

# **Process Review Panel for the Securities and Futures Commission 2009-10 Annual Report**

## **Executive Summary**

### **Introduction**

The Annual Report of the Process Review Panel (PRP) for the Securities and Futures Commission (SFC) covers the work of PRP in 2009-10 relating to the review of cases concluded by SFC in 2008-09.

### **Background and Terms of Reference of PRP**

2. PRP is an independent panel established by the Chief Executive in November 2000 to review and advise SFC on the adequacy of SFC's internal operational procedures governing the actions taken and operational decisions made in the performance of its regulatory functions.

3. PRP receives and considers periodic reports from SFC in respect of the completed or discontinued cases, including complaints against SFC or its staff. In addition, PRP may call for, and review, SFC's files to verify that the actions taken and decisions made in relation to any specific completed case are consistent with the relevant internal procedures and operational guidelines. PRP is required to submit its reports to the Financial Secretary annually or otherwise on a need basis.

### **Constitution of PRP**

4. PRP, chaired by Mr Anthony Chow Wing-kin, comprises eleven members. They come from the financial sector, academia, the legal and accountancy professions. There are also a Legislative Councillor and two ex officio members, including the Chairman of SFC and the representative of the Secretary for Justice.

### **Work of PRP in 2009-10**

5. In 2009-10, PRP reviewed 55 completed or discontinued cases of SFC in the following areas –

- (a) licensing of intermediaries;
- (b) inspection of intermediaries;
- (c) authorisation of collective investment schemes;
- (d) handling of complaints;
- (e) investigation and disciplinary action; and
- (f) processing of listing applications under the Dual Filing regime.

6. PRP concluded that SFC has generally followed its internal procedures and complied with the operational guidelines in handling these cases.

### **Observations and recommendations**

7. PRP made a number of observations and recommendations, to which SFC has responded positively. SFC has provided elaborations and explanations and introduced improvement measures where appropriate. The following is a summary of the key issues noted by PRP –

- (a) licensing of intermediaries – SFC has, in conjunction with the Hong Kong Monetary Authority, reviewed the existing separate processing of applications for registration as registered institutions and executive officers. The current arrangement is found to be reasonable and clearly set out (paras. 3.3 – 3.6);
- (b) authorisation of collective investment schemes – SFC does take into account, amongst others, an applicant’s disciplinary record when processing applications for authorisation of collective investment schemes. An applicant has the duty to consider if such information should be disclosed in the offering document (paras. 3.13 – 3.14);
- (c) handling of complaints –
  - (i) PRP noted that the public may not fully realise the statutory secrecy obligation which limits the extent to which SFC could

divulge information to the public, and suggested SFC strengthen publicity in this respect. SFC has stepped up effort to explain to the public its role, powers and procedures in handling complaints as well as the applicability of the statutory secrecy provision (paras. 3.16 – 3.19); and

(ii) PRP suggested additional avenues for SFC staff to voice out their opinion and grievances. SFC has introduced an intranet channel “Your Voice” for staff to share their views and suggestions on work-related issues (para. 3.20);

(d) investigation and disciplinary action –

(i) PRP suggested SFC consider setting out a standard sanction framework to ensure consistency in the level of punishment. SFC responded that while it makes references to past cases, SFC should be given the necessary flexibility in determining sanctions in response to changes in market practices. Disciplinary actions, apart from being a penalty for wrongdoings, also serve to encourage better compliance and forestall recurrence. SFC has hence adopted “probationary suspension” where appropriate (paras. 3.22 – 3.31);

(ii) on regulation of market commentaries, the “Code of Conduct for Persons Licensed by or Registered with SFC” and provisions relating to market misconduct under the Securities and Futures Ordinance have addressed the issue of potential conflict of interest by licensed persons and other persons making market commentaries through the media. SFC has undertaken to issue compliance advice letters, where appropriate, to address possible regulatory concerns and to raise standards of conduct and compliance. SFC has also responded positively to PRP’s suggestion of stepping up investor education efforts in this respect (paras. 3.32 – 3.33 and 4.8 – 4.11); and

(iii) on the dual routes provided under the law to deal with market misconduct, SFC and the Department of Justice have in place an established referral arrangement, under which criminal

prosecution against the wrongdoers would first be considered before other civil enforcement options (paras. 4.2 – 4.7).

## **Way forward**

8. Looking ahead, PRP would continue its work on the review of completed or discontinued cases, and maintain dialogue with market players and engage the industry to gauge their views.

9. PRP welcomes and attaches great importance to views from market practitioners as well as the public on the work of PRP. Suggestions and comments can be referred to PRP through the following channels –

By post to:        Secretariat of the Process Review Panel  
                         for the Securities and Futures Commission  
                         Room 1801, 18<sup>th</sup> Floor, Tower 1, Admiralty Centre  
                         18 Harcourt Road  
                         Admiralty  
                         Hong Kong

By email to:      [prp@fstb.gov.hk](mailto:prp@fstb.gov.hk)