



**National Council of  
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**Submission to the Securities Commission on the  
Binding Rulings on Securities Law Discussion Paper**

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 46 nationally organised societies. It has 35 branches spread throughout the country to which women from some 150 societies are affiliated.

This submission has been prepared by members of the Economics Standing Committee. The makeup of the Council is such that we attempt to represent the views of investors rather than those of organisations offering securities. We have made comments on most of the important questions highlighted in the discussion paper and used points from the other questions to expand these.

**1. Is there a need for binding rulings to be available on aspects of the securities law?**

The short answer to this question is Yes. If a fundraiser were able to apply for a binding ruling the cost would be considerably less than that involved in going to court and so more applications might be made resulting in more consistency in fundraising proposals. We do not consider that there should necessarily be a large number of lawyers on the Commission to make these binding rulings since we note that already the Commission will seek opinions from barristers in complicated circumstances.

**5. Is it a proper administrative function for a body such as the Commission which is not a tribunal of lawyers to give greater certainty to the law (i.e. through giving rulings) in areas where the law is doubtful?**

The Securities Commission has been set up to administer the Securities Law with which it must be fully conversant and so it should be able to make Rulings which are astute and reliable within the boundaries of that law. The commission will also be aware of changes in public opinion which may eventually lead to law change.

**7. Should rulings be made specifically for the applicant alone or should general or class rulings also be available?**

Where a ruling is requested by a specific applicant that applicant must have a specific reply but it should be borne in mind that if this is used as a basis by other fundraisers their circumstances will be different and the ruling could not be relied on. Class applications should also be accepted for rulings.

**10. Should the Commission have a discretion to refuse to make rulings? If so in what circumstances?**

Yes. This would be especially so if the matter were already before the Court or if law changes were "in the pipe-line". Also the ruling should be refused if there was insufficient evidence or the application was considered frivolous.





**15. Would safe harbour provisions provide satisfactory protection to directors (and others with potential liability) acting bona fide in reliance on a ruling that is overturned on appeal?**

The emphasis in this question must be on “bona fide” actions. This would mean making sure that the directors waited until the ruling had been made before making the offer and publishing it in the prospectus with the other information.

Rulings should not be extended to cover liability under other acts such as the Fair Trading Act although it would be hoped that the Fair Trading Act had been taken into account by the directors and by the Commission before the prospectus was issued.

Reference to the Illegal Contracts Act would be justified if it would help investors to recover their money where a ruling had been overturned by the Court but it would be unfair to prosecute directors for wrong doing if they had acted in a bona fide manner on the ruling.

**19. Should all rulings be published?**

Once again – Yes. A body of information based on binding rulings could be of considerable value to investors and to fund-raisers.

It should not be mandatory to name the parties who sought the ruling although the Commission should have discretion to do so if it considered it would be helpful.

A legal opinion received should not necessarily be published. It was requested by the Commission to help in the decision but the published ruling is that of the Commission which must stand by it.

It shall certainly be an offence for an issuer not to disclose accurately any ruling that it has obtained in respect of any particular offer.

**24. Should the Commission have an explicit power to grant exemptions for the avoidance of doubt?**

Yes. This seems to be part of the same idea. It may appear to the Commission that the matter on which a ruling is requested is not wholly covered by the Act and an exemption would be more appropriate.

**25. Would such an exemption power achieve the benefits of a ruling power as described in this paper?**

Yes. As noted above. We would expect it to be of more limited use however.

**26. Any other matters which should be taken into account?**

The need to be as certain as possible that rulings from the Commission cannot be overturned by the Court because of “loop-holes” in the law. We are sure however that the Commission is already aware of this and has taken what steps it can in advance.

Thank you for the opportunity to comment on this discussion paper.

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