

SECURITIES COMMISSION
NEW ZEALAND

Securities Commission
Annual Report 2008

**The Securities Commission is
New Zealand's main regulator of
investments.**

Our purpose

To strengthen investor confidence and foster capital investment in New Zealand by promoting the efficiency, integrity and cost-effective regulation of our securities markets.

Our work

Contributes to robust and vibrant capital markets in which investors, both domestic and overseas, can have confidence. This is important for New Zealand's sustainable economic development.

Outcomes we contribute to

High standards of conduct are expected in the markets and the law is complied with.

The regulatory environment is relevant and effective.

Securities law is tailored to the needs of the markets.

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

Public understanding of the law and practice of securities is increased.

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CHAIRMAN'S REPORT

This year has seen significant market turbulence in New Zealand markets and world wide. The sub-prime crisis which commenced in the US mortgage market and the effects of this crisis have reverberated around the world. The credit constrictions which have accompanied the crisis affected New Zealand companies and institutions as credit became more difficult to source. For the first three to six months of this financial year the turmoil in New Zealand was largely a result of domestic concerns. But, post-August 2007 when the sub-prime effects were being felt in the US and the UK, credit to all banks began to be constrained. Inter bank lending was reduced. While few New Zealanders were directly exposed to the securitized products which caused turmoil in other parts of the world, the reduction in liquidity more generally did affect this market. This, combined with declining economic conditions and further falls in the New Zealand property market, began to influence the New Zealand capital market more generally.



Jane Diplock AO

The collapse of a number of finance companies in early 2007-2008 was due to a combination of a downturn in the property market, poor business models, poor governance, and in some cases fraud. There had been a high appetite for debt instruments by the New Zealand investing public. As a number of finance companies collapsed this appetite quickly turned away from these instruments, limiting reinvestments and causing other finance companies to suffer difficulties. Some of these companies then failed as investors sought other investment products. While the finance company sector is a relatively small part of the capital market as a whole, the failures in this sector were damaging to individual investor confidence when they were affected and had an impact on investor confidence more broadly.

These collapses are being investigated by the Commission as well as the Serious Fraud Office, the National Enforcement Unit of the Registrar of Companies, and the New Zealand Police. Each agency brings its special skills and regulatory responsibilities and we work closely together. Investigations are revealing misleading disclosures and poor behaviour by directors. We are also concerned about reports of investors being given very dubious investment advice.

These events show the wisdom brought to bear in recent years in developing this country's regulatory framework. The securities law now in place enables the Commission to take actions that previously it could not take. It was under law introduced in 2002 that the Commission was able to take the Tranz Rail insider trading case in which the defendants paid some \$27 million in settlements. Subsequent law reforms have further enhanced the rules about insider trading and introduced new law on market manipulation, that is, behaviour or practices that give a false or misleading impression about the supply, demand, price or value of securities traded on a registered exchange. These changes have strengthened the regulatory framework and made it more effective in both discouraging and prosecuting poor market behaviour.

The largest remaining gaps in our regulatory framework relate to regulation of financial advisers. The experiences of the past year have shown a distinct need for a truly professional sector with set standards for training and performance. Government is addressing this. In the meantime a first step has been taken with the new requirement for investment advisers to provide clients with a disclosure statement. This should ensure that people at least know the range of investments an adviser gives advice on, their qualifications for giving advice, the relationships they have with product providers, and how they get paid. The Commission has exercised its powers since this came into force at the end of February by seeking disclosure documents from all advisers and will take action against non-compliance.

CHAIRMAN'S REPORT

As the legal framework has been developed the Commission has stepped up its staffing and capability for enforcing these new laws and will continue to do so to meet the demand that new requirements for financial intermediaries will bring. We will have the right people with the right training and the necessary commitment in place.

The Commission's role is not to remove or even lessen investment risk. However, it is concerned that investors should be aware of the risks they are taking with any investment. The past year revealed a lack of understanding by some investors about risk. To address this we carried out the Look, learn, invest - be a smart investor campaign to encourage people to use the information available to them when choosing investments. We continued to support the work of Enterprise New Zealand Trust in schools. This aims to eventually bring forward a generation of young people who feel competent to take part in the capital markets as investors.

Investors are, of course, at the heart of the Commission's work. This year has seen pleasing results in recovery of investors' money not only from the Tranz Rail settlement but also from contributory mortgages managed by a replacement broker appointed by the Commission.

Opportunities for investors, and for business, are increasing with the mutual recognition of securities offerings regime now in force with Australia. A great deal of work has gone into getting this regime in place with its supporting regulatory structure. The strong relationship between the Australian Securities and Investments Commission and the New Zealand Securities Commission has been constructive in assisting this important aspect of the single economic market between our two countries to come to fruition. It will reduce costs for issuers raising capital on both sides of the Tasman and increase choices for investors. This regime is being used as a model for other countries around the world.

Further afield New Zealand has continued its role with the International Organisation of Securities Commissions (IOSCO). I was honoured recently to be elected for an unprecedented third two-year term as Chairman of the Executive Committee. This means we can see IOSCO through to its self-imposed 2010 deadline for all members to join the IOSCO Multilateral MOU which enables exchange of information to enforce securities law and combat international fraud. The IOSCO role also provides opportunities to promote New Zealand's markets in financial centres around the world. We are grateful to the Ministry of Foreign Affairs and Trade and New Zealand Trade and Enterprise for arranging meetings with investors and business leaders at which we promote New Zealand as an attractive investment destination.

For the fourth consecutive year the Commission rated in the top ten small workplaces in the Unlimited/JRA Best Places to Work Survey. This is a remarkable achievement particularly given our serious role and responsibilities as a regulator.

I would like to thank the Members and staff of the Commission for a year of hard work, commitment and significant achievements.



Jane Diplock AO
Chairman

MEMBERS OF THE COMMISSION

The Securities Commission consists of not less than five and not more than ten Members appointed by the Governor-General on the recommendation of the Minister of Commerce. Members are appointed for their knowledge 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 reappointed.

There was a full complement of Members for most of the 2007/2008 year. Joanna Perry left the Commission in April 2008 having served 11 years. Her contribution, particularly her expertise in accounting and auditing, was extremely valuable to the Commission during that time.

The Commission held 11 regular monthly meetings (11 in 2007) and 64 division meetings (71). There were an additional 68 resolutions in writing (61). The Audit and Risk Review Committee met on 6 occasions (4). Joanna Perry chaired this committee until April 2008. Keitha Dunstan is the current Chairman. Other members of the Audit and Risk Review Committee are Annabel Cotton, David Jackson and Cathy Quinn.

MEMBERS OF THE COMMISSION AS AT 30 JUNE 2008



Jane Diplock

Jane Diplock AO BA (Hons), LL B, DipEd (Sydney), Dip Int Law (ANU), FIPAA, FNZIM.
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; Fellow of the New Zealand Institute of Management.



Keitha Dunstan

Keitha Dunstan PhD (QLD), M Bus (QUT), Grad Dip Mgt (UCQ), B Com (QLD), CA.
Research Professor, School of Accounting and Commercial Law, Victoria University of Wellington.
Professional:
Head of School, School of Accounting and Commercial Law at Victoria University of Wellington.



John Holland

John Holland B Com, LL B.
Solicitor, Christchurch.
Professional:
Partner of Chapman Tripp specialising in securities and competition law and mergers and acquisitions.
Directorships:
Board member of Chapman Tripp.



Colin Beyer

Colin Beyer LL B, DistInstD.
Consultant to Simpson Grierson, Wellington.
Professional:
Solicitor, Wellington.



David Jackson

David Jackson M Com (Hons), FCA.
Company Director, Auckland.
Professional:
Chartered Accountant
Directorships:
Fonterra Co-operative Group Limited, Nuplex Industries Limited, Pumpkin Patch Limited, and The New Zealand Refining Company Limited.



Mai Chen

Mai Chen LL B (Hons) (Otago), LL M (Harvard), FNZIM.
Partner of Chen Palmer, Wellington, Barristers and Solicitors, Public Law Specialists.
Professional:
Specialist in government regulation of business, administrative and constitutional law, public policy and legislation. Member of the New Zealand Trade and Industry Beach Heads Advisory Board and the Asia New Zealand Foundation. Formerly on the Advisory Board of AMP Life Limited (NZ) and Senior Law Lecturer at Victoria University of Wellington. Fellow of the New Zealand Institute of Management.



Cathy Quinn

Cathy Quinn LL B.
Solicitor, Auckland.
Professional:
Partner of Minter Ellison Rudd Watts specialising in corporate and securities law.



Annabel Cotton

Annabel Cotton BMS (Accounting and Finance), ACA, CSAP.
Business Consultant, Hamilton.
Professional:
Consultant to companies listed in New Zealand and overseas.
Directorships:
Genesis Power Limited, Kingfish Limited, Barramundi Limited, Marlin Global Limited and a number of private companies.



Neville Todd

Neville Todd B Com (Otago).
Company director, Wellington.
Professional:
Managing Director of Kinloch Funds Management Limited.
Directorship:
Kinloch Funds Management Limited and its subsidiaries.

FUNCTIONS AND POWERS

The Commission is established under the Securities Act 1978 which determines its functions which 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 and comment on practices relating to securities
- > to cooperate with overseas securities commissions
- > to keep under review and comment on securities markets activities
- > to advise the Minister of Commerce on conduct rules proposed by securities exchanges
- > to promote public understanding of the law and practice of securities.

To perform these functions the Commission has a number of powers. These include:

- > to receive evidence as to securities law and practice, with power to summons people and documents and to carry out inspections
- > to ban misleading and illegal offer documents and advertisements
- > to enforce securities law and the law relating to insider trading and market manipulation, and disclosure by substantial security holders and investment advisers
- > to enforce continuous disclosure law and to make orders requiring disclosure by issuers
- > to require an exchange to provide information and assistance to the Commission
- > to accept enforceable undertakings
- > to publish reports and comments
- > to make orders requiring disclosure by unregistered exchanges
- > to exempt persons from compliance with provisions of the Securities Act or Regulations under the Act
- > to authorise certain market participants
- > to recommend law reform
- > to hear appeals against certain decisions of the Registrar of Companies.

The Commission is an independent Crown entity in terms of the Crown Entities Act 2004.

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Other legislation the Commission works with includes the Securities Markets Act 1988, the Financial Reporting Act 1993, the Securities Regulations 1983, the Securities Act (Contributory Mortgage) Regulations 1988, and the Securities (Fees) Regulations 1998.


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

AUTHORITY

This annual report was approved by the Securities Commission on 17 July 2008.



Jane Diplock AO
Chairman



Keitha Dunstan
Chairman, Audit and Risk Review Committee

ACHIEVEMENTS

ENFORCEMENT

The Commission used its powers to ban offer documents and take other actions to address bad practice in the primary markets. It took public enforcement actions which gave clear signals to the market about compliance with the law and clarified the standards of behaviour expected in the markets.

Finance companies

The Commission took preventative action in respect of several finance companies in distress to give formal consents to the Registrar of Companies (under the Corporations (Investigation and Management) Act) to preserve the interests of the companies' members and creditors.

The Commission required directors of all non-bank deposit takers to provide signed statements certifying that their prospectuses were up-to-date and not misleading. It took enforcement action to cancel the prospectuses of two finance companies, Bridgecorp Limited and Bridgecorp Investments Limited, following earlier suspensions of the prospectuses. The Commission notified two other finance companies that it was considering cancelling their prospectuses and both withdrew their prospectuses without requiring formal orders.

Other issuers

Three issuers withdrew offers of securities voluntarily after the Commission raised compliance issues with them. Several other issuers withdrew and/or agreed to amend future advertising of securities. No formal action was required in these cases as the issuers voluntarily complied with our requests and took appropriate steps to repay and/or fully inform investors.

Insider trading – Tranz Rail case

Following the successful settlement of this case in June 2007 the Commission sought orders from the High Court for distribution of the \$29 million recovered. The Court gave orders in March 2008 for distribution of around two-thirds of the settlement money. The Commission is seeking further directions for payment of the remainder. The Court has also ordered payment of the Commission's costs, amounting to around \$2 million. This money will go to the Commission's litigation fund and will be available for future enforcement work.

Contributory mortgages

The Commission appointed Crichton Horne & Associates Mortgage Brokers Limited to manage the mortgages of New Zealand Commercial Mortgage Brokers Limited, Harts Contributory Mortgages Limited (previously Reeves Moses Hudig Mortgage Brokers Limited), and General Mortgage Limited in 2001, 2002 and 2003 respectively. These appointments related to 46 mortgages in which people had invested some \$82 million. Almost all principal and interest has now been recovered for investors from 40 of the mortgages, and recovery of principal for the remaining six mortgages ranged between 22% and 91%. Crichton Horne took legal action against some directors of the contributory mortgage broking firms and valuers who valued the properties. They also managed the full recovery of principal and interest on the \$27 million Parliament Street mortgage offered by the Mortgage Financier Limited referred to them in 2002.

MONITORING AND MARKET OVERSIGHT

The Commission monitors market activity to identify and investigate possible breaches of securities law and encourages entities and their directors to strive for international best practice in corporate governance.

ACHIEVEMENTS

Report on the Feltex inquiry

The Commission completed its inquiry into the 2004 IPO prospectus of Feltex Carpets Limited and the company's compliance with financial reporting and continuous disclosure obligations in the period between its listing in 2004 and the appointment of liquidators in late 2006. The inquiry concluded that the IPO prospectus was not misleading in any material particulars. However, it found that Feltex failed to disclose certain material information to the market concerning changes to its banking facility agreement with ANZ in October 2005, failed to disclose the breach of its banking covenants and did not properly classify its debt in its 31 December 2005 half-year financial statements. The Commission also found that work undertaken by Ernst & Young New Zealand in its review of Feltex's 31 December 2005 half-year financial statements failed to meet the required standards.

The Commission referred matters arising from its findings to the Registrar of Companies, the Accounting Standards Review Board, and the New Zealand Institute of Chartered Accountants.

Oversight of NZX

The Commission oversees NZX's performance of its regulatory role and advises the Minister of Commerce on NZX's rules.

In June it published the third annual oversight review of NZX's performance of its regulatory functions as a registered exchange. The review covered the 2007 calendar year and focused mainly on NZX's policies on the continuous disclosure rules and its administration of these, including publishing market announcements. The Commission's overall conclusion was that NZX had met its obligation to operate its markets in accordance with its conduct rules. The Commission was also satisfied with the actions taken by NZX, NZX Discipline and the Special Division in respect of recommendations made in the previous review. Concerns were noted in some areas and NZX, NZX Discipline and the Special Division will respond to these by 30 September 2008.

Market misconduct

The Commission investigates, and if necessary takes enforcement action, on breaches of the laws on insider trading, market manipulation and disclosure by substantial security holders and investment advisers and brokers.

The Commission initiates investigations into possible market misconduct based on information obtained through its own market monitoring and from NZX referrals under the Securities Markets Act 1988. During the year it undertook 33 investigations.

Investment adviser disclosure project

The Commission undertook an extensive education campaign to alert investment advisers to their responsibilities well before new law came into force on 29 February 2008. The law requires advisers to provide investors with a comprehensive disclosure statement. The Commission sought disclosure statements from advisers in March 2008 and from a sample checked found that most comply with the law.

Reviews of financial reporting

The Commission published reports on two further cycles of its Financial Reporting and Surveillance Programme (FRSP). This work encourages high quality financial reporting so that investors can have confidence in the credibility of information provided by issuers. It focuses on compliance by issuers with Financial Reporting Standards and other elements of Generally Accepted Accounting Practice (NZ GAAP).

Cycles 5 and 6 reviewed the financial reports of 40 and 30 issuers respectively. In both cycles the Commission was prompted to write to some issuers for further information or for commitment to revise or enhance disclosures in future financial statements.

ACHIEVEMENTS

The Commission reviewed 12 issuers in Cycle 5 and seven issuers in Cycle 6 that had applied New Zealand Equivalents to International Financial Reporting Standards (NZ IFRS). Overall, the Commission considers that compliance by these issuers with NZ IFRS is good. For issuers transitioning to NZ IFRS the Commission has provided feedback and information on NZ IFRS adoption issues in the cycle reports.

The Commission is pleased with the cooperation from issuers to resolve the matters that have been raised with them. It is encouraged by the commitment of issuers and their auditors to comply with NZ GAAP. This will help provide a true and fair view of the state of affairs of those issuers and further raise the quality of financial reporting in New Zealand.

Enforceable undertakings

The Commission accepts enforceable undertakings from those who breach the law. These are a cost-effective enforcement tool that enable the breach to be remedied, address investors' interests, and avoid court action. All undertakings are published and this communicates the standards of behaviour the Commission expects in the markets.

This year the Commission accepted one enforceable undertaking from Foodstuffs Wellington Cooperative Society Limited and its directors addressing historical non-compliance with the Securities Act. The Commission also accepted an extension of an undertaking previously offered by Contributory Mortgage Investment Limited and its directors that would otherwise have expired at the end of March 2008.

LAW REFORM

The Commission recommends to the Minister of Commerce improvements to securities law that will achieve a regulatory regime that is internationally acceptable, cost-effective and suited to New Zealand's markets.

Regulation of financial products and providers and financial advisers

The Commission has been heavily involved in the Government's review of financial products and providers, and financial adviser regulation. Discussion documents were published in late 2006 and subsequent work has resulted in some reforms currently before the House in bills relating to deposit takers, registration and dispute resolution, and financial advisers. The Commission is continuing to work with officials on matters including deposit takers, collective investment schemes, securities offerings and mutual governance.

Securities Legislation Bill regulations

The Commission contributed to regulations required to bring the Securities Markets Amendment Act 2006 into force. Changes to the Securities Act 1978, increasing the Commission's ability to bring Court actions for breaches of securities law, came into force in October 2006, while changes to the Securities Markets Act came into force on 29 February 2008.

Securities Amendment Regulations 2007

The Commission used its power to recommend urgent regulations under the Securities Act for the first time.

In early September 2007 it responded to a request by the Minister of Commerce to consider whether any immediate changes could be made to the rules of law concerning finance companies, in particular to assist trustees to get the information they need to perform their statutory functions. After consulting with trustee companies the Commission recommended urgent regulations be made to improve trustees' ability to obtain information, to have information independently verified, and to receive reports from finance companies. New regulations came into force on 21 September 2007.

ACHIEVEMENTS

The Commission is currently consulting with industry to review the effectiveness of the regulations, with a view to recommending any changes that may be needed to ensure that the new rules achieve the best results for trustees and investors.

Accounting and auditing

The Commission made submissions on draft financial reporting standards to the New Zealand Institute of Chartered Accountants and the International Accounting Standards Board and participated in a working group on audit oversight.

Anti money laundering

The Commission is working on the inter-agency project on Anti Money Laundering and Countering the Financing of Terrorism (AML/CFT) aimed at strengthening New Zealand's anti money laundering laws. One aspect of compliance is that institutions that are subject to regulatory requirements are supervised by an appropriate agency. It is proposed that the Commission will have a role as the AML supervisor for certain institutions in the financial sector.

Trans-Tasman mutual recognition regime

The Commission and the Australian Securities and Investments Commission (ASIC) completed work on a regulatory regime for securities offered on both sides of the Tasman which came into operation in June 2008. This enables issuers from each country to offer in the other country using the same offer documents. It will reduce compliance costs and benefit investors with a wider range of investments.

EXEMPTIONS AND AUTHORISATIONS

Exemptions from the law reduce costs for issuers bringing new and overseas investment products to the New Zealand markets. All exemptions are based on the policy of the law and conditions are imposed so that issuers comply with the spirit of the law.

It is more cost-effective for issuers to rely on class exemptions, but where this is not possible individual exemptions can be granted. Where an application for exemption raises policy questions the public is usually consulted.

Authorisations by the Commission are required by certain market participants including trustees and statutory supervisors, and futures dealers who cannot rely on a class authorisation granted to futures and options participants on the NZX and the Sydney Futures Exchange.

Review of class exemptions

The Commission reviewed its class exemption notices in 2007 to make sure they were current, useful and consistent with Commission policy. Comments were sought on some 50 class exemptions. Most exemptions were renewed on the same terms with minor changes. However, the Commission decided that more substantive changes were required to the following exemption notices:

- > The Securities Act (Building Societies) Exemption Notice 2002 was amended to allow a prospectus relating to building society shares to contain similar disclosures to those required in a short form prospectus for equity securities
- > Clause 10 of the Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice 2002, which required a report to be provided to the Commission each year relating to securities offered under an issuer's employee share purchase scheme, has been revoked.

ACHIEVEMENTS

A new class exemption was created for public offerings made by companies listed, or applying to be listed, on markets operated by New Zealand Exchange Limited. The Commission also made substantive changes to its class exemptions on residential property developments, real property proportionate ownership schemes, and rights, options, and convertible securities.

Exemptions from the Financial Reporting Act

Changes to the Financial Reporting Act, which came into force on 18 June 2007, gave the Commission exemption powers relating to financial reporting by overseas issuers. They aim to ease compliance costs for overseas issuers where financial reporting requirements of their home jurisdictions are sufficiently robust that New Zealand investors would not be prejudiced if the issuer filed its overseas accounts in New Zealand, instead of financial statements that comply with the Financial Reporting Act. One class exemption and five individual exemptions from certain requirements of the Financial Reporting Act have been granted.

INTERNATIONAL COOPERATION AND RECOGNITION

The Commission's international work has three main components:

- > contributing to strengthening the international investment environment by raising the standard and consistency of regulation and cross-border cooperation at the global level
- > enforcement of New Zealand securities law where cross-border breaches and fraud are suspected
- > contributing towards a single economic market between New Zealand and Australia and facilitating mutual recognition of securities offerings.

Contributing to the international investment environment

The Commission makes a significant contribution to strengthening the international investment environment through its active participation in the International Organisation of Securities Commissions (IOSCO). IOSCO is the international standards setter for securities regulation. It aims for the world's securities markets to be regulated on explicit and sound principles and standards, and for regulators to effectively enforce securities law through cooperation and information exchange.

The Commission is a member of IOSCO's governing body, the Executive Committee, and is also Vice-Chair of its Asia Pacific Regional Committee. In May 2008, Jane Diplock was re-elected to chair the Executive Committee for an unprecedented third two-year term.

Considerable progress was made towards IOSCO's strategic direction adopted under Jane Diplock's chairmanship in 2005, and this has involved an increasingly operational approach. The Chairman led the process to appoint a new IOSCO Secretary General who took up his role in January 2008. At its meeting in February 2008 the Executive Committee endorsed Action Plans to provide operational support to the achievement of its strategic goals, including meeting its self-imposed target of having all member jurisdictions signed onto the *IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (IOSCO MMOU) by 2010. Cross-border enforcement cooperation between regulators has improved with 63 member jurisdictions, representing more than half the IOSCO members, now either signed on in full or committed to making the necessary changes to sign onto the IOSCO MMOU. The Commission is on the IOSCO Screening Group which reviews applications to join the IOSCO MMOU.

Progress was also made in facilitating members to implement in full the *IOSCO Objectives and Principles of Securities Regulation* (IOSCO Principles) which are the benchmark for securities regulation that protects investors, ensures markets are fair, efficient and transparent, and reduces systemic risk.

ACHIEVEMENTS

The Commission provided assistance with the moderation of decisions submitted to the database set up by IOSCO to enable regulators to share information on applying International Financial Reporting Standards (IFRS). IOSCO monitors the database and refers any interpretation issues to the International Accounting Standards Board or the International Financial Reporting Interpretations Committee.

The Commission's and Chairman's roles within IOSCO assist in raising New Zealand's profile in the international financial community and provide opportunities to promote New Zealand as a well-regulated securities market. While undertaking her IOSCO commitments, the Chairman shared IOSCO's priorities and perspectives, and promoted New Zealand's well-regulated securities market, at a range of international fora.

The Commission also worked with the Ministry of Foreign Affairs and Trade and New Zealand Trade and Enterprise to create opportunities for the Chairman, while on IOSCO business, to promote New Zealand as an attractive investment destination to business audiences.

Enforcement of securities law in cross-border cases

The Commission used the IOSCO MMOU five times for enforcement inquiries over the past year. In addition to participating as a signatory to the IOSCO MMOU, the Commission maintains a number of bilateral agreements and this year signed bilateral Memoranda of Understanding with the Emirates Securities and Commodities Authority and the Jordan Securities Commission, bringing the total number of such agreements to 14.

Assisting overseas counterparts contributes to global and domestic investment environments in which investors can have confidence. The Commission gave priority to requests for assistance from other regulators, and provided responses to five enforcement requests from overseas regulatory bodies within the agreed timeframes.

Contributing to a single economic market with Australia

The Commission met with the Australian Securities and Investments Commission (ASIC) twice during the year to discuss trans-Tasman regulatory and enforcement issues, including the mutual recognition of securities offerings regime which came into force on 13 June 2008. Commission staff work regularly with ASIC counterparts on operational matters. As usual, several senior staff attended the ASIC Summer School.

The Chairman took part in the Australia New Zealand Leadership Forum and the Trans-Tasman Business Circle.

PUBLIC UNDERSTANDING

It is important for the public and advisers to have an understanding of the securities markets and the law relating to these because well-informed investors are an essential ingredient for robust capital markets. As New Zealand's securities regulatory regime is disclosure-based, it is important that people understand information they are entitled to before making investment decisions.

Services

The Commission's websites, publications, media releases and speeches provided information to help people understand the securities markets and how they are regulated. The website www.seccom.govt.nz averaged 37,000 visitors per month, and some 2450 subscribers received email alerts to new information on the site. The Commission produced a quarterly *Bulletin*, and issued 23 news releases which were widely reported. Publications included *Feltex Carpets Limited's IPO, Prospectus, Financial Reporting and Continuous Disclosure*, and *Responsible Investment Disclosure by KiwiSaver Scheme Providers*. The Chairman, Members and staff spoke to groups and conferences in New Zealand and overseas on 33 occasions.

ACHIEVEMENTS

Education

An education campaign alerting market participants to the new securities law included advertising to promote a dedicated website www.newsecuritieslaw.govt.nz, and targeted magazine articles and presentations. A guide, *New Securities Law for Investment Advisers and Market Participants 2008*, was published and more than 5000 copies distributed. Market testing with investment advisers and company directors indicated that the publication was welcome and useful.

A project to alert people to the new disclosure requirements for investment advisers included a brochure, *How to choose an investment adviser*, and involved working with the Retirement Commission to update the *Sorted* website and publish a brochure.

In response to its concerns about lack of understanding about risk on the part of investors in finance companies, the Commission undertook the *Be a smart investor* campaign. This comprised advertising, a brochure and a dedicated website www.looklearninvest.org.nz.

The Commission continued its sponsorship of Enterprise New Zealand Trust's Financial Studies Course for senior secondary school students. This covers investment, external influences on investment decisions, financial planning and student loans. It is now well resourced with teacher resource materials and a teacher training programme. A student resource pack will be finalised when the New Zealand Qualifications Authority completes unit standards for financial studies.

EFFECTIVENESS AND ORGANISATIONAL HEALTH

Capability and risk

The Commission has a risk management framework which identifies its key areas of capability and associated risks. The Commission has developed responses to the main risks as follows:

> *Staff recruitment and retention*

The Commission has 49 staff positions (44 in 2006/07) and 42 full time equivalent employees (42 in 2006/07). The risk that the Commission may not be able to recruit suitably qualified staff was countered by graduate recruitment, overseas recruitment, and targeting New Zealand recruitment campaigns effectively.

The Commission minimises the risks associated with retaining staff by its commitment to being a good employer. It was placed in the top ten small employer category (up to 50 staff) of the *Unlimited/JRA Best Places to Work in New Zealand Survey* in 2007, for the fourth consecutive year. The Commission continues its values-based culture, maintains high professional standards and is responsive to staff feedback.

> *Physical event/disaster*

The Commission's offices are code compliant under section 95 of the Building Act 2004. Its earthquake and disaster plan includes emergency food, water and first aid supplies, staff trained in first aid, and document and IT recovery systems. Key staff have access to the Commission's computer network enabling them to work from home.

> *Reputation and integrity*

As the Commission promotes high ethical standards in the securities markets, it is essential that people have confidence in the Commission itself. The integrity of its approach, quality of the work and maintenance of confidentiality are managed through adoption of the Values and the Code of Ethics.

ACHIEVEMENTS

- > *Confidentiality of information*
New Members and staff sign a confidentiality agreement when they join the Commission and this is reinforced in the induction process. Security around the IT systems and files is robust and effective physical security is in place at the Commission's office.
- > *Knowledge available*
Institutional knowledge is available from the Commission's document management and records systems. The Commission's virtual teams' work structure is conducive to effective knowledge sharing.
- > *Future capability*
The Ministry of Economic Development is proposing reforms which would significantly increase the Commission's responsibilities. The Commission has updated a 2006 estimate of the likely resource requirements of these new responsibilities as further policy decisions have been taken.
- > *Organisational health and capability building*
The Commission worked with the following agencies on its organisational capability and health initiatives:
 - > the State Services Commissioner – *Development Goals for the State Services*
 - > the Equal Employment Opportunities Unit (EEO Unit) of the Human Rights Commission – *Good Employer Guidance under the National Equal Opportunities Network*.

The Commission's good employer programme reflects its commitment to EEO under which staff are recruited and rewarded on the basis of merit. The statement "This organisation is an equal opportunities employer" was ranked first out of the 60 statements in the *Unlimited/JRA Best Places to Work Survey 2006*.

Financial objectives

The Commission achieved its main financial objective for the 2007-2008 year by carrying out its strategic plan on time and within budget and resources. It delivered the outputs, as detailed in the Statement of Service Performance, within the funds appropriated by Parliament for this purpose.

The Commission applied its policies for expenditure, financial delegations, and acquisitions. Detailed planning and management procedures based on the Auditor-General's guidelines are followed for significant acquisitions including planning and managing litigation expenditure.

WORKING WITH OTHERS

The Commission has a wide range of stakeholders and the policy on stakeholders is published on its website.

The Commission worked with the Minister of Commerce and the Ministry of Economic Development in accordance with its statutory functions and powers, on policy, regulatory matters, law reform, and appropriations. It reported to the Minister under the Crown Entities Act.

The Commission carried out its co-regulatory role with the NZX covering the markets operated by that exchange as required by the Securities Markets Act 1988.

The Commission is grateful for the good working relationship it has with the Parliamentary Counsel Office. It worked with other government agencies including the Commerce Commission, Police, Registrar of Companies, Reserve Bank of New Zealand, Retirement Commission, Serious Fraud Office, State Services Commission, and Takeovers Panel as appropriate and in accordance with its statutory functions and powers. The Commission worked with overseas securities regulators and agencies in accordance with the IOSCO MMOU, bilateral MOUs and applicable law, as well as a variety of industry organisations and professional bodies.

ACHIEVEMENTS

TAKEOVERS PANEL

The Commission provides administrative and support services to the Takeovers Panel in accordance with the Securities Act and under the terms of an MOU. The income received from the Panel and the costs of providing these services are recorded in the financial statements. The Panel is working towards employing its own staff and consequently the level of recovery for services for the 2007/2008 year was \$1,026,782 (budget \$1,242,000). The Panel is expected to relocate to separate premises in the 2008/2009 year.

The Commission encourages all entities that have economic impact in New Zealand or are accountable in various ways to the public to report on their corporate governance. To assist with this the Commission published *Corporate Governance in New Zealand – Principles and Guidelines* in 2004. We report on how the Commission achieved each of these corporate governance principles in the year to 30 June 2008.

Principle 1 Directors should observe and foster high ethical standards.

The Commission's Code of Ethics sets out our 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
- > reporting breaches of the Code of Ethics.

The Code sets out measures to deal with breaches of the Code and how they can be reported. Every Commission Member and staff member has been given a copy of the Code which is also published on the website. No breaches of the Code were identified during the year. The Commission has a conflicts of interest policy to ensure compliance with the Crown Entities Act 2004.

Principle 2 There should be a balance of independence, skills, knowledge, experience, and perspectives among directors so that the board works effectively.

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 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 overseas 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 on page 4 of this report.

Principle 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 policy. The Commission has an Audit and Risk Review 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 risk management and for preparing the Commission's quarterly reports to the Minister of Commerce. The Audit and Risk Review Committee convenes quarterly.

Principle 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 and section 44A of the Public Finance Act 1989, including tabling its Annual

CORPORATE GOVERNANCE

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's financial statements are signed by the Chairman of the Commission and the Chairman of the Audit and Risk Review Committee. The Commission also reports quarterly to the Minister of Commerce in accordance with its Output Agreement with the Minister. The Commission is required by the Crown Entities Act to prepare a Statement of Intent. The Statement of Intent for the three years from 2008 to 2011 was tabled in the House on 27 June 2008. The Commission will report against that document in its next annual report.

Principle 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.

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

Governance of potential and relevant risks is provided by the Audit and Risk Review Committee. The Committee's risk review objective is to assist the Commission in independently assessing compliance with risk management and internal control practices. It has examined, accepted and assumed its monitoring role of the Commission's organisational risks. Its audit task is to assist the Commission to ensure the soundness and integrity of the financial statements.

Principle 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 and Risk Review 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. No non-audit work was undertaken by Audit New Zealand for the Commission this year.

Principle 8 The board should foster constructive relationships with shareholders that encourage them to engage with the entity.

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. The Commission is funded by Parliamentary appropriation to carry out its statutory functions and has an annual Output Agreement with the Minister on the work it will do. Its Statement of Intent for the three years 2008-2011 is published on the website and will be reported against in the annual report next 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.

Principle 9 The board should respect the interests of stakeholders within the context of the entity's ownership type and its fundamental purpose.

The Commission has a Policy on Stakeholders, published on the website, which identifies the Commission's stakeholders and describes how it relates to and communicates with them.

The Commission published its second Statement of Intent (SOI) under the Crown Entities Act in June 2007. This set out the broad parameters of work for the three years 2007 to 2010 and a detailed plan for the 2007-2008 financial year.

Objectives set in the SOI for the 2007-2008 financial year are reported against below. The Statement of Service Performance reports details of activities under each output for the 2007-2008 year.

REPORT AGAINST THE STATEMENT OF INTENT

ENFORCEMENT

Objective – enforcement work is targeted at those issues most likely to deter bad practice in key areas.

Objective – our enforcement actions achieve the desired regulatory results.

The SOI said the Commission will have achieved the enforcement objectives when:

- > resources are applied in accordance with its enforcement priorities; and
- > the Commission achieves the desired regulatory outcome in at least 80% of cases.

Performance against enforcement objectives

The Commission allocated its resources according to its priority and case selection criteria so that enforcement work was targeted at issues most likely to deter bad practice. The Commission's enforcement work this year focussed heavily on finance companies, exercising powers in respect of companies in distress with a view to securing remaining assets and removing companies from the market in the interests of investors.

Enforcement resources have also been applied to investigations of failed finance companies with a view to bringing Court proceedings to seek criminal convictions, civil penalties, or compensation for investors.

Each enforcement action taken this year achieved the desired regulatory result, either to secure assets or to remove an offer from the market in the interests of investors.

MONITORING AND MARKET OVERSIGHT

Objective – monitoring and market oversight work corrects identified deficiencies and communicates the Commission's expectations of standards of conduct in the market and the requirements of the law.

Objective – monitoring and market oversight work is targeted at those issues most likely to deter bad practices in key areas.

Objective – NZX properly fulfils its regulatory role in the market.

The SOI said the Commission will have achieved its monitoring and market oversight objectives when:

- > in 90% of cases where deficiencies are identified the desired regulatory result is achieved;
- > its resources are applied in accordance with its monitoring and market oversight priorities; and
- > it has published a report of its annual oversight review of NZX.

Performance against monitoring and market oversight objectives

The Commission achieved a satisfactory regulatory outcome in monitoring and oversight activities described on pages 6 - 8 and detailed in the Statement of Service Performance by appropriately addressing breaches of the law and by signalling the standards of behaviour expected in the markets.

The Commission allocated its work in accordance with its priority and case selection criteria. The criteria are reviewed regularly so that the focus is on key areas where its actions will effectively contribute to a well-regulated and well-informed market.

The Commission's report *Oversight Review of NZX 2007* published on 20 June 2008 concluded that NZX was performing its regulatory obligations as a registered exchange, but noted some areas of concern. The review considered that responses to, and actions resulting from, the Commission's recommendations made in the *Oversight Review of NZX 2006* published on 28 June 2007 were satisfactory. NZX's responses to recommendations from the latest review will be reported in the Commission's next annual report.

REPORT AGAINST THE STATEMENT OF INTENT

LAW REFORM

Objective – provide robust advice to Government to give priority to reforms needed to address shortcomings in the law identified through the Commission's work.

Objective – high quality advice and assistance is given to the Government's financial services policy development.

The SOL said the Commission will have achieved the law reform objectives when:

- > advice given seeks priority for reforms to address identified shortcomings in regulation of financial intermediaries, disclosure about investment products, issues identified by FSAP which will bring our law up to the standards required by the IOSCO Principles, Securities Regulations, and auditor oversight; and
- > the quality, quantity, and timeliness of the Commission's advice and assistance to the Ministry of Economic Development's reform programmes satisfy the MED.

Performance against law reform objectives

The Commission:

- > sought urgent changes to the law to give trustees more powers in relation to investors in finance companies; and
- > provided advice and assistance on: the reform of financial adviser law and regulations under the Securities Markets Act; the review of financial products and providers; and the Ministry of Justice's anti money laundering proposals.

The MED has confirmed that it was satisfied with the advice received from the Commission during the year.

EXEMPTIONS AND AUTHORISATIONS

Objective – all exemptions and authorisations are completed within the agreed time.

Objective – an effective regime is in place to authorise futures dealers.

The SOL said the Commission will have achieved its exemptions and authorisations objectives when it has:

- > dealt with all applications for exemptions and authorisations within the time agreed with the applicants; and
- > introduced and communicated a new policy for authorisation of futures dealers.

Performance against exemptions and authorisations objectives

The Commission:

- > received 66 applications and granted 43 exemptions;
- > completed the five-yearly exemption review which saw 37 notices renewed, 12 notices revoked or allowed to expire and 1 new exemption granted;
- > completed 100% of applications within the time agreed with applicants;
- > authorised 6 futures dealers on terms and conditions consistent with the Securities Markets Act; and
- > decided to defer settling a formal policy for authorisation of futures dealers in view of the forthcoming reforms for all financial advisers.

INTERNATIONAL COOPERATION AND RECOGNITION

Objective – the Commission's contribution to the work and development of IOSCO and other relevant international bodies promotes New Zealand's markets and regulatory environment.

Objective – the Commission has a strong relationship with ASIC.

Objective – the Commission fulfils its obligations under the IOSCO Multilateral MOU and bilateral MOUs with overseas regulators.

REPORT AGAINST THE STATEMENT OF INTENT

The SOI said the Commission will have successfully achieved its international cooperation and recognition objectives when it has:

- > taken part in all relevant IOSCO meetings and made a presentation which includes promoting New Zealand's markets and/or regulatory environment at 60% or more IOSCO regional meetings;
- > met regularly with ASIC and cooperative work is completed to agreed standards and time frames; and
- > obligations under IOSCO and bilateral MOUs are fulfilled within agreed time frames.

Performance against international cooperation and recognition objectives

The Commission:

- > took part in meetings of IOSCO's Asia Pacific Regional Committee (APRC), Executive Committee and Presidents' Committee and the IOSCO Technical Committee's meetings with industry. Opportunities were taken to promote New Zealand's regulatory framework to IOSCO and business audiences on 9 occasions;
- > Members met with ASIC on 2 occasions; staff worked with ASIC at an operational level on various matters including finalising the regime to regulate securities offered to the public under the trans-Tasman mutual recognition scheme; and
- > fulfilled its obligations and/or made use of the IOSCO MMOU and bilateral MOUs 6 (8) times in the course of enforcement work.

PUBLIC UNDERSTANDING

Objective – the Commission's education projects, websites, publications and presentations provide investors and potential investors with information to help them understand the law and practice of securities.

Objective – a guide to new securities law is published.

The SOI said the Commission will have achieved the 2007-2010 public understanding objectives when:

- > its education projects are completed and meet the measures of success set for each project (90%); and
- > the guide to new securities law is published before the law comes into force in 2007.

Performance against public understanding objectives

The Commission:

- > carried out four public education projects – New law for market participants, New law for investors, Youth education (via Enterprise New Zealand Trust's financial studies course), and Be a smart investor. All projects met the measures of success as described in the Statement of Service Performance on page 45; and
- > published a guide, New securities law for investment advisers and market participants, in December 2007 as soon as regulations were settled and before the law came into force in February 2008.

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 Statement of Service Performance 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 and statement of service performance fairly reflect the financial position and operations of the Securities Commission for the year ended 30 June 2008.

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Jane Diplock AO
Chairman

17 July 2008



Keitha Dunstan
Chairman, Audit and Risk Review Committee

17 July 2008

STATEMENT OF FINANCIAL PERFORMANCE*for the year ended 30 June 2008*

2008 Budget \$000's		Note	2008 Actual \$000's	2007 Actual \$000's
Revenue				
6,501	Government grant		6,501	6,501
1,242	Administrative services to the Takeovers Panel	3	1,027	1,124
250	Exemption and authorisation fees		234	277
215	Interest		214	191
–	Other income	4	7	1
2,400	Litigation fund income	5	2,076	292
10,608	Total revenue		10,059	8,386
Expense				
4,883	Personnel expenses	4	5,174	4,599
642	Occupancy expenses		642	560
344	Depreciation and amortisation	4	336	364
2,332	Other operating expenses	4	2,302	2,114
488	Litigation fund expenses	5	54	292
8,689	Total expense		8,508	7,929
1,919	Surplus		1,551	457
Comprising				
7	Operating surplus		(471)	457
1,912	Litigation fund surplus		2,022	–
1,919			1,551	457

STATEMENT OF CHANGES IN EQUITY*for the year ended 30 June 2008*

Budget \$000's		Note	Accumulated Funds \$000's	Litigation Fund \$000's	Total Equity \$000's
3,554	At 1 July 2006		2,710	844	3,554
400	Surplus for year		457	–	457
400	Total recognised income/expense for the year		457	–	457
3,954	At 30 June 2007		3,167	844	4,011
1,919	Surplus (deficit) for year		(471)	2,022	1,551
1,919	Total recognised income/expense for the year		(471)	2,022	1,551
5,873	At 30 June 2008	5, 6	2,696	2,866	5,562

STATEMENT OF FINANCIAL POSITION*as at 30 June 2008*

2008 Budget \$000's		Note	2008 Actual \$000's	2007 Actual \$000's
Current assets				
193	Cash and cash equivalents	7	48	95
1,950	Term deposits	7	1,632	1,950
116	Cash and cash equivalents – litigation fund	7	178	183
2,400	Term deposits – litigation fund	7	650	575
49	GST receivable		51	60
335	Trade and other receivables	10	2,223	274
5,043	Total current assets		4,782	3,137
Non-current assets				
1,350	Property, plant and equipment	11	1,356	1,307
12	Computer software	12	25	28
1,362	Total non-current assets		1,381	1,335
6,405	Total assets		6,163	4,472
Current liabilities				
472	Trade and other payables	13	541	388
13	Rent holiday liability	14	13	13
485	Total current liabilities		554	401
Non-current liabilities				
47	Rent holiday liability	14	47	60
532	Total liabilities		601	461
Equity				
3,117	Accumulated funds		2,696	3,167
2,756	Litigation fund	5	2,866	844
5,873	Total equity	6	5,562	4,011
6,405	Total equity and liabilities		6,163	4,472

STATEMENT OF CASH FLOWS*for the year ended 30 June 2008*

2008 Budget \$000's		Note	2008 Actual \$000's	2007 Actual \$000's
Cash flows from operating activities				
	Cash was provided from:			
6,501	- Government grant		6,500	6,501
2,276	- Litigation fund income		149	435
267	- Exemptions and authorisations fees		212	295
-	- Miscellaneous		7	1
230	- Interest		224	81
1,242	- Administrative services to the Takeovers Panel		1,020	1,124
	Cash was applied to:			
(3,553)	- Suppliers		(3,015)	(3,139)
(4,838)	- Employees		(5,018)	(4,446)
-	- Net GST		8	(11)
2,125	Net cash flows from operating activities	15	87	841
Cash flows from investing activities				
	Cash was provided from:			
-	- Decrease in term deposits		318	-
	Cash was applied to:			
(344)	- Purchase of property, plant and equipment		(366)	(98)
-	- Purchase of computer software		(16)	(14)
-	- Increase in term deposits		-	(1,950)
(1,825)	- Increase in term deposits (litigation)		(75)	(575)
(2,169)	Net cash flows from investing activities		(139)	(2,637)
Cash flows from financing activities				
	Cash was provided from:			
-	- Capital contribution		-	-
-	Net cash flows from financing activities		-	-
(44)	Net increase (decrease) in cash balances		(52)	(1,796)
353	Add opening cash and cash equivalents balance		278	2,074
309	Closing cash and cash equivalents balance carried forward		226	278
Comprising				
193	Cash and cash equivalents		48	95
116	Cash and cash equivalents - litigation fund		178	183
309			226	278

NOTES TO THE FINANCIAL STATEMENTS*for the year ended 30 June 2008*

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NOTES TO THE FINANCIAL STATEMENTS

for the year ended 30 June 2008

NOTE 1 STATEMENT OF ACCOUNTING POLICIES

REPORTING ENTITY

The Securities Commission (the Commission) is a body corporate established by the Securities Act 1978. The financial statements of the Commission are prepared pursuant to section 154 of the Crown Entities Act 2004.

The Commission is an independent Crown entity for legislative purposes and a public benefit entity for the purposes of complying with Generally Accepted Accounting Practices in New Zealand (NZ GAAP).

The financial statements of the reporting entity, the Commission, for the year ended 30 June 2008 were authorised for issue by the Commission on 17 July 2008.

The Commission's primary function is the regulation of investments in New Zealand.

BASIS OF PREPARATION

Statement of compliance

These financial statements have been prepared in accordance with Generally Accepted Accounting Practice in New Zealand (NZ GAAP). They comply with New Zealand equivalents to International Financial Reporting Standards (NZ IFRS) and other applicable Financial Reporting Standards, as appropriate for public benefit entities.

Basis of measurement

The accounting principles recognised as appropriate for the measurement and reporting of results and financial position on a historic cost basis have been applied.

Functional and presentational currency

These financial statements are presented in New Zealand dollars (\$) which is the entity's functional currency. All financial information presented in New Zealand dollars has been rounded to the nearest thousand dollars.

Use of estimates and judgements

The process of applying accounting policies requires the Commission to make judgements, estimates and assumptions that affect the reported amounts of assets, liabilities, income and expenses. The estimates and associated assumptions are based on past experience and various other factors that are believed to be reasonable under the circumstances. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimates are revised and in any future periods affected.

The Commission has made the following critical accounting estimates and judgements when preparing these financial statements:

a) Impairment on library

The Commission estimates there are no significant impairment issues in respect of the carrying values of its library collection.

b) Litigation

The Commission has filed proceedings in the High Court in an insider trading case. The Commission has relied on advice from legal counsel in forming a view that the recovery of costs incurred in the filing of proceedings of this matter is appropriately disclosed as a contingent asset under note 18.

Standards amendments and interpretations issued that are not yet effective and have not been early adopted

NZ IAS 1 *Presentation of Financial Statements (revised 2007)* replaces NZ IAS 1 *Presentation of Financial Statements (issued 2004)* and is effective for reporting periods beginning on or after 1 January 2009. The revised standard requires information in financial statements to be aggregated on the basis of shared characteristics and introduces a statement of comprehensive income. The statement of comprehensive income will enable readers to analyse changes in equity resulting from non-owner changes separately from transactions with the Crown in its capacity as "owner". The revised standard gives the Commission the option of presenting items of income and expense and components of other comprehensive income either in a single statement of comprehensive income with subtotals, or in two separate statements (a separate statement of financial performance followed by a statement of comprehensive income). The Commission intends to adopt this standard for the year ending 30 June 2010, and is yet to decide whether it will prepare a single statement of comprehensive income or a separate statement of financial performance followed by a statement of comprehensive income.

SIGNIFICANT ACCOUNTING POLICIES

Significant accounting policies set out below have been applied consistently to all periods presented in these financial statements.

a) Property, plant and equipment

Property, plant and equipment are shown at cost or deemed cost less depreciation, and less any impairment losses (see note 1(o)).

Library collections that had been revalued to fair value immediately prior to 1 July 2004, the date of transition to NZ IFRS, are measured on the basis of deemed cost, being the revalued amount at the date of that revaluation.

The following classes of property, plant and equipment have been depreciated over their economic lives 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,
- > library collections – straight line over ten years,
- > motor vehicle – straight line over five years.

b) Intangible assets

Computer software that is not integral to the operation of the hardware is recorded as an intangible asset and amortised on a straight line basis over a period of three years.

c) Cash and cash equivalents

Cash and cash equivalents comprise cash balances on hand, held in bank accounts, and short term deposits that form part of the Commission's day-to-day cash management. They are short term, highly liquid investments that are readily convertible to known amounts of cash and subject to an insignificant risk of changes in values. They are held for the purpose of meeting short term cash commitments and have short maturities of three months or less.

d) Term deposits

This category includes only term deposits with maturities greater than three months. These deposits are loans and receivables under NZ IFRS. Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. Loans and receivables are recognised initially at fair value plus transaction costs and subsequently measured at amortised cost using the effective interest rate method.

e) Trade and other receivables

Trade and other receivables and GST receivables are stated at cost less impairment losses.

f) Short term employee benefits

Employee entitlements represent the Commission's liability for employee annual leave entitlements. This has been calculated on an accrued entitlement basis which involves recognising the undiscounted amount of short term employee benefits expected to be paid in exchange for service that an employee has already rendered. This is calculated at current remuneration rates.

g) Operating leases

Leases where the lessor retains substantially all the risks and benefits of ownership of the asset are classified as operating leases. Operating lease payments are recognised as an expense in the income statement on a straight line basis over the lease term after taking into account any lease inducements.

h) GST

All items in financial statements are exclusive of GST with the exception of trade and other receivables and trade and other payables which are stated with GST included.

The statement of cash flows has been prepared on a net GST basis. That is, cash receipts and payments are presented exclusive of GST. A net GST presentation has been chosen to be consistent with the presentation of the statement of financial performance and statement of financial position. The net GST component of operating activities reflects the net GST paid to and received from the Inland Revenue Department. The GST component has been presented on a net basis as the gross amounts would not provide meaningful information for financial statement purposes.

i) Trade and other payables

Trade and other payables and GST payable are stated at cost.

j) Financial instruments

A financial instrument is recognised when the Commission becomes party to a financial contract. 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.

Financial instruments comprise trade and other receivables, cash and cash equivalents, term deposits and trade and other payables.

k) Income tax

The Commission is exempt from income tax under the Income Tax Act 2004.

l) Revenue recognition

Government grant is recognised as revenue in the year in which it is appropriated.

Revenue from application fees and recovery of related costs and revenue from administrative services provided to the Takeovers Panel is recognised when the relevant services are provided.

Interest income is recognised as it accrues, based on the effective interest rate inherent in the respective financial instrument. The effective interest rate exactly discounts estimated future cash receipts through the expected life of the financial asset to that asset's net carrying amount. The method applies this rate to the principal outstanding to determine interest income each period.

m) Cost allocation policy

For the purposes of the statement of service performance direct costs are charged directly to outputs. Indirect costs are allocated on the basis of direct labour hours spent on each output.

n) Litigation fund

Reimbursements from the Crown to top up the fund are shown as income in the period to which the Commission's claim for reimbursement relates.

The balance of the fund is disclosed as a component of equity in the statement of financial position. The fund is restricted for approved litigation purposes only.

o) Impairment

The Commission considers at each reporting date whether there is any indication that a non-financial asset may be impaired. If any such indication exists, the asset's recoverable amount is estimated.

Given that the future economic benefits of the Commission's assets are not directly related to the ability to generate net cash flows, the value in use of these assets is measured on the basis of depreciated replacement cost.

At each balance date financial assets such as receivables are assessed for impairment. Trade and other receivables are individually assessed for impairment. This assessment is also made with reference to previous experience with debtors. The recoverable amount is the present value of the estimated future cash flows.

An impairment loss is recognised in the statement of financial performance whenever the carrying amount of an asset exceeds its recoverable amount. Any reversal of impairment losses is also recognised in the income statement.

p) Contingent assets and contingent liabilities

Contingent liabilities are disclosed if the possibility that they will crystallise is not remote. Contingent assets are disclosed if it is probable that the benefits will be realised.

q) Changes in accounting policy

There have been no changes in accounting policies since the date of the last audited financial statements.

r) Superannuation schemes

Obligations for contributions to Kiwisaver and the State Sector Retirement Savings Scheme are accounted for as defined contribution superannuation schemes and are recognised as an expense in the statement of financial performance as incurred.

NOTE 2**BUDGET FIGURES**

The budget figures are those approved by the Commission on 15 June 2007 and published in the Commission's Statement of Intent 2007-2009. The budget figures are prepared in accordance with Generally Accepted Accounting Practice and are consistent with the accounting policies adopted by the Commission for the preparation of the financial statements.

NOTE 3**ADMINISTRATIVE SERVICES TO THE TAKEOVERS PANEL**

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

NOTE 4 REVENUE AND EXPENSE

2008 Budget \$000's		Note	2008 Actual \$000's	2007 Actual \$000's
Other income				
–	Miscellaneous income		7	1
–			7	1
Personnel expenses				
4,548	Staff expenses		4,472	3,945
335	Members' fees		702	654
4,883			5,174	4,599
Depreciation and amortisation				
328	Depreciation	11	317	345
16	Amortisation	12	19	19
344			336	364
Other operating expenses				
16	Auditors – audit fees		19	15
–	Auditors – audit fees for transition to NZ IFRS		–	1
65	Communication charges		55	54
370	Printing and stationery		318	320
750	Professional services		744	666
585	Services and supplies		602	581
546	Travel and accommodation		564	477
2,332			2,302	2,114

NOTE 5 LITIGATION FUND

The Government has agreed to fund a litigation fund of \$843,750 and to make top-ups as necessary to maintain the fund up to a maximum of \$2,920,000 for the year ended 30 June 2008. The fund is to be used solely for approved litigation costs incurred by the Securities Commission in taking or defending eligible cases.

A summary of the movements in the fund during the year is as follows:

	2008 \$000's	2007 \$000's
Opening balance	844	844
Government grant revenue	16	243
Interest income	64	49
Settlements and cost recoveries	1,996	–
Expenditure on eligible litigation	(54)	(292)
Closing balance	2,866	844
Comprising		
Cash and cash equivalents		
- Current account	79	92
- Call account	99	91
- Short term deposits	-	-
Term deposits	650	575
	828	758
Trade and other receivables	2,038	93
	2,866	851
Trade and other payables	-	(7)
Balance	2,866	844

NOTE 6 MANAGEMENT OF EQUITY

The Commission seeks to maintain sufficient equity to enable it to be able to manage its on-going operations and obligations. Surplus funds are invested having regard to the cash flow profile of future commitments. There have been no material changes in the Commission's management of equity during the period compared with the previous period.

The Commission is not subject to any externally imposed equity requirements.

NOTE 7 FINANCIAL INSTRUMENTS

Credit risk

Credit risk represents the risk that a counterparty will default on its contractual obligations to the Commission. Financial instruments which subject the Commission to credit risk consist of bank balances, bank term deposits, trade and other receivables. The maximum exposure to credit risk at the reporting date is the carrying amount of those instruments as detailed in note 8.

There is limited credit risk for the Commission because most of the financial assets are the Commission's cash or investments. These are deposits with Westpac Banking Corporation which is a registered bank in New Zealand and is rated Moody's Aa2 and Standard & Poors AA for its long term credit rating.

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

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

Liquidity risk

Liquidity risk represents the Commission's ability to meet its contractual obligations associated with financial liabilities. The Commission evaluates its liquidity requirements on an on-going basis by preparing quarterly budget analyses which are used to manage the timing of investment maturity with payments due. The Commission's creditors are mainly those reported as trade and other payables. The Commission aims to pay these within normal commercial terms, that is, by the 20th of the month, if not earlier.

Employee entitlements comprise obligations for employee accumulated leave. This obligation is extinguished when leave is taken. Staff are encouraged to take leave within the year in which it vests.

The Commission has cash and other short term deposits that it can use to meet its on-going payment obligations.

Market risk

The only market risk that the Commission is subject to is interest rate risk. Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. As term deposits are at fixed rates, and therefore do not fluctuate, the market risk the Commission is exposed to does not impact its reported financial performance and/or equity.

Details are as follows:

	Effective interest rate	Total \$000's	Maturities 3 months or less \$000's	Maturities greater than 3 months \$000's
2008				
Cash and cash equivalents				
- Current account	3.50%	45	45	–
- Call account	7.45%	3	3	–
Term deposits	8.79%	1,632	–	1,632
		1,680	48	1,632
Cash and cash equivalents - litigation fund				
- Current account	3.50%	79	79	–
- Call account	7.45%	99	99	–
Term deposits	8.79%	650	–	650
		828	178	650
2007				
Cash and cash equivalents				
- Current account	3.50%	43	43	–
- Call account	7.20%	52	52	–
Term deposits	7.63%	1,950	–	1,950
		2,045	95	1,950
Cash and cash equivalents - litigation fund				
- Current account	3.50%	92	92	–
- Call account	7.20%	91	91	–
Term deposits	7.69%	575	–	575
		758	183	575

Term deposits are made for varying periods of up to, and including, three months depending on the immediate cash requirements of the Commission, and earn interest at the respective short term deposit rates.

The Commission interest rate risk is limited to interest on term investments, the maturities of which are shown above.

Sensitivity analysis

As at 30 June 2008, if the floating interest rate on call deposits had been 100 basis points higher or lower, with all other variables held constant, the surplus/deficit for the year would have been \$1,020 (2007: \$1,430) higher or lower.

Fair values

All financial instruments are recognised in the statement of financial position and are stated at carrying amounts. Given their short term nature, the carrying amounts are considered a reasonable approximation of their fair values.

There has been no change from the previous period in the Commission's exposure to risks, how they arise, or in the Commission's objectives, policies and processes for managing the risk and the methods used to measure the risks.

NOTE 8 CATEGORIES OF FINANCIAL ASSETS AND FINANCIAL LIABILITIES

The carrying amounts of financial assets in the NZ IAS 39 categories are as follows:

	2008 \$000's	2007 \$000's
Loans and Receivables		
Cash and cash equivalents	48	95
Term deposits	1,632	1,950
Interest receivable – other	104	113
GST receivable	51	60
Trade and other receivables	2,077	131
Cash and cash equivalents – litigation fund	178	183
Term deposits – litigation fund	650	575
Interest receivable – litigation fund	42	30
Total loans and receivables	4,782	3,137

Financial liabilities at amortised cost:

	2008 \$000's	2007 \$000's
Trade payables	331	266
Employee entitlements	210	123
	541	389

NOTE 9 INCOME FROM FINANCIAL ASSETS

	2008 \$000's	2007 \$000's
Loans and Receivables		
Interest – other	214	191
Interest – litigation fund	64	49
Total interest income from loans and receivables	278	240

NOTE 10 TRADE AND OTHER RECEIVABLES

	2008 \$000's	2007 \$000's
Trade receivables	2,069	51
Receivables from the Crown	8	80
Interest receivable	146	143
	2,223	274

The Commission filed proceedings against six defendants for insider trading (Securities Commission v Midavia Rail Investments and Other) on 13 October 2004. Subsequently, the Commission reached a settlement agreement with all the defendants. The first settlement of \$1,995,910 was approved by the High Court on 29 March 2008 and is expected to be released to the Commission in 2008/09 after a final decision of the High Court regarding taxation, including GST. This is included in Trade Receivables.

The status of trade and other receivables as at 30 June 2008 is as follows:

	Total \$000's	Not past due \$000's	Up to 30 days past due \$000's	Over 30 days past due \$000's
<i>Trade and other receivables</i>				
2008				
Gross receivables	2,223	2,166	17	40
Impairment	—	—	—	—
	2,223	2,166	17	40
2007				
Gross receivables	274	249	7	18
Impairment	—	—	—	—
	274	249	7	18

NOTE 11 PROPERTY, PLANT AND EQUIPMENT

	Office equipment \$000's	Office furniture \$000's	Leasehold improvements \$000's	Library \$000's	Motor vehicle \$000's	Total \$000's
At 1 July 2007						
Net of accumulated depreciation	120	185	790	183	29	1,307
Additions	203	46	44	33	64	390
Disposals	—	—	—	—	(24)	(24)
Depreciation charge for the year	(99)	(43)	(142)	(20)	(13)	(317)
At 30 June 2008, net of accumulated depreciation	224	188	692	196	56	1,356
At 30 June 2007						
Cost	793	443	1,268	237	64	2,805
Accumulated depreciation	(673)	(258)	(478)	(54)	(35)	(1,498)
Net book value	120	185	790	183	29	1,307
At 30 June 2008						
Cost	996	489	1,312	270	64	3,131
Accumulated depreciation	(772)	(301)	(620)	(74)	(8)	(1,775)
Net book value	224	188	692	196	56	1,356
At 1 July 2006						
Net of accumulated depreciation	203	225	913	171	42	1,554
Additions	45	6	17	30	—	98
Disposals	—	—	—	—	—	—
Depreciation charge for the year	(128)	(46)	(140)	(18)	(13)	(345)
At 30 June 2007, net of accumulated depreciation	120	185	790	183	29	1,307
At 30 June 2006						
Cost	748	437	1,251	207	64	2,707
Accumulated depreciation	(545)	(212)	(338)	(36)	(22)	(1,153)
Net book value	203	225	913	171	42	1,554
At 30 June 2007						
Cost	793	443	1,268	237	64	2,805
Accumulated depreciation	(673)	(258)	(478)	(54)	(35)	(1,498)
Net book value	120	185	790	183	29	1,307

NOTE 12 COMPUTER SOFTWARE

	2008 \$000's	2007 \$000's
Gross carrying amount	140	124
Accumulated amortisation	(115)	(96)
Net carrying amount	25	28
	2008 \$000's	2007 \$000's
Opening accumulated amortisation	(96)	(77)
Amortisation	(19)	(19)
Closing accumulated amortisation	(115)	(96)
	2008 \$000's	2007 \$000's
Opening net carrying amount	28	33
Additions	16	14
Amortisation	(19)	(19)
Closing net carrying amount	25	28

NOTE 13 TRADE AND OTHER PAYABLES

	2008 \$000's	2007 \$000's
Trade payables	331	266
Employee entitlements	210	123
	541	389

NOTE 14 RENT HOLIDAY LIABILITY

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 15 RECONCILIATION OF THE NET SURPLUS FROM OPERATIONS WITH THE NET CASH FLOWS FROM OPERATING ACTIVITIES

	2008 \$000's	2007 \$000's
Reported surplus	1,551	457
Add (less) non-cash items:		
- Allocation of receipt of rent-free period	(13)	(13)
- Depreciation/amortisation	336	364
	323	351
Add (less) movement in working capital:		
- Increase (decrease) in creditors	153	(9)
- Decrease (increase) in receivables	(1,940)	42
	(1,787)	33
Net cash flows from operating activities	87	841

NOTE 16 LEASE COMMITMENTS

The Commission has the following operating lease commitments. These amounts are the total of minimum future lease payments under the Commission's non-cancellable operating leases.

	2008 \$000's	2007 \$000's
- Not later than 1 year	655	573
- Later than 1 year and not later than 5 years	2,347	2,619
- Later than 5 years	—	382

The Commission rents its premises under an operating lease that ends on 1 February 2013. This lease gives the Commission the right to renew the lease for 3 years subject to a mutually agreed re-determination of the lease rental. The lease specifies that the Commission is required to make good the premises to the original condition on termination of the lease. The make good amount is estimated at \$20,000.

NOTE 17 CAPITAL COMMITMENTS

Estimated capital expenditure contracted for at balance date but not provided for: Nil (2007 – \$30,238).

NOTE 18 CONTINGENT LIABILITIES AND CONTINGENT ASSETS

Contingent liabilities

There are no contingent liabilities at balance date. (2007 – Nil)

Contingent assets

For the Tranz Rail insider trading matter, the Commission expects to receive approval for further costs, already incurred and likely to be incurred, pending the final distribution decision of the High Court. The final amount of any such distribution to the Commission under section 19 of the Securities Markets Act 1988 is contingent on a decision of the High Court.

NOTE 19 PROFESSIONAL INDEMNITY INSURANCE

The Commission has effected a professional indemnity insurance policy to provide cover for Members and employees of the Commission as the Commission performs its duties and statutory functions.

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NOTE 20 SUBSEQUENT EVENTS

There were no material events subsequent to balance date that would affect the interpretation of the financial statements or the performance of the Commission. (2007 – Nil)

NOTE 21 TRANSACTIONS WITH RELATED PARTIES

Transactions with other entities within the Crown

The Commission is an independent Crown entity under the Crown Entities Act 2004. The Commission is wholly owned by the Crown and the Government is its major source of revenue.

The Commission has entered into a number of transactions with other entities within the Crown on an arm's length basis. Where those parties are acting in the course of their normal dealings with the Commission, related party disclosures have not been made for transactions of this nature. NZ IFRS provides an exemption for public entities from having to make disclosures in respect of transactions between related parties subject to common control or significant influence by the Crown for transactions that would occur within a normal supplier or client/recipient relationship on terms and conditions no more or less favourable than those which it is reasonable to expect the entity would have adopted if dealing with that entity at arm's length in the same circumstances. Therefore, in accordance with NZ IFRS such transactions are not disclosed in these financial statements.

As indicated in the statement of financial performance, income is received from a Government grant and from administrative services provided to the Takeovers Panel.

Transactions with suppliers

During the year the Commission incurred expenses of:

	Transaction	Transaction value Year ended 30 June		Balance outstanding Year ended 30 June	
		2008	2007	2008	2007
A.M. Cotton and J.M.G. Perry	Genesis Energy	57,612	55,623	6,044	6,149
D.A.Jackson	New Zealand Institute of Chartered Accountants	4,584	6,734	–	–
M. Chen	Chen Palmer Barristers and Solicitors	–	1,021	–	–
J.M.G. Perry	Kiwi Income Property Trust Limited	504,511	524,866	–	–
Phillip Meyer	Enterprise New Zealand Trust	55,000	85,000	–	–

- > Genesis Energy, a firm of which A.M. Cotton, Member of the Commission is a director and J.M.G. Perry, Member of the Commission until April 2008, is a director. The expenses related to office electricity charges which were charged on normal commercial terms.
- > New Zealand Institute of Chartered Accountants, of which D.A. Jackson, Member of the Commission, was a member of the Executive Board until September 2007. The expenses relating to membership fees, course fees and publications which were charged on normal commercial terms.
- > Chen Palmer Barristers and Solicitors, of which M. Chen, Member of the Commission, is a partner. Prior year expenses related to legal advice were charged on normal commercial terms.
- > Kiwi Income Property Trust Limited, of which J.M.G. Perry, Member of the Commission until April 2008, is a director. The expenses related to office rent and maintenance which were charged on normal commercial terms.
- > Enterprise New Zealand Trust, of which Phillip Meyer, the husband of the Chairman is a trustee on a voluntary basis. Expenses relate to sponsorships of investment education in schools.

These transactions are on normal commercial terms and there are no other material transactions between Members and the Commission in any capacity other than that to which they were appointed.

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

Compensation of key personnel

Key personnel comprise the Chairman, Members of the Commission and the senior management team.

	2008 \$000's	2007 \$000's
Short term employee benefits comprise:		
- Members' fees	318	323
- Chairman's salary	384	331
- Chairman's motor vehicle benefit	34	34
- Senior management team remuneration	1,070	1,098
	<u>1,806</u>	<u>1,786</u>

Composition of Members' fees

Members fees are paid on the basis of time spent on the work of the Commission and were:

	2008 \$000's	2007 \$000's
C.A.N. Beyer	43	33
M. Chen	21	17
A.M. Cotton	54	64
K.D. Dunstan	49	61
J.L. Holland	29	8
D.A. Jackson	14	21
L.A.J. Kavanagh	–	21
J.M.G. Perry	30	43
C.A. Quinn	46	14
N.O. Todd	32	41
	<u>318</u>	<u>323</u>

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 2008	Number of Employees 2007
260,001 to 270,000	1	–
250,001 to 260,000	–	–
240,001 to 250,000	–	1
230,001 to 240,000	1	–
220,001 to 230,000	–	–
210,001 to 220,000	1	1
200,001 to 210,000	–	–
190,001 to 200,000	–	1
180,001 to 190,000	–	–
170,001 to 180,000	2	1
160,001 to 170,000	–	1
150,001 to 160,000	–	1
140,001 to 150,000	1	–
130,001 to 140,000	1	1
120,001 to 130,000	3	2
110,001 to 120,000	1	–
100,001 to 110,000	4	5

No compensation or other benefits were paid to persons who ceased to be Members or employees during the year in relation to that cessation.

NOTE 22 BUDGET VARIANCES

(a) *Operating Income*

Significant variances from budget were:

- i) reduced income from services to Takeovers Panel due to renegotiated arrangements where Panel has started taking direct responsibility for employing its staff
- ii) reduced exemptions and authorisation fees due to market activity impacts.

(b) *Operating Expense*

Significant variances from budget were the increased personnel expenses due to higher than expected recruitment of new and replacement staff for the Commission's increasing workloads.

(c) *Litigation income and expenditure*

Significant variances from budget were the reduced litigation expenses, and hence income, due to lower than expected litigation activity.

STATEMENT OF OBJECTIVES

for the year ending 30 June 2008

Funds are to be appropriated by Parliament for the year to 30 June 2008 for the stated purpose of:

- > “Enforcement – inquiring into suspected breaches of securities law and intervening in the interests of investors in accordance with statutory powers.
- > Monitoring and market oversight – maintaining oversight of securities market activity and taking actions in accordance with statutory powers.
- > Enforcement-based law and practice reform – reviewing securities law and practice and making recommendations for reform.
- > Exemptions and authorisations – considering and deciding on applications for exemptions from the provisions of the Securities Act 1978, 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.
- > International recognition – 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 – 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 2008, Volume 1: 149-150).

STATEMENT OF SERVICE PERFORMANCE

*Performance standards and measures for the outputs of the Commission
for the year ended 30 June 2008*

OUTPUT 1 Enforcement – inquiring into suspected breaches of securities law and intervening in the interests of investors in accordance with statutory powers.

Activities	Take enforcement action in the following areas:
<i>Primary market</i>	offer documents, illegal offers, contributory mortgages.
<i>Secondary market</i>	insider trading, market manipulation, secondary market disclosures (substantial security holder disclosure, continuous disclosure, disclosure of trading by directors and officers).
<i>Intermediaries</i>	futures dealers, investment advisers.

This is done by:

- > prohibiting advertising,
- > removing offer documents from the market,
- > taking civil enforcement action in the Courts,
- > referring for prosecution,
- > acting on behalf of overseas commissions,
- > making other compulsory orders.

Performance measures ENFORCEMENT	Performance standards	
	Actual	Budget
	2008	2008
<i>Quantity</i>		
Complete the enforcement actions that meet the Commission's case selection criteria, relating to the above matters.	6	5
Enforcement resources are applied in accordance with established targets subject to variances under the Commission's case selection and public interest criteria.	Full compliance	Full compliance
<i>Quality</i>		
Enforcement actions achieve the desired regulatory result.	100%	80%
There is no successful judicial review of the Commission's decisions or actions.	100%	100%
<i>Timeliness</i>		
Progress civil enforcement actions from investigation to the filing of proceedings.	There were no civil enforcement actions to progress	On average, within 24 months of commencement of investigation
Complete other enforcement actions.	2.0 months	On average, within 6 months of action commencing
<i>Cost</i>		
Expenditure allocated to enforcement work.	2%	4%

OUTPUT 2 Monitoring and market oversight – maintaining oversight of securities market activity and taking actions in accordance with its statutory powers.

Activities	Maintain oversight of securities markets and take appropriate action in the following areas:	
	<i>Market oversight</i>	NZX oversight, corporate governance, financial reporting.
	<i>Primary market</i>	offer documents, illegal offers, contributory mortgages.
	<i>Secondary market</i>	insider trading, market manipulation, secondary market disclosures (substantial security holder disclosure, continuous disclosure and disclosure of trading by directors and officers).
	<i>Intermediaries</i>	futures dealers, investment advisers.
	This is done by:	
	> overseeing the operation of NZX,	> using compulsory information-gathering powers (inspections, summons),
	> reviewing practices of market participants and issuers,	> commenting publicly on market practice,
	> assessing referrals from NZX,	> accepting enforceable undertakings,
	> monitoring market disclosures,	> reviewing financial reporting by issuers,
	> reviewing offer documents and advertisements for securities,	> reviewing corporate governance reporting,
	> responding to public complaints,	> acting on behalf of overseas commissions.

Performance measures	Performance standards	
	Actual	Budget
	2008	2008
MONITORING AND MARKET OVERSIGHT		
<i>Quantity</i>		
Complete the monitoring and market oversight matters relating to matters listed above.	77	155
Complete NZX oversight review.	1	1 time in the year
Complete financial reporting surveillance programme.	2 cycles completed	2 cycles in the year
Advise the Minister on proposed changes to Conduct Rules of the NZX.	NZX had no proposed changes	2 times in the year
Consider and comment on continuous disclosure applications under the MOU with the NZX.	8 times	6
MMO resources are applied in accordance with established targets subject to variances under the Commission's case selection and public interest criteria	Full compliance	Full compliance
<i>Quality</i>		
There is no successful judicial review of the Commission's decisions or actions.	100%	100%
Percentage of cases where compliance breaches or poor standards of conduct in the markets are identified and the desired regulatory result is achieved.	100%	90%
<i>Timeliness</i>		
Complete monitoring and market oversight matters.	2.91 months	On average within 3 months
Complete NZX oversight review.	5.1 months	Within 6 months
Complete financial reporting surveillance programme.	8.5 months	On average, within 9 months of commencing each cycle
Advice is provided to the Minister on approvals of, or proposed changes to, the NZX Conduct Rules within timeframes agreed with the NZX and allowing the Minister to exercise powers within the timeframes specified in the Securities Markets Act 1988.	NZX had no approvals or proposed changes	100%
<i>Cost</i>		
Expenditure allocated to monitoring and market oversight.	37%	41%

OUTPUT 3 **Law and practice reform – reviewing securities law and practice and making recommendations for reform.**

- Activities**
- > Contribute to Government law reform programmes.
 - > Recommend changes to corporate and securities law.
 - > Comment on accounting and other industry standards and codes.

Performance measures LAW AND PRACTICE REFORM	Performance standards	
	Actual	Budget
	2008	2008
<i>Quantity</i>		
Make recommendations for securities law reform and improved market practice in accordance with obligations under the Securities Act 1978 and other relevant legislation.	In September the Commission made a recommendation for urgent changes to the Securities Regulations 1983 to strengthen the power of trustees of finance companies. This was accepted and amendments came into force on 21 September 2007	The Commission will make recommendations to comply with its obligations under the Securities Act 1978 and with other relevant legislation. The Commission's contributions to law reform will arise in particular from the experience gained in the course of its enforcement work
Review exposure drafts of financial reporting and auditing standards, and Financial Reporting Act.	Reviewed 3 exposure drafts. In August the Commission made a recommendation to the Ministry of Economic Development to consider a review of independent auditor oversight in NZ so it may be brought into line with international best practice	Review as required
Participate in projects and reviews with the Ministry of Economic Development, other government departments and interested parties.	Participated in MED projects and reviews being: 1. Securities Legislation Bill Regulations 2. Review of Financial Products and Providers 3. Review of Financial Intermediaries 4. Non-bank deposit takers and Ministry of Justice's Anti-Money Laundering proposals	Participation as required
<i>Quality</i>		
Make recommendations for securities law reform and improved market practice in accordance with obligations under the Securities Act 1978 and other relevant legislation; quality of advice and assistance on MED reform programmes satisfies MED.	MED has advised it is satisfied with the quality of advice and assistance given. Recommendations to strengthen the powers of trustees of finance companies were accepted by Cabinet	MED is satisfied with the quality of advice and assistance given
<i>Timeliness</i>		
Provide information and responses to the Ministry of Economic Development and others within agreed timeframes.	100%	100%
<i>Cost</i>		
Expenditure allocated to law and practice reform.	7%	7%

OUTPUT 4 Exemptions and authorisations – considering and deciding on applications for exemptions from the provisions of the Securities Act 1978, Securities Markets Act 1988 and the Securities Regulations 1983; considering and deciding on applications for authorisation of market participants, including futures exchanges and dealers, trustees and statutory supervisors; reviewing existing authorisations.

- Activities**
- > Receive and consider applications for exemption from securities law.
 - > Review existing exemptions.
 - > Undertake special review projects relating to policy on exemptions.
 - > Authorise futures dealers and exchanges.
 - > Consider amendments to futures exchange rules.
 - > Approve NZFOX participant rules.
 - > Approve trustees and statutory supervisors.
 - > Review existing authorisations.

Performance measures EXEMPTIONS AND AUTHORISATIONS	Performance standards	
	Actual	Budget
	2008	2008
<i>Quantity</i>		
Consider all applications for exemptions and authorisations of market participants.	Considered all applications The Commission completed its 5-yearly review of class exemptions	All applications
Review existing exemption notices and authorisations.	Reviewed as required	As required
<i>Quality</i>		
The Regulations Review Committee does not recommend disallowance of notices, and notices are not successfully judicially reviewed.	100%	100%
Proportion of notices issued which comply with the Commission's internal processes.	100%	100%
<i>Timeliness</i>		
Percentage of exemption applications and authorisations completed within 6 weeks of receiving all necessary information or within other period agreed with applicant.	100%	100%
<i>Cost</i>		
Expenditure allocated to exemptions and authorisations.	7%	8%

- OUTPUT 5** **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.**
- Activities**
- > Promote New Zealand's markets and regulatory environment.
 - > Take part in the work of IOSCO's:
 - Executive Committee (Jane Diplock is Chairman of this committee),
 - Asia Pacific Regional Committee (Jane Diplock is Deputy Chairman),
 - Committee on the Implementation of Objectives and Principles of Securities Regulation,
 - Communications Group.
 - > Meet and confer with overseas regulators and institutional investors.
 - > Contribute to implementation of the FSAP recommendations.
 - > Respond to enquiries from overseas about New Zealand's regulatory regime.
 - > Participate in the international standard setting process by completing comparative surveys on securities law and regulation.
 - > Fulfil the obligations under the IOSCO MMOU and bilateral MOUs.
 - > Contribute towards trans-Tasman initiatives.

Performance measures INTERNATIONAL RECOGNITION	Performance standards	
	Actual	Budget
	2008	2008
<i>Quantity</i>		
Take part in the work of IOSCO's Executive Committee, Asia Pacific Regional Committee and Implementation of Objectives and Principles of Securities Regulation Committee.	<p>The Chairman was re-elected chair of IOSCO's Executive Committee for a third 2-year term. The Commission was also re-elected Vice-chair of the Asia-Pacific Regional Committee</p> <p>Attended a series of IOSCO meetings in Dubai, Tokyo, South Korea, Amsterdam and Paris</p> <p>The regulator's perspective was presented at the IASC Foundation's conference on IFRS in Singapore</p> <p>Contributed to the IOSCO IFRS Database as Moderator and recorded a decision in the Database</p> <p>Completed the recruitment process of the next Secretary General of IOSCO and met with the new Secretary General and his team</p> <p>The Commission also took part in the work of the IOSCO MMOU Screening Group</p> <p>The Commission's proposal for NZAID funding to assist the securities regulator of Papua New Guinea to apply to the IOSCO MMOU was approved</p>	100% of relevant meetings
Make presentations at IOSCO meetings which promote New Zealand's markets and regulatory environment.	<p>A heavy schedule of speaking and meeting commitments with both IOSCO related and wider business audiences was completed, and opportunities taken to promote New Zealand's markets and regulatory environment in over 70% of cases</p> <p>Bilateral MOUs were signed with the Emirates Securities and Commodities Authority (ESCA), and the Securities Commission of Jordan</p>	60% of meetings attended
Meet with ASIC.	Meetings were held with ASIC in October and March	Twice per year
Meet with overseas regulators and institutional investors.	<p>The Commission hosted delegations of regulators and government officials from Vietnam and the Trade Minister of the UAE (former Minister for the Economy and Chairman of ESCA)</p> <p>Met with several regulators during IOSCO meetings and bilateral country visits</p>	As required

Performance measures INTERNATIONAL RECOGNITION	Performance standards	
	Actual	Budget
	2008	2008
<i>Quantity</i>		
Contribute towards trans-Tasman initiatives.	<p>The Commission presented a New Zealand regulatory perspective on CER at ASIC's Summer School</p> <p>The Commission and ASIC developed and published a joint protocol and a joint guide to facilitate the implementation of the Mutual Recognition of Securities Offerings that came into force on 13 June 2008</p> <p>The Chairman took part in the Australia New Zealand Leadership Forum</p>	As required
<i>Quality</i>		
The Commission will present itself as a constructive and cooperative member of the international community of regulators. Views expressed to IOSCO will take into account the relevant New Zealand values and principles.	The Commission presented itself constructively and cooperatively at the international level. Views expressed to IOSCO were congruent with New Zealand's values and principles	Presentations include information about NZ's regulatory environment
Cooperative work with ASIC is completed to agreed standards and timeframes.	100%	100%
<i>Timeliness</i>		
Presentations at meetings and responses to committees provided within agreed timeframes.	100%	100%
Contribute towards trans-Tasman initiatives, within agreed timeframes.	100%	100%
Obligations under MOUs with overseas regulators are fulfilled within mutually agreed timeframes.	100%	100%
<i>Cost</i>		
Expenditure allocated to international liaison work.	19%	14%

OUTPUT 6 Public understanding - promoting public understanding of the law and practice of securities.

- Activities**
- > Publish *The Bulletin*, annual report and other documents.
 - > Respond to public inquiries.
 - > Manage the website.
 - > Maintain relationships with the news media.
 - > Develop and implement a public education programme.

Performance measures PUBLIC UNDERSTANDING AND MARKET PRESENCE	Performance standards	
	Actual	Budget
	2008	2008
<i>Quantity</i>		
Publish <i>The Bulletin</i> .	July / October / January / April	4 times a year
Deal with inquiries from the public.	1,572 inquiries	All inquiries
Manage the Commission's website.	Website was available 99.52% of the time	Website is available 95% of the time
Develop and implement public education projects.	Implemented sub-projects Risk and Return, New Law Investment Advisers, New Law Investors, and Youth	3 sub-projects are implemented per year
<i>Quality</i>		
Readers respond that <i>The Bulletin</i> is interesting and relevant.	100% of reader responses found it very useful or useful	80% of reader response to survey
Education projects meet their set measures of success.	Objectives for above sub-projects met	90% of measures of success for each sub-project are met
Inquiries are dealt with effectively.	No complaints received	Absence of material number of complaints
Market tests indicate the <i>Guide to the New Law</i> is useful and relevant.	Testing with investment advisers and directors indicated the guide is useful and relevant	Market test reports indicate guide is useful and relevant
<i>Timeliness</i>		
<i>The Bulletin</i> is produced on time.	July / October / January / April	July / October / January / April
Education projects are carried out to agreed timetables.	Sub-project milestones achieved except for: New Law – reactivated after Regulations approved December 07, and Youth student study guides deferred awaiting NZQA decisions	Sub-project milestones are achieved
Public inquiries are handled within 5 working days of receipt.	100%	95%
New information is published on the website without delay	New information was available on the website within 3 days of receipt	New information is available on the website within 3 days of receipt
Meetings with, and responses to, news media meet agreed timetables.	At all times	At all times
<i>Cost</i>		
Expenditure allocated to public understanding.	13%	11%

OUTPUT 7 Takeovers Panel – providing administrative and support services by agreement.**Activities**

Provide services related to the Panel's outputs including:

- > review of Takeovers Code,
- > approvals,
- > exemptions,
- > enforcement,
- > market practice,
- > public understanding,
- > international liaison,
- > administration.

Performance measures	Performance standards	
	Actual	Budget
	2008	2008
TAKEOVERS PANEL		
<i>Quantity, Quality and Timeliness</i>		
Services are provided as per the MOU between the Panel and the Commission.	In accordance with the MOU	In accordance with the MOU
<i>Cost</i>		
Expenditure allocated to providing administrative services to Takeovers Panel.	15%	15%

AUDIT REPORT

TO THE READERS OF THE SECURITIES COMMISSION'S FINANCIAL STATEMENTS AND STATEMENT OF SERVICE PERFORMANCE FOR THE YEAR ENDED 30 JUNE 2008

The Auditor-General is the auditor of the Securities Commission (the Commission). The Auditor-General has appointed me, Robert Cox, using the staff and resources of Audit New Zealand, to carry out the audit on his behalf. The audit covers the financial statements and statement of service performance included in the annual report of the Commission for the year ended 30 June 2008.

UNQUALIFIED OPINION

In our opinion:

- > The financial statements of the Commission on pages 22 to 37:
 - > comply with generally accepted accounting practice in New Zealand; and
 - > fairly reflect:
 - the Commission's financial position as at 30 June 2008; and
 - the results of its operations and cash flows for the year ended on that date.
- > The statement of service performance of the Commission on pages 39 to 46:
 - > complies with generally accepted accounting practice in New Zealand; and
 - > fairly reflects for each class of outputs:
 - its standards of delivery performance achieved, as compared with the forecast standards outlined in the statement of forecast service performance adopted at the start of the financial year; and
 - its actual revenue earned and output expenses incurred, as compared with the forecast revenues and output expenses outlined in the statement of forecast service performance adopted at the start of the financial year.

The audit was completed on 17 July 2008, and is the date at which our opinion is expressed.

The basis of our 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 the audit to obtain all the information and explanations we considered necessary in order to obtain reasonable assurance that the financial statements and statement of service performance 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 and statement of service performance. If we had found material misstatements that were not corrected, we would have referred to them in our opinion.

The audit involved performing procedures to test the information presented in the financial statements and statement of service performance. 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;
- > determining whether accounting policies are appropriate and consistently applied; and
- > determining whether all financial statement and statement of service performance disclosures are adequate.

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

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

RESPONSIBILITIES OF THE MEMBERS OF THE COMMISSION AND THE AUDITOR

The Members of the Commission are responsible for preparing the financial statements and statement of service performance in accordance with generally accepted accounting practice in New Zealand. The financial statements must fairly reflect the financial position of the Commission as at 30 June 2008 and the results of its operations and cash flows for the year ended on that date. The statement of service performance must fairly reflect, for each class of outputs, the Commission's standards of delivery performance achieved and revenue earned and expenses incurred, as compared with the forecast standards, revenue and expenses adopted at the start of the financial year. The Members of the Commission's responsibilities arise from the Crown Entities Act 2004.

We are responsible for expressing an independent opinion on the financial statements and statement of service performance and reporting that opinion to you. This responsibility arises from section 15 of the Public Audit Act 2001 and the Crown Entities Act 2004.

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.

Other than the audit, we have no relationship with or interests in the Commission.



Robert Cox
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 2008 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 website. We accept no responsibility for any changes that may have occurred to the financial statements since they were initially presented on the website.

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 17 July 2008 to confirm the information included in the audited financial statements presented on this website.

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

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