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23 July 2004

Ms Ruth Smith
Manager
Market Integrity Unit
Corporations and Financial Services Division
Department of The Treasury
Langton Crescent
PARKES ACT 2600

Dear Ms Smith

Re: Trans Tasman Mutual Recognition of Securities Offerings

I refer to the discussion paper "Trans Tasman mutual recognition of offers of securities and managed investment scheme interests".

ANZ appreciates the opportunity to provide comment on the models included in the discussion paper. ANZ supports a mutual recognition regime being put in place and we offer the following response to address some of the regulatory barriers and financial disincentives that may prevent the full benefits of such a regime being passed on.

If you require further information about this submission please contact Mark Siddall on (03) 9273 0829 or siddallm@anz.com

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jane Nash', written in a cursive style.

Jane Nash

ANZ position on Discussion Paper: Trans Tasman Mutual Recognition of Offers of Securities and Managed Investment Scheme Interests

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

Under the current regime, before an investment offer from one country can be marketed in the other, it must comply with the securities law requirements of both. Legal and compliance costs must be incurred in both jurisdictions before investment offers can be offered in both countries. The duplication of the time, effort and cost creates a distinct barrier to issuers making securities offers available in both countries. As a result, competition in the capital markets and investor choice for residents of both countries is reduced. This is borne out by the fact that as at 31 March 2004, only 27 Australian fund managers had complied with the filing requirements of the New Zealand Securities Commission, entitling them to distribute products in that country.

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 described in this paper?

Yes. Subject to our comments below the proposed regime could potentially remove unnecessary regulatory barriers and associated financial disincentives resulting in:

- Lower compliance, legal and regulatory costs;
- Increased investor choice;
- Overcome existing inconsistencies between each country's current regulatory framework; and
- Provide a larger investor base for issuers.

3. 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?

Yes, the proposal should focus on the removal of or reduction in barriers to issuers being able to easily access capital across both jurisdictions. If issuers cannot be convinced that the resulting scheme fails to significantly reduce regulatory, compliance and legal costs, then they will not make (significant) use of the scheme so that the anticipated benefits for both issuers and investors would fail to materialise.

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?

The proposal allows investors in the host jurisdiction to pursue statutory remedies in the courts of the host jurisdiction as well as in the courts of the home jurisdiction. As both jurisdictions operate under a common law regime, then the proposal may give rise to a curious situation. That is, in applying the laws of the home jurisdiction, the courts of the host jurisdiction could potentially reach different conclusions in interpreting the legislative framework of the home country. Some further consideration may need to be given to this issue to help ensure that proposed new regime does not (by default) leave issuers in the same position that they are under the current regime.

“The proposed model will exclude financial advice that extends beyond offer documents.” The meaning of this statement is not entirely clear. We have assumed that it means that any financial advice provided in connection with (but not contained within) an offer document will continue to be governed by the law of the host country. If this is so, then the regime will, at least insofar as financial advice in connection with issue documents is concerned, require issuers to comply with the laws of the host country and in doing so will maintain at least one barrier to the successful implementation of the proposal. Given that the framework for providing financial advice is significantly more restrictive in Australia than it is in New Zealand, this may result in a situation where Australian companies would face fewer barriers in using the new regime than New Zealand companies.

5. Are the proposed exemptions from the standard domestic requirements of each country’s fund-raising 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 apply to offers under the mutual recognition regime?

The suggested exclusions appear reasonable in the context of the stated objectives of the proposal. However, given that the domestic disclosure regime in Australia is significantly more restrictive (and therefore likely to be more expensive to comply with than New Zealand), the net result of implementing the proposal (and exempting New Zealand issuers from the Corporations Law requirements outlined in Appendix 2 of the Discussion Paper) may distort the market by inadvertently advantaging New Zealand issuers. That is, New Zealand based issuers would be able to bring their offering to the Australian market at less cost than Australian based issuers would be able to.

6. Is it appropriate 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 this paper?

Yes, special arrangements should be made along the lines suggested in the discussion paper. The process for registration should be simple. In the context of civil judgements made in favour of investors, a low cost registration and simple process should be put into place to ensure that investors are not (financially) disadvantaged simply because they chose to invest domestically in a security or managed investment issued out of the other jurisdiction.

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

No