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

The Investment Savings and Insurance Association ("ISI") appreciates the opportunity to comment on the Discussion Paper jointly issued by the NZ Ministry of Economic Development and the Australian Department of the Treasury.

Generally, we welcome the mutual recognition proposal. When implemented it will be another step in closer integration of New Zealand and Australian financial markets. The proposal is an incremental improvement formalising present exemptions. It therefore places mutual recognition of security issues on a more solid foundation.

Our comments on specific issues raised in the Discussion Paper are as follows:

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 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 2003 ARMIS Notice has improved this.
- 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 of two sets of offer documents per se gives 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, increases the costs relating to preparing new offer documentation and amending documentation.
- Breaches of the lodging 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.

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?

We strongly support the introduction of the regime. In particular it will facilitate opportunities for investors in New Zealand to access a wider range of investment products.

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.

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 "misleading and deceptive" legislation. 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.
- We do have some concerns over the 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.

While the proposal will reduce barriers to trans-Tasman security offers, because of the different regulatory frameworks for financial advisers between the two countries, there will continue to be a mismatch in the ability of advisers to offer advice in both countries.

We would appreciate the opportunity to have further discussion with officials on this aspect of the proposal.

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.

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.

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

No.

Yours sincerely

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