

Financial Markets Conduct Bill

Submission from Merlin Consulting Limited

5 September 2011

FINANCIAL MARKETS CONDUCT BILL
SUBMISSION ON EXPOSURE DRAFT
Merlin Consulting Limited

Clause Number	Clause heading	Submission
Part 5	Dealing in financial products on markets	
Clause 268	Listed issuer may require person who has relevant interest to disclose information to it	<p>Request: Remove the words <i>“for the purposes of assisting the listed issuer to ascertain who is, or may be, a substantial product holder in the listed issuer</i> removed.</p> <p>A listed issuer should not have to have this intent in order to issue a Notice requiring identification of a relevant interest. Listed companies in New Zealand regularly issue Notices in order to engage with their investors and monitor investors holdings below the 5% level. Engagement with investors is an indicator of good governance practices. Neither Corporations Act 2001 S672A (Australia) nor the Companies Act 2006 S793 (UK) requires the purpose of identifying SSH owners.</p>
Clause 270(2)	Listed issuers must maintain register of disclosures of substantial holdings	<p>Request: Add a requirement that all responses are required to be held in the register of disclosures. This requirement will provide equality of information relating to investor ownership of a company.</p> <p>Clause 270(2) requires that responses that do not identify a substantial holding are not required to be filed. This appears to be based on the concept of allowing privacy for any party who chooses not to have their shares registered directly on the register. This provision appears to be <u>diametrically opposed and completely at odds</u> with Part 4 Subpart 5 (Clauses 193 – 196) regarding the requirement that a register be available for public inspection and that copies may be made. Very few professional investors but considerable numbers of retail investors hold shares directly on a company’s register. Institutional holdings are instead registered in the name of clearing houses (nominees or custodians) in order to facilitate settlement of share transactions, dividend payments and other corporate actions. Merlin Consulting suggests that, as a rule of thumb, the number of investors in a company, including those that hold through nominee and custodian accounts is usually twice the number who hold directly on a register. As an example New Zealand’s largest listed company, Fletcher Building Limited, disclosed in its 2010 annual report that it had 35,776 shareholders on its register. Merlin Consulting believes there are likely to be another 35,000+ investors in Fletcher Building Limited holding through custodian accounts including broker nominee accounts. Currently, these owners, who receive distributions/ dividends and are entitled to vote at company shareholder meetings, are all afforded privacy because their investments are not held directly on the Fletcher Building share register.</p> <p>Clause 270(2), as it stands, cannot meet the purpose of Subpart 5: “ ... to promote an informed market ... by ensuring that participants in financial product markets have access to information concerning the identity and trading activities of persons who are, or may at any time be, entitled to control or influence the exercise of significant voting rights in a listed issuer”. It is assumed that “significant” is not the same as “substantial”, the wording used elsewhere in the legislation that is synonymous with a 5% threshold.</p> <p>Clause 270(2) is out of step with Australian and UK legislation that requires all responses to be filed and available for public</p>

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		<p>inspection under certain circumstances (Corporations Act S672DA, Companies Act 2006 S808).</p> <p>Prior to the 2008 amendments to the Securities Markets Act 1988, this provision was included in New Zealand legislation. We submit that this provision be reinstated in line with Australian and UK legislation and keeping with the New Zealand legislative intent to promote an informed market.</p>
Clause 274	Listed issuers must publish information on substantial holdings	<p>Request: that the Clause be removed</p> <p>This clause requires a company to advise its shareholders of the names of all investors who hold 5% or more of the company as at a date not more than 3 months prior to the disclosure. Any new substantial holding disclosures filed under Clauses 193 – 196 after the date that the information is captured will render the disclosures to shareholders out-of-date. The most up-to-date filings can be readily accessed through NZX filings. Also, it is not obvious why this information over all other disclosures in an annual report must be advised to shareholders who choose to opt out of receiving printed annual reports.</p>