

Received 30/6.

File:  
Ref: AMM2704-148303

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29 June 2004

Ministry of Economic Development  
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**Attn: Bianca Garwood, Regulatory and Competition Policy Branch**

**TRANS TASMAN MUTUAL RECOGNITION OF OFFERS OF SECURITIES AND MANAGED INVESTMENT SCHEME INTERESTS - DISCUSSION PAPER**

1. Thank you for sending me your Paper on 19 May.
2. In my opinion, the core issues which both Governments should focus upon really derive from the underlying role of the Securities law, and to some extent from a series of recent cases in which I have been involved.
3. My opinion is that:-
  - The Securities law needs to be simple, clear and strict. There is no reason why the underlying securities law in Australia and New Zealand should not be exactly similar.
  - The strongest commercial communities with successful market operation, are those with strong fundamental rules and a strict enforcement of compliance with them (both as to substance and as to form).
  - It is important not to focus merely on "form", but in all matters to respect preference of substance over form.
  - The generation of securities, their issue and trading, represents the core of our society in its construction of progressive business to move society forward. That is simply a product of the fact that the "company" has been found the most useful and successful means of combining citizens capital since the 16<sup>th</sup> Century, which is why the company is universally used as a vehicle for investment. The community conducts its progressive forward activity through the means of business. That is why the matter of Securities law is right at the heart of the efficient, honest and clean functional business of society.
  - The Courts in New Zealand have (because of inadequate securities and business knowledge of many Judges) generally been unsuccessful or inadequate (or both) in the application of Securities law in New Zealand, often expressing a view that matters should be "*left to the market*" and in doing so, failing to perceive the ultimate deed for recourse to our highest Courts in order to ensure a well understood, clean and strict compliance with strong rules.

- That is why a fundamental Securities law which requires strict compliance is necessary for application to both Australian and New Zealand Securities (and offers of them), and there is no reason why mutual compatibility and similarity should not be readily achieved.
  - I do refer to the NZ Court of Appeal's failure to address underlying issues in a number of cases, including *Rubicon/NZ Forest Products*, *Rubicon/Perry/NZ Forest Products*, and in *Richmond/PPCS/Bell & Orr* where there were issues that involved the seriousness of substantive breaches of securities law, and indeed much argument pointing out that in analogous Competition law and even Fisheries law cases, the Courts around the World had taken a view that breaches were very serious, were nevertheless easy to commit and hard to detect, whilst being very profitable, to that extraordinary surveillance and extreme penalties were necessary to preserve the integrity of the legal propriety and system. For example, a German chemical company was fined \$972 million for anti-competitive activity in relation to its production of animal vitamin pills, whilst Daimler Puch was fined \$355 million Euro for attempting to prevent cross-border trading in its cars. Various fisheries cases around the World reveal punishment for offences in substance at a level well beyond the magnitude of the particular offence.
4. In summary, my submission is that both Governments should focus upon the underlying substance and purpose of the Securities law, ensure that the mutual laws focus upon substance over form, and do provide a clear and explicit regime which the Courts will both understand and enforce to the betterment of both communities.
5. I shall be pleased to discuss the matter in due course upon your request.

Yours sincerely  
IZARD WESTON

Andrew Morrison  
Partner