



28 February 2011

The Chair  
Commerce Select Committee  
Parliament Buildings  
Wellington

**Financial Markets (Regulators and KiwiSaver) Bill – Unsolicited offers for securities**

The New Zealand Law Society (Society) wishes to make an additional submission on the Bill in relation to a recent development that, in the Society's opinion, has the potential to erode public confidence in the integrity of New Zealand's capital markets.

Members of the Select Committee will be aware of the recent publicity concerning a flurry of unsolicited offers for shares in a number of high profile listed companies. In particular, the actions of Bernard Whimp to send, on 27 December, low-priced offers to shareholders in seven large listed companies have attracted a great deal of publicity, most of it deservedly negative.

Concerns have been raised for some time about the ability of less than scrupulous market operators to gain access to securities registers for improper purposes. The access issue is firmly on the agenda and has been addressed in the current Ministry of Economic Development review of securities law. The Society supports reform in this area, to bring the relevant New Zealand laws into line with those in corresponding jurisdictions (notably Australia).

In the meantime, the gaps in market regulation and practice being exploited by the recent activities by Mr Whimp highlight a gap in the New Zealand regulatory framework that the Society believes needs urgent attention.

The Society is concerned that, if the shortcomings in the regulatory framework are allowed to continue for a period of months, pending the next step in the legislative review process arising out of the current securities law review, the credibility of New Zealand's capital markets will attract further negative publicity.

This regulatory gap also puts the market regulator in the very difficult position of having to admit that:

- (a) it is not illegal to buy securities below their market value; and
- (b) with some careful footwork, well-known proponents of such low-ball offers can continue to bring about the situation that the Chairman of Vector has described very publicly as appalling, in the safe knowledge that such predatory offers navigate around the prohibition on misleading and deceptive conduct in section 13 of the Securities Markets Act 1988.

As a result, the Committee urges an amendment to the Bill to prevent inexperienced and/or ill-informed investors continuing to be targeted and the very real prospect of damage to the reputation of New Zealand's capital markets. In particular, we advocate that the New Zealand regulatory framework follow the recent law changes in Australia, by requiring that:

- (a) offers for securities contain a written statement setting out the market value of the securities on the day the offer is made; and
- (b) security holders be given a reasonable period to consider whether to accept such an unsolicited offer.

In addition, it is recommended that any shortcomings in the disclosure attached to such unsolicited offers are backstopped with appropriate penalties.

The Society suggests that, at least in the short term, the apparent shortcomings in the existing law could be addressed by providing a power in the Bill to make regulations, and that market consultation commence immediately in order to implement a disclosure regime that addresses the shortcomings highlighted by the recent activities of Mr Whimp and others.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Temm', written in a cursive style.

Jonathan Temm  
**President**