



5 March 2007

Mr Liam Mason  
General Counsel  
Securities Commission  
P O Box 1179  
Wellington

Dear Mr Mason

**Exemption Policy:        -Overseas Incorporated Companies  
                                  -Conduit Issuers**

Thank you for the opportunity for the Investment Savings and Insurance Association ("ISI") to provide comments in relation to exemption policies the Securities Commission is considering as a result of amendments contained in the Financial Reporting Amendment Act 2006 ("FRA").

**Overseas Incorporated Companies**

You have asked for examples where it would be appropriate for the Commission to allow an exemption from provisions of the FRA concerning the preparation, content, audit and registration of financial statements.

We recommend that an exemption should be available for Australian issuers operating under the Trans Tasman Mutual Recognition of Securities Offering Regime (when available), where financial statements are lodged at ASIC and are available on line and by request. In that situation, there would be no added value in having lodgements at the NZ Companies Office.

Similarly, for those acting under OEIC or ARMIS exemption notices, an exemption should be available as long as their financial statements are readily available electronically and in hard copy on request.

Our members advise that there is a clear need for an exemption for UK/Irish/European issuers as they typically do not prepare parent company non-consolidated financial statements. This consequently creates difficulties for those issuers wishing to use their financial statements in New Zealand.

There is also a significant administration cost involved in the requirement to produce New Zealand consolidated financial statements, for instance, for the New Zealand branch business of an overseas issuer, although parent company consolidated financial statements are available. We note the requirement to have regard to “the financial reporting requirements that must be complied with in relation to the issuer under the law in force in the country where the issuer is incorporated or constituted”. It would be reasonable to conclude that subscribers for the securities in New Zealand would not be detrimentally affected by the issuer being exempted from some of the provisions of the FRA where the financial reports of the overseas parent are available and the reporting and disclosure standards of the home country are at least as robust as those in New Zealand.

A relevant factor for assessing FRA filing exemptions could be that the financial statements are available on other international regulatory websites (eg ASIC's website), provided that fact is disclosed in the issuer's offering documents.

### **Conduit Issuers**

In relation to the conduit exemption, the general policy behind the legislation is understandable but Section 4A is drafted very broadly and has no clear stopping point (as well as not being limited to situations where there is an obligation on the recipient to repay the funds received, so it could capture the seller of a major asset into the issuer). It could potentially catch ‘up stream’ parties for which the mischief that the amendment is aimed to capture is not really relevant and this could add compliance costs and increase uncertainty, in particular with inter-funding structures.

It is not uncommon for ‘retail funds’ to interfund into ‘institutional funds’ for sensible efficiency reasons. Those ‘institutional funds’ up stream are not usually issuers. It is possible there could be more than one level of inter-funding including in overseas funds, ultimately ending up in, say, direct international equities. Depending on the proportions of investment, it may be that these institutional funds become caught and could move in or out of the regime depending on the proportions held by the retail fund and through the chain.

We recommend that, where the retail fund is a ‘genuine’ issuer which just happens to gain exposure to certain assets via inter-funding rather than holding direct assets, the conduit regime should not apply as the financial statements for the retail fund do reflect the performance and financial position of that retail fund.

Yours sincerely

Vance Arkininstall  
**CHIEF EXECUTIVE**