

## Financial Markets Authority Legislation

Business Roundtable executive director, Roger Kerr, said the organisation was still reviewing the report from the Commerce Select Committee on the legislation to establish the Financial Markets Authority.

While pleased that a number of the changes it had proposed appeared to have been taken up, Mr Kerr said that it was concerned at the half measure adopted in relation to concerns it and others had expressed about permitting the FMA to “compulsorily acquire” investors’ rights of action in relation to securities.

In response to the concerns, the bill now permits individuals to “opt out” and decline the FMA permission to take over any claims they may have against others in relation to their securities. However, the bill does not allow this “opt out” mechanism for corporate investors.

“This is an unjustified interference in the private property rights of corporate investors”, Mr Kerr said. “If an investor – individual or corporate – has suffered some wrong which has decreased or possibly eliminated the value of their securities, the investor will be left with a cause of action for damages to redress that loss. That cause of action is the investor’s right of property. In relation to corporate investors, the bill permits the FMA to exercise that cause of action for damages in the public interest and gives the court the power to override any objection from the investor.

“We don’t allow regulators to take over other property rights in the public interest. Why are we permitting that here? ”, Mr Kerr said.

More importantly, Mr Kerr noted that where there is a regulatory “taking” there is normally compensation. “None is proposed here – in fact, the objecting corporate investor may be forced to pay for the privilege of having the FMA exercise its rights even if it doesn’t want them exercised.”

The bill also creates the concerning precedent of treating different categories of property owners differently.

Mr Kerr said that the implications of the FMA’s proposed new power were too important to be rushed through as an appendage to the FMA establishment legislation.

“The sensible solution, in our view, is to send this proposal back to the Ministry of Economic Development for fine-tuning as part of its comprehensive review of securities law. These are the most important reforms for the securities markets in decades, so let’s take the time to get the details right.”

3 March 2011

For more information contact:  
Roger Kerr  
Executive Director

Ph: +64 4 499 0790  
Email: [rkerr@nzbr.org.nz](mailto:rkerr@nzbr.org.nz)

[www.nzbr.org.nz](http://www.nzbr.org.nz)