

LCQ15: Using the social media to mislead investors

Following is a question by the Hon Tony Tse and a written reply by the Secretary for Financial Services and the Treasury, Mr Christopher Hui, in the Legislative Council today (October 21):

Question:

Some members of the financial sector have pointed out that the acts of lawbreakers using the social media to disseminate misrepresented investment information with a view to misleading investors have been increasingly rampant in recent years. Such acts include the dissemination of false or misleading investment advice and inside information anonymously or by means of impersonation of well-known persons in the investment sector. Moreover, some key opinion leaders who constantly disseminate investment advice on the social media have been queried for their lack of relevant professional qualifications and knowledge, their bragging about their investment performance, as well as their failure to disclose interests in a timely manner. In this connection, will the Government inform this Council:

(1) of the existing legislation that regulates the acts of using the social media to disseminate investment information; the legal liability to be borne by a person who uses the social media to disseminate false or misleading investment information or impersonates other people in disseminating such information;

(2) of the number of complaints about the acts referred to in (1) which were received by the authorities in each of the past three years, as well as the follow-up actions taken; the respective numbers of persons prosecuted and convicted;

(3) whether it will review the relevant legislation in order to step up efforts in combating the acts of using the social media to disseminate misrepresented investment information with a view to misleading investors; if not, of the reasons for that; and

(4) whether it will step up public education efforts to remind investors that they must not easily trust the investment information on the social media in order to avoid falling prey to investment scams?

Reply:

President,

My response to the various parts of the question, in consultation with the Police and the Securities and Futures Commission (SFC), is as follows:

(1) The SFC, in accordance with the Securities and Futures Ordinance (Cap. 571) (SF0), has the statutory powers to take enforcement action against

different kinds of market misconduct and illegal dissemination of investment information.

As regards provision of false or misleading information on social media, anyone who issues an advertisement, invitation or document which is or contains an invitation to the Hong Kong public to invest in securities or collective investment schemes must be authorised or exempted by the SFC in accordance with section 103 of the SFO. Otherwise it constitutes an offence which carries a maximum fine of HK\$500,000 and up to three years' imprisonment. A fine of HK\$20,000 is payable for each day that the offence continues. Furthermore, if a person holds himself out as carrying on a business in a regulated activity stipulated under the SFO without a licence, he commits an offence under section 114 of the SFO. The maximum penalties for a breach of that section are a fine of HK\$5 million and seven years' imprisonment.

Under sections 277 and 298 of the SFO, disclosure of false or misleading information inducing transactions may occur when a person discloses or disseminates false or misleading information that is likely to induce another person to buy or sell a stock in Hong Kong. Making a fraudulent or reckless misrepresentation to induce another person to invest in securities or collective investment schemes is also an offence under section 107 of the SFO. This offence carries a maximum fine of HK\$1 million and up to seven years' imprisonment.

Apart from the SFO, a person who publishes deceiving message via social media platforms might have committed the offences of "fraud" or "obtaining property by deception", in breach of sections 16A and 17 of the Theft Ordinance, Cap. 210 of the Laws of Hong Kong, the maximum penalties of which are imprisonment for 14 years and 10 years respectively; or the offence of "conspiracy to defraud" under the common law, the maximum of penalty of which is imprisonment for 14 years according to section 159C of the Crimes Ordinance, Cap. 200 of the Laws of Hong Kong.

(2) In the past three years (between August 2017 and July 2020), the SFC received about 1 400 relevant complaints. The SFC would follow up with all the complaints received as appropriate, and investigate those cases if the SFC has reviewed and confirmed that the relevant complaints fall within its remit. The SFC would also suitably refer other specific cases to the relevant authorities. There has been no prosecution cases brought by the SFC so far.

During the same period, the Police received 785 complaints relating to investment related fraud. In combating the crime, the Police had conducted various operations, including initiated financial investigation, and arrested over 500 persons. The Government does not maintain the breakdown of other figures requested in the question.

(3) and (4) Under existing legislations, the SFC has the statutory powers to combat market misconduct through the use of social media, as described in the response to part 1 above. The SFC will monitor the developments and maintain close dialogue with other regulators.

In the meantime, the SFC and the Investor and Financial Education Council (IFEC) have stepped up public promotion and education, reminding the public about stock trading scams on social media, through websites and social media.

For example, the SFC created an official Facebook page in September 2020 and warned the public on September 24 about the increasing use of social media platforms to defraud investors through the Facebook page. On the same day, the SFC published a special edition of its Enforcement Reporter which explains how online investment scams operate and provides tips for avoiding them. Specifically, it points out that fraudsters will befriend the targets and claim that they have stock tips from an expert, or even an insider, to persuade the targets into buying stocks offloaded by the fraudsters at artificially high prices. Some scammers impersonate themselves as celebrities (such as renowned investment experts or key opinion leaders) when they set up such investment groups to carry out their "pump and dump" schemes by claiming that their recommendations are based on exclusive tips from experts, or even inside information.

Furthermore, the IFEC has provided advice on its website on how social media scams work and how to identify internet scams. The public is reminded to be wary of unsolicited offers when making investments, to verify the identity of those who claim themselves to be licensed persons, and stay alert of warning signs of internet scams.

The Police will also continue to closely monitor the crime trend of online investment fraud, and advise the public of the latest modus operandi of fraudsters through various channels including the Police's Anti-Deception Coordination Centre, Police Facebook, Instagram, Twitter, press conferences, anti-deception seminars, television and radio programs, and community publicity campaigns.