BELL GULLY

# Corporate Reporter

**24 JUNE 2015**

**Welcome** to Issue No. 35 of Corporate Reporter, Bell Gully's regular round-up of corporate and general commercial matters, designed to keep you informed on regulatory developments, legislation and cases of interest.

## IN BRIEF

Items in this issue include:

- MBIE consults on amendments to the FMC Regulations;
- FMA grants series of financial reporting exemptions under new regime;
- New NZX Market Rules in force from 14 July 2015;
- FMA agrees to modify NZ$750,000 wholesale investor exclusion;
- Transition exemption notices issued for licensed derivatives issuers;
- Takeovers Panel alters its position on association and lock-up agreements;
- Court of Appeal confirms fiduciary relationship between director and shareholder; and
- The latest media releases from the New Zealand Commerce Commission and the Australian Competition and Consumer Commission.

# COMMERCIAL

## Regulatory developments

### New consumer credit laws are now in force

Amendments to the Credit Contracts and Consumer Finance Act 2003 and associated regulations came into force on 6 June 2015.

The primary purpose of these amendments is to ensure that lenders comply with new responsible lending obligations and consumers have enhanced access to information to help them make informed borrowing choices. These new stricter rules apply to all lenders who provide consumer credit, take security over consumer goods, or enter into buy-back transactions.

Most of the changes apply only to contracts entered into on or after 6 June 2015, but there are some exceptions.

Minister of Commerce and Consumer Affairs Paul Goldsmith has stated the Ministry of Business, Innovation and Employment do not intend to "impose unnecessary compliance costs on lenders who are already lending responsibly, but rather provide additional protection from lenders who engage in predatory practices."

For further information on the changes visit the Ministry's website *here*.

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### Anti-corruption Bill a step closer to becoming law

The Organised Crime and Anti-corruption Legislation Bill passed its second reading last month following the Select Committee's report on the Bill, and it is now at the Committee of the whole House stage. A copy of the Select Committee's report is available *here*.

The Bill includes provisions which will impact on some businesses' compliance requirements. These include:

- amendments to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to require reporting entities under that Act (unless they are exempted by regulations) to report all international wire transfers over NZ$1,000 and all physical cash transactions over NZ$10,000 to the Police's Financial Intelligence Unit; and

- an amendment to the Companies Act 1993 requiring particulars of any "facilitation payments" to foreign public officials (which are still carved out from the Crimes Act 1961 provided the value of the payment is small and does not give an undue material advantage to the payer or an undue disadvantage to anyone else) to be recorded in a company's accounting records.

Other provisions of note in the Bill include measures to:

- improve the effectiveness of New Zealand's money laundering offences by clarifying that intent to conceal is not necessary to prove a money laundering offence. It also removes the requirement that the offence from which proceeds are derived must be punishable by imprisonment of five years or more;

- bring the foreign bribery offence into line with international recommendations (this includes clarifying the circumstances in which a company is liable for foreign bribery);

- increase the penalties for bribery and corruption in the private sector, to bring them into line with public sector bribery; and
- extend the company director disqualification provisions to corruption and bribery offences under the Crimes Act.

Once enacted, the Bill will bring New Zealand into line with international best practice as set by the United Nations Convention against Corruption, the Recommendations of the Financial Action Task Force, and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

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## Changes for inactive 'large' financial reporting entities in force on 1 July

From 1 July 2015, the financial reporting requirements that would normally apply to 'large' entities under the new financial reporting regime will not apply if the entity is inactive in respect of an accounting period. This brings the new regime in line with the position of inactive entities under the Financial Reporting Act 1993.

The meaning of 'large' in section 45 of the Financial Reporting Act 2013 has been amended to exclude entities that have been inactive in respect of an accounting period, provided that within five months after the end of the accounting period they deliver a prescribed declaration to the Registrar of Companies stating that it was an inactive entity for that period.

The prescribed form is available *here* in the Schedule to the *Financial Reporting Regulations 2015*.

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## Final steps in place for the reform of accounting and auditing legislation

From 1 July, changes under the Financial Reporting Amendment Act 2014 and the Auditor Regulation Amendment Act 2014 come in to force, bringing the remaining parts of the Accounting Infrastructure Reform Bill into effect.

The Financial Reporting Amendment Act allows members of accredited professional bodies to perform most statutory audits if they are recognised by their professional body as qualified to do so. The *Financial Reporting Regulations 2015*, which prescribe various matters required by the Act, will also come into force on 1 July.

The Auditor Regulation Amendment Act removes the ban on companies performing statutory audits by allowing New Zealand audit firms to incorporate using the company form. It also allows certain incorporated overseas audit firms to operate in New Zealand. Standards relating to ownership, governance and professional indemnity insurance will also come into force on 1 July under the *Auditor Amendment Regulations 2015*.

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# COMPANY LAW

## In the courts

### Fact-based fiduciary relationship between a director and a shareholder is upheld by Court of Appeal

**Holmes v Kiriwai Consultants Ltd [2015] NZCA 149**

Unlike the status-based fiduciary relationships (such as that of principal and agent), the relationship between director and shareholder is not an inherently fiduciary one. However, the Court of Appeal has confirmed that there may be special factual circumstances which give rise to a fact-based or particular fiduciary relationship between a director and a shareholder – and that this is not, as some may have concluded on the basis of the decision in *Coleman v Myers*[1], just limited to situations involving closely held family companies.

**The appeal**

In this case an aggrieved shareholder brought proceedings against a director alleging breach of section 149 of the Companies Act 1993 (which is designed to address the problem of insider trading arising where directors buy or sell shares with information that might affect the value of the shares) and a breach of fiduciary duty for not disclosing price sensitive information to the shareholder prior to acquiring the shareholder's shares. The High Court found in favour of the shareholder on both counts. The director appealed the decision and the shareholder cross-appealed the High Court's ruling regarding the assessment of "fair value" under section 149.

**Background facts**

In 2007 Mr Emmens, through his company (Kiriwai), had taken a minority shareholding in Holmes Ventures Limited (**HVL**). The shareholding was linked to Mr Emmens employment with HVL through the terms of a shareholders' agreement. Under the agreement, Kiriwai could be forced to sell its shareholding if Mr Emmens ceased to be an employee and, as an added incentive for Mr Emmens to remain as an employee, Kiriwai was only entitled to fair value for the shares after a period of five years.

The relationship between Mr Emmens and the majority shareholder and director of HVL, Mr Holmes, broke down in 2012, resulting in Mr Emmens' role with the company being formally disestablished in September 2012.

In November 2012, when the director was in the midst of negotiations for a particularly lucrative transaction involving the sale of a subsidiary of HVL, the director offered a "take it or leave it" deal for Kiriwai's shareholding in HVL. The offer was made without disclosing that the director was involved in negotiations that would substantially increase the value of HVL's shares if the transaction proceeded.

Mr Emmens was keen to sell the shares. He had been waiting since September 2012 to receive financial information on HVL so he could obtain an accurate valuation of the shares, but the director had not complied with the request for information. Mr Emmens reluctantly agreed to the "take it or leave it" offer.

**Fiduciary relationship was established**

The Court of Appeal upheld the High Court's finding that a fiduciary duty existed on the facts between the director and the minority shareholder, Kiriwai. As such, Mr Holmes, in his capacity as director, was liable to pay Kiriwai the difference between the price it received for its shares and the price it should have received had the director

[1] [1977] 2 NZLR 298 (CA)

disclosed the fact of the negotiations. The court pointed to the following combined factors as being relevant for holding that the director was under a fiduciary duty to disclose the information:

- the director had complete control over HVL;
- the employment of Mr Emmens gave rise to duties of good faith as between HVL and Mr Emmens;
- the director had the power to compel Kiriwai to sell its shares by terminating Mr Emmens' employment;
- the director had the power to end Kiriwai's access to company information and Mr Emmens' remuneration which impacted on his negotiating power over the sale of the shares;
- the director knew that the sale of the shares was a significant transaction for Mr Emmens and that Mr Emmens had been seeking information to give to his legal and financial advisers so he could be properly advised on the value of the shares; and
- the director placed pressure on Mr Emmens to accept a quick sale of the shares in the knowledge that he was in possession of material information.

**The insider trading claim under section 149**

As the court pointed out, section 149 of the Companies Act did not require the director to disclose the negotiation of the potential sale of the subsidiary (as required by the director's fiduciary obligations), but it did prevent the director from dealing with the shares unless the sale was for fair value. "Fair value" in this context is "what is fair as between the vendor and purchaser in all the circumstances, taking into account all material information known to the director at the relevant time."

The Court of Appeal allowed the shareholder's cross appeal, recognising that on the facts the High Court judge had relied on competing views of "fair value" given by experts without undertaking her own factual analysis of the likelihood of the sale of the subsidiary proceeding. On the Court of Appeal's analysis of the facts they concluded that the likelihood of the sale proceeding was sufficiently high and that it was a material factor that should have been taken into account in assessing fair value of the shares, subject to a discount to recognise that there was a possibility that the transaction might not go ahead or not go ahead for the proposed amount.

# MERGERS AND ACQUISITIONS

## Takeovers Panel

### Class exemption granted to facilitate intra-group transactions

The Takeovers Panel has granted the *Takeovers Code (Class Exemptions) Notice (No 2) 2001 Amendment Notice 2015* to widen the scope of clause 25 of the principal notice which exempts intra-group transfers within wholly-owned groups from the fundamental rule (rule 6(1)) of the Takeovers Code (i.e., that no person, together with their associates, can increase their shareholding over 20% other than in accordance with the Code or an exemption).

New clauses 25A and 25B grant new exemptions from compliance with rule 6(1) covering intra-group transactions where the group is headed by a natural person or by a number of persons including at least one natural person. Previously the class exemption notice only exempted intra-group transactions where the group was headed by a body corporate. The change will facilitate normal intra-group transactions where there is no change in the ultimate control of the voting rights in the code company.

## Takeovers Panel revises its position on association and lock-up agreements

In the latest edition of the Takeovers Panel's Newsletter, *Code Word 39*, the Panel has advised that it has recently reviewed its position on association and lock-up and shareholders' agreements.

The Panel's revised position is that parties to a lock-up agreement or a shareholders' agreement may be associates of each other for the purposes of the Takeovers Code, but the terms and nature of those agreements and the surrounding circumstances need to be considered on a case by-case basis.

In the past, the Panel has determined that the parties to lock-up agreements were 'associates' merely by virtue of being party to the agreements. In contrast, the Panel has in the past considered whether shareholders' agreements result in the parties being associates under the relevant circumstances on a case-by-case basis.

Code Word 39 sets out broad guidance to assist the market in deciding whether under the circumstances an associate relationship may exist between the parties to a lock-up or shareholders' agreement but, ultimately, it is for the Panel to consider all transactions on a case-by-case basis, especially if a complaint is made and the Panel needs to make a formal determination under section 32 of the Takeovers Act 1993.

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## Takeovers Panel provides template for exemption applications

A template form is now available to use for applications for exemptions from the Takeovers Code. The form is available on the Takeover Panel's website *here*.

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# CAPITAL MARKETS

## Regulatory developments

## MBIE consults on amendments to the Financial Markets Conduct Regulations

MBIE has called for submissions on proposed amendments to the Financial Markets Conduct Regulations 2014 (**FMC Regulations**) and related regulations issued for the Financial Markets Conduct Act 2013 (**FMCA**) regime.

Copies of the consultation document and the exposure drafts of the proposed amendment regulations are available *here*. Submissions close on **2 July 2015**.

**Overview of proposed amendments**

*Managed funds*

The majority of the proposed amendments address a range of managed fund situations which were not fully catered for in the FMC Regulations including:

- providing for disclosure needs for multiple employer schemes and defined benefit schemes;

- providing a version of the fund update for multi-fund investment options;
- providing for use of fund updates at the "point-of-sale" to supplement the PDS for managed funds; and
- ensuring disclosure works for debt issued for the purposes of a managed investment scheme.

In addition, MBIE is seeking feedback on an exposure draft of the structure requirements for an alternative managed fund PDS which would allow fund updates to form part of a PDS. This would give issuers greater flexibility about how to combine their funds in a point-of-sale offer document and, for issuers with multiple funds, potentially limit the need for multiple PDSs.

*Other disclosure changes*

Other proposed amendments also address disclosure matters which were deferred when the FMC Regulations were put in place for the 1 December 2014 FMCA implementation date. These include:

- new short-form disclosure for offers of shares or other products that rank equally or in priority to existing quoted financial products (which is an addition to the FMCA Schedule 1 disclosure exclusion for offers of financial products of the same class as quoted financial products); and
- bespoke disclosure requirements for offers of convertible financial products, which include carrying over key elements of the offer document requirements set by the Securities Act (Banks' Regulatory Capital) Exemption Notice 2014 by requiring additional warnings to be included to the bank PDS in Schedule 9 of the FMC Regulations, alerting investors to the complex and high risk nature of hybrid bank products.

MBIE are also seeking feedback on various matters relating to offers of options by way of issue for financial products.

*Remedial changes*

The proposed regulations address a number of implementation issues that have been raised over the last few months, and make a number of minor improvements to ensure the regulations apply appropriately.

Further details on the proposed amendments are set out in our earlier client update *here*.

**Timing of proposed amendments**

The amendments are expected to be made in the third quarter of 2015, and MBIE have indicated that some may be in force by 1 December 2015 to permit short-form offers and convertible offers to be made under the FMCA using the proposed relief.

A longer transitional period is being proposed for other disclosure requirements where more business changes may be needed for implementation.

**Further changes still to come**

MBIE acknowledge that the proposed amendments do not resolve all implementation issues that have been raised, and have indicated that they will publish a list of further issues that they are currently working on their website (which will be updated periodically).

In addition, MBIE is seeking to address a number of remedial changes to the FMCA in the Regulations Systems Bill. For a list of the issues for which approval has been obtained *click here*.

FMA is also currently considering submissions on its *March consultation* on exemptions under the FMCA, which, as MBIE point out, need to be viewed alongside the FMCA and FMC Regulations for a full picture of the regime.

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## First consultation round on the financial adviser regime review underway

MBIE is seeking submissions on an *Issues Paper* that identifies areas to improve and clarify how the Financial Advisers Act 2008 (**FAA**) and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**) work.

This Issues Paper outlines MBIE's analysis of the role of financial advice, registration and dispute resolution as well as the aims and role of government regulation in this area. It contains a number of key questions, informed by initial discussions with government agencies, industry groups, financial advisers and consumers.

The feedback MBIE receives on the Issues Paper will be used to help develop an options paper, which the Ministry expects to consult on before the end of 2015.

The final report on the operation of both the FAA and FSP Act will be provided to the Minister of Commerce and Consumer Affairs by 1 July 2016. This report will include any recommendations for changes arrived at after the options paper consultation process.

The closing date for submissions on the Issues Paper is **22 July 2015**.

For further details visit the Ministry's website *here*.

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# Financial Markets Authority (FMA)

## FMA reaches significant settlement for alleged market manipulation

Milford Asset Management (**Milford**) agreed to pay NZ$1.5 million to FMA for alleged market manipulation under a settlement agreement signed last week. This followed an investigation by FMA of certain trading conduct undertaken by an unnamed portfolio manager at Milford between December 2013 and August 2014.

The Milford investigation and settlement illustrates FMA's continued focus on preventing and penalising market manipulation. As such, all firms dealing in financial products (whether they be debt securities, equity securities, management investment products or derivatives) should have robust systems and processes in place to ensure that there is adequate oversight and control of trading conduct, and should continue to review those systems and processes to ensure that they are being complied with and remain appropriate.

Failure to ensure the requisite degree of oversight can result in civil and criminal liability, as well as significant fines or pecuniary penalties (both for an individual and for the company).

For further details and commentary on the Milford settlement see our earlier client update *here*.

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## FMA grants a series of financial reporting class exemptions under the FMCA

FMA has granted the following class exemption notices for discretionary investment management services (**DIMS**) Licensees, dual-listed issuers, overseas registered banks and overseas licensed insurers in respect of their financial reporting obligations set out in Part 7 of the Financial Markets Conduct Act 2013 (**FMCA**).

**Financial Markets Conduct (Financial Reporting - DIMS Licensees) Exemption Notice 2015**

FMA has granted a class exemption from financial reporting requirements under the FMCA to providers of DIMS who have up to NZ$250 million in retail funds under management and are licensed to provide DIMS under Part 6 of the FMCA.

The exemptions in the notice apply according to whether a DIMS licensee falls into one of two levels. The levels are based on the amount of retail funds under management in respect of an accounting period. A DIMS licensee with less than NZ$100 million in retail funds under management will be a level 1 licensee and licensed DIMS providers with NZ$100 million to NZ$250 million in retail funds under management will be a level 2 licensee.

The notice exempts level 1 licensees from financial reporting requirements under the Act relating to accounting records, the preparation of financial statements that comply with generally accepted accounting practice (GAAP), and the audit and lodgement of those financial statements. These DIMS licensees are still required to keep accounting records and meet company or tax financial reporting obligations that would apply to the DIMS licensee if it were not an FMC reporting entity.

The notice exempts level 2 licensees from the requirement under the Act to have financial statements audited by a qualified auditor. These DIMS licensees are still required to comply with any company or other audit requirements that would apply to the DIMS licensee if it were not an FMC reporting entity.

The exemptions do not apply if:

- a DIMS licensee is an FMC reporting entity for any reason other than because it holds a DIMS licence; or
- there is no independent custodian.

A copy of the exemption notice is available *here*.

**Financial Markets Conduct (Dual-listed FMC Reporting Entities) Exemption Notice 2015**

This notice applies to overseas incorporated, dual-listed issuers that are listed on a licensed market in New Zealand and also have a primary listing on a financial product market regulated by Australia, Ontario (Canada), Singapore, the United Kingdom, or the United States of America. It continues similar exemptions contained in the Financial Reporting Act (Dual-listed Issuers) Exemption Notice 2013. However, one notable difference is the removal of Hong Kong as a specified jurisdiction, apparently because FMA is not satisfied that Hong Kong's auditor regulatory system is consistent with international best practice.

This notice exempts those dual-listed issuers from various financial reporting provisions in Part 7 of the FMCA subject to conditions that require those issuers to prepare financial statements that comply with the financial reporting requirements of the jurisdiction of the overseas financial product market (the **relevant jurisdiction**). The main effects of the exemptions are:

- the financial statements that are prepared will comply with the overseas generally accepted accounting practice or principles (**overseas GAAP**) that is or are required or permitted in the relevant jurisdiction rather than NZ GAAP;

- those financial statements will be audited by an overseas approved auditor who is qualified under the laws of the relevant jurisdiction to give an opinion as to whether the financial statements comply with the relevant overseas GAAP;

- if the entity has a New Zealand business, those financial statements will be accompanied by separate New Zealand branch financial statements that comply with NZ GAAP or overseas GAAP;

- those New Zealand business financial statements must be audited by a qualified auditor (as that term is defined in the FMCA or an overseas approved auditor.

A copy of the exemption notice is available *here*.

**Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2015**

The same Part 7 FMCA financial reporting exemptions for dual-listed issuers (noted above) have been granted to overseas banks that are registered and overseas insurers that are licensed by the Reserve Bank of New Zealand under the *Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2015***.** The exemptions are also subject to conditions that require the entities to prepare financial statements that comply with the laws and regulatory requirements of their home jurisdiction. In addition, their home jurisdiction, through a securities regulator in that jurisdiction, must be a full signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

## Transition exemption notices issued for licensed derivatives issuers

FMA has granted two short-term class exemption notices, which expire on 30 November 2015, to address transition matters that have arisen for licensed derivatives issuers.

The first exemption notice applies to derivatives issuers who were required (or elected) to register a product disclosure statement by 1 June 2015 to make regulated offers of derivatives and have a balance date within the period 1 February 2015 to the close of 31 May 2015. The *Financial Markets Conduct (Derivatives Issuers—Link to Financial Statements) Exemption Notice 2015* exempts those issuers from the requirement under the Financial Markets Conduct Regulations 2014 (**FMC Regulations**) to provide a link to GAAP-compliant audited financial statements for the most recently completed accounting period because complying with that requirement in the short period available would be unduly onerous or impracticable for those issuers.

The second exemption notice, the *Financial Markets Conduct (Derivatives Issuers—Responsibilities in Event of Shortfall) Exemption Notice 2015*, provides an alternative method of reconciliation and compliance with the FMC Regulations' requirement for derivatives issuers to carry out, on a daily basis, cash-based reconciliations as a means to calculate whether there is a shortfall of funds in the trust account. In practice, under the previous Futures Industry (Client Funds) Regulations 1990, derivatives issuers have been carrying out equity-based reconciliations, rather than only cash-based reconciliations. The Government is proposing to amend the derivatives investor money reconciliation requirements in the Financial Markets Conduct Regulations 2014 to bring them into alignment with current practices as part of the proposed Financial Markets Conduct Amendment Regulations 2015 (discussed in the item "MBIE consults on amendments to the Financial Markets Conduct Regulations" above).

## FMA agrees to modify the NZ$750,000 minimum investment wholesale investor exclusion

Following a series of consultations, FMA has agreed to grant limited short term exemptions for offerors of certain types of debt securities seeking to rely on the NZ$750,000 minimum investment wholesale exclusion in clause 3(b) of Schedule 1 of the Financial Markets Conduct Act 2013.

Currently, to rely on the NZ$750,000 investment exclusion, clauses 3 to 5 of Schedule 8 of the Financial Markets Conduct Regulations 2014 require a prescribed warning on offer documents and an investor acknowledgement.

The effect of the exemptions will be that:

- for offers of Kauri bonds, the warning and investor acknowledgement will not be required;
- for other offers of unsubordinated debt securities, the investor acknowledgement will not be required and a single warning will be required on the principal terms sheet given to the investor (and not on every document that contains the key terms of the offer).

The exemptions are being granted to address concerns that the compliance burdens associated with requiring warning and investor acknowledgement to investors may outweigh the benefits to wholesale investors for such offers. FMA also recognises, particularly in the case of Kauri bonds, that considering the relative size of New Zealand's debt capital market these requirements could discourage overseas issuers from extending wholesale debt offers into New Zealand, which would limit investment opportunities for New Zealand businesses.

FMA has decided to grant the exemptions for 12 months to enable FMA to monitor the use of the exemptions and carry out a general review of how the exemptions are working, including considering whether there is any inappropriate use of the exemptions.

The exemption notice is expected to be in place by the end of June 2015.

For further information on this change is available *here*.

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## FMA issues new guide to bank capital notes for investors

FMA has issued a new guide designed to help investors understand the risks and complexities associated with capital notes issued by banks.

The guide also relates to similar products such as perpetual subordinated notes and hybrid securities.

A copy of the guide is available *here*.

# NZX Limited (NZX)

## Amendments to NZX's Market Rules in force from 14 July 2015

NZX has amended its various market rule sets that govern listing and trading on NZX's markets - largely to reflect recent amendments to the legislation governing New Zealand's financial markets (including the Financial Markets Conduct Act 2013). The amended rules (which were approved by the Financial Markets Authority on 15 June

2015) are all dated 16 April 2015 and will come into effect on 14 July 2015. Marked-up copies showing changes from the various existing rules can be viewed on the following links:

- *Marked-up amendments to the NZX Main Board-Debt Market Listing Rules*;
- *Marked-up amendments to the NZAX Listing Rules*;
- *Marked-up amendments to the NZX Participant Rules*;
- *Marked-up amendments to the NZ Markets Disciplinary Tribunal Rules*;
- Marked-up amendments to the NZX *Derivatives Market Rules* and *Derivatives Market Procedures*.

The amendments to the NZX Main Board/ Debt Market Listing Rules and the NZAX Listing Rules (the **Listing Rules**) include provisions which give NZX greater flexibility to tailor offer document content requirements to different types of offers.

NZX has also taken the opportunity to clarify the operation of the Listing Rules in relation to the issuance of convertible securities. The amendments allow an issuer to issue equity securities at the time of conversion of a convertible security, so long as either:

- the convertible security is initially issued either with shareholder approval, or in accordance with a specified carve-out from the shareholder approval requirements; or

- at the time of conversion, the equity security is issued with shareholder approval or in accordance with a specified carve-out from the shareholder approval requirements.

In addition, NZX Clearing has announced amendments to the Clearing and Settlement Rules and the Depository Operating Rules which will also come into effect on 14 July 2015. Details of these amendments can be found *here*.

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# COMPETITION AND CONSUMER LAW

## New Zealand Commerce Commission (NZCC)

### Media releases

The NZCC has issued the following media releases:

#### Industry regulation and regulatory control

**Commission begins industry and consumer engagement on input methodologies review**
The NZCC has released its first paper for industry and consumers as part of the review of input methodologies under Part 4 of the Commerce Act. Input methodologies are the rules and processes that underpin the regulation of electricity lines, gas pipelines, and specified airport services. NZCC Chair Dr Mark Berry said the paper is the first step in developing a clear problem definition for the review. Firm proposals for change will be developed later in the process.
*Click here for more*

**Commission opens consultation on dairy competition review**
The NZCC has released a consultation paper outlining its proposed approach, timeframes and scope for its review of the state of competition in the New Zealand dairy industry. Submissions on the consultation paper are due by 10 July.
*Click here for more*

**Commission releases report on Christchurch Airport's revised pricing information**
The NZCC has published its observations on Christchurch International Airport Limited's disclosure of revised pricing information.
*Click here for more*

**Commission releases draft decision on Transpower's NIGU application**
The NZCC has released a draft decision on Transpower's application seeking to recover its overspend on the North Island Grid Upgrade Project (**NIGU**). The NIGU project was part of a suite of initiatives aimed at improving security of electricity supply to Auckland and Northland. The Commission is reviewing the project as Transpower spent more than originally approved.
*Click here for more*

## Mergers and acquisitions

**Commission gives clearance to Staples/Office Depot merger**
The NZCC has given clearance for Staples to acquire all of the outstanding shares of Office Depot, which trades in New Zealand as OfficeMax.
*Click here for more*

**Statement of preliminary issues for Pfizer's application to acquire Hospira**
The NZCC has published a statement of preliminary issues relating to an application from Pfizer to acquire all of the remaining shares in Hospira. Pfizer and Hospira are both global companies that manufacture and supply pharmaceutical products.
*Click here for more*

**Commerce Commission held conference on wool scouring authorisation**
The Commission held a one day conference on 10 June 2015 to discuss matters relating to Cavalier Wool Holding Limited's application for authorisation to acquire New Zealand Wool Services International's wool scouring business.
*Click here for more*

**Commerce Commission declines Reckitt Benckiser lubricant merger**
The NZCC has declined an application from Reckitt Benckiser Group, owners of Durex, to purchase Johnson & Johnson's K-Y brand and product assets.
*Click here for more*

## Telecommunications

**Telco report shows strong growth in data consumption**
The NZCC has released its latest annual telecommunications monitoring report analysing the state of New Zealand's telecommunications markets. Telecommunications Commissioner Dr Stephen Gale said the past 17 months had been particularly eventful for the industry, with mergers, acquisitions, spectrum sales and the arrival of a slew of content streaming services.
*Click here for more*

## Consumer issues

**Law change creates new climate for borrowing**
Consumers in the market for a loan can expect to see significant changes to lending practices after an overhaul of consumer credit law. Changes to the Credit Contracts and Consumer Finance Act 2003 came into force on 6 June 2015. The Commerce Commission will be responsible for enforcing the amended law and will have a wider range of tools which it can use to better protect New Zealanders.
*Click here for more*

## Australian Competition and Consumer Commission (ACCC)

# Selected ACCC media releases

The ACCC has issued the following media releases:

### Industry regulation and regulatory control

**ACCC proposes to re-authorise Virgin/ Delta Trans-Pacific alliance**
The ACCC is proposing to grant authorisation for Virgin Australia and Delta Air Lines to coordinate their operations between Australia and the United States of America for a further five years in its draft decision. The alliance allows Virgin and Delta to offer a single integrated network comprising their services between Australia and the US and respective domestic Australian and US networks.
*Click here for more*

### Mergers and acquisitions

**ACCC calls for comment on proposed acquisition of iiNet by TPG**
The ACCC has released a Statement of Issues outlining the ACCC's preliminary views on the proposed acquisition of iiNet Ltd by TPG Telecom Ltd. The ACCC's preliminary view is that the proposed acquisition is unlikely to raise competition concerns in other markets, including in relation to the supply of wholesale transmission (or backhaul), mobile broadband and voice services. The ACCC is seeking further information to determine whether the proposed acquisition would be likely to substantially lessen competition in the market for the supply of retail fixed broadband services.
*Click here for more*

### Market behaviour

**Chairman addresses the great divide on misuse of market power**
Proposed Harper reforms offer a way forward on the great divide surrounding section 46 of the Competition and Consumer Act 2010, ACCC Chairman Rod Sims said at the Annual Hodgekiss Competition Law Conference in Sydney.
*Click here for more*

**ACCC lodges submission on Harper Review recommendations**
The ACCC has provided a submission to the Commonwealth Treasury's consultation on the recommendations of the Competition Policy Review Panel. The submission is available on the ACCC website's submissions page *here*. The submission is focused on a subset of the recommendations, particularly those that changed since the Draft Report, and deals with some specific details as to how the recommendations can be implemented.
*Click here for more*

**Australia and Japan to increase cooperation on competition matters**
The ACCC and the Japan Fair Trade Commission today announced that they have signed a Cooperation Arrangement. The agreement paves the way for increased cooperation and investigative assistance between the agencies on competition matters which affect Australian or Japanese markets.
*Click here for more*

### Telecommunications

**ACCC issues final determination on NBN Co's LTRCM**

The ACCC issued its final determination on NBN Co's Long Term Revenue Constraint Methodology (LTRCM) for the 2013-14 financial year. It is satisfied that NBN Co's LTRCM proposal meets the expenditure criteria set out in the Special Access Undertaking, which establishes part of the regulatory framework for the National Broadband Network.

*Click here for more*

**ACCC reports upon Telstra's compliance with its structural separation undertaking**

The ACCC's annual report on Telstra's compliance with its Structural Separation Undertaking (**SSU**) has been tabled in Parliament. The report demonstrates that Telstra was generally compliant with its commitments under the SSU during the 2013-14 financial year, but nonetheless failed to meet its obligations on a number of occasions.

*Click here for more*

### Consumer issues

**Spreets to pay penalties of $600,000 for misleading consumers**

The Federal Court has ordered Spreets Pty Ltd to pay total penalties of $600,000 for making false or misleading representations to consumers about deals offered on its online group buying website in contravention of the Australian Consumer Law (**ACL**). Spreets contravened the ACL by engaging in misleading and deceptive conduct and making false or misleading representations about the price of certain deals, consumers' ability to redeem vouchers, and consumers' refund rights.

*Click here for more*

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