

立法會
Legislative Council

LC Paper No. CB(1)1499/09-10

(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

Panel on Financial Affairs

**Minutes of special meeting
held on Monday, 21 December 2009 at 3:00 pm
in the Chamber of the Legislative Council Building**

- Members present** :
- Hon CHAN Kam-lam, SBS, JP (Chairman)
 - Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
 - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
 - Dr Hon Philip WONG Yu-hong, GBS
 - 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, JP
 - Hon KAM Nai-wai, MH
 - Hon Starry LEE Wai-king
 - Dr Hon LAM Tai-fai, BBS, JP
 - Hon Paul CHAN Mo-po, MH, JP
 - Hon CHAN Kin-por, JP
 - Hon CHAN Tanya
 - Hon Mrs Regina IP LAU Suk-ye, GBS, JP
- Members absent** :
- Hon Albert HO Chun-yan
 - Dr Hon David LI Kwok-po, GBM, GBS, JP
 - Hon James TO Kun-sun
 - Hon Vincent FANG kang, SBS, JP
 - Hon CHIM Pui-chung

Public officers attending : Agenda Item I
Mr CHENG Yan-chee, JP
Deputy Secretary for Financial Services and the Treasury
(Financial Services)

Attendance by invitation : Agenda Item I
Mr Keith LUI
Executive Director
Supervision of Markets
Securities and Futures Commission

Mr Charles GRIEVE
Senior Director
Corporate Finance Division
Securities and Futures Commission

Mr Mark DICKENS
Head of Listing
Listing Division
Hong Kong Exchanges and Clearing Limited

Mr Roger LEE
Head of Listing Operations
Hong Kong Exchanges and Clearing Limited

Ms Christine KAN
Senior Vice President
Listing Division
Hong Kong Exchanges and Clearing Limited

Clerk in attendance: Ms Rosalind MA
Chief Council Secretary (1)5

Staff in attendance : Ms Anita SIT
Chief Council Secretary (1)4

Mr Noel SUNG
Senior Council Secretary (1)4

Ms Haley CHEUNG
Legislative Assistant (1)8

I Issues relating to the listing of Asian Citrus Holdings Limited

- (LC Paper No. CB(1)729/09-10(01) — Administration's paper on issues relating to the listing of Asian Citrus Holdings Limited
- FS09/09-10 — Fact Sheet on a summary of local press reports on the share price volatility of Asian Citrus Holdings Limited on its debut trading in Hong Kong from 26 November to 17 December 2009 prepared by the Research and Library Services Division of the Legislative Council Secretariat (Chinese version only)
- LC Paper No. CB(1)729/09-10(02) — Hong Kong Exchanges and Clearing Limited's (HKEx) press release dated 4 December 2009 on New arrangements for dissemination of information concerning companies listed by way of introduction
- LC Paper No. CB(1)729/09-10(03) — HKEx's press release dated 26 November 2009 on Statement regarding shares of Asian Citrus Holdings Limited
- LC Paper No. CB(1)598/09-10(01) — Hon Starry LEE's letter dated 3 December 2009 (Chinese version only)
- LC Paper No. CB(1)556/09-10(01) — Hon CHAN Kam-lam's letter dated 27 November 2009 to the Secretary for Financial Services and the Treasury (Chinese version only)
- LC Paper No. CB(1)657/09-10(01) — Administration's response to Hon CHAN Kam-lam's letter dated 27 November 2009

- LC Paper No. CB(1)657/09-10(02) — Submission from a member of the public (Restricted to members only) (Chinese version only)
- LC Paper No. CB(1)729/09-10(04) — Submission from Hong Kong Institute of Investors (Restricted to members only) (Chinese version only)
- LC Paper No. CB(1)729/09-10(05) — Submission from 亞洲果業苦主聯盟 (Restricted to members only) (Chinese version only))

Declaration of interests

Ms Starry LEE declared interest that her employer was one of the auditors for Asian Citrus Holdings Limited (Asian Citrus), but she had not been involved in auditing the company, nor her employer was involved in the preparation of the listing documents for Asian Citrus.

2. Mr Paul CHAN declared interest that his accounting firm had recently merged with another accounting firm which, prior to the merger, had assisted Asian Citrus in preparing the documents for listing on the London Stock Exchange.

Timing for discussion of the item

3. Mr KAM Nai-wai expressed concern on whether the Panel should discuss issues related to a particular listed company while the shares of the company were being traded at the Stock Exchange of Hong Kong Limited (the HK Exchange), and asked whether it would be more appropriate to discuss the issues after the HK Exchange had closed trading at 4 pm. Mr KAM pointed out that members might raise questions regarding possible breaches of the listing rules and misconduct of market participants, which might affect the company's share price. Ms Starry LEE said that some market participants had raised similar concerns. She sought the views of the representatives of the Administration, the Securities and Futures Commission (SFC) and the Hong Kong Exchanges and Clearing Limited (HKEx) on the appropriateness of proceeding with the discussion while the shares of Asian Citrus were being traded at the HK Exchange.

4. The Chairman remarked that members should focus their discussion on the arrangements for listing a company by way of introduction, the events surrounding the suspension of dealings of Asian Citrus shares two hours after its listing, and the arrangements for ensuring that investors received accurate and adequate information of a newly listed company, with a view to improving the listing arrangements and protecting the interests of investors. The discussion would not touch on the business of Asian Citrus, and hence should not affect the trading at the stock market.

5. Mr Mark DICKENS, Head of Listing, Listing Division, Hong Kong Exchanges and Clearing Limited (HL(LD)/HKEx) remarked that the Panel should decide the issues to be discussed at the meeting. If members would discuss on issues such as the liability of company directors and claims for compensation against a listed company, such information could be potentially price sensitive, given that the proceedings of the meeting were being broadcast live.

6. Mr Paul CHAN opined that it was unsafe to proceed to discuss the item at this juncture, as the ensuing discussion would inevitably touch on Asian Citrus, and might cause misunderstanding or misinterpretation among market participants. He was of the view that the meeting should be held outside the trading hours of the HK Exchange and London Stock Exchange, say between 8 am and 10 am or on a Saturday, so that investors might make their investment decisions after knowing the deliberations of the Panel. Ms Emily LAU, Mr CHAN Kin-por and Mr KAM Nai-wai shared the view of Mr Paul CHAN. Ms LAU said that discussion would unavoidably involve comments on the listing of Asian Citrus, and the Panel might be held responsible for any subsequent events affecting the stock market. Mr CHAN Kin-por and Mr KAM were of the view that the meeting should be held after HK Exchange had closed trading at 4 pm.

7. Mr Andrew LEUNG and Mr Jeffrey LAM opined that the Panel should discuss the issue only after SFC had completed an investigation report on the Asian Citrus incident. This would avert disclosure of any market sensitive information during the discussion. Mr LAM remarked that if members agreed to proceed to discuss the item at the meeting, members should be cautious that price sensitive information would not be disclosed during the discussion, or investors affected by any share price fluctuation resulting from such disclosure would lodge complaints. Ir Dr Raymond HO concurred with Mr LEUNG and Mr LAM's view and said that the Panel should be cautious in dealing with the issue, as it might involve disclosure of price sensitive information. Ir Dr HO opined that in line with the usual practice such as the examination of the Director of Audit's Reports by the Public Accounts Committee, the Panel should consider the issue based on SFC's findings in its investigation.

8. Ms Starry LEE remarked that many small investors had made complaints to Members about the listing and the dealings of Asian Citrus on the first day of listing, and the Panel should discuss the matter as soon as possible as SFC would take time to complete its investigation into the incident. Ms LEE opined that since the events relating to the first day of listing of Asian Citrus were already known to the public, and based on HKEx's advice that only matters such as those related to the directors' liability were price sensitive information, the Panel might proceed to discuss the item either immediately or after the HK Exchange had closed trading at 4 pm. Mr Abraham SHEK echoed Ms LEE's view and said that the listing rules and arrangements were highly transparent, and the share prices fluctuated due to many factors, rather than purely based on the Panel's deliberations. The Panel should focus on reviewing the arrangements for listing by way of introduction and the events on

the first day of the listing of Asian Citrus, which were already in the public domain. Mr SHEK opined that discussion on the item would not affect Asian Citrus's share prices.

9. Mrs Regina IP pointed out that even if members agreed to discuss the item after the HK Exchange had closed trading at 4 pm, by that time the London Stock Exchange would commence operation, and one might argue that it would still be unsafe to discuss the item as Asian Citrus was also listed on the London Stock Exchange. Given that SFC would take time to complete its investigation into the Asian Citrus incident, the grievances of the small investors involved could not be addressed timely if the meeting was postponed to a day when SFC's investigation report was available. Mrs IP opined that even if the Panel discussed the item after the closure of the stock market(s), it could be argued that the discussion would affect share prices on the next day. Mrs IP doubted whether it was the Panel's practice not to discuss issues relating to a listed company while the shares of the company were being traded in the market.

10. Mr KAM Nai-wai recalled that the Panel discussed the incidents relating to Citic Pacific Limited and PCCW when the dealings of the shares of the two listed companies were suspended.

11. The Chairman reiterated that the Panel should focus its discussion on the arrangements for listing of companies by way of introduction based on the information provided by the Administration, which had already been publicized. He opined that since the discussion would not be related to the operation of Asian Citrus, it should not involve any price sensitive information, nor affect the operation of the stock market. The Chairman opined that if members were over-cautious about the issue, the Panel would not be performing its functions.

12. After seeking members' views, at 3:34 pm, the Chairman declared that the meeting was adjourned and would resume at 4 pm for discussion of the item.

13. The meeting resumed at 4:00 pm.

Briefing by the Administration

14. At the invitation of the Chairman, Deputy Secretary for Financial Services and the Treasury (Financial Services) (DS(FS)) advised that HKEx had provided a paper reporting on the details of the events occurred on the first day of the trading in the shares of Asian Citrus. The paper had incorporated the comments of SFC.

15. Executive Director (Supervision of Markets) Securities and Futures Commission (ED(SM)/SFC) briefed members that the shares of Asian Citrus which was previously listed in London's Alternative Investment Market (AIM) and PLUS was listed on HK Exchange by way of introduction on 26 November 2009. An unusual price volatility of the shares was found on 26 November 2009 and the trading of the shares was suspended by HK Exchange at 11:57 am for the purpose of

maintaining an orderly market. HKEx had already referred the relevant trading details to SFC for follow-up. SFC had an established mechanism for following up unusual market activities and was currently in the process of making enquiries and collecting information about the incident. SFC had discussed with HKEx after the incident on measures to enhance the current arrangements of information disclosure, and HKEx made an announcement on 4 December 2009 about a new information disclosure arrangement to be applied to listing by introduction. HKEx was also studying the feasibility of introducing a market maker mechanism. SFC would keep liaising with HKEx on ways to enhance the market operations.

16. HL(LD)/HKEx said that listing by introduction was one of the accepted ways of listing a company on the HK Exchange. There were three companies listed by introduction in 2009. They all had shares listed on another exchange originally and had their second listing on HK Exchange. In addition, there was a spin-off case under the listing by introduction in 2009. The procedures for vetting and approving the listing documents of companies seeking listing by introduction were very similar to those for vetting and approving a prospectus. The involvement of HKEx and SFC in the procedures did not absolve the directors of the newly listed company and its sponsor of their responsibilities for the listing document. HKEx would try to ensure the company with its shares already listed on an overseas exchange had an adequate number of shares available for trading in Hong Kong on the first day of trading and for settlement under the T+2 requirement. In the case of Asian Citrus, about 80.5 million shares equivalent to more than HK\$ 400 millions worth or eight times of the minimum value required by the Listing Rules had been moved to the Hong Kong Share Register and were available for trading by the time the stock was listed. On 23 November 2009, the sponsor of Asian Citrus had confirmed no comment on the HKEx's normal practice of extracting the net tangible asset value (NTAV) per share set out in the listing document as at 30 June 2009 for display on the trading screen. HKEx uploaded onto its website on 23 November 2009 a formal notice which was an announcement made by Asian Citrus to confirm that the commencement date of stock trading was 26 November 2009. The copies of the listing document were available at the sponsor's address. HL(LD)/HKEx referred members to pages 6 and 7 of HKEx's paper which extracted the information available in Asian Citrus's listing document and advised that a Chinese language newspaper had reported the facts about Asian Citrus on 24 November 2009 correctly. He also referred members to a price-volume chart attached to the paper which showed a high price of HK\$51.25 per share set in the pre-opening auction session on 26 November 2009. The officers of both HKEx and Asian Citrus's sponsor had noticed and commented on the high price. The share price then dropped rapidly to the low HK\$20 range by 10:23 am and that, as far as HKEx could determine, no further action was taken by both the sponsor and the listing company after the listing ceremony. An investment manager called HKEx at 10:45 am suggesting that the market was misinformed and the call lasted until 11:10 am when the necessary verification of information and escalation to a more senior staff of the HKEx was completed. Another call was received by the Listing Division of the HKEx at 11:21 am which complained that the market was misinformed and the call was also escalated to the senior management. The issue was escalated to the Head of Listing of HKEx at 11:45 am, who then

consulted the Chief Executive of the HKEx and directed the suspension of the trading in the shares of Asian Citrus for the purpose of maintaining an orderly and informed market. The suspension took effect at 11:57 am.

17. HL(LD)/HKEx said the trading on the incident day was then reviewed and information was passed to SFC for appropriate action. HKEx had discontinued the practice of displaying information in the free text area of the AMS/3 trading screen for companies listed by way of introduction, and required a company listed by introduction to make an announcement, preferably on the day before its first trading day, to provide information about trading in other markets and any other changes of the information in the listing document. HKEx was open to suggestions on additional information that should be included in the announcement issued by the companies listed by introduction. HKEx would consider the suggestions case by case and try to work out a new model for that information with the market as a whole. He believed the incident was not caused by inadequate stock liquidity but there might be room for improving the transmission of shares between various markets. He also advised that HKEx was exploring the feasibility of introducing a market maker mechanism.

Discussion

18. The Deputy Chairman enquired about the number of companies which had been listed by way of introduction in the past and whether guidelines that covered this kind of listing was available for public access. HL(LD)/HKEx confirmed there had been four companies listed by way of introduction in 2009 including (a) Asian Citrus; (b) Hutchison Telecom Hong Kong Holdings which was a spin-off case in which its group of shareholders was the same as that in its parent company; (c) RCG Holdings Limited; and (d) China XLX Fertiliser Limited. RCG had unusual trading activities on its second trading day and the share price of China XLX Fertiliser Limited had a sharp rise after the pre-opening session before it resumed to normal. The Deputy Chairman queried if it was a matter of concern for the fact that three out of four companies listed by introduction had unusual market activities. HL(LD)/HKEx replied that it was a matter of concern and additional steps were being considered.

19. The Deputy Chairman asked whether the documents used for listing by introduction were treated exactly the same as a prospectus; or in other words, whether prosecution could be made under existing legislation if misleading information was provided in the documents used for listing by introduction. Senior Director (Corporate Finance Division), Securities and Futures Commission (SD(CFD)/SFC) replied that the listing document and the prospectus were treated the same. He would not comment on whether prosecution could be made on misleading information in the listing document but could confirm that SFC would raise objection to the listing if there was misleading or inadequate information found in the listing document.

20. The Deputy Chairman further asked whether a minimum requirement on the number of shares in circulation existed for the purpose of eliminating the chance of price or market manipulation and whether the listing by introduction would be disapproved if such a minimum requirement was not met. HL(LD)/HKEx confirmed that the listing would not be allowed if the shares in circulation were inadequate. The minimum requirement expressed in share value under the Listing Rules was HK\$50 million. The shares available in the case of Asian Citrus were equivalent to HK\$400 million worth and the supply of shares was considered adequate. The Deputy Chairman further enquired on why the share price increased sharply at the pre-opening session if the supply of shares was adequate. HL(LD)/HKEx replied he did not know the reason for it.

21. Ms Tanya CHAN said she had received information from some organizations about the trading of the shares of Asian Citrus during its pre-opening session and trading session on 26 November 2009. The information revealed that the share price dropped from HK\$51.25 during the pre-opening session with 840,000 shares traded over-the-counter to HK\$5.94 upon the opening of the trading session at 10:00 am. Ms CHAN asked whether the relevant investigation would cover these pre-opening session transactions and the almost 90 percent drop of share price. Ms CHAN also queried why the suspension of the trading in the shares was made as late as 11:57 am but not at an earlier time when the above transactions occurred.

22. HL(LD)/HKEx said SFC was following up on the identities of those who conducted and benefited from the transactions and the instructions they passed to the brokers on 26 November 2009. He could not give comment on the matter which had already been referred to the SFC. HKEx could not ask any further question on this matter to prevent duplication with SFC's investigation. However, based on his personal speculation without the support of facts, these transactions might be off-market transactions that were reported to the HK Exchange but not the transactions taken place through the HK Exchange and might be conducted between two brokers before the market opened, which were admitted under the Listing Rules.

23. Mr KAM Nai-wai said that he had a number of observations about the incident. Firstly the listing document of Asian Citrus did not prominently indicate the information about the 10 for 1 stock split; secondly, the information shown on the Teletext did not reflect the implication of the 10 for 1 stock split; and thirdly, the share price was HK\$51.25 at the pre-opening session and HK\$5.94 for a manual trade transaction at 10:00 am. Mr KAM queried whether the occurrences of the above three events were just a coincidence or actually caused by the negligence of the regulators. He pointed out that the NTAV shown on the listing document was dated 30 June 2009 and queried whether it should be the duty of HKEx or SFC to ensure the NTAV was updated and displayed at a prominent place in the listing document. Mr KAM enquired whether the share price decrease from HK\$51.25 to HK\$5.94 would be an item of investigation and what had been done by the regulators in the investigation so far. He further asked whether the investigation would cover how far the regulators were negligent in performing their duties on information disclosure.

24. HL(LD)/HKEx said that he could not comment on the scope of the investigation which was a statutory decision to be made by SFC. SFC was also the regulator that determined whether HKEx had fulfilled its duties in this incident. He believed there was adequate information available for investors, which included a formal notice mentioning the 770.5 million shares in issue, the market capitalization of about £354.5 million and some other things happened on the shares. It was a matter for market participants to decide where they would choose to get this information and how they would choose to interpret it. One Chinese language newspaper reported the information correctly on 24 November 2009. He explained that 30 June 2009 was the end of Asian Citrus's financial year and the NTAV figure as at 30 June 2009 displayed in Asian Citrus's listing document was the figure audited on the same date. It was not possible to get a more up-to-date asset or earning figure without a complete fresh audit each time. But, the accounts shown in the listing document or prospectus must be dated not more than six months before the date of listing. HL(LD)/HKEx said that there was a risk the information could become stale and if the information was seriously stale, the company concerned should make appropriate announcement.

25. Mr KAM Nai-wai further enquired why the Teletext did not display the information about the 10 for 1 stock split.

26. Ms Starry LEE opined that HKEx was expected to fulfil its duty on information disclosure by providing investors with information in a sufficient, fair and open manner. Pointing out that it was the common practice of investors to check the information shown in the Teletext, Ms LEE queried whether HKEx had given due consideration to protecting investors' interests in not annotating in the Teletext that the NTAV dated 30 June 2009 was the value before the stock split.

27. HL(LD)/HKEx replied that it was not HKEx's practice to interpret or alter the data in the listing document without receiving such a request from the sponsor of the company concerned. It was the sponsor and the directors of the company who were responsible for the information. In the Asian Citrus case, HKEx adopted the normal practice of extracting the NTAV with the correct date for the sponsor to comment and the sponsor did not request any adjustment of the extracted information. It was not the practice of HKEx to interpret the information for investors or give investment advice. HL(LD)/HKEx said the trading screen did not show the message of the stock split but it gave the "as at" date. The stock split information was posted on the HKExNews website on 23 November 2009, three days before the trading screen was put up.

28. ED(SM)/SFC explained that the way the information was displayed in the Teletext in the Asian Citrus case followed the practice normally applied by HKEx to stocks listed by introduction. HKEx had changed this practice after the Asian Citrus incident such that the companies listed by introduction were required to announce the last closing price of their shares on any other markets on or before the first day of trading on the HK Exchange.

29. Ms Starry LEE mentioned that she had received some 300 complaints since the occurrence of the incident. Many investors were furious at the way SFC and HKEx had handled their complaints, and they complained that no one in the HKEx answered their phone calls and no one in the SFC was available to receive them. It was only after the investors had organized themselves in staging protests and some Members had voiced out the investors' concern that an information paper was provided for this meeting to explain the incident. Ms LEE asked whether SFC and HKEx would make an apology to the investors on the way the latter's complaints had been handled.

30. ED(SM)/SFC said that SFC had received about 200 complaints on the incident and was handling them and communicating with the complainants according to an established procedure.

31. HL(LD)/HKEx said that it was not true to say that the HKEx had not met anyone because the Corporate Communication Unit of the HKEx had met with representatives of the investors on the date of incident. He had also met with the demonstrators and received two petitions on the Friday before this meeting. It was not correct to say HKEx had neglected investors' interests or concern; because after the incident, HKEx had indeed announced in full the actions to take and the benefits associated with the actions so that investors would know exactly what would happen. HKEx had referred the matter promptly to SFC which had the power to enquire and determine what exactly had happened. HKEx had also amended the relevant procedures to mitigate the chance of recurrence of similar incidents.

32. Mrs Regina IP opined that HKEx should know very well listing by introduction which involved trading in more than one market would create a high opportunity for hedging and in this connection, it was important to ensure accurate and updated information was provided to the investors. Based on the fact that the NTAV shown in the Teletext was a figure before the stock split, Mrs IP asked if the HKEx would accept the comment that they had failed to ensure an orderly and informed market and they should compensate for the investors concerned.

33. HL(LD)/HKEx replied that the information on the trading screen was extracted from the listing document and confirmed by the sponsor of Asian Citrus. The information on the website including the stock split, the market capitalization and number of shares in issue was also provided by the company. He confirmed that no information was generated by HKEx.

34. Noting that HKEx passed the responsibility for information to the sponsor of the company concerned, Mrs Regina IP referred members to paragraph 10 of HKEx's paper which mentioned a listed company was under an obligation to keep the investing public informed of relevant information as soon as reasonably practicable. Mrs IP queried whether it was the sponsor of the company concerned or it should be HKEx to ensure the listed company had fulfilled this obligation.

35. HL(LD)/HKEx replied that the listing document and the formal notice were vetted by HKEx and the SFC with the same degree of care and same standard as if they were a prospectus under the Companies Ordinance, even though the legal responsibilities for the listing document were governed by the Securities and Futures Ordinance which were slightly different from but parallel to the legal responsibilities specified under the Companies Ordinance. A company seeking listing by introduction was required to provide documents which included all material information sufficient for investors to form a fair and justifiable opinion. HL(LD)/HKEx advised that HKEx had the jurisdiction to discipline listed companies but since the matter had already been referred to its statutory regulator, HKEx adopted the normal practice of suspending all enquiries it might otherwise make in respect of the case until HKEx received further notice from its statutory regulator to resume the enquiry. He added that the statutory regulator has the power to compel a truthful answer in the investigation but HKEx could only request listed companies to provide it.

36. Mrs Regina IP asked HKEx to advise whether it should be the information about the share before the stock split or after the stock split that was important to the investor and which one of the two pieces of information should be put up on the Teletext.

37. HL(LD)/HKEx replied the information put up on the Teletext was confirmed by the sponsor as a practice adopted by HKEx for many years and additional information was also available in the listing document and formal notice. HKEx would not make judgement on the relative importance among the different pieces of information but would ensure all required information was available to investors.

38. Mrs Regina IP remarked that the change made by HKEx after the Asian Citrus incident to discontinue the practice of displaying information in the Teletext for companies listed by introduction already indicated that the previous practice of putting up the NTAV value as at 30 June 2009 was problematic.

39. HL(LD)/HKEx disagreed that the practice was problematic and advised that the practice had never been a subject of complaint before the incident. He said once the complaint on the practice was received, HKEx immediately re-considered and changed the practice as a response to the concern of investors.

40. Mr Paul CHAN pointed out that the NTAV dated 30 June 2009 provided in the Teletext on 26 November 2009 was not wrong but was not full and complete because it did not reflect the effect of the stock split. He commented that HKEx should have stated clearly that the NTAV provided on 26 November 2009 had not reflected the stock split effect so as to avoid misleading investors.

41. ED(SM)/SFC replied that there was a limit on the amount of information that could be displayed on the text area of the Teletext. Investors were not expected to make an investment decision based on a single piece of information and should refer to information in other sources when such information was available.

HL(LD)/HKEx said that comprehensive information including listing document and formal notice on the HKExNews website was already available for investors to make decisions. He noted that different information vendors reported the trading screen information differently.

42. Mr Paul CHAN remarked that the replies of SFC and HKEx could not answer his question. Mr CHAN then referred members to paragraph 31 of HKEx's paper which mentioned the Chief Executive of the HKEx had noted around 10:00 am that the trading activities for Asian Citrus shares were unusual and subsequently there were a number of phone complaints from 10:00 am onwards until the suspension of the trading at 11:57 am. Mr CHAN queried what monitoring action the HKEx had made after they had noted the unusual situation around 10:00 am.

43. HL(LD)/HKEx referred members to the chart attached to HKEx's paper. He said that the trading activities concerned were spotted in the pre-opening session. The trading was monitored by the Risk Management Division of HKEx and, as far as he believed, by SFC. The share price then dropped rapidly and stayed within the range of HK\$20. It was difficult to judge if this share price was normal and what the right price should be because the share had not been traded in the Hong Kong market before. HKEx took action by suspending trading in the share concerned after an investment manager who was a professional in the market called HKEx around 10:45 am to express the concern that the market had misunderstandings. Suspension of trading was not a step taken lightly because it could be harmful to investors. It was only at 10:45 am that attention was drawn to the possibility that the share price within the range of HK\$20 was wrong.

44. Mr CHAN Kin-por queried whether HKEx could detect the occurrence of the incident using its own monitoring mechanism if it had not received a phone call from the investment manager. Mr CHAN opined that the incident could have been avoided if the information in the Teletext was updated with the latest closing price of the shares of Asian Citrus in the London Stock Exchange. Mr CHAN enquired about the coverage and amount of information that a company to be listed by introduction was required to disclose and in what circumstances investors would be compensated.

45. HL(LD)/HKEx replied that HKEx did not consider they had been negligent or had erred in this matter. HKEx had a monitoring system, but HKEx could not judge the correct price of the shares in the absence of historical stock information in Hong Kong. It was within expectation that the share price would be traded at a price above those in other markets because the usual purpose of listing by introduction was to access markets where shares were traded at a higher price. The trading on the shares of Asian Citrus would have continued throughout that day if HKEx had not received complaints from the market. The abnormal share price only occurred within a short time on 26 November 2009 and was not obvious. Mr CHAN Kin-por pointed out the closing price of the Asian Citrus shares in the HK Exchange on 26 November 2009 could not be regarded as normal. He queried whether a monitoring mechanism depending on charts only was desirable. Mr CHAN also opined that the level of alertness of HKEx in the incident was low.

46. On Mr CHAN Kin-por's enquiry about the compensation issue, HL(LD)/HKEx replied that HKEx did not accept it had done anything unjustified in the incident that required compensation, and he could not comment on the compensation issue in other cases. Mr CHAN Kin-por further enquired about the channels available for investors to seek compensation. HL(LD)/HKEx said he could not give legal advice on this. The Chairman then invited the SFC to advise what channels were available for investors or market participants to seek compensation if SFC's investigation results confirmed that market misconduct had taken place. ED(SM)/SFC replied that, if violations against the rules and ordinances was found in this incident, SFC would disclose the information on the action to take if there was any. People who suffered from the violations could sue for compensation through litigation.

47. Mr WONG Ting-kwong opined that the incident involved human error. Mr WONG queried whether a simple discontinuation of the practice of displaying information in the Teletext for companies listed by introduction was a desirable solution from the perspective of protecting investors' interests and meeting the requirement on information disclosure in Hong Kong as an international financial centre. Mr WONG asked what actions HKEx and the SFC would take in light of the occurrence of the incident.

48. HL(LD)/HKEx replied that HKEx would require companies to be listed by introduction to provide the latest closing price of their shares on any other markets on or before the first day of trading on the HK Exchange. He believed there were adequate liquidity provisions but HKEx would take extra steps to ensure an adequate supply of shares which were well spread out before the trading of the shares was allowed on its first day in HKEx. HKEx was also studying the feasibility of a market maker mechanism for arbitrage trading between overseas exchanges and the HK Exchange. HKEx, after consulting market participants, might require sponsors to provide more up-to-date estimated information closer to the day of listing but he remarked that the sponsors were naturally reluctant to provide such real time information which had not been verified to the audit standard. HL(LD)/HKEx said that the above measures did not totally resolve the problem of share price volatility on its first day trading which was inherent in the price formation process when the price might fluctuate according to the different views of buyers and sellers towards the company's prospect until a consensus price could be reached. HKEx would closely monitor the trading price and would refer the matter to the statutory regulator if suspicious market activities were detected.

49. Mr WONG Ting-kwong opined that the incident was not as simple as a problem of share price volatility on its first day trading but a problem about information disclosure. The information displayed in the Teletext should be comprehensive and should include the latest closing price of the shares on the overseas market(s) concerned. Mr WONG expressed doubt on whether the regulators would learn the lesson from this incident to prevent recurrence of similar incidents.

50. HL(LD)/HKEx replied that HKEx would definitely learn from the experience in this incident and that a company to be listed by introduction should disclose the latest share price on the overseas market(s) concerned. This latest price would not be displayed in the Teletext but would be publicized in the form of an announcement in the HKExNews website together with other information such as the listing document.

51. Ms Starry LEE then enquired whether HKEx, when asking for the sponsor's comment on the NTAV to be posted on the Teletext, had queried the company sponsor of Asian Citrus on how far the figure was updated to reflect the implication of the 10 for 1 stock split. Ms LEE also asked whether HKEx, when vetting the content of the listing document, had reminded the sponsor that the information such as the stock split should be displayed prominently in the listing document.

52. HL(LD)/HKEx replied that sponsors were reminded in all times to display trading information prominently in the listing document, but he was not aware of whether the sponsor of Asian Citrus had been asked specifically on whether the NTAV value had reflected the implication of the stock split. The Chairman said it was problematic that HKEx simply accepted the information provided by the sponsor to be the information displayed on the Teletext. The Chairman also expressed concern about the assumption made by HKEx that investors would not depend on the Teletext information only and would refer to other information sources as well before making their investment decisions.

53. Mr KAM Nai-wai also expressed doubt on whether HKEx had really learned the lesson from the incident. As HKEx simply put up the information provided and confirmed by the sponsor on the Teletext, he queried whether HKEx had fulfilled its duties and responsibilities on information disclosure. Mr KAM said that the HKEx took action only after complaints were received from the market and queried whether the HKEx was negligent in performing its duty in this incident.

54. ED(SM)/SFC replied the Teletext arrangement and the current arrangement on information disclosure were subject to improvement. HKEx had adopted a new arrangement which required companies listed by introduction to provide the latest closing prices of their shares in any other markets on or before the first day of trading on the HK Exchange.

55. Ms Starry LEE said, based on her understanding in the meeting, the HKEx did not consider they had erred in the incident. Pointing out that the NTAV put on the Teletext was important information for investors in making decisions and the NTAV dated 30 June 2009 in the case of Asian Citrus was not the full and complete information, Ms LEE queried whether SFC, as the regulator of HKEx, was satisfied with the HKEx's practice of putting up such information on the Teletext, and whether SFC would consider that HKEx was negligent in performing its duty in the incident. She also asked whether SFC would consider it fair to investors if HKEx did

not consider providing compensation for those investors suffering losses in the incident.

56. ED(SM)/SFC replied that there was room for improvement of the existing arrangements for listing by introduction. HKEx would study the feasibility of some improvement measures. He believed that such improvement measures would be helpful in enhancing the protection of investors' interests and information disclosure to investors in long term.

57. The Chairman said he agreed that the investors should refer to the information in the listing document before making their investment decisions but it was difficult for investors to interpret the worth of Asian Citrus's shares on the first trading day based on the information of the listing document. Investors would assume the information displayed in the Teletext was the most reliable information for them to make investment decisions. However, in the Asian Citrus case, the outdated NTAV as at 30 June 2009 displayed in the Teletext was a piece of misleading information for investors. The Chairman queried whether HKEx had fulfilled its duty on information disclosure in this incident if it simply displayed the information provided by the sponsor without making its own assessment.

58. The Chairman pointed out the 10 for 1 stock split took place as early as 2 November 2009 which was more than twenty days before the first trading day of Asian Citrus shares in the HK Exchange. The latest closing price of the shares of Asian Citrus in the London market was also available one day before the first day trading in HK Exchange. He queried why HKEx did not display the up-to-date information in the Teletext. He further said that while the latest closing price of the shares of Asian Citrus in London was HK\$5.89, the opening share price in Hong Kong was HK\$51.25. Such a significant price difference was not reasonable, and this should give rise to the concern of whether there was market manipulation. The share price of Asian Citrus dropped by around HK\$10 every 10 minutes since the opening of the trading session on 26 November 2009 and this price movement was obviously unusual. He disagreed with the attitude of some representatives of HKEx who described the incident as "unfortunate" on the day of the incident. He urged both HKEx and SFC to investigate the incident in depth and handle the matter seriously for the sake of protecting investors' interest and maintaining the reputation of Hong Kong as an international financial centre.

59. The Chairman also queried why the HKEx did not order suspension at an earlier time when the share price was much higher than HK\$20, but took action only after complaints from market participants had been received. Unlike listing by way of initial public offering, the first day trading of shares listed by way of introduction was limited to those market participants who had the shares in hand. It should not be difficult for SFC to track the transactions made by this small number of participants. He therefore urged SFC to take forward the investigation process promptly.

60. ED(SM)/SFC replied that SFC would consider seriously the opinions of the Chairman and appreciated that some of the opinions would be good for the long term

development of the market concerned. He stated that SFC would continue studying alternatives with HKEx to enhance the existing mechanisms in tandem with the changing requirements of market participants and the evolution of the market. HL(LD)/HKEx replied that HKEx was very conscious of staying ahead of the markets and was open to suggestions of new measures.

61. The Deputy Chairman asked whether HKEx would temporarily suspend any listing by introduction until the investigation result was made available or until the factors leading to the Asian Citrus incident could be identified by SFC. HL(LD)/HKEx advised that HKEx would not proceed with any case of listing by introduction unless HKEx and SFC were satisfied with the availability of adequate precautionary measures, which might take place before or after SFC had completed the investigation of the Asian Citrus incident.

62. Mr KAM Nai-wai noted the investors had complained that the NTAV of RMB 37.3 was shown only after more than 100 pages in the listing document and the information about the 10 for 1 stock split was mentioned only after around 300 pages. He opined that it was not realistic to expect investors to go through a document of more than a few hundred pages on the internet, and asked whether the relevant authority would resume the previous practice of using newspaper advertisement to announce important trading information about a company to be listed.

63. HL(LD)/HKEx explained that under the previous practice, only one Chinese and one English newspaper were selected for posting the advertisement and there was a chance that investors who did not happen to read the selected newspaper would miss the information. The HKExNews website in which the trading information was currently posted seemed to be heavily used with more than one million hits a month. Mr KAM Nai-wai remarked he was not suggesting cancellation of the current practice of posting information on the HKExNews website but would like the relevant authority to consider using newspaper advertisement as an additional means of posting trading information.

64. Ms Tanya CHAN enquired about the time required to complete the investigation and the current progress of the investigation.

65. ED(SM)/SFC replied that SFC had an established mechanism to handle unusual market activities and was now in the process of making enquiries and collecting information in respect of the Asian Citrus case. It would take time for SFC to contact the brokers and their clients involved in the transactions, and he could not confirm the time required to complete the process.

66. The Chairman remarked that the volume of transactions involved in the incident was limited and the process should not take long. Ms Tanya CHAN opined that the SFC was experienced in conducting investigation and thus should have defined the scope of the investigation such as the volume and period of transactions involved in the incident. Ms CHAN asked the SFC to estimate the time required to

complete just the information collection process. ED(SM)/SFC replied that he could not estimate the time required but the SFC would follow the established procedures and practices in handling the matter.

67. Mr KAM Nai-wai and Ms Starry LEE commented that since the number of transactions involved in the incident was limited, the investigation should not take long if the SFC would put the task of investigating the incident as its priority item. They asked SFC to provide a clear indication of the time required to complete the investigation of the incident. The members also stressed that many investors wanted to know the result of the investigation, which was necessary for them to pursue their claims for compensation.

68. ED(SM)/SFC replied that SFC had an established mechanism for handling cases involving unusual market activities and would follow the established procedures to handle the Asian Citric incident. SFC would complete the enquiry as quickly as possible but he could not confirm the time required to complete it.

69. Mr KAM Nai-wai asked whether the SFC investigation would focus on the trading activities in both the pre-opening and trading sessions. ED(SM)/SFC replied that SFC would collect the information related to the scope of its enquiry.

70. Ms Starry LEE commented that the investors would feel disappointed as they did not see any commitment made by SFC on the time required to complete the investigation. Ms LEE asked whether the SFC would meet the investors regularly to keep them informed of the progress of the SFC investigation. ED(SM)/SFC replied that SFC would keep communicating with the investors if the investors so requested.

71. Mrs Regina IP enquired about the channels available for investors to seek compensation and whether the Administration would amend the ordinances concerned if the channels available were not adequate. DS(FS) replied that the provisions in section 281 and 305 under the Securities and Futures Ordinance specified that a person who had committed a relevant act in relation to market misconduct under the civil regime or a person who had contravened any provision which prohibited market misconduct under the criminal regime shall be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the market misconduct or contravention. He explained that if the Market Misconduct Tribunal or the Court ruled that a person had committed an act in relation to market misconduct or had contravened the relevant criminal provisions, the existing ordinance allowed the parties concerned to seek compensation through civil actions.

72. Mrs Regina IP further enquired whether SFC would refer the case to the Market Misconduct Tribunal or the Court and, after the Tribunal or Court ruled that market misconduct or contravention of law did exist, whether the investors concerned were required to bear the cost of the legal action to seek compensation.

73. DS(FS) replied that the SFC would decide whether a case should be referred to the Market Misconduct Tribunal or the Court, based on the nature of the individual case and information available. Investors initiating legal action would have to bear the litigation cost, but if the court or tribunal ruled that market misconduct had taken place, the investors could rely on such findings in their action to seek compensation.

74. The Chairman reminded members that since the shares owned by an individual investor might be purchased on the market from another individual investor, the litigation would possibly involve the relationship among individual investors themselves and not necessarily involve the relationship between an individual investor and the listed company in this incident. In this connection, the Chairman opined that, despite the comment just given by DS(FS), even if the Court or Tribunal ruled that market misconduct had taken place in the incident, there was no guarantee that the investors suffering losses in the incident would be able to recover their losses through legal action. Investors should not have an unrealistic expectation in this regard.

75. At 5:36 pm, the Chairman suggested and members agreed to extend the meeting up to 5:45 pm.

76. Ms Emily LAU opined that if the SFC investigation had not been completed, then no conclusion should be drawn in the meeting on whether any person had erred in the incident. In this connection, Ms LAU wanted to clarify if such conclusion had been drawn already or not. The Chairman clarified that no member had stated in the meeting that there was a conclusion already drawn on whether any person had erred but the regulators had mentioned in the meeting that they did not accept there were problems in the way they had handled the incident. Ms Emily LAU further asked whether there was a possibility that the outcome of the investigation would identify the person who had erred in the incident. ED(SM)/SFC advised it was possible that person who had erred in the incident could be identified as a result of the investigation

77. Ms Emily LAU enquired whether the investigation results would include a recommendation on the compensation arrangement and if that was the case, the litigation on compensation arrangement could be avoided.

78. ED(SM)/SFC replied that the SFC was collecting relevant information about the incident. If enforcement action would be taken against any person involved in the incident, SFC would disclose the relevant information to the public through an established procedure. Ms Emily LAU urged SFC to complete the investigation strictly, seriously and promptly. Ms LAU also said that she had received some information from complainants and the information might help SFC's investigation. She expected SFC would contact and communicate with the complainants for the investigation follow-up.

79. Based on the fact that the NTAV shown in the Teletext was not full and complete and the ways the regulators handled the incident as described in HKEx's

paper, Mr Paul CHAN commented that SFC and HKEx did not have adequate level of alertness on the occurrence of the incidence and should be responsible for its occurrence to a certain extent. Mr CHAN also commented that the introduction of a market maker mechanism would ensure a higher liquidity of shares and make it possible for the market maker to suspend the trading in case of unusual share price volatility.

80. HL(LD)/HKEx replied that the market maker mechanism might be one of the possible ways to resolve the problem and HKEx was exploring the feasibility of it.

81. The Chairman expressed concern that most investors were still in doubt on why the transaction volume during the pre-trading session was huge and the share price volatility was significant. Many investors also queried why HKEx ordered the suspension which prevented them from selling their shares to reduce their loss, as their losses became larger when the share price dropped further upon the re-opening of the trading on 27 November 2009. The Chairman said that shortly after the incident, some investors and he himself had requested the relevant authority to cancel all transactions on Asian Citric shares on 26 November 2009 and if the cancellation could be made timely, the losses suffered by investors could be reduced. He urged the relevant authorities to seriously review the incident for the purpose of maintaining the healthy development of the market, and to learn from the experience in this incident and to ensure relevant parties in the incident would be fairly treated. Finally, the Chairman said that the Panel would closely monitor the development of the issue.

82. Ms Emily LAU asked if the investigation report would be passed to the Panel. ED(SM)/SFC replied that SFC would follow the established procedure in handling the arrangement of the investigation report. The Chairman said that SFC should maintain high transparency about its investigation results.

83. Mrs Regina IP said that the investors would feel disappointed if they needed to instigate legal action to seek remedies on their own. She enquired about the channels for investors who had suffered losses to seek remedies from the parties concerned. The Chairman requested the Administration to provide a written reply to Mrs IP's question which could not be answered in the meeting due to the time constraints.

(Post-meeting note: Written reply was provided by the Administration vide LC Paper No. CB(1)837/09-10 on 5 January 2010.)

II Any other business

Late application for membership

84. The Chairman informed members that Dr LAM Tai-fai had applied to join the Panel. He sought members' view on Dr LAM's late application. Members agreed to accept Dr LAM's application.

85. There being no other business, the meeting ended at 5:50 pm.

Council Business Division 1
Legislative Council Secretariat
31 March 2010