

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 9 May 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](#).

New Zealand Exchange (NZX)

- ***The Carbon Market Working Group launches New Zealand-based regional carbon market name, TZ1, and website***
A group of companies with a stake in New Zealand's financial and environmental reputation is putting its combined weight behind a new Asia Pacific carbon market under the name, TZ1. The group prepared a report entitled "Report into the Feasibility of a New Zealand Carbon Market", which it presented to the Prime Minister, Minister of Finance and Minister for Climate Change Issues and Energy. The group has been working since December 2006 to determine the technological and financial infrastructure, expertise, international linkages and other factors that will combine to establish a successful carbon market for the Asia Pacific region in New Zealand.
[Click here to access the TZ1 website and more information on carbon markets](#)
[Click here for more on the Carbon Market Working Group](#)
[Click here to view support for the market](#)
- ***NZSX Listing Rules - two new guidance notes***
NZX has released guidance notes on Listing Rule 5.2.3 relating to when the NZX will be satisfied that the issuer of securities has a sufficient spread of security holders and on the requirements of the Securities Act (NZX-Share and Unit Purchase Plans) Exemption Notice 2005.
[Click here to access the NZX guidance note on spread](#)
[Click here to access the NZX guidance note on share purchase plans](#)

For more information on share purchase plans see a recent article by Louise Hill, a senior associate in Bell Gully's Corporate team, which considers a number of issues associated with share purchase plans including the effect of the proposed Securities (Mutual Recognition of Securities Offerings – Australia) Regulations 2006 and their Australian counterpart on these plans.
[Click here to access this Bell Gully article](#)
- ***Annual Report – 'opt in' law change – consequential NZX rule changes***
NZX proposes to amend the NZSX/NZDX and NZAX Listing Rules to enable issuers to take full advantage of the amendments to the annual report requirements under the Companies Amendment Act (No 2) 2006. The amendments to the Companies Act 1993 (which are expected to come into effect on 11 June 2007), together with these consequential changes to the Listing Rules, will enable listed companies to send a full hard copy of their annual and half yearly reports to shareholders on request only. Instead, companies will be required to inform shareholders of the availability of the reports on request and online by way of delivery of a notice which meets the requirements of section 209 of the Companies Act. Submissions on the proposed rule changes closed on 5 May.
[Click here to view the proposed amendments to the NZSX/NZDX Listing Rules](#)
[Click here to view the proposed amendments to the NZAX Listing Rules](#)

- **The Bulletin**

The Securities Commission has published the latest edition of its quarterly newsletter. This issue includes coverage of:

- enforceable undertakings from Huka Falls Resort Limited and Kensington Park Properties Limited, in relation to offers of membership in incorporated societies to prospective buyers of properties being developed by these companies, which were made without an investment statement or registered prospectus;
- a discussion paper from the Commission that proposes to declare certain derivative contracts, known as contracts for difference, to be futures contracts under the Securities Markets Act;
- the Commission's soon-to-be-released draft policy statement that provides guidance on applying for a futures dealer's authorisation and includes proposed capital adequacy requirements;
- the Commission's 4th cycle review of financial reporting by issuers; and
- the International Organisation of Securities Commissions (IOSCO) consultation paper Principles for the Valuation of Hedge Fund Portfolios.

[Click here to access The Bulletin](#)

- **Securities Act Exemption Notices**

The following Securities Act exemption notices have been published:

- **Securities Act (Charitable and Religious Purposes) Exemption Amendment Notice 2007/94**
This notice amends the Securities Act (Charitable and Religious Purposes) Exemption Notice 2003. The effect of the amendment is to exclude the exemption in clause 5 from section 33(2) of the Securities Act 1978 (the Act) in the case of charitable organisations that offer debt securities for allotment to a school board of trustees and the requisite approval under the Crown Entities Act 2004 is conditional upon compliance by the charitable organisation with section 33(2) of the Act or is conditional upon the charitable organisation having a trust deed and trustee under the Act.
- **Securities Act (Equity Partners Infrastructure Company No. 1 Limited) Exemption Notice 2007/100**
This notice, which expires on 30 September 2007, applies to an offer of equity securities in Equity Partners Infrastructure Company No. 1 Limited (EPIC). It exempts EPIC from regulation 23 of the Securities Regulations 1983. The effect of the exemption is to allow EPIC to include in its offer documents a statement that it intends to list on a market operated by New Zealand Exchange Limited (NZX), although no application to list can be made at this time. The exemption is subject to conditions requiring disclosure of the main risks to investors.
- **Securities Act (KCL Investments Limited) Exemption Notice 2007/101**
This notice, which expires on 2 November 2012, applies to offers by KCL Investments Limited of participatory securities in schemes for ownership interests in real property in Queensland, Australia. The notice exempts those offers, subject to conditions, from the prospectus and investment statement requirements and various other requirements of the Act. These conditions include a requirement for investors to be supplied with a written statement containing the information specified in Schedule 1 and with a report by a registered valuer that contains the information specified in Schedule 2.

<p>Ministry of Economic Development (MED)</p>	<ul style="list-style-type: none"> • Quality Regulation Review Commerce Minister, Lianne Dalziel, has released the following in relation to the review of regulatory frameworks (the Quality Regulation Review): <ul style="list-style-type: none"> ➤ Cabinet paper forming the Second Milestone Report for the Quality Regulation Review, summarising progress to date and setting out the key issues for the next stage of the review. Click here to access this cabinet paper ➤ Update on the progress of the Quality Regulation Review and on the process underway for responding to concerns that have been raised. Click here for more ➤ Media statement summarising the key themes of the review, progress already made, and improvements to be implemented. Click here for more <p>Clayton Cosgrove, Minister for Building and Construction, has released a cabinet paper seeking Cabinet's agreement to a set of actions necessary to address issues identified through the Quality of Regulation Review with the alignment and administration of resource and building consent regulatory functions. Click here to access this cabinet paper</p>
<p>New Zealand Commerce Commission (NZCC)</p>	<ul style="list-style-type: none"> • NZCC media releases The NZCC has issued the following media releases: <ul style="list-style-type: none"> ➤ The NZCC has published its first regular monitoring report on telecommunications markets in New Zealand. Recent amendments to the Telecommunications Act have explicitly empowered the NZCC to monitor the performance of telecommunications markets and report on this work. The report establishes a base set of statistics about telecommunications markets in New Zealand and overseas, which can be used for comparison going forward. Click here for more ➤ The NZCC has issued a notice requiring Telecom to submit a standard terms proposal for the unbundled copper local loop co-location service. The notice requires Telecom to specify the non-price terms and conditions on which it proposes to provide a co-location service to other operators. Click here for more ➤ The NZCC has reached a settlement with Aoraki Mount Cook Alpine Village Ltd, which owns the Hermitage Hotel at Mount Cook. Under the settlement, the company admitted to breaching the Commerce Act by tying the purchase of hotel accommodation with dinners through a compulsory "Dinner, Bed and Breakfast" rate. The deal meant anyone who stayed at the Hermitage Hotel also had to have dinner at one of the Hermitage's restaurants. The NZCC's investigation found that the compulsory tie was likely to breach of section 36 of the Commerce Act, which prohibits the misuse of market power, and section 27, which prohibits agreements that substantially lessen competition. Click here for more ➤ The NZCC has extended the due date to 25 May 2007, for two clearance decisions relating to The Warehouse: <ul style="list-style-type: none"> ○ the three Foodstuffs co-operatives, seeking clearance to acquire up to 100% of the ordinary shares in The Warehouse Group Limited; and ○ Woolworths Limited, seeking clearance to acquire up to 100% of the shares in, or assets, of The Warehouse Group Limited. Click here for more ➤ The NZCC has initiated the processes for determining standard terms of access for the backhaul services supporting Telecom's unbundled copper local loop and bitstream services. Standard terms determinations will ensure that the necessary backhaul services are in place to support the unbundled local loop and bitstream services, enabling companies to offer functions such as voice over internet protocol and high speed broadband. Click here for more ➤ The NZCC has cleared Carter Holt Harvey Limited to acquire the sawn timber business of Lakesawn Lumber Limited, which is a member of the Pedersen group of companies. Pedersen is a wood products service group, and also carries on a saw milling operation at Taupo producing structural and industrial timber. Click here for more

Australian Competition and Consumer Commission (ACCC)

- **ACCC media releases**

The ACCC has issued the following media releases:

- The ACCC has issued a position paper outlining a robust framework for the review of existing regulation and the principles which will guide future regulatory decisions. This represents the next instalment of the ACCC's continuing Fixed Services Review, which was initiated by the ACCC in December 2005.
[Click here for more](#)
- The ACCC has announced that it proposes to allow the Federal Chamber of Automotive Industries to negotiate model terms and conditions on behalf of its members with port facility managers and automotive stevedores for the use of their facilities at Australian ports.
[Click here for more](#)
- The ACCC has consented to a variation to Toll Holdings' undertakings in connection with a proposed restructure of Toll's business that requires Toll make a clean break of its logistics and infrastructure assets into two separate and unrelated companies. Toll offered the original undertakings to the ACCC in March 2006 in connection with Toll's takeover of Patrick Corporation.
[Click here for more](#)
- The ACCC has issued a statement of issues on the proposed acquisition of Greif Australia Pty Ltd by Drum Makers Pty Ltd (a subsidiary of Visy Steel Products Pty Ltd, which is itself a subsidiary of Visy Industrial Packaging Holdings Pty Ltd). The statement of issues seeks further information on a number of competition issues which have arisen from the ACCC's market inquiries.
[Click here for more](#)
- The ACCC has issued a final determination granting authorisation to the Real Estate Institute of Western Australia. REIWA's application, which updates a number of previously authorised arrangements such as its Members Code of Conduct, also includes a new Auction Code of Conduct for its members.
[Click here for more](#)
- The Federal Court at Sydney has made orders by consent in the ACCC's proceedings against British American Tobacco Australia Limited (BATA) for alleged breaches of the Trade Practices Act 1974. The ACCC had taken action against BATA alleging that its Limited Edition Dunhill wallet packs did not comply with regulations relating to the labelling of tobacco products. The consent orders made by the court include an undertaking from BATA that it will not, in the future, supply the Dunhill wallet packs, or any type of similar pack, in Australia.
[Click here for more](#)
- The ACCC has accepted court-enforceable undertakings from JV Mobile after concerns that the company may have breached the Franchising Code of Conduct, and so be in breach of Trade Practices Act 1974. JV Mobile provides licences to JV Mobile retailers to own and operate stores using the name JV Mobile in Melbourne, Sydney, Adelaide and Brisbane. ACCC Chairman, Graeme Samuel notes that the ACCC was concerned that JV Mobile had promoted and advertised its business network as a franchise, including in Vietnamese language media, and sought and/or received payments pertaining to a franchise business from JV Mobile retailers without giving them all the safeguards available under the Franchising Code.
[Click here for more](#)
- The ACCC has been made aware of alleged attempts by some wholesale traders to avoid their obligations under the Horticulture Code which becomes law on 14 May 2007. According to ACCC Chairman, Graeme Samuel the attempts are in the form of allegedly inducing growers to enter contracts backdated as if they were entered into, on or before 14 December 2006 which is the cut-off date for contracts that would not be subject to the new Horticulture Code provisions.
[Click here for more](#)
- The ACCC has issued a draft decision proposing to grant authorisation to a memorandum of understanding that will allow Tabcorp, Sky and TVN to share thoroughbred racing content.
[Click here for more](#)
- Telstra Corporation Limited notified the ACCC of an access dispute with Chime Communications Pty Ltd, on 18 April 2007. The access dispute relates to the price for the supply of the local carriage service from Telstra to Chime. The local carriage service is a service for the supply of an end to end voice grade carriage service between two points within a standard zone, which effectively allows access seekers to resell local calls to end-users. The ACCC has commenced the arbitration process for this access dispute.
[Click here for more](#)

<p>ACCC continued</p>	<ul style="list-style-type: none"> ➤ The ACCC has granted authorisation to the International Air Transport Association (IATA) for certain aspects of the IATA Passenger Agency Program on a transition basis. The program provides a system for the sale and distribution of air transport through travel agencies. It was previously re-authorised in 2002. Authorisation for some aspects of the program ended in December 2006. Click here for more ➤ The ACCC has issued a discussion paper seeking industry comment on a telecommunications transmission cost model developed by an independent expert consultant. This model has been configured to estimate the costs of supplying transmission services between various capital-regional locations in Australia. Click here for more ➤ The ACCC has issued a statement of issues on the proposed acquisition by Video Ezy Australasia Pty Ltd of Blockbuster Australia Pty Ltd and the master franchise rights for the business. Click here for more
<p>Reserve Bank of New Zealand</p>	<ul style="list-style-type: none"> • Financial Stability Report The Reserve Bank today released its Financial Stability Report, a twice-yearly report that assesses the health of the New Zealand financial system. The report covers developments in financial institutions, foreign exchange and debt markets, and payments systems. It also comments on recent financial policy developments. Click here for more Click here to view the report
<p>Bell Gully News</p>	<ul style="list-style-type: none"> • Bell Gully authors New Zealand chapter of global competition publication Bell Gully competition specialists, partner Phil Taylor and senior associate Torrin Crowther, have authored the New Zealand chapter of <i>The 2007 Handbook of Competition Enforcement Agencies</i>. Published by Global Competition Review, the handbook was launched in April at an American Bar Association's Antitrust Spring meeting in Washington DC. Click here for more • Portfolio Investment Entities The Portfolio Investment Entity (PIE) regime was passed into legislation just before Christmas last year, and was subject to amendment throughout its passage through Parliament. Under the regime, companies, superannuation and investment funds that qualify as PIEs are eligible for tax benefits. Although the PIE rules only come into effect in October this year, there is already a large amount of activity in the funds management industry as people gear up to become PIEs. In this Update, Matthew McKay, Bell Gully Senior Solicitor, and Solicitor Paul Kilford discuss the eligibility requirements and benefits of PIEs. Click here to read the Update
<p><i>The Bell Gully Regulator Report is designed to highlight certain New Zealand and Australian corporate, commercial and competition regulatory developments. The Bell Gully Regulator Report is not designed to be comprehensive and is necessarily brief and general in nature and is not intended to provide legal advice. You should seek professional legal advice before taking any action in relation to the matters dealt with in this publication. Bell Gully is not the author of any information received by clicking on the hypertext links and therefore is not responsible for their accuracy.</i></p>	

©Bell Gully 2007