

PCO 6803/6
Drafted by Parliamentary Counsel Office

Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2006

Governor-General

Order in Council

At Wellington this day of 2006

Present:

in Council

Pursuant to sections 74, 78, 81, and 90 of the Securities Act 1978, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Commerce, makes the following regulations.

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Regulations

- 1 Title**
These regulations are the Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2006.
- 2 Commencement**
These regulations come into force on **date**.
- 3 Interpretation**
- (1) In these regulations, unless the context otherwise requires,—
- Act** means the Securities Act 1978
- agreement** means 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
- Australian collective investment scheme** means a managed investment scheme as defined in section 9 of the Corporations Act 2001 (Australia) to which Australian securities legislation applies
- Australian offeror** means an offeror who—
- (a) is incorporated under the laws of Australia; or

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- (b) in the case of a natural person, is resident in Australia;
or
- (c) in the case of a legal person who is not a natural person,
is established under the laws of Australia; or
- (d) is registered as an overseas company under the laws of
Australia

Australian recognition scheme means the recognition scheme contained in Part 8.2 of the Corporations Act 2001 (Australia)

Australian regulator means—

- (a) the Australian Securities and Investments Commission established under the Australian Securities and Investments Commission Act 1989 and continued under the Australian Securities and Investments Commission Act 2001; or
- (b) any other similar regulator established by law to replace that Commission

collective investment scheme means an Australian collective investment scheme or a New Zealand collective investment scheme

Commission has the same meaning as in section 2(1) of the Act

New Zealand collective investment scheme means a scheme that is operated by a body that is incorporated or formed in New Zealand and that—

- (a) is a unit trust as defined in s 2 of the Unit Trusts Act 1960 in relation to which, under sections 8 and 9 of that Act, a trust deed has been approved by the Registrar or District Registrar of Companies and an authenticated copy of the trust deed has been lodged with the District Registrar; or
- (b) involves the issue of participatory securities in respect of which, under sections 33(3) and 46 of the Act, a statutory supervisor has been appointed and a deed of participation registered by the Registrar

New Zealand offeror means an offeror who—

- (a) is incorporated under the laws of New Zealand; or
- (b) in the case of a natural person, is resident in New Zealand; or

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- (c) in the case of a legal person who is not a natural person, is established under the laws of New Zealand; or
- (d) is registered as an overseas company under the laws of New Zealand

offeror means an offeror of securities to the public

Registrar means the Registrar of Companies established under the Companies Act 1993 or any other person established by law to replace the Registrar

regulated offer means an offer of securities by an Australian offeror in respect of which a disclosure document or a product disclosure statement or a similar offer document is required under Australian securities legislation

Regulations means the Securities Regulations 1983

securities means any or all of the following securities:

- (a) equity or debt securities;
- (b) interests in collective investment schemes;
- (c) any interest in, or any option to acquire, any of the securities in paragraphs (a) and (b)

securities legislation means—

- (a) in relation to Australia, the Corporations Act 2001 and any regulations made under that Act, or any legislation enacted in substitution for that Act;
 - (b) in relation to New Zealand, the Act and any regulations made under the Act, or any legislation enacted in substitution for the Act.
- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in these regulations has the same meaning as in the Act or the Regulations.

Part 1

Recognition scheme when New Zealand is host country

4 When New Zealand is host country

New Zealand is the host country when an offer of securities to which these regulations apply is made in New Zealand by an Australian offeror.

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**5 Effect of recognition scheme in relation to offer by
Australian offeror of securities in New Zealand**

- (1) Securities to which these regulations apply that are offered in New Zealand by an Australian offeror are exempted from—
 - (a) Part 2 of the Act, except sections 35 (restrictions on door-to-door sales), 38B (prohibition of advertisements), and 58 (criminal liability for misstatement in advertisement or registered prospectus); and
 - (b) the Regulations.
- (2) Securities that are exempted under subclause (1) do not cease to be exempted if any of the requirements of regulation 11 are not complied with.
- (3) Nothing in Part 2 of the Act (except sections 38B and 58) or the Regulations applies to an advertisement made by or on behalf of an Australian issuer that—
 - (a) states that—
 - (i) the issuer is considering making an offer of securities to the public; and
 - (ii) no money is currently being sought and that no applications for securities will be accepted or money received unless the subscriber has received a disclosure document or a product disclosure statement or a similar offer document; and
 - (iii) it is intended that the offer will be made under these regulations, subject to meeting the requirements of these regulations; and
 - (b) if the issuer wishes, states that the issuer is seeking preliminary indications of interest and, in this case, also states—
 - (i) how indications of interest may be made; and
 - (ii) that no indication of interest will involve an obligation or commitment of any kind; and
 - (c) contains no other information, except any or all of the following:
 - (i) the name of the issuer;
 - (ii) a description of the securities intended to be offered, including a brief description of any rights or privileges to be attached;

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- (iii) the rate or rates of interest (if any) that may be earned by holding the securities intended to be offered:
 - (iv) the total number of securities intended to be offered:
 - (v) a statement of the intended use of the subscriptions:
 - (vi) the terms of the intended offer:
 - (vii) a description of the class of persons to whom it is intended the offer will be made:
 - (viii) the date at which the issuer expects that the offer will be made; and
- (d) is dated and is not distributed to any person later than 6 months after its date.

6 Regulations apply to securities offered in New Zealand by Australian offeror if regulations 7 to 10 satisfied

- (1) These regulations apply to securities offered in New Zealand by an Australian offeror if the requirements of regulations 7 to 10 are satisfied.
- (2) These regulations do not apply to securities offered in New Zealand by an Australian offeror if—
 - (a) the offeror, or an associated person of the offeror, has, in relation to a previous offer of securities in New Zealand, breached any of the requirements of regulation 11; and
 - (b) the Commission has given notice to the offeror that the offeror must not make further offers under these regulations.
- (3) If satisfied that a failure to meet a requirement contained in regulations 9 or 10 is technical and minor only, the Commission may declare in writing that it is a non-material breach.
- (4) The effect of a declaration of a non-material breach is that the requirement in question is deemed to have been complied with.

7 Offer must be regulated offer in Australia

The offer must be a regulated offer.

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8 Offeror must be entitled to offer securities to public under laws of Australia

- (1) The offeror must be entitled under Australian securities legislation to offer the securities to the public.
- (2) In particular, without limiting subclause (1), any offer documents required to be filed with the Australian regulator must have been filed, and any waiting period must have expired.

9 Offeror must give notice to Registrar

- (1) The offeror must, before making the offer, give a notice to the Registrar that complies with subclause (3).
- (2) The notice, when received by the Registrar, also serves as the opt-in notice referred to in section 73(1)(c) of the Act.
- (3) The notice must—
 - (a) state that the offeror intends to make an offer in accordance with these regulations; and
 - (b) specify the name of the offeror and the securities to be offered; and
 - (c) specify the proposed offer period; and
 - (d) state the full name and address in New Zealand of 1 or more persons resident or incorporated in New Zealand who are authorised to accept service in New Zealand at that address of documents on behalf of the offeror; and
 - (e) state that the offeror submits to the jurisdiction of the courts of New Zealand; and
 - (f) be signed by a person with authority to act on the offeror's behalf; and
 - (g) be accompanied by the documents specified in regulation 10.
- (4) In subclauses (3)(c) and (5), **proposed offer period** means the period in which it is proposed to offer the securities in Australia and New Zealand.
- (5) The proposed offer period must include any period during which the securities are to be offered in New Zealand.

10 Documents that must accompany notice to Registrar

The following documents must accompany the notice to the Registrar under regulation 9:

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- (a) the offer documents filed with the Australian regulator or, if the offer can be made without filing with the Australian regulator, the offer documents; and
- (b) a copy of any exemption relevant to the offer granted by the Australian regulator that is specific to the offer or the offeror; and
- (c) particulars of any general exemptions relevant to the offer granted by the Australian regulator; and
- (d) the relevant constitutional document in respect of the offeror or the securities offered; and
- (e) a copy of the warning statement referred to in regulation 11(1)(d).

11 Ongoing requirements

- (1) The offer must comply with the following ongoing requirements:
 - (a) the offer must remain a regulated offer in Australia at all times during which it is open for acceptance by persons in New Zealand; and
 - (b) the offer must comply with the securities legislation of Australia; and
 - (c) the offer must be open to acceptance by persons in Australia at all times during which it is open for acceptance by persons in New Zealand; and
 - (d) if any offer document referred to in regulation 10(a) is provided to any person, the offer document must be accompanied by the following warning statement:

“This offer is made in both Australia and New Zealand and is regulated under the securities legislation of Australia. The securities legislation of New Zealand does not generally apply to the offer made in New Zealand. However, sections 35 (restrictions on door to door sales), 38B (prohibition of advertisements), and 58 (criminal liability for misstatement in advertisement or registered prospectus) of the Securities Act 1978 do apply to the offer made in New Zealand.

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Under the agreement between Australia and New Zealand in relation to mutual recognition of securities offerings, both the New Zealand Securities Commission and the Australian Securities and Investments Commission (ASIC) have enforcement responsibilities relating to this offer. In the first instance, you should make any complaint to the New Zealand Securities Commission who will pass on your complaint to ASIC if necessary.

New Zealand investors should satisfy themselves as to the tax implications of investing in these securities and should be aware that investing in Australian securities may involve a currency exchange risk.”

- (2) The offeror must comply with the following ongoing requirements:
- (a) the offeror must provide an offeree, on request, with copies of the relevant constitutional documents in respect of the offeror or the offer; and
 - (b) the offeror must ensure that a person who is prohibited by, or under a power exercised under, New Zealand legislation from being concerned in the management of a company in New Zealand is not concerned in the management of the offeror.
- (3) If an event listed in the following table occurs in relation to the offer or the offeror, the offeror must file with the Registrar the document, statement, or notice specified in the table for that event within the time specified for that event:

Item	Event	Document, statement, or notice	Time for filing
a	Change made to an offer document or any other document required by the law of Australia in relation to the offer	Copy of the document as changed	As soon as practicable after the change is made and no later than 5 working days after the day on which the offeror notified (or should have) notified the Australian regulator of the change
b	Change in offeror's address for service	Notice containing the prescribed information	At least 5 working days before the change takes effect

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Item	Event	Document, statement, or notice	Time for filing
c	Supplementary or replacement offer document is required by the law of Australia	Copy of the supplementary or replacement offer document	As soon as practicable after the supplementary or replacement offer document is filed with the Australian regulator and no later than 5 working days after the day on which the document is (or should have been) filed with the Australian regulator
d	Change made to a relevant constitutional document in respect of the offeror or the securities offered	Copy of the constitutional document as changed	As soon as practicable after the change is made and no later than 5 working days after the day on which the offeror notified (or should have notified) the Australian regulator of the change
e	Australian regulator grants, amends, or revokes a general exemption relevant to the offer	Copy of the exemption or amended exemption, or notice containing the prescribed information	As soon as practicable and no later than 5 working days after the grant, amendment, or revocation of the exemption
f	Australian regulator grants, amends, or revokes an exemption relevant to the offer that is specific to the offer or the offeror	Copy of the exemption or amended exemption, or notice containing the prescribed information	As soon as practicable and no later than 5 working days after the grant, amendment, or revocation of the exemption
g	Australian regulator begins an enforcement action, or exercises a power it has under law, in relation to the offer or the offeror	Notice containing the prescribed information	As soon as practicable and no later than 5 working days after the action is taken or the power is exercised

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Part 2

**Application of New Zealand securities law to
New Zealand securities offered in Australia**

**12 When Part 2 of Act and Regulations apply to securities
offered in Australia by New Zealand offeror**

- (1) Subject to subclause (2), Part 2 of the Act (except section 35) and the Regulations apply to securities offered in Australia by a New Zealand offeror when the offeror makes, or purports to make, the offer under the Australian recognition scheme.
- (2) Part 2 of the Act and the Regulations do not apply to securities offered in Australia by a New Zealand offeror under subclause (1) to the extent that the offer is exempted under section 5(5) of the Act from compliance with Part 2 and the Regulations.

**13 Notice to Registrar of intention to make offer under
Australian recognition scheme**

- (1) A New Zealand offeror who intends to make an offer of securities in Australia under the Australian recognition scheme must give notice to the Registrar in the prescribed form of the intention to make the offer.
- (2) The offeror must give the notice not later than the time that it notifies the Australian regulator of the intention to make the offer.

Part 3

Miscellaneous

14 Prescribed information

The following information in the Schedule is prescribed:

- (a) information relating to a change in the offeror's address for service (regulation 11(3)(b));
- (b) information relating to the revocation of an exemption (regulation 11(3)(e) and (f));
- (c) information relating to an enforcement step (regulation 11(3)(g));
- (d) information relating to an intention to make an offer under the Australian recognition scheme (regulation 13).

Part 3 r 14

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Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on **to come**, prescribe **to come**.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*:

These regulations are administered by the Ministry of Economic Development.
