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28 October 2004

Ms Ruth Smith
Manager – Market Integrity Unit
Department of the Treasury
Langton Crescent
PARKES ACT 2600

Dear Ms Smith,

TRANS-TASMAN MUTUAL RECOGNITION OF OFFERS OF SECURITIES AND MANAGED INVESTMENT SCHEME INTERESTS
- Discussion Paper May 2004

The Securities & Derivatives Industry Association was formed in 1999 at the time of the demutualisation of the Australian Stock Exchange to represent the interests of market participants. Currently we have 69 member organisations – employing in excess of 8,000 people - which account for some $2.5b worth of trading daily on the ASX or approximately 98% of the market. In addition we have over 1300 individual members and are working to build the profession of stockbroking.

SDIA welcomes the opportunity to comment on the discussion document prepared by the Australian Treasury and the New Zealand Ministry of Economic Development dated May 2004.

SDIA supports the continuing co-ordination of corporations and securities law and regulation between New Zealand and Australia and believes that a framework to facilitate trans-Tasman mutual recognition of offers of securities and managed investment schemes will benefit both markets by reducing costs, increasing efficiency and broadening the opportunities for capital raising and investment.

In this respect, we support the submission by Australian Stock Exchange Limited dated 16 July 2004.

Our membership is comprised of stockbrokers who hold Australian Financial Services Licences, typically authorising them to -

- Advise & deal
- Make a market, and
- Conduct a custodial and depository service

- in financial products.

While many of our Member firms, like the domestic and international banks, are themselves issuers, we represent them in their capacity as market participants. As such, we note that the Discussion Paper does not address the licensing of financial intermediaries directly:

> *'The proposed regime applies to issuers but not to other parties who, for example, provide financial advice in relation to, or deal in, the securities or interests in managed investment schemes.'* (Discussion Paper p.2)
>
> *'The regime will not cover financial advice that extends beyond offer documents. Because the requirements under Australian and New Zealand law in respect of the provision of financial advice are not sufficiently similar at present, mutual recognition in this regard would not be readily achieved.'* (Discussion Paper p.9)

With the growing internationalisation of the markets in general, and the historically close ties between the New Zealand and Australian stockmarkets and market participants, we trust that the mutual recognition project will be broadened to encompass those who are licensed in each jurisdiction to advise or deal in securities or financial products.

In response to the seven specific issues raised in the discussion paper, SDIA's comments are outlined below.

1. What costs do the current requirements for trans-Tasman offers of securities impose on Australian and New Zealand Issuers?

SDIA is not in a position to quantify these costs. However, it may safely be assumed that the proposed mutual recognition framework would reduce costs to issuers through the substantial reduction in duplication of similar requirements in the two countries, thus lowering the cost of capital, and with no material reduction of investor protection.

2. 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 discussed in the paper?

SDIA considers that the approach as detailed in the discussion paper is an appropriate framework. It supports the basic principle that underpins the proposed regime: that despite local variations in corporations and securities law, the underlying policy goals are the same.

SDIA agrees that the relevant goals of regulation of capital raising and investor protection can be achieved by allowing issuers to use their home jurisdiction offer documents when offering securities in the other (host) jurisdiction, provided limited additional disclosure requirements are met.

While much has been achieved by way of class order relief and exemptions to lessen the effect of local variations on issuers, SDIA prefers that regulation should occur based on transparent principles contained in legislation rather than by way of ad hoc issuer-based relief or class exemptions. However, we agree with ASX that to provide optimum flexibility in a changing commercial, regulatory

and policy environment, the principle of the mutual recognition regime ought to be enshrined in legislation, but it should also provide the regulators with exemption or modification powers if they agree that modification is necessary in the circumstances.

3. **Are there any features of the proposal set out in the 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?**

We agree that it is important for ASIC and the New Zealand Securities Commission as responsible regulators to establish arrangements for communication and co-ordination of regulatory action in connection with relevant offers.

We note the comments in the discussion paper in relation to enforcement issues, and in particular that the host jurisdiction regulator would have primary responsibility for action against issuers for failure to comply with the ongoing requirements, and that the home jurisdiction would have responsibility for action in respect of breaches of the substantive requirements of the home jurisdiction securities laws. We agree that **dual listings** present particular issues. In these cases, simultaneous market disclosure is essential to prevent arbitrage trading opportunities emerging.

4. **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?**

SDIA does not have any substantive concerns about the features of the proposal.

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

For the reasons outlined in 2. above, we would prefer to see the exemptions and modifications previously in effect superceded by the new mutual recognition regime.

6. **Is it appropriate to provide for special arrangements for enforcement of civil and/or criminal penalties for breach of the host jurisdiction's ongoing requirements, along the lines described in section 5.5 of the paper?**

SDIA supports provisions that would enable the proper enforcement of civil and criminal penalties. We would hope that as far as possible such sanctions are made equivalent in both countries, so that the deterrent effect is practically the same.

7. Are there any other aspects of the proposal on which you wish to comment?

We would submit that both:

a. the provisions and enforcement of the **continuous disclosure** regime; and

b. the definition of "**security**" (noting the change to the Australian definition post-Financial Services Reform),

should be coordinated and streamlined across the two jurisdictions.

Thank-you for the opportunity to contribute to this important project. If you have any queries, please contact Doug Clark, Policy Executive on 0417 168 804 or email: dclark@sdia.org.au.

Yours faithfully,

David Horsfield, MSDIA
Managing Director / CEO