I am an investor who has suffered significant financial loss as a result of the collapse of Opes. I am not a greedy person attracted by the promise of high returns (not applicable in the case of Opes), rather I am an educated, financially literate person (at the time I entered into the Opes agreement I was working as a Licensed Adviser), who was misled and deceived by Opes personnel as to the true nature of their 'margin lending' product.

I will therefore confine my remarks in this submission in relation only to Opes.

2. The general regulatory environment for these products and services

The general regulatory environment for the product offered by Opes can only be described as lacking.

A situation existed where a product - the Australian Master Securities Lending Agreement (AMSLA) - designed and intended for use by sophisticated corporate investors operating in wholesale markets - was on sold to unsophisticated retail clients for whom this type of product was inappropriate and who did not have, or were not provided with, sufficient education or guidance to appreciate the unique terms and conditions and higher risks of the AMSLA.

There needs to be an assessment of the current situation whereby an unsophisticated private investor can so easily enter into a complex financial product of this kind.

As an example, I point to the US, where the inclusion of limits in the 1999 Gramm-Leach-Bliley Act prevented OTC derivatives dealers from offering equity swaps (a sophisticated financial product designed for professional counterparties) to retail investors. Clearly the US recognises that complex financial products designed for market counterparties are not suitable for the retail market.

The Australian system should consider differentiating financial products according to their complexity and unless some kind of extra and detailed risk disclosure is in place, access by retail investors to wholesale market products should either be better regulated or prevented.

3. The role played by commission arrangements relating to product sales and advice

What was the requirement for Opes sales people to disclose how they were remunerated and if sales commission was payable to them as a result of signing clients up?

For the client to be able to decide if there appears to be a conflict of interest when being advised by a sales representative of a product provider to enter into a higher risk product ,this information must be provided.

Why were the greater risks attached to the Opes product not highlighted and clearly disclosed by them?

5. The adequacy of licensing arrangements for those who sold the products and services

Here my comments relate directly to the Opes personnel who were responsible for selling their product to a variety of investors including financial intermediaries, licensed advisers and retail clients. All investors and advisers relied on the Opes representatives who should be expected to know their product thoroughly .However they either did not - and so were unable to disclose the higher risk nature of the product - or they were fully cognisant of the higher risks but obscured them rather than jeopardise their sales commission.

Again, the adequacy of licensing arrangements for those who sold the products and services can only be described as insufficient .Is it possible that Opes personnel were really so ignorant of the higher and unique risk of their product that they were not able to outline it to clients in their discussions and presentations? What level of education or training is required by the Regulator of those who are in a position to sell this financial product?

There is a licensee responsibility to ensure competency - but how can this be effectively policed or monitored?

The adequacy of the ASIC licensing system needs to be re-thought, or a greater effort made to educate and inform consumers as to how the licensing regime actually works and what it means to them in practice. I believe that the majority of consumers would be under the, sadly mistaken, impression that an ASIC license is a seal of approval that a business is reputable and safe to deal with.

6. The appropriateness of information and advice provided to consumers considering investing in those products and services and how the interests of consumers can best be served.

Information provided was not adequate for investors to appreciate the higher risk nature of the arrangement they were entering into. Many investors were switching to Opes from traditional margin lenders and, as far as I am aware, no effort was made by Opes personnel to inform or educate investors as to the unique differences and higher risk of their product versus the traditional margin lending arrangement.Opes would certainly have been aware that the majority of the retail clients transferring to them were moving their accounts from traditional margin lenders.

Opes clients were not sufficiently apprised of the key features of the AMSLA that they were entering into, with the majority of Opes clients believing that they were entering into a standard margin lending arrangement.

It clearly needs to be considered how this situation of ignorance could arise in the first place (lack of education on part of product provider or mis-selling?); and how this can be prevented from recurring in the future.

How can the interests of consumers be best served?

Was it really appropriate that an arrangement designed for sophisticated market counterparties should be extended to the retail market? Is this in the best interest of consumers?

I suggest that any higher risk financial product or service should be accompanied by a separate Risk Disclosure Statement, such as is required for an investor to purchase Traded Options on the ASX through an ASX member firm. This Risk Disclosure statement should set out in plain English the key features of the product and the risks involved in using it. It should be a separate document and not a form tucked away at the end of a brochure full of reams of small print terms and conditions.

If a client had been required to sign a simple Risk Disclosure statement stating, for instance, that the client acknowledged that they had lost beneficial ownership of and legal title to their shares; and furthermore that their shares were being used as collateral by Opes for financing purposes - many people would not have signed.

The PDS available from Opes was changed just weeks before its collapse, and no attention was drawn to this - I do not believe that clients were even informed of the existence of the new PDS. Is there a requirement to update investors with any new PDS? If not, why not? Particularly if the new PDS contains changes which will have a significant impact on the investor’s decision to remain invested in that product?

It is one thing to criticise investors for not looking thoroughly before they leap, but if the investor is not updated how can he remain in an informed state and make a decision accordingly?

"More importantly, and possibly crucially, the contract did not meet the mandatory information requirements of the Corporations Act, in that the Financial Services Guide (PDS) did not include a copy of the securities lending facility terms. The replacement contract does include the facility terms in the Financial Services Guide"

(The Australian – Bryan Frith 25th April 2008)

7. Consumer education and understanding of these financial products and services

Clearly Opes clients placed a lot of trust in Opes personnel, as education on the product was non-existent. This resulted in a situation where the clients' understanding of the product was totally incorrect i.e. most clients believed they were entering into a margin loan.

I reiterate my suggestion for a Risk Disclosure Statement or a 'Key Facts' document which takes from the FSG or PDS the key points and risks of that product in plain English ,and must be read and signed by the client before entering into any type of higher risk product or strategy.

The involvement of the banking and finance industry in providing finance for investors in and through…Opes Prime….and the practices of banks and other financial institutions in relation to margin lending associated with those businesses.

The conduct of ANZ throughout the Opes Prime situation has been unconscionable. Although ANZ purport to have taken internal action as a result, this is cold comfort to those who have suffered financial loss or hardship and who would like the regulator adopt a much harsher approach to ANZ than the mild admonishment we have seen to date.

Many investors were using the Opes product reassured by the prominence of ANZ in their marketing materials, replete with ANZ logo describing them as 'banker and custodian bank', an impression also reinforced by Opes personnel.

The precise role of ANZ i.e. that they were in the position of providing financing to Opes in exchange for Opes clients stock was never made clear. In fact the impression given was that ANZ was simply the custodian holding the stock for clients of Opes - anyone signing the Form 'Collateral Lodgement from Sponsored Holding (HIN) in the Opes FSG dated 15th May 2006 which stated 'Please accept this authority to transfer the following holdings from my account to ANZ Nominees PID 20005' would have been under the distinct impression that ANZ was acting as custodian ('custodian bank' as shown in the PDS) and nothing more than that.

Substantial shareholder notices were never lodged for any of the ANZ Nominees' large positions in these stocks, an action that would in itself have triggered alarm bells as to ownership of the stock and led to questions being asked much earlier. I do not accept that this particular matter has been satisfactorily resolved by the ASIC.

I request that the Parliamentary Committee call on ANZ to explain and justify their actions whereby they seized and indiscriminately sold down the Opes book, with no regard for the many underlying clients who would have re-financed their margin loans given the opportunity This would then have left ANZ to pursue those Opes clients who should have been margin called and never were. I find it hard to believe that the outcome of a more orderly rundown of the Opes book by ANZ could have possibly resulted in a worse situation that the one in which they now find themselves; and it would certainly have avoided the reputational damage, bad press and litigation that they have now incurred.