



ASIC

Australian Securities & Investments Commission

ASIC and CBA Storm Financial settlement

Document history

Last updated 8 March 2013

Date	Changes made to this document
8 March 2013	Added new question 37 to address some inaccuracies in an "Information Bulletin" distributed by Levitt Robinson Solicitors in February 2013
27 February 2013	Amended Question 19 to provide information on the sending of offer letters and eligibility for compensation
29 November 2012	Amended Question 28 to provide a link to the ATO's information sheet <i>Taxation issues for Storm Financial investors benefiting from the ASIC-CBA settlement</i>
19 November 2012	Added new question 36 to address some further matters raised by the "Information Bulletin" distributed by Levitt Robinson Solicitors in October 2012
31 October 2012	Added new question 35 to address some questions raised by an "Information Bulletin" distributed by Levitt Robinson Solicitors in October 2012 Corrected a typographical error in Question 12
16 October 2012	Amended paragraph 31.2 Added new questions 33 and 34
4 October 2012	Corrected some typographical errors in paragraph 9 of question 12 Added new questions 30, 31 and 32, to provide further explanation and clarification of the ASIC Compensation Model
26 September 2012	Added new question 29, in relation to who investors should contact if they have changed address since they last had contact with the CBA
19 September 2012	Document reissued

Overview

ASIC has entered into an agreement with the Commonwealth Bank of Australia (**CBA**) for CBA to make available up to \$136 million as compensation for losses suffered on investments made through Storm Financial Limited (Receivers and Managers Appointed) (In Liquidation) (**Storm**). The compensation will be available to many CBA customers who

borrowed from the bank to invest through Storm, including CBA customers who are members of the Sherwood class action that has been brought against CBA.

The \$136 million is in addition to payments of approximately \$132 million, and other benefits, CBA has already provided to Storm investors under its CBA Resolution Scheme.

ASIC believes the compensation deal is a timely, fair and certain outcome for Storm investors who borrowed from CBA. Storm investors can be confident we would not have agreed to a settlement unless we thought the compensation was appropriate.

ASIC has developed a compensation model (in conjunction with external forensic accountants) to calculate Storm investors' loss. That model has calculated the estimated loss for each investor (or investor group, where two or more investors invested jointly in the Storm model). It has also allocated each investor's loss between the banks who funded investments in the Storm model.

More information about the agreement and compensation arrangements with CBA follow below.

This agreement will bring to a close the legal action against CBA in ASIC's unregistered managed investment scheme (UMIS) proceeding (**the ASIC UMIS Proceeding**) which was also brought against Storm, Bank of Queensland Limited (**BoQ**) and Macquarie Bank Limited (**Macquarie**) in the Federal Court of Australia in Brisbane in December 2010. ASIC will continue the ASIC UMIS Proceeding against Storm, BoQ and Macquarie, scheduled to start on Monday 17 September 2012. ASIC estimates the total loss suffered by all investors who borrowed monies from financiers to invest through Storm to be approximately \$830 million.

1 What compensation will CBA provide?

- 1.1 In around July 2009, CBA established the CBA Resolution Scheme ("**Resolution Scheme**"). Pursuant to (or in some cases prior to or outside) the CBA Resolution Scheme, CBA has reached settlement with approximately 1,200 investor groups (that is, an investor, or two or more investors who invested jointly) who used home and/or margin loans from CBA to invest in the Storm investment model ("**CBA Customers**"). CBA estimates that the compensation it provided to CBA customers under (or in some cases prior to or outside) its Resolution Scheme totalled approximately \$132 million. CBA also provided considerable further hardship assistance via interest waivers, reduced interest rates and flexible payment arrangements.
- 1.2 Those CBA Customers who accepted settlements with CBA under the CBA Resolution Scheme (or, in some cases, prior to or outside it) provided a release to CBA from any Storm-related claims they may have otherwise had against CBA. However, the release given by most of those CBA Customers to CBA contained what

is called an “ASIC carve-out” clause, which enables those CBA Customers to obtain the benefit of any compensation recovered by ASIC from CBA in relation to those CBA Customers.

- 1.3 ASIC and CBA have now agreed to a settlement of ASIC’s Proceeding Number QUD 577 of 2010, which ASIC brought in the Federal Court of Australia against Storm, CBA, Bank of Queensland Limited and Macquarie Bank Limited. As part of that settlement, CBA has agreed to provide a further amount of up to \$136 million compensation to CBA Customers. This amount is intended to ensure that each CBA Customer who takes part in the settlement will be provided with compensation which will equate to 55% of the total loss which ASIC has calculated:
- (a) was suffered by the investor as a result of their investments with Storm; and
 - (b) should be allocated to CBA
- once compensation already provided to CBA Customers under the CBA Resolution Scheme (or prior to our outside of it) has been taken into account.
- 1.4 The agreement brings other benefits to CBA Storm investors:
- (a) After compensation is applied to investors’ outstanding CBA margin loans, any investors still in negative equity on their Storm-related margin loans will have the balance of those loans written off; and
 - (b) Investors granted a loan interest-payment moratorium by CBA will have that moratorium interest written off.
- 1.5 ASIC calculates the total loss suffered by all investors who borrowed monies from various banks to invest through Storm to be approximately \$832 million.

2 Why is ASIC settling with CBA now?

- 2.1 ASIC recognises that CBA’s Resolution Scheme was a constructive response by CBA to the financial hardship faced by some of CBA’s customers arising from their investment with Storm.
- 2.2 The provision of additional compensation by CBA under the agreement reached between ASIC and CBA resulted from continuing negotiations between CBA and ASIC about whether it was appropriate to provide additional compensation for some CBA customers who borrowed to invest through Storm, over and above that already provided under the CBA Resolution Scheme.
- 2.3 The provision of the additional compensation obtained pursuant to the settlement agreement reached between ASIC and CBA is positive for Storm investors who borrowed from CBA to invest in Storm and, recognizing the compensation already provided under the CBA Resolution Scheme, produces a timely, fair and certain outcome for CBA customers.
- 2.4 ASIC welcomes CBA’s approach to resolving this matter and sees it as an example of a responsible approach by a bank to dealing with its customers.

- 2.5 ASIC's end objective in commencing the legal proceedings has always been to obtain compensation for investors for losses incurred as a result of investment through Storm. This has been achieved without the need for a long, drawn out legal process. Legal proceedings can often be uncertain. Investors can be confident that we would not have agreed to a settlement of this matter unless we regarded the amount of compensation to be appropriate.

3 Has CBA admitted liability?

- 3.1. CBA has always denied that:
- (a) Storm operated an unregistered managed investment scheme; and
 - (b) CBA was knowingly concerned in the operation by Storm of an unregistered managed investment scheme.
- 3.2. By settling the ASIC UMIS Proceeding brought against it by ASIC, CBA admits no liability in relation to ASIC's allegations and the terms of the agreement reached between ASIC and CBA reflect this.
- 3.3. The decision of CBA to pay additional compensation to CBA Customers was reached after continuing negotiations between CBA and ASIC having regard to the need for finality for all parties involved, particularly CBA's customers.

4 Is ASIC continuing proceedings against CBA?

- 4.1 As part of the settlement reached between ASIC and CBA, the Court has dismissed the ASIC UMIS Proceeding as against CBA, with no orders made regarding the legal costs incurred by ASIC or CBA in the ASIC UMIS Proceeding. This means that ASIC and CBA will each pay for their own costs incurred in the ASIC UMIS Proceeding.
- 4.2 The settlement reached between ASIC and CBA does not include any settlement of ASIC's claims against BOQ and Macquarie in the ASIC UMIS Proceeding. ASIC will proceed with its case against BOQ and Macquarie in the ASIC UMIS Proceeding.
- 4.3 The settlement also will not affect the proceeding ASIC has brought in the Federal Court of Australia against MBL, BOQ and Senrac Pty Limited on behalf of Barry and Deanna Doyle (being Proceeding No NSW 1797 of 2010), or the civil penalty claims being brought by ASIC against Julie and Emmanuel Cassimatis.

5 Does this settlement mean that ASIC will not be bringing any action against CBA along the lines of the action ASIC has brought on behalf of Mr and Mrs Doyle in the Doyle Proceeding? Will ASIC be taking any other action against CBA, including regulatory action?

- 5.1 The settlement reached between ASIC and CBA means that ASIC will not bring any action against CBA along the lines of the action ASIC has brought on behalf of Mr and Mrs Doyle in the Doyle Proceeding. ASIC will not be taking any other action against CBA.

6 Has ASIC consulted investors and their action groups about the settlement with CBA?

- 6.1 ASIC informed investors and their action groups of the agreement reached between ASIC and CBA as soon as the agreement was reached. It was not possible to do so beforehand.

7 How has this further amount of compensation offered by CBA been calculated?

- 7.1 ASIC has (in conjunction with external forensic accountants) developed a compensation model to calculate the loss suffered by Storm investors. The forensic accountants have reviewed investor data held by Storm in its databases, as well as data obtained from banks and fund managers, to identify investors who made investments through Storm by monies borrowed using margin loans and, in many cases, home loans (“the ASIC Compensation Model”).
- 7.2. ASIC and CBA have subsequently worked together to identify those investors who used a CBA home loan and/or a CBA margin loan to finance investments through Storm.
- 7.3. The ASIC Compensation Model has been used to calculate the loss suffered by all Storm investors on an investor by investor basis (or investor group, if there is more than one investor), by calculating the profit and loss for each investment made by the investor or investor group, based upon the income and realisation proceeds received on that particular investment and the cost of financing or otherwise acquiring the investment.
- 7.4. The ASIC Compensation Model also contains a method of allocating the loss suffered by an investor or investor group between the banks who funded that investor or investor group’s investments in Storm. The allocation is based on interest and fees charged by the bank to that investor or investor group for loans used to invest through Storm, and the proportion of that investor or investor group’s total Storm-related lending that was provided by that bank.

- 7.5. ASIC has used its Compensation Model to calculate the loss suffered by each CBA Customer as a result of investing through Storm, and has allocated part or all of that loss to CBA in accordance with the principles in the Model.
- 7.6. CBA and ASIC have agreed that CBA will make available further compensation sufficient to provide, when benefits already provided by CBA to CBA Customers under the CBA Resolution Scheme (or prior to our outside of it) are taken into account, each CBA Customer who participates in the settlement with compensation that will equate to 55% of that part of their loss which ASIC has allocated to CBA in accordance with the ASIC Compensation Model (“**ASIC Compensation Amount**”). Some investors have already received compensation of 55% or more through CBA’s Resolution Scheme. They will not receive any additional compensation as a result of this agreement.
- 7.7. Refer to Question 12 for more information about the ASIC Compensation Model as it applies to individual CBA customers.

8 What if an investor has already obtained compensation from CBA under the CBA Resolution Scheme?

- 8.1 If a CBA Customer has already been provided with an amount of compensation under the CBA Resolution Scheme:
- (a) if that compensation is more than the ASIC Compensation Amount, then the CBA Customer will not obtain any further compensation under the settlement agreement between ASIC and CBA (and that CBA Customer gets to keep the compensation already provided to that investor); or
 - (b) if that compensation is less than the ASIC Compensation Amount, then the agreement between ASIC and CBA will provide compensation that will bring the total amount of compensation made available by CBA with respect to that CBA Customer to the ASIC Compensation Amount for that CBA Customer (provided the CBA Customer is not an Excluded Person).
- 8.2 CBA Customers who are eligible to receive additional compensation through the ASIC settlement will be notified of their additional compensation amount by CBA.
- 8.3 The participation of any group members of the Sherwood Proceedings in the compensation made available as a result of the agreement reached between ASIC and CBA may be subject to Federal Court directions or orders.

9 Will investors who borrowed from CBA to fund investments through Storm, and also from BOQ and/or Macquarie, obtain compensation under the agreement reached between ASIC and CBA?

- 9.1 The ASIC Compensation Model apportions investor loss between lenders. If a CBA Customer also borrowed from BOQ or Macquarie or another bank to fund

investments through Storm, CBA will make available compensation for that CBA Customer that is equivalent to 55% of the amount of loss which ASIC has allocated to CBA under the ASIC Compensation Model (taking into account compensation already provided by CBA as part of, or prior to or outside, CBA's Resolution Scheme).

- 9.2 ASIC is continuing the ASIC UMIS Proceeding as against BOQ and Macquarie, so it is possible that CBA Customers who also borrowed monies from BOQ and/or Macquarie to invest through Storm may obtain further compensation as a result of the ASIC UMIS Proceeding from BOQ and/or Macquarie.

10 Will investors who did not borrow from CBA to fund investments through Storm, but did borrow from BOQ and/or Macquarie, obtain compensation under the agreement reached between ASIC and CBA?

- 10.1 Investors who borrowed monies from BOQ and/or Macquarie to invest through Storm, but did not borrow from CBA, will not obtain any compensation under the agreement reached between ASIC and CBA.
- 10.2 However, ASIC is continuing the ASIC UMIS Proceeding against BOQ and Macquarie, so investors who borrowed from BOQ and/or Macquarie may obtain compensation as a result of the ASIC UMIS Proceeding in the future.

11 Who are "Excluded Persons"?

- 11.1 ASIC and CBA have agreed that certain persons will not benefit from the agreement between CBA and ASIC, because they fall within a category of persons who were closely associated with the design, implementation or promotion of the Storm investment model, or because they invested through Storm jointly with such a person.
- 11.2 For example, a person who was a director of Storm or one of Storm's subsidiaries, or was a Storm financial adviser, or was a senior Storm employee who held a role with Storm that related to the design, implementation or promotion of the Storm investment model, will be an Excluded Person.
- 11.3 Specifically, Excluded Persons include the following 4 categories of person (or entity):
- (a) A natural person who (except where that person was a Storm investor in the capacity of a trustee):
 - (i) was a director of Storm or one of Storm's subsidiaries; or
 - (ii) was a Storm financial adviser;
 - (iii) was a senior Storm employee whose role related to the design, implementation or promotion of the Storm investment model;

- (b) A company of which, at any time at which that company invested through the Storm investment model:
 - (i) at least one shareholder was a person to whom paragraph (a) applies,
 - (ii) each shareholder was a person to whom paragraphs (a) or (d) apply; and
 - (iii) no shareholder was a shareholder in their capacity as trustee of a trust, except as trustee of a trust which is an Excluded Trust;
 - (c) A trustee of an Excluded Trust, which is a trust of which, at any time at which that trust invested through the Storm investment model:
 - (i) at least one beneficiary was a person to whom paragraph (a) applies;
 - (ii) each beneficiary was a person to whom paragraphs (a) or (d) apply; and
 - (iii) no beneficiary was a beneficiary in their capacity as trustee of a trust, except as trustee of a trust which:
 - (A) at least one beneficiary was a person to whom paragraph (a) applies;
 - (B) each beneficiary was a person to whom paragraphs (a) or (d) apply; and
 - (C) no beneficiary was a beneficiary in their capacity as trustee of a trust, except as trustee of a trust which is an Excluded Trust by virtue of a further application of this definition; and
 - (d) a natural person who invested jointly with an Excluded Person referred to in paragraphs 2(a) or (c) above, to the extent that they invested in Storm jointly with that Excluded Person.
- 11.4 Nothing in the agreement reached between ASIC and CBA affects the right of an Excluded Person to bring (or continue) a Storm-related claim against CBA.
- 11.5 Additionally, CBA is not obliged under the agreement with ASIC to pay compensation to an investor who, at or after 17 October 2012, is conducting active court proceedings (other than the Sherwood proceedings) against CBA or a person associated with CBA in relation to Storm.

12 How was the settlement amount for each investor calculated? If an investor used monies from CBA and monies from BOQ and/or Macquarie to invest, how is their compensation amount determined?

- 12.1 ASIC has engaged external forensic accountants to develop a compensation model to measure the loss suffered by Storm investors. ASIC and its external forensic accountants have reviewed investor data held by Storm in its databases, as well as data obtained from banks and fund managers, to identify investors who financed investment through Storm by monies borrowed through home loans and margin loans from banks (“**the ASIC Compensation Model**”).

- 12.2 The ASIC Compensation Model calculates the loss suffered by Storm investors on an investor by investor basis (or investor group, if there is more than one investor who invested jointly in the Storm investment model), by calculating the profit and loss for each investment made by the investor or investor group, based upon the income and realisation proceeds received on that particular investment and the cost of financing or otherwise acquiring the investment.
- 12.3 The ASIC Compensation Model uses investor-specific information obtained from Storm's customer database, banks who lent funds to investors to finance investments through Storm, and from certain managers of index funds.
- 12.4 In calculating each investor's loss, the ASIC Compensation Model compiles the various costs the investor incurred in investing through Storm and deducts from those costs the benefits the investor received from their investment.
- 12.5 The Model includes the following costs incurred by investors as result of investing through Storm:
- (a) the portion of the purchase price of units in index funds purchased as advised by Storm ("**Units**") which was sourced from a loan (both home and margin loans), or from the investor's own assets (which is assumed to be any funding which is not able to demonstrated to have been funded by a margin loan or home loan, such as cash, superannuation etc) ("**Other Funding**");
 - (b) the portion of interest charged by banks on the portion of home and margin loans used to purchase Units, including capitalised or pre-paid interest;
 - (c) fees paid to banks with respect to margin loans used to fund the purchase of Units (including break costs);
 - (d) commissions paid to Storm (an assumed commission rate is applied under the Model to all investors, being 6.6% on net investments for those investments made prior to 1 July 2000, and 7.26% on net investments made from 1 July 2000);
 - (e) reinvestment of cash distributions and proceeds of redemption of Units to fund further investment through Storm; and
 - (f) in respect of investments funded by sources other than borrowing from banks (that is, Other Funding), an amount representing the loss of opportunity to make a reasonable return from other investments (5.5% p.a.).
- 12.6 Against these costs of investment incurred by the investor, the Model sets off the following benefits to the investor as a result of their investment through Storm:
- (a) the redemption price of Units (whether sold by the investor or sold or redeemed by the banks);
 - (b) cash distributions with respect to Units;
 - (c) the value of unsold or unredeemed Units as at 28 January 2009 (or the nearest available date if no value is available as at 28 January 2009);

- (d) an amount representing the opportunity benefit to investors of extracting redemptions from the Storm investment model (i.e. redemptions used for purposes other than repaying margin loan borrowing) (5.5% p.a.); and
 - (e) a franking credit benefit (estimated by reference to the declared franking level for each income tax year of certain managed investment funds). Estimated franking credits received in association with dividends are credited at 100 cents in the dollar of the estimated franking credit amount. No other tax benefit or tax expense to investors has been estimated in the Model.
- 12.7 The date from which the Model calculates loss for each investor or investor group is the date of the first investment for that investor or investor group recorded in Storm's customer database.
- 12.8 The Model ceases to calculate loss for each investor or investor group on the earliest of the following dates for each investor or investor group:
- (a) 28 January 2009; or
 - (b) the date at which all margin loans have been paid out in full and Units in index funds have been fully redeemed
- (“End Date”).**
- 12.9 The ASIC Compensation Model also allocates the loss suffered by each investor or investor group between the banks who funded that investor or investor group's investments through Storm, on an investor by investor basis based upon each investment by the investor or investor group. The allocation is based upon:
- (a) the actual home loan interest, margin loan interest and margin loan fees charged by a particular bank to that investor or investor group for loans used to invest through Storm; and
 - (b) the proportion of that investor or investor group's total Storm-related borrowing that was provided by that bank.
- 12.10 This allocated compensation amount is the amount of compensation which the ASIC Compensation Model assigns to the bank in that investor's case.
- 12.11 Where there is only one bank relating to an investor or investor group, all loss suffered by that investor or investor group as calculated by the ASIC Compensation Model is allocated to that bank.
- 12.12 Where an investor or investor group used more than one bank to fund investments through Storm, then the loss suffered by the relevant investor or investor group as calculated by the ASIC Compensation Model is allocated between the banks in accordance with the principles set out in paragraph 12.09 and 12.10 above. .

13 Does the ASIC Compensation Model calculate interest?

- 13.1 The ASIC Compensation Model makes allowance for the period that has elapsed between the time that CBA customers suffered loss and the time of receipt of

compensation. It calculates a notional interest amount for each CBA Customer based upon the ASIC Compensation Amount for that CBA Customer, as follows:

- (a) from the End Date for that CBA Customer, being the date up to which the ASIC Compensation Model calculates that CBA Customer's compensation amount to be provided by CBA (being either 28 January 2009 or the date at which all of the investor's margin loans have been repaid in full and all units in index funds have been fully redeemed, whichever is the earlier);
 - (b) to the date which is the last day of the month preceding the month in which any notification of payment or potential payment is made to the CBA Customer;
 - (c) at the rate of 4.5% per annum, compounding yearly
- (“ASIC Interest”).

- 13.2 The ASIC Interest calculated by the ASIC Compensation Model will be set-off against any CBA Moratorium Amount calculated for that CBA Customer.

14 What is a set-off of CBA Moratorium Amount?

- 14.1 In around June 2009, CBA granted a payment moratorium to some CBA Customers with respect to interest on their loan(s) (the amount of the interest the subject of the moratorium is the “CBA Moratorium Amount”). The CBA Moratorium Amount has been or, for CBA customers who participate in the settlement, will be, written off by CBA.
- 14.2 Where a CBA Customer has a CBA Moratorium Amount, the amount of any ASIC Interest calculated for that CBA Customer under the ASIC Compensation Model will be reduced (not below zero) by the amount of the CBA Moratorium Amount of the CBA Customer (“Net Interest Amount”).

15 Will interest be paid to CBA Customers?

- 15.1 ASIC and CBA have agreed that an amount equal to the combined Net Interest Amounts (of those CBA Customers who participate in the settlement and for whom the ASIC Compensation Model calculates a Net Interest Amount) will be allocated to an “Adjustment Fund”. If an adjustment is required to a CBA Customer's ASIC Compensation Amount (either because CBA and ASIC have agreed that an adjustment is required, or the expert has determined that an adjustment take place – see Question 21), then the monies allocated to the Adjustment Fund, to the extent available, will be used to meet those adjustments. Any monies remaining in the Adjustment Fund after any adjustments have taken place will be distributed among those CBA Customers for whom the ASIC Compensation Model has calculated a Net Interest Amount pro rata to their Net Interest Amount.

16 How will the settlement affect CBA Customers who are also group members of the Sherwood Proceedings?

- 16.1 If a CBA Customer who is also a group member of the Sherwood Proceedings receives a notification of an offer of payment from CBA and chooses to take part in the settlement reached between ASIC and CBA, the group member will be required to provide a release to CBA which will prevent the group member from continuing to be a part of the Sherwood Proceedings against CBA..
- 16.2 The participation of any group members of the Sherwood Proceedings in the compensation made available as a result of the agreement reached between ASIC and CBA may be subject to Federal Court directions or orders.

17 How will the settlement affect CBA Customers who have not previously provided a release to CBA and who are not group members of the Sherwood Proceedings?

- 17.1 CBA Customers who are not group members of the Sherwood Proceedings and have not previously provided a release to CBA (through the Resolution Scheme or prior to or outside of the Scheme) will, if they wish to receive compensation, be required to provide a release to CBA which will prevent the CBA Customer from continuing, or bringing, any claims or proceedings against CBA with respect to Storm.

18 Can a CBA Customer obtain compensation under the agreement between ASIC and CBA and still take part in the Sherwood Proceeding?

- 18.1 A CBA Customer who is a group member in the Sherwood Proceeding and who wishes to receive compensation will be required to provide a release to CBA which will prevent the CBA Customer from bringing or proceeding with any Storm-related claims. A CBA Customer who chooses to obtain compensation under the agreement between ASIC and CBA will therefore not be able to continue to take part in the Sherwood Proceeding.

19 When will payment be made? How do I find out if I am eligible for compensation?

- 19.1 On Wednesday 13 February 2013, CBA commenced sending notification letters making compensation available under this Settlement. CBA will also send to those investors who are not eligible for compensation a letter setting out that fact and explaining why.
- 19.2 CBA have informed ASIC that CBA intends to send notification letters to over 500 CBA customers in February 2013, and approximately 1,000 by mid-March 2013, and will continue sending the remainder of notification letters steadily. ASIC and CBA expect that all notification letters, including those to investors who are not eligible to receive any further compensation under the ASIC/CBA Settlement, will be sent within the next 2 to 3 months.

- 19.3 The notification letters will include a notice setting out the compensation, information about how ASIC reached the compensation figure (including an explanation as to the method and investor information relied upon by the ASIC compensation model to calculate the investor's compensation amount) and any documents required to be completed to accept the offer (where applicable). CBA will ensure that, where possible, notification letters are delivered to CBA investors personally.
- 19.4 ASIC can inform CBA customers who invested through Storm and who have inquired with ASIC whether or not they are eligible to receive any further compensation under the ASIC/CBA Settlement. Investors who seek this information should contact ASIC on 1300 300 630 or by email at storm.investor@asic.gov.au.
- 19.5 Please note that since ASIC took over carriage of the Business Names Register in 2012, ASIC has been receiving an unprecedented number of calls to our call centre. Callers may have to wait for an extended period to get through to the call centre. Accordingly, CBA borrowers are encouraged to email ASIC at storm.investor@asic.gov.au or write to ASIC at the below address:

Storm Investor Liaison team
 Australian Securities and Investments Commission
 GPO Box 9827
 Brisbane, Qld, 4001

- 19.6 It would assist ASIC if, in any email or letter, each investor can complete the following table and provide the required information for proof of identity purposes:

Client Code (if known)	Name and Date of Birth of each investor	Address (and previous address if changed recently)	Contact phone numbers

20 What if a CBA Customer’s margin loan is in negative equity?

- 20.1 If, after the ASIC Compensation Amount has been applied in reduction of a CBA Customer’s margin loan, and the margin loan remains in Negative Equity, CBA will write off remaining Negative Equity.
- 20.2 Negative Equity is:
- (a) if the margin loan has a debit balance and no security is held for the margin loan, the debit balance of that margin loan; or
 - (b) where security is held in respect of the margin loan, the amount by which the debit balance of the margin loan exceeds the value of the security.

21 What if a CBA Customer does not agree with the data held by ASIC which gives rise to the calculation of compensation for that Investor?

- 21.1 If a CBA Customer believes that the data used by ASIC and CBA to calculate that investor's ASIC Compensation Amount is incorrect, the investor may notify ASIC. The investor will need to give ASIC documentation which can demonstrate that the data is incorrect.
- 21.2 The only matter that may be relevant to any review is whether the data used by ASIC to calculate the ASIC Compensation Amount for a CBA Customer is correct. Relevant data is:
- (i) the details and cost of Units purchased;
 - (ii) the origin of funds used for the purchase of those Units
 - (iii) the date and amount of sale or redemption of all Units and payment of all amounts owing under margin loans (if applicable);
 - (iv) the value of unsold Units as at dates relevant to the Model;
 - (v) fees and interest charged by banks in relation to Storm-related loans
 - (vi) the amount of cash distributions in respect of Units;
 - (vii) the face value amount of compensation provided by CBA pursuant, prior to or outside the CBA Resolution Scheme; and
 - (viii) whether or not an investor accepted an offer from CBA pursuant to, outside or prior to the CBA Resolution Scheme.
- 21.3 The following are not relevant to any review, and ASIC will not consider any material or comment provided by CBA Customers in so far as it is directed to the following:
- (i) the method ASIC has used to calculate loss;
 - (ii) the method ASIC has used to allocate loss between banks;
 - (iii) the provision by CBA of compensation for CBA Customers equivalent to 55% of the amount of loss allocated to CBA under the ASIC Compensation Model;
 - (iv) the method of calculating interest (including moratorium interest); or
 - (v) the set-off of the ASIC Compensation Amount against any existing indebtedness of the customer to CBA.
- 21.4 ASIC will review the data. If ASIC believes that an error has been made in relation to any of the reviewable items leading to an error in the ASIC Compensation Amount, ASIC will refer the matter to CBA. ASIC and CBA will review the data and will seek to reach agreement regarding whether the ASIC Compensation Amount for that investor should be adjusted.
- 21.5 If ASIC and CBA are not able to agree, ASIC and CBA will refer the matter to an expert, to be appointed by the Chairman of the Institute of Chartered Accountants for determination. A determination of the expert will be binding on CBA and ASIC.
- 21.6 CBA and ASIC will be responsible for the costs of the expert.

22 Can an investor refer a matter to the expert for determination?

- 22.1 Investors, or investor groups, do not have the ability to refer the matter to the expert for determination.

23 What releases will CBA Customers have to give to obtain the compensation?

- 23.1 CBA Customers who have already accepted an offer from CBA which included the provision of a release to CBA will not be required to sign any further release.
- 23.2 For any ASIC compensation to be payable to a CBA Customer who has not already accepted an offer that included the provision of a release to CBA, that CBA Customer will be required to sign a full release in favour of the CBA Group.
- 23.3 The participation of any group members of the Sherwood Proceedings in the compensation made available as a result of the agreement reached between ASIC and CBA and may be subject to Federal Court directions or orders.

24 Do CBA Customers have to continue to meet loan repayments now that a negotiated outcome has been reached?

- 24.1 Yes. Any ASIC Compensation Amounts may be offset against existing CBA loans, so in many cases CBA Customers may have the opportunity to make lower loan repayments. In some cases, the ASIC Compensation Amount may completely repay all of an investor's CBA loans. However, if a CBA Customer has loans which remain outstanding after any compensation amounts have been applied, the CBA Customer will have to continue to meet loan repayments.

25 Does a CBA Customer have to accept an offer? What happens if the Investor does not accept an offer from CBA?

- 25.1 CBA Customers who have not previously accepted an offer of compensation from CBA under the CBA Resolution Scheme, or prior to or outside of it, may choose whether or not to accept any ASIC Compensation Amount which may be offered as a result of the agreement between ASIC and CBA. If such a CBA Customer chooses not to accept any offer of compensation that may be made, the CBA Customer will be free to make or continue any claim or court proceeding against CBA.

26 How do investors confirm their participation in the compensation arrangements? Do they need to register with ASIC?

- 26.1 Investors do not need to register with ASIC. Investors will be provided with a notification from CBA if they are to be provided with or offered compensation as a result of the agreement reached between CBA and ASIC.

27 Who should investors contact for more information about whether to accept the proposal and what options are available to them?

- 27.1 Storm investors can visit ASIC's Storm investor website (<https://storm.asic.gov.au>) if they have questions about the settlement. Storm investors who are unable to access the website can also call ASIC's Client Contact Centre on 1300 300 630 to request a printed copy of the information on the website.
- 27.2. Please note ASIC cannot give Storm investors legal advice, and Storm investors should seek their own independent legal advice about the settlement.

28 What are the tax implications for investors who receive compensation amounts as a result of the settlement?

- 28.1 The payment of this compensation may have tax consequences. ASIC has asked for the Commissioner of Taxation's views on the Australian income tax implications for investors who receive this compensation. The ATO has published on its website an information sheet [Taxation issues for Storm Financial investors benefiting from the ASIC-CBA settlement](#) which explains the Commissioner of Taxation's views.

29 I have changed address since I last had contact with the CBA. Should I contact the CBA, or will the CBA use the contact details on ASIC's database?

- 29.1 Please contact the CBA via their Storm Financial customer information line on 1800 059 000 if your address details have changed. In addition, please inform ASIC of any change of address by providing the following: Full name and date of birth of each investor, old address, new address, and contact phone numbers (if applicable). ASIC can be contacted by calling 1300 300 630 or by email at storm.investor@asic.gov.au.

30 Is it true that investors will only be compensated for the money they lost that was borrowed from CBA by way of a margin loan, and not money borrowed against their homes?

- 30.1 No, that is not true.
- 30.2 The ASIC Compensation Model calculates loss on an investor by investor, and investment by investment, basis. It does this by determining whether an investment (however funded, e.g. home loan, margin loan or Other Funding as defined in Question 12) made a profit, or a loss, after taking into account the cost of acquiring the investment (including borrowing costs described in Question 12) and the income from, and the realisation proceeds (or end value) of, that investment.
- 30.3 The ASIC Compensation Model then allocates each investor's loss between the banks which funded their investments through Storm, whether by way of home loans or margin loans, according to the method explained in Question 12.

- 30.4 If a Storm investor only borrowed from CBA to invest in Storm and that investor participates in the settlement, they will receive 55% of their Storm related losses. If a Storm investor borrowed from CBA and other banks to invest through Storm and that investor participates in the settlement, they will receive 55% of that part of their Storm related losses allocated to CBA in the way described above.
- 30.5 See question 7 (in particular paragraphs 7.1, 7.3 and 7.4) and question 12 (in particular paragraphs 12.1 and 12.9-12.12) for further information.

31 Is it true that investors who already received some compensation from CBA through the CBA Resolution Scheme cannot receive any further compensation under the ASIC settlement?

- 31.1 No, that is not true.
- 31.2 Investors who received some compensation under the CBA Resolution Scheme may, depending on the amount of that compensation, still receive further compensation under the ASIC/CBA settlement.
- 31.3 See question 8 for further information.

32 Will investors be compensated for capital losses, such as savings or superannuation?

- 32.1 Yes, the ASIC Compensation Model does compensate for losses of an investor's capital invested through Storm, including an investor's savings or superannuation.
- 32.2 The ASIC Compensation Model calculates loss on an investor by investor, and investment by investment, basis. It does this by determining whether an investment (however funded, e.g. home loan, margin loan or Other Funding as defined in Question 12, such as savings or superannuation) made a profit, or a loss, after taking into account the cost of acquiring the investment (including borrowing costs described in Question 12) and the income from, and the realisation proceeds (or end value) of, that investment.
- 32.3 The ASIC Compensation Model then allocates the loss (including capital losses) suffered by each investor between the banks who funded that investor's investments through Storm, according to the method explained in Question 12.
- 32.4 See Question 12, in particular paragraph 12.5(a) and 12.9-12.10 for further information.

33 Who should I contact if I am an executor or administrator of a deceased estate of a person who was a Storm investor, or if I invested jointly in Storm with someone who is now deceased?

- 33.1 Please contact the CBA via their Storm Financial customer information line on 1800 059 000. CBA staff will be able to assist you with the appropriate procedures to enable the estate to deal with CBA in relation to the ASIC Settlement.

34 I have read in the media and elsewhere that Storm investors suffered aggregate losses of around \$3 billion. Is that true and, if so, why did ASIC settle with CBA for only \$136 million?

- 34.1 ASIC does not consider that the \$3 billion figure is correct.
- 34.2 ASIC engaged a firm of external forensic accountants to calculate losses arising from Storm, based primarily on Storm's own records and information obtained from banks and fund managers.
- 34.3 Those external forensic accountants calculate the aggregate losses suffered by Storm investors to be approximately \$830 million. This figure encompasses all Investors and their borrowings from all the various banks, not just Investors who were customers of CBA.
- 34.4 The amount of approximately \$136 million paid, or available to be paid, by CBA under the ASIC Settlement, when added to the compensation previously provided under the CBA Scheme of approximately \$132 million, totals approximately \$268 million. This amount is 55% of the loss attributable to CBA under the ASIC Compensation Model. ASIC considers this to be a fair and reasonable compensation outcome.
- 34.5 ASIC does not know of any reliable source for the \$3 billion loss figure.
- 34.6 The following figures (drawn from information available to ASIC and its external forensic accountants) indicate that the \$3 billion figure is unlikely to be an accurate assessment of loss:
- 34.6.1 the total value of all investments made in the Storm investment model in Storm associated index funds at the height of the market (1 November 2007) was approximately \$2.524 billion;
 - 34.6.2 the total amount invested over the life of the Storm investment model (including through reinvested distributions and fee rebates) was approximately \$2.930 billion;
 - 34.6.3 the total amount returned to investors who invested in the Storm investment model (through redemption of units, distributions and the value of units still held at the end of the Storm investment model) was approximately \$2.677 billion.
- 34.7 ASIC does not consider that loss can be assessed solely by reference to the unrealized value of an investment at the top of the market (that is, the amount in paragraph 34.5.1). ASIC considers that any assessment of loss has to take account of the amounts returned to investors, among other factors. The way in which the ASIC Compensation Model assesses loss is set out in question 7 and question 12.

35 Some questions arising from an "Information Bulletin" distributed by Levitt Robinson Solicitors in October 2012.

35.1 Is the amount of total loss suffered by all investors \$3 billion?

- 35.1.1 The information bulletin from Levitt Robinson says that the Parliamentary Joint Committee (PJC) on Corporations and Financial Services in their November 2009 Report on the Inquiry into Financial Products and Services in Australia estimated that total loss suffered by all investors who borrowed money from financiers to invest through Storm was \$3 billion.
- 35.1.2 This is incorrect. The PJC report dated November 2009 did not provide any estimate of total losses suffered by all investors who borrowed money to invest through Storm. As set out under Question 34, ASIC's estimate of Storm investor losses is around \$830 million, and ASIC does not know of any reliable source for the \$3 billion loss figure.

35.2 Did ASIC and CBA use the same accountants?

- 35.2.1 The information bulletin from Levitt Robinson says that "*ASIC and CBA approached the matter by having their common accountants*" calculate losses. This is incorrect. ASIC and CBA did not have "common accountants". As set out under Question 7 and Question 12, ASIC developed the compensation model, in conjunction with external forensic accountants. Those external forensic accountants were engaged, briefed and paid for by ASIC, not CBA. In performing their work, the accountants owed obligations to ASIC, not CBA.

35.3 How is loss calculated for investments funded otherwise than by a margin loan or home loan? For these investments, is my compensation limited to only 5.5% of the money I invested?

- 35.3.1 The information bulletin from Levitt Robinson says that "*to the extent that you put in your own money – e.g. super or cash – you only get acknowledgement for 5.5% per annum from ASIC/CBA*" and that "*this 5.5% for "Other Funding", which is all that is taken into account in calculating your loss, is to be set-off against the 5.5% "Opportunity Benefit"...*"
- 35.3.2 This statement is incorrect. As set out in Question 12, paragraph 12.5(a), the calculation of loss under ASIC's Compensation Model takes account of the purchase price of units from an investor's own assets, such as cash or superannuation (called Other Funding). Further, any losses incurred in relation to the purchase of Units funded by the investor's own money e.g. superannuation or cash (Other Funding) are allocated between the banks who lent money to that investor to fund investments made through Storm. Consequently, the type of losses allocated to CBA will include losses incurred on investments funded by the investor themselves, as is explained in Question 12.

35.4 How are losses made on investments funded by my own cash or superannuation allocated to the banks?

- 35.4.1 The information bulletin from Levitt Robinson says that ASIC's calculation of loss *"is then reduced to the extent your loss can be apportioned between CBA and any other banks to which you owe money, and 'Other Funds'"*.
- 35.4.2 The preceding statement is inaccurate, and it fails to properly explain how "Other Funding" is allocated among the banks. Other Funding, as explained in Question 12, is assumed to be any funding which is not able to demonstrated to have been funded by a margin loan or home loan, such as cash and superannuation.
- 35.4.3 The Model calculates loss by determining whether an investment (however funded, e.g. home loan, margin loan or Other Funding) made a profit, or a loss, after taking into account the cost of acquiring the investment (including borrowing costs described in Question 12) and the income from, and the realisation proceeds (or end value) of, that investment. The Model then allocates that loss, including loss incurred on investments funded by Other Funding, between the banks which funded their investments through Storm, whether by way of home loans or margin loans, according to the method explained in Question 12.
- 35.4.4 The key point is that losses made on investments funded by Other Funding are allocated to the banks that lent money to that Investor.

35.5 Is the example given by Levitt Robinson a correct application of the allocation method in ASIC's Compensation Model?

- 35.5.1 The information bulletin from Levitt Robinson gives the following example to explain the calculation and allocation of losses:
- "As a simple example, with respect to monies invested in Storm, if you sourced 10% of the money from [Bank A] and sourced 40% from Other Funds (i.e. your own cash and superannuation), CBA would only contribute the other 50% towards what ASIC and CBA has, in a very limited way, defined to be your loss and then, only 55% of that 50%, which bring CBA's contributions down to 27.5% of your "loss" according to ASIC/CBA's very restricted and self-serving definition"*
- 35.5.2 This is not correct. The starting point is that losses made by an investor on investments funded by Other Funding are allocated to the banks that lent money to that investor, and that CBA will compensate CBA Customers for 55% of losses allocated to CBA.
- 35.5.3 The correct application to the given example of the method of calculating and allocating loss (as explained above in Question 7 and Question 12) is as follows:
- (a) Out of the total amount of the investor's funding for investments made through Storm, 60% of that funding was from banks, while the other 40% was from their own cash or superannuation (Other Funding).
 - (b) Out of the investor's total funding from banks:
 - i. the proportion of that funding from Bank A was $\frac{1}{6}$ th (or 16.7%); and
 - ii. the proportion of that funding from CBA was $\frac{5}{6}$ ^{ths} (or 83.3%).

- (c) The investor's losses on investments funded by loans from Bank A will be allocated to Bank A.
- (d) The investor's losses on investments funded by loans from CBA will be allocated to CBA.
- (e) The investor's losses on investments funded by the investor's own cash or superannuation (Other Funding) will be allocated between CBA and Bank A, in proportion to the amount of funding provided by each bank, based upon the proportions set out in (b) above. In other words, 1/6th (16.7%) of the losses incurred on investments funded by the investor will be allocated to Bank A, while 5/6^{ths} (83.3%) of the losses incurred on investments funded by the investor will be allocated to CBA.
- (f) So, the investor's losses allocated to CBA are:
 - i. the losses made on investments funded by CBA; plus
 - ii. 5/6^{ths} (83.3%) of losses made on investments funded by the investor's own cash or superannuation.

36 How does the settlement compare with outcomes under CBA's Resolution Scheme?

- 36.1 The information bulletin from Levitt Robinson includes the heading "*How people who have accepted settlements and have signed a Deed of Release in favour of CBA through the CBA Resolution Scheme are affected by the offer*". Under that heading, Levitt Robinson say that, from their "*knowledge of a similar offer being formulated a month ago, [they] doubt that there would be very many people who will receive a significantly better outcome from the ASIC/CBA Offer than under the CBA Resolution Scheme*".
- 36.2 This statement is inaccurate. ASIC's Compensation Model includes around 2,000 investors or investor groups who borrowed from CBA to make investments through Storm. Out of those 2,000 investors or investor groups, around 1,200 of them received payments under CBA's Resolution Scheme. Out of those 1,200 investors or investor groups, around 700 of them will receive an ASIC Compensation Amount. The remaining 500 or so investors or investor groups will not receive an ASIC Compensation amount, because:
- (a) they have already received, under CBA's Resolution Scheme or another previous settlement, compensation equal to or higher than 55% of their losses allocated to CBA;
 - (b) in aggregate, and over the life of their Storm investments funded by CBA, they made profits; or
 - (c) in a small number of cases, they are Excluded Persons (as described in Question 11).
- 36.3. Out of the 2,000 investors or investor groups in the Model who borrowed from CBA to make investments through Storm:
- (a) around 1,400 can receive an ASIC Compensation Amount; and
 - (b) around 600 will not receive an ASIC Compensation Amount, because of the reasons set out in paragraph 2(a)-(c) above.

37. Correction of some inaccuracies in an “Information Bulletin” distributed by Levitt Robinson Solicitors in February 2013

37.1 Levitt Robinson Solicitors distributed an information bulletin dated 28 February 2013 titled "Information Bulletin No. 111".

37.2 The bulletin says that:

“Flaws have been identified to us in the ASIC/CBA offer calculations. In the calculation of losses on the cost of units, based on the date of purchase, reliance has been placed squarely by ASIC and CBA on Storm's records, now with the liquidator. They have both said so.

Storm had insisted to its clients that distributions paid by the various fund managers, needed to be reinvested into "the plan" and used for the purchase of additional units. By any measure – whether technical taxation or accounting – these reinvested distributions were actually new purchases of additional units. This was never recorded by Storm because of logistical difficulty, even though additional units were purchased using each client's own individual cost base.

Therefore, losses on those purchases should be taken into account in determining compensation. By relying upon Storm's records, this will not occur and is sadly lacking from the ASIC/CBA deal”.

37.3 The bulletin is inaccurate:

37.3.1 The ASIC Compensation Model does take into account the purchase of units using reinvested distributions. This is outlined in Question 12 at paragraph 12.5(e), as well as in the worked [Example of the ASIC Compensation Model](#).

37.3.2 Storm recorded the purchase of units, including purchases using funds from reinvested distributions.

37.3.3 ASIC does not rely solely on Storm's records. As outlined in Question 7 and Question 12, the ASIC Compensation Model uses information obtained from Storm's customer database, as well as banks who lent funds to investors to finance investments through Storm, and from certain managers of index funds.