

Securities and Financial Services Law (7th ed)

Robert Baxt | LexisNexis Butterworths | 2008



The latest edition of this text, now in its seventh edition, is welcomed for a number of reasons. First, since the last edition in 2003, there has been a large number of cases that have been delivered which have interpreted the far-reaching (the authors have termed them 'revolutionary') changes to financial services law ushered in by the Financial Services Reform Act, which, in large measure, commenced in March 2002. Secondly, with the extreme volatility in equity markets since November 2007 following the credit crunch that commenced a few months earlier, aggrieved retail investors who have experienced a significant diminution in the value of their superannuation entitlements or equity portfolios may be inclined to look closely to the roles of the issuers of financial products and intermediaries in bringing that result about (perhaps encouraged by the

recent incidence in securities class litigation, about which more is said below). The advisory and product disclosure obligations of product issuers and intermediaries are comprehensively considered. Thirdly, the publication of this edition virtually coincides with the government's recent Green Paper concerning financial services and credit reform and the text's analysis of the existing laws will serve to focus the attention of contributors seeking to influence legislative change to the existing regulatory framework on a range of topical issues; such as whether there is a need for margin loans, or mortgages over real property, to be added to the inclusive list of financial products in Chapter 7 of the *Corporations Act 2001* (Cth); and whether credit rating agencies should be required to obtain financial services licenses.

The structure of the text has changed substantially since the previous edition. It has been much simplified. This edition has grouped chapters thematically, beginning with an introduction that centres on the regulation and administration of securities and financial services laws (and which includes a chapter specifically devoted to the meanings of 'financial product' and 'security' – whose concepts almost justify a text in itself) and develops with separate parts concentrating on issuers of financial products; markets for products; intermediaries and, finally, market conduct. A virtue of the book is its continued attention towards important decisions in non-statutory law: close consideration is given, for example, to the decision of *ASIC v Citigroup Global Markets Australia*, which among other things, dealt with the existence, scope and

contractual exclusion of fiduciary duties owed by an investment bank to its client, a takeover bidder. The multiple roles of the ASX, and the potential conflicts arising from its being listed on an exchange it regulates, are closely examined.

The text has particular significance to the Bar in its new treatment of securities class litigation, which subject has increased in importance by two recent decisions of the High Court of Australia: *Campbells Cash & Carry v Fostif* (concerning litigation funding for class actions) and *Sons of Gwalia v Margaretic* (concerning the rights of shareholders to sue for defective disclosure by companies). These decisions, beneficial alike to retail investors, have fuelled litigation concerning the prohibition against misleading or deceptive conduct in financial services and the continuous disclosure obligations of listed entities. Separately, the *Glencore* decision by Emmett J in the Federal Court of Australia has demonstrated the ability of companies to retain recourse to the courts in takeover battles through judicial review of decisions by the Takeovers Panel. Intriguingly, the authors speculate that the High Court's decision in *A – G (Cth) v Alinta Ltd*, delivered earlier this year, which posited that s657A(2)(b) of the *Corporations Act* did not confer the judicial power of the Commonwealth upon the Panel, may not represent the last constitutional challenge to the Panel's validity.

Finally, part of the value of the text is its authors, all of whom are authoritative figures in corporate law. They combine deep practical experience, familiarity with the way regulators work, and academic rigour. A feature of the text is its extensive reference to securities cases and literature overseas; particularly in the United States. The text concisely states the law, but not without reference to the policy considerations shaping the law. Judicious reference is made to ASIC's interpretation of the laws, apparent from its Regulatory Guides.

The text is an outstanding companion to *Ford's Principles of Corporations Law* and *Company Directors: Principles of Corporate Governance* in the corporate lawyer's library.

Reviewed by Alister Abadee

A virtue of the book is its continued attention towards important decisions in non-statutory law: close consideration is given, for example, to the decision of ASIC v Citigroup Global Markets Australia which among other things, dealt with the existence, scope and contractual exclusion of fiduciary duties owed by an investment bank to its client, a takeover bidder.