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EDITORIAL 361

ARTICLES

Enhanced participation and equal treatment?: Fairness in New Zealand's Takeovers Code – *Nan Seuffert*

This article analyses the fairness objectives of the Code using illustrations from two high profile takeover bids that allow comparison of pre- and post-Code takeover strategies. The analyses of pre-Code strategies fill a gap in the literature and suggest that problems identified in the 1980s and early 1990s continued until the effective date of the Code. Edison Mission Energy's (EME) failed bid for Contact Energy Limited (Contact) provides a comparison of pre- and post-Code pause and publicity provisions that allows analysis of the Code's fairness objective of enhancing shareholder participation. Compliance with the Code's pause and publicity provisions in EME's post-Code offer provided shareholders with information and time to evaluate the merits of the offer, enhancing shareholder participation in comparison to the pre-Code offer. Lion's pre-Code bid for Montana highlighted the potential for unequal treatment of shareholders in the process of an off market bid, where brokers have control over whose shares are sold to the bidder. The Code's scaling provisions require equal treatment of shareholders. Its post-Code offer demonstrated the strength of the Code's equal pricing requirements.

The two bids also raise two closely linked issues. The first issue is whether serial partial bids are consistent with the fairness aims of the Code. Such bids are consistent with the Code's modest aims of increasing fairness over the pre-Code regime, but still provide potential for some shareholder coercion and unequal treatment. Second, what are the appropriate methods for independent advisers to use in evaluating the "merits" of a takeover offer as required by Code r 21? Achieving the Code's modest fairness objectives, including in relation to serial partial bids, as well as consistency in interpreting the provisions of the Code, suggest that valuations of shares under r 21 be approached consistently using pro rated full underlying value. 363

The continuous evolution of Australia's continuous disclosure laws – *Greg Golding and Natalie Kalfus*

1 July 2004 marked the introduction of ASIC's contentious power to fine for continuous disclosure violations. In recent years mechanisms for the enforcement of continuous disclosure obligations have been the subject of an ongoing debate in Australia. This

article considers the effectiveness of the Australian regime by reference to a comparative analysis as well as a number of enforcement actions recently undertaken. 385

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