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The Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
CANBERRA
ACT 2600

By email: economics.sen@aph.gov.au

Securities & Derivatives Industry Association Submission:

Senate Inquiry into the Corporations (NZ Closer Economic Relations) and other Legislation Amendment Bill 2007

The SDIA is pleased to see that the following issues are now being addressed through amendments to the Corporations Act 2001 (the Corporations Act) to support closer economic relations between Australia and New Zealand through the greater co-ordination of business law achieving:

- Mutual recognition of securities offerings thereby reducing duplicated regulation;
- Reduced filing requirements for certain foreign companies carrying on business in Australia thereby reducing administration of filing requirements;
- Information sharing between the Australian Competition and Consumer Commission (ACCC) and other agencies, bodies and persons; and
- The protection of certain information which is given to, or obtained by, the Commission.

1. Objectives

The Regulatory Impact Statement states:

“The problem to be addressed, is the regulatory barriers currently facing issuers wishing to offer securities in the host jurisdiction and complying with the relevant requirements in relation to the structure of the investment scheme in that jurisdiction and preparing further offer documents, unless the issuer is operating under an exemption in the host jurisdiction.

2. The effect of the current regulatory regime

Even though Australia offerors may be able to reduce costs if they are able to rely on a New Zealand exemption notice when making an offer to the New Zealand public, there is still considerable cost involved, and this may still prevent a offeror making an offer in New Zealand and thereby reduces investment options for New Zealand investors.

The same applies to New Zealand offerors wishing to make an offer to Australian investors. The cost of compliance with the Corporations Act may prohibit a New Zealand offeror from making an offer to Australian investors and may well reduce investment opportunities for Australian investors and potential markets for New Zealand offerors.

3. Options identified for a trans- Tasman mutual recognition arrangement for offers of securities and managed investment schemes.

The SDIA has reviewed the three options (considering workable solutions) described in the Regulatory Impact Study and offers the following comment on each option:

- Option 1 – disapplication of domestic law

The SDIA consider that issues could arise if a regulator in a host jurisdiction of an offeror was regulated only by its home regulator. This is irrespective of the offeror having an agent in a host jurisdiction. What would be the agents obligations to the host regulator?

- Option 2 – incorporation of foreign law

This option as outlined could be confusing when applied. Whilst the EU model probably works well in the EU this appears to hinge on the licensing arrangements (a licence granted in one EU jurisdiction is a regulatory “passport” across the EU.

Without the above described licensing arrangements it may be difficult for this Option 2 to be a workable solution in any trans Tasman arrangement at this time.

- Option 3 – compliance with substantive requirements of domestic law.

Given the explanation of Option 3 outlined in the Regulatory Impact Statement this appears to be the most practical Option of the 3 canvassed as it offers some regulatory “teeth” to the host jurisdiction with respect to investor protection whilst the primary responsibility remains with the home jurisdiction regulator.

It is important that whatever option is chosen, that communication between the home and host regulators is of a very high standard for the credibility of their roles to be maintained. Proper analysis of “relevant exchange of information” is crucial to the protection of investors in both jurisdictions.

Once again, thank you for the opportunity to comment. Should you require further information, please contact Jill Thompson, Policy Executive by email at jthompson@sdia.org.au or 02 80803207 or myself on 02 8080 3208.

Yours faithfully,



David Horsfield
Managing Director/CEO
Securities & Derivatives Industry Association

ABOUT SDIA: The Securities & Derivatives Industry Association (SDIA) is the peak industry body that represents over 67 stockbroking firms across Australia, who in turn represent over 98% of the market by value on the ASX. The SDIA includes organisations of all sizes across the entire breadth of the industry, both institutional and retail, which enables the SDIA to have a comprehensive understanding of the challenges and opportunities facing our industry. The SDIA actively liaises with our members, regulators and other market participants to further strengthen our profession in Australia.

For information about the SDIA go to www.sdia.org.au.