Mutual recognition of trans-Tasman offers

The closer economic relations agreement between Australia and New Zealand is about to be strengthened.

In a submission to the Department of the Treasury and the New Zealand Ministry of Economic Development Discussion Paper 'Trans-Tasman Mutual Recognition of Offers of Securities and Managed Investment Scheme Interests', the Institute supported the general concept of mutual recognition as providing a framework for greater investment between Australia and New Zealand, enhancing competition in our capital markets and reducing compliance costs for business.

The proposed regime for mutual recognition of offers of securities and managed investment scheme interests will allow issuers to offer securities in both Australia and New Zealand using the same regulated offer document produced in the home jurisdiction.

Under mutual recognition, both issuers and consumers will benefit from the efficiencies gained from transparency of costs and greater competition in the capital markets.

For issuers the benefits associated with the mutual recognition regime include:

- Reduced costs of compliance and lower cost of raising capital;
- Removal of unnecessary regulatory barriers;
- Greater investor base access.

For consumers, the benefits associated with the mutual recognition regime include:

- Increased range of investment choices;
- Greater opportunity to diversify investments.

The main advantage of the mutual recognition regime for issuers is the reduction in the cost of raising capital. This cost efficiency is generated by removing the need for issuers in Australia and New Zealand to produce multiple disclosure documents and meet different regulatory requirements in order to offer securities in each respective country.

Usually an entity in Australia will structure an offshore offering from Australia. This means that legal, corporate advisory, underwriting, disclosure document production and dissemination services are undertaken in Australia. When structuring an offer, compliance costs associated with making an offshore offer are a substantial factor to consider. If an issuer decides not to conduct a cross-border offer, the issuer is not able to access a larger investor base and investors do not have access to investment choice.

The cost of raising capital is dependent on a number of factors specific to the offer, such as complexity or conditions. Anecdotal evidence suggests that transaction costs, largely due to compliance costs, can place limitations on trans-Tasman offerings. Therefore, we believe the mutual recognition regime has the potential to significantly impact on offers to Australian and New Zealand investors, as offers become more transportable cross-border.

A key risk of the proposal is ensuring the complex nexus between (1) the application of securities law (2) potential breaches of law and (3) enforcement actions of securities regulators are adequately reflected in formal cross-jurisdictional arrangements. Unlike Europe's 'harmonisation approach', which seeks a platform of common legal and regulatory provisions, the proposed mutual recognition regime attempts to align regulation but maintain separate legal authority. The risk with our 'integration' or co-ordination approach is that laws change in one country and create a conflict in the legal/regulatory framework in the other country.

It is vital that the mutual recognition regime balances certainty and flexibility. The Institute considers it is important to ensure that adopting the mutual recognition regime does not compromise high standards of market integrity and investor protection.

Therefore, we believe the mutual recognition regime should only apply to offers of securities or managed investment scheme interests that are regulated under the securities laws of both Australia and New Zealand and where a regulated offer document is required in both countries.

The proposed regime is intended to apply only to issuers of securities or managed investment scheme interests, and not to other parties, including persons who provide financial advice or those who deal. We acknowledge that New Zealand legal requirements, in respect of the provision of financial advice or dealing, are not sufficiently similar to Australia to allow mutual recognition in this regard. The Institute believes that this is appropriate to ensure the integrity of the financial services licensing regime.

In the past the regulatory approach to 'mutual recognition' has generally tended to focus on the application level, rather than on an underlying policy objectives level. Importantly, this proposal for integrating the fundraising requirements for Australian and New Zealand issuers will overcome inconsistent requirements between respective regulatory frameworks that pursue the same policy objectives but perhaps in different ways.

Globalisation is driving greater connectivity between marketplaces. The Institute endorses initiatives that provide an effective mechanism for promoting improved capital raising opportunities for issuers as well as encouraging increased investment choice for consumers through market integration strategies. However, we believe that as a strategy to benefit Australia in the global marketplace, it is equally important to improve market efficiencies, remove unnecessary legal and regulatory barriers, promote greater activity in the market for corporate control and reduce the cost of raising capital domestically. J

Financial literacy a plus for Australia

Governments love consumers who spend, but the spending is creating a mountain of household debt. This is a potential political and socio-economic problem that governments are now trying to tackle.

Dad, when I grow up can I be in debt too? 'Let's help kids get money smart' and 'Betcha my dad's debt is bigger than your dad's debt – let's help kids get money smart,' are just two of the many media jingles of the Operation HOPE Inc, 'Banking on our Future' campaign in the US. HOPE is a non-profit organisation established to address and improve financial literacy in the US that has the support of the likes of former President Bill Clinton and US Federal Reserve Chairman Alan Greenspan who have pledged support to financial literacy programs across the US.

Mounting consumer debt isn't only a US problem. The Australian economy is also heavily dependent on consumer spending and provided the motivation for the Federal Government to establish the Consumer and Financial Literacy Taskforce (the Taskforce) in February this year. The Taskforce, chaired by Paul Clitheroe, was established by the then Minister for Revenue and Assistant Treasurer, Senator Helen Coonan, to develop the first national strategy for consumer and financial literacy and called for submissions on its discussion paper, 'Australian Consumers and Money'. The Securities Institute lodged its submission on 30 July.

The Securities Institute's position is that achieving a financially literate Australia is a plus for the economy and has advocated that a Commonwealth Inspector-General of Financial Literacy should be established. Institute CEO, Brian Salter said "consumer and financial literacy programs must be made available for all sectors of the Australian population so that consumers and investors can participate in the financial services industry with confidence".

This is the first time the Securities Institute has lodged a submission in this retail policy area. However, as the Institute's paper outlines, we support the comment by the Taskforce Chair, Paul Clitheroe, that "financial literacy is important to individuals, families and the broader economy" and that "government and financial institutions would make a determined effort to 'lower the bar' in terms of the complexity of products, access to information and multiple regulations".

We also support Senator Coonan's assertion that "We must start the process of consumer and financial education with the very young — in schools and in homes. We must carry it through to Australians at every stage of their life, from school students to retirees regardless of gender, cultural background or language".

A snapshot of the Institute's position:

- The Institute supports the recommendation for the establishment of a central coordinating body to connect providers with consumers via a consumer information centre; consideration must be given to proposing the formation of an independent Commonwealth statutory office. We propose a Financial Literacy Inspector-General, to act in an advisory capacity to government and external stakeholders to review, coordinate and implement financial literacy programs. Government must be responsible for providing adequate, ongoing funding and the office must not be bound by bureaucratic red tape. A Board of Consumer and Financial Literacy, including stakeholder input, would also need to be established to provide accountable and consultative oversight;
- Government must utilise existing infrastructures within Department of Education, Science and Training, various state education portfolios and the financial services sector to deliver programs;
- Consumer education is a joint responsibility of Government and information providers;
- Government must promote the importance of professional bodies and their members in ensuring high quality information is disseminated to consumers. Government, regulators and industry must work together to ensure that high standards of professional conduct promote the objectives of better disclosure, better advice and informed consumers.

Our view is that consumer and financial literacy programs must be available for all sectors of the Australian population.

We strongly believe that financial literacy is a life skill that all Australians must and can achieve.

It is vital that Australians seek to maximise their future income cash flows by putting in place strategies that now go to meeting their retirement circumstances and needs.

Australians need to be armed with knowledge to achieve this and develop their competencies in managing areas such as their cash flows, savings, borrowings and investments.

We hope that Prime Minister John Howard and Opposition Leader Mark Latham will show bipartisan support for financial literacy programs.

The Institute's full policy submission can be viewed at: http://www.securities.edu.au/members/members_policy_submissions.asp