



INTERNATIONAL
BANKS AND SECURITIES
ASSOCIATION OF AUSTRALIA

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

Dear Ms Smith

Trans-Tasman Mutual Recognition of Securities Offerings

Thank you for the opportunity to comment on the Discussion Paper on Trans-Tasman Mutual Recognition of Offers of Securities and Managed Investment Scheme Interests. IBSA is the representative body for investment banks operating in Australia and their business activities in the capital markets area typically have an international dimension. In this context, the Discussion Paper is relevant to us and we appreciate the opportunity to comment on its proposals.

1. Support for Mutual Recognition

With regard to the key question posed in the Discussion Paper, our members believe the proposal to facilitate mutual recognition of regulation governing securities and managed investment scheme offers would generate benefits and should be pursued.

From an Australian issuer perspective, the costs imposed by the current requirements for an offer of securities from Australia into New Zealand are significant but not overbearing. Internally generated costs that were identified by members include the production, verification and sign-off of additional New Zealand specific investment statements, which can be a time consuming process. In addition, there is typically a requirement for external advice arising in order to provide New Zealand-specific legal and taxation advice.

Proceeding with mutual recognition would not dramatically lower these costs; for instance, the proposed entry requirement for a warning statement means offerees in the host country still need to be advised of tax differences and currency risk. Although significant savings would not be made in this area, our members believe that worthwhile efficiencies could nevertheless be achieved, particularly in increasing investment opportunities between the two countries.

In sum, the initiative would remove unnecessary regulatory barriers to trans-Tasman offers of securities. It would more readily facilitate investment between

the two countries, with consequent benefits like increased choice for investors while affording them adequate regulatory protection.

2. The Preferred Approach

We agree with the approach proposed in the Discussion Paper, ‘Model 3’, which involves compliance with the substantive requirements of the home country subject to conditions. The conditions proposed are generally regarded as being reasonable and manageable, as long as they are restricted to what is relevant to the offer. However, members identified a few points for consideration as the precise measures are being negotiated.

We believe that the ‘equivalence’ of the two regulatory regimes is a matter that requires careful consideration. The effect of the mutual recognition terms should be that neither jurisdiction offers a materially different level of investor protection (through the law, associated regulatory instruments or the manner of their administration by the regulator). In this context, members have observed that the Australian regulatory regime is stricter in relative terms.

Clarification is required on which country’s liability laws will apply. In particular, underwriters in Australia are liable for loss or damage caused by misleading or deceptive statements in disclosure documents¹, which is not the case for New Zealand underwriters. Liability under the proposed arrangement should be ‘equal’ in the sense that the parties held liable are the same in both countries, so that investors in either country have the same avenues for recourse.

We have an additional, relatively minor, point relating to the ongoing requirement for the offeror to provide an offeree, on request, with copies of the relevant constitutional documents. It would be more helpful if the offeror could simply refer to a website/organisation where the offeree can access this information. We expect that further practical comments of this nature may emerge, as the details of the mutual recognition arrangements are fleshed out.

3. Managing Change

The management of future law reform and the amendment of regulatory instruments relevant to the mutual recognition agreement would involve liaison with the New Zealand regulatory authorities. We understand this is not expected to create a significant problem (for example, by delaying implementation of changes), as the Commonwealth Government already has a consultation process with the States and Northern Territory in respect of changes to parts of the corporations legislation. In addition, at a recent meeting to explore opportunities for greater cooperative regulation, ASIC and the New Zealand Securities Commission agreed to work on the detailed regulatory arrangements that would need to be put in place to underpin the proposals in the Discussion Paper.

We agree it will be necessary to ensure that the mutual recognition arrangements work efficiently, as it is important that they do not unduly disturb the process for managing ongoing change to the regulatory system.

¹ Section 729, Corporations Act 2001.

4. Concluding Comments

It might be helpful for industry to consider the detail of the proposed arrangements, for example, concerning the enforcement of fines etc., when further progress is made in developing the initiative. Therefore, we would be happy to comment again at a later stage in the development of the initiative.

We hope that our comments here are of some assistance to you. Please contact me if you have any queries or require any further assistance.

Yours sincerely

David Lynch
Director of Policy