

**New Zealand: Financial Sector Assessment Program—Detailed Assessments of  
Observance of Standards and Codes—International Organization of Securities  
Commission (IOSCO)—Objectives and Principles of Securities Regulation**

This Detailed Assessments of Observance of Standards and Codes on the IOSCO Objectives and Principles of Securities Regulation for **New Zealand** was prepared by a staff team of the International Monetary Fund as background documentation for the periodic consultation with the member country. It is based on the information available at the time it was completed in **June, 2004**. The views expressed in this document are those of the staff team and do not necessarily reflect the views of the government of **New Zealand** or the Executive Board of the IMF.

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# FINANCIAL SECTOR ASSESSMENT PROGRAM

## NEW ZEALAND

### DETAILED ASSESSMENTS OF STANDARDS AND CODES: IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION

JUNE 2004

INTERNATIONAL MONETARY FUND  
MONETARY AND FINANCIAL SYSTEMS DEPARTMENT

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## ACRONYMS

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APRA	Australian Prudential Regulatory Authority
ASIC	Australian Securities and Investments Commission
ASRB	Accounting Standards Review Board
BCP	Basel Core Principles
CIS	collective investment schemes
ESAS	Exchange Settlement Account System
FATF.	Financial Action Task Force
FRCG	Financial Regulators' Coordination Group
GAAP	Generally Accepted Accounting Principles
ICANZ	Institute of Chartered Accountants of New Zealand
IOSCO	International Organization of Securities Commissions
MED	Ministry of Economic Development
MFP Code	IMF Code of Good Practices on Transparency in Monetary and Financial Policies
MMOU	IOSCO Multilateral Memorandum of Understanding
MOU	Memorandum of understanding
MPC	Monetary Policy Committee
MPS	Monetary Policy Statement
NBFI	Nonbank financial institutions
NZAX	New Zealand Alternative Market
NZFOE	New Zealand Futures and Options Exchange
NZSX	New Zealand Stock Market
NZX	New Zealand Stock Exchange Limited and/or New Zealand Stock Exchange (as appropriate)
OCR	Official Cash Rate
OIA	Official Information Act
RBNZ	Reserve Bank of New Zealand
RC	Registrar of Companies
ROSCs	Report on the Observance of Standards and Codes
RTGS	Real-Time Gross Settlements
SC	Securities Commission
SDDS	Special Data Dissemination Standard
SFE	Sydney Futures Exchange
SME	Small- and medium-size enterprises
SRO	Self-regulatory organization
SSC	State Services Commission
SYCOM	Electronic trading system used by NZFOE
TP	Takeover Panel
FSA	Financial Services Authority

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## **I. IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION**

### **A. General**

1. The New Zealand securities regulatory system was assessed for its observance of the IOSCO Principles as part of the IMF FSAP mission to New Zealand from October 30–November 18, 2003. The assessment was conducted by Janet Holmes (Ontario Securities Commission). The assessment is based on: (1) a self-assessment, prepared principally by staff of the Securities Commission (SC) and Ministry of Economic Development (MED), with input from other authorities and stock exchange operators; (2) a review of applicable laws, guidance and procedures; (3) a review of certain publicly available data concerning the authorities and SROs; (4) interviews with staff of the authorities, stock exchange operators, the Accounting Standards Review Board (ASRB) and Institute of Chartered Accountants of New Zealand (ICANZ), as well as interviews with representatives of certain market participants (including issuers, market intermediaries, investors, legal advisers and a new market operator); and (5) a review of documentation provided by various interviewees.

2. The self-assessment was prepared prior to IOSCO's endorsement and publication of the Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation (Methodology). While a draft of the Methodology was available to some staff, not all people who provided input into the self-assessment had an opportunity to consider the Methodology in providing information and feedback. The assessment was prepared using the final version of the Methodology as a guide.

#### **Institutional and macroprudential setting, market structure**

3. New Zealand equity markets are comparatively small with market capitalization of about 44 percent of GDP. Reflecting a preference for property investment, ownership of New Zealand-listed equities remains mostly in the hands of offshore investors and domestic institutional investors, with only about one-fourth held directly by households. Securities market intermediaries include sharebrokers, futures dealers, investment advisers, and managers of collective investment schemes (CIS), including contributory mortgage brokers.

4. New Zealand markets have been undergoing significant change. NZX, the only regulated securities exchange, demutualized in late 2002, self-listed in 2003 and recently launched a new, regulated market targeted at developing and nontraditional enterprises. Another group recently announced its intention to establish a new web-based market, Unlisted, without seeking recognition as an exchange. SFE Corporation (SFE), the parent corporation of New Zealand Futures and Options Exchange (NZFOE), will transfer trading in NZFOE products to Australia in 2004 and has arranged with NZX for the trading on SFE of products based on NZX-listed securities.

#### **General preconditions for effective securities regulation**

5. Preconditions for effective securities regulation include sound and sustainable macro-economic policies conducive to investment and savings, enforceable property rights, a

supportive political environment free from corruption, well-developed infrastructure (such as legal and accounting systems, clearing and settlement systems and payment systems), an effective judicial system, corporate governance mechanisms, an insolvency regime, the absence of unnecessary barriers to entry and exit from markets and products, market openness to the widest range of participants that meet predefined entry criteria and the regulators' awareness of the impact of new policies. These preconditions appear to be met in New Zealand.

## B. Principle-by-Principle Assessment

Table 1. Detailed Assessment of Observance of the IOSCO Objectives and Principles of Securities Regulation

<b>Principles Relating to the Regulator</b>	
<b>Principle 1.</b>	<b>The responsibilities of the regulator should be clear and objectively stated.</b>
Description	<p>The principal statutory securities regulators are the SC, Takeover Panel (TP) and Registrar of Companies (RC). MED plays a significant role in policy development. NZX plays an important regulatory role in New Zealand securities markets in respect of its member sharebroking firms (NZX Firms) and listed companies (NZX Companies). NZFOE has played a similar role in respect of futures dealers, although NZFOE's parent corporation, SFE, plans to transfer NZFOE's operations to Australia and withdraw NZFOE's regulatory functions from New Zealand in 2004.</p> <p>The SC's responsibilities are clearly set out in legislation and associated regulations. The SC has a website (<a href="http://www.sec-com.govt.nz">www.sec-com.govt.nz</a>), which, among other things, describes in general terms its organizational structure, functions and powers; provides an overview of the statutory framework for regulation of securities markets; and includes a link to the website where the relevant statutes and regulations can be accessed. The SC's Annual Reports (available on the website) contain similar information, and its quarterly publication, The Bulletin, frequently discusses various aspects of the SC's functions and powers. It issues reasons for its material decisions (e.g. to grant an exemption, suspend or cancel the registration of a prospectus, etc.), so that the interpretative process is transparent.</p> <p>The TP administers and enforces the law relating to takeovers. Its responsibilities are clearly set out in legislation. Like the SC, the TP has a website (<a href="http://www.takeovers.govt.nz">www.takeovers.govt.nz</a>), which, among other things, describes in general terms its organizational structure, functions and powers; provides an overview of the statutory framework for regulation of takeovers; and includes the full text of the Takeovers Act and the Takeovers Code, as well as a description of the Takeovers Code "in business language." The TP publishes an Annual Report (available on the website). Another TP publication, Code Word (available on the website), frequently describes the TP's functions and powers. It issues reasons for its material decisions, so that the interpretative process is transparent.</p> <p>The RC supervises companies, a role that includes some specific responsibilities relating to securities (e.g. review and registration of prospectuses, prosecution of certain offences, and receipt of financial statements). These are clearly specified in securities legislation, companies' legislation, and financial reporting legislation. The RC has a staff, who make up the Companies Office, which is a business unit within MED. MED and the Companies Office have websites, each of which provides some information about the RC's functions and powers. The legislation and subordinate legislation administered by the RC is accessible on the New Zealand government's website. General, user-friendly descriptions of the RC's functions, however, are harder to locate than those for the SC and TP. Likewise, while MED publishes an Annual Report (available on its website), there is less detailed information available in respect of the RC.</p>

	<p>Other authorities potentially involved in securities regulation include the Commerce Commission, Reserve Bank of New Zealand (RBNZ), Serious Fraud Office (SFO), and ASRB. The activities of ICANZ, an SRO for the accounting profession, also affect the quality of securities regulation.</p> <p>The securities regulatory system in New Zealand has undergone significant reform in recent years so that some of the regulators' powers have not been tested. To date, there have been no successful challenges to the jurisdiction-conferring provisions in the relevant legislation.</p> <p>As discussed in more detail below, the scope of securities regulation in New Zealand is not as extensive as it is in some jurisdictions (e.g. there is no comprehensive licensing regime for market intermediaries). However, these gaps in regulation do not appear to flow from the fact that there are multiple securities regulators.</p>
Assessment	Fully Implemented
Comments	<p>The securities regulatory framework in New Zealand has undergone significant change in recent years and further reforms have been proposed or are in development. In particular, recent reforms have expanded the role of the SC so that, in effect, it operates as the central hub, with a broad mandate relating to all securities matters, in a network of statutory regulators and SROs whose functions are more narrowly defined. The SC's broad mandate facilitates cooperation and communication among regulators.</p>
<b>Principle 2.</b>	<b>The regulator should be operationally independent and accountable in the exercise of its functions and powers.</b>
Description	<p><b>Independence:</b> Through legislation, Parliament has constituted the SC and TP as independent statutory corporations and delegated to them certain powers, which they can exercise without external political interference and/or the need to obtain the Ministry's approval in respect of day-to-day technical matters. The RC is expected to exercise his decision-making powers independently of the Minister. The very limited circumstances in which the Minister can intervene directly in the performance of the regulators' functions are described below in relation to principles 11-13.</p> <p>The SC and TP are funded through service-related fees paid by market participants and an annual Parliamentary appropriation (which takes into account past and projected fee revenue). Thus, fee revenue is not as stable a source of funding as it would be for a purely self-funded regulator that was entitled to decide how much of its fee revenue it would retain from year to year. Parliament, however, has established funds for each of the SC and TP for use, in the regulators' discretion, to pay external costs of litigation in the courts. These litigation funds reduce the risk that funding constraints could prevent these regulators from taking enforcement action in the courts in circumstances where they perceived such action to be appropriate.</p> <p>Fees collected from issuers by the RC are turned over to the Consolidated Revenue Fund. Parliament makes an annual appropriation to MED and this amount is, in turn, allocated across MED's activities. In recent years, the amount allocated to the RC has been relatively fixed, although the current government has demonstrated a willingness to provide additional funding where an issue arises that requires additional resources.</p> <p>The SC and TP, every member of the SC and TP, every officer and employee of the SC and TP, and anyone authorized to carry out inspections for the SC or TP are protected from liability unless they act in bad faith. Mechanisms exist to protect the independence of the chief executives and governing boards of the SC and TP. These include the specification of eligibility criteria and maximum terms of office, and criteria for removal in the Securities Act and Takeovers Act. Staff advised that they were not aware of any SC or TP member ever being removed from office. The RC is a public servant and the normal public service rules of law and employment contract apply.</p> <p><b>Accountability:</b> Structures to ensure that the SC, the TP and the RC (through MED) remain accountable to Parliament and the public in the exercise of their functions and powers include the following: (1) The SC, TP and MED must publish annual reports, which are made publicly available (tabled in Parliament, published on the regulators' websites, etc). (2) The regulators' receipt of funds is audited in accordance with New Zealand's sector-neutral Generally Accepted</p>



	<p>Accounting Principles (GAAP). (3) The SC and TP enter annual Output Agreements with the Minister providing for the allocation of funds to planned activities and quarterly performance reporting to the Minister, who, in turn, is responsible in Parliament for the SC and TP. Under the Public Finance Act, MED must prepare an annual Statement of Intent, which agreed with the Minister and tabled in Parliament. The activities of the SC, TP, and MED are subject to periodic scrutiny by a Select Committee of Parliament. (4) Legislation provides that persons who may be affected by a decision of the SC, TP, or RC normally are to be given notice of the proceedings and the right to be heard. Anyone affected by a decision of the SC, TP, or RC is entitled to reasons for the decision. The SC and TP routinely publish exemption decisions (including written reasons) on their websites. (5) The exercise of statutory powers by the SC, TP, and RC is subject to judicial review. Certain specified decisions and actions of the SC, TP, and RC can also be appealed to the High Court. MED and the SC and TP must comply with the Bill of Rights Act and the Human Rights Act in developing securities laws and exercising powers and functions, respectively. (6) Government, SC, and TP policies in favor of transparency facilitate accountability because they result in the publication of a significant amount of information regarding the regulators' exercise of their functions and powers and proposals for law reform.</p> <p><b>Protection of Confidential and Commercially Sensitive Information:</b> See the discussion in respect of Principles 11 and 12.</p>
Assessment	Broadly Implemented
Comments	<p>The principal securities regulator, the SC, and the TP are operationally independent. A Broadly Implemented rating has been assigned because the RC is not operationally independent.</p> <p>The SC and TP are partly funded by fees and partly by annual Parliamentary appropriation, while the RC's activities are fully funded by Parliamentary appropriation. The RC has noted that there is flexibility to reallocate appropriated funds within the Companies Office, but such funds cannot be applied to other business units or elsewhere within MED. However, there is a risk that this flexibility could result in a reduction of resources available for the securities-related functions of the Companies Office, which is also responsible for maintaining the Personal Property Securities Register and matters relating to insurance and superannuation schemes. For example, a pressing need in these areas of operation could result in the shift of resources away from securities-related functions (e.g. review of issuers' disclosure documents, investigations and enforcement activity).</p> <p>Full or partial funding through Parliamentary appropriations has certain risks (e.g. that a change in government policy could result in reduced funding, that opposition members of Parliament could attempt to delay votes on annual funding, etc.) However, given the small size of New Zealand securities markets and the relatively small number of market participants, a fully self-funded model in the present circumstances might provide a less stable, and less equitable, funding source. Each of the statutory regulators has indicated that the present government appears willing to provide funding to enable them to fulfill new responsibilities and address new issues as they arise. Accordingly, no recommendation is made at this time regarding changes to the funding model.</p> <p>The SC, TP, and RC are accountable in the exercise of their functions and powers.</p>
<b>Principle 3.</b>	<b>The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.</b>
Description	<p><b>Sufficiency of Powers:</b> Although important reforms have been implemented and further significant regulatory reform is planned, at this time, the securities regulators do not have sufficient powers and authorities, taking into account the size, complexity and types of securities markets in New Zealand and a full assessment of the Principles. For example, the regulatory scheme currently does not provide for: (1) an assessment of the operational capacity or fitness of securities exchanges as part of the initial registration process or the ongoing supervision of securities exchanges, notwithstanding the fact that NZX, the only authorized securities exchange, plays a frontline role in the regulation of stock broking firms, stockbrokers and listed companies; (2) several categories of market intermediaries are subject to little or no regulation or ongoing oversight (e.g. in respect of qualifications, integrity, financial resources, and standards for internal</p>

	<p>control and operational conduct); (3) in respect of several categories of CIS, the regulatory scheme depends principally on standards set and overseen by trustees and private statutory supervisors, who are retained by the CIS operators they oversee; and (4) the SC currently lacks certain powers to take administrative action or initiate action in Court to enforce some key provisions in the securities law (although enactment of the proposed securities trading law reforms would enhance the SC’s powers in this respect).</p> <p><b>Funding, Resources and Training:</b> The SC and TP appear to have sufficient funding to enable them to fulfill their assigned functions and exercise the powers granted to them. SC staff indicated, and a review of the SC’s financial statements and public statements by the Minister support the view that, the present government is willing to provide additional funds to the SC to enable it to fulfill its new functions and exercise its new powers. For example, the government is providing additional funding to the SC to expand its investor education initiatives and to commence the development of an ongoing program of surveillance and monitoring of compliance with financial reporting standards by issuers in their financial reports.</p> <p>The TP’s workload has been very heavy. Two new TP members have been appointed in the last year (since the Takeovers Act was amended to increase the maximum number of TP members).</p> <p>There is a shortage of qualified, senior professionals (especially accountants and lawyers) with adequate expertise in securities and takeover matters. This has made it somewhat more difficult for the SC to recruit senior, permanent staff on its own behalf and provide services to the TP. However, these difficulties do not appear to flow from an inability to offer competitive remuneration. Despite these constraints, SC and TP staff stated that they have been able to deal with all matters as they arise and there is no backlog of complaints or referrals.</p> <p>The RC has a staff of six full-time employees who are responsible for reviewing documents to be registered under the Securities Act, the FRA, and other legislation. During peak periods, the RC sometimes calls upon additional employees to assist with this function. In addition, the RC has a staff of approximately twelve people, who participate in inquiries, inspections and enforcement matters, and can call upon qualified staff allocated to other units if the need arises.</p>
Assessment	Partly Implemented
Comments	<p>This Principle is considered Partly Implemented principally because the securities regulators do not, as yet, have sufficient powers and authorities to fully implement all of the IOSCO Principles and accordingly, a negative response to Key Question 1 must be given. It should be noted, however, that the securities regulators appear to have most of the powers and authorities needed to fulfill their existing mandates. To a lesser extent, concerns about the adequacy of the RC’s financial and other resources have contributed to the Partly Implemented rating.</p>
<p><b>Principle 4. The regulator should adopt clear and consistent regulatory processes.</b></p>	
Description	<p>Procedures in respect of specific statutory powers are set out in applicable securities and takeovers legislation. In other situations, the SC, TP, and RC may regulate their own procedure but are required to do so subject to the common law requirements of natural justice. Each of the SC, the TP and MED consistently consults the public by publishing discussion papers on regulatory reform. The SC, TP, and RC do not have rulemaking powers. The SC’s and the TP’s exemption powers, and the Governor-General’s regulation-making powers are specified in the relevant legislation.</p> <p>The SC and TP disclose and explain their policies in important operational areas. For example, the SC publishes from time to time extensive reports arising from its inquiries into alleged contraventions of securities laws. In these reports, the SC expresses its views on the interpretation of the securities laws, the appropriateness of various practices in relation to securities and the need for reform, if any, to securities laws. The TP has published on its website its policies, practice notes and guides, decisions and exemption notices. The RC publishes a variety of documents, including forms, guidance on frequently asked questions, and a monthly bulletin covering various operational issues arising in respect of its various functions.</p> <p>Each of the SC, TP, and RC appears to follow consistent practices in the exercise of its functions</p>

	<p>and powers. The SC has published internal procedures for handling certain matters (e.g. investor inquiries, processing of exemption applications, etc.) The TP and RC have developed extensive procedures manuals and/or checklists relating to the exercise of their functions.</p> <p>The SC and, to a lesser extent, the TP promote investor education (principally through their websites). In the May 2003, the SC received funding for two new public education projects, targeted at vulnerable investors, and strategies for this initiative are in development.</p>
Assessment	Fully Implemented
Comments	<p>Securities regulators and MED achieve high standards of transparency and procedural fairness. These standards contribute to the consistent exercise of the regulators' powers. In addition, there are various initiatives to enhance investor education.</p> <p>Certain improvements, however, could be considered. Although each entity's functions and powers are transparently set out in legislation, as well as websites and/or other publications, it would facilitate understanding of the regime if each statutory regulator and SRO included on its website a common, comprehensive, and easy-to-understand description of the regulatory framework that indicated the respective roles of each regulator and how they work together.</p> <p>The securities regulatory system is undergoing significant change, creating challenges even for knowledgeable market participants and regulators to fully understand how the new standards apply. The regulators should consider working with securities industry participants to develop bilateral education initiatives. Regulatory staff would learn from the experience of industry participants, while they in turn would gain insight into staff's interpretation of the new standards.</p>
<b>Principle 5.</b>	<b>The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.</b>
Description	<p><b>The SC and the TP:</b> The SC is a small but growing organization. Its staff has increased from 18 in 2001 to 30 in 2003. The SC has an executive chair and nine part-time Members.</p> <p>The SC provides all of the TP's staff under a Memorandum of Understanding (MOU). The TP has a full-time senior executive and eleven part-time Members. There are special statutory provisions recognizing that TP staff are employed by and share premises with the SC (e.g. communication of confidential information is prohibited except pursuant to the regulators' reciprocal obligations to assist each other in the exercise of their statutory functions).</p> <p>The SC and TP expect Members and staff to observe high standards of conduct in relation to conflicts of interest, confidentiality and appropriate use of information, but do not provide their staff with a comprehensive statement of these standards. Instead, the standards arise from a variety of sources, both written and unwritten (e.g. some statutory and common law standards of general application, professional Codes of Conduct that are binding upon staff lawyers and accountants, some express terms in employment agreements and retainers, and oral communication of expectations). There are criminal sanctions for misuse of confidential information, and administrative penalties (administered by the governing bodies of the legal and accounting professions) for noncompliance with standards relating to, e.g., conflicts of interest. All but three of the SC's professional staff are lawyers or accountants. In addition, noncompliance with the disclosure of interests or confidentiality provisions in the employment agreements or retainer agreements with Members would provide cause for termination. To date, the small size of these organizations has facilitated face-to-face communication and constant monitoring of standards. However, there is no active monitoring of SC staff's disclosure obligations with respect to securities transactions (e.g. no requirement to have brokerage statements forwarded to the SC and no verification that written disclosures are accurate).</p> <p><b>The RC and MED:</b> Staff of the RC and MED are expected to comply with the Public Service Code of Conduct, as well as an MED-specific Code of Conduct. These Codes are incorporated by reference into employment agreements. MED has developed a written process for handling alleged violations of these standards. Staff must notify senior management of any actual or potential interest that may present a conflict, but are not required to disclose their investments or transactions in financial products. There is no active monitoring of staff's investment practices.</p>

Assessment	Fully Implemented
Comments	<p>The culture of these regulators is one of professionalism and commitment to high standards.</p> <p>In a small organization, a less formal approach to communicating and monitoring standards could meet the objectives of this Principle. If SC and TP staff numbers increase any further, the SC and TP should develop a written Code of Conduct that incorporates or cross-references the standards of behavior staff and members are expected to meet, including standards relating to conflicts of interest and personal dealings in securities or other investments that may present a conflict. An appropriate level of monitoring (e.g. through annual attestations of compliance with the Code and, possibly, spot checks on disclosures relating to securities transactions) by a designated ethics officer, who can also serve as an information resource for staff, should also be introduced. To facilitate transparency, this Code should be made publicly available.</p>
<b>Principles of Self-Regulation</b>	
<b>Principle 6.</b>	<b>The regulatory regime should make appropriate use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, and to the extent appropriate to the size and complexity of the markets.</b>
Description	<p>The New Zealand regulatory system relies upon regulated exchanges performing SRO-type functions. NZX meets the definition of SRO in the Methodology because it: (1) supervises compliance by NZX Companies with NZX Listing Rules; (2) supervises certain market participants, i.e. NZX Firms and NZX Brokers; and (3) oversees trading activities on its markets. NZFOE also meets the definition of SRO for purposes of the Methodology because it exercises regulatory functions, namely: (1) supervision of NZFOE Dealers; and (2) oversight of trading activities on its markets.</p>
Assessment	Fully Implemented
<b>Principle 7.</b>	<b>SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.</b>
Description	<p><b>Authorization:</b> The securities regime does not provide for authorization of SROs as such. The legislation provides for registration of securities exchanges and authorization of futures exchange, each of which is expected to carry out certain regulatory functions.</p> <p>To obtain the status of a registered securities exchange, the exchange must have its conduct rules approved by the Governor General on the advice of the Minister (who must seek the SC's advice). These conduct rules must include: (1) listing rules for issuers; and (2) business rules governing the conduct of business on the market and persons authorized to undertake trading activities on that market. This approval process enables the SC and Minister to evaluate the exchange's willingness and legal powers to: (1) carry out the purposes of the relevant governing securities regulatory standards and enforce compliance by firms and listed companies subject to those standards; (2) develop rules designed to set standards of behavior for members and promote investor protection; (3) enforce its own rules and impose appropriate sanctions for noncompliance; (4) treat regulated persons (e.g. firms, brokers and listed companies) in a fair and consistent manner; and (5) avoid rules that may create anti-competitive situations. When NZX demutualized, it submitted its conduct rules for approval, even though it was deemed to be a registered exchange pursuant to private Act.</p> <p>While the securities regulatory regime sets some entry standards for registered exchanges, it does not expressly require the operator of an exchange to demonstrate either that it: (1) is fit and proper to carry out SRO-type functions, or (2) has the operational capability to do so.</p> <p>The SC authorizes futures exchanges, on such terms and conditions as it considers appropriate. SC staff stated that, in exercising the discretion to authorize futures exchange, the SC would expect a futures exchange to have procedures and rules for: (1) the exchange's governance; (2) admission criteria for members (including experience, qualification and character standards); (3) members' rights and obligations; (4) conduct rules; (5) discipline, appeal, arbitration, client complaint and dispute resolution procedures; (6) audit, investigative and monitoring powers; (7) segregation and handling of client funds; (8) provision for risk disclosure and client agreement forms; and (9) specific rules for the operation of the trading system. These expectations are reflected in the</p>

	<p>SC's December 2002 discussion paper on futures dealers' authorizations.</p> <p><b>Ongoing Oversight:</b> The Securities Markets Act provides for a degree of ongoing oversight by the SC of registered securities exchanges. For example, registered securities exchanges: (1) must operate their markets in accordance with approved conduct rules; (2) cannot change or revoke their conduct rules without notice to the Minister, who can disallow the proposed change or revocation on public interest grounds; (3) must give the SC or TP (or their appointee) information, assistance and access to their facilities upon reasonable request; and (4) must notify the SC if the exchange takes any disciplinary action against a person for contravention of the conduct rules or suspects that a person has committed, is committing or is likely to commit a serious contravention of the conduct rules, securities legislation or takeover legislation. If the SC concludes that specified grounds exist, it can, for a period of up to 21 days: (1) direct a registered securities exchange to suspend the trading of securities, or a class of securities, of one or more public issuers; and/or (2) give the registered exchange any other direction in relation to that trading. The SC can revoke or vary a direction, and it can apply to the court to enforce a direction or to obtain a more extensive direction or one having an effect for more than 21 days. The SC, however, cannot require a registered exchange to change its conduct rules. The Governor-General retains the authority to revoke a securities exchange's registration (and, theoretically, this power could be exercised in circumstances where a securities exchange was unwilling to change its conduct rules to respond to concerns raised by the securities regulators).</p> <p>In respect of futures exchanges, the SC can use its power to impose terms and conditions on its authorization to provide for an appropriate degree of ongoing oversight of an authorized futures exchange. It can also revoke an authorization.</p> <p>In practice, the SC interacts with the NZFOE and NZX on a regular basis pursuant to formal and informal arrangements. In addition, the SC's broad inspection powers (described in relation to Principle 8) apply in respect of the exchanges. There is, however, no comprehensive oversight plan for either exchange.</p> <p><b>Professional Standards and Conflicts of Interest:</b> NZX's conduct rules and the NZFOE's rules include provisions intended to, among other things: (1) protect confidential information, except to the extent such information is required to be provided by NZX for specific purposes such as providing it to the SC; (2) ensure procedural fairness in respect of disciplinary proceedings; and (3) avoid or resolve conflicts of interest that arise at NZFOE. NZX staff are required to sign a confidentiality agreement and comply with a trading policy that requires pre-trade approval by the legal team for any transaction in NZX-listed securities.</p> <p>NZX is self-listed. Its Listing Rules provide that a "Special Division" of the Market Surveillance Panel, which exercises disciplinary powers in relation to NZX Companies, will exercise all of NZX's powers in relation to monitoring and enforcing the Listing Rules as they apply to NZX as an NZX Company. The Special Division has three independent members, selected by the Chair. The term "independent" means that the person must not be a director, employee or shareholder of NZX or any related company. The role and independence of the Special Division currently are being reviewed by NZX as part of a broader review of its investigation and enforcement functions.</p>
Assessment	Partly Implemented
Comments	<p>NZX supervises the major share broking firms, their individual brokers, and listed companies. NZX Firms and NZX Brokers are the principal market intermediaries operating in organized equity markets in New Zealand. Most secondary market trading in equities of New Zealand companies appears to involve NZX Companies. Given the significance of NZX's regulatory role, it is essential that there is adequate initial and ongoing supervision of this exchange and any other securities market operator that is required to be registered.</p> <p>The initial assessment process does not provide either for an assessment of the adequacy of the operator's financial, physical and human resources or an assessment of its integrity and fitness to exercise regulatory functions.</p>

	<p>The SC interacts with NZX and NZFOE on a regular basis, receives information from them, and is able to inquire into a wide range of matters relating to the operation of the exchanges' markets and the exercise of their regulatory functions. These activities, in the aggregate, satisfy most of the criteria for an effective, ongoing oversight program. Consideration should be given, however, to formalizing an oversight plan (e.g. developing risk assessment criteria, providing for regular theme-based inspections that take into account international best practices for SROs and providing for public disclosure of the main findings of such reviews).</p> <p>Securities legislation should be amended to authorize: (1) the SC to direct on public interest rounds, or recommend to the Minister that the Minister direct, a recognized securities exchange to amend some or all of its conduct rules; and (2) authorize the Minister to make such a direction on the SC's advice and on public interest grounds.</p> <p>NZX should adopt a broader definition of "independence" for Special Division members or transferring disciplinary functions in respect of NZX to another body, such as the SC.</p>
<b>Principles for the Enforcement of Securities Regulation</b>	
<b>Principle 8.</b>	<b>The regulator should have comprehensive inspection, investigation and surveillance powers.</b>
Description	<p>The SC, the TP and NZX have very broad inspection, investigation and surveillance powers and can exercise their powers in a wide range of circumstances (e.g. without notice in some circumstances, usually without having to obtain court approval and generally in the absence of suspected misconduct). For example, the SC can: (1) review securities practices and activities in securities markets; (2) receive evidence; (3) require persons to provide information; (4) summon witnesses and require them to provide documents or information; and (5) conduct an inspection, ask the RC to conduct an inspection into certain matters or appoint an inspector. The TP has powers similar to (2)-(5) noted above in respect of the SC. The NZX Board can, among other things: (1) receive and consider complaints against NZX Firms or their conduct; (2) appoint inspectors with broad powers applicable in respect of NZX Firms, their employees and their operations; (3) take any action that, in its opinion, is required for the operation of fair and orderly markets and to secure compliance with NZX requirements; and (4) require NZX Companies and their representatives to produce documents for inspection and copying.</p> <p>The Financial Transactions Reporting Act requires financial institutions (i.e. any firm that holds money for a client) to retain records that identify the client (name of account holder and person authorized to transact business), the amount purchased or sold, the time of the transaction, the price of the transaction and the individual and the bank or broker and brokerage firm that handled the transaction. This requirement applies to financial services providers who hold or handle money on behalf of other persons. Under this Act, financial institutions also are required to put in place measures to minimize potential money laundering.</p> <p>NZX requires NZX Firms to maintain complete and correct records and explanations of its affairs and the transactions of its stock broking business, as well as accounting records and controls (which must be audited). NZFOE has similar requirements.</p>
Assessment	Broadly Implemented
Comments	As noted in respect of Principle 7, the SC cannot require a registered securities exchange to change its conduct rules. This could only be accomplished indirectly, by requiring such a change under a warning that the Governor-General would revoke the exchange's registration. In the absence of such a power, the SC cannot unilaterally require a registered exchange, which performs significant inquiry and enforcement functions in New Zealand markets, to improve its processes. For this reason, a Broadly Implemented rating has been assigned.
<b>Principle 9.</b>	<b>The regulator should have comprehensive enforcement powers.</b>
Description	<p><b>The SC and TP:</b> Amendments to securities and takeover legislation in late 2002 significantly increased the enforcement powers of the SC and TP. For example, the SC can: (1) suspend or cancel an investment statement or the registration of registered prospectus; (2) prohibit the distribution of advertisements for securities; (3) prohibit a person from acting as a contributory mortgage broker; (4) require a public issuer to disclose information or publish corrective statements to secure compliance with the continuous disclosure regime; (5) give directions to any</p>

	<p>registered exchange regarding trading of securities on the exchange (including suspension of trading); and (6) require a registered exchange to provide information, assistance or access. The SC may seek Court orders: (1) seeking civil penalties for insider trading; (2) enforcing continuous disclosure laws and seeking pecuniary penalties; and (3) requiring compliance with, and making orders in respect of, substantial securityholder laws. The SC can also recommend to the Minister that a corporation be placed in statutory management.</p> <p>The SC also has two important, “intermediate” enforcement powers. It has used its power to review and comment on practices relating to securities and securities markets to inquire into alleged misconduct and publish reports in which it expresses its views on such conduct. These reports can operate as a specific or general deterrent. In December 2002, the SC obtained the power to receive enforceable undertakings from any person and to seek Court orders to enforce such undertakings. This is a flexible power enabling the SC to work with a person considered to be engaging in inappropriate conduct in order to develop remedies that prevent further harm to particular investors or market integrity, compensate persons who have sustained harm, establish procedures to improve future compliance with securities laws, etc.</p> <p>The SC, however, cannot, for example: (1) impose an administrative penalty; (2) apply to the court for a civil remedy in respect of misleading or inadequate disclosure in offer documents or advertisements; or (3) bring an action in court for a breach of the Investment Advisers (Disclosure) Act. The government, however, has indicated it will introduce legislation in 2004 that would give the SC the second and third powers described above.</p> <p>The TP also has a range of enforcement powers. For example, if it determines after a meeting that it is not satisfied that a person has complied with the Takeovers Code, it can issue short-term restraining orders or apply to the court for orders providing for a longer period of restraint or dealing with more complex matters. It can also apply to the court for a wide range of orders, including compliance orders, compensation orders, orders providing for pecuniary penalties, and orders affecting holdings in securities. Like the SC, the TP can also accept written undertakings. The Takeovers Act provides for significant pecuniary penalties for contraventions.</p> <p><b>The RC:</b> The RC must refuse to register any prospectus that is false or misleading in a material particular and may refuse to register any prospectus that does not comply with the law. The RC also has a number of other enforcement powers, such as the power to prosecute the offences relating to issues and issuers of securities (e.g. illegal offers, misleading statements in offer documents) and to prosecute offences under the Financial Reporting Act (FRA). The RC can apply to the court for an order disqualifying a director for up to 10 years if he or she has persistently failed to comply with the Securities Act or a judgment has been obtained against him or her under the insider trading regime. The RC can declare a corporation to which the Corporations (Investigation and Management) Act 1989 applies to be “at risk,” thereby enabling the RC to provide advice and, with the SC’s prior consent, directions to the corporation.</p> <p>The NZX Board (or authorized delegate) can impose a fine of up to \$NZ 250,000 on an NZX Firm, censure an NZX Firm or suspend or revoke its designation as an NZX Firm, for, among other things, breaches of NZX Business Rules and/or failure to comply with good stockbroking practice. In respect of NZX Companies, the Market Surveillance Panel can impose a wide range of penalties, including censure, suspension, or cancellation of the quotation of listed securities, and cancellation of an NZX Company’s listing.</p> <p><b>Private Remedies:</b> Securities legislation does not preclude private parties from seeking their own remedies for misconduct relating to securities laws. Shareholders and former shareholders of a company to which the Takeovers Code applies can apply for court orders in certain circumstances where: (1) the TP determines that it is not satisfied that there has been compliance with the Code; and (2) the TP consents to the application or has not applied to the Court within 10 days after a person has requested that it do so. Shareholders and former shareholders can sue NZX Companies for compensation arising out of a breach of NZX Listing Rules.</p>
Assessment	Broadly Implemented

Comments	<p>The enforcement powers of the SC and TP recently have been increased so that these regulators have a relatively wide and flexible range of enforcement tools available to them, supplemented by effective arrangements with other domestic authorities to share information and cooperate in enforcement proceedings. However, some gaps in the securities regulators' enforcement powers exist. For example, no securities regulator can apply to the Court for enforcement of directors' and officers' duties to securityholders under the Companies Act. The National Enforcement Unit has some enforcement powers in relation to directors but gaps exist. None of the securities regulators has the power to initiate a court action for a breach of the Investment Advisers (Disclosure Act) or obtain compensation or a civil penalty in respect of a breach of the disclosure standards for offers. The government has indicated that it intends to introduce legislation next year to address some of these gaps in enforcement powers. A further review of securities laws, expected to commence in 2004, is expected to address any remaining gaps in enforcement powers.</p>
<p><b>Principle 10. The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.</b></p>	
Description	<p>Generally, all of the securities regulators have effective systems to conduct inspections (or refer matters to another regulator for inspection), once a complaint or referral has brought to their attention an issue regarding possible noncompliance with securities laws. Each of the regulators has systems to receive and respond to investor complaints. SC, TP, and NZX staff indicated that they do not have backlogs of investor complaints.</p> <p>In addition, most regulators conduct routine inspections of certain matters. For example, the RC reviews all documents relating to offers of securities. It conducts a more limited review of annual financial statements (e.g. to identify whether the audit report is qualified). NZX reviews a variety of documents in connection with the initial or subsequent listing of securities, keeps under review public disclosures in respect of NZX Listed Companies and trading in listed securities and has commenced a comprehensive on-site inspection process for NZX Firms. The TP reviews all documents associated with takeovers and reviews activities in relation to NZX Companies that may raise concerns about compliance with the Takeovers Code. Some regulators also conduct theme-based reviews, e.g. in areas that have been identified as sources of potential risk to the achievement of the regulators' objectives.</p> <p>As described below in relation to Principle 28, NZX's SMART and FASTER systems enable NZX and the SC to conduct an audit of the execution and trading of all transactions on its markets. NZFOE's SYCOM system and Austraclear securities settlement system enable a similar audit of transactions on its exchange.</p> <p>A review of some of the periodic reports on enforcement prepared by regulatory staff and discussions with SC staff regarding their processes for handling enforcement issues indicated that the securities regulators generally are competently discharging inspection responsibilities. SC staff and some market participants commented that, recently, NZX has been sending out more inquiries about trading to market participants and referring more files to the SC for consideration. This suggests that NZX staff are using SMARTS data to detect unusual trading behavior and follow up on any concerns arising from such data.</p> <p>Some regulated entities are required to have in place supervisory and compliance procedures reasonably designed to prevent securities law violations, but others are not subject to such requirements. For example, such requirements apply in respect of NZX Firms and futures dealers. However, the securities regulatory regime does not impose such requirements on several other categories of regulated market participants, including contributory mortgage brokers, certain classes of CIS operators, investment advisers or sharebrokers that are not NZX Firms.</p>
Assessment	Partly Implemented
Comments	<p>The SC and TP are active in overseeing securities markets and takeovers, demonstrating the willingness and capability to pursue enforcement action when concerns about compliance with securities and takeover law materialize. NZX is implementing a broader and deeper compliance program for NZX Firms and monitors compliance by NZX Listed Companies with initial,</p>



	<p>periodic, and timely disclosure obligations.</p> <p>However, certain significant gaps in the regulatory scheme adversely affect the regulators' ability to use their enforcement powers to promote compliance, detect problems at an early stage and thereby deter breaches, and sanction noncompliance with securities laws. For example (and as discussed in more detail below in relation to other Principles):</p> <p>Stockbrokers are licensed by the District Court. Unless they choose to become designated as NZX Firms or NZX Brokers, the licensing criteria are minimal and they are subject to no ongoing supervision. The securities regulators do not know how many licensed stockbrokers there are in New Zealand, nor do they have comprehensive data regarding the activities of stockbrokers who are not subject to the oversight of NZX.</p> <p>There is no ongoing regulatory oversight of CIS operators. This makes it more difficult for the regulators to prevent or detect inappropriate conduct at an early stage. The regulators must rely upon unit trustees or statutory supervisors to deal with inappropriate conduct at an early stage or raise concerns with the regulator. Although these private supervisors of CIS have broad obligations to act in the best interests of CIS unitholders, it is generally the case that they have a broad discretion to decide when to intervene in a CIS' affairs and/or report concerns to the regulators. This may reduce the ability of the regulators to detect and prevent inappropriate conduct at an early stage.</p> <p>The government has indicated that it intends to introduce legislation in 2004 to strengthen the disclosure regime for investment advisers (including the introduction of new enforcement mechanisms) and commence a wider review of the regulatory scheme for these intermediaries. Currently, however, these intermediaries are not required to be licensed in this capacity and are not subject to ongoing regulatory supervision. This makes it difficult for securities regulators to obtain comprehensive data regarding the activities of these intermediaries, thereby making it more difficult to detect and prevent inappropriate conduct at an early stage.</p> <p>As there is limited information available about the number and activities of companies that are subject to the Takeovers Code but that are not NZX Companies, it is relatively more difficult for the TP to be certain that it has detected instances of noncompliance with the Takeovers Code in respect of this sub-category of "Code Companies."</p> <p>Thus, it is hard to conclude with certainty that, overall, the securities regulators have an effective enforcement program in place. Since, however, they have demonstrated a willingness and ability to respond to compliance concerns that arise, however, reforms to the regulatory scheme relating to the matters noted above should enable the authorities to fully implement this Principle.</p>
<b>Principles for Cooperation in Regulation</b>	
<b>Principle 11.</b>	<b>The regulator should have authority to share both public and non-public information with domestic and foreign counterparts.</b>
Description	<p>The SC can share information with other domestic authorities, and the other securities regulators can share information with the SC and some or all of the other relevant domestic authorities, without the need for external approval: (1) The SC's functions include keeping under review practices relating to securities and activities on securities markets and commenting on these to any appropriate body. (2) The TP can share any information with the SC that the TP considers may assist the SC in the performance of its functions and duties or exercise of its powers. (3) Any information gained from an inspection undertaken by the SC, TP, or RC or a person appointed by any of them may be given to any other person for purposes of the Securities Act, Securities Markets Act, Takeover Act, and/or certain other specified Acts. (4) NZX and NZFOE are required to share information with the SC and have established information-sharing arrangements for this purpose. (5) The Official Information Act provides an added basis for the regulators to share information voluntarily with each other, since the Act's purpose is to make official information available to anyone (upon request) unless good reasons exist for withholding it.</p> <p>The SC and TP have statutory functions to cooperate with overseas regulators and communicate information obtained in the performance of the functions and powers of each body (whether or not</p>

	<p>confidential) where such cooperation or information may assist the overseas regulator in the performance of its functions. They can provide information to overseas regulators on an unsolicited or solicited basis, even if the alleged conduct would not be a breach of New Zealand law. The SC and TP can undertake an inspection, summon a person to give evidence (under oath or otherwise) and/or provide documents or other information, provided that certain criteria (including Ministerial approval) are satisfied. The Minister has given class approvals to the SC for all requests that come from seven overseas regulators with whom the SC has frequent contact. For regulators that are not covered by a class approval, Ministerial approval is in many cases a formality and occurs immediately.</p> <p>The SC and TP cannot provide to an overseas regulator information, documents or evidence obtained from a person under a summons issued by the SC or TP unless the SC or TP receives a written undertaking from the overseas regulator that such information, documents or evidence: (1) will not be used by the overseas regulator as evidence in criminal proceedings against that person (except perjury proceedings); and (2) to the extent to which it is within the overseas regulator's ability, to ensure that such information, documents or evidence will not be used by any other person, authority or agency as evidence in proceedings of that kind.</p> <p>The SC's powers, capability, and willingness to cooperate with overseas regulators were subjected to a rigorous screening process by IOSCO experts before it was accepted as a signatory to the IOSCO MMOU in October 2003. The SC intends to request that the Minister grant a class approval in respect of all signatories to the IOSCO MMOU.</p>
Assessment	Fully Implemented
Comments	The RC, NZX, and NZFOE can share information with the SC. NZX and NZFOE are required to cooperate with the SC and the SC is authorized to keep under review securities practices and activities on securities markets and cooperate with overseas regulators. This has the effect of enabling the SC to act as the hub in an information-sharing network that links domestic and foreign securities regulators.
<b>Principle 12.</b>	<b>Regulators should establish information sharing mechanisms that set out when and how they will share both public and nonpublic information with their domestic and foreign counterparts.</b>
Description	<p>Each of the statutory regulators, NZX and NZFOE can enter into information-sharing agreements with other domestic authorities. The SC has entered into bilateral MOUs with the TP, the SFO and NZX, and NZFOE's written undertaking to the SC provides for information-sharing. There are close informal links at the member and staff level between the SC and NZX. The TP maintains informal links with NZX at both the member and staff level. There is some coordination between the TP and NZX where both organizations need to approve the appointment of independent advisers and independent appraisers in respect of the same transactions. There is also some sharing of market intelligence. The SC, the TP, MED, the RBNZ, the SFO and the Commerce Commission meet formally, approximately four times a year, as the Financial Regulators Coordination Group, to discuss matters of common interest, to coordinate approaches to current issues where necessary and to share information. A multilateral MOU has been developed to govern the sharing of information among these entities and they are in the process of executing this agreement. The SC also regularly shares information, with the Minister of Consumer Affairs, the New Zealand Law Society and ICANZ. The TP shares certain information informally with the Overseas Investment Commission and the RC.</p> <p>The SC has entered into a variety of formal information-sharing arrangements and MOUs with overseas regulators. It is a signatory to the IOSCO MMOU, as well as IOSCO's 1986 Rio Declaration. The TP does not have any formal information-sharing arrangements with international financial regulators. Most of the TP's day-to-day work does not require an international perspective or raises concerns about cross-border issues. There is, however, close coordination at a policy level between the TP and its counterpart in Australia. In addition, the TP liaises with ASIC, which, among other things, is responsible for granting exemptions from the takeovers provisions in the Corporations Law.</p>

	<p>The SC and TP can make an order prohibiting the publication or communication of any information, document or evidence obtained in connection with any proceedings of the SC/TP or RC. Such an order can be made on any terms or conditions that the SC or TP thinks fit, but the order must end at the conclusion of an inquiry or proceedings. The information then becomes subject to the Official Information Act.</p> <p>Generally, the SC and TP can hold meetings in private on their own initiative or at the request of an applicant. Certain meetings of the SC, however, must be held in public. For example, an appeal to the SC from a decision of the Registrar must be held in public.</p> <p>The Securities Act and Takeovers Act provide that, subject to certain exceptions, no court or other person can require a member, officer or employee of the SC or TP, any delegate thereof or any expert appointed by such agency, or any other person present at a meeting of the SC or TP to:</p> <p>(1) give evidence in a court or in any proceedings of a judicial nature in respect of anything coming to his knowledge in connection with the operations of the SC or TP; or (2) make discovery of a document or produce a document for inspection in court or in any proceedings of a judicial nature if the document was provided or obtained in connection with the operations of the SC or TP.</p> <p>Both the SC and TP can impose conditions in relation to the provision of information, documents or evidence to an overseas regulator. This includes conditions relating to maintaining the confidentiality of anything provided.</p>
Assessment	Fully Implemented
Comments	The securities regulators can enter into formal and informal arrangements regarding the sharing of information with domestic authorities and foreign regulators. Where the level of interaction is warranted, the arrangements have been documented in writing. Representatives of all of the regulators confirmed that, to date, they have not declined any request from a domestic or foreign regulatory authority to share information, subject to appropriate safeguards.
<b>Principle 13.</b>	<b>The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.</b>
Description	<p>As part of the screening process for the IOSCO MMOU, IOSCO experts verified that the SC is able to offer effective and timely assistance to foreign regulators in respect of most matters, regardless of whether it has an independent interest in the matter. The SC, as well as the other securities regulators in New Zealand can provide effective and timely assistance to foreign regulators in obtaining information about the regulatory processes in New Zealand. Furthermore, there is a high degree of transparency regarding many of the securities regulatory processes, so that overseas regulators can obtain a significant amount of information without having to request assistance from a New Zealand authority.</p> <p>Although the SC can obtain information for an overseas regulator to assist it in enforcing compliance with the overseas regulator's laws regarding fraudulent or manipulative practices and market intermediaries, certain gaps in the New Zealand regulatory scheme regarding these matters may make it more difficult for the SC to work with overseas regulators to prevent or halt illegal cross-border conduct. For example, as noted above in respect of Principle 9 there are minimal licensing criteria and no ongoing supervision of sharebrokers who choose not to become NZX Firms or NZX Sharebrokers. At least one New Zealand sharebroker was found to have been cold-calling overseas investors and engaging in illegal or abusive conduct. The absence of a comprehensive regime for the oversight of sharebrokers makes it harder for the SC to detect whether other sharebrokers are engaged in similar conduct. (However, if such conduct were detected, the SC could take some enforcement action in New Zealand to assist the foreign regulator in stopping illegal conduct that had an effect within the foreign regulator's jurisdiction.)</p>
Assessment	Broadly Implemented
Comments	Although the SC has broad powers to obtain for, and share information with, overseas regulators, certain gaps in the New Zealand regulatory system may make it more difficult for the SC and other domestic authorities to detect and deter cross-border illegal conduct by New Zealand market intermediaries. For this reason, a Broadly Implemented (rather than a Fully Implemented) rating

	has been assigned. To the extent further reforms are implemented to expand the scope of oversight of market intermediaries, these concerns would be mitigated.
<b>Principles for Issuers</b>	
<b>Principle 14.</b>	<b>There should be full, accurate and timely disclosure of financial results and other information that is material to investors' decisions.</b>
Description	<p><b>Disclosure in Relation to Offers:</b> Any entity that offers securities to the public must comply with the Securities Act and associated regulations, which prescribe disclosure for investment statements, prospectuses and advertisements. An investment statement, intended to provide key information to assist the prudent but nonexpert investor to decide whether to subscribe for securities, must be provided to a prospective investor in advance of any subscription. There are detailed prescriptive requirements for the disclosure in registered prospectuses. In addition, there is a general obligation to include all information material to the offer. A copy of the registered prospectus must be provided to a prospective investor upon request. Advertisements relating to offers must not be misleading, nor inconsistent with the prospectus. The Securities Act prohibits allotment of securities if, at the time of the allotment, the investment statement or registered prospectus is known by the issuer/operator to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances.</p> <p>Subject to certain exceptions for NZAX issuers, NZX requires issuers to prepare an "Offering Document" containing all of the information required under the Securities Act and associated regulations, as well as additional information prescribed by NZX. Certain NZAX issuers are permitted under NZX Listing Rules and an exemption to the Securities Act to prepare a single "Disclosure Document," which must be registered as a prospectus, containing prescribed information (including a requirement to contain all information material to the investment), rather than preparing both an investment statement and prospectus (as required under the Securities Act).</p> <p><b>Periodic and Timely Disclosure:</b> The Companies Act requires all companies to produce an annual report, and the Financial Reporting Act requires the directors of every issuer to prepare annual financial statements within five months of year end. These statements must comply with NZ GAAP, present a true and fair view of the matters to which they relate, be audited by an independent auditor and be registered with the RC within 20 working days after the expiry of the five month period.</p> <p>NZX Companies must issue annual and half-yearly reports to NZX and their quoted securityholders. The deadline for NZSX Companies is three months after the end of the relevant period. The deadline for NZAX Companies is four months. In addition, NZX Companies must make preliminary announcements of their annual and half-yearly results as soon as the information is available and no later than 60 days after the end of the period. NZX recently adopted changes to its Listing Rules to require NZX Companies to disclose in their annual reports the extent to which their governance practices differ from NZX's new Corporate Governance Best Practice Code.</p> <p>Recent amendments to the Securities Market Act now require issuers whose shares are traded on a recognized securities exchange to disclose immediately material information in accordance with the exchange's listing rules, unless that information is already generally available. The NZX Listing Rules provide that, once an NZX Company becomes aware of any material information concerning it, it must immediately release that material information to NZX, unless: (1) a reasonable person would not expect the information to be disclosed; (2) the information is confidential and its confidentiality is maintained; and (3) one or more of the following applies:</p> <ul style="list-style-type: none"> <li>The release of the information would be a breach of law;</li> <li>The information concerns an incomplete proposal or negotiation;</li> <li>The information comprises matters of supposition or is insufficiently definite to warrant disclosure; or</li> <li>The information is a trade secret.</li> </ul> <p>NZX makes the text of material change news releases available to the public approximately 20</p>

	<p>minutes after the news release is made available to subscribers to NZX information services.</p> <p>NZX can suspend trading in the securities of any listed company, enabling it address the potential for irregular trading arising from a listed company's decision to keep confidential a material change. Since, however, the issuer is not required to notify NZX or any other authority of its decision to keep confidential material information, NZX may not be in a position to implement a trading suspension to address asymmetry of information unless the SMARTS system reveals a pattern of irregular trading.</p> <p><b>Measures to Assure Sufficiency, Accuracy and Timeliness of Disclosure:</b> The securities regulatory regime incorporates various measures intended to assure the sufficiency, accuracy and timeliness of issuers' disclosure, including the following:</p> <p><i>Offer Documents:</i> (1) The directors and any promoters of an issuer are required to sign the prospectus and any amendment. (2) Prospectuses and amendments must be submitted to the RC, who can refuse to register the prospectus or amendment if it does not comply with the law and must refuse to register it if it contains a statement that is false or misleading in a material particular or omits a material particular. (3) An allotment of securities is voidable if made without providing a valid investment statement to the offeree, and void if a prospectus has not been registered. The offer of securities, distribution of prospectus or allotment of a security in contravention of the Securities Act is a criminal offence. (4) The SC can prohibit advertisements, prohibit or suspend investment statements, and/or cancel or suspend registered prospectuses. Although the SC cannot require a misleading offer document or advertisement to be corrected, it can exercise its discretionary power regarding the revocation or modification of an order in order to ensure that an issuer cannot continue an offer unless it amends the offer documents to the SC's satisfaction. Its power in respect of advertising also allows it, where an advertisement does not comply with the law, to prohibit distribution of any advertisement in respect of the relevant offer. Therefore, the SC can, in effect, close down an offer until it is satisfied that the prohibitions relating to a particular offer document or any advertisement in respect of the offer, can be lifted. Accordingly, the SC can use these powers (as well as its power to accept enforceable undertakings) to protect offerees and potential offerees in the primary market where an issuer wishes to continue with an offer. These powers may be less effective in respect of completed offerings, where there is the potential for secondary trading to occur on the basis of a misleading offer document. However, the SC's power to accept enforceable undertakings (e.g. regarding the withdrawal and/or amendment of misleading offer documents) could be used in relation to issuers that are willing to voluntarily correct disclosure deficiencies. (6) Investors have a statutory civil right of action for compensation if they subscribed for securities on the faith of a registered prospectus or advertisement that contained an untrue statement. (7) NZX can, among other things, cancel the listing of any issuer, cancel or suspend the quotation of any securities, publish a censure of or statement relating to the conduct of any issuer, director or associated person, and/or refer any conduct to a statutory regulator or other authority. (8) Staff of the RC review all prospectuses and amendments, and NZX staff review documents provided in relation to a listing. The RC has discretion to refuse registration of a prospectus if it does not comply with any securities law requirement and is required to refuse registration if the prospectus is (in general terms) materially deficient. The SC has extensive inquiry and inspection powers, which it can use if a concern is raised about the adequacy of disclosure in offer documents.</p> <p><i>Continuous and Periodic Disclosure:</i> (1) The RC must forward qualified audit reports to the ASRB and SC. The RC, however, does not have a discretionary power to refuse to accept for filing noncompliant financial statements, nor is he required to refuse to accept for filing materially deficient financial statements. (This can be contrasted with the RC's powers and duties in relation to registration of prospectuses.) (2) It is a criminal offence to make or authorize the making of a materially false or misleading statement in a document required to be filed under the FRA, or to omit any matter knowing that this makes the document materially false or misleading. (3) If the SC believes that an issuer has failed to comply with a registered exchange's continuous disclosure requirements, it can require disclosure or corrective statements to be made. The SC can also direct</p>
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	<p>a registered exchange to suspend trading in securities, or a class of securities, of one or more public issuers if it believes there has been a contravention of the continuous disclosure requirements, or if the exchange's administration of the regime is not fulfilling the purpose of the continuous disclosure regime.</p> <p><b>Review Processes:</b> Approximately 700 prospectuses were registered in the year ended June 30, 2003 and 860 in the year ended June 30, 2002. RC staff estimated that, on average, approximately two hours were spent on reviewing a prospectus from a well-established issuer with well-known advisers, where the documents did not appear to be materially deficient or involve a novel scheme. Significantly more time (e.g. several days or even weeks) might be spent reviewing a materially deficient disclosure document. Approximately, 6,500 sets of annual financial statements were filed by companies in each of the years ended June 30, 2003 and June 30, 2002. All prospectuses, amendments to prospectuses and financial statements, as well as documents filed under certain other statutes, are screened or reviewed by the RC's staff. There are six full-time staff review the substance of prospectuses and financial statements, as well as staff who carry out processing functions (including verification of compliance with filing requirements) and in-house solicitors who provide legal support. The RC can call upon enforcement staff with expertise in reviewing such documents, retired staff and certain staff in other teams with experience in financial matters. There is no formal risk-based review system for disclosure documents. Factors such as the track record of the issuer, and the experience and reputation of the issuer's accountants, lawyers and other professional advisers, are taken into account in deciding how extensive a review will be.</p> <p>NZX retains two outside experts to review all offer documents for initial public offerings. NZX has five staff lawyers who review offer documents, listing particulars and draft company constitutions submitted in connection with proposed listings.</p> <p><b>Cross-Border Matters:</b> The Securities Act provides a mechanism for mutual and unilateral recognition of securities offers effected under the laws of other countries. The SC has granted exemptions to facilitate cross-border offers of securities by issuers in specific jurisdictions. NZX provides exemptions from its Listing Rules for issuers that are listed on a recognized overseas exchange and accepted for listing on NZX, for so long as that issuer complies with the listing requirements of the overseas exchange.</p>
Assessment	Broadly Implemented
Comments	<p>There are comprehensive disclosure requirements for the offer documents.</p> <p>A concern arises with respect to the adequacy of the resources currently employed by the RC in relation to securities matters. More resources should be devoted to the review of disclosure documents, so that the appropriate regulator or regulators can implement risk-based review systems enabling them to conduct comprehensive reviews of issuers' disclosure records. This might involve exploring coordinated review processes among the RC, NZX and SC to determine whether there are further opportunities to take advantage of each regulator's expertise, reduce potential duplication of effort and/or facilitate the identification of issues that potentially require enforcement action.</p> <p>The periodic disclosure requirements for listed companies appear to provide for sufficient, timely disclosure. A concern arises, however, with respect to unlisted companies, which are required to report financial results only once a year and do not have to submit audited annual financial statements to the RC until almost six months after year-end. It appears that most of these unlisted issuers, however, are closely held and there is limited secondary market trading in their securities. Accordingly, the lack of a timely periodic disclosure of results is somewhat less problematic than it would be in respect of larger, actively traded issuers. Nevertheless, amending these reporting requirements to provide for more timely disclosure by these issuers would be helpful (e.g. a requirement to file audited annual financial statements within four months of year-end, and make a preliminary announcement of annual results within 60 days of year end.)</p> <p>Although the prescribed criteria in NZX's rules regarding nondisclosure of confidential material</p>

	<p>developments are reasonably comprehensive, a concern arises with respect to the ability of NZX and/or the statutory regulators to ensure that the exemption is not being abused and that fair and orderly markets are maintained when there is nondisclosure of material developments. This concern could be addressed by requiring NZX-listed companies to notify NZX (in confidence) when they rely upon the exemption, thereby enabling NZX to spot-check appropriate reliance on the exemption and facilitating NZX's monitoring of trading to ensure that persons with superior information do not engage in insider trading.</p> <p>NZX should be required to make NZX Company material information news releases available to the public at the same time as it makes such news releases available to the subscribers of its information service. Material event disclosure is intended to protect investors and potential investors from misuse of such information by insiders and to fully inform the price discovery process. The current time lag appears to undermine these objectives.</p>
<p><b>Principle 15. Holders of securities in a company should be treated in a fair and equitable manner.</b></p>	
<p>Description</p>	<p>The Companies Act defines the fundamental rights attaching to shares (e.g. voting rights, dividend rights etc.), defines the relationship between shareholders and management, prescribes the general duties of directors and officers, and provides remedies (including derivative actions, dissent/appraisal rights and a broadly worded oppression remedy) for contraventions of those duties, other provisions in the Companies Act and in respect of conduct this oppressive, unfairly prejudicial or unfairly discriminatory.</p> <p>The NZX Listing Rules impose additional requirements and restrictions intended to protect shareholders. For example, NZX: (1) requires certain provisions to be included in the constitution of a listed company; (2) imposes restrictions on share issuances intended to protect minority shareholders; (3) regulates share buybacks; (4) requires an independent valuation and minority shareholder approval in respect of related party transactions, unless a waiver is obtained; and (5) has issued a "comply or explain" corporate governance code.</p> <p>The Takeovers Code applies to "Code Companies," which are companies registered under the Companies Act and either: (1) are listed on a registered stock exchange; (2) have been listed on a registered stock exchange in the past 12 months; or (3) have 50 or more shareholders and \$NZ 20 million or more of assets. The Code prevents any person from becoming a holder or controller of 20 percent or more of the voting rights in a Code company except in the manner prescribed by the Code. Full and partial offers must be effected in compliance with provisions intended to provide for equal treatment of shareholders, adequate disclosure of information relevant to the shareholder's decision whether to accept the offer and adequate time to make that decision. Certain restrictions are imposed on the offeror's dealings in securities during the offer period. In addition, defensive tactics to frustrate the offer or prevent shareholders from having the opportunity to consider the offer are not permitted.</p> <p><b>Disclosure of Interests in Securities:</b> The Securities Markets Act requires persons who acquire 5 percent or more of the securities of a public issuer to disclose this fact immediately to the issuer and the market generally. Further disclosures are required when a person ceases to be a substantial securityholder and upon changes in holdings of 1 percent or more. Public issuers must maintain a file of such notices and make it available for inspection to anyone on payment of a prescribed fee. Public issuers must also disclose the identity in certain offer documents and annual disclosure documents, such as financial statements. NZX Companies must notify NZX of substantial securityholder disclosures. NZX maintains a register of company announcements and makes recent notices available for public inspection.</p> <p>A public issuer is empowered to demand the prescribed disclosure (and must make such a demand upon request by securityholders holding at least 5 percent of votes). It is an offence not to comply with the substantial securityholder disclosure requirements, and the SC can apply to the Court for certain enforcement orders relating to these provisions.</p> <p>Certain provisions in the Securities Markets Act expected to come into force in 2004 will require directors and officers of public issuers to disclose any interests they have (or had) in the public</p>

	<p>issuer, as well as transactions affecting those interests, within five days of acquiring or disposing of the interest, or becoming a director or officer. Public issuers will have to maintain a file of such notices, but will not have to disclose the information contained in such notices in their periodic reports. NZX Listed Companies will be required to provide NZX with copies of such notices, and NZX will make such notices publicly available. It is not clear at this time, however, whether NZX will provide an internet-based historical record of such notices (as opposed to only the most recent notices).</p> <p>The Securities Markets Act also makes it an offence not to comply with the disclosure requirements, and provides for a penalty of up to \$NZ 30,000. The SC will be able to make disclosure orders if it is satisfied that a person has contravened the disclosure requirements.</p> <p>The government has indicated that it will introduce legislation in 2004 providing for certain technical amendments to the substantial securityholder regime and changes to the penalty provisions, as well as the introduction of a civil penalty of up to \$NZ 1,000,000 for contravention of the disclosure requirements. These proposed reforms were motivated by a concern that the existing penalties regime does not provide an adequate deterrent.</p> <p><b>Corporate Governance Reform:</b> The Minister has asked the SC to take the lead in developing an agreed statement of corporate governance principles. The SC recently issued a consultation paper, and has begun to evaluate the responses. The consultation paper raises questions for discussion regarding matters such as ethical conduct, board composition and performance, board committees, reporting and disclosure, remuneration, risk management, auditors, shareholder relations and stakeholder interests.</p>
Assessment	Broadly Implemented
Comments	<p>Overall, the regulatory regime and legal infrastructure sets standards for the fair and equal treatment of securityholders. Fundamental rights are defined in corporate legislation, NZX Listing Rules and the Takeover Code provide additional substantive protections, and securities legislation provides for disclosure of information regarding substantial shareholdings and holdings by directors and officers.</p> <p>Some concerns arise, however, as to whether certain aspects of the regime rely too heavily on shareholder self-help mechanisms, in circumstances where the costs and other burdens associated with invoking such mechanisms might dissuade shareholders from seeking remedies. For example, shareholders can apply to the court for a variety of remedies under the Companies Act. Their individual investments in the company, however, might be so small that the cost of pursuing litigation will discourage them from taking action.</p> <p>The securities legislation should be amended to require public issuers to file substantial securityholder notices and notices regarding directors' and officers' interests in a central, public electronic register, so that an adequate historical record of such notices can be easily accessed by the public and regulators. Requiring persons interested in such information to pay a fee and attend at the location where the company maintains the file is likely to discourage shareholders and others from monitoring this important information. Such private monitoring can encourage compliance with the requirements. A central electronic register also would make it easier for securities regulators to monitor transactions in public issuers' securities.</p>
<b>Principle 16.</b>	<b>Accounting and auditing standards should be of a high and internationally acceptable quality.</b>
Description	<p>New Zealand's financial reporting regime is derived principally from the FRA, which is administered by the RC. The ASRB, ICANZ and the SC also play an important role in developing, promoting and/or enforcing adherence to high quality financial reporting standards.</p> <p>Public companies must include audited financial statements in offer documents and listing particulars. An issuer must include an independent auditor's report on the full financial statements included in its prospectus as well as the summary financial information that is taken from previously audited full financial statements. Where prospective financial information is included in the prospectus, the information must be examined by an independent auditor, who provides a</p>



	<p>limited scope opinion regarding the compilation of the information and calculation of amounts.</p> <p>New Zealand presently has a three-tier system for financial reporting. The top tier consists of “reporting entities,” which must prepare financial statements in accordance with all the financial reporting standards (i.e., NZ GAAP is applied “in full”). A “reporting entity” includes: (1) any issuer that has allotted securities under the Securities Act through an offer made in registered prospectus or investment statement; (2) every manager of a unit trust; and (3) every person who is a party to a listing agreement with a registered stock exchange.</p> <p>Directors of companies nominate the external auditors, and the company’s shareholders confirm or decline to confirm the appointment.</p> <p><b>Oversight of Standards and Auditors:</b> The ASRB’s principal functions include: (1) approving financial reporting standards (or amendments) as appropriate; (2) giving directions regarding accounting policies; and (3) liaising with a view to harmonization of Australian and New Zealand standards, where possible. Standards approved by ASRB have the status of deemed regulations. The ASRB recently recommended that all New Zealand entities should be required to adopt International Financial Reporting Standards commencing in 2007.</p> <p>The ASRB is a Crown entity that is required to act independently in carrying out its functions. As a Crown entity, it is subject to the Public Finance Act, which provides a framework for Parliamentary scrutiny of ASRB and specifies minimum financial reporting obligations for Crown entities. ASRB is subject to oversight by the Minister and has a publicly available output agreement that establishes performance expectations. The ASRB must ensure that reasonable consultation occurs with persons affected by the adoption or amendment of reporting standards.</p> <p>ICANZ was established under the Institute of Chartered Accountants Act of New Zealand 1996 (the “ICANZ Act”). There is no formal oversight relationship between ICANZ and a government regulator. The ICANZ Act requires ICANZ to have a Code of Ethics governing its members’ professional conduct. The Act also provides for ICANZ to regulate its members, a function that includes educating them about and enforcing, its professional engagement standards, which include the Codified Auditing Standards and Audit Guidance Statements. The ICANZ Code of Ethics is largely based on the Code of Ethics published by the International Federation of Accountants.</p> <p>ICANZ carries out public consultations before approving professional engagement standards, which are available on its website (<a href="http://www.icanz.co.nz">www.icanz.co.nz</a>).</p> <p>Issues of interpretation are first dealt with through discussions between the practitioner and an ICANZ practice reviewer. The exercise of ICANZ’s disciplinary and enforcement powers is subject to general principles regarding procedural fairness and natural justice. Its interpretation process, however, is not subject to the oversight of a regulator or other body that acts in the public interest. SC staff indicated that, recently, ICANZ has become more active in its compliance functions.</p> <p>The SC plays a role in promoting and enforcing accounting and auditing standards. It has issued reports on particular transactions and schemes in which it commented on the quality of the financial reporting, and referred issues to ICANZ for consideration. The SC has received funding to develop a pilot review program for financial statements of public issuers and expects to finalize the plan in 2004.</p> <p><b>Disclosure of Resignation, Removal or Replacement of External Auditors:</b> A company cannot appoint a new auditor in the place of an existing auditor without giving the existing auditor 20 days’ prior notice of the proposal and a reasonable opportunity to make representations to the shareholders in writing or at a meeting (at the auditor’s request and at the company’s expense). Neither the issuer nor the old or new auditors, however, are expressly required to make timely public disclosure of a resignation, removal or replacement of an external auditor. The NZX Listing Rules list some of the matters that NZX considers require disclosure under its continuous disclosure requirements. The resignation, removal or replacement of an external auditor is not</p>
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	<p>included in the list. (However, the list is not exhaustive.)</p> <p><b>International:</b> The FRA’s “Overseas Companies Reporting Regime” requires overseas-owned and overseas-incorporated companies to prepare financial statements as if the company were a New Zealand company, unless the RC is satisfied that the company’s financial statements comply with the legal requirements of the company’s country of incorporation and those requirements are substantially the same as those contained in the FRA.</p>
Assessment	Broadly Implemented
Comments	<p>The SC has published a Statement of Principles of Corporate Governance and Financial Reporting, recommending practices consistent with the IOSCO Statement of Principles for Auditor Oversight. MED is undertaking a comprehensive review of the FRA, including a review of audit standard setting. The SC-led corporate governance reform initiative is expected to include standards relating to, among other things, auditor independence and auditor oversight.</p> <p>A Broadly Implemented rating has been assigned primarily: (1) because ICANZ’s interpretation processes are not subject to oversight by a body that acts in the public interest and (2) the resignation or removal of an external auditor is not required to be disclosed in a timely manner. NZX should specify in the Listing Rules that the resignation, removal or replacement of an external auditor should be disclosed under the continuous disclosure requirements.</p>
<b>Principles for Collective Investment Schemes</b>	
<b>Principle 17.</b>	<b>The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.</b>
Description	<p>There are six types of CIS in New Zealand: (1) unit trusts; (2) superannuation schemes; (3) contributory mortgages; (4) life insurance policies; (5) group investment schemes; and (6) participatory schemes.</p> <p>All marketing of CIS to the public must be done in accordance with the Securities Act (i.e. the provisions applying generally to offerors of securities and offers).</p> <p>Although operators (or supervisors of operators) of CIS are subject to various duties (e.g. to act with due care and in the best interests of CIS unitholders), only the statutory supervisors of operators of participatory schemes are subject to comprehensive eligibility criteria. In respect of other types of CIS, certain arrangements intended to protect the interests of unitholders are required. In very general terms, there usually are requirements: (1) to segregate the assets of the CIS from those of the operator (e.g. through trust accounts, arrangements to have independent nominee companies or trustee companies to hold assets, etc.); and (2) to have a trust deed or similar document executed by the issuer/operator and a trustee, who will supervise the fulfillment by the issuer/operator of its obligations under this document. In respect of some CIS, there are basic criteria relating to the fitness and integrity of the operator (or supervisor of the operator). For example, it is a criminal offence for any person who has been convicted of a crime involving dishonesty to act as a director, officer or responsible employee of a manager of a unit trust, except with the consent of the relevant Minister.</p> <p>It is a criminal offence to make materially misleading statements in offer documents or advertisements and/or to offer, distribute or allot securities in contravention of the Securities Act. Likewise, it is a criminal offence to offer an interest in a unit trust in contravention of the Unit Trusts Act 1960. The SC’s powers on respect of prospectuses, investment statements and advertisements are described above in relation to Principle 14.</p> <p>The Court can remove managers of unit trusts on application by the responsible Minister, a unit trustee or a unitholder. The government Actuary has certain powers to direct the operation of a superannuation scheme if he believes that it is operating in contravention of the governing legislation, and it is a criminal offence not to comply with such a direction.</p> <p>The SC can make certain orders in respect of contributory mortgage brokers (e.g. to prohibit a broker from continuing to act in respect of existing mortgages and appoint another broker in its place, and to replace the directors of the broker’s nominee company). The SC can also revoke the</p>

	<p>authorization of a participatory scheme’s statutory supervisor.</p> <p>CIS operators and/or the supervisor of CIS operators are subject to certain ongoing obligations (e.g. to keep offer documents accurate and up-to-date). Failure to do so may mean that allotments of securities are voidable. Among other things, material changes in respect of the operator, trustee or statutory supervisor may be considered material information in respect of the offer (e.g. where the quality of the management or organization was mentioned in offer documents), requiring an amendment or reissue of the prospectus. The general duty of companies to report changes in directorship or ownership to the RC applies to corporate entities involved in the operation or supervision of CIS. Operators generally must (pursuant to the trust deed or a statutory requirement) report material changes in their affairs to the trustee or statutory supervisor. Statutory supervisors must report material changes in their management or organization to the SC.</p> <p>All issuers must keep proper accounting records, and must prepare and file audited annual financial statements under the FRA. CIS’ annual audited statements must be filed with the RC, who is required to refer all qualified audit reports to the SC and ASRB. The accounting records and legal compliance of contributory mortgage brokers must be audited quarterly.</p> <p>There is no program of routine inspections by a securities regulator. However, the SC has the power to inspect the affairs of a CIS (e.g., where the financial statements, offer documents or other sources of information suggest that there may be compliance or investor protection issues). More detailed provisions apply in respect of superannuation schemes, involving the Government Actuary and the scheme’s own independent auditor or actuary.</p> <p>In addition to a general obligation (e.g. to act with due care and in the best interests of CIS unitholders), a CIS operator other than a contributory mortgage broker usually is required to comply with specific obligations specified in the trust deed or deed of participation, some of which are prescribed by law. Its compliance with these obligations is supervised by the trustee or an appointed supervisor. In order to fulfill their fiduciary obligations of care to CIS unitholders, trustees for unit trusts, group investment funds and superannuation schemes implement compliance and monitoring programs. There is no specific requirement to do so, but carrying out such programs reduces the trustee’s risk of liability to CIS unitholders.</p> <p>Securities and companies law of general application requires disclosure of interests, material transactions and related party transactions. Unit trustees, statutory supervisors and CIS operators are subject to the general obligations to act honestly with due care in the best interests of CIS unitholders. In addition, statutory supervisors are required to ensure that the CIS operator maintains appropriate operating procedures. Listed CIS are subject to additional requirements under the NZX Listing Rules. In respect of most CIS regulated in New Zealand, all contributions received by operators must be transferred to a trust account and held on trust by an independent person. This reduces the risk that an operator will misuse the CIS unitholders’ property.</p> <p>In general terms, a CIS operator can delegate its functions in relation to the CIS but not its legal obligations or liabilities. If a delegate assumes sufficient core functions of an operator, it is likely to meet the definition of “issuer” under the securities laws, in which case it will also become directly liable to the investors (as will the original operator). Delegation arrangements will be reviewed and monitored by trustees of unit trusts, group investment funds and superannuation schemes and by statutory supervisors for participatory schemes.</p> <p>Part 5 of the Securities Act allows for mutual recognition and application of overseas securities regimes in New Zealand and for New Zealand’s regime to be extended to overseas offers under application and regulation regulations.</p>
Assessment	Not Implemented
Comments	Although the Securities Act provides a common regulatory framework for the regulation of the various types of CIS in their capacity as issuers and regarding the disclosure documents provided to prospective and/or continuing investors, the regulation of CIS operators/managers and their conduct varies according to the type of product. The various categories of CIS operators are

	<p>regulated under different statutes and obtain authorization from different regulators and authorities. General responsibilities, standards for performance and duties may be defined by general principles of trust law, while the more detailed requirements may be specified in contracts. Accordingly, the regulatory scheme for CIS operators is relatively complex, and somewhat less transparent than some other aspects of the securities regulatory regime. The regulatory scheme does not prescribe in detail eligibility criteria for CIS operators, and there is no program for ongoing regulatory oversight of CIS operators.</p> <p>The operation of CIS has been identified as a risk area by the SC and MED representatives have indicated that the regulatory scheme for CIS will be considered in the fourth stage of the securities law reform process. Several commentators advised the mission team that the operation of CIS in New Zealand is an area of concern, and that reform is needed.</p> <p>Reliance to some extent on supervision of CIS operators by trustees can be a cost-effective regulatory method. Certain improvements to the scheme, however, could reduce risks and enhance compliance. Possible reforms could include: (1) the appointment of a trustee or statutory supervisor to oversee the conduct of contributory mortgage brokers (or provide for direct regulatory oversight); (2) high level minimum entry and ongoing standards concerning CIS operators' honesty and integrity, competence, financial capacity, internal controls, powers and duties; (3) general conflict of interest standards for CIS operators and their trustees or supervisors; (4) minimum standards for CIS operators to provide periodic and timely reports to trustees or statutory supervisors (or to the appropriate regulator, if directly supervised by a regulator), including a requirement to immediately report material contraventions of any regulatory requirement or requirement specified in a trust deed or similar document; (5) minimum requirements for trustees or statutory supervisors to conduct periodic inspections of CIS operators and make timely reports to the SC of any material contraventions by CIS operators of regulator requirements or requirements under the trust deed or similar document; (6) the suspension or prohibition of any CIS operator by the SC; and (7) the issuance of directions by the SC to a trustee or statutory supervisor that does not appear to be fulfilling its responsibilities and, in more serious situations where investor protection is jeopardized, to remove a trustee or statutory supervisor and replace such person with the SC's appointee.</p>
<p><b>Principle 18. The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.</b></p>	
<p>Description</p>	<p>For most CIS, the participants' rights are derived from a combination of statutory provisions, general legal principles governing trust relationships and the provisions of a trust deed or deed of participation. The CIS operator has some discretion to define these rights through negotiation of the trust deed or deed of participation with the trustee or statutory supervisor, but the trustee or statutory supervisor, due to its own obligations to act with due care in the best interests of unitholders, will insist that the deed contain certain protections. The Securities Regulations require all material matters to be disclosed in the registered prospectus for an offer of CIS units. This includes summaries of trust deeds or deeds of participation, material contracts, managers' and promoters' interests. Risks of the proposed investment must be set out in an investment statement, which must be given to all prospective investors.</p> <p>The RC is responsible for registering trust deeds and deeds of participation for unit trusts, group investment funds and participatory schemes, for registration of contributory mortgage brokers and for ensuring that the form and structure requirements for these CIS are observed. The Government Actuary performs the same function for superannuation schemes.</p> <p>In general terms, investors' rights form part of the investment contract and, therefore, cannot be changed without unanimous consent. In some cases the regulatory scheme provides for prior approval by the trustee or statutory supervisor on behalf of unitholders. However, any change that adversely affects investors' rights will have to be notified, and generally will require prior consent. Some changes will be material and, therefore, the issuer/operator would have to file an amended prospectus with the RC before making further allotments of securities.</p>

	<p>Segregation of assets is maintained in respect of unit trusts, group investment funds and superannuation schemes. A contributory mortgage broker must have a nominee company that operates a trust account in which contributions are held in the name of the nominee or the individual names of all contributors. For CIS that require a deed of participation, a deemed term of the deed is that the operator must ensure that all money received on behalf of the scheme is paid into the scheme's bank account. However, the manager is not required to establish a trust and there is no obligation to segregate scheme assets from scheme money.</p> <p>Except for contributory mortgage schemes, the Securities Act provides that a CIS operator must keep a register of all shares/units and maintain proper accounting records of transactions in the scheme. The Unit Trusts Act imposes additional obligations on unit trust operators. Contributory mortgage brokers must keep registers and maintain accounting records in relation to transactions involving the scheme. CIS operators must have their financial statements audited at least annually.</p> <p>Provisions for the winding-up and/liquidation of CIS exist in legislation (for some CIS) or deeds of participation (for participatory schemes). The Government Actuary can issue directions to superannuation schemes in some circumstances. A statutory supervisor can apply to the High Court if it believes that the winding-up provisions may not give adequate protections to investors in the circumstances. As noted above, the SC can order a contributory mortgage broker to cease acting as such and to appoint a replacement broker.</p>
Assessment	Partly Implemented
Comments	<p>A Partly Implemented rating is assigned to this Principle, principally because: the regulatory scheme does not appear to provide for: (1) adequate assurance, through regulatory oversight, that standards relating to the legal form and structure of all CIS are enforced; (2) notification to the regulator of proposed changes to investors' rights; or (3) segregation of assets in relation to participatory schemes. It is recognized, however, that in respect of most CIS (except contributory mortgage schemes), the trustee or statutory supervisor has obligations to ensure that CIS unitholders are adequately protected. If some or all of the recommendations set out above in respect of Principle 17 were implemented, there would be greater assurance that the underlying objectives of Principle 18 were achieved.</p> <p>In connection with the upcoming review of the Securities Act, the SC and/or RC should consider reviewing a sample of trust deeds and deeds of participation to determine whether any significant concerns arise with respect to the terms negotiated by trustees and statutory supervisors for the protection of CIS unitholders. If problems are identified, it may be appropriate to specify minimum standards in the legislative framework (while making it clear that the trustee or statutory supervisor is free to establish higher standards through negotiation).</p>
<p><b>Principle 19. Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.</b></p>	
Description	<p>Public offers of CIS units are subject to the same disclosure requirements as public offers of any other types of securities (see the discussion in relation to Principle 14). In addition, in respect of offers of CIS units, prospectuses and/or investment statements must include, among other things, information regarding: (1) the legal constitution of the CIS; (2) investors' rights in the CIS; (3) the asset valuation methodology; (4) procedures for the purchase, redemption and pricing of units; (5) relevant audited financial information; (6) information about the custodian, if any; (7) the CIS' investment policies; (8) risk disclosure; (9) the appointment of any external administrators, investment advisers or managers who have a significant and independent role in relation to the CIS; and (10) fees and expenses in relation to the CIS.</p> <p>Annual audited financial statements prepared in accordance with and registered under the FRA must be prepared for all CIS. The Unit Trusts Act requires the manager of a unit trust to send to unitholders each year an audited statement of accounts, together with a summary of any amendments to the trust deed made since the date of the last statement. An annual meeting is optional. For most other CIS, the operator is required to hold an annual meeting within six months after the end of the financial year to consider the previous year's financial statements.</p>

Assessment	Broadly Implemented
Comments	CIS are subject to prospectus disclosure requirements as well as annual reporting requirements sufficient to provide the investor with the information needed to evaluate a fund's suitability and value. There is a concern, however, that unitholders do not receive annual reports in a timely manner, since such reports need not be made publicly available for almost six months after the end of the financial year (and only listed CIS disclose preliminary results at an earlier date).
<b>Principle 20.</b>	<b>Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.</b>
Description	<p>There are asset valuation requirements for some types of CIS, but not all CIS are required to have net asset value calculations conducted on a regular basis in accordance with NZ GAAP. Financial statements for CIS must be prepared and audited annually. The statements must be prepared in accordance with NZ GAAP by a qualified independent auditor. There are specific regulatory requirements in respect of the fair valuation of assets where market prices are not available in respect of group investment funds but not other types of CIS.</p> <p>All information relating to the circumstances of valuation, pricing and redemption is required to be contained in the deed of participation or trust deed, and material information must be disclosed in the offer documents. Information relating to the purchase and redemption of units, the realization of assets for the purposes of redemption, pricing of interests on redemption and circumstances in which redemption might be suspended would constitute material information. Material changes in such information would have to be disclosed in an amended prospectus. While regulatory requirements do not address the circumstances in which redemptions can be suspended, the scheme documentation usually permits suspensions of redemption, e.g. where the level of redemptions requested could be contrary to the interests of remaining unitholders.</p> <p>There are no prescriptive requirements with respect to pricing errors.</p> <p>The SC can intervene in an ongoing offer (e.g. by canceling or suspending a registered prospectus) if, for example, the descriptions of the operator's practices in the offer documents are false or misleading. The statutory supervisor can apply to the High Court for directions if it appears that the terms of a deed of participation are insufficient to protect investors. The Government Actuary has certain powers to direct the operation of a superannuation scheme if he believes it is operating in contravention of the Act.</p>
Assessment	Not Implemented
Comments	In respect of most CIS, the trustee or statutory supervisor negotiates with the CIS operator the terms relating to asset valuation, NAV calculations, and pricing and redemption of CIS units. The broad obligations of the trustee or statutory supervisor to act with due care in the best interests of unitholders provide some assurance that these matters will be properly addressed. This broad discretion could result, however, in significant variations in investor protections across different schemes. It is recommended, therefore, that consideration be given to adopting consistent, minimum regulatory standards regarding asset valuation, pricing and redemption.
<b>Principles for Market Intermediaries</b>	
<b>Principle 21.</b>	<b>Regulation should provide for minimum entry standards for market intermediaries.</b>
Description	<p>Minimum standards of entry apply to some market intermediaries in New Zealand. The principal categories of market intermediaries are: (1) sharebrokers; (2) futures dealers; (3) investment advisers and brokers; and (4) contributory mortgage brokers. The regulatory scheme for contributory mortgage brokers is described in relation to Principles 17-20.</p> <p><b>Sharebrokers:</b> No individual may act as a sharebroker without obtaining a license from the District Court (a firm cannot act as a sharebroker unless all those acting for it in that behalf hold licenses). The District Court must grant a license upon payment of the prescribed fee, if it is satisfied that the applicant is a fit person. The District Court receives testimonials from persons in the finance industry but does not conduct a comprehensive assessment of the applicant or firm. Capital requirements are not imposed, and there is no assessment of the sufficiency of internal controls etc. The authorities do not know how many persons hold share broking licenses in New</p>

	<p>Zealand because there is no central register of such licensees.</p> <p>Evidence suggests that most actively traded public companies in New Zealand are listed on NZX or an authorized exchange in another jurisdiction. Trading in the listed securities of NZX and NZAX-listed companies must be effected through an NZX Firm. Therefore, most trading in the securities of actively traded public companies in New Zealand occurs through an NZX firm. There are 37 NZX Firms.</p> <p>NZX conducts a comprehensive assessment of any applicant firm and of persons in a position to control or materially influence it. NZX's criteria for admission of NZX Firms include: (1) minimum capital requirements; (2) fit and proper standards; (3) standards for internal controls, risk management systems and supervisory systems; and (4) requirements that the firm agree to be bound by NZX Business Rules and to observe Good Stockbroking Practice. NZX requires NZX Brokers and NZX Associate Brokers to meet experience and education requirements, holding a stockbroking license if required to do so under law, and undertake to comply with the NZX Business Rules, observe Good Stockbroking Practice and carry out responsibilities as a broker honestly and diligently. The NZX Business Rules require timely notification of changes in the legal or beneficial ownership of any shares in the NZX Firm, appointments of new directors (who must provide the appropriate undertakings about compliance with business conduct standards), and commencement and cessation of employment of NZX Brokers and NZX Associate Brokers.</p> <p>The NZX Disciplinary Committee can, among other things, revoke or temporarily suspend an NZX Firm's designation, order the dissolution of an NZX Firm that is a partnership, or order that an employee of an NZX Firm be dismissed, that a Principal's engagement be terminated or that a contractual relationship be terminated.</p> <p><b>Futures Dealers:</b> No one may carry on the business of dealing in futures contracts without the SC's authorization. The SC has developed the following general authorization guidelines, which are available upon request (but have not been posted on the SC's website), which address: (1) the applicant's experience in trading futures contracts; (2) financial stability and capital adequacy for futures dealers (but not advisers); (3) the integrity of the applicant (or, if applicable, its directors); and (4) status as a dealer admitted to trade on NZFOE or another authorized futures exchange (or alternative arrangements exist providing for monitoring by an approved independent third party. The SC has broad discretion to refuse authorization and withdraw, suspend or condition its authorization of a futures dealer in a wide range of circumstance. Its exercise of discretion, however, is subject to judicial review, thereby encouraging consistent application of standards.</p> <p>As noted above in respect of Principle 7, NZX has made a preliminary proposal to the SC regarding the assumption of certain regulatory functions in respect of futures dealers who carry on business in New Zealand.</p> <p><b>Investment Advisers and Brokers:</b> Investment advisers and brokers (other than sharebrokers) are not licensed. They are subject to a disclosure regime that applies to any person who provides investment advice or broker services. Advisers are required to disclose, initially, any relevant convictions, bankruptcies or prohibitions from taking part in a company's management, as well as their procedures for dealing with money. Upon request, they are required to disclose matters such as the types of securities they provide advice about, their relevant qualifications and experience and whether they have a pecuniary or other interest in the advice provided. If a prospective investor asks for any of this information, all of the information noted above must be provided in writing.</p> <p>The Court can: (1) prohibit a person from giving investment advice or taking part in the management of an investment adviser; (2) enjoin conduct that contravenes or would contravene the Investment Advisers (Disclosure) Act; (3) remedy inadequate disclosures; and/or (4) make compensation orders, where there has been a significant contravention of the Act.</p> <p>The Minister has published recommendations for reform of the disclosure regime for investment advisers to address the following problems. (1) Prospective clients may not know that they can ask</p>
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	<p>for disclosure about the adviser’s experience and matters that may indicate that the adviser has conflicts of interest. (2) The disclosure statements do not contain other information that investors might find useful (e.g. the availability of dispute resolution facilities). (3) The absence of offence provisions for recommending products that advisers and brokers know or ought to know do not comply with securities laws heightens risks for investors. (4) No regulator is responsible for enforcing the law relating to advisers. It can be difficult for individual investors to bear the costs associated with litigation, or obtain the evidence needed to bring an action. It is expected that draft legislation to address these issues will be published for comment in early 2004. Further review of the regulatory regime for investment advisers will be carried out as part of the fourth stage of the securities law reform package, commencing in 2004.</p> <p><b>Further Law Reforms:</b> MED staff have indicated that the fourth stage of the government’s securities law reform package is expected to involve an evaluation of whether to introduce, amend and/or increase minimum entry standards for various categories of market intermediaries.</p>
Assessment	Partly Implemented
Comments	<p>The minimum entry standards applicable to NZX Firms, their brokers, NZFOE Dealers and other futures dealers meets most of the objectives specified in Principle 21. These are the only market intermediaries permitted to trade on organized securities and futures markets in New Zealand.</p> <p>Most other categories of market intermediaries are subject to few or no entry standards. In its most recent Annual Report the SC identified as “priority risk areas” matters relating to contributory mortgage brokers and investment advisers. In the past few years, it has prohibited a number of contributory mortgage brokers from carrying on business, published a report discussing the inappropriate conduct of an investment adviser, and noted that it lacks some of the regulatory tools needed to detect and prevent New Zealand licensed stockbrokers (who are not NZX Firms) from engaging in illegal or inappropriate cross-border activities. Although these enforcement actions have reduced the risks associated with contributory mortgage brokers (i.e. through prohibition orders), this evidence nevertheless suggests that the minimum entry standards for these categories of market intermediaries are insufficient.</p> <p>As noted above, the government has indicated its intention to review the existing regime and, if appropriate, implement reforms. Policymakers may wish to consider the following reform options:</p> <p style="padding-left: 40px;">A licensing regime that incorporates: (1) minimum entry standards relating to the integrity, financial capacity, competence, operational capability, internal controls and supervisory systems; (2) involves a comprehensive assessment by a securities regulator or SRO of these standards; (3) provides for periodic and timely reporting by market intermediaries to the regulator or SRO in respect of their continued ability to meet these standards; and (4) provides for a risk-based ongoing oversight program carried out by a securities regulator or SRO.</p> <p style="padding-left: 40px;">Alternatively, a regime that requires market intermediaries to meet the standards listed above initially and on an ongoing basis, requires market intermediaries to provide periodic reports to the regulator or SRO and permits the regulator to take effective enforcement action if the standards are not met. This might be a less costly regulatory option than a licensing regime but nevertheless would make it easier for the regulator to detect and resolve problems at an early stage than does the current regime.</p>
<b>Principle 22.</b>	<b>There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.</b>
Description	<p>A significant subset of sharebrokers (<i>i.e.</i> NZX Firms) and futures dealers are subject to initial and ongoing capital and prudential requirements. The other categories of market intermediaries (<i>e.g.</i> contributory mortgage brokers, investment advisers and brokers, and non-NZX sharebrokers) are not subject to such requirements they also engage in activities as NZX Firms or futures dealers.</p> <p>NZX recently has implemented a pro-active compliance program for NZX Firms. NZX intends to complete a comprehensive assessment of each NZX Firm’s business, operations and risks this year. These assessments comprise a detailed self-assessment, a desk-based review and a three-person, three-day visit to each NZX Firm, resulting in a report, follow-up recommendations and a</p>



	follow-up visit to assess implementation of recommendations.
Assessment	Partly Implemented
Comments	<p>There are adequate initial and ongoing capital adequacy requirements for NZX Firms, which constitute the most significant group of securities market intermediaries in New Zealand. NZX has been implementing a pro-active compliance program, which includes an assessment of NZX Firms' business, the risks associated with that business, capital adequacy and internal controls. NZX can intervene if a concern arises with respect to an NZX Firm's capital adequacy.</p> <p>Most futures dealers are subject to the oversight of NZFOE, which has established and monitors capital adequacy of its firms. This situation will change soon, when NZFOE's operations are moved to Australia. The SC is developing a regime for authorization of futures dealers, and is considering NZX's proposal regarding an oversight role for New Zealand futures dealers.</p> <p>Although there are relatively few (approximately 20–25) contributory mortgage brokers carrying on business in New Zealand, they continue to be a source of concern. Since January 2002, the SC has ordered four contributory mortgage brokers to cease carrying on such business. The regulatory regime for contributory mortgage brokers will be considered in the next phase of securities law reform commencing in 2004.</p> <p>Many investment advisers who deal in securities on behalf of customers are NZX Firms and, therefore, are subject to initial and ongoing capital and other prudential requirements. There are also a number of investment advisers (large and small) who have custody of client assets, and some of these will have sharebrokers' licenses permitting them to deal in securities. They are not subject to capital or prudential requirements, and there is no oversight of their compliance with any legal obligations arising under the general law regarding the protection of client funds and assets. (Investor complaints and qualified audit reports might enable securities regulatory authorities to identify a compliance problem). The government has indicated that it intends to strengthen the disclosure regime for investment advisers, and that draft legislation likely will be proposed in early 2004. It is expected that a wider review of the regulatory scheme for investment advisers will be undertaken commencing in 2004.</p>
<b>Principle 23.</b>	<b>Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.</b>
Description	<p><b>Sharebrokers:</b> NZX's Conduct Rules specify detailed standards for internal organization and operational conduct regarding matters such as: (1) recordkeeping; (2) settlement, payment and accounting systems; (3) ethical standards; (4) good stockbroking practice, as defined by NZX; (5) client funds trust accounts; (6) information about client identity, authorizations to trade and investment objectives; (7) appointment of compliance officers and managing officers responsible for compliance matters; (8) procedures for referral within the firm of suspected cases of insider dealing, investor complaints about employee conduct, etc; (9) requirements for written contracts with clients; and (10) contributions to NZX's Fidelity Guarantee Fund. protection mechanisms.</p> <p>Other sharebrokers are not subject to standards relating to internal controls or operational conduct.</p> <p><b>Futures Dealers:</b> Futures dealers must be authorized by the SC, which can impose terms and conditions on such authorization. To date, the SC generally has based its authorization of futures dealers on their membership of and regulation by an authorized futures exchange (or, occasionally, a futures exchange authorized and subject to oversight by an overseas regulator). Futures dealers who are members of NZFOE are required to comply with standards similar to those outlined above in respect of NZX Firms.</p> <p><b>Investment Advisers and Brokers:</b> Before receiving investment money or property, investment advisers are required to provide a disclosure statement to prospective clients containing a brief description of their procedures relating to the receipt and disbursement of money and property.</p> <p><b>Contributory Mortgage Brokers:</b> See the discussion in relation to Principles 17–20.</p>

Assessment	Partly Implemented
Comments	<p>NZX's regime for NZX Firms and NZX Brokers meets most of the objectives set out in this Principle. Most authorized futures dealers currently are subject to the standards and oversight of NZFOE, but this situation will change in the next few months when NZFOE's operations in New Zealand are terminated and SFE withdraws NZFOE's regulatory functions in New Zealand. The SC is developing a new regime for the authorization and oversight of futures dealers.</p> <p>Other market intermediaries (e.g. non-NZX sharebrokers, investment advisers and contributory mortgage brokers) are not subject to comprehensive standards for internal organization and operational conduct. While the SC has broad powers to inspect their operations and take certain remedial actions if necessary to prevent further harm to investors, there is no program for oversight of these market intermediaries.</p>
<b>Principle 24.</b>	<b>There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.</b>
Description	<p>The information-sharing arrangements among New Zealand financial regulators described above in relation to Principles 11-13 would facilitate communication and cooperation if a market intermediary failed. In addition, general and specific procedures for dealing with the possible failure of certain categories of market intermediaries. Securities regulators, however, have not developed a comprehensive plan for dealing with the possible failure of a market intermediary.</p> <p>The NZX Regulations permit NZX to buy in securities without notice where a FASTER participant fails to deliver following a trade. An NZX Firm is required to provide an early warning notice to an NZX Inspector if: (1) there is any material change, loss or exposure that may affect the NZX Firm's Liquid Capital position (whether or not they maintain Liquid Capital in excess of Prescribed Capital); or (2) Liquid Capital falls below a threshold of 20 percent in excess of the Prescribed Level. NZX Inspectors and the NZX Board have broad discretion to intervene upon notice that an NZX Firm is in financial difficulty. NZX has established a Fidelity Guarantee Fund, which would provide some compensation to an NZX Firm's clients if it could not pay claims against it. NZX staff have held a series of meetings to develop scenarios addressing the potential failure of NZX Firms, with a view to publishing a policy on such matters.</p> <p>The NZFOE Business Conduct Committee has broad powers under the NZFOE Business Rules to intervene if an NZFOE Dealer is in financial difficulty. It can direct NZFOE Dealers regarding their trading and clients, and can suspend or terminate Dealers. NZFOE maintains a fidelity fund, which can be applied for the purpose of compensating a claimant to the extent that the claimant's pecuniary loss cannot be compensated by recourse to the NZFOE Dealer's assets.</p> <p>The SC can intervene in the affairs of a contributory mortgage broker if it is satisfied that the broker is contravening, or has contravened, securities legislation and that it is desirable and in the public interest to intervene. For example, the SC can temporarily prohibit the broker from offering interests in contributory mortgages or, upon seven days' notice, prohibit the broker from offering interests in contributory mortgages for a specified period, require the broker to ceasing to act as a broker in respect of any previously allotted mortgages, and/or replace any of the directors or the secretary of the nominee company with its own appointees.</p> <p>The Corporations (Investigation and Management) Act provides a "last resort" mechanism for corporations in distress. Except in the case of fraud or reckless trading, the Act can be invoked only where conventional forms of insolvency treatment, such as liquidation or receivership, will not address the situation. Under the Act, if the RC determines that a corporation is "at risk", the RC can give advice or assistance to the corporation and, with the SC's prior consent, issue binding directions to protect the corporation's members and creditors. On the SC's recommendation, the Minister can appoint a statutory manager. Eight finance and property management companies were put into statutory management in June 2003.</p>
Assessment	Partly Implemented
Comments	The securities regulators have intervention powers that could be used in connection with a failure or potential failure of a market intermediary. There also are good information-sharing

	<p>mechanisms. The SC, in particular, has broad powers to inquire into matters raising investor protection concerns, and can receive and share information with other domestic and overseas financial regulators.</p> <p>With respect to the market intermediaries that are not subject to SRO oversight, there are some basic mechanisms that would enable the regulator to receive some notice of problems and take certain intermediate actions. However, these mechanisms generally are insufficient to provide early warning of potential problems so that damage limitation measures can be implemented. If more serious problems arise, the SC can intervene to protect the interests of investors in contributory mortgage schemes, the RC can issue directions to protect members and creditors and, a corporation can be put into statutory management.</p> <p>NZX and NZFOE have extensive intervention powers, plus early warning systems and mechanisms to protect client assets. NZX is developing a crisis management plan to address, among other things, the potential failure of an NZX Firm.</p> <p>Securities regulators and SROs, as a group, should develop a crisis management plan for dealing with the potential failure of market intermediaries. Such a plan should: (1) build on any experience the regulators' staff has acquired in dealing with such matters (e.g. the experience of SC and MED staff in placing companies into statutory management) through the development of scenarios; (2) identify the legal and operational issues that would arise in connection with a firm's failure and propose approaches for resolving these issues; (3) identify the trigger points for action and include an estimate of the timetable required to implement the necessary measures (e.g. notifications, applications for injunctive relief, etc); and (4) include contact details for key staff in New Zealand and (as appropriate for the scenario in question, overseas regulators).</p>
<p><b>Principles for the Secondary Market</b></p>	
<p><b>Principle 25.</b></p>	<p><b>The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.</b></p>
<p>Description</p>	<p><b>Authorization:</b> A market cannot hold itself out as a securities exchange unless it obtains recognition from the Minister. Likewise, a market cannot hold itself out as a futures and options exchange unless it obtains the SC's authorization. Provided, however, that they do not hold themselves out as exchanges securities and derivatives markets can be operated without recognition or authorization unless the Minister declares that they cannot operate without obtaining registration/authorization. The Minister can exercise this power only upon notice to the operator giving the operator a right to be heard and if the Minister is satisfied that the result of not requiring registration/authorization is likely to detrimental to the integrity or effectiveness of, or confidence of investors in, securities or derivatives markets (as the case might be) in New Zealand. Currently, the Minister is considering whether or not to exercise her power to declare that Unlisted, a proposed new, web-based share market and trading facility, cannot operate its market without registering as an exchange and has published draft guidance on the factors she is likely to consider in exercising such a power.</p> <p>Securities exchanges that choose or are required to be registered must have their conduct rules approved by the Minister on the SC's advice. This registration process enables the SC to comment on, and the Minister to assess: (1) the conduct rules addressing prudential and other requirements designed to reduce the risk of noncompletion of transactions; and (2) the exchange's rules, policies and procedures to prevent fraudulent behavior, treat members and participants fairly and have the legal capacity to carry out its obligations. The regime, however, does not expressly provide for an assessment of the exchange's operational competence or fitness.</p> <p>The criteria that the SC would consider in deciding whether or not authorize a futures exchange are described above in relation to Principle 7.</p> <p><b>Supervision:</b> The approval process for a registered securities exchange's conduct rules enables the Minister to ensure that the conduct rules provide for: appropriate dispute resolution and appeal provisions; procedures and sanctions for dealing with disorderly markets and contraventions of trading rules; and rules to ensure fairness, efficiency, transparency and investor protection. It</p>

	<p>should be noted, however, that the approval process for proposed changes to the conduct rules of existing markets, is, in fact a “disallowance process” that sets a high threshold for disallowance (i.e. no disallowance unless the Minister concludes it would be contrary to the public interest not to disallow the proposed change).</p> <p>The SC is able to exercise a degree of oversight over NZX’s operations, due to NZX’s duty to cooperate with the SC, the SC’s broad inspection powers, its power to issue directions in respect of certain matters to NZX and under the terms of the MOU between NZX and the SC. Under the MOU, surveillance and referral matters, as well as the general working of the co-regulatory framework are assessed quarterly by an Operations Group consisting of NZX and SC staff, while broader issues are considered bi-annually by a Strategic Group. Furthermore, since NZX is a listed company, it must provide periodic and timely disclosure of significant developments in its operations. There is, however, no comprehensive program for the oversight of NZX’s operations.</p> <p>It is within the SC’s discretion to ensure that these matters are addressed in a futures exchange’s conduct rules as part of the approval process and on an ongoing basis. For example, NZFOE has provided certain undertakings to the SC regarding matters such as approval processes for changes to NZFOE rules, supervision of business on NZFOE’s market by a an NZFOE Business Conduct Committee and periodic and timely reporting of certain matters (such as inappropriate conduct).</p> <p><b>Securities and Market Participants:</b> The approval process for a registered exchange’s conduct rules permit the Minister, on the SC’s advice, to assess the rules governing listing or the admission to trading of securities, and to determine whether the participation rules provide for fair access to trading. The SC can require a futures exchange to inform it of the products to be traded and obtain approval for criteria relating to product design and trading conditions.</p> <p><b>Fairness of Order Execution Procedures:</b> In connection with the approval of the FASTER System and, more recently, as part of the review of NZX’s conduct rules, the SC considered whether NZX’s order execution rules were fair and consistent with securities law. NZX’s order execution rules are specified in its conduct rules, which are required to be published.</p> <p><b>Operational Information:</b> The Securities Markets Act requires registered exchanges to make their conduct rules available for public inspection. NZX’s Conduct Rules (including its rules governing the business of trading on its markets) and its operational procedures are published on its website. NZX requires NZX Brokers to conduct all on-market transactions through its FASTER System. FASTER provides for the management and reporting of all trades up to and including final settlement between brokers. FASTER inter-connects the trading system, NZX Firms’ office accounting systems, public subscribers, share registries and payment systems. The use of FASTER is governed by NZX Regulation 6, which was considered in connection with the approval of NZX’s conduct rules upon its demutualization.</p> <p>NZFOE’s rules governing the business of trading on its market and its operational procedures are published on SFE’s website. NZFOE uses an electronic trading system known as SYCOM, which has been approved by ASIC (SFE’s regulator).</p>
Assessment	Partly Implemented
Comments	<p>A Partly Implemented rating has been assigned principally because the Securities Markets Act does not expressly provide for an assessment of the operational competence and fitness of market operators as part of the registration process for securities exchanges. An amendment to the legislation to provide for such an assessment is recommended.</p> <p>The government’s policy decision not to require all markets to seek approval but instead to grant the Minister some discretion to require a market to cease operating unless it obtains registration/approval is understandable in light of the size of New Zealand’s markets and the desire to encourage small business. However, there are some concerns about the threshold that must be met before the Minister can exercise this discretion.</p>

<b>Principle 26. There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.</b>	
Description	<p>As indicated above in respect of Principles 7 and 25, the regulatory scheme indirectly requires NZX to monitor day-to-day trading activity to ensure compliance with its conduct rules and it does, in fact do so. Through formal and informal arrangements (described above in relation to Principles 7 and 25), the SC can monitor compliance by NZX with its responsibilities in relation to market integrity, market surveillance and monitoring of risks and it can exercise certain intervention powers if a concern arises that the exchange is not operating the market in a proper way. However, although the SC can give directions to the exchange (including a direction to suspend trading in securities), it cannot direct the exchange to change its conduct rules. The Minister could indirectly require the exchange to change its conduct rules by proposing to revoke its registration unless the requested changes were made.</p> <p>NZFOE has provided undertakings to the SC regarding reporting, proposed changes to its rules and related matters, and representatives of NZFOE and the SC maintain regular operational contact. Through these contacts and reporting procedures, the SC has an opportunity to monitor compliance by NZFOE with its responsibilities. If a concern arose, the SC could revoke or suspend NZFOE's authorization or amend the terms and conditions of such authorization.</p>
Assessment	Partly Implemented
Comments	<p>The SC has broad powers to inquire into the affairs of registered securities exchanges and authorized futures exchanges, as well as unauthorized markets. Registered securities exchanges and authorized futures markets are required to cooperate, provide assistance and access to the SC, and there are arrangements in place regarding consultation, periodic reporting and reporting of compliance concerns. There is, however, no comprehensive program for ongoing regulatory oversight of exchanges.</p> <p>The SC's discretionary power to impose terms and conditions on an authorized futures exchange enables the SC to impose an escalating range of disciplinary actions on a market operator. The SC's power to issue directions to a registered securities exchange gives the SC with some flexibility in dealing with a regulated securities market that does not appear to be operating in an appropriate manner (but its intervention powers are more limited because it cannot require a registered exchange to amend its conduct rules). Revocation of registration is such a serious disciplinary action that a registered exchange may conclude that the power would never be used, and, therefore, it may not be an effective deterrent. To enhance the authorities' intermediate powers with respect to securities exchanges, the securities legislation should be amended to authorize: (1) the SC to direct on public interest grounds, or recommend to the Minister that the Minister direct, a recognized securities exchange to amend some or all of its conduct rules; and (2) authorize the Minister to make such a direction on the SC's advice and on public interest grounds.</p>
<b>Principle 27. Regulation should promote transparency of trading.</b>	
Description	<p>While there are no express legislative requirements regarding transparency of trading, the extent to which a registered exchange's conduct rules provided for transparency of trading would be a significant factor in determining whether to approve (or disallow) such rules.</p> <p>NZX requires all debt and equity transactions between NZX Firms to be completed using the FASTER System. Orders are captured on a time and priority basis at each successive price level. Participants are provided with real-time pre-trade data such as: quote basis, last price, change in price, number of trades, bid depth total, number of bids, bid price, offer price, offer depth, number of offers, offer depth total, open price, high price, low price, closing price, and weighted average price. As trades are matched in FASTER Trading, they are passed to the FASTER System, where they are published on a real-time basis to market participants. The description of the FASTER System submitted with the draft regulation regarding the FASTER System established the standards for pre- and post-trade transparency. Subscribers to NZX information services nominate</p>

	<p>the service level they require (e.g. either real-time or delayed information).</p> <p>Trading on NZFOE must take place via the SYCOM System. All bids and offers received by dealers must be immediately entered into the SYCOM System, where they are displayed. The Trading Rules allow for expressions of interest (clearly defined as such) to be entered into SYCOM to assist price discovery. The Trading Rules also set out the procedures for end of trading price-determination, which is disclosed via SYCOM.</p>
Assessment	Fully Implemented
Comments	<p>The review processes for electronic trading systems and the registration/authorization processes for securities and futures exchanges provide an opportunity for the SC to assess whether the trading rules of an exchange promote transparency of trading.</p> <p>The Securities Markets Act should be amended to specify high level principles that a regulated exchange's trading rules and systems should meet, such as a requirement that the exchange's rules promote transparency of trading.</p>
<b>Principle 28.</b>	<b>Regulation should be designed to detect and deter manipulation and other unfair trading practices.</b>
Description	<p><b>Prohibited Conduct:</b> There are no specific statutory provisions in securities trading law prohibiting manipulative and/or unfair practices in relation to securities, although it is possible to address some forms of these practices under general fraud and/or consumer protection laws (e.g. the Fair Trading Act 1986). NZX Business Rules prohibit NZX Firms and their employees from engaging in manipulative practices. These standards cover transactions effected directly on all regulated markets in New Zealand. While securities legislation does not prohibit front-running, Rule 4.7 of the NZX Code of Practice prohibits this practice.</p> <p>Insider trading is not a criminal offence, but, subject to certain exceptions, any insider of a public issuer who possesses inside information who buys or sells securities of the public issuer will be liable to the persons with whom the insider traded and the public issuer. The SC can bring an action in Court on behalf of the issuer and seek an amount equal to the gain made or the loss avoided as compensation or a pecuniary penalty. An insider can include a person who receives inside information in confidence from a public issuer or from a person who has inside information by virtue of holding office in the public issuer. An insider who possesses inside information and encourages another person to buy or sell securities of the public issuer or pass the advice or encouragement to another person can be required to compensate persons who suffered loss because they acted on the insider's advice or engaged in a transaction with a person who acted on the insider's advice, as well as the issuer. The SC can take up the issuer's right of action in Court and seek compensation or a civil penalty.</p> <p>The requirement to prove that an insider received information through a relationship with the public issuer limits the scope of the insider trading laws. No one has ever been found liable since the provisions came into force ten years ago, although cases have been settled in favor of plaintiffs.</p> <p>The government has indicated that it intends to introduce legislation in 2004 to implement the Minister's recommendations regarding reform of the securities trading law. The Minister has recommended, among other things, that: (1) the requirement to prove that a person acquired inside information through a relationship with another insider be eliminated; (2) prohibitions on disclosure- and trade-based market manipulation be introduced; (3) a criminal penalties regime for insider trading, tipping and market manipulation be introduced; and (4) a civil penalties regime, enforceable by the SC and providing for civil burden of proof, in respect of insider trading, tipping, market manipulation, and misleading and deceptive statements under the Securities Act (i.e. in relation to offers) be introduced.</p> <p><b>Detection and Deterrence:</b> In respect of listed securities, NZX has implemented procedures intended to detect suspicious trading activity, investigate the surrounding circumstances and, if appropriate, take disciplinary action or refer the matter to the SC. NZX's computerized tool, SMARTS, is used to monitor trading and detect manipulation and insider trading. The SMARTS</p>

	<p>system identifies trading metrics and allows for the creation of alerts and the ability to modify such alerts to suit changing circumstances. If an alert occurs, the data can be extracted and analyzed quickly. If the analysis raises further concerns, NZX staff may initiate an inquiry and/or refer the matter to the SC.</p> <p>NZX has commenced a pro-active inspection and compliance program, which will involve on-site inspections at all NZX Firms this year. These inspections may result in the identification of irregular behavior, which could lead to further inquiry, disciplinary action or a referral to the SC.</p> <p>The Minister has recommended significant changes to the penalty and remedy provisions in the Securities Trading Act on the grounds that the existing scheme lacks consistency and flexibility and does not provide a sufficient deterrent effect. In respect of insider trading and market manipulation, she has recommended: (1) criminal penalties of up to 5 years' imprisonment and a fine of up to \$NZ 100,000 for an individual and \$NZ 300,000 for a corporation; and (2) civil penalties of up to the greater of \$NZ 1,000,000 and three times the gain made or loss avoided.</p>
Assessment	Partly Implemented
Comments	<p>Although general fraud and consumer protection laws can be used to address some forms of manipulative and unfair trading practices in relation to securities, securities legislation does not expressly prohibit market manipulation, the dissemination of misleading information (except in respect of offers) or front running, and provides only for a civil cause of action and a civil penalty in respect of insider trading. It appears very difficult to prove the elements of insider trading based on the current definition. However, the government has decided to introduce legislation providing for significant reforms to the securities trading law, including the establishment of criminal and civil penalties for these activities. The draft legislation is expected to be introduced in 2004.</p> <p>NZX prohibits NZX Firms and their representatives from engaging in market manipulation, the dissemination of false or misleading information, front running and other activity that undermines the integrity of the market. NZX has systems and processes to detect irregular trading and information-sharing arrangements with the SC regarding the referral of irregular and illegal conduct. The SC has broad powers of inspection and can work with overseas regulators to detect illegal trading behavior.</p> <p>The Securities Markets Act should be amended to specify high level principles that a regulated exchange's trading rules and systems should meet, such as a requirement that the exchange should have rules and systems designed to detect and deter market manipulation and other unfair trading practices. Given that there are effective systems in place to detect illegal conduct in regulated secondary markets, the implementation of the government's proposed reforms should enable New Zealand to fully implement this Principle.</p>
<b>Principle 29.</b>	<b>Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.</b>
Description	<p>NZX imposes liquid capital requirements on NZX Firms and monitors their compliance with these requirements on a daily basis, and monitors large positions. NZX can monitor capital adequacy, client funds accounting and settlement performance, indicators which may show that a firm is at risk. Where an NZX Firm has a large controlling position, an NZX inspector could instruct that firm to reduce exposure or increase margins. The FASTER Registry holds information regarding the size and beneficial ownership positions held by clients and NZX Firms in FASTER-traded securities. NZX can take action against an NZX Firm that does not provide the information needed to evaluate an exposure and can suspend a firm that cannot comply with capital requirements.</p> <p>As described in more detail in respect of Principles 11-13, formal and informal arrangements exist to enable operators of New Zealand markets, New Zealand statutory regulators and overseas authorities to share information on large exposures of common market participants. Although the rules of Austraclear, the securities settlement and payment system operated by RBNZ, prohibit Austraclear from releasing counterparty information to a third party such as NZX, the SC could obtain the necessary information under its inspection powers</p> <p>National insolvency laws do not specifically accommodate market default procedures, and there</p>

	<p>are no central bank guarantees.</p> <p>NZX has a range of mechanisms enabling it to isolate a failing NZX Firm and protect the positions it holds on behalf of clients. NZX Regulation 3 provides for full trust accounting for client assets and for specific recovery procedures if an NZX Firm defaults. The securities settlement system provides for Delivery versus Payment, thereby eliminating principal risk. The FASTER System: (1) allows for full tracing and identification of securities held in broker transfer accounts; and (2) affords protection for client funds, separate from the broker's funds. If an NZX Firm is deemed to be in default, NZX notifies all other NZX Firms and all of the uncompleted contracts with the defaulting NZX Firm are rescinded or terminated in accordance with the NZX Business Rules.</p> <p>The liability of NZX's Fidelity Guarantee Fund in respect of a particular failure is capped at \$NZ 500,000 and the maximum amount payable to any claimant is \$NZ 20,000 or such greater amount as the NZX Board shall determine. A recent calculation showed that, while the average trade size exceeds \$40,000, when trades exceeding \$NZ 100,000 (accounting for 20 percent of all trades) are excluded, the average trade size drops to \$NZ 9,000.</p>
Assessment	Fully Implemented
Comments	Consistent with the recommendations made in respect of Principles 25, it is recommended that the Securities Markets Act be amended to specify high level principles that a regulated exchange's trading rules and systems should meet, such as a requirement that the exchange's rules and procedures ensure the proper management of large exposures, default risk and market disruption.
<b>Principle 30.</b>	<b>Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.</b>
Description	Not Assessed
Assessment	Not Applicable
Comments	None

Table 2. Summary of Observance of the IOSCO Objectives and Principles of Securities Regulation

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Fully Implemented	8	1, 4, 5, 6, 11, 12, 27, 29
Broadly Implemented	7	2, 8, 9, 13, 14, 15, 16, 19
Partly Implemented	11	3, 7, 10, 18, 21, 22, 23, 24, 25, 26, 28
Not Implemented	2	17, 20
Not Applicable	1	30 (not assessed)



### C. Recommended Actions and Authorities' Response to the Assessment

Table 3. Recommended Action Plan to Improve Observance of the IOSCO Objectives and Principles of Securities Regulation

Reference Principle	Recommended Action
Principle 4	<p>To facilitate understanding of this relatively complex regime, each statutory regulator and SRO should include on its website a common, comprehensive and easy-to-understand description of the regulatory framework indicating the respective roles of each regulator and how they work together.</p> <p>To enhance understanding of the new and upcoming reforms, the regulators should work with market intermediaries, public issuers and their advisers to develop bilateral industry-regulator education initiatives, such as case studies, so that regulatory staff can learn from the practical experience of these market participants and their advisers, while they in turn can gain insight into staff's interpretation of the new standards.</p>
Principle 5	<p>If SC and TP staff numbers increase further, the SC and TP should develop a written Code of Conduct that incorporates or cross-references the standards of behavior staff and members are expected to meet, including standards relating to conflicts of interest and personal dealings in securities or other investments that may present a conflict. An appropriate level of monitoring (e.g. through annual attestations of compliance with the Code and, possibly, spot checks on disclosures relating to securities transactions) by a designated ethics officer, who can also serve as an information resource for staff, should also be introduced. To facilitate transparency, this Code of Conduct should be made publicly available.</p>
Principles 7, 8, 25 and 26	<p>The government should amend the securities legislation to include comprehensive, high level principles for regulated securities and futures exchanges. While existing legislation already includes some standards, it does not expressly establish standards relating to an exchange operator's operational capability, integrity and fitness to exercise SRO-type functions (Principle 7) and operate a fair, orderly, transparent and efficient market.</p> <p>The SC should develop a formalized oversight plan for regulated exchanges providing for risk assessment criteria and periodic inspections that take into account best practices for SROs and exchanges. There should be public disclosure summarizing the objectives of the oversight plan and of the key findings of such reviews.</p> <p>Securities legislation should be amended to authorize: (1) the SC to direct, or recommend to the Minister that the Minister direct, a recognized securities exchange to amend some or all of its conduct rules; and (2) authorize the Minister to make such a direction on the SC's advice. (Principles 7, 8 and 26)</p> <p>NZX should adopt a broader definition of "independence" (applicable to the individuals constituting the Special Division of its disciplinary body, deciding matters involving NZX in its capacity as a listed company), or disciplinary functions in respect of NZX should be transferred to an independent body, such as the SC.</p>
Principle 9	<p>The reforms in the remedies and penalties Section of the Cabinet Paper, <i>Investment Advisers</i>, should be implemented as soon as possible.</p>
Principle 10	<p>The RC should devote additional resources to ensure that the National Enforcement Unit can act promptly and effectively to prosecute offences in relation to securities matters.</p>
Principle 14 (also Principle 3)	<p>More resources should be devoted to the review of disclosure documents, so that the appropriate regulator or regulators can implement risk-based review systems enabling them to conduct comprehensive reviews of issuers' disclosure records. This might involve exploring coordinated review processes among the RC, NZX and SC to determine whether there are further opportunities to take advantage of each regulator's</p>

	<p>expertise, reduce potential duplication of effort and/or facilitate the identification of issues that potentially require enforcement action.</p> <p>NZX-listed companies should be required to notify NZX (in confidence) when they rely upon the exemption to make timely disclosure of material developments, thereby enabling NZX to spot-check appropriate reliance on the exemption and facilitating NZX's monitoring of trading to ensure that persons with superior information do not engage in insider trading.</p> <p>The government should amend the Financial Reporting Act to provide for more timely disclosure of financial information by unlisted public issuers. An appropriate standard might be a four month deadline, plus a requirement to make a preliminary announcement of results within 60 days of year-end.</p> <p>NZX should make Listed Companies' news releases available simultaneously to its paying subscribers and the general public.</p>
Principle 15	<p>The government should amend the companies' legislation to provide additional alternatives to shareholder self-help remedies.</p> <p>The government should amend the securities legislation to require substantial securityholders, directors and officers to file their notices of transactions in a central electronic register, thereby ensuring that an adequate historical record of such notices can be easily accessed by the public and regulators.</p>
Principle 16	<p>Given the reliance placed on external auditors in New Zealand's securities regulatory system, the government should ensure that ICANZ's interpretation of audit standards is subject to oversight by an independent body acting in the public interest.</p> <p>NZX should amend its Listing Rules to require immediate disclosure of the resignation, removal or replacement of an external auditor.</p>
Principles 17-20	<p>The securities legislation should be amended to provide for: (1) the appointment of a trustee or statutory supervisor to oversee the conduct of contributory mortgage brokers (or provide for direct regulatory oversight); (2) high level minimum entry and ongoing standards concerning CIS operators' honesty and integrity, competence, financial capacity, internal controls, powers and duties; (3) general conflict of interest standards for CIS operators and their trustees or supervisors; (4) minimum standards for CIS operators to provide periodic and timely reports to trustees or statutory supervisors (or to the appropriate regulator, if directly supervised by a regulator), including a requirement to immediately report material contraventions of any regulatory requirement or requirement specified in a trust deed or similar document; (5) minimum requirements for trustees or statutory supervisors to conduct periodic inspections of CIS operators and make timely reports to the SC of any material contraventions by CIS operators of regulator requirements or requirements under the trust deed or similar document; (6) the suspension or prohibition of any CIS operator by the SC; and (7) the issuance of directions by the SC to a trustee or statutory supervisor that does not appear to be fulfilling its responsibilities and, in more serious situations where investor protection is jeopardized, to remove a trustee or statutory supervisor and replace such person with the SC's appointee.</p>
Principles 21-24	<p>The government should enact legislation providing for more comprehensive regulatory oversight of market intermediaries. Policy options could include:</p> <p>A licensing regime that incorporates minimum entry standards relating to the integrity, financial capacity, competence, operational capability, internal controls and supervisory systems; involves a comprehensive assessment by a securities regulator or SRO of these standards; provides for periodic and timely reporting by market intermediaries to the regulator or SRO in respect of their continued ability to meet these standards; and provides for a risk-based ongoing oversight program carried out by a securities regulator or SRO.</p>

	Alternatively, a regime that requires market intermediaries to meet the standards listed above on an ongoing basis, requires market intermediaries to provide periodic reports to the regulator or SRO and permits the regulator to take effective enforcement action if the standards are not met might be a less costly regulatory option that would make it easier for the regulator to detect problems at an early stage than does the current regime.
Principle 24	Securities regulators and SROs, as a group, should develop a comprehensive crisis management plan for dealing with the potential failure of market intermediaries.
Principles 27-29	The government should amend the securities legislation to specify high level standards for regulated exchanges' trading systems and rules with respect to transparency of trading (Principle 27); the prohibition, deterrence and detection of market manipulation and other unfair trading practices (Principle 28); and proper management of large exposures, default risk and market disruption (Principle 29).
Principle 28 (also Principle 9)	The government's proposal to introduce comprehensive prohibitions on market manipulation and insider trading and enhance penalties and enforcement powers should be implemented as soon as possible.

### **Authorities' response**

6. The New Zealand authorities consider the FSAP mission's findings and recommendations helpful, and note that, in many areas, work is already under way to further improve observance of the IOSCO Principles.

7. The authorities note the FSAP team's endorsement of the forthcoming law reforms relating to the introduction of comprehensive prohibitions on market manipulation, insider trading and enhanced penalties and enforcement powers. The authorities welcome the constructive technical recommendations designed to improve New Zealand's observance of the IOSCO Principles, and will give consideration to them. The team's suggestions with regard to regulatory oversight of market intermediaries and collective investment schemes will be considered in the proposed reviews of the relevant legislation to be undertaken in the near future.

8. The authorities note the recommendation that legislation be amended to specify standards for regulated exchanges' rules with respect to trade transparency, unfair trading practices, management of large exposures, default risk and market disruption. The authorities consider that the broad public interest test in the current legislation provides flexibility for these things and others to be considered when approving exchange rules, and is preferable to a prescriptive approach.

9. The Securities Commission has decided to develop a formal oversight plan for regulated exchanges this year and has informed NZX. It is most likely that details of this plan, once settled, will be published. The oversight plan will cover some of the matters identified by FSAP as appropriate "ongoing standards" for regulated exchanges and the Commission expects to report on its oversight actions.