



The New Zealand Kiwifruit Board

2002

Annual Report

The New Zealand Kiwifruit Board was established by Regulation 32 of the Kiwifruit Export Regulations 1999 and is known as **Kiwifruit New Zealand**

Kiwifruit New Zealand's Year

- ❖ Regular meetings with Zespri at Board and Senior Executive level and Zespri's activities monitored as required by the Kiwifruit Export Regulations
- ❖ Cost of running KNZ reduced by \$90,000
- ❖ Growers meetings held through out the growing districts and a newsletter produced for growers explaining what KNZ was doing

Information Disclosure

- ❖ Zespri to provide more information designed to be useful to growers in its Annual Report
- ❖ Supply contract disclosure timetable created and greater supply contract disclosure made available to growers

Non Diversification

- ❖ Procedure developed in conjunction with Zespri to identify Zespri's non core activities
- ❖ Zespri Fresh Produce NV and Kiwifruit Internationals Limited activities monitored

Complaints and Inquiries

- ❖ Two complaints resolved and no new complaints received
- ❖ 10 inquiries received and 8 inquiries resolved during the year
- ❖ Pamphlet produced explaining the complaint investigation process

Export Authorisation and Collaborative Marketing Approvals

- ❖ Zespri's export authorisation reviewed during the year
- ❖ In 2003 32 collaborative marketing applications made and 19 approved
- ❖ The 2003 collaborative marketing volume about the same as for 2002 season
- ❖ Some developmental programmes running in Indonesia, Philippines and Thailand

Collaborative Marketing Results

- ❖ In the 2002 season \$14.5M was returned to the Pools from the sale of 1.6M trays
- ❖ In the 2001 season \$12M was returned to the Pools from the sale of 1.8M trays
- ❖ In 2002 60% of the programmes made a higher contribution than Zespri's average return in the equivalent markets
- ❖ In 2001 25% of the programmes made a higher contribution than Zespri's average return in the equivalent markets
- ❖ KNZ achieved its goal of increasing return to Pools by \$1M – the return to the Pools improved by \$2.5M

Collaborative Marketing Enhancement

- ❖ Made the process less cumbersome and bureaucratic
- ❖ Exploring ways in which to give collaborative marketers incentives to increase growers return
- ❖ Seeking a solution to the US anti trust issue
- ❖ Working to grow collaborative marketing volumes

Kiwifruit New Zealand's Annual Report

1 April 2002 to 31 March 2003

Contents

Page

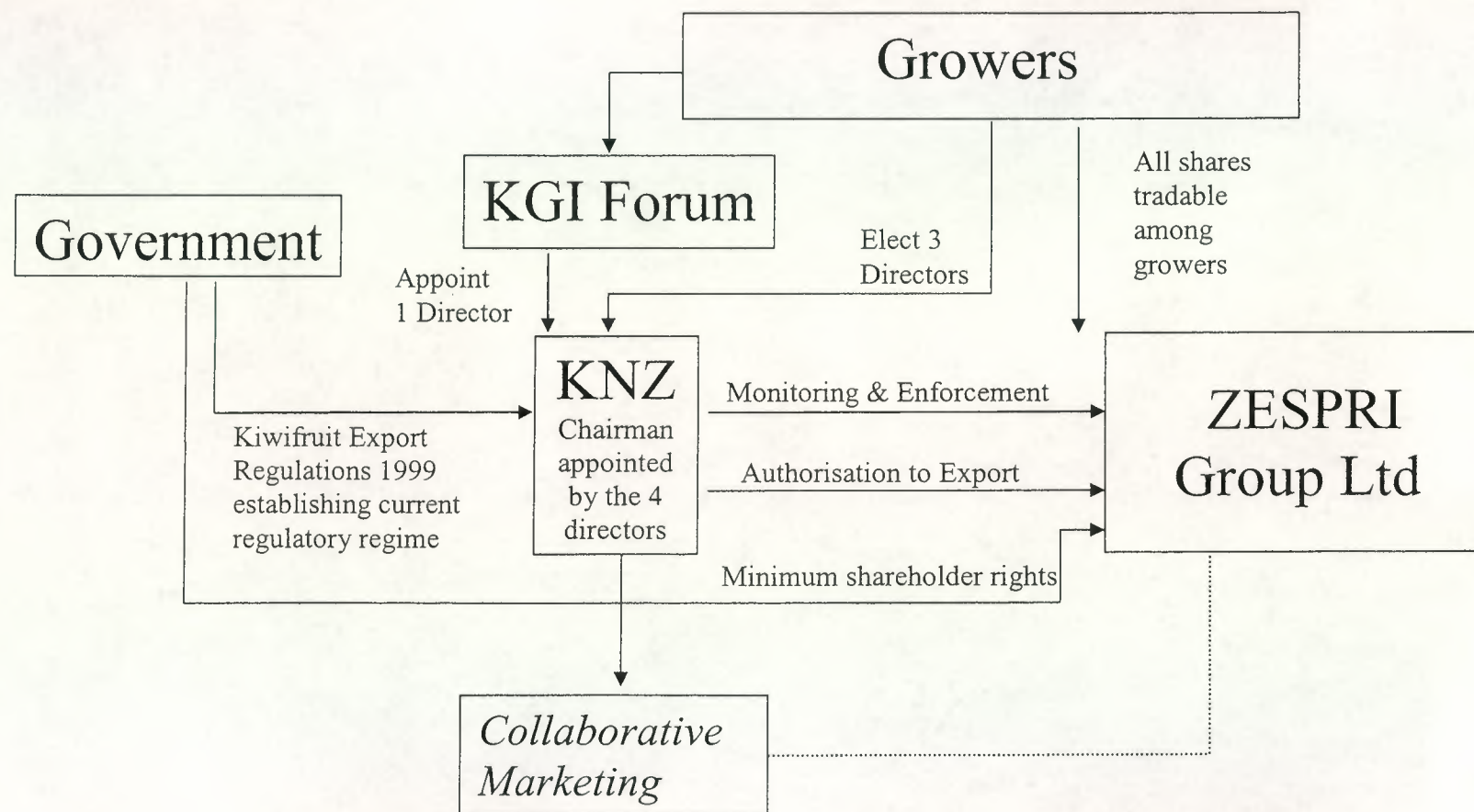
2	Kiwifruit New Zealand's Year
4	Kiwifruit Industry's Regulatory Structure
5	Kiwifruit New Zealand's Regulatory Role
7	Chairman's Report
10	Kiwifruit New Zealand's Strategic Focus
11	Kiwifruit New Zealand's Regulatory Performance 2002/2003
12	Financial Summary for 2002/2003
13	Chief Executive's Report
15	Kiwifruit New Zealand's Regulatory Activities for 2003/2004
16	Directory

References to "the Regulations" or "the Kiwifruit Export Regulations" in this report are references to the Kiwifruit Export Regulations 1999

References to "Zespri" in this report include Zespri Group Limited and Zespri International Limited

References to "Zespri's Export Authorisation" in this report are references to the Authorisation to Export Kiwifruit Granted to Zespri Group Limited by Kiwifruit New Zealand

Regulatory Structure



Kiwifruit New Zealand's Regulatory Role

Kiwifruit New Zealand was established in April 2000 to administer the Kiwifruit Export Regulations 1999.

Kiwifruit New Zealand's functions prescribed in the Regulations are:

- To authorise the export of kiwifruit by Zespri (except to Australia).
- To monitor and enforce the terms and conditions of Zespri's export authorisation.
- To monitor and enforce: the non-discrimination rule, the non-diversification rule and the information disclosure requirements – all rules designed to mitigate the impact of Zespri's monopsony.
- To determine applications to export kiwifruit in collaboration with Zespri – collaborative marketing.
- To inquire into complaints about the application of the non-discrimination rule, the non-diversification rule, the information disclosure requirements and collaborative marketing.
- To encourage, within the scope of KNZ's powers: innovation, efficient price signals to growers, appropriate protections for growers and Zespri's shareholders and, to promote sustained downward pressure on Zespri's costs.

Monopsony is defined as *a market situation in which there is only one buyer* and is typically referred to in Zespri's context as *a single point of entry to overseas markets other than Australia*.

The **non-discrimination rule** says that Zespri cannot discriminate among growers/suppliers except on commercial grounds. Commercial grounds include matters relating to product features, quality, quantity, timing, location, risk, or potential returns. The majority of the complaints made to Kiwifruit New Zealand have been made under this rule. The non-discrimination rule is designed to protect growers/suppliers against Zespri mis-using its monopsony power. See Regulations 9 and 10 of the Kiwifruit Export Regulations 1999.

The **non-diversification rule states** that Zespri must not carry out activities, and must not own or operate assets, that are not necessary for the core business unless:

- The providers of capital, generally shareholders and suppliers, used or to be used for those activities have been asked and have agreed to the use of their capital for those activities; and
- The providers of capital who have not agreed are not exposed to more than a minimal risk from those activities.

This rule does not apply to sales in New Zealand of kiwifruit up to the limit of 300,000 trays each season. See Regulations 11 of the Kiwifruit Export Regulations 1999.

The **non-diversification rule has the following purposes:**

- To protect shareholder capital when Zespri invests in activities that are not necessary for the purchase of NZ grown kiwifruit for export.
- To mitigate the impact of Zespri's monopsony by preventing it becoming involved in NZ supply activities that are not related to the marketing of NZ grown kiwifruit, so that there is commercial contestability among Suppliers. (Zespri may only purchase kiwifruit at dockside.)
- To keep Zespri focused on marketing NZ kiwifruit and only diversify into non-related activities with the consent of the providers of capital.

Core business is defined in the Kiwifruit Export Regulations 1999 as:

the purchase of NZ grown kiwifruit for export where the point of acquisition of title to fruit is at FOBS. It excludes kiwifruit at FOBS exported to Australia and it excludes the sale of kiwifruit in NZ up to 300,000 trays each season.

The **information disclosure regime** is designed to ensure that Zespri shareholders and growers/suppliers get the information they need to evaluate Zespri's performance and, if necessary, they can then put pressure on Zespri to perform and to not abuse its dominant position. See Regulations 12 to 14 of the Kiwifruit Export Regulations 1999.

Chairman's Report

I am pleased to report, as the summary of Kiwifruit New Zealand's year on page 2 of this report discloses, that Kiwifruit New Zealand has had a very successful year.

After years of consistent work on collaborative marketing there was a real improvement in the overall return to growers up some \$2.5M on a little less volume than for the 2001 season. It was also pleasing to note that 60% of the programmes equalled or out performed similar Zespri programmes, which is itself up from the 25% for the 2001 season.

At the start of the financial year an agreement was signed with Zespri that recognised that the best interest of the New Zealand kiwifruit industry would be served by strategic co-ordination and integration of the industry's commercial regimes:

- within the Regulations;
- that enables Zespri to maximise the opportunities provided by its single desk status to sustainably develop an integrated global marketing system focused on Kiwifruit; and
- that mitigates the potential disadvantages of Zespri's single desk operation and ensures that KNZ is able to satisfy its obligations to appropriately regulate and monitor the New Zealand industry and Zespri's performance.

Zespri and Kiwifruit New Zealand agreed that the best interest of the New Zealand kiwifruit Industry is served by Zespri pursuing a strategic direction that commits it to being more effective by:

- creating a more commercial and entrepreneurial focus within its core business; and
- causing the development of new products, technologies, businesses and markets that may extend beyond its core business

with a view to ensuring that the New Zealand kiwifruit industry moves up the value chain in pursuit of higher long-term profit margins, increased international competitiveness, increased shareholder value and greater wealth for New Zealand Growers.

As a result of this agreement:

- Zespri established Zespri Fresh Produce NV to leverage off the Zespri operating system to take advantage of international opportunities for the sale of kiwifruit and complementary horticultural products.
- Zespri established Aragorn Limited as a new technology and business commercialisation company that will facilitate the leverage of Zespri's integrated marketing and operating system to expand the focus, use and sale of New Zealand kiwifruit into products, processes, markets, brands and collaborative marketing arrangements that may be beyond the scope of its core business as defined by the Kiwifruit Export Regulations.
- Kiwifruit New Zealand is working to establish a new collaborative marketing regime that co-operates with Aragorn and local industry participants to build an alternative marketing regime that complements and collaborates with the Zespri system to increase the overall wealth of New Zealand Growers.

The long term success of the kiwifruit Industry depends on the development of innovative products and marketing. The agreement with Zespri was the first step to secure this part of the Industry's future.

Kiwifruit New Zealand continued to develop and worked to improve all other aspects of collaborative marketing. This included streamlining the application process, making all collaborative marketing decisions for the 2002 season by the end of 2001 and advising all

collaborative marketers of those decisions also by the end of 2001 so that they could effectively plan for the upcoming season. Kiwifruit New Zealand also launched a consultation programme with the Industry inquiring into ways of improving collaborative marketing and to give the collaborative marketers real incentives to perform benefiting growers' return.

Information disclosure required by the Regulations is another vital component that will ensure that the current regulatory regime continues to see Zespri secure premium returns for Growers over and above the returns of Zespri's competitors. Kiwifruit New Zealand worked on two fronts during the year. The first was a comprehensive review of the Information Disclosure Handbook. This document is created by the Director General of the Ministry of Agriculture and Forests and requires Zespri to annually make disclosures to principally shareholders and Growers in addition to the normal disclosures made each year by corporates. The underlying aim is to empower shareholders and Growers to make inquiry of Zespri should the disclosed information indicate an area where Zespri's performance is not as effective as it should be. To keep Zespri efficient, innovative and cost conscious Kiwifruit New Zealand worked with Zespri during the year developing an alternative revenue statement and a series of measures designed to give shareholders and Growers quality information in as simple and as useful form as possible.

The second area was related to disclosure of the supply contract. The regulations create a regime for Zespri to provide information through out the season to shareholders and Growers concerning its purchasing activities and contracting terms. We worked with Zespri to ensure the timely supply of this information and encouraged Zespri to make available as much information as possible.

Towards the end of 2002 we reviewed the way in which we approached the regulation of the Industry and reviewed the standards we were using. When Kiwifruit New Zealand was first established in its current form in April 2000 considerable effort was applied to establishing the new structure, getting collaborative marketing running and granting Zespri its first Export Authorisation. Complaints and negotiating the collaborative marketing agreement with Zespri referred to earlier in this report took up the remainder of our time and energy. It then became timely to stop and consider what Kiwifruit New Zealand's vision was and how it saw itself as a regulator in the kiwifruit Industry. The result of this reflective work is found on page 10 of this report. There Kiwifruit New Zealand's vision and focus are stated in simple and readily understandable terms.

As a result Kiwifruit New Zealand has developed its own particular style of regulation. It maintains a cordial and close working relationship with Zespri Board and its senior executives rather than resort to its enforcement powers under Zespri's Export Authorisation. It makes consultation and encouragement its first ports of call. In Kiwifruit New Zealand's early years it spent much of its time adjudicating on complaints. These complaints became time consuming and entangled in legalities. In result the Industry did not get the speedy answers it needed to continue to effectively operate and the process was cumbersome. We have now developed an inquiry system under which any grower who contacts Kiwifruit New Zealand with a substantive issue concerning Zespri has that looked into speedily with an attempt to resolve the issue without the need for it to become a complaint. Ten such substantive inquiries were received during the year and eight were resolved. This system does not preclude an issue becoming a complaint. Rather it acts to filter out those issues that can be readily resolved without the need for complaint action to be pursued.

A milestone was passed at the start of last financial year with the release of the Tomua complaint decisions. These complaints gave us the opportunity to develop valuable jurisprudence that will allow us to adjudicate more speedily on future complaints placing reliance on the principles that have now been established. The object of the regulatory regime is the protection of Growers and Suppliers from discriminatory action that cannot be justified on commercial grounds by the holder of the monopsony power, Zespri. Kiwifruit New Zealand determined what "unjustified

discrimination” means under Kiwifruit Export Regulations. The benchmark is *whether Zespri treated all “like suppliers” alike or whether it has discriminated among suppliers by treating some like suppliers differently.*

Finally I thank the Directors of KNZ who retired in the last year, Terry Richards and Malcolm Cartwright, for their contribution not only to Kiwifruit New Zealand but the Industry in general. Both were inaugural and highly valued directors of Kiwifruit New Zealand. Without the benefit of their wealth of Industry knowledge and experience Kiwifruit New Zealand would not be the organisation it is today.

Peter Trapski
Chairman

Kiwifruit New Zealand's Strategic Focus

What we are:

We are the guardian of the single point of entry for the export of NZ kiwifruit on behalf of growers.

How do we operate?

We are a facilitator rather than a participant or a doer.

Our focus is:

- To minimise the need to enforce the Kiwifruit Export Regulations 1999.
- To interpret the Kiwifruit Export Regulations 1999 in a positive, permissive and contemporary way.
- To keep the Industry integrated.
- To build grower wealth.

Kiwifruit New Zealand's
Regulatory Performance 1 April 2002 to 31 March 2003

Activity	Kiwifruit Export Regulation	Performance
To authorise the export of kiwifruit by Zespri (except to Australia).	Regulations 4 and 33(1)(a)	Current Authorisation issued on 23 May 2000 and reviewed during 2002
To monitor and enforce the terms and conditions of Zespri's export authorisation.	Regulation 33(1)(b)	Monthly reports from and meetings with Zespri Group Limited plus the provision of relevant information
To monitor and enforce the non-discrimination rule	Regulations 9 and 33(1)(b)	Monthly meetings with Zespri Group Limited and complaint and inquiry investigations
To monitor and enforce the non-diversification rule	Regulations 11 and 33(1)(b)	Monthly meetings with Zespri Group Limited to develop a procedure for identifying non core business
To monitor and enforce the information disclosure requirements	Regulations 12 to 14 and 33(1)(b)	Monitored Zespri's compliance and developed disclosure process for the supply contract and related information
To determine collaborative marketing applications	Regulations 24 to 31 and 33(1)(c)	Approved 20 programmes marketing 1.66M trays of kiwifruit that earned a market return of NZ\$14,955,151
To inquire into complaints about the application of the non-discrimination rule, the non-diversification rule, the information disclosure requirements and collaborative marketing	Regulation 33(1)(b)	Complaints: Made / resolved within year: 1 Resolved / made previous year: 1 Made but not resolved: 0 Made previous year / not resolved in this financial year: 0 10 Inquiries received during the year

Copies of:

- Zespri Group Limited Export Authorisation
- Report on Collaborative Marketing Results for 2002

are available from Kiwifruit New Zealand on request.

Financial Summary 1 April 2002 to 31 March 2003

	2003 \$	2002 \$
<u>Income</u>		
Regulation 39(a) from Zespri International Ltd	609,444	743,182
Regulation 39(b) from Collaborative Marketing	43,772	105,000
Interest and Miscellaneous Income	605	1,054
Total Income	653,771	849,236
<u>Expenditure</u>		
Kiwifruit New Zealand Board	116,798	208,945
Kiwifruit New Zealand Executive	174,459	280,404
Collaborative Marketing	44,770	87,721
New Zealand Kiwifruit Growers Incorporated *	267,516	190,516
Administration and Overheads	35,835	95,901
Total Expenses	639,378	863,487
Net Surplus to Accumulated Funds (After tax, prior period adjustment and non-deductible expenses deducted)	13,142	(14,545)
<u>Accumulated Funds</u>		
Opening Funds	2,228	16,773
Net Surplus for Year	13,142	(14,545)
Total Funds as at 31 March 2003	15,370	2,228

* The New Zealand Kiwifruit Growers Incorporated is funded by Kiwifruit New Zealand but operates independently of Kiwifruit New Zealand. Kiwifruit New Zealand shares its office with the New Zealand Kiwifruit Growers Incorporated and therefore the administration and overhead expenses are shared.

A copy of Kiwifruit New Zealand's audited accounts is available on request.

Chief Executive's Report

Last financial year laid the foundations for enhancements to be made to:

- The information that Zespri provides its shareholders, Growers and the public.
- The identification of Zespri's non core activities and Zespri's ownership / operation of non core assets.
- The way in which collaborative marketing is administered by Kiwifruit New Zealand.
- The incentives for collaborative marketers to increase market return to Growers.

One of the key ways in which to mitigate the affect of Zespri's monopoly is to ensure that Zespri provides sufficient information about its operations to permit shareholders and Growers in particular to assess its performance. The risk is that the lack of competition will result in Zespri becoming less efficient and failing to market New Zealand kiwifruit securing the premium prices it achieves today. Shareholders and Growers need accurate and timely information to ensure that Zespri is:

- Nurturing innovation in the kiwifruit industry.
- Sending efficient pricing signals to shareholders and Growers.
- Promoting sustained downward pressure on its costs.

In the current financial year Kiwifruit New Zealand will continue working with Zespri to provide as much useful and meaningful information to shareholders and Growers so that they can assess Zespri's performance and, if necessary, make inquiry about activities that do not appear to be operating as effectively as they should.

Securing the Industry's future requires Zespri and the Industry to search for innovative new products, value added products and new marketing initiatives, such as 12 month supply where the fruit is sourced by Zespri from countries other than New Zealand. Whether the non diversification rule applies to these activities or not is matter of interpretation. In this financial year Kiwifruit New Zealand's goal is to finish developing a procedure with Zespri so that Zespri can apply the procedure to all its activities and the ownership / operation of its assets to assess whether the non diversification rule does indeed apply. This will promote some certainty in the application of this rule and allow shareholders (where they are the providers of capital) confidence that a robust assessment has been made. Kiwifruit New Zealand will monitor Zespri's assessments and where necessary Kiwifruit New Zealand may itself investigate whether an activity or the ownership / operation of an asset is non core following the procedure set out in Zespri's Export Authorisation.

Collaborative Marketing in the 2002 season improved its result on slightly less volume of trays by \$2.5M in grower return. The majority of programmes also performed well when compared with Zespri. The challenge for the 2003 season is to sustain this improved performance. The strength of the New Zealand dollar and the detrimental affect of re-exporting out of Australia to the collaborative marketing operations in Asia will make this a difficult goal to achieve. Kiwifruit New Zealand will maintain close contact with the collaborative marketers and look to develop ways in which to give them greater incentives to increase growers return.

An in depth assessment of the anti-trust issues that have prevented collaborative marketing being approved for the United States in recent years was undertaken by New Zealand Institute of Economic Research (NZIER) last financial year. In its report NZIER proposed a possible way in which to successfully collaboratively market kiwifruit in the United States with minimal anti trust risk. As the financial year drew to a close NZIER's work was being reviewed by the law firm Chapman Tripp. Kiwifruit New Zealand's Board plans to be in a position to advise collaborative marketers and the Industry in time for the allocation of fruit for the 2004 season whether collaborative marketing can once again be run in the United States.

Kiwifruit New Zealand recognises the potential of the US market where at present less than five million trays of New Zealand kiwifruit are marketed each year. As NZ fruit production increases the US market may offer exporting opportunities for increased volumes at premium prices. Indications are that the US market will be more susceptible to innovative and niche marketing programmes that can secure a premium as opposed to larger scale programmes in large supermarket chains. This is exactly where collaborative marketing can deliver solid returns to growers.

Kiwifruit New Zealand continues to look for new collaborative marketing opportunities that meet the Regulatory requirement of increasing growers' wealth. Towards the end of the financial year a Hui was held with the Maori Exporters of Kiwifruit Association (MEKA) to explore ways in which MEKA might effectively collaboratively market indigenously branded kiwifruit overseas. In the present financial year work with MEKA and other groups will continue to see whether these opportunities can be realised.

Kiwifruit New Zealand during the last financial year re-worked its vision and focus. The updated versions are found at page 10 of this report. Kiwifruit New Zealand is committed to continually developing the way in which it exercises its Regulatory powers while ensuring that the Industry continues to prosper and Growers' wealth increases. Kiwifruit New Zealand's Regulatory activities for this financial year are found on the next page of the Report. It is the combination of these Regulatory activities that permits the current Regulatory Regime to operate as effectively as it does permitting Zespri the competitive freedom to secure for its shareholders and Growers premium prices in the overseas markets.

Mike Chapman
Chief Executive

**Kiwifruit New Zealand's
Regulatory Activities for 2003/2004**

Regulatory Role	Kiwifruit Export Regulation	Activities for 2003 / 2004
To authorise the export of kiwifruit by Zespri (except to Australia)	Regulations 4 and 33(1)(a)	Chief Executive to monitor during year reporting any issues that may give rise to an amendment being considered
To monitor and enforce the terms and conditions of Zespri's export authorisation	Regulation 33(1)(b)	Chief Executive to monitor during year reporting any irregularities to the Board
To monitor and enforce the non-discrimination rule	Regulations 9 and 33(1)(b)	Chief Executive to monitor during year reporting any possible areas for investigation to the Board Non-conflicted Board Members to Review Service Level Agreements for fruit purchase to ensure compliance
To monitor and enforce the non-diversification rule	Regulations 11 and 33(1)(b)	The procedure identifying non-core activities to be finalised by 1 June 2003 and put into operation for Zespri's AGM in August 2003
To monitor and enforce the information disclosure requirements	Regulations 12 to 14 and 33(1)(b)	Zespri's compliance with the information disclosure regime to be enhanced to provide more accurate and timely information to growers To complete the review the Information Disclosure Handbook, consult the industry on the proposed amendments before submitting the amendments to the Director General of MAF
To determine collaborative marketing applications	Regulations 24 to 31 and 33(1)(c)	Collaborative marketing processes to be simplified, innovative and new programmes identified and overall growers' wealth increased The 2003 collaborative marketing programmes returning wealth to growers as good as or better return than Zespri's programmes The 2004 collaborative marketing approval process fairly completed before start of 2004 season
To inquire into complaints about the application of the non-discrimination rule, the non-diversification rule, the information disclosure requirements and collaborative marketing	Regulation 33(1)(b)	All complaint investigations expeditiously handled

List of Directors and Staff

Kiwifruit New Zealand comprises five directors. Growers elect three of the directors, one is appointed by the New Zealand Kiwifruit Growers Incorporated and the four directors appoint the Chairman. The Kiwifruit Export Regulations 1999 require the Chairman to be fully independent of the kiwifruit industry. Kiwifruit New Zealand meets monthly, except in January, and as required.

Kiwifruit New Zealand:

Chairman	Peter Trapski
Deputy Chairman	Hendrik Pieters
Directors	Grant Eynon
	Malcolm Cartwright (Retired on 30 September 2002)
	Brian Calcinai (From 1 October 2002)
KGI Appointed Director	Terry Richards (Retired on 31 March 2002)
	Ruth Lee (From 1 April 2002)

Kiwifruit New Zealand Executive:

Chief Executive	Mike Chapman
Executive Assistant	Valda Middlemiss

Kiwifruit New Zealand offices are at:

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Mount Maunganui South

Directory of Policies and Procedures

- Code of Conduct: Conflicts of Interest and Confidential Information
- Securities Code of Conduct
- Programme for the Disclosure of Kiwifruit Purchase Conditions
- Requests for Confidentiality under Regulation 21

Copies of the Policies are available from Kiwifruit New Zealand on request