

立法會
Legislative Council

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Panel on Financial Affairs

**Minutes of meeting
held on Thursday, 5 July 2007 at 9:30 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Bernard CHAN, GBS, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon SIN Chung-kai, SBS, JP
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon TAM Heung-man
- Members attending** : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
- Member absent** : Hon CHIM Pui-chung

**Public officers
attending**

: Agenda Item III

Ms Selene TSOI
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) 4

Agenda items IV, V and VI

Mrs Dorothy MA
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) 1

**Attendance by
Invitation**

: Agenda Item III

Ms Sophia KAO, JP
Chairman
Financial Reporting Council

Mr M T SHUM, SBS
Chief Executive Officer
Financial Reporting Council

Agenda Items IV, V and VI

Securities and Futures Commission

Mr Martin WHEATLEY
Chief Executive Officer

Hong Kong Exchanges and Clearing Limited

Mr Richard WILLIAMS
Head (Listing Division)

Mr Roger LEE
Senior Vice President (Listing Division)

Agenda Item IV

The Newspaper Society of Hong Kong

Mr SIU Sai-wo
Convener of Business & Finance Information Concern
Group

Mr Ivan TONG
Member of Business & Finance Information Concern
Group

Mr CHAN Wing-ping
Member of Business & Finance Information Concern
Group

Mr Wilson CHAN
Member of Business & Finance Information Concern
Group

Hong Kong Institute of Investors

Mr Ricky TAM
Chairman

Ms Mingnie CHUNG
Senior Vice President

Clerk in attendance: Miss Polly YEUNG
Chief Council Secretary (1)5

Staff in attendance : Ms Annette LAM
Senior Council Secretary (1)3

Ms Rosalind MA
Senior Council Secretary (1)8

Ms Sharon CHAN
Legislative Assistant (1)8

I. Confirmation of minutes of meeting and matters arising

(LC Paper No. CB(1)2009/06-07 — Minutes of special meeting on
12 April 2007)

The minutes of the special meeting held on 12 April 2007 were confirmed.

II. Information papers issued since the last meeting

- (LC Paper No. CB(1)1885/06-07 — Legislative Council Brief on "Final Report of Public Consultation on Tax Reform"
- LC Paper No. CB(1)1893/06-07 — Mandatory Provident Fund Schemes Statistical Digest — March 2007
- LC Paper No. CB(1)1929/06-07(01) — Administration's response dated 13 June 2007 from the Secretary for Financial Services and the Treasury to the Hong Kong Institute of Trade Mark Practitioners
- LC Paper No. CB(1)1963/06-07 — Draft report of the Panel for 2006-07 for submission to the Legislative Council)

2. Members noted that the above papers had been issued for the Panel's information.

Meeting with the new Secretary for Financial Services and the Treasury

3. Ms Emily LAU said that as far as she was aware, new Principal Officials had been invited to meet with Panels of their respective policy purview. She asked about the Panel's plan, if any, to invite Prof KC CHAN, the new Secretary for Financial Services and the Treasury (SFST), to a meeting of the Panel to brief members on his visions and plans. The Chairman advised that members might consider inviting SFST to a special meeting to be arranged before the commencement of the 2007-08 legislative session, or receiving a policy briefing by SFST following the Chief Executive's policy address in October 2007 in line with the existing practice.

4. Ms Emily LAU was of the view that the Panel should meet with SFST as early as possible and preferably at a special meeting to be arranged in July 2007. Mr Albert HO and Miss TAM Heung-man shared Ms LAU's view. Noting members' view, the Chairman directed the Clerk to liaise with SFST's office for the meeting arrangements accordingly.

(Post-meeting note: The notice of the special meeting to be held on Friday, 20 July 2007 was issued to members vide LC Paper No. CB(1)2072/06-07 on 6 July 2007.)

III. Progress of the work of the Financial Reporting Council

(LC Paper No. CB(1)2008/06-07(01) — Paper on "Establishment of the Financial Reporting Council" provided by the Financial Reporting Council

LC Paper No. CB(1)2066/06-07(01) — Powerpoint presentation material on "Progress of the work of the Financial Reporting Council"(tabled at the meeting and soft copy issued to members on 5 July 2007))

5. At the invitation of the Chairman, Ms Sophia KAO, Chairman of the Financial Reporting Council (C/FRC) gave a brief introduction on the FRC which was set up on 1 December 2006 under the Financial Reporting Council Ordinance (Cap. 588) (FRCO) enacted on 13 July 2006. She informed members that following a worldwide open recruitment exercise conducted by a selection panel, Mr SHUM Man-to was appointed the Chief Executive Officer (CEO/FRC) by the CE under section 8 of FRCO to head the FRC secretariat and Mr SHUM assumed office on 1 February 2007. Under the direction of the FRC Board and in accordance with the FRCO, CEO/FRC had commenced various preparatory work such as building up the executive secretariat of FRC, developing operational and complaint handling procedures, and formulating working arrangements with other regulatory bodies. C/FRC advised that FRC would start operation with effect from 16 July 2007 to receive complaints and to conduct enquiries into audit irregularities and non-compliances with financial reporting requirements of listed entities in Hong Kong.

6. Mr SHUM Man-to, CEO/FRC then gave a power-point presentation on the background of setting up the FRC, the role and structure of FRC, preparatory work in the lead-up to the commencement of operation on 16 July 2007 and the way forward. He highlighted the following salient points:

- (a) On the recommendation of the Hong Kong Institute of Certified Public Accountants (HKICPA) and in response to public demand for enhanced regulation of the accounting profession in the wake of the Asian financial crisis and corporate scandals in the United States, the FRC was tasked to safeguard the integrity of financial reporting in Hong Kong and to protect the interest of the investing public. To uphold the FRC's status as an independent investigator for the accountancy profession, six out of the 10 FRC Board members including the Chairman were lay members (i.e. non-accountants).
- (b) The role of the FRC was to conduct independent investigation into possible auditing and reporting irregularities committed by

auditors and reporting accountants in relation to the audit or financial reporting of listed entities; to enquire into possible non-compliances with financial reporting requirements of listed entities, and to require listed entities to remove or rectify identified non-compliances. The Audit Investigation Board (AIB) and the Financial Reporting Review Panel (FRRP) were the two subsidiary organs to assist the FRC Board in discharging its two principal functions. The appointments to the AIB and FRRP would be announced shortly.

- (c) To avoid any overlap of work with other regulatory bodies, agreements were reached with other regulators such as the Securities and Future Commission (SFC), The Stock Exchange of Hong Kong Limited (SEHK) and HKICPA on the protocols for referring cases/complaints to the FRC for investigation and enquiry. Regarding auditing and reporting irregularities, the FRC was empowered to conduct investigation and report its findings. Where investigation by FRC revealed irregularities and non-compliances, the cases would be referred to the appropriate regulatory bodies (e.g. HKICPA, SFC, SEHK, the Hong Kong Police Force (the Police) and the Independent Commission Against Corruption (ICAC) etc) for follow-up action.
- (d) The FRC had been in dialogue with relevant regulatory and enforcement bodies including the HKICPA, SFC, SEHK, ICAC, the Police, Office of the Commissioner of Insurance, Mandatory Provident Fund Schemes Authority, and Companies Registry to establish a close working relationship. Where necessary, FRC might enter into memoranda of understanding with these bodies to set out the cooperation framework.
- (e) Funding for FRC came from four sources - the Companies Registry Trading Fund, SFC, the Hong Kong Exchanges and Clearing Limited, and HKICPA. Under the Memorandum of Understanding signed by these four parties, the FRC would be provided a total of \$10 million (\$2.5 million from each party) per annum for its recurrent expenses for the first three years of operation. A further \$20 million (\$5 million from each) would be set aside as a Reserve Fund. Contributions from the fourth year onwards would be reviewed and adjusted in the light of actual requirements. FRC was also required to submit to the Legislative Council a Statement of Accounts audited by the Director of Audit and a report on its activities in respect of each financial year ending 31 December.
- (f) FRC was determined to maintain a lean and efficient human resources structure. The approved establishment of the FRC

secretariat for the first financial year was 11 headcounts, including the CEO and a number of investigation staff experienced in financial reporting and listing requirements. Where circumstances so warranted, FRC might appoint consultants or legal advisers. The Operation Committee, the Corporate Communications Committee and the Tender Committee would underpin the FRC Board on the formulation of policies and overseeing the activities of the FRC Secretariat.

- (g) Investigation and enquiry procedures and guidelines on complaint handling were being developed, referencing the practice of other local and overseas regulators and enforcement agencies. The guidelines and procedures would be made public to enhance transparency on FRC's work. The FRC website would be launched shortly before 16 July 2007 and FRC would strive to promote public understanding and confidence in its statutory role and functions.

Discussion

Cross-border investigation on listed companies

7. Referring to the difficulties in investigating audit irregularities and accounting non-compliances of Mainland incorporated companies listed in Hong Kong with most of their business activities conducted in the Mainland, Miss TAM Heung-man enquired about the mechanism for cross-border investigation and measures, if any, to facilitate the investigation process. Mrs Sophie LEUNG was concerned how FRC would exercise its investigatory power effectively in cross-border cases to reinforce Hong Kong's reputation as an international financial centre.

8. In reply, C/FRC advised that reference would be made to the investigation and enforcement mechanisms of other local and overseas regulatory bodies and enforcement agencies. FRC would initiate liaison with the relevant Mainland authorities and agencies to explore areas for cooperation. CEO/FRC supplemented that with the assistance of the Financial Services and the Treasury Bureau and the Hong Kong and Macau Affairs Office, contacts would be made with the Ministry of Finance, the regulatory authority of the accountancy profession in the Mainland, and other Mainland agencies. He stressed that cross-border investigation of auditing and accounting irregularities of locally listed entities that conducted their businesses in the Mainland was no easy task, and time was required to establish the necessary working relations with the Mainland counterparts, to formulate working protocols, and set out the cooperation framework. CEO/FRC pointed out that for investigations and enquiries in relation to listed companies which were still listed and in operation, the FRC should be able to obtain records, documents and information from them because, being companies listed in Hong Kong, they were bound by the Hong Kong Listing Rules irrespective of where they were

incorporated. It could be more complicated if the cases involved listed companies which were based in the Mainland and had already ceased operation. These cases would probably involve criminal offences and would accordingly be investigated by the Police. In any case, the FRC would cooperate and work closely with relevant regulatory and enforcement bodies.

9. In this connection, C/FRC assured members that FRC was mindful of the importance of discharging its statutory functions effectively, particularly in cross-border investigation. She said that the FRC would keep the Panel informed of its work and progress on an ongoing basis.

Investigatory functions of the FRC

10. Ms Emily LAU was pleased to note that the FRC would commence operation on 16 July 2007. She called on the FRC to conduct investigations in a vigorous, fair, open and accountable manner to build up its credibility as an independent investigator for the accountancy profession. While agreeing that overlap of work with other regulatory bodies should be avoided, Ms LAU was concerned that some cases might slip through functional gaps that existed between various regulatory and enforcement bodies, and would therefore escape investigation.

11. In response, C/FRC advised that members and staff of FRC were firmly committed to the objectives of safeguarding the integrity of the accountancy profession and protecting the interest of the investing public. FRC was moving ahead in full speed to build up an efficient professional investigation team and to develop procedures and guidelines for full operational readiness. She said that each complaint received would be looked into. Due diligence would be exercised to avoid any functional gaps that might lead to complaints or allegations being unattended. She assured members that FRC would always endeavour to handle each case impartially, consistently, and in a reasonable and accountable manner, having regard to procedural fairness and in accordance with the FRCO.

12. In response to Mr WONG Ting-kwong's enquiry on whether FRC would only act upon complaint, or would initiate investigation or enquiry into suspected irregularities and non-compliances, C/FRC confirmed that the FRC would not only act upon complaint but might initiate investigation or enquiry where circumstances so warranted, or when there were circumstances suggesting that there was a relevant irregularity or there appeared to be a relevant non-compliance. To facilitate investigation, FRC might also seek information from the concerned frontline regulatory and enforcement agencies.

13. Noting that FRC had no power to take disciplinary action or to prosecute for breaches of auditing or reporting requirements, Mr WONG Ting-kwong asked whether criminal prosecution would be taken out by the Department of Justice, or whether civil proceedings would be instituted. In response, C/FRC clarified that the statutory function of FRC was confined to investigation and reporting the

findings of its investigation. Irregularities and breaches found by the FRC after investigation would be referred to the relevant regulatory body for follow-up action. In this connection, cases involving criminal offences would be referred to the ICAC and the Police. Auditing and reporting irregularities involving auditors/accountants who were members of the HKICPA or other professional bodies would be referred to the respective professional body. Irregularities involving the Listing Rules would be referred to the SEHK and/or SFC. In the event of non-compliance with financial reporting requirements, the FRC could require the listed entity concerned to remove the non-compliance identified. If the listed entity failed to do so, an application might be made to the Court for an order to remove the non-compliance. Alternatively, any failure to rectify non-compliances might also be referred to the SEHK and/or the SFC for follow-up.

14. Ms Emily LAU noted with concern the approved estimated expenditure of \$9.6 million for the 2007 financial year. She questioned whether FRC had sufficient resources to carry out its investigation work effectively, particularly for major cases involving complex investigation. Sharing a similar view, Mr Albert HO was concerned that resource constraint would undermine FRC's capability to target at irregularities and non-compliances of big listed entities. Mr James TO doubted whether FRC would be able to perform its investigation function effectively with a modest budget of \$9.6 million. In view of the large number of listed companies incorporated outside Hong Kong that had different auditing standards and reporting requirements in their respective home jurisdictions, Mr TO anticipated that there might be a large number of breaches that warranted in-depth investigation and enquiry. In this regard, these members urged FRC to put up requests for additional resources if necessary in order to perform its role effectively.

15. C/FRC thanked members for their concern and support and reiterated that under no circumstances would the FRC refrain from undertaking the necessary investigation work due to a lack of resources. As FRC had not yet commenced operation, it was therefore difficult at this stage to make a realistic estimate on the number of complaints, the size of the work load, and the expenditure to be incurred for commissioning legal advisers and consultants. Nevertheless, she said that the provision of \$10 million per annum for the first three financial years plus a reserve fund of \$20 million was expected to be sufficient for the initial period of operation. If necessary, FRC would seek additional resources to ensure the proper discharge of its functions. In this connection, Miss TAM Heung-man requested that a review of the financial and human resources requirements be conducted in the light of operational experience in due course. C/FRC took note of the suggestion.

Policy on disclosure of information

16. On the disclosure of information relating to FRC investigation and enquiry, Miss TAM Heung-man enquired whether and at what stage FRC would make public the details of cases under investigation. In response, C/FRC said that FRC would regularly publish statistical data such as the number of complaints

received and the number of investigations/enquiries initiated. She advised that once an investigation or enquiry was initiated, FRC was bound by the secrecy provision under the FRCO to maintain confidentiality. To preserve the integrity of the investigation and to protect the auditor, the reporting accountant, and the listed entity concerned, no information concerning any investigation or enquiry could be disclosed during the course of the investigation or enquiry. She said that each case was unique and the disclosure or otherwise of information relating to an investigation or enquiry would be decided on a case-by-case basis in accordance with the FRCO. To uphold transparency and the public's right to know, disclosure of information would be considered where circumstances so warranted and where permissible under the law.

17. While agreeing that premature disclosure of information on cases under investigation might not be in the public interest, Mr Albert HO considered that to inspire public confidence in the credibility and impartiality of FRC in its investigatory functions, FRC should formulate and publish its policies and guidelines on disclosure of information, setting out the circumstances under which it would disclose information on individual cases. He highlighted the importance of publishing the outcome of investigation or enquiry with a view to demonstrating that FRC had discharged its functions in an equitable and effective manner. He called on FRC to seriously consider his views.

18. C/FRC responded that internal guidelines on disclosure policy had been developed. The FRC would fine-tune the policy in the light of operational experience. She said that generally speaking, the public would be aware of cases of wide public concern that were under FRC investigation and enquiry. The complainant could also disclose to the public the complaint that he had lodged. She reiterated that a decision on disclosure or otherwise would be made by FRC in accordance with the FRCO and the internal guidelines on disclosure, having regard to transparency, the public's right to know, and the unique circumstances of the case. CEO/FRC supplemented that at the conclusion of an investigation or enquiry, a report would be compiled by FRC. In this regard, the FRCO had stipulated clearly the factors to be considered in deciding whether to make public the report or any part of it. These factors included whether or not the disclosure would be in the public interest, whether the publication might adversely affect any person named in the investigation or enquiry report; and whether the publication might have implications on the criminal or civil proceedings instituted by other regulatory bodies.

19. In this connection, Mr James TO expressed concern about the lack of transparency on the enforcement and regulatory actions taken by some other regulators such as the SFC. He recalled that despite widespread speculation on some cases which had aroused considerable public concern, the public was not even informed of whether investigation had ever been conducted by SFC, neither were the findings of the investigation made known to the public. He urged FRC to take note of the need for greater transparency on its work.

20. C/FRC re-affirmed that FRC would attach great importance to openness and transparency. However, there were different considerations at different stages of investigation. She nevertheless took note of the members' concern about greater openness.

Appointment of membership of boards and committees

21. Noting that the appointments to the AIB and the FRRP would be announced shortly, Ms Emily LAU remarked that to boost public confidence in FRC's impartiality and credibility, it was important that only competent individuals of the right caliber with no vested interests would be appointed. She also enquired whether the "six-year rule" and the "six-board rule" were applicable to the appointment to FRC boards and committees. In reply, the Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) confirmed that the appointment of members to the FRC boards and committees was consistent with the "six-board rule". The "six-year rule" would not arise until 2012. In response to Miss TAM Heung-man's concern about members' attendance at FRC Board meetings, C/FRC said that the 10 Board members were all very committed and had participated actively in the business of the Board. So far, three meetings had been convened to deliberate on policy issues and administrative matters pertinent to the establishment and operation of FRC. Seven members were required to form a quorum.

The way forward

FRC

22. Summing up, the Chairman requested the Administration to take note of members' concerns and views expressed at the meeting. At the request of the Panel, C/FRC undertook to brief the Panel before March 2008 on the work of FRC, including a review of its financial and human resources requirements, as well as its procedures and guidelines for complaint handling and for information disclosure.

IV. Electronic Disclosure Project launched by the Hong Kong Exchanges and Clearing Limited

(LC Paper No. CB(1)2008/06-07(02) — Paper provided by the Hong Kong Exchanges and Clearing Limited (HKEx)

LC Paper No. CB(1)1848/06-07(01) — Press release on HKEx Sets Date for the Launch of Electronic Disclosure and the Abolition of Mandatory Paid Announcements)

Presentation by the Hong Kong Exchanges and Clearing Limited

23. At the invitation of the Chairman, Mr Richard Williams, Head of Listing Division of the Hong Kong Exchanges and Clearing Limited (H(LD)/HKEx)

briefed members on the operation of the Electronic Disclosure Project (EDP) launched on 25 June 2007. Under the new regime, Main Board listed issuers were no longer required to publish full announcements in local newspapers. Instead, full announcements would be posted on HKEx's website and on the listed companies' own websites, if any. He highlighted the following points:

- (a) Six months prior to the launch of EDP on 25 June 2007, extensive market training and awareness programmes were organized to familiarize issuers with EDP operations and procedures. Comprehensive guidance was also published on HKEx's website in the form of frequently asked questions. Over 99% of all issuers confirmed their operational readiness for the launch of the EDP on 25 June 2007.
- (b) In the first week of EDP operation, 1 410 announcements and other documents were successfully submitted to HKEx by 518 issuers (including 473 equity issuers) through the designated electronic submission system (ESS) for publication on the HKEx website. The average processing time for document uploading and for the document to be published on the HKEx website was around two seconds and 55 seconds respectively excluding the Internet transmission time which was beyond HKEx's control. The HKEx website recorded over 19 million page viewing during the first five days of operation from 25 to 29 June 2007. This compared favourably with the 76 million page viewing recorded for the calendar year 2002. The alert service that provided email or SMS alerts on the latest issuer-related news published on the HKEx website was recently enhanced by doubling the maximum number of stocks a subscriber might select from the original 10 to 20, and also by reducing the interval between the dissemination of alerts to 30 minutes from one hour. As of 30 June 2007, about 29 809 users had subscribed for the alert service, and a total of 265 116 alerts were transmitted between 25 and 29 June 2007.
- (c) HKEx had not observed or received any complaints about online traffic congestion affecting investors' access to issuer documents through the HKEx website. The few isolated incidents where issuers had mistakenly stated incorrect trading resumption times in their announcements, or attached an incorrect version of a document for publication, or used incorrect or incomplete headline categorizations, were rectified by subsequent correction announcements or by other remedial actions. None of the incidents was related to technical problems of the ESS or any other HKEx systems, and none of them had resulted in market disorder.

- (d) Regarding incomplete or inaccurate headlines for announcements which needed subsequent amendments, the situation had much improved. In the first 24 hours of operation, the categorization of headlines for about 27% of announcements required amendment. This went down to about 13% on the fourth day of operation. The display of documents on the HKEx website had since been enhanced so that the headline categories and document title also appeared in the latest listed company announcements and other documents. Visitors could also search archives by headline categories and document title.
- (e) A very small number of listed companies had experienced difficulties in meeting the 11:00 pm publication deadline for announcements of price sensitive information, resulting in suspension during the morning trading sessions or continued suspension. Statistics showed that listed companies were exercising better discipline, resulting in fewer suspensions. Having regard to feedback that investors were confused by two different sets of suspension of trading announcements, one issued by the HKEx and the other by the listed issuer, HKEx had taken remedial action to distinguish the announcements made by HKEx from those made by listed companies.
- (f) The HKEx would continue to monitor compliance with the requirements of the new regime and take appropriate action where necessary to promote a high level of compliance and to enhance the HKEx website.

Presentation by deputations

24. The Chairman welcomed representatives of the Newspaper Society of Hong Kong (the Newspaper Society) and the Hong Kong Institute of Investors (HKII) to the meeting and invited them to present their views.

The Newspaper Society of Hong Kong

(LC Paper No. CB(1)2008/06-07(03) — submission)

25. Mr SIU Sai-wo, Convenor of Business & Finance Information Concern Group of the Newspaper Society, declared that some members of the Newspaper Society, being newspapers publishers, might have a direct interest in the subject as the abolition of the requirement for Main Board listed issuers to publish paid announcements in newspapers would reduce their advertising revenue. However, in presenting views to the Panel, the Newspaper Society's main concern was investors' right to information. Mr SIU said that the Newspaper Society supported the objectives of bringing the Hong Kong financial markets in line with international practice and had no objection in principle to electronic dissemination

of listed issuers' information. Nevertheless, the Newspaper Society was gravely concerned that adopting a web-based dissemination regime would restrict investors' access to information, in particular small investors who were not Internet users. He then highlighted the Newspaper Society's views as follows:

- (a) HKEx had not conducted a fair, open and thorough consultation prior to deciding on the implementation of the new regime. The consultation conducted in 2005 based upon which HKEx's conclusions were made had only received comments from 40 respondents, the majority being listed issuers and market practitioners. HKEx had not made active effort to solicit comments from individual investors who would be most affected by the changes.
- (b) While newspapers and other media could continue to provide information to investors through analysis and commentaries, the new arrangement might deprive investors of a major source of obtaining issuer-related information. The Newspaper Society recommended that a "dual approach" be adopted whereby listed companies should continue to be required to publish summary announcements in local newspaper in parallel to posting the full version of the announcements on HKEx's website and on the listed companies' own websites.
- (c) The implementation of the EDP would put HKEx in a monopoly position as the primary dissemination channel for all securities trading information in Hong Kong. The Newspaper Society was concerned that if the HKEx decided in future to impose charges on listed companies or information users, whether directly or indirectly, the free flow of information and investors' right to know would be seriously impaired.

Hong Kong Institute of Investors

(LC Paper No. CB(1)2008/06-07(04) — submission)

26. Mr Ricky TAM, Chairman of HKII, expressed reservation over the EDP. HKII considered that the abolition of the requirement for Main Board listed issuers to issue newspaper announcements would undermine investors' right to information and be prone to certain risks. He put forward the following views of HKII:

- (a) Easy disclosure by issuers did not necessarily mean easy access by the public. According to the survey by the Chinese University's Centre of Communications Research commissioned by the Newspaper Society, about 60% of the respondents objected to the EDP and close to 70% of the investors polled in

the survey believed that the new system would reduce information transparency. The new disclosure system was discriminatory against traditional investors who did not trade on-line. Although currently, the charges for on-line securities trading was lower, only 13% of investors traded on-line and on-line transactions took up only 4% of the total trading volume. About 30% of retail investors were over 50 years of age and were not familiar or conversant with obtaining information on-line.

- (b) Disclosure of information via the Internet might at times be risky and unreliable. HKII doubted whether the websites of HKEx and the listed companies had capacity to support a large number of browsers accessing their websites at the same time, such as for viewing Initial Public Offerings (IPOs) results, trading debuts of some popular IPOs and shares applications. During the early days of operation of the new system, a number of issuers had mistakenly stated incorrect trading resumption times in their announcements and caused unnecessary confusion to the market. Moreover, most listed companies' websites were hard to locate and the HKEx web page was not sufficiently user-friendly.
- (c) HKII was concerned about HKEx's monopolization of information and was worried that HKEx might eventually charge the public for accessing or obtaining information on its website.
- (d) Instead of abolishing the established arrangement on dissemination of information that had served the public well, the Administration/HKEx should consider adopting a multi-pronged approach to also make use of other dissemination platforms such as TV and radio announcements.

Discussion

Investors' access to information on listed issuers

27. Referring to the views expressed by the representatives of the Newspaper Society and HKII on the inadequacies of the EDP, Miss TAM Heung-man queried whether and how HKEx could cater for the need of retail investors, such as elderly investors, who might have no access to or not be conversant with the use of the Internet. She was concerned whether alternative channels for access to information would be provided to investors. Ms Emily LAU expressed similar concern. While not objecting to the implementation of the web-based dissemination regime, Ms LAU pointed out that the crux of the matter was whether and how the interest of the investing public in Hong Kong would be taken into account in the implementation.

28. In response, H(LD)/HKEx said that according to HKEx's analysis, the circulation of local newspapers might not ensure adequate dissemination of information on Main Board listed issuers to all investors, especially those located overseas. He advised that the new web-based dissemination regime would facilitate timely dissemination of issuers' information to all investors as issuers would not need to prioritize completion of newspaper announcements at the expense of the publication of the electronic version of the announcement. H(LD)/HKEx added that notwithstanding the amendments to the Listing Rules for the implementation of EDP, issuers could still continue to reach out to investors through newspapers on a voluntary basis. Moreover, investors could also access information on listed issuers through other channels such as television programmes and newspaper commentaries. The result of the regular stock investor survey conducted by the Securities and Futures Commission (SFC) in June 2006 showed that the majority of investors made their trading decisions on the basis of information from financial analyses or commentaries published in newspapers and other media.

29. Referring to his experience in conducting classes for investors, Mr Ricky TAM said that the HKEx website was unsatisfactory in terms of user-friendliness. Moreover, the needs of traditional investors who were not Internet users could not be adequately addressed under the new web-based dissemination regime. Mr TAM also expressed concern about the limited lead time for investors to decipher the voluminous information in the announcements published on the HKEx website to make informed investment decisions during trading hours.

Effectiveness of EDP

30. Mr Bernard CHAN declared that he was on the management board of a listed company. While appreciating the merits of EDP in facilitating convenient information dissemination by listed issuers in the light of the global development of electronic dissemination, Mr CHAN considered that the interest of investors was of utmost importance in assessing the merits or otherwise of the new dissemination regime. He therefore sought further elaboration from HKEx on the assistance to be provided to investors who were not Internet users.

31. H(LD)/HKEx explained that one of the key issues for the successful transition to the new web-based dissemination regime was investors' behavioral change to obtain financial information electronically. Referring to statistics on Internet users, Internet penetration and the provision of Internet-enabled computers for public use in libraries in Hong Kong, H(LD)/HKEx said that investors' access to the Internet should not be a problem. Moreover, according to a survey by the South China Morning Post, 71.5% of Hong Kong retail investors indicated that they would likely use the Internet to read issuers' information after the implementation of EDP. H(LD)/HKEx further pointed out that getting information from the Internet would be possible as long as the individual concerned had the incentive to do so, and he saw no reason why elderly investors would not be

capable of doing so. Moreover, if necessary, they could also seek the help of their family members or friends.

32. In this connection, H(LD)/HKEx drew members' attention to the potential flaws inherent in the previous arrangements under which there were frequent delays in the publication of the electronic version of the announcements to the disadvantage of those investors who had no access to local newspapers and had to rely on electronic news. Moreover, according to a survey by SFC, there were about 800 000 retail investors in Hong Kong while the most popular Chinese newspapers (publishing about 60% of the announcements by listed issuers) only had about 87 000 readers, among whom only a small percentage would read the financial pages. In conceiving the dissemination requirements under EDP, HKEx had to strike a balance between the needs of retail investors who might have to change their habits in getting financial information and investors who had no access to announcements published in local newspapers.

33. Mr Bernard CHAN further sought the views of the deputations on how the EDP regime should be improved to meet the needs of different investors, and whether they considered that a "dual approach" for listed companies to publish announcements in newspapers in parallel to the web-based dissemination should be maintained in the long run.

34. In response, Mr SIU Sai-wo stressed that the newspaper industry in Hong Kong was supportive of the development of electronic dissemination of listed issuers' information. However, the industry was of the view that the implementation of EDP by HKEx was too abrupt and the public had not been sufficiently consulted on or prepared for the proposed changes. Referring to the practice of some derivative warrants issuers who had selectively published information favourable to their product prices in the absence of any formal dissemination requirements, Mr SIU considered such selective disclosure by issuers on a voluntary basis was not in the interest of the investing public. The newspaper industry believed that the investing public should be provided with complete regulatory information on listed issuers. In this connection, he said that the newspaper industry had suggested that HKEx/the Administration should conduct surveys on the views of retail investors before working out the timeframe for full conversion to the web-based dissemination regime. Mr SIU urged HKEx to seriously consider the suggestion that web-based dissemination should be complemented by the publication of summary announcements by listed issuers in newspapers.

35. While expressing support for the implementation of electronic dissemination of information, Mr SIN Chung-kai considered that implementation of EDP under a "dual approach", i.e. requiring listed issuers to publish summary announcements in newspapers in parallel to the web-based dissemination, could better serve the needs of individual investors. He considered that such a dual approach would facilitate the timely dissemination of information electronically as well as alert investors of the availability of regulatory information through the

conventional channel. Moreover, publishing only summary announcements in newspapers would not incur high cost on the listed issuers. Mr SIN therefore called on HKEx to discuss with the Newspaper Society on the feasibility of a "dual approach".

36. In response, H(LD)/HKEx advised that to tie in with the implementation of EDP, a number of support measures had been put in place. For example, HKEx had enhanced the email/mobile alert service available through the Investment Service Centre on the HKEx website. The service provided free email or SMS alerts to each subscriber advising them of the publication of a new disclosure by or notices on disclosure of interest relating to companies that they invested in. With the high mobile phone penetration in Hong Kong (around 136%), the SMS alert service should provide an effective alert to investors.

37. In this regard, the Chief Executive Officer of the Securities and Futures Commission (CEO/SFC) advised that in examining the proposed amendments to the Listing Rules for the implementation of the web-based dissemination regime, SFC had considered the proposal in terms of its technical feasibility, financial implications and the impact on the provision of information to the investing public. On the provision of information to investors, CEO/SFC referred to the experience of the United Kingdom and advised that following the transition to electronic publication, new services had become available in the market to meet the needs of investors in obtaining information.

38. Mr Ricky TAM said that according to his observation, individual investors might not have a keen interest in using electronic services, as evidenced in the small percentage of on-line securities trading (only 13% of investors traded on-line) despite the lower transaction charges. He also doubted the reliability of the service provided by EDP in view of the confusion caused to investors during the initial launch of EDP.

39. While supporting the dissemination of information through the electronic means, Mr Wilson CHAN, member of the Business & Finance Information Concern Group of the Newspaper Society, queried the soundness of implementing a disclosure regime such as EDP which relied heavily on the HKEx website. He considered that a multi-pronged approach should be adopted to make use of other dissemination platforms as well. Mr CHAN also expressed doubt on the user-friendliness of the existing HKEx website under which users could hardly retrieve relevant information from the voluminous documents and announcements posted on the website.

40. Noting paragraphs 15 and 16 of the information paper provided by HKEx that all other major international markets and some Asian markets had adopted the electronic mode of dissemination, Ms Emily LAU was concerned about the extent to which overseas experience would be applicable to Hong Kong. In response, H(LD)/HKEx said that the experience of overseas jurisdictions had shown that given the changing profile of investors, electronic dissemination of information

was a pre-requisite for the financial markets to develop into international financial centres and attract international investors.

41. Mr Ivan TONG, member of the Business & Finance Information Concern Group of the Newspaper Society, pointed out that the dissemination model of Hong Kong compared less effectively to that in the United States (US). Under the US model, the Securities and Exchange Commission, which was the regulator, maintained the EDGAR database to provide free information to the public on all listed companies. In the case of Hong Kong, EDP was managed by HKEx which assumed the conflicting roles of a market regulator and a listed company. Mr Ricky TAM also opined that access to information through EDP was not comparable to access through the EDGAR database in terms of convenience in searching and retrieval of information.

42. Mr SIN Chung-kai also expressed concern about the need to upgrade the HKEx website and recalled that he had put forward the suggestion to upgrade the database maintained by HKEx with reference to the EDGAR database about a decade ago. In response, H(LD)/HKEx advised that HKEx was committed to enhancing its website to facilitate information flow for the investing public. An enquiry hotline had also been set up and suggestions on how the website should be improved had been received. He said that a separate project was underway to establish a standalone website on issuers' disclosure to facilitate search and retrieval of relevant information by investors.

43. Mr Ronny TONG considered a fair information dissemination regime crucial for ensuring that all investors had equal access to information on listed issuers, in particular price-sensitive information. In this connection, Mr TONG was concerned that dissemination through the HKEx website should be arranged in such a manner that all investors, whether located overseas and in Hong Kong, would have equal access to the information published by listed issuers.

44. In reply, H(LD)/HKEx advised that minimal processing time would be required for uploading documents onto the HKEx website. The expeditious publication of announcements through the electronic channel would ensure that the announcements would be available in the first instance to all investors through the HKEx website. The design of the current web-based dissemination regime had incorporated functions to address the concern about investors' equal access to information from overseas markets, such as enabling the publication of overseas regulatory announcements during trading hours of the local market. It was planned that during the next stage of implementation of EDP, publication of all announcements, including those of a price-sensitive nature, would be arranged on a real-time basis during trading hours. HKEx would collect the views of market participants on the relevant detailed arrangements at a later stage.

45. Noting that listed issuers were still at liberty to publish information in newspapers on a voluntary basis under the web-based dissemination regime, Mr Ronny TONG was concerned whether the information published by listed

issuers voluntarily in newspapers would be in full compliance with the disclosure requirements, and whether it would be subject to a lower level of regulatory oversight. He was also concerned that announcements presented in a summary form might be incomplete and misleading.

46. In reply, H(LD)/HKEx confirmed that where listed issuers wished to disseminate information by other channels such as newspapers, such dissemination would not be subject to the same requirements under the web-based regime but the dissemination should not be made before the publication of the announcement on the HKEx website. Regarding the completeness and accuracy of information, H(LD)/HKEx said that a very different and complicated test would be required for assessing the fairness of announcements in a summary form. This was a major reason why HKEx did not implement a "dual approach" by requiring the listed issuers to publish summary announcements in newspapers in parallel to the web-based dissemination. Nevertheless, he pointed out that provisions under the Securities and Futures Ordinance (Cap. 571) (SFO) would provide safeguards against the dissemination of misleading or incorrect information by listed issuers. HKEx would also monitor dissemination by listed issuers and where necessary, follow up breaches of the Listing Rules.

Financial implication of the new dissemination regime

47. Responding to Mr Ricky TAM's concern about HKEx's monopoly of information and whether there would be a future levy on access to information on the HKEx website, H(LD)/HKEx reiterated that HKEx did not currently charge investors for access to information and had no intention to do so in the future. CEO/SFC added that fees and charges of HKEx were subject to the approval by SFC and the latter would unlikely approve charges which were inconsistent with public interest.

48. Noting from paragraph 43 of the information paper provided by HKEx that the abolition of the requirements for issuers to publish paid announcements in newspapers might result in revenue loss of some \$400 to \$500 million to the newspaper industry, Ms Emily LAU enquired whether such cost savings on the part of the listed companies would ultimately benefit small shareholders or investors. In reply, H(LD)/HKEx said that while the costs for publishing announcements in newspapers might be saved, costs would still be incurred for listed issuers to disseminate information through the Internet. He believed that the savings would to a large extent be ploughed back to the companies and eventually to their shareholders.

Way forward

49. Summing up, the Chairman invited HKEx/SFC to take into consideration the views and suggestions raised by members and deputations, notably the following:

- (a) to consider possible improvements to the HKEx website to make it more user-friendly; and
- (b) to consider exploring other viable means of dissemination, such as requiring Main Board listed issuers to publish summary announcements in local newspapers in parallel to the web-based dissemination regime of posting the full version of the announcements both on HKEx's website and on the listed companies' own websites.

(Post-meeting note: HKEx's written response to paragraph 49 above was issued to members vide LC Paper No CB(1)2312/06-07 on 30 August 2007.)

V. Issues related to the cooperation between the securities regulators of Hong Kong and the Mainland

- (LC Paper No. CB(1)2008/06-07(05) — Paper provided by the Securities and Futures Commission (SFC)
- LC Paper No. CB(1)1809/06-07(01) — Letter dated 31 May 2007 from Hon Albert Ho)

Briefing by the Securities and Futures Commission

50. At the invitation of the Chairman, CEO/SFC briefly explained the role of HKEx and SFC in the regulation of listing corporations. Under the current regulatory structure, HKEx was the frontline regulator with the primary responsibility of ensuring compliance by listed companies and their directors with the provisions of the Listing Rules. In discharging this responsibility, HKEx would investigate suspected breaches and take remedial/disciplinary actions where appropriate. SFC performed its regulatory role through exercising its statutory powers of investigation and enforcement in cases of corporate misconduct in breach of SFO. In the course of investigation, SFC might obtain relevant information from the companies concerned or interview their directors. Where the listed company under investigation operated its business outside Hong Kong, SFC would have to rely on the cooperation of the securities regulator of the respective jurisdiction for support. The cooperation with other securities regulators was achieved through the Multilateral Memorandum of Understanding (MMoU) of the International Organization of Securities Commission (IOSCO), to which the China Securities Regulatory Commission (CSRC) had recently become a signatory.

Discussion

51. As there was an increasing number of Mainland enterprises listed in Hong Kong, Miss TAM Heung-man opined that the sharing of information involving corporate misconduct between the regulators of Hong Kong and the Mainland would be crucial for the protection of investors' interest. She was concerned

whether an effective information sharing mechanism was in place. Miss TAM also enquired whether a set of common regulatory requirements applicable to both Hong Kong and the Mainland would be established in the long run.

52. In response, CEO/SFC advised that there were variations between the Listing Rules in Hong Kong and those in major financial centres in the Mainland such as Shanghai. However, a broadly common standard had been adopted in facilitating access to information by investors. In this connection, HKEx had developed close communication with the Mainland exchanges to ensure that information on regulatory actions taken in one market would be relayed quickly to the other market so that investors' access to market information would not be affected. CEO/SFC informed members that IOSCO was in the course of devising global standards in different areas of regulatory work, such as corporate transparency. Nevertheless, as an international organization of securities commissions, IOSCO did not have any rule-making power binding on members and could only set standards for its members' reference. CEO/SFC believed that being a signatory to the MMoU of IOSCO, CSRC would put in place relevant regulatory requirements on par with international standards.

53. H(LD)/HKEx said that HKEx was in the process of developing a mechanism with the Shanghai Stock Exchange by way of establishing close day-to-day communication channels as well as examining the appropriateness and applicability of the rules and regulations in the markets of Hong Kong and Shanghai. Regarding variations in requirements for listing regulation which had become an issue of concern, the regulators of both places would explore possible measures to reduce the compliance burden on the listed issuers in dealing with the different requirements. He however highlighted that a higher standard would have to be applied in sharing sensitive information among the two regulators relating to regulatory actions.

54. Mr SIN Chung-kai opined that given the large number of Mainland enterprises listed in Hong Kong, the cooperation of the Mainland authorities would be vital in the regulation of these listed companies. In this connection, he expressed concern about the difficulties SFC might have encountered in conducting investigation on suspected regulatory breaches in cases where the management or executive directors of listed companies stayed in the Mainland.

55. CEO/SFC explained that as SFC had no jurisdiction to conduct investigation in the Mainland or compel the transfer of persons from the Mainland, SFC would have to rely on the assistance of the relevant Mainland agencies to provide information and contact individual officers of the listed companies. SFC's main contact point in the Mainland was CSRC. Under the previous arrangement before CSRC became a signatory to the MMoU of IOSCO, there had been correspondence between SFC and CSRC for sharing of information in the possession of CSRC. However, CSRC was not empowered to conduct investigation on behalf of SFC. Under the new arrangement which had been put in

place recently, CSRC was able to exercise its information-gathering power to assist SFC where evidence was needed from Mainland sources.

56. Mr SIN Chung-kai remained concerned about the effectiveness of the assistance provided by CSRC and requested SFC to provide a more detailed breakdown containing information/statistics, since CSRC became a signatory to the MMoU of IOSCO, on the number of cases in which assistance had been sought from CSRC to obtain information in the Mainland to facilitate SFC's investigation into suspected regulatory breaches of Hong Kong-listed issuers. Mr SIN also requested SFC to provide the details of the responses received from CSRC and/or cases that CSRC had followed up. In response, CEO/SFC said that as far as he could recall, there had not been any negative response from CSRC to SFC's requests for assistance in obtaining information for investigation of suspected breaches. CEO/SFC nevertheless took note of Mr SIN's request and agreed to provide further information on the subject after the meeting.

(Post-meeting note: Information provided by SFC as requested in paragraph 56 above was issued to members vide LC Paper No. CB(1)2312/06-07 on 30 August 2007)

57. Referring to the figures on enforcement actions taken by SFC in Table 4 of the information paper provided by SFC, Miss TAM Heung-man noted with concern that the majority of the cases which SFC had referred to other enforcement agencies for follow-up had ended with no further action taken. Miss TAM was concerned whether SFC/HKEx would maintain a list of listed companies which had been referred to other enforcement agencies and keep these companies under scrutiny.

58. In response, CEO/SFC advised that SFC would refer cases to relevant agencies where suspected breaches outside its purview were detected in the course of its investigation. A referred case would be outside SFC's purview once the investigation was taken up by the relevant agencies. SFC's role would be confined to providing information on the case to facilitate follow-up action by the agencies concerned. H(LD)/HKEx added that HKEx would refer cases to SFC or other enforcement agencies through SFC where suspected breaches of statutory requirements were involved. Meanwhile, HKEx would keep abreast of the development of these cases as in some cases, although the suspected breaches were not substantiated, the investigation might nevertheless provide useful information to HKEx in its consideration of its own disciplinary actions or as background information for future regulatory action.

VI. Issues relating to the listing of companies which are incorporated outside Hong Kong

(LC Paper No. CB(1)2008/06-07(06) — Paper provided by HKEx)

LC Paper No. CB(1)1270/06-07(01) — Paper on "HKEx statement regarding the listing of overseas companies" provided by the HKEx

LC Paper No. CB(1)1101/06-07(01) — Joint press release on "Joint policy statement regarding the listing of overseas companies" published by the HKEx and SFC on 7 March 2007)

59. At the invitation of the Chairman, H(LD)/HKEx briefed the Panel on HKEx's initiative to open the equity listing regime to issuers from overseas jurisdictions. He said that HKEx had been taking forward this key initiative under its Strategic Plan for 2007-09 to promote listing activities in Hong Kong. HKEx also had plans to enhance the interest of overseas investors in the Hong Kong market. The policy statement published jointly by HKEx and SFC on 7 March 2007 provided a clear road map for potential issuers in overseas jurisdictions. Promotional efforts were made by HKEx's Business Development Division, for example, through explaining the merits of listing in Hong Kong at events in several overseas markets. HKEx would continue its promotional efforts in this regard while taking a long term view on the subject and hence, was not expecting a large number of applications from overseas issuers in the near future.

60. Mr SIN Chung-kai opined that while overseas institutional investors might have shown interest in the financial market of Hong Kong, he was concerned whether and how HKEx would promote the Hong Kong market to retail investors overseas. In response, H(LD)/HKEx advised that both institutional and retail investors had shown interest in the financial market of Hong Kong. Referring to the interest of retail investors in Japan in a number of IPOs in Hong Kong, H(LD)/HKEx pointed out that these investors had been investing in the Hong Kong stock market through their intermediaries. HKEx would explore means to promote the Hong Kong market to retail investors overseas through their intermediaries as well as to continue with its efforts in communicating with institutional investors in Hong Kong to strengthen their confidence in the Hong Kong market.

VII. Any other business

61. There being no other business, the meeting ended at 12:00 pm.