

ANNUAL REPORT

2004

FUNCTIONS AND POWERS OF THE PANEL

The functions of the Takeovers Panel are set out in section 8 of the Takeovers Act 1993. In summary the Panel's functions are:

- > To keep under review the law relating to takeovers of specified companies and to recommend to the Minister any changes to that law it considers necessary;
- > For the purposes of its review of the law, to keep under review practices relating to takeovers of specified companies;
- > To investigate any act or omission or practice for the purpose of exercising its powers under the enforcement provisions of the Act;
- > To make determinations and orders and make applications to the Court under the enforcement provisions of the Act;
- > To co-operate with any overseas regulator and for that purpose to communicate to that regulator information obtained by the Panel in the performance of its functions and powers which the Panel considers may assist that regulator in the performance of its functions;
- > To promote public understanding of the law and practice relating to takeovers.

In exercising its functions and powers the Panel shall comply with the principles of natural justice.

The powers of the Panel are set out in Part 3 of the Takeovers Act 1993. In summary the powers of the Panel are:

- > To issue summonses and to take evidence on oath;
- > To carry out inspections and obtain evidence at the request of overseas regulators;
- > To make confidentiality orders;
- > To accept undertakings that are enforceable by the Courts;
- > To inspect documents, and to authorise the Registrar of Companies or any other person to undertake inspections;
- > To grant exemptions from the Code;
- > To enforce the Takeovers Code by:
 - making determinations on whether a person is complying with the Code;
 - issuing restraining orders; and
 - applying for Court orders.

Under the Takeovers Code the Panel has powers to approve independent advisers and appoint independent experts.



CHAIRMAN'S REVIEW

John King

The Takeovers Code has been in force for nearly three years. It is no longer new. Market participants are now used to the Code and have seen it operating in various circumstances. For shareholders the value of the Code is that it ensures a process by which they are well informed and able to decide whether or not to accept a takeover offer. This is a far cry from the days of midnight raids that caught many shareholders unawares.

Recent months have seen a high level of takeover activity with successful full and partial takeovers taking place in an orderly fashion under the Code. These highlight the value of the framework of the Code for those operating in the takeovers market.

THE PANEL AS AN ARBITRATOR

A key attribute of the Panel is that it must exercise its powers within tight time frames so as to ensure that issues are disposed of promptly and takeover activity can proceed and not be held up by lengthy bureaucratic processes. In this sense it has an arbitration role.

One instance of this was during Rubicon Limited's successful partial offer for Tenon Limited. The conditions of Rubicon's offer sought to impose obligations on Tenon's directors to provide confirmation about aspects of its affairs to Rubicon, or to an expert appointed by Rubicon. Tenon's directors, in a public release, declined to provide the confirmations sought. Rubicon alleged that the decision by Tenon's directors not to assist Rubicon by satisfying these conditions amounted to an action designed to frustrate its offer. Rubicon claimed that this contravened rule 38 of the Code. The Panel determined that the Code's prohibition of defensive tactics does not oblige the directors of target companies to provide information required by an offeror. The board of the target company should not be manoeuvred, by conditions included by an offeror in its offer, into a position where it can be suggested it is in breach of the rule 38 prohibition on defensive tactics merely by refusing to provide information or give access to information. The matter was heard and decided by the Panel under section 32 of the Takeovers Act within a week so that the takeover could proceed with minimal disruption and delay.

Another issue that the Panel was able to resolve quickly also arose during the Rubicon partial takeover of Tenon. Tenon alleged that Rubicon's announcement that it would pay handling fees to brokers in connection with acceptances of Rubicon's partial offer was a breach of the

Code. The complaint raised an enforcement matter which could have gone through the process of a section 32 meeting. However, the Panel over the space of two days received submissions from the parties and then issued a statement that it considered that the complaint was without merit. No meeting under section 32 was sought so that the Panel's action led to a quick resolution of the matter.

THE PANEL AS A FACILITATOR

As the market has become used to the Code and the Panel's role in the marketplace, the concept of the Panel as a facilitator rather than as an aggressive policeman is evolving. The Panel's executive is crucial for this to occur. Although the Panel does not approve takeover documents, the executive can, and does, pick up and point out non-compliance issues in time for them to be corrected. This assists the efficient operation of the takeovers market under the Code.

The value of the Panel as a facilitator was also evident during a compulsory acquisition by SK Foods International following its successful takeover offer for Cedenco Foods. After SK Foods became the dominant owner of Cedenco it was required to issue an acquisition notice to outstanding shareholders. An issue arose for the Panel because SK Foods was not entitled to assert, as it had, that outstanding Cedenco shareholders had no right to object to the compulsory acquisition price. The Panel used its power to grant a retrospective exemption which allowed SK Foods' flawed compulsory acquisition to proceed as planned but provided for the price to go to expert determination if sufficient shareholders objected. In the event less than 10% of the outstanding shareholders objected to the price and the expert determination process was not triggered. Again the matter was settled quickly. The Panel's ability to grant a retrospective exemption is of great value enabling problems to be dealt with efficiently but also in compliance with the policies of the Code.

The Panel's facilitation role was also demonstrated in two recent Code offers where shareholders resided in numerous overseas jurisdictions. Individual exemptions to allow cash, rather than securities, to be offered to overseas shareholders were granted to Independent Newspapers Limited for its offer for Sky Network Television Limited and to Rural Portfolio Investments Limited in relation to its partial offer for Wrightson Limited. In both cases the bidders intended to offer scrip in jurisdictions in which New Zealand disclosure documents could not be used. The policy of rule 20 of the Code is to ensure that there is equal treatment of all security holders of a code company. The Panel is reluctant to grant exemptions which would allow offers to be made to certain shareholders on different terms. However, it is important that the making of scrip offers be a real and practical option available to bidders. In addition, a proper relationship needs to be maintained between the cost of compliance with the Code and the benefits resulting from it. Exemptions from rule 20 were granted to INL and RPI because the number of shares held by shareholders in overseas jurisdictions was so low that compliance with the securities laws in those jurisdictions would have been impractical and unreasonably expensive. Also, the Panel was satisfied that the alternative consideration offered to overseas shareholders was appropriate and put the overseas shareholders in the same position as shareholders who receive and immediately sell the scrip offered by the bidder. The difficulties faced by INL and RPI may well arise with future scrip takeover offers as most code companies will have shareholders resident overseas. The Panel published in *Code Word* the circumstances in which it would be likely to consider granting specific exemptions from rule 20, however, each case will be treated on its merits.

Class exemptions are also utilised to facilitate the operation of the takeovers market. However they are considered carefully to ensure that they operate within the policy upon which they are based. The class exemption for professional underwriters was amended recently. There was a risk that the exemption could be used by corporate investors as a means of increasing control in code companies. The Panel did not intend the class exemption to be used in this manner. The class exemption was amended to clarify that it does not apply if an underwriter has a collateral intention of increasing its voting control in a code company. A number of conditions on the applicability of the exemption apply, including the provision that it will not apply where the underwriter already holds more than 5% of the voting rights of the code company. In appropriate circumstances individual exemptions can be sought where the class exemption does not apply.

An exemption was also an effective solution to a conflict of interest that arose when the chief executive officer of Trans Tasman Properties Limited was required by the Code to sign the certificate to be included in the Trans Tasman Properties target company statement issued in response to the takeover offer from SEA Holdings New Zealand Limited. The chief executive officer of Trans Tasman Properties was also the chief executive officer of SEA Holdings. The Panel agreed it was inappropriate for him to certify the target company statement and granted an exemption. As a condition of the exemption, he was required to certify that he had provided to the board of Trans Tasman Properties all information necessary to enable the directors to sign the required certificate. The exemption was an effective solution to the conflict of interest inherent in the one person holding the role of chief executive officer of both the offeror and also of the target company, while being consistent with the objectives of the Code.

THE PANEL AS AN ENFORCER

The Panel watches the market very carefully and will not hesitate to act when it believes that its intervention is needed. The participants in the market are aware of this. Mostly we believe that market participants are trying to comply with the Code. Where this doesn't occur it is usually a genuine mistake or a misunderstanding of how the Code works.

The Panel took prompt action after Restaurant Brands Limited received a takeover notice from King Win Laurel International Limited, which did not comply with the Code in a number of respects. The Panel's objective was to have the notice withdrawn from the market as quickly as possible, and preferably without expensive regulatory action. The Panel immediately contacted King Win asking it to withdraw its notice and explaining why the takeover notice did not comply with the Code. King Win was told that the Panel would act to restrain the offer if necessary and subsequently withdrew its takeover notice. Some media commentators have said that the King Win takeover notice should not have been notified to the market because it was so obviously non-complying with the Code. The Panel does not accept this. While the shortterm increase in Restaurant Brands' share price may have been unfortunate, the Panel considers it is not for target companies to withhold from shareholders the information that a takeover notice has been received that purports to comply with the rules of the Code.

In the Dominion Retail Property Fund Limited takeover bid for Tri-City Properties Limited the Panel for the first time had to consider the consequences of an error in a takeover document which affected the price being offered by the bidder. The Panel determined, by a section 32 meeting, that Dominion Retail had breached the Code by not correctly stating all the terms and conditions of the offer. In considering how this could be remedied, the Panel

had to determine whether the mistake could be corrected or whether the offer would need to be withdrawn and a new offer made. The Panel did not consider that the latter alternative was in the interests of shareholders if it could be avoided. The practical solution would be for the terms of the offer to be clarified and for all security holders who had accepted the misleading offer to be given the right to withdraw their acceptances. This would put shareholders in the same position they would have been in had the original offer correctly stated the price in the first place. In addition, for this to occur, it would be necessary for the offer period to be extended. The Panel accepted an undertaking from Dominion Retail that the company would explain the correct terms of the offer to security holders, grant them the right to revoke their acceptances and extend the offer period. We understand that a small number of security holders withdrew their acceptances.

COMPULSORY ACQUISITION

In March 2004 the Panel for the first time appointed an independent expert to determine the consideration for shares to be acquired compulsorily. This was the final step in the takeover bid by Ngai Tahu Holdings Corporation Limited for Shotover Jet Limited. The issue arose when Ngai Tahu received objections to the consideration specified in its compulsory acquisition notice from shareholders who together held more than 10% of the outstanding voting rights. The role of an independent expert is to determine the fair and reasonable value of an equity security. This becomes the amount that the dominant owner must pay to outstanding security holders. It may be higher than, equal to, or lower than, the acquisition price specified by the dominant owner in the acquisition notice. The value ultimately determined by the independent expert was higher than the consideration specified in Ngai Tahu's compulsory acquisition notice. Accordingly, all outstanding shareholders were to be given a "top-up" of the difference between the amount specified in the compulsory acquisition notice and the value of each Shotover Jet share determined by the expert.

MAKING THE CODE WORK BETTER

In 2003 the Panel consulted with interested parties on changes to the Code and subsequently recommended a number of technical changes to the Minister of Commerce late that year. The changes recommended range from a few proposals which aim to clarify the wording of the Code, to several proposals designed to make the Code work more efficiently in certain circumstances. None of the proposals would change the basic structure of the Code. Nor is there any change in the underlying policy of the Code. All the proposals result from the market's experience with the operation of the Code in the first three years it has been in force. The Panel's proposals are currently being considered by officials of the Ministry of Economic Development and the Panel is assisting this process as required. The Panel hopes that the changes will be implemented early in the 2004-2005 financial year.

FINANCE

Budgeting for the Panel's activities is difficult. The Panel's income is split between its Government grant and third party income received under the Takeovers (Fees) Regulations 2001. Third party income cannot be reliably estimated as it is dependent on the level of takeover activity and also the outcome of enforcement action. For example, the cost of meetings under section 32 of the Takeovers Act in some circumstances is borne by a party to the proceedings but it can also be an expense to be borne by the Panel. In the last financial year the Panel incurred a deficit of \$26,306. Surpluses from previous years have covered this deficit but these surpluses are not at a level to absorb continuing deficits. It is clearly

important that the Panel be appropriately funded so that it is not inhibited in the performance of its role under the Code and the Takeovers Act.

IN CONCLUSION

To fulfill its role it is important for the Panel to keep in touch with market participants and their advisers. During the year it has continued to work in this respect by issues of *Code Word*, maintaining its website with relevant and current material, and the meetings it has hosted with various groups of advisers.

I am grateful to the members of the Panel for their hard work, often for long hours and at times that are personally inconvenient. Their willingness to do this is critical to the Panel's ability to respond to market issues in a swift and timely fashion. I am also grateful to the Panel's executive for their dedication and commitment to making the Code work.



J.C. King
CHAIRMAN

FINANCIAL REPORT

SOURCES OF FUNDING

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

STATEMENT OF RESPONSIBILITY

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

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

In our opinion these annual financial statements fairly reflect the financial position as at 30 June 2004 and the operations of the Takeovers Panel for the year ended 30 June 2004.



J.C. King

CHAIRMAN

11 August 2004



D.M.D. Rawstorne

CHAIRMAN, AUDIT COMMITTEE

11 August 2004

STATEMENT OF FINANCIAL PERFORMANCE for the year ended 30 June 2004

<i>Budget 2004</i>		<i>Note</i>	<i>Actual 2004</i>	<i>Actual 2003</i>
\$			\$	\$
Operating income				
904,889	Government grant - baseline funding		904,889	822,222
13,400	Interest		8,700	13,475
	- Bad debts and associated costs recovered		33,438	-
455,400	Application fees and costs recoverable	6	410,839	460,870
1,373,689	Total operating income		1,357,866	1,296,567
Income for litigation fund matters				
	- Recovery of costs		-	12,375
40,000	Interest		37,378	40,077
40,000	Total litigation fund income		37,378	52,452
1,413,689	Total income		1,395,244	1,349,019
Operating expenditure				
3,520	Audit fees		3,500	3,500
	- Bad debts written off		-	31,996
	- Bad debts provision		-	10,000
	- Debt collection fees		12,981	2,893
25,000	Communication charges		26,322	24,410
260,000	Members' fees	3	288,283	258,432
34,400	Printing and stationery		22,792	34,252
125,000	Consultants and legal		72,701	97,207
37,400	Services and supplies		32,469	31,731
82,000	Travel and accommodation		57,608	76,559
20,950	Use of assets		25,177	35,557
911,400	Securities Commission services		842,339	787,852
1,499,670	Total operating expenditure		1,384,172	1,394,389
	- Expenditure on litigation fund matters	4	23,386	12,375
1,499,670	Total expenditure		1,407,558	1,406,764
	Net operating surplus (deficit) before			
(85,981)	transfer to litigation fund		(12,314)	(57,745)
(40,000)	Transfer to litigation fund		(13,992)	(40,077)
\$(125,981)	Net surplus (deficit)		\$(26,306)	\$(97,822)

STATEMENT OF FINANCIAL POSITION as at 30 June 2004

<i>Budget 2004</i>		<i>Actual 2004</i>	<i>Actual 2003</i>
\$	<i>Note</i>	\$	\$
Current assets			
9,244		6,959	6,206
Cash			
86,431		235,024	166,431
Short term deposits - other			
779,285		747,448	733,909
Short term deposit - litigation fund			
822		87	822
Interest receivable - other			
- Interest receivable - litigation fund		5,829	5,376
154,536		120,192	182,605
Sundry debtors and prepayments			
(10,000)		(10,000)	(10,000)
Less provision for bad debts			
3,387	<u>5</u>	-	20,950
Prepayment for use of assets			
1,023,705		1,105,539	1,106,299
Total current assets			
Non-current assets			
840	<u>5</u>	-	4,227
Prepayment for use of assets			
\$1,024,545		\$1,105,539	\$1,110,526
Total assets			
Current liabilities			
35,980		40,270	35,980
Creditors and accruals			
3,991		7,028	3,991
GST payable			
39,971		47,298	39,971
Total current liabilities			
Equity			
205,289		304,964	331,270
Accumulated funds			
779,285	<u>4</u>	753,277	739,285
Litigation fund			
984,574		1,058,241	1,070,555
Total equity			
\$1,024,545		\$1,105,539	\$1,110,526
Total equity and liabilities			

The accompanying notes form part of these financial statements.

STATEMENT OF MOVEMENTS IN EQUITY

for the year ended 30 June 2004

<i>Budget 2004</i>		<i>Actual 2004</i>	<i>Actual 2003</i>
\$	<i>Note</i>	\$	\$
Equity at start of year			
331,270		331,270	429,092
Accumulated funds			
739,285		739,285	699,208
Litigation fund			

Surplus (deficit) for year		
(125,981) (Total recognised revenues and expenses)	(26,306)	(97,822)
(40,000) Increase (decrease) in litigation fund	13,992	40,077
\$984,574 Equity at end of year	\$1,058,241	\$1,070,555
Comprising:		
205,289 Accumulated funds	304,964	331,270
779,285 Litigation fund	<u>4</u> 753,277	739,285
\$984,574 Equity at end of year	\$1,058,241	\$1,070,555

STATEMENT OF CASH FLOWS

for the year ended 30 June 2004

<i>Budget 2004 \$</i>	<i>Note</i>	<i>Actual 2004 \$</i>	<i>Actual 2003 \$</i>
Cash flows from operating activities			
Cash was provided from:			
904,889		904,889	897,222
475,400		469,851	477,683
- Bad debts recovered		33,438	-
53,400		46,360	54,447
Cash was applied to:			
(1,470,651)		(1,371,653)	(1,414,738)
(36,962)	7	82,885	14,614
Cash flows from investing activities			
Cash was provided from:			
40,000		-	4,769
Cash was applied to:			
- Net increase in bank deposits		(82,132)	-
- Prepayment for use of assets		-	(34,106)
40,000		(82,132)	(29,337)
3,038		753	(14,723)
6,206		6,206	20,929
\$9,244		\$6,959	\$6,206

The accompanying notes form part of these financial statements.

NOTES TO THE FINANCIAL STATEMENTS

for the year ended 30 June 2004

NOTE 1 STATEMENT OF ACCOUNTING POLICIES

Reporting Entity

The Takeovers Panel is a body corporate established by the Takeovers Act 1993. The financial statements presented here are prepared pursuant to section 16 of the Takeovers Act 1993 and section 41 of the Public Finance Act 1989.

Measurement System

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

Specific Accounting Policies

Budget Figures

The budget figures are those approved by Panel members on 30 September 2003. The budget figures are prepared in accordance with generally accepted accounting practice.

Short Term Deposits

Short term deposits are shown at cost.

GST

The Panel is registered for GST and GST is accounted for by the net method.

Financial Instruments

Financial instruments recognised in the statement of financial position include cash balances, receivables, payables, and investments.

Income Tax

The Panel is exempt from income tax under the Income Tax Act 1994.

Sundry Debtors

Sundry debtors are stated at their net realisable value after providing for doubtful and uncollectable debts.

Revenue Recognition

The Government grant is recognised as revenue when it becomes due. Revenue from application fees and costs recoverable is recognised when the relevant services are provided or when the Panel has made the relevant determination under section 32 of the Takeovers Act 1993.

Litigation Fund

Interest income and expenditure on approved litigation fund matters are reported as income and expenditure of the Panel in the financial period in which they were derived or incurred. Reimbursements from the Crown to top-up the fund are reported as income in the period in which the Panel's claim for reimbursement is accepted by the Crown. The balance of the fund is disclosed as a component of equity in the statement of financial position.

Prepayment for Use of Assets

This represents amounts paid to the Securities Commission to finance the purchase of assets required by the Commission to service the requirements of the Panel. The amounts are being written off, having regard to the expected life of the assets and the estimated period of the arrangements with the Commission, over the following periods:

Furniture, fittings and library	5 years
Office equipment	3 years

The small remaining balance after writing off the current portion of prepayments was amortised this year. In future years the Securities Commission is expected to finance capital expenditure items related to furniture, fittings, and office equipment.

NOTE 2 CHANGES IN ACCOUNTING POLICIES

There have been no changes in the Panel's accounting policies other than for Prepayment for Use of Assets. All of the other policies have been applied on bases consistent with those used last year.

NOTE 3 REMUNERATION OF MEMBERS OF THE PANEL

Members are remunerated on the basis of time spent on the work of the Panel. Members' fees for the year ended 30 June 2004 were:

	<i>2004</i>	<i>2003</i>
	\$	\$
J.C. King (Chairman)	81,223	81,059
D.O. Jones (Deputy Chairman)	50,935	47,030
D.M. Byrne	13,312	14,212
A.N. Frankham	19,361	6,729
C.G. Giffney	26,652	29,285
A. Lawrence	15,832	16,500
K.J. O'Connor	22,800	20,867
D.J. Quigg	29,193	15,613
D.M.D. Rawstorne	15,033	20,371
S. Suckling	13,942	6,633
P.D. McKenzie (Associate)	-	133
Total	\$288,283	\$258,432

NOTE 4 LITIGATION FUND

The Panel has established a litigation fund from an appropriation of \$675,000 (GST not applicable) made by Parliament. The fund is to be used solely for litigation costs that are incurred by the Panel as it enforces compliance with the Takeovers Code or responds to litigation brought against it. It is being held on short term deposit. Parliament has made a further appropriation of \$675,000 for the year ending 30 June 2005 to top-up the fund to the set level of \$675,000, should this be required during the year.

The fund was used during the year to defend proceedings brought against the Panel in relation to one of the exemption applications submitted to the Panel. The proceedings were later withdrawn.

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

	<i>2004</i>	<i>2003</i>
	\$	\$
Opening balance 1 July 2003	739,285	699,208
Government grant received	-	-
Recovery of costs	-	12,375
Interest received	31,549	34,701
Interest accrued	5,829	5,376
Expenditure on approved litigation	(23,386)	(12,375)
Balance at 30 June 2004	\$753,277	\$739,285

NOTE 5 PREPAYMENT FOR USE OF ASSETS

	<i>2004</i>	<i>2003</i>
	\$	\$
Opening balance	25,177	26,629
Amount paid to finance the purchase of additional assets	-	34,105
Amount amortised for use of assets	(25,177)	(35,557)
Balance at 30 June 2004	-	\$25,177
Current portion	-	20,950
Non-current portion	-	4,227
Balance at 30 June 2004	-	\$25,177

NOTE 6 APPLICATION FEES AND COSTS RECOVERABLE

The Takeovers (Fees) Regulations 2001 enable the Panel to recover costs with respect to applications received for various approvals, for exemptions, and for certain enforcement action pursuant to the Takeovers Act. An analysis of the amounts received for the year ended 30 June 2004 is as follows:

	<i>2004</i>	<i>2003</i>
	\$	\$
Exemptions	200,260	209,722
Approvals	90,173	78,997
Enforcement — section 32	131,645	166,266
Miscellaneous	-	5,885
Adjustment to prior year income	(11,239)	-
Total	\$410,839	\$460,870

NOTE 7 RECONCILIATION OF STATEMENT OF FINANCIAL PERFORMANCE WITH STATEMENT OF CASH FLOWS

	<i>2004</i>	<i>2003</i>
	\$	\$
Reported surplus (deficit)	(12,314)	(57,745)
Add prepayment for use of assets	-	34,106
Movement in working capital:		
Increase (decrease) in creditors	7,327	(86,291)
(Increase) decrease in receivables	87,872	124,544
	95,199	38,253
Net cash flows from operating activities	\$82,885	\$14,614

NOTE 8 CASH FLOWS

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

NOTE 9 FINANCIAL INSTRUMENTS

Credit Risk

Financial instruments which potentially subject the Panel to credit risk consist of bank balances, bank short term deposits, sundry debtors, and accrued interest receivable.

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

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

There are no concentrations of credit risk.

Fair Values

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

Currency Risk

The Panel does not hold any overseas securities or deposits and is therefore not exposed to any currency risk.

Interest Rate Risk

The Panel has not purchased any financial instruments that may be subject to interest rate risk.

NOTE 10 COMMITMENTS

There were no lease commitments at balance date. (2003 - no commitments)

The Panel has no material commitments at balance date. (2003 - no commitments)

NOTE 11 CONTINGENT LIABILITIES

There were no contingent liabilities at balance date. (2003 - no contingent liabilities)

NOTE 12 TRANSACTIONS WITH RELATED PARTIES

There were no transactions with related parties during the year. (2003 - Mr Peter McKenzie QC provided a number of expert opinions and acted as counsel assisting the Panel on several occasions during 2003. Mr McKenzie was appointed as an associate member of the Panel for the period 19 September 2002 to 19 March 2003 in relation to one matter before the Panel. Fees totalling \$24,032 were paid to him during the year for his opinions and advice, in addition to his fees earned as an associate member of the Panel. There were no other transactions with related parties during the year.)

NOTE 13 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 Panel. (2003 - no subsequent events)

NOTE 14 SEGMENTAL INFORMATION

The Takeovers Panel operates in one industry segment administering the Takeovers Act and Code and is based in one geographical segment, which is New Zealand.

NOTE 15 BUDGET VARIANCES

Significant variances from budget were:

Income

Total operating income was \$15,823 lower than expected, primarily because of the fewer enforcement meetings held during the year from which the Panel was able to recover its costs under the Takeovers (Fees) Regulations 2001.

Expenditure

Total operating expenditure for the year was \$115,498 less than expected, primarily because utilisation of Securities Commission staff resources was below the level agreed with the Commission. Expenditure on outside experts was also less than budgeted.

Net Surplus

The Panel recorded a lower deficit than had been expected. This was a combination of reduced third party fee income and reduced staff and expert expenditure discussed above. The activities of the Panel are influenced significantly by the level of takeover activity and the needs of the market for exemptions and approvals. The Panel also has obligations to keep the Code under review and to review market practices.

REPORT OF THE AUDITOR-GENERAL

TO THE READERS OF THE TAKEOVERS PANEL'S FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2004

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

Unqualified opinion

In our opinion:

- the financial statements of the Takeovers Panel including the Statement of Financial Performance, Statement of Financial Position, Statement of Movements in Equity, Statement of Cash Flows, and Notes 1 to 15 to the Financial Statements:
 - comply with generally accepted accounting practice in New Zealand; and
 - fairly reflect:
 - > the Takeovers Panel's financial position as at 30 June 2004; and
 - > the results of its operations and cash flows for the year ended on that date.

The audit was completed on 11 August 2004, and is the date at which our opinion is expressed.

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

Basis of opinion

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

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

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

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

Audit procedures generally include:

- determining whether significant financial and management controls are working and can be relied on to produce complete and accurate data;
- verifying samples of transactions and account balances;
- performing analyses to identify anomalies in the reported data;
- reviewing significant estimates and judgements made by the members of the Takeovers Panel;
- confirming year-end balances;
- determining whether accounting policies are appropriate and consistently applied; and
- determining whether all financial statement disclosures are adequate.

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

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

Responsibilities of the members of the Takeovers Panel and the Auditor

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

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

Independence

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

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



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

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

We have not been engaged to report on any other electronic versions of the Takeovers Panel's financial statements, and accept no responsibility for any changes that may have occurred to electronic versions of the financial statements published on other websites and/or published by other electronic means.

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 11 August 2004 to confirm the information included in the audited financial statements presented on this web site.

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

MEMBERS OF THE TAKEOVERS PANEL

CHAIRMAN



John King

Consultant with Russell McVeagh. Director of Telecom Corporation of New Zealand Limited, Westpac (NZ) Investments Limited and The New Zealand Guardian Trust Company Limited. Vice President of the Employers & Manufacturers Association (Northern) Inc., and Deputy Chairman of the Spirit of Adventure Trust. Member of the Council of the Auckland College of Education and the Council of Business New Zealand. Chairman of the Panel since it was created in 1994 and previously of the Takeovers Panel Advisory Committee. Member of the Australian Takeovers Panel.

DEPUTY CHAIRMAN



David Jones

Principal of Jones Young, Auckland, specialising in commercial and company law. Personal adviser to the Minister of Justice on the company law reform programme 1991. Member of the Company Law Monitoring Group 1993. Lecturer in company law for the Institute of Directors. Member of the Panel from its inception as an advisory group.

MEMBERS



Denis Byrne

Brisbane-based commercial lawyer and company director. Member of the Australian Takeovers Panel since 1997. Appointed to the New Zealand Takeovers Panel in 2001. Chair of the Fisheries Research & Development Corporation, Director of Horticulture Australia Limited, Total Care Technologies Pty Limited, the Ball Solutions Group of Companies (Australia) and Birkdale Nursery Holdings Pty Ltd. Chair of the Queensland Gas Appeals Tribunal and the Dowlands College Foundation, Member of the Starlight Children's Foundation Advisory Board.



Anthony Frankham

Auckland-based independent financial analyst. Director of Frankham Lyne Limited, Director of Auckland International Airport Limited, and a Director and Chairman of New Zealand Experience Limited. Board Member of the Spirit of Adventure Trust. Chairman of the Audit Office's New Zealand Audit Committee and the Institute of Chartered Accountants Disciplinary Tribunal. Life Member of the Institute of Chartered Accountants. Appointed to the Panel in 2002.



Colin Giffney

Principal of Giffney & Jones, specialist corporate advisers. NZX broker and a founding Member of the Market Surveillance Panel. Appointed to the Takeovers Panel in 2001.



Alastair Lawrence

Auckland-based investment banker. Principal of Antipodes, a private investment bank which provides specialist mergers and acquisitions advice, in addition to private equity for emerging New Zealand companies. Director of Landcare Research, and a number of private companies. Member of the Panel since 1994 and prior to that a member of the Takeovers Panel Advisory Committee.



Kevin O'Connor

Wellington company director. Chairman of utilities investment company Infratil Limited, director of a range of private companies and a previous Chairman of the Market Surveillance Panel of the New Zealand Stock Exchange. Member of the Panel since 1994.



David Quigg

Partner of Quigg Partners, barristers and solicitors of Wellington, specialising in mergers and acquisitions, takeovers and corporate law. Lecturer in takeovers and mergers and acquisitions law for the Institute of Directors. Member of the National Board of the Institute of Directors. Appointed to the Panel in 2001.



Daphne Rawstorne

Wellington-based accountant, former Managing Partner of Deloitte, and Fellow of the Institute of Directors. Company director and business consultant. Member of the Panel since 1999.



Sue Suckling

South Island company director and business consultant. Chair of the National Institute of Water & Atmospheric Research, AgriQuality New Zealand Limited, Baker Fruit Processors Limited, Carsons (SI) Limited, and The Oxford Clinic Limited. Director of Westpac (NZ) Investments Limited and Farmlands. Appointed to the Panel in 2002.

EXECUTIVE OF THE TAKEOVERS PANEL

Kerry Morrell, Senior Executive Officer
Marion Hemphill, Counsel to the Panel
Angela Doone, Solicitor
David Tsai, Solicitor
Nigel Brunsdon, Accountant
Catherine Chapman, Communications Manager

HOW TO CONTACT US

Takeovers Panel
Level 8, Unisys House
56 The Terrace
Wellington

Phone (04) 471 4618
Fax (04) 471 4619
Email takeovers.panel@takeovers.govt.nz
www.takeovers.govt.nz