



30 January 2009

Liam Mason  
The Securities Commission  
PO Box 1179  
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By email: [liam.mason@seccom.govt.nz](mailto:liam.mason@seccom.govt.nz)

Dear Liam

### **Exemptions for Listed Share Purchase Plans & Rights Offers**

The Commerce and Business Law Committee of the New Zealand Law Society welcomes the opportunity to comment on the discussion document referred to above.

The Committee supports the proposed initiatives, and the objective of assisting listed issuers to raise capital in a manner that does not compromise the protection of the ability of retail investors to make informed decisions concerning their investments.

#### **Option 1**

The Committee supports the increase of the annual limit under the current the Securities Act (NZX – Share and Unit Purchase Plans Exemption Notice 2005) to NZ\$15,000. Consistency with what is proposed under Australian law in this respect is considered appropriate. Notwithstanding that New Zealand law does not have an equivalent to the “small investment” exemption in the Australian Corporations Act 2001, the rationale for considering an investment of \$15,000 to be “small” for that purpose in Australia is equally applicable to the circumstances in New Zealand.

#### **Option 2**

The Committee supports the proposition to grant an exemption for fixed offers with up to ten percent of market capitalisation.

#### **Option 3**

The Committee also supports the proposition raised as option 3. In respect of the issue raised in paragraphs 34 and 35 of the discussion document, the Committee raises, as a possible alternative, an exemption that allows the rights offer to be renounceable only amongst other shareholders. Where a shareholder declines to subscribe for some or all of his or her entitlement, those rights could be taken up only by another shareholder of the company. We note that an exemption in respect of the Takeovers Code would also be required in certain circumstances, including where the twenty percent threshold would be exceeded.

The Committee questions the purpose of requiring share purchase plans to price offers below the average market price over a set period, as mentioned in paragraph 37 of the discussion document. This appears to interfere with the manner in which companies structure rights offers, with no clear reasoning. The Committee cautions against such a restriction and suggests allowing companies to

price the offer as they consider appropriate in the circumstances, unless there is a real benefit arising to shareholders from imposing such a restriction.

The Committee would welcome the opportunity to be consulted on the drafting of any exemption notice. If you have any queries regarding this submission please contact Diana Brown, the Committee Secretary in the first instance, by email [diana.brown@lawsociety.org.nz](mailto:diana.brown@lawsociety.org.nz) or phone (04) 463 2967.

Yours sincerely

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

John Horner  
**Convener, Commercial and Business Law Committee**