

## **PRESENTERS**

### ***Liam Mason***

Liam heads the Securities Commission's team of in-house lawyers, which deals with applications for exemptions and authorisations, and provides legal support to the enforcement team. Liam has had a lead role in the Commission's work on recent securities law reforms, including the Securities Markets and Institutions Bill and the Securities Trading Law Reform Bill. He has been with the Securities Commission since 1997.

### ***Cathy Quinn***

Cathy Quinn is a corporate law partner at Minter Ellison Rudd Watts and works from their Auckland office. Cathy chairs Minter Ellison Rudd Watts corporate group of partners. She is an author of Morison's Company and Securities Law and is a member of the New Zealand Securities Commission.

*The statements and conclusions contained in this booklet are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.*

# CONTENTS

<b>INTRODUCTION.....</b>	<b>1</b>
<b>1. OFFER TO THE PUBLIC.....</b>	<b>3</b>
Securities law – general scope and requirements .....	3
Key definitions.....	3
<i>Security</i> .....	3
<i>Offer</i> .....	4
<i>Subscription</i> .....	5
Who is the “public”?.....	6
<i>Section 3(2)(a)(i) – relatives or close business associates of the issuer or a director of the issuer</i> .....	7
<i>Section 3(2)(a)(ii) – persons whose principal business is the investment of money or who, in the course of and for the purposes of the business, habitually invest money</i> .....	8
<i>Section 3(2)(a)(iia) – persons who pay a minimum subscription price of \$500,000 prior to allotment</i> .....	9
<i>Section 3(2)(a)(iii) – persons selected otherwise than as members of the public</i> .....	9
<i>The Lawrence case</i> .....	10
<i>Eligible person exception</i> .....	11
Offer documents.....	12
<i>Investment statement</i> .....	13
<i>Registered prospectus</i> .....	13
<i>Advertisements</i> .....	15
Trustees and statutory supervisors .....	16
<b>2. EXEMPTIONS.....</b>	<b>19</b>
Statutory exemptions .....	19
<i>Previously allotted securities</i> .....	20
<i>Contributory mortgages</i> .....	21
<i>Contributory mortgage offer documents</i> .....	23
<i>The Commission’s enforcement powers regarding contributory mortgage brokers</i> .....	24
<i>Civil and criminal liability of a broker and its directors and officers</i> .....	24
Commission exemptions .....	25
Key class exemptions.....	26
<i>Overseas issuers</i> .....	26
<i>New Zealand issuers</i> .....	29
<i>Local authority and other venture capital schemes</i> .....	30
<i>Employee share purchase schemes</i> .....	31
<i>Takeovers</i> .....	32
<i>NZAX</i> .....	34
<i>Dividend reinvestment schemes</i> .....	35
<i>What the Securities Commission considers when granting an exemption</i> .....	36
<b>3. CONSEQUENCES OF BREACHES OF THE SECURITIES ACT .....</b>	<b>39</b>
Validation of void allotments.....	39
<i>What is a void allotment?</i> .....	39
<i>Repayment of subscription money</i> .....	39
<i>How do you “fix” a void allotment?</i> .....	42

<i>New provisions inserted by the Securities Amendment Act (2004 No 31) on 15 April 2004</i> .....	43
Voidable allotments .....	44
<i>New provisions inserted by the Securities Amendment Act (2004 No 31) on 15 April 2004</i> .....	46
Enforceable undertakings and other powers of the Securities Commission.....	47
<i>Enforceable undertakings</i> .....	47
<i>Power to prohibit the distribution of advertisements</i> .....	48
<i>Power to suspend or cancel the registration of a registered prospectus</i> .....	48
<i>Suspension and prohibition of investment statements</i> .....	49
Civil and criminal liability .....	49
<i>Civil liability for misstatements in advertisements and prospectuses</i> .....	49
<i>Criminal liability for misstatements in advertisements and prospectuses</i> .....	52
<i>Criminal liability for offering, distributing or allotting in contravention of the Act</i> .....	53
<i>Criminal liability for obstructing the Commission in the exercise of its powers – s 59A</i> .....	53
<i>Other offences</i> .....	54
<b>4. OVERVIEW OF ANNOUNCED CHANGES TO THE SECURITIES MARKETS ACT</b> .....	<b>55</b>
Introduction.....	55
Insider trading .....	55
Market manipulation.....	57
Investment advisers.....	57
Penalties and remedies.....	58
<b>5. INVESTMENT ADVISERS</b> .....	<b>61</b>
Introduction.....	61
Investment Advisers (Disclosure) Act 1996 .....	61
<i>Purpose</i> .....	61
<i>Important definitions</i> .....	61
<i>Disclosure</i> .....	62
<i>Enforcement</i> .....	64
Crimes Act 1961 .....	65
Secret Commissions Act 1910 .....	65
Consumer Guarantees Act 1993 .....	66
Fair Trading Act 1986.....	66
Enforcement and remedies.....	67
Common law and equity .....	68
<i>Contract</i> .....	68
<i>Tort</i> .....	68
<i>Fiduciary duties</i> .....	69
<b>6. THE SECURITIES COMMISSION</b> .....	<b>71</b>
Introduction.....	71
Powers of the Commission .....	71
<i>Powers to obtain evidence</i> .....	72
<i>Natural justice and rights of appearance</i> .....	74
<i>Enforceable undertakings</i> .....	76
Applications for exemptions, etc .....	76
<i>Process</i> .....	77

<i>Timing</i> .....	77
<i>Cost</i> .....	78
<b>APPENDIX 1</b> .....	<b>79</b>