



CHANGES TO THE SECURITIES REGULATIONS

Discussion Document

April 2009

ISBN 978-0-478-33624-5

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First Published April 2009
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Wellington
New Zealand
<http://www.med.govt.nz>

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It would be useful if submissions sent in hard copy or faxed were also provided in electronic form (PDF, Microsoft Word 2000, or compatible format).

Questions in the discussion document are intended to provide a focus for the issues. Broader comment on the issues will also be welcomed.

The closing date for submissions is 8 May 2009.

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TABLE OF CONTENTS

QUESTIONS FOR SUBMITTERS	7
INTRODUCTION: CHANGES TO THE SECURITIES REGULATIONS	9
Background	9
The purpose of this discussion document	9
CHANGES TO THE SECURITIES REGULATIONS	11
Use of the financial statements prepared under the Financial Reporting Act in prospectuses	11
Expanding the definition of borrowing group	12
Application of relevant financial reporting standards to summary financial statements	12
Prospective financial information in prospectuses	13
Disclosure of terms of participation deed	14
Disclosure of interests	14
Use of information from interim and unaudited financial statements	15
Determining the consideration to be paid for securities	16
Inclusion in prospectuses of material comments on prospective financial information	17
Aligning the requirements for interim financial statements with the applicable financial reporting standard	18
Making it an offence for a person to distribute an advertisement via the internet if the advertisement is not accompanied by a certificate	18
Rewrite and technical changes to modernise the regulations	19
Conditions on use of simplified disclosure prospectuses	20
APPENDIX – TECHNICAL CHANGES TO THE SECURITIES REGULATIONS	22
BODY OF REGULATIONS	22
Regulation 2(1)	22
Regulation 2(2)	24
Regulation 2(3)	24

Regulation 5(2)	24
Regulation 7A(4)	24
New Regulation 7B	24
Regulation 9	25
Regulation 11	25
Regulation 12	25
Regulation 13	25
Regulation 14	26
Regulation 17	26
Regulation 20	27
Proposed New Regulation 20A	27
Regulation 21	27
Regulation 22	27
Regulation 23	27
Regulation 27	28
Regulation 28	28
COMMON CHANGES TO SCHEDULES	28
Clause 3 of the First and Second Schedules	28
Clause 5 of the First and Second Schedules and Clause 2 of the Third Schedule	28
Clause 5A of the First and Second Schedules	29
Clause 7(2) of the First Schedule, Clause 6(2) of the Second Schedule, and Clause 4(3) of the Third Schedule	29
Clause 39 of the First Schedule and Clause 33 of the Second Schedule	29
Clause 6(7) of Schedule 3A and Clause 5(7) of Schedules 3B and 3C	29
FIRST SCHEDULE CHANGES	29
Clause 14(1)(a)	29
Clause 14(1)(b)	30
Clause 14 (2)	30

Clause 15(5)	30
THIRD SCHEDULE CHANGES	30
Clause 6(6)(ab)	30
Clause 13(2)	30
SCHEDULE 3D CHANGES	31
Clauses 3(1) and 3(2)	31
Clause 5(1)(b)	31
Clause 20	31
FOURTH SCHEDULE CHANGES	31
EIGHTH SCHEDULE CHANGES	31

QUESTIONS FOR SUBMITTERS

- Q1 Do you agree that the financial statements in the prospectuses for equity, debt, and participatory securities should be prepared in accordance with GAAP? If these financial statements are prepared in accordance with GAAP, are there any additional matters that are not included in GAAP that you think should also be included in these financial statements?
- Q2 Do you agree that the definition of borrowing group should include guaranteeing parent and sister companies as well as guaranteeing subsidiaries?
- Q3 Do you agree that the summary financial statements in prospectuses should be prepared in accordance with the applicable financial reporting standard?
- Q4 Do you agree that issuers should be required to include a full set of prospective financial statements in their prospectus in circumstances where they are currently required to only include a prospective statement of cash flows?
- Q5 If issuers are required to include a full set of prospective financial statements in their prospectuses in the circumstances described in question 4, do you agree that these prospective financial statements should be prepared in accordance with the applicable financial reporting standard?
- Q6 Do you agree that the issuers of participatory securities should be required to include the principle terms of their deed of participation in prospectuses, rather than having the option of simply attaching the deed itself?
- Q7 Do you agree that the requirements for the disclosure of directors/managers' and promoters' interests for issuers of equity and participatory securities should be broadened to aligned with the equivalent requirements for unit trusts, life insurance policies, and superannuation schemes?
- Q8 Do you agree that information from interim financial statements about the net assets or the amount of assets and liabilities of an issuer should be able to be cited in an advertisement?
- Q9 Do you agree that information from unaudited full or interim financial statements about the net assets or the amount of assets and liabilities of an issuer should be able to be cited in an advertisement, so long as the advertisement makes it clear that the full or interim financial statements have not been audited?
- Q10 Do you agree that the consideration to be paid for a security should be able to be determined by reference to a formula, so long as the formula is set out in full and clearly explained?
- Q11 Do you agree that an advertisement should be able to contain prospective financial information in the form of commentary or analysis of prospective financial information contained in the registered prospectus, so long as it sets out the principal assumptions and method of calculation of that information? If so, do you also consider that this amendment should apply to all prospective financial information, and not just prospective financial information in the form of commentary or analysis on prospective financial information in the registered prospectus?
- Q12 Do you agree that interim financial statements in prospectuses should be prepared in accordance with the applicable financial reporting standard?

- Q13 Do you agree that the current regulation 17(6) should be expanded to make it an offence for a person to post an advertisement on a website without a signed certificate?
- Q14 Do you have any comment on the intention to undertake a limited rewrite of the regulations?
- Q15 Do you have any comments on the technical changes to the securities regulations set out in appendix 1?
- Q16 Do you think that the application of the Simplified Disclosure Prospectus should be restricted to certain non-complex products? If so, to which non-complex products do you think the Simplified Disclosure Prospectus should be restricted?

INTRODUCTION: CHANGES TO THE SECURITIES REGULATIONS

Background

1. The Securities Regulations 1983 set out the required content of prospectuses for equity, debt, and participatory securities, unit trusts, life insurance policies, and superannuation schemes. They also set out the required contents of investment statements and provide rules on the material that may be included in advertisements.
2. In 1999, the Securities Commission commenced a review of the Securities Regulations 1983. The review recommended a number of amendments designed to modernise the regulations and reduce compliance costs. Many of these proposed amendments were consulted on in 2000. However, several of the amendments to the regulations required the incorporation by reference of financial reporting standards in the regulations, and the implementation of the review was delayed by the need to amend the Securities Act 1978 to allow for this.¹
3. In November 2008, the Capital Market Development Taskforce (CMDT)² released a report in response to the current financial crisis. The report made a number of recommendations on how securities law could be improved to increase the availability of capital for New Zealand firms and to reduce the costs of raising capital.
4. In particular, the CMDT made several recommendations relating to making disclosure in prospectuses more meaningful, and also recommended the urgent implementation of the amendments arising from the Securities Commission's review of the securities regulations.

The purpose of this discussion document

5. This discussion document proposes a number of changes to the securities regulations derived from the Securities Commission's review of the Securities Regulations 1983 and specific recommendations of the CMDT.
6. These changes are designed to:
 - improve disclosure by issuers;
 - remove unnecessary compliance costs;
 - provide greater flexibility in the contents of prospectuses; and
 - modernise outdated aspects of the regulations.

¹ The necessary amendment to the Securities Act 1978 was made in late 2006.

² The Capital Market Development Taskforce is an industry-led group established in July 2008 to produce a plan to develop New Zealand's capital market. The task-force comprises both private and public sector participants including officials from Treasury, Reserve Bank, Inland Revenue Department and Ministry of Economic Development.

7. Where the amendment is in response to a specific recommendation of the CMDT this is noted below.
8. In addition, the discussion document seeks submitters views on an entirely separate matter relating to regulations required under the Securities Disclosure and Financial Advisers Amendment Bill. Specifically, whether the use of the simplified disclosure prospectus under the Bill should be restricted to the issue of non-complex products.

CHANGES TO THE SECURITIES REGULATIONS

Use in prospectuses of financial statements prepared under the Financial Reporting Act

Issue

9. The securities regulations currently specify the contents of financial statements that must be included in registered prospectuses for equity, debt, and participatory securities. The required contents of financial statements under the securities regulations are different from those that apply in relation to financial statements prepared by issuers under the Financial Reporting Act 1993, which must be prepared in accordance with generally accepted accounting practice (GAAP³).

Objectives

10. The objectives of this change are to reduce compliance costs and improve disclosure.

Proposed change

11. We propose to change the securities regulations to require that the financial statements used in the prospectuses for equity, debt or participatory securities are prepared in accordance with GAAP, in the same way as financial statements prepared under the Financial Reporting Act. This will reduce compliance costs by removing the requirement for issuers to prepare two different sets of financial statements for two different purposes. It also has the benefit of ensuring that the contents of financial statements in prospectuses are consistent with best practice as set out in financial reporting standards. This change will also require some consequential changes to the required contents of audit reports in prospectuses.
12. In addition, if the financial statements in prospectuses for equity, debt and participatory securities are to be prepared in accordance with GAAP, we are seeking submitters' views on whether there are any matters that are not included in GAAP that should also be included in these financial statements.

<p>Q1 Do you agree that the financial statements in the prospectuses of equity, debt, and participatory securities should be prepared in accordance with GAAP? If these financial statements are prepared in accordance with GAAP, are there any additional matters that are not included in GAAP that you think should also be included in these financial statements?</p>

³ GAAP is the applicable financial reporting standards, and in the absence of such standards, accounting policies that are suitable for the circumstances of the entity and have authoritative support from within the accounting profession.

Expanding the definition of borrowing group

Issue

13. When making an offer of debt securities, an issuer's obligation to repay the amount owing under the terms of the security is usually guaranteed by related entities, such as subsidiaries of the issuer. The securities regulations require disclosure about the debt issuer and the borrowing group (i.e. the issuer and any guaranteeing subsidiaries). Disclosure required in relation to the borrowing group includes the financial statements of the borrowing group, and a brief description of the activities of the borrowing group and the principle fixed assets of the borrowing group that are provided as security for the securities being offered. However, the guaranteeing entities of a debt issuer may include parent or sister companies which are not currently included in the definition of borrowing group.

Objective

14. The objective of this change is to improve disclosure.

Proposed change

15. We propose to change the securities regulations to include guaranteeing parent and sister companies within the definition of borrowing group. This would ensure that disclosure relating to the borrowing group actually provides information about all of the entities that are guaranteeing fulfilment of the issuer's obligations under the terms of the debt securities.

<p>Q2 Do you agree that the definition of borrowing group should include guaranteeing parent and sister companies as well as guaranteeing subsidiaries?</p>

Application of relevant financial reporting standards to summary financial statements

Issue

16. The securities regulations currently prescribe the contents of summary financial statements in the registered prospectuses of equity, debt and participatory securities, unit trusts, life insurance policies, and superannuation schemes. However, when any of these entities choose to prepare summary financial statements for any other purpose they are required to comply with the applicable financial reporting standard (FRS-43) under section 36A of the Financial Reporting Act 1993.

Objective

17. The objective of this change is to improve disclosure and reduce compliance costs.

Proposed change

18. We propose to change the securities regulations to prescribe that the summary financial statements in the registered prospectus of these entities must comply with the applicable financial reporting standard. This reduces the costs to those entities of preparing summary financial statements for other purposes, as it means that these entities are not required to prepare two different sets of summary financial statements. It also has the effect of ensuring that the contents of summary financial statements in these prospectuses are consistent with best practice as set out in the applicable financial reporting standard.

Q3 Do you agree that the summary financial statements in prospectuses should be prepared in accordance with the applicable financial reporting standard?

Prospective financial information in prospectuses

Issue

19. The securities regulations currently prescribe that a registered prospectus must, in certain circumstances, contain a prospective statement of cash flows rather than a full set of prospective financial statements. In particular, this is required where the prospectus is for an initial offer of equity securities, or for an offer of participatory securities.
20. It is unlikely that by itself a prospective statement of cash flows provides much useful prospective financial information to investors compared to a full set of prospective financial statements. In addition, when an entity chooses to prepare prospective financial information for any other purpose they are required to comply with the applicable financial reporting standard (FRS-42) under section 36A of the Financial Reporting Act 1993, which is not the case for prospective statements of cash flows in prospectuses.

Objective

21. The objective of this change is to improve disclosure.

Proposed change

22. We propose to change the securities regulations to prescribe that a full set of prospective financial statements be included in prospectuses in circumstances where a prospective statement of cash flows is currently required, and that these prospective financial statements be prepared in accordance with the applicable financial reporting standard.
23. Two key benefits would result from these changes. Firstly, these changes would provide more useful disclosure to investors by providing them with prospective financial information that would allow them to make a more informed judgement about the future financial performance of the entity. Secondly, these changes would ensure that the required content of prospective financial statements maintains best practice as set out in the applicable financial reporting standards.

- Q4 Do you agree that issuers should be required to include a full set of prospective financial statements in their prospectus in circumstances where they are currently required to only include a prospective statement of cash flows?
- Q5 If issuers are required to include a full set of prospective financial statements in their prospectuses in the circumstances described in question 4, do you agree that these prospective financial statements should be prepared in accordance with the applicable financial reporting standard?

Disclosure of terms of participation deed

Issue

24. The securities regulations currently require that either the deed of participation or the principal terms of the deed be included in prospectuses for participatory securities. These deeds are usually long and complex, making the information contained in the deed inaccessible to potential investors.

Objective

25. The objective of this change is to improve disclosure.

Proposed change

26. We propose to change the securities regulations to require that the principal terms of the deed of participation for participatory securities be included in prospectuses and the deed itself not need to be attached. This will be more accessible and useful than simply attaching the deed itself.

- Q6 Do you agree that issuers of participatory securities should be required to include the principal terms of their deed of participation in prospectuses, rather than having the option of simply attaching the deed itself?

Disclosure of interests

Issue

27. The securities regulations currently require different disclosure of directors/managers' and promoters' interests in the prospectus of an issuer of equity or participatory securities than for unit trusts, life insurance policies, and superannuation schemes. There is no obvious benefit arising from the inconsistent treatment of disclosure of directors/managers' and promoters' interests for different kinds of issuers.

Objective

28. The objective of this change is to improve disclosure.

Proposed change

29. We propose to change the securities regulations to align the requirements for disclosure of directors' and promoters' interests in schedules 1 and 3 (equity and participatory securities) with the broader requirements relating to disclosure of interests in schedules 3A, 3B, and 3C (unit trusts, life insurance policies, and superannuation schemes). In addition to making the requirements more consistent across different kinds of issuers, this will also result in slightly broader disclosure requirements applying to the directors/managers and promoters of issuers of equity and participatory securities.
30. In summary, this change would repeal the rules in existing clauses 15 and 16 of schedule 1, and clauses 13 and 14 of schedule 3, and instead require identical disclosure by directors/managers and promoters of issuers of equity and participatory securities to that applying to the directors/managers and promoters of other entities under clause 11 of schedule 3A, clause 8 of schedule 3B, and clause 8 of schedule 3C.

<p>Q7 Do you agree that the requirements for the disclosure of directors/managers' and promoters' interests for issuers of equity and participatory securities should be broadened to aligned with the equivalent requirements for unit trusts, life insurance policies, and superannuation schemes?</p>
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Use of information from interim and unaudited financial statements (specific CMDT recommendation)

Issue

31. The securities regulations currently provide that no advertisement may state the amount of the net assets, or the amount of the assets and liabilities, of the issuing group, borrowing group, guarantor, or mortgagor under a contributory mortgage, unless the amounts shown appear in the most recent audited financial statements of that entity. However, the audited full financial statements might not be the most recent financial statements available about an entity, so this requirement may create an impediment to providing the most up-to-date financial information to investors.

Objective

32. The objective of this change is to improve disclosure and reduce compliance costs.

Proposed change

33. We propose to change the securities regulations to allow information about the net assets and assets and liabilities of these entities in interim financial statements to be cited in an advertisement, if the interim financial statements are more recent than the last full financial statements. The result would be that more recent information could be provided to investors than would otherwise be the case.

34. In addition, we propose to change the securities regulations to allow an advertisement to cite information about the net assets and assets and liabilities of these entities from unaudited full or interim financial statements, provided that the advertisement makes it clear that the full or interim financial statements have not been audited. The result would be that more recent information could be provided to investors than would otherwise be the case.

Q8 Do you agree that information from interim financial statements about the net assets or the amount of assets and liabilities of an issuer should be able to be cited in an advertisement?

Q9 Do you agree that information from unaudited full or interim financial statements about the net assets or the amount of assets and liabilities of an issuer should be able to be cited in an advertisement, so long as the advertisement makes it clear that the full or interim financial statements have not been audited?

Determining the consideration to be paid for securities (specific CMDT recommendation)

Issue

35. The securities regulations currently require that a registered prospectus to contain a description of the price or other consideration to be offered for equity, debt, or participatory securities, or unit trusts. Other than for unit trusts, the regulations do not currently provide for the price or other consideration offered for securities to be determined by reference to a formula (e.g. as a percentage of the value an existing security at a point in time).

Objective

36. The objective of this change is to increase flexibility.

Proposed change

37. We propose to change the securities regulations to allow the price or other consideration being paid for equity, debt, or participatory securities, or unit trusts to be determined by a formula, so long as the formula used is set out in full and clearly explained. This will increase flexibility in designing offers of securities.

Q10 Do you agree that the consideration to be paid for a security should be able to be determined by reference to a formula, so long as the formula is set out in full and clearly explained?

Inclusion in prospectuses of material comments on prospective financial information (specific CMDT recommendation)

Issue

38. The securities regulations currently prohibit an advertisement from containing prospective financial information that is not also in the prospectus for the securities. This creates a problem where an issuer may wish to include with the prospectus an expert's report that comments on the prospective financial information contained in the prospectus (the expert may for example, do some sensitivity analysis that may be useful for investors). At present the issuer cannot do this because the experts report may itself be an advertisement under the securities regulations, and by commenting on the prospective financial information in the prospectus it will inevitably be containing prospective financial information that is different from that in the prospectus.

Objective

39. The objective of this change is to increase flexibility.

Proposed change

40. We propose that prospective financial information may be included in an advertisement (even though it is not included in the prospectus), as long as it only takes the form of commentary or analysis on prospective financial information in the prospectus. In these circumstances, the advertisement itself would also be required to contain a statement of the principle assumptions and method of calculation of this prospective financial information.⁴
41. We also seek submitters' views on whether the amendment described in paragraph 40 should be extended to cover all prospective financial information and not just prospective financial information that takes the form of commentary or analysis of prospective financial information in the prospectus.

Q11 Do you agree that an advertisement should be able to contain prospective financial information in the form of commentary or analysis of prospective financial information contained in the registered prospectus, so long as it sets out the principal assumptions and method of calculation of that information. If so, do you also consider that this amendment should apply to all prospective financial information, and not just prospective financial information in the form of commentary or analysis on prospective financial information in the registered prospectus?

⁴ This is consistent with the requirements of the regulations where there is no prospectus. In these circumstances an advertisement may contain prospective financial information as long as it includes a statement of the principle assumptions and method of calculation of that prospective financial information.

Aligning the requirements for interim financial statements with the applicable financial reporting standard (specific CMDT recommendation)

Issue

42. Where an issuer wishes to include interim financial statements in a prospectus, there are some differences between the required contents of those interim financial statements under the securities regulations, and what is required under the applicable financial reporting standard (NZ IAS 34). This has the effect of requiring issuers to prepare two different sets of interim financial statements for different purposes.

Objective

43. The objective of this change is to reduce compliance costs and improve disclosure.

Proposed change

44. We propose that the required content of interim financial statements used in prospectuses be prepared in accordance with the applicable financial reporting standards. This will reduce compliance costs by removing the requirement for issuers to prepare two different sets of interim financial statements for two different purposes. It also has the benefit of ensuring that the contents of interim financial statements in prospectuses are consistent with best practice as set out in the applicable financial reporting standard.

Q12 Do you agree that interim financial statements in prospectuses should be prepared in accordance with the applicable financial reporting standard?

Making it an offence for a person to distribute an advertisement via the internet if the advertisement is not accompanied by a certificate

Issue

45. The current Securities Regulation 17(6) makes it an offence for publishers, broadcasters, and film exhibitors to distribute an advertisement if a signed certificate has not been completed on behalf of the issuer in relation to that advertisement.⁵ However, regulation 17(6) does not currently cover a person who distributes the advertisement via the Internet. This appears to be a loophole in this offence provision.

Objective

46. The objective of this change is to modernise the regulations.

⁵ Unless the exception in subclause 3 applies.

Proposed amendment

47. We propose that the securities regulations be changed so that it is an offence for a third party to distribute an advertisement via the internet without a certificate (however, this amendment does not propose that an internet service provider will be liable). Further, as part of the technical changes proposed in the discussion document, the Securities Regulations will also be changed so that it is only an offence if person knew or ought reasonably to have known of the absence of a certificate.

Q13 Do you agree that the current regulation 17(6) should be expanded to make it an offence for a third party to post an advertisement on a website without a signed certificate?

Rewrite and technical changes to modernise the regulations

Issue

48. The Securities Regulations 1983 are more than 25 years old and have been substantially amended on a number of occasions. As a result, the Securities Regulations contain a range of outdated terminology, unclear definitions, and superfluous, spent and unnecessarily rigid provisions. In addition, many of these provisions will be amended or replaced as a result of the proposals in this paper.

Objective

49. The objective of this change is to modernise the regulations.

Proposed changes

50. It is intended that the Securities Regulations 1983 will be rewritten using modern drafting language (e.g. “must” rather than “shall”), without the rewrite process changing the substantive effect of the regulations.
51. In connection with the limited rewrite, a number of technical changes are proposed to modernise the regulations, increase their flexibility and technological neutrality, and clarify and simplify some of their definitions and substantive provisions. The proposed technical changes are set out in appendix 1. These changes were originally proposed in the context of amendments to the current regulations rather than a rewrite, and so are expressed as amendments to the Securities Regulations 1983.

Q14 Do you have any comment on the intention to undertake a limited rewrite of the regulations?

Q15 Do you have any comments on the technical changes to the securities regulations set out in appendix 1?

Conditions on use of simplified disclosure prospectuses

Issue

52. In February 2009, the government introduced the Securities Disclosure and Financial Advisers Amendment Bill into Parliament. The Bill provides for the regulation of a “Simplified Disclosure Prospectus” that may be used by issuers who are subject to certain disclosure obligations. Regulations will provide for the use of a Simplified Disclosure Prospectus by a listed issuer who is subject to a continuous disclosure obligation.
53. Cabinet agreed most of the contents of the regulations in February this year.⁶ Regulations will be made to provide for a Simplified Disclosure Prospectus for listed issuers, which will enable stock exchange listed issuers to offer designated debt and equity securities without the need to duplicate information that they have already publicly disclosed under their continuous disclosure obligations under the Securities Markets Act 1988 and listing agreements. Currently, the policy is that offer may be for designated debt (e.g. bonds) and equity (e.g. shares) securities, the security being offered must rank equally or preferentially to the issuer’s existing listed securities although the security being offered does not itself need to be listed. The simplified disclosure prospectus must also contain a signed statement from directors to the effect that the issuer has complied with the requirements of continuous disclosure and that they can confirm all information material to the offer has been disclosed.
54. The securities regulations will set out who may issue securities using a Simplified Disclosure Prospectus, which securities may be issued using a Simplified Disclosure Prospectus, and what must be disclosed in a Simplified Disclosure Prospectus.
55. The simplified disclosure regime will be able to be used for issues of equity securities and debt securities that rank equally or preferentially with any of the issuer’s listed equity securities, and will be able to be used for issues of debt securities that rank equally or preferentially with any of the issuer’s listed debt securities.
56. We welcome views on whether, in the first instance, we should further restrict the application of the simplified disclosure regime to non-complex products, such as shares, preference shares, securities that convert into ordinary shares of the same issuer, and debt securities repayable by the same issuer debt. The main advantage of allowing the SDP regime to apply to complex products is that it will provide issuers with more options when seeking to raise finance in the current economic climate. The main downside to this proposal is the difficulty in determining how complex securities will fall within the ranking tests proposed.

⁶ The relevant Cabinet paper is at http://www.med.govt.nz/templates/MultipageDocumentTOC_____40347.aspx

Q16 Do you think that the application of the Simplified Disclosure Prospectus should be restricted to certain non-complex products? If so, to which non-complex products should the Simplified Disclosure Prospectus be restricted?

APPENDIX – TECHNICAL CHANGES TO THE SECURITIES REGULATIONS

BODY OF REGULATIONS

Regulation 2(1)

1. It is proposed to remove duplicated definitions

It is proposed that the definitions in Regulation 2 that duplicate definitions in section 2 of the Act be revoked. These definitions are: “associated persons”, “Commission”, “company”, “contributory mortgage”, “debt security”, “equity security”, “interest in a superannuation scheme”, “issuer”, “life insurance company”, “life insurance policy”, “manager”, “participatory security”, “promoter”, “superannuation scheme”, “superannuation trustee”, “trust deed”, “unit”, “unit trust”, and “unit trustee”.

Removal of the duplicated definitions will avoid unnecessary repetition and confusion.

2. It is proposed that the definition of the term “holding company” be revoked.

This definition is obsolete as it is no longer used in the Regulations.

3. It is proposed that the definitions of the terms “current assets”, “current liabilities”, “fixed assets”, and “non-current liability” be revoked.

There is no need to define these terms in the Regulations, as they are defined in GAAP.

4. It is proposed that the term “accounting period” be defined by reference to the Financial Reporting Act 1993.

This proposal will ensure that an issuer’s accounting period for the purposes of the Regulations is aligned with the period for which GAAP financial statements are drawn up.

5. It is proposed that the definitions of the terms “broadcasting”, “broadcasting stations”, “diffusion service”, “exhibitor”, “operator” and “publisher” be reviewed as may be necessary to reflect changes in technology and legislation.

These definitions do not fully reflect technology and legislative change. For instance, the definition of “operator” does not reflect the repeal of broadcasting warrants, and the definition of “diffusion service” may not appropriately apply to modern information dissemination systems.

6. It is proposed that the definition of the term “investment” be revoked.

This definition will become obsolete once references to GAAP are adopted in the Regulations.

7. *It is proposed that the definition of the term “intangible assets” be revoked.*

This will mean that the term will be defined in accordance with GAAP. This will ensure consistency between financial information contained in offer documents and the issuer’s annual report, and that offer documents will continue to reflect GAAP as it evolves over time.

8. *It is proposed that the definition of the term “immediate relative” be amended to include de facto and same sex partners.*

This change is for consistency with current legislative policies in other areas.

9. *It is proposed that the definition of “qualified auditor’s report” be revoked.*

The term “qualified auditor’s report” currently has a different meaning in the Regulations than in GAAP. By revoking the definition of the term and expanding on the requirements for audit reports in Clause 8 of Schedule 1, Clauses 4 and 7 of the Schedule 2, Clause 6 of Schedule 3, Clause 16 of Schedule 3A , Clause 12 of Schedule 3B, and Clause 12 of Schedule 3C, this inconsistency is circumvented.

10. *It is proposed that it be clarified that the requirements of GAAP apply to each of the “issuing group” and the “borrowing group” as defined in Regulation 2, as if it were a group as defined in GAAP.*

The concept of “borrowing group” is not used in GAAP. However, it has a specific purpose in the context of the Regulations and it is necessary to retain it, at least until there is a more comprehensive review. This change will help assist issuers to comply with the financial reporting requirements of GAAP and of the Regulations, particularly Schedule 2.

11. *On the assumption that the “financial statements” clauses of Schedule 2 are to be revoked, but the borrowing group concept retained, it is proposed that issuers be allowed to account for their investments in non-guaranteeing subsidiaries in accordance with their accounting policy for investments outside the group. It is proposed that, as a consequence, the prohibition on the use of equity accounting in the financial statements of the borrowing group be removed.*

12. *It is proposed that the equity accounting issues defer to GAAP as we propose to revoke the financial reporting prescription in the Regulations.*

13. *It is proposed that the Regulations defer to GAAP and not require a distinction between unrealised and realised gains and losses.*

14. *It is proposed that Regulations defer to GAAP in the matter of the materiality criterion (for the purposes of financial statements only).*

Proposals 11, 12, 13, and 14 are to ensure that the financial reporting requirements of the Regulations are as consistent as possible with GAAP.

Regulation 2(2)

15. It is proposed that the circumstances in which a body corporate is associated with another body corporate be defined by reference to GAAP for financial reporting purposes.

This will ensure that financial reporting requirements are consistent with GAAP where appropriate.

Regulation 2(3)

16. It is proposed that the circumstances in which a body corporate is related to another body corporate be defined by reference to GAAP for financial reporting purposes.

This will ensure that financial reporting requirements are consistent with GAAP where appropriate.

Regulation 5(2)

17. It is proposed that Regulation 5(2) be amended to require disclosure of any relationship between the valuer and the issuer, or the valuer and either any property which is the subject of a valuation for the purposes of a transaction involving the issuer, or any person associated with the property.

This will more effectively implement the intention of the provision, by requiring disclosure of further information relevant for an investor's evaluation of a valuation report.

Regulation 7A(4)

18. It is proposed that Regulation 7A(4) be amended to permit cross-referencing of addresses (but not the corresponding names of individuals or companies) within the prescribed information, or to a directory of addresses elsewhere in the investment statement.

This will allow for less unnecessary repetition within an investment statement, which should assist both the issuer and the investor.

New Regulation 7B

19. It is proposed that a new Regulation 7B be inserted to provide that nothing in this Part of the Regulations limits the provisions of Parts II and III of the Regulations, which relate to the content of advertisements.

This will make it clear that investment statements are subject to the advertisement provisions in the securities regulations.

Regulation 9

20. It is proposed that Regulation 9 be amended to provide that an advertisement must not be inconsistent with any registered prospectus, investment statement, or disclosure statement relating to the same offer.

This will rectify an anomaly in Regulation 9 (i.e. the failure to refer to the investment statement), and clarify the important requirement that all offer documents relating to the same offer should be consistent with each other.

Regulation 11

21. It is proposed that it be clarified that Regulation 11 applies to third party assurances of withdrawal or redemption prices for unit trusts.

Regulation 11 sets out restrictions on statements about guarantees in advertisements. When Regulation 11 was first made, unit trusts were not subject to the Regulations. This change will clarify that Regulation 11 does apply to third party assurances of withdrawal or redemption prices for unit trusts.

Regulation 12

22. It is proposed that the application of Regulation 12 be clarified by adding the words “or unit trust or life insurance company or superannuation scheme” after the words “issuing group or borrowing group” in each place that those words appear.

Regulation 12 sets out restrictions on statements about assets and advertisements. When Regulation 12 was first made, unit trusts, life insurance companies, and superannuation schemes were not subject to the Regulations. This change will clarify the application of Regulation 12 to those classes of securities.

23. It is also proposed that Regulation 12(1)(c) be amended to refer to interim financial statements that appear in a registered prospectus or a certificate provided under section 37A(1A) in addition to the most recent audited consolidated financial statements.

Regulation 12 currently restricts the ability of issuers to communicate in an investment statement information in half-yearly financial statements which is already published in a registered prospectus or which appears in a section 37A(1A) certificate. This restriction does not appear necessary and this change removes it.

Regulation 13

24. It is proposed that references to the Companies Act 1955 in Regulation 13 be revoked.

These references are obsolete.

Regulation 14

25. It is proposed that Regulation 14(2) be amended to refer to all kinds of securities.

This Regulation prescribes particular statements as to whether debt or participatory securities are secured or unsecured. However, there does not appear to be any reason why the provision is restricted to these types of securities. The proposal will extend its application to all types of securities.

Regulation 17

26. It is proposed that Regulation 17(2) be amended to allow for the certificate required by this Regulation to be signed by two directors or by their respective agents authorised in writing. This change should apply to investment statements as well as advertisements more generally.

Regulation 17(2) sets out who must sign a certificate in respect of an advertisement before it can be distributed. The proposal will provide for some flexibility when directors are unavailable to sign the certificate required by this Regulation, although the directors will still be liable. This conforms with the procedure for signing prospectuses prescribed in Section 41 of the Securities Act.

27. It is proposed that Regulation 17(3)(a)(i) be amended to allow for contact information to be provided without restricting the medium or method of communication, provided that at least one non-electronic method is included.

Regulation 17(3)(a)(i) sets out the content restrictions of an advertisement that does not require a signed certificate from the director/s before it is distributed. This proposal will ensure the Regulation is technologically neutral, but will require a non-electronic contact point to ensure that no investor is disadvantaged.

28. It is proposed that it be clarified that Regulation 17(3) only applies where all of the information specified in Regulation 17(3)(a) is contained in the advertisement in question.

This will clarify the circumstances in which an advertisement will require a signed directors' certificate. Some users of the Regulations have expressed doubt about this in the past.

29. It is proposed that Regulation 17(6) be amended to the effect that a publisher, operator or exhibitor is liable only where they distribute an advertisement knowing or having reasonable grounds to believe that a certificate that complies with Regulation 17(2) has not been completed.

Regulation 17(6) imposes liability on publishers, broadcasters, or exhibitors in relation to an advertisement where there is no signed certificate from the directors that complies with the relevant provisions before the advertisement has been distributed. The proposal makes the obligations of publishers, broadcasters, and exhibitors less onerous in this regard, although they will still be liable if they know or have reasonable grounds to believe that the directors have not completed the required certificate.

Regulation 20

30. *It is proposed that Regulation 20 be amended by adding the words “or imply” after the word “state”.*

Regulation 20 provides that “No registered prospectus or advertisement shall state that investment in the securities to which it relates is safe or free from risk”. Regulation 20 only prohibits statements that an advertisement is “safe” or “free from risk”, and not statements that imply safety or freedom from risk. Adding the words “imply” will more effectively implement the intention of this provision.

Proposed new Regulation 20A

31. *It is proposed that a new Regulation 20A be inserted, which provides that no registered prospectus or advertisement shall state or imply that the advertisement, or prospectus, or the offer, or the securities have been in any way approved or endorsed by the Securities Commission or the Registrar of Companies.*

Occasionally such statements or implications appear in offer documents. They are untrue and highly misleading if not deceptive, and should be expressly prohibited by regulation.

Regulation 21

32. *It is proposed that the scope of Regulation 21 should be extended by deleting the references to “interest” and replacing them with “returns”. It should be clear that “returns”, for the purposes of this Regulation, include earnings but not capital.*

Regulation 21 is to be extended to apply to returns generally, rather than interest only, in order to assist investors to compare the returns advertised by different issuers for different products. Lack of comparability of the bases of calculation of returns, or their disclosure more generally, is often a major difficulty for investors.

Regulation 22

33. *It is proposed that Regulation 22, which refers to descriptions of “mortgage debentures” be revoked.*

This Regulation is obsolete.

Regulation 23

34. *It is proposed that Regulation 23 be amended:*

- i to apply to secondary market trading mechanisms generally, provided that the identity and structure of the market is properly disclosed;*
- ii by replacing the references to the New Zealand Stock Exchange with references to stock exchanges or other securities trading mechanisms generally;*
- iii by revoking the prescriptive requirements of Regulation 23(2) and replacing them with a requirement that any statement referring to the matters set out in Regulation 23(2) is approved by the exchange or other market in question.*

Regulation 23 sets out restrictions on statements about listing of securities on the New Zealand Stock Exchange. This proposal will provide greater flexibility in statements about exchange listings and extend its application to cover secondary markets generally.

Regulation 27

35. It is proposed that Regulation 27 be revoked.

This Regulation refers to Section 67(3) of the Act, which is now repealed. The Regulation is therefore obsolete.

Regulation 28

36. It is proposed that Regulations 28(1) and 28(2) be revoked.

These clauses of the Regulation contain transitional provisions that are obsolete.

COMMON CHANGES TO SCHEDULES

Clause 3 of the First and Second Schedules

37. It is proposed that clause 3(1) of the First and Second Schedules be amended to require disclosure of the statute or other authority by, or under, which the issuer is registered at the time of the offer.

This clause requires disclosure of details of incorporation and registration of the issuer, but not the statute or authority under which it is registered. This information is considered at least as important as the other information required in terms of providing relevant information to an investor.

38. It is proposed that clauses 3(2) and 3(3) of the First and Second Schedules be revoked.

These are transitional provisions and are obsolete.

Clause 5 of the First and Second Schedules and Clause 2 of the Third Schedule

39. It is proposed that clause 5 of the First and Second Schedules and clause 2 of the Third Schedule be amended for consistency with clause 4 of Schedule 3B and clause 3 of Schedule 3C, in particular, that they include information about criminal convictions, prohibition as a director, and any history of being placed in statutory management or receivership.

These clauses require disclosure of information about the directors, manager, and advisors of the issuer. The proposed changes will ensure consistency between the Schedules and require the disclosure of further relevant information to investors.

Clause 5A of the First and Second Schedules

40. *It is proposed that clause 5A of the First and Second Schedules be amended to require disclosure only of limitations imposed by the company's constitution (or in the case of an issuer not incorporated under the Companies Act 1993, any limitations imposed under either the incorporating legislation or the constitution of that body).*

These clauses currently require disclosure of provisions contained in the Companies Act. These provisions will be common to most or all issuers incorporated in New Zealand and it is considered unnecessary that they be disclosed in full in the prospectus.

Clause 7(2) of the First Schedule, Clause 6(2) of the Second Schedule, and Clause 4(3) of the Third Schedule

41. *It is proposed that the term "principal fixed assets" be replaced by the term "principal assets" in the clauses; and disclosure will also be required of whether the assets are subject to obligations in favour of other persons that affect the issuer's control over its assets.*

The current term is considered restrictive and does not necessarily catch other assets that may be material. The new term and the additional disclosure will improve the relevance to investors of the information required by this provision.

Clause 39 of the First Schedule and Clause 33 of the Second Schedule

42. *It is proposed that references to memoranda and articles of association in Clause 39 of the First Schedule and clause 33 of the Second Schedule be revoked.*

These references relate to Companies Act 1955 requirements and are therefore obsolete.

Clause 6(7) of Schedule 3A, clause 5(7) of Schedules 3B and 3C

43. *It is proposed that the references to "subclause 1(b)" in Clause 6(7) of Schedule 3A, and in clause 5(7) of Schedules 3B and 3C be replaced with references to subclause 1.*

This will correct a drafting error.

FIRST SCHEDULE CHANGES

Clause 14(1)(a)

44. *It is proposed that clause 14(1)(a) of the First Schedule be deleted.*

This clause relates to a Companies Act 1955 requirement and is obsolete.

Clause 14(1)(b)

45. *It is proposed that clause 14(1)(b) be amended to also require information about the removal of directors and the process by which directors retire that is materially different from that specified in the Companies Act 1993.*

This clause currently requires equivalent disclosure about appointment of directors. The proposed change will ensure that all relevant details about the term of appointment of a director are disclosed.

46. *It is also proposed that this clause be amended to provide that the manner of a director's appointment, removal, or retirement need not be specified to the extent that the offer document states that it complies with the listing rules of a named stock exchange registered in New Zealand where the issuer is a company listed on that stock exchange.*

This proposal removes the requirement to specify information about stock exchange listing rule requirements that will be common to most New Zealand listed companies and are publicly available.

Clause 14(2)

47. *It is proposed that clause 14(2) of the First Schedule be revoked.*

This clause relates to retirement ages of directors. It is to be revoked for consistency with the Human Rights Act 1993.

Clause 15(5)

48. *It is proposed that clause 15(5) of the First Schedule be revoked.*

This clause relates to the Companies Act 1955 and is obsolete.

THIRD SCHEDULE CHANGES

Clause 6(6)(ab)

49. *It is proposed that the reference to "group" in clause 6(6)(ab) of the Third Schedule be replaced with a reference to "scheme".*

The rest of this Clause refers to "scheme" rather than group. A reference to "group" in Clause 6(6)(ab) is more accurate and will ensure there is consistency with the rest of the clause.

Clause 13(2)

50. *It is proposed that clause 13(2) of the Third Schedule be replaced with a provision equivalent to clause 11(2) of Schedule 3A.*

Clause 13(2) specifies disclosure of material transactions by a manager. Clause 11(2) serves a similar purpose in Schedule 3A, but is less prescriptive and allows greater flexibility.

SCHEDULE 3D CHANGES

Clauses 3(1) and 3(2)

51. *It is proposed that clauses 3(1)(a) and 3(2)(a) be amended to require disclosure of the names and addresses of any directors of the issuer.*

Under current definitions of “promoter” and “issuer”, the names of directors of promoters need to be disclosed, but not the names of directors of the issuer. The names of directors of an issuer are seen as at least as important as the names of directors of promoters.

Clause 5(1)(b)

52. *It is proposed that clause 5(1)(b) of Schedule 3D be amended so that it is technologically neutral.*

This clause currently refers to the person to whom, and place at which, payments for securities may be made. It is currently unclear how this clause applies when payments are made by electronic transfer.

Clause 20

53. *It is proposed that it be clarified that clause 20 of Schedule 3D relates to information about the issuer or the securities that is relevant to the investment offered.*

Clause 20 requires a statement of the information that is required to be, or will be, available on request from the issuer. As currently worded, this clause does not limit the type of information available on request from an issuer. In particular, it could cover a very wide range information that is not relevant to the offer of securities.

FOURTH SCHEDULE CHANGES

54. *It is proposed that clause (c)(ii) of the Fourth Schedule be amended to include a reference to the investment statement.*

The Fourth Schedule sets out the requirements for a director’s statement about an advertisement pursuant to Regulation 17(2). The requirements include a statement that the advertisement does not contain any matter inconsistent with a prospectus or disclosure statement, but does not make reference to an investment statement.

EIGHTH SCHEDULE CHANGES

55. *It is proposed that Schedule 8 be deleted.*

The Eighth Schedule sets out information required by a section of the Securities Act that has now been repealed. It is, therefore, obsolete.