

LEGISLATIVE RESEARCH SERVICE
DEPARTMENT OF THE PARLIAMENTARY LIBRARY
AUSTRALIAN STOCK EXCHANGE AND NATIONAL
GUARANTEE FUND BILL 1986

Date introduced: 28 November 1986
House: House of Representatives
Presented by: Hon Lionel Bowen, M.P., Attorney
General

DIGEST OF BILL

Purpose

The Bill will create a body to control and operate stock exchanges ... main board listings and will also create a national guarantee fund that will replace the various exchanges' fidelity funds.

Background

There are six capital city stock exchanges in Australia, located at Sydney, Melbourne, Brisbane, Perth, Adelaide and Hobart. Although each is a separate body there is a national body, the Australian Associated Stock Exchanges (AASE), which represents the various exchanges. Each exchange has its own fidelity fund out of which are paid claims based on misappropriation or fraudulent use of funds or securities.

The exchanges contain a number of markets. There are main board markets, options markets and futures markets, though the latter are often established as separate bodies.

The regulation of the securities industry is coordinated by the Formal Agreement between the Commonwealth and States entered into in December 1978. Under the agreement, each party is represented on the Ministerial Council for Companies and Securities which has responsibility for legislation. Under the agreement the Commonwealth passes the agreed legislation and reciprocal legislation is enacted by the States. This Bill will fulfill the Commonwealth's obligation under the scheme.

The proposal to create a national exchange that would own the capital city exchanges was forwarded to the Ministerial Council by AASE and was considered at the meeting held in March 1986. The Ministerial Council approved the preparation of legislation at that meeting and this Bill will implement the proposal.

Outline

The Bill will create a national stock exchange that will hold the capital city exchanges as wholly owned subsidiaries. The subsidiary exchanges will be those nominated by AASE and currently comprise the six capital city exchanges. The National Guarantee Fund will provide no fault guarantees that contracts will be complied with or compensation payable.

Main Provisions

Clause 5 will insert a new Part IIA, titled Australian Stock Exchange Limited, into the Securities Industry Act 1980 (the Principal Act).

The Australian Stock Exchange Limited (ASX) will be incorporated in the A.C.T. by proposed section 36B.

Proposed section 36D will provide that the ASX is to perform any function conferred on it by a State Act, regulation or other instrument.

The ASX's memorandum and articles of association are to be those lodged with the National Companies and Securities Commission (NCSC) by AASE before the commencement of this Bill (proposed section 36E).

The memorandum and articles of association of exchanges nominated by the AASE will, from the commencement date, be those lodged with the NCSC before the commencement of this Bill (proposed section 36F).

Members of nominated exchanges, other than solely Registered Options Members, will become members of the ASX (proposed section 36G), and will cease to be members of the nominated exchange (proposed section 36H).

The ASX will take over responsibility for main board listings (proposed section 36L).

The NCSC is to determine, within three months of the commencement of this Bill, what assets of a nominated exchange are to be transferred to the ASX and such assets are to be transferred within 14 days of receipt of the determination (proposed section 36M).

The assets and liabilities of AASE will be transferred to the ASX (proposed section 36R), as will AASE's employees (proposed section 36S).

A State or Territory law that corresponds with a provision of this Bill will not be effected by the Bill (proposed section 36T).

Statements made by exchanges, their members, officers or employees arising out of disciplinary proceedings will be protected from defamation action except where made with malice (proposed section 42B which will be inserted into the Principal Act by clause 6).

Clause 15 will insert a new Part IXA, titled the National Guarantee Fund, into the Principal Act.

Proposed section 122AB deals with excluded persons. These will be members and their associates and the clause lists the groups of associates for unincorporated members, corporations and partnerships.

Members will be taken to be insolvent when, for natural persons, they become subject to the Bankruptcy Act 1966 or, for corporations, the corporation is wound up, a receiver is appointed or an arrangement with creditors is made (proposed section 122AC).

Proposed Division 2 deals with the National Securities Exchanges Guarantee Corporation (the Corporation).

The Ministerial Council may nominate a corporation limited by guarantee to be the Corporation (proposed section 122AC). A corporation shall not be so nominated unless the ASX is a member of the corporation and membership of the corporation comprises eligible exchanges or their nominees. The nominated corporation is to obtain indemnity insurance (proposed section 122BC).

Proposed Division 3 will establish the National Guarantee Fund (the Fund).

The Fund is to be established by proposed section 122CA and will be managed by the Board of the Corporation. The Fund will initially consist of the existing fidelity funds that are to be transferred (proposed section 122CB) and is to be kept in a separate account (proposed section 122CC).

Proposed section 122CD deals with payments out of the Fund. Such payments may be for claims, legal expenses, payments to participating exchanges, for indemnity insurance and administration.

The Corporation may, with the approval of the Ministerial Council, set an amount other than \$15 million as the minimum amount of the Fund (proposed section 122DD).

Proposed Division 4 deals with levies to maintain the fund where the Fund falls below the minimum amount. The Corporation will be able to determine the class or classes of reportable transactions that will be subject to levy and the rate or rates of the levy (proposed section 122EB). The levy will be payable by leviable dealers (proposed section 122EC). In addition, the Corporation may levy participating exchanges (proposed section 122FB) which may in turn impose a levy on its members (proposed section 122FC).

Proposed Division 5 will create Securities Industry Development Accounts. Where the Fund exceeds the minimum amount, the Corporation may distribute the excess to participating exchanges having regard to the amounts paid in by each exchange and any payments received by an exchange (proposed section 122GB). All such money received is to be placed in a separate development account and may be used for purposes approved by the Ministerial Council (proposed section 122GC).

Proposed Division 6 is titled Contract Guarantees and deals with claims. Claims may be made by a selling dealer where the buying dealer defaults (proposed section 122J), buying dealers where the selling dealer defaults (proposed section 122K), selling clients where the selling dealer defaults (proposed section 122L) and buying clients where the buying dealer defaults (proposed section 122M). Where a successful claim is made the claimant is to receive the security contracted for or, if this is not possible, an amount equal to the loss suffered (proposed section 122N).

Proposed Division 7 deals with claims on insolvent members. Where a member becomes insolvent the Fund may be used to make good the losses of clients (proposed section 122R). There will be a limit on the maximum amount payable to each client of \$50,000 and the aggregate payments in respect of a dealer may not total more than 14 per cent of the prescribed minimum of the Fund (proposed section 122W).

Proposed Division 8 deals with matters associated with claims. The more important are: the Board will be empowered to settle claims (proposed section 122YA); a successful claimant will be entitled to recover the costs of making the claim (proposed section 122YB); interest at the rate of 5 per cent will be payable from the time the person became entitled to make the claim (proposed section 122YC); where cash is to be paid to settle a claim and the Board and the claimant cannot agree the amount of compensation, the amount will be decided by arbitration (proposed section 122YH); and the Corporation may enter into contracts of insurance or indemnity (proposed section 122ZC).

Division 9 contains transitional provisions and provides for the transfer of fidelity fund assets to the Fund (proposed section 122ZF) and the winding up of the fidelity funds (proposed section 122ZG).

For further information, if required, contact the Economics and Commerce Group.

17 February 1987

Bills Digest Service
LEGISLATIVE RESEARCH SERVICE

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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