Submission to the Parliamentary Joint Committee:

Inquiry into Financial Products and Services in Australia

This submission is directed primarily at the following term of reference:

"The committee will investigate the involvement of the banking and finance industry in providing finance for investors in and through Storm Financial, Opes Prime and other similar businesses, and the practices of banks and other financial institutions in relation to margin lending associated with those businesses".

As emailed to:

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Submitted by:
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28th June 2009

Summary

I have lost money in the turmoil surrounding the fall in stock markets around the world during September, October and November 2008. While nearly every person in Australia was affected through direct share ownership, superannuation and/or managed funds, many people have lost money due to situations and circumstances beyond their control.

I had a portfolio of direct shares, and obviously take full responsibility for the decline in their value. My superannuation was severely affected, but once again I take full responsibility for this. Also, by the long term nature of superannuation, I am fortunate enough to have time on my side to hopefully and eventually recover before I retire.

However, my investment in 2 managed funds, via margin loans and regular gearing facilities from Colonial Geared Investments (CGI) is a totally different situation. **I believe that CGI was unable to respond to the rapid fall in world share markets and totally failed in their "duty of care" to their customers. They could not and did not react in a timely manner to the rapid decline in the markets. They were unable to enact their own precisely defined (to 2 decimal points) Margin Call LSR. If they had undertaken their "duty of care", I would have been left with a small amount of equity. Instead, CGI failed to act in any way until my equity had been totally wiped out and in fact, I have ended up owing them money**.

My losses are only of a relatively small magnitude, in the vicinity of $11,000. However, it is the principal of the matter – the inability of CGI to respond to the situation and their complete lack of "duty of care" – that has resulted in me writing this submission.

I was not caught up in the Storm Financial disaster, but many of the issues and questions raised in other submissions to the enquiry appear very similar to my concerns, claims and allegations. My situation – from the start of the margin loan in March 2004 to the present day – is detailed in the following pages.

I did have 2 margin loans with CGI, and both of them have been treated and ended up the same way. The majority of this submission and details contained here-in relate directly to the first loan. However, in my closing comments and desired outcome I have collated both loans.

It has been a challenging process to collate the relevant dates, figures and sources of information. I believe all figures to be accurate. All of the figures, statements and comments from third parties can be substantiated with written documents, which can be presented if required.

Acronyms and Company Names

- **CGI** – Colonial Geared Investments. A subsidiary of the Commonwealth Bank of Australia (CBA). (Money magazine – Margin Lender of the Year 2008)
- **CML** – Colonial Margin Lending. A subsidiary of the Commonwealth Bank of Australia (CBA)
- **CBA** – Commonwealth Bank of Australia
- **Asgard** – is a member of the BT Financial Group, which is a subsidiary of the Westpac Banking Corporation (Westpac)
- **Securitor** - is a member of the BT Financial Group, which is a subsidiary of the Westpac Banking Corporation (Westpac)

The Margin Loan Commences

I commenced a margin loan, through my financial adviser, with Colonial Geared Investments (CGI) in March 2004. I put in $10,000, borrowed $10,000 from CGI, and at the same time commenced a Regular Gearing Facility, also with CGI, to borrow another $500 per month and contribute $250 of my own money. The funds were then invested in a range of managed funds, with the investment of the funds done by Asgard into a range of approximately 10 funds as directed (and agreed to by me) by the financial adviser. This spread the risk across a range of investment categories. I was looking at this as a long-term investment strategy, and understood that the markets that we were investing in would fluctuate over time. I went into this arrangement thinking that this was a 'low input' investment in terms of my time and effort, and that there were 3 parties that had a vested interest in my investments. I was paying for this in 3 ways:
1 - My financial adviser - directly via commissions, including a 5% 'up-front' commission on the money invested (both borrowed and my personal contribution)
2 – to CGI via a premium in the interest rate that they charged
3 – to Asgard via the fees that they charged to invest the money into the managed funds.

During the application process there was no direct contact with CGI. I believe that I am reasonably intelligent and reasonably financially literate, and thought that I had a basic understanding of how a margin loan worked. I do admit to not reading the 24 pages of the CGI Terms and Conditions.

When the loan was approved, I received a letter from CML giving details of the loan. At the bottom of the document it stated:

> Margin Call LSR: 80%
> Note: Ratios are recalculated **each day** and are subject to change due to market movements and changes in securities held

I have bolded "**each day**", as this will be relevant later on in my submission. *Also, there was no comment or confirmation of the need and/or requirement for me to monitor this ratio.*

March 2004 to September 2008

During this period I continued to invest $750 ($500 borrowed, $250 personal contribution) per month into the managed funds. At the end of each quarter, both CGI and Asgard mailed me a statement summarising the margin loan and funds performance (respectively).
It is noteworthy to consider the quarterly statements from each party.
The Asgard Investor Report is a comprehensive report summarising important items such as the asset allocation, rate of return, net earnings and account valuation. At no stage is there any mention of the margin loan, as this is not their responsibility. **However. they do provide a daily update to CGI on the value of the investment.** This is a critical point which will be covered in more detail later in this submission.

The Colonial Margin Loan Statement gives a summary of the loan details, including key ratios and security summary. It is noteworthy that the Base LSR, Margin Call LSR and Current LSR are all calculated, **in all 3 cases to 2 decimal points**. To me this indicates a computer system and software with a high degree of accuracy – for example they did not just say "*around about 84%*". This point will also be covered in more detail later in the submission.
The Statement does have a disclaimer in small print at the bottom of the first page:

The estimated values should not be used for investment or divestment decisions. Information regarding the precise number of units held should be obtained from the respective fund manager or from your CHESS statements. Prices are estimates only.

Comment – I can accept this statement, as values do change and obviously any value is out of date as soon as it is written down, let alone printed and mailed. I did regularly check the 2 reports and there was always a slight discrepancy between the security values. However, this did not concern me as this slight difference did not appear to have made a major difference to the current LSR value.

Table 1 – Quarterly Margin Loan Statements from CML

Quarter	Loan Amount $	Base LSR %	Margin Call LSR %	Current LSR %	Security Summary $
Mar 2004	$10,000	73.68	83.68	52.63	$19,000.00
June 2004	$11,000	74.52	84.52	52.09	$21,116.05
Sep 2004	$12,500	74.53	84.53	51.36	$24,336.62
Dec 2004	$14,000	75.03	85.03	49.27	$28,416.21
Mar 2005	$15,500	74.55	84.55	48.8	$31,764.62
Sep 2005	$18,500	74.53	84.53	46.8	$39,533.68
Dec 2005	$20,000	74.90	84.9	46.4	$43,100.60
Mar 2006	$21,500	74.52	84.52	44.17	$48,680.20
Jun 2006	$28,000	74.80	84.80	51.19	$54,70237
Sep 2006	$29,500	74.54	84.54	50.89	$57,97255
Dec 2006	$31,000	74.72	84.72	46.85	$66,16316
Mar 2007	$32,500	74.74	84.74	45.24	$71,840.99
Jun 2007	$34,000	73.79	83.79	45.48	$74,760.63
Sep 2007	$45,500	74.65	84.65	49.79	$91,380.88
Dec 2007	$47,000	74.54	84.54	50.42	$93,216.40
Mar 2008	$58,500	74.56	84.56	69.77	$83,845.17
Jun 2008	$60,000	74.75	84.75	72.74	$82,486.30
Sep 2008	$61,000	74.69	84.69	79.17	$77,050.90

The figures in Table 1 are taken directly from the quarterly CML statement. As you can see, the 'current LSR' was very conservative at approximately 50% until the end of 2007. I did borrow a lump sum of $10,000 in early 2008, which pushed the LSR up to 69.77% in March 2008 and then 72.74% by the end of June 2008. This was further exacerbated by the falling market.

As the market continued to fall, the Current LSR slipped to 79.17% by the end of September 2008. In hindsight, it is now obvious that this exceeds the Base LSR of 74.69%, but it did not exceed the Margin Call LSR of 84.69%.

My question is: Why didn't CML include some type of notification to the client in the quarterly statement that their loan was now in buffer territory? Surely this would have been a very simple process to include this on the quarterly statement in big, bold font so that the client could not miss it? Where was their "duty of care" to their customer? They could have easily put a simple statement such as:

"Your Current LSR has exceeded the Base LSR. As per the loan Terms and Conditions, this needs to be rectified as soon as possible. If the situation deteriorates and your Current LSR exceeds the Margin Call LSR, we will begin to sell down your securities. CML does not

monitor your situation on a daily basis and we do not have to notify you if and when this happens. Please contact us on 1 800 xxx xxx or contact your financial adviser"

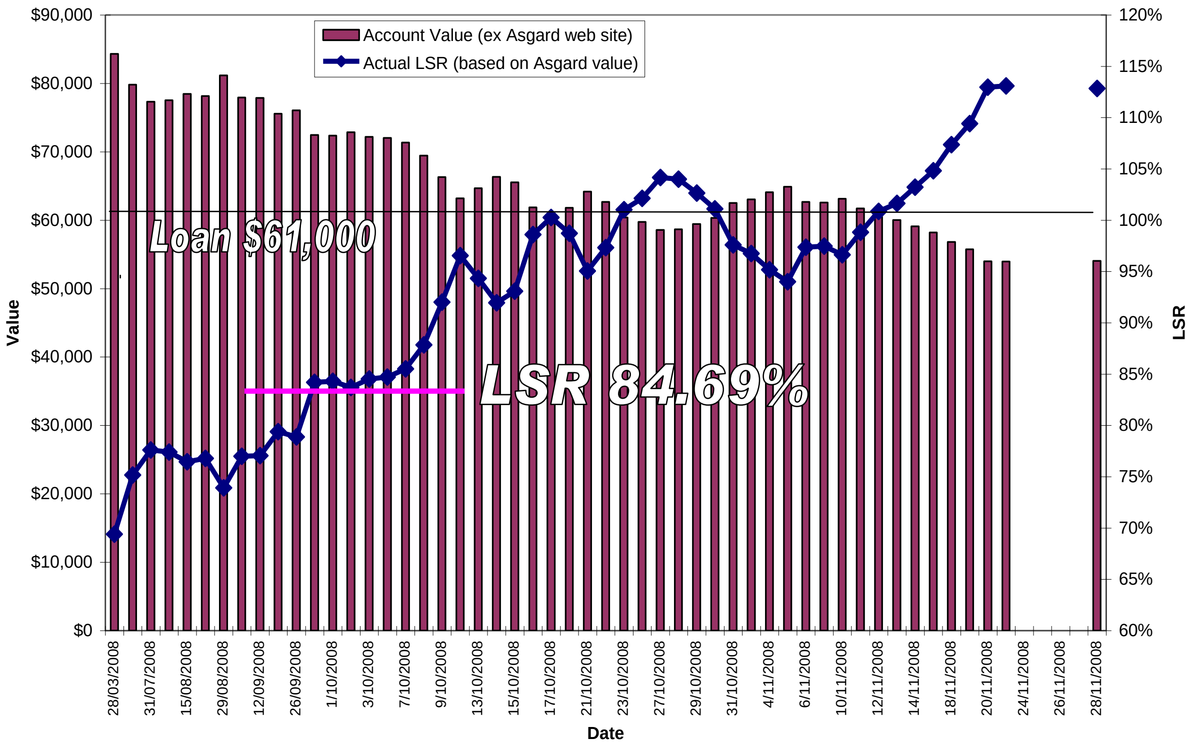
A simple statement such as this would have shown their "duty of care". The onus for monitoring and reacting would have clearly been passed on to the client.

However, this did not happen. As there was nothing like this on the quarterly statement, why would I be concerned? I naively trusted 'the system' – financial adviser / CML / Asgard - to manage my investment and to notify me if and when I needed to do anything. As this did not happen, I did not appreciate the need to act.

1st September 2008 until 31st December 2008

From this point in time everything went "pear-shaped". I have compiled a detailed time-line, which is available if required. Everything is documented, mostly in emails, and these are also available if required. With the benefit of hindsight, I have since retrieved the security values from the Asgard website, as shown in Graph 1. According to these figures and my calculations, my account exceeded the defined margin call LSR% level on the 6th October 2008. **At this point in time, my equity was approximately $11,022.**
As you can see, it never did fall below this margin call LSR% again.

Graph 1 – Account Value versus LSR



Like every other investor I watched the markets drop, but believed that my financial adviser was looking after my interests. However, it now turns out that she was having concerns and difficulties with the accuracy of the CGI website numbers. She had raised the issue with CGI as far back as June 2008 regarding discrepancies between the figures coming from Asgard and CGI. She continued to raise these concerns with CGI on at least 4 occasions from the

23rd September until the 7th November, including with the State Manager of CGI. This is detailed later in the submission.
CGI have now admitted in an email to my adviser that their figures and website were inaccurate from the 25th September 2008 until the 20th October 2008. I believe this to be a critical failure that contributed significantly to my predicament.

I also know that CGI were provided with daily updates of the value of the security from Asgard. This was confirmed in an email from Asgard where they stated:

"The Portfolio Valuation appearing on Investor Online is updated on a daily basis using the most recent managed fund prices we have in our system at the time of the valuation.
Portfolio Valuations are sent to Colonial on a daily basis. The LVR/LSR is calculated by Colonial"

Meanwhile, what did CGI do? Absolutely nothing, it seems. In correspondence with a CGI employee (CBA#2 - discussed in more detail later in the submission), he confirmed via an email that:
"the Margin call was triggered on 10.11.2008 - Message was left on 10.11.2008. The LVR was 118.97%".
However, an email from Asgard said that they received a request from CGI to redeem the total holdings on the 19th November – I do not understand why there is a difference between these dates.

(I should add here that during October, my adviser suggested that we switch some of the funds. While this resulted in some buying and selling of funds, the net affect was basically zero. Also, 2 of the funds were 'frozen' towards the end of October, which meant that they were then valued by CGI at zero dollars. It is this latter action that may have finally caused CGI to act. However, both these actions happened significantly later than my critical date of the 6th October).

To CGI this figure of 118.79% is just a number on a page. To me however, it means that my $11,022 in equity on the 6th October has been wiped out, and in fact I now have a debt with CGI of $13,614.85.

According to the CGI Terms and Conditions for the Notice of a Margin Call (page 4):

> 4.3 (a) You agree that we may provide notice of margin call by any or all of the following ways to you or your Client Adviser:
> - In writing (including by fax, email or other electronic means)
> - Orally, including the telephone
> - Updating the Colonial Geared Investments website

Comment – as far as I am concerned this clause is a cop-out on behalf of CGI. Surely in this day and age of instant communication – landline, mobile phone, text messaging, email – they can do better than this! If the on-line share brokers can text you within minutes of a share transaction, surely CGI can have a software system in place to inform their clients of their margin loan situation (once again, "duty of care").

As far as I am aware, there is no suggestion or proof that CGI used either of the first 2 options described in Clause 4.3 (a) prior to the 10th November. That only leaves the website option, which as described previously appears to have had major issues with accuracy and being up-to-date.

I can't help but think that CGI was totally unprepared for the rapid drop in the world share markets. Like "a kangaroo caught in a spot-light", they didn't know what to do. It may have been a combination of computer hardware, computer software, the ability to link and match information or simply not enough people to monitor and respond. **Whatever the reason, something has gone terribly wrong**.

Via this submission, I would like to request that the Parliamentary Joint Committee ask these questions to the representative of CGI/CML/CBA when they appear before the Inquiry:

1. ***Can you please confirm that the CGI website was providing accurate and up-to-date figures from 1st July 2008 until the 31st December 2008?***
2. ***If not, what was the period during which problems were happening?***
3. ***Can you please explain why CGI/CML/CBA did not trigger margin calls immediately when client Current LSR's reached and or exceeded the pre-specified and precise (to 2 decimal points) Margin Call LSR's?***
4. ***When this didn't happen, why did CGI/CML/CBA let clients' LSR's grow until they reached greater than 100%, thereby ensuring that equity was decimated and only a debt was left?***
5. ***What finally prompted CGI/CML/CBA to request the redemption of holdings?***
6. ***Where was the "duty of care" to their customers?***

2009 Year to Date

I have spent a considerable amount of time trying to understand what went wrong. I have talked to all 3 parties:

1) Financial Adviser

I have had discussions with and sent numerous emails to my adviser. She firmly believes that she did everything in her power to keep abreast of and manage the situation as it unfolded. She firmly blames the faults in the CGI website information. This is a timeline of her actions with Colonial that she supplied to me:

July 2008	Raised issue with CGI regarding discrepancy of figures between Asgard and CGI
23rd Sep	Sent email to CGI (Brisbane) to again raise the issue of discrepancy in the figures - issue not resolved
15th Oct	Raised issue with CGI (Brisbane) again as it appeared the CGI website was not updating
20th Oct	Emailed CGI (Brisbane) a spreadsheet listing the real figures and what actions will need to be taken. Had a phone discussion with CGI (Brisbane) and advised that as this situation was serious, they would contact head office and let me know of what CGI will do. Listed on this spreadsheet was that your accounts were over the margin call limit and also listed was the required sell down amount to have this margin call corrected. **This was not acted upon by CGI at this time.**
21st Oct – 30th Oct	Over the next few weeks there were several discussions held with CGI (Brisbane) as to what needs to be done to rectify the issue. Market prices were increasing during this week. I also contacted Asgard to express concern over the discrepancy in the figures and also informed my dealer group Securitor of the issues I was having regarding the margin loans and sort their assistance in chasing up with CGI and Asgard regarding incorrect data concerns.
4th Nov	Held meeting with CGI (Brisbane) to find out what was happening - It was discussed that I would resend a new spreadsheet showing the actual figures on Asgard and we would act off this report.
6th Nov	Sent new spreadsheet to CGI with updated figures

7th Nov	Followed up with CGI (Brisbane) to find out what was happening. CGI advised that the Sydney team had already decided what action would be taken on all loans and had apparently acted on these actions on 4.11.08. CGI Sydney office had requested a full redemption of both the Asgard investment accounts

She has since sent to CGI (CBA #1 – see below) all the information detailed above and at the date of writing this is being investigated.

2) Asgard

I have been in contact with Asgard. They supplied with me with the information regarding the daily updates to CGI as detailed earlier.

3) CGI / CML / CBA

This brings me to my dealings with the margin loan provider. I have now had contact with 3 people from the CBA. For the purpose of this submission, I am going to call them CBA#1, CBA#2 and CBA#3. To my way of thinking they were only trying to do their job, as trained and directed by their employer. My dealings with all 3 were pleasant and cordial, and I see no need to name them at this point in time. Obviously I can provide their names and positions within CBA if deemed necessary.

CBA#1

When I became disillusioned with the whole affair I sent, via fax, 2 formal letters of complaint (one for each loan) to the CGI Complaints Manager in Sydney on the 27th February 2009. CBA#1 rang me shortly after to discuss my complaints. On the 6th March she emailed me a timeline of what had happened with my second loan account. I found this to be extremely basic and providing little detail. It is also interesting that her email included the comment: "I have not included some notes which I made subsequent to our conversation which are internal". I guess that this is normal business practice, but one cannot help wonder if there was something to hide?

CBA#1 is now investigating the documents provided by my financial adviser (as mentioned earlier).

CBA#2

CBA#2 then contacted me to discuss the situation. We have since had several conversations, 2 of which were quite lengthy, but to his credit were arranged at a time to suit me. He basically said that CGI were not able to and did not monitor each margin loan individually, and that it was the responsibility of the client and adviser to monitor their own situation.

CBA#3

On the 10th June 2009 I received a letter from the Credit Manager from CBA stating that I had outstanding negative balances of $13,614.85 and $10,035.74 on my 2 margin loans. In the letter it stated that:

"the Bank is looking for a repayment program to be entered into, to in fact repay the same in full. So with this in mind I would appreciate you completing the attached "Personal Money Planner" and returning it with details of your proposed repayment program for consideration".

Incredibly, attached was a 2-page form requesting all my financial details. What amazes me is that none of this information was requested when I initially entered into the loan arrangement with CGI.

Needless to say, I promptly rang CBA#3 and as nicely as I could explained that this whole situation was being investigated. After sending a copy of the letter to my financial adviser, she contacted the CBA and this request for the Personal Money Planner has been put on hold.

Where to from here?

I firmly believe that CGI/CML/CBA has not been in the position to carry out their "duty of care" in relation to the margin loans that I had with them. Due to their apparent inability to provide accurate data on their website, and by their Terms and Conditions not being required to notify my adviser or me, the margin call on my loans was not triggered at **their** pre-subscribed trigger point.

Subsequently I went from a position in early October, when both margin calls should have been triggered, of having **positive equity of $16,584** (Fund 1 $11,022 plus Fund 2 $5,562) to having a **net debt of $11,467.50** ($23,650.59 owed to the CBA less the remaining value of the managed funds, being $12,183.09 as at the 19th June 2009).

If the CBA is found to have been unable to provide accurate information, and contributed to the position that I have been left in, I believe that they should (at minimum):

- **cancel the outstanding debts of $23,650.59 and**
- **pay to me $5,117.32, being the difference in my equity between early October 2008 and the 19th June 2009.**

Thankyou for the opportunity to present this submission. Please do not hesitate to contact me if you require any further information.

Stephen Wilson
28th June 2009