

23 July 2004

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Dear Bianca

**MINISTRY OF ECONOMIC DEVELOPMENT DISCUSSION DOCUMENT: TRANS TASMAN  
MUTUAL RECOGNITION OF OFFERS OF SECURITIES AND MANAGED INVESTMENT  
SCHEME INTERESTS**

These submissions are made on behalf of the members of the New Zealand Bankers' Association ("NZBA") namely:-

- ANZ National Bank Limited
- ASB Bank Limited
- Bank of New Zealand
- Citibank NA
- The Hongkong and Shanghai Banking Corporation Limited
- Kiwibank Limited
- TSB Bank Limited
- Westpac Banking Corporation (New Zealand Division)

The discussion document sets out a number of questions, the NZBA submissions on these questions are set out below:-

**1 What costs do the current arrangements for trans-Tasman offers of securities impose on Australian and New Zealand issuers?**

The current regime is costly for issuers and provides a disincentive for issuers to offer funds in the host jurisdiction. The costs include:-

- The substantial costs of preparing initial offer documents in the home jurisdiction can be duplicated (or even exceeded) by the need to prepare discrete offer documents for the host jurisdiction for a new offer of securities, including costs of internal resources, external legal advisors' fees and printing and production costs.
- Similarly, the costs of preparing any changes to original offer documents are duplicated by the need to amend home jurisdiction and host jurisdiction documents. Substantial business costs have been suffered under 1999 ARMIS Notice due to funds being off market whilst inconsistencies between the Australian PDS and NZ investment statement were rectified.

- The nature of some offers requires production of a full NZ Prospectus and investment statement, or compliance in NZ with both the Australian Issuers exemption notice and the ARMIS exemption notice (for example, a debt obligation that incorporates a conversion right – converting into units in a managed investment scheme or into shares). Costs include producing and distributing such additional documents as well as lodging the Australian offer documents where the exemption notices are relied on.
- For commercial reasons, often the content of the offer may differ between markets e.g. not all of the funds offered to investors in the home jurisdiction under the disclosure document are offered to investors in the host jurisdiction. The requirement for different documents between markets creates additional work and costs to ensure the documents in the host jurisdiction are presented in such a way to ensure the investor clearly understands any idiosyncrasies.
- Additional external communications costs (including time of internal resources and external legal fees) to explain the different documentation and content of an offer. These costs continue and are substantial during the life of an offer, including assessing how reporting requirements apply in the different jurisdictions and implementing those requirements.
- The lodgment requirements per se give rise to extra costs, including costs of producing, couriering and lodgment of copies of scheme constitutions and compliance plans. The complicated requirements under the ARMIS Notices of lodging host jurisdiction documents, particularly timing requirements, increase the costs relating to preparing new offer documentation and amending documentation.
- Breaches of the lodgment requirements have given rise to substantial compliance costs. In the case of Australian issuers, the current regime exposes them to severe liabilities for failure to lodge documents in New Zealand even though they have been lodged with the Australian Securities & Investments Commission.
- The 2003 ARMIS Notice has gone a long way to providing flexibility required to make and reduce the costs of Trans Tasman offerings. Nevertheless, there are other constraints that reduce investment opportunities. From time to time an issuer will develop offers in Australia, intending to distribute a NZ tranche. Considerable costs are incurred to prepare for this NZ distribution, but the NZ tranche is eventually not distributed because of discrepancies between jurisdictions (in particular the extent of the potential risk to the issuer and its directors in relation to the NZ promoter tests, where there is no directly analogous Australian test).

**Should Australia and New Zealand put in place a mutual recognition regime for offers of securities and interests in managed investment schemes broadly along the lines described in this paper?**

The NZBA strongly supports the introduction of the regime. In particular it will facilitate opportunities for investors in New Zealand to access a wider range of investment products. The model is seen as preferable to the incorporation of foreign law or disapplication of domestic laws.

- 2 Are there any features of the proposal set out in this paper which you see as particularly important in order to ensure that the regime achieves the objectives of facilitating investment between the two countries, enhancing competition in capital markets, reducing compliance costs for business, and increasing choice for investors?**

- Ensuring that offerings are, so far as possible, subject to one regulatory regime – that of the home jurisdiction and minimising any additional requirements imposed by the host jurisdiction.
- Simplicity of procedures and requirements relating to lodgment of documents.
- Regulators working together and taking a consistent approach.

**3 Are there any features of the proposal that you see as inappropriate or undesirable, and that you consider should be changed? How should they be changed?**

- Additional requirements should be limited to only the purpose of alerting investors to the fact that relevant offers are not regulated locally. Consequently, the ongoing requirements should be limited to ensure that they promote the objectives of the proposed regime only. For example, the document filing requirements set out in paragraph 5.2 (which are similar to current requirements) would not serve much purpose if investors and the relevant regulator can obtain the documents from the home jurisdiction free of charge.
- It is also a concern that each jurisdiction will have a choice to apply local trade practices legislation, such as the ‘misleading and deceptive’ prohibition in NZ. Generally, an offer that complies with home jurisdiction legislation should be deemed to also comply with equivalent host jurisdiction legislation.
- Reporting requirements need to be addressed. The reporting requirements relating to the offer in the home jurisdiction should apply equally to the host jurisdiction.
- In particular, it is suggested that there be an obligation on issuers of securities that are listed on a home exchange to provide the same reporting to the home and host exchanges (as required by home exchange regulation) to ensure both markets receive the same information at the same time.
- Total exclusion of financial advice from the regime. If the regime is to be most beneficial to investors, they should be able to access the best advice in relation to the relevant products. We suggest that home jurisdiction advice in relation to securities (or a class of securities of which such securities form part) offered under the regime should be permitted provided the provider is licensed in the home jurisdiction and advice is limited to the securities or class of securities that are the subject of the offer.

**4 Are the proposed exemptions from the standard domestic requirements of each country’s fundraising laws for offers made under the mutual recognition regime as set out in Appendix 2, appropriate? Should additional requirements be excluded? Should any of these requirements continue to offers under the mutual recognition regime?**

As mentioned, an offer that complies with home jurisdiction legislation should be deemed to also comply with equivalent host jurisdiction legislation.

**5 Is it appropriate to provide for special arrangements for enforcement of civil and/or criminal penalties for breach of the host jurisdictions ongoing requirements along the lines described in section 5.5 of the paper?**

Yes, provided the enforcement policy of the regulators is the same and consistently applied.

**6 Any there any other aspects of this proposal on which you wish to comment?**

No.

Errol Lizamore  
**Chief Executive**