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1. RECENT CORPORATE LAW DEVELOPMENTS

(A) CORPORATIONS LAW REFERRAL WELCOMED

In a media release dated 7 March 2001, the Business Council of Australia announced that a coalition of business, financial and legal groups had welcomed the introduction into the New South Wales Parliament of the first State legislation referring corporate regulatory powers to the Commonwealth. The coalition called on other States to follow suit as soon as possible.

The introduction of the NSW legislation is a critical step towards finally resolving the uncertainty that surrounds the national Corporations Law. It follows the recent agreement between the Prime Minister and the Premiers of NSW and Victoria on terms for the referral of their powers to the Commonwealth.

The legislation, supported by a revised Corporations Agreement between governments, provides an outcome that balances concerns of the States over the use of the referred power with certainty and consistency in corporate regulation across Australia. The coalition urges other States to enact their referring legislation as soon as possible. It warns that delay will only risk further damage to Australia’s international financial reputation, caused by recent decisions undermining the operation of the Corporations Law.

The members of the coalition are the Australian Institute of Company Directors, the Business Council of Australia, the Institute of Chartered Accountants in Australia, the Investment & Financial Services Association, the Law Council of Australia and the Securities Institute of Australia.

(B) 2001 AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION SUMMER SCHOOL

The 2001 Australian Securities and Investments Commission Summer School was held at The University of Melbourne from 18-23 February 2001. It was planned with the support of the University’s Centre for Corporate Law and Securities Regulation. The theme of the Summer School was "Retail Financial Product Distribution: Challenges for Financial Service Firms, Consumers and Regulators in the 21st Century". The Summer School brought together senior regulators from many countries including the United Kingdom, Canada, New Zealand, Hong Kong, Singapore, Malaysia, Thailand, Indonesia, Sri Lanka and Papua New Guinea. Keynote speakers at the Summer School included:

- Mr Seelan Singham, Partner, McKinsey and Company

- Dr Günther Sattelhak, Senior Lawyer, Global Technology and Services Division, Deutsche Bank Head Office, Frankfurt

- Professor Ann Harding, Professor of Applied Economics and Social Policy and inaugural Director of the National Centre for Social and Economic Modelling, University of Canberra

- Ms Deirdre Hutton CBE, Chairman, National Consumer Council, United Kingdom

- Mr Rick Eager, Vice-President, Financial Services Group, CSC Australia

- Mr Graham Rich, Chief Executive Officer and Publisher, Morningstar

- Ms Victoria Weekes, Director, Legal and Compliance, Salomon Smith Barney, Australia

- Mr Brian McKenna, Director and Head of Private Client Group, Salomon Smith Barney, Australia

- Mr Michael Hawker, Group Executive, Australian Business and Personal Banking, Westpac Banking Corporation

- Mr Roger Murray, Executive Legal Counsel, AMP Financial Services

- Mr Rob Coombe, Executive Vice-President, Head of Retail, BT Funds Management

- Mr Robert King. Chief Executive Officer, Macquarie Bank, Financial Enrichment Pty Ltd

- Mr Stuart Marks, Principal Lawyer, Macquarie Bank, eDivision

- Mr Brian Thomas, Head of Retail Funds, Credit Suisse Asset Management

- Mr Peter Kell, Co-director, Office of Consumer Protection, Australian Securities and Investments Commission

- Ms Louise Sylvan, Chief Executive Officer, Australian Consumers Association.

(C) ASPECTS OF THE REGULATION OF PROPRIETARY COMPANIES

On 8 March 2001 Senator Grant Chapman presented to Parliament the report of the Parliamentary Joint Statutory Committee on Corporations and Securities (PJSC) titled Aspects of the Regulation of Proprietary Companies. The following is Senator Chapman’s statement to Parliament.

The First Corporate Law Simplification Act 1995 (the Act), which amended the Corporations Law, changed the financial reporting requirements for proprietary companies. The Act replaced the previous distinction between exempt and non-exempt proprietary companies with a distinction between large and small proprietary companies, based on the company’s assets, revenue and employees.

In February 2000, the Parliamentary Joint Statutory Committee on Corporations and Securities (PJSC) resolved to inquire into the new reporting system. The PJSC undertook this inquiry for two reasons.

(1) When the new reporting requirements were introduced, the object of the policy was to reduce the reporting obligations of small proprietary companies. Conversely, reporting standards for large proprietary companies, which have significant economic impact, were strengthened.

(2) However, in two previous reports in 1995, the PJSC had noted that the large/small distinction might impose significant audit costs. This initial view was strengthened by early and significant indications of problems with the new reporting system.

The Treasurer foreshadowed a review of the large/small test two years after its commencement. However, the PJSC considered that the proposed review would be limited in scope and would not address all the problems with the new reporting system. It was important therefore that any review should assess the effectiveness of the large/small test and consider additional measures to enhance the accountability of proprietary companies.

In February 2000, the Committee advertised for public submissions, receiving 14 written submissions from individuals, proprietary companies, accounting firms and professional organisations. Public hearings were held in Canberra on 28 June 2000 and Melbourne on 30 June 2000.

Although a number of submissions expressed support for the large/small test, the majority gave either qualified support or were critical of the new reporting system.

The most common criticisms related to the arbitrary nature and amounts of the threshold limits and the differential reporting for large ‘grandfathered’ proprietary companies. These submissions highlighted the practical difficulties in distinguishing between companies on the basis of size and financial circumstances, and the costs associated with preparing and lodging financial statements.

In addressing the effectiveness of the new reporting system, submissions recommended various changes to the large/small test that would exempt a larger number of proprietary companies or extend the scope of the test to include presently exempt companies. Other options for reform included the reinstatement of the previous test of an ‘exempt proprietary company’ and replacing the large/small test with the reporting entity concept.

The Committee concluded that there were fundamental conceptual and practical problems with the new financial reporting system for proprietary companies and that because of these problems, the new system has not achieved the objectives set for it.

The Committee was particularly concerned about the complexity of the rules for determining the reporting requirements of proprietary companies. Although in many cases applying the large/small test involves the application of threshold limits, the rules for determining reporting obligations have proven to be complex, unnecessarily onerous and costly, largely due to an inconsistency between the reporting requirements under the Law and the reporting entity concept of the existing accounting standards, and ASIC’s discretion to grant relief from the reporting requirements.

Therefore, the Committee was not persuaded that the large/small test should be retained, either in its current form or with the changes suggested, to improve the efficacy of the test.

The use of an arbitrary, albeit quantitative, test has resulted in some companies being incorrectly classified and other companies, in which there is a significant public interest, not having to prepare and lodge financial statements.

The Committee considers that the operation of the large/small test will continue to be ineffective if the reporting requirements can be circumvented and if ASIC is unable to identify which large proprietary companies have failed to comply with their reporting obligations.

Of the three reform options put forward, the Committee favoured the reinstatement of the previous test of ‘exempt proprietary company’ to reflect the two broad groups of proprietary companies:

(a) family-owned type companies, and

(b) subsidiaries of disclosing entities.

The reporting requirements of the Law should reflect these separate groups and the nature and size of share ownership in proprietary companies.

While this approach may result in certain non-exempt proprietary companies reporting publicly, even if there is no significant public interest, the existing reporting requirements create a far greater problem by excluding proprietary companies that are reporting entities from the requirement to prepare, and lodge, audited general purpose financial reports.

The exempt proprietary test should nevertheless recognise:

(a) that there is a demand for financial information by creditors and others, and

(b) recent developments in the Law affecting the duties of directors, particularly

their current obligations for solvency.

Accordingly, the PJSC has recommended that the previous distinction between exempt and non-exempt proprietary companies be reinstated, to replace section 45A of the Law and that all directors of proprietary companies be required to sign and lodge a declaration of solvency with their annual reports.

A consistent theme of submissions was the need to consider the cost/benefit of the audit requirement applicable to proprietary companies. If the audit requirement is considered necessary or desirable in terms of public policy, then the benefits to the community must be realised and costs to business minimised. For those large proprietary companies that are not exempted, the cost burden can be onerous and unwarranted.

Several submissions questioned the cost/benefit of the audit requirement for large proprietary companies. To reduce compliance costs, it was proposed that all proprietary companies should be exempted from the audit requirement. While the benefits of the audit requirement are clear, the PJSC found it difficult to assess their magnitude.

The arguments for exempting all proprietary companies from the audit requirement focussed solely on the costs a company incurs in preparing accounts and the audit of those financial statements. The arguments have some merit but ignore the needs of creditors, employees and others in the community who may be affected if the company fails. Audited financial statements assist those outside the company to monitor its performance and to derive some assurance that the company is a solvent entity. The potential for managers and other insiders misusing inside information is also reduced.

The Committee therefore concluded that it would not be appropriate to relieve all proprietary companies of the audit requirement. This option would not be consistent with the reporting entity concept in the Accounting Standards, as some proprietary companies, particularly those that seek to raise equity or loan capital, will almost always have dependent users of financial reports.

The PJSC endorsed the submission by ASIC that entities lodging financial statements should comply with minimum requirements of the Accounting Standards, so as to ensure that financial statements are prepared on a comparable basis.

At present, even large proprietary companies which claim not to be reporting entities may disregard those Standards. The result is that two comparable companies could produce different financial outcomes depending on whether they apply the Standards.

In order to resolve any doubts about compliance in this area, the PJSC recommends that both reporting and non-reporting entities apply all of the recognition and measurement requirements of the Accounting Standards. The PJSC also concludes that the Standards should be freely available on the Internet, which is not the position at present.

The need for audited financial statements will always outweigh other considerations but, as submissions noted, for some proprietary companies, the issue is more complex.

The PJSC believes that the ownership of the company is a better indicator of the need to impose an audit requirement under the Law than the somewhat arbitrary test of a company’s economic impact.

The PJSC report is available on the Committee's website at:

"<http://www.aph.gov.au/senate/committee/corp_sec_ctte/reports.htm>".

2. RECENT ASIC DEVELOPMENTS

(A) ASIC CALL FOR PUBLIC COMMENT ON ASX FUTURES EXCHANGE

On 12 March 2001 ASIC called for public comment on an application for ASX Futures Exchange Pty Limited (ASXF) to be approved by the Minister for Financial Services and Regulation as a futures exchange.

ASIC also called for public comment on an application for Options Clearing House Pty Ltd (OCH) to be approved by the Minister as a futures clearing house for the proposed futures exchange to be operated by ASXF.

ASIC is seeking comment on the applications before making a recommendation to the Minister on the matters.

ASIC will consider ASXF’s and OCH’s draft business rules and applications in light of further comments received from the consultation process.

Before approving a futures exchange or clearing house, the Minister must be satisfied that the interests of the public will be served by the granting of approval.

A summary of ASXF’s and OCH’s application is available from the ASIC website at "<http://www.asic.gov.au>".

In assessing whether an application meets the criteria laid down in s 1126 and 1131 of the Corporations Law, which are required to be met on an ongoing basis under s1137, ASIC requires the exchange to have the following attributes:

- the people who control the applicant body corporate are fit and proper persons and have the expertise to conduct a futures market or a clearing house;

- (in the case of the clearing house) direct participation is restricted to suitably qualified participants that are bound by the business rules of the clearing house which suitably deal with registration of futures contracts and expulsion, suspension and disciplining of members;

- (in the case of the futures exchange) direct participation in any market conducted by the futures exchange is restricted to suitably qualified trading participants who are bound by the business rules of the exchange;

- proposed qualifications for trading and clearing participants are adequate, especially in light of the experience and expertise that participants will require to deal efficiently, honestly and fairly on the market; the futures contracts in which participants will be able to deal; andthe need for participants to have financial resources commensurate with their responsibilities to other market participants and to clients on whose behalf they trade or clear on the market;

- the exchange and clearing house’s business rules and operational plans provide for a comprehensive system of supervision of participants, and in the case of the futures exchange includes adequate surveillance and enforcement systems;

- the exchange’s trading facilities and its clearing and settlement systems operate efficiently and reliably so as to provide adequate protection for investors, and to ensure the market is fair and orderly;

- (in the case of the clearing house) its clearing and settlement systems operate efficiently and reliably so as to provide adequate protection for investors and to ensure clearing and settlement are fair and orderly;

- (in the case of the futures exchange) there are appropriate rules dealing with the conditions under which futures contracts may be traded, and the exchange exercises control over these functions; and

- the applicant has sufficient resources to establish and conduct the proposed futures market in an efficient and reliable manner and, in the case of the futures exchange, to carry out its supervision responsibilities.

ASIC will accept comments up to the close of business on 20 April 2001.

Submissions should be marked to the attention of: Tracey Lyons, Manager, Markets Regulation, Australian Securities and Investments Commission, GPO Box 9827, Sydney, NSW 2000.

Submissions will also be accepted by email to tracey.lyons@asic.gov.au

All submissions will be treated as public and will be provided to ASXF unless otherwise marked.

(B) ASIC REVIEWS INDUSTRY CODE COMPLIANCE

On 28 February 2001 Ms Jillian Segal, Deputy Chair of ASIC, announced that the level of compliance with the banking, building society, credit union and Electronic Funds Transfer (EFT) Codes of Practice continues to be high, and that complaints about EFT transactions have increased.

ASIC has released a second report on compliance with the payments system codes of practice and the EFT Code of Conduct, based on compliance reports from members covering the period between April 1999 and March 2000.

The codes set out the service standards consumers can expect when dealing with a company, and address general principles of disclosure, conduct and complaint handling.

The compliance report also includes information about consumer disputes under the codes.

In respect of the EFT code the number of disputes has increased while the number of transactions has slightly decreased. There were 64 complaints per million transactions this year compared to 42 complaints per million transactions last year. In raw figures, the number of complaints increased from 73,125 complaints to 106,719 complaints over the same time period.

The number of complaints involving unauthorised ATM and EFTPOS transactions remained at around thirty per cent of all EFT complaints, and the majority of these complaints were resolved in favour of the card-issuer. The most common explanation for these unauthorised transactions was cardholder negligence with their PIN.

About two-thirds of the EFT complaints reported in 1999/2000 related to system malfunctions, and most of these were resolved in favour of the consumer.

Banks reported 10,357 disputes under the Code of Banking Practice, which represents a fall in the number of disputes relative to the total number of transactions.

The disclosure of fees and charges, PIN based EFT transactions, and account crediting and debiting were the largest sources of dispute under the Banking Code.

Under the Building Society Code and the Credit Union Code, the main source of dispute related to PIN based EFT transactions.

Full copies of the report are available on ASIC's web site at "<http://www.asic.gov.au>".

3. RECENT ASX DEVELOPMENTS

(A) PROPOSED LISTING RULE AMENDMENTS - 1 JULY 2001

ASX invited public comment on proposed amendments to the Listing Rules, which were discussed in last month's Bulletin. The exposure draft is still available on "<http://www.asx.com.au>" in the About ASX/Information on Companies section. Written submissions closed on Friday 9 March 2001. A summary of responses received is expected to be posted on the website by Friday 23 March 2001.

4. RECENT TAKEOVERS PANEL MATTERS

(A) FASTER DISPUTES IN AUSTRALIAN TAKEOVERS

In a media release dated 12 March 2001, the Minister for Financial Services & Regulation, the Hon Joe Hockey, announced that one year after its establishment the new Takeovers Panel was an overwhelming success and had improved the efficiency of dispute resolution. "The changes to the Panel’s role that took effect on 13 March 2000 have unquestionably improved takeover dispute resolution in Australia," the Minister said. Having takeover disputes considered by respected members of the business community has meant that shareholders are given better information sooner about takeovers where they have an interest."

In the year since its powers were enhanced, the Panel has been instrumental in making sure shareholders had high quality information sooner than used to be the case when takeovers where subject to lengthy and complex litigation. "I would like to congratulate the Panel president Simon McKeon and the other Panel members, as well as the staff of the Panel Executive, and thank them for the time and effort they have put into the Panel’s activities over the past year."

The Minister also announced the appointment of 18 new part-time members to the Panel, along with the reappointment of three current part-time members. "Consistent with previous appointments these new members have outstanding backgrounds, experience and a wide range of skills in their fields, including financial and legal aspects of takeover activity, the Minister said. The panel has drawn on a group of 43 Australians from many parts of the country and a wide variety of backgrounds but with a common experience that I believe will help ensure that Australian shareholders get the best possible information as quickly as possible".

(B) PANEL DECLARES ACQUISITION OF TAIPAN SHARES BY ST BARBARA TO BE UNACCEPTABLE CIRCUMSTANCES

On 9 March 2001 the Takeovers Panel advised that it had declared that St Barbara Mines caused unacceptable circumstances and breached section 606 of the Corporations Law by acquiring 4 million shares in Taipan Resources on 12 October 2000. St Barbara thereby increased Strata Mining Corporation's voting power in Taipan to more than 20%. An application for the declaration was made by Troy Resources on Tuesday 13 February. Troy is also bidding for Taipan.

On 14 March 2001 the Panel advised that it has ordered that 2.7 million shares in Taipan Resources that were acquired by St Barbara Mines on 12 October 2000 be vested in ASIC for sale.

The Panel ordered that 2.7 million Taipan shares - the number of shares by which St Barbara's acquisition caused Strata's voting power to exceed 20%, be vested in ASIC. The Panel ordered that:

- ASIC retain a broker to sell the shares by tender to the highest bidder;

- the shares not be acquired by St Barbara, Strata Mining, or any of their associates;

- the shares must be sold no later than 5.00 p.m. on the date prior to the close of St Barbara's takeover bid, currently 20 March 2001;

- ASIC return the net proceeds of sale to St Barbara;

- if Taipan offers to buy back and cancel the shares at a price equal to or greater than the highest bid received for the shares, ASIC may sell the shares to Taipan.

The Panel's previous media release of 23 February 2001 noted that the application raised other concerns, asserting that St Barbara is associated with various other persons who have recently dealt in Taipan shares, and the consequences if these associations were made out. The Panel invited ASIC to make some further enquiries in relation to these elements. ASIC has now advised the Panel that it has been unable to find evidence to support those concerns. The Panel has therefore decided not to consider those issues any further.

The Panel for this matter was Professor Ian Ramsay (sitting President), Denis Byrne and Trevor Rowe.

The reasons for the decision will be published shortly.

(C) PANEL PUBLISHES TWO POLICIES FOR COMMENT – SUBSTANTIVE UNACCEPTABILITY ENFORCEMENT AND REMEDIES

On 2 March 2001 the Takeovers Panel released for public comment two policies relating to its role as the determiner of unacceptable circumstances in takeovers.

The first is a guide to the Panel's view on issues it will take into consideration in determining whether particular circumstances are unacceptable. The second is a discussion on the remedies that the Panel has at its disposal in ensuring that takeovers disputes are settled quickly and efficiently and that they "get back on track" as quickly as possible.

The President of the Panel Mr Simon McKeon said that the two policies are important guides to how the Panel will approach the issues which will be at the heart of most matters that come before the Panel.

In its discussion of substantive unacceptability, the Panel points out that its unacceptable circumstances declaration power is primarily a policy based power and that the important considerations are whether the principles of the takeovers provisions, set out in s602 of the Corporations Law (Law), have been breached or followed, and whether there has been harm to the market or shareholders. Thus, while the Panel is required to consider whether circumstances involve a contravention of the Law, and a contravention may constitute unacceptable circumstances, not all contraventions of the Law necessarily constitute unacceptable circumstances.

The Panel pointed to the wide and flexible powers that the legislature has given to it in relation to takeovers. The Panel says in its policy that its role is not punitive, but that there may be costs involved in rectifying unacceptable circumstances. In those cases, the Panel says, it will make orders that impose those costs on parties where they are necessary to rectify the harm caused by the unacceptable circumstances.

Comments are sought on the policies by 12 April 2001. The policies are available on the Panel's website at "<http://www.takeovers.gov.au/Policy/010228_PS4.htm>" and "<http://www.takeovers.gov.au/Policy/010228_PS1.htm>".

Comments may be sent by hard or electronic copy to:

Nigel Morris
Director, Corporations and Securities Panel
Level 47 Nauru House, 80 Collins Street
Melbourne VIC 3000
Tel: +61 3 9655 3501
nigel.morris@takeovers.gov.au

5. RECENT CORPORATE LAW DECISIONS

(A) WINDING UP MANAGED INVESTMENT SCHEMES
(By Thomas Staples, [Australian Securities and Investments Commission](http://www.asic.gov.au))

Australian Securities & Investments Commission v Chase Capital Management Pty Ltd [2001] WASC 27, Supreme Court of Western Australia, Owen J, 2 February 2001

The full text of the judgment is available at:

"<http://cclsr.law.unimelb.edu.au/judgments/states/wa/2001/february/2001wasc0027.htm>" or

"<http://cclsr.law.unimelb.edu.au/judgments/>".

(1) Background

Chase Capital Management Pty Ltd ("Chase"), the first respondent and Chase Capital Management Ltd ("CCML"), the second respondent, together operated the Chase investment scheme ("the Chase Scheme"). Leadenhall Funds Management Pty Ltd ("Leadenhall"), the third respondent, and Leadenhall Funds Management Ltd, ("LFML") the fourth respondent, together operated the Leadenhall investment scheme ("the Leadenhall Scheme"). CCML and LFML are companies said to have been registered or incorporated in the Turks and Caicos Islands in the Caribbean. Neither of them is registered as a foreign company in Australia. Hicks, the fifth respondent, controls CCML and LFML. CCML holds the issued shares in Chase and LFML holds the issued shares in Leadenhall. Sims and Percy, the sixth and seventh respondents, are directors of Chase. Hicks is the sole director of Leadenhall. Chase is the trustee of a unit trust known as the Chase Capital Unit Trust constituted by a deed dated 14 October 1999.

The seven respondents have had a connection, in one way or another, with a series of syndicated investments. At least $3 million was obtained from various investors, pooled together, and invested in securities.

On 31 May 2000 ASIC commenced proceedings against the seven respondents in the Supreme Court of Western Australia.

The originating process sought the following final relief:

- a declaration that the Chase Scheme and the Leadenhall Scheme were managed investment schemes which were not registered and thereby contravened Corporations Law ("CL") s 601ED(5);

- a declaration that the literature provided to investors was misleading or deceptive or likely to mislead or deceive contrary to CL s 995, in that the respondents had no reasonable grounds to support the representation of returns of "25% per quarter" in relation to the investments;

- a declaration that the respondents carried on a securities business, without being licensed to do so, in contravention of CL s 780(1);

- a declaration that the respondents offered for subscription or issued invitations to subscribe for securities, without a prospectus having been lodged with ASIC, in contravention of CL s 1018(1);

- a declaration that the respondents issued a form of application for the issue of securities without the form being attached to a copy of the prospectus, in contravention of CL s 1020;

- a declaration that the respondents dealt in a futures contract on another person's behalf without being licensed to do so, in contravention of CL s 1142;

- various injunctions pursuant to CL s 1324(1) restraining the respondents from offering for subscription or issuing invitations to subscribe for securities and operating or promoting the Chase Scheme and the Leadenhall Scheme without those schemes first being registered;

- injunctions pursuant to CL s 1323(1)(e) restraining the respondents from disposing of the assets of the Chase Scheme and the Leadenhall Scheme, including funds contained in specified bank accounts;

- pursuant to CL s 1323(1)(h) and (3), alternatively, pursuant to the Supreme Court Act 1935 (WA) s 25(9), or alternatively pursuant to the Court's inherent jurisdiction, an order appointing a receiver and manager of all the assets and undertaking of the first to fourth respondents;

- pursuant to CL s 1114(1)(f) an order that the contracts entered into by investors as part of the Chase Scheme or the Leadenhall Scheme be declared null and void; and

- pursuant to CL s 601EE(1) an order that the Chase Scheme and the Leadenhall Scheme be wound up.

On 6 June 2000 ASIC obtained various injunctions restraining the respondents' fundraising activities and the disposal of assets forming part of the Chase Scheme and the Leadenhall Scheme.

On 1 August 2000 ASIC obtained an order appointing an interim receiver and manager to safeguard these assets until the claims of investors could be determined.

ASIC contended that a receiver and manager should be appointed by the Court for the following reasons:

- there was a need to protect members of the public who had invested in the Chase Scheme or the Leadenhall Scheme;

- there was a strong prima facie case for contraventions of CL s 601ED(5), s 765, s 780, s 995, s 1018, s 1020 and s 1142;

- there was evidence that the first to seventh respondents were continuing to contravene those sections;

- there was a real risk that investors' funds would be dissipated offshore. Certain funds had already been transferred to a bank account in Hong Kong;

- the fifth respondent had admitted under affirmation in an ASIC examination that he had caused CCML and LFML to be registered or incorporated in the Turks and Caicos Islands for effectively "jurisdictional" reasons;

- the first to fourth respondents' books and records were incomplete and did not adequately record the financial interests and contributions of investors. It appeared that CL s 286 had been breached; and

- there was a need for a person or persons independent of the first to fourth respondents' directors to investigate the affairs of the first and fourth respondents and provide a report to the court as to the most desirable and effective manner in which to wind up the Chase Scheme and the Leadenhall Scheme.

On 15 September 2000 the receiver and manager filed a report as to the affairs of the first to fourth respondents and its officers. The receiver and manager recommended the winding up of the Chase Scheme and the Leadenhall Scheme as the only means to finalise those schemes.

On 22 September 2000 ASIC issued a chamber summons for the winding up the Chase Scheme and the Leadenhall Scheme pursuant to CL s 601EE(1) and also the winding up of Chase and LFML on the just and equitable ground pursuant to CL s 461(1)(k).

(2) Issues

- Were the Chase Scheme and the Leadenhall Scheme managed investment schemes within the meaning of CL s 9?;

- Did the Court have jurisdiction to order the winding up of the Chase Scheme and the Leadenhall Scheme pursuant to CL s 601EE(1)?; and

- Should the Court, in the exercise of its discretion, order the winding up of the Chase Scheme and the Leadenhall Scheme pursuant to CL s 601EE(2)?

(a) Managed Investment Schemes

The respondents contended that the Chase Scheme and the Leadenhall Scheme did not fall within the definition of a managed investment scheme in CL s 9.

Counsel for the respondents submitted that money was paid by investors to the various corporate entities "as a conduit" to the ultimate investment. Chase and Leadenhall were never in a position to provide valuable consideration. Rather, they were trustees or agents to invest funds as requested by the investor. Justice Owen rejected this submission and found that the relevant part of the definition of a managed investment scheme focused on the acquisition of benefits from the "scheme", not from the managers. His Honour referred to the decision of the Court of Appeal of Queensland in Australian Securities & Investments Commission v Enterprise Solutions 2000 Pty Ltd [2000] QCA 452 as authority for the proposition that the generation and earning of profits from the investment and the distribution of those profits to the investor is a relevant benefit produced by a scheme. An investor can acquire such a benefit.

Counsel for the respondents also argued that the respondents' activities could not be categorised as part of a managed investment scheme due to the ad hoc nature of the decision-making process. It was submitted that investors had sufficient control over the operation of the Chase Scheme and the Leadenhall Scheme to take them outside the definition. Justice Owen found that the evidence before him did not support this contention.

Justice Owen also found that both the Chase Scheme and the Leadenhall Scheme were managed investments schemes within the meaning of CL s 9. His Honour made a finding that each scheme involved more than 20 members and was therefore required to be registered pursuant to CL s 601ED. His Honour said by way of obiter that in any event the Chase Scheme and the Leadenhall Scheme were required to be registered regardless of the number of members as they were promoted by persons who were in the business of promoting managed investment schemes. CL s 601ED(5) had therefore been breached.

(b) Did the Court have jurisdiction to order that the Chase Scheme and the Leadenhall Scheme be wound up?

Given the foregoing findings and given that CL s 601EE(1) expressly gives ASIC standing to bring the application, the Court found that all conditions precedent to jurisdiction had been satisfied.

(c) Should the Chase Scheme and the Leadenhall Scheme be wound up in the exercise of discretion?

CL s 601EE(2) provides as follows:

"601EE(2) [Powers of Court] The Court may make any orders it considers appropriate for the winding up of the scheme."

CL s 601EE(2) does not state what factors the Court should take into account in the exercise of its discretion.

The Court accepted ASIC's submission that it should be guided by the considerations governing the exercise of the discretion to wind up a company on the just and equitable ground pursuant to CL s 461(1)(k).

Public interest considerations may justify winding up where, among other things, it is required for investor protection and where there have been regular or repeated breaches of the law. The Court relied on Australian Securities Commission v AS Nominees Ltd (1995) 62 FCR 504 at 530–533; Australian Securities & Investments Commission v Austimber Pty Ltd (1999) 17 ACLC 893 and Walter L Jacob Ltd [1989] 5 BCC 244 as authority for this proposition.

There was a serious question be tried in the present case as to whether offers had been made for subscription in securities without a prospectus having been lodged and without the form being attached to a prospectus. By virtue of s 92(2) and s 1002(A)(1), securities include interests in a managed investment scheme made available by the body. Securities made available by the body are therefore securities of that body.

The Court was prepared to order winding up of the Schemes notwithstanding undertakings by the individual respondents and notwithstanding the fact that some investors opposed the winding up order.

The Court took the following matters into account in the exercise of its discretion:

- Some of the investments were in a questionable state and it would be preferable if an independent person were in control of recovery processes;

- Because of the intra-group transactions, there may be disputes as to the true ownership of some assets and as to the true purport of certain of the transactions;

- Investors may take differing views as to the appropriate method of finalisation of the schemes;

- There will need to be an accounting between different interests; and

- The schemes could not be finalised without a continuing breach of the law.

Justice Owen said, "…I think a formal winding up is the result that best caters for the public interest. The major element of the public interest that is involved in this case is the preservation of the integrity of the system of investor protection for which the Law stands. I have also taken into account the prevention of continuing breaches of the Law and the orderly functioning of external administrations in the interests of the commercial community generally".

For like reasons, the Court ordered the winding up of Chase and Leadenhall pursuant to CL s 461(1)(k). Justice Owen said, "it would inject an air of unreality if the schemes were wound up without the corporate entities that had been part of the operation not also being made the subject of formal administration. The great risk of taking that course would be to leave the administration open to sterile arguments about power. That would increase the overall costs of the finalisation and would not be in the interests of the creditors".

(3) Comment

This case was the first occasion in which a Court has been asked to wind up a managed investment scheme on what is essentially the just and equitable ground applicable to the winding up of a corporation. The decision shows a willingness to apply established principles in this new context.

(B) APPLICATION FOR LEAVE TO APPEAL - SECTIONS 471B CORPORATIONS LAW AND 101(2)(c) SUPREME COURT ACT 1970
(By Amy Supangkat, [Blake Dawson Waldron](http://www.bdw.com.au))

Keith William Skinner v Jeogla Pty Ltd [2001] NSWCA 15, Supreme Court of New South Wales Court of Appeal, Spigelman CJ, Powell JA and Ipp AJA, 20 February 2001

The full text of this judgment is available at:

"<http://cclsr.law.unimelb.edu.au/judgments/states/nsw/2001/february/2001nswca15.htm>" or

"<http://cclsr.law.unimelb.edu.au/judgments/>".

This is an appeal against the trial judge's decision that the appellant receiver had breached section 420A(1)(a) of the Corporations Law.

The mortgagee bank, the first defendant to the proceedings at first instance, had in its favour certain registered mortgages over cattle and land. The appellant (second defendant) was appointed by the bank as receiver and manager of all of the assets and undertakings of the corporate respondents, including properties and cattle, when the respondents defaulted under the bank securities. At first instance, the respondents succeeded in challenging the receiver's conduct in selling some of the properties. An adjustment was made in the accounts between the parties and the receiver was ordered to pay the respondents' costs of the proceedings. Subsequent to those proceedings and before the appeal was heard, the court made a winding up order against the corporate respondents. The appellant receiver conceded that leave to proceed with the appeal under section 471B of the Corporations Law was necessary and sought that leave, and also sought leave under section 101(2)(c) of the Supreme Court Act 1970, if such leave was necessary.

(1) Application of section 471B Corporations Law

Section 471B of the Corporations Law provides:

"471B While a company is being wound up in insolvency or by the Court, ... a person cannot begin or proceed with:

(a) a proceeding in a court against the company or in relation to the property of the company;

...

except with the leave of the Court and in accordance with such terms (if any) as the Court imposes."

The appellant acknowledged that the conduct of the appeal fell within the meaning of the words "proceed with a proceeding" and conceded that leave to appeal was required under section 471B.

Spigelman CJ noted the following two cases which are sometimes referred to as authority for the propositions that lodging an appeal against a decision in favour of a company in liquidation does not require leave pursuant to section 471B. Because the appellant had conceded the need to seek leave, the Court did not express a final view on the issue.

In Humber & Co v John Griffiths Cycle Company (1901) 85 LT, Lord Davey in the House of Lords, in discussing the equivalent provision in the UK, stated that where proceedings have been pursued by a company after it has been ordered to be wound up, other parties may take "defensive proceedings" without leave. Although the meaning of "defensive proceedings" is not clear, Spigelman CJ considered that it could encompass prosecuting an appeal.

In BPM Pty Ltd v HPM Pty Ltd (1996) 14 ACLC 857, in rejecting a submission that leave was required to appeal a decision refusing to order security for costs against a plaintiff corporation that had gone into liquidation after the first instance decision, the Full Court of the Supreme Court of Western Australia adopted the terminology of Lord Davey in Humber and described the application for security as a "defensive" and procedural measure.

(2) Application of section 101(2) Supreme Court Act 1970

Section 101(2) of the Supreme Court Act 1970 provides:

"101(2) An appeal shall not lie to the Court of Appeal except by leave of the Court of Appeal, from:

...

(c) a judgment given or order made in proceedings in the Court ... as to costs only which are in the discretion of the Court."

At first instance, no order was made against the appellant other than an order for costs. The appellant sought leave to appeal under section 101(2), if it was required.

Spigelman CJ considered the appeal to be one "as to costs only" within the meaning of section 101(2)(c). Powell JA also expressed the view that leave would have been required pursuant to section 101(2)(c) of the Supreme Court Act 1970 even if not required under section 471B of the Corporations Law. However, the court did not rely on this section in determining the case as the appellant conceded that leave was required under section 471B of the Corporations Law.

(3) Construction of section 420A(1) Corporations Law

In considering the application for leave to appeal, Spigelman CJ stated that the court would not exercise the discretion in section 471B of the Corporations Law to allow a person to proceed with proceedings which are not reasonably arguable.

Section 420A(1), provides:

"420A(1) In exercising a power of sale in respect of property of a corporation, a controller must take all reasonable care to sell the property for:

(a) if, when it is sold, it has a market value - not less than that market value; or

(b) otherwise - the best price that is reasonably obtainable, having regard to the circumstances existing when the property is sold."

His Honour rejected the appellant's argument that the duty stated in paragraph (b) will be generally applicable and paragraph (a) will have application only in some circumstances. This is clearly indicated by the use of the word "otherwise" in paragraph (b).

The appellant also argued that the construction of "market value" means an "established" market price. The trial judge appeared to have adopted a test of whether a market value was ascertainable, which would have the effect that paragraph (a) would play a dominant role and paragraph (b) would have minimal application. Spigelman CJ considered the legislative history of the sub-section and stated that it was not such as to give support to a construction that would give overwhelming dominant practical application to paragraph (a). Instead, his Honour suggested that there are two alternative constructions of the words "market value" which are reasonably arguable: that market value means (i) a definite value, being a value that is clearly and obviously established as a market price; or (ii) a readily determinable value, being a value which can be readily determined through comparable sales. His Honour did not choose between the alternatives but suggested that on either interpretation, the trial judge erred in his construction of section 420A.

(4) The decision

Although the court found that the trial judge had erred in interpreting section 420A, the court held that the interests of the appellant in setting aside the costs order did not justify the grant of leave to proceed, and ordered the proceedings be dismissed.

Spigelman CJ (with whom the other members of the court agreed) stated three elements as being relevant in determining that the discretion under section 471B of the Corporations Law should be exercised against the appellant:

(i) the necessity to adjourn the appeal in order to join the mortgagee bank, being a necessary party to the appeal;

(ii) the high probability that the factual issues would need to be remitted to a court of first instance, and the low probability of the appellants succeeding upon remittal based on the reasons given by the trial judge in the proceedings at first instance; and

(iii) the fact that the only practical consequence, if the appeal were to succeed, would be the reversal of the order for costs.

(C) EXCLUSIVITY ARRANGEMENTS IN SCHEMES EFFECTING A MERGER
(By Adam Brooks, Herbert Geer & Rundle)

Arthur Yates & Co Limited (Application of) [2001] NSWSC 40, New South Wales Supreme Court, Santow J, 7 February 2001

The full text of this judgment is available at:

"<http://cclsr.law.unimelb.edu.au/judgments/states/nsw/2001/february/2001nswsc40.htm>" or

"<http://cclsr.law.unimelb.edu.au/judgments/>".

In this matter, Santow J had to consider the convening of a meeting of Yates shareholders to consider a proposed scheme of arrangement. The scheme contemplated a merger taking place between Yates and a third party. Yates and the third party had agreed that during a specified exclusivity period, they would not have any discussions with any other person that may result in the merger not proceeding. The exclusivity provision was expressed to only impose obligations to the extent that it would not involve a breach of the duties of Yates directors or be unlawful on any other basis. The exclusivity period purported to last until the shareholder approval and court approval conditions are satisfied.

In this matter, Santow J made some observations on practical constraints upon alternative merger proposals.

Santow J noted that an exclusivity arrangement can be distinguished from other forms of constraints (such as inducement or break fees) because exclusivity arrangements do not generally involve financial disincentive. Santow J opined that in relation to such exclusivity clauses:

(a) they should be for no more than a reasonable period capable of precise ascertainment;

(b) they should be subject to the overriding obligations not to breach the directors’ fiduciary duties or be otherwise unlawful; and

(c) there should be adequate prominence given to the constraint in the explanatory memorandum to shareholders.

Santow J was satisfied that these matters were satisfied in relation to the proposed Yates scheme. Santow J stated however "If in some future case the exclusivity clause were accompanied by a break fee, it will need to be looked at carefully...".

Santow J noted that constraints recognise the commercial reality that a bidder under a scheme may not wish to spend substantial time and money on a bid only to find that the directors of the target have used that bid as a stalking horse for a better one. On the other hand, Santow J noted that even modified shut-out agreements can be unfair to shareholders if not qualified by reference to directors’ duties.

(D) JURISDICTION OF THE CORPORATIONS AND SECURITIES PANEL
(By Adam Brooks, Herbert Geer & Rundle)

St Barbara Mines Limited v Australian Securities and Investments Commission [2001] FCA 119, Federal Court of Australia, Hill J, 15 February 2001

The full text of this judgment is available at:

"<http://cclsr.law.unimelb.edu.au/judgments/states/federal/2001/february/2001fca119.htm>" or

"<http://cclsr.law.unimelb.edu.au/judgments/>".

St Barbara Mines Limited ("St Barbara") intended to make a takeover offer in respect of Taipan Resources NL ("Taipan").

The Australian Securities and Investments Commission ("ASIC") refused to accept the relevant bid documents for registration because of the view it took on the question whether ordinary and partly paid shares comprise shares of the one class or shares of different classes. St Barbara challenged ASIC’s decision by application pursuant to the Administrative Decisions (Judicial Review) Act 1977.

ASIC objected to the jurisdiction of the Federal Court to deal with the matter. ASIC relied on section 659B of the Corporations Law which provides that only ASIC or another public authority of the Commonwealth or a state may commence court proceedings "in relation to a takeover bid, or proposed takeover bid, before the end of the bid period". The bid period had not expired.

The stated object of section 659B is to make the Corporations and Securities Panel ("the Panel") the main forum for resolving disputes about a takeover bid until the bid period has ended.

St Barbara disagreed with ASIC’s view of the law but nevertheless sought a modification of the law from ASIC pursuant to section 655A. The modification application was unsuccessful.

Hill J noted that the Panel had jurisdiction to review ASIC’s decision under section 655A.

St Barbara argued for a narrow reading of section 659B (that the Court does have jurisdiction because the proceedings do not relate to a bid but relate to the non-acceptance of bid documents with ASIC).

Hill J noted that the object of the relevant provisions is for the Panel to take the place of the courts as the principal forum for resolving takeover disputes until the bid period has ended. Hill J concluded that this case is an obvious example of a proceeding which relates to a bid and that accordingly the Court would have no jurisdiction to deal with the proceedings at this stage.

(E) TIMBER SCHEME NOT A FRANCHISE BUSINESS
(By Sean Tully, [Phillips Fox](http://www.phillipsfox.com.au))

Enviro Systems Renewable Resources v ASIC [2001] SASC 11, Supreme Court of South Australia, Martin J, 2 February 2001

The full text of this judgment is available at:

"<http://cclsr.law.unimelb.edu.au/judgments/states/sa/2001/february/2001sasc11.htm>" or

"<http://cclsr.law.unimelb.edu.au/judgments/>".

(1) Background

Aussie Glass (Operations and Marketing) Pty Ltd (‘Aussie Glass’) developed documentation for a "timber merchant franchise" scheme. From about April 1997 to June 1998, Aussie Glass used the registered business name "Enviro Systems Renewable Resources" to offer interests in the scheme. From about June 1998, Enviro Systems Renewable Resources Pty Ltd (‘Enviro’) began operating the scheme and offering interests in it under licence from Aussie Glass.

Enviro retained Maritime Funding Pty Ltd (‘Maritime Funding’) to market and sell interests in the scheme. Commission sales agents engaged by Maritime Funding made initial contact with potential participants. The agents provided potential participants with copies of an Information Memorandum, a disclosure document and a third document referred to as the "Blue Gum brochure". The documentation spoke of Enviro as a "Franchisor" and a participant as a "Franchisee".

Essentially, under the documentation Enviro offered participants the right to use identified half hectare Woodlots to grow Tasmanian Blue Gum trees and the rights to harvest and sell the timber or timber products. Participants did not have a registrable interest in any of the land on which the Woodlots were situated. The documentation provided that a participant could personally discharge his or her obligations or could use the services of an approved and qualified manager to manage the Woodlots to the stage of producing timber ready for sale by the participant. Participants were required to pay an annual "franchise" fee, which covered rental, maintenance charges, insurance and any management fee.

(2) Application

Enviro applied for a declaration that its scheme was a franchise for the purposes of Chapter 5C of the Corporations Law. ASIC opposed the application and asserted that Enviro had been operating a managed investment scheme in breach of the Corporations Law.

A franchise is specifically excluded from the definition of a managed investment scheme in section 9 of the Corporations Law. Therefore, if the scheme operated by Enviro was found to be a franchise, Enviro could not be regarded as operating a managed investment scheme in breach of the Corporations Law. Section 9 of the Corporations Law defines franchise as "an arrangement under which a person earns profit or income by exploiting a right, conferred by the owner of the right, to use a trade mark or design or other intellectual property or the goodwill attached to it in connection with the supply of good or services. An arrangement is not a franchise if the person engages the owner of the right, or an associate of the owner, to exploit the right on the person’s behalf".

ASIC submitted that the scheme did not involve a franchise as:

- the participants were passive investors who took an interest in a collective investment scheme; and

- no profit or income was earned by a participant exploiting the right to use a trade mark or other intellectual property or goodwill. Whatever income may be derived in due course would be derived from the growing of trees rather than from the exploitation of any relevant right.

Enviro submitted that the scheme was a franchise as it involved participants earning income by exploiting the right to use a trade mark, namely, the Enviro name and Enviro logo, and the right to use other intellectual property, namely, the E S System.

(3) Decision

Martin J stated that "the definitions in the [Corporations] Law and the [Franchising] Code [of Conduct], and the history of regulation of passive investment schemes and franchise arrangements, support the view that the Legislature intended to exempt from the regulatory regime applicable to managed investment schemes those types of arrangements in which the risk that the business will succeed or fail is, to a significant extent, dependent on the activities of the franchisee. On the other hand, the Legislature intended that passive investment schemes in which the risk of the business succeeding or failing is wholly or very substantially dependent on the activities of the promoter, and in which business it is not intended that the investor will actively participate, should be regulated by the regime applicable to managed investment schemes". His Honour added that "Having ascertained the overall object of the relevant regulatory regimes, section 109H of the [Corporations] Law requires this Court to prefer a construction on the provisions of the Law which promotes the purpose or object underlying the Law in preference to a construction that would not promote that purpose or object".

When considering whether the scheme was a franchise, Martin J did not limit himself to a literal reading of the scheme documentation, and thus a strict view of the legal rights and duties created by the documentation, rather he considered the realities of the scheme as it was designed to operate in practice. In doing so His Honour held that the scheme operated by Enviro was not a franchise as:

- it was intended that Enviro would control the day-to-day operations of the scheme, and that the participants would not take an active role in the day-to-day operations of any aspect of the scheme;

- the presentation of the scheme by Enviro was designed to encourage potential participants to take up the entire package;

- the success of the scheme was entirely dependent upon Enviro; and

- the scheme was designed to attract passive investors.

While this conclusion was "sufficient to dispose of the application", Martin J thought it appropriate to consider whether the scheme involved the exploitation of any intellectual property. In doing so, His Honour held that "Enviro does not own a right to use a particular system, which right is capable of being conferred upon a participant and of being exploited by a participant in connection with the supply of timber. The scheme envisages the earning of income, but not through the exploitation by a participant of a right to use a particular system owned by Enviro. Similarly, although Enviro has applied for the registration of a ‘logo’, the scheme is not designed to enable a participant to earn income by exploiting the right to use the logo or any other form of trade mark".

Martin J therefore refused Enviro’s application for a declaration that the scheme was a franchise for the purposes of the Corporations Law.

6. RECENT CORPORATE LAW JOURNAL ARTICLES

R Campo, ‘The Protection of Employee Entitlements in the Event of Employer Insolvency: Australian Initiatives in the Light of International Models’ (2000) 13 Australian Journal of Labour Law 236

International and Comparative Corporate Law Journal, Vol 2 No 2, 2000. Articles include:

- The Codification of Directors’ Duties: Some Observations from an Australian Standpoint on the Joint Consultation Paper of September 1998 issued by the Law Commissions of the United Kingdom

- The Company of the 21st Century: Old Wine in New Bottles

- Company Law Reform: The Issues – Some Strategic Questions

- A Possible Turning Point in the Development of EC Company Law: The Centros Case

- Directors’ Duties in the 21st Century: A New Beginning?

S Brown, ‘Tender Procedure for the Purchase of Blocks of Shares of Stock in Open Joint Stock Companies in Ukraine’ (2000) 28 International Business Lawyer 463

D Kramer and M Jacobs, ‘Regulation Fair Disclosure: Has the SEC Levelled the Playing Field by Narrowing its Boundaries?’ (2000) Vol 15 No 11 Journal of International Banking Law

G F K Santow, ‘Corporations Law in a Federal System’ (2000) 20 Australian Bar Review 162

University of Cincinnati Law Review, Vol 68 No 4, Summer 2000, 13th Annual Corporate Law Symposium: Contemporary Issues in the Law of Business Organizations. Articles include:

- Mandatory Disclosure: A Behavioral Analysis

- The Peculiar Role of the Delaware Courts in the Competition for Corporate Charters

- Are Dead Hand (and No Hand) Poison Pills Really Dead?

- Should State Corporate Law Define Successor Liability?: The Demise of CERCLA’s Federal Common Law

- ‘Proper Purpose’ Fiduciary Duties, and Shareholder-Raider Access to Corporate Information

- Lockups and Delaware Venue in Corporate Law and Bankruptcy

Australian Journal of Corporate Law, Vol 12 No 2, December 2000. Articles include:

- The Business Judgment Rule

- Good Corporate Governance or Not?

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Insolvency Law Journal, Vol 8 No 4, December 2000. Articles include:

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- Accessing the Family Jewels: Legislative Efforts to Provide Creditors with Access to the Assets of Discretionary Trusts

B Grossfeld, ‘Loss of Distance: Global Corporate Actors and Global Corporate Governance – Internet v Geography’ (2000) Vol 34 No 3 International Lawyer

G Wegen and S Mutter, ‘Use of the Internet at Shareholders’ Meetings of German Stock Corporations’ (2000) 28 International Business Lawyer 401

B Hannigan, ‘Limitations on a Shareholder’s Right to Vote – Effective Ratification Revisited’ (2000) Journal of Business Law 493

G Wilson, ‘Business, State, and Community: "Responsible Risk-takers", New Labour, and the Governance of Corporate Business’ (2000) Vol 27 No 1 Journal of Law and Society

J Cioffi, ‘Governing Globalisation? The State, Law, and Structural Change in Corporate Governance’ (2000) Vol 27 No 4 Journal of Law and Society

Securities Regulation Law Journal, Vol 28 No 4, Winter 2000. Articles include:

- Regulation FD: Its Creation, Its Authority, Its Possible Impact

- The Selection of Institutional Investors as Lead Plaintiffs Under the Private Securities Litigation Reform Act

- Litigating Securities Fraud as a Breach of Fiduciary Duty in Delaware

B Black, R Kraakman and A Tarassova, ‘Russian Privatization and Corporate Governance: What Went Wrong?’ (2000) Vol 52 No 6 Stanford Law Review

B Sullivan, ‘Corporate Killing – Some Government Proposals’ (2001) Criminal Law Review 31

Michigan Law Review, Vol 98 No 7, June 2000, Special Issue on International Bankruptcy. Articles include:

- International Bankruptcy: In Defense of Universalism

- The Case for Cooperative Territoriality in International Bankruptcy

- Resolving Transnational Insolvencies Through Private Ordering

- A Global Solution to Multinational Default

D Rice, ‘The Jurisdiction in Cyberspace: Which Law and Forum Apply to Securities Transactions on the Internet?’ (2000) Vol 21 No 3, University of Pennsylvania Journal of International Economic Law

A Flick and G Lang, ‘The New Polish Commercial Company Code’ (2000) 28 International Business Lawyer 516

Committee on Professional and Judicial Ethics, ‘Formal Opinion 2000-03: The Acceptance of Securities in a Client Company in Exchange for Legal Services to be Performed’ (2000) 55 The Record 629

Committee on Securities Regulation, ‘Letter to Securities and Exchange Commission Regarding the Facilitation of Electronic Communications Required Under the Securities Laws’ (2000) 55 The Record 712

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