ASIC

Australian Securities & Investments Commission

Responding to the global financial crisis: the ASIC story

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Trans-Tasman Business Circle

30 November 2010

Thank you for having me here today.

The Trans-Tasman Business Circle does an excellent job in bringing together business and government leaders from Australia and New Zealand to collaborate and share ideas across the Tasman. I am honoured to have been asked to speak to you today.

May I first convey my and ASIC’s sincere condolences to the families of the Pike River miners who lost their lives and to the people of New Zealand at this very sad time.

With the global financial crisis (GFC) largely behind us, it is timely to provide an assessment of ASIC’s response. This is the topic of my speech today.

New Zealand and Australian regulators

Before I engage with my topic, however, let me emphasise the important point of the strong relationship between Australia’s ASIC and the New Zealand Securities Commission (NZSC). The strength of this relationship extends across all levels. In fact, the NZSC’s chairman, Jane Diplock, came from ASIC. As has the newly appointed CEO, Sean Hughes, of the soon-to-be-established New Zealand Financial Markets Authority—the organisation that will replace the Securities Commission and various other regulatory bodies. The appointment of senior ASIC people to these types of roles in New Zealand is a positive endorsement of the calibre of ASIC’s senior leadership.

The benefits of Australia–New Zealand cooperation at the regulatory level, which is very much part of the broader agenda of a Single Economic Market across the Tasman, translates into direct benefits to business and consumers in both countries.

Let me illustrate those benefits with two examples:

- The Trans-Tasman Mutual Recognition for Securities Offerings has been in place since June 2008 and is designed to streamline capital raisings across the Tasman. Basically, this involves a mutual recognition of each other’s securities offer documents and avoids ‘double handling’ by regulators in each jurisdiction.

  Our research indicates that these arrangements have reduced additional legal and documentation costs for some issuers by between 55–95%. The time to go to market has also been shortened, by up to 25%. To date, there have been 559 Australian offers and 23 New Zealand offers made under the mutual recognition arrangement.

- ASIC, Treasury and our New Zealand counterparts have also been working to give effect to a Prime Ministerial commitment to recognise financial advisers across the Tasman. From 1 December 2010, advisers who are individuals registered or authorised in New Zealand will be entitled to apply for an Australian financial services (AFS) licence to practice in Australia without the need to undergo further competence testing or examination. The same arrangements will be available to Australian individual advisers seeking to practice in New Zealand. Again, its benefit will be in compliance cost savings for financial advisers seeking to provide services in both jurisdictions.

This experience in mutual recognition work with New Zealand is part of a broader commitment by ASIC to remove or reduce regulatory barriers to the flow of funds into and out of our capital markets. Another example is the Australia–Hong Kong mutual recognition of cross border offering of collective investment schemes. This agreement was signed in July 2008 and seeks to reduce regulatory duplication by allowing most funds registered in Australia for offer to retail investors in Hong Kong (and vice versa). Following our work with our Chinese counterparts, Australia has also been recognised as an approved destination under the Chinese Qualified Domestic Institutional Investor (QDII) Scheme administered by the China Banking Regulatory Commission and facilitated by the China Securities Regulatory Commission. This agreement makes Australia a more attractive destination for China's capital investment.

Another important example of our work on mutual recognition, still being negotiated, is the mutual recognition arrangement for market operators and securities dealers between the US SEC and ASIC (and Treasury).

The work we do with New Zealand provides important benefits to investors and issuers and, as a by product, promotes the concept of mutual recognition, which we are seeking to extend more broadly in the future.

ASIC's response to the GFC

Let me now move to ASIC's response to the GFC. Here I am going to develop five points, with the fifth point very much looking at lessons learned from the way we handled the GFC.

First point: The impact of the GFC on securities and investments markets in Australia (markets where ASIC has prime responsibility) was less than in comparable markets, such as the United States and the United Kingdom.

This is a widely held view but one worth restating. The point is also clearly valid for our banking and financial markets, which are the responsibility of

Australian Prudential Regulation Authority (APRA) and the Reserve Bank of Australia (RBA). My focus, as Chairman of ASIC, is on the securities and investments markets.

Let me illustrate the soundness of the point I have just made by looking at the impact of the GFC in Australia on institutional investors and then retail investors.

First, at the institutional level:

- Australian financial institutions did not record significant losses from holdings in asset-backed securities. The quality of the great majority of Australian assets underlying asset-backed securities remained high throughout the crisis. By late 2008, total residential mortgage-backed security (RMBS) arrears in Australia averaged around 1.6% of the amounts outstanding. This is small in absolute terms and is only moderately higher than the pre-GFC average of 1.1% in 2006 and 2007.
- Australian institutions were not exposed to any significant degree to the more exotic securitisation products, such as collateralised debt obligations (CDOs) and CDO squareds. At the height of the GFC, there was some A$17 billion invested in CDOs in Australia, with minimal losses. To put this in perspective, CDO-related losses incurred by US insurer AIG alone amounted to US$35 billion by late 2008.

Secondly, at the retail level, we saw that although household assets (defined as both financial assets, such as shares and deposits, and physical assets) declined, the declines were not as significant as in overseas markets and the rebound was faster. Net household assets in Australia fell by just 3% per annum during financial year 2007–08 and 2008–09, before expanding by 8% in the following year (2009–10). This is a much stronger result than say, in the United States, where the household balance sheet contracted by 10% in financial year 2007–08 and by 17% in 2008–09, before a smaller 7% recovery in 2009–10.

While the impact was less in Australia, there was nevertheless an impact. That impact was clearly felt at an individual investor level. To illustrate that:

- Major corporate collapses or near collapses (e.g. ABC Learning, Allco and Babcock and Brown) during the GFC totalled around A$66 billion (between 2007 and mid-2009), representing a slightly greater proportion of GDP than the A$20 billion lost during the turmoil of the late 1980s.
- Collapses that impacted particularly on retail investors were significant. For example, in Opes Prime we saw stock lending being used at the retail level and, in Storm Financial, margin lending was used to excessively leverage investments.
- We saw retail investors impacted by frozen funds. At least around A$22 billion were frozen.

- We saw some, although limited, exposure of retail investors to CDOs through Basis Capital and Absolute Capital.
- We also saw difficulties with forestry and agricultural managed investment schemes. Great Southern and Timbercorp, the two highest profile cases, had A$3 billion in funds under management, though the full extent of losses will not be known for some time.

It was encouraging to see that strategies adopted by many retail investors assisted them in minimising a harsher impact:

- asset diversification: a factor that served us well is that Australian investors tended not have all their ‘eggs in one basket’. There were, however, many cases where this was not so and in those cases the losses have had a devastating impact.
- a degree of knowledge and understanding of risk: we did not see a proliferation in numbers of stock lending schemes and margin lending schemes that had been designed for the institutional sector brought into the retail sector. Notable exceptions were in cases such as Opes Prime and Storm Financial.

Overall, however, the point that Australia’s securities and investments markets have fared better during the GFC compared to other countries—such as the United States, the United Kingdom and, more broadly, Europe—is sound. (In saying that, I am not in any way underestimating the impact on those investors, particularly retail investors, who were affected.)

Second point: There are many reasons why the GFC had less impact on the securities and investments markets in Australia, but prominent among them is the architecture of the financial regulatory regime and oversight role played in those markets by ASIC.

First, the regulatory architecture: since the GFC, it has not been necessary for Australia to implement the kind of regulatory changes that have been necessary in other countries. This is because of the more robust regulatory system we have in place.

The reason we have it in place does not necessarily lie in greater foresight of the GFC. Rather, it lies in the fact that Australia went through a series of mini-crises since floating the currency in 1983 (as did Canada, which for similar reasons had a sound financial and oversight system going into the GFC). The difficulties of the state banks, the insurance collapse of HIH and the collapse of Estate Mortgage brought with them the Wallis inquiry and changes that strengthened Australia’s regulatory architecture (e.g. the twin peaks model).

These regulatory changes provided important safeguards in minimising the excesses that we witnessed in other places during the GFC. Let me explain:

- From 2002, we had introduced a strong regulatory regime and licensing system for financial sales, advice and dealings in relation to financial products under the *Financial Services Reform Act 2001*. This system assisted in maintaining market integrity.
- Our Product Disclosure Statement (PDS) disclosure regime helped highlight the downside of riskier product offerings to retail investors. The marketing arms of global investment banks (many of which had extensive operations in Australia) would not have ordinarily missed the opportunity to bring these products into Australia. Part of the reason for less attraction to marketing these products may well have been our disclosure laws (e.g. the PDS).
- The regulatory framework around managed investment schemes discouraged Ponzi-type schemes, like Madoff, and made it difficult for them to go undetected, as all schemes offered to retail investors had to be registered and faced additional compliance and risk management obligations.
- The regulatory oversight for gatekeepers such as auditors, financial advisers and other intermediaries provided important protections.

As part of these reforms, ASIC had its oversight powers strengthened in the period prior to the GFC. Under the Chairmanship of Jeff Lucy, ASIC moved more heavily into surveillance and compliance activities.

Its surveillance and shadow shopping initiatives and the FIDO website were all important contributors in better understanding risk and bringing about greater transparency and disclosure of risk. Important examples in this regard were improved auditor oversight arrangements, closer review of financial statements and the formation of a compliance and surveillance directorate.

While there were other factors to explain why Australia fared better in the GFC, like a strong economy, a strong banking sector, and a positive corporate ethical culture, the strength of the financial regulatory architecture and ASIC’s role in oversight were important contributors to why Australia fared better and should not be underestimated.

Third point: ASIC responded decisively and made the right calls or judgements in its response to the securities and investments issues thrown up by the GFC in Australia.

Judgements made by a regulator need to be timely and considered, and achieve the right balance in maintaining confidence in the markets and responding to potential issues.

ASIC was able to make sound judgements because we went into the GFC well prepared. We were well prepared not only due to the expansion of our role, which I have just mentioned, but also because in late 2007–early 2008, ASIC underwent a major strategic review. The purpose of the review was to better position ASIC in the event of a downturn—although we did not know the timing or severity of this downturn. By way of example, to better prepare ASIC, we:

- increased senior leadership, recruited from the market and expanded at Commission level to introduce additional skills;
- increased our resources by establishing stakeholder teams responsible for particular sectors (e.g. investment managers, investment banks, brokers and so on);
- created an Office of the Chief Economist and developed the research capability to assess industry and market impacts (the importance of this research capability was made clearly apparent when the GFC hit); and
- pushed for better disclosure in markets—for example, in response to the issues of disclosure in the debenture market where, with a three-point plan, we analysed the problems in that sector and moved to improve the sector with an ‘if not, why not’ approach to disclosure.

These changes put ASIC in a better position to respond to the GFC and make sound calls or judgements. Let me use some specific examples to illustrate this point:

- Short selling: ASIC’s actions on short selling began well before the height of the financial crisis in late 2008. Concerned about tightening credit markets and an increasing volume of margin calls on directors’ shares, we canvassed the costs and benefits of a short-selling ban in the first half of 2008. At the time, the benefits of short selling—through price discovery and market efficiency—outweighed the risks of system-wide instability. But, together with ASX, we examined ways to improve the disclosure regime around short selling.

  The markets, however, with the Lehman collapse in September 2008 and the freezing of credit, took a dangerous turn. Short selling, particularly of financial stocks, raised, in our view and in the view of regulators in most markets, a potential systemic risk.

  On 22 September 2008, we banned naked short selling and temporarily banned covered short selling. Covered short selling for non-financial stocks re-opened in November 2008, by which time the interim daily short sales disclosure regime we had developed with ASX had become operational.

  The ban on covered short selling for financial stocks was lifted in May 2009, once we were confident in the reduced threat to financial stability.

- Rumourtrage: An issue that has been closely linked with short selling is the spread of rumours. And, during the market downturn, we saw numerous instances where the two worked together to put significant pressure on listed companies.

  We launched Project Mint in March 2008, amid concerns that there were an increasing number of instances of false rumours being associated with short selling. In law enforcement terms, Project Mint was launched as a ‘disruptive’ strategy. Essentially, this involves moving in quickly and reviewing materials and messages sent to the market. It served to disrupt possible activity of false rumours and reassured the market that the regulator was there—an important step in maintaining confidence during the crisis.

- Frozen funds: In the unlisted markets, we saw an increase in redemptions and less new money as a consequence of the GFC. This created a liquidity squeeze. Under our system, in such situations the regulatory framework allows the ‘freezing’ of redemptions, which trustees can activate—and many did. As I mentioned earlier, we know at least around A$22 billion were frozen, though the figure is likely to be higher.

  ASIC introduced measures at that time to allow investors to withdraw their investments from a frozen fund on grounds of financial hardship. In August 2009, we expanded the existing relief, including raising the cap on hardship withdrawals and allowing investors to make up to four hardship withdrawals a year, instead of a once-only withdrawal.

  In effect, this has been a balancing exercise between the interests of those facing hardship and the existing framework under the Corporations Act, which required fund operators to treat all members equally.

These are some examples of ASIC acting decisively and with sound judgement to respond to the GFC.

Another area where ASIC has shown strong leadership and sound judgement is in the area of international regulatory cooperation. Clearly, the GFC led to a reassessment of regulatory settings and, in some cases, the need for increased regulation, particularly in the so-called unregulated sector. ASIC’s judgement was to participate in international discussions and seek to influence outcomes that balance efficiency of the markets with investor protection. ASIC has played an important role in IOSCO and in the Joint Forum, and has been highly praised internationally for its work.

A further example of ASIC’s good judgement relates to capital raisings. In the 2008–09 financial year, total secondary equity raisings were almost A$90 billion, compared with A$60 billion in the pre-GFC year of 2006–07.

These raisings were important in recapitalising our corporations. Our capital raisings were among the highest in the world. We monitored retail investor impact but, on balance, felt that it was acceptable and the impact did not outweigh the benefits of these raisings.

ASIC also provided class order relief to help promote the issue of vanilla corporate bonds to retail investors. The ASIC initiatives simplified the disclosure requirements for certain offers of listed vanilla bonds by allowing such offers to be made with reduced disclosure under a short-form prospectus. The measures also allowed vanilla bonds to be offered under a two-part prospectus. Around A$150 million has been raised under this relief. ASIC has also provided class order relief to facilitate offers of convertible notes to wholesale investors.

Furthermore, we have streamlined the equity raising process, including making it easier to include a retail component in an equity offer by expanding situations where a full prospectus or PDS is not required.

Fourth point: In a crisis such as the GFC, financial and other pressures on participants in these markets increases and, notwithstanding overall good corporate ethics in Australia, can lead to wrongdoing. ASIC has continued to act decisively to investigate and punish wrongdoing.

Since 1 January 2009, in the aftermath of the GFC, ASIC commenced 323 new investigations. Many of these relate to events or collapses or matters that arose as a result of the GFC.

Specific matters that arose in that period and that are now before the courts on GFC-related issues are:

- Centro: ASIC launched civil penalty proceedings in the Federal Court on 19 October 2009 against current and former directors and a former chief financial officer (CFO) of various entities within the Centro Properties Group and Centro Retail Group. Central to ASIC’s action is the responsibility of directors and CFOs to take reasonable steps to ensure the information contained in financial reports and disclosed to the market is accurate, complies with relevant accounting standards and is not misleading.
- Octaviar: ASIC commenced civil penalty proceedings in the Supreme Court of Queensland on 29 October 2009 against five former officers of various entities within the Octaviar (formerly MFS Limited) group of companies, in relation to the use of A$147.5 million in funds of the Premium Income Fund. In taking this action, ASIC is addressing the core obligations of a responsible entity (RE) and its directors and officers to operate the fund with care and diligence, and in the best interests of the fund’s members.

- Chartwell: ASIC conducted an extensive investigation into the affairs of Chartwell Enterprises Pty Ltd, which collapsed in April 2008, owing investors approximately A$70 million. The company had been operating as a Ponzi scheme. As a result of our investigation, the former company secretary, Mr Ian Rau, was sentenced to two years and seven months imprisonment on eight charges, including carrying on a financial services business without a financial licence, dishonest conduct and obtaining property by deception. Mr Rau's co-accused, Chartwell's director Mr Graeme Hoy, will stand trial in the Victorian Supreme Court on 82 charges.
- Opes Prime: Earlier this year, ASIC brought criminal charges against the directors of Opes Prime Stockbroking, which failed in March 2008. The charges relate to breaching their duties as directors.
- Storm Financial: Last Friday we announced civil penalty proceedings against the Cassimatises as directors of Storm Financial Limited, which collapsed in January 2009. ASIC's investigations into other possible contraventions and into bannings continue.

In addition, leading up to the GFC, ASIC had significantly increased its resources in improving market integrity and punishing insider trading and market manipulation. The results have come through during the GFC and have added to general deterrence.

Between 1 January 2009 and 31 October 2010, ASIC has had 28 successful market integrity related outcomes—included in this number are six significant outcomes for insider trading, six significant outcomes for market manipulation, two significant continuous disclosure outcomes and four for other market integrity offences. Ten people have also been banned.

Another important issue arising out of the GFC has been ASIC's actions to recover compensation for retail investors. As I mentioned earlier, some individual retail investors carried significant losses. Examples of actions to recover money include:

- Opes Prime: ASIC took action to investigate issues arising from the collapse of Opes Prime and worked with the liquidator to recover, through mediation, some A$253 million in compensation for Opes Prime creditors.
- Storm Financial: ASIC last Friday announced that we will commence proceedings against the banks to assist retail investors to recover compensation.

Ordinarily, recovery of compensation is left to private litigation and to class actions. In limited situations, such as those outlined, ASIC has intervened and sought to take action. Generally, ASIC needs to be satisfied that it is in the public interest to do so.

Fifth point: Although ASIC's response to the GFC has been sound, and acknowledged to be so, there have also been important lessons for ASIC. ASIC is using these lessons to respond to issues in the securities and investments markets as the markets move into their next cycle.

Let me cover three lessons that we are applying in our forward program. The *first* relates to policy settings. We refer to these as 'big P' policy, which is for Government, and 'small p' policy, which is for ASIC, the regulator.

When developing policy for the regulation of financial markets, we, like many other countries, have been influenced by the group of theories known as the 'efficient markets hypothesis'. Essentially, to let the markets do the hard work with minimum regulatory interference.

The GFC is causing a reassessment of whether these theories have achieved the right balance between efficiency, investor protection and financial stability. In some countries we are now seeing a move to greater regulation (particularly of the so-called unregulated markets pre-GFC), as can be seen in the United States and Europe.

As our regulatory architecture was better placed for the GFC, the changes needed here have been less significant. Nevertheless, the Government has (in 'big P' policy terms) moved to:

- improve short selling disclosure;
- improve the regulation of credit rating agencies; and
- introduce new margin lending regulation when used for retail investors.

In addition, the Government has announced changes in the financial advice area. These changes have emerged out of the events that have unfolded.

ASIC, in the 'small p' policy space, has reassessed a number of policies to better position us as the markets move to the next cycle.

Examples are:

- Our work on contracts for difference (CFDs): In July, we released the results of a 'health check' study on the CFD sector. Among other things, we found that retail investors were often confused about how CFDs work and about the nature of the risks attached. In response, we have produced a consultation paper on over-the-counter CFDs,[1] aimed at setting disclosure benchmarks around client suitability, counterparty risk, stewardship of client monies and margin call practices. We've also

[1] Consultation Paper 146 *Over-the-counter contracts for difference: Improving disclosure for retail investors* (CP 146). See ASIC Media Release (10-239MR) *ASIC takes action to help investors understand OTC CFDs* (17 November 2010). <http://www.asic.gov.au/asic/asic.nsf/byheadline/10-239MR+ASIC+takes+action+to+help+investors+understand+OTC+CFDs?openDocument>

released an investor guide, which provides clear and independent advice to retail investors on the benefits and risks of CFDs.

- Our work on infrastructure: Following a review of the infrastructure sector, we published, in April 2010, a consultation paper on improving disclosure made by infrastructure companies to retail investors. We proposed a benchmark disclosure model, focusing on key issues such as corporation structure and management, funding, and modelling assumptions. A regulatory guide and investor guide can be expected shortly.
- Our work on agribusiness schemes: During 2009, we reviewed PDSs from the seven largest agribusiness REs. We negotiated supplementary PDSs for 10 schemes and web updates for two. This year, we undertook a risk-based review of 10 significant agribusiness REs to determine, among other things, compliance with licence conditions, adequacy of compliance arrangements and continuous disclosure. Where improvements were considered necessary, the REs have been requested to address those concerns. ASIC has reviewed each PDS issued by an agribusiness RE this calendar year and raised concerns where appropriate, resulting in the issue of three supplementary PDSs.

We continue to monitor the position of the entities in the review and the conduct of the voluntary administrators (in circumstances where the REs are under administration).

Earlier this year, we also consulted on improving retail disclosure by REs of agribusiness schemes, by setting disclosure benchmarks around things like fee models and the financial position of the REs. We are currently working towards releasing the relevant policies.

The objective in each of these cases has been to strengthen the regulatory policy framework where necessary. In short, to make use of the GFC experience to better improve such things as disclosure for retail investors.

The *second lesson* relates to the role of ASIC itself. ASIC is an oversight body. We are not a guarantor of last resort and we are not a regulator that has been set up to prevent losses or collapses. Our regulatory system (influenced, as I said earlier, by a group of theories around the efficient markets hypothesis) is one where:

- we have self-executing laws—the policy behind those laws is to let the market do the work with minimum interference from the regulator;
- prime responsibility for strategy, risk management and compliance with the law is with boards and executives; and
- gatekeepers, such as auditors and credit rating agencies, have responsibilities.

Ultimate risk, however, for success or failure of the investment is a matter for the market. Shareholders and underwriters and other investors carry that risk and they manage the risk through such strategies as asset diversification and assessing risk–reward premiums.

This system and approach was well understood by institutional investors, but has been less so by retail investors. As a result, some retail investors have been disappointed at ASIC's performance.

At the heart of this disappointment is an expectation gap in 'risk taking'. In our regulatory framework, the investor carries risk. There are no 'safe' investments. Where this is well understood (e.g. at the institutional and sophisticated level), ASIC's role is seen for what it is. An oversight body that comes to the scene of the accident, cleans it up, puts wrongdoers in jail and seeks compensation for the injured. We put into practice lessons learned to minimise accidents in the future.

At the retail level, however, the expectation can be much greater. It can extend to taking action to prevent failures. For example, there is an expectation that ASIC should have prevented some of the corporate collapses that occurred during the GFC and, once the loss occurred, ASIC should have more quickly recovered money and punished wrongdoing.

The challenge for ASIC is—firstly—to make clear (particularly to retail investors) just what we can and cannot do. For example, you get with the benefit of hindsight calls that ASIC was aware that Storm Financial was in the market and we should have closed it down. This disregards just what powers ASIC has. At the height of the stock market, investors with margin loans were in the 'black'. How would they have reacted to ASIC (if we had the power, which we do not) seeking to close them out?

It also disregards the complexity of the schemes that may go wrong. We saw in the United States the proliferation of complex CDOs and CDO squareds, which were put together with lawyers, accountants, valuers and others. Simply being aware of a product in the market does not mean that you can assess its legality. These products are developed over years by the investment bankers, lawyers and accountants with huge investment.

Our challenge is to be clear that ASIC is not a 'guarantor' of last resort and about just what investors can expect. The car accident analogy is one of the ways we will seek to do that.

The second thing we are doing, and will continue to do, is to assist retail investors to make more informed decisions. In other words, so that they better understand the fundamentals of our system—that they carry risk. Here we have developed and will continue to develop a number of initiatives:

- our investor education program (e.g. *Investing between the flags*[2]);
- our FIDO website—which has had some 2 million hits in the past 12 months and contains practical investing examples and questions to ask; and
- our regulatory guides, guidance notes and financial consumer and retail investor warnings.

Finally, we are not ignoring the policy challenge ('big P' policy issue) of whether retail investors need additional protection. For example, the questions of:

- whether disclosure is adequate or whether there should be suitability tests (e.g. responsible lending);
- whether some products should be prohibited; and
- whether ASIC's role should be expanded and we should be resourced to do more 'preventative' work.

These are matters for Government and what ASIC can do, as we are doing, is promote debate.

The *third lesson* or challenge for ASIC is to improve the speed for taking proceedings to punish wrongdoing and, in doing so, deter misbehaviour. Extended investigations impact on business reputations and when charges are laid, if too much time has elapsed, the deterrence impact may not be significant.

Against speed, however, we need to balance individual rights and proper process, and bring cases to court when we meet requisite legal and public interest standards.

ASIC is improving in this regard:

- The civil penalty proceedings in relation to Centro were launched within 13 months of the commencement of our investigation.
- In the Chartwell case, we provided our brief to the Commonwealth Director of Public Prosecutions (CDPP) within nine months of commencing our investigation, with charges brought within six months after that.

We have been examining ways to increase speed. We do, however, work within a litigation system that is ultimately driven by the courts and, in criminal cases, we have the important processes administered by the CDPP.

[2] See ASIC Media Release (09-244MR) *Investing between the flags* (8 December 2009) <http://www.asic.gov.au/asic/asic.nsf/byheadline/09-244MR+Investing+between+the+flags?openDocument>

As part of the third lesson, we are also examining and making use of civil penalty proceedings and mediation and settlement. Certainly, for compensation cases—as we have said for Opes Prime and Storm—a commercial resolution is preferable. Now, when I speak of a commercial resolution, it can be misunderstood by lawyers as indicating weakness and that can lead to greater resistance. We will be encouraging those affected to put their legal advice aside and focus on what has happened. What is driving a commercial resolution in Storm Financial, for example, is the age and financial means of those affected. We and those involved owe it to them to strive for an early resolution.

Conclusion

Before concluding, let me say that in addition to responding to the GFC issues, ASIC has also undertaken our business-as-usual work. And that has not been inconsiderable. Our usual business has increased further in the past year with the introduction of the new credit regime and taking over surveillance of ASX. Both considerable projects and both carried out with a seamless transition.

Coming back to the theme of 'Responding to the GFC', you can see from the first four of my five points that ASIC has responded well, as would be expected of a respected regulator. The fifth point I made emphasises that we, as an organisation, are seeking to learn from the GFC and implement those lessons as we move into the next phase of the cycle. I mentioned three such lessons.

Thank you for the opportunity to put 'the ASIC story' forth. I recognise that some of you may see it as ASIC 'talking up our own book'. My simple defence is that it is important for the business and consumer community to have our perspective, so that a better assessment can be made of the opinions others express.

Thank you.