Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates, 2 June – 4 June 2009

Question: bet 171

Topic: **Agreement Between Storm & ASIC**

Hansard Page: **E100-101**

Senator McDonald asked:

Senator IAN MACDONALD—That is fine. Thank you. There was a suggestion made to me that an agreement entered into between ASIC and Storm in December 2008 actually worsened the situation by preventing the Storm people from doing things that they might have been able to do to lessen the impact in December, which then got worse in January. Do you accept that?

Mr D'Aloisio—No. I think at our last meeting Deputy Chairman Cooper commented on this. From memory, I think it is in the *Hansard*. Certainly, our position is quite clear. We did not do anything that we felt would have exacerbated the issue. At that point in December 2008, just as our investigations were taking off, a lot of things had happened. We do not think there is any substance to that claim, but I am happy to look at it again and give you a more specific answer. Certainly, we do not think there is any substance to that claim at all.

Senator IAN MACDONALD—There are suggestions that because Storm were taken out of the whole procedure that a certain bank or banks were then able to escape some scrutiny and activity that might otherwise have been imposed upon them had the financial advisers of people who had invested been able to get banks to do something.

Mr D'Aloisio—We will look at it again. At the end of the day what happened with Storm was about debt and the absence of equity leading to debt needing to be repaid. If you have a situation where you have that sort of deficit and the double leverage model that they were operating it is difficult to extrapolate from that that some action or act could have occurred which would have prevented a financier calling in a debt or selling securities. We will look at it, but it just seems to be something that has been said after the event.

Senator IAN MACDONALD—There were people who reported to me that the bank or banks—some, not all, I might add—were advising the borrowers and in some instances were saying that they had told the financial adviser, Storm, which was then out of the picture and could not do anything because of this agreement with ASIC anyhow. But many of the complaints that have come to me have been that the banks simply did not advise the borrower in the terms of their agreement. That of course becomes a legal matter between the borrower and the bank should the borrower be in a position to engage expensive commercial lawyers to take them to court. Of course, people in this situation do not have a brass razoo left. The prospect of getting any decent counsel in the commercial area to take on their cases is limited unless it is—

Mr D'Aloisio—We recognise that and that is why we have said we are looking at this as a potential case under section 50 of the ASIC Act. We were in effect standing in and looking after the interests of the investors, because of public interest issues such as the one you have just mentioned. They are not in a position to look after their own interests and they have rights that we feel as a matter of public policy we should pursue for them.

Senator IAN MACDONALD—I appreciate that—

Mr D'Aloisio—I will look at that issue again. I think we will write to the committee on that because it came up at the last meeting and it has come up again. I am keen to ensure that we give you a clear answer on that issue. As we have said, there is no doubt in my mind it is not what ASIC did that is at issue here. It is what happened to that organisation, how it was run, the business model and the actions around its collapse.

Answer:

We did not enter into an agreement with Storm in December 2008 which prevented it from contacting, or providing services to, clients.

We sought to negotiate an enforceable undertaking (EU) with Storm around 18 December 2008, to address concerns that Storm may have been providing conflicted and incorrect advice, to clients who were in negative equity, that they did not need to meet their margin calls and should not deal with the banks. We were concerned that this advice was coloured by the collapse of the Storm model and that clients were better off seeking independent advice about their affairs.

The EU was not executed by Storm and was therefore of no effect. However, around 19 December 2008, Storm said that it would cease contact with all clients over the Christmas period. This action was not requested by ASIC. Storm subsequently went into administration on 9 January 2009.

For further information see Appendix 4 to ASIC's Submission to the PJC Inquiry into Financial Products and Services.