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|  | |  |  |  |  |  | | --- | --- | --- | --- | --- | | |  |  | | --- | --- | | **Bulletin No. 125**  Editor: [Professor Ian Ramsay](mailto:i.ramsay@unimelb.edu.au" \t "_new), Director, Centre for Corporate Law and Securities Regulation  Published by Lawlex on behalf of [Centre for Corporate Law and Securities Regulation](http://cclsr.law.unimelb.edu.au/" \t "_new), Faculty of Law, the University of Melbourne with the support of the [Australian Securities and Investments Commission](http://www.asic.gov.au/" \t "_new), the [Australian Securities Exchange](http://www.asx.com.au/" \t "_new) and the leading law firms: [Blake Dawson Waldron](http://www.bdw.com.au/" \t "_new), [Clayton Utz](http://www.claytonutz.com/" \t "_new), [Corrs Chambers Westgarth](http://www.corrs.com.au/" \t "_new), [DLA Phillips Fox](http://www.dlaphillipsfox.com/" \t "_new), [Freehills](http://www.freehills.com/" \t "_new), [Mallesons Stephen Jaques](http://www.mallesons.com/" \t "_new).   1. 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Recent Corporate Law and Corporate Governance Developments** |  |  | | |  | | |  | | --- | | **1.1 Seminar -Directors' Duties: Navigating the Storm on Board - Melbourne and Sydney**   Directors' duties have recently been the subject of extensive media and regulatory scrutiny.  High-profile transactions have highlighted difficult issues for directors, and ASIC enforcement actions against executive and non-executive directors have brought issues of liability to the fore.    This seminar brings together eminent speakers to discuss topical issues in directors' duties, from the perspectives both of directors and of their legal advisers. These include:   * The standard of care applicable to a director occupying a special position, such as the chair of a board committee:  is it higher than that of other directors? * The business judgement rule: when does it apply, and how helpful is it? * Directors' duties in the context of management buyouts: what protocols should directors follow when management presents a buyout offer?   The seminar will be convened by Professor Ian Ramsay, Director of the Centre for Corporation Law & Securities Regulation at The University of Melbourne.  Speakers for the Melbourne seminar are:  Sir Rod Eddington, Bob Baxt AO, Alison Lansley and Jon Webster.  Speakers for the Sydney seminar are:  Alan Cameron AM, David Gonsky AC, Tim Bednall and Stuart McCulloch.     The seminar is being held in Melbourne on 19 March 2007 and Sydney on 1 May 2008, 5.30pm to 7.15pm.    Further information is available at: [http://cclsr.law.unimelb.edu.au/go/news/index.cfm](http://cclsr.law.unimelb.edu.au/go/news/index.cfm" \t "_new)  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.2 Securities Commission New Zealand releases terms of reference for its oversight of the New Zealand Exchange for 2007**   On 24 January 2008 the Securities Commission New Zealand released the terms of reference for its oversight of the New Zealand Exchange (NZX) in the 2007 calendar year. This oversight review is being conducted under sections 10(b), 10(c) and 10(caa) of the Securities Act 1978. The purpose is to review NZX's performance of its co-regulatory function, in particular its obligations under section 36G of the Securities Markets Act 1988 and, in respect of futures and options dealers, NZX's regulation of dealers under its Futures and Options Participant Rules.   The terms of reference are in four main parts:   1. The main focus of the review is NZX's policies on the continuous disclosure   rules and its administration of these, including publishing market announcements. 2. Any new developments or issues relating to the three areas which were the focus of the 2006 review: the management and operation of the NZAX market; NZX's processes for admission or approval of listed issuers and market participants to its markets; and how NZX minimises the risk of non-compliance by listed issuers and market participants with the Listing Rules and Participant Rules. 3. Any issues arising during the review in relation to the eight areas identified for the first oversight review, and a new area i.e. the impact, if any, of NZX's expanding commercial activities on its regulatory function. 4. NZX's progress implementing the Commission's recommendations arising from its review of the 2006 calendar year.   The Commission expects to complete the review and publish a report by 30 June 2008.    Further information is available on the [Securities Commission New Zealand](http://www.seccom.govt.nz/new/releases/2008/240108.shtml" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.3 Pricewaterhouse Coopers releases the results of its 11th Annual Global CEO Survey**   On 22 January 2008 PriceWaterhouse Coopers released the results of the 11th Annual Global CEO Survey at the World Economic Forum annual meeting in Davos, Switzerland.   Compared with last year's survey, possible economic downturn is the only risk factor to increase in concern among CEOs. The percentage of CEOs who said they are "very confident" about revenue growth over the next twelve months fell two percentage points from last year to 50%. CEOs however, remained nearly twice as confident as they were in 2003.  The overall drop in business confidence was most pronounced in North America, where just 35% of CEOs said they were "very confident' about growth. Confidence among Western European CEOs also declined to 44%, down 8 percentage points from last year. In contrast, CEO confidence increased in Asia Pacific, Latin America and Central and Eastern Europe. The growing confidence was particular pronounced in China and India - where 73% and 90% of CEOs respectively were "very confident" about the prospects for growth over the next 12 months.   Other key findings of the survey include:   * Climate change was cited as a concern by only 34% OF CEOs worldwide, down from 40% last year. Only 37% of CEOs reported that their organisation was investing significant resources to address the risks and opportunities presented by climate change. Four-fifths of CEOs called fro an increase in government action to reduce emissions. Support for increased government intervention was highest among CEOs in the Asia Pacific (90%) and lowest in North America (64%). * Over-regulation was cited as a concern by 59% of respondents, down from 73% last year. CEOs identified labour law, tax regimes, and education as the top areas in which governments could make improvements. Just 5% felt improvements were needed in regulation of initial public offerings or listings on stock exchanges. * Compared with last year's survey, more CEOs identified their main opportunities for short term growth coming from better penetration of existing markets or developing new products rather than from mergers and acquisitions or geographical expansion. Similarly to last year, CEOs said they preferred to finance future growth from within the company rather than through external sources such as debt or equity markets. * At least 24% of CEOs reported that their company had completed at least one cross-border merger or acquisition in the past 12 months, while 31% plan to do so within the next 12 months. CEOs in Western Europe were particularly likely to have participated in cross-border M&A activity. Interest in M&A in 2008 is highest in Asia Pacific. The key obstacles to M&A activity identified by CEOs included cultural and financial considerations. * More than half the CEOs surveyed said that collaborative networks will become a major organisational principle for business, with marked differences between different regions.   The 11th Annual Global CEO Survey is available on the [PricewaterhouseCoopers](http://www.pwc.com/extweb/home.nsf/docid/2AE969AC42DD721A8525725E007D7CF2" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.4 Hedge fund working group focuses on valuation and risk management standards**  On 22 January 2008, the Hedge Fund Working Group (HFWG) published its best practice standards for hedge fund managers following widespread consultation with the industry and other interested parties.    The body of voluntary standards includes recommendations for managers to adopt an independent process for valuing portfolios and to put in hand robust governance of funds. In each case this is to handle conflicts of interest between managers and investors. The report also recommends enhanced disclosure to investors and that managers should have a comprehensive framework to manage risk - an important area in the context of financial stability.  The HFWG, comprising 14 leading hedge fund managers based mainly in London, was set up last year in response to concerns both about the growing impact of hedge funds and financial stability. The standards aim to address these and other issues through increased disclosure to investors and other counterparties. Compliance with the hedge fund standards will be voluntary and will operate on a 'comply or explain' basis.   A new Hedge Fund Standards Board (HFSB) is being set up to act as custodian of the standards. The trustees of the HFSB will be responsible for updating the standards in the future.   Further information is available on the [HFSB](http://www.hfsb.org/" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.5 FSA publishes discussion paper reviewing the structure of the UK Listing Regime**   On 14 January 2008, the UK Financial Services Authority (FSA) released a discussion paper on the structure of the UK Listing Regime. This paper sets out a new structure for the listing regime in which securities subject to higher standards will be more clearly separated from directive minimum standards. The paper is a response to concerns expressed over the lack of clarity and potential for confusion in the market as a result of the different segments and markets offered by the FSA and the London Stock Exchange (LSE), such as Primary Listing, Secondary Listing, GDRs and AIM, which are all loosely referred to as a 'London Listing'.   In the UK, Primary Listed securities embody higher standards and are governed by provisions which are 'super-equivalent' to the requirements of the relevant European Union directives. Provisions for Secondary Listed securities and Global Depositary Receipts (GDRs) are in line with the minimum EU requirements.    This discussion paper invites comments on two structural options for amending the Listing regime. The first option involves reclassifying Secondary Listing and GDRs so that the securities would continue to be admitted to trading and subject to appropriate EU directive based obligations, but would not be 'Officially listed' by the FSA. The second option involves renaming Primary Listing 'Tier One Listing' and Secondary Listing and GDRs 'Tier Two Listing'.    Currently, UK companies are only eligible for a 'super-equivalent' Primary Listing and not Secondary Listing. Overseas issues can choose which of the two regulatory regimes they list under. The paper explores proposals to relax these restrictions and create a level playing field for UK and overseas issuers.    The paper also asks whether there would be greater clarity if all Primary Listed companies were subject to the same corporate governance requirements, be they UK or overseas issues. Currently, overseas issues must disclosure whether or not they comply with the corporate governance regime in their country of origin and disclose the significant ways in which their corporate governance practices differ from those in the Combined Code. The paper seeks views on whether requiring overseas companies to 'comply or explain' against the Combined Code would lead to substantive changes in behaviour by investors and issues. Finally, the paper considers whether there is a case for amending the regulatory standards which apply to GDRs.   The discussion paper is available on the [FSA](http://www.fsa.gov.uk/pubs/discussion/dp08_01.pdf" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.6 IASB releases new standards on business combinations and non-controlling interest**   On 10 January 2008, the International Accounting Standards Board (IASB) released new accounting requirements for business combinations and transactions with non-controlling interests (NCIs, formerly 'minority interests').    The new requirements represent a significant step towards the convergence of International Financial Reporting Standards (IFRS) and US GAAP. The US Financial Accounting Standards Board (FASB) released its versions of the standards in December 2007. It is expected that the Australian Accounting Standards Board (AASB) will adopt these standards without amendments for for-profit entities.   Key changes include:   * Transaction costs for mergers and acquisitions are to be expensed rather than capitalised; * Contingent consideration must be measured at the date of acquisition with subsequent changes to be taken to the income statement; * Non-controlling (minority) interests will be measured at full fair value, including goodwill, or the fair value of the proportion of net assets held; * New guidance on issues such as reacquired rights and vendor indemnities; and * Combinations by contract alone and those involving mutuals will now be covered by the standards.   The new requirements come into effect on 1 July 2009.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.7 GAO: Continued concentration in audit market for large public companies does not call for immediate action**  On 9 January 2008, the US General Accountability Office (GAO) published a report entitled "Audits of Public Companies: Continued Concentration in Audit Market for Large Public Companies Does Not Call for Immediate Action".    This report examines (1) concentration in the market for public company audits, (2) the potential for smaller accounting firms' growth to ease market concentration, and (3) proposals that have been offered by others for easing concentration and the barriers facing smaller firms in expanding their market shares.   The report presents the results of GAO's survey of accounting firms that perform public company audits and GAO's survey of public companies. The first survey was administered to all US accounting firms that audit at least one public company. The data collected from this survey was supplemented by interviews with  the four largest accounting firms. The second survey was administered to a random sample of almost 600 large, medium and small public companies, and asked about their experiences with their auditors. For the report, GAO also developed an econometric model that analysed the extent to which various factors, including concentration and new auditing requirements, affected fee levels. This work was supplemented by interviews with market participants, including public companies, investors, accounting firms, academics and regulators.    The report makes no recommendations.    The full report is available on the [GAO](http://www.gao.gov/new.items/d08163.pdf" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.8 Consumers resigned to getting poor advice says Panel research**  On 4 January 2008, the Financial Services Consumer Panel published consumer research, which it commissioned to inform its response to the FSA's Retail Distribution Review. The research looks at how consumers react to some of the presumptions set out in the Review.   The main conclusions of the report were as follows:   * the current advice framework is characterised by a great deal of confusion. Most consumers do not distinguish between different types of adviser when talking about or referring to financial advice. Many consumers described advice they had received as independent, even when the advice was provided by a tied financial adviser or even by bank sales staff; * when prompted to think about the kinds of financial advice available, the majority of consumers understand that many 'financial advisers' are not independent. However, the concept of financial advisers' independence is not a 'top of mind issue' for consumers; * many consumers don't understand the implications of the lack of independence of financial advisers; * the main reasons for consumers to use an adviser are because they provide an easier and more convenient route to finding the best place to invest money. Also many consumers like to engage with someone and to be able to discuss their financial situation with another person who has more experience of the financial market than them; * the key barrier to seeking advice is the perception that there is no value to it. This is driven by both attitude and circumstance. Attitudinally, the less financially experienced or knowledgeable do not appreciate the value of advice, because there is a perception that financial advisers are not for them; that they are only for rich people. Conversely, many of those who are financially sophisticated and particularly well off feel they have sufficient knowledge to manage their money themselves, or are more knowledgeable than the financial advisers themselves. They also enjoy researching and making financial decisions. The majority of consumers in the research commented that they would only seek advice for 'life changing' amounts of money. * generic advice could encourage those who lack financial experience to seek advice. It may also encourage those consumers who don't see the value in seeking advice for smaller sums of money to seek advice. Generic advice can play a vital role in setting up consumers' expectations and educating them about the rest of the system, and what tier of further advice is appropriate to them; and * in its current format Generic Advice will struggle to be top-of-mind for consumers. It must be widely and heavily communicated and be more accessible and advice led than currently proposed, in order for it to become more important in consumers' minds.   The report is available at: [http://www.fs-cp.org.uk/pdf/rdr\_report.pdf](http://www.fs-cp.org.uk/pdf/rdr_report.pdf" \t "_new)  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.9 SEC publishes text of RAND report on investment adviser, broker-dealer industries**   On 3 January 2008, the US Securities and Exchange Commission (SEC) received and posted on its website the RAND Corporation's final report on practices in the investment adviser and broker-dealer industries.   The SEC contracted RAND to produce the report following the publication of a 2005 SEC rule permitting broker-dealers to offer fee-based brokerage accounts without being required to comply with the Advisers Act. The rule was the subject of a large number of comments, prompting the Commission to fund a major study comparing how the different regulatory systems that apply to broker-dealers and investment advisers affect investors. The final RAND report, produced by RAND's Center for Corporate Ethics, Law, and Governance, is the product of more than a year of empirical study and analysis.   According to the SEC, the report will assist the Commission's efforts to update its regulations to improve investor protections.    The final RAND report is available on the [SEC](http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.10 Securities Commission New Zealand releases guide to New Securities Law**   On 22 December 2007, the Securities Commission New Zealand released a guide to the new requirements under the Securities Market Act 1988, which come into force on 29 February 2008. The guide explains the new laws and regulations on:   * investment advisers and investment brokers; * insider trading; * market manipulation; * substantial security holder disclosure; and * the Securities Commission's powers to enforce this law.   These changes to the law arise from the passing of the Securities Legislation Bill in 2006. The Act which previously set out the requirements for advisers and brokers - the Investment Advisers (Disclosure) Act 1996 - is repealed. Disclosure requirements for investment advisers are now in the Securities Markets Act 1988.  The Guide also refers to the new Securities Markets (Investment Advisers and Brokers) Regulations 2007.  The Guide is available on the [Securities Commission New Zealand](http://www.newsecuritieslaw.govt.nz/guide" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.11 APRA releases information paper detailing its approach to the supervisory review process under Basel II**   On 21 December 2007, the Australian Prudential Regulatory Authority (APRA) released an information paper on its approach to the supervisory review process under the new Basel II Capital adequacy regime, known as the Basel II Framework. This follows the release, on 30 November 2007, of the suite of prudential standards giving effect to the implementation of Basel II in Australia.   The supervisory review process, or Pillar 2, is one of three mutually reinforcing pillars on which the Framework is based. The review process is intended to ensure that locally incorporated authorised deposit-taking institutions (ADIs) have adequate capital to support all the risks in their business and to encourage ADIs to develop and implement better risk management techniques in monitoring and managing their risks.    APRA's approach to the supervisory review process under Basel II was the subject of a discussion paper released in September 2007. APRA Chairman Dr John Laker said that this discussion paper had been well received by industry and that no significant changes had been made in finalising the information paper.   There are no separate Pillar 2 prudential standards since ADIs' obligations and APRA's powers in this area are already addressed in Prudential Standard APS 110 Capital Adequacy. The Basel II Framework came into force in Australia on 1 January 2008.   The information paper is available on the [APRA](http://www.apra.gov.au/" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.12 FTC staff proposes online behavioural advertising privacy principles**  On 20 December 2007, the staff of the US Federal Trade Commission released a set of proposed principles to guide the development of self-regulation in the area of online behavioural advertising. These principles are intended to address important consumer privacy concerns associated the practice of tracking of a consumer's activities online - including the searches the consumer has conducted, the Web pages visited, and the content viewed - in order to deliver advertising targeted to the individual consumer's interests.  Further information is available on the [FTC](http://www.ftc.gov/opa/2007/12/principles.shtm" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.13 FRC consults on possible changes to the Combined Code**  On 20 December 2007, the US Federal Reporting Council (FRC) initiated consultation on two possible changes to the Combined Code.   The effect of these proposals would be to remove the restriction on an individual chairing more than one FTSE 100 company; and, for listed companies outside the FTSE 350, to allow the company chairman to be a member of, but not chair, the audit committee provided he or she was considered independent on appointment.  These proposals follow a review of the impact and implementation of the Combined Code, the results of which were published in November 2007. The review found that the Code continues to have a broadly beneficial impact, and is seen as having contributed to higher overall standards of governance among UK listed companies and to more professional boards; but while there are many positive indicators to suggest that the 'comply or explain' approach is working fairly well, there is also some frustration with its day-to-day operation.  Further information is available on the [FRC](http://www.frc.org.uk/press/pub1471.html" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.14 SEC launches new internet tool with instant comparisons of executive pay**   On 21 December 2007, the US Securities and Exchange Commission (SEC) launched the first-ever online tool that enables investors to easily and quickly compare executive compensation levels in the largest 500 American companies.   Using the Executive Compensation Reader, investors can view Summary Compensation Tables and other data on 500 large companies that have filed proxy statements with the SEC. Investors can view the total annual pay as well as dollar amounts for salary, bonus, stocks, options and company perks. The new tool also includes direct links to companies' proxy statements, including footnotes and the companies' explanation of their compensation decisions.   Using the online tool, investors can easily compare executive compensation figures among various companies by sorting according to industry, public market capitalisation or size. Selected comparisons can be viewed in both table and graph form.   According to the SEC, the Executive Compensation Reader builds on the Commission's commitment to dramatically enhance clarity and completeness of executive compensation disclosure and highlights the power of interactive data to transform financial disclosure.    The Executive Compensation Reader is available on the [SEC](http://www.sec.gov/xbrl" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.15 FSA publishes a discussion paper reviewing the liquidity requirements for banks and building societies**   On 19 December 2007, the UK Financial Services Authority (FSA) published a discussion paper reviewing liquidity requirements for banks and building societies. The paper, which draws upon early lessons from recent market turbulence, suggests how future liquidity policy should develop and sets out key issues for discussion with the banking industry and other stakeholders.   The FSA's preliminary conclusions are that a principle-based approach is correct, but that the application of existing high-level standards needs to be toughened and some form of quantitative liquidity requirements remains necessary. The Discussion Paper stresses the primary responsibility of firms' boards and management for maintaining adequate liquidity and managing their liquidity risks. It also looks at the market failure and cost-benefit issues involved.   The FSA intends to develop UK policy in line with international work being undertaken by the Basel Committee and the Committee of European Banking Supervisors.   The Discussion Paper is available on the [FSA](http://www.fsa.gov.uk/" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.16 APRA releases its second consultation package on proposed refinements to the general insurance prudential framework**   On 19 December 2007, the Australian Prudential Regulation Authority (APRA) released its second consultation package on proposed refinements to the general insurance prudential framework to recognise the differing risk profiles of insurers.    The package consists of a response paper and draft prudential standards and prudential practice guides. The refinements are expected to apply from 1 July 2008.   The proposed refinements have been developed in the context of the [Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=98568" \t "Default), enacted on 24 September 2007.    The response paper outlines APRA's response to submissions received on the discussion paper released by APRA on 31 July 2007. Contained in the paper are proposals for the categorisation of insurers that are largely aimed at clarifying and simplifying APRA's requirements of branches and subsidiaries of foreign insurers. The proposals will also scale back some of the requirements of smaller insurers and captives, while maintaining the integrity of APRA's prudential framework. The paper also contains a number of proposals applying to all insurers. These include the recognition of 'kangaroo bonds', the measurement of capital and certain reinsurance and investment-related measures.    APRA invites comments on the proposed refinements by 22 February 2007.  The consultation package is available on the [APRA](http://www.apra.gov.au/" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.17 European Commission sets out strategy for EU mortgage markets**   On 18 December 2007, the European Commission released a White Paper on the Integration of EU Mortgage Markets. The White Paper summarises the conclusions of a comprehensive review of European residential mortgage markets and presents a balanced 'package' of measures to improve the efficiency and the competitiveness of these markets, to the benefit of consumers, mortgage lenders and investors alike. This is to be achieved in particular through improvement in the areas of cross-border supply, product diversity, consumer empowerment and customer mobility.   Evidence shows that the single market for residential mortgages is far from integrated. Obstacles exist that restrict the level of cross-border activity on the supply and demand sides, thus reducing competition and choice in the market. While the influence of factors such as language, distance, consumer preferences or lender business strategies cannot be underestimated, other factors, which prevent the conduct or substantially raise the cost of business for offering or taking out a mortgage credit in another EU Member State, can be addressed by appropriate policy initiatives. The potential benefits of removing these barriers could, according to some estimates, reduce the interest payable on a EUR 100 000 mortgage loan by as much as EUR 470 per year.   To unlock these benefits, the Commission seeks to improve the competitiveness and efficiency of mortgage markets by facilitating the cross-border supply and funding of mortgage credit as well as by increasing the diversity of products available. The White Paper also recognises that there can be no efficient market without confident and empowered consumers, who are able to seek out and choose the best product for their needs.   Recent events both in the US and in Europe have shown the economic and social importance of mortgage credit. Where possible and appropriate, the White Paper also draws on the initial lessons that can already be learnt from the recent turbulence in financial markets.   Non-legislative solutions are announced in particular in the field of land registration, property valuation, and forced sales procedures. The Commission does not rule out proposing future legislative measures if they are deemed necessary. However, until a rigorous impact assessment, including a quantitative cost-benefit analysis, has been undertaken and further consultation with all stakeholders have been concluded, the Commission considers that it would be premature to decide on whether a legislative approach would at this stage deliver the necessary value added.  The White Paper is available on the [Europa](http://ec.europa.eu/internal_market/finservices-retail/home-loans/integration_en.htm" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.18 APRA releases final reporting requirements for discretionary mutual funds**   On 17 December 2007, the Australian Prudential Regulatory Authority (APRA) released the final reporting requirements for the collection of data from discretionary mutual funds (DMFs). This release follows the passage of the [Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=98568" \t "Default) on 13 September 2007. This Act requires DMFs to provide data to APRA under the [Financial Sector (Collection of Data) Act 2001](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=57996" \t "Default), to assist the Government to assess the need to prudentially regulate DMFs. According to APRA, the proposed level of reporting will address this need.   DMFs are entities that offer 'discretionary cover': that is, an insurance-like product that may involve an obligation on the DMF to consider meeting a claim on it, but gives the DMF a discretion as to whether it will pay the claim. A DMF may be a trust, mutual, company limited by guarantee or other structure. Because of their discretionary nature, DMFs are not insurance companies and thus not required to be authorised by APRA.   APRA's reporting requirements for DMFs are set out in reporting standards, forms and instructions. APRA has established a specialist unit to assist DMFs meet their reporting obligations. The relevant requirements are available on the [APRA](http://www.apra.gov.au/" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.19 SEC votes to publish concept release soliciting comment on oil and gas disclosure requirements**   On 11 December 2007, the US Securities and Exchange Commission (SEC) issued a concept release which asks for public comment on possible revisions to disclosure requirements for oil and gas reserves. The concept release has been issued by the Commission in response to concerns expressed by commentators that the Commission's rules (which were formulated almost three decades ago) have not adapted to current practices and may not provide investors with the most useful picture of oil and gas reserves held by public companies.    The concept release is available on the [SEC](http://www.sec.gov/rules/concept/2007/33-8870.pdf" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.20 SEC facilitates smaller company access to capital markets**   On 11 December 2007, the US Securities and Exchange Commission (SEC) unanimously approved changes that will give smaller companies faster and easier access to capital when they need it or market conditions are favourable.  Specifically, the Commission adopted amendments to the eligibility requirements of Form S-3 and Form F-3 of the Securities Act to allow companies that do not meet the current public float requirements of the forms to nevertheless register primary offerings of their securities, subject to certain restrictions, including the amount of securities those companies may sell pursuant to the expanded eligibility standard in any one-year period.  These changes to Forms S-3 and F-3 are intended to allow a larger number of public companies to benefit from the greater flexibility and efficiency in accessing the public securities markets afforded by Forms S-3 and F-3 in a manner that is consistent with investor protection. The amendments to Forms S-3 and F-3 will allow companies with less than $75 million in public float to register primary offerings of their securities on these forms, provided they:   * meet the other registrant eligibility conditions for the use of the respective form; * are not shell companies and have not been shell companies for at least 12 calendar months before filing the registration statement; * have a class of common equity securities listed and registered on a national securities exchange; and * do not sell more than the equivalent of one-third of their public float in primary offerings pursuant to the new instructions in any period of 12 calendar months.   The amendments will come into force 30 days after their publication in the Federal Register.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.21 APRA announces Basel II approvals**   On 10 December 2007, the Australian Prudential Regulatory Authority (APRA) announced the authorised deposit-taking institutions (ADIs) that have been given approval to adopt the advanced approaches available under the Basel II Framework from 1 January 2007.   This announcement follows the release by APRA on 30 November 2007 of the full suite of prudential standards that will give effect to the implementation of the Basel II Framework in Australia. The majority of ADIs will adopt the Basel II standardised approaches for credit and operational risk, so are not subject to any approval process. APRA's prior approval, however, is necessary before an ADI may adopt the internal ratings-based approach (IRB) to credit risk, at either the Foundation or Advanced level, and the advanced measurement approaches (AMA) for operational risk. An ADI must adopt both the IRB and AMA before it can use either approach to measure its capital adequacy requirement.    Further details and a list of the ADIs that have received approval to adopt the advanced approaches available under the Basel II Framework are available on the [APRA](http://www.apra.gov.au/" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.22 APRA releases new reporting standards and guidance for life insurers and friendly societies**   On 6 December 2007, the Australian Prudential Regulatory Authority (APRA) released new reporting standards for life insurers and friendly societies. These standards embody a shift towards a more modern system of data collection that is more consistent with other APRA-regulated industries such as general insurers, superannuation funds and authorised deposit-taking institutions.   The new framework includes 13 new forms, replacing 53 forms for life companies and 31 different forms for friendly societies. Life companies and friendly societies were involved in the development of the new framework and support the move towards a more standardised and modern system.   APRA will use the data collected to assist in the prudential supervision of life companies. It also publishes information based on these data to help industry and observers understand life insurance trends and identify emerging issues.  The revised data collection will occur under the Financial Sector (Collection of Data) Act 2001.   The new reporting standards took effect on 1 January 2008.   The package which is comprised of reporting standards, forms and instructions, are available on the [APRA](http://www.apra.gov.au/Statistics/Life-Company-Prudential-Reporting-Framework.cfm" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.23 IOSCO publishes report on corporate governance in emerging markets**   In December 2007, the Emerging Markets Committee (EMC) of the International Organisation of Securities Commissions (IOSCO) issued a report identifying the dominant trends of corporate governance standards in Emerging Market jurisdictions.   The report, 'Corporate Governance Practices in Emerging Markets', is based on information collected by a Survey Questionnaire on Corporate Governance in Emerging Markets in August 2006.  The survey questionnaire was prepared with the objective of assessing the general framework of corporate governance practices prevailing in emerging market jurisdictions. The survey also intended to identify the best practices among surveyed jurisdictions which could be implemented across emerging market jurisdictions. Twenty-six emerging market jurisdictions responded to the questionnaire.   The report is available on the [IOSCO](http://www.iosco.org/library/pubdocs/pdf/IOSCOPD261.pdf" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1)  **1.24 Recent IASB Publications**   The International Accounting Standards Board (IASB) has released a number of news releases, including:   * ASB issues [amendment to IFRS 2 Share-based Payment](http://www.iasb.org/News/Press+Releases/IASB+issues+amendment+to+IFRS+2+Share-based+Payment.htm" \t "_new) (17 January 2008) * [IFRIC publishes proposed guidance on accounting for customer contributions](http://www.iasb.org/News/Press+Releases/IFRIC+publishes+proposed+guidance+on+accounting+for+customer+contributions.htm" \t "_new) (17 January 2008) * [IFRIC publishes proposed guidance on distributions of non-cash assets to owners](http://www.iasb.org/News/Press+Releases/IFRIC+publishes+proposed+guidance+on+distributions+of+non-cash+assets+to+owners.htm" \t "_new) (17 January 2008) * [IASB completes the second phase of the business combinations project](http://www.iasb.org/News/Press+Releases/IASB+completes+the+second+phase+of+the+business+combinations+project.htm" \t "_new) (10 January 2008) * [IASB publishes revised proposals for determining the cost of an investment in separate financial statements](http://www.iasb.org/News/Press+Releases/IASB+publishes+revised+proposals+for+determining+the+cost+of+an+investment+in+separate+financial+sta.htm" \t "_new) (13 December 2007) * [IASB proposes guidance on group cash-settled share-based payment arrangements](http://www.iasb.org/News/Press+Releases/IASB+proposes+guidance+on+group+cash-settled+share-based+payment+arrangements.htm" \t "_new) (13 December 2007)   Further information is available on the [IASB](http://www.iasb.org/News/International+Accounting+Standards+Board+-+News.htm" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1) | |  |  |  |  |  | | --- | --- | --- | --- | | |  |  |  | | --- | --- | --- | | **2. Recent ASIC Developments** |  |  | | |  | | |  | | --- | | **2.1 ASIC announces a reduction in form lodging requirements for certain foreign-controlled small proprietary companies**   On 24 December 2007, ASIC announced a reduction in form lodging requirements for certain foreign-controlled small proprietary companies.  Previously, these companies were required to lodge a form 384 with ASIC for each financial year they wished to take advantage of financial reporting relief under ASIC Class Order [CO 98/98]: Small proprietary companies which are controlled by a foreign company but which are not part of a large group.  As a result of the change, companies will generally need to lodge a form 384 once only, for the first financial year they wish to take advantage of CO 98/98 relief. The only other requirement will be for some companies to lodge a form 394 if, and when, they cease to take advantage of the relief.  These changes are not expected to affect the quality of information currently contained in ASIC's public records.  Further information is available on the [ASIC](http://www.asic.gov.au/" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h2)  **2.2 ASIC announces phase two of Westpoint investor compensation action**  On 20 December 2007, ASIC announced the second phase of its Westpoint compensation actions. This follows ASIC's 8 November 2007 announcement that it would take legal action seeking compensation for investors in the failed Westpoint Group. The first phase of the regulator's legal action involved seeking to recover damages from various directors and officers of certain companies in the Westpoint Group and entities associated with one of the directors.  The second phase involves Australian financial services licensees and a trustee. ASIC will commence proceedings against Strategic Joint Partners Pty Ltd and State Trustees Limited. It is also working with the liquidator of Brighton Hall Securities Pty Ltd to facilitate recoveries. The proceedings seek approximately $6.5 million in damages from Strategic Joint Partners, based on the amounts which their clients invested in Westpoint products and subsequently lost when Westpoint collapsed.   As with the initial actions against financial services licensees, ASIC will allege that, in selling products with the risk and financial characteristics of Westpoint, Strategic Joint Partners did not comply with its obligations under the conditions of its Australian financial services licence and under the law.   ASIC expects the total amount of damages claimed from State Trustees to be approximately $17.9 million. ASIC will allege that State Trustees, as the trustee of an unsecured mezzanine note issue by Market Street Mezzanine Ltd (In Liquidation), breached its duty to the mezzanine note holders and failed to comply with its obligations under the [Corporations Act](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "Defaukt).   In regard to Brighton Hall Securities, ASIC will initiate actions to ensure assets of the company are made available to compensate investors as well as potential recoveries against third parties.   ASIC is principally using its power under section 50 of the [ASIC Act](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56481" \t "Default), which enables it to begin and carry on civil proceedings for damages for investors where it appears to ASIC that such proceedings are in the public interest. ASIC expects these proceedings to be filed in the first quarter of 2008.  ASIC is continuing to investigate matters arising from the Westpoint collapse, including possible further claims for compensation against other financial service licensees, unlicensed entities and the auditors. ASIC is also continuing to investigate possible criminal action.    Further information is available on the [ASIC](http://www.asic.gov.au/asic/asic.nsf/byheadline/07-291+ASIC+to+pursue+compensation+for+Westpoint+investors?openDocument" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h2)  **2.3 ASIC updates regulatory guide on auditors' reporting obligations to ASIC**   On 20 December 2007, ASIC issued an updated version of Regulatory Guide 34 Auditor's obligations: reporting to ASIC (RG 34). RG 34 provides guidance to help auditors comply with their obligations to report certain matters including contraventions and suspected contraventions of the [Corporations Act](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "Default) (the Act) by their audit clients to ASIC. RG 34 has been updated to include guidance for auditors of Australian Financial Services (AFS) licensees.  RG 34 previously only provided guidance for auditors of companies and registered schemes in relation to the reporting of certain contraventions and suspected contraventions of the Act under s311 and s601HG. RG 34 has been updated to include guidance in relation to the requirement for auditors of AFS licensees to report matters under s990K. The updated version of RG 34 will assist auditors by providing more certainty in respect of their obligations under s990K.  ASIC encourages all auditors of AFS licensees to actively consider the requirements of s990K of the Act when conducting an audit of a licensee.    The Regulatory Guide 34 is available on the [ASIC](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg34.pdf/$file/rg34.pdf" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h2)  **2.4 ASIC releases regulatory guide on debenture advertising**   On 19 December 2007, ASIC made further progress in implementing its 'Three Point Plan' for unlisted and unrated debentures by releasing Regulatory Guide 156: Debenture advertising. The guide provides new advertising standards for all issuers of debentures that are offered to retail investors (including those that are listed and rated). It applies to advertising across all media. ASIC will expect advertising by issuers to comply with the guide from late January 2008 onwards.  Debenture issuers, industry and consumer groups together made 20 submissions in response to ASIC's Consultation Paper 94 and draft regulatory guide released on 31 October 2007. In the final regulatory guide, ASIC has decided to proceed with most of the proposals in its draft guide, but has provided further explanation and guidance around some of the issues in response to the submissions it has received. Accompanying the regulatory guide is an outline of submissions received, together with reasons why ASIC may not have followed certain suggestions.   While the primary responsibility for advertising material rests with the organisation placing the advertisement, the publisher or other media conduit may also have some responsibility for its content. Accordingly, ASIC has provided guidance on the role of publishers and the media in promoting debenture products.  ASIC's new approach is to provide the following principles-based standards in relation to the advertising of debentures for issuers of debentures:   1. All advertisements for debentures offered to retail investors should include a prominent statement to the effect that investors risk losing some or all of their principal investment. 2. Advertisements for debentures should only quote an interest rate if it is accompanied by prominent disclosure of either the current credit rating for the debenture and what that means or where to find this information or, where the debenture does not have a rating, what this means. 3. Advertisements should state that the debenture is not a bank deposit. They should also avoid the use of terms such as 'secure', 'secured' and 'guaranteed' and avoid the term 'no fees', as these statements may convey a misleading impression as to the risk profile of the debenture. 4. Advertisements for debentures should not state or imply that the investment is suitable for a particular class of investor. 5. Statements in advertisements for debentures should be consistent with the corresponding disclosures in the prospectus. 6. Statements made in response to inquiries are subject to the same regulation regarding misleading and deceptive conduct as the advertisements.   The guide also makes it clear that ASIC expects publishers to have systems and controls to detect and refuse advertisements for debentures that do not comply with these advertising standards.    The Regulatory Guide 156: Debenture advertising is available [here](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg156.pdf/$file/rg156.pdf" \t "_new).  The Report 113: Report on submissions for CP 94 Debenture advertising is available [here](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/REP_113_Responses_to_debenture_advertising.pdf/$file/REP_113_Responses_to_debenture_advertising.pdf" \t "_new).  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h2)  **2.5 ASIC launches civil penalty action against former officers of AWB**  On 19 December 2007, ASIC commenced civil penalty proceedings in the Supreme Court of Victoria against six former directors and officers of AWB Limited (AWB).  ASIC alleges that the defendants contravened section 180 of the [Corporations Act](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "Default), which requires company officers to act with care and diligence, and section 181, which requires company officers to discharge their duties in good faith and for a proper purpose.  ASIC is asking the Court for declarations that each defendant has breached the law, the imposition of pecuniary penalties (for each breach a maximum of $200,000), and disqualification of each defendant from managing a corporation.  These actions arise out of investigations following Cole Inquiry. The structure of those investigations is as follows:  (a) The AFP and Victoria Police are investigating criminal breaches of both Commonwealth and Victorian law (which investigations continue).  (b) ASIC is responsible for investigations under the [ASIC Act](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56481" \t "Default), possible civil and criminal breaches of the Corporations Act.  Investigations into civil penalty proceedings was given more priority by ASIC because of the statute of limitation periods which apply to those actions and which do not apply to possible criminal proceedings (which investigations by ASIC continue). Commissioner Cole examined 27 contracts between AWB and the Iraqi Grain Board (IGB). The Corporations Act limits the time for the commencement of civil penalty proceedings to six years. The time limit had expired for 20 of the contracts when the Cole Inquiry concluded in November 2006 and two expired in February and June 2007.   The contracts covered by ASIC's proceedings were entered into between 20 December 2001 and 11 December 2002 and involved the payment of AUD$126.3 million in breach of UN sanctions.  ASIC alleges that certain officers breached their duties under the Corporations Act in connection with AWB's contracts with the IGB under the United Nations (UN) Oil-for-Food Program, which contained payments for purported inland transportation fees (ITF). The ITF payments were made to Alia, a Jordanian company partly owned by the Iraqi Ministry of Transport. The regulator further alleges that all defendants caused harm to AWB through their conduct.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h2)  **2.6 ASIC grants relief to facilitate on market buy backs by ASX-listed schemes**   On 13 December 2007, ASIC announced relief from certain provisions of the [Corporations Act](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "Default) to allow the responsible entity of a registered scheme listed on the Australian Securities Exchange (ASX) to carry out on-market buy-backs of interests.   Regulatory Guide 101: On-market buy-backs by ASX-listed schemes (RG 101) explains the relief ASIC has given in Class Order (CO 07/422): On-market buy-backs by ASX-listed schemes, and explains what a responsible entity should do when conducting on-market buy-backs of interests.  In order to be eligible for the relief:   * the scheme's constitution must give the responsible entity power to buy-back interests in the scheme; * the buy-back must not materially prejudice the responsible entity's ability to pay the scheme's creditors; * the buy-back must be carried out in the ordinary course of trading on the ASX; * the responsible entity must comply with the ASX Listing Rules (ASXLRs) in relation to the buy-back as if the scheme were a company listed on the ASX (including ASXLR 7.33 which requires that the buy-back price is not more than five per cent above the average of the market price for interests (or stapled securities)); * the responsible entity must not dispose of the interests it buys back and must ensure that, immediately after registration of the transfer to the responsible entity of interests bought-back, the interests are cancelled; * member approval must be obtained where the buy-back exceeds the '10/12 limit'. (The 10/12 limit refers to 10 per cent of the smallest number, at any time during the last 12 months, of interests in the scheme); * a buy-back within the '10/12 limit' must be disclosed to the ASX; and * any discretions in relation to the setting of the buy-back price must be exercised reasonably by the responsible entity, and the exercise of any discretions must be documented.   As a consequence of CO 07/422, the responsible entity of an ASX-listed registered scheme which conducts an on-market buy-back of interests is:   * not required to specify the right to withdraw or set out adequate provisions for making and dealing with withdrawal requests in the scheme's constitution as would otherwise be required by s601GA(4) of the Act; * not required to comply with the withdrawal procedures for non-liquid schemes in Pt 5C.6 of the Act; and * exempt from the prohibition in s606 of the Act on certain acquisitions of relevant interests in ASX-listed registered schemes.   ASIC's policy is intended to:   * enable listed schemes to utilise a cost-effective, transparent and fair means of returning capital to members; * avoid placing listed schemes at a regulatory disadvantage to listed companies in relation to capital management techniques where there is no regulatory reason for different treatment of listed schemes and listed companies; and * ensure that the special regulatory protections that Parliament intended for registered schemes are not undermined but operate in a commercially sensible manner.   The Guide is available at: [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg101.pdf/$file/rg101.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg101.pdf/$file/rg101.pdf" \t "_new)    The Class Order is available at: [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/co07-422.pdf/$file/co07-422.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/co07-422.pdf/$file/co07-422.pdf" \t "_new)  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h2)  **2.7 ASIC releases class order on Singaporean collective investment schemes**   On 4 December 2007, the Australian Securities and Investments Commission (ASIC) issued Class Order [CO 07/753]. This class order provides operators of collective investment schemes authorised by the Monetary Authority of Singapore (MAS) with conditional relief from managed investment scheme registration requirements, Australian financial services license requirements, and certain financial product disclosure requirements under the [Corporations Act](http://my.lawlex.com.au/index.asp?pact=coredoc&nav=col&cid=56482" \t "Default) (the Act).   CO 07/753 will enable Singaporean collective investment schemes authorised in Singapore by MAS to offer investments to retail clients in Australia.  This relief is provided in accordance with ASIC's policy on recognition of foreign collective investments schemes, set out in Regulatory Guide 178 Foreign collective investment schemes (RG 178).    Under RG 178, ASIC provides conditional registration, licensing and product disclosure relief to foreign collective investment scheme operators where:   * the operator's home regulatory regime is sufficiently equivalent to the Australian regulatory regime; * ASIC has effective cooperation arrangements with the operator's home regulator; and * Australian investors have practical access to rights and remedies should the foreign operator breach any of the relevant provisions of its home regulatory regime.   The relief in CO 07/753 is subject to the standard conditions of relief under RG 178. ASIC has also additionally imposed a condition requiring Singaporean operators and their agents and representatives relying on the relief to comply with the Singaporean regulatory regime regarding their conduct in Australia.  Singaporean operators are required to meet Australian requirements for dispute resolution including being a member of an ASIC approved external dispute resolution scheme.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h2) | |  |  |  |  |  | | --- | --- | --- | --- | | |  |  |  | | --- | --- | --- | | **3. Recent ASX Developments** |  |  | | |  | | |  | | --- | | **3.1 ASX invites feedback on proposed changes to Listing Rules**   On 14 December 2007, the ASX released for public consultation two sets of proposals to amend its Listing Rules.   The first proposal is to amend the Listing Rules to allow quotation of non-voting ordinary shares. ASX is conducting this consultation in response to stakeholder requests, and has not yet formed a view on the proposal. The public consultation paper explains non-voting shares, outlines the benefits and common concerns associated with them, details the experience in other markets around the world and raises some possible safeguards if such shares were allowed to be issued in the Australian market.    The second proposal relates to a range of changes the ASX proposes to make to its Listing Rules following an internal rule review conducted over the past 12 months. The specific proposals for consultation relate to:   * share purchase plans; * capital raising by small and medium sized entities; and * listing eligibility requirements.   Further information is available on the [ASX](http://www.asx.com.au/index.htm" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h3) | |  |  |  |  |  | | --- | --- | --- | --- | | |  |  |  | | --- | --- | --- | | **4. Recent Takeovers Panel Developments** |  |  | | |  | | |  | | --- | | **4.1 Takeovers Panel publishes four revised guidance notes**   On 18 December 2007, the Takeovers Panel released revised versions of Guidance Note 8 (Matters Procedures); Guidance Note 16 (Correction of Takeover Documents); Guidance Note 17 (Rights Issues) and Guidance Note 19 (Insider Participation in Control Transactions).   The Panel advised that it has not published the Guidance Notes in draft form for comment because it considers that the changes made are not substantive and involve no major change of policy. Rather, the changes are part of the Panel's planned process of reviewing the currency and consistency of its Guidance Notes.    **Guidance Note 8 (matters procedures)** provides guidance on how the Panel conducts its proceedings and the requirements for parties to those proceedings. It has been updated to provide guidance on how the Panel is likely to consider the timing of any application when assessing such issues as whether or not to commence proceedings, make interim orders, make costs orders etc.   In general, the Panel (among other things) weights up the possible prejudice to each of the parties affected by any action it might take. When an application is made late in a process, the prejudice to one or other party is likely to be greater and the Panel is likely to require more cogent reasons to take that action.   **Guidance Note 16 (Correction of Takeover Documents)** provides guidance on circumstances that the Panel is likely to declare to be unacceptable in relation to deficiencies in takeovers documents and how the Panel may use corrective statements to remedy unacceptable circumstances. The Panel's primary focus is on the quality and accessibility of the information going to target shareholders and the market, and remedying in the most appropriate manner any unacceptable circumstances in relation to that information.    The Guidance Note has been updated to provide guidance on the Panel's approach to disclosures offered to the Panel as bases for it declining to commence proceedings. The Panel note that such disclosures (if adequate) have the benefit of reaching shareholders earlier than if the Panel is required to conduct proceedings.   **Guidance Note 17 (Rights Issues)** provides guidance on the circumstances that the Panel is likely to declare to be unacceptable in relation to rights issues. The Guidance Note has been updated in relation to the disclosure that a company undertaking a rights issue should give the market to avoid the risk of a declaration of unacceptable circumstances. In particular, the Panel took into account the new "cleansing notice" disclosure regime under section 708AA of the Act.   **Guidance Note 19 (Insider Participation in Control Transactions)** provides guidance on situations where there is involvement or potential involvement by the management, directors or external advisers of a target company with the bidder in a takeover bid or potential bid for the target company. The reference in the Guidance Note to the decision of the Full Court of the Federal Court in Australia Pipeline Limited v Alinta Limited [2007] FCAFC 55 has been removed after the High Court's announcement of the orders it made on 13 December 2007 following the appeal made by the Attorney-General of the Commonwealth of Australia.   The revised Guidance Notes are available on the [Takeover Panel](http://www.takeovers.gov.au/display.asp?ContentID=122" \t "_new) website.  [etailed Contents](http://www.law.unimelb.edu.au/bulletins/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h4) | |  |  |  |  |  | | --- | --- | --- | --- | | |  |  |  | | --- | --- | --- | | **5. Contributions** |  |  | | |  | | |  | | --- | | 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/LAWLEX-old-editions/LAWLEX%20Corporate%20Law%20Bulletin%20No%20125%20January%202008.htm%23h1) | | |  |

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