

# Storm praised by ASIC Investors 'in control'

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**THE corporate watchdog was trying to pin an "unprecedented" case on banks in alleging they were tied up in a managed investment scheme with Storm Financial, a court was told yesterday.**

The Federal Court in Brisbane also heard investors with the financial advisory business Storm were free to make decisions once given advice.

"They did control what, if anything, they would do in response," said the lawyer for Macquarie Bank, John Sheahan, SC.

Townsville-based Storm gave advice to clients who were wiped out in the sharemarket collapse of the global financial crisis. Some clients had borrowed funds from Bank of Queensland or Macquarie.

The case from the Australian Securities and Investments Commission revolves around whether the lenders were involved with an allegedly unregistered managed investment scheme operated by Storm.

The court heard a scheme includes characteristics such as whether peoples' money is pooled or whether members lack day-to-day control over operations of the scheme.

Mr Sheahan said ASIC was launching into an unprecedented argument. The watchdog had not produced any example of where the central role of advising clients and monitoring their position fell within being a managed investment scheme, he argued.

Investors had controlled whether they would listen to advice, he said.

Mr Sheahan argued ASIC was using an "arbitrary construct" in making its case that could potentially affect "hundreds of schemes".

Mr Sheahan pointed out that ASIC had in 2007 examined a prospectus for Storm's proposed stockmarket float and not raised concerns about it operating a unregistered managed investment scheme.

Mr Sheahan presented a letter from an ASIC officer who praised Storm's processes for providing supplementary advice statements.

"It may be a model that can be used by other licensees to assist in servicing the mass market," the letter said.