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Your Ref:

27 August 2009

Shona Batge  
Committee Secretary  
Parliamentary Joint Committee on  
Corporations and Financial Services  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

Dear Madam,

**RE: INQUIRY INTO FINANCIAL PRODUCTS AND SERVICES IN AUSTRALIA**

We refer to previous communications with you and now **enclose**, our Response to the Commonwealth Bank of Australia's Submission of 31 July, 2009, for your consideration.

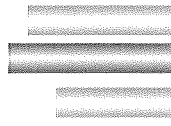
Yours sincerely

**LEVITT ROBINSON**

*Per: [Signature]*

**STEWART A. LEVITT**

Principal/Advocate



RESPONSE TO  
COMMONWEALTH BANK OF AUSTRALIA SUBMISSION  
DATED 31 JULY, 2009  
TO PARLIAMENTARY JOINT COMMITTEE  
ON CORPORATIONS AND FINANCIAL SERVICES – INQUIRY INTO FINANCIAL  
PRODUCTS AND SERVICES IN AUSTRALIA, JULY, 2009

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1. The CBA's covering letter to the Chairman of the Joint Committee, dated 31 July, 2009, refers to Storm's aggressive application of wealth creation strategy, "with little regard for its clients' individual needs, circumstances or attitudes towards risk. We believe the resulting hardship endured by some Storm clients during the global financial crisis was largely caused by inappropriate advice provided by Storm."

This seems to avoid the fact that not only did the CBA provide funding to Storm's clients, in order for them to implement Storm's advice but it made the implementation of Storm's advice a condition for making the funding available.

It also used generous credit allocations to break down Storm clients' resistance to becoming Storm investors, alleviating their risk anxiety to ignore the lack of diversification of investment, the importance attached to preserving the principal residence and similar deterrent factors.

2. The main criticism of Storm under "Executive Summary" on page 1, is that:

"the advice offered by Storm - a licensed financial planning group - to its clients, appears to have been inappropriate and seemingly, without regard to

the need to ensure that debt levels and client cash flows could withstand market fluctuations.

“In our view, this factor is by far the main cause of the financial hardship now being experienced by Storm clients.”

The Bank then accepts its own responsibility as a ‘product provider’ for “poor lending”.

However, the Bank’s “poor lending practices” were simply designed to induce and support Storm clients to commit to the Storm product and to follow the Storm investment strategy which the CBA now, *ex post facto*, seeks to impeach.

Under “Our Association with Storm” on page 2, the Bank is trying to quarantine the problems to Townsville, whereas Townsville/Aitkenvale housed a dedicated division of the Bank, set up to cater just to Storm clients.

Storm funding applications from all over Australia – from as far South as Werribee in Victoria and for Sydney clients and from Redcliffe, in Brisbane (Storm’s largest national office), had their loans disproportionately processed through Townsville/Aitkenvale.

3. “What We’ve Learned from Storm”

The ‘VAS’ property valuation system was entirely generated by the CBA and it was not Storm who devised it or operated it.

It was made available to Storm clients.

Secondly, with regard to the reliance which the CBA seems to have placed on “previous experience of Storm acting appropriately in relation to margin calls” and relying on Storm to continue “doing the right things”, not only were the conditions which obtained during the second-half of 2008 exceptional but also, during prior periods of margin call, either Storm clients had been contacted by the Bank or

else, Storm representatives had been contacted by the Bank, with a view to sorting things out with the client in margin call, for the reasonable opportunity to “top-up”.

Moreover, it is well known now that there was a total break down of the ability of CGI to produce reliable information on clients' LSRs and LVRs between late September and early December, 2008 and further, representations were made by Colonial First State's representative, Kemal, to Storm clients in buffer or in margin call, particularly in October/November, 2008, that they just needed to bring their account 0.5% below margin call, in order to “stay out of margin call”. There is some evidence that CGI refinanced Macquarie Margin Loans, even *after* the Lehman Bros. collapse and increased the clients' borrowings (to a married couple with a combined family income, excluding Storm Index Fund Dividends of less than \$100,000.00 and two small children) - primarily against real estate, by a further \$500,000.00 - all when the world media was bewailing the onset of a new great depression.

Only a matter of weeks afterwards, having exacerbated the problem for these clients, Colonial First State made a margin call, which the clients only discovered weeks later.

(*Vide*, the foot of page 24 and top of page 25 in paragraph 45 of Levitt Robinson Submission to Parliamentary Joint Inquiry, dated 27 July, 2009.)

4. “Commissions and Recent Corporate Collapses” – p. 6

A practice grew up in the CBA of deducting the upfront fee payable to Storm from the client's own bank borrowings, through the CBA or Colonial First State.

The CBA offered more generous terms with respect to LVR/LSR, buffer and interest rates to Storm clients, in order to incentivize and effectively to endorse the Storm investment product, to prospective Storm clients who were either already or often, shortly to become, CBA clients.

5. "B. Our Association with Storm", p. 12

Where it is stated that the CBA did not pay any commissions or rebates to Storm in relation to home lending, it should be recalled that the home lending often occurred in order to complement margin loans by providing further security for margin loans, obtained through CGI and managed by Colonial First State, for investment in Storm indexed products.

6. "C. What We've Learned from Storm" – p. 14

Again, the Townsville/Atikenvale office did not only process Townsville/Aitkenvale applications but rather, was the centre for processing loans for Storm clients (many of whom are also CBA clients) throughout Australia.

7. It is our understanding that there was a symbiotic and friendly relationship continuing between former CBA employees who had joined Storm and continuing CBA staffers during the period prior to the disintegration of the relationship at the end of 2008.

8. The whole process of making margin calls between September and December, 2008 appears to have been confused and disrupted by the Bank's own lack of specific intelligence concerning the LSR/LVR ratios of CGI clients and the difficulty of ascertaining whether or not the clients were in buffer or liable to margin call and if so, when they became so and what would be the effect of redeeming part or all of their respective portfolios.

No reasonable opportunity seems to have been given to clients by the CBA to "top-up" their investments.

9. It does not appear that Storm clients were ever made aware of the Bank's view that the Bank would not discharge its obligations towards them directly.

The client does not appear to have been privy to whatever Storm and the CBA might have "agreed among themselves" with regard to communicating with clients

who had reached buffer and further, as Greenwood J. opined in Storm Financial Limited v Commonwealth Bank of Australia [2008] FCA 1991 at page 14 at paragraph 49, on page 16:

“...the letter of 18 May, 2007 talked about working in partnership to clear margin calls and the Bank’s letter of 17 December, 2008 seems to acknowledge that the position is that Storm had primary responsibility for the loan. It seems unlikely as a matter of prudential banking management that the Commonwealth Bank of Australia would have displaced all responsibility for its loan portfolio with these borrowers and investors, entirely to a third party, Storm. However, it should be noted that the protocol surrounding or at least, reasons for the Bank sending daily data sheets to Storm, containing all the relevant ratios and information is not explained by Storm in its material in support of the application.

“The much more likely inference is that both Storm and the Bank assumed a degree of responsibility for managing in a tripartite way the relationship between the Bank, the borrower/customer/investor and Storm, as adviser overall.”

Notwithstanding Justice Greenwood’s comment with regard to the despatch of daily data sheets to Storm, according to information now available, it appears that the daily data sheets were grossly inaccurate, throughout the period from late September through to mid-December, 2008 and that they could not be relied upon because of deficiencies in the Bank’s own Empire Software.

The Bank appears to consider that it abnegated all responsibility to the client in its relationship with Storm but the client does not appear to have been privy in advance to the Bank’s regarding itself as having abnegated responsibility to the client.

Indeed, a number of Storm employee representatives have informed me, in fact, that they received assurances from Kemal at CGI Sydney, that they could count on

him to inform them in advance, so that they could respond appropriately, if the Bank believed that it needed to make a margin call.

Colonial First State's preemptory action is described on p. 11, which resulted in the termination of several managed index funds, whose investors comprised Storm clients. While the CBA's actions may have been motivated by a misplaced and belated belief that it was warranted by its prudential obligations, the Bank's conduct nevertheless ran counter and contrary to what many Storm clients have recalled, as assurances given that they would be given a reasonable opportunity to sort things out with the CBA/Colonial First State, and not be sold up without notice.

A number of clients had cash at their disposal which they could have used to push back the buffer but were denied this opportunity, despite being assured by Colonial First State personnel that they would be conceded it.

10. "We relied on Storm to do the right thing with respect to margin calls."

That is simply not the case. The letter of 17 May, 2007 from CGI to Storm Financial Pty Limited, stated clearly that:

"In the unlikely event of a margin call, Colonial Geared Investments and Storm Financial will work in partnership to clear the margin call."

This was not a case of Storm assuming all of the responsibility with respect to margin calls as the Bank appears to be attempting to shift it, through its Parliamentary Submission.

11. CGI also made it plain in the same letter that:

"Storm Financial must convey...individual LVRs to the client and advise the client that a departure from Storm's advised strategy will lead to a rebalancing of their facilities with CGI..."

This letter was written by Craig Keary, General Manager of Colonial Geared Investments on CGI letterhead and signed-off by Storm's M.D., Cassimatis on 26 July, 2007, evidencing Storm's acceptance of the CBA's/CGI's terms.

Dated: 26 August 2009

With compliments  
LEVITT ROBINSON

STEWART A. LEVITT  
Principal Solicitor/Advocate

