

9 February 2018

Manager
Financial Services Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

FROM: Roger Wallis

████████████████████
████████████████████
██

PARTNER: Roger Wallis

REF: 100222216/6087648.1

By email: productregulation@treasury.gov.au

DESIGN AND DISTRIBUTION OBLIGATIONS AND PRODUCT INTERVENTION POWER – CHAPMAN TRIPP SUBMISSION

- 1 Chapman Tripp is a full service corporate law firm with offices in Auckland, Wellington and Christchurch, New Zealand.
- 2 We have a significant legal practice in public offerings of securities in New Zealand.
- 3 Thank you for the opportunity to make a submission on the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 (*the Bill*).

Submission

- 4 We would like to raise two technical issues:
 - 4.1 **"Company" is too narrow:** As it currently reads, s993DB(2)(d) of the Bill excludes ordinary shares in a "company", which is defined in the Corporations Act 2001 (*the Act*) as a company registered under the Act.

This definition is too narrow, given the Bill will also apply to recognised offers by New Zealand incorporated companies or other body corporates. Not all New Zealand "companies" offering under the recognised offer regime will be registered as foreign companies under the Act, as they are not required to be.
 - 4.2 **Recommendation:** To use the definition of a "corporation" (as defined in s 57A of the Corporations Act 2001), instead of "company" in s 993DB(2)(d). This will allow for mutual recognition of offers of ordinary shares by New Zealand incorporated companies and other body corporates. Consequential changes would need to be made to use "corporation" rather than "company" in the anti-avoidance provision in s 993DB(3).
 - 4.3 **Simple options:** There is currently no exclusion for simple options to subscribe for ordinary shares in a corporation. The same policy reasons for excluding offers of ordinary shares in a corporation apply to offers to subscribe for options.

4.4 **Recommendation:** That s 993DB(2)(d) be expanded to also exclude (perhaps an additional paragraph (e) "options to subscribe for ordinary shares in a corporation", which would allow for options to subscribe for ordinary shares in an Australian or New Zealand incorporated company to be excluded. Consequential changes would need to be made to extend the anti-avoidance provision in s 993DB(3) to also apply to options to subscribe for shares in a corporation.

5 Please feel free to contact me if you would like any clarification of our submissions discussed above.

Yours faithfully



Roger Wallis
PARTNER

