

Storm: ASIC knew for months

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the collapse that lawyers estimate could result in about \$1.5 billion of losses – nearly three times those of margin lender Opes Prime.

It comes after a parliamentary Joint Committee on Corporations and Financial Services last year accused ASIC of being tardy in addressing concerns over property schemes after the collapse of Westpoint, Fincorp and Australian Capital Reserve.

“Blind Freddy could have seen something was wrong,” said John McLennan, a retired Westpac efficiency auditor, expert witness and whistleblower who helped uncover the Swiss bank loan scandal in the 1990s.

“If I had seen something like this, I would have been up them like a rat up a drainpipe. We expect and pay for the regulators to ask the hard questions. I think the regulators were afraid of the Commonwealth Bank,” said Mr McLennan, who said the collapse was responsible for thousands facing financial ruin and at least one suicide.

Storm claims the share rout in November, when global markets plumbed the year’s low, finished many investors off as the value of their loans, often taken out against the equity in their homes, exceeded the value of the securities.

Mark Weir, a co-chairman of Storm Investors Action Group, which is holding roadshows across Queensland to support victims and build a fighting fund for compensation, added: “Throughout this entire episode investors have been very cynical about the ability of the regulators to act in the investors’ best interests.”

Investors claim hundreds of millions of dollars in lost investments might have been saved if ASIC had taken action when it first learned of Storm’s troubles in October, rather than waiting until December after further large stockmarket losses.

A senior ASIC official, who declined to be named, said it “had people crawling all over Storm” from early November but that it took until December 12 to build up a case that there were reasonable grounds to suspect a technical contravention of the law.

He said a team of more than 20 ASIC officials were currently involved on the investigation, in addition to work being done by the receivers and administrators, investor groups and the legal action between Storm Financial and CBA.

“People think ASIC is a supercitizen, who can turn up with Superman powers and stop things happening,” the official said.

“The only area where we have unusually strong powers is in gathering information and forcing them to speak to us. Beyond that, we have to go to the courts and get the courts to decide. People ask why we don’t turn up and shut it down – well, we do not have a shutdown power.”

The official said that by the time ASIC started its inquiries in early November “the curtains had come down” on the investments. “By the time the investors had received the letter we were left with cleaning up the mess.”

Since December, ASIC has received an order from the Supreme Court of Queensland freezing a \$2 million “dividend” paid to Storm’s co-founders and chief executives, Mr Cassimatis and his wife, Julie Cassimatis, just before the financial planning company collapsed.

It has also reduced an extension to the time for a creditors’ meeting requested by the administrator, Worrells Solvency and Forensic Accountants, from 90 to 30 days.

At the height of the bull market, Storm Financial attracted a cult-like following, with the Cassimatises hosting overseas trips to exotic locations.

Their lavish lifestyle of private jets, luxury mansions and prestigious offices attracted widespread publicity and clients from as far afield as Townsville in northern Queensland, to Geelong in south-east Victoria.

Storm Financial’s bull-market philosophy that debt was good encouraged investors to borrow heavily, often against unencumbered assets such as their homes or superannuation.

About 3000 of Storm’s 14,500 clients geared up to invest in debt-driven, high commission index-linked funds that were run by Colonial Geared Investments, which is a division of CBA.

Investors typically paid a hefty upfront commission of up to 7 per cent based on the

On the line

Extracts from the script telling CBA staff how to deal with Storm Financial clients receiving a margin call

Script for call to Storm Financial clients – Monday 8 December, 2008

My name is (xxxx) and I’m calling from Colonial Geared Investments about the margin loan facility you have arranged through Storm Financial, who have been managing your investments. We want to make sure that you fully understand your position with regard to your margin loan. Are you aware of the current state of your investments and the situation with your margin loan?

(Presume that they do not know they are in negative equality)

I don’t understand how my investments are in negative equity – why hasn’t someone told me about this?

Storm Financial is your financial adviser and manages your investments. I am surprised to hear that your financial adviser has not kept you informed of your position. Colonial Geared Investments has only provided the margin loan facility.

I think this is ridiculous as I have put a lot of money in, in a short period of time. I am going to go to the media and tell them what has happened and how the Commonwealth Bank has ruined my life.

As you are aware, Storm Financial is your financial adviser and investment manager. This is a matter between them and you. Colonial Geared Investments are only the provider of the margin loan product and are happy to work with you to determine the best way forward.

I am very unhappy about this and do not intend to pay.

As a first step, you should speak to your Storm Financial adviser about your obligations and position. Colonial Geared Investments are happy to work with you regarding the repayment of your loan.

I intend to sue the Commonwealth Bank because my financial resources have been destroyed.

This is not a matter between you and the Commonwealth Bank. Storm Financial are your financial adviser and investment manager. It is with their representative that you should raise your concerns.

SOURCE: COURT FILINGS

Calls went according to script

Duncan Hughes

Commonwealth Bank of Australia wrote scripts for its employees who had to try to collect margin debts from thousands of Storm Financial clients in which the bank staffers were told to blame all their woes on their adviser.

Among the carefully calibrated responses were suggestions on how to reply if someone said they had lost their life savings and home, threatened to go to the media or just simply refused to pay their debt to the bank.

Leaked copies of two scripts set out 16 questions and answers for the first margin call on the morning of Monday, December 8, and six points to make to the same investors on the follow-up call on Thursday. The questions anticipate that some incredulous investors might hope the markets could pick up and recover some of their value.

“There is no way we can predict the future direction of the sharemarket. Under the terms

and conditions of your margin loan, you are required to clear margin calls as they appear,” was the standard answer to investors wanting more time. Anticipating that some investors might be emotional about being told they had lost their life savings and home, callers were told to stress it was the fault of their adviser Storm, rather than the bank.

For some Storm investors, it was a financially crippling double blow as they owed a debt on their margin loan in excess of their assets and still had a debt on the housing loan taken to arrange the margin loan.

Those who refused to pay were directed to speak to Storm, which was to be closed down the following month. As was an investor who complained that they had “lost a lot of money in a short period of time” and threatened to “go to the media and tell them what has happened and how the Commonwealth Bank has ruined my life”.

Storm chief executive Emmanuel

Cassimatis claims the scripts prove he was being manipulated by the bank, which was engaged in talks with him about a rescue package as it prepared to shut him down and close the funds. CBA claims it considered the position of investors “at all times” and took action to minimise the losses of those investors “after Storm Financial failed to take appropriate action in regard to margin calls on investment loans”.

But the bank was prepared for some clients having trouble paying debts because hypothetical questions from investors include:

- I can’t pay the full amount. Can I pay in instalments?
- What period of time can I spread the payments over, I have limited funds available?
- I don’t have the funds to pay, what can I do?
- I don’t understand how my investments are in negative equity – why hasn’t someone told me about this?

total amount of the exposure, or what is called “funds and liabilities under advice”. Mr Cassimatis claimed the charges were good value and often discounted.

As the market rose through 2006-07, Storm encouraged investors to increase their bets, thereby increasing its revenue stream.

But as the stockmarkets fell so did the number of commission-paying new investors, reducing the company’s monthly income from about \$3.2 million last August to about \$150,000 in January, when it was placed in administration.

Investors have been very cynical about the ability of the regulators to act in the investors’ best interests.

MARK WEIR, STORM INVESTORS ACTION GROUP

On October 8 last year, Mr Cassimatis wrote to thousands of investors in his index funds urging them to switch “up to 100 per cent” of their portfolio to cash because of the “severe strain on the world’s financial markets” and “to avoid a situation where one must dispose of assets or sell down assets in order to reduce debt”, that is, a margin call.

Lawyers who have seen the letter claim that the blanket advice is unlawful under the Corporations Act, ASIC regulations, and the rules of membership of Storm’s professional association, the Financial Planners Association.

According to Mr Cassimatis, ASIC’s initial response to the letter was “compliance questions” and discussions with officials at the regulator’s Sydney offices, but no formal investigation until December 12.

“They questioned us about procedure and about sending out bulk letters. I told them events were moving so quickly we had no choice. I told them I was not going to sit idly by and let everyone be destroyed,” Mr Cassimatis claimed.

“They seemed to be quite understanding of that at the time,” he said.

He said the margin loan facilities were typically intended to have a loan-to-value ratio (LVR) of up to 60 per cent, which means the amount loaned was 60 per cent of the value of the investment. Some investors claim their LVR exceeded 100 per cent by the time margin calls were made.

CBA and Storm are bitterly disputing the tripartite way the relationship between the bank, investor and Storm – as overall adviser – was structured and who was ultimately responsible for the advice. At the heart of the

row is whose responsibility it was to alert investors that they had breached their LVRs and were facing calls.

CBA claimed that Storm Financial was both adviser and manager, and that Colonial Geared Investments only provided the loan facility. Mr Cassimatis described his relationship with the bank as a “joint venture”, with it having responsibility to monitor his clients’ LVR beyond 80 per cent.

He said: “It was as close as you can get. The bank had sent people in on many occasions to check our processes and systems.”

He claimed CBA, under increasing market pressure about the state of its balance sheet and rising bad debts, panicked and forced Storm’s collapse just days before the bank went to the markets for a \$2 billion capital injection.

Law firm Slater & Gordon, which is representing about 800 clients, believes about 3000 clients could be facing losses averaging \$500,000 each.

Latest high-profile victims include media presenter and former Manly Sea Eagles rugby league star John Gibbs, who is estimated to have lost \$7 million, and leading Australian cricketer Andrew Symonds, who has lost at least \$1 million.

The bank, adviser and investors have geared up to win public opinion and the legal battle by appointing public relations advisers and lawyers, with the Cassimatises launching their own website on Friday.