

Press release

**LCQ20: Surrender by the Hong Kong Mercantile Exchange Limited of its
authorisation to provide automated trading services**

Wednesday, July 10, 2013

Following is a question by the Hon James Tien and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (July 10):

Question:

On May 17 this year, the Hong Kong Mercantile Exchange Limited (HKMEX) decided to surrender its authorisation to provide automated trading services because its revenues had fallen short of expenditure (the HKMEX incident). The incident has aroused grave public concern. However, representatives from the Government and the Securities and Futures Commission (SFC) refused, on the ground that the incident was under investigation, to explain the details of the incident in reply to Members' questions raised at the meeting of the Panel on Financial Affairs of this Council held on June 3. Subsequently, I proposed at the meeting of the House Committee (HC) of this Council on June 7 that a select committee be formed and authorised by this Council to exercise the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) (the P&P Ordinance) to inquire into issues relating to the incident. At its meeting of June 26 this year, this Council also debated and voted on the resolution to set up a select committee on this matter. In this connection, will the Government inform this Council:

(a) given that the senior officers of the Government and SFC had, prior to the aforesaid HC meeting, held a closed meeting with some Members of this Council from certain political groups, and such Members indicated after the closed meeting that as the authorities had addressed their prime concerns, they decided to object to the setting up of the select committee, whether the authorities can explain why they were willing to explain the details to some Members of this Council at that closed meeting only, and whether they can state openly to members of the public and this Council the justifications presented at the closed meeting; if not, of the reasons for that;

(b) given that, in response to the criticisms that there have been inconsistency and unfairness in SFC's regulation of HKMEX and securities brokers and that SFC is alleged to have given preferential treatment to the former, the Government has explained that the two differed remarkably in terms of functions, business operation and the level of

regulation that they were subject to and the two therefore could not be compared, whether the authorities know if other international financial centres have adopted more lenient standards in regulating institutions akin to HKMEx; if they know; of the details; if not, the reasons for not conducting a study on it;

(c) whether it has assessed the impact of the HKMEx incident on the credibility of SFC and the reputation of Hong Kong as an international financial centre; if it has, of the details; if not, the reasons for that;

(d) given that the Government has repeatedly stated that if this Council invokes the P&P Ordinance to inquire into the HKMEx incident, the investigations currently being carried out by the law enforcement agencies and the legal proceedings which may be initiated in the future will be affected, of the concrete examples to support such statement; and

(e) whether it has assessed if the investigation initiated by SFC on the HKMEx incident will give the public the impression of "the industry investigating its own members", hence undermining the credibility of the investigation results; if the assessment result is in the affirmative, of the reasons for continuing with such investigation?

Reply:

Mr President,

My consolidated reply to the question is as follows.

The Administration and the Securities and Futures Commission (SFC) have all along maintained dialogues with various groups, including the industry, legislators and political groups, regarding the development of the financial market in Hong Kong and related matters.

Concerning the regulatory regimes over automated trading services (ATS) providers and licensed brokers, the SFC has indicated that since the functions and operations of the two are quite different, it is not appropriate to make direct comparisons. ATS providers are market operators who provide electronic platforms. They are not intermediaries, and do not hold client assets. Therefore, the regulatory focus is on the trading platform provided by ATS providers for the market. The provision of ATS is not unique to Hong Kong. Major jurisdictions like the US and Europe also have similar regulatory regimes, for example, "Regulation ATS" in the US

and "Markets in Financial Instruments Directive" in Europe. The relevant trading platforms are generally regulated as market operators rather than as intermediaries or brokers.

The performance of its regulatory role is a core responsibility of the SFC, and is also the cornerstone of SFC's credibility and Hong Kong's reputation as an international financial centre. The SFC has never tolerated any irregularities. The SFC has initiated investigations into suspected irregularities of the Hong Kong Mercantile Exchange Limited (HKMEx) and referred certain issues to the Commercial Crime Bureau of the Police. As usual, the SFC will continue to perform its functions without fear or favour.

At the moment, the relevant law enforcement agencies are conducting investigations into the suspected irregularities of HKMEx. Legal proceedings have also commenced in relation to some matters, with charges already laid against certain persons. The on-going investigations are criminal investigations. The SFC has indicated that if the Legislative Council were to exercise the powers under the Legislative Council (Powers and Privileges) Ordinance to inquire into the relevant issues, it would not only affect the on going investigations by the law enforcement agencies, but might also affect possible future legal proceedings. For instance, certain evidence involved might be disclosed during the inquiry by the Legislative Council. Potential defendants could therefore obtain advance notice of evidence that might affect their interests. This might complicate future prosecutions. Moreover, if witnesses or parties involved were subject to public examination, it could prejudice investigations by law enforcement agencies and any fair trial. The accused persons might also submit applications for a stay of legal proceedings.

We understand Members' concerns about the HKMEx incident. Both the Administration and the SFC attach great importance to public expectation for transparency and accountability on the part of regulatory authorities. In line with the established practice, the SFC has committed that if it takes any enforcement or disciplinary actions or commences any legal proceedings after completing its inquiry or investigation into the suspected irregularities of HKMEx, it will announce enforcement news with a view to facilitating public understanding of the enforcement work.

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