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**MEMORANDUM**

**To:** Bianca Garwood @ Ministry of Economic Development - Wellington  
**Date:** 26 July 2004

**CC:** NA  
**Pages:** 2

**From:** Paul Ridley-Smith

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## TRANS-TASMAN MUTUAL RECOGNITION OF SECURITIES

### Summary:

1. I support the policy and proposed means of implementation of mutual recognition.
2. Model 2 (disapplication of domestic law) creates the best outcome for New Zealand issuers – because it avoids any marginal costs in extending an offer into Australia. But, as the Discussion Document notes, it is unlikely that such a simple model would work in practice. The tendency will be for the host jurisdiction to limit the application of such a regime when it has no means of regulation or responsibility over securities' offers made inside its jurisdiction.
3. Model 1 (incorporation of foreign law) is too complex and likely to lead to inconsistency of application and enforcement.
4. I'm very pleased to see that the Discussion Document very substantially avoids the confusing and flawed term "harmonisation".
5. I make some comments on technical issues. None of these are substantive.

### Preference for Mutual Recognition:

6. The most significant benefit of mutual recognition is that it allows New Zealand to continue to make and enforce the rules governing the public issue of securities in New Zealand. It does not require New Zealand to adopt the much more complex and expensive Australian model. Others call this "harmonisation".
7. New Zealand should adopt a strategy that preserves the competitive cost advantage that it presently has over Australia – an advantage had without, in my view, disadvantaging subscribers to public issues of securities. It also allows New Zealand to make unilateral

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changes to its legislation, should circumstances warrant.

8. In addition, in recognition that Australia has a rigorous and comprehensive legislation regulating the public offer of securities, it is clearly sensible and beneficial for New Zealand investors that the marginal cost of extending an Australian offer to New Zealand is as low as possible. Mutual recognition achieves this.
9. To give an example of the current competitive advantage that New Zealand has, Infratil Limited recently completed a public offer (by way of bonus issue) of warrants. The New Zealand legal costs for preparation and completion of the Investment Statement & Prospectus (including liaising with the Companies Office & NZX) and advising on quite complex Securities Act issues were NZ\$15,000 plus GST. The New Zealand Companies Office costs were \$360 plus GST.
10. By comparison, the Australian legal costs merely to secure an ASIC exemption to allow the distribution of the New Zealand documents in Australia were A\$10,000. The ASIC charge was A\$2,000.
11. Given the relative amounts of work, the Australian costs were relatively higher by a significant multiple.

**Technical Comments:**

12. It seems to me that the mechanics of home mutual recognition would be implemented have been carefully thought through.
13. I note that you contemplate that both generic and specific exemptions will apply cross border (subject to filing specific exemptions). This is important as New Zealand issuers often rely on both types of exemption (e.g. Securities Act (Rights, Options, and Convertible Securities) Exemption Notice 2002).
14. In comment on the issue you raise in Paragraph 5 of Section 6, it is critical that the Australian generic exemption does and will have very general application for New Zealand issuers (as appear to be the case for Australian issuers in New Zealand). The benefits of mutual recognition will be lost for New Zealand if New Zealand issuers are exempted from 98% of the Australian requirements but are caught up in technical issues that require expensive Australian legal advice or ASIC exemptions. As I note above, getting that advice and exemptions is expensive – even to tidy up a simple matter. My knowledge of Australian is not sufficient for me to know if the proposed exemptions listed in Appendix 2 are broad enough. I suggest that the New Zealand Ministry of Development take Australian legal advice on this aspect.
15. I have given some comments above on costs. Subject to my immediately previous comment, I believe that this proposal has the potential to reduce transaction costs substantially.
16. I have no other comments on the issues you raise in Section 6.

Yours faithfully,