

Briefing Paper

for

**Minister of Commerce
Hon Simon Power**

20 November 2008

Securities Commission

Level 8, Unisys House
56 The Terrace
Wellington

CONTENTS

INTRODUCTION.....	5
CURRENT PUBLIC ISSUES	5
Supervision of financial advisers.....	5
Enforcement.....	6
Finance companies and mis-selling of financial products	6
Tranz Rail settlements.....	7
Law reform.....	7
Capital Market Development Taskforce.....	7
Disclosure under the Securities Regulations 1983.....	7
Securities Act review	7
Mutual recognition arrangements.....	8
Independent audit oversight	8
Market regulation.....	8
BACKGROUND.....	9
The Commission	9
Members of the Commission.....	9
Role and powers of the Commission	9
Resourcing – Vote Commerce.....	11
Relationships – the Government and regulatory environment.....	11
Registrar of Companies and National Enforcement Unit	11
Ministry of Economic Development – Business Law Unit.....	12
NZX.....	12
Takeovers Panel	13
Other agencies.....	13
Public education	13
Industry groups.....	13
Market participants	14
International relationships.....	14
International Organisation of Securities Commissions (IOSCO).....	14
Australian Securities and Investments Commission.....	14
Other overseas securities regulators	15
Other overseas bodies.....	15
Securities markets.....	15
Primary and secondary markets	15
The listed securities markets.....	16
Futures markets	16
Unregistered securities markets	16
Collective investment schemes	16
Unlisted debt – finance companies, banks, corporate bonds.....	17
Intermediaries.....	17
APPENDIX – MEMBERS OF THE COMMISSION	18

INTRODUCTION

The Securities Commission is an independent Crown entity established under the Securities Act 1978. It is New Zealand's main regulator of the securities markets.

Our purpose is to strengthen investor confidence and foster capital investment in New Zealand by promoting the efficiency, integrity and cost-effective regulation of our securities markets. The efficiency and integrity of capital markets – and of the financial sector as a whole – is fundamental to investor confidence, underpinning the sustainability of New Zealand's economic development.

In recent years the Commission's responsibilities have expanded to include enforcement, market supervision and now oversight of financial intermediaries. The enactment in September of the Financial Advisers Act and the Financial Service Providers (Registration and Dispute Resolution) Act positions us as a financial services regulator, with a broad remit spanning market participants, intermediaries, investors and consumers.

CURRENT PUBLIC ISSUES

The current international market turmoil demands a multi-faceted regulatory response to restore investor confidence, to boost industry professionalism and to sustain the domestic and international reputation of New Zealand's financial system. Our immediate priorities are:

- bringing into operation the regime for supervision of financial advisers
- enforcement related to finance companies and mis-selling of financial products
- law reform to facilitate capital raising in New Zealand regarding
 - Capital Market Development Taskforce recommendations
 - mutual recognition arrangements.

These matters are outlined below along with other current related issues.

Supervision of financial advisers

The financial advisers legislation was passed at the end of September and a key focus for us is to bring into operation the regime as soon as possible. Early implementation of the financial advisers legislation is important to restore investor confidence. Timely implementation will also mean that investors are able to obtain sound financial guidance when the two year Government deposit guarantee scheme is lifted in late 2010. Sufficient funding to implement this has not yet been appropriated.

The financial advisers legislation places the Commission and other agencies involved in an ideal position to strengthen the financial services regulatory framework, build partnerships with industry to promote professional behaviour, and overhaul strategies to educate and protect consumers. It offers Government an ideal opportunity, given recent events in world markets, to reinforce its commitments to strengthening the financial system and consumer protection.

The objective of enhancing professionalism is underpinned by the need to implement high standards of competence across the financial services sector, particularly with financial

advisers who represent, for investors and consumers, the most visible face of the finance sector. The effective setting of competence standards, assessment of adviser competence (knowledge based and “on-the-job”) and delivery of training require effort by the tertiary education network. Initiatives are now required by the relevant industry training organisation to help re-align capacity in the public and private training sectors to swiftly deliver to the financial services industry.

Over 2009 the policy framework for the financial advisors legislation will be developed in close partnership with the financial services industry.

Enforcement

Finance companies and mis-selling of financial products

Mis-selling of financial products and poor advisor conduct is becoming evident in our enforcement work. One of the Commission’s main enforcement priorities is investigating the finance companies that have collapsed or frozen repayments since June last year. We are working with the Registrar of Companies, the receivers of the finance companies, and other agencies to determine the state of affairs of these companies and whether civil or criminal action should be taken. In particular, we are assessing whether the companies misled their investors or failed to disclose material information. If they did, the directors can face criminal penalties of imprisonment or substantial fines.

Every offer of securities to the public, including finance company debentures and notes, must have a registered prospectus and an investment statement. A prospectus must be kept up to date. If it becomes misleading because of any adverse circumstance, the issuer must amend it or stop allotting the securities.

If a prospectus is false or misleading in a material way, or if the securities have otherwise been offered or allotted in breach of the Securities Act, the issuer and its directors can face criminal penalties of imprisonment or substantial fines. In May 2008 the Minister of Commerce agreed to allow prosecutions to be funded from the Commission's litigation fund. Previously the litigation fund had been available for civil actions only, and the National Enforcement Unit (NEU) of the Ministry of Economic Development had taken Securities Act prosecutions. The Commission and the Registrar now allocate Securities Act prosecutions between the Commission and the NEU.

Also, law changes in force since October 2006 enable the Commission to go to court to seek compensation for affected investors for prospectuses registered after that date. We can also seek civil penalties in some circumstances. These actions can be taken against each director of the company, and any promoter of the offer. The Commission’s litigation fund will be topped up from the Tranz Rail settlement providing significant resources to take actions under the new law.

Investors can also sue for compensation for loss caused by false or misleading statements. The Commission is continuing to investigate whether there may be any prospects for compensation if investors’ losses can be attributed to misleading statements or omissions in the prospectuses.

The Commission cannot protect people against genuine investment risk. However, some of the finance company collapses raise serious questions as to whether directors were giving

investors an accurate picture of their financial situation and the risks of investing with them, or even, in some cases, whether there was fraudulent behaviour.

As well as conducting its own investigations, the Commission has assisted the Companies Office to gather evidence for its prosecutions of the directors of Five Star Finance Limited, Five Star Debenture Nominee Limited, Bridgecorp and National Finance 2000 Limited. Also, in respect of Bridgecorp, the Companies Office laid additional more serious charges against executive directors Rodney Petricevic and Robert Roest at the request of the Commission after we had conducted further investigations.

Tranz Rail settlements

The Commission is in the final stages of its distribution of the \$29million settlement of its case on insider trading against Tranz Rail. The Commission had sought direction from the High Court regarding such distribution and the Court's order included payment of the Commission's costs, amounting to \$2 million. This money will go to the Commission's litigation fund to be available for future enforcement work.

Law reform

Capital Market Development Taskforce

An immediate priority for the Commission will be to provide advice to the Minister and MED on any recommendations made by the Capital Market Development Taskforce, which intends shortly to make recommendations to Government, aimed at facilitating fund raising by listed issuers. The Taskforce has brought forward its reporting date in response to current global financial conditions and the effect of these on New Zealand firms, and the Commission sees a prompt response to the work of the Taskforce as a high priority.

Disclosure under the Securities Regulations 1983

The Commission is also responsible for recommending any changes needed to the existing disclosure requirements under the Securities Regulations 1983. We anticipate that changes will need to be made in the short term to disclosure requirements for deposit takers, in line with new prudential rules to be administered by the Reserve Bank. We understand that the introduction of the Government deposit guarantee scheme has brought forward plans for the introduction of these new prudential rules, and recommendations may need to be made early in the new year.

Securities Act review

The Commission is currently contributing to the ongoing review of the Securities Act, which incorporates reviews of trustee responsibilities and supervision, supervision of funds managers, and disclosure rules for securities offerings. We are also working with the Ministry of Justice on reforms to New Zealand's anti-money laundering laws. It is proposed that the Commission will undertake a supervisory role in relation to compliance with AML requirements by some financial service providers.

Mutual recognition arrangements

A current priority is to explore opportunities for New Zealand to enter into further mutual recognition arrangements to deepen and strengthen the capital markets. Our work will explore further potential arrangements with Australia's securities regulator (ASIC), as well as with regulators in key Asian markets. The Chairman's role as Chairman of the Executive Committee of the International Organisation of Securities Commissions (IOSCO) will be instrumental in achieving this, as well as facilitating effective cross-border law enforcement.

Working closely with IOSCO's other two main committees, the Technical Committee and Emerging Markets Committee, the Chairman is playing a leadership role in the evolution of IOSCO's work in shaping the future regulatory architecture in response to the global financial crisis.

Independent audit oversight

The Commission is of view that there needs to be effective independent audit oversight in New Zealand, ie oversight that is independent of the accountancy profession. Related to this is the issue of whether key overseas jurisdictions will recognize the audit oversight regime in New Zealand in the future. In the case of the EU we have been advised that if New Zealand does not develop, or confirm its intention to develop, within certain time-frames, a regime that meets the EU equivalence requirements, New Zealand auditors will not be able to participate in the audit of New Zealand incorporated entities listed in EU jurisdictions, without the imposition of additional conditions.

Market regulation

In response to the global financial crisis the Commission is closely monitoring the NZX's supervision of capital ratio and client fund requirements for broker dealers on the NZX to ensure that, in the event of the collapse of a broker-dealer, client funds are protected.

Work has commenced on the Commission's fourth annual oversight review of the NZX.

In light of recent market events investigations are underway for potential civil and criminal proceedings against board members and senior management of certain companies for breaches of market manipulation and secondary market disclosure laws.

BACKGROUND

The Commission

Members of the Commission

Members of the Commission are appointed by the Governor-General on the recommendation of the Minister of Commerce.

The Commission currently has a full complement of 10 Members. The Chairman is a full time position.

Other Members attend regular monthly meetings and conduct Commission business in divisions which meet as required. Members' workloads are generally 3-5 days per month.

Under the Financial Advisers Act 2008 a Commissioner of Financial Advisers is to be appointed as an additional Member of the Commission. The Ministry of Economic Development is currently considering nominations and expressions of interest for this position. It is expected to be a full time role.

Members hold office for a term not exceeding five years and may be re-appointed. Chairman Jane Diplock AO was reappointed in 2006 for a second five year term which will expire on 3 September 2011. One Commission Member's term will expire in August 2009, while the terms of four others will expire during 2010, of which two will be completing a second term.

Profiles of Members are included in the Appendix.

Role and powers of the Commission

The legislation relevant to the Commission includes:

- Securities Act 1978
- Securities Markets Act 1988
- Securities Regulations 1983
- Securities Act (Contributory Mortgage) Regulations 1988
- Securities (Fees) Regulations 1998
- Financial Reporting Act 1993
- Corporations (Investigation and Management) Act 1989
- Crown Entities Act 2004
- Financial Advisers Act 2008
- Financial Service Providers (Registration and Dispute Resolution) Act 2008.

The role of the Commission can be broadly described as follows:

- ***Surveillance and enforcement*** – monitor and enquire into suspected breaches of relevant law and intervene in the interests of investors so that high standards of conduct are expected in the markets and the law is complied with

- ***Oversight and supervision*** – undertake oversight of registered exchanges (ie NZX) and supervision of financial advisers to encourage – in partnership with industry – voluntary compliance with professional requirements, and to maintain integrity and improve confidence in the market
- ***Law and practice reform*** – review and recommend changes to the law to ensure that the regulatory environment is relevant and effective
- ***Exemptions and authorisations*** – use exemption powers based on the policy of the law while responding to the needs of the market and authorise market participants (such as trustees and futures dealers) so that opportunities for New Zealand investors are increased
- ***International cooperation and recognition*** – promote internationally New Zealand's markets as well regulated to create a climate for increased investment, and foster good relationships with overseas regulators
- ***Public understanding*** – promote understanding of the law and practice of securities.

To carry out this work the Commission's powers include:

- to receive evidence and summon any person to appear before us, and to summon documents
- to carry out inspections
- to publish reports and comments
- to exempt persons from compliance with provisions of the Securities and Financial Reporting Acts or Regulations
- to suspend or cancel a registered prospectus
- to suspend or prohibit an investment statement
- to prohibit advertising of any securities
- to approve trustees and statutory supervisors
- to accept enforceable undertakings
- to hear appeals against certain decisions of the Registrar of Companies
- to recommend regulations
- to enforce insider trading, market manipulation and substantial security holder law
- to enforce continuous disclosure law and to make orders requiring disclosure by issuers
- to make orders requiring disclosure by unregistered exchanges
- to require an exchange to provide information and assistance to the Commission
- to administer the law relating to futures contracts
- to recommend approval of electronic systems for the transfer of securities
- to enforce investment adviser disclosure law
- to authorise, suspend and ban financial advisers (expected to be in place by 2010)
- to receive financial statements of issuers which do not comply with the Financial Reporting Act 1993
- to approve directions to 'at risk' corporations
- to recommend corporations and associated persons be placed in statutory management.

Resourcing – Vote Commerce

The Commission is funded by Government grant via Vote Commerce. The Commission also charges fees for exemptions from securities law and authorisations of certain market participants. Government appropriations for the Commission for 2008/09 are \$7.3million (\$6.5 million in 2006/07 and 2007/08). The Government also provides a litigation fund for Court actions taken by the Commission.

With the Commission's increased functions which have recently evolved and the new role related to financial advisers legislated for this year, the Ministry of Economic Development is conducting a base line review of funding to ensure that we have the required resources to carry out the functions now required of us under legislation. The expanded responsibilities for the Commission arising from the Financial Advisers Act have necessitated the baseline review looking afresh at the Commission's entire infrastructure. The doubling of staff numbers, the likely opening of an Auckland office, and the need for computer systems to deal with the authorisation and monitoring of financial advisers require this agency to reshape significantly. Importantly, much of this will be funded on a "user-pays" basis with industry fees and/or levies being introduced.

Implementation of the Financial Advisers Act has funding implications beyond the Securities Commission, and other commerce related agencies (the Registrar of Companies for the registration infrastructure and the Ministry of Consumer Affairs for the dispute resolution framework). Additional funding to support the tertiary education system in realigning its capacity is important because the new professional adviser framework depends on competency assessment and training becoming available across the country.

The Commission provides quarterly reports and financial statements to the Ministry of Economic Development (MED) as well as presenting its Annual Report to the Minister for tabling in Parliament.

Relationships – the Government and regulatory environment

Registrar of Companies and National Enforcement Unit

The Commission works closely with other agencies that have related regulatory and enforcement functions. The Registrar of Companies is responsible under the Securities Act for the vetting and registration of prospectuses. The Registrar also conducts investigative work for the Commission by conducting inspections under the Securities Act at the request of the Commission.

The Securities Act contains a number of criminal offences. Until earlier this year the Commission was not funded to take criminal proceedings. Where Commission investigations led to criminal proceedings these prosecutions were brought by the National Enforcement Unit of the Ministry of Economic Development on referral from the Registrar of Companies or the Commission. However, in May 2008 the Minister of Commerce agreed to allow prosecutions to be funded from the Commission's litigation fund which had previously been available for civil actions only. The Commission and the Registrar now allocate Securities Act prosecutions between the Commission and the National Enforcement Unit.

Ministry of Economic Development – Business Law Unit

The Commission has a function to review the law relating to securities and to make recommendations for change to the Minister of Commerce. In practice the Commission focuses its work on recommendations for changes to the law that arise from our enforcement work and other practical experience of the securities markets.

The Commission also works closely with Ministry officials on securities law reform projects, providing comment on draft and final discussion papers, regulations, and bills drawing from our enforcement and other practical experience of the securities markets. The Commission is consulted on cabinet papers affecting securities law.

NZX

Under the Securities Markets Act 1988 New Zealand has a co-regulatory regime for listed securities markets. The legislation provides for the registration of securities exchanges and futures exchanges. The New Zealand Exchange Limited (NZX) is the front line regulator. The Securities Commission oversees this regulatory activity.

NZX is currently the only registered securities exchange and following demutualization is a listed company on its own exchange. The Government approves NZX's conduct rules for listed companies and market participants. The Commission advises the Minister on these rules and on any amendments.

The Commission conducts an annual oversight review of NZX's performance as a front-line regulator. This review has occurred for the past three years. The Commission has made recommendations to NZX, NZX Discipline and the NZX Discipline Special Division. Among the recommendations these have addressed NZX Discipline's exercise of its discretion whether to publish decisions which identify market participants who have breached the Participant Rules; and the NZX Discipline Special Division's formalising of its procedures. Our recommendations have also resulted in the NZX ensuring that attachments to issuer announcements (such as annual reports) are made available on the public website. The Commission is satisfied that NZX, NZX Discipline and the NZX Discipline Special Division have responded appropriately to Commission recommendations as a result of these reviews.

In certain circumstances the Commission can give compulsory directions to a registered exchange requiring it to suspend trading in particular securities, or to take some other action relating to trading in securities.

To facilitate their relationship the Commission and NZX have signed a Memorandum of Understanding, which addresses thresholds, procedures, and processes for:

- compulsory referrals by the NZX to the Commission (disciplinary actions, significant contraventions of the NZX's Conduct Rules or securities and takeovers law)
- discretionary referrals to the Commission arising from the NZX's oversight of trading activity, in particular, in relation to insider trading, disclosure failures and market manipulation. Unusual movements in share price and volume are normally a trigger for this
- the referral of matters from the Commission to the NZX relating to compliance with the NZX's Conduct Rules or the application of those rules

- consultation on waivers from continuous disclosure
- procedures relating to the Commission's power to give directions to the NZX
- procedures to consult on new NZX Conduct Rules and amendments to these rules.

Takeovers Panel

The Commission has provided administrative and support services to the Takeovers Panel in accordance with the Securities Act and under a Memorandum of Understanding. Under revised arrangements that were fully implemented from 1 September 2008, the Panel has become responsible for its staff. The Panel continues to co-locate with the Commission, making a contribution towards the administrative and support services it shares with the Commission. Once it has secured extra funding, the Panel will relocate to separate premises. The separation is currently planned for 1 July 2009.

Other agencies

The Commission works with other public and regulatory agencies. These include the Reserve Bank, Commerce Commission, Serious Fraud Office, Office of the Auditor General, New Zealand Trade and Enterprise, Ministry of Foreign Affairs and Trade, Retirement Commission, Ministry of Consumer Affairs, Advertising Standards Authority, Banking Ombudsman, Law Commission, the Government Actuary and Enterprise New Zealand Trust.

The Commission, along with the Registrar of Companies, Serious Fraud Office, Reserve Bank, Government Actuary, Takeovers Panel, and Commerce Commission, meets several times a year as the Financial Regulators Coordination Group to discuss current issues and to share information. A multilateral MOU has been developed to assist information sharing among members of the group.

Also, the Chairman has been meeting monthly since March 2008 with the Registrar of Companies, the Director of the Serious Fraud Office, and the Establishment Director of the Organised and Financial Crime Agency of New Zealand to co-ordinate finance company enforcement action.

Public education

The Commission recognizes the importance of raising the general level of financial literacy among New Zealanders and is keen to see this addressed by Government in a coordinated manner. We have been working with other government agencies from our perspective of financial education around investing.

We are also continuing work undertaken over a number of years with Enterprise New Zealand Trust, sponsoring elements of the Trust's financial work in schools with the aim of developing a generation that will be financially aware and invest confidently. However, the Commission is concerned that delays in the development of relevant unit standards are hindering uptake of financial studies papers by schools.

Industry groups

The Commission maintains links and consults with industry groups, including the Investment Savings and Insurance Association, New Zealand Institute of Chartered Accountants, Institute of Directors, Trustee Corporations Association, Institute of Financial Advisers,

Financial Services Federation, Bankers Association, New Zealand Law Society, New Zealand Shareholders Association, and Listed Companies Association.

Market participants

The Commission's work ultimately concerns three groups of market participants – investors, intermediaries, and issuers of securities. It does so in the exercise of its functions, including enforcement work, processing exemption or authorisation applications, and promoting public understanding through its communications and educational programmes.

International relationships

International Organisation of Securities Commissions (IOSCO)

The Commission has been an active member of the International Organisation of Securities Commissions, IOSCO, and of its Asia Pacific Regional Committee, for a number of years. Chairman Jane Diplock was re-elected chairman of IOSCO's Executive Committee, its governing body, in May 2008 for a third two-year term.

IOSCO is recognised as the global policy forum and standard setter for securities regulation. Its members total 109 securities regulators and a number of affiliate organisations. Member jurisdictions regulate over 95% of securities markets world wide.

Among IOSCO's important initiatives are its 30 Objectives and Principles for Securities Regulation (IOSCO Principles) which are promoted for full implementation in each member jurisdiction with the aim of raising the standards of regulation of securities markets globally. Through a Multilateral Memorandum of Understanding (IOSCO MMOU), IOSCO facilitates exchange of information and cooperation for cross border enforcement. New Zealand is a signatory to the MMOU.

New Zealand has benefited from the Commission's involvement with IOSCO in the development of domestic securities policy and legislation. The Commission's acceptance as a signatory to the IOSCO MOU has increased the number of jurisdictions with which the Commission can cooperate to enforce securities law. It has used the forum to promote and garner respect for New Zealand's regulatory framework and capital markets.

The Commission works with the Ministry of Foreign Affairs and New Zealand Trade and Enterprise to arrange speaking opportunities for the Chairman when travelling internationally to IOSCO meetings to promote New Zealand's regulatory framework and capital market to investor and business audiences.

Australian Securities and Investments Commission

The Commission has a close relationship with the Australian Securities and Investments Commission (ASIC) including a bilateral agreement to exchange enforcement-related information. The two commissions regularly meet to discuss matters of mutual interest consistent with the Closer Economic Relations accord.

In July 2008 the Australian and New Zealand governments brought into force the arrangement on mutual recognition of securities offerings. This aims to make it easier and more cost effective for businesses to raise capital across the Tasman and provide more

choices for investors while ensuring their interests are protected. Consistent with the Single Economic Market programme we will be exploring further opportunities for mutual recognition with Australia, as well as with other markets, for the purposes of strengthening and deepening our capital markets.

Other overseas securities regulators

The Commission has bilateral MOUs with securities regulators in Australia, China, Dubai, Hong Kong, Indonesia, Israel, Japan, Jordan, Malaysia, Papua New Guinea, Sri Lanka, Taiwan, United States of America and United Arab Emirates,. These MOUs facilitate the exchange of information between the Commission and its counterparts in these countries.

Other overseas bodies

Chairman Jane Diplock is a member of the Trans-Tasman Leadership Forum. From time to time the Commission is in contact with other international bodies affecting securities markets including the Financial Stability Forum, OECD, and the International Accounting Standards Board.

Securities markets

Primary and secondary markets

It is convenient to divide securities markets, from a regulatory perspective, into primary and secondary markets. The primary market involves the offer and issue of securities by companies and other issuers. This includes public offerings of shares, debt securities, units in unit trusts, superannuation and life insurance products, and interests in syndicates and other participatory schemes. The secondary market is the subsequent trading of securities, whether on regulated exchanges or elsewhere.

The primary market is regulated under the Securities Act. This Act applies to any offer of securities to the public. Non-public offers of securities are not subject to this law. The regulatory regime is largely disclosure-based. To offer securities an issuer must have a registered prospectus disclosing all material matters about the issuer and the securities on offer and an investment statement which contains information about the offer in plain English.

The secondary market is regulated under the Securities Markets Act 1988. This Act applies to:

- registration and oversight of securities exchanges
- insider trading laws
- market manipulation laws
- continuous disclosure laws
- directors' and officers' disclosure
- investment adviser disclosure
- substantial security holder disclosure
- futures dealing.

The listed securities markets

NZX operates three securities markets:

- **NZSX** – the New Zealand Stock Market. This is the main board of NZX, and is the principal equities trading market in New Zealand
- **NZAX** – New Zealand Alternative Market. This was set up in 2003 and has less stringent listing rules than the NZSX. It is designed for developing companies and companies with non-traditional structures, such as co-operative companies. NZAX issuers can raise capital more cheaply under exemptions granted by the Commission in 2003
- **NZDX** – the New Zealand Debt Market. This market trades corporate and government bonds and fixed income securities.

Futures markets

The only active authorised futures exchange is the Sydney Futures Exchange Limited (SFE). The New Zealand Futures and Options Exchange Limited (NZFOE) which is a wholly owned subsidiary of SFE is authorised but no longer operates. NZX derivative products can be traded on the SFE market.

Futures dealers must be authorised by the Commission. Participants of SFE or who are approved by NZX as Futures and Options Participants can deal in futures contracts under class authorisations granted by the Commission. Other dealers must be individually authorised.

Unregistered securities markets

The Securities Markets Act applies to trading on registered securities exchanges. No one can call their securities market a “stock exchange” or “securities exchange”, or state or imply that a market is regulated under New Zealand law unless that person is registered as an exchange. However this does not stop any trading platform from operating, although the Minister of Commerce has the power to prevent a body corporate from operating without registration. There are a number of unregulated trading platforms operating including Unlisted.

Collective investment schemes

Interests in collective investment schemes – including interests in unit trusts, superannuation, and life insurance – are securities under New Zealand law. Primary offers of these products to the public are regulated under the Securities Act. In addition, specific legislation for the formation and governance of some schemes is found in the Unit Trusts Act 1960, the Life Insurance Act 1908, the Trustee Companies Act 1967 (in respect of Group Investment Schemes), and the Superannuation Schemes Act 1989. These Acts all include restrictions on the operation of such schemes, but there is no licensing of fund managers.

A small number of unit trusts have securities listed on the NZSX market. Other participatory schemes can offer securities to the public under the Securities Act and must appoint a statutory supervisor which must be a statutory trustee corporation or a person approved for the purpose by the Commission. These include forestry and agricultural syndicates, limited partnerships, and some property interests. The Securities Act regulates

only the offer of securities by these schemes and does not prescribe the legal form or organisation of the schemes.

Unlisted debt – finance companies, banks, corporate bonds

The Reserve Bank is the main regulator of registered banks. Registered banks are also subject to the Securities Act when they offer securities (including bank accounts) to the public. Registered banks are exempt from the prospectus and trustee requirements of securities law. Investment statements are not required for any call debt securities.

The Reserve Bank will also now have prudential regulation of non-bank deposit takers following legislation enacted in September 2008. Finance companies offering debt securities, usually debentures, are also subject to securities legislation and the Commission is undertaking a number of investigations against failed finance companies.

Issuers who offer debt securities to the public must appoint a trustee which must be a statutory trustee corporation or a person approved by the Commission to act as a trustee for debt securities. Typically, debt security trust deeds include lending ratios and other prudential controls. Other issuers of debt, such as building societies and credit unions, are also subject to the Securities Act and also to their own industry-specific legislation.

Intermediaries

Intermediaries, including investment advisers, sharebrokers, financial planners, and other promoters or marketers of financial products, are involved in both the primary and secondary markets.

The Securities Markets Amendment Act 2008, which came into force in February, strengthened the disclosure obligations for financial advisers. Advisers are required to give their clients a disclosure statement with information about themselves, the products they advise on and the way they are paid. If they fail to comply the Commission can make orders and can take advisers to court to seek compensation and penalties.

The recently passed Financial Advisers Act 2008 will require financial advisers to meet standards for competence, professional conduct and disclosure and make them accountable for the quality of advice they give to clients. The Commission's responsibilities will include authorising financial advisers who advise on more complex ('category 1') products such as securities, real estate and futures contracts, and administering a Code of Conduct. The Commission will be able to require advisers to meet their obligations.

APPENDIX – MEMBERS OF THE COMMISSION

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.

Colin Beyer LL B, DistFInstD.

Consultant to Simpson Grierson, Wellington.

Professional: Solicitor, Wellington.

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 Enterprise Beachheads 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.

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.

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.

Elizabeth Hickey M.Com(Hons), FCA, MInstD.

Professional: Chartered Accountant, Auckland.

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.

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.

Cathy Quinn LL B.

Solicitor, Auckland.

Professional: Partner of Minter Ellison Rudd Watts specialising in corporate and securities law. Member of the Government appointed Capital Market Development Taskforce.

Neville Todd B Com (Otago).

Company Director, Wellington.

Professional: Managing Director of Kinloch Funds Management Limited.

Directorships: Kinloch Funds Management Limited and its subsidiaries.