FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO - NEW ZEALAND

21 August 2012

Mr Murray Sherwin CNZM
Chair
New Zealand Productivity Commission
P O Box 8036
WELLINGTON 6143
NEW ZEALAND

Mr Gary Banks AO
Chairman
Australian Productivity Commission
GPO Box 1428
CANBERRA CITY, ACT 2601
AUSTRALIA

Dear Chairmen

Submission to: Strengthening Economic Relations between Australia and New Zealand

Thank you for the opportunity to address a joint meeting of the Australian and New Zealand Productivity Commissions on 2 August. At our meeting I indicated that I would let you have a short written submission to summarise the points raised.

The Financial Markets Authority (FMA) was established in May 2011 as the principal conduct and disclosure regulator for New Zealand financial markets. FMA took on functions previously performed by the Securities Commission, the Government Actuary, and aspects of the functions of the Registrar of Companies. In addition, FMA has responsibility to monitor compliance with and enforce some 20 pieces of legislation as they relate to financial markets participants.

An important driver for the establishment of FMA was to achieve better and more efficient regulation of financial markets conduct in New Zealand by consolidating functions, removing regulatory duplication of effort, and filling gaps. In FMA's submission, continued focus on these goals could produce further improvements in both domestic and trans-Tasman financial markets regulation.

Further, FMA has committed to tangible and measurable contributions to the pursuit of a Single Economic Market (SEM). Our principal public accountability framework includes a specific output measure around activities to support the development of the SEM and to enhance the strength of the relationship with our Australian counterpart[1].

[1] FMA Statement of Intent 2011-14, Output 2.8

FINANCIAL MARKETS AUTHORITY
WWW.FMA.GOVT.NZ
LEVEL 2
1 GREY STREET
WELLINGTON
PO BOX 1179
WELLINGTON 6140
NEW ZEALAND
TEL: +64 4 472 9830
FAX: +64 4 472 8076

Current State – comparability of financial services regulation

Australia and New Zealand already have broadly similar models for financial markets regulation. Both have adopted their own tailored "twin peaks" model, separating prudential and conduct regulation. Australia has implemented this model more fully than has New Zealand, with the consolidation of registration functions, corporate regulation, consumer credit, financial literacy, and financial crime investigation in the Australian Securities and Investments Commission (ASIC). In New Zealand, FMA has principal regulatory responsibility for the regulation of investments and investment markets, but shares responsibility with the Registrar of Companies and the Serious Fraud Office in relation to registries and enforcement, while the Commerce Commission has retained oversight of consumer credit contract regulation. Although many of FMA's impacts are designed and intended to deliver improvements in retail financial education and awareness, principal accountability for financial literacy sits outside FMA[2]. This continuing fragmentation in the New Zealand regulatory makeup may pose a challenge to businesses wanting to operate on both sides of the Tasman and to further regulatory harmonisation.

Despite these institutional differences, the appetite and potential for harmonisation is high. Financial markets legislation in both countries places strong emphasis on the need for disclosure both to retail investors and to market participants. Australian legislation, in keeping with common international practice, also requires most market participants to be licensed. Reforms in New Zealand since 2008 have increasingly adopted this approach, and this will be largely comparable to the regulatory coverage in Australia (excepting consumer credit advisers) once the Financial Markets Conduct Bill, now before Parliament, is fully implemented.

Steps towards integration

While the detail of much of New Zealand and Australia's financial markets legislation differs (mainly in relation to primary markets and adviser licensing), both frameworks are built on the same principles. This has made it possible to date to achieve significant co-ordination within the existing legislative regimes.

Since 2008 the Mutual Recognition of Securities Offerings scheme has provided a "passport" approach to trans-Tasman offers of financial products, allowing offer documents that comply with the law of one country to be used in the other, merely by opting into the regime by notifying the host regulator. Research published by ASIC in 2009 showed estimated savings in legal and documentation costs of between 55% and 95% by companies using this scheme, as well as vastly accelerated time to market.

In July this year, ASIC and FMA announced a mutual recognition programme for financial advisers which allows cross-recognition of the educational requirements in each jurisdiction. This measure was necessary because although the Trans-Tasman Mutual Recognition Agreement does apply to individuals who are licensed as financial advisers, many advisers in

[2] Including, but not exclusively, with the Commission for Financial Literacy and Retirement Income.

both countries operate under corporate licences or approvals, and cannot take advantage of TTMRA.

The adoption by both Australia and New Zealand of International Financial Reporting Standards has improved the comparability of financial reports between the two countries, and has also enabled FMA to grant relief to many Australian companies that must register their financial statements in New Zealand, allowing them to register in New Zealand the financial reports that comply with the Australian rules.

FMA has sought to promote uniformity or alignment in its regulatory guidance also. Our recent Effective Disclosure Guidance is deliberately modelled on the Australian requirement for clear, concise and effective offer documents. FMA's guidance on reporting of non-GAAP financial information by issuers and listed companies is also modelled on the equivalent guidance produced by ASIC and there has been extensive consultation between the two regulators in the framing of such guidance.

Later this month, FMA and ASIC will sign a revised Memorandum of Understanding which specifically acknowledges the acceleration and deepening of trans-Tasman economic and regulatory integration. Amongst other things, this will enable the regulators to consult and exchange information on the identification, assessment and mitigation of risks to Australian and New Zealand markets and investors. It will also assist with information exchanges to support cooperation on applications for registration or authorisation, as well as on-going supervision and oversight of regulated persons who are registered or licensed in one jurisdiction and operate in the other.

Institutional ties

In FMA's submission, the experience to date in co-ordinating our approaches to financial markets conduct regulation indicates that a more comprehensive approach is both feasible and beneficial. An important step in this direction is to further improve institutional links.

While FMA and ASIC work closely on an operational level there are not at present formal governance links. The strength of the relationship between FMA and ASIC was cemented by the appointment of FMA's inaugural CEO in October 2010 from within ASIC's senior executive ranks, but there are presently no other governance or operational ties at a personnel level. Cross-membership of regulators has been successfully implemented between the ACCC and the Commerce Commission and the Australian and New Zealand Takeovers Panels. We believe that cross-membership of FMA and ASIC would have more than a merely symbolic benefit, and would help to embed a trans-Tasman focus in the governance and priorities of both organisations. Such a step could, on the New Zealand side at least, be achieved without legislative change, by the appointment of an additional member or associate to FMA's Board.

Single Economic Market goals

A large number of our most significant financial services firms operate on both sides of the Tasman. In FMA's submission it is in the interests of all market participants, including

investors in both countries, to seek to find a single regulatory approach to financial markets conduct regulation wherever possible so that businesses and investors find a familiar and cost-effective environment in both New Zealand and Australia.

We appreciate that consideration of a single regulatory approach in some areas can raise issues of sovereignty and political accountability, or at least the perception of such. We acknowledge that such issues can arise in relation to discrete issues that touch on conduct regulation, such as differing approaches to superannuation savings, while broader issues such as differing taxation treatment of some investments can act as an external impediment to seamless integration of regimes. However, we think that these areas are more isolated, potentially illusory and certainly less severe in FMA's sphere of regulation. We aspire to a model of regulation which has at its heart trans-Tasman harmonisation as the rule, except where local requirements demand differences.

We also see that the potential benefits of integration for market participants are high, through reduction of complexity, increased certainty, and lower costs of compliance. We think that a worthwhile single economic market goal in relation to financial markets conduct regulation would be to achieve a single licensing and product disclosure regime for Australia and New Zealand, bringing total portability for services, products, and providers. Ideally this would be supported by a single trans-Tasman business registry, giving one-stop access for market participants and the public.

I should be happy to discuss this submission further with the Australian and New Zealand Commissions and I wish you success in the joint study. In addition FMA will consider providing a further submission once the draft report has been published.

Yours sincerely,

Sean Hughes
Chief Executive