



James Gibson Partner

## Extending Australian securities offerings to the New Zealand retail market

The extension of an Australian securities offering to the New Zealand market can provide a number of benefits to the issuer.

Not only does extending the offer to New Zealand provide access to a greater pool of available capital, but it can also provide an opportunity for an issuer to establish or reinforce the presence of its brand or business in the New Zealand market.

Extending an Australian offer into the New Zealand market can be done relatively easily because the New Zealand and Australian securities law regimes are reasonably similar.

### Exemption Notice

Most Australian IPOs are extended into the New Zealand retail market in reliance on the Securities Act (Australian Issuers) Exemption Notice 2002 (the **Exemption Notice**). The Exemption Notice relieves Australian companies which are offering securities to retail investors in Australia under an Australian prospectus from the requirement to prepare and register a New Zealand prospectus.

The Exemption Notice does not relieve an Australian issuer of the requirement to prepare and distribute an investment statement.

At a minimum an investment statement must contain answers to a series of prescribed questions, which include:

- what sort of investment is this?
- how much do I pay?
- what are my risks?
- what returns do I get?
- how do I cash in my investments?

It has become accepted practice in New Zealand for Australian issuers relying on the Exemption Notice to "wrap" the New Zealand investment statement around the Australian prospectus. This simplifies the disclosure required in the investment statement and reduces duplication.

The investment statement is not required to include financial statements (although some Australian issuers have included a summary of the financial statements that are contained in the Australian prospectus at the beginning of the investment statement).

### NZX Listings

If an Australian issuer decides to offer securities in New Zealand it has three options in relation to listing on NZX:

- obtain a "dual" listing on NZX;
- obtain an "overseas" listing on NZX; or
- not to list on NZX at all.



**Anna Buchly** Senior associate

## Dual Listing

An Australian ASX listed issuer can list on NZX as a "dual listed issuer", which means that it is fully listed on the NZX and is also listed on the main board of its Home Exchange, the ASX.

Unlike an overseas listed issuer, neither of the exchanges on which the Australian issuer is listed (e.g., ASX and NZX) takes precedence in terms of regulatory compliance – compliance is required with the listing rules of both exchanges. However, NZX has provided that many of the NZSX Listing Rules do not apply to a dual listed issuer (because, for example, the issuer is already bound by equivalent ASX Listing Rules).

A dual listed issuer will be weighted on the NZSX50 on the basis of the proportion of revenue generated in New Zealand. For an Australian issuer to be eligible for this weighting the Australian issuer needs to have a New Zealand business and its audited financial statements must separate the revenue generated in New Zealand. Generally, this weighting will give a significantly greater weighting to the Australian issuer's shares than if the Australian issuer was listed as an overseas listed issuer.

## Overseas Listing

An Australian issuer listed on the ASX can list on NZX as an "overseas listed issuer".

Unlike dual listed issuers, overseas listed issuers are not (with a few exceptions) obliged to comply with the NZSX Listing Rules. Instead, an overseas listed issuer is deemed to comply with the NZSX Listing Rules as long as it is listed on a recognised overseas exchange (of which the ASX is one) and remains listed. NZX does however retain the right to require an overseas listed issuer to comply with any NZSX Listing Rules, although this discretion is infrequently exercised.

An overseas listed issuer is required to give NZX the same information and notices it is required to supply to its home exchange and to release simultaneously to NZX all material information it releases to its home exchange to ensure uniformity of information between the markets.

The index weighting of an overseas listed issuer's securities on NZSX is calculated on the basis of the proportion of securities held on its New Zealand share registry. This may mean that the issuer will not qualify for entry into the relevant NZSX indices and therefore will not be a "required buy" for index tracking funds.

## Offer Process

To ensure a co-ordinated process, the New Zealand offer process (including New Zealand due diligence and drafting of the investment statement) should run in parallel with the Australian offer process with minimal additional legal or practical steps.

The way to achieve a seamless dual offer process is to set up due diligence and drafting processes that accommodate the dual offer from the outset. We have found that spending time at the beginning establishing the right processes and procedures will ultimately result in a more efficient process and ensure that the process meets the legal requirements of both jurisdictions.

The dual offer process should include:

- tailoring the due diligence planning memorandum and legal, accounting and management sign-offs to satisfy the legal requirements of both jurisdictions; and
- managing the process timetable, including:
  - obtaining any offer-specific exemptions from the New Zealand Securities Act which may be required (and can have a lead time of 6-8

To receive your updates faster, please subscribe to our electronic newsletter service on: [info@bellgully.com](mailto:info@bellgully.com)

To view all our publications or update your details please visit our website: [www.bellgully.com](http://www.bellgully.com)

For further information, please contact your usual Bell Gully advisor or:

#### AUCKLAND

**James Gibson**  
[james.gibson@bellgully.com](mailto:james.gibson@bellgully.com)  
64 9 916 8962

**Gavin Macdonald**  
[gavin.macdonald@bellgully.com](mailto:gavin.macdonald@bellgully.com)  
64 9 916 8938

**Anna Buchly**  
[anna.buchly@bellgully.com](mailto:anna.buchly@bellgully.com)  
64 9 916 8649

#### WELLINGTON

**Andrew Brown**  
[andrew.brown@bellgully.com](mailto:andrew.brown@bellgully.com)  
64 4 915 6848

**Mark Freeman**  
[mark.freeman@bellgully.com](mailto:mark.freeman@bellgully.com)  
64 4 915 6963

**Disclaimer:** This publication is necessarily brief and general in nature. You should seek professional advice before taking any further action in relation to the matters dealt with in this publication.

All rights reserved © Bell Gully 2006.

weeks);

- organising the review of documentation by NZX and making all required NZX listing ruling and waiver applications early in the process; and
- managing the completion and printing of the investment statement in conjunction with the completion and printing of the Australian prospectus.

Although the New Zealand and Australian securities laws are similar, there are some differences which can have a material impact on the offer process if they are not managed carefully.

### Bell Gully's involvement in recent Australasian offerings

Recent examples of Australian offers being extended into the New Zealand market that Bell Gully has been involved in are:

- Goodman Fielder Limited (listed on ASX and dual listed on NZX);
- Pacific Brands Limited (listed on ASX and an overseas listed issuer on NZX);
- Repco Corporation Limited (listed on ASX and dual listed on NZX); and
- Just Group Limited (listed on ASX but no NZX listing).

*If we can assist you or your clients to consider extending an Australian offer into New Zealand please contact us directly.*