



MACQUARIE

Macquarie New Zealand Limited

Submission to
Department of the Treasury and Ministry of Economic
Development on
Trans-Tasman Mutual Recognition of Offers of Securities and
Managed Investment Scheme Interests Proposal

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1. EXECUTIVE SUMMARY

1.1 Macquarie New Zealand Limited

This submission is made by Macquarie New Zealand Limited on behalf of New Zealand members of the Macquarie Bank Group (“Macquarie New Zealand”). Macquarie New Zealand provides a wide range of financial services to both retail and wholesale clients in New Zealand including issuing managed investment schemes in New Zealand and assisting clients to invest in Australian securities and managed investment schemes. Macquarie New Zealand is therefore appropriately qualified to comment on the Trans Tasman Mutual Recognition of Offers of Securities and Managed Investment Schemes Proposal (“Proposal”).

1.2 Submission on the Proposal

Macquarie New Zealand generally welcomes the Proposal as a positive step towards encouraging Australian and New Zealand issuers of securities and managed investment schemes to offer their products to investors across the Tasman. As noted below, Macquarie New Zealand is a wholly owned subsidiary of Macquarie Bank Limited, a listed Australian bank. We have had the opportunity to discuss the Proposal with officers of Macquarie Bank Limited and can confirm that the Proposal is one which has the support of the Macquarie Bank Group. There are currently existing and planned business areas where an easing of the regulatory burden which inevitably exists in cross border transactions would assist the broader Macquarie Bank Group in its activities in both Australia and New Zealand. This assistance would, in our view, benefit investors in both jurisdictions by providing them with a broader range of investment opportunities while maintaining the protections inherent in each legal system.

2. DISCUSSION OF THE PROPOSAL

2.1 Macquarie New Zealand Limited

This Submission to the Department of the Treasury and Ministry of Economic Development on the Proposal is made by Macquarie New Zealand Limited, which has its registered office at Level 14, 209 Queen Street, Auckland. Macquarie New Zealand Limited is making this submission on behalf of the New Zealand members of the Macquarie Bank Group.

The New Zealand members of the Macquarie Bank Group are wholly owned subsidiaries of Macquarie Bank Limited whose head office is in Sydney, Australia. Macquarie Bank Limited is a publicly listed investment bank with a market capitalisation (as at 31 March 2004) of \$AU 7.7 billion. It employs over 5000 people in offices in Australia, New Zealand, Asia, North and South America, South Africa, the UK and Europe.

Macquarie New Zealand has operated in New Zealand since 1985. Macquarie New Zealand has steadily built its presence in this country to the point where it now has (as at 30 June 2004) a total of 110 staff across offices in Auckland, Wellington and Christchurch. Macquarie New Zealand has a wide range of domestic and international clients, and works in the following areas:

- Corporate Advisory (including mergers and acquisitions);
- Project and Structured Finance;
- Property Finance;
- Debt Markets;
- Institutional (or Wholesale) Stockbroking; and
- Retail Stockbroking and Financial Services.

2.2 Macquarie New Zealand's experience with Trans Tasman offers of securities and managed investment scheme interests

Macquarie New Zealand assists its clients to invest in Australian securities including, where permitted by law, to participate in Australian initial public offerings. Macquarie New Zealand also assists its clients to invest in Australian managed investment schemes, including those issued by Australian members of the Macquarie Bank Group. One current example of an Australian managed investment scheme which is offered to clients is the Macquarie Cash Management Trust. This Trust is offered to New Zealand investors using a New Zealand investment statement.

Macquarie New Zealand is also an issuer of managed investment schemes in New Zealand. For various reasons it has not to date issued any of these schemes in Australia.

2.3 The Trans Tasman Mutual Recognition of Offers of Securities and Managed Investment Scheme Interests Proposal

Macquarie New Zealand is supportive of the Proposal as a step towards encouraging issuers of securities and managed investment schemes in New Zealand or Australia (home jurisdiction) to offer them to investors from across the Tasman (host jurisdiction). Although Macquarie New Zealand has been involved in some Trans Tasman offerings we are aware of a number of offerings that were not offered across the Tasman because of the extra costs involved. Consequently, Macquarie New Zealand believes that the Proposal will only encourage issuers to offer securities across the Tasman if the host jurisdiction resists the temptation to impose an onerous overlay of domestic and local law over the requirements of the home jurisdiction.

We note that, while the Proposal is a step towards encouraging issuers of securities and managed investment schemes to offer them across the Tasman, there are other considerations that may lead issuers to decide not to offer their securities across the Tasman. In particular an issuer will need to consider whether there is a market for their securities in the host jurisdiction and whether the securities will be tax effective for investors in the host jurisdiction.

3 RESPONSE TO QUESTIONS ASKED

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

The main cost for issuers is the cost of preparing documents required by law such as investment statements. These costs include the cost of external legal advisers and time invested by staff in working with the external legal advisers. The current requirements also expose the issuer to a risk that any documents prepared for the host jurisdiction will contain an error that is not contained in the documents issued in the home jurisdiction.

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?

Macquarie New Zealand supports a mutual recognition regime broadly along the lines of the Proposal.

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?

If the Proposal is implemented along the lines described in the paper and the host jurisdiction's laws are not too onerous then this will assist those objectives to be achieved. However as noted above there are other factors which may cause an issuer to decide not to issue a security or managed investment scheme across the Tasman

including the tax effectiveness of their securities or managed investment scheme for investors in the host jurisdiction.

- 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?**

No.

- 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 exemptions are appropriate, and no additional requirements should be excluded.

- 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 this paper?**

Yes. It is important that regulators are able to enforce the terms of the Proposal. We submit however that a civil or criminal action by a regulator should only be available in one country for any given breach of the requirements and that the country having jurisdiction in each case should be clearly defined. Inherent in this observation is a concern that, for the benefit of both investors and product issuers alike, there should be no opportunity for regulatory risk to be arbitrated or evaded through want of clarity or inconsistency. In that respect we believe the implementation of the Proposal will best be achieved by a comparison of relevant laws in Australia and New Zealand and recognition of differences. It may be necessary that compromise be reached in order to remove any potentially adverse impact of recognised different laws.

- 7 Are there any other aspects of this Proposal on which you wish to comment?**

Macquarie New Zealand considers the Proposal to be a positive step towards encouraging Australian and New Zealand issuers of securities and managed investment schemes to offer their products to investors across the Tasman.