

立法會
Legislative Council

LC Paper No. CB(1)570/02-03

(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

Legislative Council
Panel on Financial Affairs

Minutes of special meeting held on
Monday, 11 November 2002 at 2:30 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 LEE Cheuk-yan
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon NG Leung-sing, JP
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
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
- Members absent** : Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon SIN Chung-kai
- Public officer attending** : Miss Vivian LAU
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)

Action

Attendance by invitation : Mr Ashley ALDER
Executive Director, Corporate Finance Division
Securities and Futures Commission

Ms Karen LEE
Executive Vice President
(Listing, Regulation and Risk Management)
Hong Kong Exchanges and Clearing Limited

Mr David WONG
Chairman
Hong Kong Securities & Futures Industry Staff Union

Mr TAM Cheuk-hong
Promotion & Development Officer
Hong Kong Securities & Futures Industry Staff Union

Mr WONG Fuk-sang
Chairman
Penny Stock Incident Committee

Mr HUI Chi-leung
Member
Penny Stock Incident Committee

Miss KWOK Ching-miu
Secretary
Penny Stock Incident Committee

Mr Richard K C MAK
President
The Hong Kong Society of Financial Analysts Limited

Mr James A SOUTAR
Secretary
The Hong Kong Society of Financial Analysts Limited

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

Action

Staff in attendance : Mr Jimmy MA
Legal Adviser

Ms Pauline NG
Assistant Secretary General 1

Mr Joey LO
Assistant Secretary (1)1

Miss Christy YAU
Legislative Assistant 7

I Report of the Panel of Inquiry on Penny Stocks Incident and other related issues

- (LC Paper No. CB(1)213/02-03(01) — Submission from Hong Kong Securities & Futures Industry Staff Union
- LC Paper No. CB(1)213/02-03(02) — Submission from Penny Stock Incident Committee
- LC Paper No. CB(1)250/02-03(01) — Submission from the Hong Kong Society of Financial Analysts Limited
- LC Paper No. CB(1)213/02-03(03) — Letter from Mr YEUNG Wai-sing, member of the Eastern District Council
- LC Paper No. CB(1)213/02-03(04) — Letter from Miss YUEN, a member of the public
- LC Paper No. CB(1)250/02-03(02) — Letter from Consumer Council with copy of submission to the Expert Group to Review the Operation of the Securities and Futures Market Regulatory Structure
- LC Paper No. CB(1)2497/01-02 and CB(1)142/02-03 — 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

Action

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

Action

- 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 Nos. CB(1)157 and 256/02-03 — Letters from Panel Clerk to the Administration and the Securities and Futures Commission and their replies
- LC Paper Nos. CB(1)168 and 256/02-03 — Letters from Panel Clerk to Hong Kong Exchanges and Clearing Limited and its reply
- LC Paper No. CB(1)230/02-03 — Minutes of meeting on 31 July 2002
- LC Paper No. CB(1)159/02-03 — Minutes of meeting on 20 September 2002)

The Chairman recapitulated the decisions of the Panel made at the special meeting on 8 October 2002 and informed members of the up-to-date position of these decisions as follows -

- (a) Members’ concern about the propriety of the four categories of responsibilities adopted by the Panel of Inquiry on the Penny Stocks Incident (Inquiry Panel) for assessment of responsibilities of principal officials and senior personnel of statutory agencies had been referred to the Panel on Constitutional Affairs. The issue was scheduled for discussion on 18 November 2002.
- (b) The Panel had written to the three parties directly involved in the incident, i.e. the Administration, the Securities and Futures Commission (SFC) and the Hong Kong Exchanges and Clearing Limited (HKEx), to consult them whether and to what extent they agreed or disagreed with the content of the report of the Inquiry Panel. All the three parties had provided their replies which had been circulated to Members.

Action

- (c) In response to the Panel's invitation for public views, a total of six written submissions had been received. The main purpose of this meeting was to receive and listen to the views from the public on the report of the Inquiry Panel and other related matters.

2. Regarding the way forward, Mr Abraham SHEK said that the subject had been fully deliberated by the Panel in a series of meetings. The Panel had also discussed in detail the Report of the Inquiry Panel, and had heard the views of various parties concerned. The Panel would be listening to the views of the trade at this meeting. He enquired if there were other aspects which required further discussion by the Panel. In response, the Chairman said that having regard to the development of the various issues arising from the Penny Stock Incident, he did not observe any particular aspects which required the Panel to hold further meetings on the subject, unless there were unforeseen issues of substance unearthed or a majority of Panel members considered otherwise. Mr NG Leung-sing considered that there was no need for the Panel to hold any more meetings on the Penny Stock Incident. The Chairman asked members if they had other views on this matter. No member expressed further views in response.

Presentation of views by deputations

3. The Chairman said that the following three organizations which had submitted written views would present their views at this Panel meeting -

- (a) The Hong Kong Securities & Futures Industry Staff Union (SFISU);
- (b) The Hong Kong Society of Financial Analysts Limited (SFA);
and
- (c) The Penny Stock Incident Committee (PSIC).

4. The Chairman also informed members that he was given to understand that the attending representatives of the Penny Stock Incident Committee were not involved in any court case concerning claims for compensation for losses incurred in the Penny Stocks Incident.

5. At the invitation of the Chairman to speak, Mr David WONG of SFISU presented the Union's views on various issues related to the Penny Stocks Incident. The salient points were as follows -

- (a) The views of SFISU conveyed to the Inquiry Panel on many basic issues related to the Penny Stock Incident were not

Action

subsequently included in the report of the Inquiry Panel.

- (b) The Penny Stocks Incident reflected the long-standing loopholes and shortcomings of the regulatory framework and the mechanisms and procedures for market consultation on proposed changes to the rules and regulations governing the operation of the local securities and futures industry.
- (c) There was a general perception in the industry that whatever public consultations instituted by HKEx would serve no more than just a vehicle in the run up to a fait accompli and this explained the panic selling of penny stocks in the incident.
- (d) As revealed in the incident, some government officials and the senior personnel of the regulatory authorities were not sufficiently knowledgeable of the operation of the securities and futures market and were not sensitive to market sentiments. They also failed to react promptly to contingencies taken place in the market until cornered by public pressure.
- (e) To revive the confidence of investors in the securities and futures industry, SFISU considered it necessary to nurture a new culture in that SFC and HKEx should operate with greater transparency and should be more receptive to the views of market players.
- (f) SFISU fully agreed to the need to review the existing three-tiered regulatory framework to bring to order the current state of confusion. SFISU therefore looked forward to the outcome of the review by the Expert Group appointed by the Financial Secretary.
- (g) SFISU urged the relevant authorities to look into the existing anomaly of having securities brokerage companies and banks conducting securities brokerage business placed under two different regulatory systems. This arrangement had unfairly jeopardized the business of the securities brokerage industry. SFISU was not opposing to banks conducting securities business as such but would urge that fair competition and a level-playing field be established.
- (h) In the first nine months of 2002, 51 brokerage firms had closed down and an additional 35 had notified HKEx that they would be closing down by the end of the year, signifying that a few thousand employees in the securities and futures industry would be laid off.

Action

- (i) In the absence of an effective redress mechanism, SFISU would like to appeal to legislators for support and advice in order to ride out of the difficult business environment confronted by the industry.

6. At the invitation of the Chairman, Mr James A SOUTAR, secretary of the Hong Kong Society of Financial Limited (SFA), briefly introduced SFA highlighting that SFA was a non-profit making organization in Hong Kong providing continuous professional training recognized by SFC. One of SFA's objectives was to provide a convenient communication channel between financial analysts and investment advisors in Hong Kong and the Hong Kong securities market regulators. SFA had a membership of 1 800 and an additional 7 000 candidates for the designation of Chartered Financial Analysts (CFA), which was endorsed by SFC as a recognized industry qualification for investment and commodity trading advisers. Mr SOUTAR then presented the views of SFA on the findings and recommendations of the Inquiry Panel. The salient points were summarized below-

- (a) SFA agreed to the basic conclusion of the Inquiry Panel that the Penny Stocks Incident was a result of a combination of factors, including a set of delisting proposals that took the investing public by surprise and the inefficiencies that existed in the penny stocks arena.
- (b) Undoubtedly, the Penny Stocks Incident was an unfortunate episode that had caused wide concern in the securities industry but in the eyes of SFA, it could be taken as a useful opportunity to formalize the communication links between the regulatory authorities and market practitioners, enabling a new driving force for the overall benefits of the industry.
- (c) SFA was pleased to learn that the authorities concerned agreed to the recommendation of the Inquiry Panel on the need to improve the consultation process by engaging the market and the public in a more efficient and constructive manner. In this regard, SFA suggested that a "practitioners panel" should be established. This panel could be appointed by SFC and HKEx with a membership comprising practitioner groups in Hong Kong, including stockbrokers, professional investment managers, market analysts, and retail investor representatives. The panel should meet on a regular basis to facilitate a two-way dialogue on various initiatives between the regulatory authorities and the industry.

Action

- (d) With a sizable membership of qualified financial analysts, SFA was in a right position to assist in establishing a practitioners' panel as aforementioned and to serve as a communication link between investment practitioners and the market regulators.

As a concluding remark, Mr SOUTA said that SFA's concern was not centred on the penny stock incident as such but rather on the improvements and reforms that could be made for the overall benefits of the industry.

7. Mr WONG Fuk-sang, chairman of the Penny Stocks Incident Committee, said that the committee's main concern was to see to it that the losses incurred by penny stock investors in the incident were fairly recompensed. In a way, the investors were contributors towards capital raising for funding new developments, which in turn would create job opportunities for the local work force and even beef up the public coffer through paying stamp duty on stock transactions. It was difficult to imagine that it was this very group of investors who had suffered heavily from a financial setback because some senior personnel of the authorities had under-estimated the market risks associated with the "50 cents" delisting proposal. The responsible government officials were in fact well aware of the delisting proposal well before the incident, but obviously were heedless of the embedded risks. If they were able to read the market better, analyse the situation more critically, and investigate into the vulnerabilities, in short, behaving in a way that was commensurate with what was expected of them, the penny stocks fiasco would have been averted. What had upset the public most was that some responsible officials were seen to be shirking responsibilities with twisted arguments causing further frustrations. Mr WONG continued that the Government had an undeniable role and duty to see to it that all aggrieved investors in the incident should have a way to seek compensation for the financial losses incurred. The report of the Inquiry Panel had over-simplified the impact of the incident and to his disappointment, it did not address the issue of compensation at all.

Discussion

8. On the question of communication between HKEx and the market, Ms Emily LAU sought the views of SFISU as to whether there had been any improvement in this regard since the Penny Stocks Incident. Mr WONG replied that "points taken but policies un-shakened" was the crux of the problem, which had in fact rendered most consultation discussions futile. Noting this, Ms Emily LAU said that it would only be fair for HKEx to listen first before moving forward, and it was understandable that in certain cases not all views tapped were necessarily practicable or entirely in the public interest. That said, she was still concerned whether HKEx had made efforts to improve its communication with the market and enquired about the actions being taken by HKEx in this

Action

regard.

9. In response, Ms Karen LEE informed the meeting that HKEx was currently working in conjunction with SFC to establish a consultative mechanism to tap the views and response of the market in the course of consolidating proposals for public consultation. She also advised that in the course of drawing up the revised consultation paper on the continuing listing criteria to be released shortly, HKEx had undertaken sounding out activities to gauge the views of various representative bodies of the securities and futures industry.

10. In response to Ms Emily LAU's enquiry about the position of the Government and the regulatory authorities on the issue of compensation, the Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) reiterated the Financial Secretary's remark made at a previous Panel meeting that the Government had no plan to provide compensation pursuant to the Penny Stocks Incident. This notwithstanding, she said that, as the Chief Executive had pledged at the time when the report of the Inquiry Panel was published, the Administration had been adopting a positive and responsible attitude in the Penny Stocks Incident. In this connection, she advised that the Administration was working closely with SFC and HKEx to follow up the recommendations of the Inquiry Panel, and that a special committee headed by the Permanent Secretary for Financial Services and the Treasury (Financial Services) had been set up to co-ordinate such matters.

11. In reply to a further enquiry from Ms Emily LAU about the situation of claims for compensation from investors, Ms Karen LEE advised that HKEx had received a total of 22 written requests to seek compensation pursuant to the Penny Stocks Incident. The legal advice for the HKEx was that HKEx had no legal responsibility to compensate for the pecuniary losses incurred by stock investors in the incident and HKEx had responded to all the requests accordingly.

12. On this, Mr WONG Fuk-sang of the PSIC said that he was unable to accept the response of the Administration and HKEx as it was evidently a case of the authorities causing the damage at a high cost on the part of the innocent investors and yet allowed to be absolved of all compensation obligations.

13. Ms Karen LEE further explained that each and every request for compensation had been looked into carefully by HKEx and legal opinion had been sought with regard to the justifications advanced in each and every case. The conclusion was that, in the circumstance, there was no case whatsoever for HKEx to provide compensation.

14. Ms Emily LAU said that it appeared that the only recourse for aggrieved investors was court action if they were to seek compensation for the pecuniary

Action

losses incurred in the incident.

15. Mr NG Leung-sing noted that the deputations seemed to have focused mainly on some controversial issues of the securities and futures industry and the issue of compensation rather than on the findings and recommendations in the report of the Inquiry Panel. He appreciated that there were good reasons for such issues to be raised, but he also cautioned that no false hope should be created on the issue of compensation. Mr NG expressed appreciation of the views provided by the deputations. He also opined that as the Panel had already listened to the views, written and oral, of various parties involved in the incident and that the relevant authorities had already taken on board the necessary actions to follow up on the problems identified, there should be no need for the Panel on Financial Affairs to further discuss the report of the Inquiry Panel.

16. The Chairman thanked all attendees for attending the meeting.

II Any other business

17. There being no other business, the meeting ended at 3:10 pm.