

Ms Bianca Garwood
Regulatory and Competition Policy Branch
Ministry of Economic Development
PO Box 1473
WELLINGTON

16 July 2004

Dear Ms Garwood

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

We are pleased to present PricewaterhouseCoopers New Zealand ("PwC") submission on "Discussion Document : Trans-Tasman Mutual Recognition of Offers of Securities and Managed Investment Scheme Interests".

General Comments

We agree in principle with a mutual recognition regime for trans-Tasman offerings.

We would like to emphasise, however, that we see this as a stop-gap measure and is just the first stop towards achieving the long term goal of a true trans-Tasman securities market.

We would also like to state that regardless of the terms of the mutual recognition regime, the success of the regime will ultimately come down to the practical application by the Regulators in both New Zealand and Australia of the final regime.

Specific Matters for Comment

We have addressed below each of the specific areas on which you have requested comment.

Issue1

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

There are no significant additional accounting issues that arise as a result of the current requirements for trans-Tasman offerings. The additional costs that currently arise largely relate to matters that require legal rather than accounting advice.

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Issue 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?

As indicated previously we agree that a mutual recognition regime along the lines described in this paper should be put in place as the first step to establishing a true trans-Tasman securities market.

Issue 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?

In order to ensure that this regime achieves its stated objectives we believe that cost of compliance with the proposed regime should be substantially less than the current trans-Tasman requirements.

Issue 4

Are there any features of the proposal that you see as in appropriate or undesirable, and that you consider should be changed? How should they be changed?

It appears from our reading of the discussion document that the proposed regime would only be applicable for offerings that are made in both New Zealand and Australia. We believe that the regime should be extended to situations where an offering is only being made in the host country, and not in the home country.

Furthermore, in order to minimise costs, we believe that the issuer should have the option of following either the home or host country's regulations, depending on which is more cost effective. An example of where this may be applicable could be where an Australian entity establishes a subsidiary in New Zealand and then makes an offering of securities in that subsidiary in New Zealand. Although the offering is being made in New Zealand, it may be that all information is held in Australia and the principals and advisors involved are based in Australia and are therefore more familiar with Australian securities regulations. The ability to prepare an offer document under the Australian regulations may be more cost effective in this instance.

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Issue 5

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 apply to others under the mutual recognition regime?

We consider this to be more of a legal question which does not have a direct impact on any accounting matters and as such make no comment.

Issue 6

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 this paper?

We consider this to be more of a legal question which does not have a direct impact on any accounting matters and as such make no comment.

Issue 7

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

Set out below are a number of additional points for consideration.

7.1 Content of Offer Document

We believe that the proposed scheme should ensure that the potential liability for claims by investors is not extended beyond the current situation in each country.

The mutual recognition regime may lead to situations where investors will not receive information that they would normally expect to receive in relation to an offering of securities.

Under the New Zealand regulations the Company's auditor is required to issue a prescribed opinion. Part of this opinion deals with prospective financial information and requires a statement that :

"In our opinion, the prospective financial information, so far as the accounting policies and calculations are concerned, has been properly compiled on the footing of the assumptions made or adopted by the issuer set out at pp.... of this prospectus and is presented on a basis consistent with the accounting policies normally adopted by the company (group)."

Under the Australian regulations no prescribed opinion is required of the Investigating Accountant, however it has become normal practice for an opinion on prospective financial along the following lines to be included in the offer document:

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“Based on our review of the Forecasts, which is not an audit, and based on an investigation of the reasonableness of the best estimate assumptions giving rise to the Forecasts, nothing has come to our attention which causes us to believe that:

- (a) the best estimate assumptions set out in Section ___ of the Prospectus do not provide a reasonable basis for the preparation of the Forecasts, and
- (b) the Forecasts are not properly prepared on the basis of the best estimate assumptions and presented fairly in accordance with the recognition and measurement principles prescribed in Accounting Standards and other mandatory professional reporting requirements in Australia, and the accounting policies adopted by the Company disclosed in Section ___ of the Prospectus
- (c) the Forecasts are unreasonable.

The underlying assumptions are subject to significant uncertainties and contingencies often outside the control of the Company. If events do not occur as assumed, actual results and distributions achieved by the Company may vary significantly from the Forecasts. Accordingly, we do not confirm or guarantee the achievement of the Forecasts, as future events, by their very nature, are not capable of independent substantiation.”

The two opinions are quite different as the Australian opinion provides negative assurance on the forecast assumptions whereas the New Zealand opinion states only that the prospective financial information has been compiled on the basis of the disclosed assumptions and accounting policies.

We query whether an investor would be able to pursue a claim against the Company if that investor stated that they assumed that the accountants report in the prospectus contained the normal opinion provided in Australia when it only had the opinion required by New Zealand regulation. The investor would obviously not be able to claim that the Company breached the terms of the mutual recognition regime.

We have not undertaken the extensive legal consideration that would be required to provide a solution to this issue, however including limitations on such claims in the legislation is an obvious and effective solution.

7.2 Exclusions form Mutual Recognition Regime

We note that Section 5.1 of the Discussion Document states that the proposed regime would not apply to “other financial products such as life assurance, superannuation products, or derivatives (other than options to acquire securities).”

We query this exclusion and believe that the Mutual Recognition Regime should apply to all financial products.

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7.3 Entry requirements

Section 5.2 of the Discussion Document states that the offeror must provide the host jurisdiction regulator with "other specified warnings", along with other documents.

More guidance is required on the purpose of this document and the likely content as it could become quite onerous and lead to significantly increased compliance costs. The interaction between this document and the risks identified in this document also need to be clarified.

7.4 Unit Trusts

We are uncertain whether the proposed mutual recognition regime includes Unit Trusts. We recommend that it does and this should be made clear in the documentation.

Conclusion

We agree in principle that it is appropriate to put in place a mutual recognition policy for trans-Tasman offerings, however would like to re-emphasise that we see this purely as a stop-gap measure.

Should you wish to discuss any matter raised further, please contact Ian McLoughlin on (09) 355 8167.

Yours faithfully

PricewaterhouseCoopers