

February 24, 2010

Storm victims to receive compensation under CBA Resolution Scheme

National law firm Slater & Gordon and the Commonwealth Bank of Australia have today (Tuesday 23 February) finalised a historic agreement which will deliver compensation including cash refunds and home loan cuts to people caught up in the Storm Financial collapse.

The agreement (called the Proposal Framework) establishes the compensation principles to be applied to the claims of more than 2,000 Slater & Gordon clients who borrowed from the CBA to invest in equity investments on the advice of the Queensland based financial advisory company, Storm Financial and are part of the Storm Resolution Scheme established by the Bank in July 2009.

Depending on individual circumstances Slater & Gordon clients could receive:

- cash compensation; and/or
- concessions including reduced loan balances and interest rates, interest refunds and in some cases permanent tenancy arrangements.

The CBA is expected to start making compensation offers within days and all offers are expected to have been made by the end of May.

Mr Damian Scattini, Slater & Gordon Group Practice Group Leader, Brisbane said the agreed compensation principles will deliver a quick, fair, transparent and commercially appropriate resolution of the claims against the Bank.

“This will take into account the individual circumstances of all clients, this is not a one size fits all approach.

“Agreeing compensation principles is a critical final step in delivering faster and fairer compensation for Storm victims. It builds on the innovative Resolution Scheme, established by the Bank following negotiations with Slater & Gordon last year.

“We expect that significant, in some cases life changing, outcomes will be delivered to our clients by the Bank following this agreement”, Mr Scattini said.

The agreed compensation principles have the following key elements:

- Investment home loans will be individually assessed retrospectively at the date the loan was provided against agreed prudent lending principles. If it is determined that the Bank has lent imprudently, any difference between this assessment and the original loan offer, including interest, will be written off the loan balance or paid in cash where there is no remaining loan.

Additionally, where a borrower retains a CBA investment home loan, the borrower’s current circumstances will be evaluated and, where and as appropriate, financial hardship assistance including debt reduction, permanent tenancies and interest rate relief will be offered;

- Where margin loans entered margin call in the second-half of 2008 borrowers will generally receive 90 per cent of the equity they held in their portfolios on the day of their notional first margin call plus interest.
- Additionally, any 'negative equity' that the borrower owes the Bank on their margin loan will be written off and any cash contribution made by the borrower to the negative equity balance after 8 December 2008 will be refunded, with interest;
- Borrowers can reject an offer from the Bank prepared using the Proposal Framework and ask for an evaluation and determination from the Independent Panel which continues to oversee the CBA Resolution Scheme. A borrower may also withdraw from the Scheme at any time with all legal rights and entitlements intact. In addition, if ASIC secures a better outcome following the conclusion of its investigations, then the difference will also be available to borrowers even if they have already accepted an offer from the Bank.
- Interest payments on Investment Home Loans suspended by the Bank since 17 June 2009 will be written off for each borrower who receives a proposal, even if that proposal results in a "status quo" offer.

The compensation principles were negotiated between the Bank and Slater & Gordon following an extensive 'test case' process which involved six typical claims. During the test cases all relevant legal issues were exhaustively tested before an eminent independent panel of lawyers.

Mr Scattini said Slater & Gordon believes the application of the compensation principles will deliver outcomes for clients entirely consistent with what they could hope for if they took the Bank to court.

"In the case of margin loans, for instance, borrowers will typically be put in the position they would have been in had their margin loans been managed very effectively in the second half of 2008. They will receive this compensation despite the realities of a rapidly falling market.

"It remains the case, however, that we expect some clients will not be offered compensation. This will reflect their individual circumstance and the strength of their legal claims against the Bank.

"Our clients wanted a process that focused on their individual circumstances, the strength of their legal claims and allowed them to put the Storm saga behind them as quickly as possible."

Mr Scattini said the Bank had acted conscientiously, quickly and in good faith to try and find a solution for Storm clients that remedies where the Bank has done wrong, as CBA CEO Mr Ralph Norris said it would.

"We look forward to other Banks taking a similar approach," Mr Scattini said.

The agreed compensation principles have been examined by the Independent Panel of former Federal Court Justice Roger Gyles AO QC and Robert Gotterson QC as neutral evaluators and retired High Court Justice Ian Callinan AC as chairman.

The Independent Panel has indicated that the principles have delivered fair outcomes in each of the six 'test case' claims and are also likely to produce satisfactory and fair results in other similar claims.

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HOW IT WORK FACTS SHEET

HOW THE AGREED COMPENSATION PRINCIPLES WILL WORK FOR INVESTMENT HOME LOANS

Borrowers who took out an investment home will have the process that the Bank went through at the time of the loan re-examined.

If it is determined that, at the time, the Bank either over valued their home or repayment capacity then the original loan will be readjusted so it reflects what the borrowers should have been lent, applying prudent lending criteria.

This could effectively see someone's debt to the Bank reduced by the difference in what they were lent and what they should have been lent.

Example

A borrower lent \$400,000 by the Bank on the basis that their house was wrongly valued at \$500,000 when the true value of the house (at the time of the loan) was \$450,000 would have their loan reduced to \$360,000. In addition the borrower would recover any interest paid on the \$40,000 that was imprudently lent.

If the borrower has refinanced the loan with another lender or paid the loan back, the borrower will recover \$40,000 plus interest paid in cash compensation.

HOW THE AGREED COMPENSATION PRINCIPLES WILL WORK FOR MARGIN LOANS

Where margin loans entered margin call in the second-half of 2008 borrowers will generally receive 90 percent of the equity they held in their portfolios on the day of their first margin call after 30 June plus interest.

Example

A customer with a margin loan of \$450,000 enters margin call when their portfolio falls to \$500,000, leaving them with equity of \$50,000. If the customer first entered margin call (after 30 June 2008) on 1 October 2008, the customer recovers 90% of their equity (\$45,000) plus interest on that amount from 1 October 2008 to the date on which a proposal is made to them by the Bank.

Additionally, if the customer has 'negative equity' with the Bank (for instance, their portfolio fell to \$425,000 before their margin loan was actually closed out) then that negative equity (\$25,000) is also written off.

If the customer made a cash contribution to their negative equity balance after 8 December 2008, that cash contribution will be refunded, with interest.

If alternatively the customer closed out their margin loan when their portfolio was worth \$460,000, the customer keeps the \$10,000 recovered at closing out as well as receiving \$45,000 compensation plus interest.

HOW HARDSHIP PROVISIONS WILL BE APPLIED

If after the agreed compensation principles are applied to a borrower's claim it is determined that the borrower retains a home loan with the Bank that the borrower will not be able to service without real financial hardship, the Bank offers hardship assistance.

The nature of the hardship assistance offered will be determined on a case by case basis and assessed having regard for factors including the age of the borrower, their debt, their income and living expenses and their other financial resources.

Hardship assistance could include reducing the debt owed to the Bank, cutting interest rates or fees, or putting a moratorium on repayments for certain periods of time.

STORM CBA CHRONOLOGY – FACTS SHEET

From July, 2008	Some Storm clients' margin loans begin to enter margin call. Colonial Geared Investments becomes concerned that Storm may not be acting quickly enough to resolve margin calls.
October 10, 2008	ASX falls by 8.3% to 3,960 points pushing many borrowers into margin call and in some cases towards negative equity.
November 13, 2008	ASX falls by 5.9% to 3,697 points.
December 8, 2008	Colonial Geared Investments begins writing to and calling Storm clients in margin call directly to advise them of their situation.
December 12, 2008	ASIC commences an investigation into Storm.
January 2009	Slater & Gordon announces its investigation into Storm and the conduct of related Banks.
January 12	Storm is placed into voluntary administration
March 6 2009	ASX falls to its lowest point of 3,145 points, down 54% from its high of November 2007.
March 26	Storm is wound up by order of Justice Logan of the Federal Court of Australia
May 2009	CBA and Slater & Gordon commence resolution Pilot Program scheme with a sample group of Storm investors.
June 17 2009	CBA suspend the loan repayments of ex-Storm customers and CBA CEO Ralph Norris admits CBA has identified "shortcomings" concerning loans it made to Storm clients. Norris states, "Our customers can be assured that where we have done wrong, we will put it right".
July 2009	On 29 July 2009 CBA launches the Storm Resolution Scheme, stating that the purpose of the Scheme is to ensure transparent, fair and expeditious resolution for eligible Storm investors.
November 29	Slater & Gordon and CBA's legal team appear before the Independent Panel to make oral submissions regarding CBA's involvement with Storm Financial, and the position of borrowers who acquired loans from CBA or Colonial Geared Investments on the advice of Storm.
December 2009	Slater & Gordon begins settlement discussions with CBA to agree compensation principles and set up a resolution framework that would deliver fast and fair outcomes for all borrowers who signed up to the Scheme.
December 3	The Scheme's Independent Panel commences consideration of six 'test case' claims.
February 2010	The Independent Panel is asked by CBA and Slater & Gordon to consider a 'Proposal Framework' which contains proposed compensation principles
February 19	The Independent Panel notify CBA and Slater & Gordon that the Proposal Framework is likely to deliver reasonably fair and satisfactory outcomes
February 23	CBA and Slater & Gordon sign the Proposal Framework which contains agreed compensation principles