

New Zealand Stock Exchange Restructuring Bill

Private Bill

As reported from the Finance and Expenditure
Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the New Zealand Stock Exchange Restructuring Bill and recommends by majority that it be passed with the amendments shown.

This is a private bill. We report that the statements in the preamble have been proved to our satisfaction.

Introduction

The New Zealand Stock Exchange Restructuring Bill (the bill) provides a mechanism for the New Zealand Stock Exchange (the exchange) to be converted into a company if its members choose to do so. We refer to this process as the demutualisation, as the exchange is currently a mutual organisation. The bill provides that members of the exchange will be entitled to determine their ownership entitlements and, upon demutualisation, shares of the company will be issued in accordance with those ownership entitlements. In addition, the bill provides that the company will not be a new legal entity and is the same body corporate as the exchange.

Although this is a private bill, it raises a number of complex issues of wide public interest. This is because the exchange plays an important role in the New Zealand economy as the facilitator of investment in New Zealand business. Therefore, it is important that New Zealand's capital markets conform to international best practice.

Many of the world's major stock exchanges have demutualised over the past decade. The majority of us consider this bill will allow the exchange to move to a structure that conforms closely with international norms. We consider a company structure will provide the exchange with the flexibility needed to operate in the current environment. For example, it would make it easier for the exchange to operate in other jurisdictions and to provide facilities for trading different types of financial products. It could also raise capital to enable it to expand its operations. In addition, a company structure would ensure the exchange operates under standard company mechanisms for transparency and accountability within the organisation. It would also allow the owners of the exchange flexibility to transfer their ownership rights. This places incentives on the management of the exchange to manage the company efficiently in order to maximise the returns of the owners.

Alliance and Green members are concerned a company structure could create conflicting objectives for the exchange. It is their view that a stock exchange should be a neutral conduit for the trading of securities rather than a company seeking to maximise its profit and increase the value of its own shares. Accordingly, they oppose the passage of the bill.

The remainder of this report sets out our consideration of the bill and the amendments we are recommending.

Definition of “qualifying member”

We heard a number of submissions on the definition of “qualifying member”. The bill defines a qualifying member as a person who was a member of the exchange on 16 August 2000. Some submitters are concerned that they will be unfairly excluded by the date. We consider the arbitrary nature of the 16 August date unjust given that it takes a number of years to become a full member of the exchange.

We therefore recommend clause 4 be amended to change the qualifying member date to 15 February 2001. This is the date the bill was introduced to the House. However, those who were members at

16 August 2000 should also be included so that those who made decisions based on that date will not be disadvantaged.

Only qualifying members are able to gain an ownership entitlement when the exchange demutualises. However, the restructuring proposal, which will be voted on by members entitled to vote under the exchange's rules, will specify which qualifying members will have an ownership entitlement. Accordingly, those who are qualifying members will not necessarily receive an ownership entitlement.

Approval of exchange rules

The Governor-General currently exercises approval powers in relation to the exchange's business rules. These rules govern the conduct of business on the exchange. However, the exchange's listing rules are not subject to the Governor-General's approval powers. The listing rules are important as they define the conditions under which companies are listed on the exchange and are aimed at protecting shareholders and investors. We consider investor confidence in the rules under which the exchange operates is of the utmost importance.

Due to the potential significance for New Zealand's capital markets of the nature of the listing rules, we seek to ensure there is some public oversight of the rules. We therefore recommend clause 10A be inserted to provide that, on demutualisation, the Governor-General approve the listing and business rules of the exchange. This should be done on the recommendation of the Minister of Commerce. The Minister must recommend that the rules be approved unless she or he is satisfied it is not in the public interest to do so. Any changes to the rules would be subject to a disallowance power.

Establishment of a control limit

The general purpose of the bill is to allow the exchange to become a publicly owned company. A number of submitters are concerned that the exchange could be vulnerable to being taken over by dominant interests. This situation may not align with the development of New Zealand's capital markets. We agree and consider it inappropriate that the exchange be vulnerable in this manner.

We therefore recommend clause 10B be inserted to provide that, upon demutualisation, a control limit be set by the Governor-General. We recommend the limit be ten percent. Under clause 10B,

anyone who holds or controls voting rights that exceed the limit must, within 90 days, take steps to ensure they are no longer in contravention of the limit. During this time no voting rights that exceed the limit may be exercised. After the 90-day period a person still in contravention of the limit commits an offence and is liable for a fine not exceeding \$1000 for each day the contravention continues.

Claim the exchange's rules discriminatory

One submitter claimed she and one other had been discriminated against by the exchange. She had her membership of the exchange revoked while on maternity leave. This was due to a requirement under the exchange's rules governing membership that a person will cease to be a member if she or he has not represented a member firm full time for a total of six months out of the last 12 months, unless granted leave of absence by the board of the exchange. The submitter argued this rule discriminates against parents, particularly women. This is because parents may need to work slightly less than full time to meet their childcare commitments. In the majority of cases this falls to the mother.

The exchange argued that it is important that members are active, as the business of the exchange is dynamic. It also pointed out the submitter could become a member again once she started working full time.

We do not make a judgment on the merits of the submitter's argument. However, we have worked with the exchange to ensure the submitter and one other who has been similarly affected is working through a fair, mutually agreed process with the exchange to resolve the issue.

Taxation provision

The intent of the taxation provision needs to be clarified. The bill currently provides that a qualifying member would be deemed to have shares in the company for a cost equal to the value of that member's interest in the exchange on the day the restructuring occurs.

We recommend clause 13(2)(a) be amended to provide that the member would be regarded as having shares for a cost equal to the value immediately before the restructuring day.

The broader regulatory environment

As stated above, this bill raises issues of wide public interest. As this is a private bill the requirement for a control cap and for provisions for the approval of business and listing rules applies only to the exchange. As a result, if another stock exchange established itself in New Zealand it would not have these requirements upon it. Accordingly, we recommend the Government consider introducing legislation that would:

- allow the Governor-General by Order in Council to impose a control cap on stock exchanges where it is in the public interest
- require the listing rules of stock exchanges to be approved by the Governor-General by Order in Council, as is currently required for business rules. The rules should be approved unless it is not in the public interest to do so. Any changes to the business or listing rules should be subject to disallowance by the Governor-General by Order in Council where it is in the public interest to do so.

As mentioned above, investor confidence in New Zealand's capital markets is of key importance. We understand the Government is working on measures relating to insider-trading law and the Securities Commission's oversight of stock exchanges. We encourage any measures that will increase investor confidence while minimising compliance costs for investors, listed companies and stock exchanges.

We note that international best practice is for the respective regulatory responsibilities of a demutualised exchange and the relevant regulator to be clearly documented. Given the proposed reform of the Securities Act 1978 and the demutualisation of the exchange, we look forward to the appropriate documentation of these responsibilities in due course.

Green Party minority view

The Green Party does not support the demutualisation of the exchange. We believe the wider investment community, including sharebrokers, advisers, shareholders and listed companies, are best served by the exchange remaining in a mutual structure rather than one interest group, sharebrokers, gaining ownership of the exchange.

The transfer of ownership to individual shareholding brokers creates a conflict of interest for the brokers who, on the one hand, will still want the exchange to provide quality service but, on the other hand, will want to maximise the value of and return on their shares.

We also oppose the demutualisation of the exchange because we see it as a first step to the take over of the exchange by a foreign exchange or exchanges. We do not believe this would be in the best interests of listed New Zealand companies, their shareholders or the wider investment community. Individualised ownership of the exchange increases the likelihood that a takeover offer by foreign stock exchange will eventuate.

We were advised that other parliaments around the world have not permitted this to occur. They recognise the inherent conflict of interest in allowing the owners/shareholders to make decisions such as selling the exchange when they have no obligation to consider the impact on the wider investment community.

We dispute the claimed advantages of demutualisation and note that, while a number of stock exchanges have demutualised in recent times, significant exchanges such as New York remain mutuals. Many of New Zealand's largest businesses are co-operatives. It is part of the New Zealand business ethos to work to mutual benefit. In our view the stock exchange, as a service provider, should continue that tradition.

Leaving aside our opposition to demutualisation, we do not believe this proposal has been well thought through by the exchange. It has come directly from the Board without any endorsement from the wider membership of the exchange. We believe normal practice should have been for the exchange to hold a special general meeting to discuss and agree to demutualisation instead of asking Parliament to legislate in advance of the members of the exchange discussing whether or not they wish to demutualise.

The exchange currently is largely unregulated with little accountability or independent scrutiny. This approach is relatively unique internationally with most overseas stock exchanges being subject to some degree of public scrutiny and supervision. These needs have not been adequately addressed in the bill.

At the very least, the bill should not proceed until the Government and the Securities Commission have implemented measures on insider trading and stock exchange oversight. To proceed in advance

of these safeguards is tantamount to recreating the Wild West without the sheriff.

Appendix

Committee process

The New Zealand Stock Exchange Restructuring Bill was referred to the committee on 14 March 2001. The closing date for submissions was 2 May 2001. We received and considered 17 submissions from interested groups and individuals. We heard 13 submissions. Hearing evidence took 4 hours 20 minutes and consideration took 4 hours 31 minutes.

We received advice from the Ministry of Economic Development.

Committee membership

Mark Peck (Chairperson)

Hon Peter Dunne (Deputy Chairperson)

David Cunliffe

Clayton Cosgrove

Rod Donald

Hon Bill English

Rodney Hide

Luamanuvao Winnie Laban

Rt Hon Winston Peters

Dr the Hon Lockwood Smith

John Tamihere

John Wright

Annabel Young

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

New (majority)

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

Hon Marian Hobbs

New Zealand Stock Exchange Restructuring Bill

Private Bill

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Preamble

- (1) The New Zealand Stock Exchange (NZSE) is a body corporate established by the Sharebrokers Amendment Act 1981:
- (2) The NZSE wishes to give the NZSE members the right to determine whether the NZSE should be converted into a company. If converted into a company, the NZSE will continue as the same body corporate: 5
- (3) Legislation is necessary to:—
 - (a) enable the determination of the qualifying members' ownership entitlements in the NZSE, provide a mechanism for the conversion of the NZSE into a company, if the NZSE members so determine, and enable the NZSE members to determine whether all the property, rights, and liabilities of the NZSE will vest in either that company or a named wholly-owned subsidiary of that company; and 10
 - (b) ensure the continuity of the body corporate on conversion into a company; and 15
 - (c) make appropriate amendments to, and repeal, existing legislation:

- (4) The objects of this Act cannot be achieved without the authority of Parliament:

The Parliament of New Zealand therefore enacts as follows:

1 Title

This Act is the New Zealand Stock Exchange Restructuring Act **2001**. 5

2 Commencement

- (1) **Sections 15** and **16** come into force on the restructuring day.
(2) The rest of this Act comes into force on the day after the date on which this Act receives the Royal assent. 10

3 Purpose

The purpose of this Act is to—

- (a) enable the determination of the qualifying members' ownership entitlements in the NZSE; and
(b) provide a mechanism for the conversion of the NZSE into a company, if the NZSE members so determine; and 15
(c) enable the NZSE members to determine whether all the property, rights, and liabilities of the NZSE will vest on the restructuring day in the Company or a named wholly-owned subsidiary of the Company. 20

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—
Board means the board of directors of the NZSE constituted under the NZSE rules 25

New (majority)

business rules means the rules made by the NZSE or the Company that will govern the conduct of—

- (a) the business on the stock exchange to be operated by the vesting entity; and
(b) the sharebrokers who will be authorised to undertake activities on that stock exchange 30

chairman means the chairman of the Board

Company means the Company that the NZSE becomes on the restructuring day under **section 10**

New (majority)

conduct rules means the business rules and the listing rules of the stock exchange to be operated by the vesting entity

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control, in relation to a voting right, means having directly or indirectly effective control of the voting right

control limit means the highest percentage of voting rights in the Company that may be held or controlled directly or indirectly by any person

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instrument includes—

(a) any instrument (other than an enactment) of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities or would do so if it or a copy of it were lodged, filed, or registered under any enactment; and

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(b) any judgment, order, or a process of a court

liabilities means liabilities, debts, charges, duties, and obligations of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere)

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New (majority)

listing rules means the rules made by the NZSE or the Company that will relate to—

(a) the governance of the persons who are parties to listing agreements with the vesting entity; and

25

(b) the entry into, and revocation of, listing agreements with the vesting entity

Minister means the Minister of Commerce

NZSE means the New Zealand Stock Exchange established by section 3 of the Sharebrokers Amendment Act 1981

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NZSE member means a member of the New Zealand Stock Exchange as defined in the NZSE rules

NZSE rules means the rules approved by the Governor-General and published in the *Gazette* under section 7 of the Sharebrokers Amendment Act 1981

ownership entitlement means an entitlement to share in the ownership of the NZSE

property means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal, and, without limitation, includes—

- (a) choses in action and money; and
- (b) goodwill; and
- (c) any copyright, patent, registered design, trademark, know-how, service marks, or other intellectual property, and any applications pending for patents, trademarks, copyright, and other intellectual or industrial property; and
- (d) rights, interests, and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective

qualifying member means a person—

- (a) who was an NZSE member on 16 August 2000 <or 15 February 2001>; or
 - (b) whose application to be an NZSE member was lodged with the NZSE on or before <16 August 2000> <15 February 2001>, and is approved by the NZSE before the date of the first meeting convened under **section 7**—
- and includes that person's nominee

Struck out (majority)

restructuring day means the day specified as the restructuring day by the Governor-General by Order in Council, being a day after the publication in the *Gazette* of a notice under **section 8(c)**

New (majority)

restructuring day means the day specified as the restructuring day by the Governor-General by Order in Council, being a day after the—

- (a) publication in the *Gazette* of a notice under **section 8(c)**; and 5
- (b) approval under **section 10A(2)** of the conduct rules of the stock exchange to be operated by the vesting entity; and
- (c) determination of a control limit in respect of the Company under **section 10B(2)**; and
- (d) documents and fee referred to in **section 9(1)** have been delivered to the Registrar of Companies 10

restructuring proposal means the restructuring proposal referred to in **section 6**, or an amended or new restructuring proposal prepared under **section 7(4)**

rights means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective 15

Secretary has the same meaning as in section 2 of the Sharebrokers Act 1908

subsidiary has the same meaning as in sections 5 to 8 of the Companies Act 1993 20

Struck out (majority)

vesting entity means the Company or a wholly-owned subsidiary of the Company in which all of the NZSE's property, rights, and liabilities vest on the restructuring day under the restructuring proposal

New (majority)

vesting entity means the Company, or the wholly owned subsidiary of the Company, in which all of the NZSE's property, rights, and liabilities vest on the restructuring day in accordance with the restructuring proposal referred to in **section 8** 25

New (majority)

voting right means a currently exercisable right to cast a vote at meetings of members or shareholders of a person, not being a right to vote that is exercisable only in 1 or more of the following circumstances:

- (a) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the security that confers the voting right is in arrears or some other default exists: 5
 - (b) on a proposal that affects rights attached to the security that confers the voting right: 10
 - (c) during the liquidation of the person:
 - (d) in respect of a special, immaterial, or remote matter that is inconsequential to control of the person.
- (2) A person is an **associated person** of another person if— 15
- (a) they are acting jointly or in concert; or
 - (b) either person acts, or is accustomed to act, in accordance with the wishes of the other person; or
 - (c) they are related companies; or
 - (d) either person is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other; or 20
 - (e) they are both, directly or indirectly, under the control of the same person.
- (3) For the purposes of **subsection (2)**, a director of a company or other body corporate is not an associated person of that company or body corporate merely because he or she is a director of that company or body corporate. 25

5 Act binds the Crown
This Act binds the Crown.

6 Restructuring proposal 30

(1) The Board may prepare a restructuring proposal which must include—

Struck out (majority)

- (a) a method for establishing, or a statement as to, which qualifying members have an ownership entitlement and the extent of those entitlements; and

New (majority)

- (a) a method for establishing, or a statement as to,—
- (i) which qualifying members have an ownership entitlement; and 5
 - (ii) the extent of those qualifying member's ownership entitlements; and
- (b) a statement to the effect that the NZSE convert into a company, and the name of the Company; and 10
- (c) a statement specifying whether all the property, rights, and liabilities of the NZSE will vest on the restructuring day in the Company or in a named wholly-owned subsidiary of the Company; and
- (d) a statement to the effect that, immediately on conversion of the NZSE into the Company, shares in the Company be issued to the qualifying members in accordance with *<the qualifying members'>* *<their>* ownership entitlements determined under the method or statement referred to in **paragraph (a)**. 15 20
- (2) The restructuring proposal may include any other matters that the Board considers appropriate and that are not inconsistent with this Act.
- 7 Member approval of restructuring proposal**
- (1) The Board may convene a meeting of the NZSE members to determine whether there is sufficient support for the restructuring proposal. 25
- (2) The meeting must be convened under the NZSE rules.
- (3) There is sufficient support for the restructuring proposal if 75% or more of all NZSE members entitled to vote under the NZSE rules and voting on the restructuring proposal approve the restructuring proposal. 30

- (4) If there is not sufficient support for the restructuring proposal the Board may—
- (a) amend or replace the restructuring proposal in a manner consistent with **section 6**; and
 - (b) convene another meeting or meetings of the NZSE members under the NZSE rules for the purpose of determining whether there is sufficient support for the amended or *<replaced>* *<new>* restructuring proposal. 5
- 8 Effect of member approval** 10
- If there is sufficient support for a restructuring proposal,—
- (a) the qualifying members' ownership entitlements are those determined under the restructuring proposal; and
 - (b) no person has any ownership entitlement except under the restructuring proposal; and
 - (c) the chairman must, no later than 30 days after the date of the meeting of NZSE members that approved the restructuring proposal, publish a notice in the *Gazette* confirming that the NZSE members have, under this Act, approved the conversion of the NZSE into a company, and including such other information as the Board considers appropriate. 15 20
- 9 Registration of company**
- (1) The chairman must ensure that, before the restructuring day, there is delivered to the Registrar of Companies—
- (a) the application for registration of the Company under the Companies Act 1993; and 25
 - (b) *<if approved under the restructuring proposal,>* a copy of any constitution of the Company that was included in the restructuring proposal *<referred to in section 8>*; and
 - (c) the fee that is payable under the Companies Act 1993 for registration of a company. 30
- (2) The application for registration of the Company under the Companies Act 1993 must comply with section 12 of that Act, except that—
- (a) the chairman may be the applicant on behalf of the persons who are to receive initial shares in the Company; 35
 - (b) the chairman may sign the application and any other documents required to accompany it:

- (c) section 12(1)(d)(i) of that Act does not apply to a person named as a shareholder in the application for registration.

10 Conversion of NZSE into company

- (1) On the restructuring day— 5
- (a) the NZSE becomes a company registered under the Companies Act 1993; and
- (b) all the property, rights, and liabilities of the NZSE become those of the vesting entity; and
- (c) if a constitution is delivered to the Registrar of Companies under **section 9(1)(b)**, the Registrar must register that constitution as the constitution of the Company; and 10
- (d) the Company must issue shares to the qualifying members in accordance with the ownership entitlements determined under the restructuring proposal ⟨referred to in **section 8** (except that shares may not be issued to an extent that would result in a breach of **section 10B(3))⟩**; 15
- and

New (majority)

- (da) the stock exchange operated by the vesting entity has conduct rules which are those that have been approved by the Governor-General by Order in Council under **section 10A(2)**; and 20

- (e) the Registrar of Companies must issue a certificate of registration for the Company.

- (2) The certificate of registration is conclusive evidence that the Company is, on the restructuring day, registered as a company under the Companies Act 1993. 25

New (majority)

10A Conduct rules

- (1) The chairman must before the restructuring day forward to the Secretary— 30
- (a) the conduct rules of the stock exchange to be operated by the vesting entity; and

New (majority)

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|------|---|----|
| (b) | a list of the sharebrokers who will be authorised to undertake activities on that stock exchange. | |
| (2) | The Governor-General may, by Order in Council made on the recommendation of the Minister, approve the conduct rules received by the Secretary. | 5 |
| (3) | The Minister must recommend that the conduct rules be approved unless satisfied that it is not in the public interest to do so. | |
| (4) | The conduct rules approved under subsection (2) come into force on, and have contractual effect on and from, the restructuring day. | 10 |
| (5) | On approval of the conduct rules under subsection (2) ,— | |
| (a) | the conduct rules are to be regarded as having been forwarded to the Secretary under section 9(1) of the Sharebrokers Act 1908; and | 15 |
| (b) | the list of sharebrokers referred to in subsection (1)(b) is to be regarded as having been forwarded to the Secretary under section 9(1) of the Sharebrokers Act 1908. | |
| (6) | The Company must notify the Secretary in writing as soon as practicable after any change is made to the conduct rules. | 20 |
| (7) | Within 40 working days after the Secretary receives a notice under subsection (6) , the Governor-General may, by Order in Council made on the recommendation of the Minister, disallow all or part of the change to the conduct rules. | |
| (8) | The Minister must not recommend that a change to the conduct rules be disallowed unless satisfied that it is in the public interest to do so. | 25 |
| (9) | Any Order in Council made under subsection (7) must specify the date on which any change disallowed is to cease to have effect. | 30 |
| (10) | A disallowance does not affect the validity of anything done before the disallowance takes effect. | |
| (11) | Every Order in Council made under this section is to be treated as a regulation for the purposes of the Regulations | |

New (majority)

- (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989, but the conduct rules are not to be treated as regulations for the purposes of those Acts.
- (12) Nothing in section 11 of the Sharebrokers Act 1908 applies to the conduct rules of the stock exchange to be operated by the vesting entity. 5
- (13) A copy of the conduct rules must be available for public inspection, free of charge and during normal office hours, at the office of the vesting entity.
- 10B Control limit on Company** 10
- (1) There must be a control limit in respect of the Company on and from the restructuring day.
- (2) The control limit in respect of the Company is to be determined by the Governor-General by Order in Council.
- (3) No person may hold or control voting rights in the Company which exceed the control limit determined under **subsection (2)**. 15
- (4) Every person who contravenes **subsection (3)** must—
- (a) take such steps as are necessary to ensure that the person is no longer in contravention of that subsection at the end of 90 days after the date of first contravention; 20
and
- (b) while he or she contravenes that subsection, not exercise or control the exercise of any voting rights which exceed the control limit.
- (5) Every person who contravenes **subsection (4)(a)** commits an offence and is liable on conviction to a fine not exceeding \$1,000 for each day during which the contravention continues. 25
- (6) An exercise of voting rights by or under the control of a person in contravention of **subsection (4)(b)** is of no effect, and must be disregarded by the person responsible for counting the votes concerned. 30
- (7) For the purposes of this section, voting rights held or controlled by an associated person of a person are to be treated as voting rights held or controlled by that person. 35

New (majority)

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| (8) | Every Order in Council made under this section is to be treated as a regulation for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989. | |
| (9) | Nothing in this section limits any takeovers code that is in force under section 28 of the Takeovers Act 1993 or any other enactment. | 5 |
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- 11 Effect of conversion to company**
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|-----|---|----|
| (1) | The Company is the same body corporate as the NZSE. | |
| (2) | Section 10 does not— | 10 |
| | (a) create a new legal entity; or | |
| | (b) prejudice or affect the identity of the body corporate that becomes the Company or its continuity as a legal entity. | |
| (3) | On and from the restructuring day— | 15 |
| | (a) a reference (express or implied) in any instrument to the NZSE is to be read and construed as a reference to the vesting entity; and | |
| | (b) all money payable to the NZSE is payable to the vesting entity; and | 20 |
| | (c) any action, arbitration, proceeding, or cause of action that was pending or that existed by, against, or in favour of, the NZSE or to which the NZSE was a party before the restructuring day may, on and after the restructuring day, be continued and enforced by, against, or in favour of, the vesting entity, and it is not necessary to amend an application, notice, or other document to do so. | 25 |
| (4) | All transactions entered into by, and acts of, the NZSE before the restructuring day are to be regarded as having been entered into by, or to be those of, the vesting entity and to have been entered into or performed by the vesting entity at the time when they were entered into or performed by the NZSE. | 30 |
| (5) | All contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices (whether or not in writing), entered into by, made with, given to or by, or addressed to the NZSE (whether alone or with any | 35 |

other person) and existing immediately before the restructuring day are, to the extent that they were previously binding on and enforceable by, against, or in favour of, the NZSE, binding on and enforceable by, against, or in favour of, the vesting entity as fully and effectually in every respect as if, instead of the NZSE, the vesting entity had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed, as the case may be. 5

- (6) Nothing effected or authorised by this Act—
- (a) is to be regarded as placing the NZSE, the Company, or the vesting entity, or any other person, in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or 10
 - (b) is to be regarded as giving rise to a right for any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or 15
 - (c) is to be regarded as placing the NZSE, the Company, or the vesting entity, or any other person, in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or 20
 - (d) releases any surety wholly or in part from any obligation; or
 - (e) invalidates or discharges any contract. 25

12 Employees of NZSE

- (1) On the restructuring day each employee of the NZSE (a **transferred employee**) ceases to be an employee of the NZSE and becomes an employee of the vesting entity.
- (2) For the purposes of every enactment, law, determination, contract, and agreement relating to the employment of each transferred employee, his or her contract of employment is to be regarded as having been unbroken and the period of his or her service with the NZSE is to be regarded as having been a period of service with the vesting entity. 30 35
- (3) The terms and conditions of the employment of each transferred employee with the vesting entity on the restructuring day (and after that until varied) are identical to the terms and

conditions of his or her employment with the NZSE immediately before the restructuring day and are capable of variation in the same manner.

- (4) A transferred employee is not entitled to receive any payment or other benefit by reason only of his or her ceasing by virtue of this Act to be an employee of the NZSE. 5

13 Taxation

- (1) The issue by the Company of shares on the restructuring day to qualifying members in accordance with their ownership entitlements is not a dutiable gift for the purposes of the Estate and Gift Duties Act 1968. 10
- (2) For the purposes of the Income Tax Act 1994, a qualifying member who is issued shares by the Company on the restructuring day is to be regarded as having—

Struck out (majority)

- (a) acquired the shares for a cost equal to the value of the shares on the restructuring day; and 15

New (majority)

- (a) acquired the shares for a cost equal to the value immediately before the restructuring day of the member's ownership entitlement, determined under the method or statement referred to in **section 6(1)(a)**; and 20
- (b) held those shares at all times prior to the restructuring day; and
- (c) subject to section OD5(5) of the Income Tax Act 1994, held the voting interest attributable to those shares at all times prior to the restructuring day. 25

14 Registered stock exchange

- (1) On the restructuring day the Secretary must register the stock exchange operated by the vesting entity as a stock exchange under section 9(2) of the Sharebrokers Act 1908.

Struck out (majority)

- (2) The chairman must, no later than 30 days before the restructuring day, forward to the Secretary—
- (a) the rules that will govern the conduct of—
 - (i) the business on the stock exchange to be operated by the vesting entity; and 5
 - (ii) the sharebrokers who will be authorised to undertake activities on that stock exchange; and
 - (b) a list of the sharebrokers who will be authorised to undertake activities on that stock exchange.
- (3) On approval of those rules by the Governor-General by Order in Council— 10
- (a) those rules will come into force and are to be regarded as having been forwarded to the Secretary under section 9(1)(b) of the Sharebrokers Act 1908 and approved by the Governor-General under section 11(2) of that Act; and 15
 - (b) that list of sharebrokers is to be regarded as having been forwarded to the Secretary under section 9(1)(a) of the Sharebrokers Act 1908.

15 Repeals 20
The Sharebrokers Amendment Act 1981 is repealed.

- 16 Amendments**
- (1) The Acts specified in **Schedule 1** are amended in the manner indicated in that schedule.
 - (2) The regulations specified in **Schedule 2** are amended in the manner indicated in that schedule. 25
 - (3) The order specified in **Schedule 3** is amended in the manner indicated in that schedule.

Schedule 1 Acts amended

Chateau Companies Act 1977 (1977 No 4)

Omit from section 9(2)(e) the words “member of a registered stock exchange” and substitute the words “sharebroker authorised to undertake activities on a stock exchange registered under the Sharebrokers Act 1908”. 5

Companies Act 1993 (1993 No 105)

Omit from section 61(7) the words “the New Zealand Stock Exchange” and substitute the words “a stock exchange registered under the Sharebrokers Act 1908”. 10

Omit from section 61(7) the word “Exchange” in each place where it occurs and substitute in each case the words “stock exchange”.

Omit from section 147(1)(b) the words “member of” and substitute the words “sharebroker authorised to undertake activities on”. 15

Companies Amendment Act 1963 (1963 No 136)

Omit from the definition of **stock exchange** in section 2(1) the words “; and includes the New Zealand Stock Exchange established by the Sharebrokers Amendment Act 1981”.

Electricity Industry Reform Act 1998 (1998 No 88) 20

Omit from section 19(1)(b) the words “member of” and substitute the words “sharebroker authorised to undertake activities on”.

Financial Reporting Act 1993 (1993 No 106)

Omit from section 4(1)(c) the words “in New Zealand” and substitute the words “registered under the Sharebrokers Act 1908”. 25

Fisheries Act 1983 (1983 No 14)

Omit from section 41(2)(b) the words “stock exchanges affiliated to the Stock Exchange Association of New Zealand”, and substitute the words “a stock exchange registered under the Sharebrokers Act 1908”. 30

Fisheries Act 1996 (1996 No 88)

Omit from section 56(2) the words “the New Zealand Stock Exchange” and substitute the words “a stock exchange registered under the Sharebrokers Act 1908”.

Insolvency Act 1967 (1967 No 54) 35

Omit from section 72(2)(e) the words “member of a registered stock exchange” and substitute the words “a sharebroker authorised to

Insolvency Act 1967 (1967 No 54)—continued

undertake activities on a stock exchange registered under the Sharebrokers Act 1908”.

Local Government Act 1974 (1974 No 66)

Omit from sections 594F(3) and 594X the words “the New Zealand Stock Exchange” and substitute the words “a stock exchange registered under the Sharebrokers Act 1908”. 5

Omit from section 594G the words “the New Zealand Stock Exchange (or any other stock exchange)” and substitute the words “any stock exchange”.

Mackelvie Trust Act 1958 (Private) (1958 No 2) 10

Omit from section 7(2) the words “the New Zealand Stock Exchange” and substitute the words “a stock exchange registered under the Sharebrokers Act 1908”.

Omit from section 7(3) the words “member of the Auckland Stock Exchange” and substitute the words “sharebroker authorised to undertake activities on a stock exchange registered under the Sharebrokers Act 1908”. 15

Methodist Charitable and Educational Trusts Act 1911

(Local) (1911 No 1)

Omit from sections 30(1)(e) and 30(1)(f) the words “the New Zealand Stock Exchange” and substitute the words “any stock exchange registered under the Sharebrokers Act 1908”. 20

Mutual Insurance Act 1955 (1955 No 23)

Omit from section 35(5)(b) the words “any stock exchange in New Zealand” and substitute the words “any stock exchange registered under the Sharebrokers Act 1908”. 25

National Heart Foundation of New Zealand Empowering Act 1970 (Private) (1970 No 3)

Omit from section 3(1) the words “Stock Exchanges affiliated to the Stock Exchange Association of New Zealand” and substitute the words “a stock exchange registered under the Sharebrokers Act 1908”. 30

Port Companies Act 1988 (1988 No 91)

Omit from section 13 the words “the New Zealand Stock Exchange” and substitute the words “a stock exchange registered under the Sharebrokers Act 1908”. 35

Public Trust Office Act 1957 (1957 No 36)

Omit from section 42C(2)(a) the words “the Stock Exchange at Wellington or (if there is no such sale price on that date) on some other Stock Exchange in New Zealand (if that sale price is published by or with the consent or authority of the Stock Exchange), or (if no such sale price on that date is so published) the last sale price on any such Stock Exchange” and substitute the words “that Stock Exchange (or if there is no such sale price on that date) the last sale price on that Stock Exchange”. 5

Omit from section 42C(2)(b) the words “registered member of” and substitute the words “sharebroker authorised to undertake activities on”. 10

St John’s College Trusts Act 1972 (Private) (1972 No 6)

Omit from section 11(1)(c) the words “stock exchanges affiliated to the Stock Exchange Association of New Zealand” and substitute the words “a stock exchange registered under the Sharebrokers Act 1908”. 15

Sale of Liquor Act 1989 (1989 No 63)

Omit from section 200(1A) the words “in New Zealand”.

Securities Amendment Act 1988 (1988 No 234) 20

Omit from the definition of **stock exchange** in section 2 the words “the New Zealand Stock Exchange; and includes”.

Omit from section 6(1)(b)(i) the words “member of” and substitute the words “sharebroker authorised to undertake activities on”.

Securities Transfer Act 1991 (1991 No 119) 25

Omit from paragraph (a) of the definition in section 2 of **authorised transaction** the words “member of” and substitute the words “sharebroker authorised to undertake activities on”.

Omit from the definition of **stock exchange transaction** in section 2 the words “member of” and substitute the words “sharebroker authorised to undertake activities on”. 30

Sharebrokers Act 1908 (1908 No 176)**Struck out (majority)**

Insert in section 2, before the definition of **Minister**, the following definition:

“**Business rules** means the rules that govern the conduct of— 35

Sharebrokers Act 1908 (1908 No 176)—continued

Struck out (majority)

- “(a) the business on a stock exchange; and
- “(b) the sharebrokers who are authorised to undertake activities in relation to that stock exchange.”

Repeal section 9 and substitute: 5

“9 Stock exchanges to be registered

“(1) Every person who intends carrying on business as a stock exchange must before commencing business forward to the Secretary—

- “(a) a list of the sharebrokers who are authorised to undertake activities on that stock exchange; and 10
- “(b) a copy of the business rules of that stock exchange.

“(2) The Secretary must, on approval of a stock exchange’s business rules under **section 11(2)**, register the stock exchange by entering the name of the stock exchange in a register.” 15

Repeal section 10(1) and substitute:

“(1) It is not lawful for any person carrying on business to use a style or title including the words “stock exchange” unless the business is a stock exchange registered under this Act.”

Struck out (majority)

Repeal section 11 and substitute: 20

“11 Rules must be approved—

“(1) Subject to the provisions of this Act, every stock exchange must have business rules.

“(2) The business rules of a stock exchange will not come into force until they have been approved by the Governor-General by Order in Council. 25

“12 Exempt stock exchanges—

“(1) Nothing in sections 9, 10, and 11 applies to, or in respect of, a stock exchange that—

- “(a) is authorised by the laws of another country to operate as a stock exchange; and 30

Sharebrokers Act 1908 (1908 No 176)—continued**Struck out (majority)**

“(b) has been authorised by the Governor-General by Order in Council to operate as a stock exchange in New Zealand.

“(2) Every stock exchange authorised under **subsection (1)(b)** is, for the purposes of any other enactment, to be treated as if it had been registered under **section 9(2)**. 5

“(3) Every Order in Council under this section is a regulation for the purposes of the Acts and Regulations Publication Act 1989.” 10

Takeovers Act 1993 (1993 No 107)

Omit from the definition of **stock exchange** in section 2(1) the words “the New Zealand Stock Exchange; and includes”.

Trustee Companies Act 1967 (1967 No 35)

Omit from section 31(1)(b) the words “registered member of” and substitute the words “sharebroker authorised to undertake activities on”. 15

Wellington Methodist Charitable and Educational Trusts Act 1916 (Local and Personal) (1916 No 13)

Omit from section 31(1)(b) the words “stock exchanges affiliated to the Stock Exchange Association of New Zealand” and substitute the words “any stock exchange registered under the Sharebrokers Act 1908”. 20

Schedule 2 Regulations amended

Building Societies Regulations 1989 (SR 1989/33)

Omit from regulation 31(b)(v) the words “the New Zealand Stock Exchange” and substitute the words “a stock exchange registered under the Sharebrokers Act 1908”. 5

Securities Regulations 1983 (SR 1983/121)

Revoke subclauses (1) to (3) of regulation 23 and substitute:

“(1) Except as provided in **subclauses (2) to (4)**, no registered prospectus or advertisement may contain— 10

“(a) a statement to the effect that permission has been granted for the securities to which the registered prospectus or advertisement relates to be listed by a stock exchange registered under the Sharebrokers Act 1908; or 15

“(b) a statement in any way referring to any such permission, or to any application or intended application for any such permission, or to listing the securities or to any requirements of a stock exchange registered under the Sharebrokers Act 1908. 20

“(2) Where, on or before the date of a registered prospectus, or the date of distribution of an advertisement, relating to securities, there has been delivered to the Registrar for registration an acknowledgement by a stock exchange registered under the Sharebrokers Act 1908 to the effect that all its requirements (other than those relating to the number of holders of the securities) for listing the securities have been met, the registered prospectus or advertisement may include a statement to the following effect: 25

‘Application has been made to [*state name of applicable stock exchange*] for permission to list the securities and all the requirements of [*state name of applicable stock exchange*] relating thereto that can be complied with on or before the date of the prospectus (*or* the distribution of the advertisement) have been duly complied with. However, [*state name of applicable stock exchange*] accepts no responsibility for any statement in this prospectus (*or* advertisement).’ 30 35

“(3) Where, on or before the date of a registered prospectus, or the date of distribution of an advertisement, relating to securities,

Securities Regulations 1983 (SR 1983/121)—continued

there has been delivered to the Registrar for registration an acknowledgement by a stock exchange registered under the Sharebrokers Act 1908 to the effect that the securities have been accepted for listing, the registered prospectus or advertisement may include a statement to the following effect:

5

‘The securities have been accepted for listing by [*state name of applicable stock exchange*] and will be quoted upon completion of allotment procedures. However, [*state name of applicable stock exchange*] accepts no responsibility for any statement in this prospectus (*or advertisement*)’.

10

Omit from clause 31(b)(iv) of the First Schedule the words “the New Zealand Stock Exchange” and substitute the words “a stock exchange registered under the Sharebrokers Act 1908”.

Omit from clause 24(b)(v) of the Second Schedule the words “the New Zealand Stock Exchange” and substitute the words “a stock exchange registered under the Sharebrokers Act 1908”.

15

Omit from clause 28(b)(iii) of the Third Schedule the words “the New Zealand Stock Exchange” and substitute the words “a stock exchange registered under the Sharebrokers Act 1908”.

Securities (Substantial Security Holders) Regulations 1997
(SR 1997/110)

20

Omit from note 1 of the notes to the notice set out in form 1 of the Schedule, the words “the New Zealand Stock Exchange, or any other” and substitute the word “any”.

Schedule 3 Order in Council amended

Securities Transfer (Approval of FASTER system) Order 1998

Omit the words, whenever they appear, "New Zealand Stock Exchange" and substitute the words "the vesting entity (within the meaning of section ~~5~~ ~~4~~ of the New Zealand Stock Exchange Restructuring Act 2001)".

5

Revoke the definition of **member of the Exchange** in the Schedule and substitute the following definition in its appropriate alphabetical order:

10

"sharebroker authorised by the Exchange means a sharebroker authorised to undertake activities on the Exchange acting in the ordinary course of business as such, and includes an officer, employee, or agent of the sharebroker".

15

Omit the words "member of the Exchange" whenever they appear in the Schedule and substitute the words "sharebroker authorised by the Exchange".

Legislative history

15 February 2001

Introduction (Bill 103-1)

14 March 2001

First reading and referral to Finance and Expenditure Committee
