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We will vigorously pursue legal action against organisations found to be in breach of these requirements, in particular where email content has been forwarded, copied or pasted in any way without prior authorisation. If you are uncertain about your organisation's licensing arrangements, please contact SAI Global on 1300 555 595. | |  | |      |  |  |  |  |  | | --- | --- | --- | --- | --- | | |  |  |  | | --- | --- | --- | | |  |  | | --- | --- | | **Detailed Contents** | [own](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%231) | | | http://my.lawlex.com.au/alert/pic/spacer.gif | | | [1. Recent Corporate Law and Corporate Governance Developments](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#1)  [1.1  Proposed directors' liability reforms](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#011)  [1.2  CAMAC report on derivatives](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#012)  [1.3  UK Government acts on executive remuneration](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#013) [1.4  Productivity Commission inquiry into default superannuation funds in modern awards](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#014) [1.5  IOSCO principles on suspension of CIS redemptions](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#015) [1.6  SEC seeks public comment for financial literacy study mandated by Dodd-Frank Act](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#016) [1.7  CPSS-IOSCO final report on requirements for OTC derivatives data reporting and aggregation](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#017) [1.8  ECGI conference on 'Corporate Governance After the Crisis'](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#018) [1.9  ESMA first credit rating agency annual report](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#019) [1.10  IMF working paper on bank capital adequacy in Australia](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#0110) [1.11  IMF working paper on rating agencies](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#0111) [1.12  CAFRAL-BIS conference on post-GFC financial sector regulation](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#0112)  [1.13  APRA prudential standard for Financial Claims Scheme](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#0113) [1.14  ESMA extends transitional period for use of non-EU credit ratings; Australian CRA regime endorsed; first regulatory technical standards on CRAs adopted](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#0114) [1.15  Further consultation on new Shorter Product Disclosure Statement regime](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#0115) [1.16  FSA guidance on remuneration proportionality](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#0116) [1.17  Draft laws to deal with phoenix company activity](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#0117) [1.18  Basel Committee consultative paper on revised 'Core principles for effective banking supervision](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#0118)' [1.19  Basel Committee  consultative paper on 'Principles for the Supervision of Financial Conglomerates'](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#0119) [1.20  EBA compliance table on internal governance guidelines](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#0120) [1.21  UK Government response to Independent Commission on Banking's final report](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#0121) [1.22  GMI's 2011 CEO pay survey](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#0122)  [2. Recent ASIC Developments](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#2)  [2.1 Consultation on transfer determinations for trustee companies providing traditional trustee company services](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#021) [2.2 Improved disclosure by infrastructure entities](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#022) [2.3 Revised policy on home loan credit assistance](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#023) [2.4 Improved financial information for investors and others](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#024) [2.5 New guidance for acquisitions of control approved by members](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#025)  [3. Recent ASX Developments](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#3)  [3.1 ASX Listing Rules' 'good fame and character' requirement for directors of new listed entities](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#031) [3.2 ASX Operating Rules and Procedure changes to broaden classes of underlying instruments permitted for AQUA Products](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#032) [3.3 ASX Settlement Operating Rules introduction of 'Delivery versus Payment' settlement facilitation service](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#033) [3.4 Amendments to ASX clear minimum core capital requirements](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#034) [3.5 Reports](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#035)  [4. Recent Takeovers Panel Developments](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#4)  [4.1 Hastings Diversified Utilities Fund - Panel declines to make a declaration of unacceptable circumstances](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html#041)  **Editor's Note**  This is an additional issue of the Corporate Law Bulletin.  The "Recent Corporate Law Decisions" section of the Bulletin will return in the February issue. |      |  |  |  |  | | --- | --- | --- | --- | | |  |  |  | | --- | --- | --- | | **1. Recent Corporate Law and Corporate Governance Developments** |  | [ext Section](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%232) | | | http://my.lawlex.com.au/alert/pic/spacer.gif | | |  | | --- | | **1.1 Proposed directors' liability reforms**    On 27 January 2012, the Australian Treasury published proposed amendments to directors' liability laws, which will form the first part of the Commonwealth Government's implementation of the Council of Australian Governments' (COAG) Directors' Liability reform project.     An exposure draft of the Personal Liability for Corporate Fault Reform Bill 2012 has been released for public comment.  This Bill covers Treasury (non-taxation) legislation.  As such, it makes amendments to the [Corporations Act 2001](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "Default), [Insurance Contracts Act 1984](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=6416" \t "Default), [Foreign Acquisitions and Takeovers Act 1975](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=6803" \t "Default) and the [Pooled Development Funds Act 1992](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=6648" \t "Default).    This follows the 29 November 2009 COAG agreement to progress the reforms contained in the National Partnership Agreement to deliver a Seamless National Economy.  One of the 27 regulatory reforms is the directors' liability reform project.   The reform project aims to harmonize the approach to imposing personal criminal liability for corporate fault - otherwise known as derivative liability - by requiring Australian jurisdictions to audit their laws against COAG agreed principles and to amend legislative provisions to reflect a national approach to imposing personal criminal liability on corporate officers.    The reform project resulted from growing concern over a trend in regulatory legislation across Australia to hold company officers criminally liable when their company breached a statutory requirement.  In September 2006, the Corporations and Markets Advisory Committee published a report titled 'Personal liability for corporate fault' in which the Committee expressed concern at the growing trend of imposing criminal liability on corporate officers when their company breached a statutory requirement. The Committee stated that such liability should only be imposed in exceptional circumstances.   A further exposure draft Bill, covering the second tranche of proposed amendments relating to other Commonwealth legislation, is expected to be released later in the first quarter of 2012 for public comment.    The Personal Liability for Corporate Fault Reform Bill 2012 is available on the [Treasury website](http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=2300" \t "_new).     The Corporations and Markets Advisory Committee report titled 'Personal liability for corporate fault' is available on the [Committee website](http://www.camac.gov.au/camac/camac.nsf/byHeadline/PDFFinal+Reports+2006/$file/Personal_Liability_for_Corporate_Fault.pdf" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.2 CAMAC report on derivatives**    On 24 January 2012, the Corporations and Markets Advisory Committee (CAMAC) released its report on 'Derivatives'.  The report is a response to a request from the Government for advice on the suitability of the legislative definition of derivative for today's derivatives markets and whether it may be possible to decrease complexity in this area of the law.  In responding to the Government, CAMAC took into account the broader economic and commercial role of derivatives as a financial instrument and, within that context, considered whether the current legislative structure properly regulates derivatives in the simplest manner possible. As part of that process, CAMAC conducted a Roundtable of relevant peak bodies and industry participants.  CAMAC concluded that the current definition suitably aligns with market and regulatory perceptions of what constitutes a derivative. The definition is meant to be broad, to allow for its application to new derivative products without disruption to the regulatory structure of derivatives markets.   CAMAC also considers that the [Corporation Act 2001](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "Default) section 761D definition of derivative is not unduly complex. It is a broad principles‑based definition, tempered by specific exclusions and the ability, if necessary, to enact regulations that make further adjustments in response to developments in the market.  Some problems in applying concepts in the definition to less common financial arrangements which might be caught by the definition, highlighted in recent case law, may give the impression that the legislative concepts may not apply to more common financial arrangements which would be expected to be caught by the definition.  CAMAC does not consider this to be the case as any problems that may arise can be dealt with through regulations declaring something to be/not to be a derivative, rather than seeking to redesign the legislation to cater for uncommon situations.  In CAMAC's view, Australian derivatives markets are appropriately regulated through the general licensing and disclosure requirements applicable to all financial products, including derivatives, as well as the provisions specifically tailored for derivatives. The report also outlines some differences between the regulation of derivatives and securities which could, at an appropriate time, be rationalised.  The report is available on the [CAMAC website](http://www.camac.gov.au/camac/camac.nsf/byHeadline/PDFFinal+Reports+2011/$file/Derivatives_Report_Dec2011.pdf" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.3 UK Government acts on executive remuneration**  On 23 January 2012, the UK Government announced new proposals to regulate excessive executive remuneration.  The proposals ensure that shareholders will be given more powers to block excessive pay proposals and payments for failure.  Companies will have to justify high salaries with clearer and more informative remuneration reports.  They will also be encouraged to increase diversity on their boards.  Measures announced include:  Greater transparency:  More information on what benchmarks companies use to set executive pay and how pay policy relates to company strategy and performance. Companies must produce a single figure for total pay and show how their spending on executive pay compares with other payouts such as dividends and business investment.  More shareholder power:  The Government will consult on giving shareholders binding votes on executive pay policies and exit payments worth more than one year's salary. The Government will require companies to obtain 75 per cent (up from 50 per cent) shareholder support to pass the vote.  The Government will also look at requiring clawback clauses to be introduced in all contracts so pay can be recovered if a company performs poorly.  More diversity:  Renewed drive to have more people from different professional backgrounds onto company boards.  The Government will look at reducing the number of current executive directors serving on other companies' remuneration committees.  Employee engagement:  Companies to explain how they have consulted employees and taken account of employee pay when they set board pay. The Government will also encourage employees to utilise their right to request that employers consult them on pay deals.  The proposals follow on from a discussion paper published in September 2011, which explored the issues surrounding executive remuneration.  The Secretary of State's statement on 'Executive Pay' in the House of Commons (Hansard 23 January 2012) is available on the [House of Commons website](http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120123/debtext/120123-0001.htm" \l "12012313000002" \t "_new).  The Executive Remuneration Discussion Paper is available on the UK Government's [Department for Business Innovation and Skills website](http://www.bis.gov.uk/assets/biscore/business-law/docs/e/11-1287-executive-remuneration-discussion-paper.pdf" \t "_new).  A summary of the responses to the Discussion Paper is also available on the [Department for Business Innovation and Skills website](http://www.bis.gov.uk/assets/biscore/business-law/docs/e/12-564-executive-remuneration-discussion-paper-summary-responses.pdf" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.4 Productivity Commission inquiry into default superannuation funds in modern awards**  On 20 January 2012, the Australian Government announced that the Productivity Commission will conduct an inquiry into the selection and ongoing assessment of default superannuation funds in modern awards. The inquiry is expected to begin in early February 2012 and run for up to eight months.  Superannuation originated in the industrial relations system and awards determined the funds that applied for each industry. The government believes default funds should continue to be included in modern awards, but there should also be a transparent set of criteria that such funds can be assessed against.  The government has stated that this is in line with the Cooper Review, which recommended the processes by which default funds are nominated for inclusion in modern awards be reviewed in 2012 to assess whether they are sufficiently open and competitive.  The government has asked the Commission to design a process for the selection and ongoing assessment of superannuation funds for nomination as default funds in modern awards.  Accordingly, it seeks to develop transparent and objective criteria against which funds wishing to be eligible for default fund status in modern awards can be assessed, on an ongoing basis, to ensure that the best interests of members are met if their superannuation contributions are allocated to a default fund under the modern award.  The Productivity Commission will hold public hearings and release a draft report for public comment, before delivering a final report to government.  The Terms of Reference for the Inquiry are available on the [Treasury website](http://assistant.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2012/003.htm&pageID=003&min=mva&Year=&DocType" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.5 IOSCO principles on suspension of CIS redemptions**   On 19 January 2012, the Technical Committee of the International Organization of Securities Commissions (IOSCO) released its final report, 'Principles on Suspensions of Redemptions in Collective Investment Schemes', which contains principles regarding the suspension of redemptions for open-ended collective investment schemes (CIS).    The principles reflect a common level of approach and provide standards against which both regulators and the industry can assess the quality of regulation and industry practices concerning suspensions of redemptions.   The principles, which are based on the CIS responsible entities' basic duty to manage CIS liquidity on an on-going basis so as to avoid suspensions to the extent possible, generally cover all types of open-ended CIS which offer a continuous redemption right, and apply irrespective of whether they are offered to institutional or retail investors.  They are addressed to those entities responsible for the overall operation of the CIS and in particular its compliance with the legal/regulatory framework in the respective jurisdiction and thus for the implementation of the principles.  The delegation of activities may not be used to circumvent the principles and there should be compliance with the principles, whether activities are performed directly or through a third party.   The principles comprise:   **Management of liquidity risk:** 1. The responsible entity should ensure that the degree of liquidity of the open-ended CIS it manages allows it in general to meet redemption obligations and other liabilities.    2. Before and during any investment, the responsible entity should consider the liquidity of the types of instruments and assets and its consistency with the overall liquidity profile of the open-ended CIS. For this purpose, the responsible entity should establish, implement and maintain an appropriate liquidity management policy and process.    **Ex-ante disclosure to investors:**  3. The responsible entity should clearly disclose the ability to suspend redemptions in exceptional circumstances to investors prior to their investment into the CIS.    **Criteria/reasons for the suspension:** 4.  Suspension of redemptions by the responsible entity may be justified only (a) if permitted by law and in exceptional circumstances provided such suspension is exclusively in the best interest of unit-holders within the CIS, or (b) if the suspension is required by law, regulation or regulators.    **Decision to suspend:** 5.  The responsible entity should have the operational capability to suspend redemptions in an orderly and efficient manner.   6.  The decision by the responsible entity to suspend redemptions, in particular the reasons for the suspension and the planned actions should be appropriately: (a) documented; (b) communicated to competent authorities and other relevant parties; and (c) communicated to unit-holders.    **During the suspension:**  7.  During the suspension of the redemptions, the responsible entity should not accept new subscriptions.    8.  The suspension should be regularly reviewed by the responsible entity.  The responsible entity should take all necessary steps in order to resume normal operations as soon as possible having regard to the best interest of unit-holders.   9. The responsible entity should keep the competent authority and unit-holders informed throughout the period of suspension. The decision to resume normal operations should also be communicated as soon as practical.    However, it should be noted that not all principles would necessarily be appropriate for, or apply to, specific non-retail CIS which are not offered to the public and are not subject to approval/registration but instead are subject to specific rules under their national applicable law and regulation.    Implementation of the principles may vary from jurisdiction to jurisdiction, depending on local conditions and circumstances.   The final report is available on the [IOSCO website](http://www.iosco.org/library/pubdocs/pdf/IOSCOPD367.pdf" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.6 SEC seeks public comment for financial literacy study mandated by Dodd-Frank Act**   On 18 January 2012, the US Securities and Exchange Commission announced a request for public comment on financial literacy and investor disclosure issues that it is studying as part of a review mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act.     Section 917 of the Dodd-Frank Act directs the SEC to conduct a study of retail investors' financial literacy and submit its findings to Congress by 21 July 2012. The SEC is using qualitative and quantitative research, including investor testing, to help inform the study.  To supplement its research, the SEC also is seeking public comment on financial literacy and investor disclosure issues.  Consistent with the Dodd-Frank Act's specifications for the study, the SEC is seeking comment on methods to improve the timing, content, and format of disclosures to investors regarding financial intermediaries, investment products, and investment services.  It also requests comment on information that retail investors need to make informed financial decisions on hiring a financial intermediary or purchasing an investment product or service typically sold to retail investors, including mutual funds.  In addition, the SEC seeks comment on how to make investment expenses and conflicts of interest in investment transactions more transparent to investors.  Further information is available on the [SEC website](http://www.sec.gov/rules/other/2012/34-66164.pdf" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.7 CPSS-IOSCO final report on requirements for OTC derivatives data reporting and aggregation**   On 17 January 2012, the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) released their final report on the OTC derivatives data that should be collected, stored and disseminated by trade repositories (TRs).    The report addresses Recommendation 19 in the October 2010 report of the Financial Stability Board, 'Implementing OTC derivatives market reforms', which called on the CPSS and IOSCO to consult with the authorities and the OTC Derivatives Regulators Forum in developing:   minimum data reporting requirements and standardized formats, and   the methodology and mechanism for data aggregation on a global basis.  The requirements and data formats will apply both to market participants reporting to TRs and to TRs reporting to the public and to regulators. The report also finds that certain information currently not supported by TRs would be helpful in assessing systemic risk and financial stability, and discusses options for bridging these gaps.   Issues relating to data access for the authorities and reporting entities are discussed, including methods and tools that could provide the authorities with better access to data. Public dissemination of data, it is noted, promotes the understanding of OTC derivatives markets by all stakeholders, underpins investor protection, and facilitates the exercise of market discipline.   The report also covers the mechanisms and tools that the authorities will need for the purpose of aggregating OTC derivatives data.   The committees support the view that TRs, by collecting such data centrally, would provide authorities and the public with better and more timely information on OTC derivatives.  This would make markets more transparent, help to prevent market abuse, and promote financial stability.    The report indicates that some questions remain regarding how best to address current data gaps and define authorities' access to TRs.  As requested by the G20, two internationally coordinated working groups will address these questions in the coming year.  The FSB will establish an ad hoc group of experts to further consider means of filling current data gaps, while the CPSS and IOSCO will establish a joint group to examine authorities' access to trade repositories.   The final report is available on the [IOSCO website](http://www.iosco.org/library/pubdocs/pdf/IOSCOPD366.pdf" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.8 ECGI conference on 'Corporate Governance After the Crisis'**    On 13-14 January 2012, the European Corporate Governance Institute, in conjunction with Columbia Law School, the Faculty of Law at the University of Oxford and the University of Oxford's Saïd Business School, held an academic conference entitled 'Corporate Governance After the Crisis'.     The conference sought to identify a series of key questions arising out of the global financial crisis, which were as follows:    (i) Are banks different?   (ii) Lessons for the governance of financial and non-financial firms  (iii) Systemic effects of regulation  (iv) Shareholder behaviour and goals  (v) Alternative models of corporate governance.   Some of the papers presented at the conference have been made publicly available on the [ECGI website](http://www.ecgi.org/ceo/2012/index.php" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.9 ESMA first credit rating agency annual report**   On 13 January 2012, the European Securities and Markets Authority (ESMA) published its first annual report in respect of its supervision of credit rating agencies.  Since 1 July 2011, ESMA has had the exclusive responsibility for the registration and supervision of credit rating agencies in the EU.   The report summarizes the work carried out by national competent authorities (NCAs) and ESMA during the registration process and presents the supervisory actions that ESMA has undertaken in the course of 2011 in order to ensure that registered CRAs comply with the standards established in the relevant EU Regulation.    Following the applications for registration by CRAs, the NCAs ensure that CRAs are compliant with the integrity, transparency, good governance, independence and quality standards spelled out in the EU Regulation before adopting any positive registration decision.    The report also informs on other policy activities carried out by ESMA under the EU Regulation during the same period.   ESMA's annual report on CRAs is available on the [ESMA website](http://www.esma.europa.eu" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.10 IMF working paper on bank capital adequacy in Australia**  On 1 January 2012, the International Monetary Fund (IMF) released a Working Paper entitled 'Bank Capital Adequacy in Australia'.     The Working Paper has found that, given Australia's conservative approach in implementing the Basel II framework, Australian banks' headline capital ratios underestimate their capital strengths. Given their high capital quality and the progress in their funding profiles since the global financial crisis, the Australian banks are making good progress toward meeting the Basel III requirements, including the new liquidity standards.     Stress tests calibrated on the Irish crisis experience show that the banks could withstand sizable shocks to their exposure to residential mortgages.  However, combining residential mortgage shocks with corporate losses expected at the peak of the global financial crisis would put more pressure on Australian banks' capital.  Therefore, the Paper suggests that it would be useful to consider the merits of higher capital requirements for systemically important domestic banks.  The Working Paper is available on the [IMF website](http://www.imf.org/external/pubs/ft/wp/2012/wp1225.pdf" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.11 IMF working paper on rating agencies**   On 1 January 2012, the International Monetary Fund (IMF) released a Working Paper entitled 'Are Rating Agencies Powerful?  An Investigation into the Impact and Accuracy of Sovereign Ratings'.     The Working Paper found that Credit Rating Agencies' (CRAs) opinions have an impact in the cost of funding of sovereign issuers and consequently ratings are a concern for financial stability.  While ratings produced by the major CRAs perform reasonably well when it comes to rank ordering default risk among sovereigns, there is evidence of rating stability failure during the recent global financial crisis.  According to the Working Paper, these failures suggest that ratings should incorporate the obligor's resilience to stress scenarios.  Furthermore, the empirical evidence also supports:  reform initiatives to reduce the impact of CRAs' certification services;  more stringent validation requirements for ratings if they are to be used in capital regulations; and  more transparency with regard to the quantitative parameters used in the rating process.  The Working Paper is available on the [IMF website](http://www.imf.org/external/pubs/ft/wp/2012/wp1223.pdf" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.12 CAFRAL-BIS conference on post-GFC financial sector regulation**    On 15-16 November 2011 in Mumbai, India, the Bank for International Settlements (BIS), in conjunction with the Centre for Advanced Financial Research and Learning  (CAFRAL), held its inaugural international conference of central banks and regulators on the topic of 'Financial regulation and its implications for growth equity and stability in the post-crisis world'.  A selection of speeches, papers and summaries of discussions from the conference is available on the [BIS website](http://www.bis.org/publ/bppdf/bispap62.htm" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.13 APRA prudential standard for Financial Claims Scheme**  On 22 December 2011, the Australian Prudential Regulation Authority (APRA) released 'Prudential Standard APS 910 Financial Claims Scheme' (APS 910), which implements some of the operational requirements of the Financial Claims Scheme (FCS) for authorised deposit-taking institutions (ADIs).  The FCS was established in October 2008.  It is designed to protect depositors (up to a defined amount) and to provide them with timely access to their deposits in the event that their ADI becomes insolvent and is declared to be subject to the FCS.  APRA consulted with industry on the proposed FCS requirements twice in 2010 and most recently in September 2011.  APS 910 reflects APRA's consideration of issues raised as part of this consultation. The key requirements of the prudential standard include:  ADIs will need to identify each unique account-holder;  ADIs will need to be able to produce a 'Single Customer View' (SCV) that aggregates the protected accounts held by each account-holder; and  SCV data will be subject to annual reviews by the ADI's external auditor, as well as attestation by the ADI's chief executive officer.  Once the prudential standard comes into force, and after the relevant transition period, ADIs will be subject to testing of their FCS preparedness through APRA on-site visits.  APRA will also be working with ADIs during the transition period to ensure that there is clear and consistent application of the principles that underpin the introduction of APS 910 across the ADI industry.  APS 910 took effect on 1 January 2012.  Allowing for the two-year transition period, ADIs will need to comply with the standard not later than 31 December 2013 unless granted an extended transition.   APS 910 is available on the [APRA website](http://www.apra.gov.au/adi/PrudentialFramework/Pages/prudential-standards-and-guidance-notes-for-adis.aspx" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.14 ESMA extends transitional period for use of non-EU credit ratings; Australian CRA regime endorsed; first regulatory technical standards on CRAs adopted**   On 22 December 2011, the European Securities and Markets Authority (ESMA) announced that it had decided to extend until 30 April 2012 the initial transitional period of three months for credit ratings issued outside the European Union.  This decision allows the use in the EU of credit ratings issued in third countries while the convergence process with the EU requirements and the endorsement process of third countries continue.     At the same time, following an assessment of its regulatory framework, ESMA announced that it has decided to endorse Australia's regulatory regime on credit ratings (according to Art 4 (3) of the EU Regulation on Credit Rating Agencies, or CRAs1).  As part of the endorsement decision, ESMA and the Australian Securities and Investments Commission (ASIC) concluded on 20 December 2011 the exchange of letters (EOL) establishing the co-operation arrangement between the EU and Australia for the supervision of cross-border CRAs.  Having assessed as endorsable Japan and now Australia, ESMA is in an advanced state of its assessment for several other non-EU countries, namely Argentina, Canada, Hong Kong, Singapore, and the USA.  ESMA is also currently examining the regulatory frameworks of Brazil and Mexico.  Finally, on 20 December 2011, ESMA adopted its first four draft Regulatory Technical Standards (RTS) on Credit Rating Agencies (CRAs). In accordance with the CRA Regulation 4, these four RTS were sent for endorsement to the European Commission.  They will be directly applicable in all Member States upon the date of endorsement. The four RTS contribute to the establishment of harmonized standards in financial services, to ensure a level playing field and adequate protection for investors and consumers across the European Union.  The new draft standards complement the CRA Regulation by introducing detailed specifications for CRAs for the information they have to provide to ESMA at the moment of registration, certification, and during their periodic data reporting.  Such information will be used by ESMA for its ongoing supervision.  In addition, the RTS detail the information that will be used for the disclosure on the past performance of credit rating, provided to the public through ESMA's central repository (CEREP), which will be made publically available in January 2012.  Finally, the RTS provide detailed specifications on the compliance of credit rating methodologies with the CRA Regulation.  Further information is available on the [ESMA website](http://www.esma.europa.eu/news/ESMA-extends-transitional-period-use-non-EU-credit-ratings-Australian-CRA-regime-endorsed?t=326&o=home" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.15 Further consultation on new Shorter Product Disclosure Statement regime**   On 22 December 2011, the Australian Government announced that it would undertake further consultation with industry and consumer groups on the transition to the Shorter Product Disclosure Statement (SPDS) regime.  Due to commence on 22 June 2012, the SPDS regime is designed to ensure that disclosure for certain financial products - including superannuation and simple managed investment schemes - is presented in a short and simple way that equips consumers to make better financial decisions.  However, the Government has stated that it is aware that the financial services industry is dealing with a number of implementation issues in moving to the new SPDS regulations for superannuation platforms and multifunds.  Accordingly, in order to address the need to transition to the new regulations, the Government will be undertaking further consultation with industry and consumer groups to determine whether these products should be completely out of the shorter PDS regime or in the regime but with modified content requirements.  The Government has announced that on an interim basis:  Superannuation platforms will be excluded from the SPDS regime, however relief will be provided by ASIC so that superannuation platforms can, on the discretion of the provider, be included in the SPDS regime; and  Multifunds will also be excluded from the SPDS regime, however relief will also be provided so that multifunds can at the discretion of the provider, be included in the SPDS regime.  The Government also reiterated that other complex products such as hedge funds will continue to remain excluded from the SPDS regime, in accordance with the original policy intent, until these products can be fully considered in respect of the policy intent of the SPDS regime.  The announcement is available on the [Treasury website](http://mfss.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/169.htm&pageID=003&min=brs&Year=&DocType" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.16 FSA guidance on remuneration proportionality**   On 21 December 2011, the UK Financial Services Authority published, in respect of the Remuneration Code (SYSC 19A) and the Pillar 3 disclosures on remuneration (BIPRU 11), its 'General Guidance on Proportionality'. The remuneration principles proportionality rule requires a firm, when establishing and applying the total remuneration policies for remuneration code staff, to comply with SYSC 19A.3 in a way and to the extent that is appropriate to its size, internal organisation and the nature, the scope and the complexity of its activities.   The FSA's general guidance is available on the [FSA website](http://www.fsa.gov.uk/pubs/guidance/fg11_22.pdf" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.17 Draft laws to deal with phoenix company activity**   On 20 December 2011, the Australian Government announced new measures to deal with 'phoenix' company activity.  The draft Corporations Amendment (Similar Names Bill) 2012 (the Similar Names Bill) and the draft Corporations Amendment (Phoenixing and Other Measures) Bill 2012 (the Phoenixing Bill),which will implement key components of the Government's Protecting Workers' Entitlements 2010 election commitment, have been released for public consultation.  The Similar Names Bill imposes personal liability upon directors for the debts of 'phoenix' companies that are set up using a similar name to a failed company that has left unpaid creditors behind.  It includes amendments designed to crack down on 'phoenixing', where directors try and avoid having to pay workers' entitlements and other unsecured creditors by restarting their failed business using a similar company name, sometimes located in the same premises with the same staff and clients.  Under the proposals, directors of a failed company can be held liable for the debts of a company that has a similar name to a pre-liquidation name of the failed company - otherwise known as a phoenix company.  The amendments propose to stop directors from exploiting the limited liability protections in the [Corporations Act](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "Default) to avoid having to pay any debts, including workers' entitlements, that they incur in a 'phoenix' company.  The draft Phoenixing Bill includes amendments to the Corporations Act to provide the Australian Securities and Investments Commission (ASIC) with an administrative power to wind up abandoned companies and to facilitate the online publication of notices and gazettals relating to external administrations.  The reform is designed to ensure employees will be able to promptly access the Government's General Employee Entitlements and Redundancy Scheme (GEERS), which is only triggered once a company is wound up.  Other measures contained in the draft Phoenixing Bill include a new requirement that liquidators notify the Department of Families, Housing, Community Services and Indigenous Affairs (FAHCSIA), which funds employers to pay the Government's paid parental leave payments for their employees, of the winding up of a company. This amendment will ensure that FAHCSIA can determine whether to continue making paid parental leave payments to the company or pay them directly to the employee.  The draft [Similar Names Bill](http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=2272" \t "_new) and the draft [Phoenixing Bill](http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=2279" \t "_new) can be found on the Treasury website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.18 Basel Committee consultative paper on revised 'Core Principles for Effective Banking Supervision'**   On 20 December 2011, the Basel Committee on Banking Supervision issued for public comment its revised 'Core Principles for Effective Banking Supervision'.  The consultative paper updates the Committee's 2006 'Core principles for effective banking supervision' and the associated 'Core principles methodology', and merges the two documents into one.     The Core Principles have also been re-ordered, highlighting the difference between what supervisors do themselves and what they expect banks to do:  Principles 1 to 13 address supervisory powers, responsibilities and functions, focusing on effective risk-based supervision, and the need for early intervention and timely supervisory actions.  Principles 14 to 29 cover supervisory expectations of banks, emphasizing the importance of good corporate governance and risk management, as well as compliance with supervisory standards.  The Core Principles have been enhanced to strengthen supervisory practices and risk management.  In addition, the revised Core Principles respond to several key trends and developments that emerged during the last few years of market turmoil:  the need for greater intensity and resources to deal effectively with systemically important banks;  the importance of applying a system-wide, macro perspective to the micro-prudential supervision of banks to assist in identifying, analyzing and taking pre-emptive action to address systemic risk; and  the increasing focus on effective crisis management, recovery and resolution measures in reducing both the probability and impact of a bank failure.  The total number of Core Principles has increased from 25 to 29; 36 new essential and additional criteria have been introduced and another 33 additional criteria have been upgraded to essential criteria that represent minimum baseline requirements for all countries.  The revised Core Principles represent the collective efforts between the Basel Committee and other banking supervisors from around the world, as well as the International Monetary Fund and the World Bank.  The full text of the revised Core Principles is available on the [BIS website](http://www.bis.org/publ/bcbs213.pdf" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.19 Basel Committee consultative paper on 'Principles for the Supervision of Financial Conglomerates'**   On 19 December 2011, the Basel Committee's Joint Forum released a consultative paper on 'Principles for the Supervision of Financial Conglomerates'.  The proposed principles, which revise the Joint Forum's 1999 principles, provide national authorities, standard setters and supervisors with a set of internationally agreed principles that support consistent and effective supervision of financial conglomerates and in particular those financial conglomerates that are active across borders.  The principles are designed to strengthen the global financial system through more effective and consistent oversight and supervision of financial conglomerates, notably including risks arising from unregulated financial activities and entities.  The proposed principles are organized into five sections and expand on and supplement the 1999 Principles in a number of ways, including:  **Supervisory powers and authority**  The principles are directed to both policy makers and supervisors highlighting the need for a clear legal framework that provides supervisors with the necessary powers, authority and resources to perform, with independence and in coordination with other supervisors, comprehensive group-wide supervision.  **Supervisory responsibility**  The principles reaffirm the importance of supervisory cooperation, coordination and information exchange. They clarify the importance of identifying a group-level supervisor whose responsibility is to focus on group-level supervision and the facilitation of coordination between relevant supervisors. New principles have been included which relate to the role and responsibilities of supervisors in implementing minimum prudential standards, monitoring and supervising activities of financial conglomerates and taking corrective action as appropriate.  **Corporate governance**  The principles reaffirm the importance of fit and proper principles and also provide, through a series of new principles, guidance for supervisors intended to ensure the existence of a robust corporate governance framework for financial conglomerates. These new principles relate to the structure of the financial conglomerate, the responsibilities of the board and senior management, the treatment of conflicts of interest and remuneration policy.  **Capital adequacy and liquidity**  The principles highlight the role of supervisors in assessing capital adequacy on a group basis, taking into account unregulated entities and activities and the risks they pose to regulated entities. They include new principles on group-wide capital management. The principles also provide guidance on internal capital planning processes that rely on sound board and management decisions, incorporate stressed scenario outcomes, and are subject to adequate internal controls. A new principle on liquidity assessment and management is also introduced - providing guidance for supervisors intended to ensure that financial conglomerates properly measure and manage liquidity risk.  **Risk management**  The principles set out the need for a financial conglomerate to have a comprehensive risk management framework to manage and report group-wide risk concentrations and intra-group transactions and exposures. Greater emphasis is placed on the financial conglomerate's ability to measure, manage and report all material risks to which it is exposed, including those stemming from unregulated entities and activities. The principles focus on group-wide risk management culture and appropriate tolerance levels; addressing risks associated with new business areas and outsourcing; group-wide stress-tests and scenario analyses for the prudent aggregation of risks; bringing off-balance sheet activities within the scope of group-wide supervision.  The full text of the consultative paper is available on the [BIS website](http://www.bis.org/publ/joint27.pdf" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.20 EBA compliance table on internal governance guidelines**   On 19 December 2011, the European Banking Authority (EBA) published a compliance table setting out whether Member States' competent authorities comply (or intend to comply) with its Guidelines on Internal Governance (GL44), published in September 2011.  These guidelines aim at enhancing and consolidating supervisory expectations and improving the implementation of internal governance arrangements.  The EBA Internal Governance Guidelines repeal the 2010 High Level Principles for Risk Management, the 2009 High Level Principles for Remuneration Policies and Section 2.1 of the 2006 Guidelines on the Application of the Supervisory Review Process under Pillar 2.  Article 16(3) of the EBA Regulation requires national competent authorities to inform the EBA within two months after the publication of the EBA guidelines or recommendations whether they comply or intend to comply with each set of these guidelines or recommendations.  If a competent authority does not comply or does not intend to comply it must inform the EBA of the reasons. The EBA decides on a case by case basis whether to publish reasons.  The [compliance table](http://eba.europa.eu/cebs/media/Publications/Consultation%20Papers/2010/CP44/EBA-2011-12-16-%28Confirmation-of-Compliance-table---GL44-Internal-Governance%29.pdf" \t "_new) and [EBA's Guidelines on Internal Governance](http://eba.europa.eu/cebs/media/Publications/Standards%20and%20Guidelines/2011/EBA-BS-2011-116-final-%28EBA-Guidelines-on-Internal-Governance%29-%282%29_1.pdf" \t "_new) are available on the EBA website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.21 UK Government response to Independent Commission on Banking's final report**   On 19 December 2011, the UK Government released its response to the final report published in September 2011 by the Independent Commission on Banking (ICB) on banking reform.     In its final report, the ICB made a number of recommendations to promote financial stability and competition in UK banking.  It recommended that its reforms be implemented no later than the start of 2019.   The UK Government's response provides a strong endorsement of the ICB's report and recommendations.  Amongst other measures, it intends to pass legislation requiring the ring-fencing of retail banking activities, whereby the ring-fenced bank is legally and operationally independent from the rest of its corporate group.  Large ring-fenced banks will be subject to higher equity requirements.     A White Paper will be published in 2012 explaining how the Government's plans will be implemented.  It is envisaged that full implementation will be achieved by 2019.   The UK Government's response to the ICB's report is available on the [UK Government's Treasury website](http://cdn.hm-treasury.gov.uk/govt_response_to_icb_191211.pdf" \t "_new).   The ICB's September 2011 Final Report is available on the [ICB's website](http://bankingcommission.independent.gov.uk/" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1)  **1.22 GMI's 2011 CEO pay survey**   On 15 December 2011, GMI released its annual CEO Pay Survey 2011, identifying changes in total annual and total realized compensation paid to CEOs in North America for fiscal year 2010.    Key findings from this year's survey include:  Total realized compensation for CEOs in the S&P 500 rose by a median 36.5%;  Total realized compensation for all CEOs in the survey rose 27% compared to a 13% increase in total annual compensation;  Three of the 10 highest paid CEOs of 2010 are from the health care providers and services industry, including the top two;  Four of the 10 highest paid CEOs of 2010 were retired or terminated executives receiving exit packages;  Perks in the S&P 500 rose 11% from 2009 to 2010;  Three of the five highest paid CEOs of 2010 received single year pension and deferred compensation increases of US$14 million; and  More than 70 percent of CEOs received a restricted stock award in 2010 while only 53 percent received stock options.  Realized compensation includes total annual compensation, change in pension and non‐qualified deferred compensation, value realized in exercising options and vesting of other equity and any payments from a vested retirement plan.   The rise in realized compensation represents a considerable increase following consecutive years of pay declines in 2008 and 2009.  Pay elements were up across the board in 2010.  In addition to annual pay elements contributing to this rise, CEOs saw greater profits in stock option exercises and vested stock during 2010.   Annual compensation rose by more than 13%, resulting largely from an increase in annual cash bonus payments. In several notable cases, performance objectives that were not met in 2008 and 2009 were satisfied in 2010, though often only because the targets had been reduced.  For that reason, during 2010, a modest economic recovery led to a rebound for many CEOs resulting in the annual cash bonuses.   Bonuses, equity profits, pension payments, and perquisites, also known as "all other compensation", were considerable among the highest paid CEOs.  Time-based equity grants and discretionary bonus payments helped fuel some of the most sizeable compensation packages.   Substantial increases resulting from pension payments and other deferred compensation also accounted for significant portions of realized compensation.   The survey is based on the analysis of more than 3,200 proxy statements. Of those, changes were calculated and based on the data in 2,132 proxy statements where CEOs had been in their positions for the last two fiscal years.   Further details of GMI's pay survey are available on the [GMI website](http://www2.gmiratings.com/news_docs/1775gmi_pressrelease_ceopay_final.pdf" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1) | |      |  |  |  |  | | --- | --- | --- | --- | | |  |  |  | | --- | --- | --- | | **2. Recent ASIC Developments** |  | [ext Section](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%233) | | | http://my.lawlex.com.au/alert/pic/spacer.gif | | |  | | --- | | **2.1 Consultation on transfer determinations by ASIC for trustee companies providing traditional trustee company services**   On 24 January 2012, ASIC released a consultation paper seeking public comment about its proposals on administering the transfer determination provisions of Chapter 5D of the [Corporations Act 2001](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "Default) for trustee companies providing traditional trustee company services.  The power to make a transfer determination is a new power for ASIC and is part of the amendments to the Corporations Act enacted in November 2009 to regulate traditional services provided by trustee companies previously authorised under state and territory legislation.   ASIC's Consultation Paper 173 'Trustee companies: Transfer determinations by ASIC' sets out proposals on what information it will require to properly consider a transfer determination.  ASIC plans guidance in this area in order to assist trustee companies to efficiently prepare and supply relevant material to ASIC with their applications for a transfer determination.  CP 173 deals with the three types of transfer determination applications it anticipates receiving from trustee companies performing traditional services such as an estate management function. These are:  voluntary transfers between trustee companies belonging to the same corporate group;  voluntary transfers between unrelated trustee companies; and  compulsory transfers from one unrelated trustee company to another.  CP 173 sets out proposals on the information a trustee company will be required to supply to ASIC in connection with an application for a transfer determination in each of the three situations.  The information is required in order for ASIC to properly consider and assess the applications in accordance with the provisions of Part 5D.6 of the Corporations Act and to satisfy ASIC that any transfer is in the best interests of both the clients of the transferring company and those of the receiving company (when viewed as a group).  Consultation Paper 173 is available on the [ASIC website](http://www.asic.gov.au/asic/asic.nsf/byheadline/Consultation+papers?openDocument" \l "cp173" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h2)  **2.2 Improved disclosure by infrastructure entities**   On 24 January 2012, ASIC released new disclosure benchmarks and principles for infrastructure entities to improve investor awareness of the risks associated with investing in these products.  The risks of investing in infrastructure entities were highlighted during the global financial crisis. The response of retail investors to loss of capital experienced during the crisis indicated that existing disclosure did not effectively communicate an understanding of the characteristics and risks of infrastructure entities to investors.  ASIC's Regulatory Guide 231 'Infrastructure entities: Improving disclosure for retail investors' outlines nine benchmarks and 11 disclosure principles that apply to infrastructure entities, aimed at addressing the risks peculiar to infrastructure entities.  RG 231 is the next in a series of 'if not, why not' disclosure benchmarks for sectors that pose particular risks to consumers to ensure they are informed and can be confident when making investment decisions.  It follows Regulatory Guide 227 'Over-the-counter contracts for difference: Improving disclosure for retail investors' which provided benchmarks for the over-the-counter contracts for difference sector.  Infrastructure entities must disclose whether they meet the benchmarks and if not, why not.  'Why not' means explaining how a responsible entity deals with the business factor or the issue underlying the benchmark.  The benchmarks relate to topics such as corporate structure and management, remuneration of management, classes of units and shares, substantial related party transactions, cash flow forecast, base-case financial model, performance and forecast, distributions and updating the unit price.  Infrastructure entities are also required to disclose against 11 disclosure principles addressing key relationships, management and performance fees, related party transactions, financial ratios, capital expenditure and debt maturities, foreign exchange and interest rate hedging, base-case financial model, valuations, distribution policy, withdrawal policy, and portfolio diversification.  In addition to the benchmarks and disclosure principles, RG 231 also outlines the standards ASIC expects responsible entities to meet when advertising infrastructure entities to retail investors. These standards are consistent with draft guidelines for the advertising of financial products and financial advice, released in November 2011.  Responsible entities of infrastructure entities must disclose the benchmark and disclosure principle information in any existing and new disclosure dated on or after 1 July 2012.  ASIC has also published an investor guide for retail investors and financial consumers on its [MoneySmart website](http://www.moneysmart.gov.au" \t "_new) to provide more information about this product class.   Regulatory Guides 231 and 227 are available on the [ASIC website](http://www.asic.gov.au/asic/asic.nsf/byheadline/Regulatory+guides?openDocument" \l "rg231" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h2)  **2.3 Revised policy on home loan credit assistance**   On 22 December 2011, ASIC released a revised version of Regulatory Guide 206 'Credit licensing: Competence and training', with a modified policy on organisational competence and representative training for credit licensees that provide home loans.  The revised policy gives additional flexibility for credit licensees that provide home loans and responds to feedback received on Consultation Paper 165 'Credit assistance for home loans: Competence and training requirements', released earlier in 2011.  RG 206 sets out ASIC's minimum expectations on how credit licensees must maintain organisational competence and ensure that their representatives are adequately trained.  The main changes from ASIC's earlier policy are as follows:  Responsible managers of credit providers providing home loans will no longer need to complete a Certificate IV in Finance and Mortgage Broking, but will instead be able to hold any relevant credit industry qualification to at least the Certificate IV level, or another general relevant higher level qualification (e.g. a diploma or university degree). This is the general approach ASIC has taken in relation to responsible managers of other credit licensees.  ASIC will no longer prescribe a particular training course for representatives providing credit assistance in relation to home loans offered by their own licensee. Instead, ASIC has provided more principles-based guidance on the types of skills and knowledge these representatives should acquire through the training they undertake.  In relation to ongoing training requirements, ASIC will also give these representatives the option of a regular 'knowledge update review' - a test administered by a registered training organisation via a secure facility, assessing the representative's knowledge of key regulatory and market developments, as relevant to their role and industry sector - as part of meeting their continuing professional development obligations.  ASIC states that the revised policy seeks to minimise licensees' compliance burden, while requiring a high standard of training for those who play a significant role in decisions about home loans.  ASIC will monitor how the credit industry complies with RG 206 over the next three years, and the broader standards of training and competence within the industry and will review its policy in light of any findings arising from that monitoring process.  If, at that stage, ASIC is not confident that these more flexible arrangements are effectively ensuring a high standard of organisational competence and representative training in the industry, ASIC may investigate whether a more prescriptive approach would be appropriate.  ASIC has not changed its policy on organisational competence and representative training for the intermediary mortgage broking sector.  ASIC did not receive any submissions to CP 165 suggesting any changes were warranted and states that it is confident that the current settings in RG 206 are right for this industry sector.  [Regulatory Guide 206](http://www.asic.gov.au/asic/asic.nsf/byheadline/Regulatory+guides?openDocument" \l "rg206" \t "_new) and [Consultation Paper 165](http://www.asic.gov.au/asic/asic.nsf/byheadline/Consultation+papers?openDocument" \l "cp165" \t "_new) are available on the ASIC website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h2)  **2.4 Improved financial information for investors and others**   On 21 December 2011, ASIC released the results of its reviews of financial reports for the year ended 30 June 2011 and announced its areas of focus for 31 December 2011 financial reports.  ASIC has stated that while the overall quality of financial reporting in Australia compares favourably with other major jurisdictions, it continues to find a number of cases where material adjustments are required to financial reports.   ASIC reviews a significant number of financial reports of listed and unlisted entities each year.  In the next reporting season, ASIC has confirmed that it will focus particularly on:  asset values and going concern assessments, including adequate disclosure of material assumptions;  consolidation decisions and off balance sheet arrangements; and  proper disclosure of segment information in a manner that enables useful assessment of the separate businesses.  ASIC recently issued its Regulatory Guide 230 'Disclosing non-IFRS financial information' following extensive consultation. Over the next few months, ASIC will be monitoring both the financial reports and market releases about those reports to ensure proper balanced use of non-IFRS information in the market.  More information about the findings of ASIC's review of the financial reports for the year ended 30 June 2011 and focuses for the 31 December 2011 reports are available on the [ASIC website](http://www.asic.gov.au/asic/asic.nsf/byheadline/11-312MR+Improved+financial+information+for+investors+and+others?openDocument" \t "_new).      Regulatory Guide 230 is also available on the [ASIC website](http://www.asic.gov.au/asic/asic.nsf/byheadline/Regulatory+guides?openDocument" \l "rg230" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h2)  **2.5 New guidance for acquisitions of control approved by members**   On 21 December 2011, ASIC released updated guidance on a key part of Australia's takeover regulation.  The guidance is set out in Regulatory Guide 74: 'Acquisitions approved by members'.   The [Corporations Act 2001](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "Default) prohibits a person acquiring more than 20 per cent of a company with more than 50 members, a listed company or a listed managed investment scheme, unless an exception applies.  A common exception is where members approve the acquisition, as set out in Item 7 of section 611.  ASIC's guidance emphasises that members asked to make such a decision must be fully informed about the acquisition's consequences.   The changes in RG 74 follow a consultation process (see Consultation Paper 159: 'Acquisitions approved by shareholders: update to RG 74').  As foreshadowed through consultation, the update takes into account developments in the law since RG 74 was first published, including the extension of takeovers regulation to listed managed investment schemes.   The updated guide provides entities and advisers with ASIC's views on how the Item 7 exception applies, how ASIC monitors compliance with Item 7's requirements and ASIC's policy on relief in relation to those requirements.   RG 74 indicates that acquirers need to take care in structuring transactions so that reliance on the Item 7, section 611 exception by acquirers is consistent with the policy underlying the exception.  That is, members affected by the acquisition make an informed decision.  An Item 7 transaction that is inter-conditional with another transaction having significant control implications can cause concerns in this regard.   ASIC encourages entities to provide it with draft notice of meeting documents for member approvals and to raise potential structuring issues with ASIC before any transaction announcement.   [Regulatory Guide 74](http://www.asic.gov.au/asic/asic.nsf/byheadline/Regulatory+guides?openDocument" \l "rg74" \t "_new) and [Consultation Paper 159](http://www.asic.gov.au/asic/asic.nsf/byheadline/Consultation+papers?openDocument" \l "cp159" \t "_new) are available on the ASIC website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h2) | |      |  |  |  |  | | --- | --- | --- | --- | | |  |  |  | | --- | --- | --- | | **3. Recent ASX Developments** |  | [ext Section](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%234) | | | http://my.lawlex.com.au/alert/pic/spacer.gif | | |  | | --- | | **3.1 ASX Listing Rules' 'good fame and character' requirement for directors of new listed entities**   On 1 January 2012, ASX amended the Listing Rules to require an applicant for ASX listing to satisfy ASX that its directors or proposed directors at the date of listing are of good fame and character.  Applicants are required to provide to ASX a criminal history check, a bankruptcy check and a statutory declaration from each director affirming that they have not been the subject of relevant disciplinary or enforcement action by an exchange or securities market regulator.   These requirements apply to applications for new listings that are lodged on or after 1 January 2012, and to listed entities that are required on or after 1 January 2012 to re-comply with Chapter 1 and Chapter 2 of the Listing Rules under Listing Rule 11.1.3.   The new requirements reflect ASX's desire to maintain the reputation of the ASX market and also align with the 'good fame and character' requirement that applies to the directors of participants in ASX's licensed markets and clearing and settlement facilities.  They also dovetail with the views expressed by ASIC in [Regulatory Guide 228](https://westpoint.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg228-published-10-November-2011-1.pdf/$file/rg228-published-10-November-2011-1.pdf" \t "_new) as to the sorts of information that companies which access capital markets through a prospectus should be disclosing about their directors.   The 'good fame and character' requirements are discussed in [Listed Entities Update 07/11](http://www.asx.com.au/resources/newsletters/companies_update/archive/CompaniesUpdate_20110928_0711_HTML.htm" \t "_new), issued on 28 September 2011, and [Listed Entities Update 08/11](http://www.asx.com.au/resources/newsletters/companies_update/archive/CompaniesUpdate_20111123_0811_HTML.htm" \t "_new), issued on 23 November 2011.   ASX has also updated Listing Rule Guidance Note 1 'Applying for Admission and Quotation', Guidance Note 4 'Foreign Entities' and Guidance Note 12 'Significant Changes to Activities' to reflect the new 'good fame and character' requirement.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h3)  **3.2 ASX Operating Rules and Procedure changes to broaden classes of underlying instruments permitted for AQUA Products**   On 9 January 2012, ASX amended ASX Operating Rule 7100, ASX Operating Rules Schedule 10A.3.3 and ASX Operating Rules Procedure 10A.3.3 to broaden the scope of AQUA Products facilitated along with other miscellaneous changes.     The amendments seek to facilitate AQUA Products over an expanded range of instruments by extending the limbs of subsection (c) of Schedule 10A.3.3 which lists acceptable classes of Underlying Instruments for AQUA Products.  This includes the facilitation of AQUA Products over certain underlying debentures or bonds or indices over such debentures or bonds.   The amendments also clarify the operation of Schedule 10A.3.3 to the ASX Operating Rules in respect of existing classes of Underlying Instruments presently facilitated whilst also bringing into line the description of pricing transparency requirements for commodities and currencies with requirements adopted for other classes of Underlying Instruments.   Such expansion and amendments are consistent with the core AQUA principle that all AQUA Products must have underlying assets for which there is a robust and transparent pricing mechanism.   The Circular describing the amendments in more detail is available on [ASXOnline.com.au](http://www.asxonline.com/intradoc-cgi/groups/participant_services/documents/communications/asx_032480.pdf" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h3)  **3.3 ASX Settlement Operating Rules introduction of 'Delivery versus Payment' settlement facilitation service**   ASX will be introducing a 'Delivery versus Payment' ('DvP') settlement facilitation service to Approved Listing Market Operators in respect of non-ASX quoted financial products.  This will enable transactions in non-ASX listed financial products to be settled on a DvP basis in batch settlement.   The Circular describing the amendments in more detail is available on [ASXOnline.com](http://www.asxonline.com/intradoc-cgi/groups/clearing_and_settlement/documents/communications/asx_032500.pdf" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h3)  **3.4 Amendments to ASX clear minimum core capital requirements**   On 1 January 2012, ASX increased the minimum core capital requirements for General Clearing Participants to $20 million.  This was in accordance with the timetable communicated to Participants in ASX Clear Notice 66/10, dated 2 December 2010.   Participant core capital requirements are a key risk management tool used by ASX Clear to provide financial safeguards to users of Australia's financial markets and to promote systemic stability.   ASX will defer the planned introduction of the $10 million minimum core capital requirement for Direct Clearing Participants from 1 January 2013 until 1 January 2014, at the earliest.  A further review of the intended timetable will be undertaken in Q4 2012.   The ASX Clearing Corporation Notice is available on [ASXOnline.com.au](http://www.asxonline.com/intradoc-cgi/groups/derivatives/documents/communications/asx_032434.pdf" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h3)  **3.5  Reports**   On 6 January 2012, ASX released:  the [ASX Group Monthly Activity Report](http://www.asxgroup.com.au/media/PDFs/ASXGroupMonthlyActivityReport_Dec11.pdf" \t "_new);  the [ASX 24 Monthly Volume and Open Interest Report](http://www.sfe.com.au/content/notices/2012/notice2012_006.pdf" \t "_new); and  the [ASX Compliance Monthly Activity Report](http://www.asxgroup.com.au/media/PDFs/ASXComplianceMonthlyActivityReport_Dec11.pdf" \t "_new)  for December 2011.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h3) | |      |  |  |  |  | | --- | --- | --- | --- | | |  |  |  | | --- | --- | --- | | **4. Recent Takeovers Panel Developments** |  | [ext Section](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%237) | | | http://my.lawlex.com.au/alert/pic/spacer.gif | | |  | | --- | | **4.1 Hastings Diversified Utilities Fund - Panel declines to make a declaration of unacceptable circumstances**   On 6 January 2012, the Takeovers Panel announced that it had declined to make a declaration of unacceptable circumstances in response to an application dated 23 December 2011 from Hastings Diversified Utilities Fund in relation to its affairs.   The application concerned disclosure deficiencies in the bidder's statement lodged by APT Pipelines Limited.  The Panel decided not to make a declaration after APT Pipelines Limited agreed to provide supplementary disclosure in a form and manner that was acceptable to the Panel.  Accordingly, the Panel considered that it was not against the public interest to decline to make a declaration of unacceptable circumstances.  The reasons for the decision are available on the [Takeovers Panel website](http://www.takeovers.gov.au/content/DisplayDoc.aspx?doc=reasons_for_decisions/2012/001.htm&pageID=&Year=" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h4) | |      |  |  |  |  | | --- | --- | --- | --- | | |  |  |  | | --- | --- | --- | | **5. Contributions** |  |  | | | http://my.lawlex.com.au/alert/pic/spacer.gif | | |  | | --- | | If you would like to contribute an article or news item to the Bulletin, please email it to: "[cclsr@law.unimelb.edu.au](mailto:cclsr@law.unimelb.edu.au" \t "_new)".  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/173-January-2012.html%23h1) | | | http://my.lawlex.com.au/alert/pic/spacer.gif |

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