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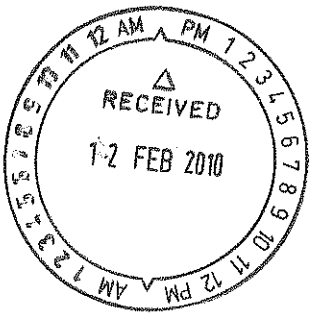

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11 February 2010

The Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Secretary,

SUBMISSION TO THE INQUIRY INTO LIQUIDATORS AND ADMINISTRATORS.

TERMS OF REFERENCE

"This inquiry will investigate the role of liquidators and administrators, their fees and their practices, and the involvement and activities of the Australian Securities and Investments Commission, prior to and following the collapse of a business."

BASIS OF SUBMISSION

This submission concerns the conduct of ASIC generally.

BACKGROUND

I am a licensed Commercial Agent and do and have acted for many parties trying to recover monies lost to fraudulent investment schemes.

Having been a professional complainant to ASIC and its predecessors for more than twenty years I am well used to receiving no assistance whatever from ASIC. In fact the hindrance that the existence of ASIC causes has commonly prevented other agencies conducting investigations.

Every written complaint I have made to ASIC & its predecessors has been lodged after extensive research, with supporting evidence, willing witnesses, and directly and clearly about corporations law breaches.

I have many examples to support allegations regarding the failures and hindrance by ASIC.

1. Where does the present system fail?
2. What could be changed so failings could be reduced?
3. What recourse do you presently have to address complaints about Insolvency Practitioners?
4. What outcomes would you like to see?

THE ASIC CHARTER

The first problem is the banality of the ASIC Charter, which ASIC claims on its Google summary as:

> **ASIC administers and enforces company and financial services laws to protect consumers, investors and creditors..."**

The foregoing statement is demonstrably false. ASIC ought to be ashamed to allow that statement to stand. ASIC's conduct makes this statement a crime under the *Trade Practices Act* as deceptive and misleading conduct.

Where does the present system fail?

Endless-too many areas to list.

1. The ASIC policy of "go everywhere else first" has catastrophic consequences. As ASIC is the senior port of call for breaches of Corporations Law, what is the impact of such a policy in operation? It is simply that every other agency, as soon as it becomes aware that companies and/or directors are involved, says it won't act because ASIC is the appropriate authority.

   If one has the remotest possibility of privately funded legal redress, notwithstanding that the conduct being complained of has often wiped out the victims financial resources, ASIC will not act. It is therefore a foregone conclusion that offences which lead to the loss of monies MUST involve losses which could possibly be litigated on a basis that some sort of skullduggery or deception was involved. When ASIC makes such decisions, it knows full well that if this criterion remains policy it is 'off the hook'.

   It is common for aggrieved parties to seek private legal remedies before complaining to authorities. By the time they realise this is not going to assist them, maybe one to three years have elapsed. During the time consumed in assembling and lodging complaints with each other possible investigating authority, time lapses, so that eventually when each other agency declines to investigate, and the complaint ends up back at ASIC, ASIC then declines to investigate, presumably sometimes on the basis of the age of the events.

2. It is worth noting that contrary to guidelines accepted pursuant to Victims of Crime legislation[i] which include informing victims in a timely manner of reasons for decisions, ASIC declines to provide such reasons. There is a stench of suspension of 'Natural Justice' in this environment. In the absence of reasons being given, one is only able to speculate, and I get the feeling from some of my complaints that a significant reason for not investigating is the age of the complaint.

3. The time lapse since the alleged offences then has two prongs to it; firstly that some offences may by then become statute barred, and secondly, the matter is by definition out of the spotlight so inactivity by ASIC will have little or no impact in the current environment/media.

4. There have been numerous public policy announcements from ASIC and numerous enquiries regarding ASIC's conduct which have made many recommendations along the lines of ASIC becoming more proactive in ensuring a transparent and enforcing regulatory regime. As a prolific and professional consumer, I have seen no evidence of any change in ASIC's behaviour.
   One can understand that a liquid investment market requires confidence to enable investors to feel secure enough to invest in areas other than the pillar banks.
   Experience tells me that nearly all if not all investor clients who have lost moneys in what appeared to be fairly mainstream investments, have done so because they believed there was a regulatory body overseeing the compliance of such investments.

5. This situation is exacerbated where clients of mine have rung ASIC and named parties they intended to invest with and have been told there is nothing adverse known, when ASIC has been in the process of prosecuting those parties, or may even have had those parties convicted but the appeals process has not yet been exhausted.

6. My clients include solicitors, accountants, sophisticated investors and retail 'mum and dad' investors. To a person, as they have realised their losses they have been dismayed to learn that the sorts of protections they believed were afforded by the existence of ASIC, did not exist.

7. A Liquidator has no responsibility to advise creditors of the true situation regarding the prospects of recovery.

8. It is meaningless to say that ethics and sound practice requires adherence to certain standards, like acting diligently, when those standards are not known, not publicised and where known are not enforced.

9. A Liquidator is entitled to ensure all proceeds from a liquidation are paid to him by way of fees.

10. There is no budget for liquidations and no proportionality of fees charged by liquidators, which completely contradicts the principle of maximising recoveries for creditors, as well as contradicting fundamental business principles that expenditure should be proportional to the returns.

    Professor Berna Collier, when she was an ASIC Commissioner, wrote a paper on proportionality of fees for Administrators-I am unable to locate the paper now, but I think her recommendation was that no more than 2 or 3% of the value of assets recovered should be charged.

11. Administrations are very easily fraudulently stacked by directors, with no authority of IP's to intervene. E.g. In one of my matters, 20 alleged $500 creditors gave proxies to a director of a failed company, and whereas we had 74.8% of money by value proxies, directors' proxies ensured the company was not liquidated. In the final wash up, creditors received no dividend and the directors were let off scot free with no examination of their conduct possible. This was an obvious phoenix fraud.

12. Liquidators have the unfettered right to enter into third-party agreements, such as litigation funding, with no oversight by Committees of Inspection (COI). These third parties may not even exist but the COI has no ability to vet or oversee the engagement only of third parties on fair and just terms.

13. In 2004 then ASIC CEO Jeffrey Lucy stated publicly that ASIC had no intention of regulating sharp practices-a clear green light to enable the 'sharp practice' industry to thrive. In the *Sydney Morning Herald* of 18 September 2004, Anne Lampe reported *"Lucy is unapologetic about not protecting all consumers from sharp practices, saying it is up to consumers to be aware of where they put their money."*

14. The culture encouraged by ASIC clearly ensures that no one will be accountable for wrongdoing. For nowhere near comparable crimes by dint of dollar value, blue-collar workers attract many years imprisonment. Dole cheats are jailed. Tax cheats are jailed.

15. Liquidators do not normally report insolvent trading to ASIC as such, for that requires expert reports which can cost up to $100,000 for one month's work, such costs to be provided from funds that would otherwise be available to the IP.

16. The ASIC model was designed last century in vastly different times and its sheer inability to operate effectively is unquestionable. The 'old rules don't work'. ASIC has had decades to act and the Parliament has had decades to act-decades is long enough.

ASIC'S PAST FORM & PRESENT REPUTATION

Fiona Buffini in *The Financial Review* dated 24 June 2005, in an article titled 'New tricks for old watchdog' wrote:

> "Australian Securities and Investments chairman Jeffrey Lucy plans to transform the regulator into a more flexible organisation that responds faster to emerging threats to consumer and investor confidence.

Protecting consumers ...from bad decisions, and maintaining confidence in companies and financial markets are among ASIC's five core goals."
Wow! Five years later, after Lucy has gone, what has happened? Nothing!

The article just gets worse as it goes on. Is it that incoming CEO's get carried away with their own importance and feel ego-driven to produce such rubbish when appointed? Why doesn't the CEO just say-ASIC is going to change, it has agreed benchmarks which have been established with Choice and other peak consumer groups, it will report percentage improvements quarterly and the management will be judged on that and if necessary terminated according to their achievement of corporate goals. Consumer surveys will be mandatory and quarterly reports will be made public, so that investors, creditors and consumers can be heard in evaluating the regulator's effectiveness-I'd vote for that CEO.

John Garnaut in *The Sydney Morning Herald* on 13 January 2005, in an article titled 'Consumer Protection out of touch' wrote:

> "Laws protecting consumers from property scams, complex financial products and dangerous goods should be reformed because of confusing and costly overlapping between state and federal regimes, the Productivity Commission says.
>
> The commission also wants to review the "plethora" of overlapping and sometimes buck-passing regulators responsible for administering those laws, after growing frustration among consumers and their advocates."

Wow! More than four years later, what has happened? Nothing!

The article gets worse. "Hopes raised", "Australia has gone from the position of being a leader to a sad sort of follower", ad infinitum.

THE ASIC APPROACH

ASIC criteria for enforcing Corporations laws appear to have been fairly well publicised and articulated as being apparently based on the following criteria:

- High-profile
- Considerable media reportage
- Large losses
- Long after the activity has ceased.

Consequences of this approach

- Enormous resource deployment
- Virtually no recoveries
- Green light to anyone not doing things on such a large scale
- Widespread knowledge that ASIC will not police Corporations laws that do not relate to entities in the foregoing categories.

At present, the relevant advisory industry routinely and quite rightly informs those it advises that nearly all cases breaches of corporations laws will not be prosecuted. Accordingly, those wishing to profit by ignoring such laws can do so with relative impunity.

If a new approach was publicised and a raft of prosecutions was highly publicised maybe the culture of impunity would be removed.

One can also imagine the impact if State police Forces started using the ASIC approach-that is, only consider prosecuting celebrities or where losses were in multi millions, etc. What sort of message would that send to bank robbers? A laughable basis for any regulatory body to justify inactivity.

Reserve Bank Governor Glenn Stevens, not known for his flippancy or light-heartedness, is reported as telling central bankers gathered to celebrate the Reserve's 50th birthday on 9 October 2010, in describing monetary policy "*...until recently it was thought central banks should do no more than "clean up" after busts....*" Peter Martin *The Sydney Morning Herald* 10 October 2010. This policy understanding is eerily parallel to current ASIC policy.

'Quis custodiet ipsos custodes?'

The average expectation of the average person is that justice is available. As we live in a developed society, we are continually told that our institutions provide protection, either upfront, or after the event.

Options after loss

1. When a victim goes to the police with all the evidence, the police say it is civil, or if it involves a company, an ASIC matter.

2. When a victim goes to a lawyer, even when conduct is criminal, lawyers proceed civilly because they don't get paid for lodging complaints regarding criminality.

3. When a victim goes to ASIC as a public-purse option, they are told it doesn't investigate around 93% of complaints-it simply records them.[ii]

The initial loss compounded

Even after monies are recovered by various forms of Supreme Court anointed administrators, Receivers/Managers/Voluntary Administrators/Liquidators, etc. then the money control is lost. Insolvency Practitioners (IP's) charge cartel fees around $500 an hour, and commonly ensure that all recoveries are kept in fees, by deploying however many staff on projects necessary to consume all the assets, beyond creditor's' scrutiny. It is mandatory to accept their fees.

The principle of appointing an insolvency expert is to try to protect creditors. In my 25-year experience, I have **never** seen any distribution, and the amount of fees has always eaten up whatever funds were available.

Wherever one turns there is no relief-this is an industry characterised by cartel behaviour with no apparent recourse for consumers or victims. Sort of pass the parcel, and you gouge a few hundred thousand then pass it on-it all goes around in a merry-go-round.

The possibly relevant authorities ensure this system continues.

In the food chain, there are those that produce, and others that service the producer. Corporate regulation in Australia is designed to ensure people can do what they like with other people's money with complete immunity.

LACK OF CONSUMER CONFIDENCE

Ian Verrender, in *The Sydney Morning Herald* on 19 November 2009, wrote *"Over the years ASIC has taken an uneven approach to white-collar crime, often employing its resources to take trophies with cases against easy targets. It was a strategy that made the statistics look good, with an overwhelming success rate in prosecutions. But it did little to instil public confidence in its abilities to rein in the excesses of the corporate world."*

Since then, we know that ASIC has been shamed in some high-profile matters in high-profile ways-fundamental criticism by judges clearly stating that ASIC has failed to meet minimal

requirements for conducting matters in a reasonable manner sufficient to warrant success. If the Commonwealth government adhered to its stated practice of being a 'model litigant', then these criticisms could not have been levelled.

Much has been written about the impact of 'loss of confidence' in the law, the legal process and the courts systems. A major theme is that for a healthy democracy, the legal system must be able to be understood and be seen to provide mechanisms for people to fulfil their citizens' duties in reporting crime.[iii]

I recently met a respected Australian journalist who said to me *"I reckon I could scam a billion dollars* [in Sydney] *and not be touched by the authorities."* I believed him and understood because I have been trying to get action taken in the face of mountains of evidence for more than twenty years to no avail.

Regardless of the spin from vested interests, according to consumers and the media ASIC is a complete failure. Any reading of the ASIC charter would tell you it is a statement of what ASIC does NOT do.

VICTIMOLOGY

Despite significant progress in the concept of 'victimology' over the past two decades in other areas of law, particularly criminal law, it also reaches into many areas where people have suffered.[iv]

Notwithstanding that ASIC is the senior, primary and only regulator overseeing corporations law in Australia, covering the single jurisdiction that generates by far the majority of all financial losses in the country, the concept of victimology seems to have escaped it completely. Its total inability to protect victims before the event, or to intervene to bring offenders to account after the event, is reflected by continual calls for the disbandment of ASIC.

Anybody who has ever known a victim of such crime will tell you of their disbelief and despair after contacting ASIC seeking action regarding offences & offenders.

FILLING THE TROUGH FOR THE SNOUT

What sort of government forethought and planning took place when it became clear that Australians, in addition to access to healthy disposable incomes, would have access to more than $1 billion in superannuation?

The only conclusion is that it adopted the laissez faire[v] approach of we'll see what the free market does then respond about a decade after.

I expect that the Committee is aware that fraudsters from all over the world descended on Australia when they got wind of the honey pot. And they are still here and prospering, thank you very much.

If you planned a tourist campaign to encourage conmen to visit Australia, all you need to do is say three things:

- the streets and markets are awash with money
- the average Australian is ignorant of consumer protection, very poorly informed and very trusting
- there is virtually no regulation or policing of corporations laws in Australia (and state police forces won't even look at offences if there is a company or director involved).

Beware the stampede.

How does an agency that boasts it fails to investigate 93% of complaints compile a KPI assessment for provision to relevant parties without damming itself?

REALITY CHECK

I have read dozens of submission made to previous enquiries involving ASIC which have largely had common threads; the lack of response, the unwillingness to get involved, the "go everywhere else first" rule, the secrecy, the deaf ear, ad infinitum. While there may have been some fiddling around the edges of some market issues, thankfully for the many dependent, there has been no inroad stopping the golden goose from laying its golden eggs.

Basic sociology tells us that a bureaucracy is akin to a living system and any threat to its stasis is repelled. Change processes are hard and frequently unsuccessful-accordingly corporations that take over other corporations commonly get rid of the old management to impose their own culture-there is no other way.

While the 'boffins' that run ASIC remain, the culture cannot change. While the stated will of the government may be to run a smart economy with a level playing field, and the ACCC to weed out cartel behaviour, good old ASIC lumbers on-the nest created by ASIC inactivity has enabled whole industries to grow and thrive and it would be an enormous shock to the big end of town, the tourist conmen, and cause aftershocks through the whole dependent carcass-feeding industry that protects this turf so tenaciously, if ASIC got real.

ASIC engages advisers who come from the heart of this industry. Some of these advisers have street reputations that would make you blush. What research has ASIC done before putting the fox in charge of the chickens, and paying them on top?

When Telstra was privatised in the late 1970's conventional wisdom was that it would take 25 years to effect cultural change to a market mentality. By the 1990's the view had changed holding that it would then take a further 25 years. So that's 40 years to change a culture. One does not need a sociology degree to understand that these sorts of assessments would apply equally to any moribund historical 'promotion by seniority' agency such as ASIC.

I'm guessing that a major reason for the continual name changing of the corporate regulator is an attempt to dress mutton up as lamb. Changing your name does not change your values or your character-it is designed to make you appear better & that's all.

What could be changed so failings could be reduced?

Address all the failings outlined above and fix them.

Nature invokes an imperative-evolution creates change which requires responses-either adaptation or death.

There is an old and wise maxim that if the business model fails, change it.

It is a matter of vital public and market importance that public policy in this area is designed to be and is effective at producing policy outcomes more consistent with the will of the majority, and NOT the fraudsters, as is presently the case.

The '*Consumer Financial Protection Agency Act of 2009*'[vi] (introduced August 2009) is an Obama Administration initiative presently before the US Congress. Notwithstanding that this proposed Act does not cover investments, its principles could be adapted. It was created because the 'old rules don't work'.

If ASIC can't be morphed into an effective regulatory body, can it and replace it with one that works.

Commonsense dictates that if you effectively police at the ground level, there will be far less crime and abuse of regulations at the higher levels. The likelihood of detection and prosecution determine rates of offending. Penalties also have some impact but not when they lie in the present ASIC range.

By enforcement of the statutory requirements of corporations law, ASIC could redeploy the huge resources presently unavailable to it through its focussing on large-scale misdemeanours.

Parliament could legislate to make it mandatory for liquidators to lodge full documentation supporting all decisions to engage third parties, including contracts and covering litigation funders, with ASIC within 7 days of entering such agreements.

Prevent crooks from IP shopping and crooked IP's from engaging in organised crime with these crooks. Make the appointment of IP's strictly according to 'next cab off the rank' principles, from a panel appointed by the Supreme Court.

At present, most issues with Administrations have to go to court for resolution. This places huge cost burdens on creditors. Could ASIC establish an alternative to this process, by setting up an ASIC Tribunal, or alternatively fund those matters which had no alternative to court adjudication?

Assuming there are some objective criteria available to establish effectiveness of ASIC, these could be made public.

- Number of complaints investigated v numbers of complaints not investigated
- Time taken to act from notification of offences
- Legislating to make breach of corporations laws 'strict liability'
- Changing the present definition of ASIC as a repository for records and making the supplying of false information an offence.
- Number of offenders prosecuted
- Number of directors banned
- Number of offenders jailed

- Amount of monies recovered
- Amount of monies prevented from being lost
- Number of illegal schemes shut down
- Time taken to achieve outcomes

Why is the ITSA funded so that creditors don't have to pay and ASIC is not funded in corporations matters?

Why are the courts funded?

Why are most tribunals funded?

No levy is placed on individuals in case of bankruptcy but a levy could be placed on companies to fund a scheme covering either insurance or premiums for the corporate regulator to handle all liquidations.

The concept of privatisation wouldn't work with State & Federal Police Forces, so why should it work with policing corporate crime?

I don't know the history of corporations law enforcement but I do believe that it is a brave person that regulates to privatise law enforcement full stop. A democracy must make public policy decisions that reflect 'good governance' and if privatisation does work, why is all law enforcement in Australia not privatised? You know, give guns to private citizens employed by corporations to lock up as many people as possible and keep the privatised jails full?

Just what is the rationale behind privatising enforcement of the *Crimes Act* (Commonwealth) in relation to offences committed by directors or officers of corporations?

ASIC gives unfettered control to private citizens, who are nominally officers of the court, but who act frequently & flagrantly beyond the court's control, completely without censure. If you think I am describing a 'cowboy' scenario, you are right—that is exactly what it is, and anybody who says differently is being dishonest. The Insolvency Practitioners Association of Australia (IPAA) has a case to answer for their refusal and sheer unwillingness to reign in their members to abide by decent standards, or to provide input to regulators to prevent blatant malfeasance going unchallenged.

Of all bodies the IPAA know exactly what is going on in the market place[vii] and desperately tries to obfuscate and bury it with platitudinous press releases and mollification.

The blatant misinformation trotted out defensively by the IPAA, about the low rates of disciplinary actions against IP's in Australia, sits in stark contradiction of the reality of offences, but is certainly testament to the lack of prosecutions. The day that ASIC, or the IPAA, decides to collect meaningful data-like exit surveys from the hundreds of thousands of victims in matters handled by its members, will be the day that transparency will expose the shocking state of affairs in reality.

Until an industry body with courage, authority and the preparedness to use it is in place, the regulators would be well advised to acknowledge the industry vacuum existent in this regard.

In the interest of fairness, I would be remiss in not stating that many IP's share some of the same sorts of frustrations with ASIC outlined in this submission. Despite doing their professional best to ensure that breaches of corporations laws are properly notified to ASIC, the lack of response or action by ASIC disheartens them and provides them with no confidence that blatant breaches will be dealt with. Equally, they have no recourse to a higher authority, and there are many instances where IP's have fought tenaciously to encourage ASIC to act.

What recourse do you presently have to address complaints about Insolvency Practitioners?

None. Registration of liquidators is managed by ASIC. ASIC is unaccountable, aloof, secretive, non-communicative and unresponsive.

The IPAA is a self-serving industry group whose major function is to ensure cartel behaviour is tolerated, admission to the ranks is regulated, fees are bolstered, the government and ASIC leave their members unpoliced, etc.

Just ask the IPAA what it did to reign in IPAA member Stuart Ariff, other than issue a press release after he was convicted.

The IPAA lists 12 core MUSTS for member practitioners-their pontification is absurd to anyone with any experience of many (certainly not all) IPAA liquidator members. These may well be laudable industry guidelines but without objective evidence of compliance, they do nothing to instil confidence in the actuality. They are motherhood statements, no more.

The Ombudsman is not an effective oversight body relating to ASIC. The Ombudsman's standard method of operation is to ask the agency complained of did it do the right thing, and when the agency always says "yes, we did the right thing" the Ombudsman closes the matter.

What outcomes would you like to see?

A decent responsive regulatory body that:

1. Does not privatise oversight of corporations law.
2. Acted upon complaints.
3. Policed those areas it is responsible to police.
4. Demonstrated a dynamic early intervention ethic.
5. Provided confidence to the consumer.
6. Obtained funding sufficient to conduct its work.
7. Abided by normal criteria in dealing with victims of crime.
8. Ensured a level playing field for those wishing to commit crimes with impunity.
9. Made corporate crime subject to the same criteria as non-corporate crime.
10. An effective regulatory body which oversees this body and which compares every decision and act with the body's Charter, and publicly reports its activities in the normal manner of transparency and healthy operation of democracy.

I would be happy to appear before the Committee to address any issues outlined in this submission.

Yours faithfully,

Ian James.

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[i] The Charter contained within the 1996 Victims Rights Act.

[ii] One gets the impression this is a kind of perverse boast. In commerce one can imagine any company boasting that it does not investigate 93% of complaints would simply go out of business. It is either a statement of extraordinary staff incompetency or a statement of management incompetency to convince the Parliament to provide sufficient resources to undertake charter compliance.

[iii] ANU Conference 'Confidence in the Courts' 9-11 February 2007-'Through the Looking Glass: Victims of Crime and Confidence in the Courts'. Robyn Holder, Chair, Victim Support Australasia; ACT Victims of Crime Coordinator.

"The key arguments I hope to make are that:

1. People who are victims of crime are rational choice actors who uphold the rule of law and express confidence in the courts through their preparedness to report crime and to cooperate with authorities.
2. Justice agencies, including courts, critically undermine that confidence by not providing the means or mechanisms to enable people to undertake and fulfil these duties.
3. Victims' inherent respect as citizens for the legitimacy of the courts can be stabilised through procedural recognition and inclusion.
4. While judicial officers and courts may not necessarily have principal carriage of some of these measures, they are directly responsible for others, and certainly have a vested interest in exhibiting leadership to secure them in others."

[iv] **Victimology** is the scientific study of victimization, including the relationships between victims and offenders, the interactions between victims and the criminal justice system — that is, the police and courts, and corrections officials — and the connections between victims and other social groups and institutions, such as the media, businesses, and social movements.[1] Victimology is however not restricted to the study of victims of crime alone but may cater to other forms of human rights violations that are not necessarily crime. Wikipedia.

[v] Adam Smith, who is said to have never used the term laissez faire, despite being laboriously credited with doing so, considered his greatest work *The Theory of Moral Sentiments* and not *An Inquiry into the Nature and Causes of the Wealth of Nations*, held a strong moral precept that whereas free markets and trade would enable self interest to determine the best 'free of government' outcomes, when it came to individuals moral sentiments would cause beneficial outcomes for people-in reality he expounded that this related more to personal exchanges rather than macro societal needs. Smith wrote fervently on the "savage injustices" and "ruinous destructive" behaviours of societies if left to their own devices.

[vi] **Consumer Financial Protection Agency Act of 2009 – Introduced /8/2009.**

Establishes the Consumer Financial Protection Agency as an independent executive agency to regulate the provision of consumer financial products or services (products or services) under: (1) this Act; (2) consumer finance laws including the Electronic Funds Transfer Act, the Equal Credit Opportunity Act, provisions of the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Home Mortgage Disclosure Act, the Real Estate Settlement Procedures Act, the Truth in Lending Act, and the Truth in Savings Act; and (3) transferred authorities concerning consumer financial protection functions of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the

Office of Thrift Supervision, the Federal Deposit Insurance Corporation (FDIC), the Federal Trade Commission (FTC), and the National Credit Union Administration (NCUA).

Requires the Agency to establish a Consumer Advisory Board to advise and consult with the Agency in the exercise of its functions and to provide information on emerging practices in the products or services industry.

Requires collection of annual fees or assessments to recover amounts expended by the Agency. Establishes in the Treasury the Consumer Financial Protection Agency Civil Penalty Fund for deposit of any civil penalty obtained against a person in a judicial or administrative action under this Act.

Requires the Agency to seek to promote transparency, simplicity, fairness, accountability, and access in the market for consumer financial products or services.

Authorizes the Agency to take administrative actions to: (1) prevent a person from committing or engaging in an unfair, deceptive, or abusive act or practice under federal law in connection with any transaction with a consumer for a product or service; (2) ensure the appropriate and effective disclosure or communication to consumers of associated costs, benefits, and risks; (3) guide the manner, settings, and circumstances for the provision of products or services to ensure that their risks, costs, and benefits are fully and accurately represented to consumers; and (4) approve pilot disclosures to consumers.

Encourages states to prescribe standards applicable to persons (other than insured depository institutions or credit unions) to deter and detect unfair, deceptive, abusive, fraudulent, or illegal transactions in the provision of products or services.

Authorizes the Agency to prescribe regulations establishing minimum standards. Defines "standard consumer financial product or services" and allows the Agency to prescribe regulations or guidance concerning the offering of them at or before the time an alternative consumer financial product or service is offered.

Sets forth prohibitions regarding marketing and advertising, agreement terms and fees, refusals to permit access to records, and providing assistance in unfair, deceptive, or abusive acts or practices.

Describes the enforcement authorities of states under this Act.

Describes the investigative and adjudicatory authorities and procedures of the Agency, including procedures for referral for the institution of criminal proceedings.

Provides identification and availability requirements for the maintenance of records of the number and dollar amounts of deposit accounts for each branch, automated teller machine at which deposits are accepted, and other deposit-taking service facility with respect to any financial institution.

Amends the Equal Credit Opportunity Act to require each financial institution, in the case of an application for credit for a small business, to: (1) inquire whether the business is a women- or minority-owned business; and (2) maintain a separate record of the responses to such inquiry.

Restricts access to such information by loan underwriters or other employees of the financial institution. Requires such information to be compiled and maintained by each financial institution and submitted annually to the Agency, which shall make it available for public disclosure. Amends the Federal Trade Commission Act to require the FTC, in any investigation or proceeding in which it appears that an unfair or deceptive act or practice is being committed in connection with the marketing, sale, provision, or delivery of a product or service, to consult and coordinate with the Agency as the agencies deem appropriate.

Makes it unlawful for any person, knowingly or recklessly, to provide substantial assistance to another in violating any provision of the Act or any other Act enforceable by the FTC that relates to unfair or deceptive acts or practices.

Precludes FTC rulemaking authority with regard to the marketing, sale, provision, or delivery to an individual of a consumer financial product or service that is subject to the jurisdiction of the Agency.

Revises other FTC rulemaking procedures regarding: (1) rule publication; (2) meetings with outside parties; (3) communications of investigative personnel outside the rulemaking record; and (4) judicial review.

[vii] If they don't know what's going on, what does that tell you?