**OFFICE OF THE MINISTER
OF COMMERCE**

The Chair
CABINET ECONOMIC DEVELOPMENT COMMITTEE

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND IN RELATION TO MUTUAL RECOGNITION OF SECURITIES OFFERINGS

PROPOSAL

1 The purpose of this paper is to seek approval for New Zealand to sign and bring into force by way of exchange of diplomatic notes an Agreement between the Government of Australia and the Government of New Zealand in relation to mutual recognition of securities offerings (the Agreement). The Agreement will be implemented through the making of regulations under the Securities Act.

EXECUTIVE SUMMARY

2 The objective of the proposed Agreement is to remove unnecessary regulatory barriers to trans-Tasman securities offerings. This will promote investment between Australia and New Zealand, enhance competition in capital markets, reduce costs for business, and increase the choice for investors.

3 The proposed regime has been developed under the framework of the Memorandum of Understanding on the Coordination of Business Law between Australia and New Zealand, and helps facilitate the single economic market agenda.

4 Currently New Zealand and Australian issuers cannot use the same offer documents in both countries when making a trans-Tasman offer of securities. The issuer must comply with the relevant fundraising requirements in both countries, unless operating under an exemption in the other country.

5 The proposed model would allow an issuer offering securities to extend an offer that is being lawfully made in one country to investors in the other country using the same offer documents and offer structure. The issuer would not be required to comply with most of the substantive requirements of the other country's domestic fundraising laws. Instead, issuers who wish to operate under the proposed regime will have to comply with some entry and ongoing requirements agreed between the two countries and prescribed in each country's law.

6 In New Zealand the regime will be implemented through the making of regulations under Part 5 of the Securities Act 1978. In Australia the passing of legislation is needed. The Agreement agreeing the principles of the regime will enter into force when both parties have enacted legislation to implement the regime.

Background

7 The proposed Agreement has been developed under the framework of the Memorandum of Understanding on the Coordination of Business Law between Australia and New Zealand, and helps facilitate the single economic market agenda.

8 In October 2001, the Australian Government invited New Zealand to work towards a regime for co-ordination in the recognition of securities offerings. In order to make it possible to enter into the proposed arrangement a new Part 5 of the Securities Act 1978 was included in the Securities Markets and Institutions Bill, enacted in December 2002. Part 5 provides for regulations to be made to give effect to mutual recognition regimes in relation to offers of securities that are regulated in other countries. The regulations will prescribe conditions for use of the mutual recognition regime, and will provide for exemptions from specified domestic securities law requirements for offers made under the regime.

9 Discussions with Australian officials on the proposed mutual recognition regime proceeded in parallel with the New Zealand enabling legislation. After deciding on the broad parameters of the regime, officials developed detailed proposals for the regime in 2003. These proposals were contained in the discussion document entitled *Trans-Tasman Mutual Recognition of Securities and Managed Investment Scheme Interests* released in May 2004. Approval for the release of the discussion document was given by the Cabinet Economic Development Committee on 5 May 2004 [EDC min (04) 8/10 refers]. Approval was also given for officials to begin negotiations to draft a treaty to implement the regime.

10 28 submissions were received on the discussion document. Submissions were generally supportive of the regime and raised some technical and implementation issues. Officials have considered those issues and made some minor changes to the proposed regime. Officials have also reached agreement with Australian officials on the text of an Agreement. The Agreement text has been considered by the Ministry of Economic Development in conjunction with the Ministry of Foreign Affairs and Trade, the Ministry of Justice, the Treasury (Australia), the Department of Foreign Affairs and Trade (Australia) and the Attorney-General's Department (Australia).

Comment

11 The fundamental objective of a mutual recognition regime is to benefit businesses and individuals by reducing barriers to cross-border securities offerings. Mutual recognition achieves this by enabling entities from a participating jurisdiction to operate in other participating jurisdictions on the basis of compliance with one set of rules.

12 The objective of the proposed regime is to remove unnecessary regulatory barriers to trans-Tasman securities offerings, and to thereby facilitate investment between New Zealand and Australia, enhance competition in capital markets, reduce costs for business, and increase the choice for investors. The regime will significantly reduce compliance costs for issuers wishing to offer securities to investors in Zealand and Australia.

13 Although the detailed requirements of Australian and New Zealand securities law differ in a number of respects, the underlying policy goals are the same, for example disclosure of information to ensure that investors are fully and fairly informed. The relevant goals can be achieved by implementing a mutual recognition regime and allowing issuers to use their home jurisdiction offer documents when offering securities in the other jurisdiction.

The Current Position

14 Currently New Zealand and Australian issuers cannot use the same offer documents in both countries when making a trans-Tasman offer of securities. The issuer must comply with the relevant fundraising requirements in both countries, unless operating under an exemption in the other country.

15 This means that there are additional costs associated with extending an offer from the offeror's home jurisdiction to the other jurisdiction. In some cases, the offer will be made in both countries, but the additional compliance costs will increase the offeror's cost of raising funds. In other cases, the additional costs will mean that the offer is not extended to the other country. This reduces the offeror's access to potential investors, and reduces investment options for investors in the other country.

16 The proposed model would allow an issuer offering securities or managed investment scheme interests to the public, to extend an offer that is being lawfully made in one country (the home jurisdiction), to investors in the other country (the host jurisdiction) using the same offer documents and offer structure. The issuer would not be required to comply with most of the substantive requirements of the host jurisdiction's domestic fundraising laws. Instead, issuers who wish to operate under the proposed regime will have to comply with some entry and ongoing requirements agreed between the two countries, and prescribed in the host jurisdiction's law.

Details of the Proposed Model

The scope of the proposed mutual recognition regime

17 The proposed regime will apply to offers of most securities, including shares, debt securities/debentures, options to acquire securities, and interests in collective investment schemes[1]. It will not extend to other financial products such as life insurance, superannuation products, or derivatives (other than options to acquire securities). The regime will also not cover financial advice that extends beyond the offer documents.

18 The agreement provides for the regime to be available to issuers who are residents of the home jurisdiction, incorporated or established under the home jurisdiction's laws or registered as an overseas company in the home jurisdiction. However, under the Agreement, either jurisdiction can exclude overseas companies from offering securities under the regime.

[1] Collective investment schemes include managed funds and group investment schemes.

In preparing regulations to implement the regime, New Zealand officials will consider the appropriateness of allowing issuers registered as overseas companies in Australia to operate under the regime.

Requirements to be met by issuers under the mutual recognition regime

19 As noted at paragraph 12, an issuer wanting to operate under the mutual recognition regime will have to comply with some entry and ongoing requirements.

20 The regime will apply only if the offer complies with certain *entry* requirements. These comprise:

a The offer must be a “regulated offer” in the home jurisdiction, that is the offer must be subject to the home jurisdiction’s regulatory regime;

b The offeror must file a notice with the home and host jurisdiction regulators stating that it proposes to make an offer under the regime. This notice will include specified information, for example the name of the offeror, the securities being offered, an address for service in the host jurisdiction and confirmation that the offeror submits to the jurisdiction of the host country’s courts; and

c The offeror must provide the host jurisdiction regulator with a number of other documents, such as the home jurisdiction offer documents.

21 An offer that does not comply with the entry requirements will fall outside the regime. Such an offer will be treated as an ordinary domestic offer in the host jurisdiction and therefore will be unlawful if domestic regulatory requirements are not met. The entry requirements are the means by which an issuer opts in to the regime, and submits to the jurisdiction of the host country’s courts. Hence they are necessary for effective enforcement of the regime.

22 The key *ongoing* requirements of the regime would include:

a The “home country compliance requirement” – the issuer must comply with the requirements of its home jurisdiction securities laws in connection with the offer to investors in the host jurisdiction. The home jurisdiction will apply its securities laws to offers made under the regime to investors in the host jurisdiction.

b The offer must remain a regulated offer in the home jurisdiction.

c The offer must be open to acceptance by persons in the home jurisdiction at all times when the offer is open for acceptance by persons in the host jurisdiction.

d Offers to investors in the host jurisdiction must be accompanied by a prescribed warning statement that (among other things) domestic securities law requirements do not apply to the offer, and that the offer is subject to the securities laws of the other jurisdiction.

23 Failure to comply with the ongoing requirements would result in a breach of the host jurisdiction's laws; the consequences of this would be specified in the law of the host jurisdiction, including criminal sanctions, civil liability and/or stop orders issued by the host regulator.

24 That is, the ongoing requirements are the means which allow investors and the regulator in the host jurisdiction to pursue statutory remedies in their own country. If for example a disclosure document omits information required under the home jurisdiction's securities laws, this will constitute a breach of the home jurisdiction's laws and a breach of the home country compliance requirement under the laws of the host jurisdiction.

25 Under the proposed mutual recognition regime (and also under the current regime) there is a risk arising from the fact that civil pecuniary penalty orders and criminal fines are not enforceable across the Tasman. This problem is one of the issues being addressed by the Trans-Tasman Working Group on Court Proceedings and Regulatory Enforcement in its public discussion paper. The proposed regime will be better than the status quo, because issuers opting in to the regime will provide an address for service of proceedings and submit to the jurisdiction of the host jurisdiction courts, which will facilitate civil court proceedings there and enforcement of any resulting civil money judgment in the home jurisdiction. In addition, most breaches of the ongoing requirements of the host jurisdiction will also be breaches under the law of the home jurisdiction, so action may be taken in the home jurisdiction. Remaining issues on enforcement of penalties across the Tasman will need to be dealt with by the Working Group process.

The modification of applicable offering requirements

26 The mutual recognition model requires the host jurisdiction to legislate to provide that if an offer is made under the regime, the entry and ongoing requirements apply in place of the standard domestic fundraising requirements.

27 Both jurisdictions will also need to legislate to provide that where an offer made in one jurisdiction is extended to the other jurisdiction under the mutual recognition regime, the securities laws of the home jurisdiction will apply to the offer whether the investor is in the home or host jurisdiction.

28 Some specific provisions of each home jurisdiction's fundraising laws will not apply to offers made under the regime. For example, in New Zealand it is envisaged that offers under the mutual recognition regime would be exempt from the Securities Regulations 1983 and all of Part II of the Securities Act 1978, except for the following sections:

a Section 35 Restrictions on door-to-door sales

b Section 38B Prohibition on advertisements

c Section 58 Criminal liability for misstatements in advertising or registered prospectus.

The role of the regulators

29 Under the proposed regime, the home jurisdiction regulator will have primary responsibility for supervising a cross-border offer. It will be able to exercise its powers of its own motion, at the request of the host regulator, or at the request of a person in the host jurisdiction.

30 The host jurisdiction will be able to regulate to provide for its regulator to have certain powers in respect of offers made under the mutual recognition regime if the entry requirements are not satisfied, or the ongoing requirements are not complied with. Legislation in each country will, to the extent necessary, expressly provide for these powers.

Jurisdiction and enforcement regarding civil and criminal proceedings

31 Under the regime a breach of the requirements of the regime by an issuer could be the subject of both civil and criminal proceedings, in the home jurisdiction or the host jurisdiction. As noted in paragraph 24, at present penalties imposed against issuers by a court in one country are not enforceable in the other. Apart from the issues included in the regime, remaining issues on cross border enforceability of civil pecuniary penalties and criminal fines will be dealt with as part of the process being undertaken by the Trans-Tasman Working Group on Court Proceedings and Regulatory Enforcement.

The Agreement

32 Officials have agreed on the text of an Agreement between the two governments which sets out the objectives of the regime, the principle of mutual recognition, the entry and ongoing requirements, the agreed provisions on enforcement, how the scheme will be given effect through each party enacting legislation, and consultation and review clauses. A copy of the Agreement is attached as Appendix 1.

33 Article 13 provides that the Agreement shall enter into force on the date on which the Parties have exchanged diplomatic notes confirming the completion of their respective domestic procedures for the entry into force of the Agreement.

34 Major bilateral treaties of particular significance are presented to the House for select committee consideration in accordance with the procedure set out in the Standing Orders (SO 382). What might constitute a "major bilateral treaty of particular significance" is a matter for the Minister of Foreign Affairs and Trade to determine in accordance with the criteria developed to assist the Minister exercise his discretion. The Minister of Foreign Affairs and Trade decided on 2 August 2005 that the Agreement is not a “major bilateral treaty of particular significance” and therefore does not need to be subject to the Parliamentary treaty examination process.

CONSULTATION

35 In preparing this paper, the following departments and government agencies have been consulted: the Treasury, the Ministry of Foreign Affairs and Trade, the Ministry of Justice, and the Securities Commission. The Department of the Prime Minister and Cabinet has been informed of the contents of this paper.

36 The Ministry of Economic Development and the Department of the Treasury (Australia) jointly issued a public discussion document on the proposed regime in May 2004. 28 submissions were received on the discussion document. Submissions were generally supportive of the regime and raised some technical and implementation issues. The submissions received were considered in drafting this paper.

FISCAL IMPLICATIONS

37 The Securities Commission and Registrar of Companies will each have a role in regulating offers of securities under the regime. These roles will be carried out using existing resources which carry out the registration and exemption processes under the current regime.

HUMAN RIGHTS

38 The proposals recommended in this paper do not appear to raise any human rights or Bill of Rights issues.

LEGISLATIVE IMPLICATIONS

39 The recommendations in this paper will require the making of regulations under Part 5 of the Securities Act. The regulations will only come into force once the Australian legislation has been passed. A likely time frame for this has not been provided yet.

REGULATORY IMPACT AND COMPLIANCE COST STATEMENT

40 A Regulatory Impact and Compliance Cost statement is attached that complies with the requirements for RISs and BCCSs.

41 Based on the information provided in the attached RIS/BCCS, the Regulatory Impact Analysis Unit considers that the disclosure of information is adequate, and the level of analysis is appropriate given the likely impacts of the proposal.

42 The proposed regime will reduce compliance costs to issuers wanting to offer securities across the Tasman, by removing the need for an issuer to comply with differing requirements in both jurisdictions. In particular, the costs of obtaining legal advice are likely to reduce, as issuers will not be forced to seek legal assistance in preparing a second set of offer documents. However those offering securities across the Tasman will need to obtain legal advice in order to ensure compliance with the new requirements.

Publicity

43 Once Cabinet has reached a decision on the mutual recognition regime for securities offerings, and the necessary approvals have been obtained in Australia, I will release a joint press statement with the Australian Parliamentary Secretary to the Treasurer to publicise the approval of the regime. This paper will also be published on the Ministry's website.

Recommendations

44 It is recommended that the Committee

1 **Note** that the fundamental objective of the Agreement between the Government of Australia and the Government of New Zealand in relation to Mutual Recognition of Securities Offerings (the Agreement) is to create a mutual recognition regime that benefits businesses and individuals by reducing barriers to cross-border securities offerings.

2 **Note** that the Minister of Foreign Affairs and Trade decided on 2 August 2005 that the Agreement is not a "major bilateral treaty of particular significance" and therefore does not need to be subject to the Parliamentary treaty examination process.

3 **Agree** that New Zealand sign the Agreement.

4 **Agree** that, following signature and the enactment by both Parties of the necessary legislation to implement the mutual recognition regime, New Zealand send a diplomatic note confirming the completion of its respective domestic procedures required for the entry into force of the Agreement.

5 **Agree** that the Regulatory Impact and Compliance Cost Statement attached to this paper be published on the Ministry of Economic Development website.

6 **Direct** officials to provide drafting instructions for regulations to give effect to the detail of the mutual recognition regime.

Hon Pete Hodgson
Minister of Commerce

REGULATORY IMPACT STATEMENT

BACKGROUND

This regulatory impact statement considers the impact of the Trans-Tasman Treaty for the Mutual Recognition of Securities and the resulting regulatory regimes.

The Australian and New Zealand governments signed a Memorandum of Understanding on the Co-ordination of Business Law (MOU) in 2000, which established a work stream for the co-ordination of Trans-Tasman offerings of securities. In October 2001, the Australian Government invited New Zealand to work towards a regime co-ordinating the regulatory environment for Trans-Tasman securities offerings. Part 5 of the Securities Act 1978 was then enacted and allows regulations to be made for mutual recognition regimes of cross border securities offerings.

STATEMENT OF THE NATURE AND MAGNITUDE OF THE PROBLEM AND THE NEED FOR GOVERNMENT ACTION

The New Zealand and Australian governments are committed to working towards a single economic market. Regulatory arrangements in areas such as the supply of goods and occupational registrations have progressed. The requirements around securities offerings between the two jurisdictions have not kept pace with developments in these areas, thereby inhibiting the development of a single economic market between New Zealand and Australia.

The current regulatory regime for trans-Tasman offerings of securities generates high costs for issuers in both jurisdictions, which provides a disincentive to fundraise cross border. The problem is that issuers in one jurisdiction are generally unable to use the same offer documents for the offering of securities in the other jurisdiction. The resulting duplication of the offer documents increases costs for issuers wanting to offer securities across the Tasman. It is estimated that the costs imposed by the current regulatory arrangement, for Australian firms providing offer documents to New Zealand investors, may range from A$10,000 to A$50,000 per securities offering, inclusive of legal costs. There is no clear indication of the costs to New Zealand issuers wanting to offer securities in Australia, although it is conceivable that these costs would be proportionately similar. It should also be noted that the cost of offering securities across the Tasman would vary from issuer to issuer, depending on whether they fall within current exemptions. There are general exemptions in both jurisdictions that permit qualifying issuers from the home jurisdiction to offer securities without complying with some of the requirements of the host jurisdiction, which reduce some of the costs that arise from Trans-Tasman offerings of securities. Nonetheless, the current position continues to impose substantial costs on issuers wanting to offer securities in both Australia and New Zealand.

In submissions on the discussion document entitled *Trans-Tasman Mutual Recognition of Offers of Securities and Managed Investment Scheme Interests* (May 2004), members of the public confirmed that these costs discouraged the offerings of securities across the Tasman. These high costs have restricted offerings between the

two countries and have limited competition in the domestic capital markets of both jurisdictions. This has had the ultimate effect of reducing overall investor choice. It should be noted that there is no comprehensive quantification of the extent to which the costs has disincentivised cross border offerings of securities.

STATEMENT OF THE PUBLIC POLICY OBJECTIVE(S)

The primary objective is to remove unnecessary regulatory barriers to trans-Tasman securities offerings, and to thereby facilitate investment between New Zealand and Australia, enhance competition in domestic capital markets, reduce costs for business, and increase the choice for investors. A secondary objective is to significantly reduce compliance costs for issuers wishing to offer securities to investors in New Zealand and Australia.

STATEMENT OF FEASIBLE OPTIONS (REGULATORY AND/OR NON-REGULATORY) THAT MAY CONSTITUTE VIABLE MEANS FOR ACHIEVING THE DESIRED OBJECTIVE(S)

Status Quo

Overseas issuers of securities must comply with the substantive requirements of securities legislation in the host jurisdiction, including any requirements to prepare and lodge investment statements and prospectuses, before such issuers may offer securities to the public. Section 5(5) of the Securities Act 1978 ("the Act") in New Zealand currently provides that the Securities Commission may exempt a person, class of persons or class of transactions from some of the requirements of the Act. There are two general exemptions at present that are salient to Australian issuers. If the Australian issuer falls within one of the two general exemption notices it would not have to comply with the substantive requirements of the Act. The exemptions allow Australian issuers to use an Australian prospectus for an offer of equity or debt securities in New Zealand. The issuer, however, would still be required to provide an investment statement that complies with New Zealand's regulatory requirements and to comply with all other regulatory requirements, as set out in part 2 of the Securities Act.

New Zealand issuers similarly may be exempt from some of the Australian regulatory requirements. The Australian Securities and Investments Commission (ASIC) may exempt some class of persons from some of the requirements in the Corporations Act 2001 (Cth). For example, ASIC Class Order (00/177) provides some relief to issuers with prospectuses registered in New Zealand from the prohibition on offering a security beyond the date of expiry on the Australian prospectus.

It should be noted that the substantive legal requirements for the offerings of securities are quite extensive and are not covered in any great detail here. The status quo is not preferred as it does not meet the public policy objectives.

Regulatory Options

Mutual Recognition through the Disapplication of Domestic Law

One option to reduce costs would involve the disapplication of the law of the host country in favour of the home jurisdiction's law in respect to offers of securities made by issuers from the home jurisdiction. These offers would be regulated solely by the law of

the home country and the law of the host country would have no force. This model would mean that it would be difficult for investors in the host jurisdiction to access dispute resolution processes in claims against issuers from the home jurisdiction, as these investors would need to seek relief from courts in the home country or through alternative disputes resolution processes available in the home country. This option is not preferred.

Mutual Recognition through the Incorporation of Foreign Law

Under this second option, the host jurisdiction would incorporate the law of the home jurisdiction within its domestic regulatory framework (which would only apply to conduct in the host country by entities offering securities from the home jurisdiction). It is likely that the host country would incorporate the law of the home jurisdiction either ‘word for word’, or by reference to law of the home country at a particular date. The practical problem with this model is that the host country would have to amend its law or regulations to reflect changes in the home country’s law. Such a process can be resource intensive and can lead to gaps in the mutual recognition regime where there is a lag between changes to the law in the home and host countries. This option is therefore not preferred.

Mutual Recognition for Securities Offerings through Entry and Ongoing Requirements (Preferred Option)

This option would allow an issuer offering securities or managed investment scheme interests to the public, to extend an offer that is being lawfully made in one country, to investors in the other country using the same offer documents and offer structure. The issuer would not be required to comply with most of the substantive requirements of the host jurisdiction’s domestic fundraising laws. Instead, issuers who wish to operate under the proposed regime will have to comply with a number of entry and ongoing requirements agreed between the two countries, and prescribed in the host jurisdiction’s law.

- The offer must be a “regulated offer” in the home jurisdiction, that is the offer must be subject to the home jurisdiction’s regulatory regime;

- The offer for securities may only be an offer for shares, debt securities, options to acquire securities, equitable interests in securities and participatory securities, excluding life insurance, superannuation products and any other derivatives not listed.

- The offeror must file a notice with the home and host jurisdiction regulators stating that it proposes to make an offer under the regime. This notice will include specified information, such as the name of the offeror, the securities being offered, an address for service in the host jurisdiction and confirmation that the offeror submits to the jurisdiction of the host country’s courts; and

- The offeror must provide the host jurisdiction regulator with a number of other documents, such as the home jurisdiction offer documents.

An offer made by an issuer from the home country under the regime in the host jurisdiction will be required to comply with the home country's securities law. The host country's law will also apply to offers made under the regime by imposing a specific set of requirements, including an ongoing requirement to comply with the relevant laws of the home jurisdiction. The key *ongoing* requirements of the regime would include:

- The "home country compliance requirement" – the issuer must comply with the requirements of its home jurisdiction securities laws in connection with the offer to investors in the host jurisdiction. The home jurisdiction will apply its securities laws to offers made under the regime to investors in the host jurisdiction.
- The offer must remain a regulated offer in the home jurisdiction.
- The offer must be open to acceptance by persons in the home jurisdiction at all times when the offer is open for acceptance by persons in the host jurisdiction.
- Offers to investors in the host jurisdiction must be accompanied by a prescribed warning statement that (among other things) domestic securities law requirements do not apply to the offer, and that the offer is subject to the securities laws of the other jurisdiction.

Failure to comply with the ongoing requirements would result in a breach of the host jurisdiction's laws; the consequences of this would be specified in the law of the host jurisdiction, including criminal sanctions, civil liability and/or stop orders issued by the host regulator.

The home jurisdiction regulator will have primary responsibility for supervising a cross-border offer. It will be able to exercise its powers of its own motion, at the request of the host regulator, or at the request of a person in the host jurisdiction. The host jurisdiction will be able to regulate to provide for its regulator to have certain powers in respect of offers made under the mutual recognition regime if the entry requirements are not satisfied, or the ongoing requirements are not complied with.

The Treaty for the Mutual Recognition of Securities Offerings records both Australia and New Zealand's agreement to the implementation of a regulatory regime along the lines of the preferred option. It will come into force when both Australia and New Zealand have notified the other country that the respective domestic implementation of the regime has been completed. The treaty is to be reviewed five years from the date of entry into force to make any necessary amendments. The treaty may also be terminated by both Australia and New Zealand at any time, so long as appropriate notice is given to the other state.

Sections 74 and 78 in Part 5 of the Securities Act 1978 provide authority for the New Zealand government to implement a Mutual Recognition regime in the terms outlined above.

Statement of the Net Benefit of the Proposal, Including the Total Regulatory Costs (Administrative, Compliance and Economic Costs) and Benefits (Including Non-Quantifiable Benefits) Of the Proposal, and Other Feasible Options

Government

The New Zealand government currently maintains a substantial degree of authority over Australia issuers. Under the proposed regime, however, the extent of this authority will be limited, as Australia issuers will be regulated by the securities regulator in Australia (the Australia Securities and Investments Commission). Any reduction in regulatory jurisdiction over Australia issuers, however, is mitigated by the requirement that the issuers will have to comply with the ongoing requirements of the regime.

The proposed regime, and the empowering treaty, will strengthen relations with Australia and facilitate the development of a single economic market in the Trans-Tasman arena. The proposed regime develops a more cohesive and comprehensive regime for the treatment of the Trans Tasman securities offerings when compared to the current regime.

The New Zealand government may incur costs in establishing new systems for the Securities Commission and the Registrar of Companies to deal with the changes created by the new regime. The cost of establishing these systems, however, has not been quantified at present.

The regime will also encourage a greater flow of capital into New Zealand. This may have some fiscal benefits for the government and encourage national economic growth more generally.

Issuers of Securities

There will be compliance cost implications to the issuers, which are detailed in the Business Compliance Cost Statement. Issuers of securities will incur substantially decreased costs under the proposed regime. Offerors from Australia will not have to produce a prospectus or an investment statement that complies with the substantive requirements of New Zealand law, which currently costs issuers in something in the vicinity of A$10,000 to A$50,000. At this stage of the project, however, it is difficult to quantify the difference in costs, as the decisions regarding the costs of lodgement are still outstanding, although early indications is that the reduction in costs are likely to be substantial. Accordingly, it will cost Australian firms less to offer securities to New Zealand investors. It is also likely that similar benefits will flow to New Zealand issuers offering securities in Australia.

Australian issuers will have to submit the offer documents to the Securities Commission on application for entry into the scheme. There will be a cost associated with the lodgement of these documents, although it is not currently clear what this cost will amount to. Section 70A (3) of the Securities Act allows regulations to be made that establish the fees that will be payable to the Securities Commission for the exercise of any power that the Act confers on the Commission. Regulations will have to be passed that will enable the Commission to charge a fee for the lodgement of the offer document. Officials have begun work on developing appropriate lodgement fees and a

further RIS will be prepared at this time. The fee for the lodgement of documents in Australia has not been set at present. Officials from both Australia and New Zealand will be meeting to discuss this issue before any decisions are made.

Smaller issuers of securities may also be affected by the increased number of issuers in the market, which may affect these firms' ability to remain competitive. This is mitigated by the fact that New Zealand issuers would have access to a greater number of investors than under the current regime. This is an especially salient benefit for New Zealand issuers given the relatively small pool of investors available in New Zealand relative to the pool of investors that are available in Australia. Issuers from New Zealand would be able to access investors from Australia at a lower cost, which would increase New Zealand issuers' ability to raise capital.

Investors

The proposed regime will result in an increased number of securities that are offered in New Zealand. Investors would benefit by having increased choice for investment and therefore greater scope for risk diversification. A greater number of issuers of securities in New Zealand may also lead to a more efficient allocation of capital to investors, which ultimately will provide more effective and appropriate products to investors. The on-going controls allow investors and the regulator in the host jurisdiction to pursue statutory remedies in their own country.

STATEMENT OF CONSULTATION UNDERTAKEN

Stakeholder Consultation

A discussion paper by the New Zealand Ministry of Economic Development and Australia Treasury, outlining the proposed regime was circulated to the public in Australia and New Zealand for comment in May 2004. Submitters were generally supportive of the regime. Some concerns were raised by submitters about the proposal including the manner in which the proposed regime would be enforced against overseas companies. It is considered that these issues are generic Trans Tasman legal enforcement issues and cannot be confined within this mutual recognition regime. A separate stream of work is being progressed on Trans Tasman Court Proceedings and Regulatory Enforcement that will consider the issue of enforcement in a wider context. Officials have agreed with most of the other submissions made and developed the regime accordingly.

Government Departments/Agencies Consultation

The Securities Commission, the Ministry of Foreign Affairs and Trade, the Ministry of Justice, the Treasury have been consulted. The Department of the Prime Minister and Cabinet has been informed. No significant concerns were raised.

BUSINESS COMPLIANCE COST STATEMENT

The proposed regime will reduce compliance costs to issuers that want to offer securities across the Tasman (to New Zealand from Australia or to Australia from New Zealand) by removing the need to comply with different disclosure requirements for offerings of the same securities in each jurisdiction.

However, some compliance costs will arise from the need to comply with the entry and on-going requirements of the regime. Australian firms wishing to offer securities in New Zealand or New Zealand firms wishing to offer securities in Australia are likely to obtain legal advice on the new regime before offering any securities.

It is difficult at this juncture to provide any quantification of the costs incurred. There have been some estimates by the Australian Securities Exchange ("ASX") that the cost to Australian issuers under the current regime ranges from A$10,000 to A$50,000. There were no indications of the legal costs that New Zealand issuers were likely to incur when offering securities in Australia under the current regime. The legal costs to New Zealand issuers under the current regime, however, are likely to mirror the costs estimated by the ASX. The costs arising from the proposed mutual recognition regime are likely to be substantially reduced in comparison to the current regime for issuers from both Australia and New Zealand. Further, it should be noted that many of the firms that will be offering securities under the proposed regime will be larger firms who are better placed to bear these costs.

Both governments are also intending to publicise details of the regime, to reduce the need for issuers to incur legal costs in seeking advice.