

Annual Report

2019-20

Process Review Panel for the Securities and Futures Commission



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Abbreviations used in this Report

| | |
|----------|---|
| BVI | British Virgin Islands |
| CCC | Complaints Control Committee |
| CFD | Corporate Finance Division |
| CIS | Collective Investment Scheme |
| COVID-19 | Coronavirus Disease |
| CSRC | China Securities Regulatory Commission |
| DoJ | Department of Justice |
| ENF | Enforcement Division |
| ESC | Enforcement Steering Committee |
| FRC | Financial Reporting Council |
| HKICPA | Hong Kong Institute of Certified Public Accountants |
| HKMA | Hong Kong Monetary Authority |
| ICAC | Independent Commission Against Corruption |
| IMMD | Immigration Department |
| IPO | Initial Public Offering |
| LIC | Licensing Department |
| LSD | Legal Services Division |
| MMT | Market Misconduct Tribunal |
| MOF | The Ministry of Finance of the People's Republic of China |
| MOU | Memorandum of Understanding |
| PRP | Process Review Panel |
| RO | Responsible Officer |
| SEHK | Stock Exchange of Hong Kong Limited |
| SFC | Securities and Futures Commission |
| SFO | Securities and Futures Ordinance |
| SUR | Surveillance Team |

Message from the Chairman

This is my second message for the Annual Report, which was written in the times of global health emergency following the outbreak of COVID-19 and unprecedented challenges faced by societies across the world. It was also during this exceptional period of time when the second round of case review of the year was conducted. Despite the impact of measures taken in society in response to the pandemic, I am delighted to conclude that PRP's work was by and large effectually completed during the year.

Over the year, PRP conducted case reviews and meetings and came up with observations and recommendations at individual case level and on the overall procedures of various divisions of SFC. In particular, PRP had drawn SFC's attention to certain long-lasting difficulties such as engagement of market experts and processing of licensing applications, and made insightful and comprehensive recommendations.

In this year's case review, we have seen improvements made after the ENF's Strategic Review in some cases where LSD played a more proactive role in providing legal advice to ENF. We also observed shortened processing time in some license applications under the revamped licensing process. Whilst we appreciate SFC's commitment to keep up with its efforts in enhancing efficiency, we will continue to convey our views to SFC over how to improve its operational process.

Noting SFC's continued efforts in refining its procedures in enforcement cases and licensing process, we look forward to seeing further enhancements in these areas. As a whole, we hope that upon reviews and revamping, SFC would be in a better position to further look into the adequacy of its procedures and guidelines in ensuring consistency of management's decisions and that of case supervision, which is of great importance in maintaining fairness and public accountability in SFC's regulatory actions.

Message from the Chairman (continued)

At the case level, we recognised the efforts made by SFC's staff in conducting investigations and providing assistance to applicants. We also noted the difficulties faced by case officers in trying to meet the service pledges of SFC, for example, in vetting licensing applications in situations where the applications lacked sufficient information or the applicants were not responsive to SFC's requisitions. We envisage that SFC's efforts in revamping, namely, the new licensing portal would ease the burden of case officers while providing more detailed guidance to applicants at the outset.

This year's work ended with evolving challenges ahead in both the financial and public health domains. I would like to thank all fellow Members for their dedication to complete PRP's work, especially at the early stage of the outbreak of COVID-19 when their own schedule of work must have been disrupted. Yet, they stayed ready to undertake PRP's work and accommodated for changes made to facilitate case review and meetings under the special circumstances. I would also like to thank the Secretary for the Financial Services and the Treasury and his staff for their support to PRP.

Taking the solid foundation of PRP, we are enjoying a good composition of experienced and relatively new PRP Members. For those who joined not that long ago, they brought new insights to issues that remained a challenge to SFC. For those who just know so well the recommendations and comments that PRP have made to SFC over the years, they helped PRP to stay focused on areas that required its persistent pursuit. As we believe that it is of utmost concern and interests to stakeholders that SFC maintains its consistency and fairness in carrying out its work, we will work towards closer collaboration with SFC in our review of cases to achieve our common goal of providing an ever improving and effective regulatory regime for the Hong Kong's financial markets.

Message from Chairman (continued)

Finally, I wish to assure that PRP will continue to carry out its functions earnestly, impartially and independently. It is also important that PRP could stay abreast of market development and emerging issues so as to come up with effective and pragmatic ideas for enhancing SFC's process and procedures. In this connection, we are glad to hear stakeholders' views as part of our on-going efforts to help SFC to win public confidence and trust in its work.

Lee Kam Hung Lawrence, BBS, JP
Chairman

Executive Summary

In 2019-20, PRP reviewed 54 cases selected from the closed case lists submitted by SFC.

2. PRP made comprehensive recommendations to SFC for enhancement of its processes and procedures after deliberation and discussion on the cases selected for review. PRP's recommendations (as highlighted in boxes) and SFC's response are summarized below -

Engagement of Market Experts

- ✧ SFC should take a more proactive approach to recruit new market experts to address the problem of insufficient qualified external market experts in its existing pool.
- ✧ SFC should review the procedure for engaging external market experts to ensure that decisions such as whether and when to engage market experts are suitably and timely made.
- ✧ SFC should provide more assistance and guidance to market experts to enable them to provide market expert reports that meet the required evidentiary and legal standard.

3. PRP noted that SFC faced difficulties in engaging external market experts who were qualified and experienced to provide expert reports that were admissible in proceedings. This has resulted in lengthy process of engagement of market experts in some cases. In some other cases, the investigation team had spent a long time working with LSD and an external market expert only to be advised by LSD eventually that there was insufficient evidence to proceed or ENF that expert opinion from SUR would be sought instead of an external market expert. These gave rise to PRP's questions on the basis of ENF's decisions of whether and when to seek

external expert opinion.

4. PRP observed that the lack of sufficient qualified external market experts in SFC's existing pool is a persistent problem. In view that the time taken to engage market experts might lead to ageing of cases and weakening of evidence, and that some expert reports were considered by SFC as not suitable for admission in proceedings, there could be room for improvement in SFC's procedures in seeking expert opinion and a need to enhance the ability of some market experts to write expert reports.

5. PRP recommended SFC to take more proactive actions to expand its pool of market experts by making use of the existing database maintained by LIC and to build up the network by organizing thematic seminars and events.

6. PRP also recommended ENF to explore with LSD more effective ways of seeking external expert opinion for the best use of SFC's resources. For example, LSD could take part in deciding on the need to seek expert opinion so that, notwithstanding a positive expert opinion, cases with insufficient evidence to proceed could be identified at an earlier stage. The engagement process should also be timely discontinued when warranted following the development of an investigation. ENF in suitable cases could engage external market expert and external counsel at the same time so that they could communicate on issues warranting clarification timely.

7. To improve the quality of market expert reports, PRP recommended SFC to offer more assistance and guidance to the market experts by making clear its expectation and, where necessary, supplementing its written instructions following discussions among the market experts, ENF and LSD or external counsel.

8. SFC responded that LSD would discuss with ENF the need to engage an expert. LSD would also advise ENF on any perceived difficulties in pursuing a case, even with expert evidence. However, the prospects of a case might not be evident until most of the evidence, including market expert opinion, has been gathered and thoroughly analysed. SFC did not specify what the opinion should be to market experts but would ensure that they are provided with sufficient information to render an

independent opinion that would be admissible in proceedings.

9. According to SFC, ENF was gradually expanding its pool of experts through referrals by other divisions within SFC and by sourcing them from the market. Market expert reports that failed to meet the requirements for admissibility as expert evidence was not a widespread problem. ENF and LSD had been jointly running a training course for external market experts annually to better prepare market experts to write expert reports. LSD had also developed a template for expert reports that would facilitate their admissibility for proceedings.

Overview of Communication and Coordination in the Investigation Process

- ✧ SFC should reinforce the overall planning of enforcement investigations to deal with situations such as loss of trace of key persons and ageing of cases in a more efficient manner.
- ✧ SFC should ensure that strategic decisions or directions are made as soon as the circumstances warranted during the course of case supervision.
- ✧ SFC should enhance information sharing among investigation teams handling interrelated cases and further review the coordination between ENF and LSD in the former's seeking of legal advice.

10. PRP noted in several enforcement cases seeming delays in making a decision to close a case that could not be pursued. In particular, in at least two cases reviewed, PRP noted they were concluded with no further action after years of investigation as a result of the loss of trace of suspects, unwillingness of key witnesses to testify, or time and resources considerations. PRP considered that there might be room for improvement in the relevant decision making process.

11. PRP also noted in two enforcement cases, after ENF had taken more than two years to seek legal advice, involving consideration by ENF and LSD of different possible proceedings at different stages of the investigation, and legal advice sought by ENF from LSD and external counsel for four times, both cases were concluded with no further action due to insufficient evidence. PRP opined that situations such as the loss of trace of key persons in these cases might be avoidable with better overall planning on investigations and coordination between ENF and LSD. PRP made a similar observation in reviewing some interrelated cases in which case officers seemed not to have sufficient information on the progress of other related cases. PRP took the view that there should be closer communication between respective case teams to enhance efficiency and maintain consistency.

12. SFC responded that case officers prepared for the investigation of each enforcement case by drawing up an investigation plan at the beginning of the investigation. In the cases mentioned by PRP, the investigation teams carried out the investigations as planned. Basically, there was no delay in making the strategic decisions to take no further action in those cases.

13. SFC advised that ENF and LSD regularly discussed cases to identify any concerns about the strength of evidence and assess case strategy. Further to the measures taken pursuant to the Strategic Review in late 2016, such as establishing dedicated contact points for LSD to liaise with each ENF team and appointing a Litigation Coordinator, SFC would continue to strengthen communication between ENF and LSD. As for cases with poor prospect, SFC endeavoured to identify such cases as early as possible with a view to making efficient use of its resources.

14. For interrelated cases, SFC advised that specialised investigation teams were formed to handle cases of a similar nature to enhance investigation efficiency, consistency and communication between case officers investigating related matters. Case directors also closely monitored the progress of their cases by holding regular discussions with case officers and reviewing case progress reports.

Handling of Licensing Applications and Complaints

- ✧ For licence applications, SFC should take more proactive actions to deal with applicants who were unresponsive to its requisitions and deter people from submitting substandard applications by setting a time lapse policy, rejecting applications or requesting applicants to withdraw substandard applications and according lower priority for applications lacking necessary information/documents.
- ✧ For complaints, SFC should further streamline its procedures for handling straight-forward complaints and look into possible filing of complaints for the purpose of holding back listing applications.

Licensing Applications

15. PRP noted a few cases in which LIC had taken a long time to seek requisitions from the applicants because the applicants were uncooperative or the applications were incomplete. PRP considered that SFC should keep in view of the resources devoted at different points of time and stop further processing an application where the situation warranted. This might call for the need of a time lapse policy, a better mechanism or more vigorous measures to deal with uncooperative applicants and substandard applications.

16. SFC advised the need for retaining its discretion to determine when to conclude its processing of a licence application on a case by case basis. Therefore, SFC considered it inappropriate to impose a rigid time lapse policy. Rather, SFC might refuse an application on the basis that the applicant had failed to satisfy SFC that it was fit and proper to be licensed if an applicant failed to respond to SFC's requisitions fully or in a timely manner.

17. SFC also advised that in order to reduce rounds of requisitions, LIC had launched new licensing forms in 2019 requiring applicants to provide more relevant information upfront and provided more guidance to the industry in the new edition of its Licensing Handbook. With noticeable reduction in the number of rounds of requisitions raised and hence the processing time taken following implementation of these measures, LIC was in the process of revamping its licensing portal, which would ensure that applicants provide necessary information in their applications before submitting to LIC. SFC expected that the new portal would further improve the efficiency of communication with applicants and the tracking of the status of applications.

Complaints

18. PRP noted SFC had spent quite some time on the investigation of simple complaint cases and considered that SFC should further streamline its procedures for handling straight-forward complaints with a view to saving resources. PRP was also mindful of possible abuse of the right to lodge complaints, noting a case where CFD had put on hold the vetting of an IPO application due to the ongoing investigation of a related complaint.

19. SFC responded that there were established procedures for the handling of straight-forward complaints. Basically, the amount of work done by units was commensurate with the seriousness of potential regulatory concerns indicated in a complaint. As for the possible filing of complaints for the purpose of holding back listing applications, SFC reckoned that it was not uncommon for SFC and SEHK to receive complaints on listing applications. To the knowledge of SFC, the proposed listing timetable in most cases had not been affected by complaints received during the course of vetting, since they were addressed in parallel with comments raised during the scrutiny of the listing applications. SFC noted PRP's concern over possible abuse of the complaints handling system and emphasised that each case is assessed against its specific facts and circumstances.

Communication with External Parties

- ✧ PRP considered SFC's effective communication and coordination with DoJ, other regulators, law enforcement agencies and professional bodies crucial to ensure smooth work processes in SFC and proper handling of suspected misconduct by relevant parties. SFC should consider ways to enhance communication with and institutionalize referral to these external parties.

20. PRP noted in a case where the SFC's intended proceedings to freeze some bank accounts appeared to be curtailed quite abruptly when the garnishee proceedings in respect of those bank accounts initiated by four private plaintiffs, including a complainant of a case referred by HKMA, came to SFC's attention. PRP noted in another case that SFC and ICAC conducted investigations concurrently on apparently related subject matters. PRP questioned the effectiveness of SFC's communication with HKMA and ICAC in both cases. In particular, PRP questioned if the MOU signed between SFC and HKMA back in 2002 had fulfilled its purpose of enhancing cooperation.

21. PRP also questioned if SFC had any regular dialogues with HKICPA and FRC on market practices, especially discussion on questionable conduct, noting SFC's finding of some questionable conduct on the part of an auditor in an enforcement case. PRP considered that the case might warrant the attention of HKICPA and FRC as the relevant professional bodies, although SFC determined on the basis of evidence collected that no follow-up action was required. Overall, for cases involving referral to DoJ or criminal proceedings of other regulators and/or law enforcement agencies or where the subject matter fell outside the jurisdiction of SFC, or requiring follow-up action by professional bodies, PRP reminded SFC to ensure good coordination among the parties, for example, through top-level dialogues for effective handling and referral of the cases as appropriate.

22. SFC responded that in the case reviewed by PRP involving HKMA, ENF had followed the established protocol of information sharing as set out in the MOU that SFC entered into with HKMA in 2002. SFC and HKMA regularly reviewed and updated the cooperation arrangements set out in the MOU, which were last updated in 2019. SFC maintained regular dialogues with HKMA, and also FRC and HKICPA. Where required, SFC passed on complaints to these organisations.

23. According to SFC, in the event that SFC and ICAC conducted investigations respectively, SFC provided full and prompt assistance to ICAC, including the sharing of documents/evidence obtained and the provision of witness statement(s) during the course of ICAC's investigation. The MOU signed between SFC and ICAC in August 2019 sets out the framework for such cooperation and collaboration between the two agencies. As for SFC's working relationship with DoJ, SFC followed the protocol set out in its MOU signed with DoJ in March 2016, which further strengthened cooperation between the two parties in the handling of criminal cases under SFO and other relevant legislation.

Staff Development

- ✧ SFC should promote staff development in areas such as evidence analysis, review of legal issues and alertness to fundamental issues to ensure that investigations are conducted effectively and efficiently.

24. PRP noted a case in which one of the SFC's intended proceedings was not instituted and the major hurdle was the absence of credible witnesses. The crucial witnesses in the case were investors who were also part of the pyramid selling scheme. As such, SFC found insufficient evidence to prove one way or the other whether the investors were marketed shares of a Hong Kong public company or BVI companies by the suspects. From the time the said issues came to SFC's attention, over four years were spent on the case. The case was eventually concluded with no further action. PRP raised concern about the timing of identifying the fundamental issues. PRP also questioned SFC's taking of over two years in

a case to investigate, examine and analyse evidences in relation to the rationale and process involved in the suspected wash trade and cross trade.

25. PRP noted SFC provided regular staff training to promote professional competence. In the areas of evidence analysis in relation to more complex trading methods or strategies, review of legal issues and alertness to fundamental issues in investigations, PRP considered that SFC might need to strengthen staff development.

26. SFC responded that generally speaking, when dealing with cases that might not fall within SFC's jurisdiction, ENF would seek LSD's early advice to resolve the jurisdictional and evidential concerns. The Strategic Review had enhanced ENF's ability to seek timely advice from LSD when needed.

27. In terms of staff development, SFC advised that the technical competency requirements of its staff were reviewed annually to ensure that officers' professional knowledge and skills were continuously developed to discharge their duties effectively. At the divisional level, the ENF management strategically reviewed the technical and operational readiness of all functions within ENF, including its investigative functions, to ensure that ENF officers were equipped with the knowledge and skills to tackle emerging and evolving threats.

Chapter 1 General Information

Background

1.1 PRP for the SFC is an independent panel established by the Chief Executive in November 2000. It is tasked to conduct reviews of operational procedures of SFC and to determine whether SFC has followed its internal procedures and operational guidelines to ensure consistency and fairness in carrying out its work.

Functions

1.2 PRP reviews completed or discontinued cases handled by SFC and advises SFC on the adequacy of its internal procedures and operational guidelines governing the actions taken and operational decisions made by SFC in performing its regulatory functions. The broad areas of the SFC's work cover authorisation of investment products, licensing of intermediaries, inspection of intermediaries, enforcement, corporate finance including processing of listing applications, and complaint handling.

1.3 PRP does not judge the merits of the SFC's decisions and actions. It focuses on the process.

1.4 The Terms of Reference of PRP are -

- (a) To review and advise the SFC upon the adequacy of the SFC's internal procedures and operational guidelines governing the actions taken and operational decisions made by the SFC and its staff in the performance of the SFC's regulatory functions in relation to the following areas -
 - (i) receipt and handling of complaints;
 - (ii) licensing of intermediaries and associated matters;
 - (iii) inspection of licensed intermediaries;
 - (iv) taking of disciplinary action;
 - (v) authorisation of unit trusts and mutual funds and advertisements relating to investment arrangements and agreements;
 - (vi) exercise of statutory powers of investigation, inquiry and prosecution;
 - (vii) suspension of dealings in listed securities;

- (viii) administration of the Codes on Takeovers and Mergers and Shares Buy-back (formerly known as the Codes on Takeovers and Mergers and Share Repurchases);
 - (ix) administration of non-statutory listing rules;
 - (x) authorisation of prospectuses for registration and associated matters; and
 - (xi) granting of exemption from statutory disclosure requirements in respect of interests in listed securities.
- (b) To receive and consider periodic reports from the SFC on all completed or discontinued cases in the above-mentioned areas, including reports on the results of prosecutions of offences within the SFC's jurisdiction and of any subsequent appeals.
- (c) To receive and consider periodic reports from the SFC in respect of the manner in which complaints against the SFC or its staff have been considered and dealt with.
- (d) To call for and review the SFC's files relating to any case or complaint referred to in the periodic reports mentioned in paragraphs (b) and (c) above for the purpose of verifying that the actions taken and decisions made in relation to that case or complaint adhered to and are consistent with the relevant internal procedures and operational guidelines and to advise the SFC accordingly.
- (e) To receive and consider periodic reports from the SFC on all investigations and inquiries lasting more than one year.
- (f) To advise the SFC on such other matters as the SFC may refer to the Panel or on which the Panel may wish to advise.
- (g) To submit annual reports and, if appropriate, special reports (including reports on problems encountered by the Panel) to the Financial Secretary which, subject to applicable statutory secrecy provisions and other confidentiality requirements, should be published.
- (h) The above terms of reference do not apply to committees, panels or other bodies set up under the SFC the majority of which members are independent of the SFC.

1.5 PRP submits its annual reports to the Financial Secretary who may cause them to be published as far as permitted under the law.

1.6 The establishment of PRP demonstrates the Government's resolve to enhance the transparency of SFC's operations, and SFC's determination to boost public confidence and trust. PRP's work contributes to ensuring that SFC exercises its regulatory powers in a fair and consistent manner.

Modus Operandi

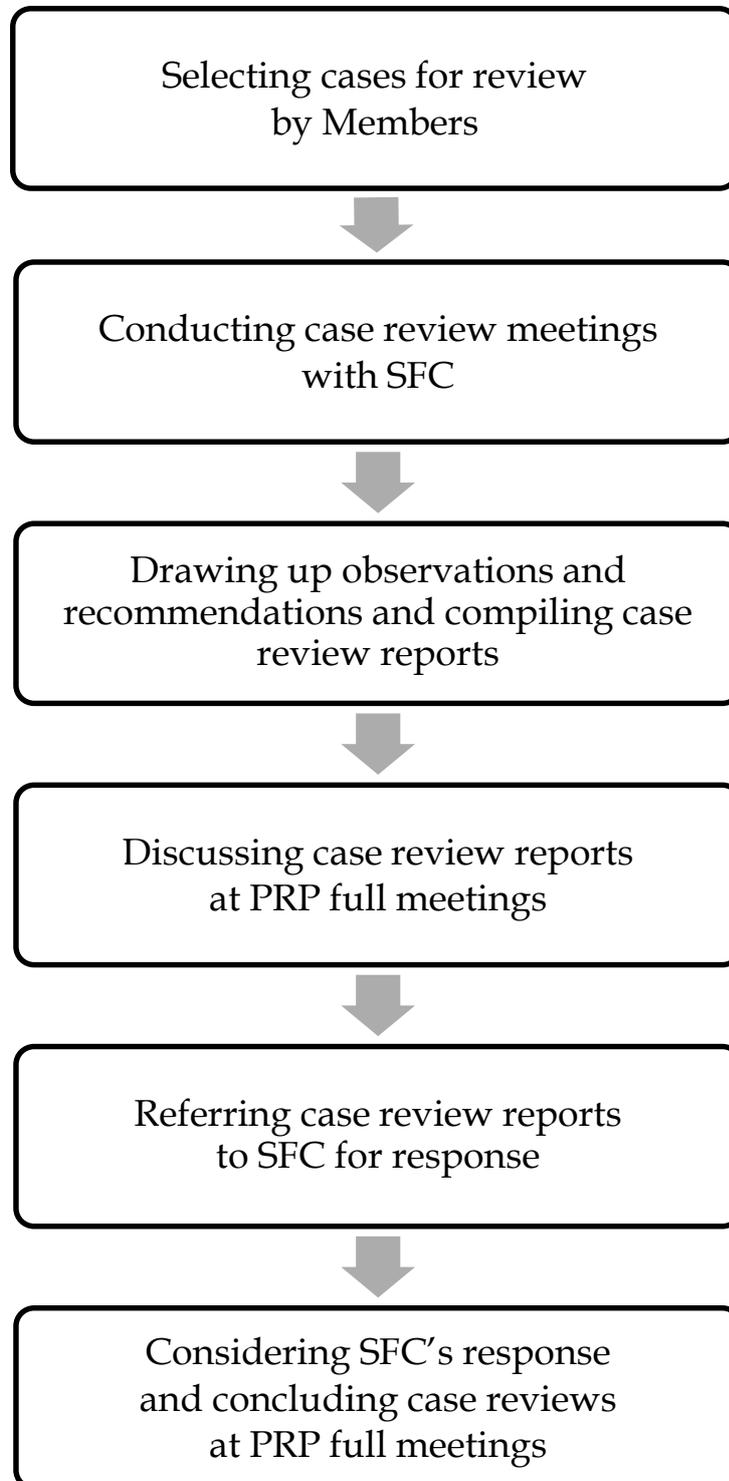
1.7 SFC provides PRP with monthly lists of completed and discontinued cases from which members of PRP select cases for review. Members pay due regard to areas such as processing time of completed cases, procedural steps taken by SFC in arriving at its decisions and relevant checks and balances.

1.8 SFC also provides PRP with monthly lists of on-going investigations and inquiry cases that have lasted for more than one year for PRP to take note of and consider for review upon completion of the cases.

1.9 PRP members are obliged to keep confidential the information provided to them in the course of PRP's work. To maintain the independence and impartiality of PRP, all PRP members are required to make declaration of interest upon commencement of their terms of appointment and declare their interest in the relevant matters before they engage in each case review and relevant discussions, as appropriate.

Case Review Workflow

1.10 The workflow of a PRP case review is set out below -



Membership

1.11 Mr. LEE Kam-hung, Lawrence is the Chairman of PRP.

1.12 PRP comprises members from the financial sector, the academia, and the legal and accountancy professions. In addition, there are two ex-officio members, namely the Chairman of SFC and the representative of the Secretary for Justice.

1.13 The membership of PRP in 2019-20 is as follows -

Chairman:

Mr. LEE Kam-hung, Lawrence, BBS, JP since 1 November 2018

Members:

Mr. CHAN Lap-tak, Jeffrey since 1 November 2018

Ms. Lena CHAN since 1 June 2016

Ms. CHAU Suet-fung, Dilys since 1 November 2018

Ms. CHUA Suk-lin, Ivy since 1 November 2018

Mr. CHUI Yik-chiu, Vincent since 1 November 2018

Ms. DING Chen since 1 November 2014

Ms. KWAN Wing-han, Margaret since 1 November 2018

Mr. KWOK Tun-ho, Chester since 1 November 2016

Mr. LAI Hin-wing, Henry since 1 November 2018

Dr. MAK Sui-choi, Billy since 1 June 2016

Mr. TSANG Sui-cheong, Frederick since 1 November 2016

Ms. YUEN Shuk-kam, Nicole since 1 November 2014

Ex officio Members:

Chairman, the Securities and Futures Commission since 20 October 2018

Mr. Tim LUI, SBS, JP

Secretary for Justice's Representative since 26 February 2015

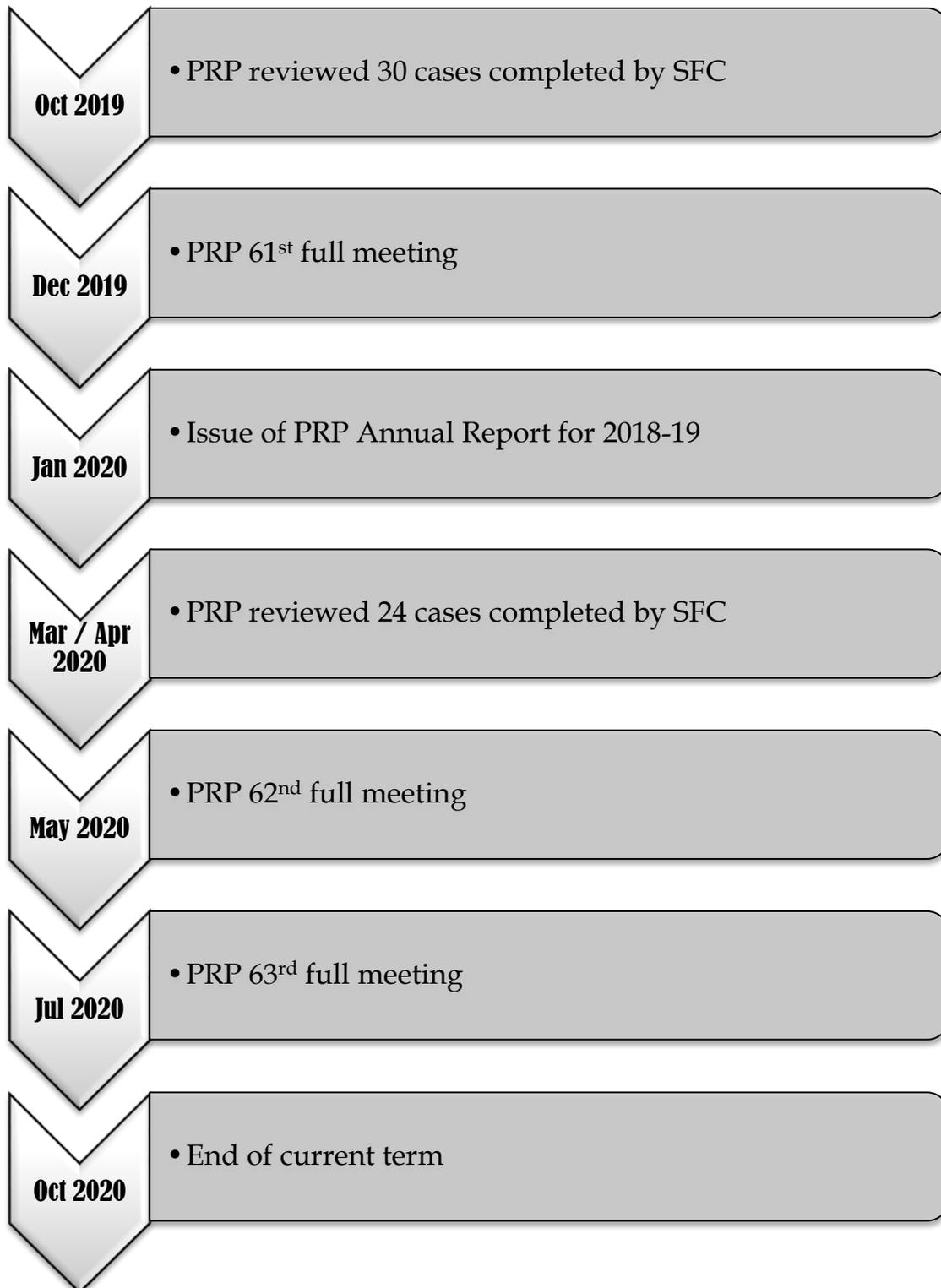
Ms. CHEUNG Kam-wai, Christina, JP

Secretariat:

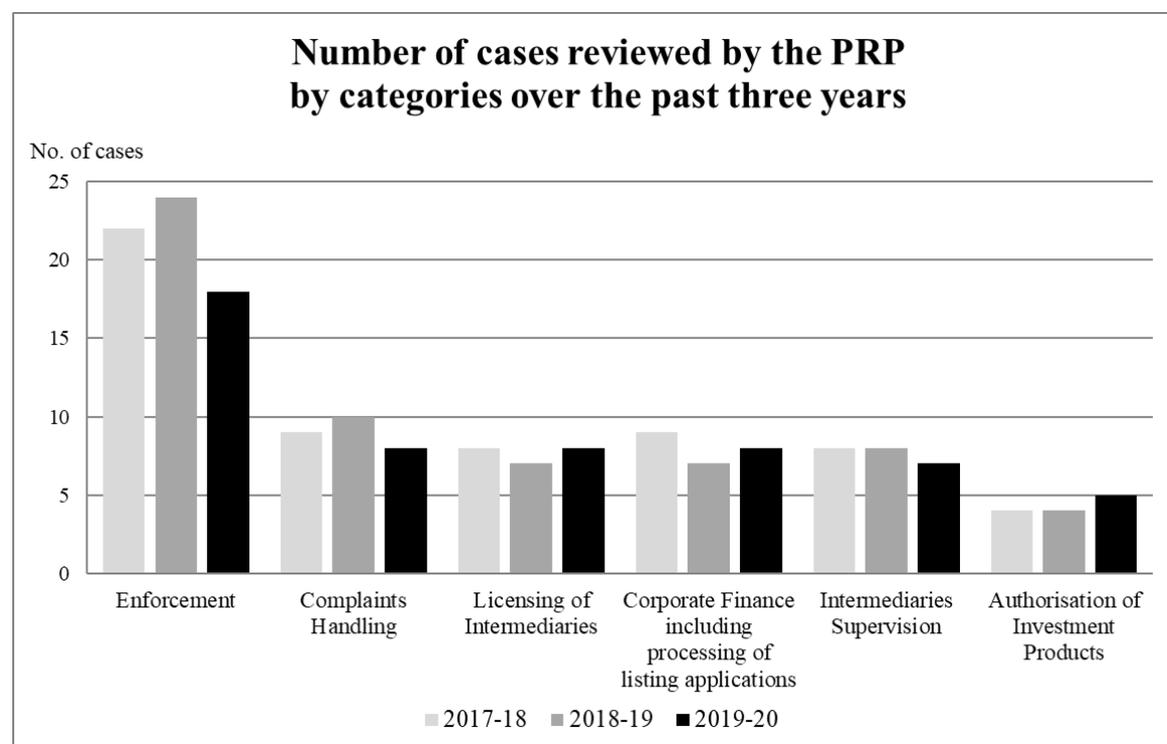
The Financial Services Branch of the Financial Services and the Treasury Bureau

Chapter 2 Highlight of the Work of PRP

2.1 Major events in 2019-20 are set out below –



2.2 Distribution of the cases reviewed by PRP in the past three years is as follows -

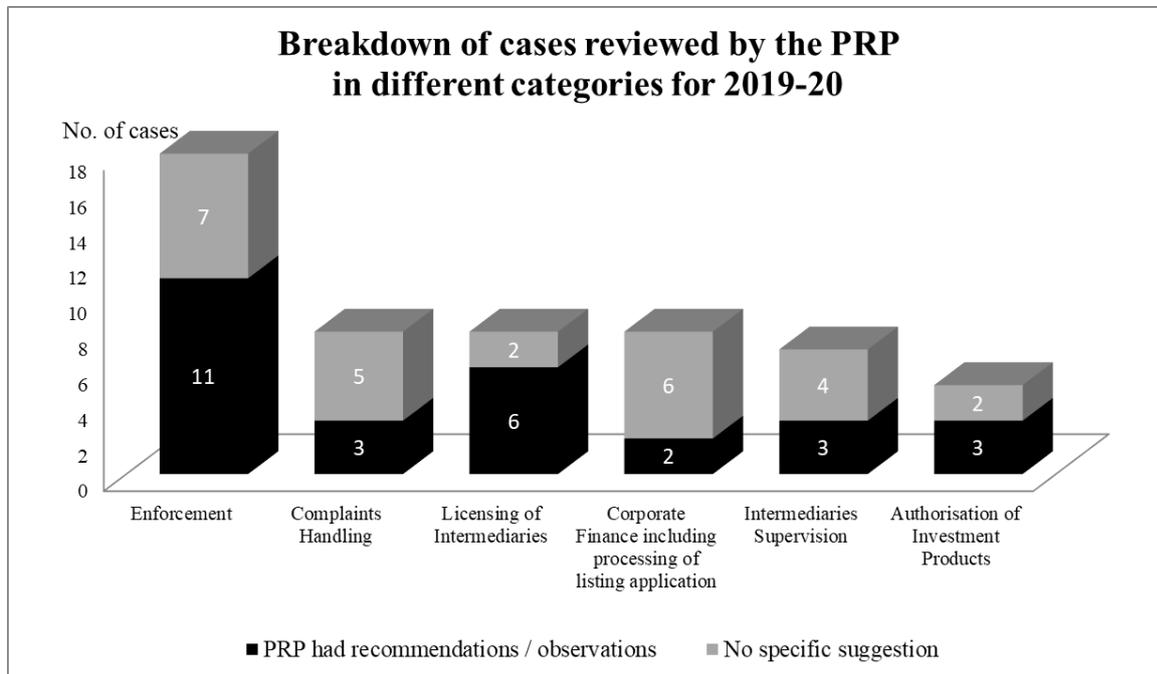


2.3 Distribution of the 54 cases¹ reviewed by PRP in 2019-20 is as follows -

| | No. of Cases |
|--|--------------|
| Enforcement | 18 |
| Complaint Handling | 8 |
| Licensing of Intermediaries | 8 |
| Corporate Finance including processing of listing applications | 8 |
| Intermediaries Supervision | 7 |
| Authorisation of Investment Products | 5 |
| Total | 54 |

¹ Due to the outbreak of COVID-19, the number of cases reviewed in March and April 2020 was reduced to 24 upon request by SFC. The six outstanding cases will be carried forward to the first round case review in 2020-21.

2.4 Among these 54 cases, PRP made recommendations or observations on 28 cases, representing 52% of the reviewed cases.



2.5 Highlight of PRP's observations and recommendations is set out in Chapter 4. Follow-up actions taken by SFC on PRP's recommendations in past years are set out in Chapter 3.

Chapter 3 Follow-up Actions Taken by SFC on PRP's Recommendations in Past Years

3.1 PRP pointed out a number of areas for improvement to the SFC in the past years. In response, SFC had made progress in the following aspects –

- (a) Combating cross-boundary illegal activities;
- (b) Strengthening collaboration with ICAC and HKMA; and
- (c) Enhancing cooperation between SFC and IMMD.



A. Combating cross-boundary illegal activities

3.2 Following PRP's recommendation in 2016-17 to enhance communication and collaboration with the Mainland authorities, SFC entered into a tri-partite MOU with the MOF and CSRC in July 2019 with a view to enhancing cooperation with the Mainland authorities and combatting instances of misconduct among Mainland businesses listed in Hong Kong.

3.3 The cooperation agreed by the three parties under the MOU has facilitated SFC's access to audit working papers, which were created by Hong Kong accounting firms in their audits and kept in the Mainland, when conducting investigations into Mainland-based issuers or listed companies and their related entities or persons.

3.4 The tri-partite MOU also helps improve the quality of annual reports of listed entities in Hong Kong, protect the interests of Hong Kong and Mainland investors and enhance public confidence. It further underpins the regulatory cooperation between Hong Kong and the Mainland and assures the healthy development of the accounting industry

as well as the prosperity and stability of financial markets in both sides.



B. Strengthening collaboration with ICAC and HKMA

3.5 In 2017-18, PRP commented that closer cooperation of SFC with other local regulators and law enforcement agencies was necessary to maintain the integrity of the financial market and expedite the process of the relevant cases/applications.

3.6 PRP noted that in August 2019, SFC entered into an MOU with ICAC which set out the framework for cooperation and collaboration between the two agencies covering referral of cases, joint investigations, exchange and use of information, mutual provision of investigative assistance, and capacity building. This MOU has formalised and strengthened cooperation between SFC and ICAC in combating financial crime. It also helps maintain the integrity of Hong Kong's securities and futures market.

3.7 In September 2019, SFC and HKMA also updated their cooperative arrangements in the MOU they signed in 2002. The enhanced collaboration would facilitate mutual discharge of regulatory responsibilities and statutory functions. SFC and HKMA might conduct joint investigations in appropriate cases with a view to delivering a coordinated enforcement effort and consistent enforcement outcomes whilst minimising duplication of effort.



C. Enhancing cooperation between SFC and IMMD

3.8 In 2018-19, PRP recommended establishing an MOU between SFC and IMMD to boost the efficiency of the SFC's work. In a case reviewed by PRP this year, SFC advised that it had maintained smooth and effective cooperative relationship with IMMD thus far. PRP was reassured that central contact points had been established by SFC to strengthen the communication between the two parties. These central contact points have allowed SFC to make timely enquiry on the progress of applications for employment visas or under the Quality Migrant Admission Scheme.

§ *PRP's remarks*

3.9 Though the progress in enhancing SFC's cooperation with IMMD through the central contact points was considered encouraging, PRP reiterated that SFC might benefit from establishing an MOU with IMMD.



Chapter 4 Observations and Recommendations of Cases Reviewed in 2019-20

4.1 In 2019-20, PRP reviewed 54 cases which were concluded by SFC during the period from December 2018 to November 2019. The processing time of these cases, which were of different nature and complexity, ranged from around two months to several years.

4.2 In recent years, SFC had undertaken series of reviews and revamping with a view to enhancing efficiency and transparency. For example, the ENF's Strategic Review resulted in an upgraded case management system to enable closer and more effective supervision by management, more strategic prioritisation of cases, formation of specialised teams to handle investigations on key risk areas and closer cooperation with market practitioners. PRP was delighted to see how the improved systems and procedures of ENF and their better coordination with other divisions of SFC helped expedite enforcement investigations.

4.3 Further to the recommendations made to SFC in relation to the Strategic Review, PRP stayed focussed on SFC's enforcement work given the increase in both its volume and complexity. While appreciating SFC's on-going efforts to expand its pool of market experts, PRP noted the engagement of market experts remained a relatively weak link in its enforcement work. This year, PRP has paid special attention to ENF's engagement processes and reminded SFC to take more proactive actions to engage market experts. A series of comprehensive recommendations were made to SFC in this regard.

4.4 As for ENF's coordination with other divisions of SFC, PRP took a closer look of the investigation process in some interconnected cases which involved different divisions or teams and reviewed holistically the planning of investigations and case supervision in different types of enforcement cases. PRP observed room for improvement in the procedures of ENF's investigations and their

communication with internal and external parties.

4.5 In line with its commitment to making efficient use of resources and promoting communication with market practitioners, SFC took the initiatives in enhancing licensing processes and on-going efforts to revamp its licensing portal and processing systems. PRP considered that these would help SFC use their resources more effectively by reducing the need to request additional information from applicants and encouraging applicants to better prepare for their submissions. In this connection, PRP reviewed the handling of licensing applications and complaints.

4.6 In its daily work, SFC liaises closely with the Government and other local regulators in carrying out its regulatory functions. In reviewing some cases involving DoJ, ICAC and HKMA, etc., with which an MOU had been entered into by SFC, PRP has advised SFC to review regularly its sharing of information and coordination of actions with these external parties to ensure that the MOUs are working effectively.

4.7 PRP commended the case officers for their strenuous efforts in taking forward cases while keeping up with the rapidly-changing markets. In particular, PRP noted the challenges facing enforcement officers in investigating into market misconduct that were increasingly complex and evolving in nature. From fundamental issues in question to sophisticated schemes of misconduct, PRP had drawn SFC's attention to the need of continued staff development for enriching their knowledge in relevant market issues.

4.8 To summarize, PRP made comments and recommendations to SFC on the following key areas -

- (a) Engagement of market experts;
- (b) Overview of communication and coordination in the investigation process;
- (c) Handling of licensing applications and complaints;
- (d) Communication with external parties; and
- (e) Staff development.



A. Engagement of Market Experts

4.9 PRP raised questions to SFC about the engagement of market experts in enforcement cases, noting that at least two cases reviewed this year involved repeated engagement process. In one of the cases, SFC engaged a second market expert as the first market expert failed to address all the issues set out in SFC's instructions. The decision to invite the first market expert, who possessed the requisite expertise but had no prior experience in providing expert opinion was in fact an attempt to add new blood to SFC's existing pool of market experts in view of the difficulties in engaging qualified and experienced market experts.

4.10 In the other case, PRP noted from the case officers that on LSD's advice that the expert report was inadequate, the investigation team sought clarification from the market expert who subsequently provided a revised expert report. Yet, the revised report still could not meet the requisite standards for admission as expert evidence.

4.11 In enforcement cases, expert opinion formed an important part of evidence to substantiate market misconduct. When seeking expert opinion, LSD is required to vet the instructions to the market expert prior to his or her engagement. In the cases mentioned above, the repeated process of engagement of market experts inevitably resulted in lengthened processing time. For example, in one of the cases, SFC had taken 15 months to seek expert opinion whilst in another case, the investigation team had spent over a year working with LSD and the market expert but eventually LSD advised that there was insufficient evidence to proceed.

4.12 On the other hand, PRP noted in a case that ENF had sought expert opinion from SUR instead of an external market expert, which gave rise to query of the basis of seeking external market opinion.

§ PRP's observations

4.13 To summarize, PRP made the following observations in these cases –

- (a) **Insufficient qualified external market experts in the existing pool of SFC:** PRP noted from previous case reviews that SFC encountered difficulties in engaging external market experts. The problem persisted and there remained lack of sufficient qualified external market experts to provide services for SFC;
- (b) **Room for improvement in the procedure of seeking expert opinion:** Decisions such as whether to engage market experts, the timing of the engagement and the number of market expert to be engaged have impact on the processing time of cases. Given the time taken to engage market experts would not be very short, the case might be aged, the evidence might be weakened and important witness could become untraceable. There is still room for improvement in the procedures of seeking expert opinion; and
- (c) **Substandard market expert reports:** SFC issued instructions to market experts setting out, among others, issues to be addressed in their expert reports. The fact that some expert reports could not meet the requisite standards for admission as expert evidence might show that some market experts were unable to meet the legal or other requirements for expert reports.

§ PRP's recommendations

(a) Take a more proactive approach to recruit new market experts

4.14 PRP noted from some case officers that it was difficult for SFC to engage market experts as very few active market practitioners were ready to take up the role and so the pool of experts available was very small. PRP appreciated SFC's efforts in recruiting new market experts but considered that SFC should take more proactive actions to expand its pool of market experts.

4.15 PRP suggested ENF to make use of the existing database maintained by LIC to build up a network of potential market experts by extending invitation to these potential candidates, in particular those who have just retired to assume the role of market experts, and organize thematic seminars and events to reach out to other potential market experts.

(b) Review the procedure for engaging market experts

4.16 PRP noted the making of decision on whether and when a market expert should be engaged rested very much upon ENF officers' analysis and judgement. While LSD is responsible for vetting instructions to market experts and determining the sufficiency of evidence, PRP considered that LSD could take part in the decision making process in respect of seeking expert opinion at an earlier stage. This could save time for going through the lengthy process of engaging market experts should LSD find the evidence insufficient to proceed in the first place notwithstanding a positive expert opinion. PRP also considered that given the sufficiency of evidence to proceed might change following the development of the investigation, the procedure of seeking expert opinion should ensure that the need of such opinion would be subject to regular review so that the engagement process could be timely discontinued when warranted.

4.17 PRP also suggested SFC to consider, where applicable, engage external market expert and external counsel at the same time so that the external market expert could seek clarification from the external counsel on any legal issues timely and the external counsel could also readily comment on the adequacy of the external market expert's draft opinion in terms of its coverage and standard. Overall, PRP recommended ENF to explore with LSD on more effective ways of seeking external expert opinion for the best use of SFC's resources.

(c) Provide more assistance and guidance to market experts

4.18 To improve the situation where market experts fails to provide expert reports that meet the required evidentiary and legal standard, PRP recommended SFC to offer more assistance and guidance to the market experts by making clear its expectation on expert reports including the scope of opinion and the legal requirements. PRP also considered that SFC's written instructions to market experts might be supplemented with discussions among the market experts, ENF and LSD or external counsel where necessary as the current written instructions might not adequately serve the purpose of letting the market expert know what exactly SFC was asking for.

4.19 Moreover, PRP suggested that SFC should indicate to the market experts its readiness for offering guidance, in particular, from the legal perspective throughout the process of writing expert reports.

§ SFC's response

4.20 The decision on whether and when a market expert should be engaged was made having regard to the nature and circumstances of each case, the evidence gathered and the complexity of the matter. An expert might therefore be instructed at different stages of a case from the outset of the investigation until preparation for trial. In reviewing the instructions to the market expert, LSD would discuss with ENF the need to engage an expert, i.e. whether based on the particular facts of the case, the court would be in a position to reach its own conclusions on the

evidence without the assistance of expert evidence. LSD would also advise ENF on any perceived difficulties in pursuing a case, even with expert evidence. Sometimes, the prospects of a case might not be evident until most of the evidence, including market expert opinion, has been gathered and thoroughly analysed.

4.21 In engaging a market expert, SFC sought to obtain an independent opinion. Therefore, SFC did not specify what the opinion should be. SFC would provide sufficient information for market experts to render an independent opinion that would be admissible in proceedings. Discussions took place between LSD, ENF and external counsel with experts at various stages of the case.

4.22 While finding a suitable expert can be difficult at times, and in some situations, there might be unavoidable delays, SFC was gradually expanding its pool of experts through referrals by divisions within SFC and by sourcing them from the market. SFC did come across experts who were not able to produce reports that meet the requirements for admissibility as expert evidence. This was however not a widespread problem. Also, ENF and LSD had been jointly running a training course for external market experts annually. Various topics including the preparation of reports and statements for courts and tribunals, giving evidence in chief and in cross-examination, the communication with the courts and tribunals, etc were covered in the course. There were also case studies to demonstrate practical skills and encourage discussion among experts.

4.23 Further, LSD had developed a template for expert reports with the aim of standardizing the presentation of reports in a way that would facilitate their admissibility for court/MMT proceedings. SFC also maintained a system to assess the performance of its experts, which assisted SFC to consider their suitability for future appointments.



B. Overview of Communication and Coordination in the Investigation Process

4.24 PRP reviewed 18 enforcement cases during the year. It noted that ENF had sought legal advice from LSD and external counsel for four times in a case and taken more than two years to seek legal advice in another case, involving consideration by ENF and LSD of different possible proceedings at different stages of the investigation. Subsequently, both cases concluded with no further action due to insufficient evidence. In the latter case, PRP also observed that there was a long time gap between the commencement of the investigation and interview of suspects and witnesses, and the key person had been found uncontactable long before conclusion of the case.

4.25 Besides, at least two other cases under review were concluded with no further action after years of investigation as a result of the loss of trace of suspects, unwillingness of key witnesses to testify, and time and resources considerations. On the other hand, there was a case which was put on hold after the decision of no further action was made because civil action in a related case was still on-going.

4.26 PRP also noted that in some interrelated cases, respective case officers seemed not to have sufficient information on the progress of other related cases.

§ *PRP's comments*

4.27 PRP commented that in some of the enforcement cases, there seemed to be delay in closing the cases administratively or making a decision to close a case that could not be pursued. For example, it may not be fruitful for the case with a decision of no further action made to be closed until completion of the civil action in a related case. To close a case in consideration of time and resources as well as the likely outcome of the possible proceedings, the decision might also be made earlier instead of after years of investigation. The same handling applied to the case concluded with no further action due to the unavailability of key

witness. While PRP appreciated that it took time to collect evidence and so it might be difficult for any conclusive decisions be made swiftly, there appeared to be room for improvement in relevant decision making processes.

4.28 For interrelated cases, PRP commented that closer communication between respective case teams was necessary to enhance efficiency and maintain consistency.

4.29 Overall, PRP considered that better overall planning on the investigation might be warranted.

§ PRP's recommendations

4.30 PRP suggested SFC to reinforce the overall planning of investigation in enforcement cases. For example, set milestone for different stage of investigation and arrange meetings for relevant parties, such as ENF, LSD and external counsel to discuss the strength of the evidence collected and the need to collect new evidence or expert opinion at an early stage. PRP considered that an overall strategic action plan could help ENF deal with situations such as loss of trace of key persons and ageing of cases in a more efficient manner.

4.31 In the above connection, PRP suggested SFC to review the procedure of bringing up cases to the senior management for making high-level decision to ensure that strategic decisions or directions were made as soon as the circumstances warranted during the course of case supervision.

4.32 PRP also suggested SFC to enhance the information sharing among investigation teams in the handling of interrelated cases. In particular, it would be more effective if the senior officers with oversight could give direction to case officers of the different teams concerned. SFC should also further review the coordination between ENF and LSD in the former's seeking of legal advice with a view to enhancing efficiency.

§ *SFC's response*

4.33 Case officers prepared for the investigation of each enforcement case by drawing up an investigation plan at the beginning of the investigation. The plan contained, among others, the expected timeframe for every stage of investigation up to the stage of making recommendation to ENF management, for example, taking no further action or referring the case for legal advice. This timeframe served primarily as a management tool to monitor the progress of cases.

4.34 In the case concluded due to the unavailability of key evidence of a key person, the investigation team carried out the investigation as planned. Overall, the timing of interviews in enforcement cases is driven by investigation strategy. It was part of ENF's investigation strategy to examine and understand the relevant issues and documents before commencing the interviews. It was a conscious strategic decision to hold the interviews at the chosen time and to proceed with the case even though one of the key suspects became uncontactable because, among others, it was uncertain at the material time whether ENF had only temporarily lost contact of that key suspect. The senior management of ENF had been monitoring this case regularly through the ESC and rendered timely guidance to the case team at all important junctures. There was also no delay in making the strategic decision to take no further action in the other case mentioned by PRP. The decision was made as soon as practicable.

4.35 As for the communication between ENF, LSD and DoJ in investigations, ENF and LSD regularly discussed cases pending internal and external legal advice with a view to identifying any concerns about the strength of evidence, and assessing case strategy. When external counsel were instructed, LSD maintained regular contact with external counsel about the progress of the advice and to respond to any requests for further information. Case conferences were held between ENF, LSD and external counsel to discuss the strength of the evidence and to address any gaps in the evidence. SFC would continue to strengthen communication between ENF and LSD. Since the Strategic Review in

late 2016, dedicated contact points had already been established in LSD to liaise with each ENF team on important matters; and ENF had in 2016 appointed a Litigation Coordinator at directorate level to further strengthen communication between ENF, LSD and DoJ. Further, a Deputy Chief Counsel from LSD attended ESC meetings. For cases with poor prospect, ENF endeavoured to identify such cases as early as possible during the investigation process with a view to making efficient use of its resources.

4.36 For interrelated cases, following the Strategic Review in 2016, specialised investigation teams were formed to handle cases of a similar nature to enhance investigation efficiency, consistency and communication between case officers investigating related matters. Case directors also closely monitor the progress of their cases by holding regular discussions with case officers and reviewing case progress reports.

4.37 For the case where PRP found respective case officers seemed to have insufficient knowledge of the progress of the other related cases, the investigation teams were supervised by an Associate Director who was hands-on and had knowledge of all the cases. The progress of all the cases were monitored by the Director and Senior Director of the same team.



C. Handling of Licensing Applications and Complaints

4.38 PRP reviewed 8 licensing applications and 8 complaints during the year. For licensing applications, PRP noted that LIC had taken almost or over a year to finish some of the cases. One of them involved the applicant's taking of over seven months to meet all SFC's capital requirements after LIC granted approval-in-principle for the application. In a few other cases, LIC had taken a long time to seek requisitions from the applicants because the applicants were seemingly half-hearted towards the requisitions, their applications were either incomplete or lacked of correct/important information, or they failed to respond to LIC's request to confirm details of applications.

4.39 PRP recognised the efforts of case officers in providing assistance to the applicants and making up substandard applications, but considered that these were done at the expense of SFC's resources. PRP had also raised concern about SFC's handling of simple complaint cases which SFC had spent quite some time on the investigation.

4.40 PRP noted a substantial number of complaints had been handled by SFC every year. In 2019, SFC received 4,491 complaints against intermediaries and market activities. PRP considered that some of these complaints might be avoidable if the public was well informed of the new developments in intermediaries and market activities. PRP was also mindful of possible abuse of the right to lodge complaints, noting a case where CFD had put on hold the vetting of an IPO application due to the ongoing investigation of a related complaint. This might somehow show how a complaint might affect the processing of a listing application.

§ PRP's recommendations

4.41 PRP recommended SFC to consider setting a time lapse policy for licence applications to deal with situations where the applicant had taken an unduly long period of time to meet SFC's requirements or

respond to its requisitions. While PRP appreciated SFC's case-by-case approach and had no objection to it, SFC should keep in view of the resources devoted at different point of time and stop further processing where the situation warranted. This might require SFC to devise a better mechanism to deal with all these situations as a whole.

4.42 SFC should also consider rejecting an application or requesting it to be withdrawn in situations where the applicant persistently submitted incorrect or incomplete information or where the application lacked the essential information.

4.43 For applications that did not meet the threshold of rejection, PRP suggested SFC to take more vigorous measures to increase the efficiency of applicants' response to its requisitions and improve the quality of applications. For example, LIC might accord lower priority for processing the application or start afresh the process until the applicant submitted all the necessary information or documents.

4.44 All in all, PRP considered that SFC should take more proactive actions to deal with uncooperative applicants and deter people from submitting substandard applications.

4.45 For the handling of straight-forward complaints, PRP suggested SFC to further streamline its procedures and provide clearer information to the market with a view to saving resources and reducing the number of complaints. For example, if complaints against certain CIS were found prevalent, SFC could consider providing the market with more information on the constitution and related issues to help investors to make their decisions. Where the circumstances warranted, SFC should also consider looking into possible filing of complaints for the purpose of holding back listing applications.

§ *SFC's response*

4.46 For the licensing application where the applicant had taken several months to meet SFC's capital requirements after the granting of approval-in-principle, LIC did not exercise the discretion of refusal as the applicant had informed LIC a few times that capital injection was forthcoming.

4.47 For the suggested time lapse policy in relation to the processing of licensing applications, SFC considered it inappropriate to impose a rigid policy. Rather, if an applicant failed to respond to SFC's requisitions fully or in a timely manner, SFC might refuse the application on the basis that the applicant had failed to satisfy SFC that it was fit and proper to be licensed. SFC needed to retain its discretion to determine when to conclude its processing of an application on a case by case basis.

4.48 In fact, SFC had introduced various measures in the past couple of years to improve the efficiency of licensing processing in the situations referred to by PRP. In order to reduce rounds of requisitions, the new licensing forms launched in 2019 required applicants to provide more relevant information upfront. SFC also provided more guidance to the industry in the new edition of the Licensing Handbook. Since implementation of the enhanced risk-based licensing process, there had been a noticeable reduction in the number of rounds of requisitions raised and hence the processing time taken. The number of long outstanding applications for over 90 days significantly dropped by 38% during the year of 2019/20.

4.49 Currently, LIC was in the process of revamping its licensing portal, which would ensure that applicants provide necessary information in their applications before submitting to LIC. The new portal would also contain a communication feature to facilitate information exchange between LIC and applicants. SFC expected that the new portal would further improve the efficiency of communication with applicants and the tracking of the status of applications. LIC's

management would also continuously monitor the progress of the applications and review its processing procedures from time to time.

4.50 For the handling of straight-forward complaints, SFC has established procedures to handle these cases. The operational unit would assess a complaint and decide if further action was required for the matter. After the CCC made a decision based on the operational unit's decision, it remained the unit's decision to take up the matter for further assessment should the situation warrant. Basically, the amount of work done by units was commensurate with the seriousness of potential regulatory concerns indicated in a complaint. In addition, there has been continued effort in collaborating with other agencies to provide guidance, alert the market and raise public awareness as regards certain prevalent CIS complaints.

4.51 As for the possible filing of complaints for the purpose of holding back listing applications, it was not uncommon for SFC and SEHK to receive complaints on listing applications. To the knowledge of SFC, the proposed listing timetable in most cases had not been affected by complaints received during the course of vetting, since they were addressed in parallel with comments raised during the scrutiny of the listing applications. Whilst SFC noted PRP's concern over possible abuse of the complaints handling system, SFC emphasised that each case was assessed against its specific facts and circumstances.



D. Communication with External Parties

4.52 PRP noted it was common for SFC to communicate with other regulators and law enforcement agencies as well as government departments, and was concerned about the effectiveness of their communication in case processing. In one of the enforcement cases, SFC received a referral of complaint from HKMA. When SFC initiated to institute proceedings to freeze some bank accounts, it noted that some plaintiffs, including the complainant in the case referred by HKMA, had already commenced garnishee proceedings against those bank accounts. Subsequently, SFC decided not to pursue the investigation further. In the other enforcement case, PRP noted LSD had taken extra time to meet DoJ's request for a full referral and further evidence after SFC referred the case to DoJ for legal advice.

4.53 In a case handled by CFD, PRP noted SFC and ICAC had commenced proceedings/investigation on related subjects and communications between SFC and ICAC ensued during the process.

4.54 On the other hand, PRP noted an enforcement case where ENF found that the auditor of the subject of the investigation had made a claim which lacked a sufficient evidential foundation, which might warrant the attention of relevant professional bodies such as HKICPA and FRC. However, due to a confirmation received from a relevant party in support of the auditor's claim, SFC took no follow-up action in this regard. PRP also noted that in a complaint case, SFC informed the complainant that some allegations fell outside its jurisdiction without referring those allegations to the relevant regulator.

§ PRP's comments

4.55 In the case concerning HKMA, PRP questioned the effectiveness of SFC's communication with HKMA noting that the decision to withhold the proceedings in this case related to the private plaintiffs' initiation of garnishee proceedings and one of whom lodged

the complaint to HKMA. In particular, PRP questioned if the MOU signed between SFC and HKMA in 2002 had fulfilled its purpose of enhancing cooperation. PRP raised the same queries in the case involving ICAC noting that SFC's case related to on-going actions taken by ICAC. For cases involving criminal proceedings of other regulators and/or law enforcement agencies, PRP considered that SFC should ensure good coordination among the parties and DoJ, for example, through top-level dialogues to ensure effective handling of the cases.

4.56 As for the questionable conduct of the auditor in the enforcement case, PRP asked if SFC had any regular dialogues with HKICPA and FRC on market practices, especially discussion on questionable conduct. PRP considered that SFC should enhance communication with relevant professional bodies in the handling of suspected misconduct. For allegations or misconduct that fell outside the jurisdiction of SFC, PRP enquired if there was any mechanism of referral to other relevant authorities.

4.57 In the case where a referral was made to DoJ, PRP commented that LSD should ascertain DoJ's requirement before referring the case to DoJ for legal advice.

§ PRP's recommendations

4.58 PRP considered SFC's effective communication and coordination with other regulators, law enforcement agencies and professional bodies such as HKMA, ICAC and FRC crucial to ensure smooth work processes in SFC and proper handling of suspected misconduct by relevant parties. SFC should consider ways to enhance communication with and institutionalize referral to these external parties for the said purposes.

§ *SFC's response*

4.59 SFC maintained effective communications and a close working relationship with HKMA. The MOU entered into with HKMA in 2002 sets out the cooperative arrangements, which were designed to facilitate the exchange of relevant information and to ensure effective coordination and cooperation between the two organizations on enforcement matters. If there were issues of common concern, the two organizations would exchange information and assist each other in the performance of their respective statutory functions. In appropriate cases, SFC and HKMA might conduct joint investigations with a view to delivering a coordinated enforcement effort and consistent enforcement outcomes, whilst minimising any duplication of effort. SFC and HKMA regularly reviewed and updated these cooperation arrangements, which were last updated in 2019.

4.60 Further to the MOU, the senior management of ENF and its counterparts in HKMA met multiple times each year to discuss and address issues of common concern. SFC and HKMA also collaborated on training. Where appropriate, training programmes were made available to each other.

4.61 For the case reviewed by PRP, ENF had followed the established protocol of information sharing as set out in the MOU. The case officers had maintained contact with HKMA officers in the investigation of the complaint referred by HKMA. However, the complainant in that case was not obliged to notify HKMA or SFC of any legal action taken by him or her.

4.62 SFC also maintains regular dialogues with FRC and HKICPA. Representatives of SFC and FRC meet regularly to discuss various matters of mutual interest, including cases that are under investigation by both organisations and conduct issues relating to auditors. SFC soft consulted HKICPA on policy issues of common interest and arranged for a representative to sit on the HKICPA

committees. Where required, SFC passes on complaints to the two organisations.

4.63 In order to strengthen its working relationship with DoJ, SFC signed an MOU with DoJ in March 2016 to further strengthen cooperation in the handling of criminal cases under SFO and other relevant legislation. In the case where LSD was requested by DoJ to make a full referral, LSD and ENF followed the protocol set out in the MOU when referring the case to DoJ.

4.64 SFC also entered into an MOU with ICAC in August 2019, which sets out the framework for cooperation and collaboration between the two agencies covering referral of cases, joint investigations, exchange and use of information, mutual provision of investigative assistance, and capacity building. In the event that ICAC and SFC conducted investigations respectively, SFC provided full and prompt assistance to ICAC, including the sharing of documents/evidence obtained and the provision of witness statement(s) during the course of ICAC's investigation.

4.65 For the complaint case which PRP found referral necessary, SFC had informed the complainant that his complaint fell outside the jurisdiction of SFC. This was in line with the current procedure that required where a complaint received by SFC fell outside its jurisdiction but appears to be within the remit of another regulator or law enforcement agency, SFC should in its reply suggest the complainant to report his or her case directly to the relevant regulator or law enforcement agency.



E. Staff Development

4.66 In an enforcement case reviewed, PRP noted SFC's intended proceedings were not instituted and the major hurdle was the absence of creditable witnesses. The crucial witnesses in the case were investors who were also part of the pyramid selling scheme. As such, SFC found insufficient evidence to prove whether the investors were marketed shares of a Hong Kong public company or BVI companies by the suspects. From the time the said issues came to SFC's attention, over four years were spent on the case. In another enforcement case which involved suspected wash trade and cross trade, ENF took around 2.5 years to investigate, examining and analysing the roles played by each entity under investigation in each step of the execution and settlement process. In particular, 9 months were spent on reviewing evidence to identify the rationale and process for the crossing of the shares concerned.

§ *PRP's comments*

4.67 PRP was concerned about the timing of identifying the fundamental issues in the case that concerned marketing of shares of a Hong Kong public company or BVI companies. Given the diversity of investment products available in Hong Kong, it was foreseeable that similar cases would arise in future. SFC should consider ways to improve the handling of such cases to better protect the interests of the public investors. In the case involving suspected wash trade and cross trade, PRP questioned the timeliness of case officers' review and analysis of the process involved in the trades and the roles played by each relevant party despite the complexity of the evidence.

§ *PRP's recommendations*

4.68 PRP noted SFC provided regular staff training to promote professional competence and keep its staff apprised of the latest developments in various areas. In relation to the enforcement cases

reviewed, PRP recommended SFC to promote staff development in areas such as evidence analysis and review of legal issues in investigations. Specifically, PRP suggested SFC to enhance the alertness of officers to fundamental issues of an investigation, for example, whether the subject issues fell within SFC's jurisdiction and their skills in collecting and analysing evidence in relation to more complex trading methods or strategies, etc.

§ *SFC's response*

4.69 The main hurdle in the case concerning the marketing of shares of a Hong Kong public company or BVI companies by the suspects was the absence of credible witnesses. Generally speaking, when dealing with cases that might not fall within SFC's jurisdiction, ENF would seek LSD's early advice to resolve the jurisdictional and evidential concerns. Where an emerging threat affected the interests of the investing public, SFC would usually, as it did in the current case, collaborate across different divisions to formulate an appropriate regulatory response using its regulatory toolbox. Following the Strategic Review, a designated counsel of LSD had been assigned to work with each specialised investigation team. This had enhanced ENF's ability to seek timely advice from LSD when needed.

4.70 As regards the case involving suspected wash trade and cross trade, the evidence gathered was highly technical and complex. The case officers needed to conduct extensive inquiries into the trading pattern to ensure a full and accurate analysis of the evidence before making a proposal to take action against the licensed corporation.

4.71 In terms of staff development, SFC reviewed the technical competency requirements of its staff annually. Staff members' career goals and competency requirements were defined and assessed in consultation with their respective supervisors to ensure their professional knowledge and skills were continuously developed to ensure effective discharge of their functions. At the divisional level, ENF management also strategically reviewed the technical and operational readiness of all functions within ENF,

including its investigative functions, to ensure that ENF officers were equipped with the knowledge and skills to tackle emerging and evolving threats.



Chapter 5 Way Forward

5.1 PRP is delighted to note that SFC has taken on board many of PRP's recommendations. In particular, PRP observed the improvements made by SFC in enforcement cases in the case reviews conducted in recent years, which were apparently attributed to the ENF's Strategic Review in late 2016. The Strategic Review addressed many of PRP's fundamental concerns about enforcement actions, for example, the timeliness of investigations and collaboration between ENF and LSD. With the new licensing portal in the pipeline, PRP also looks forward to a more effective licensing process. On SFC's regulatory functions as a whole, PRP envisages that SFC would steer initiatives to further enhance organizational efficiency based on PRP's recommendations.

5.2 In the year ahead, PRP will continue its work with a view to ensuring that the SFC adheres to its internal procedures for consistency and fairness.

5.3 PRP welcomes and attaches great importance to the views from market practitioners. Comments on the work under PRP's terms of reference can be referred to PRP through the following channels²-

By post to: The Secretariat of the Process Review Panel
 for the Securities and Futures Commission
 24th Floor, Central Government Offices
 2 Tim Mei Avenue
 Tamar
 Hong Kong

By email to: prp@fstb.gov.hk

² Enquiries or complaints relating to non-procedural matters could be directed to SFC through the following channels -

By post to : Securities and Futures Commission,
 54/F, One Island East, 18 Westlands Road, Quarry Bay, Hong Kong

By telephone to :(852) 2231 1222

By fax to :(852) 2521 7836

By email to : enquiry@sfc.hk (for general enquiries, comments and suggestions, etc.)

 : complaint@sfc.hk (for public complaints)

Chapter 6 Acknowledgement

6.1 PRP would like to express its gratitude to the support and co-operation of SFC in the review work. Special thanks must go to the Senior Director, Commission Secretary Mr Paul Yeung and his team, for their assistance in facilitating the case reviews and in coordinating the responses from different divisions within SFC.

6.2 As always, PRP Secretariat has continued providing its solid support to the work of PRP. In particular, the Chairman and Members wish to place on record their appreciation to Miss Maria Tsie, the outgoing PRP Secretary, for her hard work and contribution to PRP in the past seven years.

**Process Review Panel
for the Securities and Futures Commission
November 2020**