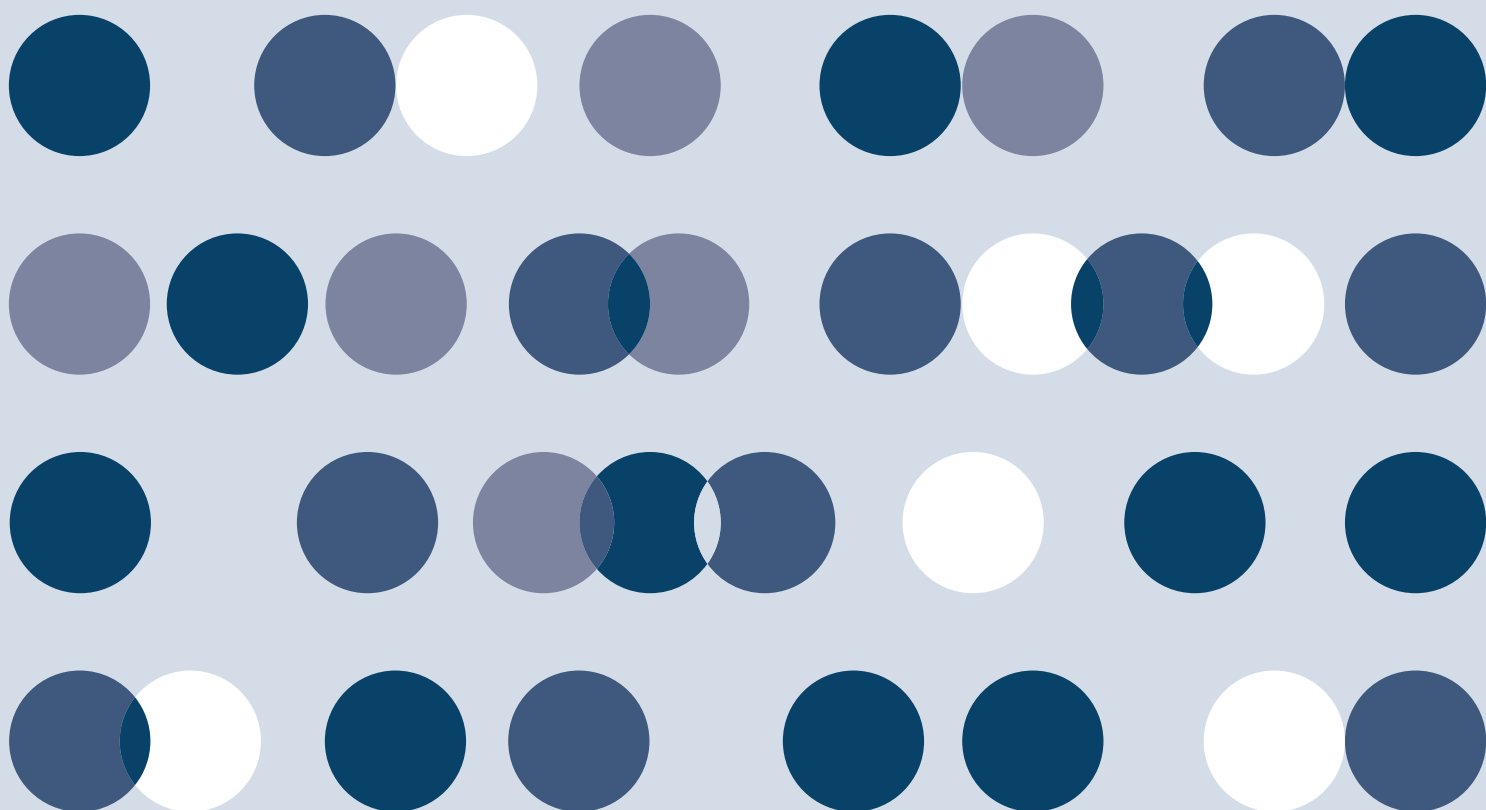


July 2017

ENFORCEMENT NEWSLETTER
FOR SIX MONTHS ENDED 30 JUNE 2017



INTRODUCTION

Welcome to our new publication of *Enforcement Newsletter*. This biannual Newsletter provides a summary of the news and updates of the enforcement work undertaken by Listing Enforcement of The Stock Exchange of Hong Kong Limited (the Exchange) and highlights specific areas/conduct that may impact on compliance with the Listing Rules.

As the frontline regulator of listed issuers in Hong Kong, the Exchange has the statutory duty to ensure, so far as reasonably practicable, an orderly, informed and fair securities market in Hong Kong. Enforcement is an important tool for the achievement of this regulatory objective. The publication of this Newsletter marks the next phase of our continuing efforts to improve the level of information available to the market in respect of this important area of regulatory work, following:

- the publication of the Disciplinary Procedures and various Enforcement Guidance materials on the HKEX website;
- the setting up of a designated [Listing Disciplinary & Enforcement](#) webpage on the HKEX website, including the publication of periodic statistics (Enforcement Statistics) relating to investigations carried out by Listing Enforcement and concluded disciplinary actions (these statistics can also be found in this Newsletter); and
- the adoption of a themed approach to enforcement since 2014, which, together with the Enforcement Policy Statement, have recently been updated (see news release of 17 February 2017).

In this issue, you will find that there are cases involving directors' failure to procure the issuer's compliance with the Listing Rules and/or to ensure that the issuer had adequate and effective internal controls. This might have been caused by a lack of understanding of the Listing Rules on the part of the directors or their failure to give the necessary focus to their compliance obligations. We hope that this Newsletter, together with the Exchange's recent launch of Director Training Programme in March 2017 and the rolling out of its second series in June 2017, will help to provide guidance to issuers and directors, which in turn promotes good corporate governance and culture amongst issuers.

UPDATED ENFORCEMENT STRATEGY

Following a review of our enforcement strategy and regulatory developments, a number of changes have been put in place and announced in early 2017, with a view to enhancing transparency of our current enforcement practice and work, and strengthening the way in which we can achieve our objectives in enforcing the Listing Rules using the existing resources and tools.

Revised Enforcement Policy Statement

The Enforcement Policy Statement was revised on 17 February 2017, making a number of administrative changes to reflect the Exchange's current enforcement practice. This Statement outlines, amongst other matters, the Exchange's approach towards the enforcement of the Listing Rules and the criteria for assessing the appropriate course of enforcement action.

The revised [Enforcement Policy Statement](#) is found on the HKEX website.

Thematic Enforcement

Since 2014 the Exchange has been adopting a themed approach to enforcement activity. Following a review, the Listing Committee has modified the focus for investigation and enforcement action from five to seven themes, as outlined below. Notwithstanding this themed approach to investigation, the Exchange will continue to pursue any other breaches of the Listing Rules that may demonstrate sufficiently egregious conduct beyond the scope of the themes.

1. Directors' performance of fiduciary duties
2. Failure of issuers and directors to cooperate with the Exchange's investigation
3. Inaccurate, incomplete and/or misleading disclosure in corporate communication
4. Failure to comply with procedural requirements in respect of notifiable/connected transactions
5. Repeated breaches of the Listing Rules
6. Delayed trading resumption
7. Financial reporting - delays, or internal controls and corporate governance issues

The [news release](#) is found on the HKEX website.

A breakdown of our investigations by theme is included in the following Enforcement Statistics for the six months ended 30 June 2017.

ENFORCEMENT STATISTICS

The [Enforcement Statistics](#) for the 6 months ended 30 June 2017 were published on the HKEX website on 19 July 2017.

(1) Investigations Statistics

This table shows the number of parties and rule breaches involved in the investigations carried out by Listing Enforcement of the Stock Exchange during the course of the first six months of the year as compared to the previous year.

	Six months ended 30/6/2017 ⁽¹⁾			Six months ended 30/6/2016 ⁽¹⁾		
	MB	GEM	Total	MB	GEM	Total
Investigations	54	15	69	38	6	44
Cases involving:						
Company	46	14	60	34	6	40
Current directors ⁽²⁾	14	4	18	9	3	12
Former directors ⁽²⁾	18	8	26	11	4	15
3 Listing Rule breaches (or less)	31	9	40	16	3	19
More than 3 Listing Rule breaches	23	6	29	22	3	25
Involvement with and referrals to other regulators ⁽³⁾	27	4	31	14	1	15

⁽¹⁾ Figures cover investigations concluded during the period and investigations which remained active as at the end of the period.

⁽²⁾ Figures may include directors residing overseas.

⁽³⁾ Other regulators include regulators such as the Securities and Futures Commission (SFC), Independent Commission against Corruption, Financial Reporting Council and the Commercial Crime Bureau. Referrals do not include those made to the SFC which do not arise out of an investigation for potential breach of the Listing Rules or those matters specifically under the remit of the SFC's jurisdiction e.g. referrals made under the Inside Information Provisions in Part XIVA of the Securities and Futures Ordinance.

(2) Issues under Investigation

Since 2014 the Stock Exchange has been adopting a themed approach to enforcement activity. Following a review, the Listing Committee has modified the focus for investigation and enforcement action from five to the following seven themes. Notwithstanding this themed approach to investigation, the Exchange will continue to pursue any other breaches of the Listing Rules that may demonstrate sufficiently egregious conduct beyond the scope of the themes.

ISSUES	Six months ended 30/6/2017 ⁽¹⁾			Six months ended 30/6/2016 ⁽¹⁾		
	MB	GEM	Total	MB	GEM	Total
CORE THEMES⁽²⁾						
(1) Directors' duties	7	3	10	18	2	20
(2) Failure to cooperate with an Exchange investigation	6	1	7	3	0	3
(3) Inaccurate, incomplete and/or misleading disclosure in corporate communication	1	1	2			
(4) Failure to comply with procedural requirements in respect of notifiable/connected transactions	5	1	6			
(5) Repeated breaches of the Listing Rules	0	0	0			
(6) Delayed trading resumption	0	0	0			
(7) Financial reporting - delays, or internal controls and corporate governance issues	1	0	1			
Late financial reporting (now forms part of Theme (7))				0	0	0
Heavily qualified audit reports: corporate governance issues (now forms part of Theme (7))				0	0	0
Prolonged suspension of trading (now forms part of Theme (6))				0	0	0
MULTIPLE THEMES	26	8	34	3	3	6
OTHERS:						
Accurate presentation of information (now forms part of Theme (3))				3	0	3
Notifiable transactions (now forms part of Theme (4))				5	1	6
Connected transactions (now forms part of Theme (4))				3	0	3
Other Listing Rules not falling into any of the above categories	8	1	9	3	0	3

⁽¹⁾ Figures cover investigations concluded during the period and investigations which remained active as at the end of the period.

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

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

	Six months ended 30/6/2017			Six months ended 30/6/2016		
	MB	GEM	Total	MB	GEM	Total
Sanctions imposed ⁽¹⁾						
Public censures	3	0	3	2	0	2
Public statements involving criticism	0	0	0	0	0	0
Other public statements ⁽²⁾	0	0	0	2	0	2
Private reprimands	0	0	0	0	0	0
Directions involving ⁽³⁾ :						
Internal Control Review	0	0	0	0	0	0
Retention of Compliance Advisor	1	0	1	1	0	1
Training of Directors	2	0	2	2	0	2
Warning/caution letters issued by Enforcement only	4	0	4	5	1	6
Average time for completion of an investigation (from commencement of investigation to the decision as to the level of regulatory action) was 9.1 months for cases investigation of which was completed in the first six months of 2017.						

⁽¹⁾ 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.

⁽²⁾ Include Rule 2A.09(7) statement (GEM: 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.

⁽³⁾ 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

	Six months ended 30/6/2017			Six months ended 30/6/2016		
	MB	GEM	Total	MB	GEM	Total
Executive directors	9	0	9	8	0	8
Non-executive directors	2	0	2	2	0	2
Independent non-executive directors	0	0	0	0	0	0
Total	11	0	11	10	0	10

DISCIPLINARY ACTIONS

During the first six months of 2017, the Listing Committee of the Exchange has issued three news releases in respect of the outcome of the following disciplinary proceedings.

The investigations relating to these disciplinary proceedings involved one or multiple themes of enforcement (set out under each case below). Issuers and directors are encouraged to read the news releases of the disciplinary actions and the key messages, as they convey the Exchange's continuing expectations of issuers and directors in relation to compliance with the Listing Rules.

Natural Dairy (NZ) Holdings Limited (stock code: 462)

[News release](#) of 13 January 2017

This case concerns the issuer's failure to announce and obtain shareholders' approval for a material change in the terms of a very substantial acquisition previously announced and approved by shareholders, and to ensure that the announcements were accurate, complete and not misleading. The issuer's breach was caused by the conduct of the directors in office at the time and the Listing Committee was not satisfied that they had discharged their duties under the Listing Rules.

The Hong Kong securities market is primarily disclosure-based. Investors and shareholders rely on information in the public domain to make their investment decisions. It is therefore important that appropriate steps are taken by issuers and directors to ensure timely and accurate disclosure of relevant information to the public.

Themes:

- (1) Directors' duties
- (2) Inaccurate, incomplete and/or misleading disclosure
- (3) Failure to comply with procedural requirements in respect of notifiable/connected transactions

Key messages:

- It is imperative to keep shareholders and the public fully informed of material changes to previously approved transactions, as those changes might affect their interests. Shareholders should be kept informed and given the opportunity to vote on such changes.
- Information disclosed in announcements must be accurate and complete in all material respects and not misleading or deceptive, as shareholders and the public rely on such information to evaluate the issuer and make their investment decisions.
- Directors must ensure that they have access to the issuer's board papers and related materials, so that they can properly and fully understand the issuer's affairs.

Datang International Power Generation Co., Ltd. (stock code: 991)

News release of 28 February 2017

This case concerns the issuer having entered into a number of connected transactions but failed to comply with the Chapter 14A reporting, announcement, circular and shareholder approval requirements. The issuer has a history of non-compliance relating to connected transactions.

It demonstrates that the Exchange takes repeated non-compliance seriously and will take enforcement action where appropriate.

Themes:

- (1) Repeated breaches of the Listing Rules
- (2) Directors' duties
- (3) Failure to comply with procedural requirements of notifiable/connected transactions
- (4) Failure of a former director to cooperate with the Exchange's investigation

Key messages:

- Chapter 14A provisions are designed to safeguard and protect investors and shareholders, as they rely on information in the public domain to make their investment decisions.
- While a single instance of non-compliance, when taken in isolation, may be minor in nature and does not warrant disciplinary action, repeated non-compliance by issuers suggest that (i) the appropriate regulatory messages from previous instances of non-compliance have not been recognised; (ii) there are internal control deficiencies; and/or (iii) there are misunderstandings by the directors of Rule obligations, which need to be addressed by appropriate regulatory action.
- Directors should participate in continuous professional development to develop and refresh their knowledge and skills, to ensure that their contribution to the board remains informed and relevant, and that breaches are not repeated in the future.
- A director's compliance with his Declaration and Undertaking to cooperate with the Exchange's investigation is of utmost importance to enable the Exchange to discharge its function of maintaining and regulating an orderly market.

Mr Gao Yun Chun, former independent non-executive director of Global Sweeteners Holdings Limited (stock code: 3889)

News release of 20 April 2017

This case concerns the failure of a former director of a listed issuer, Mr Gao Yun Chun, to cooperate in the Exchange's investigation and to provide a complete and accurate correspondence address to the Exchange, in breach of his Declaration and Undertaking given to the Exchange.

The Declaration and Undertaking given by Mr Gao provides that the failure of any person to complete his Declaration and Undertaking truthfully, completely and accurately, or to observe any of the undertakings made under it, constitutes a breach of the Listing Rules.

Directors are reminded to comply with their obligations under the Undertakings they have given to the Exchange.

Theme:

(1) Failure of a former director to cooperate with the Exchange's investigation

Key messages:

- A director must provide true, complete, accurate and up-to-date particulars to the Exchange. Failure to do so may lead to the director not being alerted to the service of documents, notice and/or disciplinary proceedings on him.
- A director's compliance with his Declaration and Undertaking to cooperate with the Exchange's investigation is of utmost importance to enable the Exchange to discharge its function of maintaining and regulating an orderly market.
- The director's relevant conduct will be taken into account in assessing his suitability under Rule 3.09 in the event that he should wish to become a director of another issuer in the future.

COMPLIANCE HIGHLIGHTS

This section highlights issues and observations we have come across during our investigations of suspected breaches of the Listing Rules. These highlights aim to help issuers and directors understand and comply with the Listing Rules.

Adequate back-up for sick director/staff	
Observation	Some issuers have asserted, during our investigation of possible breaches of the Listing Rules, that their non-compliance was caused by the illness of a particular director/staff who was responsible for certain tasks and took a considerable period of sick leave
Concern	<ul style="list-style-type: none"> • Possible over-reliance on one director/staff • Possible internal control deficiency in respect of back-up arrangements to cover the absence of that director/staff who was on sick leave
Reminder	<ul style="list-style-type: none"> • The board is collectively responsible for the issuer's management and operations, and the directors are collectively and individually responsible for the issuer's compliance with the Listing Rules • Issuers should have appropriate and effective risk management and internal controls

Understanding dealing restrictions	
Observation	In certain cases involving possible breaches of Rule 10.06(2) or the Model Code in relation to the issuer's repurchase of shares and the directors' dealings of the issuer's shares, the directors asserted that they were not informed by the company secretary or other staff about the dealing restrictions imposed by the Listing Rules
Concern	<ul style="list-style-type: none"> • Possible over-reliance on the company secretary/staff for Listing Rule compliance • Possible internal control deficiency in respect of the issuer's repurchase of shares and/or director's dealings of shares • Possible insufficient/lack of training on dealing restrictions
Reminder	<ul style="list-style-type: none"> • Each director should be familiar with the dealing restrictions • Issuers should have appropriate and effective internal control procedures on share repurchases and directors' dealings in the securities of the issuer • Directors and relevant staff should periodically attend appropriate training to develop and refresh their knowledge and skills, to ensure that they are aware of the Listing Rule implications of transactions involving the issuer

Importance of providing the Exchange with prompt, accurate and complete submissions

Observation	<p>Certain issuers/directors have made inconsistent submissions to the Exchange during its investigation of possible breach of the Listing Rules, even though the directors:</p> <ol style="list-style-type: none">(1) were given notice that the Exchange would rely on the information to be given in the submissions according to section 384 of the Securities and Futures Ordinance (SFO); and(2) gave written confirmations in the earlier submissions that they have reviewed the submissions and that the information was true and correct to the best of their knowledge, information and belief.
Concern	<ul style="list-style-type: none">• Directors might not have properly reviewed the information contained in the submissions to be made to the Exchange to ensure that it is true and correct to the best of their knowledge, information and belief
Reminder	<ul style="list-style-type: none">• In its investigation into possible breach of the Listing Rules, the Exchange is performing its statutory duty under the SFO to maintain an orderly, informed and fair market for the trading of securities listed on the Exchange. In this context, the Exchange relies on the submissions given by the issuers and directors. Listed issuers and directors must therefore ensure that prompt, accurate and complete information is given to the Exchange in response to the Exchange's requests for information for the purposes of discharging its statutory duty or investigations into possible breach of the Listing Rules• Directors may be personally liable to criminal prosecution if they knowingly or recklessly provide information to the Exchange which is false or misleading in a material particular. Where appropriate, a referral will be made to the SFC for investigation of possible breach of section 384 of the SFO in the event that there are inconsistent versions of submissions made to the Exchange

Segregation of duties and powers	
Observation	There are a number of investigation cases involving possible internal control deficiencies, such as over-concentration of powers so that one person was able to, without knowledge of the board, use the company chop and enter into notifiable transactions, or transfer money out of the issuer's accounts, which resulted in the issuer's non-compliance with the Listing Rules
Concern	<ul style="list-style-type: none"> • Possible over-reliance and/or over-concentration of powers on one director • Possible internal control deficiency in respect of segregation of duties and powers
Reminder	<ul style="list-style-type: none"> • The board is collectively responsible for the issuer's management and operations, and the directors are collectively and individually responsible for the issuer's Listing Rule compliance • Issuers should have appropriate and effective risk management and internal controls, including procedures to avoid over-reliance and/or over-concentration of powers on one or more individuals

