

SENATE ECONOMICS REFERENCES COMMITTEE

Inquiry into the post-GFC banking sector

QUESTIONS ON NOTICE

Commonwealth Bank of Australia

9 August 2012

Senator Williams asked:

- a) After the Commonwealth Bank appoints a receiver, what happens to any monies that the owner of the business had set aside to fulfil the business's GST obligations or which were otherwise necessary to meet the business' GST obligations?
- b) After a business has been placed in receivership, has the Commonwealth Bank received any monies that had been set aside to fulfil the business's GST obligations or which were otherwise necessary to meet the business' GST obligations?
- c) If so, were these monies forwarded to the Australian Taxation Office?
- d) Does the CBA have any internal policies in place regarding businesses placed in receivership and their GST obligations?

CBA response:

- a) *On the appointment of a Receiver, control of the company and its assets (including any monies held for whatever purpose) passes to the Receiver. At no stage does the Bank itself take control of the company or its assets. Feedback from insolvency firms indicates that they do not encounter scenarios where a business entering receivership has had specific monies set aside to fulfil the business's GST obligations.*

In the event monies were specifically set aside to meet GST obligations, the Receiver would be legally obliged to deal with these monies consistent with statutory responsibilities and the priorities under [s433](#) of the Corporations Act 2001 (the Act). Amounts owing to the ATO for unremitted GST are an unsecured claim and do not have priority under either [s433](#) or relevant sections of the GST legislation.

The monies which "were otherwise necessary" to meet the GST obligations or other obligations of the business, including amounts owing to employees, secured creditors, suppliers and other taxation obligations, are typically unavailable to specifically meet those obligations in full in a receivership. Accordingly, any monies available are dealt with consistently with the Receivers' responsibilities and the priorities under [s433](#) of the Act.

- b) *We refer to our response at a). Funds are distributed by a Receiver in accordance with, and in compliance with, all applicable legislation.*

As a general rule, the Commonwealth Bank, as holder of a circulating security interest, would receive monies after satisfaction of priority claimants, namely employees under [s433](#) of the Act. Receivers are responsible for dealing with the debts of an entity in receivership (including GST owed by the entity) and CBA does not control a receiver's dealing with any funds earmarked for particular debts.

c) *We refer to our responses at a) and b).*

The Australian Taxation Office, as an unsecured creditor, ranks pari passu with other unsecured creditors. The Australian Taxation Office would receive monies after satisfaction of priority claimants and holders of circulating security interests as required under [s433](#) of the Act.

d) *CBA does not have any specific internal policies in place regarding businesses placed in receivership and their GST obligations.*

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The Committee asked:

1. The 2009 *Report and Accounts* for Bank of Scotland plc, in the section 'Loss on the sale of Bank of Western Australia Limited and St. Andrews Australia Pty Limited' at page 35, reports a £845 million loss for 2008, and a further £100 million loss in 2009. The report states:

'On 8 October 2008, the Group agreed the sale of part of its Australian operations, principally Bank of Western Australia Limited and St. Andrews Australia Pty Limited, to Commonwealth Bank of Australia. The sale completed on 19 December 2008 and resulted in an estimated pre-tax loss on disposal of £845 million (including goodwill written-off of £240 million). The agreement provided for adjustments to the consideration received in certain circumstances and as a result a further loss of £100 million has been recognised in the current year'.

How does this reconcile with the Commonwealth Bank's evidence at the 9 August 2012 hearing that, following the settlement of \$2.1 billion in December 2008, the Commonwealth Bank paid an additional \$26 million as an adjustment to the purchase price? How can Lloyds and the Commonwealth Bank both report that they paid more?

CBA response: *The Commonwealth Bank of Australia (CBA) agreed to acquire the Bank of Western Australia Limited and related bodies corporate (Bankwest Entities) from HBOS Australia Pty Ltd (HBOS Australia) on 8 October 2008.*

HBOS Australia and CBA agreed on 8 October 2008 that the price payable on completion of the acquisition would be \$2.1 billion, subject to an agreed price review process which would determine whether the price would increase, decrease or remain the same. The initial agreed purchase price of \$2.1 billion was to be reviewed once accounts were prepared for the Bankwest Entities post-completion. These completion accounts were to be prepared as at 19 December 2008 (ie, the date the acquisition completed). The price review process culminated in an independent expert settling the completion accounts and making a determination as to the final price payable by CBA.

The independent expert determined (applying the valuation basis agreed by the parties) that the value of the Bankwest Entities as at 19 December 2008 was \$26.1 million higher than the initial price of \$2.1 billion. CBA was therefore required to pay HBOS Australia the increased price of \$2.1261 billion. The determination by the expert was final and binding.

We do not know what accounting policies or accounting treatment that Bank of Scotland plc applied to its accounts in order to determine (historically or at the relevant times) the carrying value of the Bankwest Entities. Consequently, CBA is unable to comment on the level of write offs disclosed in Bank of

Scotland's 2009 Report and Accounts. However, CBA categorically confirms that the initial price agreed by HBOS Australia and CBA for the Bankwest Entities was not reduced by an amount equal to £100 million or by any other amount. As we have mentioned above, an independent expert (applying the valuation basis agreed by the parties) determined that the final price payable by CBA was \$26.1 million higher than the initial price of \$2.1 billion.

2. The price paid by the Commonwealth Bank at the time of the acquisition was reported as \$2.1 billion. In evidence on 9 August 2012, Mr Cohen advised that the Commonwealth Bank paid an additional \$26.1 million as an adjustment to the purchase price. Can you please state the final price that the Commonwealth Bank paid for Bankwest?

CBA response: *As a result of the review mentioned in our response to question 1 above, the final price paid by CBA for the Bankwest Entities was \$2.1261 billion: an increase of \$26.1 million over the purchase price initially agreed by the parties in October 2008.*