# "The Script"

December 2002

The official newsletter of the New Zealand Shareholders' Association Incorporated


## NEWS FLASH : MEMBERSHIP REACHES 400 !

**It seems unbelievable that from the inaugural meeting in May 2001 your Association has grown in membership to 400 in just 18 months. This growth surely continues to underline the need for such an organisation as NZSA to represent the interests of those who hold shares in public companies, and to take issue with company directors and management where they continue to act with scant regard for the rights and interests of all their shareholders.**

**Your Directors have been extremely busy, despite coping with the demands of 'day jobs', in researching and preparing proposals and resolutions for company AGMs, keeping the media informed, attending AGMs and dealing with the inevitable outcomes of our representations. Our website is testimony to the huge amount of activity. The growing membership also requires increasing activity in accounting processes and responding to queries and advice, and it is heartening that our branches in Auckland, Tauranga and Wellington are becoming firmly established in providing a mechanism for coordinating and leading NZSA activities in their regions. We plan to establish further branches as numbers in a region warrants.**

**THE COMPLIMENTS OF THE SEASON TO YOU ALL.**

## REPORTS ON RECENT AGMS

**Ports of Auckland** - Oliver Saint

The AGM was held on Monday 21st October to a capacity gathering in the Hilton Hotel conference facility. The opening content of the meeting showed vast improvement compared with the previous year and the opportunity for shareholder questions came within 30 minutes of the start of the meeting. The chairman tabled an apology from a director who had been recently appointed. It seems to this observer that if a director is appointed to the Board during the year then that person should take extraordinary steps to ensure attendance at the meeting ratifying his appointment. Your representative introduced, as delicately as possible, these shareholder expectations. One other matter was raised dealing with the future development of the area from Princes Wharf past the tank installations. The chairman advises shareholders that there is a vision for this area and urged patience until the plan has been released.

**Fletcher Building** - Oliver Saint

The AGM was held in the Sheraton on Tuesday 12 November. The agenda was extensive and covered the adoption of a new Constitution, the acquisition of Laminex Group and the issue of new Capital Notes to cover, in part, the debt element of this acquisition. The chairman indicated a poll would be taken on all resolutions. A positive feature of the meeting was the request by the chairman that each director seeking re-election address the meeting to explain

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what contribution he or she could make to the deliberations of the Board. This move now seems to be the rule rather than the exception at meetings and is appreciated by shareholders.

Several shareholders sought further information on the Laminex Group acquisition and it was pleasing to see Association members joining the questioning. Asked why such a potentially profitable organisation should be sold, the CEO responded that the owner Amatek is a private fund in the UK and was seeking to implement its exit strategy after a period of ownership. Amatek was in the process of making a public offer when Fletcher Building stepped in with its offer. The video presentation indicated market share ranging over the product base from 45% to 80%. Mr Waters indicated that the raw board end of the commodity enjoyed a 40% to 45% market share with good prospects. It was confirmed that Laminex would confine its range to the Asian region and that independent reports from two sources had earmarked this area as being particularly attractive Finally it was confirmed that the Company's cost of capital was a touch above 10%.

**Tranz Rail** - Oliver Saint (proxy holder)

The 2002 AGM was held in the conference facility of the Bruce Mason Theatre, Takapuna on Monday 18 November. The room was packed with shareholders, guests and Tranz Rail management and staff many of whom remained standing for all of the meeting. A combination of small room, low ceiling and tightly spaced chairs made for an uncomfortable venue. The chairman Mr Walden and CEO Mr Michael Beard both addressed the meeting. The agenda, which comprised only two items under 'business', the election of directors and appointment of auditors was dealt with before shareholders had an opportunity to raise questions. Given the circumstances surrounding the loss for the year, it was understandable that shareholder questions were dealt with as a final item. However usually, and this was one occasion, it is preferable for shareholders to have the chance to question the Board prior to the agenda item electing directors. Often this item, which is vitally important for shareholders, is barely considered.

The CEO gave a less than impressive commentary on what was planned for the future. The failure of Tranz Rail to collect $1,000 of freight from a logging contractor has been well publicised in the media and needs no further comment. However a keen railway enthusiast Mr Gerald Petrie was unimpressed with the current strategy in place and made his views known in no uncertain terms. His query related to marginal freight use, or present lack of, and suggested that trains would be returning to their destination carrying zero revenue. The CEO responded outlining in more detail the new strategy adopted. It was an impressive and sympathetic response that indicated a breadth of knowledge and understanding of the rail business that had not been appreciated by shareholders in his earlier address. It would have given confidence to shareholders and added silent endorsement of the urging of the chairman for shareholders not to sell their shares just yet. This was one of those rare instances when a well researched and difficult question put with a degree of animosity brought out the very best in a CEO, allowing shareholders a brief insight into the qualities and competence of a leader.

**Steel and Tube - "Core Business Growth" Focus** - Ashley Q. Chan

Investors hoping for a definitive statement on returning 'surplus' capital to shareholders were to be mildly disappointed at Steel and Tube's 2002 AGM. Notwithstanding last year's excellent profit result, critics of the Board's share buy-back plan were vocal.

Chairman Dr Bob Every sought to justify the buy-back of 8.78 million shares as being "equitable" to all shareholders. Unlike the Auckland Airport return of capital, the share buy-back is not compulsory for those investors who do not wish to reduce their shareholding. Dr Every added that the company would "take stock" of the success of the buy-back in a year's time, and would look at alternative capital return plans if necessary. Another queried why $8 million from the sale of Canadian assets last year was retained as working capital, and not returned to shareholders. Dr Every replied that these funds were needed for "growth opportunities" in the "core business", although he did not elaborate.

Regardless of any specific expansion plans, profit growth overall has been outstanding. 'Same business' 1st quarter profit has increased 14% compared to the same period a year ago, and if the new Piping Systems business is included profit growth is 21%. The new business has so far earned more profits than in the acquisition documents, and is now "earnings per share accretive". A buoyant rural economy has helped to improve sales and margins in the important Steel Distribution division. A strong (Auckland) residential housing market, good for the Roofing division, was however offset by a subdued (Auckland and Wellington) construction sector, bad for the Reinforcing division.

In terms of 'Corporate Responsibility', the company has achieved two milestones this year. Firstly, zero lost time accidents were recorded, assisting the company in winning the inaugural ACC award for Excellence in achieving a safer workplace. Secondly, an Internal Audit function has been re-established within the corporate structure to oversee compliance and governance issues.

Future profits and dividends appear dependent on a rebound in the NZ construction sector (for Reinforcing) and continued strength in the residential housing sector (for Roofing), given the expected decline in rural incomes. Chief Executive Nick Calavrias has stated though that he is "cautiously optimistic" about the economic outlook.

**Advantage Group** - Oliver Saint

The AGM was held on Friday 22 November at the Crown Plaza Hotel, Auckland. An unusual event occurred when the chairman Evan Christian vacated the chair in favour of David Wolfenden. Normally, being chairman of directors these procedures are dealt with in the privacy of a Board meeting rather than at a meeting of shareholders. However the event was promised in the annual report and shareholders were not disappointed. The new chairman had difficulty in eliciting shareholder questions other than queries about the low share price. However as the results for the first six months are forecast to be break even, there seems little prospect of any immediate change in this area. A query on the lack of a dividend provided the comment that the position will be reviewed next year. The policy of paying out 50% of after tax profits is always subject to annual review.

**Auckland International Airport** - Bruce Sheppard

AIA is undoubtedly a well-run company, but that isn't too hard to understand given that it has a localized monopoly in respect of its core business. Be that as it may poor management can stuff up even when bequested such a privileged position.

At the AGM on 18 November, Oliver Saint raised a number of points on governance issues and presentation and was cut off prematurely by a chairman secure in his position and moderately arrogant with it. The arrogance and condescending attitude to shareholders was underlined when the chairman introduced Greenpeace's resolution on environmental issues as an issue raised by a "small and recent shareholder". After a reasonable level of debate on the Greenpeace initiative it was put to the vote, following an address by the CEO that emphasized the quality of the after match function.

Greenpeace lost the day when they tried in vain to appeal to emotion rather than economic common sense with words to the effect that shareholders should do the right thing (In Greenpeace's view) so that the shareholder's grandchildren would be proud of them.

I was the final speaker on the Greenpeace proposal, and emphasized the inappropriate references to Greenpeace and re asserted the right of any shareholder to raise business at a shareholders meeting. I pointed out that the issue was a management issue and should be left to management and finally I reminded shareholders that this debate was really about shareholder value as against the alternative theorem of Stakeholder values. It is hardly surprising that shareholder values were of pre-eminent concern to shareholders and that stakeholder issues should be left to management. The resolution was lost resoundingly.

Greenpeace would have been better to have withdrawn the proposal especially since management gave an undertaking to the meeting to investigate the issue thoroughly and to act when able and appropriate.

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**Fletcher Challenge Forests - and ADR'S** - Ross Dillon

The AGM held on 13 November was a relatively "up-beat" affair, especially compared to the special general meeting 3 months earlier. A number of points that the Association has been advocating in relation to AGM's appear to be gaining ground, and this meeting was an example.

The Chairman commenced the meeting with an address that focused on the future direction of the company (rather than a survey of material already before shareholders in the annual report). He updated shareholders on company performance, from close of the annual report to date. On the basis that shareholders can all read the annual report for themselves, this approach is to be encouraged.

Then the floor was opened for shareholders to comment. Having such an early chance to participate is such a rare occurrence that the questions came slowly to start with, but then gained momentum as shareholders realised they had this opportunity and seized it. Such a refreshing approach, compared to the usual process of dealing with all formal parts of the agenda, leaving shareholders questions to last when all are thirsty, hungry, and no longer attentive.

Shareholders commended management on the positive direction the company was now taking, and the progress made on getting it to a positive forward-looking position. A number of queries about aspects of the annual report were asked and answered, and then the meeting proceeded to the formal parts of the agenda.

The first of these was the election of directors. Our esteemed Chairman, Bruce Sheppard, took that opportunity to draw attention to the use of ADR votes, by observing that the contractual right to exercise those votes in favour of management proposals, was (though legal) entirely unjust. Votes should be cast by shareholders, not appropriated by management (even if there existed a contractual right to do so). Shareholders were invited to protest this position by leaving the meeting. He also noted that as Mr Andrews (a director seeking re-election) was in effect the appointee of Rubicon, normal shareholders should allow them to appoint him, and not vote. The quid pro quo, however, was that Rubicon should not vote on any other directors' appointment. Our Chairman then referred to Mr Walls (the other director seeking re-election), and suggested that due to his use of the ADR vote in favour of the CNIF purchase in August, he should not be supported as a director. Having stated his case, he then left the meeting, thereby obtaining the early running for tea and biscuits.

The votes were held by poll and the Chairman undertook to report votes cast in favour of every resolution, together with total votes cast. We have not yet seen those figures. We wish to analyse whether Rubicon did vote in relation to both appointments.

The usual resolution regarding auditor fees was met with the Association asking whether the auditors were to be prevented from supplying any other accounting services. The Chairman provided a satisfactory reply, which noted that this issue has been closely reviewed by the Board in light of the Enron scandal, and the audit committee now must specifically approve any services to be provided by the audit firm, <u>before</u> the work can be undertaken. He also indicated that as this is now clearly an important issue for shareholders, the policy will be spelt out in future annual reports. The Association's view is that such an approach preserves some flexibility, ensures the issue is subject to independent Board approval, and the process itself is likely to form a barrier to any abuse. If the wheels do fall off, the Board can not say it was not aware of the issue. All in all, a reasonable compromise.

The final formal business was the Constitutional Amendment required in order to retain full listing on the ASX. Your Association noted that the company had to comply with the mandatory provisions of the Companies Act, and the requirements of the NZSE, ASX and NYSE – which could introduce various conflicts between competing requirements. How were these to be handled? The answer apparently is that (i) the working of the constitutional amendment proposed had received the "blessing" of the NZSE, NYSE and ASX, so did not introduce any conflict, but (ii) in the future the company will seek to meet the most strict requirements from each exchange.

While not an unreasonable proposition (and certainly practical enough) the Association does have some concerns that the Constitution itself does not seem to have any mechanism for resolving any of these potential conflicts – particularly important now the Constitution expressly requires the company to comply with them all. It also tends to underline the high compliance costs that multiple listing can bring.

After the formal close of the meeting, shareholders met with the Directors over afternoon tea. The ADR issue was explored further, and Mr Walls indicated that in August the company had spent considerable time, effort and money tracking down the major ADR owners, and seeking that they positively exercised their vote. He was not sure whether they were expressly told that if they did not vote, management would be entitled to vote "yes". This is the nub of the problem with ADR's. The Association's view is that shareholders only hold one main power – the power to vote. As long as shareholders make an informed choice, there is no issue. Shareholders are entitled to decide not to vote. But management should not ever be in a position to appropriate that voting power.

In the normal course, if a shareholder decides to abstain, this has the effect of shrinking the total pool of votes cast and increases the likelihood of a "no" vote (imagine only 3 votes – a "yes", a "no" and an "abstain" – this leaves a deadlock). On the other hand, the ADR arrangement allows an "abstain" to become a "yes" (using the same example, a deadlock becomes a "yes" results, 2 to 1 in favour).

In our view, it is only if an ADR abstainer has been made aware that his abstention will be used as a "yes" vote, that management should be allowed to exercise the vote in that way. Otherwise, it could well be that the abstainer believes he or she is leaving it to the balance of shareholders to decide. In fact, due to the contractual arrangements associated with the ADR system, he or she has delivered his or her vote to management. This can clearly prejudice all other shareholders, whose ability to control management, by exercising their limited rights, is significantly diluted.

## BRANCH ACTIVITIES

All members in the Auckland, Bay of Plenty and Wellington regions are welcome to attend branch meetings and take part in other organized activities. These gatherings provide opportunities to increase understanding of company activities, their accounting processes and their governance, as well as to meet other members with similar interests to yours. There is an additional annual subscription of $20 for branch membership, and this is matched by a similar amount from NZSA to provide each branch with funds to run its business.

### Auckland Branch

Auckland Branch meets at the Horse & Trap in Mt Eden on Tuesday 3 December, starting at 7.00 pm. The guest speaker is Brian Gaynor, who is a member of NZSA, and Brian will discuss his 'Stars' and 'Dogs' among NZ companies. Brian will be followed by discussions on P/E Ratios and Understanding Annual Reports, led by Graham Wilson and Phillip Clemow respectively.

The next planned activities for the branch are a hosted visit to Ports of Auckland on Wednesday 19 February, and an evening meeting in March. More details of these will be announced early in 2003. The final Committee meeting for this year is on Wednesday 11 December.

If Auckland members need further information, they should phone or email Russell Hodge, whose contact numbers are on the front of this Newsletter.

### Tauranga Branch

Association members attended in reasonable force the AGM of the Port of Tauranga on Friday 25 October when the Chairman provided an updated report on a very strong year's performance and highly favourable progress in the first few months of the ongoing year, both at Tauranga and at North Port. Opportunity was taken, with the Chairman's approval, to distribute at the end of the meeting flyers relating to our local branch, which resulted in some membership enquiries and applications.

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Members had the opportunity of a conducted tour around Sanfords Seafoods processing plant at the Port on 16 October; and then on 21 November a party of 20 enjoyed a visit to Seeka Kiwifruit Industries at Te Puke. Management personnel took us to a Kiwifruit gold orchard at Paengaroa, a green kiwifruit orchard on the road to Maketu, followed by a visit to the packing shed and cool store adjacent. We were then presented with a detailed overhead presentation back at Te Puke as recently provided to shareholders. The afternoon concluded with refreshments generously offered after a busy and warm afternoon learning much about an industry of growing significance. Our visit will be featured in the weekly Te Puke Times whose reporter spoke with members of the group and took photographs for the paper. Our final visit for the year will be to Comvita at Paengaroa on 2 December but prior to then members will enjoy a Xmas lunch at Fahy's Motor Inn on 28 November.

It has been an important development of the Branch activities to arrange visits to our major local industries and take the opportunity these present to associate with management and learn at first hand the challenges which they confront and the opportunities available to them if their planning is successful. We have been received on each occasion with great courtesy and no effort has been spared to ensure a warm welcome and a thoroughly professional oversight of their industries and the operations they run.

Malcolm Dunphy

## Wellington Branch

The Wellington Branch Committee elected their officers at their first Meeting on 2 November. The Team is: Peter Nalder (Chairman), Ray Jack (Secretary), Phil Kelliher (Treasurer), Sir James Belich, Ashley Chan and David Underwood. They intend to meet monthly to organize company visits and educational meetings for their members. The Committee has initiatives to increase NZSA and branch membership, and intends to grow its public profile by attending AGMs and submitting information to the media.

The Committee will meet again on 2 December, and is planning a Branch Meeting, with a high-profile guest speaker, for March 2003.

NZSA members who are not already members of the Wellington Branch, or other people in Wellington who get to read this Newsletter, should contact any of the committee members if they wish to join the Wellington Branch.