—another piece of information—

**Senator BOYCE**—the owner would be trying to keep their reserve quiet, is it not?

**Mr D'Aloisio**—That is a good analogy.

**Ms Gibson**—One of the rumours that was pretty common in the first half of the year and through September was, 'This stock is going down because it is being shorted.'

**Senator BOYCE**—Well, it suited some people to—

**Ms Gibson**—Yes, it suited some people—

**Senator BOYCE**—to suggest that.

**Ms Gibson**—to suggest that, but—

**Senator BOYCE**—It was not about company performance at all, was it?

**Ms Gibson**—the two are not necessarily unrelated.

**Senator BOYCE**—No, that is right.

**Ms Gibson**—So this throws light on the question of whether it is a shorting activity that is causing the price to go down.

**CHAIRMAN**—Can I just move you on.

**Senator MASON**—Do you think you could stop rumourtrage in politics?

**Mr D'Aloisio**—Very good.

**Senator MASON**—It is the natural currency, of course.

**Ms Gibson**—Once it is fixed in the market—

**CHAIRMAN**—Can I just move us on from a great conversation to something that we need to deal with: superannuation?

**Ms GRIERSON**—Before we leave that market manipulation—

**Senator BOYCE**—I have got a couple more questions.

**Ms GRIERSON**—can I ask about any moves you are making to deal with the people who are now using the online forums as individual traders and having multiple identities? It is almost as though we are going to see an Xbox game one day playing the market. Are you able to take that on?

**Ms Gibson**—We can see the level of trading. We then have to go back to those operators to find out whether it is particular individuals who are doing that. The systems that individual trading houses have can track back to different routes. There are rules about multiple trading identities. Has it been a priority of ours to try to check that? The truth would be: no, it is not a priority. We look at it in the context of particular activity in particular stocks rather than focus on the traders as the players. With time and with technology, it will be easier to see a particular trader's activity online rather than needing to look at the trading in a company and then go behind that.

**Mr D'Aloisio**—ASX performs a significant role in the way that it licenses market participants. The market participants are the ones who will have the prime responsibility of making sure that whoever comes into the market comes through in a bona fide way.

**Ms GRIERSON**—I hold grave fears about the checks of that.

**Mr D'Aloisio**—No, we will.

**Ms GRIERSON**—Thank you.

**Senator BOYCE**—Have you been collecting statistics on market manipulation by short selling in the past two years, five years? Do you have evidence of an increase in the level of market manipulation using short selling in the past six months?

**Ms Gibson**—It is difficult to answer. The term in the act that we would use for market manipulation is where the prices move to unnatural levels because of unnatural dealings on the market. On the rumourtrage side of things we are more looking at the misleading conduct that

might feed into the market that generates, if you like, a more natural buy and sell. We are monitoring the level of trading of a number of companies that the computer systems we have—

**Senator BOYCE**—Sorry, what do you mean by 'a number of companies'?

**Ms Gibson**—The ASX has a technological system that oversees the market—

**Senator BOYCE**—That would alert you to—

**Ms Gibson**—and alerts us to odd activities or things that are outside the projected normal bands, and that will lead us to look into what might be manipulative, which is more often a course of trades over a time frame that look to be odd and out of the ordinary course. We also look for spikes in trading, which tends more to suggest inside trading or an inside deal. What we then have to do on the rumourtrage is tie back where we hear of a rumour or believe that there is a rumour in circulation and look at what happened to the course of trading, so that it is a matter of linking fact of rumour to course of trading and, if at all possible and ultimately if prosecution is to proceed, linking the party doing the trading to the rumour.

**Senator BOYCE**—So it is probably a fairly blunt instrument. But has the number of companies that you are being alerted about changed?

**Ms Gibson**—We have received a lot more referrals from ASX this year than in prior years. I do not have the exact figures with me, but certainly—

**Senator BOYCE**—Can you give some sort of sense of the number?

**Ms Gibson**—I would be inclined to say double but I think that is overstating it. But it is—

**Senator BOYCE**—So we are talking about a hundred companies or a thousand companies?

**Ms Gibson**—We have had 86 referrals from the ASX this year on continuous disclosure, market manipulation and insider trading. My sense of it is that market manipulation has been significantly more, but, Senator, I would need to come back to you with the exact figures on past referrals on those.

**Senator BOYCE**—I would be interested in any more information you can give me on that. I have just one last question on this side. I have some that I would like to put on notice, though, Chair, if that is possible. How are you proposing to regulate the ban on naked short selling or monitor or—

**Mr D'Aloisio**—I think it will be fairly straightforward. You do not have the stock, and I think through ASX and ourselves we will be able to monitor that. The only naked short selling that will occur going forward will be where it is subject to an exception that has been granted. So we will monitor both the exceptions and daily trading with ASX.

**Senator BOYCE**—But there is still nothing to stop people having a little bit of a deal on the side, is there, despite the fact that it is—

**Ms Gibson**—The easiest was to just—

**Senator BOYCE**—now illegal?

**Mr D'Aloisio**—No, there is nothing to stop dishonesty, Senator.

**Senator BOYCE**—That is right. That is what I am asking. What processes do you intend to have in place to become aware of dishonesty?

**Mr Cooper**—As the chairman said, three days later you do not have the securities, and the ASX will know immediately who you are, and unless—

**CHAIRMAN**—There are penalties that apply for doing that and, therefore, there are systems that are already in place and the ASX will—

**Mr Cooper**—I fall within an exception to the rule.

**CHAIRMAN**—ASIC has the—

**Mr D'Aloisio**—You are done. It is very easy to prove, though.

**Ms Gibson**—Plus the brokers have a duty to ask the question and follow up. They are not going to be condoning illegal behaviour. Many of them have the shares in their accounts or would not have the shares in their accounts. Part of our project, if you are talking about all these things to the brokers, is to see how their compliance practices are going in assuring this. So that is a second tier of monitoring.

**CHAIRMAN**—Can I move on to superannuation, and particularly superannuation funds. In July ASIC released a consultation paper in relation to superannuation funds trying to facilitate calculations for fund members to get some advice on the level of contributions they need to make to have an adequate retirement saving upon retirement, but there are some regulatory problems in terms of super funds being able to give financial advice. Can you give us a brief update as to the progress of that?

**Mr Cooper**—We can. There are really two strands. The first is the government work through the Financial Services Working Group, of which ASIC is a member. It is basically a policy, through ASIC guidance, to allow super funds to give simple and straightforward advice to their existing members about things like: 'What is co-contribution? I have heard about salary sacrificing. What is it about? How much can I salary sacrifice?' The advice is specifically from the fund to the member about their superannuation. It does not go wider to other forums.

**CHAIRMAN**—That would not breach any regulatory requirement to have a specific licence for giving advice?

**Mr Cooper**—It comes about often because a lot of super fund trustees do not have financial services licences, and the boundaries between what is general advice and what is personal advice and so on are—

**CHAIRMAN**—What I am trying to draw out specifically is personal advice where a fund member says, 'Look, I just need some sort of advice on the amount of contribution.' Is there a potential to have some sort of form or calculator which would advise a member, 'If you want this much at retirement, under current circumstances you would have to invest this much'? Would someone need to be licensed to give that personal advice?

**Mr Cooper**—That is a slightly different strand of work because it sounds like that is what we are calling the super snapshot. In other words: 'If I have $20,000 in the fund, I am aged 30 and I put X dollars in each year, what would be a ballpark figure for me at retirement?' That is a separate project that we are working on as well. We have got a consultation—I may have mistaken your question.

**CHAIRMAN**—No, I am just asking whether that then—

**Mr Cooper**—We have a lot of pots on the stove, as it were, in this area to get the settings right. But that is a really worthwhile project. There are a lot of issues, of course, because, whatever you call it, you are almost representing to people what they are going to have in retirement. As we have seen, this year equity markets have fallen by round about 50 per cent. So in making these kinds of predictions to the entire superannuation population of 10 million-odd people, some very deep issues are going to have to be worked through. We think it is a very worthwhile project and that people should have this snapshot, this picture, but one has to be very careful that it is not an ironclad representation. After all, these are accumulation funds.

**CHAIRMAN**—Sure.

**Mr Cooper**—It is up to the market.

**Ms GRIERSON**—How would you influence the assumptions made on that information?

**Mr Cooper**—Assumptions are everything, how—

**Ms GRIERSON**—Is it going to be best case all the time, which is what has generally been happening?

**Mr Cooper**—I think that ultimately there will be pretty ironclad assumptions, and inflation rates, earnings rates and those kinds of things are all going to have to be very carefully looked through, probably through the Australian Government Actuary. There are a lot of deep discussions to be had about the issues around it, but we think it is a worthwhile project. So far the feedback we have had from industry generally is cautious but positive to the market.

**CHAIRMAN**—Specifically in terms of licensing, do you think there needs to be some sort of new regime perhaps or some sort of acknowledgement that a super fund may have some expertise within the fund itself to be able to provide that type of advice, or is that going to need a specific licence? Are you looking at that specific power with all your work?

**Mr Cooper**—We are. All these issues are in our consultation as to exactly what the end result might look like. We already have a policy around calculators. We think online calculators are

very much part of the future of financial services, so this project would produce some sort of online projection, and a paper one as well, in your super fund statement.

**CHAIRMAN**—And super funds generally are happy with the course and consultation?

**Mr Cooper**—As I said, it is cautious support because there are so many obvious issues: who is going to be liable if, for example, in the year that you retire there is another one of these sorts of market events and you have been working on a particular projection for the past 10 years and, guess what, that turns out to be wrong?

**Senator MASON**—I have heard that.

**Mr Cooper**—There are definite—

**Senator BOYCE**—In fact, the calculator has to be embedded in education, does it not?

**Mr Cooper**—It does, yes. People are going to have to understand what it is actually telling them—that it is not a guarantee, that it is subject to a lot of toing and froing.

**CHAIRMAN**—It would be a figure based on what you would expect in the future if it were today.

**Mr Cooper**—Yes.

**CHAIRMAN**—So it really is just a snapshot of that moment rather than any real future.

**Mr Cooper**—Yes. That is why we are using snapshots.

**CHAIRMAN**—But you still need to have some way of determining how much you contribute in order at least to have a plan—

**Mr Cooper**—Correct.

**CHAIRMAN**—or a strategy to get you where you might want to be in the future.

**Mr Cooper**—To use a bit of a buzzword, it is actually about people actually engaging with their retirement amount, which is not something that we can easily do at the moment. In some cases people would be horrified.

**Mr D'Aloisio**—I think that is a very important point to build on, because a superannuation member, in effect, under the accumulation models is an retail investor in these products and in the investment.

**CHAIRMAN**—Does that need to be better understood?

**Mr D'Aloisio**—At the heart of investor education and the financial literacy space that I talked about earlier, we believe that we have to invest in promoting the understanding that

superannuation is not just something that is set aside for you because you are a super fund member and that you have to be actively involved in what is going on.

**CHAIRMAN**—It is not a defined benefits scheme; it is market related.

**Mr D'Aloisio**—Correct.

**Senator BOYCE**—So you want to change the behaviour of only about 70 per cent of Australians.

**Mr Cooper**—Yes, we do because—

**Mr D'Aloisio**—We do. We have come from a defined benefit background and moved to an accumulation background, and, really, at the end of the day we are all investors in our future. The message for ASIC is that the issues around asset allocation—how the investment is made, risk-reward premium, disclosure, active interest, long term, short term, what should I put in—are all issues that you want the investor to be across.

**CHAIRMAN**—This environment might provide some great grounds for education. Could I ask you about the same issue?

**Senator BOYCE**—Well, just a comment.

**CHAIRMAN**—Okay. I cannot recall now whether the issue of financial advisers' indemnity insurance was raised in your annual report or whether it came up in our previous hearings, but you are of the view that that is adequate and that financial advisers are properly covered, properly indemnified. I am hearing different things and have been informed that that is not necessarily the case, that there is some concern that there is not enough coverage, that it is inadequate, that it is not quite appropriate or that the access to proper insurance—

**Mr D'Aloisio**—The model we are working under is a professional indemnity insurance model that ASIC is implementing through the regulations that were passed some time back for financial planners to carry certain levels of insurance. The stresses on that are the availability of professional indemnity insurance, its cost and its adequacy in the event of issues occurring. When we implemented the regime we told the market that we would look at it over a two-year period and give government feedback on whether the professional indemnity approach to protecting those who get advice from financial planners is adequate or not. We are about 12 to 15 months into that, I think, so we are going to look pretty carefully over the next six months at what issues are unfolding and whether there are—

**CHAIRMAN**—Is there a particular issue between the larger corporate banking professional financial advisory bodies and the cost to people who are employed compared with, say, a boutique financial adviser or an independent financial adviser who has perhaps a larger cost? Is the whole sector reflecting more unfairly, let us say, on the independent compared with maybe the bank employed financial adviser?

**Mr Cooper**—There is no doubt that a big balance sheet and a big brand assists when sometimes there have been mishaps in financial advice, either deliberate or accidental. That is

just a commercial reality. It is just one of the benefits of having financial strength. You would have to accept that that was just a fact of life. The big APRA regulated groups are exempt, and insurance deals with the other people who do not have those resources.

**CHAIRMAN**—Thanks for that.

**Mr D'Aloisio**—We want to encourage more financial advisers to come into the market. We think that financial advisers can and do play a significant role in assisting retail investors. At the same time, though, when it comes to professional indemnity and the ability to give proper advice, if there are claims we do have to balance that up. We think the regime of PI insurance is important and we want to review how it is working. If it is not working properly, it will be a policy matter for government as to whether it comes up with some other arrangement. We think it is very important in the coming period that we look for ways to get financial planners or advisers into the market to assist retail investors.

**Ms GRIERSON**—I was going to take up the question of financial services. You had a consultation paper out on the cap on compensation provided to investors out of dispute resolution schemes.

**Mr D'Aloisio**—Yes.

**Ms GRIERSON**—One of the recommendations is to increase the cap from $100,000 to $280,000.

**Mr D'Aloisio**—Yes.

**Ms GRIERSON**—It is too early to get feedback on that, but what has been the feedback so far and what would be the implications of that difference?

**Mr Cooper**—No great surprises. There are certain quarters—

**Ms GRIERSON**—Who do not like it at all.

**Mr Cooper**—that do not think it is a great idea. The chairman and I have gone on the record a few times, and we recognise that a couple of other issues have arisen. Obviously the financial crisis has had something to do with it, and there are two views as to the impact of that. One view is that that is a reason for not increasing the cap to $280,000, and another camp says it is all the more reason to increase it. Just going back to the last topic, we have been liaising very closely with the insurance community, and there is no doubt that the insurance market in this area will, as they call it in the trade, harden. It is going to be a hard market in 2009. There is the possibility that some players might not want to be in that market at all. So the commission will have to take all those factors into account as we go forward on this project to increase the level to $280,000. These are just yet more issues that we will have to take on board, but our position remains that that is the point that we would like to get to.

**Mr D'Aloisio**—I think the policy issue behind that is that sometimes the assumption is made that you are going from zero to $280,000. The $280,000 is actually a limit on what could be unlimited liability in terms of recovery.

**Ms GRIERSON**—It is a deterrent rather than a penalty, I would have thought. In actual operation, it would be more a deterrent than a penalty that would be applied, one would hope. We have been talking about disclosure with superannuation schemes, but they are not financial advisers, although they may have an adjunct, a service. What do we do to make sure those disclosures do not become market drivers themselves? How do we marry the financial service licence requirements with superannuation requirements? Is there need for any major change there?

**Mr Cooper**—We do not think so. The important point to remember is that the regime, such as it would exist, is only between a trustee and an existing member, and that is already a fiduciary relationship. It is not about being able to bring new members into the scheme. The trustee owes a whole matrix of special duties to that member, which we believe are an important factor in assessing whether this is a risk. The sort of advice that can be given is specifically limited to that fund and to an ambit of straightforward, single advice type issues. The minute it gets into an overall financial plan or into real personal advice it moves out of that regime. So it is of very limited scope. What are some of the reasons? The fairly clear reason is that superannuation is a compulsory investment. The government forces all working Australians to have super. We know there are not enough advisers in the system. Often also in this area we are talking about almost uncommercial transactions. If someone with $12,000 in their super fund rings up and wants to discuss additional contributions, co-contributions or what have you—we do not have to be embarrassed about this—a lot of technological change and development would be needed to make that transaction commercial. So I think in the specific area that we are talking about the project really does make sense.

**CHAIRMAN**—I know Senator Boyce has a number of questions that she wants to put on notice, and the committee may have some further questions that we would want to put on notice.

**Ms GRIERSON**—I want to ask one more quick question before the end because I think—

**Senator BOYCE**—I also have one.

**Ms GRIERSON**—There is a new imperative for our regulators to work really well together. Now, that is not making any assumption that they have not in the past, but there is a higher imperative now that our regulators work together at a very close level. Can you assure us that that is happening? Is there a noticeable difference, or is it something you are quite comfortable with?

**Mr D'Aloisio**—I can assure you that the relationships with our fellow regulators are working really well. We are in daily contact with a range of groupings, whether it is APRA, RBA, Treasury, ACCC or the ATO. The principal one is the Council of Financial Regulators. Outside of that, the relationships are at officer level but also at our level. I have to say I am pleasantly surprised having come from outside the public service and heard about some of the issues about turf. People are getting on with things and resolving issues. From our end we get great cooperation whenever we seek it from all the other bodies.

**Ms GRIERSON**—Thank you, and thank you, Mr Chair. I thought that should be on the record if that were the case.

**Senator BOYCE**—One last question about redemptions from mortgage trusts and how you are measuring the hardship provisions, because it is a very bizarre situation that because of a bank guarantee people's funds have been frozen. You said earlier you did not have a sense of how many people had applied for hardship exemptions or what level of funds was involved. Who is collecting those statistics?

**Mr D'Aloisio**—Because of the way it is been operating, we know that there have been something of the order of 100 to 110 applications across three or four funds.

**Senator BOYCE**—One hundred and ten applications?

**Mr D'Aloisio**—I think so. These are just rough figures. But it is early days in the sense that we have not yet done a full survey. We are just getting a view of it.

**Senator BOYCE**—But who is collecting, because every one of those cases is—

**Mr D'Aloisio**—We will collect it.

**Senator BOYCE**—How often will you publish those results?

**Mr D'Aloisio**—I think they have got to get to a meaningful point. My guess is that we will probably do that in a month's time or something of that order.

**Senator BOYCE**—Are you keeping statistics on the number of people who are rejected, who apply for—

**Mr D'Aloisio**—We will ask the two questions—yes. The number of entities that have applied and—

**Senator BOYCE**—An entity is presumably an individual in most cases?

**Mr D'Aloisio**—The trustee. The trustees have the power. The way that it works, Senator, is that we allow the trustees to apply the hardship provision in relation to their particular fund. A member applies to the trustee and the trustee makes the decision. We will track with the trustees the number of applications they have and the amounts of money they pay out. We think that at the moment, as I said, it is around a hundred, and the payouts probably range between $50,000 and $100,000. However, these are very early numbers, and you have got to consider that there are 190,000 members of these mortgage trusts.

**Senator BOYCE**—Exactly.

**Mr D'Aloisio**—So a hundred is not a meaningful statistic at this point. It is important for the individuals, but it is not a meaningful statistic at this point.

**Senator BOYCE**—Absolutely. The timeliness of the approvals of the exemptions would also be a figure I would be interested in because, as you said, for the individual it is—

**Mr D'Aloisio**—It is very important.

**Senator BOYCE**—a big issue.

**Mr D'Aloisio**—We will do that.

**Senator BOYCE**—Thank you.

**Ms GRIERSON**—The only thing I wanted to ask about was enforcement. We do not have time to go to it today, I understand, because the Chair has to leave. People have been very anxious to see an outcome on Westpoint, the wheat board—all those cases. It would be a very good thing to review the outcomes of those major cases because there will not be great satisfaction levels, I would not think. I hope that, out of the cases that are very significant, more recommendations are made about enforcement, regulation, penalties or whatever. I will put that on the record, and I would welcome following that up at our next meeting.

**Mr D'Aloisio**—Yes.

**CHAIRMAN**—Mr D'Aloisio, the committee has covered a range of areas today. For a range of reasons, we do not have quite as much time as we would have liked. There are a number of questions we would like to put to you on notice. If we could have answers to those questions by 16 January, that will give us enough time to work on our report and deal with those. I also put on the record that at our last meeting I raised the issue of the Dodrill matter out of Queensland, so could we again pursue not only that situation but also the related issue of where we draw the line in the sand in dealing with specific issues that are raised with ASIC? Thank you very much for your appearance today and your time. I thank the committee members and the secretariat as well. That concludes today's hearing. I thank everyone and adjourn the committee.

**Committee adjourned at 11.11 am**