Submission to the Parliamentary Joint Committee on Corporations and Financial Services

- Inquiry into issues associated with recent financial product and services provider collapses such as Storm Financial, Opes Prime and other similar collapses.

Submitted by Michael Ivan Keith Whiting and Sharryl Ann Whiting
July 2009

Attached:

Letter from Storm Financial -	17/10/08
Notice from Colonial First State -	17/10/08
Letter from M.I.K. Whiting -	26/02/09
Letter from Colonial Geared Investments	13/03/09

Summary
Herewith is a summary of what we seek through this Inquiry:

- Compensation for the losses we incurred during the last three months of 2008 - not market losses, which we accept, but losses caused by having our complete share portfolio sold down.

- Re-payment of the break fee of $28,606.09.

- Payment of interest on $455,000 between 04/12/2008 and 08/01/2009.

- Any other entitlement as a result of the systematic failure, lack of resources, relaxation of prudential guidelines, and acts of negligence or other issues that this inquiry may determine.

Herewith is a summary of the questions we would like answered:

- Who was/were responsible for selling us down – Storm or CGI?

- Why was our entire portfolio sold down?

- Why were we not advised of the complete sell-down?

- Did ASIC instruct Storm not to contact clients during this period when we most needed financial advice?

- Why were we forced to pay a break fee when we had sufficient securities to cover our margin loan and didn't need to break the agreement?

- Why was $455,000 left sitting in the margin loan not earning interest when it should have been automatically switched to our interest-bearing Accelerator Account as had previously occurred? Why were we denied this interest?

- Why were we jeopardised by CGI's inability to handle this situation? Why weren't orderly procedures followed during the days when the share market crashed in late 2008, exposing us to substantial loss?

- Why did the relationship between Storm Financial and the banks abruptly sour causing the meltdown between them and its detrimental effects on all Storm clients?

- Why was there no Plan B in place between Storm and CBA in the event of a huge market downturn as experienced in late 2008?

- Why was Storm Financial's Professional Indemnity Insurance so inadequate?

- Why did ASIC approve of the close relationship between Storm Financial and CBA, and also of Storm Financial's investment model and then appear to disapprove of it?

Preamble

Our names are Michael and Sharryl Whiting.

As a result of the collapse of Storm Financial and the complete sell-down of our financial investments by the Commonwealth Bank of Australia (CBA)/Colonial Geared Investments (CGI), we are making this submission to set out our grievances with the hope of obtaining a more favourable outcome than has occurred to date.

Personal

I worked with CSIRO for almost 40 years doing agricultural and rangeland research, while my wife raised our three children and earned two university degrees.

In July 2006 I retired with the plan for us to be self-funded retirees but, because of the effects of the circumstances set out in this submission, we are now both receiving the age pension.

In late 2007 we used some of my superannuation payment to purchase land in Townsville, and in mid-2008 we sold our rural/residential house block with a plan to use the proceeds to build a new house on the block of land.

Relationship with Storm

- 1994 – Following years of maintaining a life insurance policy with MLC, we were made aware of the benefits of share market indexed funds to financially plan for the future. We also became aware of margin loans and their use to help grow our assets. We could become self-funded retirees!

- 1995 – Our first year as clients of Cassimatis Securities Pty Ltd., which then became Ozdaq Securities in 2000, and then Storm Financial. We always enjoyed a constructive relationship with Emmanuel and Julie Cassimatis, other advisors, and Bernardine Frawley, our long-term advisor.

  From our initial meeting with Cassimatis Securities in 1994 until the end of 2008 we had many meetings with various advisors, planned around the possibilities of further investments, or as information sessions. These meetings were always professionally conducted with, for us, adequate explanation of the process and with paperwork prepared and presented for signatures without fuss.

  It was always appreciated that Storm's relationship and dealings with the banks and arrangement for borrowings, transfers and redemptions were hassle free and well explained**. All dealings were done between the bank**

and Storm. Clear evidence of this close relationship between Storm and the banks was displayed during the Storm Financial organised tour of Italy and a Mediterranean cruise in 2007. Clients all paid their own way, but special rates and events were arranged by Storm. During the tour, a bank representative gave a welcome address and another of the events was sponsored by Colonial First State and Colonial Geared Investments.

World events

Between 1995 and 2008, world events (1997 – The SE Asia Economic Crisis, 2000 – The Technology Share collapse, 2001 – September 11 and 2003 – The Iraq War) had substantial effects on the world economy. With buffers in place, we survived these market downturns, and CGI seemed to handle the situations in an efficient manner.

Storm Investments

Our investments, with a security value in excess of $2.57 million in September 2008, were initially in MLC Australian Trust Index Fund and then progressively in Storm-badged indexed funds with Colonial First State and Challenger Managed Investments Ltd.

Over a period of 14 years we paid a total of $136,794 in fees to Storm Financial.

These investments were partially funded from our own funds and with a Colonial Geared Investments' margin loan. This margin loan had reached $1.93 million by Sept. 2008. At that time, the loan had a Loan-to-Security Ratio (LSR) of 76.57% with a margin call set at 94.57%. It is our understanding that CGI offered Storm clients significantly more favourable LSRs (80% with a l0% buffer = 90%) than to other advisory companies (70% with a 10% buffer = 80%) (see CGI letter to Emmanuel Cassimatis, Storm Financial dated 18/05/2007).

Assurances from all Storm professionals and, in particular, our advisor, that our LSR was always being monitored and appropriate action taken as required was heartening.

During all of these years, we experienced a much more relaxed financial situation and enjoyed a lifestyle that we would not have otherwise afforded. With family living around Australia and the world, we were able to visit them from time to time and enjoy our growing and developing families and grandchildren.

Public Float of Storm

We were encouraged and participated willingly in the public float of Storm Financial in 2007. We invested $50,000 which was refunded in total when the float failed, though we were not clear of the reasons for this failure.

Falling Markets

When the share market was falling significantly in late 2008, Storm increasingly was active in advising clients of their options:

- 13/10/2008 we signed a document giving Storm the authority to arrange to sell down our funds as the market fell.

- 08/10/2008, 17/10/2008, 21/10/2008, 17/12/2008 and 05/01/2009 we received letters and emails from Storm Financial explaining actions, offering support and trying to clarify the bank's decisions.

- During December 2008 it appears CGI ignored its contract commitment relating to favourable LSRs to Storm clients and reverted to the industry standard of 80%. The paragraph on Page 3 of the Storm/CGI agreement dated 18/05/2007 states: "In the unlikely event of a margin call, CGI and Storm Financial will work in partnership to clear the margin call." Although we did not officially receive a margin call, when CGI reduced the buffer, it effectively lowered our equity position and we found ourselves in financial distress with no warning.

- Then CBA shut down all Storm-badged products, stopped all investments, cashed them in and paid investments out to us. We assumed that enough shares to cover our margin loan would be sold and that the rest of our shares would be left in the market. However, we were sold down completely! We were given no advice of the bank's decision to sell us down completely. **Questions: We would like to know who was responsible for selling us down – Storm or CGI? Why was our entire portfolio sold? Why were we not advised? There appears to have been a breach of duty of care. We had funds available outside of this margin loan which could have been utilised to secure our margin loan and enable us to remain in the market.**

- 11/12/2008 – "CBA pulls the plug on Storm" – Townsville Bulletin headline.

- Official closure of Storm Financial – As a result of these events we have suffered substantial loss and amidst all of this confusion, we were left with no financial advisor to seek advice in order to address our financial situation at the time! **Question: Is it true that ASIC instructed Storm NOT to contact clients?**

- 23/02/2009 – Rather than having the $1.9 million margin loan over our heads, we opted to pay it out plus the substantial **break fee of $28,606.09**, leaving us little opportunity to get back into the market or be self-funded retirees. **Question: Would we have had to break the contract if we hadn't been completely sold down?**

- **Proceeds of sell-downs** – From the end of October 2008 and early November proceeds of sell-downs were switched to our linked CBA Accelerator Cash Account. However, redemptions from 04/12/2009 to 08/01/2009 were left sitting in the Margin Loan until a request to move the funds in early January 2009! We were denied the **interest on our $450,000** during this period (see letters attached 26/02/2009 and 13/03/2009). **Question: Why were we denied this interest?**

- **Early October – December, 2008 - CGI meltdown –** We feel CGI panicked and did not have the human or perhaps the technological resources to handle the meltdown as they suspended all applications, redemptions and switches on four of the Storm-badged funds from 17/10/2008 for several working days. This was while the markets continued to fall dramatically. **Questions: Why were we jeopardised by CGI's inability to handle this situation? Why weren't orderly procedures followed during the weeks when the share market crashed in late 2008, exposing us to substantial loss?**

- **Code of Banking Practice** – We note that the CBA is a signatory to the Australian Bankers' Association Code of Banking Practice. In this document it states that CBA will act fairly and reasonably towards its clients in a consistent and ethical manner. We feel that CGI acted with undue haste and without warning when closing down Storm Indexed Funds, leaving us in an unfavourable financial position. The document also states that CBA will ensure their staff can competently and efficiently discharge their functions and have an adequate knowledge of the provisions of this Code. We feel CGI staff resources were grossly inadequate to discharge their duties in a "competent and efficient" manner in their dealings with Storm Financial and its clients.

- **Storm Financial and CBA's relationship late 2008** – It appears to us that the close relationship enjoyed by Storm Financial and banks, particularly CBA/CGI, became bitter, to the detriment of Storm clients. **Questions: What occurred? Why was there no Plan B in place between Storm and CBA in the event of a huge market downturn as experienced in late 2008?**

- **Storm Financial's Professional Indemnity Insurance – Question: Why was it so inadequate?**

- **ASIC – Question: Did ASIC approve of the close relationship between Storm Financial and CBA, and also of Storm Financial's investment model?** Our understanding is that ASIC had, as recently as July 2008, investigated Storm and its advisory practices and found them favourable!

- February 2009 we were forced to apply to Centrelink for Age Pensions on which to live – gone were the hopes of being self-funded retirees!

Summary

We hope that our grievances set out in this document will highlight the reasons we seek a favourable solution to the financial situation into which we have been forced. In particular, we seek compensation for the losses incurred during the last three months of 2008 - not market losses, which we accept, but losses caused by having our complete share portfolio sold down. We also seek re-payment of the break fee of $28,606.09, interest on the $455,000 between 04/12/2008 and 08/01/2009, and any other entitlement as a result of the systematic failure, lack of resources, relaxation of prudential guidelines, and acts of negligence or other issues that this inquiry may determine.

We hope this inquiry will also provide answers to our questions set out in the Summary at the beginning of this document.
