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26 October 2006

Ministry of Economic Development

By email: financialsectorsubmissions@med.govt.nz

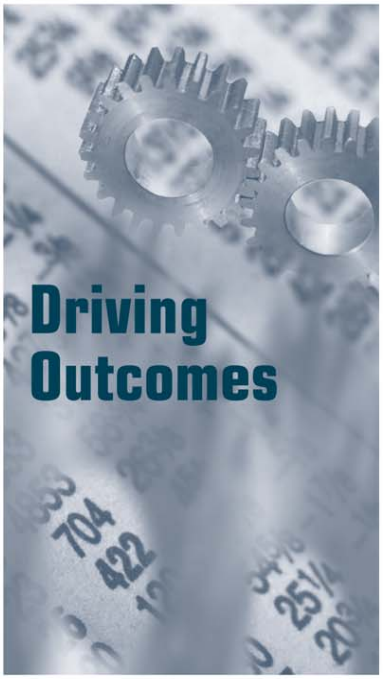
Attention: Kathy James

SECURITIES (MUTUAL RECOGNITION OF SECURITIES OFFERINGS-AUSTRALIA) REGULATIONS 2006

Thank you for the opportunity to comment on the draft Securities (Mutual Recognition of Securities Offerings-Australia) Regulations 2006 (the **Regulations**).

By way of the background the Listed Companies Association (**LCA**) is a voluntary organisation established primarily to represent the interests of companies which are listed on the New Zealand Exchange. The Executive of the Listed Companies Association is currently comprised of the following:

Linda Cox (Chair) – Telecom
John Blair – Air New Zealand
Peter Holdaway – SKYCITY
Takeshi Ito – Millennium & Copthorne Hotels
Grant Niccol – Fletcher Building
Paul Ridley-Smith – Infratil
Ross O'Neill – Contact Energy
Charles Spillane –Auckland International Airport
Tony Coombe – Turners Auctions
Gerald Fitzgerald – Kensington Swan
Roger Wallis/Tim Williams (alternate) – Chapman Tripp
Gavin McDonald/David Flacks (alternate) – Bell Gully



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Trans Tasman Mutual Recognition

The LCA Executive strongly supports the proposed mutual recognition of securities offerings between Australia and New Zealand.

LCA members are interested in the regime, as it offers the opportunity for significantly more cost effective extension of their securities offerings into Australia, as well as further facilitating the participation of Australian investors in the New Zealand capital markets, and has the potential to increase the choice for investors.

In addition to promptly finalising the content of the Regulations, the LCA Executive encourages the Ministry to develop a simple online registration for the regime, ideally in a way that enables compliance with both the home country and host country registration requirements at the same time.

Comments on the Regulations

General comment

Although we note your desire to use the terminology in the agreement dated 22 February 2006 between the Government of Australia and the Government of New Zealand in relation to mutual recognition of securities offerings (the **treaty**), it appears the Exposure Draft of the Corporations Amendment (NZ Closer Economic Relations Bill) 2006 (**Australian exposure draft**) uses Corporations Act 2001 terminology, rather than the language of the treaty, in some respects (see commentary on the Australian exposure draft, paragraph 4.33).

In some instances, notably the definition of offeror discussed below, we consider the terminology of the Securities Act 1978 and the Securities Regulations 1983 should be used in preference to terminology in the treaty.

Definition of Australian offeror

While we recognise the definition closely follows the treaty, the definition of Australian offeror is too narrow, as it is designed for only an original allotter of securities, and not an on-seller of previously allotted securities in an Australian public company or collective investment scheme made in accordance with Australian law; an on-seller may not be an Australian resident or incorporated or registered person.

Unless the regime is extended to a broader range of (non Australian) offerors of previously allotted securities, the utility of the regime will be seriously undermined.

Definition of New Zealand collective investment scheme

The definition of **New Zealand collective investment scheme** would not currently include a group investment index fund, such as the various exchange-traded funds offered by NZX. A group investment fund is a participatory security under the Securities Act 1978, but the Securities Act (Group Investment Index Funds) Exemption Notice 2002 exempts the need for a statutory supervisor and a deed of participation (hence paragraph (c) of the definition of New Zealand collective investment scheme will not apply), and instead the conditions of the notice provide for a trustee corporation, or the Public trust, and a trust deed to govern index funds.

Definition of New Zealand offeror

As with the definition of Australian offeror, the definition is too narrow, as it would limit the permitted on-sale of previously allotted securities to on-sales by a New Zealand resident, incorporated or registered person. A large number of New Zealand listed companies have overseas incorporated controlling shareholders, including several with Australian incorporated controlling shareholders. Unless the Australian mutual recognition regime is extended to recognise a broader range of (non New Zealand) offerors of previously allotted securities of New Zealand companies or collective investment schemes, the utility of the regime will be seriously undermined. The LCA Executive has significant concerns about this shortcoming.

In addition, we note that paragraph 4.38 of the Australian commentary on the Australian Exposure Draft states that a corporate offeror issuing into Australia must be incorporated in New Zealand, although this restriction may be reviewed in 2 years (i.e., an overseas company contemplated by paragraph (d) of the definition of **New Zealand offeror** will not be able to opt in to the regime, at least initially).

Definition of offeror

The Securities Act 1978 and Securities Regulations 1983 tend to use the term **offeror** only for the sale of previously allotted securities to members of the public, and Part 5 of the

Securities Act 1978 uses the more conventional term **issuer** when establishing liability. To complicate things further, section 6(7) of the Act defines an issuer, in the context of previously allotted securities, as meaning both the original allotter of the security and the offeror of the security for sale.

We suggest that either the Regulations use the more conventional term issuer, in place of offeror, or defines the term offeror to include an issuer.

Regulation 6

We consider regulation 6(3) should be amended to also extend to a technical or minor failure to comply with regulation 8. We understand ASIC does have discretionary power to grant relief if there is an oversight in strict compliance with the Australian waiting period, or other requirements before an offeror is entitled to offer Australian securities.

Regulation 9

As noted above, it would be desirable if the required notifications can be given electronically.

Regulation 10(c)

Although we acknowledge reference to this requirement is included in the treaty, we do not think it should be necessary to file particulars of general exemptions relevant to the offeror granted by the Australian regulator. ASIC has granted a significant number of general exemptions/class order relief, some of which are quite trivial. We understand ASIC publish general class orders on its website, so they are accessible and, if a general exemption is material it would no doubt be referred to in the disclosure document.

We also contrast regulation 10(c) with the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2003, clause 6(1)(b)(iii) which only requires exemptions specific to the scheme to be provided (and makes it clear general exemptions do not need disclosure).

Regulation 11(1)(d)

This regulation should enable the warning statement to be accompanied by **or included** in the offer document.

Regulation 11(3), Item e

This requirement should be omitted, for the same reasons as for omission of Regulation 10(c).

Regulation 13(1)

As noted above, it would be desirable if this notice could be given electronically, rather than by a prescribed form, ideally in a way that enables compliance with both the home country and host country registration requirements at the same time.

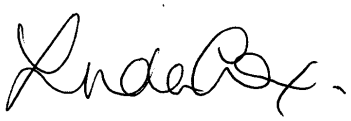
Regulation 14

The Schedule does not currently appear in the draft Regulations. In any event, it would be desirable if these notices could be given electronically, rather than by prescribed forms, ideally in a way that enables compliance with both the home country and host country registration requirements at the same time.

Next steps

We would be very happy to discuss any aspect of our comments with you further. Please do not hesitate to call me in this regard.

Yours sincerely



Linda Cox
Chair