



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 190

Offering financial products in New Zealand and Australia under mutual recognition

December 2014

About this guide

This is a guide for New Zealand and Australian issuers offering financial products or interests in managed or collective investment schemes in both countries.

It explains what issuers have to do under the trans-Tasman mutual recognition scheme for offers of financial products. It also covers transitional arrangements that are in place until 1 December 2016.

This is a joint guide published by the Australian Securities and Investments Commission (ASIC) and the New Zealand Financial Markets Authority (FMA).

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This version was issued in December 2014 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 190, issued 13 June 2008, reissued 21 January 2009 and 17 March 2011.

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Australian *Corporations Act 2001*, the New Zealand *Securities Act 1978* or the New Zealand *Financial Markets Conduct Act 2013* and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Contents

A	Overview	3
	The mutual recognition scheme	3
	Changes to New Zealand law affecting the mutual recognition scheme	4
	Requirements for issuers	6
	Role of regulators	8
	How will ASIC, the NZCO and the FMA work together?	8
B	What must New Zealand issuers do to comply with the NZ financial markets law?	10
	What offers does this section apply to?	10
	Before making an offer (entry requirements).....	10
	While the offer is open (ongoing requirements).....	13
	Complying with the dispute resolution condition (ongoing requirements).....	14
	Ongoing notification requirements (New Zealand issuers).....	15
	What happens if an offering condition is breached?	16
	What other Australian securities laws apply to a recognised offer?	16
C	What must Australian issuers do to comply with the NZ financial markets law?	18
	What offers does this section apply to?	18
	Before making an offer (entry requirements).....	18
	While the offer is open (ongoing requirements).....	21
	Availability of dispute resolution in New Zealand (ongoing requirements).....	22
	Ongoing notification requirements (Australian issuers).....	22
	What happens if an offering condition is breached?	23
	What other New Zealand financial products laws apply to a recognised offer?	24
D	What must New Zealand issuers do if they elect to comply with the former NZ securities law?	25
	What offers does this section apply to?	25
	Before making an offer (entry requirements).....	25
	While the offer is open (ongoing requirements).....	28
	Complying with the dispute resolution condition (ongoing requirements).....	29
	Ongoing notification requirements (New Zealand issuers).....	30
	What happens if an offering condition is breached?	31
	What other Australian securities laws apply to a recognised offer?	31
E	What must Australian issuers do if they elect to comply with the former NZ securities law?	33
	What offers does this section apply to?	33
	Before making an offer (entry requirements).....	33
	While the offer is open (ongoing requirements).....	36
	Availability of dispute resolution in New Zealand (ongoing requirements).....	37
	Ongoing notification requirements (Australian issuers).....	37
	What happens if an offering condition is breached?	39
	What other New Zealand securities laws apply to a recognised offer?	39
	Key terms	40
	Related information	42

A Overview

Key points

The trans-Tasman mutual recognition scheme allows an issuer to offer certain financial products in Australia and New Zealand using one disclosure document prepared under regulation in its home country.

Issuers who wish to operate under the scheme will be able to comply with minimal entry and ongoing requirements agreed to between the two countries and prescribed in each country's law.

The Australian Securities and Investments Commission (ASIC), the New Zealand Companies Office (NZCO) and the New Zealand Financial Markets Authority (FMA) have established arrangements for cooperation and information sharing between the authorities in administering the mutual recognition scheme.

The mutual recognition scheme

- RG 190.1 The trans-Tasman mutual recognition scheme for offers of some financial products promotes investment between Australia and New Zealand. It allows an issuer to offer specified financial products (as defined in RG 190.30 and RG 190.53) in both countries using one disclosure document prepared under the fundraising laws in its home country.
- RG 190.2 The aim of the scheme is to remove unnecessary regulatory barriers to trans-Tasman financial product offerings and reduce costs of capital raising in both Australia and New Zealand. At the same time the scheme maintains investor protection through appropriate disclosure and supervision of offerings.
- RG 190.3 The mutual recognition scheme is contained in the following law:
- (a) for New Zealand issuers wishing to extend an offer into the Australian market (a 'recognised offer')—Ch 8 of the *Corporations Act 2001* of Australia (Australian Corporations Act) and the Corporations Regulations 2001 of Australia (Australian Corporations Regulations) (collectively, the Australian securities law); and
 - (b) for Australian issuers wishing to extend an offer into the New Zealand market (a 'recognised offer'):
 - (i) Subpart 6 of Pt 9 of the *Financial Markets Conduct Act 2013* of New Zealand (NZ FMC Act) and Pt 9 and Sch 25 of the Financial Markets Conduct Regulations 2014 of New Zealand (NZ FMC Regulations) (collectively, the NZ financial markets law); or

- (ii) Pt 5 of the *Securities Act 1978* of New Zealand (NZ Securities Act), the Securities Regulations 2009 of New Zealand (NZ Regulations 2009) and the Securities (Mutual Recognition of Securities Offerings-Australia) Regulations 2008 of New Zealand (NZ Mutual Recognition Regulations) (collectively, the former NZ securities law).

RG 190.4 From 1 December 2016, the former NZ securities law will cease to apply to any offers and the mutual recognition scheme will be solely contained in Australian securities law and the NZ financial markets law.

RG 190.5 To help Australian and New Zealand issuers who wish to participate in the scheme, the FMA and ASIC have issued this joint regulatory guide highlighting the key features of each country's financial products offering regime and key requirements under the scheme.

Changes to New Zealand law affecting the mutual recognition scheme

RG 190.6 New Zealand's financial products and markets statutory regime has undergone significant reform since this guide was last reissued on 17 March 2011. The NZ financial markets law came into force on 1 December 2014, revoking the former NZ securities law.

RG 190.7 Under the transitional provisions in the NZ FMC Act, the former NZ securities law (including the mutual recognition scheme provisions under that law) will continue to apply to some offers made under the mutual recognition scheme between 1 December 2014 and 30 November 2016 as if the NZ financial markets law had not been enacted.

RG 190.8 From 1 December 2014, the Corporations Amendment (Mutual Recognition of Securities Offers) Regulation 2014 (Australian Corporations Mutual Recognition Regulation) amends the Australian Corporations Regulations to recognise the changes to New Zealand law and the transitional arrangements that allow some offers to be made under the former NZ securities law.

What are the transitional arrangements for New Zealand issuers?

RG 190.9 In the period from 1 December 2014 to 30 November 2016, New Zealand issuers may make an offer to Australian investors under the mutual recognition scheme in the NZ FMC Act. Alternatively, they can register a prospectus and elect for the former NZ securities law to apply to that offer as described in RG 190.10. New Zealand issuers can elect for the former NZ securities law to apply by including a statement to that effect in the prospectus: NZ FMC Act, cl 6(3) of Sch 4.

- RG 190.10 Continuous issuers, such as managed funds issuers or non-bank deposit takers, can register a prospectus and offer and allot securities under the former NZ securities law until 30 November 2016. New one-off issues, such as initial public offerings or corporate debt offers, can be made under the former NZ securities law if a prospectus is registered by 1 December 2015 and any offer and allotment is completed by 30 November 2016.
- RG 190.11 From 1 December 2016, all offers of financial products must be made under the NZ financial markets law (including the mutual recognition scheme provisions in that law). From that date, Sch 2 to the Australian Corporations Mutual Recognition Regulation will amend the Australian Corporations Regulations to remove all references to the NZ Securities Act. This means that from 1 December 2016, the only recognised offers in relation to New Zealand issuers are offers of a financial product for which a disclosure document must be prepared in accordance with the NZ FMC Act.

Note: See the FMA's website at www.fma.govt.nz for more information on the transitional arrangements.

What are the transitional arrangements for Australian issuers?

- RG 190.12 The former NZ securities law will apply to an offer of financial products made by an Australian issuer to New Zealand investors under the mutual recognition scheme from 1 December 2014 to 30 November 2016 unless the Australian issuer elects for the NZ financial markets law to apply to the offer: NZ FMC Act, cl 7(1) of Sch 4. An Australian issuer can make an election by emailing notice to the FMA at compliance@fma.govt.nz and including a copy of that notice on the Australian issuer's website at all times from the date of the offer until the close of that offer or 30 November 2016, whichever is earlier.
- RG 190.13 From 1 December 2016, offers of financial products by Australian issuers to New Zealand investors under the mutual recognition scheme may only be made under the NZ financial markets law.

Note: See the FMA's website at www.fma.govt.nz for more information on the transitional arrangements.

How does this guide apply between 1 December 2014 and 30 November 2016?

- RG 190.14 For offers under the mutual recognition scheme that are made between 1 December 2014 and 30 November 2016:
- (a) if the mutual recognition scheme provisions in the NZ financial markets law apply to that offer, then the offer must meet the requirements in

Section B (for New Zealand issuers) or Section C (for Australian issuers) of this guide; or

- (b) if the mutual recognition scheme provisions under the former NZ securities law apply to that offer, then the offer must meet the requirements in Section D (for New Zealand issuers) or Section E (for Australian issuers).

RG 190.15 From 1 December 2016, all offers under the mutual recognition scheme must meet the requirements in Section B (for New Zealand issuers) or Section C (for Australian issuers) of this guide: see Table 1.

Table 1: When the requirements apply

Your offer is made	New Zealand issuers	Australian issuers
Before 1 December 2016	You must meet the requirements in Section B unless you have elected for the former NZ securities law to apply to your offer. If you have made such an election then you must meet the requirements in Section D.	You must meet the requirements in Section E unless you have elected for the NZ financial markets law to apply to your offer. If you have made an election for the NZ financial markets law to apply then you must meet the requirements in Section C.
On or after 1 December 2016	You must meet the requirements in Section B.	You must meet the requirements in Section C.

Requirements for issuers

RG 190.16 Under the mutual recognition scheme, issuers are not required to comply with most of the requirements of the other country's fundraising laws. Instead, issuers who wish to operate under the scheme are able to comply with some minimal entry and ongoing requirements.

RG 190.17 If the NZ financial markets law applies to an offer, see Table 2 and Section B (for New Zealand issuers) and Section C (for Australian issuers);

RG 190.18 If the former NZ securities law applies to an offer, see Table 3 and Section D (for New Zealand issuers) and Section E (for Australian issuers).

Table 2: Requirements for issuers under the mutual recognition scheme where the NZ financial markets law applies

	New Zealand issuers	Australian issuers
Entry requirements (before making an offer)	The offer must require a disclosure document under Pt 3 of the NZ FMC Act (Australian Corporations Regulations, reg 8.2.01).	The offer must require disclosure under the Australian Corporations Act (NZ FMC Regulations, reg 263).

	New Zealand issuers	Australian issuers
	The issuer must be incorporated under the law of New Zealand and not be disqualified or banned (Australian Corporations Act, s1200C(2)(a) and 1200C(3)).	The issuer must be incorporated or established under the law of Australia, or be a registered foreign company under the Australian Corporations Act, and not be disqualified or banned (NZ FMC Regulations, regs 256 and 272).
	The offer can apply to shares, debentures and interests in managed investment schemes, and certain rights, interests and options in these financial products under s1200A of the Australian Corporations Act.	The offer can apply to equity or debt securities, interests in an Australian registered scheme, and any interest in, or option to acquire, these financial products under reg 256 of the NZ FMC Regulations.
	The issuer must lodge with ASIC a written notice of the intention to make the offer, including an offer document that is accompanied by a prescribed warning statement (Australian Corporations Act, s1200C(5)). The issuer must also notify the NZCO (NZ FMC Regulations, reg 277). See also RG 190.31–RG 190.37.	The issuer must lodge with the NZCO a written notice of the intention to make the offer, including an offer document that is accompanied by a warning statement (NZ FMC Regulations, reg 268). The issuer must also notify ASIC (Australian Corporations Act, s1200S). See also RG 190.54–RG 190.57.
Ongoing requirements (from commencement of the offer)	Issuers must comply with specific ongoing conditions, which include ensuring that the offer remains open to investors in the home jurisdiction and notifying the relevant regulator in the country in which the foreign offer of financial products is being made of certain circumstances: see Table 4–Table 5 (for New Zealand issuers) and Table 6–Table 7 (for Australian issuers).	

Table 3: Requirements for issuers under the mutual recognition scheme where the former NZ securities law applies

	New Zealand issuers	Australian issuers
Entry requirements (before making an offer)	The offer must require disclosure under Part 2 of the NZ Securities Act (Australian Corporations Regulations, reg 8.2.01).	The offer must require disclosure under the Australian Corporations Act (NZ Mutual Recognition Regulations, reg 4).
	The issuer must be incorporated under the law of New Zealand and not be disqualified or banned (Australian Corporations Act, s1200C(2)(a) and 1200C(3)).	The issuer must be incorporated or established under the law of Australia, or be a registered foreign company under the Australian Corporations Act, and not be disqualified or banned (NZ Mutual Recognition Regulations, regs 4 and 13(2)(b)).
	The offer can apply to shares, debentures and interests in managed investment schemes, and certain rights, interests and options in these financial products under s1200A of the Australian Corporations Act.	The offer can apply to equity or debt securities, interests in collective investment schemes, and any interest in, or option to acquire, these financial products under reg 4 of the NZ Mutual Recognition Regulations.

	New Zealand issuers	Australian issuers
	<p>The issuer must lodge with ASIC a written notice of the intention to make the offer, including an offer document that is accompanied by a prescribed warning statement (Australian Corporations Act, s1200C(5)). The issuer must also notify the NZCO (NZ Mutual Recognition Regulations, reg 15).</p> <p>See also RG 190.71–RG 190.77.</p>	<p>The issuer must lodge with the NZCO a written notice of the intention to make the offer, including an offer document that is accompanied by a warning statement (NZ Mutual Recognition Regulations, reg 11). The issuer must also notify ASIC (Australian Corporations Act, s1200S).</p> <p>See also RG 190.94–RG 190.97.</p>
<p>Ongoing requirements (from commencement of the offer)</p>	<p>Issuers must comply with specific ongoing conditions, which include ensuring that the offer remains open to investors in the home jurisdiction and notifying the relevant regulator in the country in which the foreign offer of financial products is being made of certain circumstances: see also Table 8–Table 9 (for New Zealand issuers) and Table 10–Table 11 (for Australian issuers).</p>	

Role of regulators

- RG 190.19 In Australia, ASIC is the regulator for offers of financial products, and investigates suspected contraventions of Australian law.
- RG 190.20 In New Zealand, there are two regulators for offers of financial products. The FMA is responsible for market conduct and has enforcement powers to require offer documents and advertisements to comply with New Zealand law. The NZCO is responsible for the registration of corporate bodies and corporate documents, which includes registration of offer documents and other documents for offers of financial products in New Zealand.
- RG 190.21 Under the mutual recognition scheme, ASIC, the FMA and the NZCO will exercise their usual powers for offers of financial products. ASIC, the FMA and the NZCO have also established arrangements for cooperation and information sharing in administering the mutual recognition scheme: see RG 190.22–RG 190.24.

How will ASIC, the NZCO and the FMA work together?

- RG 190.22 ASIC and the NZCO have entered into a Memorandum of Understanding (MOU) for the exchange of data and information relating to companies carrying on business on both sides of the Tasman and for mutual assistance.
- RG 190.23 ASIC and the FMA have also entered into an MOU for the exchange of data and information relating to supervising, assessing, securing compliance with or enforcing the respective laws and regulations of each authority. For example, the arrangements deal with notification by one regulator to the

other if it initiates enforcement action against an issuer, where a complaint is made against an issuer, or where changes are made to offer documents.

RG 190.24 In addition to this, ASIC, the NZCO and the FMA have established protocols for cooperation between the authorities in administering the mutual recognition scheme. These protocols describe how ASIC, the NZCO and the FMA intend to cooperate and share information under the mutual recognition scheme only.

B What must New Zealand issuers do to comply with the NZ financial markets law?

Key points

A New Zealand issuer who wants to offer financial products to Australian investors under the mutual recognition scheme must:

- be entitled under the NZ financial markets law to offer the financial products;
- make a recognised offer of financial products under the NZ financial markets law (i.e. the offer must require a disclosure document under Pt 3 of the NZ FMC Act); and
- comply with all applicable New Zealand laws.

The issuer must also comply with specified requirements for offering financial products into Australia, including lodging a notice with ASIC and ensuring that the offer document is accompanied by a warning statement.

While the offer remains open to Australian investors, the New Zealand issuer must comply with the offering conditions, including ensuring that the offer remains open to New Zealand investors and notifying ASIC of certain circumstances.

What offers does this section apply to?

- RG 190.25 Section B applies when a New Zealand issuer offers financial products to Australian investors under the mutual recognition scheme in the NZ financial markets law. For information on the transitional arrangements that apply from 1 December 2014 to 30 November 2016, and for circumstances in which the former NZ securities law will apply to an offer, see Section D.

Before making an offer (entry requirements)

What is a 'recognised offer'?

- RG 190.26 An offer of financial products by a New Zealand issuer into the Australian market under the mutual recognition scheme is called a 'recognised offer'. To be a recognised offer, the offer must be an offer for which a disclosure document must be prepared under Pt 3 of the NZ FMC Act.

RG 190.27 ASIC considers that an offer that the FMA has exempted from compliance with Pt 3 of the NZ FMC Act in its entirety, as opposed to a partial exemption, is not a recognised offer.

Who can make an offer?

RG 190.28 The issuer must be incorporated by or under the law of New Zealand or be a natural person resident in New Zealand or be a legal person established by or under the law in New Zealand. An entity that is registered as an overseas company under New Zealand law will not be able to opt into this scheme: Australian Corporations Act, s1200C(2).

RG 190.29 There must be no person concerned in the management of the issuer who is:

- (a) disqualified from managing corporations under Pt 2D.6 of the Australian Corporations Act (e.g. as an undischarged bankrupt or having been convicted of certain offences);
- (b) disqualified from being concerned in the management of the issuer under New Zealand law; or
- (c) banned by ASIC from providing financial services (e.g. because the person has not complied with the law, has become insolvent or has committed a fraud) or disqualified by a court from providing financial services under the Australian Corporations Act.

Further, the person offering the financial products must not be banned by ASIC from making a recognised offer under s1200P of the Australian Corporations Act: see Australian Corporations Act, s1200C(3) and 1200G(6).

What financial products can be offered in Australia?

RG 190.30 The financial products that can be offered in Australia are limited to the securities defined in Ch 8 of the Australian Corporations Act. Essentially, the mutual recognition scheme applies to shares, debentures and interests in managed investment schemes, and certain rights, interests and options in these financial products: Australian Corporations Act, s1200A.

What must be lodged with the NZCO?

RG 190.31 If a New Zealand issuer proposes to make an offer of financial products in Australia, the New Zealand issuer must lodge with the NZCO written notice of its intention to make the offer under the mutual recognition scheme. This notification must be no later than the time ASIC is notified of the New Zealand issuer's intention: see RG 190.33–RG 190.36.

Note: Notification forms are available on the NZCO website at www.business.govt.nz/disclose/about-the-register/overseas-exempt-offers/forms-for-overseas-issuers.

RG 190.32 The notice must be sent to the NZCO:
 Companies Office
 Private Bag 92061
 Victoria Street West
 Auckland 1142
 NEW ZEALAND

What must be lodged with ASIC?

- RG 190.33 At least 14 days before the day on which the offer is first made in Australia, and no later than the time the NZCO is notified, the New Zealand issuer must lodge with ASIC a written notice of the intention to make the offer, together with:
- (a) the offer document required by the NZ financial markets law (e.g. a Product Disclosure Statement (PDS));
 - (b) the warning statement that is to be included with any offer document;
 - (c) the constitution of the New Zealand issuer or, if the financial products that are to be the subject of the offer are interests in a managed investment scheme, the constituent documents of the scheme;
 - (d) details of any exemption from the NZ financial markets law that applies to the offer, including:
 - (i) details of any general exemption that applies to the offer or to the issuer in relation to the offer; and
 - (ii) a copy of any specific exemption that applies to the offer or to the issuer; and
 - (e) an address for service in Australia.

Note 1: See Australian Corporations Act, s1200C(5) and 1200D. As at the date of this guide, there is no prescribed form for the purposes of s1200C(5) of the Australian Corporations Act. Unless a form is prescribed, the written notice can be provided in a covering letter accompanying the documents required under s1200D of the Australian Corporations Act.

Note 2: Where an issuer seeks to maintain the confidentiality of an offer in New Zealand, ASIC may on consideration of an application for relief shorten the 14-day notification period by making a declaration under s1200B(3) of the Australian Corporations Act: see RG 190.38. In these cases, ASIC may permit the required documents to be lodged in both jurisdictions on the same day.

RG 190.34 The information placed on the NZCO's 'Disclose' register will not form part of the offer document required to be lodged with ASIC for the purposes of s1200D(1)(a) of the Australian Corporations Act.

RG 190.35 As mentioned at RG 190.33(b), the offer document must be accompanied by a prescribed warning statement that the offer is principally governed by the NZ financial markets law rather than Australian law, along with certain

prescribed warnings about the rights, remedies and compensation arrangements, tax differences and any currency risk: Australian Corporations Act, s1200E and Australian Corporations Regulations, regs 8.2.02–8.2.03.

Note: If the issuer chooses to include the warning statement in its offer document, it must be included in a clear and prominent manner that is likely to be observed by a person considering the offer.

RG 190.36 There is a requirement to notify ASIC of certain events that have occurred after the information or document has been lodged with ASIC. ‘Certain events’ may include a change in the address for service in Australia (s1200C(6)(d) of the Australian Corporations Act) or those which are outlined in Table 5.

RG 190.37 The notice and related documents should be sent to ASIC:
 FE Registration Services
 Australian Securities and Investments Commission
 PO Box 4000
 Gippsland Mail Centre
 Victoria 3841
 AUSTRALIA

ASIC’s power to declare an offer a ‘recognised offer’

RG 190.38 If a New Zealand issuer’s offer would be a recognised offer except for a failure to meet the conditions in s1200C(5) and 1200C(6) of the Australian Corporations Act and ASIC is satisfied that the failure is minor or technical, ASIC may declare in writing that the offer is a recognised offer: Australian Corporations Act, s1200B(3). ASIC does not have a general exemption or modification power in respect of Ch 8 of the Australian Corporations Act.

Note: See ASIC’s Regulatory Guide 51 *Applications for relief* (RG 51) for information relating to applying to ASIC for relief, including declarations under s1200B(3) of the Australian Corporations Act.

While the offer is open (ongoing requirements)

RG 190.39 At all times while the offer remains open to Australian investors, the New Zealand issuer must comply with the offering conditions (see Table 4), which include ensuring that the offer remains open to New Zealand investors and notifying ASIC of certain circumstances (see Table 5).

Table 4: Offering conditions for New Zealand issuers

The offer	<p>At all times while the offer is open to Australian investors, the offer must:</p> <ul style="list-style-type: none"> • remain a recognised offer in New Zealand (Australian Corporations Regulations, reg 8.2.01); • comply with the NZ financial markets law (Australian Corporations Act, s1200G(5)); and • be open to acceptance by persons in New Zealand (Australian Corporations Act, s1200G(1) and 1200G(2)).
The issuer	<p>At all times while the offer is open to Australian investors, the New Zealand issuer must:</p> <ul style="list-style-type: none"> • ensure that the person offering the financial products remains incorporated, a natural person resident, or a legal person established by or under New Zealand law, and is not banned from making recognised offers (Australian Corporations Act, s1200C(2), 1200C(3) and 1200P); • have lodged a current warning statement or any changed warning statement with the offer document (Australian Corporations Act, s1200G(7)); • give a prospective investor, on request and free of charge, copies of the constitution of the issuer or constituent document of the scheme (Australian Corporations Act, s1200G(8)); • comply with the notification requirements (Australian Corporations Act, s1200G(9))—see Table 5; • maintain an address for service in Australia (Australian Corporations Act, s1200H); and • ensure that the following persons are <i>not</i> concerned in the management of the issuer (Australian Corporations Act, s1200G(6)): <ul style="list-style-type: none"> – anyone who is disqualified from managing corporations in Australia, or from being concerned in the management of the issuer in New Zealand; or – anyone who is subject to a banning order under s920A or a court order under s921A(2)(a) of the Australian Corporations Act. <p>If the offer is an offer of interests in a managed investment scheme and the issuer's records indicate that interests are held by someone who resides in Australia, the issuer must comply with the dispute resolution condition under s1200J of the Australian Corporations Act: see RG 190.40–RG 190.42.</p>

Note: A New Zealand issuer may be required to comply with the requirements in s1200G(9), 1200H and 1200J of the Australian Corporations Act after the offer has closed in Australia.

Complying with the dispute resolution condition (ongoing requirements)

RG 190.40 Where a New Zealand issuer's offer relates to interests in a managed investment scheme, the New Zealand issuer must have a dispute resolution process that complies with s1017G(2) of the Australian Corporations Act: Australian Corporations Act, s1200J.

RG 190.41 This dispute resolution system must consist of:

- (a) an internal dispute resolution procedure that:
 - (i) complies with the standards and requirements made or approved by ASIC; and

- (ii) covers complaints made by retail clients against the issuer about the financial services provided in relation to the interests; and
- (b) membership of one or more ASIC-approved external dispute resolution schemes that cover complaints made by retail clients against the issuer about the financial services provided in relation to the interests.

RG 190.42 The New Zealand issuer must maintain the dispute resolution processes in Australia for as long as the issuer's records show that an Australian resident holds financial products in the class of interests that was the subject of the offer.

Note: See ASIC's Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (RG 165) and Regulatory Guide 139 *Approval and oversight of external dispute resolution schemes* (RG 139) for information relating to Australian dispute resolution requirements.

Ongoing notification requirements (New Zealand issuers)

RG 190.43 The New Zealand issuer must notify ASIC of certain events, set out in Table 5.

Table 5: Notification requirements for New Zealand issuers (s1200G(9) of the Australian Corporations Act)

If ...	You must lodge with ASIC ...	By this time ...
a change is made to an offer document, or any other document, required by the NZ financial markets law	a copy of the document as changed.	no later than 7 days after the day on which the issuer notified (or should have notified) the NZCO of the change.
a change is made to the warning statement that is included with the offer document in Australia	a copy of the warning statement as changed.	
a supplementary or replacement offer document is required by the NZ financial markets law	a copy of the supplementary or replacement offer document.	
a change is made to the constitution or constituent document of the entity whose financial products are being offered	a copy of the constitution or constituent document as changed.	
the FMA makes, changes or revokes an exemption that applies <i>exclusively</i> to the offer or the issuer under the NZ financial markets law	a copy of the exemption, the exemption as changed, or notice in the prescribed form (if any) of the details of the revocation.	no later than 7 days after the making, change or revocation of the exemption occurs.

If ...	You must lodge with ASIC ...	By this time ...
the FMA makes, changes or revokes an exemption that applies, but <i>not</i> exclusively, to the offer or the issuer under the NZ financial markets law	written notice in the prescribed form (if any) of the details of the exemption, change or revocation.	no later than 14 days after the making, change or revocation of the exemption occurs.
the FMA or the NZCO begins enforcement action, or exercises a power it has under law, in relation to the issuer or offer	written notice in the prescribed form (if any) of the details of the action taken or power exercised.	no later than 7 days after the action is taken or the power is exercised.

What happens if an offering condition is breached?

- RG 190.44 A breach of an offering condition, address for service condition or dispute resolution condition amounts to a breach of Australian law, which ASIC can investigate: Australian Corporations Act, s1200Q. In addition, under Ch 8 of the Australian Corporations Act, ASIC may:
- (a) make a stop order under s1200N; or
 - (b) ban the issuer from making a recognised offer for a specified period under s1200P.

What other Australian securities laws apply to a recognised offer?

- RG 190.45 A recognised offer is exempt from many of the provisions of the Australian Corporations Act, including the requirements:
- (a) in Ch 2L, if the offer relates to debentures, and in Ch 5C, if the offer relates to a managed investment scheme;
 - (b) for disclosure for the offer of securities (Ch 6D), except for the hawking provisions, which still apply (see RG 190.46); and
 - (c) to be licensed or authorised to provide certain financial services and to provide disclosure for financial products (Pts 7.6, 7.7, 7.8 and 7.9 of Ch 7, except for the hawking and short selling provisions).

Note: See Australian Corporations Act, s1200F.

- RG 190.46 Other Australian laws apply to recognised offers. In Australia, there is a broad-ranging prohibition on dealing in securities (including offers of securities) in a manner that is likely to mislead or deceive. There are also general content rules for pre-offer advertising for securities and for interests in managed investment schemes. In addition, a person must not offer securities for issue or sale in the course of, or because of, an unsolicited

meeting with another person or an unsolicited telephone call to another person (this is known as ‘hawking’).

Note: See, for example, Australian Corporations Act, s736, 992AA, s1041E and s1200L.

RG 190.47 Under Australian law, even if the issuer or scheme is not listed on a financial market, you may have to comply with the continuous disclosure rules if you are:

- (a) a debenture issuer who has made a recognised offer; and
- (b) an issuer of shares and interests in a managed investment scheme who has made a recognised offer and who has had at least 100 members in a class.

Note: See, for example, Australian Corporations Act, s111AC, 111AD, 111AF(2), 111AFA(2), 111AI(b) and 1200K.

RG 190.48 Various obligations apply in relation to an entity that is a disclosing entity—for example, the issuer must lodge with ASIC on an ongoing basis information that a reasonable person would expect to have a material effect on the price or value of the securities or undertake website-based disclosure in accordance with ASIC’s good practice guidance: see Regulatory Guide 198 *Unlisted disclosing entities: Continuous disclosure obligations* (RG 198).

C What must Australian issuers do to comply with the NZ financial markets law?

Key points

An Australian issuer who wants to offer financial products to New Zealand investors under the mutual recognition scheme must:

- be entitled under the Australian securities law to offer the financial products;
- make a recognised offer of financial products under the Australian securities law (i.e. the offer of financial products must require a disclosure document or a PDS under the Australian Corporations Act); and
- comply with all applicable Australian laws.

The issuer must also comply with specified requirements for an offer of financial products in New Zealand, including lodging a notice with the NZCO and ensuring that the offer document is accompanied by a warning statement.

While the offer remains open to New Zealand investors, the Australian issuer must comply with the offering conditions, including ensuring that the offer remains open to Australian investors and notifying the NZCO of certain circumstances.

What offers does this section apply to?

- RG 190.49 Section C applies when an Australian issuer offers financial products to New Zealand investors under the mutual recognition scheme in the NZ financial markets law. For information on the transitional arrangements that apply from 1 December 2014 to 30 November 2016, and for circumstances in which the former NZ securities law will apply to an offer, see Section E.

Before making an offer (entry requirements)

What is a 'recognised offer'?

- RG 190.50 An offer of financial products by an Australian issuer into the New Zealand market under the mutual recognition scheme is a 'recognised offer'. To be a recognised offer, the offer of financial products must require a disclosure document or a PDS under the Australian Corporations Act. The Australian issuer must be entitled under Australian law to offer the financial products. If the disclosure document or PDS is required to be lodged with ASIC under

Australian law, then the issuer must lodge the disclosure document or PDS with ASIC and any exposure period must have expired.

Note: An offer can still be a recognised offer even if the PDS does not need to be lodged with ASIC under s1015B of the Australian Corporations Act. In this situation, s1015D of the Australian Corporations Act will instead require the Australian issuer to lodge an in-use notice with ASIC.

Who can make an offer?

- RG 190.51 The issuer must be incorporated under the law of Australia, be a natural person resident in Australia, be a legal person established under the law of Australia or be a registered foreign company under the Australian Corporations Act.
- RG 190.52 The issuer or any person concerned in the management of the issuer must *not* be:
- (a) prohibited by, or under a power exercised under, Australian law from being concerned in the management of a company in Australia (NZ FMC Regulations, reg 272(b));
 - (b) prohibited by, or under power exercised under, New Zealand law from being concerned in the management of a company in New Zealand (NZ FMC Regulations, reg 272(b)); or
 - (c) previously banned by the FMA from making a recognised offer (NZ FMC Regulations, reg 258(2)(a)).

What financial products can be offered in New Zealand?

- RG 190.53 The mutual recognition scheme applies to equity or debt securities, interests in an Australian registered scheme, and any interest in, or option to acquire, these financial products: NZ FMC Regulations, regs 256 and 263.

What must be lodged with ASIC?

- RG 190.54 If an Australian issuer proposes to make an offer of financial products in New Zealand, the Australian issuer must lodge with ASIC a written notice of its intention to make the offer under the mutual recognition scheme: see Australian Corporations Act, s1200S. An Australian issuer may provide written notice of its intention to offer under the mutual recognition scheme by selecting the option that confirms the offer will be made available in a recognised jurisdiction (e.g. New Zealand) under the mutual recognition scheme when completing either the ASIC OFFERlist form or PDS in-use notice and submitting it to ASIC in the usual way. This notification must be no later than the time the NZCO is notified of the Australian issuer's intention: see RG 190.56–RG 190.57.

RG 190.55 The notice should be sent to ASIC:
 FE Registration Services
 Australian Securities and Investments Commission
 PO Box 4000
 Gippsland Mail Centre
 Victoria 3841
 AUSTRALIA

What must be lodged with the NZCO?

RG 190.56 Before making the offer in New Zealand, an Australian issuer must lodge with the NZCO a written notice of its intention to make the offer under the mutual recognition scheme under the NZ FMC Regulations in the NZ financial markets law: NZ FMC Regulations, reg 266. Issuers will receive confirmation from the NZCO that their offer documents have been accepted, and should await this notice before making the offer. The notice must:

- (a) state that the issuer intends to make an offer according to the mutual recognition scheme under the NZ FMC Regulations in the NZ financial markets law;
- (b) specify the financial products to be offered;
- (c) specify the proposed offer period for:
 - (i) the offer of the financial products in New Zealand; and
 - (ii) the offer of the financial products in Australia;
- (d) state the full name and address of a person who is authorised to accept service in New Zealand;
- (e) state that the Australian issuer submits to the jurisdiction of the courts of New Zealand;
- (f) state the Australian issuer's New Zealand overseas issuer registration number (if any);
- (g) be signed by a person who is authorised to act on the issuer's behalf; and
- (h) be accompanied by the following documents:
 - (i) an offer document required by Australian law (e.g. a prospectus or, if the offer relates to a managed investment scheme, a PDS);
 - (ii) details of any exemption or declaration under the Australian Corporations Act that is relevant to the offer (whether applying specifically to the issuer or the offer, or generally);
 - (iii) the constitution of the company or scheme; and
 - (iv) a copy of the prescribed warning statement that the offer is principally regulated under Australian rather than New Zealand

law (as required under reg 271 of the NZ FMC Regulations and in the form set out in Sch 25 of the NZ FMC Regulations), along with disclosure of any dispute resolution process or other tax differences and currency risks.

Note: Notification forms are available on the NZCO website at www.business.govt.nz/disclose/about-the-register/overseas-exempt-offers/forms-for-overseas-issuers.

RG 190.57 The notice and related documents must be sent to the NZCO:
 Companies Office
 Private Bag 92061
 Victoria Street West
 Auckland 1142
 NEW ZEALAND

The FMA's power to declare a failure to meet a requirement as non-material

RG 190.58 If an Australian issuer's offer of financial products would be exempt except for a failure to meet a requirement contained in regs 267 and 268 of the NZ FMC Regulations and the FMA is satisfied that the failure is minor or technical only, the FMA may declare in writing that it is a non-material breach: NZ FMC Act, s578. The effect of a declaration of a non-material breach is that the requirement in question is deemed to have been complied with: NZ FMC Act, s578.

While the offer is open (ongoing requirements)

RG 190.59 At all times while the offer remains open to New Zealand investors, the Australian issuer must comply with the offering conditions (see Table 6), which include ensuring that the offer remains open to Australian investors and notifying the NZCO of certain circumstances (see Table 7).

Table 6: Offering conditions for Australian issuers

The offer	<p>At all times while the offer is open to New Zealand investors, the offer must:</p> <ul style="list-style-type: none"> • remain a recognised offer in Australia (NZ FMC Regulations, reg 270(a)); • comply with Australian securities law (NZ FMC Regulations, reg 270(b)); • be open to acceptance by persons in Australia (NZ FMC Regulations, reg 270(c)); and • ensure that an offer document given to a person is accompanied by the prescribed warning statement (NZ FMC Regulations, regs 271(a)–(d)).
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The issuer	<p>At all times while the offer is open to New Zealand investors, the Australian issuer must:</p> <ul style="list-style-type: none"> • give a prospective investor, on request and free of charge, copies of the constitution of the company or scheme (NZ FMC Regulations, reg 272(a)); • comply with the notification requirements (NZ FMC Regulations, reg 273)—see Table 7; • maintain an address for service in New Zealand (NZ FMC Regulations, reg 272(c)); and • ensure that anyone who is prohibited by, or under a power exercised under, Australian or New Zealand law from being concerned in the management of a company in Australia or New Zealand is <i>not</i> concerned in the management of the issuer (NZ FMC Regulations, reg 272(b)).
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Availability of dispute resolution in New Zealand (ongoing requirements)

RG 190.60 Where an Australian issuer's offer relates to interests in a managed investment scheme and any dispute resolution process described in the offer document is not available in New Zealand, reg 271(d) of the NZ FMC Regulations provides that the offer document must be accompanied by the following additional warning statement:

The dispute resolution process described in this offer document is only available in Australia and is not available in New Zealand.

Ongoing notification requirements (Australian issuers)

RG 190.61 The Australian issuer must notify the NZCO of certain circumstances set out in Table 7.

Table 7: Notification requirements for Australian issuers (including regs 273, 274 and 275 of the NZ FMC Regulations)

If ...	You must lodge with the NZCO ...	By this time ...
a change is made to an offer document, or any other document, required by the Australian securities law	notice of change to the offer document stating the date on which the Australian issuer notified (or should have notified) ASIC of the change and a copy of the document as changed with the changes marked.	no later than 5 working days after the day on which the issuer notified (or should have notified) ASIC of the change.
a supplementary or replacement offer document is required by the Australian securities law	notice of supplementary or replacement offer document stating the date on which the Australian issuer filed (or should have filed) the supplementary or replacement document and a copy of the supplementary or replacement offer document.	as soon as practicable after and no later than 5 working days after the day on which the issuer filed (or should have filed) the supplementary or replacement offer document with ASIC.

If ...	You must lodge with the NZCO ...	By this time ...
the issuer's address for service changes	notice of change of address for service containing the new address for service and the date on which the change takes effect.	at least 5 working days before the change takes effect.
a change is made to the constitutional document of the entity whose securities are being offered	notice of change to the constitutional document stating the date on which the Australian issuer notified (or should have notified) ASIC of the change and a copy of the constitutional document as changed with changes marked.	no later than 5 working days after the day on which the issuer notified (or should have notified) ASIC of the change.
ASIC makes, changes or revokes a general exemption relevant to the offer	notice of grant of, amendment to, or revocation of general exemption, specifying the general exemption, stating whether it has been granted, amended or revoked and the date of its grant, amendment or revocation.	no later than 10 working days after the day ASIC made, changed or revoked the exemption or modification.
ASIC makes, changes or revokes an exemption or modification relevant to the offer that is specific to the offer or the issuer	notice of grant of, amendment to, or revocation of specific exemption, specifying the specific exemption and, if the exemption has been granted or amended, a copy of the exemption or amended exemption (with changes marked), and the date the exemption was granted, amended or revoked.	no later than 5 working days after the day ASIC made, changed or revoked the exemption or modification.
ASIC begins enforcement action, or exercises a power it has under law, in relation to the issuer or offer	notice of enforcement action taken or power exercised stating the date on which the enforcement action began or the power was exercised and giving details of the nature of the enforcement action or the exercise of the power.	no later than 5 working days after the day on which ASIC took the action or exercised the power.

What happens if an offering condition is breached?

RG 190.62 A breach of a term or condition that must be complied with under the mutual recognition scheme is an offence under New Zealand law: NZ FMC Act, s579. In addition, the FMA may make an order prohibiting a person from making an offer under the mutual recognition regime if the FMA is satisfied that:

- (a) one or more of the requirements of the NZ FMC Regulations have been breached in relation to a previous offer by the issuer, or a person associated with the issuer; and
- (b) the contravention was not minor or technical only (NZ FMC Act, s471).

What other New Zealand financial products laws apply to a recognised offer?

- RG 190.63 A recognised offer is exempt from many of the provisions of the NZ FMC Act, including the:
- (a) disclosure requirements for offers of financial products under Pt 3;
 - (b) governance of financial products under Pt 4; and
 - (c) unsubstantiated representation requirements (NZ FMC Act, s23 and NZ FMC Regulations, reg 261).
- RG 190.64 All other provisions of the NZ FMC Act and NZ FMC Regulations will apply to a recognised offer. In particular, the provisions in Pt 6 (dealing with licensing and other regulation of market services) and Pt 2 (dealing with fair dealing) of the NZ FMC Act will apply. Part 2 has a broad-ranging prohibition on dealing in financial products (including offers of financial products) in a manner that is likely to mislead or deceive. It also prohibits offers of financial products for issue or sale in the course of, or because of, an unsolicited meeting with another person or an unsolicited telephone call to another person.

D What must New Zealand issuers do if they elect to comply with the former NZ securities law?

Key points

Until 30 November 2016, a New Zealand issuer who wants to offer securities to Australian investors under the mutual recognition scheme in the former NZ securities law must:

- be entitled under the former NZ securities law to offer the securities;
- make a recognised offer of securities under the former NZ securities law (i.e. the offer must require disclosure under Pt 2 of the NZ Securities Act); and
- comply with all applicable New Zealand laws.

The issuer must also comply with specified requirements for offering securities into Australia, including lodging a notice with ASIC and ensuring that the offer document is accompanied by a warning statement.

While the offer remains open to Australian investors, the New Zealand issuer must comply with the offering conditions, including ensuring that the offer remains open to New Zealand investors and notifying ASIC of certain circumstances.

What offers does this section apply to?

- RG 190.65 Until 30 November 2016, Section D applies when a New Zealand issuer offers securities to Australian investors under the mutual recognition scheme in the former NZ securities law. For the requirements that apply where a New Zealand issuer offers financial products to Australian investors under the mutual recognition scheme in the NZ financial markets law, see Section B.

Before making an offer (entry requirements)

What is a 'recognised offer'?

- RG 190.66 An offer of securities by a New Zealand issuer into the Australian market under the mutual recognition scheme is called a 'recognised offer'. To be a recognised offer, the offer must require disclosure under Pt 2 of the NZ Securities Act.

RG 190.67 ASIC considers that an offer that the FMA has exempted from compliance with Pt 2 of the NZ Securities Act in its entirety, as opposed to a partial exemption, is not a recognised offer.

Who can make an offer?

RG 190.68 The issuer must be incorporated by or under the law of New Zealand, be a natural person resident in New Zealand, or be a legal person established by or under the law in New Zealand. An entity that is registered as an overseas company under New Zealand law will not be able to opt into this scheme: Australian Corporations Act, s1200C(2).

RG 190.69 There must be no person concerned in the management of the issuer who is:

- (a) disqualified from being concerned in the management of the issuer under New Zealand law;
- (b) disqualified from managing corporations under Pt 2D.6 of the Australian Corporations Act (e.g. as an undischarged bankrupt or having been convicted of certain offences); or
- (c) banned by ASIC from providing financial services (e.g. because the person has not complied with the law, has become insolvent or has committed a fraud) or disqualified by a court from providing financial services under the Australian Corporations Act.

Further, the person offering the securities must not be banned by ASIC from making a recognised offer under s1200P of the Australian Corporations Act: see Australian Corporations Act, s1200C(3) and 1200G(6).

What securities can be offered in Australia?

RG 190.70 The securities that can be offered in Australia are limited to the securities defined in Ch 8 of the Australian Corporations Act. Essentially, the mutual recognition scheme applies to shares, debentures and interests in managed investment schemes, and certain rights, interests and options in these securities: Australian Corporations Act, s1200A.

What must be lodged with the NZCO?

RG 190.71 If a New Zealand issuer proposes to make an offer of securities in Australia, the New Zealand issuer must lodge with the NZCO written notice of its intention to make the offer under the mutual recognition scheme. This notification must be no later than the time ASIC is notified of the New Zealand issuer's intention: see RG 190.73–RG 190.76.

Note: Notification forms are available on the NZCO website at www.business.govt.nz/companies/learn-about/other-entities/overseas-issuers/mrso/mrso-forms.

RG 190.72 The notice must be sent to the NZCO:

Companies Office
Private Bag 92061
Victoria Street West
Auckland 1142
NEW ZEALAND

What must be lodged with ASIC?

RG 190.73 At least 14 days before the day on which the offer is first made in Australia, and no later than the time the NZCO is notified, the New Zealand issuer must lodge with ASIC a written notice of the intention to make the offer, together with:

- (a) any offer document required by the former NZ securities law (e.g. a prospectus and an investment statement);
- (b) the warning statement that is to be included with any offer document;
- (c) the constitution of the New Zealand issuer or, if the securities that are to be the subject of the offer are interests in a managed investment scheme, the constituent documents of the scheme;
- (d) details of any exemption from the former NZ securities law that applies to the offer, including:
 - (i) details of any general exemption that applies to the offer or to the issuer in relation to the offer; and
 - (ii) a copy of any specific exemption that applies to the offer or to the issuer; and
- (e) an address for service in Australia.

Note 1: See Australian Corporations Act, s1200C(5) and 1200D. As at the date of this guide, there is no prescribed form for the purposes of s1200C(5) of the Australian Corporations Act. Unless a form is prescribed, the written notice can be provided in a covering letter accompanying the documents required under s1200D of the Australian Corporations Act.

Note 2: Where an issuer seeks to maintain the confidentiality of an offer in New Zealand, ASIC may on consideration of an application for relief shorten the 14-day notification period by making a declaration under s1200B(3) of the Australian Corporations Act: see RG 190.78. In these cases, ASIC may permit the required documents to be lodged in both jurisdictions on the same day.

RG 190.74 The information placed on the NZCO's 'Disclose' register will not form part of the offer document required to be lodged with ASIC for the purposes of s1200D(1)(a) of the Australian Corporations Act.

RG 190.75 As mentioned at RG 190.73(b), the offer document must be accompanied by a prescribed warning statement that the offer is principally governed by the

former NZ securities law rather than Australian law, along with certain prescribed warnings about the rights, remedies and compensation arrangements, tax differences and any currency risk: Australian Corporations Act, s1200E and Australian Corporations Regulations, regs 8.2.02–8.2.03.

Note: If the issuer chooses to include the warning statement in its offer document, it must be included in a clear and prominent manner that is likely to be observed by a person considering the offer.

RG 190.76 There is a requirement to notify ASIC of certain events that have occurred after the information or document has been lodged with ASIC. ‘Certain events’ may include a change in the address for service in Australia (s1200C(6)(d) of the Australian Corporations Act) or those which are outlined in Table 9.

RG 190.77 The notice and related documents should be sent to ASIC:
 FE Registration Services
 Australian Securities and Investments Commission
 PO Box 4000
 Gippsland Mail Centre
 Victoria 3841
 AUSTRALIA

ASIC’s power to declare an offer a ‘recognised offer’

RG 190.78 If a New Zealand issuer’s offer would be a recognised offer except for a failure to meet the conditions in s1200C(5) and 1200C(6) of the Australian Corporations Act and ASIC is satisfied that the failure is minor or technical, ASIC may declare in writing that the offer is a recognised offer: Australian Corporations Act, s1200B(3). ASIC does not have a general exemption or modification power in respect of Ch 8 of the Australian Corporations Act.

Note: See ASIC’s RG 51 for information relating to applying to ASIC for relief, including declarations under s1200B(3) of the Australian Corporations Act.

While the offer is open (ongoing requirements)

RG 190.79 At all times while the offer remains open to Australian investors, the New Zealand issuer must comply with the offering conditions (see Table 8), which include ensuring that the offer remains open to New Zealand investors and notifying ASIC of certain circumstances (see Table 9).

Table 8: Offering conditions for New Zealand issuers

The offer	<p>At all times while the offer is open to Australian investors, the offer must:</p> <ul style="list-style-type: none"> • remain a recognised offer in New Zealand (Australian Corporations Regulations, reg 8.2.01); • comply with the former NZ securities law (Australian Corporations Act, s1200G(5)); and • be open to acceptance by persons in New Zealand (Australian Corporations Act, s1200G(1) and 1200G(2)).
The issuer	<p>At all times while the offer is open to Australian investors, the New Zealand issuer must:</p> <ul style="list-style-type: none"> • ensure that the person offering the securities remains incorporated, a natural person resident, or a legal person established by or under New Zealand law, and is not banned from making recognised offers (Australian Corporations Act, s1200C(2), 1200C(3) and 1200P); • have lodged a current warning statement or any changed warning statement with the offer document (Australian Corporations Act, s1200G(7)); • give a prospective investor, on request and free of charge, copies of the constitution of the issuer or constituent document of the scheme (Australian Corporations Act, s1200G(8)); • comply with the notification requirements (Australian Corporations Act, s1200G(9))—see Table 9; • maintain an address for service in Australia (Australian Corporations Act, s1200H); and • ensure that the following persons are <i>not</i> concerned in the management of the issuer (Australian Corporations Act, s1200G(6)): <ul style="list-style-type: none"> – anyone who is disqualified from managing corporations in Australia, or from being concerned in the management of the issuer in New Zealand; or – anyone who is subject to a banning order under s920A or a court order under s921A(2)(a) of the Australian Corporations Act. <p>If the offer is an offer of interests in a managed investment scheme and the issuer's records indicate that interests are held by someone who resides in Australia, the issuer must comply with the dispute resolution condition under s1200J of the Australian Corporations Act: see RG 190.80-RG 190.82.</p>

Note: A New Zealand issuer may be required to comply with the requirements in s1200G(9), 1200H and 1200J of the Australian Corporations Act after the offer has closed in Australia.

Complying with the dispute resolution condition (ongoing requirements)

- RG 190.80 Where a New Zealand issuer's offer relates to interests in a managed investment scheme, the New Zealand issuer must have a dispute resolution process that complies with s1017G(2) of the Australian Corporations Act: Australian Corporations Act, s1200J.
- RG 190.81 This dispute resolution system must consist of:
- (a) an internal dispute resolution procedure that:
 - (i) complies with the standards and requirements made or approved by ASIC; and

- (ii) covers complaints made by retail clients against the issuer about the financial services provided in relation to the interests; and
- (b) membership of one or more ASIC-approved external dispute resolution schemes that cover complaints made by retail clients against the issuer about the financial services provided in relation to the interests.

RG 190.82 The New Zealand issuer must maintain the dispute resolution processes in Australia for as long as the issuer's records show that an Australian resident holds securities in the class of interests that was the subject of the offer.

Note: See ASIC's RG 165 and RG 139 for information relating to Australian dispute resolution requirements.

Ongoing notification requirements (New Zealand issuers)

RG 190.83 The New Zealand issuer must notify ASIC of certain events set out in Table 9.

Table 9: Notification requirements for New Zealand issuers (s1200G(9) of the Australian Corporations Act)

If ...	You must lodge with ASIC ...	By this time ...
a change is made to an offer document, or any other document, required by the former NZ securities law	a copy of the document as changed.	no later than 7 days after the day on which the issuer notified (or should have notified) the NZCO of the change.
a change is made to the warning statement that is included with the offer document in Australia	a copy of the warning statement as changed.	
a supplementary or replacement offer document is required by the former NZ securities law	a copy of the supplementary or replacement offer document.	
a change is made to the constitution or constituent document of the entity whose securities are being offered	a copy of the constitution or constituent document as changed.	
the FMA makes, changes or revokes an exemption that applies <i>exclusively</i> to the offer or the issuer under the former NZ securities law	a copy of the exemption, the exemption as changed, or notice in the prescribed form (if any) of the details of the revocation.	no later than 7 days after the making, change or revocation of the exemption occurs.
the FMA makes, changes or revokes an exemption that applies, but <i>not</i> exclusively, to the offer or the issuer under the former NZ securities law	written notice in the prescribed form (if any) of the details of the exemption, change or revocation.	no later than 14 days after the making, change or revocation of the exemption occurs.

If ...	You must lodge with ASIC ...	By this time ...
the FMA or the NZCO begins enforcement action, or exercises a power it has under law, in relation to the issuer or offer	written notice in the prescribed form (if any) of the details of the action taken or power exercised.	no later than 7 days after the action is taken or the power is exercised.

What happens if an offering condition is breached?

- RG 190.84 A breach of an offering condition, address for service condition or dispute resolution condition amounts to a breach of Australian law, which ASIC can investigate: Australian Corporations Act, s1200Q. In addition, under Ch 8 of the Australian Corporations Act, ASIC may:
- (a) make a stop order under s1200N; or
 - (b) ban the issuer from making a recognised offer for a specified period under s1200P.

What other Australian securities laws apply to a recognised offer?

- RG 190.85 A recognised offer is exempt from many of the provisions of the Australian Corporations Act, including the requirements:
- (a) in Ch 2L, if the offer relates to debentures, and in Ch 5C, if the offer relates to a managed investment scheme;
 - (b) for disclosure for the offer of securities (Ch 6D), except for the hawking provisions, which still apply (see RG 190.86); and
 - (c) to be licensed or authorised to provide certain financial services and to provide disclosure for financial products (Pts 7.6, 7.7, 7.8 and 7.9 of Ch 7, except for the hawking and short selling provisions).

Note: See Australian Corporations Act, s1200F.

- RG 190.86 Other Australian laws apply to recognised offers. In Australia, there is a broad-ranging prohibition on dealing in securities (including offers of securities) in a manner that is likely to mislead or deceive. There are also general content rules for pre-offer advertising for securities and for interests in managed investment schemes. In addition, a person must not offer securities for issue or sale in the course of, or because of, an unsolicited meeting with another person or an unsolicited telephone call to another person (this is known as ‘hawking’).

Note: See, for example, Australian Corporations Act, s736, 992AA, s1041E and s1200L.

RG 190.87 Under Australian law, even if the issuer or scheme is not listed on a financial market, you may have to comply with the continuous disclosure rules if you are:

- (a) a debenture issuer who has made a recognised offer; and
- (b) an issuer of shares and interests in a managed investment scheme who has made a recognised offer and who has had at least 100 members in a class.

Note: See, for example, Australian Corporations Act, s111AC, 111AD, 111AF(2), 111AFA(2), 111AI(b) and 1200K.

RG 190.88 Various obligations apply in relation to an entity that is a disclosing entity—for example, the issuer must lodge with ASIC on an ongoing basis information that a reasonable person would expect to have a material effect on the price or value of the securities or undertake website-based disclosure in accordance with ASIC’s good practice guidance: see RG 198.

E What must Australian issuers do if they elect to comply with the former NZ securities law?

Key points

Until 30 November 2016, an Australian issuer who wants to offer securities to New Zealand investors under the mutual recognition scheme must:

- be entitled under the Australian securities law to offer the securities;
- make a recognised offer of securities under the Australian securities law (i.e. the offer of securities must require a disclosure document or a PDS under the Australian Corporations Act); and
- comply with all applicable Australian laws.

The issuer must also comply with specified requirements for an offer of securities in New Zealand, including lodging a notice with the NZCO and ensuring that the offer document is accompanied by a warning statement.

While the offer remains open to New Zealand investors, the Australian issuer must comply with the offering conditions, including ensuring that the offer remains open to Australian investors and notifying the NZCO of certain circumstances.

What offers does this section apply to?

- RG 190.89 Until 30 November 2016, Section E applies when an Australian issuer offers securities to New Zealand investors under the mutual recognition scheme in the former NZ securities law. For the requirements that apply where an Australian issuer offers financial products to New Zealand investors under the mutual recognition scheme in the NZ financial markets law, see Section C.

Before making an offer (entry requirements)

What is a 'recognised offer'?

- RG 190.90 An offer of securities by an Australian issuer into the New Zealand market under the mutual recognition scheme is a 'recognised offer'. To be a recognised offer, the offer of securities must require a disclosure document or a PDS under the Australian Corporations Act. The Australian issuer must be entitled under Australian law to offer the securities. If the disclosure document or PDS is required to be lodged with ASIC under Australian law, then the issuer must lodge the disclosure document or PDS with ASIC and any exposure period must have expired.

Note: An offer can still be a recognised offer even if the PDS does not need to be lodged with ASIC under s1015B of the Australian Corporations Act. In this situation,

s1015D of the Australian Corporations Act will instead require the Australian issuer to lodge an in-use notice with ASIC.

Who can make an offer?

- RG 190.91 The issuer must be incorporated under the law of Australia, be a natural person resident in Australia, be a legal person established under the law of Australia or be a registered foreign company under the Australian Corporations Act.
- RG 190.92 The issuer or any person concerned in the management of the issuer must not be:
- (a) prohibited by, or under a power exercised under, Australian law from being concerned in the management of a company in Australia (NZ Mutual Recognition Regulations, reg 13(2)(b));
 - (b) prohibited by, or under power exercised under, New Zealand law from being concerned in the management of a company in New Zealand (NZ Mutual Recognition Regulations, reg 13(2)(b)); or
 - (c) previously banned by the FMA from making a recognised offer (NZ Mutual Recognition Regulations, reg 13(4)).

What securities can be offered in New Zealand?

- RG 190.93 The mutual recognition scheme applies to equity or debt securities, interests in an Australian registered scheme, and any interest in, or option to acquire, these securities: NZ Mutual Recognition Regulations, reg 4.

What must be lodged with ASIC?

- RG 190.94 If an Australian issuer proposes to make an offer of securities in New Zealand, the Australian issuer must lodge with ASIC a written notice of its intention to make the offer under the mutual recognition scheme: see Australian Corporations Act, s1200S. An Australian issuer may provide written notice of its intention to offer under the mutual recognition scheme by selecting the option that confirms the offer will be made available in a recognised jurisdiction (e.g. New Zealand) under the mutual recognition scheme when completing either the ASIC OFFERlist form or PDS in-use notice and submitting it to ASIC in the usual way. This notification must be no later than the time the NZCO is notified of the Australian issuer's intention: see RG 190.96–RG 190.97.

RG 190.95 The written notice (ASIC OFFERlist form or PDS in-use notice) should be sent to ASIC:

FE Registration Services
 Australian Securities and Investments Commission
 PO Box 4000
 Gippsland Mail Centre
 Victoria 3841
 AUSTRALIA

What must be lodged with the NZCO?

RG 190.96 Before making the offer in New Zealand, an Australian issuer must lodge with the NZCO a written notice of its intention to make the offer under the mutual recognition scheme in the former NZ securities law: NZ Securities Act, s73(1)(c), and NZ Mutual Recognition Regulations, reg 11. Issuers will receive confirmation from the NZCO that their offer documents have been accepted, and should await this notice before making the offer. The notice must:

- (a) state that the issuer intends to make an offer according to the mutual recognition scheme in the former NZ securities law;
- (b) specify the securities to be offered;
- (c) specify the proposed offer period for:
 - (i) the offer of the securities in New Zealand; and
 - (ii) the offer of the securities in Australia;
- (d) state the full name and address of a person who is authorised to accept service in New Zealand;
- (e) state that the Australian issuer submits to the jurisdiction of the courts of New Zealand;
- (f) state the Australian issuer's New Zealand overseas issuer registration number (if any);
- (g) be signed by a person who is authorised to act on the issuer's behalf; and
- (h) be accompanied by the following documents:
 - (i) an offer document required by Australian law (e.g. a prospectus or, if the offer relates to a managed investment scheme, a PDS);
 - (ii) details of any exemption or declaration under the Australian Corporations Act that is relevant to the offer (whether applying specifically to the issuer or the offer, or generally);
 - (iii) the constitution of the company or scheme; and

- (iv) a copy of the prescribed warning statement that the offer is principally regulated under Australian rather than New Zealand law (required under regs 13(1)(d)–13(1)(g) of the NZ Mutual Recognition Regulations), along with disclosure of any dispute resolution process or other tax differences and currency risks.

Note: Notification forms are available on the NZCO website at www.business.govt.nz/companies/learn-about/other-entities/overseas-issuers/mrso/mrso-forms.

RG 190.97 The notice and related documents must be sent to the NZCO:
 Companies Office
 Private Bag 92061
 Victoria Street West
 Auckland 1142
 NEW ZEALAND

The FMA's power to declare a failure to meet a requirement as non-material

RG 190.98 If an Australian issuer's offer of securities would be exempt except for a failure to meet a requirement contained in regs 11 and 12 of the NZ Mutual Recognition Regulations and the FMA is satisfied that the failure is minor or technical only, the FMA may declare in writing that it is a non-material breach: NZ Mutual Recognition Regulations, reg 8(3). The effect of a declaration of a non-material breach is that the requirement in question is deemed to have been complied with: NZ Mutual Recognition Regulations, reg 8(4).

While the offer is open (ongoing requirements)

RG 190.99 At all times while the offer remains open to New Zealand investors, the Australian issuer must comply with the offering conditions (see Table 10), which include ensuring that the offer remains open to Australian investors and notifying the NZCO of certain circumstances (see Table 11).

Table 10: Offering conditions for Australian issuers

The offer	<p>At all times while the offer is open to New Zealand investors, the offer must:</p> <ul style="list-style-type: none"> • remain a recognised offer in Australia (NZ Mutual Recognition Regulations, reg 13(1)(a)); • comply with Australian securities law (NZ Mutual Recognition Regulations, reg 13(1)(b)); • be open to acceptance by persons in Australia (NZ Mutual Recognition Regulations, reg 13(1)(c)); and • ensure that an offer document given to a person is accompanied by the prescribed warning statement (NZ Mutual Recognition Regulations, regs 13(1)(d)–13(1)(g)).
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The issuer	<p>At all times while the offer is open to New Zealand investors, the Australian issuer must:</p> <ul style="list-style-type: none"> • give a prospective investor, on request and free of charge, copies of the constitution of the company or scheme (NZ Mutual Recognition Regulations, reg 13(2)(a)); • comply with the notification requirements (NZ Mutual Recognition Regulations, reg 13(3))—see Table 11; • maintain an address for service in New Zealand (NZ Mutual Recognition Regulations, reg 13(2)(c)); and • ensure that anyone who is prohibited by, or under a power exercised under, Australian or New Zealand law from being concerned in the management of a company in Australia or New Zealand is <i>not</i> concerned in the management of the issuer (NZ Mutual Recognition Regulations, reg 13(2)(b)).
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Availability of dispute resolution in New Zealand (ongoing requirements)

RG 190.100 Where an Australian issuer's offer relates to interests in a managed investment scheme and any dispute resolution process described in the offer document is not available in New Zealand, reg 13(1)(g) of the NZ Mutual Recognition Regulations provides that the offer document must be accompanied by the following additional warning statement:

The dispute resolution process described in this offer document is only available in Australia and is not available in New Zealand.

Ongoing notification requirements (Australian issuers)

RG 190.101 The Australian issuer must notify the NZCO of certain circumstances, set out in Table 11.

Table 11: Notification requirements for Australian issuers (including regs 13(3), 16 and 17 of the NZ Mutual Recognition Regulations)

If ...	You must lodge with the NZCO ...	By this time ...
a change is made to an offer document, or any other document, required by the Australian securities law	notice of change to the offer document stating the date on which the Australian issuer notified (or should have notified) ASIC of the change and a copy of the document as changed with the changes marked.	no later than 5 working days after the day on which the issuer notified (or should have notified) ASIC of the change.

If ...	You must lodge with the NZCO ...	By this time ...
a supplementary or replacement offer document is required by the Australian securities law	notice of supplementary or replacement offer document stating the date on which the Australian issuer filed (or should have filed) the supplementary or replacement document and a copy of the supplementary or replacement offer document.	as soon as practicable after and no later than 5 working days after the day on which the issuer filed (or should have filed) the supplementary or replacement offer document with ASIC.
the issuer's address for service changes	notice of change of address for service containing the new address for service and the date on which the change takes effect.	at least 5 working days before the change takes effect.
a change is made to the constitutional document of the entity whose securities are being offered	notice of change to the constitutional document stating the date on which the Australian issuer notified (or should have notified) ASIC of the change and a copy of the constitutional document as changed with changes marked.	no later than 5 working days after the day on which the issuer notified (or should have notified) ASIC of the change.
ASIC makes, changes or revokes a general exemption relevant to the offer	notice of grant of, amendment to or revocation of general exemption, specifying the general exemption, stating whether it has been granted, amended or revoked and the date of its grant, amendment or revocation.	no later than 10 working days after the day ASIC made, changed or revoked the exemption or modification.
ASIC makes, changes or revokes an exemption or modification relevant to the offer that is specific to the offer or the issuer	notice of grant of, amendment to or revocation of specific exemption, specifying the specific exemption and, if the exemption has been granted or amended, a copy of the exemption or amended exemption (with changes marked), and the date the exemption was granted, amended or revoked.	no later than 5 working days after the day ASIC made, changed or revoked the exemption or modification.
ASIC begins enforcement action, or exercises a power it has under law, in relation to the issuer or offer	notice of enforcement action taken or power exercised stating the date on which the enforcement action began or the power was exercised and giving details of the nature of the enforcement action or the exercise of the power.	no later than 5 working days after the day on which ASIC took the action or exercised the power.

What happens if an offering condition is breached?

RG 190.102 A breach of a term or condition that must be complied with under the mutual recognition scheme is an offence under New Zealand law: NZ Securities Act, s76. In addition, the FMA may:

- (a) make an order prohibiting the distribution of the Australian offer document (NZ Mutual Recognition Regulations, reg 6(3) and NZ Securities Act, s38B); and
- (b) ban the issuer from making an offer under the NZ Mutual Recognition Regulations (NZ Mutual Recognition Regulations, reg 13(4)).

What other New Zealand securities laws apply to a recognised offer?

RG 190.103 The following provisions of the NZ Securities Act will apply to securities offered by an Australian issuer in New Zealand under the mutual recognition scheme:

- (a) prohibition of door-to-door sales (NZ Securities Act, s35);
- (b) all Australian offer documents are advertisements under the NZ Securities Act, and while pre-offer advertising is permitted in certain circumstances (NZ Mutual Recognition Regulations, reg 6(3)), the FMA has broad powers to prohibit the distribution of any advertisements that are likely to deceive, mislead or confuse in a material regard (NZ Securities Act, s38B); and
- (c) criminal liability for untrue or misleading statements or omissions in offer documents (NZ Securities Act, s58).

RG 190.104 In addition, Pt 2 of the NZ FMC Act (fair dealing) applies to an offer of securities by an Australian issuer in New Zealand under the mutual recognition scheme in the former NZ securities law. However, conduct that contravenes or leads to liability under provisions in the NZ Securities Act relating to an untrue statement in advertisements or prospectuses will not contravene Pt 2: see cl 13 of Sch 4 of the NZ FMC Act.

Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
Australian Corporations Act	<i>Corporations Act 2001</i> (Cth) of Australia
Australian Corporations Mutual Recognition Regulation	Corporations Amendment (Mutual Recognition of Securities Offers) Regulation 2014 of Australia
Australian Corporations Regulations	Corporations Regulations 2001 (Cth) of Australia
Australian securities law	Australian Corporations Act and Australian Corporations Regulations
financial product	A financial product as defined under: <ul style="list-style-type: none"> • Australian securities law (see RG 190.30); and • NZ financial markets law (see RG 190.53)
FMA	New Zealand Financial Markets Authority
former NZ securities law	NZ Securities Act, NZ Regulations 2009 and NZ Mutual Recognition Regulations
home jurisdiction	The country in which the issuer of the financial products is domiciled
mutual recognition scheme	The trans-Tasman mutual recognition scheme for offers of financial products as contained in the law referred to in RG 190.3
NZCO	New Zealand Companies Office
NZ financial markets law	NZ FMC Act and NZ FMC Regulations
NZ FMC Act	<i>Financial Markets Conduct Act 2013</i> of New Zealand
NZ FMC Regulations	Financial Markets Conduct Regulations 2014 of New Zealand
NZ Mutual Recognition Regulations	Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008 of New Zealand
NZ Regulations 2009	Securities Regulations 2009 of New Zealand
NZ Securities Act	<i>Securities Act 1978</i> of New Zealand

Term	Meaning in this document
PDS	Product Disclosure Statement
recognised offer	An offer of financial products by a New Zealand issuer into the Australian market or an offer of certain financial products by an Australian issuer into the New Zealand market, unless otherwise specified

Related information

Headnotes

Australia, collective investment schemes, disclosure document, entry requirements, financial products, fundraising, information sharing, issuers, managed investment schemes, mutual recognition, New Zealand, notification requirements, offer document, offering conditions, offerings, ongoing requirements, Product Disclosure Statement (PDS), recognised offer, trans-Tasman

Regulatory guides

RG 51 *Applications for relief*

RG 139 *Approval and oversight of external dispute resolution schemes*

RG 165 *Licensing: Internal and external dispute resolution*

RG 198 *Unlisted disclosing entities: Continuous disclosure obligations*

Legislation

Australian Corporations Act, s111AC, 111AD, 111AF(2), 111AFA(2), 111AI(b), Pt 2D.6, Chs 2L, 5C, 6D, Pts 7.6, 7.7, 7.8, 7.9, 7.10, Ch 8, s920A, 921A(2)(a), 1015B, 1015D, 1017G, 1200A, 1200B, 1200C, 1200D, 1200E, 1200G, 1200H, 1200J, 1200K, 1200L, 1200N, 1200P, 1200Q, 1200S; Australian Corporations Regulations, regs 8.2.01, 8.2.02, 8.2.03; Australian Corporations Mutual Recognition Regulation

NZ FMC Act, Pt 2, Pt 3 and Subpart 6 of Pt 9; NZ FMC Regulations, Subparts 1, 2, and 3 of Pt 9 and Sch 25

NZ Securities Act, Pts 2, 5, s35, 38B, 58, 73(1)(c), 76; NZ Securities Regulations; NZ Mutual Recognition Regulations, regs 3, 4, 6(3), 8, 11, 12, 13(1), 13(2), 13(3), 13(4), 15, 16, 17