



5 September 2011

Investment Law Team  
Competition, Trade and Investment Branch  
Ministry of Economic Development  
**WELLINGTON**

By email: [investment@med.govt.nz](mailto:investment@med.govt.nz)

**President**

*Hon Sir Grant Hammond KNZM*

**Commissioners**

*Dr Warren Young*

*Emeritus Professor John Burrows QC*

*George Tanner CNZM QC*

*Professor Geoff McLay*

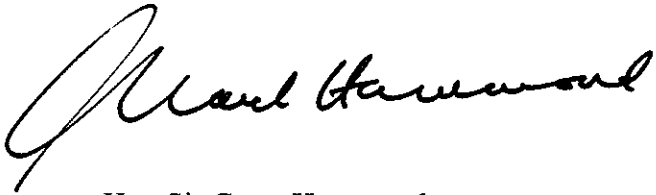
**FINANCIAL MARKETS CONDUCT BILL – EXPOSURE DRAFT**

1. The Ministry has sought submissions on the consultation draft of the Financial Markets Conduct Bill. The last date for comment is 6 September 2011. Given the shortness of the submission period I have not been able to consult colleagues on the Legislation Advisory Committee, which I now chair.
2. I have however had staff look over the draft, and I have done so myself. A memorandum with comments is attached to this letter.
3. Probably the most significant thing, from the standpoint of legal principle, about this draft – and one which may well attract adverse comment in due course – is the significantly greater use of civil pecuniary penalties. This technique has been of real concern to the Legislation Advisory Committee. So much so that the Minister of Justice advanced a reference to this Commission to have the whole subject of civil penalties made the subject of a first principles review. Work is just now really getting underway on this topic in the Commission. I am afraid I am not presently able to advance even a preliminary view of what views the Commission might ultimately adopt. There has been disquiet on this subject in the United Kingdom. I will be consulting various people in the UK when I am there in two or three weeks' time. This issue has been occasioning some discussion in that jurisdiction. What can be said at the moment is that the level of the penalties of this character in the draft is way above the LAC guidelines (\$500!).
4. I understand the urgency of this matter and that it may not be possible (particularly given such discussions as Cabinet has had) to in effect readdress this issue. However I would be wrong if I did not draw this general problem to your attention.

I would be happy to discuss this matter further with you, if that might be of any assistance.

With best wishes.

Yours sincerely

A handwritten signature in black ink, appearing to read "Grant Hammond". The signature is fluid and cursive, with a large initial 'G'.

Hon Sir Grant Hammond  
President

Enc.