

FINANCE ACT (NO. 2) 1990 AMENDMENT BILL

EXPLANATORY NOTE

GENERAL POLICY STATEMENT

The proposed amendments will maintain the substance of ANZ/PostBank's investment disclosure position that existed in relation to the Bonus Bond Scheme on the transfer of the scheme in 1990 from the Crown to ANZ/PostBank.

The transfer of the Bonus Bond Scheme (now the Bonus Bonds Unit Trust) from the Crown to ANZ/PostBank was effected by the creation of a unit trust with each bond becoming a unit in the unit trust. A pre-condition of the transfer of the Bonus Bonds Scheme to ANZ/PostBank was the passage of the Finance Act (No. 2) 1990. Amongst other things, section 8 of that Act exempted the Unit Trust from compliance with sections 7 and 11 of the Unit Trusts Act 1960. These exemptions from the Unit Trusts Act 1960 were provided in recognition of the unique nature of units which carried the right of unit holders to participate in a prize draw. Other features included the large numbers of unit holders and the generally low number of units held by individuals.

Units in the Unit Trust, as was the case with the bonds in the Bonus Bonds Scheme, are widely held and the number of units held by each holder tends to be small.

Amendments to the Unit Trusts Act 1960 effective in 1994 and 1997, and to the Securities Act 1978 effective in 1997, changed the investment disclosure regime. The proposed amendments in this Bill are intended to maintain the substance of ANZ/PostBank's investment disclosure position following the 1990 Transfer Agreement, having regard to the unique nature of bonus bonds, while being as consistent as possible with current Government policy on investment disclosure. Details of the amendments are set out in the following clause by clause commentary of the Bill.

CLAUSE BY CLAUSE COMMENTARY

Clause 1 relates to the Short Title and commencement.

Clause 2 is deemed to have come into force on 1 July 1994.

Clauses 3 and 4 come into force on 1 October 1997 or on a date to be appointed by the Governor-General by Order in Council (whichever is the earlier).

Clause 5 comes into force on the date on which the Act receives the Royal assent.

Clause 2, which is deemed to have come into force on 1 July 1994, substitutes a *new section 8* in the principal Act, and is related to the amendments in *clauses 3 to 5*.

The present section 8 exempts Post Office Bank Limited and any related company (“the Bank”), subject to conditions, from compliance with sections 7 and 11 of the Unit Trusts Act 1960.

Section 7 of the Unit Trusts Act 1960 requires a manager of a unit trust to issue a written statement that complies with that Act before offering an interest in a unit trust to the public.

Under the present section 8 (1) of the principal Act, the Bank is exempted from that requirement, subject to the condition that statements that comply with section 7 of the Unit Trusts Act 1960 are on display and available to the public during normal business hours at each branch of the Bank at which applications for units can be made.

The *new section 8 (1) and (2)* continue that exemption and condition until 1 October 1997.

On 1 October 1997 the new investment product disclosure regime for the offering of interests in unit trusts comes into force. From that time, the exemption from section 7 of the Unit Trusts Act 1960 will no longer be required.

At the time of the enactment of the principal Act, section 11 of the Unit Trusts Act 1960 required the trustee of a unit trust to send annually, to every unit holder, an audited statement of accounts in respect of the unit trust, together with a summary of any amendments of the trust deed.

Section 8 (3) of the principal Act exempted the Bank from that requirement, subject to the condition that the Bank supplied to a unit holder, on request, a copy of an audited statement of accounts in respect of the unit trust together with a summary of amendments to the trust deed (section 8 (4)).

As a result of the coming into force on 1 July 1994 of the Financial Reporting Act 1993, that requirement was altered so that a trustee of a unit trust that is an issuer within the meaning of that Act is required to send annually, to every unit holder, a copy of the financial statements registered under that Act, a copy of the auditor’s report on those statements, and a summary of any amendments of the trust deed.

The *new section 8 (3)* exempts the Bank and the trustee of an approved unit trust from that requirement, subject to the condition (*new section 8 (4)*) that the Bank supplies to a holder of a unit or units in an approved unit trust, on request, a copy of—

- (a) The unit trust’s most recent financial statements registered under the Financial Reporting Act 1993; and
- (b) The auditor’s report on those financial statements; and
- (c) A summary of any amendments of the trust deed.

This exemption is effective as from 1 July 1994.

Clause 3 repeals section 8 of the principal Act (as substituted by *clause 2*), and substitutes a *new section 8*.

As a result of the Unit Trusts Amendment Act 1996, which comes into force on 1 October 1997 and relates to the new investment product disclosure regime, the requirement under section 11 of the Unit Trusts Act 1960 to send, annually to every unit holder, a copy of the financial statements registered under the Financial Reporting Act 1993, a copy of the auditor’s report, and a copy of any amendments to the trust deed is imposed on the manager of the unit trust, not the trustee.

The *new section 8 (1)* exempts the Bank from that requirement as well, subject to the condition in *new section 8 (2)* that the Bank supplies to a holder of a unit or units in an approved unit trust, on request, a copy of—

- (a) The unit trust's most recent financial statements registered under the Financial Reporting Act 1993; and
- (b) The auditor's report on those financial statements; and
- (c) A summary of any amendments of the trust deed.

Clause 4 inserts a new *section 9A* in the principal Act.

The present exemption from section 7 of the Unit Trusts Act 1960 will no longer apply from 1 October 1997 as section 7 (as amended by the Unit Trusts Amendment Act 1996) will apply the Securities Act 1978 to the offering to the public for subscription of interests in unit trusts (rather than requiring a written statement that complies with the Unit Trusts Act 1960).

The *new section 9A* will exempt the Bank from section 54A of the Securities Act 1978 (which requires issuers of securities to periodically supply information prescribed by regulations made under that Act to existing security holders).

Clause 5 consequentially repeals an amendment to a spent provision (section 8 (5) of the principal Act).

Rt Hon W F Birch

FINANCE ACT (NO. 2) 1990 AMENDMENT

ANALYSIS

Title	3. Application of section 11 (2) of Unit Trusts Act 1960 from 1 October 1997
1. Short Title and commencement	4. Application of Securities Act 1978
2. Application of sections 7 and 11 (3) of Unit Trusts Act 1960 from 1 July 1994 to 30 September 1997	5. Repeal

A BILL INTITULED

An Act to amend the Finance Act (No. 2) 1990

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Finance Act (No. 2) 1990 Amendment Act 1997, and is part of the Finance Act (No. 2) 1990* (“the principal Act”).

(2) **Section 2** is deemed to have come into force on 1 July 1994.

(3) **Sections 3 and 4** come into force on a date to be appointed by the Governor-General by Order in Council.

10 (4) **Sections 3 and 4** come into force on 1 October 1997 if no Order in Council is made under **subsection (3)** appointing a date that is earlier than that date as the date for the coming into force of those sections.

15 (5) **Section 5** comes into force on the date on which this Act receives the Royal assent.

2. Application of sections 7 and 11 (3) of Unit Trusts Act 1960 from 1 July 1994 to 30 September 1997—The principal Act is amended by repealing section 8, and substituting the following section:

20 “8. (1) The Bank is exempted from compliance with section 7 of the Unit Trusts Act 1960 in respect of the issue of, or any offer or invitation to the public to subscribe for or purchase, interests in an approved unit trust.

*1990, No. 73

“(2) The exemption in **subsection (1)** is subject to the condition that statements that comply with section 7 of the Unit Trusts Act 1960 are on display and available to the public during normal business hours at each branch of the Bank at which applications for units can be made. 5

“(3) The Bank and the trustee of an approved unit trust are exempted from compliance with section 11 (3) of the Unit Trusts Act 1960 (as substituted by section 49 of the Financial Reporting Act 1993) in respect of an approved unit trust.

“(4) The exemption in **subsection (3)** is subject to the condition that the Bank supplies to a holder of a unit or units in an approved unit trust, on request, a copy of— 10

“(a) The unit trust’s most recent financial statements registered under the Financial Reporting Act 1993; and 15

“(b) The auditor’s report on those financial statements; and

“(c) A summary of any amendments of the trust deed that have been made since the last balance date of the unit trust.”

3. Application of section 11 (2) of Unit Trusts Act 1960 from 1 October 1997—The principal Act is amended by repealing section 8 (as substituted by **section 2** of this Act), and substituting the following section: 20

“8. (1) The Bank is exempted from compliance with section 11 (2) of the Unit Trusts Act 1960 (as substituted by section 4 (1) of the Unit Trusts Amendment Act 1996) in respect of an approved unit trust. 25

“(2) The exemption in **subsection (1)** is subject to the condition that the Bank supplies to a holder of a unit or units in an approved unit trust, on request, a copy of— 30

“(a) The unit trust’s most recent financial statements registered under the Financial Reporting Act 1993; and

“(b) The auditor’s report on those financial statements; and

“(c) A summary of any amendments of the trust deed that have been made since the last balance date of the unit trust.” 35

4. Application of Securities Act 1978—The principal Act is amended by inserting, after section 9, the following section:

“9A. The Bank is exempted from compliance with section 54A of the Securities Act 1978 (as inserted by section 27 of the Securities Amendment Act 1996) in respect of any offer to the 40

public within the meaning of the Securities Act 1978 of a unit in an approved unit trust.

5 **5. Repeal**—The Second Schedule of the Department of Justice (Restructuring) Act 1995 is consequentially amended by repealing the item relating to section 8 (5) (a) of the Finance Act (No. 2) 1990.