



Consumers' Institute

16 July 2004

Bianca Garwood
Ministry of Economic Development
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WELLINGTON

Dear Bianca

Trans-Tasman Mutual Recognition of Offers of Securities and Managed Investment Scheme Interests – Discussion Paper

Thanks for giving the Institute the opportunity to comment on the discussion paper.

We endorse the principle outlined in the paper. Mutual recognition of each country's securities offerings makes considerable sense for a number of reasons. First, the obvious cost savings in producing one set of documents when an offering is made on both sides of the Tasman. Second, there will be less room for confusion and misunderstanding. Third, and related to the second point, there will be reduced opportunity for detail to fall between dual compliance regimes. Fourth, the proposal is in accord with the common wish for Australia and New Zealand to have common trading and consumer protection laws.

We are not in a position to comment on technical aspects or the specific costs associated with the current and proposed schemes. However, we ask that you consider the following points.

1. Application of general laws (p14)

We strongly support investors in New Zealand being able to use the protections of the Fair Trading and Consumer Guarantees Acts to offers made under the new regime. Indeed, we look forward to the day when Australian legal protections, such as sanctions against unconscionable trading, are incorporated into New Zealand consumer and trade practices law.

2. The role of the host jurisdiction regulator (p15 & p16)

It is crucial, in our view, that the New Zealand Securities Commission retains its powers to investigate suspected breaches of the law under the proposed regime, and to stop and suspend an offer. Clearly, there will be a need for an agreed protocol between the two regulatory authorities covering issues such as the need for one to notify the other of investigations and consequential actions. Nevertheless, there should be no constraint on a regulator on either side of the ditch instigating an inquiry.

We welcome the proposal that will allow a home country regulator to exercise its power over recalcitrant issuers' offers in the host country.

As already mentioned, we believe close communication between regulators is critical. It is important that no gaps between them be allowed to develop which might adversely affect investor protection.

3. General

Scope of regulatory control has been a weak part of some aspects of New Zealand law – investment advisers' disclosure for example. We look forward to these deficiencies being addressed. Further, appropriate investor protection law must be supported by effective enforcement. We look forward to Trans Tasman co-operation between security regulators leading to co-ordinated and effective enforcement.

Thanks again for giving the Institute the opportunity to make these few, brief observations. Please contact me if you wish to discuss any of the points raised.

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