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## ARTICLES

### **From “if not, why not?” to “if not, NOT!” – Regulatory reform of the debenture sector – *Eve Brown***

In seeking to respond to recent finance company failures, the Australian Securities and Investments Commission has released a consultation paper which proposes reforms to strengthen the regulation framework for issues of debentures. The reforms envisage a new role for trustee gatekeepers and merit-style regulation of certain high-risk issuers of debentures. Overall, the proposals aim to address gaps in the disclosure regime and to provide further protection to retail clients. However, attention to the investor-protection benefits is not balanced with adequate consideration of the potential costs and negative impacts on the sector and those who service it, particularly trustees. This article suggests more balanced alternatives as recent developments in financial services laws could play a role in addressing the problems arising in the debentures sector, and it may be premature to pursue a sector-specific course of reform before the effectiveness of these new laws can be evaluated. .... 159

### **A securities market operator’s use of the “please explain” price query and its impact on compliance – *Larelle Chapple, Thu Phuong Truong and Michelle Welsh***

Market operators in New Zealand and Australia, such as the New Zealand Exchange (NZX) and the Australian Securities Exchange (ASX), have the regulatory power in their listing rules to issue queries to their market participants to explain unusual fluctuations in trading price and/or volume in the market. The operator will issue a price query where it believes that the market has not been fully informed as to price relevant information. Responsive regulation theory has informed much of the regulatory debate in securities laws in the region. Price queries map on to the lower level of the enforcement pyramid envisaged by responsive regulation and are one strategy that a market operator can use in communicating its compliance expectations to its stakeholders. The issue of a price query may be a precursor to more severe enforcement activities. The aim of this study is to investigate whether increased use of price queries by the securities market operator in New Zealand corresponded with an increase in disclosure frequency by all participating companies. The study finds that an increased use of price queries did correspond with an increase in disclosure frequency. A possible explanation for this finding is that price queries are an effective means of appealing to the factors that motivate corporations, and the individuals who control them, to comply with the law and regulatory requirements. This finding will have implications for both the NZX and the ASX as well as for regulators and policy makers generally. .... 173

**Raising levels of awareness of rights and obligations in the provision of financial product advice to retail clients – *Stephen Corones and Kym Irving***

In September to December 2012, 548 financial planning retail clients and 77 financial advisers responded to online surveys addressing consumer satisfaction with financial planning services and the provision of information concerning regulatory and rights issues. Retail clients commented on the extent to which advisers considered their clients' financial objectives and lifestyle situations, and the client-centredness of the financial advice they received. Retail clients also indicated their level of awareness of their substantive rights in relation to receiving advice, the legal obligations imposed on advisers, and whether they would access internal and external complaints processes if warranted. Advisers reported on the extent to which they provide clients with information relating to their substantive rights, and complaints processes available to them. Responses were analysed in relation to client demographics (eg, age, gender, education), and experience of financial advice. This article reports on the findings of the surveys and their implications for financial planners. ....

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