

"The Script"

May 2002

The official newsletter of the New Zealand Shareholders' Association Incorporated

CONTACT ENERGY AGM

Your Association attended the Contact Annual General Meeting in force. Just over 20 members attended and assisted in the co-ordination of our activity at that meeting, including the promotion of our Association.

While the two items of shareholder business brought to that meeting were doomed to fail without the support of Edison, the voting statistics on each suggest that both matters had a wide level of support among ordinary shareholders, excluding Edison but including institutions. If Edison had not voted, both resolutions would have been passed, and Graham Bulling's initiative to restrict directors' retirement allowances would now be entrenched in Contact's Constitution.

Equally, Argus Investments' resolution would have also been passed. Their resolution was a recommendation to the Board, rather than a binding constitutional amendment, and it was clear that the incumbent Board would have ignored it in any event.

The key successes from this meeting from your Association's point of view, were as follows:

- * Wide support among ordinary and institutional shareholders for the initiatives that your Association and others took.
- * Institutional partnership on key issues.

From now on, public companies will never be sure whether the initiatives we take will deliver wide support among significant equity holders and institutions.

The conduct of the meeting flushed out the

absolute arrogance of the Contact Board. The Chairman, Phil Pike, admitted to the meeting the Joint Venture arrangements with Edison were deliberately structured in the manner that they were to avoid the requirement to seek shareholder approval. He intimated that the Board would be more than happy to bend the rules if it suited them. Fortuitously, the Listing Rules have now been amended to ensure that the method by which the rules were circumvented cannot be circumvented again in that manner.

Contact was the last Annual General Meeting for the year ended 31 March 2002 that your Association attended in force, and capped off a successful year of meeting advocacy which commenced with CDL Hotels, followed by IT Capital, Air New Zealand and Sanford.

The Association can only continue to conduct such activities for the wider investing community good if we continue to command widespread support among ordinary investors.

I further encourage you to become active in the Association and would ask that you contact any member of the Executive Board if you believe that you can be of assistance. I also urge you to promptly renew your membership and endeavour to promote our Association to your friends and associates wherever possible.

Thank you for your support during the year. I hope you all believe that we are making headway.

- B R Sheppard

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Bendon Group Limited

The takeover of this company has now been completed with Pacific Retail Limited compulsorily acquiring the remaining holdings. There were a number of unsatisfactory aspects about the battle for control. First, the Bendon Board, for reasons known only to board members, did not keep their shareholders well informed during the proceedings. Second, an institutional shareholder (AMP) was, through a related organisation, involved in an attempted management buyout. The manner of the involvement, the unwillingness to make a bid for all of the company when challenged, coupled with the obvious lack of any fall back position left many wondering at the ability of our region's largest institution. Some pondered whether it was not just a ploy to bring the company into play to find a takeout for an unsatisfactory investment. Third, in this case we were advised through a target company statement that a provision for a retirement

payment to a director had been accrued in the accounts for the last five years. No advice was included in any of the financial statements of the company and it must only be surmised that the accrual had been hidden for the last five years under creditors.

Finally, independent non-executive directors of Bendon resigned before the completion of the acquisition. The result was that shareholders were left to see the acquiror obtaining control of their shares without receiving any recompense. In summary, Pacific Retail told the NZ Stock Exchange that their offer was unconditional on 10 April after having gained over 90% control on 26 March. The registrar erased shareholder names from the Bendon register on 9 April in a statement dated 12 April and forwarded settlement to shareholders on 17 April. A better example of unlawful disenfranchisement and shocking corporate governance would be hard to find.

The AGM agenda for listed companies

The 1993 Companies Act is more shareholder-friendly than its predecessor. However it is important to understand the apparently confusing changes that the new legislation has introduced. The agenda for Annual General Meetings is one area where this confusion prevails.

The Act no longer requires the annual report of a company to be approved by shareholders at an AGM. Once the accounts are passed by the Board and signed by two directors and the audit report completed, they are deemed to have been approved. As a consequence the first real opportunity for shareholder participation is during the re-appointment of the directors. This is unfortunate because the reappointment of a non-executive director may unwittingly become the opportunity for shareholder outrage.

There are still instances where the annual report is tabled as an agenda item. However tabling does not call for approval and thus once the report has been tabled it is open to the chairman to proceed to the next item of business without requesting shareholder participation. Despite automatic approval of the annual accounts, there may be some queries that shareholders would prefer to have clarified before the last item

of the meeting and more specifically before the re-appointment of their shareholder representatives.

A way out of the dilemma is for a shareholder proposal to be presented to the Board. However this procedure will be costly for the company and possibly, if care is not paid to timing, for the shareholder. Therefore in order to avoid unnecessary costs it seems practical for all AGMs to incorporate in their agendas an item that allows for shareholder discussion before the appointment of directors.

You may notice in the future increasing requests by our representatives at AGMs to have items moved up or down the agenda. We are not doing this just to obtain publicity, in fact we would prefer not to do it at all as it uses up our human resource capacity. (Remember TV has reduced the concentration time span!) We do it because there will be a very good reason for early consideration of a matter. We could use the provisions of the First Schedule of the Act but this can lead to needless expense by the company concerned that we are always reluctant to incur. Our representative will give the reasons for any move and we seek your support when this happens.

The completion of proxy forms

We received a number of proxy forms following our solicitation prior to the Contact Energy Limited AGM. We are grateful to all of you who took the time to complete and send them to us. There were however a small number of proxies that were rejected by the Registrar because they had been incorrectly completed. Also, there are aspects that might be considered when completing the form. We have prepared the following notes for guidance.

General

Wherever possible try to attend the meeting. We would rather have your presence at meetings to support our initiatives. A strong reason for attending in person is that you will hear the arguments for and against. This can be critical and the Nuplex Industries AGM is a case in point. Here the Chairman, who was up for reappointment as a director, was taken to task for his involvement in a recent acquisition. There was strong reason to believe that if a poll had been completed he would have lost his seat. It was only the response to questioning at the meeting that persuaded many present that his actions were exemplary, if unrewarding for the company. The demand for a poll was withdrawn.

If possible we recommend that you sign and send us your proxy even if you think you may be able to attend. This will help us plan but at the same time it will not prevent you attending in person if this later proves viable.

Do not appoint the Chairman of the Meeting as proxy unless you are satisfied with the resolutions and have ticked the yes/no spaces. In other words do not give the Chairman discretion. You should bear in mind that many listed companies have major shareholders (for example Contact Energy) and the chairman will have a serious conflict of interest that is unlikely to be decided in favour of the minority shareholder.

Timing

Remember proxies are usually required to be **received** by the company at the address stated at least 48 hours **before** the time set for the meeting. We received at least 6 proxies for the Contact Energy AGM that did not allow us time to present instructions to the registrar in time.

In view of the above we suggest there is no harm in sending us your proxy as soon as possible. Until we are in a position to offer a programme of listed company AGMs on our website with dates and representatives prepared to attend, please omit completing the name of the proxy; we can do this. All you have to do is sign and send it to us.

Completion

Proxies are now usually sent with a perforated card that is detached and presented at the meeting and which allows you to attend. The other section of the paper is a proxy form to be used if you are unable to attend. Here are some helpful hints:

Detach the attendance card

Sign on the proxy form if you cannot attend.

A form without a signature is invalid.

A signature placed only on the attendance card may be invalidated by the registrar on the grounds that the proxy form itself had not been properly completed. This is why we suggest detaching the proxy from the card.

Shareholders signing for a trust or on behalf of another person must complete a certificate of non-revocation of power of attorney. This is usually found on the reverse of the form.

If you think that your proxy may not be received in time you may use a fax to speed the process. However it is better to complete and return your proxy immediately for the reasons mentioned above.

Auditors - conflicts of interest

An article on Conflicts of Interest in the March 2002 issue of the Chartered Accountants Journal has brought home the extensive use by listed companies of their auditors for work unrelated to audit activity. Readers will have read of the bankruptcy of the US energy company Enron and the attention that this event has created on the question of whether auditors should become involved in consultancy work for their clients. For example, Telecom Corporation of New Zealand Limited, our largest listed company, employed its auditors on consultancy work in its financial year to 30 June 2001 whose

fees represented five times the amount of the audit fee for that year. There are four other companies whose example is the equal of or worse than this figure.

We have come to the conclusion that we must make a stand against the excessive use of auditors for other services. Thus we will be making representations to other interested institutes and organisations and proposing resolutions at selected listed company AGM's to bring about a more realistic approach to this situation.

Annual General Meeting

The first Annual General Meeting of the Association will be held at 2.00pm on Tuesday 2 July at Logan Park, Auckland. The Hon Paul Swain, Minister of Commerce, has agreed to be the Guest Speaker. The Agenda and other material for the meeting will shortly be sent to all members with the Formal Notice of Meeting.

Under the Association's Rules, two elected Board members - Chris Curlett (Deputy-Chairman and Treasurer) and Oliver Saint (Research) will resign from the Board by rotation at the meeting, and in turn offer themselves for re-election. The three co-opted members of the Board – Ross Dillon (Advocacy), Russell Hodge (Membership) and Malcolm Dunphy (Branches) will also resign at the meeting and all offer themselves for re-election.

Any members of the Association who seek nomination to the Board should indicate their intention by Fax (09 527 4300) to Chris Curlett by 27 May 2002, so that voting papers can be prepared and forwarded to all members with the Notice of Meeting.

Forming an Auckland Branch

It is intended to form an Auckland Branch of the Association at the conclusion of the AGM. Any members interested in volunteering for positions on the branch committee should contact Russell Hodge or Malcolm Dunphy.

Membership

Membership renewals have been coming in steadily, and it is heartening to know that there have been only a handful of resignations, offset by a greater number of new applications for membership.

Tauranga Branch

The Tauranga Branch of the Association came into being on 27 September 2001, as a result of a visit from our motivational Chairman Bruce Sheppard earlier that month. The Committee elected at that first meeting comprises Malcolm Dunphy (Chairman), Don Johnston (Deputy Chairman), Allen Smith (Secretary/Treasurer), and a Committee of Bruce Anderson, Russell Brown, Howard Zingel and Paul Zingel. Following the inaugural meeting the committee has met on 4 further occasions and at a Xmas lunch on 7 December.

Our current membership stands at 21 which is considerably fewer than what we would consider critical mass, and we are concerned to develop initiatives to attract additional members.

Through the good offices of Howard Zingel a group of more than 20 (including partners) were privileged to participate in a visit to the Port of Tauranga, a local icon, whose

senior management hosted the group through aspects of this busy port's operations, a real eye opener to all who took advantage of this opportunity. The 3 hour event was capped by an overhead presentation from C/E John Mayson of the Port's physical and financial growth both in Tauranga and at its inland port in Auckland and also the Whangarei development; and finally a generous social hour. Inspired by the interest and information which this visit generated, plans are afoot to approach other major companies for familiarisation tours. A small discussion group met recently and were introduced to the mysteries (and pitfalls!) of day trading on the US market. We are currently negotiating with Tauranga University College to include in their winter series a lecture with an investment/broking theme for which presenters have already been identified. The Committee hopes that these initiatives will bring life, interest and additional members to our Branch.