

立法會
Legislative Council

LC Paper No. CB(1)418/02-03

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Legislative Council
Panel on Financial Affairs

Minutes of special meeting held on
Tuesday, 8 October 2002 at 4:30 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon Ambrose LAU Hon-chuen, GBS, JP (Chairman)
Hon Henry WU King-cheong, BBS, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, GBS, JP
Hon NG Leung-sing, JP
Hon James TO Kun-sun
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP
Hon MA Fung-kwok, JP
- Non-Panel members attending** : Hon Martin LEE Chu-ming, SC, JP
Hon Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon LEE Cheuk-yan
Hon Eric LI Ka-cheung, JP

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Clerk in attendance : Ms Anita SIT
Chief Assistant Secretary (1)6

Staff in attendance : Mr Ricky C C FUNG, JP
Secretary General

Mr Jimmy MA
Legal Adviser

Ms Rosalind MA
Senior Assistant Secretary (1)9

Membership of the Panel

The Chairman informed members that Mr Kenneth TING Woo-shou and Mr Abraham SHEK had elected to join the Panel and their membership took effect from 5 October 2002.

I. Report of the Panel of Inquiry on Penny Stocks Incident

(LC Paper No. CB(1)2655/01-02(01) — “Major issues raised at the Panel meetings on 31 July, 16 September and 20 September 2002” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)2655/01-02(02) — “Comments on the responsibilities of HKEx in the Penny Stocks Incident quoted by the media” provided by the Chief Executive of Hong Kong Exchanges and Clearing Limited

LC Paper No. CB(1)2497/01-02 — Report of the Panel of Inquiry on Penny Stocks Incident and its executive summary

LC Paper No. CB(1)2537/01-02(02) — Information paper titled “Taking forward Recommendations in the Report of the Panel of Inquiry on the Penny Stock Incident” provided by the Administration

LC Paper No. CB(1)2537/01-02(03) — Speaking note of the Financial Secretary for the special Panel meeting on 16 September 2002

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- LC Paper No. CB(1)2537/01-02(04) — Speaking note of the Secretary for Financial Secretary and the Treasury for the special Panel meeting on 16 September 2002
- LC Paper No. CB(1)2585/01-02(01) — Speaking note of Mr Andrew SHENG, Chairman of the Securities and Futures Commission, for the Panel meeting on 20 September 2002
- LC Paper No. CB(1)2585/01-02(02) — Speaking note of Mr K C KWONG, Chief Executive of the Hong Kong Exchanges and Clearing Limited, for the Panel meeting on 20 September 2002
- LC Paper No. CB(1)2585/01-02(03) — Submission from Hong Kong Securities & Futures Industry Staff Union
- LC Paper No. CB(1)2585/01-02(04) — Submission from Hong Kong Securities Professionals Association Limited
- LC Paper No. CB(1)2585/01-02(05) — Submission from Hong Kong Stockbrokers Association Limited
- LC Paper No. CB(1)2585/01-02(06) — Submission from the Institute of Securities Dealers Limited
- LC Paper No. CB(1)2585/01-02(07) — Submission from Hong Kong Securities Institute
- LC Paper No. CB(1)2585/01-02(08) — List of the 11 individuals interviewed by the Panel of Inquiry on Penny Stocks Incident
- LC Paper No. CB(1)2603/01-02 — Press release dated 26 September 2002 on “Expert group appointed by the Financial Secretary to review the operation of the securities and futures market regulatory structure” provided by Financial Secretary’s Office)

2. The Chairman said that the purpose of the meeting was to discuss whether and how the Panel should follow-up the various issues arising from the Penny Stocks Incident. He recapitulated that the Panel had held three meetings on 31 July, 16 September and 20 September 2002 to understand the circumstances leading to the incident and to deliberate the issues arising from the incident. In the course of deliberation, the Administration, the Securities and Futures Commission (SFC), the Hong Kong Exchanges and Clearing Limited (HKEx) and associations of the securities and futures industry had been invited to give views and respond to Members’ questions. The major issues raised by Members at these three meetings

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had been summarized in a paper prepared by the LegCo Secretariat (LC Paper No. CB(1)2655/01-02(01)). Members might raise further points for discussion if they so wished.

3. The Chairman also informed members that the paper entitled “Comments on the responsibilities of HKEx in the Penny Stocks Incident quoted by the media” (LC Paper No. CB(1)2655/01-02(02)) was provided by the Chief Executive of HKEx in response to the Panel’s request. Also in response to the Panel’s enquiry, the Financial Services and the Treasury Bureau vide its letter dated 7 October 2002 (copy tabled and issued after the meeting vide LC Paper No. CB(1)2667/01-02(01)) provided information on whether the “Panel of Inquiry on the Penny Stocks Incident” and the “Expert Group to Review the Operation of the Securities and Futures Market Regulatory Structure” were remunerated and the remuneration details. Members noted the information.

Report of the Panel of Inquiry on the Penny Stocks Incident

4. Hon Emily LAU said that the inquiry made by the Panel of Inquiry on the Penny Stocks Incident (Inquiry Panel) was the only formal inquiry conducted in respect of the Penny Stocks Incident so far. Although the Administration and SFC had expressed their acceptance of the report of the Inquiry Panel (the Report), which was understandable as they were left unscathed in the findings and conclusions of the Report, there were apparently some individuals involved in the incident who were not prepared to accept all the findings and conclusions in the Report as exemplified by the remarks of Mr K C KWONG, Chief Executive of HKEx, at the meeting on 20 September 2002. She also found inadequacies in the Report especially in regard to Chapter 12, where the Inquiry Panel drew conclusions on the responsibilities of the individuals concerned on the basis of a novel set of categories of responsibilities. She considered that it might be necessary for the Legislative Council (LegCo) to conduct its own formal inquiry into the incident to meet public aspirations for a thorough and fair investigation. Through the proceedings of a formal inquiry, respondents would be duly informed of the criticisms against them in no uncertain terms and be given a fair chance to testify or to give evidence. That said, she was aware that for LegCo to conduct a formal inquiry, the passage of a resolution in the Council would be required, and the inquiry would inevitably add burden to the pressing commitments of some Members. As a compromise, she suggested that the Panel should ascertain whether all the facts and conclusions in the Report were in fact fully accepted by the parties and individuals concerned. Falling short of a formal inquiry by LegCo, this step would to some extent do justice to all the parties and individuals involved.

5. Mr CHAN Kam-lam said that the Report was comprehensive with regard to background information and the presentation of relevant facts. In drawing up its observations and recommendations, the Inquiry Panel had justifiably taken into account the views expressed by various parties, both directly or indirectly involved in the incident. He further said that the Panel on Financial Affairs had already had the chance to hear the views of the major parties concerned on the incident. He concurred with the Inquiry Panel that the Penny Stocks Incident was an outcome of a

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combination of factors, and among these, the different perception of SFC and HKEx of their respective roles and relationship was an important issue needed to be addressed. He therefore supported the Financial Secretary's decision to appoint an expert group to examine the operation of the regulatory structure for the securities and futures market. Mr CHAN did not consider that there was a need for LegCo to conduct another formal inquiry on the incident.

6. Mr Martin LEE said that while the Administration and other parties involved in the incident had stated their acceptance of the Report, he personally found that the Report had the following shortcomings -

- (a) From the outset, the terms of reference of the Inquiry Panel were undesirably narrow and focused on less controversial or relatively insignificant issues, such as the existing procedures for making new or amended rules of HKEx and the process of consultation with the trade and the public;
- (b) Notwithstanding the narrow scope of the its terms of reference, the Inquiry Panel felt that they were encouraged by the public utterances of the Financial Secretary (FS) and the Chief Executive to consider various matters of public interest and concern which might not, on a very strict reading, be within the scope of the words employed in the terms of reference. Such an approach was far from proper; the Inquiry Panel should have instead sought the permission of FS, who appointed the Inquiry Panel, to expand its terms of reference; and
- (c) Although the Inquiry Panel had drawn conclusions on the responsibility of the parties/individuals involved, the Inquiry Panel did not ask these parties/individuals whether they would accept the findings and conclusions of the Inquiry Panel or whether they had any dissenting views to offer before the release of the Report.

Mr Martin LEE continued that in a nutshell, it was a sub-standard Report which failed to meet public aspirations or offer useful insights into the incident. At best, certain systemic wrinkles had been identified. The remark that "to let the past take care of itself" in order "to move on" in the "Final Remarks" section of the Report was apparently a white-washing gesture analogous to a barrister seeking mitigation for a defendant in a court of law.

7. Mr Abraham SHEK said that he concurred with the Inquiry Panel that the inquiry should not be taken as a fault-finding exercise. He considered the Report acceptable with a well-balanced presentation and all relevant facts unveiled.

8. Mr Henry WU said that initially, when he only had the opportunity to read the Executive Summary of the Report on the day of the release of the Report, he was indeed unimpressed by the conclusions contained therein as they appeared piecemeal

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and biased. He therefore had expressed such a view when asked by the media on that day. Subsequently, having read through the full Report, he found it comprehensive and valuable in unfolding the circumstances leading to the events on 26 July 2002 and thereafter. As to whether the conclusions in the Report were fair or otherwise, Mr WU considered that it was a matter of individual judgment. Mr WU stressed that what the financial services sector wanted was a speedy recovery of the securities and futures market. Also, the sector hoped that the Administration and the regulatory authorities would learn a lesson from the incident and would lend their ears to the views of market practitioners in future.

9. Mr Albert HO expressed concurrence with Mr Martin LEE's views about the Report and added that one major inadequacy of the Report was that the parties in respect of whom criticisms had been made had apparently not been approached to respond to those criticisms before the release of the Report. Because of this, there was no way to ascertain whether there were any major dissenting views held by those parties, and hence it was difficult to say with certainty to what extent the Report was acceptable. He therefore suggested that the three parties concerned, i.e. the Administration, SFC and HKEx be consulted in writing as to whether they held any dissenting views on the factual descriptions, the observations and/or the recommendations contained in the Report. Pending this, it would be premature to decide whether another inquiry was needed.

10. Ms Emily LAU, Mr SIN Chung-kai and Mr Martin LEE expressed support for Mr HO's suggestion. The Chairman then sought members' view on whether the Panel should write to the three parties concerned and/or the particular individuals in respect of whom criticisms had been made in the Report. In response, Mr Martin LEE and Mr SIN Chung-kai confirmed their view that it would suffice just to write to the three parties concerned, namely the Administration, SFC and HKEx.

11. Mr NG Leung-sing suggested that the three parties should be requested to provide copies of the written submissions and/or other written information which they had provided to the Inquiry Panel. Such information would facilitate Members to comprehend the three parties' further comments on the Report, particularly if they had any dissenting views.

12. Mr Jasper TSANG requested Mr Albert HO to elucidate the underlying objective of seeking further comments from the three parties concerned on the Report. Mr Albert HO explained that at the Panel meeting on 20 September 2002, Mr K C KWONG had remarked that while he accepted the recommendations in the Report in principle, he did not agree with some of the conclusions in the Report. Apart from Mr K C KWONG, there might be other parties or individuals involved who did not fully accept the Report. Hence, it was reasonable to ascertain what these disputes were and whether such dissenting views would affect the validity of the conclusions and recommendations in the Report. Otherwise, it would be difficult to determine whether or not there was a case for LegCo to conduct another inquiry. He stressed that he personally was not inclined to conduct another inquiry unless such

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was established to be necessary.

13. Mr Jasper TSANG opined that given that the three parties concerned had already attended the previous meetings of this Panel to give their views on the incident and the Report, the reasons for inviting supplementary comments must be set out in no uncertain terms in the letters to the three parties concerned. Members agreed.

Parameters for assessment of political responsibility

14. Ms Emily LAU said that she found Chapter 12 - “roles of individuals” of the Report totally perplexing. On one hand, the two members of the Inquiry Panel admitted their lack of expertise on the issue of political responsibility and that they were not specifically tasked to examine the issue according to their terms of reference, but on the other, they had come up with four categories of responsibilities, based on which they assessed the responsibilities of the individuals involved in the incident. Ms LAU recalled that during LegCo’s deliberations on the accountability system for principal officials, the Administration had never made reference to such categorization of responsibilities. She had strong reservations on the propriety of using the four categories of responsibilities as parameters for assessment of responsibilities of principal officials. She suggested that the issue should be referred to the Panel on Constitutional Affairs (CA Panel) for detailed deliberation.

15. Mr Martin LEE and Mr Albert HO concurred with Ms LAU’s observations. They opined that although the Inquiry Panel had contributed towards the fact-finding ordeal, they were nevertheless self-conflicting and inconsistent when it came to the subject of political responsibility. Mr HO pointed out that on the one hand, the Inquiry Panel had stressed that its inquiry should not be taken as a fault-finding exercise, while on the other, they ventured to draw conclusions as to which of the individuals involved were responsible. Mr LEE pointed out that although the Inquiry Panel had made reference to the accountability system in the United Kingdom where cabinet ministers were expected to resign over major errors or improprieties, including those by their subordinates, this type of political responsibility had not been taken into account when the Inquiry Panel defined the four categories of responsibilities.

16. Mr CHAN Kam-lam opined that the responsibility issue arising from the incident should be examined in the context of the regulatory framework for the securities and futures market, and would therefore be more proper to be deliberated by the Panel on Financial Affairs (FA Panel) if considered necessary.

17. In response, Ms Emily LAU clarified that her suggestion was to refer to the CA Panel the issue as to whether it was appropriate to use the four categories of responsibilities mentioned by the Inquiry Panel as parameters for assessing political responsibility under the Accountability System. She considered that the acceptance of the four categories of responsibilities or otherwise would have an important bearing on the Accountability System.

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18. In this connection, the Legal Adviser advised that while Rule 77(3) of the Rules of Procedure provided that “a Panel shall monitor and examine, to the extent it considers necessary, policy matters referred to it by a member of the Panel or by the House Committee”, there was no provision in the Rules of Procedure regarding a referral from one Panel to another. In view of this and having regard to past practices, it would be at the discretion of a Panel to decide whether it would discuss the matter referred to it by another Panel.

19. Mr SIN Chung-kai said that the general issues relating to “political responsibility” did not appear to fall within the purview of the FA Panel. He would have no objection to the proposed referral to the CA Panel, and it would be up to CA Panel to consider whether it would discuss the issue. Mr James TIEN also did not find the referral objectionable, but considered that any further deliberation on the Report and the Penny Stocks Incident would need to be reverted to the FA Panel. Taking note of other members’ views, Mr CHAN Kam-lam said that he would have no strong view either way with regard to the proposed referral.

20. In summing up, the Chairman said that it was the consensus of members of the FA Panel to have the matter referred to the CA Panel for deliberation at its discretion.

FA Panel to receive public views on the Report

21. Mr Albert CHAN Wai-yip said that in his view, the Penny Stocks Incident was in some ways analogous to a “manslaughter” case. So far, the “suspects” had been invited to present their respective stories, but the “victims” had not had such an opportunity. He personally considered the Report biased and the conclusions not fully justified. He asked whether the FA Panel would be prepared to offer an opportunity for the aggrieved penny stocks investors to come forward to air their views on the Report.

22. Mr CHAN Kam-lam alerted members of possible court proceedings which involved claims for damages from those who had incurred financial losses in the incident. In this regard, members noted that the Panel had not been made aware of any such court proceedings.

23. The Legal Adviser advised that according to Rule 41(2) of the Rules of Procedure, a person speaking during an open meeting of the Council or its committees should not make reference to a case pending in a court of law in such a way as, in the opinion of the Chairman, might prejudice that case. Noting this, the Chairman said that he would advise any person who had instituted legal proceedings to seek recompense for losses incurred in the incident not to speak on the incident or the court case in question, lest that case might be prejudiced.

24. Ms Emily LAU said that the Panel should at least provide an opportunity for the aggrieved investors to air their views on the incident or the Report, provided

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that relevant court proceedings, if any, would not be prejudiced. While sharing Ms LAU's view, the Chairman said that if it turned out that a very large number of investors wished to present their views to the Panel, he would need members' further views on the practical arrangements.

25. Mr NG Leung-sing said that he felt rather uncomfortable and worried about the proposed move, because it would be technically difficult, if not impossible, to distinguish those investors who had incurred losses in the incident from those who had not, let alone the complication arising from pending court cases. He was particularly concerned that the proposed arrangement might offer false hope to the aggrieved investors that making representations to the Panel would offer them a better chance of obtaining compensation from the Government or other parties.

26. Mr Martin LEE opined that to avoid giving hope, false or otherwise, should not be an overriding consideration in deciding whether the Legislature should receive views from aggrieved members of the public.

27. Mr NG Leung-sing said that since the Administration had clearly indicated that it had no plan to provide compensation to affected investors in the incident, and knowing that the chance of affected investors being able to obtain recompense through litigation was rather slim, it would be risky and unwise for the Panel to give false hope to the aggrieved investors.

28. Mr James TO opined that all persons affected by the Penny Stocks Incident should have an opportunity to present their views on matters relating to the incident, including the question of recompense. The availability of meeting slots and venue for receiving views from such persons was a technicality, which could be resolved as the need arose.

29. Mr Jasper TSANG said that in practice, it would not be proper or possible to attempt to draw a fine line between those who had incurred losses in the incident and those who had not. He therefore suggested that the invitation for views on the Report should be extended to all members of the public who were interested to present their views to the Panel. Mr CHAN Wai-yip and Mr Martin LEE expressed their concurrence.

30. The Chairman concluded that there was a consensus that the FA Panel should hold a special meeting to receive views from members of the public on the Report and other related matters. Mr James TO and Ms Emily LAU suggested that representatives of the Administration, SFC and HKEx should be in attendance to respond to the views expressed. Members agreed.

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II. Any other business

31. There being no other business, the meeting ended at 5:43 pm.

Council Business Division 1
Legislative Council Secretariat
6 December 2002