

## **PRESENTERS**



### **Sacha Judd, Buddle Findlay, Auckland**

Sacha is a partner in Buddle Findlay's corporate team and specialises in mergers and acquisitions, public offerings, takeovers and securities law, and corporate governance advice. She spent three years in Hong Kong and Singapore working for Linklaters, advising on cross-border acquisitions and capital markets transactions. Sacha returned to Buddle Findlay after completing her LLM at the London School of Economics, and now lectures in securities regulation at the law faculty of the University of Auckland.



### **Andrew Wallace, Russell McVeagh, Auckland**

Andrew is an associate at Russell McVeagh. He has extensive experience in advising local and offshore clients on a wide range of New Zealand securities law issues, including in relation to the establishment of investment vehicles, securities offerings, ongoing compliance, and law reform. His practice also includes the negotiation of mergers, acquisitions and joint ventures.

*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>PREFACE .....</b>	<b>1</b>
<b>INTRODUCTION .....</b>	<b>3</b>
THE OBJECTIVE OF SECURITIES LAW .....	3
THE CURRENT LEGISLATIVE FRAMEWORK .....	4
THE ROLE OF THE SECURITIES COMMISSION .....	5
<b>KEY CONCEPTS IN THE SECURITIES ACT.....</b>	<b>7</b>
INTRODUCTION .....	7
IS THERE A SECURITY? .....	7
IS THERE AN OFFER?.....	9
IS THE OFFER FOR SUBSCRIPTION OF THE SECURITY?.....	9
IS THE OFFER MADE BY OR ON BEHALF OF THE ISSUER?.....	9
IS THE OFFEREE A MEMBER OF THE PUBLIC IN NEW ZEALAND? .....	9
<i>Relatives or close business associates</i> .....	11
<i>Habitual investors</i> .....	11
<i>Minimum subscription exception</i> .....	12
<i>The catch-all exception</i> .....	12
<i>Territorial scope</i> .....	13
<i>“Need to know” test</i> .....	13
PROMOTERS .....	13
<b>EXEMPTIONS FROM THE ACT .....</b>	<b>17</b>
THE ELIGIBLE PERSONS EXEMPTION .....	17
<i>Wealthy persons</i> .....	17
<i>Experienced persons</i> .....	17
<i>Effect of the exemption</i> .....	19
<i>Tandem offers</i> .....	19
PREVIOUSLY ALLOTTED SECURITIES .....	19
EXEMPTIONS GRANTED BY THE COMMISSION .....	20
CLASS EXEMPTIONS .....	20
SPECIFIC EXEMPTIONS.....	21
<i>Making an application</i> .....	21
<i>Exemptions for material contracts</i> .....	22
<b>THE OFFER PROCESS.....</b>	<b>23</b>
OVERVIEW .....	23
DUE DILIGENCE.....	23
PROSPECTUS AND INVESTMENT STATEMENT .....	24
<i>Prospectus</i> .....	25
<i>Short form prospectuses and simplified disclosure prospectuses</i> .....	26
<i>Investment statement</i> .....	26
SEPARATE OR COMBINED OFFER DOCUMENTS? .....	27
REGISTRATION .....	27
BRING-DOWN DUE DILIGENCE AND THE LEAD-UP TO ALLOTMENT.....	28
ADVERTISEMENTS.....	29
<i>Pre-prospectus publicity - first principles</i> .....	29
<i>Exemptions and exceptions</i> .....	29
<i>What is an advertisement for the purposes of the Securities Act?</i> .....	30
<i>Requirements for advertisements</i> .....	30
<i>When is a Regulation 30 certificate required?</i> .....	31
LISTING.....	31
OFFERS MADE OTHER THAN TO THE PUBLIC .....	32
<b>NON-COMPLIANCE WITH THE SECURITIES ACT .....</b>	<b>33</b>
UNTRUE STATEMENTS – s 55.....	33

CIVIL LIABILITY FOR UNTRUE STATEMENTS IN ADVERTISEMENTS AND REGISTERED PROSPECTUSES – s 56	34
<i>When is a statement part of an advertisement or registered prospectus?</i>	34
<i>Exceptions and defences under s 56(1)</i>	34
LIABILITY FOR FALSE STATEMENTS BY EXPERTS	35
CIVIL LIABILITY REMEDIES	36
<i>Pecuniary penalty orders – s 55C</i>	36
<i>Declarations of civil liability – ss 55D to 55F</i>	36
<i>Compensation orders</i>	36
CRIMINAL LIABILITY FOR UNTRUE STATEMENTS – s 58	37
CRIMINAL LIABILITY FOR OFFERING, DISTRIBUTING OR ALLOTING IN CONTRAVENTION OF THE ACT – s 59	38
RELIEF FROM LIABILITY – s 63	38
REASONABLE GROUNDS DEFENCE	38
<i>Reasonable grounds for belief</i>	38
<i>Due enquiry</i>	39
FURTHER OFFENCES	39
MANAGEMENT BANNING ORDERS	39
OTHER POTENTIAL LIABILITY	40
<b>ONGOING COMPLIANCE OBLIGATIONS</b>	<b>43</b>
OVERVIEW	43
REGISTERS - SS 51-52	43
ACCOUNTING RECORDS - SS 53-53F	43
CERTIFICATES - S 54	43
INFORMATION TO BE DISCLOSED ON REQUEST - S 54B	44
AMENDING A PROSPECTUS	44
LIFE OF A PROSPECTUS	45
LISTED ISSUERS	45
<b>DIFFERENT TYPES OF OFFERS</b>	<b>47</b>
RIGHTS ISSUES	47
EMPLOYEE SHARE SCHEMES	48
REAL PROPERTY SCHEMES	50
<b>PROPOSALS FOR REFORM</b>	<b>53</b>