

# SECURITIES COMMISSION



16321	185	184
30000	2.8	2.8
2419	45	45
414544	615	608
144550	432	426
24547	259	251
12000	69	68
520000	1.9	1.8
124051	304	298
8350	55	55
100000	3	3

May 2	918 91	39, Lonsa, 11, Lopes 5
May 3	913 82	45.5 C Post, 112, Covert,
May 6	911 04	878, CWine 94, Cmel, 7.7, 1
<b>Top 10 gross</b>		
Peak	6451 86, Oct 22, 1997	CastPOL 119, Catho100, D,
2002 high	2284 82, Feb 4	Daria, 950, DstCom 31.5, E
2002 low	2129 04, May 6	Desta 21, Deep 5 50, Twa
May 2	2165 50	20185, DstD128, DClw1118
May 3	2153 48	Devine prt 190, Ddass, 10.5
May 6	2151 63	Downer 80, Dromas, 100, E
<b>NZSE 30 capital</b>		
Peak	9354 23, Oct 22, 1997	Col 800, EGSi 21, EGlob 73
2002 high	1829 18, Feb 4	Earth 20, Eastin 18, Eastyn
2002 low	1711 34, Apr 30	Earl del 19, EchoT 7, Eazr
May 2	1725 80	155, EacOp 200, EacTc 1
May 3	1719 11	Easid, 126, Embel 190, E
May 6	1715 20	Emunt 20.5, Emunt sp, 87,
<b>NZSE 30 gross</b>		
Peak	3459 51, Feb 4, 2002	Envm 43, Enstar 22, Evnfl
2002 high	3459 51, Feb 4	18, Egl71 580, Epy1 9, Etes
		11, Etsang 25.5, Euzd 56, I
		EvansT rpt 155, Ewert 46,
		FCFcr 18, FCFcr rpt 19, F
		FTWes 20, Fairly 34, Feltz,
		48, FedCap 144, Fbus 73,
		FWine 45, FFAApp 190, I
		Paare 236, Feltz 210, Flat
		2650, Flate 58, Ffno 1880

## 2002 ANNUAL REPORT

E.25 TWENTY-THIRD ANNUAL REPORT Laid before the House of Representatives pursuant to section 30 Securities Act 1978 and section 44A Public Finance Act 1989



## **Securities Commission**

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## Encouraging investment in New Zealand...

- ≡ high regulatory standards
- ≡ effective enforcement
- ≡ markets with integrity
- ≡ investor confidence

## STATEMENT OF PURPOSE

Our purpose is to strengthen confidence in New Zealand's capital markets, both in New Zealand and overseas, by promoting

- the efficiency of these markets
- the integrity of these markets
- the cost-effective regulation of these markets

and thereby fostering capital investment in New Zealand.

We aim for

- good standards of disclosure
- reliable and ethical procedures for effecting transactions
- flexibility in development of best regulatory practice
- sound principles for market regulation
- cost-effective rules of law
- compliance with the law
- good working relationships with overseas regulators
- public understanding of the law and practice of securities.

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## FROM THE CHAIRMAN



The securities market is vital to New Zealand. Investors provide finance for the industries and businesses that create wealth for a country and its people. For investment to flourish we must strive for a securities market of integrity, a market that is well-regulated, a market in which compliance with the law will be enforced. In short, a market in which New Zealand and overseas investors can have confidence.

The role of the Securities Commission in enhancing investor confidence in the securities market is an important one.

The Commission has had an energetic and exciting year. It was a year marked by many achievements and significant changes both in personnel and in the overall approach to regulation of the securities market.

The Securities Markets and Institutions Bill is a further step towards the development of a well-regulated market and increasing investor confidence in that market. The Bill heralds more changes for the Commission by giving us new responsibilities supported by additional powers and increased funding.

Our recent appointment to the Executive Committee of the International Organization of Securities Commissions has put New Zealand firmly on the international regulatory scene. We believe it will enhance the perception of this country as a well-regulated and attractive securities market.

The Members and staff of the Commission welcome the challenges our new responsibilities will bring. We look forward to another year of achievement in 2002-2003.

A handwritten signature in blue ink that reads "Jane Diplock". The signature is written in a cursive, flowing style. To the left of the signature, there are three horizontal bars in blue, dark blue, and gold, with a small number "2" to their right.

**Jane Diplock**  
Chairman

## THE YEAR IN BRIEF

### THE COMMISSION

- acted to protect investors' money in respect of several contributory mortgages
- published a report on the 1 Parliament Street contributory mortgage
- published a report on certain statements about Air New Zealand Limited
- declined a request under s17 of the Securities Amendment Act 1988
- issued warnings about illegal overseas brokers
- published a report on Gideon Investments Pty Limited and Morison Guildford & Associates Limited
- completed 11 insider trading enquiries
- published a discussion paper on Conduct Rules of the New Zealand Stock Exchange
- authorised five futures dealers
- adopted new policy on authorising trustees and statutory supervisors
- consulted on policy on designation of substantial security holders
- began a review of class and specific exemption notices
- recommended changes to strengthen the law on investment advisers
- made submissions on proposed new securities law
- was elected to the Executive Committee of the International Organization of Securities Commissions
- signed a Memorandum of Understanding with the Securities and Exchange Commission of Sri Lanka
- initiated a "meet market participants" programme

### SIGNIFICANT CHANGES

- Jane Diplock assumed an Executive Chairman role
- the Takeovers Code came into force involving Commission staff in its administration and support for the Takeovers Panel
- the Securities Markets and Institutions Bill, introduced into Parliament, heralded
  - increased powers for the Commission
  - significant changes for listed companies and the stock exchange
- the Commission increased enforcement work
- John Farrell stepped down after 17 years as Chief Executive

## MEMBERS

The Securities Commission consists of not less than five nor more than ten Members appointed by the Governor-General on the recommendation of the Minister of Commerce. Members are appointed for their knowledge of, or experience in industry, commerce, economics, law, accountancy, public administration or securities. At least one Member must be a barrister or solicitor of not less than seven years' practice. Members hold office for a term not exceeding five years and may be re-appointed.

Chairman Jane Diplock took up her appointment on 3 September 2001. Michael Webb was appointed Chairman from Euan Abernethy's retirement on 30 June 2001 until 3 September 2001. Ian Farrant retired in May 2002 after five years' service.

## MEMBERS OF THE COMMISSION



### IAN F. FARRANT

B.Com  
(Accounting/Marketing), FCA.  
Company Director, Wanaka.

#### Directorships:

Broadway Industries Limited  
(Chairman); Fulton Hogan  
Limited (Chairman); The New  
Zealand Refining Company  
Group Limited (Chairman);  
Queenstown Airport  
Corporation Limited. Director of  
a number of private companies.

### ANNABEL M. COTTON

BMS (Accounting & Finance),  
ACA, CSAP.  
Investment Analyst and  
Accountant, Auckland.  
Consultant to companies  
listed in New Zealand and  
overseas.

#### Directorships:

Enigma Nominees Limited  
and Merlin Consulting  
Limited.

### FALCON R.S. CLOUSTON

B.Agr.Sc (Agricultural  
Economics).  
Business Consultant,  
Wellington.

#### Directorships:

Abacus Biotech Limited,  
Palliser Estate Wines of  
Martinborough Limited, also  
a director of a number of  
private companies.

#### Professional:

Member of Government  
Taskforce on Private  
Provision for  
Retirement 1991/1992; Past  
Member of New Zealand  
Stock Exchange.

### JANE DIPLOCK

BA (Hons), LL.B, DipEd  
(Sydney), Dip Int.Law (ANU).  
Chairman of the Commission  
since September 2001.

#### Professional:

Barrister and Solicitor of the  
ACT Supreme Court and High  
Court of Australia; Barrister  
of the New South Wales  
Supreme Court; Fellow of the  
Institute of Public  
Administration Australia;  
Chevening Fellow at London  
School of Economics.

### LLOYD A.J. KAVANAGH

LL.B.  
Barrister and Solicitor,  
Wellington.

#### Professional:

General Counsel –  
New Zealand Milk  
(part of Fonterra  
Co-operative Group  
Limited).



He brought a wide range of commercial experience to the work of the Commission and a forthright and practical approach to resolving problems. The Commission is grateful for Ian Farrant's significant contribution. Liz Hickey and Joanna Perry were re-appointed for terms of one and five years respectively. Annabel Cotton was appointed as a Member.

The Commission held 11 regular monthly meetings and 49 quorum meetings. There were an additional 108 resolutions in writing, many of these arising from telephone conferences between Commission Members. The Audit Committee, Joanna Perry (Chairman), Cathy Quinn and Rodger Spiller, met in person or by telephone on four occasions.



**COLIN A.N. BEYER**

LL.B, FIOD.  
Senior partner of Simpson Grierson, Wellington.

**Directorships:**

Tower Limited (Chairman); Summit Resources Limited (Chairman); Capital Properties New Zealand Limited (Chairman); Tower Risk & Investment Management Limited.

**Professional:**

Solicitor, Wellington.

**ELIZABETH M. HICKEY**

M.Com (First Class Honours), FCA.

Chartered Accountant, Auckland, specialising in financial reporting and financial investigations.

**Directorship:**

Radio New Zealand Limited.

**Professional:**

Member, Accounting Standards Review Board.

**MICHAEL R.H. WEBB**

LL.B, AAMINZ.

Barrister, Auckland and Wellington, specialising in corporate, banking and securities law.

**Directorships:**

Fulton Hogan Limited; Tower Trust Group.

**Professional:**

Joint Convenor New Zealand Law Society/Institute of Chartered Accountants of New Zealand Joint Insolvency Committee; Past Convenor, New Zealand Law Society Commercial and Business Law Committee; Member of Pacific Economic Cooperation Council Financial Markets Development Project Group.

**JOANNA M.G. PERRY**

MA (Cantab), FCA (ICANZ), FCA (ICAEW).

Chartered Accountant, Auckland.

**Professional:**

Partner of KPMG; Member of Financial Reporting Standards Board of Institute of Chartered Accountants of New Zealand.

**RODGER M. SPILLER**

PhD, M.Com (First Class Honours), CFP, CA, Dip. Mgt., ANZIM.

Personal Investment Adviser and Business Consultant, Auckland.

**Directorships:**

New Zealand Businesses for Social Responsibility; Transparency International (NZ).

**Professional:**

Managing Director of Money Matters (NZ) Limited and Rodger Spiller & Associates Limited; Executive Director for the New Zealand Business Council for Sustainable Development and the New Zealand Centre for Business Ethics and Sustainable Development. Author CCH's Essential Guide to Financial Planning in New Zealand.

**CATHY A. QUINN**

LL.B.  
Solicitor, Auckland.

**Professional:**

Partner of Minter Ellison Rudd Watts specialising in corporate, securities and competition law. Joint author Morison's Company and Securities Law.





## ENFORCEMENT & SURVEILLANCE

### Responsibilities

- intervene in the market in the interests of investors in accordance with statutory powers
- maintain oversight of securities market activity

### Achievements this year

- acted to protect investors' money in respect of several contributory mortgages
- published a report on the 1 Parliament Street contributory mortgage
- published a report on certain statements about Air New Zealand Limited
- issued warnings about illegal overseas brokers and named them on our website
- published a report on Gideon Investments Pty Limited and Morison Guildford & Associates Limited
- completed 11 insider trading enquiries
- issued warnings and prohibited advertising of illegal investment schemes
- identified misleading and confusing offer documents which issuers withdrew or amended
- reviewed financial reporting aspects of Telecom New Zealand's interim financial statements
- published a discussion paper on proposed Conduct Rules of the New Zealand Stock Exchange

40.7% of expenditure

### Enforcement

#### *Contributory Mortgages*

Several contributory mortgage schemes came to our attention during the year. More than \$300 million is invested in these schemes which lend money to property owners to purchase, refinance or develop real properties. Investors' money is pooled and lent by a contributory mortgage broker to a borrower, usually at relatively high rates of interest. Often banks or other lending institutions will not lend the required funds and borrowers are prepared to pay the higher rates of interest charged by contributory mortgage brokers.

## ACHIEVEMENTS

Higher promised returns carry greater risks. Investors, attracted by higher interest rates offered by contributory mortgage schemes, may not realise that they might be taking a risk that a bank would not take. The Commission issued a public warning in November urging investors to seek independent advice and find out all the facts before investing in schemes paying higher than average interest rates. The Commission took action against several contributory mortgage brokers. We appointed chartered accountants Crichton Horne in place of two brokers, banned advertisements for two contributory mortgages, and banned two firms from acting as contributory mortgage brokers for specific periods. The work of Crichton Horne has been well received by investors.

The Commission issued a public warning urging investors to seek independent advice and find out all the facts before investing in schemes paying higher than average interest rates.

We published a report on The Mortgage Financier Limited and Money Managers Limited in relation to the contributory mortgage for a development at 1 Parliament Street in central Auckland. The Commission was of the view that both companies and their directors could be criminally and civilly liable for breaches of securities law. We referred the report to the National Enforcement Unit of the Companies Office to consider whether to lay charges.

### *Air New Zealand Limited (Air NZ)*

We published a report of our inquiry into statements in the media that led to the trading halts in Air NZ shares in September 2001. The report covered statements by the Prime Minister and by Mr Greg Terry, at that time a director of Air NZ, and media reports that the Office of the Prime Minister had approached broking houses about possible steps to be taken by the Government in relation to Air NZ. The inquiry gathered evidence from more than 70 people. Submissions by affected parties were carefully considered.

The Commission found

- no evidence that the Prime Minister's Office approached broking houses about possible steps to be taken by the Government in relation to Air NZ
- no evidence of insider trading by any person in the shares of Air NZ during the period covered by this inquiry
- the Prime Minister's statements about shareholders on 25 September 2001 did not constitute tipping under the Securities Amendment Act 1988
- Mr Terry's statements about the share price on 27 September 2001 did not constitute tipping under the Act.



## ACHIEVEMENTS

The Commission considered that from a securities market perspective the Prime Minister's statements regarding shareholders on 25 September 2001 and Mr Terry's statements about the Air NZ share price on 27 September 2001 were inappropriate. The statements did not breach the law, but they were not appropriate given the status of the people involved and the intense public interest in Air NZ at the time.

Potentially price sensitive statements about listed companies made by insiders should be made through proper market information mechanisms, including those of the New Zealand Stock Exchange (NZSE). We recommended that guidelines be prepared for Ministers and their advisers regarding public statements about listed companies where the Government may have or be perceived to have inside information. We understand that such guidelines are being drawn up. The second part of the Commission's review will consider questions arising from the NZSE's decisions to impose and lift trading halts in Air NZ in September 2001.

We recommended that guidelines be prepared for Ministers regarding public statements about listed companies where Government may have or be perceived to have inside information. We understand that guidelines are being drawn up.

The Commission declined a request, under section 17 of the Securities Amendment Act 1988, from Catharine Mary Franks, a shareholder in Air NZ, to approve the appointment of a lawyer to provide an opinion on whether there was an insider trading case to answer relating to trading in shares in Air NZ. The Commission found no evidence of insider trading in its earlier comprehensive investigation and after carefully considering the section 17 request concluded that there was no new evidence to warrant further investigation.

### *Insider trading*

We have completed 11 inquiries into suspected insider trading and looked into a number of substantial security holder disclosure matters in the course of the year. Insider trading inquiries in particular occupy a lot of our time. There is often an expectation that when a share price moves ahead of an important announcement, insider trading must be involved. These cases are rarely as clear-cut as they seem. When all the evidence is examined the true position may not always be as initially suspected.

### *Overseas brokers*

The activities of brokers from overseas cold calling New Zealanders reached new heights during the year. Based in Jakarta, Bangkok or Manila, the callers invariably try to persuade people to buy shares in low value technology stock listed on the

## ACHIEVEMENTS

NASDAQ. They are often very persuasive. The strong suspicion is that the brokers simply pocket the money or if stock is bought it cannot readily be sold. When a person attempts to realise the investment the broker becomes very difficult to contact. Some people are caught twice when they are approached by a new broker saying that they have a buyer for the shares but, of course, they need to pay more money to make this happen. One person remitted US\$100,000 in response to such an approach. This is almost certainly part of the original fraud.

In reality these are "boiler-room" operations where people are crammed into a small room and they bombard people around the world with telephone calls, particularly New Zealanders, Australians and South Africans. They appear to target people in small businesses. Usually the brokers do not have any status or authority to conduct securities business in the country from which they operate. Authorities in these countries are starting to crack down on these activities. Arrests were made last year in Bangkok and Manila and the Taiwanese are holding a person they believe was the central figure behind an operation known as Mendes Prior.

Overseas brokers are a major concern for this Commission and for commissions around the world. The arrests in Thailand last year resulted in hundreds of telephone calls to us from New Zealanders who had sent money away. They revealed that at least \$14 million was lost out of the country in the last year and a half. We suspect this is only the tip of the iceberg. Many who ring us prefer not to say how much they have lost, and probably many more do not contact us at all. We constantly warn New Zealanders not to do business with strangers who cold call them from overseas. We recommend that if people want to buy shares overseas, they do so through a New Zealand broker who is accountable under New Zealand law. Once money is sent away, it is very difficult to trace. Our impression earlier this year was that the activities of overseas brokers were beginning to wane, or maybe that New Zealanders were being more wary. Recently, though, there are indications that unsolicited calls are on the rise again. Our website alerts people to this problem. We have the names of some 60 illegal brokers on our website and the list continues to grow. Other countries have followed this initiative. We liaise with our overseas counterparts and have been pleased when this has helped lead to action by overseas regulators against the brokers. Examples of this include the actions by the Thai and Philippine authorities and the securities fraud proceedings taken by the United States Commodity Futures Trading Commission against FX Advisors.

Cold calling brokers are a major concern ... at least \$14 million was lost out of the country in the last year and a half. We suspect this is only the tip of the iceberg.



## ACHIEVEMENTS

### *Gideon Investments Pty Limited*

We published a report on fund raising by Gideon Investments Pty Limited and the role of Wairarapa investment advisers Morison Guildford and Associates Limited. We reported that Morison Guildford were incompetent and irresponsible. They obtained money from New Zealanders for Gideon. They did not question the lack of offer documents. Their formal evaluation and monitoring of Gideon was close to non-existent. They withdrew investors' funds inappropriately, apparently without telling investors, and did not keep proper records. The Commission published the report as a review of market practice to highlight deficiencies in the behaviour of people committed to representing investors. The report emphasises the importance of rules of law about mandatory investment adviser disclosure and about recommending illegal offers of securities. We have recommended changes to the law relating to investment advisers.

... the report highlights deficiencies in the behaviour of people committed to representing investors ... and the importance of rules of law about mandatory investment adviser disclosure ...

### *Illegal offers of securities*

In July we prohibited the promotion of a prime bank scheme, the Tri-West Investment Club. We issued a press statement about this which received wide coverage. In September the United States Securities and Exchange Commission (SEC) filed a securities fraud law suit against the scheme and froze all Tri-West's assets. The SEC said some US\$30 million had been raised in and outside the United States. A Canadian living in Mexico appears to have been behind the scheme. Most of the investors' money appears to have been spent on supporting the lifestyles of this man and his associates.

We prohibited the promotion of a scheme whereby people paid money to offshore destinations as part of hire purchase arrangements for buying new cars. The promoter, Graham John Cumming from Tauranga, had been particularly active in the Bay of Plenty and Manawatu.

<sup>10</sup> We gave evidence to the Finance and Expenditure Committee inquiring into the revenue effects of fraudulent investment schemes. We briefed the Committee on our experience of

- overseas brokers operating from boiler-rooms who telephone people in New Zealand with offers of low value technology stock
- fraudulent schemes, often based overseas, which do not comply with our law but are promoted by people in New Zealand for sizeable commissions
- how these relate to our recommendations on reforming the law on investment advisers.

We rely on the news media to help us warn people about scams and dubious investments. We are grateful when our warnings are published widely in newspapers and periodicals such as *Consumer*. There were several useful documentaries on television during the year and we are pleased to have assisted with these.

### ***Telecom New Zealand***

We reviewed certain financial aspects of Telecom New Zealand's interim financial statements for the half-year to 31 December 2001 and found no departures from generally accepted accounting practice (GAAP) in New Zealand. The review followed public comment on some aspects of Telecom's financial reporting. Telecom conducts operations and raises securities in a global setting. The company is listed on the New York Stock Exchange. Telecom reports not only according to New Zealand GAAP but also describes where its financial statements differ from generally accepted accounting principles in the United States. The matters demonstrated the importance of working towards international harmonisation of accounting standards.

### ***Offer documents***

We reviewed offer documents, advertisements, annual reports and financial statements of issuers of securities. As a result of our work 18 documents of 11 issuers were prohibited, withdrawn or amended because they were misleading or confusing. We issued three public warnings.

Surveillance

### ***New Zealand Stock Exchange – proposed Conduct Rules***

The NZSE is considering demutualising. If it does so, the New Zealand Stock Exchange Restructuring Act 2002 requires that its Conduct Rules must be approved by the Governor-General on the recommendation of the Minister of Commerce. The Minister has asked the Securities Commission to advise him so that he can make a recommendation to the Governor-General. In June we published a paper on the Conduct Rules and invited comment.





## MARKET AUTHORISATIONS

### Responsibilities

- authorise futures dealers and exchanges
- approve amendments to exchange rules
- approve trustees and statutory supervisors
- designate certain substantial security holders

### Achievements this year

- authorised five futures dealers
- approved changes to the rules of the New Zealand Futures and Options Exchange
- considered the implications of the New Zealand Futures and Options Exchange's proposed move to Australia
- recommended an extension to the FASTER system of the New Zealand Stock Exchange
- approved four trustees and eight statutory supervisors
- adopted a new policy for authorising trustees and statutory supervisors
- consulted on policy for designating certain substantial security holders

3.1% of expenditure.

During the year we authorised five persons to deal in futures contracts. We approved amendments to the rules of the New Zealand Futures and Options Exchange (NZFOE) to make them consistent with the rules of the Sydney Futures Exchange (SFE) which owns the NZFOE. The changes related mainly to the SFE's new trade allocation and confirmation system. We were advised of the restructuring plans of the SFE which include moving the NZFOE's operations to Australia. This raises questions about the supervision of brokers in New Zealand. We are consulting on the future shape of regulation of this industry.

A new policy on approving trustees and statutory supervisors ... who must now report to the Commission each year on any changes that affect their approvals.





## ACHIEVEMENTS

We recommended an extension to the NZSE's FASTER system to the Minister of Commerce. This extends the operation of the FASTER system to the NZSE's unlisted securities market. The extension was recommended after the NZSE introduced new conditions for companies on the unlisted market who choose to use the system.

We approved 12 persons as trustees or statutory supervisors. A new policy on approving trustees and statutory supervisors was published in January following a very good response to our discussion paper. The major change is that approved trustees and statutory supervisors must report to the Commission each year on any changes that affect their approvals.

We released a discussion paper on policy for designating certain substantial security holders. This relates to banks, financial institutions, sharebrokers, trustee corporations and nominee companies who hold shares in the ordinary course of their business. When designated, these holders do not have to comply with substantial security holder disclosure requirements of the Securities Amendment Act 1988 when they act in their ordinary business. Comments from interested parties will be considered as we develop the policy which we expect to publish early in the new year. The current list of designated persons is also being reviewed.



### EXEMPTIONS

#### Responsibilities

- consider applications for exemption from securities law
- review existing exemptions

#### Achievements this year

- considered 92 new applications for exemption from securities law
- granted 78 exemptions
- amended Australian exemptions to reflect changes in Australian law
- began a review of exemptions which expire in September 2002

12.7% of expenditure



## ACHIEVEMENTS

Section 5(5) of the Securities Act empowers us to exempt persons from compliance with various provisions of securities law, subject to conditions. We use this power to remove rigidities in the law for traditional investment products and to facilitate offers of new products so that they can be offered to the public cost-effectively and without delay. Exemptions also assist issuers in other countries to promote investments in New Zealand, adding to the diversity of investments available and making our market more competitive.

We aim to avoid conferring a competitive advantage on particular institutions and to respect the reasonable needs of both issuers and investors. We aim to base all exemptions soundly on securities law and to use conditions of exemption to set alternative compliance procedures for issuers. We prefer to grant class exemptions rather than individual exemptions. When time allows we consult publicly, particularly where an application involves significant policy questions. We recognise that an applicant company may incur costs in time and resources for this public benefit and we are grateful for this help.

We considered 92 applications for exemption from securities law and granted 78 exemptions. This compares with 85 exemptions considered in 2000/2001 and 70 notices issued. There are 187 exemption notices in force (161 as at 30 June 2001) and at 30 June 2002 there were 12 applications before the Commission.

An increasing number of applications are sought urgently. This taxes the resources of both the Commission and the Parliamentary Counsel Office, which is responsible for drafting exemptions. At times the urgency arises from a lack of planning by advisers. We remind the legal profession that applications should not be left to the eleventh hour. We endeavour to accommodate the reasonable needs of market participants but we cannot guarantee to meet issuers' timetables for urgent applications particularly if the application is poorly framed or inadequately thought through.

We endeavour to meet the reasonable needs of market participants but ... we remind lawyers that applications should not be left to the eleventh hour

The Corporations Act 2001 of the Commonwealth of Australia came into force on 15 July 2001. This Federal legislation is in substance the same as the various State Corporations Acts and the Corporations Law that it replaced. We updated 13 of our exemptions by substituting references to the old law with references to the new law.

Some 57 exemptions expire in September 2002. We consulted with parties affected by these exemptions or who have an interest in them. In the case of the individual exemptions we asked if the exemptions were still needed and, if so, whether any amendment was required. In the case of the class exemptions we sought comment on their operation. A good number of submissions, particularly on the class exemptions, have been received. We continue to consult as the exemption review progresses.



## LAW REFORM

### Responsibilities

- make recommendations for law reform
- review and comment on securities law and practice

### Achievements this year

- recommended changes to the law on investment advisers
- made submissions on
  - the Securities Markets and Institutions Bill
  - the Business Law Reform Bill 2001
  - insider trading and market manipulation
  - a draft Cabinet paper on the review of our functions
  - fraudulent investment schemes
- continued the review of the Securities Regulations

### 9.1% of expenditure

Our August discussion paper *Law Reform: Investment Advisers* attracted many useful and thoughtful submissions. In general our proposals for reform were well received. The responses were taken into account in our recommendations to the Minister of Commerce in February. Our report on Gideon Investments Pty Limited and the role of Morison Guildford and Associates as investment advisers is a case study in support of changes to investment adviser law.

The Securities Markets and Institutions Bill, introduced into Parliament on 6 November 2001, was referred to the Finance and Expenditure Select Committee. The Committee reported back to the House on 4 June 2002. This is a significant piece of legislation for the Commission. It covers a variety of matters including

- continuous disclosure by issuers
- disclosure of dealings by directors
- a civil enforcement role for the Commission in relation to insider trading
- new rules for the regulation of stock exchanges
- cross-border recognition of securities offers.

The Commission worked with the Ministry of Economic Development on the policy and drafting of this legislation. We made submissions to the Select Committee. When the Bill passes into law it will increase our responsibilities and



## ACHIEVEMENTS

have a positive impact on the Commission's ability to effectively investigate and take action against market malpractice.

The Commission commented on proposals for a Business Law Reform Bill which may include a number of changes to the Securities Act. We understand that a Bill is to be introduced into the House in the coming year.

The Minister of Commerce released three discussion documents in May on insider trading, market manipulation and the penalties, remedies and application of securities trading law. The Commission helped develop these discussion documents at the invitation of the Ministry of Economic Development. Submissions should be made to the Ministry by Friday 30 August 2002.

Development of internationally harmonised, high quality financial reporting and auditing standards, and compliance

Together with the Ministry of Economic Development we continued the review of the Securities Regulations 1983. Draft amendment regulations will be released for public comment early in the coming year.

with them, are important issues world wide, with

Development of internationally harmonised, high quality financial reporting and auditing standards, and achieving compliance with those standards, are important issues world wide, with significant implications for New Zealand. We made submissions to the Financial Reporting Standards Board of the Institute of Chartered Accountants of New Zealand on exposure drafts for new financial reporting standards and guidance on related financial reporting matters. Recent high profile corporate collapses reinforce the need for sound financial reporting standards, competent and independent audits, strong regulatory frameworks and vigilant regulators. The Commission will continue to take an active interest in accounting and auditing matters.

significant implications for New Zealand.

The Commission commented on matters of interest at the invitation of other organisations, including the Law Commission and the Ministry of Social Development.





## INTERNATIONAL LIAISON

### Responsibilities

- promote New Zealand as a well-regulated securities market
- keep abreast of developments in global standard setting
- contribute the Commission's view in an international forum
- maintain good relationships with other regulators

### Achievements this year

- elected to the Executive Committee of the International Organization of Securities Commissions (IOSCO)
- signed a Memorandum of Understanding with the Securities and Exchange Commission of Sri Lanka
- took part in the Asia Pacific Regional Committee (APRC) of IOSCO
- presented papers at OECD and ASIC conferences
- undertook inquiry work in New Zealand on behalf of overseas regulators
- co-operated with authorities in Thailand and other countries on fraudulent brokers

### 4% of expenditure

The Commission was elected to the Executive Committee of IOSCO at the annual meeting in May. This is a very prestigious appointment and we are proud of this achievement. It is important international recognition of New Zealand as an increasingly well-regulated market and one suitable for international investment. The Executive Committee is dealing with major matters arising from 11 September 2001 and the need for increased international cooperation and information sharing in the fight against international terrorism. It is promoting a multilateral Memorandum of Understanding with all IOSCO member countries. The Committee is also dealing with the implications of the ENRON collapse and issues relating to the independence of analyst reports arising from the Merrill Lynch case in the United States. Accounting and auditing standards and the demutualisation of stock exchanges are also on the IOSCO Executive Committee's agenda. Election to this international committee means that New Zealand will take an active part at a world level in addressing these important regulatory issues which, with the globalisation of world capital markets, are increasingly important here in New Zealand.

Some 160 regulatory and self-regulatory agencies are members and associates of IOSCO which works in five areas



## ACHIEVEMENTS

- multi-national disclosure of information including harmonisation of international accounting and audit standards
- regulation of secondary securities markets including examining the use of the internet and other electronic communications
- regulation of market intermediaries and their products
- enforcement and exchange of information across national borders
- investment management.

Under IOSCO's 1986 Rio Declaration signatories give reciprocal assistance in gathering information on market oversight and protection of investors against fraudulent securities transactions. New Zealand is a signatory to the IOSCO-sponsored Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organisations. This reinforces understandings reached between international futures exchanges and clearing houses in Florida in 1996 enabling them to share information on the financial resources and trading positions of people dealing in futures contracts. An important aim is to identify large exposures which may potentially have an adverse effect on markets.

The Commission signed a Memorandum of Understanding (MOU) with the Securities and Exchange Commission of Sri Lanka this year. We have MOUs with the Australian Securities and Investments Commission, the United States Commodity Futures Trading Commission, the Hong Kong Securities and Futures Commission, the Chinese Taipei Securities and Futures Commission and the Papua New Guinea Securities Commission. We have an exchange of letters with the United States Securities and Exchange Commission.

We took part in the annual meetings of APRC and of enforcement officers from the Asia Pacific region and the Implementation Committee. The Chairman presented a paper at the OECD's Round Table meeting in April and Norman Miller addressed the ASIC Summer School in February.

We responded to requests for assistance from the Financial Services Authority in London, the United States Securities and Exchange Commission and the Commodity Futures Trading Commission in Washington DC. We cooperated with authorities in Thailand, the Philippines and other countries in efforts to clamp down on the activities of illegal brokers eliciting money from people in New Zealand. We hosted a brief visit by representatives of the Bangladesh regulatory authorities.

The International Monetary Fund and the World Bank are assessing the soundness of the financial sector (banking, corporate governance, insurance, superannuation and securities markets) of all their member countries. An initial visit by the Financial Sector Assessment Program mission to New Zealand is expected in March 2003 and will be followed by an "on the ground" evaluation later in the year. The IOSCO Objectives and Principles are being used as a benchmark for the securities markets assessment.



## PUBLIC UNDERSTANDING

### Responsibility

- promote public understanding of the law and practice of securities

### Achievements this year

- initiated a "meet the market" programme
- published *The Bulletin* quarterly
- upgraded the Commission's website [www.sec-com.govt.nz](http://www.sec-com.govt.nz)
- responded to 2130 inquiries from the public
- worked with journalists to increase media coverage of the Commission's work
- issued public warnings and news releases
- spoke to groups and met with market participants
- published summaries of exemptions from securities law granted by the Commission

### 11.1% of expenditure

The Chairman initiated a programme to meet with market participants. This included speeches to large groups and smaller meetings at which she listened to the concerns and interests of people directly involved in the securities markets. The quarterly issues of *The Bulletin* reported our activities and comments on the securities market. Responses to a survey sent with the April 2002 issue indicated high levels of reader interest in the content. We last surveyed readers in 1999.

The website, [www.sec-com.govt.nz](http://www.sec-com.govt.nz), brings together all the Commission's efforts to increase public understanding of securities law and practice by including publications, news releases, exemption summaries and warnings. There are many links to related information on other sites in New Zealand and overseas. A new design for the website made it easier for visitors to find what they want. On average 5000 individual visitors go to the site each month. New arrangements for hosting the site have reduced costs.

Staff responded to 2130 public inquiries. This compares with 1607 inquiries last year. We were inundated with calls from people following actions against brokers based in Thailand. Hits on our website also dramatically increased at this time. Our actions on contributory mortgages triggered many inquiries.

We have a positive attitude towards the news media and reporters show considerable interest in the Commission's work. We issued 32 media releases and initiated media



## ACHIEVEMENTS

interviews as well as responded to journalists' inquiries. In particular we promoted warnings about the risks of high return investments in a time of falling interest rates. High profile inquiries (e.g. Air New Zealand Limited and contributory mortgages) attracted considerable media coverage. We helped *Consumer* with several articles on scams and high risk investments.

We gave speeches, both in New Zealand and overseas, including addresses to investment adviser, industry and legal groups.



## SERVICES TO THE TAKEOVERS PANEL

### Responsibility

- provide support services to the Takeovers Panel

### Achievements

- the Commission and the Panel signed a Memorandum of Understanding for provision of services
- staff provided executive, administrative and support services to the Panel

19.3% of expenditure

The Takeovers Code came into force on 1 July 2001. Several Commission staff worked almost full time to provide support to the Panel during the first year of the Code's operation. Kerry Morrell is Senior Executive to the Panel and Tim Dolan is Secretary. They are supported at times by other staff. Senior Lawyer, Marion Hemphill, joined the staff in June 2002 to work full time for the Panel. Pressure on staff has been very heavy with complicated and complex takeovers, notably the contest for control of Montana Group (NZ) Limited at the time the Code came into force, and more recently the battle for control of Otago Power Limited. The high workload of the Commission meant that it was not always able to satisfy the additional resources sought by the Panel during the year. The Commission is continuing to recruit more staff to assist with the Panel's requirements. Services to the Panel are provided under a Memorandum of Understanding.





## ADMINISTRATION AND STAFFING

- Jane Diplock assumed an Executive Chairman role
- Staff roles redefined
- John Farrell retired

### *Staff*

2001-2002 has been a time of considerable change. It was a demanding year for staff who nonetheless produced high quality work often under severe time constraints. The Commission is grateful for their contribution.

The Chairman assumed an executive management role and staff positions were redefined to create a team approach to the Commission's work. The senior management structure makes Senior Executive Norman Miller responsible for enforcement, General Counsel Liam Mason responsible for legal matters and Senior Executive Kerry Morrell responsible for takeovers. Sanjiv Jetly was appointed as General Manager responsible for corporate services and administration.

Administration Officer Dewi Evans retired in May after five years of dedicated service. Four other full time staff left during the year. Seven full time and two part time staff were appointed. At 30 June 2002 there were 21 full time and three part time staff. We expect to recruit more staff in the new year as we assume the new responsibilities heralded in the Securities Markets and Institutions Bill. Various staff members attended professional development courses during the year.

### *Chief Executive John Farrell*

John Farrell stepped down in May after being Chief Executive since August 1984. He served with five Commission Chairmen and 29 Members. When John became Chief Executive the Commission had five Members and a staff of four. It was principally a law reform body, responsible for formulating securities regulations and other legal reforms. During his tenure there were many changes in the market and to securities law. The Commission and its staff increased in numbers as the work evolved, particularly as the Commission took on enforcement and authorisation responsibilities relating to secondary markets and futures dealing. John was active in the work of IOSCO. Through all the changes he maintained a steady hand on the work of the Commission, demanding and delivering high standards and consistent quality. His great depth of legal knowledge and broad business experience enabled him to occupy a unique position as Chief Executive. That this was appreciated and valued was clear from the high turnout of former Commission Chairmen and Members and people from the regulatory, legal, and business communities at his farewell in May. John made an outstanding contribution to the work of the Commission and we thank him for this.





## ROLE, FUNCTIONS AND POWERS

The role and functions of the Commission include:

- to keep under review the law relating to bodies corporate, securities and unincorporated issuers of securities and to recommend changes to the Minister of Commerce
- to keep under review practices relating to securities and to comment to any appropriate body
- to cooperate with overseas securities commissions
- to promote public understanding of the law and practice of securities
- by agreement with the Takeovers Panel, to provide administrative and support services to the Panel
- to perform any other functions conferred by statute law.

To perform these functions we have a number of powers. These include:

- to receive evidence as to securities law and practice, with power for this purpose to summon any person to appear before us
- to publish any report or comment made by us in the course of the exercise of our functions
- to exempt persons from compliance with provisions of the Securities Act or of Regulations under the Act
- to suspend or cancel a registered prospectus
- to suspend or prohibit an investment statement
- to prohibit advertising of any securities
- to approve trustees and statutory supervisors
- to inspect the documents of issuers and promoters of securities and of investment advisers
- to hear appeals against certain decisions of the Registrar of Companies
- to recommend regulations
- to administer aspects of insider trading and substantial security holder law
- to administer the law relating to futures contracts
- to recommend approval of electronic systems for the transfer of securities
- to receive financial statements of issuers which do not comply with the Financial Reporting Act 1993.

The Commission may also consider certain matters arising under the Corporations (Investigation and Management) Act 1989 (in particular, directions to "at risk" corporations and declarations of statutory management).

## SECURITIES COMMISSION

## FINANCIAL REPORT

16321	185	184
30000	2.8	2.8
24119	45	45
414544	615	608
144550	432	426
24547	259	251
12000	69	68
520000	1.9	1.8
124051	304	298
6350	55	55
100000	3	3
4747768	483	478
129004	575	565

May 2	9115.91
May 3	9113.82
May 6	9111.04

### Top 10 gross

Peak	6451.86, Oct 22, 1997
2002 high	2264.82, Feb 4
2002 low	2129.04, May 4
May 2	2165.50
May 3	2153.48
May 6	2151.63

### NZSE 30 capital

Peak	9354.23, Oct 22, 1997
2002 high	1829.18, Feb 4
2002 low	1711.34, Apr 30
May 2	1725.80
May 3	1719.11
May 6	1715.20

### NZSE 30 gross

Peak	3459.51, Feb 4, 2002
2002 high	3459.51, Feb 4

300, Loores 11, Loores 2  
 45.5, C Road 112, Covert  
 876, Collins St, Cmel 7.7.1  
 CstPOF 119, CstH100, Cx  
 Dania 900, DstCom 31.5, E  
 Denton 21, Dexp 5.50, Dista  
 In185, DstCR128, DGov1118  
 Devine pvt 950, Ddass 10.5  
 Downer 80, Dromas 100, E  
 Cor 800, EGS4 21, EGlob 73  
 Earth 20, Eastie 18, Easty  
 Eber del 19, EchoT 7, Ecce  
 155, EacOp 200, ElecTc 1  
 ELeakM 128, Embell 190, E  
 Envis 20.5, Envisat sup 87  
 Enven 43, Enstar 22, Emf6  
 16, Egly71 580, Egv11.9, Etes  
 11, Eteang 25.5, Euzo 58, E  
 EwarsT opt 195, Eweng 48  
 FCFor 18, FCFor 27.18, F  
 FTRhd 20, Farfo 34, Feltc  
 48, FedGrp 144, Ffuz 73  
 Ffuz 45, FfuzApp 290, F  
 Ffuz 228, Ffuz 211, Ffuz  
 2600, Ffuz 58, Ffuz 1880

## SOURCES OF FUNDING

The Commission is funded by the appropriation of money by Parliament and the payment of fees by the users of its services. It is responsible for the allocation of the money. It sets priorities with care and reviews them constantly to ensure that the money is used to best advantage.

## STATEMENT OF RESPONSIBILITY

We acknowledge responsibility for the preparation of these financial statements and for the judgements used in them.

We acknowledge responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of the Commission's financial reporting.

In our opinion these annual financial statements fairly reflect the financial position and operations of the Securities Commission for the year ended 30 June 2002.



Jane Diplock  
Chairman

18 July 2002



Joanna Perry  
Chairman of the Audit Committee

18 July 2002

## FINANCIAL STATEMENTS

## STATEMENT OF FINANCIAL PERFORMANCE

*for the year ended 30 June 2002*

2002 Budget \$		Note	2002 Actual \$	2001 Actual \$
<b>INCOME</b>				
2,267,000	Government grant		2,266,667	2,266,667
–	Government grant - NZ Stock Exchange	2	134,003	–
52,000	Interest		40,835	52,400
300,000	Application fees and costs recoverable		305,428	309,340
–	Recovery of litigation and court costs		45,047	2,000
488,000	Administrative services to the Takeovers Panel	3	603,716	229,157
9,000	Allocation of receipt for use of assets	4	9,848	3,002
<u>3,116,000</u>	Total income		<u>3,405,544</u>	<u>2,862,566</u>
<b>EXPENDITURE</b>				
6,000	Auditors - fees		6,000	6,000
2,000	Auditors - other services		–	–
–	Bad debts		–	1,067
30,000	Communication charges		35,825	23,470
	Depreciation			
	- Office equipment		66,728	55,826
	- Office furniture		6,543	4,888
	- Leasehold improvements		21,096	20,304
	- Motor vehicle		9,600	–
	- Library		20,133	25,073
120,000	Total depreciation		124,100	106,091
–	Fringe benefit tax		5,785	–
25,000	Litigation		18,239	47,124
252,000	Members' fees	5	251,737	213,382
214,000	Printing and stationery		232,031	201,775
180,000	Professional services		478,907	172,166
213,000	Rent		212,611	204,865
1,797,000	Salaries and superannuation subsidies	5 & 6	1,624,034	1,511,950
195,000	Services and supplies		264,499	191,732
62,000	Superannuation contribution withholding tax		40,701	50,933
213,000	Travel and accommodation		228,019	139,700
<u>3,309,000</u>	Total expenditure		<u>3,522,488</u>	<u>2,870,255</u>
<u>\$ (193,000)</u>	Surplus (deficit)	7	<u>\$ (116,944)</u>	<u>\$ (7,689)</u>

## STATEMENT OF MOVEMENTS IN EQUITY

*for the year ended 30 June 2002*

2002 Budget \$		2002 Actual \$	2001 Actual \$
(193,000)	Surplus (deficit) for year	(116,944)	(7,689)
-	Increase (decrease) in revaluation reserve	-	(10,792)
(193,000)	Total recognised revenues and expenses for year	(116,944)	(18,481)
878,000	Equity at start of period	878,205	896,686
<u>\$685,000</u>	Equity at end of period	<u>\$761,261</u>	<u>\$878,205</u>

## STATEMENT OF FINANCIAL POSITION

*for the year ended 30 June 2002*

2002 Budget \$		Note	2002 Actual \$	2001 Actual \$
<b>CURRENT ASSETS</b>				
46,000	Cash		30,314	51,983
300,000	Short term deposits		300,000	500,000
11,000	GST receivable		15,881	10,957
120,000	Sundry debtors and prepayments		181,277	118,165
477,000	Total current assets		527,472	681,105
410,000	<b>FIXED ASSETS</b>	8	466,813	399,696
\$887,000	Total assets		\$994,285	\$1,080,801
<b>CURRENT LIABILITIES</b>				
180,000	Creditors and accruals	9	206,396	172,289
9,000	Receipt for use of assets	4	10,405	8,349
189,000	Total current liabilities		216,801	180,638
<b>NON-CURRENT LIABILITIES</b>				
13,000	Receipt for use of assets	4	16,223	21,958
202,000	Total liabilities		233,024	202,596
<b>EQUITY</b>				
598,000	Accumulated funds		673,765	790,709
87,000	Asset revaluation reserve		87,496	87,496
685,000	Total equity		761,261	878,205
\$887,000	Total equity and liabilities		\$994,285	\$1,080,801

## STATEMENT OF CASH FLOWS

*for the year ended 30 June 2002*

2002 Budget \$		Note	2002 Actual \$	2001 Actual \$
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
	Cash was provided from:			
2,267,000	- Government grant		2,266,667	2,266,667
	- Government grant – recovery of costs from			
–	NZ Stock Exchange		134,003	–
298,000	- Application fees & costs recoverable		288,670	259,631
52,000	- Interest		39,528	51,055
488,000	- Administrative services to the Takeovers Panel		603,716	229,157
	Cash was disbursed to:			
(1,384,000)	- Suppliers		(1,774,354)	(1,434,516)
(1,797,000)	- Employees		(1,589,927)	(1,279,376)
–	- Net GST		(4,924)	(1,367)
(76,000)	Net cash flows from operating activities	7	(36,621)	91,251
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
	Cash was provided from:			
–	- Sale of fixed assets		3,200	–
–	- Takeovers Panel for purchase of assets	4	6,169	33,309
200,000	- Net decrease in bank deposits	10	200,000	–
	Cash was applied to:			
(130,000)	- Purchase of fixed assets		(194,417)	(93,766)
70,000	Net cash flows from investing activities		14,952	(60,457)
(6,000)	Net increase (decrease) in cash balances		(21,669)	30,794
52,000	Add opening cash balance		51,983	21,189
\$46,000	Closing cash balance carried forward		\$30,314	\$51,983



# NOTES TO THE FINANCIAL STATEMENTS

for the year ended 30 June 2002

## NOTE 1 STATEMENT OF ACCOUNTING POLICIES

### (a) Reporting Entity

The financial statements presented here for the reporting entity, the Securities Commission, are prepared pursuant to section 30 of the Securities Act 1978 and section 41 of the Public Finance Act 1989.

### (b) Measurement System

The accounting principles recognised as appropriate for the measurement and reporting of results and financial position on a cost basis have been applied with the exception that the library is periodically revalued.

### (c) Accounting Policies

- (i) **Budget Figures:** The budget figures are those approved by Commission Members on 19 July 2001.

The budget figures are prepared in accordance with generally accepted accounting practice and are consistent with the accounting policies adopted by Commission Members for the preparation of the financial statements.

- (ii) **Depreciation:** Fixed assets, other than the library, are shown at cost and have been depreciated on the following bases:

- office furniture – 20 percent of diminishing value,
- office equipment – straight line over five years,
- leasehold improvements – straight line over nine years,
- motor vehicle - straight line over five years.

- (iii) **Library:** All library acquisitions are recorded at cost. The library is depreciated on a straight line basis over ten years. The library is revalued to fair value every three years by an independent valuer. In the year that the periodic revaluation of the library is undertaken any difference between the depreciated value of the library and the fair value is recognised in the asset revaluation reserve. If this results in a debit balance in the asset revaluation reserve, the balance is expensed in the statement of financial performance.

- (iv) **Short Term Deposits:** Short term deposits are shown at cost.

- (v) **Employee Annual Leave:** Provision is made in respect of the Commission's liability for employee annual leave entitlements. This has been calculated on an actual entitlement basis at current remuneration rates.

- (vi) **GST:** All items in financial statements are exclusive of GST with the exception of accounts receivable and accounts payable which are stated with GST included.

- (vii) **Financial Instruments:** All financial instruments are recognised in the statement of financial position and all revenues and expenses in relation to financial instruments are recognised in the statement of financial performance.

- (viii) **Income Tax:** The Commission is exempt from income tax under the Income Tax Act 1994.

- (ix) **Revenue Recognition:** Government grant is recognised as revenue when it becomes due. Revenue from application fees and costs recoverable and from administrative services to the Takeovers Panel is recognised when the relevant services are provided.

- (x) **Changes in Accounting Policy:** There have been no changes in accounting policies since the date of the last audited financial statements. The policies have been applied on a basis consistent with other years.

## NOTE 2 GOVERNMENT GRANT – NZ STOCK EXCHANGE

Represents Government funding to date for the Commission review of the NZ Stock Exchange rules. The offsetting expenditure costs to the Commission are included in salaries and professional services.

## NOTE 3 ADMINISTRATIVE SERVICES TO THE TAKEOVERS PANEL

The Commission provides administrative services to the Takeovers Panel. For each financial year the Commission and the Panel agree on the level of services required and on the fees to be paid to the Commission for these services. The costs involved in providing these services are part of total expenditure.

## NOTE 4 ALLOCATION OF RECEIPT FOR USE OF ASSETS

This represents amounts received from the Takeovers Panel to finance the purchase of assets required by the Commission to service the requirements of the Panel. The prepayment is being amortised, having regard to the expected life of the assets over the following periods:

Furniture, fittings and library	5 years
Office equipment	3 years

## NOTE 5 REMUNERATION OF MEMBERS OF THE COMMISSION

	2002 \$	2001 \$
Members' fees	251,737	213,382
Chairman's remuneration (salary and motor vehicle allowance)	226,074	241,550
Total remuneration paid to Members of the Commission	<u>\$477,811</u>	<u>\$454,932</u>

Members are remunerated on the basis of time spent on the work of the Commission.

Members' fees for the year ended 30 June 2002 were:

	2002	2001
C.A.N. Beyer	22,908	8,568
FR.S. Clouston	37,091	42,052
A.M. Cotton	2,000	–
I.F. Farrant	14,429	22,829
A.N. Frankham	–	23,292
E.M. Hickey	35,768	22,900
L.A.J. Kavanagh	22,477	23,279
J.M.G. Perry	25,009	16,204
C.A. Quinn	16,250	8,284
R.M. Spiller	19,000	8,757
M.R.H. Webb	56,805	37,217
	<u>\$251,737</u>	<u>\$213,382</u>

**NOTE 6 EMPLOYEE REMUNERATION**

During the year, the number of employees of the Commission, not being Members, who received remuneration and other benefits in excess of \$100,000 were:

<b>Remuneration \$</b>	<b>No. of Employees 2002</b>	<b>No. of Employees 2001</b>
210,000 to 220,000	–	1
200,000 to 210,000	1	–
130,000 to 140,000	2	–
120,000 to 130,000	–	2

**NOTE 7 RECONCILIATION OF THE NET DEFICIT FROM OPERATIONS WITH THE NET CASH FLOWS FROM OPERATING ACTIVITIES**

	2002 \$	2001 \$
Reported surplus (deficit)	(116,944)	(7,689)
Add non-cash items:		
- Allocation of receipt for use of assets	(9,848)	(3,002)
- Depreciation	124,100	106,091
	114,252	103,089
Movement in working capital:		
- Increase (decrease) in creditors	34,107	50,273
- Increase in receivables	(68,036)	(54,422)
	(33,929)	(4,149)
Net cash flows from operating activities	(\$36,621)	\$91,251

## NOTE 8 FIXED ASSETS

	2002 Cost/ Valuation \$	Accumulated Depreciation \$	Net Book Value \$
<b>Assets at cost</b>			
Office equipment	430,992	273,774	157,218
Office furniture	100,224	68,551	31,673
Leasehold improvements	189,863	147,538	42,325
Motor vehicle	64,000	9,600	54,400
<b>Assets at valuation plus additions at cost</b>			
Library	201,330	20,133	181,197
	<u>\$986,409</u>	<u>\$519,596</u>	<u>\$466,813</u>
	2001 Cost/ Valuation \$	Accumulated Depreciation \$	Net Book Value \$
<b>Assets at cost</b>			
Office equipment	432,214	293,984	138,230
Office furniture	86,533	62,008	24,525
Leasehold improvements	189,863	126,442	63,421
Motor vehicle	-	-	-
<b>Assets at valuation</b>			
Library	173,520	-	173,520
	<u>\$882,130</u>	<u>\$482,434</u>	<u>\$399,696</u>

## NOTE 9 CREDITORS AND ACCRUALS

	2002 \$	2001 \$
Creditors	170,661	141,962
Employee entitlements	35,735	30,327
	<u>\$206,396</u>	<u>\$172,289</u>

**NOTE 10 CASH FLOWS**

The cash flows relating to the Commission's investing activities are reported on a net basis in the statement of cash flows. The amounts involved are held in short term deposits which are rolled over frequently through the year.

**NOTE 11 FINANCIAL INSTRUMENTS****(a) Credit Risk**

Financial instruments which may subject the Commission to credit risk consist of bank balances, bank short term deposits and accounts receivable.

The Commission's investments are deposited with a registered bank in New Zealand.

The Commission does not require collateral or security to support financial instruments.

There is no significant concentration of credit risk pertaining to accounts receivable.

**(b) Fair Values**

All financial instruments are recognised in the statement of financial position and are stated at fair values.

**NOTE 12 LEASE COMMITMENTS**

The Commission has the following operating lease commitments, which are subject to review under the terms of the leases, with terms of more than one year:

	2002 \$	2001 \$
- Not later than one year	210,000	210,000
- Later than one year and not later than two years	35,000	210,000
- Later than two years and not later than five years	-	35,000
- Later than five years	-	-

**NOTE 13 CAPITAL COMMITMENTS**

Estimated capital expenditure contracted for at balance date but not provided for: \$130,695 (2001 - \$28,823).

**NOTE 14 CONTINGENT LIABILITIES**

The Commission is engaged in litigation with a third party. On the basis of legal advice received the Commission does not acknowledge any liability. The claim was unquantified at balance date. (2001 - NIL).

**NOTE 15    TRANSACTIONS WITH RELATED PARTIES**

During the year there were no transactions with related parties.

No related party debts have been written off or forgiven during the year.

**NOTE 16    BUDGET VARIANCES****(a)    Income**

Income for the year was \$290,000 above budget, mainly arising from:

- (i) Additional services provided to the Takeovers Panel.
- (ii) Additional Government grant for the review of the NZ Stock Exchange rules.
- (iii) Recovery of litigation and court costs.

**(b)    Expenditure**

Significant variances from budget were:

- (i) The Commission incurred additional costs arising from additional services provided to the Takeovers Panel.
- (ii) Additional costs arising from the NZ Stock Exchange review.
- (iii) Additional professional services costs arising from various major enforcement matters.
- (iv) Additional services and supplies costs arising from increased professional indemnity insurance due to 11 September events, and increases in IT and other service costs.

**NOTE 17    COST ALLOCATION POLICY**

Direct costs are charged directly to outputs. Indirect costs are allocated on the basis of direct labour hours spent on each output.

## STATEMENT OF OBJECTIVES

*for the year ended 30 June 2002*

Funds were appropriated by Parliament for the year to 30 June 2002 for the stated purpose of:

- Enforcement – maintaining oversight of securities market activity and intervening in the interests of investors in accordance with statutory powers.
- Authorisations – considering and deciding on applications for authorisation of market participants, for example futures exchanges and dealers, trustees and statutory supervisors.
- Exemptions – considering and deciding on applications for exemptions from the provisions of the Securities Act and Regulations.
- Reform – reviewing securities law and practice and making recommendations for reform.
- International liaison – promoting New Zealand as a well-regulated country; keeping abreast of developments in global standard setting and contributing the Commission's view to this process.
- Public understanding – promoting public understanding of the law and practice of securities."

*(Estimates of Appropriations for the Government of New Zealand for the year ending 30 June 2002, volume 1, page 165).*



## STATEMENT OF SERVICE PERFORMANCE

*for the year ended 30 June 2002*

## A. PERFORMANCE STANDARDS AND MEASURES FOR THE OUTPUTS OF THE COMMISSION

**OUTPUT 1** Enforcement – to maintain oversight of securities market activity and to intervene in the interests of investors in accordance with statutory powers.

**Outcome** Good standards of disclosure.  
Reliable procedures and ethical practices for effecting transactions.  
Compliance with the law.

**Activities included**

To observe securities market activity.

To inquire into and if necessary take action, in particular, on:

- offer documents,
- contributory mortgages,
- financial statements of public issuers,
- insider trading,
- substantial security holder disclosure,
- practices of investment advisers,
- requests from overseas commissions.

To initiate inspections of the documents of issuers and promoters of securities and investment advisers.

To undertake special projects.

**Quantity** The Commission completed 109 surveillance or enforcement inquiries (budget for the year 80). It placed particular emphasis on contributory mortgages, securities offer documents, insider trading, practices of investment advisers and cold-calling activities of so-called brokers in overseas jurisdictions. The Commission, in its market surveillance role, published a discussion paper on the proposed Conduct Rules of the New Zealand Stock Exchange.

**Quality** The Commission acted in response to the needs of the market and of investors. The Commission acted in accordance with the law including, where appropriate, the rules of natural justice. It based its work on sensible interpretations of securities laws and their application in a constructive and practical way to securities market practice. It acted independently.

**Timeliness** The Commission endeavoured to complete its enforcement work promptly and, by doing this, minimised the resources committed by both market participants and the Commission. It ensured, where appropriate, that results of its inquiries were communicated promptly to market participants and the public so that they derived maximum benefit. It accorded a first level priority to selected individual inquiries.

It met agreed timetables for activity on behalf of other commissions.

**Cost** The Commission allocated 40.7% of its expenditure to this output (budget for the year 37%).



**OUTPUT 2** Authorisations – to consider and decide on applications for authorisation of market participants for example, futures exchanges and dealers, trustees and statutory supervisors.

**Outcome** Reliable procedures and ethical practices for effecting transactions.  
Compliance with the law.

**Activities included**

To authorise futures dealers and exchanges.  
To consider amendments to futures exchange rules.  
To approve trustees and statutory supervisors.

**Quantity** The Commission considered 20 applications (budget for the year 6).

**Quality** The Commission considered applications in accordance with legal requirements including, where appropriate, the rules of natural justice.

**Timeliness** The Commission generally accorded a first level priority to authorisation work. It considered applications in a timely manner taking into account the needs of individual applicants and timetables agreed with them.

**Cost** The Commission allocated 3.1% of its expenditure to this output (budget for the year 2%).

**OUTPUT 3** Exemptions - to consider and decide on applications for exemptions from the provisions of the Securities Act and Regulations.

**Outcome** Good standards of disclosure.  
Flexibility in development of best regulatory practice.  
Sound principles for market regulation.  
Cost-effective rules of law.

**Activities included**

To receive and consider applications.  
To review existing exemptions.  
To undertake special projects.

**Quantity** The Commission completed 92 exemption applications (budget for the year 80). It began a review, including public consultation, of class and individual exemptions due to expire in September 2002.

**Quality** The Commission based its work on sensible interpretations of securities law and its application in a constructive and practical way to securities market practice. It consulted extensively on new policy and on its formal expression in exemption notices. It acted independently and in accordance with the law including, where appropriate, the rules of natural justice.

**Timeliness** The Commission generally accorded a first level priority to exemption work. It considered applications in accordance with the needs of individual applicants and timetables agreed with them.

**Cost** The Commission allocated 12.7% of its expenditure to this output (budget for the year 15%).



#### OUTPUT 4 Reform – to review and comment on securities law and practice and to make recommendations for reform.

**Outcome** Good standards of disclosure.  
 Reliable procedures and ethical practices for effecting transactions.  
 Flexibility in development of best regulatory practice.  
 Sound principles for market regulation.  
 Cost-effective rules of law.

##### Activities/Quantity

The Commission recommended changes to the law relating to investment advisers after public consultation. It worked, generally with the Ministry of Economic Development, on projects and reviews including:

- the Securities Regulations 1983,
- the Securities Act 1978:
  - administration and efficiency,
  - surveillance and detection powers,
  - exemption powers,
- the law applying to insider trading and market manipulation,
- regulation of stock exchanges.

Other review projects included:

- exposure drafts of financial reporting standards of ICANZ and ASRB,
- application of the Fair Trading and Consumer Guarantees Act to securities and futures contracts.

**Quality** The Commission complied with its obligations under the Securities Act 1978 and with other relevant legislation. It based its work on accurate research into, and analysis of, the existing law and practice.

The Commission aimed to simplify the expression and content of the law. The process was based on wide and open consultation with all affected interests, including the general public or organisations representing sections of the general public. The Commission acted independently.

**Timeliness** The Commission aimed to meet the timetables of all those to whom its communications were addressed. The Commission met agreed timetables when working on specific projects with other agencies.

**Cost** The Commission allocated 9.1% of its expenditure to this output (budget for the year 15%).

#### OUTPUT 5 International Liaison – to promote New Zealand as a well regulated country. To keep abreast of developments in global standard setting and contribute the Commission's views to this process.

**Outcome** To increase New Zealand's standing in the international community as a responsible and well regulated country. To ensure that domestic policy and practice are developed in the context of a sound understanding of best international policy and practice. To maintain good working relations with overseas regulators. To strengthen public and institutional confidence in New Zealand markets.

**Activities** The Commission was elected to the Executive Committee of IOSCO at the annual meeting in May. The Commission took part in the work of the IOSCO Presidents' Committee, the Implementation Committee and the Asia Pacific Regional Committee.

The Commission promoted improved communication through regulatory agencies globally in relation to:

- overseas regulatory practices,
  - market malpractice,
- in particular in respect of cross border offers of securities.

The Commission met and conferred with overseas regulators and institutional investors, in particular in Australia. The Commission was involved in discussions with the Australian Securities and Investments Commission, Australian Stock Exchange and the New Zealand and Australian governments regarding the Australian Stock Exchange's proposed changes to foreign exempt companies rules. The Commission signed a Memorandum of Understanding with the Securities and Exchange Commission of Sri Lanka.

**Quality** The Commission presented itself as a constructive and cooperative member of the international community of regulators willing to contribute to enhanced international liaison and to assist with work on international regulatory issues.

**Timeliness** The Commission met agreed timetables when working on specific projects with overseas agencies.

**Cost** The Commission allocated 4% of its expenditure to this output (budget for the year 7%).

**OUTPUT 6** Public Understanding – to promote public understanding of the law and practice of securities.

**Outcome** Community awareness and understanding of securities market practice, the policy of the law and the importance of the Commission's work.  
Public and institutional confidence in New Zealand markets.  
Compliance with the law.

**Activities included**

- To undertake a "meet the market" programme.
- To publish *The Bulletin*, annual report and other documents.
- To maintain and develop the website.
- To publish exemption summaries on the website.
- To respond to public inquiries.
- To maintain contacts with the news media and otherwise provide information to the public.
- To produce speeches, articles and presentations.

**Quantity** The Commission established a regular programme to meet market participants. The Commission published 4 issues of *The Bulletin* (budget for the year 4 issues), issued 32 news releases, upgraded the website and answered 2130 inquiries from the public (budget for public inquiries for the year 1500).

**Quality** The Commission based its work on observed market practice and on sensible interpretations of securities law. It aimed to simplify the expression and content of the law. Material in *The Bulletin* and on the website was current, relevant and useful.

**Timeliness** *The Bulletin*, the annual report and other public understanding projects were completed on time. Public inquiries were actioned within five working days of receipt.

**Cost** The Commission allocated 11.1% of its expenditure to this output (budget for the year 10%).

**OUTPUT 7** Takeovers Panel – to provide administrative and support services by agreement.

**Outcome** To provide services in accordance with an annual agreement concluded under the terms of a Memorandum of Understanding between the Panel and the Commission.



- Activities** These related to the Panel's projected outputs including:
- Review of Takeovers Code,
  - Approvals,
  - Exemptions,
  - Enforcement,
  - Market Practice,
  - Public Understanding,
  - International Liaison,
  - Administration.

**Quantity, Quality and Timeliness**

Services were as provided for in the Memorandum of Understanding between the Panel and the Commission.

**Cost**

The Commission allocated 19.3% of its expenditure to this output and recovered this amount from the Panel (budget for the year 14%).

## B. GENERAL OBSERVATIONS

### Governance

Commission Members are appointed by the Governor-General on the recommendation of the Minister of Commerce having regard to their qualifications, experience, skill and reputation for integrity in the public market for securities. New appointments are made only after extensive advertising in the newspapers and personal interview by representatives of the Minister and the Commission.

All aspects of work were kept under continuing review by regular reporting to Commission Members and by frequent meetings of the Commission, a total of 168 during the 2002 financial year (11 regular monthly meetings and 157 quorum meetings including telephone conferences with decisions confirmed by resolutions in writing).

Where matters of significant policy arose at quorum meetings they were referred to a full meeting for further consideration by all Commission Members.

The Commission reported quarterly to the Minister of Commerce.

The Commission has an Audit Committee chaired by a chartered accountant. It met on four occasions during the year.

### Work Priorities

Work priorities were reviewed at each monthly meeting of the Commission and the complete work programme was reviewed quarterly.

All requests for new work were assessed promptly. When new work could not be undertaken because it was not within the Commission's terms of reference, because it was not within established priorities or because another agency might be able to provide more relevant or more effective service, applicants were notified promptly.

Priority was given to enforcement, in particular to contributory mortgages, the review of offer documents, the activities of investment advisers and insider trading.

Priority was given to work on exemptions and authorisations. The Commission aimed to provide a prompt, relevant and effective service so that the reasonable expectations of market participants were met and their activities were not delayed or inhibited.



## REPORT OF THE AUDITOR-GENERAL

TO THE READERS OF THE FINANCIAL STATEMENTS OF  
THE SECURITIES COMMISSION  
FOR THE YEAR ENDED 30 JUNE 2002

We have audited the financial statements on pages 25 to 40. The financial statements provide information about the past financial and service performance of the Securities Commission and its financial position as at 30 June 2002. This information is stated in accordance with the accounting policies set out on pages 29 to 30.

Responsibilities of the Members of the Securities Commission

The Public Finance Act 1989 and section 15 of the Public Audit Act 2001 require the Securities Commission to prepare financial statements in accordance with generally accepted accounting practice in New Zealand that fairly reflect the financial position of the Securities Commission as at 30 June 2002, the results of its operations and cash flows and service performance achievements for the year ended on that date.


Auditor's responsibilities

Section 15 of the Public Audit Act 2001 and Section 43(1) of the Public Finance Act 1989 require the Auditor-General to audit the financial statements presented by the Securities Commission. It is the responsibility of the Auditor-General to express an independent opinion on the financial statements and report that opinion to you.

The Auditor-General has appointed H C Lim, of Audit New Zealand, to undertake the audit.

Basis of opinion

An audit includes examining, on a test basis, evidence relevant to the amounts and disclosures in the financial statements. It also includes assessing:

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- the significant estimates and judgements made by the Members of the Securities Commission in the preparation of the financial statements; and
  - whether the accounting policies are appropriate to the Securities Commission's circumstances, consistently applied and adequately disclosed.



## Audit New Zealand

We conducted our audit in accordance with the Auditing Standards published by the Auditor-General, which incorporate the Auditing Standards issued by the Institute of Chartered Accountants of New Zealand. We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatements, whether caused by fraud or error. In forming our opinion, we also evaluated the overall adequacy of the presentation of information in the financial statements.

Other than in our capacity as auditor acting on behalf of the Auditor-General, we have no relationship with or interests in the Securities Commission.

### Unqualified opinion

We have obtained all the information and explanations we have required.

In our opinion the financial statements of the Securities Commission on pages 25 to 40:

- comply with generally accepted accounting practice in New Zealand; and
- fairly reflect:
  - the Securities Commission's financial position as at 30 June 2002;
  - the results of its operations and cash flows for the year ended on that date; and
  - its service performance achievements in relation to the performance targets and other measures adopted for the year ended on that date.

Our audit was completed on 18 July 2002 and our unqualified opinion is expressed as at that date.

H C Lim  
Audit New Zealand  
On behalf of the Controller and Auditor-General  
Wellington, New Zealand



# STAFF



JOANNE MOORES



KERRY MORRELL



ANGELA DOONE



SANJIV JETLY



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JULIE MYERS



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TOBY NORGATE



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LIAM MASON



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TIM DOLAN





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PRU CRAIG



REBEKAH FRIEND



CHRIS HOLLAND



NICOLA MORRISON



MURRAY AITKEN



CATHERINE CHAPMAN



NIGEL BRUNSDON



KATHRYN ROGERS



DEWI EVANS

NOT IN THE PICTURES  
JOHN FARRELL  
MARION HEMPHILL  
PETER MOORE



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