**CORPORATE LAW ELECTRONIC BULLETIN**   
**Bulletin No 19, March 1999**

Centre for Corporate Law and Securities Regulation   
Faculty of Law, The University of Melbourne

with the support of

The Australian Securities and Investments Commission,   
the Australian Stock Exchange   
and the leading national law firms:

Allens Arthur Robinson Group   
Blake Dawson Waldron   
Clayton Utz   
Corrs Chambers Westgarth   
Freehill Hollingdale & Page   
Mallesons Stephen Jaques

Editors: Professor Ian Ramsay, Dr Elizabeth Boros and Kenneth Fong

ACCESS TO BULLETIN

If you have difficulty receiving the complete Bulletin, you may view and print the latest Bulletin immediately from the archive site on the Internet at:

http://www.law.unimelb.edu.au/centres/cclsr/Activities/email\_archive.html

**CONTENTS**

1. [RECENT CORPORATE LAW AND RELATED DEVELOPMENTS](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#1.RecentCorporateLaw)   
(A) [Financial services reforms to empower Australian comsumers](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28A%29Financial)   
(B) [Prudential supervision of conglomerates](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28B%29Prudentialsupervision)   
(C) [Financial Sector Reform (Transfers of Business) Bill 1999](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28C%29FinancialSectorReform)   
(D) [SEC posts securities industry Y2K readiness on the Web](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28D%29SECpostssecurities)   
(E) [SEC Chairman proposes significant reforms to mutual fund governance structure](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28E%29SECChairman)

2. [RECENT ASIC DEVELOPMENTS](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#2.RecentASIC)   
(A) [Guidelines for licensees on minimum standards for the education and training of their advisers](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28A%29Guidelinesforlicensees)   
(B) [ASIC policy proposal papers on collateral benefits in response to the Aberfoyle decision](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28B%29ASICproposal)   
(C) [ASIC concerned with accounting treatments adopted by Seven Network in 1997 and 1998](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28C%29ASICconcerned)   
(D) [ASIC reports with respect to Spedley Securities Limited and Burns Philp & Company Limited](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28D%29ASICreports)

3. [RECENT ASX DEVELOPMENTS](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#3.RecentASXDevelopments)   
(A) [Tax reform urgent says ASX](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28A%29Taxreform)   
(B) [Y2K Rule](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28B%29Y2KRules)   
(C) [Electronic contract notes](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28C%29Electroniccontract)   
(D) [Third party clearing](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28D%29Thirdpartyclearing)

4. [RECENT CORPORATE LAW DECISIONS](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#4.RecentCorporateLaw)   
(A) [Dollar Plan Financial Group Pty Ltd v ASIC](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28A%29DollarPlanFinancial)   
(B) [ASIC v Forem-Freeway Enterprises Pty Ltd, Net Admin Pty Ltd and Keith David Morton](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28B%29ASCvForem-Freeway)   
(C) [Robert William Hosken v ASIC](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28C%29RobertWilliamHosken)

5. [RECENT ACCOUNTING DEVELOPMENTS](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#5.RecentAccounting)   
(A) [Australian Accounting Research Foundation](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28A%29AustralianAccounting)   
(B) [Urgent Issues Group](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#%28B%29UrgentIssuesGroup)

6. [RECENT CORPORATE LAW JOURNAL ARTICLES](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#6.RecentCorporateLawJournal)

7. [NEW CORPORATE LAW BOOK](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#7.NewCorporateLawBook)

8. [CURRENT COMMERCIAL LAW](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#8.CurrentCommercialLaw)

9. [ARCHIVES](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#9.Archives)

10. [CONTRIBUTIONS](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#10.Contributions)

11. [MEMBERSHIP AND SIGN-OFF](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#11.Membership)   
  
  
12. [DISCLAIMER](http://www.law.unimelb.edu.au/bulletins/archive/Bulletin0019.htm#12.disclaimer)

1. RECENT CORPORATE LAW AND RELATED DEVELOPMENTS

(A) FINANCIAL SERVICES REFORMS TO EMPOWER AUSTRALIAN CONSUMERS

On 3 March 1999 the Minister for Financial Services and Regulation, the Hon J B Hockey MP, released proposed reforms, which further empower Australia’s consumers of financial services. The proposed reforms, contained in a consultation paper, build on the Government’s Corporate Law Economic Reform Program Policy Paper No 6 (CLERP 6) issued in December 1997 and give effect to a number of recommendations of the Financial System Inquiry. Submissions on CLERP 6 have been taken into account in developing the consultation paper.

"The paper’s proposals provide a much better deal for consumers who will receive more useful and comparable information about financial products," the Minister said.

Key aspects of the consultation paper are:

(a) harmonised regulation of all financial products;

(b) a single licensing framework for financial service providers, replacing requirements now applying to securities dealers, investment advisers, advisers and brokers, general and life insurance brokers and foreign exchange dealers;

(c) minimum standards of conduct for financial service providers dealing with retail clients;

(d) uniform disclosure obligations for all financial products provided to retail clients; and,

(e) flexibility for authorisation of market operators and clearing and settlement facilities.

The package provides an integrated regulatory framework for financial products, consistent regulation of functionally similar markets and products, and a continuing role for industry codes of conduct.

Comments on the consultation paper should be sent to the Treasury by 16 April 1999. After the submissions have been taken into account, draft legislation will be issued for a further public comment.

Copies of the paper are available on the Treasury web site (www.treasury.gov.au ).

KEY FEATURES OF THE CONSULTATION PAPER

(1) Uniform regulation of financial products

(a) The new regulatory framework will apply to all existing financial products. In particular it will apply to:

- Deposit-taking products;

- Risk insurance (including general insurance) products;

- Credit arrangements that fall outside the scope of the Uniform Consumer Credit Code;

- Means of payment services such as smart cards and e-cash; and

- Foreign exchange.

(b) Flexibility to accommodate new and innovative products will be provided through:

- A broad definition of financial product which will capture products without the need for legislative amendment; and

- The ability to exempt products via regulation or an ASIC exemption power.

(2) Licensing of financial service providers

(a) Persons seeking to carry on a financial services business will need to obtain a financial service provider’s licence.

(b) A licence will be required where services are provided to either wholesale or retail clients. Additional obligations will be placed on licensees who offer services to retail clients.

(c) Financial services involve providing advice, dealing in or making a market in financial products; selling one’s own financial product; operating a managed investment scheme; or providing a custodial or depository service.

(d) Licences may cover all financial services in relation to all financial products or a subset of services and products.

(e) Licensees may authorise natural persons or corporate representatives to act on their behalf.

(f) Authorised representatives will be able to act for more than one licensee with the written consent of each licensee (cross endorsement).

(g) Proposed transitional licensing arrangements will apply to persons who are currently registered or licensed under banking, insurance, superannuation and Corporations Law regimes.

(3) Financial service provider conduct and disclosure

(a) Conduct and disclosure obligations will apply to financial service providers who provide retail clients with financial services.

(b) Financial service providers must give their retail clients a Financial Services Guide.

(c) Before making a recommendation to an individual client, a financial service provider must conduct a needs analysis and assess a product’s suitability for that client.

(d) Financial service providers will be required to disclose any conflicts of interests that may arise in relation to the advice they provide to a client.

(e) Licensees will be required to separate funds and property held on a client’s behalf from their own. The method of separation will not be specified in the Law.

(f) Where a licensee holds client funds and assets, monthly statements must be given to the client.

(g) Licensees who hold funds on behalf of clients must keep financial records of transactions and the financial position of their financial services business.

(h) A prohibition on unconscionable conduct in the provision of financial services will apply.

(4) Financial product disclosure

(a) An appropriate disclosure regime has been subject to substantial debate and the paper therefore proposes two possible alternatives.

(b) The first alternative proposes that retail clients be given directed disclosure via a financial product information statement containing, where relevant, specified information including:

- Characteristics, features or nature of the product;

- Expected benefits and risks associated with the product;

- Fees, charges and commissions; and

- Other material information which may reasonably influence a client’s decision.

(c) The second alternative proposes that superannuation and life insurance with an investment component be brought within the fundraising provisions of the Corporations Law. All other financial products will be subject to the financial product information statement requirements outlined above.

(d) The paper invites comments on these alternatives.

(5) Codes of conduct

(a) Existing codes of conduct will have a continuing role in the new regulatory framework and industry sectors are encouraged to modify their codes in light of the new framework.

(b) The role of codes of conduct will be to establish best practice standards for meeting the requirements of the Law.

(c) ASIC will have powers to approve a code as being consistent with the Law and should be consulted in the development or modification of codes of conduct.

(d) An approved code should largely be regulated by the industry.

(e) It will not be mandatory for an industry participant to be a party to a code.

(6) Licensing of financial product markets

(a) A market operator will be required to obtain a licence from the Minister for a financial product market.

(b) The criteria to be satisfied to obtain a licence will be broadly expressed and flexible enough to accommodate different market structures.

(c) Stock and futures exchanges which are authorised at the commencement of the new provisions will be deemed to be licensed as financial product markets.

(7) Licensing of clearing and settlement facilities

(a) The Minister will be able to licence clearing and settlement facilities.

(b) However, regulatory responsibility for those clearing and settlement facilities which the Minister considers to be of significance to the payments system and in terms of systemic risk will be transferred to the Payments System Board.

(c) The criteria to be satisfied will be broadly expressed and flexible enough to accommodate different services.

(d) Many elements of the regime regulating clearing and settlement facilities will mirror those applying to financial product markets.

(e) Securities and futures clearing and settlement facilities approved under the Corporations Law at the commencement of the new provisions will be deemed to be licensed under the new regime.

(8) Compensation arrangements

(a) Markets and clearing and settlement facilities on which retail participants trade (directly or through financial service providers) will be required to have compensation arrangements to which those investors have access.

(b) Financial product markets and clearing and settlement facilities will be entitled to call for contributions by members for compensation arrangements.

(c) Criteria for the expenditure of (excess) funds in development accounts will be included in the Regulations.

(9) Transfer of securities

(a) The means of transferring electronically the legal title to securities will not be limited to the Securities Clearing House.

(b) Other suitably qualified clearing and settlement facilities which are prescribed will be entitled to do this.

(c) A flexible approach is required to ensure competition in relation to clearing and settlement facilities is fostered.

(10) Misconduct and enforcement

(a) A general prohibition on misleading and deceptive conduct will apply to dealings in, or the provision of services in relation to, financial products.

(b) The provisions in the Corporations Law and other applicable legislation will be harmonised to provide a single regime with respect to conduct in relation to financial products.

(c) The penalty regime in relation to market misconduct will be amended to ensure that it efficiently promotes market integrity and consumer confidence. Breaches of the market misconduct provisions will attract civil pecuniary penalties.

(d) ASIC’s enforcement powers will be harmonised and consideration will be given to a general fraud offence in the Corporations Law.

(B) PRUDENTIAL SUPERVISION OF CONGLOMERATES

On 11 March 1999, the Australian Prudential Regulation Authority (APRA) released for comment a Policy Discussion Paper on the prudential supervision of conglomerates. Industry comments are invited by the end of May. The Discussion Paper is available on APRA’s website at www.apra.gov.au.

As prudential supervisor of the bulk of financial institutions in Australia, APRA is vitally concerned with the quality of the systems used by those institutions to identify, measure and manage the various risks which arise in their business. Amongst other things, it seeks also to ensure that capital held by financial institutions is commensurate with risk arising from their business activities. Increasingly, however, both in Australia and internationally, financial services of all types are being offered not by single, stand-alone institutions but within conglomerate or group structures containing different types of financial institutions and activities, often with differing risk profiles. Typically, some of these activities (for instance, banking and insurance) are covered by an explicit regime of prudential regulation while other parts of groups are not.

These trends have led to a vigorous international debate on the implications for prudential supervisors. A particular issue of concern to regulators is the possibility of "contagion" between different parts of a conglomerate group – where problems in some unregulated part might be transmitted to a healthy regulated entity. Contagion can occur in a variety of ways, including through reputational and financial linkages spanning a group.

Another area of interest to prudential regulators is the organisation structure of conglomerate groups. In some instances, organisational form may obscure the presence of risks across a group. Other structures may improve transparency of risk and improve the efficiency of business operations and thus work to enhance the overall prudential soundness of a group.

In its reforms following the 1996/97 Financial System (Wallis) Inquiry, the Government gave special attention to the structure of conglomerates in the financial sector and, among other things, revised the Banking Act to allow for the regulation of non-operating holding companies (NOHCs) which head conglomerate groups or sub-groups.

At the same time the Government, while continuing to support the principle of sectoral separation (which effectively prevented non-financial business from being conducted in a group containing a bank), also recognised a need to inject greater flexibility into the policy. It accepted that, in certain cases, financial activities or services could logically and efficiently be offered alongside non-financial products. In view of the risks that might arise, it was stated that a conservative approach to the application of such policy should be followed, with any proposals considered on a case-by-case basis.

The framework of prudential supervision must evolve with market developments. It is against this background that APRA’s Discussion Paper seeks to address the broad set of issues raised by conglomerates. It outlines a common prudential framework in which all the activities of conglomerates with financial and other business can be considered. The proposals are broadly consistent with international trends in financial supervision, such as the guidelines being developed by the tripartite (banking, insurance and securities) Joint Forum on Financial Conglomerates, of which APRA is a member. (Joint Forum papers can be accessed on the website http://www.bis.org).

The Paper canvasses new or upgraded measures in a range of areas, including: corporate governance standards (including ‘fit and proper’ tests); controls on intra group transactions and group large exposures; group-wide capital adequacy; and incentives for internal risk management on a group-wide basis. The proposed measures are intended to enhance transparency, limit contagion and reinforce the idea that primary responsibility for safety and soundness rests with the conglomerate itself.

Initially, the proposed policies would relate only to conglomerate groups which include a bank or other authorised deposit-taking institution (ADI). APRA will consider over time how they might be extended to financial conglomerates with no ADI members.

The policies, once finalised and adopted, will be given effect in the form of prudential standards under the Banking Act. It is recognised that the potential impact on existing institutions will vary; where existing arrangements are out of line with the policies, fair and reasonable transition arrangements will be agreed bilaterally.

For further information contact: Brian Gray, Executive General Manager (Policy Development and Research) at conglomerates@apra.gov.au or telephone (02) 9210-3160.

(C) FINANCIAL SECTOR REFORM (TRANSFERS OF BUSINESS) BILL 1999

The Financial Sector Reform (Transfers of Business) Bill 1999 was introduced into Parliament by the Hon J B Hockey MP, Minister for Financial Services and Regulation, in March. The purpose of the Bill is to provide for the transfer of regulatory responsibility from the states and territories to the Commonwealth of building societies, credit unions and friendly societies. In his second reading speech, the Minister stated that the Bill will enable building societies and credit unions to more effectively compete with banks and to operate outside of their existing state and territory boundaries. Consumers will have a greater selection of financial service providers and a greater selection of financial products. The Bill provides a single regulatory framework for life insurance companies and friendly societies. This will result in a single consistent regulatory regime for deposit-taking institutions, life and general insurance and superannuation.

The Minister stated that approximately 20 building societies, 85 friendly societies and many thousands of credit unions will be involved in the regulatory transfer. These organisations represent 1,326 branches nationally with $38 billion in assets and 12,420 employees.

(D) SEC POSTS SECURITIES INDUSTRY Y2K READINESS INFORMATION ON THE WEB

The United States Securities and Exchange Commission has posted a searchable database on the SEC website that gives investors instant access to the Y2K readiness reports that certain broker-dealers, transfer agents, investment advisers, and mutual funds are required to file with the SEC.

The database to date includes more than 13,000 reports that describe their

(a) state of Y2K readiness

(b) costs to address the Y2K problem

(c) Y2K risks, and

(d) contingency plans

The SEC views the Year 2000 problem as a serious issue that, if not addressed, could disrupt the proper functioning of many of the world’s computer systems. To prevent disruptions, companies need to examine their computers and programs, fix the problem, test their systems, test interactions with other organizations, and certify their computer systems as Y2K compliant before January 1, 2000.

The SEC website is ‘www.sec.gov/’.

(E) SEC CHAIRMAN PROPOSES SIGNIFICANT REFORMS TO MUTUAL FUND GOVERNANCE STRUCTURE

On 22 March 1999, the United States Securities and Exchange Commission Chairman Arthur Levitt proposed a series of significant reforms to the mutual fund governance structure that will enable independent fund directors to better protect and serve fund shareholders. Chairman Levitt announced the measures, which derive from the independent fund directors roundtable hosted by the Commission in February, at the annual Investment Company Institute’s Mutual Funds and Investment Management Conference.

Summary of the four proposals:

(a) Require fund boards to have a majority of independent directors;

(b) Require independent directors to nominate any new independent directors;

(c) Require that outside counsel for directors be independent from management to ensure that directors get objective and accurate information; and

(d) Require that fund shareholders have more specific information on which to judge the independence of their fund directors.

Chairman Levitt said, "These four straightforward proposals form the cornerstone of a major Commission effort to improve mutual fund governance. While these initial measures would be the most significant changes in a generation, this is just the beginning. The Commission will act on these measures immediately and will continue to mine the wealth of suggestions from the roundtable for additional reforms to pursue."

Chairman Levitt added, "Whether shareholders realize it or not, how directors fulfill their responsibilities directly affects them every day. From negotiating and overseeing fund fees, to monitoring performance, to policing potential conflicts of interest, fund directors should be on the front lines in defence of the shareholder interest. They need to have the tools, the access and the power to faithfully fulfill their legal duty and moral mandate as the shareholders’ representative."

2. RECENT ASIC DEVELOPMENTS

(A) GUIDELINES FOR LICENSEES ON MINIMUM STANDARDS FOR THE EDUCATION AND TRAINING OF THEIR ADVISERS

On 4 March 1999 ASIC published its proposed guidance for Licensees on their obligation to ensure that their advisers meet minimum standards of education and training. ASIC will provide this guidance to ensure that:

(a) consumers can be more confident that they will be provided with professional financial advice;

(b) licensees have greater certainty as to how ASIC will assess their compliance with their obligations to educate and train their advisers; and

(c) training and education providers and standard setting organisations will have greater certainty as to the regulatory requirements in this area so that they can develop appropriate education and training standards and courses.

ASIC considers that the regulatory framework for Licensees in this area should address the following key issues:

(a) specification of the minimum standards of capabilities required to be demonstrated by an adviser before providing advice to consumers;

(b) setting of an appropriate educational level at which these capabilities should be demonstrated;

(c) a mechanism for assessing ‘quality assurance’ of adviser training and education to ensure consistency of standards and to enable the Licensee to demonstrate that its advisers meet these standards at an appropriate level.

ASIC does not intend to endorse any one particular training methodology. Its proposed approach is to give regulatory guidance to Licensees by setting out the broad capabilities required of advisers, specifying the general educational levels at which these will need to be met and requiring external benchmarking of courses and training. This framework has been designed to provide a quality assurance mechanism to ensure that the minimum capability standards are being met.

This approach is, in part, a response to the views expressed during the consultation

process to date that it is important for ASIC to distinguish between its role in providing regulatory guidance for Licensees and the development of training standards, training delivery and assessment mechanisms at the individual level. It is considered that the latter is the domain of the current industry training organisations and Licensees.

ASIC’s primary regulatory focus is on the Licensee and how ASIC will be satisfied that the Licensee is performing its regulatory obligations in ensuring that its advisers are providing professional advice to consumers. ASIC has sought to design a framework that provides the flexibility to acknowledge existing adviser education and training and, at the same time, parallels the current government national training infrastructure.

An Interim Policy Statement containing the ASIC Guidelines will be released in the first half of 1999. ASIC will issue a final Policy Statement when the single licensing provisions comes into force.

(B) ASIC POLICY PROPOSAL PAPERS ON COLLATERAL BENEFITS IN RESPONSE TO THE ABERFOYLE DECISION

On 8 March 1999 ASIC released two Policy Proposal Papers (PPPs) on Collateral Benefits. The release of the PPPs follows public consultation on the question of ASIC’s policy response to the decision of Aberfoyle v Western Metals(1998) 28 ACSR 187.

COLLATERAL BENEFITS - FUNDING OF A TAKEOVER

ASIC has been informed that since the Aberfoyle decision there has been uncertainty about whether a bidder can fund its takeover by way of an issue of shares to target shareholders. This activity may contravene the prohibition against giving collateral benefits (s698).

ASIC proposes to give Class Order relief to allow for underwriting (broadly defined to include placements), subject to the following conditions:

(a) Underwriting is not either offered to the underwriters as an inducement to accept the bid nor aimed at target shareholders;

(b) Underwriting is part of the underwriter’s ordinary business;

(c) The bidder does not offer underwriting to substantial shareholders in the target;

(d) The bidder believes on reasonable grounds that the underwriters do not in aggregate have a relevant interest in 20% or more of the ordinary shares in the target;

(e) The underwriter must not accept the bidder’s takeover if the offers have been open for acceptance for less than three weeks;

(f) The underwriter must reasonably believe at the time it has accepted the bid that it is the best bid currently on offer; and

(g) Other than by an acceptance of the takeover, the bidder must not knowingly purchase an underwriter’s shares in the target.

The Policy Proposals also provide details of the alternatives ASIC considered and the relief it proposes to give to allow for rights issues and retail offerings under a prospectus.

COLLATERAL BENEFITS - TAKEOVERS AND CROSSINGS

ASIC has been informed that the Aberfoyle decision has created uncertainty about whether a bidder can accumulate a pre-bid stake by way of a crossing (where the broker acts for both the buyer and the seller).

ASIC believes that a crossing can be in the "ordinary course of trading", which is an exemption to the prohibition against collateral benefits. The uncertainty surrounding the phrase is to some extent unfounded. ASIC is willing to give Class Order relief on conditions which reflect the judicial interpretation of what is the "ordinary course of trading". In particular, the Class Order will not apply:

(a) Where the crossing is prearranged between the bidder and the seller;

(b) Where the bidder and the seller are not indifferent as to the identity of the other; and

(c) Where the bidder, broker or an associate of the bidder or broker has communicated to the seller the identity of the bidder or any of the terms of the bid.

The Policy Proposals provide details of an alternative form of relief where ASIC would allow all pre-bid acquisitions on market before the bid, irrespective of whether they are prearranged. In the case of a scrip bid this relief would be conditional on the consideration offered under the bid being greater or equal to the consideration offered under any pre-bid acquisition.

At this stage ASIC is considering whether to give relief on these terms. Some people may argue that this proposal is best left the subject of legislative amendment. ASIC would like to hear from market participants on whether they consider it is within ASIC’s role to give relief on this basis.

ASIC invites submissions in relation to the Policy Proposals and Issues for Consideration for both papers by 30 April 1999.

Copies of the PPPs are available from ASIC Infoline on 1300 300 630 or from the ASIC home page at ‘www.asic.gov.au’.

For further information contact:   
Allan Bulman   
Senior Lawyer   
Regulatory Policy Branch   
Tel: (03) 9280 3307   
Email: allan.bulman@asic.gov.au

(C) ASIC CONCERNED WITH ACCOUNTING TREATMENTS ADOPTED BY SEVEN NETWORK IN 1997 AND 1998

On 9 March 1999, as a result of ASIC’s ongoing surveillance into financial reports of Australian companies, ASIC announced it had formed the view that the accounts of Seven Network Limited (Seven) and one of its subsidiaries for the years ended 28 June 1997 and 27 June 1998 did not comply with the requirements of the Corporations Law.

The matters relate to Seven’s investment in MGM. A principal concern of ASIC was Seven would not have been permitted to pay the substantial dividends paid in the financial year ended 27 June 1998 had it (and its subsidiary) complied with accounting standards.

Seven does not agree with ASIC’s view and says it would have taken remedial action if required. Seven acknowledges that there is an alternative accounting treatment for certain items and has co-operated with ASIC in addressing those concerns. Seven has given an undertaking to ASIC that it will adopt an accounting treatment in its financial report for the half-year ended 27 December 1998 to address ASIC’s concerns. Seven has also made an announcement to the market detailing the nature and effect of the accounting issues.

(D) ASIC REPORTS WITH RESPECT TO SPEDLEY SECURITIES LIMITED AND BURNS PHILP & COMPANY LIMITED

On 10 March 1999 the ASIC reports into Spedley Securities Limited and Burns Philp & Company Limited were tabled in Federal Parliament.

ASIC conducted investigations into these two companies and has published the findings to draw attention to a number of corporate governance lessons it identified.

ASIC Chairman Alan Cameron said that corporate governance affects the relationships between the major players - the Board, management, auditors and shareholders. "Companies need to identify corporate governance principles and practices that ensure sound management of the company, within the letter and the spirit of the law."

SPEDLEY

The investigation into Spedley Securities Limited and related companies commenced in 1989 following the failure of the Rothwells group. Spedley and associated companies had significant exposure to Rothwells. The investigation led to three Spedley directors, including the former managing director Brian Yuill, being prosecuted and serving prison terms. One director was also banned from working as a company director for five years.

ASIC’s report identified in relation to the Spedley group corporate governance lessons concerning:

(a) the implications of there being a dominant director;

(b) the role of the non-executive directors;

(c) senior executives must be vigilant;

(d) effective internal controls are essential; and

(e) the auditor must maintain an independent outlook and fulfil all responsibilities.

BURNS PHILP

In 1998 ASIC commenced an investigation to determine the circumstances of the 1997, $700 million write-down of Burns Philp’s herbs and spices assets.

The Burns Philp report found that, "while the board recognised problems in 1996, it appears that the action taken by the company’s directors was neither sufficient nor far-reaching enough to remedy the deficiencies." The report goes onto to state that, "earlier and clearer recognition of the problems might have allowed remedial steps to be taken which could have avoided the drastic write-down in 1997." Despite these serious issues about the then corporate governance practices of Burns Philp, ASIC concluded it would be inappropriate to commence any legal proceedings.

Corporate governance lessons derived from the Burns Philp report include:

(a) directors are responsible to ensure that the board functions effectively;

(b) directors are responsible to ensure they are appropriately informed about business performance;

(c) directors must question and evaluate key features of intangible asset valuation reports;

(d) directors are responsible to ensure that shareholders are appropriately informed; and

(e) auditors must question and evaluate material intangible asset valuations.

A copy of the reports is available on the ASIC Home Page at ‘www.asic.gov.au’.

3. RECENT ASX DEVELOPMENTS

(A) TAX REFORM URGENT SAYS ASX

On 17 March 1999 the Australian Stock Exchange told the Senate Select Committee on a New Tax Systemthat the application of a Goods and Services Tax in Australia would facilitate the removal of a range of heavy tax burdens on share investments and on the efficient channelling of funds into investments.

ASX reinforced its view that these indirect State taxes:

(a) place a harsh burden on ordinary citizens in their conduct of day today financial

transactions;

(b) unduly add to the cost of capital; and

(c) severely impede Australia’s position as a regional financial centre.

"ASX has taken the opportunity presented by the Committee hearings to restate our view that the abolition of these indirect taxes should be a priority," said ASX Managing Director, Mr Richard Humphry. "We have given the Committee the example of a $10,000 purchase of shares. The direct transaction costs include $3.76 for ASX trading and settlement, stamp duty of $30 and broker charges which vary but are typically about $60. In other words, Government taxes represent one-third of transaction charges."

(B) Y2K RULES

ASX Business Rules relating to SEATS, the Derivatives Trading Systems (DTF) and SCH Business Rules relating to CHESS have been amended to deal with Y2K and other systems related issues. These Rules enable ASX and SCH respectively to request that participants undergo certain tests of their SEATS/DTF/CHESS system(s) where ASX/SCH has a reasonable belief that there is a fact or matter which may impair their ability to communicate reliably with the relevant ASX system.

ASX and SCH have the ability to take immediate action to ensure the efficiency and integrity of ASX's markets or its systems. The Rules also provide an opportunity for participants to appeal the decisions of ASX or SCH.

ASX will also introduce parallel provisions to accommodate Y2K issues under ASX's new Derivatives Clearing System (DCS) as part of a larger ASX Business Rule amendments under the DCS project.

(C) ELECTRONIC CONTRACT NOTES, ACCUMULATION AND PRICE AVERAGING

ASX has made submissions regarding the Corporations Law contract notes provisions to facilitate the issue of electronic contract notes, the accumulation of trades and reporting of them on a single contract note, and the reporting of accumulated trades for a particular client at the volume weighted average price. New Regulations came into effect on 17 March. These cover both equities and derivatives. ASX has issued a Circular to Participating Organisations explaining these matters and the differences between the requirement in equities and derivatives.

(D) THIRD PARTY CLEARING

Recently details of rules to enable brokers to participate in third party clearing were disseminated. Third party clearing is intended to give greater flexibility for participation in ASX’s markets. The third party clearing proposals will give participating organisations greater choice including whether they want to be a full service broker providing execution and settlement facilities, or whether they wish to provide execution only facilities with settlement responsibilities being out-sourced to another participating organisation. Third party clearing initiatives will be available for both equities and derivatives markets.

Third party clearing involves the assumption of settlement obligations (including settlement risk) by an organisation for a trade executed by another organisation. ASX’s third party clearing project essentially provides a framework for separating trading and clearing functions. It will enable a broker to trade but not clear or to clear but not trade. Brokers who wish to do both may continue to do both. An important aspect of third party clearing is that the clearer will carry the legal obligation to settle from the time of execution of the trade by the executing broker. This is a significant variation to the existing position where the broker which executes the trade has the primary obligation to settle.

In order to deliver the third party clearing initiative, changes needed to be made to both the ASX Business Rules as well as the SCH Business Rules. Modification is also required to the Corporations Law.

One of the reasons for introducing third party clearing is that third party clearing recognises the global trend towards specialisation and parallels the development of third party clearing structures in other domestic and international markets. It is anticipated that the availability of third party clearing structures will lead to greater efficiencies for market participants and the benefits associated with those efficiencies will be able to be passed on to investors.

At this stage ASX proposes to launch Stage 1 of third party clearing (broker driven third party clearing) towards the end of April 1999.

4. RECENT CORPORATE LAW DECISIONS

(A) Dollar Plan Financial Group Pty Ltd v ASIC [1999] AATA 122, Administrative Appeals Tribunal, BJ McMahon (Deputy President), 8 March 1999

The applicant, Dollar Plan Financial Group Pty Ltd (Dollar Plan), was a dealer licensed under s 780 of the Law. As a condition of its licence and pursuant to s 786(9) of the Law, in 1995 the applicant had lodged with ASIC an amount of $20,000 as security. The applicant now sought review of an ASIC decision to compensate a client who had suffered pecuniary loss out of the security money deposited with ASIC.

In July 1996, pursuant to s 806, the applicant gave proper authority to a Mr Schultz to act as a representative of the applicant. In August 1996, a Ms Malan sought investment advice from Mr Schultz. Mr Schultz advised Ms Malan to redeem certain investments she had and to invest the proceeds in a cash management account with Macquarie Bank and some listed property trusts. Ms Malan followed Mr Schultz’s advice, and gave him authority to act on her behalf. Ms Malan redeemed her investments and the proceeds were forwarded by way of two cheques, totalling $35,000 to a post office box used by companies associated with Mr Schultz, namely Summit Financial Planners Ltd and Bishop House Pty Ltd. Both cheques were received by Mr Schultz, who then forged Ms Malan’s signature as purported endorsement. The cheques were then deposited into an account in the name of Bishop House Pty Ltd, and the monies were used to reimburse another client of Mr Schultz. There was now no prospect of Ms Malan recovering any of her money from Mr Schultz.

Corporations Regulation 7.3.04 provides that a security lodged with ASIC in relation to a licence may be applied by ASIC ‘to compensate a person who has suffered pecuniary loss due to the failure of the licensee, or an agent or employee, to carry on business under the licence adequately and properly’. Pursuant to that regulation, ASIC sought to compensate Ms Malan. The applicant sought review of this decision, principally arguing that:

(a) Ms Malan had not suffered pecuniary loss due to a failure of the licensee or agent or employee of the licensee to carry on its business adequately or properly. The applicant argued that Mr Schultz had acted on his own account or in the course of his own businesses, Bishop House Pty Ltd or Summit Financial Pallners Pty Ltd;

(b) there was no casual link between Dollar Plan and Ms Malan’s loss;

(c) Mr Schultz, not being a licensee or employee of the applicant, could only be considered an ‘agent’, and he was not an agent since he had not been appointed under s 346(1) of the Law and Regulation 1.0.02(1).

With respect to the agency argument, Deputy President McMahon accepted that there was an anomaly in the definition of ‘agent’ in the Law. Regulation 1.0.02(1) defines ‘agent’ to mean a person appointed under s 601CG(1) of the Law, which in turn relates to the appointment of a local agent of a foreign company doing business in Australia. Deputy President McMahon agreed that Mr Schultz was not an ‘agent’ within the statutory definition, but then continued to hold the decision did not turn on this point, nor on whether Mr Schultz had apparent or ostensible authority arising from the applicant’s conduct. Rather, there had been a direct failure by the licensee to carry on business under its licence adequately or properly; Ms Malan’s loss resulted from this failure, rather than the conduct of Mr Schultz as the applicant’s agent.

On the evidence, the applicant had failed, as it was required to do as a condition of its licence, to establish or maintain adequate training, supervision and compliance procedures designed to ensure Mr Schultz did not contravene any provision of the Law. The evidence showed there had been no supervision of any kind. On the facts, the need for proper supervision was heightened by the prior relationship between a principal of the applicant and Mr Schultz. Through that relationship, the applicant was fixed with knowledge of prior concerns of potential misappropriation of client funds. Further, the applicant, located in Canberra, had never inspected Mr Schultz’s office in Newcastle. The lack of physical proximity and frequent contact and the subordinate role played by the principal’s business in Mr Schultz’s business pointed to a high risk of unauthorised acts which in turn pointed to a high duty on the applicant’s part to ensure that business was carried on adequately and properly. The lack of supervision meant the business was not carried on adequately and properly, and this caused Ms Malan’s loss, and so ASIC’s decision to compensate her out of the security lodged by the applicant was affirmed.

(B) ASC v Forem-Freeway Enterprises Pty Ltd, Net Admin Pty Ltd and Keith David Morton [1999] FCA 179, No NG 3199 of 1997, Federal Court of Australia, Madgwick J, 4 March 1999

The third respondent, Morton, was the sole director, shareholder and secretary of the first respondent, Forem-Freeway Enterprises Pty Ltd (Forem). Forem was in the business of assembling and retailing computers. It solicited cash deposits from members of the public in return for the promise to supply a computer to them in 2-3 weeks time. Since 30 June 1997, Forem had no significant realisable assets or cash with which to obtain the supplies to fulfil its orders. By August 1997, at least 200 purchasers, each having paid a deposit of $1000 (being 50% of the total purchase price), had yet to be provided with their purchases, and were left as unsecured creditors with no prospect of recovering their money. A liquidator’s report showed Forem had liabilities of $443,000 and assets of only $10,000.

The ASC contended that Morton had breached his director’s duties to act honestly (s 232(2) of the Law), failed to exercise reasonable care and diligence (s 232(4)), and had failed to prevent insolvent trading (s 588G) in relation to:

(a) Forem’s acceptance of deposits for the purchase of computer equipment when the company had neither the equipment nor the financial resources to obtain it;

(b) failure to prevent Forem incurring debts when he should have suspected it was insolvent; and

(c) diverting $80,000 of Forem’s funds to the second respondent, Net Admin Pty Ltd.

Madgwick J found that Morton had failed to keep adequate financial records, in contravention of s 286 of the Law. The company’s records failed to contain any general ledger reporting the balance of assets, liabilities and shareholder funds from time to time and there was no cashbook showing the monies paid to the company and payments made by it. There was no systematic or reliable record of the monies received from customers in the course of business; the only way to determine whether a customer’s order had been filled was to contact the customer. Magdwick J found this to be a failure of a very high order to comply with s 286, and the inadequacy of the company’s records had a bearing on the issues of the honesty and reasonableness of Morton’s conduct.

With respect to the issue of insolvency, Madgwick J held any reasonable person in Morton’s position must have realised that at any given time, Forem’s liabilities substantially exceeded its assets; there was a record of dishonoured cheques and excessive delay in meeting customer’s orders. The company could only meet its debts as they fell due by falling into default in relation to obligations to customers.

Madgwick J held that whilst there was no subjective intent to defraud customers, two particular transactions reinforced the conclusion of dishonesty. The first involved the wrongful procuring of funds in excess of $48,000 from the company’s bank. The second involved borrowing $110,000 from the company’s hire-purchase lender; $42,000 of this sum was used to acquire equipment, the balance was used at Morton’s discretion.

Further, the payment of $80,000 to the second respondent was not something which an honest or reasonable person, acting as a director in the circumstances of the company, would have done.

In granting the relief sought by the ASC, Madgwick J held the degree and circumstances of Morton’s dishonesty, and his motivation, were highly relevant. The ASC sought an order, pursuant to s 1317EA(3)(a), prohibiting Morton from managing a corporation for a period of 30 years. Madgwick J stated that the purpose of the power of the court to grant a management banning order was to protect the public. Thus it was necessary to focus on the likely capacity of the person concerned to do harm to the public and the ways in which such harm might be done.

Here the losses to the customers were caused by incompetence and irresponsibility rather than great dishonesty; the loss to the hire-purchase lender was caused by dishonesty. In this case protecting the public required a substantial prohibition period, and Madgwick J ordered a period of 12 years, and also that Morton pay compensation to the company in the sum of $200,000.

(C) Robert William Hosken v ASC [1999] TASSC 26, No LCA 55/1988, Supreme Court of Tasmania, Slicer J, 15 March 1999

The applicant, Hosken, was the co-director of Launceston International Hotels Pty Ltd (LIHPL) which was concerned with the construction and operation of a hotel complex in Tasmania. Hosken was convicted of six offences contrary to s 229(4) of the Companies (Tasmania) Code (now s 232(6) of the Corporations Law), the duty of a company officer not to make improper use of his or her position as such an officer, to gain, directly or indirectly, an advantage for him or herself or to cause detriment to the company.

The offences related to payments Hosken caused to be made out of LIHPL funds to himself, his wife, other corporate entities owned or controlled by him, and two firms of solicitors. At first instance, the magistrate found that at the time these payments were made, in September 1989 and January 1990, the transfer of funds was likely to, and did, cause harm to the interests of LIHPL.

The applicant challenged the magistrate’s findings on the basis that a principal creditor of LIHPL was Partnership Pacific Pty Ltd (Partnership Pacific), a merchant bank subsidiary of Westpac Bank. The applicant argued that in September 1989, Partnership Pacific, whose moneys were secured by a series of contractual agreements with a number of corporate entities, decided to exercise its powers under those agreements and to take over the management and operation of the hotel, part of its takeover included the payment of trade creditors of LIHPL. The applicant argued that, applying the High Court decision in Chew v R (1992) 173 CLR 626 where it is was held an offence under s 229(4) required a purposive element, he held an honest belief that Partnership Pacific would be responsible for the unsecured trade creditors, and so the payments of LIHPL funds at issue were not made in improper use of his position.

On appeal, Slicer J reviewed the evidence of two key witnesses: Mr Earl, the solicitor retained by the applicant, and Mr Alexander, a senior manager of Westpac Bank. These two were chiefly responsible for negotiating Partnership Pacific’s takeover of the hotel business. The evidence showed that there was no actual agreement for Westpac or Partnership Pacific to pay the trade creditors. However, the evidence did show that on 18 September 1989, following a series of negotiations between Earl, Alexander and Partnership Pacific’s solicitors, Earl was of the belief that there was a concluded oral agreement, including Partnership Pacific’s agreement to pay the trade creditors, and that Earl had advised Hosken of the existence and terms of this agreement.

Slicer J held that the magistrate had erred in requiring the applicant to prove the existence of the agreement. Rather the magistrate was required to be satisfied beyond reasonable doubt that the applicant held no honest belief that such an agreement did exist. On the basis of Earl’s evidence that he had informed Hosken of the agreement, Hosken did hold an honest belief, and so Slicer J quashed the charges in relation to the payments made in September 1989, and substituted an order that those charges be dismissed.

However with respect to the payments made in January 1990, Slicer J held that any honest belief held by Hosken in September 1989 could have changed once the terms of the agreement had been disputed by Partnership Pacific. By this time, the applicant would have been aware that Partnership Pacific did not intend to pay the trade creditors, LIHPL remained liable to them, and the applicant was required to take into account their interests. However, there was evidence that Earl advised Hosken to rely on the oral agreement reached in September. Therefore Slicer J quashed the convictions relating to the January 1990 payments and afforded the parties an opportunity to make further submissions in relation to their disposition.

5. RECENT ACCOUNTING DEVELOPMENTS

(A) AUSTRALIAN ACCOUNTING RESEARCH FOUNDATION

The following is a summary of some of the matters considered at the meeting of the Australian Accounting Research Foundation held on 10 March 1999.

(a) Provisions and Contingencies

The Board continued its development of an Accounting Standard based on Exposure Draft ED 88 "Provisions and Contingencies". It agreed to exclude the following items from the disclosure requirements for contingent assets: internally generated goodwill, identifiable intangible assets (including research and development), assets arising from agreements equally proportionately unperformed, and assets unique to extractive industry operations.

(b) Revaluations and Recoverable Amount

Members considered a draft Accounting Standard based on Exposure Draft ED 92 "Revaluation of Non-Current Assets" and a draft Accounting Standard comprising the existing requirements for the recoverable amount test set out in AASB 1010 and AAS 10 "Accounting for the Revaluation of Non-Current Assets". Members agreed that the Standard based on ED 92 should:

(i) specify that amounts must not be transferred to an asset revaluation reserve from other reserves (including retained profits); and

(ii) clarify that once an amount is transferred from an asset revaluation reserve to another reserve, it is no longer available for offsetting against revaluation decrements.

Members also agreed that the "reissued" Accounting Standard for the recoverable amount test should indicate that the Board does not support the use of undiscounted cash flows to measure an asset’s recoverable amount.

(c) Income Taxes

Members considered a draft AAS 3 "Income Taxes" and agreed that:

(i) the exceptions relating to the recognition of deferred tax liabilities that are included in IAS 12 "Income Taxes" should be included in the Australian Standard, and commentary should be drafted that provides a rationale for each exception and clarifies the likelihood of each exception being invoked in practice; and

(ii) the draft Standard should be restructured to include a section that makes more prominent the general principles (definition, recognition and measurement) relating to deferred tax liabilities and assets. That section should cross-reference to other sections that modify the general principles (for example, those sections that provide limited exceptions to the general principles). Members believe that such a restructure would make the Standard more easily understood.

(d) Financial Report Disclosures

Members reviewed draft Standards "Statement of Financial Performance", "Balance Sheet" and "Financial Report Presentation and Disclosures". Members made a number of minor amendments to the draft Standards and agreed to approve revised draft Standards out-of-session before sending them to the Australian Society of Certified Practising Accountants (ASCPA), The Institute of Chartered Accountants in Australia (ICAA), ASIC and Commonwealth Treasury for 30-day comment.

(e) Foreign Currency Translation

Members considered comments received on Invitation to Comment "Application of Foreign Currency to Equity" and agreed that issues of equity denominated in a foreign currency should be translated at the spot rate at issue date and should not be retranslated at subsequent reporting dates. Members agreed that a provision for dividends and other transactions associated with equity that are denominated in a foreign currency should be translated at the spot rate at the date of the transaction.

Members reviewed draft Standard "Foreign Currency Translation" and agreed that a foreign currency forward exchange contract should be recognised on the basis of the net asset or liability arising under the contract. Members made a number of minor amendments to the draft Standard and agreed to review a revised draft Standard out-of-session, with a view to sending it to the ASCPA, ICAA, ASIC and Commonwealth Treasury for 30-day comment.

(B) URGENT ISSUES GROUP

The major items discussed at the Urgent Issues Group (UIG) meeting on 18 March 1999 are outlined below.

The UIG is a committee established by the Australian Society of Certified Practising Accountants (ASCPA), The Institute of Chartered Accountants in Australia (ICAA), the Australian Accounting Standards Board (AASB) and the Public Sector Accounting Standards Board (PSASB). It comprises 16 members who are senior members of the financial reporting community representing the interests of preparers, auditors and users in the private and public sectors. The Australian Securities and Investments Commission (ASIC) Chief Accountant sits on the UIG as an observer. The UIG’s role is to review on a timely basis financial reporting issues that are likely to receive divergent or unacceptable treatment in the absence of authoritative guidance. The objective of the UIG is to reach a Consensus on the appropriate accounting treatment. The UIG cannot reach a Consensus that changes or conflicts with existing Accounting Standards and Statements of Accounting Concepts.

(a) Accounting for the redesignation of hedges - Consensus agreed

The UIG agreed a Consensus that gains and losses that arise on a hedge to the date of its redesignation must be included in the measurement of the original transaction when it takes place. This means that only gains and losses that arise on a hedge subsequent to its redesignation are accounted for in connection with the newly hedged transaction. Provided the Consensus is not vetoed by the AASB and PSASB, it will apply to redesignations that occur on or after 18 March 1999, the date on which the Consensus was agreed.

(b) Major cyclical maintenance and depreciation of complex assets

Representatives of the Commonwealth Department of Defence and the NSW Treasury made presentations to the Group, and the UIG reviewed the submissions it had received from a number of public sector entities. The UIG also considered a draft Abstract which proposed that a provision for future maintenance must not be recognised as a liability or as a reduction of an asset, and that major components of complex assets must be depreciated separately. Members agreed that commentary paragraphs in the Abstract should explain that separate depreciation of components of complex assets may be necessary to correctly identify the depreciation charge. Members indicated that at the next meeting the UIG intended to approve a Consensus which requires that "provisions for future maintenance must not be recognised as a liability, or as accumulated depreciation or as a reduction in the carrying amount of an asset", and defines provisions for future maintenance as "provisions for the anticipated future costs to be incurred under major cyclical maintenance programs."

(c) Designation of sold (written) options as hedges

The UIG considered a draft Abstract which proposed that sold options by themselves would not qualify for designation as a hedge. The draft Abstract identified circumstances in which hedging strategies involving sold options could be considered to be effective as a hedge, and proposed that "ratio" or "leverage" options should be considered effective as a hedge only to the extent that the principal amount of the sold option is matched by the principal amount of the bought option.

Representatives of the Finance and Treasury Association made a presentation to the UIG. They noted that the Abstract dealt only with whether the sold option qualified for designation as a hedge and expressed concern that an imbalance may result because movements in the market value of the option may be recognised in the operating statement but off-setting gains and losses on the underlying hedged transaction or anticipated transaction may not be recognised. A representative from Newcrest Mining also addressed the Group and expressed concerns regarding the proposed requirements, particularly in respect of the proposed treatment of "ratio" options.

The UIG discussed the scope of the project, noted that the issue initially put to it was whether or not sold options should be designated as a hedge and agreed it should remain focussed on that issue. Members also discussed the concerns raised by the presenters and reviewed the draft Abstract in the light of those concerns. Members agreed that the draft Abstract to be considered at the next meeting should retain the broad thrust of its existing proposed requirements, including those in respect of "naked" sold options, and "ratio" options, and identified a number of changes directed at clarifying the Abstract.

It was agreed that the draft Abstract to be considered at the next meeting would propose application of the Consensus for periods ending on or after December 31 1999, with adjustments on initial application to be made to opening balances of retained earnings. Members noted that such transitional provisions provided entities whose accounting policies did not currently comply with the proposed Consensus with the opportunity to, from the date of agreement of the Consensus to the first reporting period ending on or after 31 December 1999, either recognise deferred gains and/or losses in the operating statement or as an adjustment to opening retained earnings. A revised draft Abstract will be prepared for consideration at the next meeting.

6. RECENT CORPORATE LAW JOURNAL ARTICLES

Andrew Keay, ‘The Avoidance of Antecedent Transactions in Bankruptcy: Some New Directions’ (1998) 10 Corporate and Business Law Journal 113

Vicki Vann, ‘Another Way of Dealing with Phoenix Companies?’ (1998) 10 Corporate and Business Law Journal 141

Lynden Griggs, ‘Equitable Compensation, Common Law Damages and the Directors’ Duty in Tort’ (1998) 10 Corporate and Business Law Journal 207

Barry Wertheimer, ‘The Purpose of the Shareholders’ Appraisal Remedy’ (1998) 65 Tennessee Law Review 661

Stephen Choi and Andrew Guzman, ‘Portable Reciprocity: Rethinking the International Reach of Securities Regulation’ (1998) 71 Southern California Law Review 903

Edward Iacobucci, ‘The Effects of Disclosure on Executive Compensation’ (1998) 48 University of Toronto Law Journal 489

Robert Rasmussen, ‘Behavioral Economics, the Economic Analysis of Bankruptcy Law and the Pricing of Credit’ (1998) 51 Vanderbilt Law Review 1679

Robert Thompson, ‘The Basic Business Association’s Course: An Empirical Study of Methods and Content’ (1998) 48 Journal of Legal Education 438

George Weiner and Lara Mathews, ‘Parent Corporation and Individual Liability Under CERCLA After Best Foods’ (1999) 13 Natural Resources and Environment 456

The Committee on Securities Regulation, ‘Forward-Looking Statements and Cautionary Language After the 1995 Private Securities Litigation Reform Act: A Study of Current Practices’ (1998) 53 The Record 723

David Skeel, ‘An Evolutionary Theory of Corporate Law and Corporate Bankruptcy’ (1998) 51 Vanderbilt Law Review 1325

Andrew Griffiths, ‘Professional Firms and Limited Liability: An Analysis of the Proposed Limited Liability Partnership’ (1998) 2 Company, Financial and Insolvency Law Review 157

Gavin Kelly and John Parkinson, ‘The Conceptual Foundations of the Company: A Pluralist Approach’ (1998) 2 Company, Financial and Insolvency Law Review 174

Andrew Keay, ‘Preferences in Liquidation Law: A Time for a Change’ (1998) 2 Company, Financial and Insolvency Law Review 198

Eilis Ferran, ‘Shareholder Remedies: The Law Commission’s Report’ (1998) 2 Company, Financial and Insolvency Law Review 235

Dale Oesterle, ‘The Inexorable March Toward a Continuous Disclosure Requirement for Publicly Traded Corporations: Are We There Yet?’ (1998) 20 Cardozo Law Review 135

Amir Licht, ‘International Diversity in Securities Regulation: Road Blocks on the Way to Convergence’ (1998) 20 Cardozo Law Review 227

(1998) 20 Cardozo Law Review 1-134. Special Issue on ‘Insider Trading: Law, Policy and Theory After O’Hagan’. Articles include:

- Lawrence Cunningham, ‘The Heyman Center’s Roundtable on Insider Trading’

- David Brodsky and Daniel Kramer, ‘A Critique of the Misappropriation Theory of Insider Trading’

- Roberta Karmel, ‘Outsider Trading on Confidential Information - A Breach in Search of a Duty’

David A Steele and Andrew G Spence, ‘Enforcement against the Assets of a Business Trust by an Unsecured Creditor’ (1998) 31 Canadian Business Law Journal 72

(1998) 7 Canterbury Law Review 1-231. Special issue on Asian commercial law. Articles include:

- James D Cox, ‘Globalization’s Challenges to the United States Securities Laws’

- Cally Jordan, ‘The Politics of Law Reform: The Making of New Companies Law in Hong Kong’

- Berna Collier, ‘Common Law Principles Applicable to Lifting The Corporate Veil in Malaysia and Singapore’

- Desh Gupta, ‘Lessons from South Asian Currency, Stock Market and Economic Crises: Opportunities for Business’

- Elaine Hutson, ‘The Regulation of Corporate Control in Australia: A Historical Perspective’

- Roman Tomasic and Bahrin Kamarul, ‘The Rule of Law and Corporate Insolvency in Six Asian Legal Systems’

- Daniel Li, Mark A Fox and Gordon R Walker, ‘Reform of State-Owned Enterprises and Foreign Direct Investment in The People’s Republic of China’

- Kui Hua Wang, ‘Some Legal Issues of Investing in Asia: An Australian Perspective’

Simon Jay, ‘The Euro: Impact on Company Law’ (1999) 27 (No 1) International Business Lawyer 14

Jonathan Macey, ‘The Legality and Utility of the Shareholder Rights Bylaw’ (1998) 26 Hofstra Law Review 835

W K Viscusi, ‘The Social Costs of Punitive Damages Against Corporations in Environmental and Safety Torts’ (1998) 87 Georgetown Law Journal 285

Stefan Rubin, ‘Corporate Law: Misappropriation Theory of Liability Upheld for Rule 10B-5 Criminal Convictions’ (1998) 50 Florida Law Review 405

Eric Talley, ‘Turning Servile Opportunities to Gold: A Strategic Analysis of the Corporate Opportunities Doctrine’ (1998) 108 Yale Law Journal 277

OBTAINING COPIES OF ARTICLES

Subject to copyright restrictions, the articles listed above are available from the University of Melbourne Law School Library by fax or post for a fee. The charges for MelbLaw Express are $3.00 per page fax within 2 hours; $2.50 per page fax same day and $2.00 per page mailed out (includes postage). This service is available 9 - 5, five days per week.

Please contact Prue Presser or Sophy Kosmidis:   
fax: int + 61 3 9344 5995;   
tel: int + 61 3 9344 7313, or   
email: lawlib@law.unimelb.edu.au

7. NEW CORPORATE LAW BOOK

CORPORATIONS LAW WORKBOOK (4TH EDITION, 1999), LBC INFORMATION SERVICES

Authors: Susan Woodward and Helen Bird, both of the Centre for Corporate Law and Securities Regulation, Faculty of Law, The University of Melbourne.

The Corporations Law Workbook is designed to help students understand company law and its relevance to business. The Workbook provides revised, expanded and up to date summarises of the basic principles of the law and divides the subject into manageable topics so that students are able to identify the relevant issues. Each topic contains a range of exercises and essay topics, as well as problem-solving guidelines to assist in pinpointing the relevant issues when answering difficult questions. Tables, flow-charts and summaries are also included.

8. CURRENT COMMERCIAL LAW

Current Commercial Law is a journal which seeks to publish articles on a wide range of commercial law areas. It is aimed at serving the needs of law academics and practitioners engaged in commercial law. From its inception, it was envisaged that Current Commercial Lawwould provide a forum for the publication of articles and commentaries of shorter length than is generally the case with specialist law journals. The articles sought are also of a less detailed or technical nature.

Generally, articles are up to 8000 words in length with a focus on current issues in Australian business law.

The subject areas include: Company Law, Contract Law, Trade Practices, Employment Law, Marketing Law, Insurance Law, Taxation, Intellectual Property, Banking and Finance Law, Computers and the Law and Tort Law.

In addition to these law topic areas, Current Commercial Law also publishes contributions dealing with book reviews, new developments or overviews, and computer legal information sources. These contributions may be of article length or shorter.

Articles which have recently appeared include the following:

(a) The Information Content of the Wik Decision

(b) The Definition of "Personal, Domestic or Household Use or Consumption" in the Trade Practices Act

(c) Wallis Leads to CLERB

(d) The New Zealand State Owned Enterprise Model: Issues of Competition and Social Obligation

(e) The Woman who Laughed all the Way to the Bank: Garcia v National Australia Bank Ltd

Forthcoming articles include:

(a) "Fair Value" - Market Value or Intrinsic Value?: A Review of Recent Case Law on Share Valuation

(b) The ‘New’ Cheques Act 1986

(c) Tiptoe through the TLIPs: an Evaluation of the Tax Law Improvement Project

(d) ASIC, the Civil Penalty Provisions and the Corporate Law Economic Reform Bill 1998 (Cth)

Current Commercial Law invites practitioners and academics to submit contributions. Please contact:

Associate Professor Phillip Lipton   
Editor, Current Commercial Law   
School of Accounting and Law   
RMIT   
Tel: (03) 99255765   
Email: phillipl@rmit.edu.au

9. ARCHIVES

The Corporate Law Electronic Network Bulletins are retained on an archive. You may review prior Bulletins by accessing the following Website:

http://www.law.unimelb.edu.au/centres/cclsr/Activities/email\_archive.html

10. CONTRIBUTIONS

If you would like to contribute an article or news item to the Bulletin, please post it to: cclsr@law.unimelb.edu.au

11. MEMBERSHIP AND SIGN-OFF

To subscribe to the Corporate Law Electronic Bulletin or unsubscribe, please send an e-mail to: "cclsr@law.unimelb.edu.au".   
  
  
12. DISCLAIMER

No person should rely on the contents of this publication without first obtaining advice from a qualified professional person. This publication is provided on the terms and understanding that (1) the authors, editors and endorsers are not responsible for the results of any actions taken on the basis of information in this publication, nor for any error in or omission from this publication; and (2) the publisher is not engaged in rendering legal, accounting, professional or other advice or services. The publisher, authors, editors and endorsers expressly disclaim all and any liability and responsibility to any person in respect of anything done by any such person in reliance, whether wholly or partially, upon the whole or any part of the contents of this publication.