

The Bell Gully *Regulator Report* lists recent changes, decisions and developments at the main New Zealand and Australian corporate, commercial and competition regulatory bodies for the period to 16 April 2007. For further details on any matter in this report, just click on the hyperlink below each item. Should you have any questions regarding the contents of the Bell Gully *Regulator Report* please call your usual contact at Bell Gully or contact a member of the Bell Gully [Corporate Team](#) or the [Competition Team](#). For past editions of the Bell Gully *Regulator Report* please [click here](#).

A companion publication, *Commercial Quarterly*, Bell Gully's digest of current corporate and commercial law issues, is published every quarter. For the Summer issue of *Commercial Quarterly* please [click here](#). For all other Bell Gully publications please [click here](#).

<p>New Zealand Exchange (NZX)</p>	<ul style="list-style-type: none"> <li> <p><b>Market insight</b>                      NZX has published the March edition of its monthly newsletter, "Market insight", which contains details of the latest news and events at NZX.  <a href="#">Click here to access a copy of March's Market insight</a></p> </li> <li> <p><b>NZX Participant Rules now in force</b>                      The changes to the NZX Participant Rules will be in full effect from 1 May 2007, following a transition period between 28 February 2007 and 30 April 2007 to allow market participants time to make changes to their procedures and processes.  <a href="#">Click here to access the NZX Participant Rules</a></p> </li> </ul>
<p>Securities Commission</p>	<ul style="list-style-type: none"> <li> <p><b>Discussion document: Proposal to declare certain foreign exchange contracts to be futures contracts under the Securities Markets Act 1988</b>                      The Securities Commission has received requests from market participants for clarification of whether foreign exchange products, known as rolling spot foreign exchange transactions, are "futures contracts" as defined in the Securities Markets Act 1988 (the Act). The Commission believes it is desirable for instruments that are used for the same purposes as futures contracts, and that in substance carry the same risks and potential rewards as futures contracts, to be treated as such under the law. The Commission proposes to use its specific power under the Act to declare rolling spot foreign exchange transactions to be future contracts. The effect of such a declaration will mean that people dealing in these contracts will need to be authorised to deal in futures contracts under the Act.  <a href="#">Click here to access the discussion document</a></p> </li> <li> <p><b>New securities law articles available</b>                      Articles published in various journals explaining the requirements of the new securities legislation passed at the end of last year are now available on the Commission's securities law website.  <a href="#">Click here to access these articles</a></p> </li> </ul>

- **Securities Act Exemption Notices**

The following Securities Act exemption notices have been published:

- **Securities Act (Strategic Finance Limited) Exemption Notice 2007/68**

This notice, which expires on 31 December 2012, exempts Strategic Finance Limited, subject to conditions, from regulation 12(1)(a) and (c) of the Securities Regulations 1983 relating to the disclosure of financial information in an advertisement.

- **Securities Act (Canterbury Building Society) Exemption Amendment Notice 2007/69**

This notice amends the Securities Act (Ashburton Building Society) Exemption Notice 2004 to include in the exemption offers of participatory securities made to holders of preference shares issued by the Canterbury Building Society, following the change of name of Ashburton Building Society to Canterbury Building Society.

- **Securities Act (Toll Holdings Limited) Exemption Notice 2007**

This notice, which expires on 31 May 2008, provides exemptions to sections 33(3), 37, 37A, 38A, and 51 to 54B of the Securities Act 1978 and the Securities Regulations 1983 (except regulation 8) in two related circumstances. Both of the exemptions are subject to conditions that ensure that the offer of the securities and the replacement of the responsible entity is carried out in accordance with the laws of Australia and all applicable codes, rules, and other requirements.

The first exemption applies to Toll Holdings Limited (Toll), Asciano Limited (Asciano), Asciano Finance Limited (AFL), Permanent Investment Management Limited (PIML), and every person acting on behalf of any or all of them and concerns two schemes of arrangement. Under the first scheme of arrangement, the proceeds of a capital reduction of Toll are applied, on behalf of holders of ordinary shares in Toll, to subscribe for units in Asciano Finance Trust (AFT). Under the second scheme of arrangement, shares in Asciano are issued to holders of ordinary shares in Toll. The units and the shares issued under the two schemes of arrangement will be "stapled", and an application will be made to ASX Limited (ASX) for Asciano and AFT to be admitted to the official list of ASX and for the stapled securities to be quoted by ASX. The second exemption applies to Toll, AFL, PIML, and every person acting on behalf of any or all of them and concerns the replacement of PIML with AFL as the responsible entity of AFT. Under Australia's Corporations Act 2001, a registered managed investment scheme like AFT requires the appointment of a responsible entity who acts as a manager and a trustee. Initially, PIML will act as AFT's responsible entity. However, PIML is intended to be subsequently replaced by AFL.

- **Securities Act (Amalgamations) Exemption Amendment Notice 2007/79 and Securities Act (Retirement Villages) Exemption Amendment Notice 2007/80**

These notices update references to FRS-29 in the Securities Act (Amalgamations) Exemption Notice 2002 and the Securities Act (Retirement Villages) Exemption Notice 1999, respectively, with references to FRS-42, following the replacement of Financial Reporting Standard No 29: Prospective Financial Information with Financial Reporting Standard No 42: Prospective Financial Statements.

- **Securities Act (GH Emerging Markets Fund Limited) Exemption Amendment Notice 2007/90 and Securities Act (GH-Midas Fund Limited) Exemption Amendment Notice 2007/91**

These notices amend the Securities Act (GH Emerging Markets Fund Limited) Exemption Notice 2006 and the Securities Act (GH-Midas Fund Limited) Exemption Notice 2006 (the principal notices). The principal notices exempt GH Emerging Markets Fund Limited and GH-Midas Fund Limited, respectively, subject to conditions, from clause 1(4) of Schedule 1 of the Securities Regulations 1983 in relation to an offer of its preference shares, because the price of the shares is unable to be determined at the time they are offered (due to the nature of the offer). These amendment notices remove the references in the principal notices to a specific prospectus dated on or about 1 November 2006.

- **Securities Act (Carbon Logic Limited) Exemption Notice 2007/93**

This notice, which expires on 31 March 2011, exempts Carbon Logic Limited from clauses 1(4) and 10(1)(c) of Schedule 1 of the Securities Regulations 1983. Clause 1(4) requires the registered prospectus to state the price or other consideration to be paid or provided for the securities being offered. Clause 10(1)(c) requires the registered prospectus to include a one year prospective statement of cash flows.

<p>Takeovers Panel</p>	<ul style="list-style-type: none"> <li>• <b>Takeovers Panel to investigate schemes and amalgamations</b>  Commerce Minister Lianne Dalziel has asked the Takeovers Panel, and the Takeovers Panel has agreed, to undertake further work on the issue of schemes of arrangements and amalgamations. The Panel is required to include a Regulatory Impact Statement in its report back to the Minister. This follows on from the Government's adoption of a strengthened regulatory impact analysis framework, which took effect on 1 April 2007.  <a href="#">Click here for more on the Commerce Minister's request</a>  <a href="#">Click here for the Panel's press release</a> </li> <li>• <b>Takeovers Panel issues "Code Word"</b>  The latest Takeovers Panel's Code Word includes: <ul style="list-style-type: none"> <li>➤ a valedictory piece by John King and an article by the new Chairman David Jones;</li> <li>➤ an explanation of the approach the Takeovers Panel will take to exemption applications relating to initial public offerings (IPOs) or similar public offerings, following the Panel's revocation of the class exemption for IPOs on 15 May 2006. Clause 7 was revoked because it was being relied on for transactions involving schemes of arrangement which were not genuine IPOs and where changes of control could occur; and</li> <li>➤ the Takeovers Panel's general approach to schemes of arrangement when considering applications for exemption, including the differences between the revised policy and the earlier policy published on 1 July 2003.</li> </ul> <a href="#">To access a copy of Code Word No. 19 click here</a> </li> </ul>
<p>Ministry of Economic Development (MED)</p>	<ul style="list-style-type: none"> <li>• <b>Review of regulatory control provisions under the Commerce Act 1986: discussion document</b>  Commerce Minister Lianne Dalziel and Energy Minister David Parker have released a discussion document reviewing the price control provisions in Parts 4, 4A and 5 of the Commerce Act. Part 4 allows goods or services to be placed under price and quality control where competition is limited and control would be in the long term interests of consumers. Part 4A applies specifically to electricity lines businesses, and allows the Commerce Commission to place them under regulatory control if they breach thresholds set by the Commission. Part 5 requires the Commerce Commission to authorise the prices of controlled goods and services.   Ms Dalziel said the discussion document sets out options to improve certainty and predictability while maintaining flexibility, and emphasising the importance of investment in infrastructure. The Government is seeking feedback from all interested parties on a range of potential amendments to the regulatory control provisions of the Act. Submissions are due on 6 July 2007. If you would like further information or assistance with your submission, please contact your usual Bell Gully adviser.  <a href="#">Click here to access the media statement from the Ministers of Commerce and Energy</a>  <a href="#">Click here to access this discussion document</a> </li> <li>• <b>KiwiSaver default providers signed up - Ministers of Finance and Commerce media statement</b>  The six companies selected as KiwiSaver default providers have been officially signed up for the job at Parliament by Finance Minister Michael Cullen and Commerce Minister Lianne Dalziel. The six providers selected will be ready to accept members when the scheme comes into operation on July 1, 2007.  <a href="#">Click here for more</a> </li> </ul>

<p>MED continued</p>	<ul style="list-style-type: none"> <li>• <b>Review of financial products and providers and review of financial intermediaries: summaries of submissions</b>  Commerce Minister Lianne Dalziel has released summaries of the submissions received on the review of financial products and providers and the review of financial intermediaries. She noted that hundreds of submissions had been received on both reviews, and said the clear thread through them was support for better regulation of the financial services sector.  <a href="#">Click here for more</a>  <a href="#">Click here</a> to access the summary of submissions on the review of financial intermediaries and <a href="#">here</a> for more information on the review of financial intermediaries.  <a href="#">Click here to access a Bell Gully article on the submissions</a></li>   <li>• <b>Development of Requirements for the Operational Separation of Telecom: Consultation Document</b>  The likely final shape of Telecom's commercial structure has become apparent with the release of a Government consultation paper designed to increase competition in the telecommunications sector and accelerate broadband uptake by opening up the network to competition. The paper proposes the operational break-up of Telecom into separate Access Network Services, Wholesale and Retail business units. Other key features include: <ul style="list-style-type: none"> <li>➤ a requirement for the Access Network Services unit to be operated on a stand-alone basis and for Telecom Wholesale to be operated at arms-length from any retail business units;</li> <li>➤ the establishment of an Independent Oversight Group, backed up by Commerce Commission enforcement, to ensure Telecom faithfully implements the Separation Plan;</li> <li>➤ a requirement that relevant products, especially local loop unbundling (LLU) and unbundled bit stream access services (naked DSL), must be available to all market participants on equivalent terms.</li> </ul> Telecom has 20 working days to prepare the draft separation plan. Submissions close on 27 April 2007.  <a href="#">Click here for more</a>  <a href="#">Click here to access the consultation paper</a></li> </ul>
<p>New Zealand Commerce Commission (NZCC)</p>	<ul style="list-style-type: none"> <li>• <b>NZCC media releases</b>  The NZCC has issued the following media releases: <ul style="list-style-type: none"> <li>➤ GlaxoSmithKline has pleaded guilty to 15 representative charges of breaching the Fair Trading Act by making misleading claims about the Vitamin C content of Ribena. In the Auckland District Court, GlaxoSmithKline was fined \$227,500, and ordered to undertake a nationwide campaign of corrective advertising in newspapers to explain that some forms of Ribena contain no detectable level of vitamin C.  <a href="#">Click here for more</a>  <a href="#">Click here to read a Bell Gully article on the Ribena case and food labelling requirements</a></li> <li>➤ The NZCC has discontinued its case against the Hongkong and Shanghai Banking Corporation Ltd (HSBC) for alleged price-fixing in relation to interchange fees. In November 2006 the NZCC filed civil proceedings against Visa, MasterCard and 10 other financial institutions who are members of the Visa or MasterCard schemes. In those proceedings, the NZCC alleges that the arrangements within each scheme to fix credit card interchange fees are anti-competitive. The NZCC has agreed that HBSC had limited involvement in the Visa arrangements in New Zealand.  <a href="#">Click here for more</a></li> <li>➤ The NZCC has begun the process of determining standard terms for access by other operators to Telecom's telephone exchanges. The aim is to set the terms by which other operators can co-locate equipment required to make use of Telecom's unbundled local loops. Co-locating equipment will assist other operators to provide services, such as broadband to their customers, over Telecom's local loop network.  <a href="#">Click here for more</a></li> <li>➤ The due date for two clearance decisions relating to The Warehouse has been extended to 27 April 2007. The decisions relate to applications from: <ul style="list-style-type: none"> <li>○ the three Foodstuffs co-operatives, seeking clearance to acquire up to 100% of the ordinary shares in The Warehouse Group Limited; and</li> <li>○ Woolworths Limited, seeking clearance to acquire up to 100% of the shares in, or assets, of The Warehouse Group Limited.</li> </ul> <a href="#">Click here for more</a></li> </ul> </li> </ul>

<p>NZCC continued</p>	<ul style="list-style-type: none"> <li>➤ The NZCC has released for comment a discussion paper giving its preliminary view on the interrelationship between Part 2 of the Commerce Act and the Telecommunications Act. The paper sets out a draft framework that the NZCC plans to use when deciding whether an issue should be considered under Part 2 of the Commerce Act, or under the Telecommunications Act. The NZCC invites comments on the paper, which should be submitted by 30 April 2007. <a href="#">Click here for more</a></li> <li>➤ Number portability introduced on 1 April means telephone users switching companies are now able to keep the same phone number. Number portability is industry-wide, and applies to landlines and mobile phones. The NZCC worked closely with industry to meet the 1 April date, and coordinated the launch along with the Telecommunications Carriers' Forum. <a href="#">Click here for more</a></li> <li>➤ The NZCC has issued notices requiring Telecom to submit standard terms proposals for the unbundled local loop and bitstream access services. The notices require Telecom to specify the non-price terms and conditions on which it proposes to provide access to these services to other operators. <a href="#">Click here for more</a></li> <li>➤ Retired Carter Holt Harvey executive Maurice Reid has been fined \$20,000 for breaching the Fair Trading Act in the Auckland District Court. In March 2007 Mr Reid pleaded guilty to 17 charges of being party conduct that was liable to mislead the public. The charges relate to the period July 2000 and December 2002, when Mr Reid was general manager of the wood products division of Carter Holt Harvey. <a href="#">Click here for more</a></li> </ul> <ul style="list-style-type: none"> <li>• <b>Peter R Taylor: Commerce Act Update - Auckland District Law Society seminar</b> Peter R Taylor, General Counsel for the Legal Services Branch of the NZCC, gave a seminar to the ADLS on the NZCC's compliance priorities, cartels, settlement options and compliance programmes for breaches of competition laws, and the use of cease and desist orders. <a href="#">Click here to access a copy of this seminar</a></li> </ul>
<p>Australian Competition and Consumer Commission (ACCC)</p>	<ul style="list-style-type: none"> <li>• <b>ACCC media releases</b> The ACCC has issued the following media releases: <ul style="list-style-type: none"> <li>➤ The ACCC has been notified of three telecommunications access disputes with Telstra Corporation Limited. Netspace Pty Ltd has notified the ACCC of a dispute over the price for the supply of Domestic Transmission capacity between Melbourne and Hobart. TPG Internet Pty Ltd and Network Technology (Aust) Pty Ltd have each separately notified the ACCC of an access dispute in relation to the Line Sharing Service supplied by Telstra. <a href="#">Click here for more</a></li> <li>➤ The ACCC has issued its decision to approve APT Petroleum Pipelines Limited's amended, revised access arrangement for the Roma to Brisbane gas pipeline. <a href="#">Click here for more</a></li> <li>➤ The ACCC has issued its second report on whether Australia Post is subsidising its competitive activities with revenue from its monopoly activities. The report confirms that the regulatory accounts do not provide evidence that Australia Post is subsidising its non-reserved services from its reserved services. <a href="#">Click here for more</a></li> <li>➤ The ACCC proposes to grant authorisation to the International Air Transport Association (IATA) for certain aspects of the IATA Passenger Agency Program on a transition basis. The IATA Passenger Agency Program provides a system for the sale and distribution of air transport through travel agencies. The program was previously re-authorised in 2002. Authorisation for some aspects of the program ended in December 2006. IATA has sought an extension of authorisation for 18 months. <a href="#">Click here for more</a></li> <li>➤ The ACCC has issued a draft decision proposing to remove Agsafe's ability to impose trading sanctions on businesses who are not accredited through its industry program, but will provide an 18 month transitional period. Agsafe is an industry association established by manufacturers of agricultural and veterinary chemicals. Agsafe sought authorisation for its Code of Conduct which requires businesses who trade in agricultural and veterinary chemicals to obtain accreditation through the industry program know as the Guardian Program, and allows Agsafe to impose trading sanctions on businesses that are not accredited under the Guardian Program. <a href="#">Click here for more</a></li> </ul> </li> </ul>

## ACCC continued

- The ACCC has issued guidelines concerning changes to arbitration processes which result from recent amendments to the Trade Practices Act 1974. These guidelines give effect to the Trade Practices Amendment (National Access Regime) Act 2006 which commenced on 1 October 2006. Among other things, this Act amended Part IIIA by providing the ACCC with mechanisms to:
  - defer arbitration of an access dispute where it is also considering an access undertaking on related issues; and
  - backdate a final determination and apply payment of interest to a backdated determination.[Click here for more](#)
- Jaggad Pty Limited, a manufacturer and wholesaler of Jaggad branded cycling, triathlon and multisport clothing, has provided the ACCC with court-enforceable undertakings preventing Jaggad from setting minimum resale prices for Jaggad Apparel. Jaggad, which distributes Jaggad Apparel through selected independent cycling and sports fitness outlets nationally, required 11 of its resellers, identified as premium dealers, to sell Jaggad Apparel at the recommended retail prices set by Jaggad in its Premium Dealer Agreements. Jaggad acknowledged the ACCC's concerns that the conduct may have amounted to resale price maintenance in contravention of section 48 of the Trade Practices Act 1974.  
[Click here for more](#)
- The ACCC has issued a draft determination proposing to grant authorisation to Port Waratah Coal Services (PWCS) to reinstate an amended Capacity Balancing System at the Port of Newcastle. The ACCC originally granted conditional authorisation to the Capacity Balancing System in 2005, with that approval not due to expire until 31 December 2007. In September last year, however, Hunter Valley coal producers voted to switch off the system for 2007. In order to reduce and manage the large queue that has subsequently reformed, at times reaching 70 ships, and therefore reduce the resultant high demurrage costs, PWCS now seeks authorisation to reinstate a modified system for the balance of 2007.  
[Click here for more](#)
- After a period of extensive discussions, Toll Holdings has offered to the ACCC a revised variation to its undertakings that is intended to allow it to carry out a restructure that will see a separation of its infrastructure businesses (including Pacific National) into a new publicly listed company.  
[Click here for more](#)
- The Federal Court of Australia has held that the ACCC was not entitled to issue the Part A Competition Notice that it issued to Telstra in April 2006, because the notice differed in substance from the earlier Consultation Notice in the kind of anti-competitive conduct it described. The court found that because Telstra was not given details of those matters when the ACCC consulted with it, Telstra was not afforded the opportunity to address relevant issues. The ACCC issued the Competition Notice to Telstra because it increased its wholesale prices for line rental above the vast majority of its retail prices for the line rental component of fixed line plans.  
[Click here for more](#)
- The ACCC has issued its 14th imputation testing and non-price terms and conditions report under the enhanced accounting separation regime for Telstra, for the quarter ending 30 December 2006. The report presents an imputation analysis that compares Telstra's retail prices to the prices of three core telecommunications access services. The analysis is designed to indicate whether there is likely to be sufficient margins to allow efficient firms to compete at the retail level. The report also compares Telstra's customer service levels for wholesale and retail fixed-line telephony and ADSL customers. The report does not indicate systematic discrimination by Telstra against its wholesale customers.  
[Click here for more](#)
- The ACCC has announced that it will not oppose the proposed acquisition of the Northern Territory fuel retail and distribution assets from Octagon Pty Ltd by Ausfuel Holdings Pty Ltd. Ausfuel operates service stations in the greater Darwin region and a fuel distribution business which supplies fuel to industrial customers and service stations operated by third parties in the Northern Territory, Queensland and north-eastern Western Australia. Ausfuel is proposing to acquire the leaseholds in three service stations located in Darwin and fuel distribution assets from Octagon.  
[Click here for more](#)
- The Australian Government has issued the ACCC report monitoring medical indemnity insurance premiums, *Medical indemnity insurance - fourth monitoring report - March 2007*. The report found that the premiums written in 2006-07 (2006 in the case of Australasian Medical Insurance Limited) were considered to be both actuarially and commercially justified for all six medical indemnity providers.  
[Click here for more](#)

Reserve Bank	<ul style="list-style-type: none"> <li>• <b>How fiscal policy affects the wider economy</b> The Reserve Bank has presented a framework for considering how fiscal policy affects the wider economy, an important issue for monetary policy. A key message is that the specific details of new spending or taxation initiatives, and their overall scale, need to be taken into account when analysing how economic activity or inflation may be affected. The impact of fiscal policy changes and their significance for monetary policy will also depend on the state of the economy at the time they occur. <a href="#">Click here for more</a> <a href="#">Click here to access the article in the March 2007 Reserve Bank Bulletin</a></li> </ul>
Bell Gully News	<ul style="list-style-type: none"> <li>• <b>Vendor due diligence - an increasing trend in Australasian M&amp;A</b> In an article published in the <i>The Independent Financial Review</i> on 4 April 2007, Bell Gully partner Jayne Kirton addresses the growing trend of vendor due diligence reports in competitive sales processes in Australasia. <a href="#">Click here to read the article</a></li> </ul>
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