

Increased investor confidence in New Zealand's financial markets

In the wake of the global financial crisis and the collapse of many of New Zealand's finance companies, the New Zealand government sought to restore investor confidence in New Zealand's financial markets. This resulted in the establishment of a new regulatory body called the Financial Markets Authority (the FMA) and significant reforms to the financial markets regulatory framework. The focus of the reforms has been to create a robust, rigorous and highly visible regulatory regime.

In an international context, New Zealand was not affected as badly by the global financial crisis as many other countries. This was mainly due to the effective regulation systems that were in place at the time and the strength of banking system, including the Reserve Bank. However, the collapse of many finance companies resulted in large investor losses and a devastating effect on investor confidence in financial assets. These losses highlighted some of the shortfalls of the then current financial markets regime - in particular the finance company audit failures and the gaps in the responsibilities of the different regulatory bodies. The regulators were unable to take effective action against the finance companies and investors generally were unable to access recourse. These failures provided an opportunity to identify ways to improve the financial markets and the reforms aimed to address many of these issues.

Many of the changes made to New Zealand's securities markets law were based on the recommendations of the Capital Market Development Taskforce (the Taskforce) in a report released at the end of 2009. The view of the Taskforce was that securities legislation needs to work well for both issuers and investors and to facilitate capital market activity. One of the suggestions of the Taskforce was to clarify the objectives of the legislation and to create consistency within the markets. These views have led to some of the changes that are currently taking place.

Establishing the FMA was one of the most important changes to New Zealand's regulatory framework for capital markets. From 1 May 2011, the FMA replaced the Securities Commission and the Government Actuary and took over some of the roles of the NZX, the Companies Registrar and the Ministry of Economic Development. Simon Allen, the FMA chair, has said the "FMA's intent is to establish clearer and more consistent rules for market participants, improve market intelligence and surveillance, and be more

visible and proactive in regulation and enforcement as well as raise the standards of financial advisers". The structure of the FMA as a super-regulator ensures thorough coverage and enforcement of securities markets laws.

The roles of the FMA include:

- overseeing compliance with financial markets legislation;
- investigating claims about financial advisers;
- overseeing disclosures and practices of NZX-listed companies; and
- overseeing and enforcing laws on insider trading, market manipulation and other dealing misconduct.

Accompanying these roles are two new important powers:

- the power to take civil action against a financial market participant on behalf of another person, including an action for breach of director's duties; and
- greatly increased investigation and enforcement powers.
- To supplement these new roles, the FMA is better resourced than its predecessors with an increased budget and additional access to third-party funding. It is hoped and expected that its new and extended powers will lead to faster and more effective supervision resulting in better protection for investors. Early signs from the FMA indicate that a balance will be struck between taking an appropriately robust approach to misconduct while also maintaining a commercial perspective.

In support of this new super-regulator, reforms of the underlying legislation are critical. The first change was with the proposed introduction of the Securities Disclosure and Financial Advisers Amendment Bill which assists businesses to raise capital while ensuring the timely and accurate disclosure of information to prospective investors. Other legislative changes include:

- the requirement for auditors and trustees to be licensed;
- the formation of a Register of Securities Offers; and
- changes to the Securities Act exemption regime.

Significant changes are also proposed for product disclosure requirements as currently these documents are time-consuming and costly for issuers to produce and difficult for most investors to understand. The proposed form for the new product disclosure statements will include an overview of information that is useful for investors and a likelihood that documents will

be standardised for different product types, allowing direct comparison between different investment products.

The reforms will continue as part of a 'bigger picture' approach. The FMA itself will be reviewed in the context of the Securities Act review and amendments. This will allow for reflection on the current progress and for improvements to be made.

The reforms are moving New Zealand's capital markets in a positive direction with the expectation of stronger and more efficient markets that are more attractive to investors.

This newsletter is for informational purposes only and does not constitute legal advice. Use of this newsletter does not create an attorney-client relationship between the contributing law firm and the reader. Readers should contact appropriate legal counsel for advice on any particular issue. Entire content copyright is owned by the contributing law firm. Reproduction and distribution of this newsletter in whole or in part without the written permission of the contributing law firm is expressly prohibited.