

For information
on 10 November 2000

**The Legislative Council
Panel on Financial Affairs**

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

Purpose

This paper informs Members that the Chief Executive has established a new non-statutory panel, to be called the Process Review Panel (PRP), to review the internal operations of the Securities and Futures Commission (SFC).

Background

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 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.

3. Nevertheless, the SFC acknowledges that these checks and balances are only applied in specific cases. The SFC considers that it would be preferable to improve the transparency of its internal processes across the board, so that the public is better able to see for itself that the SFC does indeed always act fairly and consistently in all cases.

4. 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.

5. In order to overcome this and enhance the transparency and public accountability of the SFC, the Administration proposes to establish an independent body to review the fairness and reasonableness of SFC's

operational procedures on an ongoing basis, ensure that those procedures are consistently adhered to by the SFC, advise the SFC accordingly and submit its reports to the Financial Secretary, who may cause them to be published as far as permitted under law. The SFC supports this proposal.

Establishment of the Process Review Panel

6. In the above light, the Chief Executive has established an independent, non-statutory panel, called the Process Review Panel, on 1 November 2000 to conduct reviews of SFC's operational procedures. The PRP is to ensure that such procedures are fair and reasonable, and to determine if, in handling cases or taking actions or decisions, the SFC has followed its internal due process procedures, including procedures for ensuring consistency and fairness. The PRP's function is not to conduct review of merits. It will only focus on process. It will make regular reports to the Financial Secretary on its review findings. Through the publication of such reports, to the extent permitted within the statutory constraints of secrecy and confidentiality, the public will be better able to judge SFC's performance of its regulatory functions.

7. The establishment of the PRP, ahead of the enactment of the Securities and Futures Bill, demonstrates the Administration's resolve to enhance the transparency of SFC's operations, and SFC's determination to win public confidence and trust. We also hope to assure market participants that adequate checks and balances are in place to ensure that the SFC exercises its regulatory powers in a fair and consistent manner.

Membership

8. The PRP consists of 12 members – 9 independent, prominent persons from the securities and futures industry, the academia and the legal and accountancy professions; and 3 ex-officio members, namely the Chairman and a Non-Executive Director of the SFC and Secretary for Justice (or her representative). The membership list, as approved by the Chief Executive, is at **Annex 1**. The current membership represents a good mix of knowledge, experience and expertise from relevant quarters which is conducive to the effective operation of the PRP.

Terms of Reference (TOR)

9. In drafting the TOR for the PRP, we have made reference to the TOR for the ICAC Operations Review Committee, which is an existing non-statutory operations review mechanism well accepted by the public.

10. Specifically, the PRP will review and advise the SFC upon the adequacy of 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 the SFC's regulatory functions, in relation to, for instance, receipt and handling of complaints, licensing and inspection of intermediaries, taking disciplinary actions, etc. The Panel will also 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. In addition, the Panel may call for and review SFC's files to verify 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 SFC accordingly.

11. The TOR for the PRP, as approved by the Chief Executive, is at **Annex 2**.

Financial Services Bureau
9 November 2000

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

Membership List

The Chief Executive has made the following appointments for a term of two years from 1 November 2000 to 31 October 2002 unless otherwise specified -

Chairman

Mr CHENG Hoi Chuen, Vincent

Members

The Honourable Bernard Charnwut CHAN

Mr CHEONG Ying Chew, Henry

Mr FONG Hup

Mr KOTEWALL, Robert George

Mr KWAN Pak Chung, Edward

Dr LEE Hon Chiu

Professor LIU Pak Wai

Mr PANG Yuk Wing, Joseph

Ex-officio members

Chairman, Securities and Futures Commission
(Mr Andrew L T SHENG)

Non-Executive Director, Securities and Futures Commission
(Mr FAN Hung Ling, Henry)

Secretary for Justice
or representative (Mr Ian G M WINGFIELD)

Secretary

An officer of the Financial Services Bureau, Government Secretariat

**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.

November 2000