New Zealand Shareholders Association Inc.

Many Investors, One Voice

Committee Secretariat,
Commerce Select Committee,
Parliament Buildings,
Wellington
31 March 2011
By email

Submission to Commerce Select Committee

Regulatory Reform Bill

Introduction:

The New Zealand shareholders Association is the only national group representing the buy side of the securities markets. One of our concerns is the need to engender clarity and confidence in the regulation and operation of the New Zealand capital markets. We always comment where there is any weakening, perceived or real, in the protections available to individual or "retail" investors.

In our view the proposed change to legislation to make international comity an objective for the Takeovers Panel is in this category, as currently drafted.

Discussion:

The Regulatory Reform Bill is under consideration by the Commerce Select Committee. In the section headed Takeovers Act 1993 there is a proposed amendment:
113 Objectives of takeovers code
Section 20(1) is amended by inserting the following paragraph 30
after paragraph (d):
"(da) international comity between New Zealand and any
other country:".

The explanatory notes to the Bill explain this as follows:
"Enable the objectives of the Takeovers Code set out in section
20 of the Takeovers Act 1993 to allow the Takeovers Panel to
take into consideration "international comity".

The NZSA understands that in this context, the definition of comity is *"The courtesy by which a nation allows another's laws to be recognised within its territory so far as is practicable"*

We further understand from a Ministerial reply dated 9 March that *"the rationale .....is to allow the takeovers Panel to take into account compliance with the law of another jurisdiction in an upstream takeover situation."*

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The NZSA has no problem with this intent, but unfortunately the law as drafted allows for a very much wider interpretation including the potential to force the Takeovers Panel to consider comity in downstream takeover situations.

We acknowledge that this would only be one objective that the takeovers Panel would be obliged to consider, and that to some extent the amendment is intended to regularise a number of protocols that already exist.

However the introduction of a new test must be finely balanced to achieve its objective and not create a broader or unintended side effect. We firmly believe that New Zealand law should be supreme in New Zealand.

Recommendation:

For the prevention of any ambiguity or unintended consequences, we would ask the Select Committee to consider amending the Section 20(1)(Da) provision to clarify that its use is limited to upstream takeover situations only.

Oral Submissions:

The New Zealand Shareholders Association does not wish to make oral submissions on this matter as we believe it is adequately canvassed in this document.

On behalf of the New Zealand Shareholders Association,

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