

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

**Annual Report to the Financial Secretary**

**For 2001**

## Table of Contents

### Chapter

1	General Information	
	• Background and purpose of the Process Review Panel	Para. 1.1 – 1.6
	• Terms of reference	Para. 1.7 – 1.8
	• Constitution of the Process Review Panel and Working Groups	Para. 1.9 – 1.11
2	Highlights of Work	Para. 2.1 – 2.3
3	Approach on Case Review	
	• Presentation by the Securities and Futures Commission	Para. 3.1 – 3.3
	• Selection of cases for review	Para. 3.4 – 3.5
	• Meetings of the Process Review Panel and Working Groups	Para. 3.6 – 3.8
	• Engagement with the industry	Para. 3.9
4	Recommendations	Para. 4.1
	(A) Recommendations on inspection of intermediaries	
	– Selection of inspection targets and inspection preparation	Para. 4.2 – 4.3
	– Internal checks and balances	Para. 4.4 – 4.5
	– Conclusion of inspections	Para. 4.6 – 4.7

	– Circularisation exercise	Para. 4.8 – 4.11
(B)	Recommendations on disciplinary and enforcement actions	
	– Availability of translation of statements	Para. 4.12 – 4.13
	– Notification of the right to appeal	Para. 4.14
	– Disclosure of investigation to affected parties	Para. 4.15
	– Referral of cases to the Police	Para. 4.16
(C)	Recommendations on registration and supervision of intermediaries	
	– Processing of applications for registration and change of accreditation	Para. 4.17 – 4.18
	– Registration procedures	Para. 4.19
(D)	Recommendations on handling of complaints	Para. 4.20
5	Streamlining Securities and Futures Commission procedures	Para. 5.1
	• Licence fees	Para. 5.2
	• Application procedures	Para. 5.3 – 5.4
	• Synchronisation of processes by the Securities and Futures Commission and Stock Exchange of Hong Kong Company Limited	Para. 5.5
	• Time required for processing applications	Para. 5.6

	• Change of accreditation	Para. 5.7 – 5.9
6	Way forward	Para. 6.1 – 6.3
7	Acknowledgement	Para. 7.1 – 7.2

## Annexes

A	Terms of reference of the Process Review Panel
B	Membership list of the Process Review Panel and Working Groups
C	Recommendations from Process Review Panel that are accepted by the Securities and Futures Commission
D	Recommendations from Process Review Panel that are not accepted by the Securities and Futures Commission

## **Chapter 1. General Information**

### Background and purpose of the Process Review Panel

1.1 The Process Review Panel (PRP) is an independent, non-statutory panel established by the Chief Executive in November 2000 to review the internal operational procedures of the Securities and Futures Commission (SFC) and to determine whether the SFC has followed its internal procedures, including procedures for ensuring consistency and fairness.

1.2 Since its inception, the SFC has been subject to various checks and balances designed to ensure fairness and observance of due process. These include statutory rights of appeal, judicial review and scrutiny by the Ombudsman and the Independent Commission Against Corruption (ICAC). To date, complaints against the SFC have been relatively few and minor in nature. Only a handful of its decisions have been challenged, unsuccessfully, by judicial review.

1.3 In the course of reforming the regulatory regime for the securities and futures market, the regulatees pointed out to the Administration that these checks and balances were only applied in specific cases. The Administration, in consultation with the SFC, concluded that it would be preferable to improve the transparency of SFC's internal processes across the board, so that the public would be better able to see for itself that the SFC did indeed act fairly and consistently in the exercise of its powers.

1.4 The SFC's ability to demonstrate that it already operates in this fashion is however constrained by statutory secrecy obligations which limit the extent to which the SFC can divulge information to the public regarding what it has or has not done when performing its regulatory functions.

1.5 In order to overcome this and enhance the transparency and public accountability of the SFC, the Administration saw merit in establishing an independent body to review the fairness and reasonableness of the SFC's operational procedures on an on-going basis, ensure that those procedures are consistently adhered to by the SFC and make recommendation to the SFC accordingly.

1.6 The establishment of the PRP ahead of the enactment of the Securities and Futures Bill<sup>1</sup> demonstrates the Administration's resolve to enhance the transparency of the SFC's operations, and the SFC's determination to retain public confidence and trust. The PRP supports the objective to ensure that the SFC exercises its regulatory powers in a fair and consistent manner.

### Terms of reference

1.7 The PRP is tasked to review and advise the SFC upon the adequacy of the SFC's internal procedures and operational guidelines governing the action taken and operational decisions made by the SFC and its staff in the performance of its regulatory functions, including the receipt and handling of complaints, licensing and inspection of intermediaries, and disciplinary action. To carry out its work, the PRP receives and considers 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. In addition, the PRP may call for and review SFC files to verify that the action taken and decisions made in relation to any specific case or complaint adhere to and are consistent with the relevant internal procedures and operational guidelines. The PRP is required to submit its reports to the Financial Secretary annually or otherwise on a need basis. The Financial Secretary may cause these reports to be published as far as permitted under the law.

1.8 The terms of reference of the PRP, as approved by the Chief Executive, is at **Annex A**.

### Constitution of the PRP and Working Groups

1.9 The PRP comprises twelve members, including nine members from the financial sector, academia and the legal and accountancy professions, and three ex-officio members including the Chairman of the SFC, a Non-Executive Director of the SFC and the Secretary for Justice (or her representative).

1.10 For better execution, the PRP has set up two working groups. The

---

<sup>1</sup> The Bill was passed by the Legislative Council on 13 March 2002.

Working Group on Licensing, Intermediaries Supervision and Investment Products focuses on cases involving application for registration, approval of investment products and inspection of intermediaries. The Working Group on Corporate Finance and Enforcement focuses on cases concerning investigation and disciplinary actions, takeovers and mergers transactions and prospectus-related matters.

1.11 The membership of the PRP and the two Working Groups are at **Annex B**.

## **Chapter 2. Highlights of the Work of the PRP**

2.1 This report covers the work of the PRP from its establishment on 1 November 2000 to 31 December 2001.

2.2 In the past year, the PRP focused on the review of cases and SFC procedures in the following areas –

- (a) inspection on intermediaries;
- (b) investigation, disciplinary and enforcement action;
- (c) licensing procedures; and
- (d) handling of corporate finance matters including those in relation to listing and takeovers matters.

2.3 The PRP also dedicated considerable time to identify proposals on the streamlining of procedures, in particular licensing procedures. The removal of obsolete procedures and rationalisation of processes would encourage and facilitate compliance as well as enforcement. Obviously, streamlining procedures would also lower the industry's operation cost without necessarily compromising the quality of regulation. The PRP considered this area of work most timely for improving the business operating environment of the securities and futures industry.



## **Chapter 3. Approach on case review**

### Presentation by the SFC

3.1 In order to gain an understanding of the procedures laid down by the SFC, the PRP invited the SFC to present its internal operational manuals and to explain to members the workflow for handling different types of cases.

3.2 In the past year, the PRP, together with its Working Groups, have been given a total of eight presentations by the SFC, covering the following subjects –

- Introduction on the structure of and division of function within the SFC
- Work of the Licensing Department, Intermediaries Supervision Department and Investment Products Department
- Work of the Corporate Finance Division and the Enforcement Division
- Inquiry/disciplinary procedures of the Licensing Department
- Working procedures for investigation of alleged breaches of the Codes on Takeover and Mergers and Share Repurchases by the Corporate Finance Division
- Inquiry/disciplinary procedures of the Enforcement Division
- Selection of inspection targets by the Intermediaries Supervision Department
- Licensing procedures

3.3 These presentations gave members an overview of SFC procedures and regulatory framework, which facilitated the case review process.

### Selection of cases for review

3.4 In accordance with the terms of reference, the PRP may select any completed SFC cases for review. The SFC provided the PRP with monthly reports on all cases completed within that month. The Working Groups then selected individual cases from these monthly reports for review with a view to covering a cross section of cases of different nature (i.e. corporate finance, enforcement, intermediaries supervision and licensing) and length of completion, including cases that had taken more than one year to complete. Members then went through the relevant case files personally, to ascertain whether the standard

procedures as set out in the SFC’s internal operational manuals had been followed. Apart from checking the file records against the standard procedures laid down in the manuals, members also assessed the adequacy of the manuals from the perspectives of fairness and reasonableness.

3.5 The SFC also provided the PRP with monthly reports on on-going investigation and inquiry cases that had been outstanding for more than one year so that PRP could monitor the progress of these cases.

Meetings of the PRP and Working Groups

3.6 The PRP met on seven occasions from 12 December 2000 to 31 December 2001. At the inaugural meeting, members discussed and established its working procedures. At the regular meetings that followed, the PRP commented on, and endorsed, Working Group papers containing observations and recommendations from the review of cases.

3.7 Each of the working groups met six times during the period covered by this report and members personally reviewed a total of 43 cases, which encompassed various areas of the SFC work.

Table 1 – Breakdown of cases reviewed by the PRP

	Corporate Finance	Enforcement	Intermediaries Supervision	Licensing	Total
No. of Cases	3	10	9	21	43

3.8 After the review of each case, the Secretariat prepared a case report which summarised members’ findings and observations together with their recommendations for improvements where applicable. These reports were considered at the meetings of the Working Groups where members might give additional comments. The consolidated views of the Working Groups were put to the PRP for comment and endorsement. The observations and recommendations were then conveyed to the SFC for consideration and necessary action. The SFC has been positive in adopting suggestions from the PRP. In cases where the suggestions could not be adopted, the SFC gave

detailed reasons.

### Engagement with the industry

3.9 In order to facilitate the review process and to decide on priorities of various areas for review, the PRP established a dialogue with industry associations and representatives so as to gauge their views on the relevant procedures and processes of the SFC and to hear their suggestions for improvement. The PRP arranged two meetings for this purpose with the securities industry associations, namely, the Hong Kong Stockbrokers Association, the Institute of Securities Dealers, the Hong Kong Association of Online Brokers and the Hong Kong Securities Professionals Association.

## Chapter 4. Recommendations

4.1 From the 43 cases reviewed so far, the PRP came to the view that there was no serious deficiency in the SFC operational processes. Yet there were certain areas where the PRP had identified room for improvement. This section summarises the PRP recommendations on such improvements and the SFC's proposed follow up action. Where the SFC could not adopt a recommendation from the PRP, detailed explanations were given to the satisfaction of the PRP. The recommendations are summarised below while the SFC's response to the recommendations are detailed in Annexes C and D.

### (A) Recommendations on inspection of intermediaries

#### *Selection of inspection target and inspection preparation*

4.2 The PRP noted from the case reviews that some registrants were inspected much more frequently than the others. The PRP had also received submissions from the industry suggesting that there was a lack of transparency in the selection criteria of targets for routine inspection. The SFC explained that it adopted a risk-based approach for conducting inspections. Each intermediary was assessed against a number of risk factors based on various returns and reports (e.g. Financial Resources Rules returns, previous inspection results). Those assessed as having a higher level of risk exposure would be accorded a higher priority for inspection, and in some cases, would be inspected more frequently. This approach helped to ensure objectivity in the selection process and the efficient use of limited resources for inspection.

4.3 The PRP accepted the use of a risk-based approach in selecting targets for inspection but noted that the reason for selecting a particular firm for inspection was not documented in the case file. For transparency and completeness of record, the PRP recommended that the SFC should prepare a standard form to record on file the considerations and reasons for selecting a particular inspection target. The PRP also noted that in some cases the registrant identified for inspection was only informed just a few days before the inspection, leaving the registrant with insufficient time to prepare the necessary

information for the inspection. On the other hand, certain cases were prolonged due to the late response of intermediaries to questions raised by the SFC. The PRP therefore recommended that the SFC should give notice to firms selected for inspection well in advance of the date of inspection, the date of notice being given should be recorded on file, and a reasonable time frame should be set when requesting information from intermediaries.

#### *Internal checks and balances*

4.4 On the issue of internal checks and balances, the PRP considered that for the sake of consistency and improving the quality of inspections, inspection teams should be organised in such a way that each specialised in dealing with a particular category of intermediaries. It recommended that intermediaries e.g. securities dealers, be divided into categories according to the scale of their business and mode of operation. An inspection team would then be assigned specifically to each category of intermediaries. Members believed that inspection staff concerned could gain experience and develop expertise much quicker under this organisation structure, leading to better quality and more consistent inspections. The PRP was aware that over time a risk of complacency could develop as the inspection teams became familiar with the firms they routinely inspected. The PRP therefore recommended that a system for the periodic rotation or transfer of staff should be formalised. Members however considered it more appropriate for the SFC to determine the time period for rotation taking into account risk management considerations and the constraints of staff resources.

4.5 The Operational Manual of the SFC Intermediaries Supervision Department stated that fieldwork should be performed by not less than two authorised persons. Yet the PRP understood that there were occasions on which only one authorised person was present in the company for fieldwork. As a good internal control mechanism to prevent favouritism, the PRP recommended that all fieldwork should be performed strictly by not less than two authorised persons.

### *Conclusion of inspections*

4.6 If deficiencies were identified in an inspection, the SFC would send a Letter of Deficiencies (LOD) to the registrant summarising the deficient areas and request that remedial action be taken. The PRP noted from one case reviewed that after the SFC had received replies from the registrant in response to the LOD, no further correspondence was sent to the registrant concerned to confirm whether its proposed remedial actions were accepted and the inspection process was completed. Moreover, the SFC did not check whether the remedial work proposed by the registrant had actually been carried out.

4.7 The PRP recommended that as a standard practice the SFC should send a letter to the registrant concerned to conclude the inspection and to express appreciation of their co-operation in the process. It was suggested that the letter should state as a reminder that a registrant would be liable to disciplinary action if it failed to carry out the proposed remedial work. Also, in cases where the inspection was carried out in response to a request from other divisions/departments of the SFC, a letter/memorandum concluding the inspection should also be sent to that division/department for reference.

### *Circularisation exercise*

4.8 A circularisation exercise is carried out when there are serious weaknesses in the internal controls of a registrant which render certain accounts or transactions highly vulnerable to abuse. In a circularisation exercise, the SFC staff, independent auditor hired by the registrant, or internal auditor of the registrant would call selected clients of the registrant in question to verify whether the account holding and cash balance were accurately reflected in the registrant's records. With the co-operation of the account holders, fraud and misappropriation could be detected in a circularisation exercise.

4.9 The PRP reviewed a case where the SFC carried out a client circularisation exercise with a sampling size of 20 clients out of a total of 1000 clients. The clients selected were mainly those who had hold-mail arrangements with the company, where the correspondence between the company and the client was held at the company for client's collection, instead of being sent out to the client's address. The PRP believed that the sampling

size might not be representative and noted that the rationale for selecting the sample was not documented.

4.10 Even though the hold-mail client's accounts could be the focus of the exercise, the PRP considered it inadvisable to rely solely on clients with hold-mail arrangements for circularisation because these clients could have close relationships with the company and thus their replies might not be reliable. The PRP recommended that the SFC address the above points and consider the need to review the methodology for conducting client circularisation with a view to improving the effectiveness of such exercises.

4.11 The PRP further noted that while a registrant had to obtain the SFC's agreement on the appointment of an independent auditor to perform circularisation, there was no clear guideline for the SFC to assess whether the proposed auditor had any conflict of interest with the registrant. The PRP believed that if an auditor had a close business relations with the company, it might not be appropriate for the auditor to be appointed. The PRP recommended that the SFC should formulate a set of objective guidelines for this purpose.

## (B) Recommendations on disciplinary and enforcement action

### *Availability of translation of statements*

4.12 The PRP noted that the SFC's investigation processes were documented in English on the file. When a person used a language other than English in an interview conducted by the SFC, the original statement made by the interviewee would be translated into English if the SFC considered this necessary in the processing of the case. The interviewee would be asked to confirm the accuracy of the original statement but not the translation. Furthermore, under the existing policy, persons other than those who were the subject of prosecution or disciplinary action were not entitled to a copy of the translation of their statements. For those who were entitled to a copy of the translation, the PRP noted that the SFC would not take the initiative to inform them of the possibility of obtaining a copy of the translation. The PRP considered that under such circumstances, it would be difficult for the persons concerned to ascertain whether their statements had been properly translated. To improve transparency, the PRP recommended that the SFC inform those who were the subject of prosecution or disciplinary action of the opportunity to obtain the

translation of their statements. Furthermore, the PRP recommended that the SFC consider allowing all persons involved in an interview to access the translation of their statements to increase transparency and the quality of checks and balances.

4.13 The PRP recommended that if a person involved in a prosecution, disciplinary, or insider dealing proceedings was given a right to access the translation to statements, then the availability of this opportunity should be made known to him. The PRP believed that the resource implications for the SFC should not be significant.

#### *Notification of the right to appeal*

4.14 The PRP noted from another case reviewed that the SFC issued a Letter of Mindedness (LOM) to an intermediary indicating its intention to issue a reprimand. As the intermediary did not make representation, a Notice of Decision (NOD) was issued to him followed by the issuance of a public reprimand. The standard practice was that if there were a right to appeal concerning a particular sanction, the SFC would mention this right in both the LOM and NOD. However, as sanctions of public reprimand were not subject to appeal under the existing legislation, the SFC would not mention anything concerning right of appeal in the LOM and NOD. The PRP considered that the registrant concerned might not be fully aware of the lack of an appeal channel for a public reprimand sanction and it was conceivable that if a registrant had realised that he had no right of appeal against the sanction when receiving the LOM, he might consider more seriously whether to make representation. The PRP therefore recommended that the SFC consider stating clearly in both the LOM and the NOD that a sanction was not subject to appeal if that was the case.

#### *Disclosure of investigation to affected parties*

4.15 The PRP received a submission from an industry association expressing concern that under the secrecy requirements, a person under SFC's investigation might not disclose that fact to other persons, including his employer. However, the registrant employing the person might wish to take remedial action or preventive measure if it was aware that any of its staff was under investigation for possible misconduct. The industry association believed that employers should be informed when their staff were under investigation, so that they could protect the integrity of their business and the SFC should consider the means to allow for this. The PRP discussed this proposal and believed that while the employer should have a right to know in order to protect the integrity of its



business, this had to be balanced against the right of the employee, who might turn out to be innocent at the end of the investigation. The PRP considered that there was no hard and fast rule on this subject and recommended that the SFC consider whether a better balance could be found. If so, a set of guidelines should be formulated to provide guidance to enforcement staff.

#### *Referral of cases to the Police*

4.16 In another case reviewed, the PRP noted that the SFC Enforcement Division had neither consulted the Commission's Legal Services Division (LSD) on a prima facie case of theft nor referred the theft case to the Police. As the theft case concerned was straightforward, the PRP considered that it should have been referred to the Police for further investigation even though the SFC had encountered difficulties in the investigation process. The PRP recommended that the LSD should always be consulted on theft cases and such cases should be referred to the Police. Also, the PRP recommended that the SFC consider whether guidance on the two issues mentioned above should be included in the Operational Manual.

#### (C) Recommendations on registration and supervision of intermediaries

##### *Processing of applications for registration and change of accreditation*

4.17 The PRP noted that the industry was very concerned with the time required for the SFC to process applications for registration and change of accreditation. Under the current regulatory framework, an intermediary and its representatives must obtain a registration from the SFC before engaging in any regulated activity. The representative of a firm must also be accredited to the firm before engaging in a regulated activity. The PRP appreciated that prolonged processing of applications for registration or change of accreditation would increase the operating cost of the industry as employees concerned would not be able to participate in the regulated activities while their applications were being processed.

4.18 The PRP also noted that the processing of applications in 2001 were prolonged due to an upsurge in the number of applications in March 2001, just before the implementation of the new (and more stringent) competency requirements. It was believed that some applicants submitted their applications before the end of March 2001 to ensure that their applications would be evaluated by the competency requirements then in effect. As a result, the number of applications surged from 867 for March 2000 to 3743 for March 2001.

While the PRP noted that the SFC had allocated additional resources and re-deployed existing resources to clear this upsurge in applications, it was of the view that the upsurge was predictable, the PRP recommended that the SFC consider additional measures to minimise the impact on the length of time required for processing application when it encountered similar cases in future.

### *Registration procedures*

4.19 The PRP considered that the registration procedures merit closer study as they impacted directly on the operational efficiency and competitiveness of the intermediaries. The PRP therefore selected the streamlining of registration procedure as a focused area for study, in consultation with the industry associations. The discussions and outcome of this initiative were included in **Chapter 5** and **Annexes C and D** of this report.

### (D) Recommendations on handling of complaints

4.20 The PRP noted from reviewing a case from the Corporate Finance Division that the SFC had not acknowledged or responded to a complaint within a reasonable timeframe. The PRP considered that a reply should be given as far as possible even if it was not specifically asked for. Furthermore, the PRP noted that not all Departments within the SFC had set out complaint handling procedures in their operational manual e.g. such procedures were not in place for the Intermediary Supervision Department. Therefore, the PRP recommended that the SFC review the complaint handling procedures of individual departments to ensure that they were comprehensive and consistent.

## Chapter 5. Streamlining of SFC procedures

5.1 The PRP met twice with concerned industry associations to exchange views on the streamlining of procedures and studied a total of four written submissions from industry associations on this subject. The PRP considered the merits of the industry suggestions having regard to the PRP terms of reference and where appropriate referred the industry proposals to the SFC for consideration and response. The aim was to identify areas for streamlining that could reduce the compliance burden of the industry without compromising the quality and integrity of regulation. The PRP was pleased to note that the SFC had been very positive in considering such proposals. Their implementation should reduce the operating and compliance cost of the industry and increase the competitiveness of the industry as a whole. Removing obsolete procedures would also encourage compliance and facilitate enforcement. The proposals discussed are summarised below while the SFC's responses to the proposals are detailed in **Annexes C and D**.

### Licence fees

5.2 The industry associations suggested that the SFC should reduce the licence fees and provide fee concessions to holders of more than one licence, and improve the transparency and accuracy in the calculation of fees for annual renewal of registration via the "common anniversary date"<sup>2</sup>. Under the current system, a firm may pick a "common anniversary date" applicable to all its staff for licensing purposes. The industry would like the SFC to explain the method of calculation of licences fee under such a system to ensure there would be no overcharging of fees under the "common anniversary system".

### Application procedures

5.3 An industry association suggested that the SFC allow online access,

---

<sup>2</sup> The common anniversary date programme is an optional arrangement that allows firms to adopt a uniform anniversary date for all licences carried by them and their accredited representatives. This arrangement enables the firms to aggregate the annual fees payable into one payment, and to submit annual returns (including those of its representatives) in bulk, under a simplified submission system. The program was put in place to reduce administrative costs of the firms.

completion and submission of applications for registration so as to enhance efficiency and eliminate error in data processing. It was also suggested that the SFC should promptly notify applicants of the appointment and change of personnel responsible for processing their applications.

5.4 Under current procedures, applicants who do not fulfil all the registration requirements are given a grace period of three months to obtain the necessary qualifications through professional examinations. In order to allow sufficient time for applicants to complete the examinations, an industry association suggested that the grace period for obtaining the necessary qualifications should be extended from three months to six months.

#### Synchronisation of processes by the SFC and Stock Exchange of Hong Kong Company Limited

5.5 Currently, the Stock Exchange of Hong Kong Company Limited (SEHK) has a separate approval process for application for dealer representatives and dealing directors of Exchange Participants. The industry associations considered that this approval process was redundant as its criteria were very similar to that of the SFC. It was suggested that the SFC and SEHK should rationalise the approval process so as to minimise duplication. The industry associations further suggested that the SFC and SEHK should simplify and standardise application forms for registration so that the applicants would only be required to submit the same form in duplicate to both the SFC and SEHK.

#### Time required for processing applications

5.6 An industry association suggested that the SFC should expedite the processing of initial applications for registration, give a firm reply to applicants for new registration within one month and give an explanation in case of rejection. It was also suggested that the SFC should set out clearly the time required for processing various applications.

## Change of accreditation

5.7 When a registered person changes his employment, it is necessary for him to change accreditation<sup>3</sup> before he continues to engage in a regulated activity. In order to allow registrants who changed employment to function fully in their new employment as soon as possible, an industry association suggested that the SFC simplify the procedures for change of accreditation as well as shorten the processing time. It was further suggested that the applicant concerned should be allowed to continue to conduct regulated activities for a certain period of time, while awaiting the SFC's formal approval for change of accreditation.

5.8 Another industry association proposed that registrants should be able to retain their licences for one year after leaving their job, so that they would not need to reapply for a licence if they find new employment within this period. The PRP noted that under the Securities and Futures Bill, it was proposed that registrants might retain their licences for 90 days after leaving their job comparing to 60 days under the current regime. The PRP believed that it was not unusual that registrants might take some time before finding new employment and this depended on the situation in the job market. On balance, the PRP recommended that the period should be further extended to six months to provide greater flexibility.

5.9 An industry association also suggested that the SFC simplify the application procedures for change of accreditation in respect of dealing directors/investment advisers so as to broadly tally with those for the corresponding representatives. The industry association considered that the SFC already possessed detailed information on registrants irrespective of whether they were dealing directors, investment advisers or dealer's representatives. Therefore, the application procedures for principals and representatives should be similar.

---

<sup>3</sup> As far as an individual market practitioner is concerned, there are two main types of approval by the SFC, namely approval for a representative licence and approval for, and transfer thereafter of, accreditation. Representative licence involves an assessment by the SFC of whether an individual is a fit and proper person to be licensed to carry on a regulated activity. Accreditation concerns employment of a licensed representative by a licensed corporation to carry on a regulated activity. An individual can only carry on a regulated activity if he or she has been granted a representative licence in respect of, and is carrying on, the regulated activity for a licensed corporation to which he or she is accredited.

## **Chapter 6. Way forward**

6.1 In the past year, the PRP performed its functions through the review of SFC case files and Operational Manual. The PRP reviewed a total of 43 cases and made relevant recommendations to the SFC. It also identified possible improvements in the licensing procedures through discussions with industry associations.

6.2 Looking ahead, the PRP intends to focus on examining the new procedures that have to be formulated for implementing the regulatory regime provided for in the newly enacted Securities and Futures Ordinance. The PRP will need to follow up a number of the recommendations made in 2001. These include the revision of SFC performance pledges, rationalisation of the SFC registration procedures with that of the SEHK, and exploring other areas for possible streamlining of procedures to facilitate compliance. The PRP will also look into the Commission's Corporate Finance Division procedures e.g. the approval of prospectuses, to assess the reasonableness of the procedures and identify room for streamlining.

6.3 In the first year of its establishment, the PRP has focused on reviewing a cross section of SFC's completed cases and initiating a dialogue with industry associations. In its second year, the PRP will review revised or new SFC procedures and further cultivate its dialogue with market participants affected by the SFC regulatory processes and procedures.

## **Chapter 7. Acknowledgement**

7.1 The PRP would like to express its gratitude to the Chairman of the SFC and his staff for their assistance in facilitating the case review work and co-operation in responding to the PRP's inquiries and recommendations in the past year. The PRP is also grateful to the Hong Kong Stockbrokers Association, the Institute of Securities Dealers, the Hong Kong Association of Online Brokers and the Hong Kong Securities Professionals Association for their insightful comments and suggestions.

7.2 Dr Lee Hon Chiu, GBS, JP resigned from the PRP on 1 January 2002 after serving the PRP in its inception year. The PRP is most grateful to him for his devoted service and valuable contributions to the work of the PRP.

**Securities and Futures Commission  
Process Review Panel**

**Terms of Reference**

1. To review and advise the Commission upon the adequacy of the Commission's internal procedures and operational guidelines governing the action taken and operational decisions made by the Commission and its staff in the performance of the Commission's regulatory functions in relation to the following areas-
  - (a) receipt and handling of complaints;
  - (b) licensing of intermediaries and associated matters;
  - (c) inspection of licensed intermediaries;
  - (d) taking of disciplinary action;
  - (e) authorisation of unit trusts and mutual funds and advertisements relating to investment arrangements and agreements;
  - (f) exercise of statutory powers of investigation, inquiry and prosecution;
  - (g) suspension of dealings in listed securities;
  - (h) administration of the Hong Kong Codes on Takeovers and Mergers and Share Repurchases;
  - (i) administration of non-statutory listing rules;
  - (j) authorisation of prospectuses for registration and associated matters;  
and
  - (k) granting of exemption from statutory disclosure requirements in respect of interests in listed securities.



2. To receive and consider periodic reports from the Commission on all completed or discontinued cases in the above-mentioned areas, including reports on the results of prosecutions of offences within the Commission's jurisdiction and of any subsequent appeals.
3. To receive and consider periodic reports from the Commission in respect of the manner in which complaints against the Commission or its staff have been considered and dealt with.
4. To call for and review the Commission's files relating to any case or complaint referred to in the periodic reports mentioned in paragraphs 2 and 3 above for the purpose of verifying that the action 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 Commission accordingly.
5. To receive and consider periodic reports from the Commission on all investigations and inquiries lasting more than one year.
6. To advise the Commission on such other matters as the Commission may refer to the Panel or on which the Panel may wish to advise.
7. 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.
8. The above terms of reference do not apply to committees, panels or other bodies set up under the Commission the majority of which members are independent of the Commission.

**Membership list  
of the Process Review Panel**

**Chairman**

Mr CHENG Hoi Chuen, Vincent, JP

**Members**

The Honourable Bernard Charnwut CHAN

Mr CHEONG Ying Chew, Henry

Mr FONG Hup

Mr KOTEWALL, Robert George, SBS, SC

Mr KWAN Pak Chung, Edward

Dr LEE Hon Chiu, GBS, JP (Retired on 1 January 2002)

Professor LIU Pak Wai, SBS

Mr PANG Yuk Wing, Joseph, JP

**Ex-officio members**

Chairman, Securities and Futures Commission

( Mr Andrew L T SHENG, SBS, JP )

Non-Executive Director, Securities and Futures Commission

( Mr FAN Hung Ling, Henry, SBS, JP )

Secretary for Justice

or representative ( Mr Ian G M WINGFIELD, GBS, JP )

**Membership list of the Working Group on Corporate Finance and  
Enforcement of the Process Review Panel**

**Chairman**

Mr. KWAN Pak Chung, Edward

**Members**

The Honourable Bernard Charnwut CHAN

Mr. CHENG Hoi Chuen, Vincent, JP

Mr. KOTEWALL, Robert George, SBS, SC

Dr. LEE Hon Chiu, GBS, JP (Retired on 1 January 2002)

Mr. Ian G M WINGFIELD, GBS, JP

**Membership list of the Working Group on Licensing, Intermediaries  
Supervision and Investment Products of the Process Review Panel**

**Chairman**

Mr. FONG Hup

**Members**

Mr. CHEONG Ying Chew, Henry

Mr. FAN Hung Ling, Henry, SBS, JP

Professor LIU Pak Wai, SBS

Mr. PANG Yuk Wing, Joseph, JP

Mr. Andrew L T SHENG, SBS, JP

### Recommendations from PRP that are accepted by SFC

Item 1	Case findings/ market views	The PRP noted that some registrants were inspected much more frequently than the others were and there was a lack of transparency in the selection criteria of targets for routine inspection. The reason for selecting a particular firm for inspection was not documented in the case file.
	PRP recommendations /observations	The PRP recommended that the SFC should prepare a standard form to record on file the considerations and reasons for selecting a particular inspection target.
	Response from SFC	The Intermediaries Supervisions Division (ISD) was moving towards the automation of the inspection information system. On 1 January 2001, the ISD has launched the first phase of a computer-based Inspection Activities Management System (IAMS) which allowed inspection staff to prepare, among other documents, planning memoranda, authorisation notices, letters of deficiencies and assessment forms on the system's templates. The use of these templates helped to ensure uniform standard of notices and their timely issuance. The IAMS also supports management functionalities such as check on proper performance of all processes, generation of management information reports, etc. The future development would be to keep all inspection information in the integrated system instead of paper files. ISD expects to roll out enhancements to the IAMS system in April 2002 to enable reasons for inspection to be documented for each case for completeness.
Item 2	Case findings/ market views	The PRP noted that some registrants identified for inspection were only informed just a few days before the inspection. On the other hand, certain inspections were prolonged due to the late response of intermediaries to questions raised by the SFC.
	PRP recommendations /observations	The PRP recommended that the SFC should give notice to firms selected for inspection well in advance of the date of inspection, the date of notice being given should be recorded on file, and a reasonable time frame should be set when requesting information from intermediaries.
	Response from SFC	The case of an intermediary being notified of the inspection just a few days in advance was an exception rather than the norm. The SFC agreed with the PRP's recommendation that the intermediaries should be notified well in advance. For future cases, the SFC undertook to ensure that all intermediaries would be given at least a seven-day advance notice before conducting an inspection, except for urgent circumstances or surprise inspection, in which case the reasons for a shorter notice would be recorded on file. It would be made a standard practice to set a response deadline for the intermediaries to avoid prolonging the inspection process. In order to be fair, however, an extension of response deadline would be considered if an intermediary provided adequate reasons for such a request.

Item 3	Case findings/ market views	The PRP was aware that over time a risk of complacency could develop as the inspection teams became familiar with the firms they routinely inspected.
	PRP recommendations /observations	The PRP recommended that a system for the periodic rotation or transfer of staff should be formalised.
	Response from SFC	Recommendation on staff rotation agreed. The general existing practice is to rotate inspection staff every year, on a regular basis among the eleven monitoring teams of the ISD whenever there is staff turnover or promotion to ensure a proper mix of experience and seniority of inspection staff within each team. When such a rotation occurs, the case responsibilities of all team members will be reshuffled so that the designated case officers of the registered firms will change. As such, since no one monitoring team had the same team members for the whole past 12 months, the cases had actually been rotated among the inspection staff gradually on a staggered basis. In view of the PRP's concern, ISD undertook to keep the existing practice under constant review to ensure that it in fact results in a regular rotation of the inspection staff.
Item 4	Case findings/ market views	The PRP found that there were occasions where only one authorised person was present in the company for fieldwork.
	PRP recommendations /observations	As a good internal control mechanism to prevent favouritism, the PRP recommended that all fieldwork should be performed strictly by not less than two authorised persons.
	Response from SFC	Occasions where there was only an authorised person at the inspection site performing fieldwork were very rare. This might arise when the authorised person had to return to the registrant's office to follow up on and review some outstanding documents which were not available at the time of the original field visit. A Senior Manager/Associate Director would review such work and this should prevent favouritism. However, the SFC agreed that it was desirable to have at least two authorised persons when performing fieldwork. Senior Managers/Associated Directors will ensure that internal guidelines are adhered to.

Item 5	Case findings/ market views	The PRP noted that after the SFC had received replies from an inspected registrant in response to the Letter of Deficiencies (LOD), no further correspondence was sent to the registrant concerned to confirm whether its proposed remedial actions were accepted and the inspection process was completed. Moreover, the SFC did not check whether the remedial work proposed by the registrant had actually been carried out.
	PRP recommendations /observations	The PRP recommended that the SFC should send a letter to the registrant concerned to conclude the inspection and to express appreciation of their co-operation in the process. The letter should state as a reminder that a registrant would be liable to disciplinary action if it failed to carry out the proposed remedial work. Also, in cases where the inspections was carried out in response to a request from other divisions/departments of the SFC, a letter/ memorandum concluding the inspection should also be sent to that division/department for reference.
	Response from SFC	As a standard practice effective from August 2001, upon receipt of a registrant's response to the LOD, the SFC would issue a reply to the registrant to conclude the inspection or advise it to take further action if the remedial actions were insufficient. The letter would also express appreciation of the registrant's co-operation in the inspection process. However, in contrast to the PRP's recommendation, the SFC had decided not to mention the possibility of disciplinary action in the letter as it was believed that such reference might be ill-received by the registrant. The SFC also agreed that a memorandum should be sent to the referring division/department upon the conclusion of an inspection.
Item 6	Case findings/ market views	The PRP noted that while a registrant had to obtain the SFC's agreement on the appointment of an independent auditor to perform circularisation, there was no clear guideline for the SFC to assess whether the proposed auditor had any conflict of interest with the registrant.
	PRP recommendations /observations	The PRP recommended that the SFC should formulate a set of objective guidelines for assessing the independence of the proposed auditor.
	Response from SFC	The SFC agreed that it was essential to avoid conflict of interest in the appointment of external auditors by registrants. The guideline in the Operation Manual of the Intermediaries Supervision Department was revised in March 2002 to elaborate how the issue of independence in undertaking circularisation exercise should be resolved. Specifically, if the proposed auditor was the existing or past auditor of the registrants and the suspected control deficiencies took place at a time when the proposed auditor was serving the registrant, then the appointment of the auditor would not be approved unless the latter could demonstrate that objectivity would not be impaired.

Item 7	Case findings/ market views	The PRP noted a submission from an industry association recommending that employers should be informed when their staff were under investigation, so that they could protect the integrity of their business and the SFC should consider the means to allow for this.
	PRP recommendations /observations	The PRP believed that while the employer should have a right to know in order to protect the integrity of its business, this had to be balanced against the right of the employee, who might turn out to be innocent at the end of the investigation. The PRP recommended that the SFC consider whether a better balance could be found. If so, guidelines should be formulated to provide guidance to enforcement staff.
	Response from SFC	The SFC agreed to consider this issue and would report progress to the PRP.
Item 8	Case findings/ market views	The PRP noted that the Enforcement Division had neither consulted the Commission's Legal Services Division (LSD) on a prima facie case of theft nor referred the theft case to the Police.
	PRP recommendations /observations	The PRP suggested that the LSD should always be consulted on theft cases and such cases should be referred to the Police. The SFC was invited to consider whether guidance should be included in the Operational Manual.
	Response from SFC	The SFC accepted the recommendation from the PRP and corresponding guidelines would be included in the Operational Manual. In future, LSD would always be consulted on theft cases and, subject to LSD's advice, the theft case would be referred to the Police.
Item 9	Case findings/ market views	The PRP noted that the processing of applications in 2001 were prolonged due to an upsurge in the number of applications in March 2001, just before the implementation of the new (and more stringent) competency requirements.
	PRP recommendations /observations	The PRP was of the view that the upsurge was predictable and recommended that the SFC consider additional measures to minimise the impact on the length of time required for processing application when it encountered similar cases in future.
	Response from SFC	The Licensing Department had foreseen that with the implementation of the new Competence requirements effective 1 April 2001, there would be an above average increase on new applications, the actual figures were quite substantial. In March 2001, a total of 3,743 applications were received. The corresponding previous year figure was 867. The Department had employed additional resources (such as staff over-time work) as well as reallocated existing ones to minimize the impact.



Item 10	Case findings/ market views	The PRP noted that the SFC had not acknowledged or responded to a complaint within a reasonable timeframe. Furthermore, not all Departments within the SFC had set out complaint handling procedures in their operational manual.
	PRP recommendations /observations	The PRP considered that a reply should be given as far as possible. The PRP also recommended that the SFC review the complaint handling procedures of individual departments to ensure that they were comprehensive and consistent.
	Response from SFC	As a permanent improvement, the SFC introduced new complaint handling procedures for the Corporate Finance Division in August 2001, which were designed to ensure that complaints were dealt with promptly. A new tracking system had also been introduced to monitor the progress of all complaints handled by the Division, with bi-weekly reminders sent to all case officers handling complaints. Following the PRP recommendation, an overall review was now being conducted on all current complaint handling procedures, particularly on the consistency and quality of response. The need for Intermediaries Supervision Department to have its own dedicated complaint procedures was also being reviewed.
Item 11	Case findings/ market views	The industry associations suggested that the SFC should reduce the licence fees and provide fee concessions to holders of more than one licence, and improve the transparency and accuracy in the calculation of fees for annual renewal of registration via the "common anniversary date". The industry would like the SFC to explain the method of calculation of licences fee under such a system to ensure there would be no overcharging of fees under the "common anniversary system".
	PRP recommendations /observations	The PRP considered that the SFC should be asked to respond to the recommendation.
	Response from SFC	<p>The SFC was currently reviewing the licensing fee structure for the purpose of implementing the new licensing regime as provided for in the Securities and Futures Ordinance, under which only a single licence would be issued to the licensee covering all relevant regulated activities approved by the Commission. Preliminary review indicated that licensees would benefit from cost savings under the new structure. On 8 March 2002, the SFC published a consultation paper on its licensing fees and charges. It proposed a 3% across the board reduction for all licence applications and further one-off reduction of 5% to encourage intermediaries to apply early during the first year of the transitional period provided for by the Ordinance.</p> <p>Regarding the calculation of fees for annual renewal of registration via the "common anniversary date", the SFC clarified that annual fees were calculated and payable in advance on a pro-rata basis covering each registrant's last anniversary date to the employer's selected anniversary date of the following year. The actual period for which the licence fees for each registrant were calculated could be found from the combined listing kept by the employer. The calculation was done on a pro-rata basis and there was no over-charging of fees.</p>

Item 12	Case findings/ market views	An industry association suggested that the SFC allow online access, completion and submission of applications for registration so as to enhance efficiency and eliminate error in data processing.
	PRP recommendations /observations	The PRP supported the recommendation.
	Response from SFC	Under the new licensing system provided in the Securities and Futures Ordinance, it was proposed that applicants could submit their applications by way of electronic lodgment. Under this proposal, all the relevant forms would be accessible in electronic format for applicants to download to their own computer. The forms could then be completed in electronic format and submitted to the SFC via FinNet, the electronic network for participants in the financial services. This would be quite similar to the current eFRR lodgment system. The processing could therefore be streamlined with little human intervention. Straight through processing of applications under the new system would achieve greater efficiency, particularly in the maintenance of registrants' records. Registrants would also be able to submit annual returns through electronic lodgement. Market participants who had not been making use of the eFRR submission channel should do so as soon as possible so as to better prepared for lodgments through the electronic means under the new licensing regime.
Item 13	Case findings/ market views	An industry association suggested that the SFC should promptly notify applicants of the appointment and change of personnel responsible for processing their applications.
	PRP recommendations /observations	The PRP considered the suggestion reasonable.
	Response from SFC	The SFC had established a licensing hotline for this purpose. A caller to the hotline would be directed to the appropriate licensing officer when he identified the firm he represented.  On 28 February 2002, the SFC notified all licensed firms of their respective SFC licensing officers via the FinNet. The SFC will similarly update the firms concerned on any subsequent change in the responsible licensing officers.
Item 14	Case findings/ market views	An industry association suggested that the grace period for applicants to obtain the necessary qualification for registration through professional examinations should be extended from three months to six months.
	PRP recommendations /observations	The PRP supported the suggestion.
	Response from SFC	The grace period has already been extended to six months.

Item 15	Case findings/ market views	<p>Currently, the Stock Exchange of Hong Kong Company Limited (SEHK) has a separate approval process for application for dealer representatives and dealing directors of Exchange Participants.</p> <p>The industry associations considered that this approval process was redundant as its criteria were very similar to that of the SFC. It was suggested that the SFC and SEHK should rationalise the approval process so as to minimise duplication. The industry associations further suggested that the SFC and SEHK should simplify and standardise application forms for registration so that the applicants would only be required to submit the same form in duplicate to both the SFC and SEHK.</p>
	PRP recommendations /observations	The PRP considered that the SFC should be asked to respond to the recommendation.
	Response from SFC	<p>Implementation of the suggestions would require synchronisation of the work processes as well as the system designs of the SFC and SEHK. The SFC undertook to work with SEHK with a view to taking forward the proposals.</p> <p>The SFC has formed a working group comprising of industry participants to design simplified application forms. It will also consult the SEHK in the process.</p>
Item 16	Case findings/ market views	An industry association suggested that the SFC should expedite the processing of initial applications for registration, give a firm reply to applicants for new registration within one month and give an explanation in case of rejection.
	PRP recommendations /observations	The PRP considered that the SFC should be asked to respond to the recommendation.
	Response from SFC	It might not be able to complete the processing of an application within one month particularly if the applicant was a corporation. This was because the time required to complete the vetting process for the purposes of determining the fitness and properness of the applicant was outside the control of the SFC. However, for natural person applicants, under the new licensing regime, the SFC is empowered to grant an applicant a provisional licence, within a matter of days. As regards refusal of an application, the Securities and Futures Ordinance provides for the necessary due process, which includes providing a statement of reasons of the refusal to the applicant concerned and this is followed in practice.

Item 17	Case findings/ market views	An industry association suggested that the SFC should set out clearly the time required for processing various applications.
	PRP recommendations /observations	The PRP shared the view of the association.
	Response from SFC	<p>The SFC had performance pledges of 15 weeks and 10 weeks respectively for processing new applications for principals and representatives. The SFC would keep the performance pledges under review in light of the new licensing regime and the availability of electronic submission. For example, the SFC envisaged that the processing of change of accreditation would be about 5 business days in its revised performance pledge. Furthermore, for those applying for a provisional licence, the processing time would not be more than 7 business days.</p> <p>The detailed performance pledges would be published by the SFC upon implementation of the new licensing regime.</p>
Item 18	Case findings/ market views	In order to allow registrants who changed employment to function fully in their new employments as soon as possible, an industry association suggested that the SFC simplify the procedures for change of accreditation as well as to shorten the processing time.
	PRP recommendations /observations	The PRP considered that the SFC should be asked to respond to the suggestions.
	Response from SFC	The SFC appreciated the industry's concern and had endeavoured to expedite the transfer of accreditation of registrants. In the last two years, nearly half of the applications were approved within 10 business days. The SFC was currently reviewing its approval process for change in accreditation with a view to reducing the time for processing application from dealer's representatives to around five working days.
Item 19	Case findings/ market views	An industry association proposed that registrants should be able to retain their registrations for one year after leaving their job, so that they would not need to reapply for a registration if they find new employment within this period.
	PRP recommendations /observations	The PRP believed that it was not unusual that registrants might take some time before finding new employment especially in a bad job market. On balance, the PRP recommended that the period should be extended to six months to provide greater flexibility.
	Response from SFC	Allowing a person to retain his licence up to one year after the ceasing of his employment might not be realistic. However, the SFC noted the concern of the PRP and the industry and proposed that the grace period by which a person may retain his licence pending finding of new employment be extended from 60 days at present to 6 months. This has been reflected in the Securities and Futures Ordinance.

Item 20	Case findings/ market views	An industry association suggested that the SFC should simplify the application procedures for change of accreditation in respect of dealing directors/investment advisers so as to broadly tally with those for the corresponding representatives.
	PRP recommendations /observations	The PRP considered that the SFC should be asked to respond to the suggestions.
	Response from SFC	Under the Securities and Futures Ordinance, the registration for natural persons is no longer divided into principal and representative classes. As a result, all natural persons are subject to the same set of standard procedures.

### Recommendations from PRP that are not accepted by SFC

Item 1	Case findings/ market views	The PRP noted that the inspection targets were assigned to the inspection teams according to alphabetical order of the company names.
	PRP recommendations /observations	The PRP recommended that intermediaries be divided into categories according to the scale of their business and mode of operation. An inspection team would then be assigned specifically to each category of intermediaries.
	Response from SFC	Whilst there are benefits in having specialised teams dealing with different categories of securities dealers with different risk factors, with limited staff rotation, the concerned staff would not see enough of a broker's operation in a short period to realise the benefit. Furthermore, adoption of this practice would mean that there would be fewer opportunities for the staff to expose to a variety of firms and practices which might delay staff development. Therefore, on balance, the SFC decided not to adopt the recommendation.
Item 2	Case findings/ market views	The PRP noted that the sampling size of a client circularisation exercise might not be representative and the rationale for selecting the samples was not documented. The PRP considered it inadvisable to rely solely on clients with hold-mail arrangement for circularisation because these clients could have close relationships with the company and thus their replies might not be reliable.
	PRP recommendations /observations	The PRP recommended that the SFC address the above points and consider the need to review the methodology for conducting client circularisation with a view to improving the effectiveness of such exercises.
	Response from SFC	The sampling size and criteria of the circularisation exercise would depend on the risk and internal control assessment in each case. The methodology therefore varied depending on the facts of each case and it would be difficult to draw up definite guidelines on such issues. The sample size of the circularisation exercise in the case reviewed by PRP represented a fair sample of the clients of the firm after taking into account the control of the firm, the likelihood of employer fraud and the total number of clients of the firm. The selection criteria are risk-based so that accounts which are more prone to errors or irregularities, such as hold mail clients, will represent a bigger share of the sample. The SFC agreed that for better transparency the rationale for selecting a particular sample of clients for circularisation should be recorded on the case file.

Item 3	Case findings/ market views	The PRP noted that under the SFC's investigation processes, the interviewee would be asked to confirm the accuracy of the original statement but not the translation. The persons other than those who were the subject of prosecution or disciplinary action were not entitled to a copy of the translation of their statements. For those who were entitled to a copy of the translation, the SFC would not take the initiative to inform them of the possibility of obtaining a copy of the translation.
	PRP recommendations /observations	The SFC was invited to inform those who were the subject of prosecution or disciplinary action of the opportunity to obtain the translation of their statements. Furthermore, the SFC might wish to consider allowing all persons involved in an interview to access the translation of their statements to increase transparency and the quality of checks and balances.
	Response from SFC	Currently only a fraction of statements were translated. The existing practice was to provide the witness with a copy of the statement in the language in which the statement was given. There is no reason why a witness would require anything other than a copy of that original statement. Furthermore, the translation of an original statement was always given in the context of a prosecution, disciplinary, or insider dealing proceedings, if requested, to a person against whom proceedings were brought. To date there was nothing to suggest there was any problem with this policy. The resource implications may not be justifiable as there was no indication that anyone had been prejudiced by the existing system.
Item 4	Case findings/ market views	The PRP noted that as sanctions of public reprimand were not subject to appeal under the existing legislation, the SFC would not mention anything concerning right of appeal in the Letter of Mindedness (LOM) and Notice of Decision (NOD) issued to an intermediary.
	PRP recommendations /observations	The PRP considered that the registrant concerned might not be fully aware of the lack of an appeal channel for a public reprimand sanction and it was conceivable that if a registrant had realised that he had no right of appeal against the sanction when receiving the LOM, he might consider more seriously whether to make representation. The PRP proposed that the SFC consider stating clearly in both the LOM and the NOD that a sanction was not subject to appeal if that was the case.
	Response from SFC	<p>While there was no avenue for appeal to the Securities and Futures Appeals Panel against the SFC's decision to reprimand an intermediary, either privately or publicly, this has been changed under the Securities and Futures Ordinance. Under the Ordinance, all disciplinary decisions, including decisions to reprimand, are subject to a full merit review by an independent Securities and Futures Appeals Tribunal presided over by a full-time judge.</p> <p>The SFC feared that parties concerned might interpret it as coercion, if the SFC was to notify in a LOM that the proposed reprimand was not subject to appeal. Accordingly, the SFC believed that the PRP's suggestion should only be adopted for a NOD but not for a LOM.</p>

Item 5	Case findings/ market views	The PRP noted that the industry was very concerned with the time required for the SFC to process applications for registration and change of accreditation.
	PRP recommendations /observations	The PRP appreciated that prolonged processing of applications for registration or change of accreditation would increase the operating cost of the industry as employees concerned would not be able to participate in the regulated activities while their applications were being processed. The PRP suggested that the SFC look into the issue.
	Response from SFC	Some of the cases were prolonged due to the time required to complete the security vetting process for the purposes of determining the fitness and properness of the applicant. The vetting process involved seeking information from law enforcement bodies and the time required was outside the control of the SFC.
Item 6	Case findings/ market views	An industry association suggested that the registrants who changed employment should be allowed to continue to conduct regulated activities for a certain period of time, while awaiting the SFC's formal approval for change of accreditation.
	PRP recommendations /observations	The PRP considered that the SFC should be asked to respond to the suggestions.
	Response from SFC	A regulatory gap might exist if a person was allowed to participate in a regulated activity before completion of the accreditation procedure as the person concerned might have committed misconduct which impugned his fitness and properness to be registered whilst under the employment of his former employer. In the absence of full and rigorous vetting of the transferring licensed representatives, the SFC would not consider it had discharged its regulatory functions in relation to protection of investors, even if the transferees would be operating on a restrictive basis.