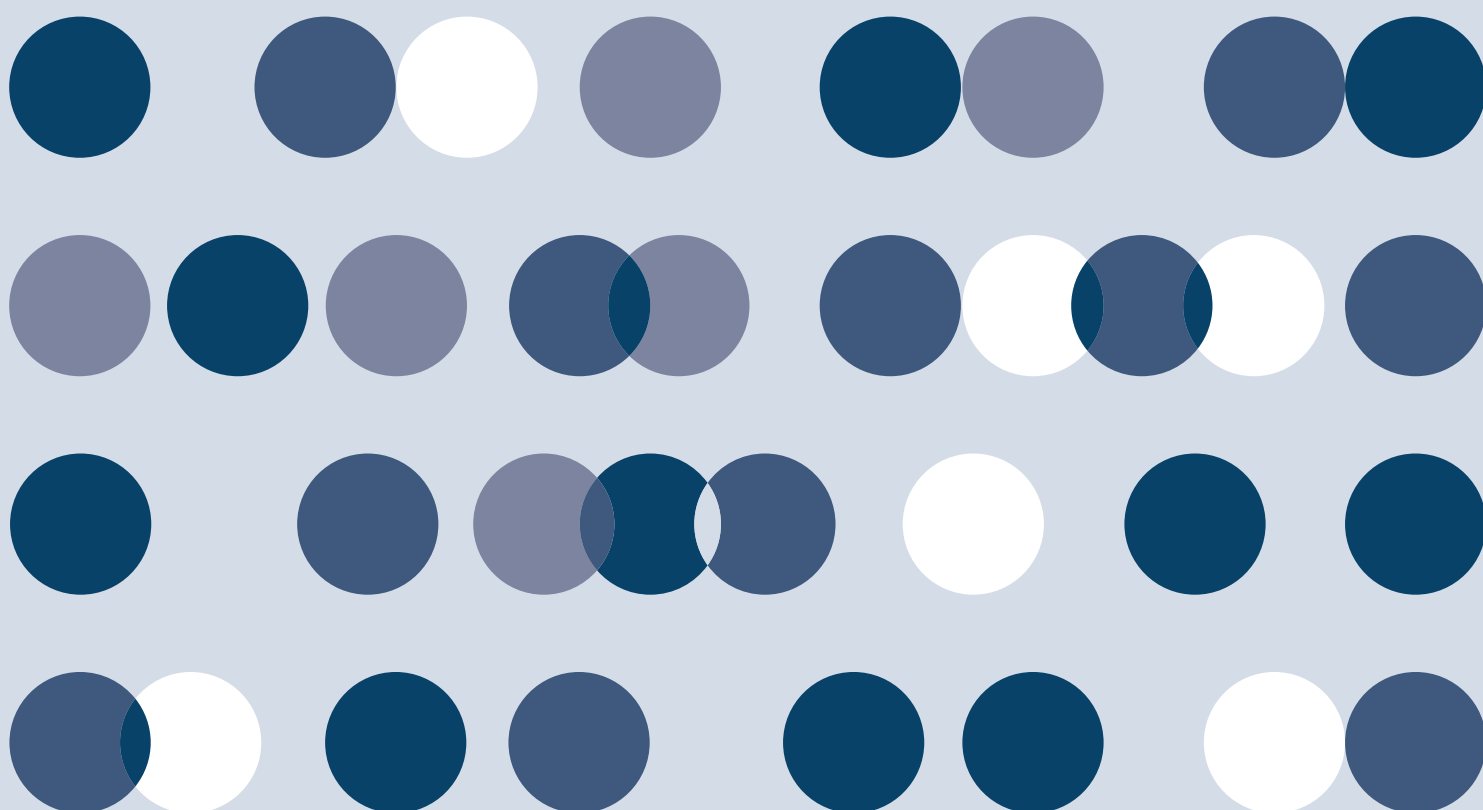


August 2019

ENFORCEMENT NEWSLETTER
FOR THE SIX MONTHS ENDED 30 JUNE 2019



INTRODUCTION

Welcome to the latest edition of the *Enforcement Newsletter*.

In this edition, we interview Tom Butlin, Head of Enforcement of the Listing Department, who provides his insights as to the current and future focus of the Enforcement Team.

The interview is followed by two articles:

- the new requirement relating to disclaimer or adverse audit opinions within financial statements; and
- the new review structure relating to disciplinary matters.

In addition, we provide our regular six-monthly update of enforcement cases and outcomes. Whilst only three cases have been finalised and published in the first six months of 2019, the volume of enforcement work and the number of investigations remain broadly consistent with recent years. As at 30 June 2019, there were 15 ongoing disciplinary and review cases awaiting final outcome.

Anyone involved in Listing Rule compliance and corporate governance in Hong Kong is encouraged to read this Newsletter to ensure they stay on top of current and future trends in Enforcement at the Exchange. This Newsletter should be viewed as a valuable tool in developing and maintaining a strong culture of Listing Rule compliance and good corporate governance within listed issuers.

AN INTERVIEW WITH THE HEAD OF ENFORCEMENT

We speak to Mr Tom Butlin about the enforcement work of the Listing Department.



Tom Butlin joined the Exchange in late 2018 as Head of Enforcement within the Listing Department. Mr Butlin commenced his career in private practice focusing primarily on commercial litigation before taking on various in-house legal counsel roles with multi-national financial services firms in Sydney, London and Hong Kong. Mr Butlin has extensive experience leading in-house legal and regulatory teams including recent roles at an international private bank (in London and Hong Kong) and a major international bank (in Hong Kong).

Tom, please tell us a little about the work of the Enforcement Team.

The Enforcement Team is responsible for investigating potential breaches of the Listing Rules by listed issuers, directors, and other responsible officers. Our investigations can be (1) self-initiated, (2) result from referrals within the Listing Department or other regulatory bodies, or (3) arise from public complaints.

At the conclusion of our investigation, we may commence disciplinary action against relevant listed issuers, directors, and/or responsible officers. Disciplinary action will predominantly involve a hearing before the Listing Committee, where the parties are given a right to be heard. The Listing Committee is responsible for determining whether there have indeed been breaches of the Listing Rules, and if so, the appropriate sanctions and directions to be imposed on the parties involved.

Some of the most common reputational sanctions include public censures and public statements involving criticism. These usually go hand-in-hand with directions for remedial action such as the appointment of a compliance adviser, internal control reviews and training for directors. The sanctions are designed to advance the objectives contained in our Enforcement Policy Statement. Such objectives include (1) deterring future breaches of the Listing Rules, (2) educating the market, (3) influencing compliance culture and attitude, and (4) enhancing corporate governance.

Any regulatory action that arises from our Enforcement investigation, including reputational sanctions, directions for remedial actions and warning letters, form part of the compliance record of the relevant parties and will be taken into account in any subsequent investigation concerning those parties.

What has been the main focus of enforcement work since you have joined the Exchange?

We continue to focus on our Enforcement Themes, which include cases relating to (1) breaches of directors' duties, (2) inaccurate, incomplete and/or misleading disclosure in corporate communications, (3) breaches of procedural requirements relating to transactions, and (4) financial reporting issues. However, we still have the flexibility to pursue other breaches of the Listing Rules involving egregious conduct, in addition to looking at new and developing areas such as disclaimer opinions and directors conducting sufficient due diligence in relation to acquisitions.

We also continue our drive to improve the standards of corporate governance in Hong Kong. I recently gave a speech at the 2019 Annual Corporate and Regulatory Update (ACRU) organised by The Hong Kong Institute of Chartered Secretaries, which outlined the need for greater focus on individual accountability in terms of Listing Rule compliance and corporate governance generally. Individuals need to recognise the type of environment they are working in. If they are operating in an environment with the *potential* for non-compliance, they need to be proactive and take steps to identify and ultimately remediate non-compliance.

Where there is potential for non-compliant conduct, we expect to see positive action taken (for example, continuing professional development of directors and improvements to internal control procedures). Any individual responsible for Listing Rule compliance or corporate governance should have appropriate resources and feel empowered to point out the risks to listed issuers and directors, such that they are able to encourage conduct which ultimately supports and fosters compliance with the Listing Rules.

One of the many factors we consider as part of any enforcement case is the conduct of individuals and whether or not there is any evidence of advanced planning, strategic thinking or effective consideration when it comes to compliance with the Listing Rules. If individuals are able to provide evidence that shows proactivity and strategic planning, this may ultimately influence our recommendation at the conclusion of our enforcement investigation.

What trends have you observed from the work of the Enforcement Team for the first half of this year?

We have noticed an increase in cases where the listed issuer's breach of the Listing Rules was caused by internal control deficiencies. Where appropriate, we will not hesitate to take disciplinary action against the entire board of the listed issuer given that each member of the board is collectively and individually responsible for ensuring that the listed issuer has adequate and effective internal controls.

We have also seen cases which involve repeated breaches over a number of years as a result of internal control deficiencies. The more troubling cases involve the same (or similar) internal control deficiencies despite listed issuers and directors having previously received guidance and/or warnings from the Exchange. There really is no excuse for repeated breaches in those circumstances, and such cases are likely to result in disciplinary action with reputational sanctions against directors.

Can you provide some tips to listed issuers and directors on how to handle an investigation by the Enforcement Team?

Directors and listed issuers have obligations under the Listing Rules to cooperate with investigations of the Exchange. If you receive an enquiry from the Exchange, the simple tip is to be cooperative. Being cooperative includes answering questions fully, openly and directly, as well as providing documentary evidence in support of your answers.

Conduct during an investigation can, in some cases, be just as important as the conduct that gave rise to the investigation in the first place. There are examples of non-cooperation which have resulted in the Enforcement Team taking swift and appropriate action resulting in reputational sanctions against individuals.

One of our objectives during an investigation is to understand the reasons behind the breaches of the Listing Rules, and what action is appropriate to assist the listed issuer and/or directors to prevent similar breaches in the future. Full cooperation with investigations, acknowledging and admitting breaches of the Listing Rules (where appropriate), and providing comprehensive responses to enquiries – are all factors which are taken into account when assessing the appropriate regulatory response in each case.

As part of our regulatory enforcement toolkit, we may make recommendations to the Listing Committee for the appointment of a compliance adviser or training for directors as a means to ensure that listed issuers and directors achieve a level of conduct which supports and fosters compliance with the Listing Rules.

These recommendations generally occur in cases where there is confidence in directors possessing the capability to make the necessary improvements required in compliance conduct and culture. Generally speaking, the level of engagement and cooperation that we receive during an investigation can be a good measure of a director's capability in relation to compliance culture and willingness to promote good conduct practices within a listed issuer.

Directors and those responsible for Listing Rule compliance are encouraged to read our Enforcement news releases and Newsletters, as well as to review the guidance materials, director training webcasts and e-training available on the Exchange's website. These serve as educational tools for issuers, directors and other responsible officers, for promoting their knowledge and skills. The directors and responsible officers can compare and understand if the same or similar issues exist in their companies, and take steps to proactively address those issues.

Finally, looking forward, will there be any change of focus for the second half of 2019 and 2020 for the Enforcement Team?

It is not a change in focus necessarily, but we plan to sharpen our focus on individual conduct. All directors should be aware that the Exchange has the power to publicly state that the retention of office by a director is prejudicial to the interests of investors. That is a very clear reputational sanction with consequences for individuals and we see this as a valuable regulatory response to poor conduct.

In addition, the Exchange is currently conducting a review of the sanctions that can be imposed in relation to enforcement matters. Whilst that review will be subject to public consultation, it can be expected that the initial proposals will contain a wider range of sanctions with a stronger focus on individual conduct and personal accountability.

Whilst all governance and compliance professionals (including company secretaries and professional advisers) play an extremely important role in Listing Rule compliance and corporate governance – ultimately the culture and attitude of a listed issuer is set at the top. If directors are not willing to be proactive, strategic thinkers

who drive good compliance culture within listed issuers, those directors will likely find themselves having to devote precious time and resources away from managing business affairs to deal with an investigation by the Enforcement Team. It really is as simple as that.

NEW LISTING RULES REGARDING FINANCIAL STATEMENTS

The Exchange will be making changes to the Listing Rules that will *normally* require a listed issuer which has received a disclaimer or an adverse opinion on its financial statements to suspend the trading of its shares. These changes aim to improve market quality and provide better investor protection, by encouraging issuers to maintain effective risk management and internal control systems, and to act promptly to resolve any issues with their auditors. The new Rules will apply to results announcements for financial years commencing on or after 1 September 2019.

Discussed below are some of the major changes and the reasons why the Exchange is concerned about issuers' financial statements with disclaimer or adverse opinions. Please refer to the [Consultation Paper](#) and the [Consultation Conclusions](#) for a full discussion.

New Requirement

Under the new Rule, the Exchange will normally require a trading suspension in an issuer's securities if that issuer publishes an annual results announcement on which the auditor has issued, or has indicated that it will issue, a disclaimer of opinion or an adverse opinion. Generally, the suspension will continue until the issuer has fulfilled the following requirements within a remedial period of 18 months for Main Board issuers and 12 months for GEM issuers¹:

1. the issuer has addressed the issues giving rise to the disclaimer or adverse opinion ("**Audit Issues**");
2. the issuer has provided comfort that a disclaimer or adverse opinion in respect of the Audit Issues would no longer be required; and
3. the issuer has disclosed sufficient information to enable investors to make an informed assessment of its financial position.

The suspension will not apply to disclaimer or adverse opinions which relate solely to going concern issues or in cases where the issuer has resolved the Audit Issues before it publishes the results announcement.

¹ As a transitional arrangement, the remedial period will be extended to 24 months for both the Main Board and GEM issuers that are suspended solely due to a disclaimer or adverse opinion being issued in the first two financial years after the implementation of the new Rule.

Regulatory Concerns

The annual results announcement of an issuer plays a key part in the issuer's financial reporting cycle, since it is the first disclosure of information concerning the issuer's full year performance. This information may be relied upon by investors for their assessment of the issuer's performance and future prospects, so that they can make informed investment decisions.

A disclaimer or an adverse opinion on financial statements indicates that the risk of misstatements could be both material and pervasive. These financial statements may not provide reliable or sufficient information relating to the issuer's financial position and performance to investors.

The Listing Rules and the Companies Ordinance require, among other things, that the directors must ensure that the issuer's annual financial statements give a true and fair view of the financial position and performance of the issuer as at the end of the financial year. Financial statements with a disclaimer or an adverse opinion do not satisfy the true and fair view requirement.

The Corporate Governance Code (Appendix 14 to the Main Board Listing Rules or Appendix 15 to the GEM Listing Rules) requires directors to acknowledge in the corporate governance report their responsibility for preparing the accounts. The Audit Committee members play an important role as they are tasked with the responsibility of monitoring the integrity of the issuer's financial statements, with particular focus on, among other things, compliance with the Listing Rules.

Enforcement

The failure of issuers and directors to comply with the financial reporting obligations under the Listing Rules is viewed in a serious light. Conduct which raises concerns over the issuer's ability to comply with its financial reporting obligations is likely to damage the integrity of the market. Directors must take steps to ensure that the issuer establishes and maintains appropriate and effective risk management and internal control systems to facilitate compliance with its financial reporting obligations. The impact of compliance problems can be greatly mitigated by, for example, the establishment and implementation of adequate procedures for financial reporting, and taking proactive steps in managing issues relating to the assets of, and control over, subsidiaries. It is the directors' responsibility to take timely action, including responding to and dealing with legitimate enquiries raised by the auditor relating to the issuer's financial statements. Those who fail to discharge these duties may be subject to enforcement action by the Exchange.

CHANGES TO REVIEW STRUCTURE IN RELATION TO LISTING COMMITTEE DECISIONS

Following the Consultation Paper on Review Structure in relation to Listing Committee Decisions issued on 10 August 2018, the Consultation Conclusions were published on 18 January 2019. The new review structure came into effect on 6 July 2019.

This article focuses on the major changes to the review structure applicable to *disciplinary matters* only¹. Please refer to the [Consultation Paper](#) and the [Consultation Conclusions](#) for a full discussion, including those applicable to non-disciplinary matters.

Background

The powers and functions in respect of all listing matters are discharged by the Listing Committee and/or its delegates, subject to the review procedures set out in Chapters 2A and 2B of the Listing Rules. The review structure therefore affects the Exchange's decision-making process in relation to listing matters, including enforcement of the Listing Rules.

Under the new structure, the Listing Committee continues to act both as an independent administrative decision maker and an advisory body for the Exchange, and has four principal functions:

1. to oversee the Listing Department;
2. to provide advice to the Listing Department on policy-related listing matters and to approve amendments to the Listing Rules;
3. to take decisions of certain listing matters (including disciplinary matters), as set out in Chapters 2A and 2B of the Listing Rules, for listing applicants, listed issuers and the individuals concerned; and
4. to act as a review body for decisions made by the Listing Department.

¹ The Rules cited in this article refer to the Main Board Listing Rules, and apply equally to the GEM Listing Rules.

Major Changes

A summary of the major changes concerning *disciplinary decisions* made by the Listing Committee is set out below:

Structure before 6 July 2019	New structure with effect from 6 July 2019
<p>Disciplinary decisions pursuant to Rules 2A.09(2), (3), (5), (7), (8) or (9):</p> <ul style="list-style-type: none"> subject to two levels of review to the Listing (Disciplinary Review) Committee (“LD(R)C”), and then the Listing Appeals Committee (“LAC”) 	<p>All disciplinary decisions²:</p> <ul style="list-style-type: none"> subject to one level of review to a <i>new</i> independent Listing Review Committee (“Listing Review Committee”), as the final review body LAC will be discontinued
<p>Composition of the Listing Committee:</p> <ul style="list-style-type: none"> at least 28 members, with at least eight representing investors’ interests and 19 others in a suitable balance of listed issuers’ representatives and market practitioners, as well as the Chief Executive of HKEX as an ex officio non-voting member 	<p>Composition of the Listing Committee:</p> <ul style="list-style-type: none"> remains unchanged
<p>Composition of the LD(R)C and LAC:</p> <ul style="list-style-type: none"> LD(R)C: members are drawn from the Listing Committee, who do not have any conflict of interest in the case and did not participate in the first disciplinary hearing by the Listing Committee LAC: Chairman of HKEX Board and two other members of HKEX Board 	<p>Composition of the new Listing Review Committee:</p> <ul style="list-style-type: none"> at least 20 members, with at least six representing investors’ interests and the remaining members with a suitable balance of listed issuers’ representatives and market practitioners for a review of any disciplinary decision, members will be drawn from the Listing Review Committee, who do not have any conflict of interest in the case

² All disciplinary review hearings for disciplinary proceedings commenced before the effective date will be conducted under the Listing Rules then in force.

Structure before 6 July 2019	New structure with effect from 6 July 2019
<p>SFC's power to request review of decisions by the Listing Committee and the LAC</p> <ul style="list-style-type: none"> • pursuant to the MOU³ 	<p>SFC's power to request review of decisions of the Listing Committee by the Listing Review Committee:</p> <ul style="list-style-type: none"> • will be codified and form part of the Listing Rules • the SFC will not request a consideration or review of any decisions of the Listing Review Committee • where any such review overturns, modifies or varies the Listing Committee's decision, the relevant party will have a further and final opportunity to seek a review by the Listing Review Committee (where applicable, the final review will be heard by a second group of members drawn from the Listing Review Committee as set out in Rule 2A.16A(7))

The Listing Review Committee is a review body only and has no other functions. The nature of review hearings will remain the same under the new structure. That is, the review hearing will be a re-hearing by the Listing Review Committee, who will rehear the case and decide it afresh. The decisions of the Listing Review Committee have no precedential effect and are in no way binding on other cases or committees. They do not constrain the discretion of the Exchange in respect of any other matter.

Effective Date

With the appointments to the inaugural Listing Review Committees of the Main Board and GEM [announced](#) on 5 July 2019, the amended [Main Board](#) and [GEM](#) Listing Rules became effective on 6 July 2019.

³ Memorandum of Understanding Governing Listing Matters between the SFC and the Exchange dated 28 January 2003.

All disciplinary review hearings for disciplinary proceedings commenced before the effective date will be conducted under the Listing Rules then in force, so that the LD(R)C and the LAC will continue to be the review bodies for those cases until all disciplinary review proceedings have been concluded.

ENFORCEMENT STATISTICS

(1) Investigations

The number of investigations carried out by the Enforcement Team has steadily increased during the first six months of 2019 (as compared with the same period in 2017 and 2018).

	Six months ended 30/6/2019 ⁽¹⁾			Six months ended 30/6/2018 ⁽¹⁾			Six months ended 30/6/2017 ⁽¹⁾		
	MB	GEM	Total	MB	GEM	Total	MB	GEM	Total
Investigations	64	21	85	57	20	77	54	15	69
Cases involving:									
Company	60	19	79	53	17	70	46	14	60
Current directors	15	5	20	11	10	21	14	4	18
Former directors	25	7	32	22	12	34	18	8	26

⁽¹⁾ Figures cover all cases investigated during the period (both concluded cases and cases that remain ongoing).

(2) Issues under Investigation

The Enforcement Team has adopted a thematic approach to enforcement activity since 2014. Whilst the Enforcement Team will continue to pursue any breach of the Listing Rules (as per the Enforcement Policy Statement), during the first six months of 2019, 89% of all investigations related to one or more of the enforcement themes identified below.

ISSUES	Six months ended 30/6/2019 ⁽¹⁾			Six months ended 30/6/2018 ⁽¹⁾			Six months ended 30/6/2017 ⁽¹⁾		
	MB	GEM	Total	MB	GEM	Total	MB	GEM	Total
ENFORCEMENT THEMES⁽²⁾									
(1) Directors' duties	21	4	25	17	5	22	7	3	10
(2) Failure to cooperate with an Exchange investigation	1	0	1	4	1	5	6	1	7
(3) Inaccurate, incomplete and/or misleading disclosure in corporate communication	0	1	1	3	1	4	1	1	2
(4) Failure to comply with procedural requirements in respect of notifiable/connected transactions	4	1	5	5	0	5	5	1	6
(5) Repeated breaches of the Listing Rules	0	1	1	0	1	1	0	0	0
(6) Delayed trading resumption	0	0	0	0	0	0	0	0	0
(7) Financial reporting - delays, or internal controls and corporate governance issues	2	0	2	1	0	1	1	0	1
MULTIPLE THEMES⁽³⁾	32	9	41	23	10	33	26	8	34
OTHERS:									
Other Listing Rules not falling into any of the above categories	4	5	9	4	2	6	8	1	9

⁽¹⁾ Figures cover all cases investigated during the period (both concluded cases and cases that remain ongoing).

⁽²⁾ Enforcement themes represent those that are the main focus of an investigation (whether or not it involves other issues). An investigation covering more than one theme will be disclosed under Multiple Themes.

⁽³⁾ Number of investigations during the period under Multiple Themes involving Theme (1): (2019: 37; 2018: 25; 2017: 28); Theme (2): (2019: 1; 2018: 2; 2017: 2); Theme (3): (2019: 12; 2018: 14; 2017: 18); Theme (4): (2019: 21; 2018: 18; 2017: 15); Theme (5): (2019: 6; 2018: 7; 2017: 5); Theme (6): (2019: 5; 2018: 2; 2017: 1); Theme (7): (2019: 20; 2018: 13; 2017: 11).

(3) Outcome of Enforcement Actions by Listing Committee and Enforcement Team

For the first six months of 2019, the average time for completion of an investigation was 8.8 months⁽¹⁾.

	Six months ended 30/6/2019			Six months ended 30/6/2018			Six months ended 30/6/2017		
	MB	GEM	Total	MB	GEM	Total	MB	GEM	Total
Sanctions imposed⁽²⁾									
Public censures	3	0	3	7	4	11	3	0	3
Public statements involving criticism	0	0	0	0	0	0	0	0	0
Other public statements ⁽³⁾	0	0	0	0	1	1	0	0	0
Private reprimands	0	0	0	0	0	0	0	0	0
Directions involving⁽⁴⁾:									
Internal Control Review	0	0	0	0	0	0	0	0	0
Retention of Compliance Adviser	1	0	1	0	3	3	1	0	1
Training of Directors	3	0	3	2	3	5	2	0	2
Warning/ caution letters issued by Enforcement only	2	5	7	5	1	6	4	0	4

⁽¹⁾ From commencement of investigation to the decision as to the regulatory action to be taken.

⁽²⁾ These figures represent the primary regulatory sanction imposed in a disciplinary action and save for (2) below, do not include other sanctions that may be imposed in the same action. See "Other Information on Regulatory Activities" below for statistics on the number of warning and caution/guidance letters issued by the Listing Department.

⁽³⁾ Include Rule 2A.09(7) statement (GEM Listing Rule 3.10(7)) where, in the case of wilful or persistent failure by a director to discharge his responsibilities under the Listing Rules, the Exchange states its opinion that the retention of office by that director is prejudicial to the interests of investors; and also where the Listing Committee expresses its views that it would be minded to make such a statement had the resigned director stayed in office. These figures are in addition to and do not form part of the total number of primary regulatory sanctions imposed.

⁽⁴⁾ These figures represent the total number of directions given in addition to the primary regulatory sanction imposed in a disciplinary action.

(4) Number of Directors Subject to Disciplinary Sanctions

As at 30 June 2019, a number of disciplinary actions were pending conclusion, there has been a decrease in the number of directors subject to disciplinary sanctions during the first six months of 2019 (as compared with the same period in 2017 and 2018).

	Six months ended 30/6/2019			Six months ended 30/6/2018			Six months ended 30/6/2017		
	MB	GEM	Total	MB	GEM	Total	MB	GEM	Total
Executive directors	11	0	11	13	23	36	9	0	9
Non-executive directors	0	0	0	1	4	5	2	0	2
Independent non-executive directors	4	0	4	6	13	19	0	0	0
Total	15	0	15	20	40	60	11	0	11

OTHER INFORMATION ON REGULATORY ACTIVITIES

	Six months ended 30 June 2019	Six months ended 30 June 2018
(1) Disciplinary proceedings		
Disciplinary reports issued	10	6
Issuers and directors involved in ongoing and concluded disciplinary actions	124	93
(2) Interaction with other law enforcement authorities		
Referrals made by the Listing Department to SFC, ICAC or CCB ⁽¹⁾	11	16
Witness statements given by the Exchange's personnel in relation to investigations of SFC, ICAC or CCB	4	1
Information and document production requests handled by the Exchange in relation to investigations of SFC, ICAC or CCB	28	42
(3) Warning and caution/guidance letters		
Issued by the Listing Department	212	172 ⁽²⁾

(4) As at 30 June 2019:

- Number of disciplinary actions pending conclusion⁽³⁾: 15 (as at 30 June 2018: 5)
- Information on delisting and cancellation can be found at: [Main Board and GEM](#)
- Monthly Prolonged Suspension Status Reports can be found at: [Main Board](#); [GEM](#)

⁽¹⁾ Referrals which arose out of an enquiry/ investigation for potential breach of the Listing Rules but exclude those which solely involve a possible breach of Part XIVA of the Securities and Futures Ordinance.

⁽²⁾ The number should be 172 and not 167 as previously disclosed.

⁽³⁾ A disciplinary action is concluded after the hearing/final review and: (i) where a public sanction is imposed, its outcome is published; or (ii) where no public sanction is imposed, the decision letter is issued.

ENFORCEMENT CASES

During the six-month period ended 30 June 2019, the Listing Committee issued three news releases in respect of the enforcement cases in which public sanctions were imposed.

Although we only have three published decisions of the Listing Department during the first half of 2019, the number of investigations and scope of enforcement work is broadly the same as recent years. As shown in the statistics above, as at 30 June 2019, there were 15 ongoing disciplinary and review cases, which will likely conclude in the second half of 2019. Overall, the majority of our investigations concern multiple enforcement themes which generally means they involve more complex issues.

Once again, directors' duties have been under the spotlight in all the cases below. They all involved the directors' failure to understand obligations in relation to Listing Rule compliance. Directors are reminded to take proactive steps to develop and refresh their knowledge and skills so as to ensure that their contribution to the Board remains informed and relevant.

Issuers and directors are encouraged to read the news releases of enforcement cases as they convey the Exchange's continuing expectations of issuers and directors in relation to compliance with the Listing Rules.

GT Group Holdings Limited (stock code: 263) **News release of 14 May 2019**

The issuer's subsidiary ("CPL") was a minority shareholder of a private entity, HEC Capital Ltd ("HEC"). Purportedly with a view to "*exert more corporate influence on HEC's decision*" when passing special resolutions, CPL and ten other minority shareholders agreed to transfer their respective shareholding in HEC to a newly incorporated private entity ("JGL") in return for the same number of shares in JGL ("Transaction"). An executive director, Ms SK Ng, and two former executive directors, Mr YF Lee and Mr Jalen Lee (together with Ms SK Ng, "**Relevant Directors**") were directors of the Company and CPL at the material time.

JGL was incorporated in 2015 to hold the HEC shares. However, it entered into a series of investment transactions in early 2016, which caused JGL to become indebted to HEC for \$457.3 million and to charge all its HEC shares as security for the debt. CPL (through Ms SK Ng and Mr Jalen Lee) later approved and ratified those investment transactions. The Relevant Directors did not disclose the investment transactions, the debt or the security to the other directors of the issuer when the board and the audit committee were reviewing the issuer's 2015 annual results in March 2016.

In April 2016, CPL discovered that JGL had disposed of all its HEC shares in settlement of the debt, thereby ceasing to be a shareholder. After the board was informed by the Relevant Directors of such disposal, the issuer recorded an impairment loss of \$215 million in its 2016 interim results, being the full value of the issuer's original investment in HEC.

During the investigation, the issuer asserted that the Transaction was not a "transaction" under Chapter 14 of the Listing Rules and refused to provide the percentage ratios for the Transaction to the Listing Department. From the information available, the Transaction constituted a major transaction. The issuer failed to comply with the announcement, circular and shareholders' approval requirements under Chapter 14 of the Listing Rules.

The Listing Committee found that the issuer was in breach of the procedural requirements of Chapter 14, as well as its obligation to provide information or explanation that the Exchange may reasonably require for investigating a suspected breach. Ms SK Ng was found to have failed to discharge her duties of skill, care and diligence to the requisite standard under Rule 3.08(f), as well as her undertaking

to comply with the Listing Rules to the best of her ability and to use her best endeavours to procure the issuer's Listing Rule compliance (the latter, "**Best Endeavour Undertaking**"). Mr YF Lee and Mr Jalen Lee were found to have breached their Best Endeavour Undertakings. Public censures were imposed upon the issuer and the Relevant Directors.

The Review Committee upheld the decision of the Listing Committee.

Themes:

- (1) Directors' duties
- (2) Failure to comply with procedural requirements in respect of notifiable/connected transactions
- (3) Failure to cooperate with the Exchange's investigation

Key messages:

- It is imperative that the issuer and its directors comply with their obligations to provide to the Exchange with information that the Exchange may reasonably require for investigating a suspected breach of or verifying compliance with the Listing Rules.
- The Listing Rules are designed to ensure that investors have a continued confidence in the market and the lack of disclosure and explanation in this case concerning a notifiable transaction failed to ensure the shareholders and investors were kept fully informed by the Company. The shareholders were deprived of their right to vote on the proposed transaction.
- Directors must take prompt steps to procure the issuer's Listing Rule compliance. Failure to do so in this case indicated a lack of the directors' understanding with respect to the scope of, or a derogation of, their duties.

Weiqiao Textile Company Limited (stock code: 2698)

News release of 17 May 2019

This case concerns: (1) the issuer's failure to disclose continuing connected transactions ("**Fund Transactions**") entered into between the issuer and its parent, and (2) the issuer's failure to publish its annual results and annual report in a timely manner. The Fund Transactions constituted the provision of financial assistance by the issuer to its parent, which were subject to the disclosure and independent shareholders' approval requirements under the Listing Rules. At a subsequent extraordinary general meeting, the issuer's independent shareholders voted against the proposed approval and ratification of the Fund Transactions.

The Listing Committee is of the view that both the issuer and their directors must endeavor to ensure strict compliance with the requirements of connected transactions stipulated in the Listing Rules. The Listing Committee is also of the view that the ultimate responsibility for compliance with the Listing Rules lies with the directors. Directors should provide adequate supervision of the senior management, and exercise their independent judgment with respect to Listing Rule compliance. Public censures were imposed against the issuer and the directors who approved the Fund Transactions.

Themes:

- (1) Directors' duties
- (2) Failure to comply with procedural requirements in respect of notifiable/connected transactions

Key messages:

- Whilst a specific function can be delegated to appropriately qualified staff, the ultimate responsibility to ensure the issuer's compliance with the Listing Rules lies with the directors. Directors are reminded to exercise their own independent judgment and adequately supervise senior management.
- Directors are reminded that any non-compliance with the Listing Rules in respect of connected transactions deprives investors and shareholders of their right to receive timely information with respect to connected transactions and is prejudicial to the independent shareholders' right to vote on those transactions.

Kiu Hung International Holdings Limited (stock code: 381) **News release of 12 June 2019**

This case concerns the responsibility of the issuer and its directors in relation to the issuer's financial reporting obligations. The issuer failed to obtain the auditor's agreement to the contents of its preliminary results announcement for the financial year 2015 before publication.

The issuer published the preliminary results announcement for the financial year 2016, which contained the auditor's disclaimer opinion. The relevant directors approved the publication of those preliminary results despite the fact that there were 15 items subject to the disclaimer opinion and their knowledge that the auditor was only appointed shortly before the publication date.

Trading of the issuer's shares was suspended for about two months until the issuer published another set of the financial results for 2016 with a qualified audit opinion.

The Listing Committee imposed public censures against the issuer and the relevant directors for their breaches of the Listing Rules.

Themes:

- (1) Directors' duties
- (2) Financial reporting - delays, or internal controls and corporate governance issues

Key messages:

- Issuers' compliance with the financial reporting obligations under the Listing Rules is vital for the maintenance of an orderly, informed and fair market for the trading of securities in Hong Kong.
- Directors must take steps to procure disclosure of timely, accurate and sufficient information by the issuer for its investors' assessment of the issuer's financial position and performance.
- Publication of preliminary results which do not convey any meaningful information about the issuer's financial position and performance, even if published within the time limit prescribed under Rule 13.49(1), does not constitute compliance with that Rule.

