

# SECURITIES COMMISSION NEW ZEALAND



## 2004 ANNUAL REPORT

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







## Encouraging investment in New Zealand...

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

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## FROM THE CHAIRMAN



This has been a very exciting and successful year for the Commission. Regulators and market participants around the world are grappling with important changes to improve the efficiency and integrity of securities markets including improved corporate governance practices and the adoption of international accounting standards.

At the request of the Minister of Commerce we consulted widely on the best regime for corporate governance for New Zealand and published *Corporate Governance in New Zealand – Principles and Guidelines* in February 2004. We recommended a principles-based approach for New Zealand, as favoured by those who took part in the consultation process. This was well received, and we subsequently published a *Corporate Governance Handbook for Directors, Executives, and Advisers* to help them apply and report

against the principles. We believe that adopting the principles will improve corporate governance generally and be of particular benefit to investors. We will be interested to see how entities apply the principles and will comment publicly when we think it useful to do so.

New Zealand will move to international standards for financial reporting from 2005. This is an important and demanding change and the Accounting Standards Review Board and the Financial Reporting Standards Board are working to produce appropriate New Zealand equivalents in time for the transition. We will be publishing a practice note to assist entities reporting during the period of transition.

The Commission is committed to adopting best practice in both corporate governance and financial reporting. In this report we have documented our performance against our own corporate governance principles. We intend to be an early adopter of International Financial Reporting Standards (IFRS), publishing our full NZ IFRS financial statements for the year ending 30 June 2006.

We have increased our enforcement focus and capability. We have used our new powers of accepting enforceable undertakings and achieved some significant regulatory outcomes which would have been difficult to achieve without this remedy. We have commenced litigation in relation to substantial security holder disclosure issues and successfully defended two applications for judicial review.

Our relationship with New Zealand Exchange Limited (NZX) has been enhanced and strengthened. We have welcomed NZX's implementation of the NZX Discipline Rules and have advised the Minister of Commerce on the conduct rules for NZX. We have investigated a number of insider trading inquiries referred by NZX to the Commission.

Our core business continues to focus on offer documents, disclosure, and financial reporting in the interests of investors. Our enforcement work included acting against misleading offer documents and accepting enforceable undertakings from market participants who breached the law, but who agreed to take specific steps to rectify the matter. We initiated an education programme, aimed at investors and potential investors, to increase understanding of the securities markets and to help people make better investment decisions.

We believe that adopting the principles will improve corporate governance generally and be of particular benefit to investors.



We were deeply involved with the International Monetary Fund and World Bank assessment of New Zealand towards the end of 2003. It is pleasing that New Zealand was given a good report by the international experts who conducted this intensive inspection, while recognising more work needs to be done on the regulation of financial intermediaries.

Our work on the international scene continued to raise this country's profile among international securities markets and regulators. After intense scrutiny of our legislation and practices the Commission was accepted as a signatory to the International Organisation of Securities Commissions' (IOSCO) multilateral memorandum of understanding. We also signed bilateral MOUs with our counterparts in China, Indonesia, and Malaysia.

In May at the annual IOSCO meeting I was elected to chair IOSCO's Executive Committee for a two year term.

We hosted a meeting of the Asia Pacific Regional Committee of IOSCO in Wellington in February. A highlight of this was a public lecture by Commissioner Roel Campos of the United States Securities and Exchange Commission. We contributed to the international debate on securities issues as a member of IOSCO's Executive Committee to which we were elected in 2002. In May 2004, New Zealand was elected deputy chair of IOSCO's Asia Pacific Regional Committee.

Our relationship with the Australian Securities and Investments Commission has developed significantly and the two commissions held an historic joint meeting in June 2004.

It has been a year of considerable achievement and I thank the Commission Members and staff for their high level of professionalism, enthusiasm and commitment.

Vigorous and well regulated capital markets are crucial to New Zealand's prosperity. The Commission will continue to contribute to achieving this in the year ahead.

**Jane Diplock AO**  
Chairman





## 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


- high standards of disclosure
- good corporate governance
- reliable and ethical procedures for effecting transactions
- high quality accounting and financial reporting practices
- 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.

## THE YEAR IN BRIEF

### THE COMMISSION

-  completed 181 enforcement and surveillance matters including 12 insider trading inquiries
-  prohibited three offer documents and advertisements that did not comply with the law
-  accepted 10 enforceable undertakings from market participants to rectify breaches of the law
-  began a Court proceeding for suspected breach of substantial security holder law
-  successfully defended two judicial review proceedings
-  advised the Minister of Commerce on five sets of NZX Conduct Rules
-  made submissions on the Business Law Reform Bill and proposed reforms to securities trading law
-  granted class authorisations for NZX Futures and Options Participants and Sydney Futures Exchange Participants
-  approved NZX Futures and Options Participant Rules
-  granted class exemptions in respect of officers and directors disclosure to ease compliance with the new disclosure laws
-  hosted the Asia Pacific Regional Committee of IOSCO
-  was elected Deputy Chairman of the Asia Pacific Regional Committee of IOSCO
-  was accepted as a signatory of the IOSCO multilateral MOU
-  signed bilateral MOUs with our counterparts in China, Indonesia, and Malaysia
-  hosted delegations from overseas regulators
-  took part in the IMF's Financial Sector Assessment Programme
-  met with the Australian Securities and Investments Commission
-  published *Corporate Governance in New Zealand - Principles and Guidelines* and a *Corporate Governance Handbook for Directors, Executives, and Advisers*
-  launched an education programme with the aim of "helping New Zealanders make better investment decisions"

### THE CHAIRMAN OF THE COMMISSION

-  was elected Chairman of the Executive Committee of IOSCO for a two year term



# 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.

Michael Webb retired in August after 11 years' service. Michael's experience and understanding of the securities markets were of considerable benefit to the Commission. We are grateful for his very significant contribution. New Members Mai Chen and Keitha Dunstan were appointed for five years, and Falcon Clouston and Lloyd Kavanagh were re-appointed for two and four years respectively, bringing the Commission to full strength.

The Commission held 11 regular monthly meetings and 114 division meetings. There were an additional 70 resolutions in writing, many of these arising from telephone conferences between Commission Members. The Audit Committee, Joanna Perry (chair), Cathy Quinn and Rodger Spiller, met on three occasions and settled one matter by written resolution.

## MEMBERS OF THE COMMISSION



**JANE DIPLOCK AO**  
**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 of Australia; Chevening Fellow at London School of Economics; Chairman of the Executive Committee of IOSCO.



**COLIN A.N. BEYER**  
**LL.B, FIOD.**  
 Consultant to Simpson Grierson, Wellington.  
**Professional:**  
 Solicitor, Wellington.  
**Directorship:**  
 Capital Properties New Zealand Limited (Chairman).



**MAI CHEN**  
**LL.B (Hons) (Otago), LL.M (Harvard),**  
**FNZIM.**  
 Foundation partner of Chen Palmer & Partners, Wellington, Barristers and Solicitors, Public Law Specialists.  
**Professional:**  
 Specialising in Government regulation of business, public policy and legislation. Formerly on the Advisory Board of AMP Life Limited (NZ) and senior lecturer in law at Victoria University of Wellington.



**FALCON R.S. CLOUSTON**  
**B.Agr.Sc (Agricultural Economics),**  
 Business Consultant, Wellington.  
**Professional:**  
 Member of Government Taskforce on Private Provision for Retirement 1991/1992; Past Member of New Zealand Stock Exchange.  
**Directorships:**  
 Abacus Biotech Limited, Palliser Estate Wines of Martinborough Limited; and director of a number of private companies.



**ANNABEL M. COTTON**  
**BMS (Accounting & Finance), ACA,**  
**CSAP.**  
 Business Consultant, Auckland.  
**Professional:**  
 Consultant to companies listed in New Zealand and overseas.  
**Directorships:**  
 Genesis Power Limited; Kingfish Limited and its subsidiaries; Merlin Consulting Limited, and director of a number of private companies.



**KEITHA DUNSTAN**  
**PhD (QLD), M Bus (QUT), Grad Dip**  
**Mgt (UCQ), B Com (QLD).**  
 Research Professor, School of Accounting and Commercial Law, Victoria University of Wellington.  
**Professional:**  
 Founding director of the Centre for Accounting, Governance and Taxation Research at Victoria University of Wellington; New Zealand President (Elect) Accounting and Finance Association of Australia and New Zealand



**LLOYD A.J. KAVANAGH**  
**LL.B.**  
 Associate Director – Mergers & Acquisitions, Fonterra Co-operative Group Limited. Formerly a partner at Russell McVeagh, specialising in banking and securities law.  
**Professional:**  
 Barrister and Solicitor, Auckland.  
**Directorship:**  
 Soprole S.A.



**JOANNA M.G. PERRY**  
**MA (Cantab), FGA (ICANZ), FCA**  
**(ICAEW).**  
 Chartered Accountant, Auckland.  
**Professional:**  
 Partner of KPMG; Chairman of the Financial Reporting Standards Board of the Institute of Chartered Accountants of New Zealand.



**CATHY A. QUINN**  
**LL.B.**  
 Solicitor, Auckland.  
**Professional:**  
 Partner of Minter Ellison Rudd Watts specialising in corporate and securities law.  
 Joint author Morison's Company and Securities Law.











**RODGER M. SPILLER**  
**PhD, M.Com (First Class Honours),**  
**CFP, CA, Dip. Mgt., ANZIM.**  
 Personal Investment Adviser and Business Consultant, Auckland.  
**Professional:**  
 Past Chairman of the Association of Investment Advisers and Financial Planners; author CCH's Essential Guide to Financial Planning in New Zealand.  
**Directorships:**  
 Managing Director of Money Matters (NZ) Limited and Rodger Spiller & Associates Limited, Executive Director of the New Zealand Centre for Business Ethics and Sustainable Development, Director of Transparency International (NZ).



The Commission published *Corporate Governance in New Zealand – Principles and Guidelines* in February 2004. We urged entities of all types to apply the principles and to report each year on how they have achieved them. We report how we achieved each principle in the year to 30 June 2004.

1. **Directors should observe and foster high ethical standards.**

The Commission adopted a Code of Ethics which sets out the Commission's values and procedures for:

-  conflicts of interest;
-  confidential information;
-  Commission property;
-  compliance with other ethical codes;
-  compliance with the law;
-  conduct;
-  compliance with the Code of Ethics; and
-  reporting breaches of the Code of Ethics.

The Code sets out how suspected breaches can be reported and measures to deal with breaches of the Code. Every Commission Member and staff member has a copy of the Code which is also published on the website. The Commission will review the Code of Ethics each year and will monitor performance against the Code to identify and deal with any breaches.

2. **Board composition and performance.**

The skills and attributes required to be a Member of the Commission are set out in the Securities Act 1978. Commission Members are appointed by the Governor-General on the recommendation of the Minister of Commerce. When seeking new Commission Members the Ministry of Economic Development advertises widely to attract people with the skills required by the Act. Commission Members disclose their interests in the securities markets, and must comply with the Commission's formal conflicts of interest policy. The functions and powers of the Commission set out in the Securities Act establish the responsibilities and roles of the Members. The Chairman has a full-time role equivalent to an executive chairman. This is in line with the governance of securities regulators in many jurisdictions. The Chairman is responsible for fostering a constructive corporate governance culture among Members and staff. Much of the Commission's work is carried out between the regular monthly Commission meetings by formal divisions of the Commission. Members are made aware before they are appointed of the likely demands on their time, frequently at short notice. The Commission formally evaluates its performance against its strategic plan each year and evaluates itself as a board. Performance monitoring of staff is carried out each year. Profiles of Commission Members are published at page 6 of this report.

3. **The board should use committees where this would enhance its effectiveness in key areas while retaining board responsibility.**

The Securities Act provides for the appointment of divisions of the Commission, with the full powers of the Commission, to carry out the day-to-day work. This enables the Commission to function effectively and to apply its conflicts of interest procedure. The Commission has an Audit Committee, chaired by a chartered accountant. This committee has a mandate to oversee all aspects of the Commission's relationship with its external auditors. It is also responsible to the Commission for preparing the Commission's quarterly reports to the Minister of Commerce. The Audit Committee meets quarterly.

## CORPORATE GOVERNANCE

4. The board should demand integrity both in financial reporting and in the timeliness and balance of disclosures on entity affairs.

As a body corporate which receives funding by Parliamentary appropriation the Commission is required to meet all its obligations under the Securities Act 1978 and section 44A of the Public Finance Act 1989 including tabling its Annual Report in the House of Representatives. After it is tabled the Annual Report is available to the public in hard copy and on our website. The Commission also reports quarterly to the Minister of Commerce.

5. The remuneration of directors and executives should be transparent, fair, and reasonable.

The remuneration of Commission Members is set by the Remuneration Authority. Members' remuneration is disclosed in the Annual Report. Remuneration for staff is set at levels which aim to attract and retain competent people, and is comparable with other organisations in the public sector. The number of staff with salary bands higher than \$100,000 per annum is disclosed in the financial statements.

6. The board should regularly verify that the entity has appropriate processes that identify and manage potential and relevant risks.

The Commission has been given new powers and assumed new responsibilities in recent years. As a result the organisation has grown rapidly. The Commission has identified potential additional risks arising from these changes. It is reviewing its risk management and has engaged Deloitte to assess its procedures and make recommendations. These will be considered and implemented as soon as possible.

7. The board should ensure the quality and independence of the external audit process.

As a body corporate, funded by Parliament, the Commission's financial statements and statement of service performance are audited by Audit New Zealand on behalf of the Auditor-General, which has a formal process for rotating audit staff. The Audit Committee and staff communicate with Audit New Zealand prior to, and following, the audit. Fees paid to Audit New Zealand are disclosed in the Annual Report. Audit New Zealand carried out an assurance-related assignment for the Commission relating to tendering. This work was compatible with the independence requirements of the Auditor-General which incorporate the independence requirements of the Institute of Chartered Accountants of New Zealand. No other non-audit work was undertaken by Audit New Zealand for the Commission.

- 8.&9. The board should foster constructive relationships with shareholders that encourage them to engage with the entity, and the board should respect the interests of stakeholders within the context of the entity's ownership type and its fundamental purpose.

The Commission is a statutory body, and its assets form part of the Crown's assets. It is accountable to Parliament, through the Minister of Commerce, for this ownership interest. As a Crown Entity the Commission has two main stakeholder groups. The first is the general public because it is largely publicly funded. The second group is participants in the securities markets with whom we are in contact in the course of our work. As part of its strategic plan the Commission identifies its objectives in building relationships with these groups and sets performance targets which are reported against each year. The Commission reports to the Minister quarterly and formally reports to Parliament each year on how it has used public funds and delivered the services agreed with the Minister of Commerce. The Commission has a function to promote public understanding of the law and practice of securities and it does this by its website, publications, speeches and articles, news releases, responses to public inquiries, and by its educational work.
















## ENFORCEMENT

The Commission's goals in this key result area are that bad market practice is seen to be unacceptable and that the law is complied with.

### Responsibilities

-  enforce the law
-  carry out inspections
-  maintain oversight of securities market activity and supervision of exchanges
-  inquire into suspected breaches of securities law
-  intervene in the market in the interests of investors in accordance with statutory powers

### Achievements this year

-  completed 181 enforcement and surveillance matters including 12 insider trading inquiries
-  prohibited three offer documents and advertisements
-  accepted 10 enforceable undertakings
-  began a Court proceeding for suspected breach of substantial security holder law
-  successfully defended two judicial review proceedings
-  advised the Minister of Commerce on five sets of NZX Conduct Rules

42 % of expenditure

### *Insider Trading and Other Inquiries*

The Commission completed 12 insider trading investigations. Most of these were referred by NZX after the detection of abnormal trading patterns by NZX's SMARTS electronic surveillance system. All referrals are examined closely. We undertake further inquiries of brokers and those who have traded to find out whether there is evidence of trading with inside information. In a lot of cases this cannot be established. However, we remain committed to this work. We have a number of inquiries underway which have required the dedication of significant resources. We intend, in appropriate cases, to take court action under section 18A of the Securities Markets Act 1988. We issued summonses to 72 parties to give evidence or produce documents to the Commission relating to insider trading and other inquiries. The Commission's other enforcement work encompassed offer documents for securities, investment advisers, financial reporting, and substantial security holder disclosure.

### *Inspections and Prohibitions*

The Commission and the Registrar of Companies conducted 11 inspections where we suspected there might be non-compliance with the law. A significant number of inspections were carried out by Companies Office personnel this year, and we are grateful for their work. The Commission conducted inspections of a number of futures dealers and persons it believed could be carrying on business as futures dealers without proper authorisation.

The Commission prohibited offer documents or advertisements of three issuers under section 38B of the Securities Act. In other cases we accepted enforceable undertakings from issuers whose advertising did not comply with the law, or was likely to mislead investors, requiring the issuers to ensure that they met their legal obligations.



## ACHIEVEMENTS

### *Enforceable Undertakings*

The power to accept undertakings that are enforceable in the Court is proving an effective enforcement tool for the Commission. Undertakings are used when a party who has breached securities law agrees to rectify the breach. This provides an enforcement solution that can be tailored to fit the circumstances of a situation and avoids the cost and delays of court proceedings. The text of each undertaking is published on our website. If a party fails to fulfill the undertaking it can be enforced in Court. The Commission accepted undertakings from Clinton Braude and Benjamin Mauerberger (arising from the activities of Bergers Securities Limited), Bridgecorp Investments Limited, Stage Three/Four Limited and Pinnacle Hill Farms Limited, Capital Funding Limited, Aquiline Holdings Limited, Prudential Mortgage Limited, Secure Property Investments Limited, Asset Finance Limited, TSB Bank Limited, and Kiwibank Limited.








### *Litigation*

The Commission obtained interim restraining orders under Part 2 of the Securities Markets Act 1988 arising from suspected non-compliance with substantial security holder law by a market participant. The orders prevent parties from dealing in relevant interests until the case comes to Court. The case is proceeding.

The Commission successfully defended two applications for judicial review. The first arose from the Commission's decision in 1993 to recommend statutory management relating to the Peninsula Club Retirement Village. The High Court found in favour of the Commission. The applicants appealed the decision but withdrew this in the Court of Appeal. The second was a challenge by the principals of Bergers Securities Limited to a Commission decision to seek information about the company from the Jersey Financial Services Commission. The proceedings were discontinued after the Commission presented its evidence. The applicants contributed to the Commission's costs.

### *Co-regulation with New Zealand Exchange Limited*

We continued to work with NZX under the terms of our memorandum of understanding. The MOU covers the monitoring and surveillance of the securities market and other statutory matters. It addresses:

-  compulsory referrals by NZX to the Commission;
-  discretionary referrals to the Commission arising from NZX's oversight of trading activity;
-  referral of matters from the Commission to NZX relating to the NZX's Conduct Rules;
-  procedures for these referrals;
-  consultation on waivers from continuous disclosure;
-  procedures relating to the Commission's power to give directions to NZX; and
-  procedures to consult on new conduct rules and amendments to those rules.

We welcomed NZX's decision to enter the futures and options arena, and to provide regulatory services as a frontline regulator of futures dealers in New Zealand. We also welcomed the implementation of the new NZX Discipline Rules, which clarify the disciplinary structures of NZX. These new rules also give the Commission a role in confirming appointments to NZX Discipline and appointing the Appeals Panel. These safeguards also clarify the independence of the Special Division, which is responsible for regulation of matters concerning NZX as a listed company. The membership of the Special Division is confirmed by the Securities Commission. Importantly, the role of the Special Division now extends to matters concerning trading in NZX shares that may arise under the Participant Rules.

### *NZX Conduct Rules*

The Commission has a role under the Securities Markets Act 1988 to advise the Minister of Commerce about new conduct rules or amendments to conduct rules of NZX. The Commission advises the Minister on whether or not it would be in the public interest to disallow changes to rules or approve new rules. The Commission advised the Minister on four changes to conduct rules, including new





participant rules, new discipline rules, and changes to listing rules. It also advised on proposed rules for the new NZAX market.

### *Cold Calling*




The plague of overseas callers contacting New Zealanders with offers of shares continued. This year most of these have been follow-up calls to people who previously bought shares from telephone callers and whose shares turned out to be worthless. The follow-up caller offers to buy or trade the worthless shares for a better investment, but of course, the victim must pay more money in "transfer fees" or "clearance fees" first. This is all part of the original scam. Callers sometimes offer telephone numbers of official-sounding organisations which the New Zealand victim can call to verify the caller's validity. These numbers are also part of the scam, and the phone is probably answered in the same room as the person making the offer to trade the shares. We have repeatedly warned people about the risks of sending money overseas to callers known to them only by telephone.

### *Illegal and Dubious Investment Schemes*

Unfortunately we continue to see the promotion of illegal investment schemes. Some of these schemes have collected an enormous amount of money. Often they operate on the basis of a "Ponzi" scheme where the money of later investors is used to repay earlier investors. Inevitably these schemes collapse when the supply of new investors "dries up". Church groups appear to be a target for such schemes and there is extraordinary trust and loyalty between those who are encouraged to invest and those who are taking their money. This is a perfect setting for fraudsters. It is called affinity fraud. We urge people to be alert to this type of activity and to report it as soon as possible. Our interest in schemes of this sort arises because of the absence of a prospectus and investment statement. Because of this we normally act to prohibit any further promotion. We would then refer them to the Serious Fraud Office as they invariably raise more fundamental concerns about the motives of the people behind them.

### *Corporations (Investigation and Management) Act 1989*

The Commission has the power to recommend to the Minister of Commerce that a corporation be placed in statutory management. It is a measure of last resort. It applies to a corporation:

-  that may be operating fraudulently or recklessly, or
-  where it is desirable to preserve the interests of shareholders, creditors, beneficiaries or the public interest, and
-  there is no other lawful way to adequately protect these interests.

On 2 July 2003 we recommended that an unincorporated body called the International Investment Unit Trust be placed in statutory management, along with two other related entities and three associated persons, Donald Rea, Catherine Trezona, and Lisa Talbot. These entities and people were involved in the promotion of a Prime Bank type scheme, mainly in the Bay of Plenty area. The corporations and associated persons were placed in statutory management the following day after an urgent meeting of the Prime Minister and senior Cabinet Ministers. The Commission was called on to consider another statutory management case in October 2003. In the event it decided not to recommend statutory management.

### *Australian Registered Managed Investment Schemes*

The Commission concluded its investigation of Australian issuers who were offering investment products in New Zealand under the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 1999. The responses to our enquiries indicated that 11 issuers had failed to comply with conditions of this exemption requiring documents to be filed with the Registrar of Companies. At our request all these companies notified their investors and informed them of the situation and their rights. Subsequently the Securities Amendment Act 2004 has introduced a new procedure for issuers who have failed to comply with conditions of exemption to seek validation of allotments in the High Court.










## ENFORCEMENT-BASED LAW AND PRACTICE REFORM

The Commission's goal in this key result area is that the regulatory environment is relevant and effective.

### Responsibilities

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

### Achievements this year

-  made submissions on
  - the Business Law Reform Bill
  - proposed reforms to securities trading law
  - New Zealand equivalents to International Financial Reporting Standards
  - amendment regulations for directors and officers disclosure
  - the discussion paper about reform of the Financial Reporting Act 1993
-  continued the review of the Securities Regulations
-  commented on 11 exposure drafts for financial reporting and auditing standards







### 5% of expenditure

#### *Business Law Reform Bill*

The Securities Amendment Act 2004 and the Securities Markets Amendment Act 2004 came into force in April 2004. The amendments were part of a wider package of legislative change included in the Business Law Reform Bill 2003. The main changes to securities law are that employer superannuation schemes do not require a registered prospectus; securities can be offered to a wealthy person or an experienced investor, both of whom are defined in the new legislation, without meeting the normal disclosure requirements for offer documents; issuers can make statements inviting expressions of interest before a formal offer is made which includes a registered prospectus and investment statement; and there are new Court procedures for seeking validation of void allotments of securities.

#### *Securities Trading Law*

The Commission has been working with the Ministry of Economic Development on reforms to securities trading law. In July 2003 Cabinet took decisions on reforms which covered:

-  insider trading;
-  market manipulation;
-  investment advisers;
-  substantial security holder disclosure;
-  application of securities trading law; and
-  penalties and remedies.

The Commission has commented on the drafting of new legislation on these matters.



## ACHIEVEMENTS

### *Financial Reporting*

Preparation for adopting New Zealand equivalents to International Financial Reporting Standards (IFRS) gathered momentum this year. The Commission made submissions to the Financial Reporting Standards Board on the development of these standards for New Zealand, and on new standards and revisions to existing New Zealand accounting and financial reporting standards. The transition to New Zealand equivalents to IFRS has potential implications for compliance with the Securities Act and Regulations. The Commission will issue practice notes to focus attention on disclosure issues in periods before these standards are adopted.

The Commission worked with the Ministry of Economic Development on proposals for amendments to New Zealand's financial reporting laws and changes in the financial reporting framework. We have commented on the Ministry's discussion document for the review's first phase, and we are working with them on the second phase.

The Commission began a pilot project to review financial reporting practices of issuers in New Zealand. Preliminary results suggest there is scope for issuers to improve financial reporting practices in certain areas, and we are extending the scope of this review.

The Commission follows developments in international financial reporting and auditing, particularly work by IOSCO, the International Accounting Standards Board, and the International Federation of Accountants, and also the progress in the trans-Tasman harmonisation of standards.

### *Directors and Officers Disclosure*

This measure, legislated for in December 2002 as an amendment to the Securities Markets Act 1988, came into force on 3 May 2004. Amendment regulations were proposed to give full effect to this legislation. The Commission worked with the Ministry of Economic Development on these regulations, and also granted a number of class exemptions to facilitate the operation of this disclosure in the securities markets.

The transition to  
New Zealand equivalents  
to IFRS has potential  
implications for compliance  
with the Securities Act  
and Regulations.


















## EXEMPTIONS AND AUTHORISATIONS

The Commission's goal in this key result area is that the securities law regimes are tailored to the needs of the market.

### Responsibilities

-  consider applications for exemption from securities law
-  review existing exemptions
-  authorise futures dealers and exchanges
-  review existing authorisations
-  approve amendments to futures exchange rules
-  approve trustees and statutory supervisors
-  designate certain substantial security holders
-  approve electronic systems for the transfer of securities

### Achievements this year

-  granted class exemptions for directors and officers disclosure
-  considered 84 applications for exemption from securities law
-  granted 76 exemptions
-  approved the NZX Futures and Options Participant Rules
-  developed class authorisations for NZX Futures and Options Participants and Sydney Futures Exchange Participants

10% of expenditure

### EXEMPTIONS

The Securities Act empowers us to exempt people from compliance with various provisions of securities law. The power to grant exemptions from the law is very significant. We aim to base all exemptions soundly on the policy of securities law. Conditions of exemption provide alternative compliance procedures so that the spirit of the law, particularly the requirement to provide investors with relevant information on which to base investment decisions, is complied with. Directors and advisers of issuers who are granted exemptions, or who rely on class exemptions, should be aware of this.

We use our exemption power to...facilitate offers of new products, and products offered by overseas issuers, so that they are available to the public cost-effectively and without delay.

We use our exemption power to remove rigidities in the law for traditional investment products and to facilitate offers of new products, and products offered by overseas issuers, so that they are available to the public cost-effectively and without delay. 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.







## ACHIEVEMENTS




The increase in exemptions for initial public offerings, and the timetables for those offerings, placed pressures on both our resources and those of the Parliamentary Counsel Office this year. We have endeavoured to meet the reasonable needs of market participants when considering exemptions.

### *Directors and Officers Disclosure*

The Commission prepared a number of class exemptions for the new directors' and officers' disclosure requirements under the Securities Markets Act 1988. This law came into force on 3 May 2004, and the Commission exemptions were in place in time for this. We granted exemptions from the disclosure requirements for relevant interests held in:

-  unquoted debt securities for which there is no established market;
-  life insurance and superannuation policies;
-  interests in passive funds; and
-  unit trusts and group investment funds of related bodies corporate of a public issuer.

We also granted exemptions from the obligation to make disclosure within five days of an acquisition or disposal that is made under a:

-  share top-up plan;
-  employee share scheme; or
-  dividend reinvestment scheme.

This exemption was granted on the condition that disclosure is made, either by the individual concerned, or by the public issuer, within 30 days of the transaction. Further minor exemptions were granted to cover disclosures already made to NZX, disclosure by directors and officers of co-operatives, and overseas listed issuers who have dual primary listings overseas. We published a practice note which explained our approach, for enforcement purposes, to certain aspects of the new law, in particular the definition of the term "officer".

### *Australian Registered Managed Investment Schemes*

The Commission reviewed its class exemption for offers of interests in Australian Registered Managed Investment Schemes. The new exemption allows the use of an Australian Product Disclosure Document in place of both a registered prospectus and an investment statement. The new exemption also makes changes to the conditions of exemption concerning filing of documents with the Registrar of Companies. Issuers are still required to file all documents, however a failure to file more minor documents will no longer result in subsequent allotments being void under the law.

We considered 81 new applications for exemption from securities law, reviewed one existing exemption notice, and completed two special projects. We granted 76 new exemptions. In 2002/2003 we reviewed 52 existing exemptions, considered 51 new applications, and granted 102 new exemptions. There are 171 exemption notices in force (149 as at 30 June 2003).

We have adopted the practice of including a Statement of Reasons in each exemption notice. We aim to publish on our website a summary of each exemption granted which describes the general effects of the exemption and the Commission's reasons for granting it. This year we published summaries of 53 exemptions.

We have adopted the practice of including a Statement of Reasons in each exemption notice.



## ACHIEVEMENTS

### AUTHORISATIONS

#### *New Zealand Futures and Options Exchange*

In 2003 Sydney Futures Exchange Limited confirmed its intention to move the NZFOE's operations to Australia. In September 2003 NZX and the Sydney Futures Exchange Limited reached an agreement for NZX equity futures and options products to be traded on SFE. NZX also proposed that it would take up a frontline role in the regulation of futures dealers in New Zealand. The Commission welcomed this announcement.

In March 2004 futures contracts traded on the New Zealand Futures and Options Exchange were transferred to the Sydney Futures Exchange. Under an agreement with the Commission the New Zealand Futures and Options Exchange continued to provide regulatory services for futures dealers in New Zealand until 3 May 2004.

From 3 May 2004 NZX assumed a role as frontline regulator of NZX Futures and Options Participants. The Commission published a class authorisation which allows any person who is designated as an NZX Futures and Options Participant to deal in futures contracts subject to the NZX Futures and Options Participant Rules which were approved by the Commission. The Sydney Futures Exchange Limited remains an authorised futures exchange in New Zealand. The Commission has also published a class authorisation allowing SFE Participants to deal in futures contracts that are traded on SFE.

The Commission considered 12 applications for authorisation as futures dealers and authorised nine futures dealers.

#### *Trustees and Statutory Supervisors*

The Commission has continued its review of trustees and statutory supervisors. We intend to revoke a large number of approvals, principally for persons who are no longer acting as trustees or statutory supervisors. New approvals will be for a maximum period of five years. Those approved will be required to report to the Commission annually, and on any material changes that affect their approval.

The Commission granted one new approval to a statutory supervisor during the year.

From 3 May 2004

NZX assumed a role  
as frontline regulator  
of NZX Futures and  
Options Participants.










## INTERNATIONAL

The Commission's goal in this key result area is that New Zealand's markets and regulatory environment are respected internationally, creating a climate for increased investment and good relationships with overseas regulators.

### 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






-  hosted the Asia Pacific Regional Committee (APRC) meeting of IOSCO
-  was elected Deputy Chairman of APRC
-  was accepted as a signatory to the IOSCO Multilateral MOU
-  signed bilateral MOUs with our counterparts in China, Indonesia, and Malaysia
-  hosted visits by delegations from other securities regulators
-  took part in New Zealand's assessment in the Financial Sector Assessment Programme
-  undertook inquiry work in New Zealand on behalf of overseas regulators
-  the Commission met with the Australian Securities and Investments Commission
-  the Chairman was elected Chairman of the Executive Committee of IOSCO

### 14% of expenditure

#### *IOSCO*

IOSCO is a global forum for securities regulators and is recognised as the international standard setter for securities regulation. Some 174 regulatory and self-regulatory agencies, regulating over 90 percent of securities markets worldwide, are members of IOSCO.

IOSCO works in five areas:

-  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; and
-  investment management.

#### *Executive Committee of IOSCO*

The Executive Committee is the governing body of IOSCO responsible for achieving the objectives of the organisation. It has 19 members who include the chairmen and deputy chairmen of the four Regional Committees, and the chairmen of the Technical and Emerging Markets Committees, plus members elected at the annual meeting of IOSCO every two years. New Zealand was elected to the Executive Committee two years ago and this year was elected deputy chair of the Asia Pacific Regional Committee. In May 2004 Chairman Jane Diplock was elected to chair the Executive Committee. This is an extremely important post which enables New Zealand to participate in the highest deliberations of IOSCO.





## ACHIEVEMENTS

### *International Cooperation*

After intense scrutiny the Commission was accepted as a signatory to the IOSCO multilateral MOU which enables cooperation between signatories to combat international fraud and to effectively enforce securities law.

The Commission  
was accepted as a

The Commission signed bilateral MOUs with the China Securities Regulatory Commission, the Indonesian Capital Markets Supervisory Agency, and the Malaysian Securities Commission. We also 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, the Papua New Guinea Securities Commission and the Securities and Exchange Commission of Sri Lanka. We have an exchange of letters with the United States Securities and Exchange Commission.

signatory to the  
IOSCO multilateral  
MOU

### *International Meetings*

The Commission attended three meetings of the Executive Committee held during the year. Discussions covered the implementation of the multilateral MOU, cooperation with international financial institutions, membership criteria and finances. We hosted the annual meetings of the Asia Pacific Regional Committee and APRC Enforcement Directors in February 2004. It was the first time that New Zealand had hosted an IOSCO event. We were very pleased to have the opportunity to host delegates from 22 jurisdictions. The feedback that we received from our colleagues from overseas was very positive. The Commission also hosted delegations from the Securities and Futures Commission of Korea and the China Securities Regulatory Commission. In June the Commission had an historic first meeting with the Australian Securities and Investments Commission. We expect this to result in closer cooperation between the Commissions to facilitate business across the Tasman.

### *IOSCO Objectives and Principles*

Sound principles and practices for the regulation and supervision of securities markets are crucial to the stability of global financial markets. The IOSCO Objectives and Principles of Securities Regulation are one of the international standards and codes regarded as a key to sound financial systems. As a member of the Task Force on implementation of the objectives and principles, we participated in drafting a methodology for assessing implementation of the principles. New Zealand was one of the first countries to be assessed against the methodology.

### *FSAP*

A team of international experts assessed the soundness of New Zealand's financial sector in November 2003. This was part of the Financial Stability Assessment Programme (FSAP) conducted jointly by the International Monetary Fund and World Bank. The assessment focused on significant issues for financial stability and included assessment of securities markets regulation. The IOSCO Objectives and Principles were used as a benchmark for the securities markets assessment. The process was very detailed and demanded much work by the Commission and other agencies. It is pleasing that the FSAP mission's final report has given New Zealand a generally good rating. The report has also usefully identified areas in which our regulatory framework could be strengthened to meet the IOSCO Principles of Securities Regulation. The majority of these are to be addressed in the government's securities trading law reforms.

### *Cooperation with Overseas Counterparts*


We responded to requests for assistance from the Financial Services Authority in London, the United States Commodity Futures Trading Commission in Washington DC, the Australian Securities and Investments Commission, and also the Cook Islands Financial Services Commission. We sought assistance from several of our counterparts overseas.











## PUBLIC UNDERSTANDING AND MARKET PRESENCE

The Commission's goals in this key result area are that people understand the law and practice of securities and that the Commission has a presence in the markets so that people know what we do and where we stand on issues affecting the markets.

### Responsibility

-  promote public understanding of the law and practice of securities

### Achievements this year

-  published *Corporate Governance in New Zealand – Principles and Guidelines*, and a corporate governance handbook for directors, executives and advisers
-  launched a public education programme to help New Zealanders make better investment decisions
-  published *The Bulletin* quarterly and maintained the website
-  responded to 1506 inquiries from the public
-  maintained good relationships with the news media and issued news releases
-  spoke to groups and met with market participants
-  took part in market participant seminars with the NZX
-  published summaries of exemptions from securities law granted by the Commission

### 17% of expenditure

#### *Corporate Governance*

Our report *Corporate Governance in New Zealand – Principles and Guidelines* was published in February 2004. This followed a request from the Minister of Commerce for the Commission to take a lead role in developing corporate governance principles that were appropriate for New Zealand and also in line with international best practice. We consulted widely and received much thoughtful and useful feedback from market participants and the public generally. We adopted a principles-based approach to corporate governance and provided guidelines which we believe will help entities apply the principles. We recommended that entities should report to shareholders and stakeholders how they achieved each principle, or why a principle did not apply to them. We are interested to see how entities apply the principles and will comment publicly on this when we think it appropriate. The report was well received. We subsequently published an abbreviated version of the report as a *Handbook for Directors, Executives, and Advisers*. This was made available at no charge and more than 3,000 copies have been distributed. As well, there have been more than 1,000 copies downloaded from the Commission's website. Members and staff of the Commission have spoken on corporate governance at the request of many interested groups around the country.

#### *Education Programme*

Funding was approved in the budget for a public education programme. The Commission was concerned to ensure that it would complement rather than duplicate education work by other agencies, and to benefit from the experience of its counterparts overseas. Where possible it wanted to work with other agencies where there are mutual goals and cooperation would make economic sense. We undertook research to identify the work being done in financial literacy and securities education both in New Zealand and in other jurisdictions. This helped clarify the Commission's point of difference and identify its target market, which is defined as "people with money to invest". This will enable the Commission to build on good work being done by the Retirement Commission and others, and to focus on investment education.



## ACHIEVEMENTS

Strategies to "help New Zealanders make better investment decisions" were developed and two projects were implemented this year. The Youth Project targets senior secondary school students who are seen as "potential investors". The project involves support for Enterprise New Zealand Trust's work in schools. The Commission is sponsoring the Saving and Investment Module of ENZT's Financial Literacy Programme which recently gained New Zealand Qualifications Authority status. The Commission is also sponsoring and helping ENZT develop a paper in financial studies which will be part of ENZT's Enterprise Certificate for more senior students. We believe our involvement with the ENZT enables us to provide securities and investment education to young people that the Commission could not reach on its own account. We envisage these sponsorships will be long term and will result in young people moving into higher education and the work force with a good understanding of financial and investment matters.

The Commission's  
education programme  
aims to  
"help New Zealanders  
make better investment  
decisions"

The second project aims to reach people who are particularly vulnerable to affinity fraud. In the first instance we targeted religious and ethnic groups because of recent high profile cases where fraudsters have used the trust that exists within these groups to peddle their scams. We wrote to a large number of groups explaining this type of fraud and offering brochures on how to recognise and combat these schemes. Initial feedback is that this is being well received. Other education projects are being developed for implementation in the new financial year.

### *Communications*

The quarterly issues of *The Bulletin* reported our activities and comments on the securities market. 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. More than 1000 people are registered to receive email alerts to new material on the site. There are many links to related information on other sites in New Zealand and overseas. On average more than 19,000 visitors go to the site each month.

Staff responded to 1,506 public inquiries. We issued 31 media releases and initiated media interviews as well as responded to journalists' inquiries. We have a positive attitude towards the news media and reporters show considerable interest in the Commission's work.

The Chairman, Members and staff maintained an intensive programme to meet with market participants. This included speeches to large groups, and meetings of smaller groups to hear the concerns and interests of people directly involved in the securities markets. Staff took part in market participant seminars with the NZX in Auckland, Wellington, and Christchurch.

The Commission aims to publish on the website a summary of each exemption granted. These describe the effects of the exemption, the conditions of exemption and the Commission's reasons for granting it. Summaries of 53 exemptions were published during the year.





## SERVICES TO THE TAKEOVERS PANEL

### Responsibility

 provide support services to the Takeovers Panel

### Achievements

 staff provided executive, administrative and support services to the Panel

### 12% of expenditure

The Takeovers Code has been in force for its third full year. Four Commission staff worked full-time, and three others worked part-time, to provide support to the Panel during the year. Kerry Morrell is Senior Executive Officer of the Panel. Pressure on staff has been very heavy, at times for significant periods, with complex and controversial takeovers and other Code transactions. These included the takeover offers of Toll Holdings Limited for Tranz Rail Holdings Limited, Rubicon Limited for Tenon Limited, Rural Portfolio Investments Limited for Wrightson Limited, and SEA Holdings NZ Limited for Trans Tasman Properties Limited. The high workload of the Commission meant that it was not always able to completely satisfy the resources sought by the Panel during the year. Services to the Panel are provided under a Memorandum of Understanding. The Commission maintains a good working relationship with the Panel.



## OTHER GOVERNMENT AGENCIES

The Commission values its relationships with other government agencies including the Ministry of Economic Development, the Registrar of Companies, the Reserve Bank of New Zealand, the Serious Fraud Office, the Commerce Commission, and the State Services Commission.

## ADMINISTRATION AND STAFFING

2003 - 2004 was a time of growth. Eight additional staff were appointed to help with the workload from increased work in enforcement and public understanding and new responsibilities given to the Commission following enactment of the Securities Markets and Institutions Bill in December 2002. We equipped staff to handle the increased workloads by increasing appropriate training opportunities available to them. Most staff attended professional development courses during the year.

Continued increase in staff numbers over the last two years led to the Commission moving to larger premises at Unisys House, 56 The Terrace, in Wellington. This move was managed with no impacts on business continuity.

The Commission is grateful to staff for the work they have done this year and particularly for their efforts in dealing with inquiries, handling urgent issues, and effectively managing the changing and growing workloads and infrastructure.









At 30 June 2004 there were 31 full-time and two part-time staff.























## 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 on these
-  to cooperate with overseas securities commissions
-  to keep under review securities markets activities and to comment on these
-  to advise the Minister of Commerce on securities exchanges' conduct rules and amendments to those rules
-  to promote public understanding of the law and practice of securities
-  to provide administrative and support services to the Takeovers Panel
-  to perform any other functions conferred by 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 reports and comments
-  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 carry out inspections
-  to accept enforceable undertakings
-  to hear appeals against certain decisions of the Registrar of Companies
-  to recommend regulations
-  to enforce insider trading and substantial security holder law
-  to enforce continuous disclosure law and to make orders requiring disclosure by issuers
-  to make orders requiring disclosure by unregistered exchanges
-  to require an exchange to provide information and assistance to the Commission
-  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





## 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 2004.



Jane Diplock AO  
Chairman

22 July 2004



Joanna Perry  
Chairman of the Audit Committee

22 July 2004

## FINANCIAL STATEMENTS

## STATEMENT OF FINANCIAL PERFORMANCE

*for the year ended 30 June 2004*

2004 Budget		Note	2004 Actual	2003 Actual
\$			\$	\$
<b>REVENUE</b>				
4,678,155	Government grant		4,550,540	3,220,354
40,000	Interest		57,564	47,976
220,000	Application fees and costs recoverable		453,407	254,749
–	Recovery of litigation and court costs		25,286	42,556
911,400	Administrative services to the Takeovers Panel	2	836,639	793,554
–	Profit on disposal of fixed assets		84,174	3,897
15,000	Allocation of receipt for use of assets	3	25,177	35,557
5,864,555	Total operating income		6,032,787	4,398,643
–	Government grant – litigation fund	5	218,510	843,750
24,000	Government grant – litigation interest	5	43,296	28,123
5,888,555	Total revenue		6,294,593	5,270,516
<b>EXPENDITURE</b>				
6,000	Auditors – fees		6,000	6,000
1,000	Auditors – fees for other services		10,260	–
–	Bad debts		785	–
55,000	Communication charges		44,400	40,307
	Depreciation			
	- office equipment		194,849	80,073
	- office furniture		24,472	44,649
	- leasehold improvements		73,489	166,403
	- motor vehicle		12,800	12,800
	- library		25,977	22,880
255,000	Total depreciation		331,587	326,805
9,000	Fringe benefit tax		8,324	7,003
–	Litigation		20,850	42,716
328,000	Members' fees	6	321,811	273,866
296,000	Printing and stationery		287,547	245,215
1,081,650	Professional services		967,169	398,050
367,650	Rent		336,129	228,055
2,646,550	Staff and recruitment	6 & 7	2,854,857	2,218,906
451,000	Services and supplies		532,497	421,049
35,000	Superannuation contribution withholding tax		35,652	28,268
331,250	Travel and accommodation		294,668	157,760
5,863,100	Total operating expenditure		6,052,536	4,394,000
–	Expenditure on litigation fund matters	5	289,929	–
5,863,100	Total expenditure		6,342,465	4,394,000
\$25,455	Surplus (deficit)	8	\$(47,872)	\$876,516
<b>COMPRISING</b>				
1,455	Operating surplus (deficit)		(19,749)	4,643
24,000	Litigation fund		(28,123)	871,873
\$25,455			\$(47,872)	\$876,516



## STATEMENT OF MOVEMENTS IN EQUITY

*for the year ended 30 June 2004*

2004 Budget \$		Note	2004 Actual \$	2003 Actual \$
25,455	Surplus (deficit) for year		(47,872)	876,516
25,455	Total recognised revenues and expenses for year		(47,872)	876,516
1,772,777	Equity at start of period		1,772,777	761,261
1,615,000	Capital contribution		1,439,800	135,000
–	Increase (decrease) in revaluation reserve	10	(43,166)	–
\$3,413,232	Equity at end of period		\$3,121,539	\$1,772,777



## STATEMENT OF FINANCIAL POSITION

as at 30 June 2004

2004 Budget \$		Note	2004 Actual \$	2003 Actual \$
<b>CURRENT ASSETS</b>				
74,305	Current account		80,956	33,850
700,000	Short term deposits		500,000	700,000
894,372	Short term deposits – litigation fund		763,826	870,372
40,607	GST receivable		69,911	40,607
67,283	Sundry debtors and prepayments		190,897	67,283
1,776,567	Total current assets		1,605,590	1,712,112
2,026,219	<b>FIXED ASSETS</b>	9	1,862,654	465,219
<u>\$3,802,786</u>	Total assets		<u>\$3,468,244</u>	<u>\$2,177,331</u>
<b>CURRENT LIABILITIES</b>				
379,377	Creditors and accruals	11	235,193	379,377
–	Rent holiday accrual	4	12,992	–
10,177	Receipt for use of assets	3	–	20,950
389,554	Total current liabilities		248,185	400,327
<b>NON-CURRENT LIABILITIES</b>				
–	Receipt for use of assets	3	–	4,227
–	Rent holiday accrual	4	98,520	–
389,554	Total liabilities		346,705	404,554
<b>EQUITY</b>				
2,453,863	Accumulated funds		2,233,459	813,408
871,873	Litigation fund	5	843,750	871,873
87,496	Asset revaluation reserve	10	44,330	87,496
3,413,232	Total equity		3,121,539	1,772,777
<u>\$3,802,786</u>	Total equity and liabilities		<u>\$3,468,244</u>	<u>\$2,177,331</u>



## STATEMENT OF CASH FLOWS

*for the year ended 30 June 2004*

2004 Budget \$	Note	2004 Actual \$	2003 Actual \$
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
Cash was provided from:			
4,678,155	- Government grant	4,550,540	3,220,354
24,000	- Government grant – litigation fund	181,882	871,873
–	- Government grant – recovery of costs from New Zealand Stock Exchange	–	25,668
220,000	- Application fees and costs recoverable	411,078	267,177
–	- Recovery of litigation and court costs	25,286	68,463
40,000	- Interest	56,202	44,235
911,400	- Administrative services to the Takeovers Panel	842,387	850,447
Cash was applied to:			
(2,961,550)	- Suppliers	(3,252,697)	(1,720,924)
(2,646,550)	- Employees	(2,796,601)	(2,176,451)
–	- Net GST	(29,304)	(24,726)
<u>265,455</u>	Net cash flows from operating activities	<u>(11,227)</u>	<u>1,426,116</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Cash was provided from:			
–	- Sale of fixed assets	86,977	6,041
–	- Takeovers Panel for purchase of assets	–	34,106
–	- Net decrease in term deposits	200,000	–
–	- Net decrease in term deposits (litigation)	106,546	–
Cash was applied to:			
(1,816,000)	- Purchase of fixed assets	(1,774,990)	(327,355)
–	- Net increase in term deposit	–	(400,000)
(24,000)	- Net increase in term deposit (litigation)	–	(870,372)
<u>(1,840,000)</u>	Net cash flows from investing activities	<u>(1,381,467)</u>	<u>(1,557,580)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>			
Cash was provided from:			
1,615,000	- Capital contribution	1,439,800	135,000
<u>1,615,000</u>	Net cash flows from financing activities	<u>1,439,800</u>	<u>135,000</u>
40,455	Net increase (decrease) in cash balances	47,106	3,536
33,850	Add opening cash balance	33,850	30,314
<u>\$74,305</u>	Closing cash balance carried forward	<u>\$80,956</u>	<u>\$33,850</u>

## NOTES TO THE FINANCIAL STATEMENTS

for the year ended 30 June 2004

### 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 18 July 2003. 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 three years,
  - leasehold improvements – straight line over remaining life of lease which is 9 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 Lambert Library Services (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) **Litigation Fund** Interest income is reported as income of the Securities Commission in the financial period in which it is derived. Reimbursements from the Crown to top up the fund are shown as income in the period in which the Commission's claim for reimbursement is accepted by the Crown. The balance of the fund is disclosed as a component of equity in the statement of financial position.
- (xi) **Changes in Accounting Policy** There have been no changes in accounting policies since the date of the last audited financial statements except that the depreciation basis on office equipment has been changed to straight line over three years (previously straight line over five years). All other policies have been applied on a basis consistent with other years.



**NOTE 2 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 3 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

The balance of the unamortised amount was written off during the year.

**NOTE 4 ALLOCATION OF RENT HOLIDAY**

This represents amounts received from the landlord for a rent holiday. The accrual is being released having regard to the expected life of the lease of 9 years.

**NOTE 5 LITIGATION FUND**

This represents government funding to cover the costs and expenses incurred by the Securities Commission in taking or defending eligible cases. It is being held on short term deposit. There have been three calls on the resources of the litigation fund to date.

	2004	2003
	\$	\$
Opening balance	871,873	–
Government grant received	218,510	843,750
Interest received	43,296	28,123
Expenditure on approved litigation	(289,929)	–
Closing balance	<u>\$843,750</u>	<u>\$871,873</u>

**NOTE 6 REMUNERATION OF MEMBERS OF THE COMMISSION**

	2004	2003
	\$	\$
Members' fees	321,811	273,866
Chairman's remuneration (salary and motor vehicle allowance)	307,840	300,000
Total remuneration paid to Members of the Commission	<u>\$629,651</u>	<u>\$573,866</u>

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

Members' fees for the year ended 30 June 2004 were:

	2004	2003
	\$	\$
C.A.N. Beyer	45,905	35,625
F.R.S. Clouston	56,751	49,647
M. Chen	18,818	–
A.M. Cotton	45,930	48,173
K.D. Dunstan	32,802	–
E.M. Hickey	–	31,076
L.A.J. Kavanagh	24,050	27,696
J.M.G. Perry	24,664	17,504
C.A. Quinn	27,096	17,090
R.M. Spiller	41,746	22,295
M.R.H. Webb	4,049	24,760
	<u>\$321,811</u>	<u>\$273,866</u>



**NOTE 7 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:

Remuneration \$	Number of Employees 2004	Number of Employees 2003
160,001 to 170,000	1	–
150,001 to 160,000	–	–
140,001 to 150,000	3	–
130,001 to 140,000	–	3
120,001 to 130,000	–	1
110,001 to 120,000	1	–
100,001 to 110,000	2	–

**NOTE 8 RECONCILIATION OF THE NET DEFICIT FROM OPERATIONS WITH THE NET CASH FLOWS FROM OPERATING ACTIVITIES**

	2004 \$	2003 \$
Reported surplus (deficit)	(47,872)	876,516
Add (less) non-cash items:		
- Allocation of receipt for use of assets	(25,177)	(35,557)
- Depreciation	331,587	326,805
	306,410	291,248
Add (less) movement in working capital:		
- Increase (decrease) in creditors	(32,672)	172,981
- Decrease (increase) in receivables	(152,919)	89,268
	(185,591)	262,249
Add (less) investing activity items:		
- Gain on sale of assets	(84,174)	(3,897)
	(84,174)	(3,897)
Net cash flows from operating activities	\$(11,227)	\$1,426,116



## NOTE 9 FIXED ASSETS

	Cost/ Valuation \$	2004 Accumulated Depreciation \$	Net Book Value \$
<b>Assets at cost</b>			
Office equipment	599,471	303,610	295,861
Office furniture	392,015	90,846	301,169
Leasehold improvements	1,146,749	65,679	1,081,070
Motor vehicle	64,000	35,200	28,800
<b>Assets at valuation</b>			
Library	155,754	–	155,754
	<u>\$2,357,989</u>	<u>\$495,335</u>	<u>\$1,862,654</u>

	Cost/ Valuation \$	2003 Accumulated Depreciation \$	Net Book Value \$
<b>Assets at cost</b>			
Office equipment	518,681	319,183	199,498
Office furniture	128,482	110,011	18,471
Leasehold improvements	321,751	313,941	7,810
Motor vehicle	64,000	22,400	41,600
<b>Assets at valuation</b>			
Library	240,853	43,013	197,840
	<u>\$1,273,767</u>	<u>\$808,548</u>	<u>\$465,219</u>

In accordance with the Statement of Accounting Policies Note 1 (c) (iii), the library has been revalued at 30 June 2004 to a fair value of \$155,754 on the basis of a valuation report compiled by Mrs S Lambert of Lambert's Library Services. After charging \$25,977 depreciation during the year \$43,166 was debited to the asset revaluation reserve at 30 June 2004.

## NOTE 10 ASSET REVALUATION RESERVE

	2004 \$	2003 \$
Opening balance	87,496	87,496
Increase (decrease) in revaluation reserve	(43,166)	–
Closing balance	<u>\$44,330</u>	<u>\$87,496</u>

## NOTE 11 CREDITORS AND ACCRUALS

	2004 \$	2003 \$
Creditors	131,410	302,718
Employee entitlements	103,783	76,659
	<u>\$235,193</u>	<u>\$379,377</u>

## NOTE 12 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.

The accompanying Notes form part of these Financial Statements.

**NOTE 13 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 14 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:

	2004	2003
	\$	\$
- Not later than 1 year	514,500	140,000
- Later than 1 year and not later than 2 years	514,500	-
- Later than 2 years and not later than 5 years	1,543,500	-
- Later than 5 years and not later than 9 years	1,843,625	-

**NOTE 15 CAPITAL COMMITMENTS**

Estimated capital expenditure contracted for at balance date but not provided for:

\$ NIL (2003 - \$33,413).

**NOTE 16 CONTINGENT LIABILITIES**

There are no contingent liabilities at balance date. (2003 – NIL).

**NOTE 17 TRANSACTIONS WITH RELATED PARTIES**

During the year the Commission paid fees for professional services to:

(a) Simpson Grierson, a legal firm in which C.A.N. Beyer, Member of the Commission, is a consultant. The fees, totalling \$59,382, were charged on normal commercial terms, and related to legal advice and contractual work carried out for:

- (i) lease of the new office premises;
- (ii) facilities management agreement with the information technology supplier.

(b) KPMG, an accounting firm in which J.M.G. Perry, Member of the Commission, is a partner. The fees, totalling \$10,028, were charged on normal commercial terms, and related to advice and contractual work carried out for internet penetration testing.

There were no amounts outstanding at year end relating to these transactions.

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

**NOTE 18 BUDGET VARIANCES****(a) Income**

Operating income for the year was \$168,000 above budget, mainly arising from:

- (i) additional application fees for exemptions;
- (ii) profit on sale of fixed assets;
- (iii) reduced services provided to the Takeovers Panel;
- (iv) reduced government grant for the new office's operational costs.



**(b) Expenditure**

Significant variances from budget were:

- (i) additional costs from accelerated depreciation of office equipment;
- (ii) additional staff and recruitment costs due to catch up on recruitment from 2003;
- (iii) reduced travel and accommodation costs due to curtailed overseas travel and generally reduced travel activity;
- (iv) reduced professional service costs due to delayed commencement of the public education activities;
- (v) additional services and supplies costs due to the increased operational costs of the new offices.

**NOTE 19 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.

**NOTE 20 INTERNATIONAL FINANCIAL REPORTING STANDARDS**

The Commission intends to be an early adopter of International Financial Reporting Standards (IFRS), publishing its full NZ IFRS financial statements for the year ending 30 June 2006. The Commission has commenced a project to identify the impacts of adopting NZ IFRS. The project is not yet sufficiently far advanced to be able to identify the specific impacts although they are not expected to be significant.

## STATEMENT OF OBJECTIVES

*for the year ended 30 June 2004*

Funds are to be appropriated by Parliament for the year to 30 June 2004 for the stated purpose of:

- Enforcement – The Commission's goal in this key result area is that bad market practice is seen to be unacceptable and the law is complied with.

The Commission will achieve this by maintaining oversight of securities market activity; inquiring into suspected breaches of securities law and intervening in the interests of investors in accordance with its statutory powers.

- Enforcement-based law and practice reform – The Commission's goal in this key result area is that the regulatory environment is relevant and effective.

The Commission will achieve this by reviewing securities law and practice and by making recommendations for reform.

- Exemptions and authorisations – The Commission's goal in this key result area is that the securities law regimes are tailored to the needs of the market.

The Commission will achieve this by considering and deciding on applications for exemptions from the provisions of the Securities Act 1978 and the Securities Amendment Act and Regulations; considering and deciding on applications for authorisation of market participants, for example futures exchanges and dealers, trustees and statutory supervisors; reviewing existing authorisations.

- International recognition – The Commission's goal in this key result area is that New Zealand's markets and regulatory environment are respected internationally, creating a climate for increased investment and good relationships with overseas regulators.

The Commission will achieve this by promoting New Zealand as a well-regulated country, keeping abreast of developments in global standard-setting and contributing the Commission's views to this process.

- Public Understanding and Market Presence – The Commission's goals in this key result area are that people understand the law and practice of securities and that the Commission has a presence in the markets so that people know what we do and where we stand on issues affecting the markets.

The Commission will achieve this by promoting public understanding of the law and practice of securities."

*(The Estimates of Appropriations for the Government of New Zealand for the year ending 30 June 2004, Volume 1, pages 190-191).*



## STATEMENT OF SERVICE PERFORMANCE

*for the year ended 30 June 2004*

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

**OUTPUT 1** Enforcement – maintaining oversight of securities market activity; inquiring into suspected breaches of securities law and intervening in the interests of investors in accordance with our statutory powers.

**Outcome** Bad market practice is seen to be unacceptable and the law is complied with.

**Activities included**

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

- dubious investment schemes,
- offer documents,
- contributory mortgages,
- financial statements of public issuers,
- substantial security holder disclosure,
- insider trading,
- continuous disclosure,
- disclosure of directors dealings,
- practices of investment advisers,
- practices of fund managers,
- requests from overseas commissions.

This is done by:

- carrying out inspections and issuing summonses,
- prohibiting advertising,
- removing offer documents from the market,
- commenting publicly on market practice,
- taking civil enforcement action in the Courts in relation to substantial security holder disclosure, insider trading, continuous disclosure, disclosure of trading by directors and officers,
- overseeing the operations of the stock exchange.

**Quantity** The Commission completed one major inquiry and 180 other surveillance or enforcement actions (budget 130) including inquiries related to insider trading, substantial security holder disclosure, offer documents, financial reporting and investment advisers. The Commission commenced 2 major enforcement inquiries (budget 4). We took 1 case to the High Court (budget 2). The Commission considered and commented on continuous disclosure applications under the MOU with the NZX 7 times (budget 8). The Commission advised the Minister 5 times on proposed changes to Conduct Rules of the NZX during the period (budget 1).

**Quality** The Commission acted in response to the needs of investors and other market participants and 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, consistent with the interests of investors, to carry out its enforcement work making best use of resources committed by both market participants and the Commission. It gave priority to inquiries raising significant issues for investors and the market. The Commission completed 1 major inquiry in 7 months (budget 6 months) and other inquiries within an average of 2.7 months (budget 3 months).

Where appropriate, results of its inquiries were communicated without delay to market participants and the public so that they derived maximum benefit.

The Commission met agreed timetables for activity on behalf of other commissions.

**Cost** The Commission allocated 42% of its expenditure to this output (budget 42%).



**OUTPUT 2** Enforcement-based law and practice reform – reviewing securities law and practice and making recommendations for reform.

**Outcome** The regulatory environment is relevant and effective.

**Activities included**

The Commission worked, generally with the Ministry of Economic Development, on projects and reviews of:

- the Securities Regulations 1983,
- the Securities Act 1978:
  - administration and efficiency,
  - surveillance and detection powers,
  - exemption powers,
- investment advisers,
- insider trading and market manipulation,
- substantial security holder disclosure,
- regulation of stock exchanges,
- corporate governance,
- the Financial Reporting Act 1993,
- the Crown Entities Bill.

The Commission reviewed 11 exposure drafts of financial reporting and auditing standards of ICANZ and ASRB.

**Quantity** The Commission did not make any recommendations for securities law reform in compliance with its obligations under the Securities Act 1978 and other relevant legislation. The Commission commented to the Ministry of Economic Development on the Business Law Reform Bill, proposed regulations, amendment regulations, and Cabinet papers on disclosure of trading by directors and officers, and the Crown Entities Bill.

**Quality** The Commission complied with its obligations under the Securities Act 1978 and with other relevant legislation. It based its work on thorough and accurate research into, and analysis of, the existing law and practice. It took into account the regulatory impact and business compliance costs of reforms. The Commission aimed to simplify the expression and content of the law. It consulted widely and acted independently.

**Timeliness** The Commission provided information and responses to the Ministry of Economic Development and others within agreed timeframes on all projects (budget 100%).

**Cost** The Commission allocated 5% of its expenditure to this output (budget 6%).

**OUTPUT 3** Exemptions and authorisations – considering and deciding on applications for exemptions from the provisions of the Securities Act 1978, the Securities Markets Act 1988 and the Securities Regulations 1983; considering and deciding on applications for authorisation of market participants, for example, futures exchanges and dealers, trustees and statutory supervisors; reviewing existing authorisations.

**Outcome** Securities law regimes are tailored to the needs of the market.

**Activities included**

- To receive and consider applications for exemption from securities law.
- To review existing exemptions.
- To undertake special review projects relating to policy on exemptions.
- To authorise futures dealers and exchanges.
- To consider amendments to futures exchange rules.
- To approve NZFOX participant rules.
- To approve trustees and statutory supervisors.
- To review existing authorisations.

**Quantity** The Commission considered 81 new applications for exemption from securities law (budget 70) and reviewed 1 existing exemption notice (budget "as required"). The Commission completed 2 special review projects relating to its policy on existing or potential new exemptions (budget 2). The Commission approved the NZX Futures and Options Rules. The Commission considered 12 applications for authorisation (budget 10). The Commission authorised 9 futures dealers and 1 person as a trustee and statutory supervisor.

**Quality** All notices were issued in accordance with the law including, where appropriate, the rules of natural justice (budget 100%). The Commission based its work on sensible interpretations of securities law and applied them in a constructive and practical way to securities market practice. It consulted extensively on new policy. It acted independently.

**Timeliness** The Commission considered and decided on all applications within 6 weeks or within timeframes agreed with applicants (budget 100%).

**Cost** The Commission allocated 10% of its expenditure to this output (budget 16%).

**OUTPUT 4** International Liaison – promoting New Zealand as a well regulated country; keeping abreast of developments in global standard setting and contributing the Commission’s views to this process.

**Outcome** New Zealand’s markets and regulatory environment are respected internationally, creating a climate for increased investment and good relationships with overseas regulators.

**Activities included**

The Commission took part in the work of IOSCO’s:

- President’s and Executive Committees,
- Asia Pacific Regional Committee,
- Committee on the Implementation of Objectives and Principles of Securities Regulation,
- Communication Group.

The Commission met and conferred regularly with overseas regulators and institutional investors.

The Commission took part in the 2003 Financial Sector Assessment Programme (FSAP) evaluation of New Zealand.

**Quantity** The Commission attended the meetings of the IOSCO Executive Committee held during the period, the IOSCO Annual Meeting, and the IOSCO Communication Group. The Chairman was elected Chairman of the IOSCO Executive Committee, and the Commission was elected Deputy Chair of IOSCO’s Asia Pacific Regional Committee.

The Commission hosted the Asia Pacific Regional Committee meetings in Wellington in February. It fulfilled its commitment to IOSCO for the period (budget 100%). The Commission was accepted as a signatory to the IOSCO multilateral MOU, and signed bilateral MOUs with its counterpart regulators in China, Indonesia and Malaysia. It hosted visits by the Securities and Futures Commission of Korea and the China Securities Regulatory Commission. The Chairman attended the OECD Roundtable on Capital Market Reform. The Commission met with Members of the Australian Securities and Investments Commission.

**Quality** The Commission presented itself as a constructive and cooperative member of the international community of regulators. Views expressed to IOSCO and others took into account relevant New Zealand values and principles.

**Timeliness** The Commission attended meetings and responded to committees within agreed timeframes on 100% of occasions (budget 100%). The Commission met the timeframes of overseas agencies (budget 100%).

**Cost** The Commission allocated 14% of its expenditure to this output (budget 9%).

**OUTPUT 5** Public Understanding – promoting public understanding of the law and practice of securities.

**Outcomes** People understand the law and practice of securities and the Commission has a presence in the markets so that people know what we do and where we stand on issues affecting the markets.

**Activities included**

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 contact with the news media and otherwise provide information to the public.

To deliver speeches, articles and presentations.

To initiate and carry out a public education programme.

To publish principles of corporate governance for New Zealand.

**Quantity** The Commission published 4 issues of *The Bulletin* (budget 4) and issued 31 news releases (budget "as required"). It published 53 summaries of exemptions granted. The Chairman and staff gave 14 formal speeches, and attended functions specifically for discussion with market participants. The Commission dealt with 1506 miscellaneous inquiries from members of the public (budget 2000). The Commission maintained relationships with the news media as required (budget "as required"). The Commission initiated a public education programme. The Commission published, after extensive consultation, a report on corporate governance in New Zealand and an accompanying handbook for directors.

**Quality** Material in *The Bulletin* was current, relevant and useful. Public inquiries were dealt with effectively. Information on the website was relevant and accurate, and relationships with the news media were constructive.

**Timeliness** *The Bulletin* was published in July, October, January, and April (budget July, October, January, and April) as scheduled. Two sub-projects of the public education programme were implemented and 1 other sub-project was approved in principle. 98% of public inquiries not associated with ongoing work were actioned within 5 working days of receipt (budget 95%). Information on the website was up to date and meetings with and responses to the news media met agreed timetables (budget "at all times").

**Cost** The Commission allocated 17% of its expenditure to this output (budget 11%).



**OUTPUT 6** Takeovers Panel – providing administrative and support services by agreement.

- Outcome** Services are provided to the Takeovers Panel in accordance with an annual agreement under the terms of a Memorandum of Understanding between the Panel and the Commission.
- Activities** To provide services related to the Panel's outputs including:
- Review of Takeovers Code,
  - Approvals,
  - Exemptions,
  - Enforcement,
  - Market Practice,
  - Public Understanding,
  - International Liaison,
  - Administration.
- Quantity, Quality, and Timeliness** for services were as provided for in the Memorandum of Understanding between the Panel and the Commission.
- Cost** The Commission allocated 12% of its expenditure to this output and recovered this amount from the Panel (budget 16%).

**B. GENERAL OBSERVATIONS****Work Priorities**

Work priorities were established under the Commission's strategic planning process. Work on hand was reviewed by the Commission monthly and new priorities set where necessary.

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 insider trading, the review of offer documents, and the activities of investment advisers.

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.





AUDIT REPORT





## AUDIT REPORT

### TO THE READERS OF THE SECURITIES COMMISSION'S FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2004

The Auditor-General is the auditor of the Securities Commission. The Auditor-General has appointed me, H C Lim, using the staff and resources of Audit New Zealand, to carry out the audit of the financial statements of the Securities Commission, on his behalf, for the year ended 30 June 2004.

#### Unqualified opinion

In our opinion the financial statements of the Securities Commission on pages 25 to 38:

- comply with generally accepted accounting practice in New Zealand; and
- fairly reflect:
  - the Securities Commission's financial position as at 30 June 2004;
  - the results of its operations and cash flows for the year ended on that date; and
  - its service performance achievements measured against the performance targets adopted for the year ended on that date.

The audit was completed on 22 July 2004, and is the date at which our opinion is expressed.

The basis of the opinion is explained below. In addition, we outline the responsibilities of the Members of the Commission and the Auditor, and explain our independence.

#### Basis of opinion

We carried out the audit in accordance with the Auditor-General's Auditing Standards, which incorporate the New Zealand Auditing Standards.

We planned and performed our audit to obtain all the information and explanations we considered necessary in order to obtain reasonable assurance that the financial statements did not have material misstatements, whether caused by fraud or error.

Material misstatements are differences or omissions of amounts and disclosures that would affect a reader's overall understanding of the financial statements. If we had found material misstatements that were not corrected, we would have referred to them in the opinion.

Our audit involved performing procedures to test the information presented in the financial statements. We assessed the results of those procedures in forming our opinion.

Audit procedures generally include:

- determining whether significant financial and management controls are working and can be relied on to produce complete and accurate data;
- verifying samples of transactions and account balances;
- performing analyses to identify anomalies in the reported data;
- reviewing significant estimates and judgements made by the Members of the Commission;
- confirming year-end balances;



# Audit New Zealand

- determining whether accounting policies are appropriate and consistently applied; and
- determining whether all financial statement disclosures are adequate.

We did not examine every transaction, nor do we guarantee complete accuracy of the financial statements.

We evaluated the overall adequacy of the presentation of information in the financial statements. We obtained all the information and explanations we required to support the opinion above.

## Responsibilities of the Members of the Commission and the Auditor

The Members of the Commission are responsible for preparing financial statements in accordance with generally accepted accounting practice in New Zealand. Those financial statements must fairly reflect the financial position of the Securities Commission as at 30 June 2004. They must also fairly reflect the results of its operations and cash flows and service performance achievements for the year ended on that date. The responsibilities of the Members of the Commission arise from the Public Finance Act 1989.

We are responsible for expressing an independent opinion on the financial statements and reporting that opinion to you. This responsibility arises from section 15 of the Public Audit Act 2001 and Section 43(1) of the Public Finance Act 1989.

## Independence

When carrying out the audit we followed the independence requirements of the Auditor-General, which incorporate the independence requirements of the Institute of Chartered Accountants of New Zealand.

In addition to the audit we have carried out an assurance related assignment in the area of tendering, which is compatible with those independence requirements. Other than the audit and this assignment, we have no relationship with or interests in the Securities Commission.

HC Lim  
Audit New Zealand  
On behalf of the Auditor-General  
Wellington, New Zealand

## Matters relating to the electronic presentation of the audited financial statements

This audit report relates to the financial statements of the Securities Commission for the year ended 30 June 2004 included on the Securities Commission's website. The Members of the Securities Commission are responsible for the maintenance and integrity of the Securities Commission's website. We have not been engaged to report on the integrity of the Securities Commission's web site. We accept no responsibility for any changes that may have occurred to the financial statements since they were initially presented on the web site.

The audit report refers only to the financial statements named above. It does not provide an opinion on any other information which may have been hyperlinked to/from these financial statements. If readers of this report are concerned with the inherent risks arising from electronic data communication they should refer to the published hard copy of the audited financial statements and related audit report dated 22 July 2004 to confirm the information included in the audited financial statements presented on this web site.

Legislation in New Zealand governing the preparation and dissemination of financial statements may differ from legislation in other jurisdictions.





STAFF OF THE COMMISSION



MURRAY AITKEN



KAREN BARNES



GEOFF BROWN



NIGEL BRUNSDON



EDWIN BUDDING



CATHERINE CHAPMAN



LAUREN CHRONICAN



CAROLINE COLE



PRU CRAIG



TRACEY CROOKSTON



ANGELA DOONE



LISA ECONOMOU



MONIQUE EGLI COSTI



TUI FARRELL



JO HALL



## STAFF OF THE COMMISSION



IMM HEAH



MARION HEMPHILL



NICOLA INGHAM



SANJIV JETLY



AMELIA LONGUET



JOCELYN MCKENZIE



LIAM MASON



NORMAN MILLER



JOANNE MOORES



KERRY MORRELL



JULIE MYERS



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MEREDITH PEARSON



JANET PERKINS



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The Securities Commission is grateful to  
Neil Dawson for the use of  
images of his art work in this Annual Report.



SECURITIES COMMISSION

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