

THE TAKEOVERS CODE – THE CURRENT STATE OF PLAY

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Introduction

Significant takeover activity in the last 12 months has meant a very active period for the Takeovers Panel.

I want to talk to you today about several key issues:

- the role of the target company directors and the target company statement in takeovers;
- the Oyster Bay takeover, highlighting the role of the Panel and the role of the Courts in takeovers;
- the Panel's recent decision in relation to Rank Group Investments Limited's second offer for Carter Holt Harvey Limited; and
- forthcoming changes affecting the Code arising from a range of technical amendments to the Code and from the Securities Legislation Bill.

The role of the target company statement

The first step in a Code takeover is the giving of a notice by the bidder or offeror to the target company of the offeror's intention to make a takeover offer.

That notice must be accompanied by a draft takeover offer document setting out all the terms and conditions of the offer as well as containing quite detailed information about the offeror's

existing interests in the target company. These interests include shareholdings and contractual relationships.

The terms of the draft takeover offer are very important. They provide information to the market and to the target company about what is being offered and the terms and conditions on which it is being offered. The importance is illustrated by the fact that the offeror cannot change those terms and conditions when making the resultant offer without the consent of the target company directors.

The New Zealand takeovers regime is often described as a “notice and pause” regime. Following the giving of the takeover notice there is then a pause of at least 14 days, and no more than 30 days, before the offeror makes its takeover offer. That takeover offer document is sent to the target company, all its shareholders, the NZX if listed, and the Panel.

The next stage in the process is the despatch of the target company statement to the shareholders. This may be sent out with the offer document, but it must be sent no later than 14 days after the offer document. It will include, or be accompanied by, an independent adviser’s report.

The Panel regards the target company statement as of fundamental importance to the Code’s framework. Its purpose is to ensure that the target company shareholders are well informed about the target company and are given competent and unbiased advice about whether or not to sell their shares.

Content of target company statement

The main components of the target company statement are:

- The independent adviser’s report, commissioned by the target company directors and prepared by an independent advisory firm. The independent adviser’s report advises shareholders on the “merits” of the takeover offer. This extends beyond a straight valuation of the target company and can address many other considerations. The particular independent adviser must be approved by the Panel. The Panel takes this approval process very seriously, paying careful attention to both competence and independence of the adviser. As will be seen from the Oyster Bay case, it is very

important that the independent adviser ensures that its report is based on up to date information.

- Recommendations, with reasons, from the directors whether or not to accept or reject the particular offer. However directors are able to state that they are unable to make a recommendation, in which case they must also give their reasons. There have been very few takeover offers where the directors of the target company have not given a recommendation one way or the other. In some cases the statements of reasons have been quite detailed and would undoubtedly have been very helpful to shareholders;
- Details of the shareholding interests and share trading of the directors and officers of the target company in the shares of the target company, including, for recent trades, information about the prices at which shares were bought or sold;
- Information about relevant market prices of the shares under offer before and after the offer was announced.
- The name of every director and officer of the target company who has agreed to accept the offer, and the number of shares involved.
- Particulars of:
 - agreements or arrangements between the offeror or its associates with the target company or with directors and officers of the target company in connection with or related to the offer. This might include details of any arrangements offered to senior personnel for a future role in the offeror's group;
 - agreements or arrangements between the target company and its directors or senior officers under which payments or other benefits may be given by way of compensation for loss of office, or remaining in or retiring from office as a result of the offer. This would cover any "golden parachutes" that might be paid to the target's senior personnel arising from the offer;
 - the nature and extent of any interest held by directors or officers of the target company or their associates in material contracts with the offeror.

The requirements for the disclosure of “particulars” have been subject to different interpretations by different legal advisers. The Panel’s firm view is that “particulars” includes names and amounts. It does not mean vague generalisations.

- The correction, by the disclosure of additional information known to the directors, of any information in the offer document which, in the opinion of the directors of the target company, is incorrect or misleading.
- Details of any material contract entered into by the target company in connection with the offer.
- A statement whether there are any negotiations underway in connection with the offer that could result in: an extraordinary transaction such as a merger, amalgamation or reorganisation; the purchase or sale of material assets; the acquisition of any shares by or of the target company; or any material change in the equity securities on issue, or policy related to distributions. This will alert shareholders to negotiations that are in progress and could follow from the takeover.
- The availability of financial information about the target company, including the latest annual report and interim financial statements. The target company statement must also identify all material changes to the financial or trading position, or prospects, of the target company since the company’s latest annual report as well as “*any other information about the assets, liabilities, profitability, and financial affairs of the target company that could reasonably be expected to be material to the making of a decision by the [shareholders] to accept or reject the offer*”. This latter requirement is particularly demanding because it requires the directors to turn their minds to whether there is anything they know of a financial nature about the company that could be material to a decision by shareholders to hold or sell their shares. This requirement was central to the Oyster Bay case, discussed later.
- Where the target company statement (including the independent adviser’s report) refers to the valuation of an asset there must also be included a summary of the valuation, the date of the valuation, the basis of computation and the key assumptions on which the valuation is based. Copies of the valuation must also be available to anyone who requests it. This requirement recognises the importance that asset valuations can have in

assessing the worth of a target company. If shareholders or analysts are sceptical or wish to know more about a valuation they must be provided with a copy of the full valuation report so they can make up their own mind.

- Where the target company statement (including the independent adviser's report) refers to prospective financial information (as many do), there must be stated the principal assumptions on which the prospective financial information is based. This requirement recognises that a classic defensive tactic by a board which is either resisting a takeover or trying to have the consideration increased is to generate a high valuation of the company. Disclosure of the principal assumptions underlying any forecasts enables other interested parties to assess for themselves the reasonableness of the resultant forecasts.
- A statement of "*any other information not required to be disclosed by this schedule [2] that could reasonably be expected to be material to the making of a decision by the [shareholders] to accept or reject the offer*". This is another very important requirement which must be addressed by the directors of the target company. It again shows that they must turn their minds to contemplate *anything* about the affairs of the company, or even more broadly, that could reasonably be expected to be material to the making of a decision by the shareholders to accept or reject an offer. It is not good enough just to "tick the boxes" that everything in the Schedule has been complied with.

Approval and certification of target company statement

The importance of the target company statement is borne out by the requirements for the approval and certification of the contents of the statement.

Clause 25 of Schedule 2 states that the target company statement must include "(1) a statement that the contents of the target company statement have been approved by the board of directors of the target company company", and "(2) if any of the directors of the target company do not approve of the statement, their names and their reasons for not approving."

The duties of directors of companies are set out in section 169 of the Companies Act 1993. The duties specifically owed to shareholders include a duty to disclose interests and a duty to disclose share dealings. The duties owed to the company include:

- a duty to act in good faith and in the best interests of the company; and
- a duty of care.

Section 137 of the Companies Act provides that a director, when exercising powers or performing duties as a director, must exercise the care, diligence and skill that a reasonable director would exercise in the same circumstances. This is the standard directors must bring to bear when they approve or certify target company statements. This was relevant in the Oyster Bay case.

It is common for a target company to establish a committee of independent directors to handle all aspects of a takeover. This is particularly likely where an existing major shareholder is bidding to increase its stake, or an existing major shareholder has entered into a pre-bid lock-up arrangement with a new external party. This committee normally has full delegated authority from the board of directors to decide all matters in relation to the takeover.

It is acceptable for a committee of independent directors to *approve* the contents of the target company statement for the board. However, all other directors must explicitly *not approve* the statement and explain why in the target company statement.

Problems can arise where there is information required to be disclosed in the target company statement that relates to the interests, activities or arrangements of a conflicted director. The independent directors will not be privy to such information yet are required to approve the statement.

The independent directors should ensure that the non-independent directors verify information in the target company statement about their interests, activities or arrangements before they (the independent directors) approve the statement.

Target company statements are also required to be “certified”. Clause 26 of Schedule 2 requires the target company statement to include a certificate as follows:

To the best of our knowledge and belief, after making proper enquiry, the information contained in or accompanying this statement is, in all material respects, true and correct and not misleading, whether by omission of any information or otherwise, and

includes all the information required to be disclosed by the target company under the Takeovers Code.

The certificate has to be signed by the chief executive officer and the chief financial officer of the target company, or if there are no such appointees then by the persons respectively fulfilling their roles, and by two directors of the target company, not being the CEO and the CFO.

The Panel has paid particular attention to ensuring target company statements are properly certified. It is important that there is both executive responsibility and board level responsibility taken for the contents of the target company statement. In one instance the Panel went as far as convening a meeting under section 32 of the Takeovers Act when the chief financial officer of a target company (who was on secondment from a major accounting firm at the time) would not sign the certificate. (The meeting did not go ahead when the CFO agreed to sign the target company statement certificate.)

The Panel does not consider that conflict of interest is a reason why the two key executives of the target company should not sign the certificate. On some occasions, where a bidder already controls the target, the CEO and CFO of the bidder and the target are one and the same. Oyster Bay is in this position. It has no executives of its own, being managed under contract by Delegat's Wine Estate Limited. The certificates in the three Oyster Bay target company statements were signed by the persons fulfilling the roles of CEO and CFO, the same persons who held those roles in Delegat's.

The Oyster Bay case

Takeover offers

Oyster Bay was the subject of a competitive takeover battle which started in May 2005. It was initiated by Peter Yealands Investments Limited, the holder of some 6.9% of the shares in Oyster Bay, who on 7 June 2005 made a partial offer to obtain enough shares to hold 51.1% of the shares of Oyster Bay. Delegat's, who already held 32.58% of Oyster Bay, made a counter-bid on 7 July 2005. The counter-bid was also a partial offer, this time to attain 50.1% of the voting rights of Oyster Bay. Delegat's was not only a shareholder but was also party to very long-term contracts with Oyster Bay for the development and management of the vineyards and for the purchase each year of Oyster Bay's entire grape harvest.

Property valuations

Ferrier Hodgson & Co, was commissioned by the independent directors of Oyster Bay to prepare independent adviser reports under rule 21 of the Code in response to each bid. These reports were incorporated in the target company statement prepared in response to the Yealands' bid that was issued on 21 June 2005 and in that prepared in response to the Delegat's bid issued on 19 July 2005. The two reports and the two target company statements referred to valuations of Oyster Bay's vineyard properties undertaken by Logan Stone Limited, registered valuers, dated 17 July 2004. (Oyster Bay has its annual balance date on 30 June.)

The valuations prepared by Logan Stone and passed on to Ferriers were on an "income" or "encumbered" basis, that is they were based on the properties' future earnings taking into account the long-term contracts with Delegat's. The properties were not considered to be saleable with the contracts in place and so the valuations used a DCF approach rather than a market value approach.

Unbeknown to Ferrier Hodgson, Logan Stone had produced market valuations of Oyster Bay's properties in 2004 on both an encumbered and an "unencumbered" (without the Delegat's contracts in place) basis but the unencumbered valuations were not adopted by Oyster Bay's directors and were not provided to Ferrier Hodgson. Also unbeknown to Ferrier Hodgson, Oyster Bay's managers had received the 2005 valuations of Oyster Bay's vineyards prepared by Logan Stone on an encumbered basis on 10 July 2005, some 9 days before the target company statement prepared in response to Delegat's offer was issued.

Complaints to the Panel

The two takeover bids went toe-to-toe for some time, with Delegat's always matching any price increase made by Yealands. Finally, on 9 August 2005, Delegat's received sufficient acceptances to get over the 50.1% minimum acceptance level. However, because this was a partial offer, Delegat's was unable, for technical reasons, to declare its offer unconditional until after the closing date of the offer, which was 19 September 2005. Yealands' bid lapsed at the end of its offer period.

On the day the Delegat's bid reached the minimum acceptance level Yealands made a complaint to the Panel relating to grape price information he alleged was either not included in the target company statement or was used in a misleading manner. A few days later

another Oyster Bay shareholder, Mr David Rankin, made a complaint to the Panel alleging that Oyster Bay's vineyards were significantly undervalued because the valuations used were prepared on an encumbered rather than an unencumbered basis. A day or two later Yealands made a second complaint, this time relating to the vineyard valuations.

The Panel examined these complaints. In respect of the grape price complaint the Panel decided after extensive enquiry to take the matter no further. This left it open for Yealands to request the Panel to hold a meeting under section 32 of the Takeovers Act to investigate the matter if he chose to do so. He did not, although the matter was later raised in the Court proceedings.

In respect of the vineyard valuations the Panel convened a meeting under section 32 of the Act on 20 September 2005. The Panel was concerned that there had been no disclosure or discussion in the target company statement or the Ferrier Hodgson report of the unencumbered valuations of Oyster Bay's properties, which Logan Stone had confirmed were of the order of \$90 million against the 2004 encumbered based valuations of \$45 million.

During the course of the Panel's meeting the independent directors of Oyster Bay argued that they had considered the issue of the unencumbered vineyard valuations when finalising the target company statement but considered the possibility of the contracts with Delegat's being terminated as so remote that it would be confusing and dangerous for shareholders if any reference were made in the target company statement to the unencumbered valuations. Ferrier Hodgson had used Logan Stone's 2004 encumbered valuation for the purposes of a net tangible assets "cross-check" calculation in its independent adviser's report.

Neither the independent directors nor Ferrier Hodgson had taken account of the 2005 Logan Stone valuations. The evidence was that neither group were aware of these valuations at the time the target company statement was finalised.

The Panel's decision

The Panel considered these issues at its hearing on 20 September 2005. The Panel accepted that Delegats' had stated that the long term security of grape supply was important and that it

did not intend to withdraw from its contractual arrangements with Oyster Bay. The Panel also accepted that the nature of the contractual arrangements with Delegat's suggested it would be extremely unlikely that Oyster Bay could sell its vineyard assets on an unencumbered basis.

However, the Panel decided that information about the market value, encumbered and unencumbered, of Oyster Bay's freehold and leasehold vineyards could reasonably be expected to be material to the making of a decision by Oyster Bay shareholders to accept or reject the Delegat's partial offer. The reasons for this decision included:

- The unencumbered market value of Oyster Bay's vineyard assets of \$90 million implied an NTA amount of \$8 per share, significantly above Delegat's offer price of \$4 per share.
- There was evidence that major international breweries and wine-making companies were interested in securing grape supply by acquiring New Zealand vineyards and this appeared to be influencing the rising price of vineyard properties in Marlborough and elsewhere.
- One of the "key features" for an investor in Oyster Bay, as set out in the company's 1999 IPO prospectus, was that investors would benefit from the value of the underlying properties. The prospectus noted that Wairau Valley viticultural land had appreciated strongly in value since 1995.
- If Delegat's obtained majority control of Oyster Bay it could potentially control the composition of the board, reducing any likelihood that Oyster Bay would initiate moves to sell the vineyard assets or unwind the long-term contracts.
- If Delegat's obtained majority control then, without disclosure of the unencumbered values, there was greater potential for value transfer if Delegat's were to acquire further shares through the Code's creep provisions.

Accordingly the Panel determined that it was not satisfied that Oyster Bay had acted in compliance with the Code by issuing its target company statement with the valuation information omitted. The Panel issued restraining orders preventing Delegat's from declaring its offer unconditional and preventing it from acquiring any shares of Oyster Bay pursuant to its offer.

The Panel indicated in its determination that it was seeking to resolve the Code contravention by Oyster Bay by:

- having the directors of Oyster Bay issue a correcting statement to be sent to all accepting shareholders; and by
- Delegat's giving accepting shareholders the right to withdraw their acceptances of Delegat's offer within a limited time after receiving the correcting information. If sufficient shareholders withdrew their acceptance the bid would fail.

This approach, the Panel's "preferred solution", was indicative of the Panel's preference to minimise disruption of a takeover process and avoid unnecessary recourse to the Courts. Mr Yealands and Mr Rankin both said that this approach was too favourable to Delegat's because it almost guaranteed, in their view, that Delegat's offer would still succeed.

High Court decision

Within a few days of the release of the reasons for the Panel's determination Delegat's initiated action against the Panel in the High Court in Wellington under the Judicature Amendment Act 1972 seeking to have the Panel's restraining orders set aside. Delegat's indicated it would not accept the Panel's "preferred solution".

Delegat's also communicated with all accepting shareholders giving their own version of the land valuation issue, offering them the ability to withdraw their acceptances of the Delegat's bid and giving them the opportunity to express support for the bid proceeding.

In response the Panel initiated proceedings under the Takeovers Act 1993 against Delegat's and Oyster Bay seeking new interim restraining orders from the Court. Under the Takeovers Act the Panel's restraining orders remain in force for 21 days. The reason for this is that if breaches of the Code cannot be resolved between the Panel and the relevant parties then the matter is determined by the High Court. The 21 day period gives the Panel time to take the matter to the Court which has the power to effectively extend the restraining orders while it considers the issues.

A hearing was held on 7 October 2005 and an oral judgment was issued by Miller J the same day (*Delegat's Wine Estate Limited v Takeovers Panel* (unreported, HC, Wellington, Miller J 7 October 2005, CIV-2005-485-2047, CIV-2005-485,2058)). In the course of his judgment

Miller J said (para 53) “*I have reached the clear view that the encumbered and unencumbered value of the vineyards was information that could reasonably be expected to be material to shareholders*” His reasoning was very similar to that followed by the Panel.

His Honour observed that prior to making any orders under section 36 the Court must satisfy itself “...*on reasonable grounds that a person has not acted or is not acting or intends not to act in compliance with the Code: s34*” . He concluded that “*the Panel was entitled to conclude that such information [about vineyard valuations] might reasonably be expected to be material to shareholders. For the same reasons, I am satisfied that Oyster Bay has failed to comply with R46 of the Code and that the interim orders that the Panel seeks should be granted.*”

In the course of these proceedings Yealands and Rankin supported the Panel’s request for the extension of interim restraining orders but told the Court they considered the Delegat’s bid should be voided and the takeover process be required to start again.

Following a further hearing which involved a number of procedural issues the Court held the final trial on 28 November 2005. From the exchange of documents ahead of the fixture all parties became aware that Logan Stone had provided new 2005 vineyard valuations to Oyster Bay on 10 July 2005 but these had not been provided to either Ferrier Hodgson or to the directors of Oyster Bay before the target company statement was finalised on 19 July 2005.

Prior to the hearing Ferrier Hodgson advised the Panel that, had it known of the 2005 valuations, it would have calculated a higher NTA valuation of Oyster Bay (\$3.98 as against \$3.26) and could have revised its primary valuation (on a DCF basis) upwards. This would have meant that the final offer price of \$4 per share would no longer have appeared to be at such a premium above valuation.

Miller J invited the Panel to make a recommendation to the Court under section 38 of the Takeovers Act. In that recommendation the Panel advised the Court that it would no longer be asking that the Court grant orders that would enable implementation of its “preferred solution”. Instead the Panel advised the Court that it now considered that the combination of the difficulties in preparing an acceptable correcting statement, the actions of Delegat’s in contacting all shareholders, and the failure to incorporate the 2005 valuations in the target company statement and independent adviser’s report, meant that the only appropriate course

was for the takeover offer to be voided and the takeover restarted. Mr Yealands had already indicated that he was prepared to make another offer for Oyster Bay.

Miller J said in his judgment of 28 November 2005 (*Takeovers Panel v Delegat's Wine Estate Limited* (No 3)(Unreported, HC Wellington, Miller J, CIV-2005-485-2058)) that he was “*satisfied that the 2005 Logan Stone valuation ought to have been disclosed as being material to shareholders. It would have altered Ferrier Hodgson's conclusion that at \$3.50 both offers were fair, and of course it would have altered the independent directors' advice that shareholders were being offered a premium for control. ...*”

His Honour said he remained of the view that “*... the difference between the unencumbered value and the Logan Stone 'value in use' DCF valuation could reasonably be expected to be material in circumstances where shareholders were considering two partial offers, one of which was from Delegat's. He concluded that "... the Code was contravened by the omission of information that could reasonably be expected to be material to shareholders, in the form of unencumbered vineyard values and the 2005 Logan Stone valuation*”.

The judgment said that, even on the affidavit evidence for Oyster Bay, it was possible to say that “*...the standard of care required by the Code was not observed. Those signing the certificate were not in a position to express the view that information in the Target Company Statement was true and correct and not misleading, by omission or otherwise. Proper enquiries had not been made to identify the information that was reasonably likely to be material to shareholders, and to ensure it remained accurate as at the date of the Statement. ...*”

The Court exercised its powers to void the Delegat's offer and require the takeover process to start again.

His Honour noted that Delegat's had a considerable advantage, even if the contracts were made voidable at the shareholders' option, because it had won the takeover contest. He said that he was satisfied that “*...Delegat's would not have enjoyed the same advantage had the 2005 valuation and the unencumbered vineyards value been disclosed on 19 July*”

After discussing the impact on shareholders, who had sold to Delegat's for only \$4 per share, the judgment concluded that Oyster Bay's breach went to the heart of Delegat's offer. His Honour said that he “*...agree[d] with the Panel's view that the process was too seriously*

flawed to allow it to stand, and the deficiencies [could not] be remedied by means of a corrective statement.” He accepted the Panel’s recommendation that the Delekat’s offer be voided.

Yealands gave the Court an undertaking that he would make a new partial offer at a price of at least \$4.50 per share. Subsequently Delekat’s gave notice of intention to make a further partial offer at \$5 per share. Shortly afterwards Yealands and Delekat’s reached an arrangement whereby Delekat’s made a partial offer at \$6 per share and Yealands agreed to accept that offer. Yealands was released from an irrevocable undertaking he had given the Court to make a new offer at a minimum of \$4.50 per share.

Commentary

The Oyster Bay case emphasises to directors the importance of their role in preparing the target company statement and the care needed in fulfilling that role.

In the context of the target company statement this means turning their minds to all relevant information about the assets, liabilities, prospects and affairs of the target company that could reasonably be expected to influence a decision by a shareholder whether or not to accept a particular bid, and to ensure all such information is disclosed. Directors must be very careful not to prejudice the capacity of their company’s shareholders to assimilate complex information when deciding on the information to include in a target company statement. The responsibility rests with directors to provide information in a form which allows shareholders the opportunity to understand and interpret it for themselves.

It is also vital that the directors and the independent adviser ensure that they have the most up to date information.

The Court has shown that where breaches of the Code relating to a target company statement are serious enough it is prepared to use its powers to void a takeover and force a restart in the takeover process.

While the Panel is pleased with the outcome of the Oyster Bay litigation it prefers to avoid recourse to the Courts. The Panel prefers to facilitate the takeover process but will, where necessary, seek appropriate orders from the Court when the Code is breached.

Rank Group Investments Limited and Carter Holt Harvey Limited

In February this year the Panel made a significant decision in relation to the terms of a proposed offer to be made by Rank Group for the remaining shares in Carter Holt Harvey it did not hold.

Rank Group had made a protracted takeover bid for Carter Holt, starting with the acquisition of the controlling stake sold by International Paper. By the time the offer closed on 27 January 2006 Rank Group had 85.7% of the shares of Carter Holt.

On 3 February 2006 Rank Group gave notice of its intention to make a further takeover offer for Carter Holt. (There is no formal stand-down period in the New Zealand Code to prevent this.) The proposed terms of the offer were such that the offer provided a base consideration of \$2.70 per share with an additional 5¢ per share payable to all acceptors if the offer received sufficient acceptances within 7 business days of the date of the offer for Rank Group to reach the 90% compulsory acquisition/dominant ownership threshold.

The Panel was concerned that this offer did not comply with the Code which requires that an offer be open for a minimum of 30 days. After seeking submissions from Rank Group's legal advisers the Panel met on 8 February to consider the position. The Panel considered that the proposed offer may not comply with the Code and convened a meeting under section 32 of the Act on 13 February 2006. Further submissions were received at that meeting.

On 15 February the Panel issued its determination. The Panel decided that the terms of the proposed offer, which were that \$2.75 per share was only available for the first seven business days of the offer period, had the effect of shortening the period during which the shareholders could accept the offer in its entirety from 30 calendar days to seven business days. The Panel found this was a breach of rule 24 which required the offer in its entirety to be open for 30 days.

To remedy this breach the Panel accepted an enforceable undertaking from Rank Group that it would amend its proposed offer to be a straight offer at \$2.75 per share and that there were no conditions requiring early acceptance of the offer.

This was an important decision for the future makeup of Code offers. The Code is an enhanced participation regime designed to ensure that all shareholders participate in the takeover process. There are two key requirements to help achieve this:

- provisions ensuring that shareholders have sufficient information on which to decide for themselves the merits of a takeover offer; and
- provisions ensuring that shareholders have a reasonable time in which to receive and consider the information and to consider the merits of the offer.

Rank's proposed offer sought to avoid the second of these key requirements.

Other current issues affecting the Code

Technical amendments to the Code

The Panel first proposed a range of technical amendments to the Code in December 2003, following a period of consultation with the market. Two subsequent changes were proposed to the compulsory acquisition provisions of the Code which were also publicly consulted on. The total package was finalised in March 2005. The totality of the changes was approved by the Government in mid 2005, following which the process of formally drafting the changes was commenced. We expect final Cabinet endorsement of the finished regulations shortly, so that the changes should come into force within the next two or three months.

The changes are quite detailed and I will not go into them here. They will be explained more fully in an edition of *Code Word* to be published shortly.

Changes through the Securities Legislation Bill

The Securities Legislation Bill, currently before Parliament, has significant implications for the Panel and for the regulation of takeovers in New Zealand.

The provisions of the Bill extend the Panel's jurisdiction into the area of misleading and deceptive conduct in relation to takeovers generally. At present the Code controls only the accuracy of the takeover documents required under the Code.

It will be a contravention of the Code for parties to takeovers to make representations that are false or misleading. The Panel will be able to find such behaviour to be a contravention of the Code and will be able to order the publication and distribution of appropriate correcting statements.

The Bill also removes the \$20 million asset threshold test for a company that is not listed to become a Code company. The sole criterion in future will be that a company has 50 or more shareholders. However, the Code's coverage is also being reduced so that companies that are only listed in respect of non-voting securities will no longer be defined as code companies.

The Panel will be explaining these changes in greater detail in *Code Word* and other fora later.

Conclusion

The past year has been a significant one for the Panel and for the market for corporate control in New Zealand. The year ahead looks to be every bit as significant, with changes to the scope of the Code and the Takeovers Act by regulation and legislation, and some significant transactions.