

**立法會**  
*Legislative Council*

Ref: CB1/BC/4/00/2

**Bills Committee on  
Securities and Futures Bill and Banking (Amendment) Bill 2000**

**Verbatim transcript of meeting  
held on Monday, 21 May 2001, at 2:30 pm  
in the Chamber of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, (Chairman)  
Hon Margaret NG, (Deputy Chairman)  
Hon Albert HO Chun-yan  
Hon NG Leung-sing  
Hon James TO Kun-sun  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon Jasper TSANG Yok-sing, JP  
Hon Ambrose LAU Hon-chuen, JP  
Hon Abraham SHEK Lai-him, JP  
Hon Henry WU King-cheong, BBS  
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Eric LI Ka-cheung, JP  
Dr Hon David LI Kwok-po, JP  
Hon Bernard CHAN
- Public officers attending** : Miss AU King-chi  
Deputy Secretary for Financial Services
- Miss Vivian LAU  
Principal Assistant Secretary for Financial Services
- Mr Frank TSANG  
Assistant Secretary for Financial Services
- Ms Phyllis KO  
Senior Assistant Law Draftsman

**Attendance by invitation** : Mr Mark DICKENS  
Executive Director, Supervision of Markets, Securities and Futures Commission

Mr Brian HO  
Senior Director, Corporate Finance, Securities and Futures Commission

Mr Anthony WOOD  
Senior Counsel, Securities and Futures Commission

**Clerk in attendance** : Mrs Florence LAM  
Chief Assistant Secretary (1)4

**Staff in attendance** : Mr LEE Yu-sung  
Senior Assistant Legal Adviser

Mr KAU Kin-wah  
Assistant Legal Adviser 6

Ms Connie SZETO  
Senior Assistant Secretary (1)1

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1 **主席：**

2

3 各位同事，我們今天繼續討論第XV部，首先邀請政府的代表進入  
4 會議室。今天收到3份新的文件，分別是由香港總商會、年利達律師事務所  
5 及Pan Asian Securities Lending Association Limited提交的意見書。請各位同  
6 事注意，這3份新的文件就這部分提出了新的意見。在此提醒各位，本星期  
7 五的會議開始討論第XVI部，政府亦提交了文件。

8

9 現在開始討論第XV部，今天是第二次討論第XV部。上次政府也作  
10 出了很詳細的介紹，今天主要讓各位跟進相關的問題。

11

12 我希望向政府提問關於條例的生效日期，即 Commencement of  
13 legislation。在第I部分的第1條，政府表示會作出notice訂明整條法例的生效  
14 日期。但有關業界團體提到，這一部分需要6個月。根據政府的一般意向，  
15 有關生效日期的問題，政府會怎樣處理？在通過法例後，是否在某日期全  
16 部一起生效，還是局部按不同的時期生效？政府的整體政策是怎樣的？

17

18 **財經事務局副局長區環智女士：**

19

20 根據當局的構思，整條法例其實應同期生效，至於中間相距多長時  
21 間，我們當然希望越快越好。以英國的經驗來說，由於有關法例在立法後  
22 一年半還未生效，期間便出現了很多不同的討論。我希望將時間縮短，我  
23 們正在加緊制定附屬法例，各個部分的附屬法例正處於不同的階段，但均  
24 在準備草擬或諮詢之中。假如附屬法例可以同步完成，就不會出現某一部  
25 分不可以生效的情況。

26

27 **主席：**

28

29 好的。各位同事是否有提問？

30

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1 **財經事務局副局長區璟智女士：**

2  
3 有關過渡性安排的條款，就是在每一個部分生效時，有什麼過渡性  
4 的條款，可以安排、方便業界人士進行，各位若參考那部分會比較清晰。

5  
6 **主席：**

7  
8 好的。我參考了所有的回應之後，我察覺到在回應給業界的意見  
9 中，你們似乎打算至少提出3至4個修訂，即Committee Stage Amendments，  
10 到進行clause by clause 審議的時候，是否應該做好？

11  
12 **財經事務局副局長區璟智女士：**

13  
14 可以。

15  
16 **主席：**

17  
18 胡經昌議員。

19  
20 **胡經昌議員：**

21  
22 多謝主席。我向政府提出一個比較原則性的問題。有關第5分部 —  
23 上市法團調查擁有權的權力，在今年2月份我曾去信政府，希望有關當局就  
24 現行的情況作答。就這個情況，我先問政府，上市法團為何會擁有調查的  
25 權力？如果我沒理解錯誤，基本上是在法例上賦予一間上市公司向他人取  
26 得資料的權力，第二，如果不遵從法例，更可能被判入獄。在這種情況下，  
27 給予私人公司這項權力，會否有問題？由於現時已有這樣的權力，過去是  
28 基於什麼原因給予這項權力？為何又有刑事責任？

29  
30 **主席：**

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1  
2 這部分是舊的，是目前已有的法例。法律顧問提到第320條只有  
3 section 7是新的，是否這樣？

4  
5 副局長。

6  
7 **財經事務局副局長區璟智女士：**

8  
9 這條訂明上市法團在甚麼情況下有權瞭解誰實際擁有他的股份。如  
10 果透明度出現問題，怎樣可以補救？請Mr DICKENS向各位解釋，條款預計  
11 應該怎樣運作，在什麼情況下可以運作，為何有這樣的需要。

12  
13 **Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures**  
14 **Commission:**

15  
16 Okay. The provisions based on the existing law, which I think has already been  
17 pointed out, are similar to powers in the Australian, Singaporean and UK legislation. The  
18 concept is that the listed corporation, through its directors, is the most natural representative  
19 of the body of the shareholders as a whole; and not only is there provision for the listed  
20 corporation to initiate this sort of inquiry, but it can be required to do so by requisition of one-  
21 tenth of its Members, so that even if the Members want to find out but the directors do not  
22 want to, the provision takes effect. That is the reason for it. The reason for the  
23 imprisonment penalty is obvious; otherwise people would not comply with the law.

24  
25 The sorts of circumstances where this comes up is where the directors believe or  
26 have reason to believe that someone may be assembling a parcel of shares to change control;  
27 that someone may be manipulating the shares, although this has never happened. Someone  
28 may be manipulating the shares through a series of transactions, and they want to find out  
29 who the real person is; and of course when the members of the company themselves believe  
30 that the directors are maintaining their control through warehousing secret parcels of shares.

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1 Those are the sorts of examples that come up. There have only been a handful in the last 10  
2 years.

3  
4 **胡經昌議員：**

5  
6 主席，由於所涉及的公司是私人公司，例如一間公司體會可能會有  
7 hostile takeover，便會要求取得資料。由證監會作出調查是合理的，因為是  
8 監管機構，但為何把權力交給一間私人公司？這個情況是很擾民的，特別  
9 是對經紀而言。在很多情況下，上市公司會就某一樣事情發信給經紀，要  
10 求他在某限期內提交資料。如果資料只是屬於一間公司，就會較為容易處  
11 理。但股民或散戶經常以一個nominee的形式投資，於是便變成由經紀行提  
12 供資料。由於條例的寫法比較鬆散，令上市公司有權限定一個reasonable  
13 time完成，這個reasonable time通常是3天的時間，要你3天內提交資料。條  
14 文也寫得很清楚，所需提交的資料不單是現今的資料，而是可以追溯到3年  
15 前的資料。在這種情況下，條文賦予上市公司這樣大的權，是很有問題的。  
16 通常書面通知都會提到：“under section 18，請你提供資料”，並沒有解釋其  
17 理由。經紀的立場當然是希望能做到，但在短期內要完成而不遵從，就會  
18 有麻煩，其中一個解釋在C2219頁第325條第(5)款提到：“任何人如證明提供  
19 資料的要求是瑣屑無聊或無理取鬧的，則並不因沒有遵從根據第320條發出  
20 的通知的要求而犯第(4)(a)款所訂罪行”。當事人還要證明上市公司的要求是  
21 瑣屑無聊或者無理取鬧的，為何要由經紀作出證明，而不是由上市公司證  
22 明是有需要取得有關資料？經紀怎樣可證明上市公司的要求是瑣屑無聊或  
23 無理取鬧的呢？這是一個較大的問題，政府能否作出解釋？

24  
25 **Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures**  
26 **Commission:**

27  
28 The company needs to have reasonable cause to believe that a person is interested  
29 in the shares. That is in clause 321 at the top of C2207. The company has to have  
30 reasonable cause to believe a person is interested in the shares. Now, with a broker there is

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1 always that reasonable cause, because the way the shares are held is in CCASS, and the  
2 nominee name is CCASS nominees. The person to whom CCASS holds is not the broker's  
3 client but the broker. All that CCASS knows is that it is Broker X who holds that parcel.  
4 Therefore you have to ask Broker X who his clients are, and if he can comply, well and good.  
5 If he cannot comply in 3 days, the question becomes whether 3 days is a reasonable time in  
6 the circumstances, and you just determine that by looking at all the circumstances. There  
7 has never been a situation where a broker has ever been prosecuted under this section,  
8 whether for failure to comply within 3 days or otherwise. It just has never happened, and the  
9 reason is that if the records were in a go-down or difficult to disentangle, then you need more  
10 time and it is reasonable that you get that time.

11  
12 So the company having shown it has reasonable cause to believe that the broker  
13 knows who the shareholders are, the burden is then on the broker to say: "Well, your request  
14 is frivolous or vexatious. You can't really want to know only about 1000 shares or 2000  
15 shares. This is not a significant parcel" or "You've got no reason to be doing this". In fact  
16 this legislation is very rarely used. It is only used by companies in extreme circumstances.

17  
18 **胡經昌議員：**

19  
20 主席，我未必同意他的說法。我於今年2月19日發出一封信，正是  
21 就向業界索取資料的投訴而發出的，限期3天之內提交3年的資料。這種情  
22 況是否合理？直至現在還是沒有答覆。剛才我提問的是，第一，如果有這  
23 種情況，3天時間是否足夠？是否有投訴的渠道？業界基本上會盡量幫忙，  
24 但既然是不合理的要求，為何還要去辦？第二，搜集資料需要時間，由誰  
25 來支付調動人手搜集資料的費用？很多情況下，業界要安排一名職員專責  
26 處理這工作，但是沒有人會支付這筆費用，那麼，應該由誰作出賠償？我  
27 們是幫助他人，而他人卻利用權力來為難我們。如果要求取得的是當天的  
28 資料，應該很快捷、容易；如果要搜集3年的資料，找尋記錄時就不是太容  
29 易，有些資料可能存放在倉庫，要安排職員搜尋，這些補償由誰來支付？  
30 是否有補償？能否要求補償？條例草案的內文提到，公司所做的report，可

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1 以收費，也可以不收費。在C2221頁的第326(6)條訂明，證監會可以有權訂  
2 立規則 —— “The Commission may by rules amend the sum specified in  
3 subsection (1) or (2)”，除非自己是股東，否則就要繳交10元作為查閱的費  
4 用；如果想要報告，每頁需繳交兩元，或者不收費用。既然上市公司的報  
5 告有權可以收費，為何我們作為被邀請提供資料的人士卻沒有補償？這裏  
6 是否應該有個機制才較為公平？

7

8 **財經事務局副局長區璟智女士：**

9

10 主席，剛才胡議員提到的個案，我們正與證監會在討論，研究此個  
11 案是否一個獨特個案？因此，我不能就此個案作出交代。剛才正如Mr  
12 DICKENS提到，我們希望在法例內力求平衡。其實對於那間要求取得資料  
13 公司亦有一個測試，它須有合理的理由，並相信有關人士擁有這些資料。  
14 知道或者合理地相信是一個很高程度的測試，上市公司不可以貿然向他人  
15 索取資料。條例草案也有條款列明，在無聊或無理取鬧的情況下，是不需  
16 要理會。法例內亦有相當的制衡措施，也幫助上市公司增加公司的透明度。  
17 至於費用方面，我們亦都有考慮是否需要增加？我們覺得靈活性在於最後  
18 一條條款，證監會有權力調整。有關費用若太昂貴，我們會擔心，在上市  
19 公司的成員調查公司股份時，他們會因費用昂貴而取消這項調查。這幾方  
20 面的問題都要考慮。至於成本方面，在《普通法》內是否有準則？

21

22 **Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures**  
23 **Commission:**

24

25 The answer is “We don’t”, but could I direct you to clause 324 on page C2215? If  
26 the company prepares a report it must give a copy to the Exchange and the Commission, and  
27 the Exchange is bound to publish it. The way that works at the moment is that that  
28 publication is free, and the information is free from the Exchange. They are not allowed to  
29 charge for it. So you have two routes to get the information – go along to the Exchange and  
30 get it for nothing, or go along to the company and if you are a member you get it for nothing,



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1 because you are a member; if you are a non-member you pay \$10 to look at it; if you want it  
2 photocopied you pay the photocopying charge of up to \$2 a page, or the company may charge  
3 less. So the report is treated as something the public is entitled to see, and the manner of  
4 publishing it to the public is to have it at the Stock Exchange.

5  
6 **主席：**

7  
8 有沒有跟進？

9  
10 **胡經昌議員：**

11  
12 有的，主席。

13  
14 我剛才所提的，就是現在上市公司有權可以收費，至於收費與否，  
15 是由他決定。但現在上市公司向我們索取資料時，卻不會付款給我們。我  
16 的意思是說，我替上市公司做這麼多事情，他一分錢都不用付，如果不遵  
17 從的話，還可能需要被監禁。在這種情況之下，你們應該怎樣補償向有關  
18 公司提供協助的人。經紀須協助搜集3年資料，但他的下屬不是負責這類工  
19 作，這是他在日常工作以外的額外工作。這些超時補償由誰支付？找3年的  
20 資料還是比較困難，如果你找一天的資料是沒問題的，立刻可以找到，如  
21 果要索取3年的資料，還要3日內提交，這樣困難就比較大。如果不遵從就  
22 要坐牢，我當然要遵從，但是誰來支付有關的費用？為何不要求上市公司  
23 須就索取資料付款。當局既賦予他權力去索取資料，為何又不賦予他權力  
24 去支付費用給提供這種服務的人士？

25  
26 **財經事務局副局長區璟智女士：**

27  
28 雖然我知道這涉及個別的上市公司，而不是一個執法機構，但因為  
29 在法例上你要協助某一個機構去執行法例，目的是協助增加市場的透明  
30 度，幫助其他用家清楚瞭解這間公司的股份權益持有人。你的同行其實是

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1 負起一個很有意義的社會責任，從這個角度來看，會不會好一點？

2  
3 在這個情況，正如剛才Mr DICKENS所提到，並非經常發生的事情，  
4 是否真的如此繁複？剛才的個案我們還在研究，我不知道這是否一個比較  
5 獨特的個案。Mr DICKENS或可以跟大家分享一下，就是假如真的有這些  
6 要求出現，怎樣可以避免這些無謂的要求，比如你的同行可以拒絕提交資  
7 料。若需提供的資料並非那麼煩瑣，純粹是協助他們取得這些有關的資料，  
8 這樣可行嗎？

9  
10 ***Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures***  
11 ***Commission:***

12  
13 I cannot talk about the facts of a particular case, for two reasons: one, they would  
14 be confidential; and two, to be frank, I do not have them to hand. The theory is this: the  
15 broker is in a sense the owner of the shares because as far as CCASS is concerned, he is the  
16 person for whose benefit CCASS is holding them. It is true that he has fiduciary duties to a  
17 client, but as far as CCASS is concerned, it will deliver the shares to the order of the broker;  
18 and it is because the broker has interposed himself between the client and CCASS that he  
19 comes under this liability.

20  
21 It is true that it can – I would not say “burdensome” – involve the burden of going  
22 to the go-down to get information that is 3 years old, although many brokers keep that  
23 information in their offices. As to whether there should be a fee for it, it has so very rarely  
24 arisen in practice that I do not think that has really been an issue. The facts of a particular  
25 case – we would have to have a look to see if it was frivolous per se.

26  
27 Can I also make the point that the company cannot prosecute? It is the  
28 Commission if it is a summary prosecution, or the Secretary for Justice if it is a prosecution  
29 on indictment, who would make the decision as to whether the elements of the offence have  
30 been made out, whether there are reasonable grounds and whether it appeared that a defence

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1 could be made out. So there is another check and balance before the broker is exposed to  
2 criminal liability.

3  
4 **主席：**

5  
6 上市公司在發出索取資料的要求時，是否需要向證監會備案？

7  
8 **Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures**  
9 **Commission:**

10  
11 They do not have to notify the SFC of making a request, but they have to notify the  
12 SFC of the information they get in response to the investigation.

13  
14 **主席：**

15  
16 有否措施可以防止有關公司不斷重覆發出索取資料的要求，滋擾經  
17 紀。

18  
19 **Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures**  
20 **Commission:**

21  
22 Only the frivolous or vexatious requirement which renders a prosecution necessary;  
23 but in practice it is very rarely abused. I mean, there is expense on both sides. It is actually  
24 quite expensive for the listed company to do this. It has to send out hundreds of letters; it  
25 has to collate the information. Having got the information, it comes under a set of very  
26 onerous provisions about writing reports, keeping registers, notifying the Stock Exchange and  
27 notifying the Commission. So it is not something a listed company embarks on lightly.

28  
29 **主席：**

30

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1 證監會都會收到相關的資料。

2  
3 **胡經昌議員：**

4  
5 主席，我不是指證監會收不到資料，其實是有關賦予權力的問題。  
6 以前只是較小規模的經紀有影響，但在《藍紙草案》，受影響的將會是大型  
7 經紀行。以前只涉及股票，現在把derivatives、short selling也包括在內，範  
8 圍就較廣泛。對大型的經紀行，以前的影響比較小，因為它們電腦記錄的  
9 資料較齊備、容易處理，但現在的層次比較廣泛，所以受影響的範圍不只  
10 是較小型的經紀行。剛才的個案是由小型的經紀行提出的。以前是否有類  
11 似的個案，我不得而知，這是我當選之後的第一個個案。在我接到電話投  
12 訴時，卻不能即時作出答覆，因為這是現行條例的做法，所以我已去信有  
13 關當局。我現在不是只關注那個個案的情況，而是整體而言，當局在賦予  
14 這個權力時，怎樣才有適當的制衡？剛才也提出，業界很擔憂，就是如果  
15 不遵從，就要上法庭作出解釋，即根據第325(5)條，證明這些是瑣屑無聊或  
16 無理取鬧的。請列舉一個例子，說明何謂無理取鬧？因為有關公司在作出  
17 書面通知時，已說明是“under section...，就要提供資料了”。不過，有關  
18 公司不會在作出書面通知時解釋索取資料的理由。

19  
20 **財經事務局副局長區璟智女士：**

21  
22 我剛才提到的那個個案是值得研究的，因為法例訂明，有關公司必  
23 須知道，或有合理理由相信有關經紀真的持有那些股票。

24  
25 **胡經昌議員：**

26  
27 主席，他只是把條例所列明的有理由相信，合理地相信等字句照  
28 抄，而沒有再作解釋。舉例而言，如果是向持有百分之十股份的股東要求  
29 索取資料，這是合理的，但書面通知內沒有提到，業界又不知道那間公司  
30 要求的理由。

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1  
2 **財經事務局副局長區璟智女士：**

3  
4 就剛才那個個案，我們是會研究的，可能是那間公司的做法不對。

5  
6 **胡經昌議員：**

7  
8 現時的法例是賦予給他這樣的權力，如果那個個案的做法是不對  
9 的，又如何可以將這情況修正，將來不會再犯錯呢？

10  
11 **財經事務局副局長區璟智女士：**

12  
13 剛才你所說的同行向證監會投訴，是否已是一個渠道？

14  
15 **胡經昌議員：**

16  
17 他向我投訴，然後由我代表他投訴。

18  
19 **財經事務局副局長區璟智女士：**

20  
21 你負起了一個社會的責任。如果證監會察覺不到歧視的情況，根本  
22 就不需要有憂慮。

23  
24 **主席：**

25  
26 胡經昌議員已經表達了他的意見。關於要求提供資料的第320(2)條  
27 是按照法例寫的，但這種情況是否合理？證監會已經file一個case，證監會  
28 研究後再作出回應。如果證監會在審閱所有的資料後，發現了一些漏洞，  
29 可能也會提出來。

30

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1 **財經事務局副局長區璟智女士：**

2  
3 請多給我們一些時間，待證監會對那個個案完成了研究調查，如果  
4 發覺現時的條款是不能夠處理那個個案，比如說盡快完成了啟動點，接著  
5 沒有證據證明是無聊或無理取鬧，我們是否還有別的事情可以做到？我希望  
6 各位從另一角度考慮，就是他正在協助那間公司做一些事情，這件事可能  
7 對其他的股東有益處，即是一個義務，但不是經常發生的。

8  
9 **主席：**

10  
11 這個個案的焦點反而是在第(1)(c)款 extend 了 coverage，把  
12 derivatives 包括在內。這可能是法例修改範圍比較廣泛的地方，引起市場  
13 人士關注。Shares比較容易處理，但derivatives怎樣處理？

14  
15 **胡經昌議員：**

16  
17 我希望帶出的，就是整件事情原來就有問題，由以前至現在都是，  
18 但還要擴闊至另外一部分的問題。

19  
20 **主席：**

21  
22 在名單內，余若薇議員先發問，接著Sophie。

23  
24 **余若薇議員：**

25  
26 多謝主席，其實胡經昌議員提出了兩個問題，一個就是收費的問題。  
27 雖然政府、證監會方面的答覆說這是很少發生的問題，以及牽涉一個  
28 社會的責任。不過，我覺得這兩個答覆都無法解決是否應該付款的問題。

29  
30 簡單的說，譬如傳召某人到法庭給證供，雖然是一個社會的責任，

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1 但是也有一個合理的補償給他，例如車馬費等合理的費用。如果某公司因  
2 為條例的關係，需要影印資料或文件，是否可以考慮on reasonable expense  
3 給他一個合理的補償？

4  
5 剛才胡經昌議員提出的另外一個問題，就是我如何去證明你是無  
6 理？在作出這種要求的時候，是否應該考慮在公司所作出的要求內列出理  
7 由？該公司這樣要求是否無理，至少可從有關的理由得知。

8  
9 另外，有關第320條第(5)款，就是提到財政司司長可以豁免某些人  
10 士，這條的作用是什麼？是否即使公司有這樣的要求，有關人士仍可以要  
11 求財政司司長作出豁免，是否這樣的用途？

12  
13 **財經事務局副局長區璟智女士：**

14  
15 這是一個很好的問題，其實這個豁免在現有的法例內亦有存在。追  
16 源究本，因為當時覺得這是一個私人機構用的權力，不是如證監會、警方  
17 等執法機構的權力，應如何作出制衡？有些情況之下，可能需要豁免，那  
18 麼，應該把權力賦予誰？當時的想法和現在的想法，都認為最簡單就是賦  
19 權FS，由他在審閱公司所present的原因，或諮詢監管機構後作出決定。這  
20 個權力從來都沒有用過，即是說沒有人作出過申請。Mr DICKENS，這個權  
21 力應該是從來都沒有用過？

22  
23 **主席：**

24  
25 從來都沒有使用過。

26  
27 **Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures**  
28 **Commission:**

29  
30 There has been no application at all. The theory behind charging people, or

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1 putting people to the inconvenience of answering questions is that they have taken some sort  
2 of interest in the shares. They may not be the ultimate beneficial owner, but there are  
3 somewhere in the chain of people who have interests going up to the beneficial owner, and  
4 just as they get, if you like, the benefit of doing that, or it is part of running their business,  
5 they get the burden of having to go transparent if and when the company wants transparency  
6 to occur. If they were visible in the first place, or made themselves visible, they would not  
7 have this burden. That is the reason there has never been reimbursement of their expenses.

8  
9 **主席：**

10  
11 有沒有跟進？

12  
13 **余若薇議員：**

14  
15 主席，我有兩項跟進。第一，是有關費用的問題。我想那個解釋仍  
16 然沒有解決本身的問題。我們當然有提供資料的責任，但因而所涉及的費  
17 用，是否應有一些合理的補償？所需的費用雖然不會很多，但若要去倉庫，  
18 便要支付車費、影印費；或者因為要在3天內完成要求，需要員工特別加班，  
19 也要支付加班費。所牽涉的費用不是很多，但大家可以考慮這件事是否合  
20 理？

21  
22 另外是豁免方面，向一個人、一個機構或者一個部門賦予權力，由  
23 他擔任制衡的工作，本來是無可厚非的，但是當某人獲賦予權力時，變成  
24 有一個上訴的機制，就是他突然間多了一個責任。例如在一間公司要求取  
25 得這些資料的時候，是否表示被要求的人就可以向財政司司長提出：請你  
26 考慮是否要行使(5)的權力，如果需要的話，應該考慮怎樣的因素，財政司  
27 司長是否要作出答覆呢？在加多一些權力時，還要考慮在什麼情況之下才  
28 使用，當局要顧及這些考慮因素。所以，在草擬條例時，必須知道有關的  
29 原因和誰是行使者，不能夠因為是是私人行使，就隨便制定權力，我覺得  
30 這樣是行不通的。



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1  
2 其實相關的是第300條，該條是有關豁免，即作出披露時的豁免。  
3 由於現時正在討論第320條，我另外提出的題目不是現時所考慮的問題，不  
4 過既然提到豁免部分，我也希望日後能聽取證監會或政府的回應，因為很  
5 多時聽到有一些投訴，就是不管是證監會或某些機構，在作出豁免的時候  
6 並不公平，某些人士的待遇會較好，某些人士則較差。在制定豁免權力的  
7 時候要考慮在什麼情況下才是公平，在什麼情況之下才行使豁免的權力，  
8 我也希望稍後可以討論這個問題。

9  
10 **主席：**

11  
12 我也想就你所提出的豁免部分作出和應。如果要求不合理，政府或  
13 證監會應不允許上市公司要求取得這些資料。假如當局允許他取得資料，  
14 而又有exemption的存在，其他人士都可以得到exemption；如果每個人都可  
15 以得到exemption，倒不如不賦予他這方面權力，這一點我們覺得較難理解。

16  
17 **財經事務局副局長區璟智女士：**

18  
19 多謝余議員的提問，其實是很好的提問。關於第300條的豁免部分，  
20 如果因應市場的發展、新的活動，證監會認為在某些情況之下作出披露可  
21 能影響市場的發展，那些披露便是不必要的。在這樣的情況之下，若有提  
22 供豁免，證監會在這方面的透明度可以增加，可以提供比較概括性的資料，  
23 未必一定要披露個別的詳細商業資料，但是可以透露豁免的原因和考慮的  
24 要素，使其他市場人士知道證監會會在那種情況之下考慮接受豁免的申  
25 請。大家都察覺到，一些較大投資行提交的意見書就是力求豁免的權力範  
26 圍要比較廣泛一些，可以包括其他市場的新發展。既然我們覺得這些權力  
27 需要有一定的靈活性，所以一定要包括在法例之內。另一方面，我們覺得  
28 可以增加透明度，令大家明白豁免的原因或所考慮的因素。

29  
30 就剛才胡議員有關個別公司要求其他人士披露資料的問題，我想各

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1 位都要再考慮一下，就是應否由財政司司長作出制衡。第一個問題是究竟  
2 是否需要這個制衡？這個制衡措施類似非正式的上訴渠道，大家是否都覺  
3 得需要一個上訴渠道？因為當局將這些權力交給個別的上市公司，萬一像  
4 胡議員剛才所擔心的情況出現，除了去信政府就個別的別案作出研究外，  
5 大家覺得這個上訴渠道是否很適當？如果覺得不需要上訴渠道，到法庭提  
6 出抗辯已經足夠，這也是一個好的方法。即使大家都覺得需要有這個制衡  
7 措施，是否應由財政司司長還是證監會擔任？我們對此持開放的態度，我  
8 們可以考慮。

9

10 **主席：**

11

12 我跟進這一部分，較合理的做法會否是由監察機關，即證監會作出  
13 制衡？剛才我在一開始時提到，行使這個權力的時候，是否有向你們備案？  
14 如果已備有這些措施，行使這個權力的機構或者上市公司在通知某個經紀  
15 提供一些資料的時候，證監會至少都會知道。證監會如果發覺他要求提供  
16 資料的理由太過份，他就不敢提出這樣的要求，至少可起到阻嚇作用。我  
17 覺得這樣便有了一些合理的制衡，希望政府方面考慮。

18

19 **財經事務局副局長區璟智女士：**

20

21 好的。

22

23 **主席：**

24

25 你將這個權力給了財政司司長，財政司司長都不知道如何運用，希  
26 望證監會跟進這些方面。

27

28 **財經事務局副局長區璟智女士：**

29

30 主席有關先備案的建議很好，我們會考慮是否需要寫在法例。如果

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1 備案已經是一個很好的制衡，而大家都覺得需要一個上訴渠道，由接受備  
2 案的有關當局處理可能會比較合理。

3  
4 **主席：**

5  
6 OK, Sophie。

7  
8 **梁劉柔芬議員：**

9  
10 主席，多謝。我的用詞必須很小心，因為有大律師，又有法律界代  
11 表在場。

12  
13 **主席：**

14  
15 都是關於政策的問題。

16  
17 **梁劉柔芬議員：**

18  
19 我們剛才討論的問題是，是否需要這麼大程度的披露？其實問題  
20 是，如果我們覺得需要披露，這是一個層次。接著出現的問題，就是會否  
21 因為要達至這個程度的披露，導致某些人士，例如一些經紀、大型的經紀  
22 行業、小型的經紀行，在提供資料的時候會有困難，或他為符合這個行業  
23 的運作而要額外付出費用，以致他因不能收回費用而蒙受損失。

24  
25 我希望從這個角度提問。我們作為市民，雖然有責任在法庭上提供  
26 證據，但是這個情況和上述的情況是不同的。我們現在要討論的是，他若  
27 這樣做便要作出披露。其實他明知這個行業的運作是這樣的，若因導致損  
28 失而要補償，這個行業豈不是很發達？因為我們現在從事出口行業，海關  
29 隨時都可能檢查出口證，或要我們提供資料。如果這樣的想法是可行的話，  
30 整個社會都會顛倒，我是想法是這樣的。

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1

2 **主席：**

3

4 我想強調的是，剛才提出的是胡經昌議員的意見，你也表達了不同的  
5 的意見。如果經紀知道要符合這些條例，那就知道任何時間都有機會向他  
6 人披露這些資料，他的記錄就要做得比較清晰。

7

8 **梁劉柔芬議員：**

9

10 剛才不只是胡議員提到，還有些大律師提議可能要這樣做。我希望  
11 確定你和我的看法也是一致，就是不是一定要這樣做。還有最重要的是要  
12 弄清楚兩個層次，我們如果同意了透明度是這樣的層次，胡議員代表業界  
13 察覺各條例哪些地方是很繁複，或者在實行情況來說，是帶來額外的困擾，  
14 我們很明白他的反應。我們可就從另外一個角度來看這個問題，但是不應  
15 該因為這個角度而採取類似“斬腳趾，避沙蟲”的做法。

16

17 **主席：**

18

19 多謝你的意見。我希望政府考慮是否有適當的制衡？私人公司運用  
20 這樣的權力的時候，是否需要適當的制衡？而負責採取制衡措施的機構，  
21 例如證監會，可否作出適當的阻攔？

22

23 **財經事務局副局長區璟智女士：**

24

25 或者直接到法院，這是另一個可行的途徑。

26

27 **主席：**

28

29 對。如果法院發出一個order，指定你一定要提供資料，那個時候你  
30 就一定要提供資料。其實意思都是一樣，問題只是法例的寫法。

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就第320條有沒有跟進問題？

**胡經昌議員：**

主席，我想代業界澄清，在提供資料時包括很多私人的資料，比如第320(3)(a)提到“identity of persons”，提供個人所擁有股份資料，雖然並非很大的問題，但由於這是個人的私隱，問題就出現了。假如純粹是法庭或證監會的要求，我並沒有意見，總之法例規定要提供就提供好了。但我們的客戶通常在簽開戶書時，須遵守一些守則，我估計現在很多客戶都沒有意識到這些資料會轉移給第三者。

**主席：**

會不會觸犯《私隱條例》？

**財經事務局副局長區璟智女士：**

我們制定這條條例前已從那個角度調查過，應該沒有問題。

**胡經昌議員：**

雖然如此，但如果是有這個可能會涉及《私隱條例》，你會否建議在開戶書澄清這件事？是否需要說明這些資料，是有可能會提供給一間私人公司？

**財經事務局副局長區璟智女士：**

客戶都能理解你們業界的運作。如果以後有這條條例的話，他們也要依循《證券及期貨條例》。這是條例的一部分，他必須守法。

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1

2 **胡經昌議員：**

3

4 他們要守法，OK。

5

6 **余若薇議員：**

7

8 主席，我有跟進。如果證監會或者政府考慮由證監會或者法庭去作  
9 出制衡，在出現爭拗的時候，希望考慮就關於費用方面作出一個合理的補  
10 償？就由作出制衡的那個機構來定奪。

11

12 **財經事務局副局長區環智女士：**

13

14 是可以考慮的。

15

16 **主席：**

17

18 胡經昌議員。

19

20 **胡經昌議員：**

21

22 多謝主席。我也希望澄清剛才余若薇議員提出，有關由FS發出  
23 exemption給某些人士不用符合條例的問題，現行的機制是有這個做法的。  
24 我希望問政府，雖然你們指出這個機制到現在還沒有運用過，但其實剛才  
25 政府也提到，舉例如果某人或某公司要求你提供資料，而你直接向FS要求  
26 給予豁免，程序是怎樣的？exemption是怎樣發出的？由於所涉及的時間很  
27 短暫，究竟有沒有程序？舉例而言，如果有人提出的要求太過份，當事人“有  
28 冤無路訴”，即使到任何部門投訴，基本上也要遵從。既然有一個exemption  
29 機制，你們心目中認為FS何時可啟動這個機制，是否要向FS提出申請，經  
30 過FS的研究，就作出豁免。是否這樣運作？

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**財經事務局副局長區璟智女士：**

現在還是沒有運用過這個權力，不過我想只要有一個簡單的書面通知給FS都可以。剛才在回答余議員和主席的建議時，我覺得這幾個條款值得我們再研究，可能是放在法院或是SFC，獨立性會較大。就正如主席剛才都有提到，這些權力並不容易運用。

**主席：**

吳靄儀議員。

**副主席：**

關於這一點，由於財政司司長在這個條例出現的次數太多，他所做的事令人很懷疑究竟會否有某些人會有特權。如果沒有機制，財政司司長就是一個個人，我可以想像很多出席財富論壇那個級數的人，何需有任何機制，撥個電話就可與他商談。如果是這樣，即使是書面通知，也很難想像一間普通小型的經紀業可以這樣做。這種缺乏機制的情況，會令某些人士懷疑某些人是否可以獲得豁免？所以，作為一個原則性，可否盡量把這樣的條文制度化，不要讓它個人化。

我當然明白，因為有特殊的情況，有些事情不可太過於限制。但是無論情況如何特殊，可否盡量在原則上將它制度化和提高透明度。舉例而言，在行使某些權力的時候，或是一些涉及系統性的問題，必須進行公開諮詢，最起碼也要有一個諮詢的機構。大家可在某一個委員會內進行討論，就不會產生一種誤會，覺得好像在行使一些特權。

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1 這條條款在1988初制定時，當局其實也有考慮到會有這樣的誤會；  
2 第一，開宗明義已提到有一個合理化的測試，即test of reasonableness，這  
3 條款有數個地方都有提到。第二，機制也有透明度，如果真的可以豁免，  
4 一定要在憲報刊登，雖然至今都沒做過。任何人士若有不滿，我相信是可  
5 以到法院申訴或尋求覆核。動機肯定是有規定的；透明度的安排也有；是  
6 否無理取鬧的測試，其實也有。所要求做的所有事情都是很清晰的，並非  
7 做不合理的事情。現在反而是覺得，這權力在實施方面的難度其實不少。  
8 剛才大家提到，這種寫法也未必是最理想的，可能放在法院會是最理想的  
9 也不一定，大家覺得這樣會較有獨立性，但成本就要較為高昂。

10  
11 **主席：**

12  
13 上市公司要負責這個成本，是嗎？

14  
15 **胡經昌議員：**

16  
17 是上市公司的要求，應該是他負責的。

18  
19 **主席：**

20  
21 經紀也要負擔成本，因為經紀若不想披露，也要到法院提出申訴，  
22 經紀的成本也會相應增加。

23  
24 **胡經昌議員：**

25  
26 主席，因為現在基本上是沒有豁免，所以必須從，就算是熬夜你也  
27 一樣要做，這是很不公平的做法。要是法庭有order，我想應該不會有誰不  
28 遵從，而且我相信法庭也會很慎重地考慮公平的問題。

29  
30 **Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures**



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1 **Commission:**

2  
3 Can I just make a point? This part of the legislation is not self-executing. You  
4 send your notice, and if the broker thinks it is a silly notice he can just sit there. One of three  
5 things then happens. Nothing happens; the SFC prosecutes him, which we would not if it  
6 were an unreasonable case; or the company can go to the court to get an order, a so-called  
7 restriction order, on the shares involved. The theory behind all this is that companies and  
8 their members have rights as against the other members. One of their rights is to know who  
9 their co-venturers are, and this was always seen as protecting the company's rights to get back  
10 to where it used to be in the 19<sup>th</sup> century, before people invented nominees, when you knew  
11 who your fellow shareholders were. Now you do not know who your fellow shareholders  
12 are, because the world has got more complicated, but if the company cares enough, it can find  
13 out. If you put all the costs on the company, then all you are saying is that the general  
14 shareholder who is already transparent, has to pay for the shareholder who has chosen not to  
15 be transparent.

16  
17 I am not saying that that is an impossible answer, but the company's money is all  
18 the shareholders' money, and they are trying to track down a shareholder who has decided to  
19 stay hidden. The question then is: who pays for all of that? You can go to the court and  
20 the court would be a better check and balance than the SFC. We do not want to get involved  
21 in arbitrating between private parties as to who should do what. That is not our job.

22  
23 **主席：**

24  
25 何俊仁議員。

26  
27 **何俊仁議員：**

28  
29 主席，我再提問一個問題，關於第320條“上市公司有權可以要求  
30 資料”；根據第325條，如果沒有遵從上市公司的要求去提供，會有後果。

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1 其中一個後果會是刑事責任，要是資料有虛假或誤導性的陳述，也是刑事  
2 責任，包括入獄或罰款。

3  
4 主席，還記得我們前年提到提供虛假消息給證監會時，政府游說我  
5 們說監管機構是很重要的，因為別人有權要求提供資料，必須保證資料真  
6 實，才能作出監管。因此，上市公司又多了一個權力，而且很容易就要負  
7 上刑事責任，這令我覺得不很舒服，究竟以前的運作是怎樣的？有沒有這  
8 樣的條文？

9  
10 **主席：**

11  
12 應該是舊有的條文。

13  
14 **何俊仁議員：**

15  
16 我知道。我的意思是以前曾試過提出檢控嗎？否則，就提供資料方  
17 面，怎會有那麼多刑事化的條文？

18  
19 **財經事務局副局長區璟智女士：**

20  
21 剛才Mark已經澄清，不是上市公司可以起訴的。一定要SFC信服，  
22 個案成立了，若是簡易程序，才會提出檢控；如果不是，便要由律政司負  
23 責。就這兩個情況而言，刑事渠道都不是上市公司所能運作的，其實最終  
24 的目的還是阻嚇作用。正如剛才Mr DICKENS所提到，若上市公司所有成員  
25 都很守規矩，披露自己所持有的股份，但有一兩個成員會特意隱藏自己擁  
26 有股份的數量，那其他成員怎樣保障自己的利益呢？這條條款要處理的就  
27 是這類問題。我們希望他們會盡量合作，以便有足夠的制衡能令他們合作。  
28 這是條款的安排，而不是在任何情況下都會犯上刑事責任。

29  
30 法例也寫得很清楚，剛才何議員提到第325(4)(b)(ii)條：“knows that,

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1 or is reckless as to whether...” ，即明知是假的；或罔顧後果明知假的也這樣  
2 說。在這兩種情況下提供阻嚇作用似乎是合理的。

3  
4 **何俊仁議員：**

5  
6 主席，你將這些行為刑事化，再加很重的罰則，肯定會有阻嚇性作  
7 用。問題是有沒有這樣的需要？就提供虛假資料而言，現在有3種情況須負  
8 上刑事責任；第一是給監管機構；第二是給公眾；第三是給上市公司。在  
9 這3種情況是可以被罰款和被判入獄，其實是否有必要3個情況都採取這做  
10 法呢？尤其是對一間上市公司，它並不是監管機構。設立MMT的其中一個  
11 想法，就是因為有許多事情不需要刑事化，用民事化的方式，即民事措施  
12 也可以解決，也會產生一定的阻嚇作用。為何一定要刑事化？為何一定要  
13 監禁？

14  
15 **財經事務局副局長區璟智女士：**

16  
17 我們的諮詢過程也頗漫長，這部分的諮詢其實已做了很多次。就這  
18 方面，我們沒收到任何反對意見，而條例也存在10年了，市場人士也沒有  
19 很強烈的意見。明知道資料虛假也提供，又或是罔顧後果明知是虛假的也  
20 會提供，可能大家覺得是一件小事。聽起來似乎是小事，但對一個國際金  
21 融中心來說，這已算很嚴重。其他投資者，尤其是小投資者，可能會被此  
22 資料誤導，作出原本不想作的投資決定，對於投資者會造成很大的損失，  
23 而對金融中心的聲譽也會有一個很大的影響。如果阻嚇作用不夠，而這些  
24 錯亂資料充斥我們的市場，最終會是一個怎樣的市場？是一個什麼級數的  
25 市場？是否公平的市場？我們須反問自己，我們究竟需要一個什麼級數的  
26 市場呢？

27  
28 **主席：**

29  
30 我希望修正剛才提出的意見，就是索取資料的機制不能弄得太難。

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1 雖然胡經昌議員舉例說是索取3年的資料，我想不會每次都是3年，很多情  
2 況下其實只需要即時的資料。雖然法例可以訂明3年時間，但很多case未必  
3 需要3年的資料，成本也未必增加那麼多。

4  
5 我相信簡單地要求備案，作為一個初級制衡已經足夠。假設經紀覺  
6 得不合理而不提供資料，因此才上court，這做法應該會較好。如果每次都  
7 去court的話，就達不到法例的目標。

8  
9 何俊仁議員。

10  
11 **何俊仁議員：**

12  
13 我想跟進區小姐剛才作出的答覆。這條條例我們是以哪個國家為藍  
14 本？即哪個國家有類似的條文，訂明提供這類資料是刑事化的？以往是否  
15 有提出檢控，即是否有提出過刑事檢控？

16  
17 **財經事務局副局長區璟智女士：**

18  
19 是英國的《公司法》。香港於1988年第一次立法，引進披露要求，  
20 以往是沒有的。至於證監會曾經是否有檢控，我要請教Mark， whether you  
21 have invoked the power to prosecute?

22  
23 **Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures**  
24 **Commission:**

25  
26 The answer is - - and also Australia has equivalent provisions. It is seen as  
27 necessary to make the legislation work. We have never prosecuted anyone. We have had  
28 complaints from listed companies that there are people who refuse to answer the notices, and  
29 just wait for the company to take them to court; and that is too expensive, so they do not do it.  
30 I mean, you are balancing two sets of interests here, but we have never prosecuted anybody

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1 for breach of this provision.

2

3 **Hon Albert HO Chun-yan:**

4

5 And there has never been any complaint that that information provided is false or  
6 materially misleading?

7

8 **Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures  
9 Commission:**

10

11 No. The usual complaint is that there is just refusal to co-operate.

12

13 **Hon Albert HO Chun-yan:**

14

15 Yes.

16

17 **主席：**

18

19 這條其實是現時的條例。剛才在開始時，胡經昌議員提到一個個  
20 案，指某間上市公司要求過往3年的資料。

21

22 **胡經昌議員：**

23

24 3天內提供3年的資料。

25

26 **主席：**

27

28 3天內提供3年的資料。OK，就第320條，各位還有問題嗎？如果沒  
29 有問題，其他部分還有問題需要提問嗎？

30

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1 **余若薇議員：**

2  
3 第XV部分？

4  
5 **主席：**

6  
7 對，是第XV部分。Audrey。

8  
9 **余若薇議員：**

10  
11 多謝，主席。我希望就第300條的豁免提問，我知道這條條例日後  
12 會有指引，但我希望當局解釋其大方向，就是在什麼情況下才會有人獲豁  
13 免披露責任。我們不時會聽到關於大經紀、大機構、或者大公司獲得優惠  
14 待遇，可以得到豁免的投訴，而小經紀行並沒有這些待遇。當局究竟在什  
15 麼情況下才會豁免披露責任？

16  
17 **財經事務局副局長區璟智女士：**

18  
19 在我請Mr DICKENS解答之前，我補充一點，其實現時的披露條例  
20 第(2)(a)款也有類似的豁免安排的情況。文件裏也有提到，這次新的披露制  
21 度會擴展到其他投資工具，因應市場人士的意見，我們建議賦權證監會制  
22 定類似“安全港”的附屬法例。因應這些新的活動市場出現，在某些情況  
23 之下我們可以豁免披露，以免影響運作，這是現時的法例還未有的。就現  
24 時寫得比較具體的豁免權力，我請Mr DICKENS解答現時的用法。

25  
26 **主席：**

27  
28 可否跟進一個問題？這個Exemption是針對產品而不是針對個人  
29 的，我希望能清楚地解釋。如果是針對個人，就會某個經紀有，某個經紀  
30 沒有，就會很discretionary。如果是針對產品，就是每個經紀的該產品都不

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1 需要，可否清楚說明？

2  
3 **財經事務局副局長區璟智女士：**

4  
5 “Any corporation”是針對要披露的有關公司或人士，我希望請Mr  
6 DICKENS解釋條款的用途。

7  
8 ***Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures***  
9 ***Commission:***

10  
11 It is actually started the other way around. There are guidelines. They were  
12 published in 1991. So far under the guidelines the application is usually made by the issuer,  
13 and what the guidelines provide at the moment is for two classes of exemption. One is what  
14 we call a complete exemption, which you are basically eligible for if less than 1 per cent of  
15 your worldwide volume trades on the Hong Kong Stock Exchange. So it was for dual-listed  
16 companies. For example, Newscorp used to have a listing here, but it also had listings in  
17 Australia and New York, and was complying with their disclosure of interests legislation,  
18 which was equivalent. So they could be exempted under the provision.

19  
20 The other is what was called a partial exemption, where basically if Hong Kong  
21 was about 20 per cent or less of your worldwide turnover, providing you had equivalent  
22 legislation in your own jurisdiction – for example, you might be a US corporation –  
23 compliance with that legislation would be deemed sufficient because the information was  
24 sufficiently public. In practice, the most common exemption is the exemption for the issue  
25 of derivative warrants. The issue of derivative warrants will normally be a \$2 company, or  
26 smaller - Merrill Lynch XYZ BVI Ltd, which issues derivative warrants over one of the  
27 Hang Seng index stocks. It was considered, and still is considered, that they fell into the first  
28 category, where Merrill Lynch does not trade as such on our exchange at all. The product  
29 really relates to Cheung Kong or to HSBC or to the company over whom the derivative  
30 warrants are issued. So there are quite a lot of exemptions granted in that category.

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1  
2           Going forward and looking at (3), which is the new bit, we would put the writer or  
3 issuer of equity derivatives in a specific category which we now have for them. As yet we  
4 have not determined on any exemptions other than the ones Miss AU foreshadowed, where  
5 we currently have a working group on stock borrowing and lending. We are sitting down  
6 with these PASLA people and the G9 people, and some of the ISDA people now, to try and  
7 work through the issues and work out what, if anything, the exemptions should be.

8  
9           It is proposed that that be a specific safe harbour power relating purely to stock  
10 borrowing and lending, but basically we would envisage that apart from those specific things  
11 we have identified in the responses, there would be nothing else than what is in the existing  
12 guidelines, but that they be modernized and rewritten because they have got a little bit out of  
13 line. The practice has got a bit out of line, although it fits within the guidelines, with what  
14 people expect; and it will also need to pick up the language of the new provisions, of course.

15  
16 **主席：**

17  
18           有沒有問題需要跟進？Margaret.

19  
20 **Deputy Chairman:**

21  
22           Mr Chairman, I do not know if the government representatives had the opportunity  
23 to look at the Linklaters letter received recently. I think it was the last meeting. It may be  
24 quite simple. They claim that the proposed disclosure regime goes considerably further than  
25 equivalent legislation in other international markets. Now, that is not my understanding  
26 from the explanation of the government, of the SFC on the last occasion. Can I ask  
27 specifically of the four items cited in the letter, whether the disclosure on these things in fact  
28 is required in any other legislation, and if so, which?

29  
30 **Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures**



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1 *Commission:*

2  
3 Interests in monetary affairs, interests in unissued shares, are currently required to  
4 be disclosed by directors under the Stock Exchange rules, but they do not reach to substantial  
5 shareholders. We have said since 1993 that we think they should, but they are not caught by  
6 the legislation of most of the jurisdictions we are talking about. Interests arising under cash-  
7 settled derivatives: our advice from the SEC is that they are caught in the United States, and  
8 to that extent we think Linklaters letter is, with respect, just wrong. We have quoted chapter  
9 and verse in the response.

10  
11 Short positions are not required to be disclosed as such, but in our response we  
12 point to the fact that some of the short positions we require disclosure of either have to be  
13 reported in the filing to the SEC, or they are forbidden by the US, or not possible under the  
14 UK law. So the treatment of short positions varies. We would say that ours probably  
15 overall goes further. I will be frank about that. But it is necessary for logical consistency.  
16 You cannot have disclosure of some and not others without getting a misleading picture.  
17 Changes in the nature of a person's interests are not caught as such in the equivalent  
18 legislation elsewhere. We have given you the example in the covering paper as to why we  
19 think they do need to be caught – the situation where I have a call option; I have disclosed that;  
20 I exercise it; I end up with shares; I now have the vote; I now have the right to dispose of the  
21 shares, but that does not get disclosed. Vice versa: where I have the shares I sell them, but  
22 with a call option back, and it still looks as if I have the full ownership because you cannot  
23 see the change in the nature of the interest.

24  
25 So the answer is that not everything here does have to be disclosed everywhere, but  
26 issues in cash-settled derivatives definitely do in the United States. Some short positions do  
27 in the United States. Interest in unissued shares – not general except in the United States and  
28 to some degree already in Hong Kong under listing rules. Changes in the nature of a  
29 person's interest – I am liable to be corrected if I am wrong, but I think the answer is “Not  
30 elsewhere”.

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1

2 *Deputy Chairman:*

3

4 Mr Chairman, in so far as our requirement is higher than elsewhere, is it true that  
5 these are extremely complex and costly? I mean, this is a just reason for concern if it is  
6 indeed because the cost of regulation is always a matter of consideration as to competitiveness  
7 and so on. Whether they are extremely complex and costly to the extent that it has an effect  
8 on our competitiveness is one question. The other is whether we proportionately gain  
9 benefit from such extra disclosure requirements.

10

11 *Miss AU King-chi, Deputy Secretary for Financial Services:*

12

13 That is in fact a very valid question, a question which keeps on guiding us in  
14 designing this new disclosure regime. I remember we mentioned at the last meeting that one  
15 cannot compare an orange with an apple. Why we decided that is that in designing this  
16 regime we always say that we need to measure up to international standards, but international  
17 standards of what? International standards of the type of investment instruments that need to  
18 be disclosed, or international standards of the level of transparency of what is required as an  
19 IFC? We had a lot of discussion, the Commission and the Bureau, and we came to the  
20 conclusion that it should be the latter – that is that the degree of market transparency should  
21 be more or less comparable. It may not be on a par, but comparable.

22

23 If that is the objective, there might be areas, as Mr DICKENS has said, where we  
24 might have to be a little bit leading in several types of investment instruments that some of the  
25 bigger market players have mentioned. We may go a little bit further, but the end result of  
26 market transparency might be just more or less the same. Why we say that is because last  
27 time we mentioned it, our market is different from others in the sense that market  
28 capitalization is on a relatively small scale when compared with, say, New York or London.  
29 I think we are only 5 per cent of the New York market cap or less than 20 per cent of the  
30 London market cap. In terms of public floats, the percentage is relatively low. These are

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1 the facts that we have to accept.

2  
3 Why I mention these sorts of market characteristics is because with these market  
4 characteristics, if we just follow the type of investing instruments that need to be disclosed in  
5 other financial centres, maybe the degree of market transparency might be lower. It is highly  
6 susceptible to market distortion or market manipulative acts as demonstrated in the past.  
7 That is why we had to be a little bit more creative, you can say, and we need to find our own  
8 solution in these areas. We also take into account a list of factors we would like. I do not  
9 know whether Members have had the chance to read the Hong Kong General Chamber of  
10 Commerce submission dated 18<sup>th</sup> May, which in effect just repeats what it has told us in the  
11 past, that they consider there is a lack of transparency, say, in the derivative market. The  
12 government is to do something to address this issue, because the market is not only used by,  
13 say, investment bankers. There are investors, large or small. They are issuers, like  
14 themselves.

15  
16 So it is not an easy solution. Having said that, I think Mark will go on in our  
17 working session with these investment bankers is that we try to accommodate, say questions  
18 about regulatory costs. I would say that cause is not so much an important factor, having  
19 considered many details and walked them through the detailed disclosure regime. Now their  
20 understanding has improved. They know what is disclosable and what is not. It is rather  
21 that the focus is more on how we impact on the sort of commercial secrets they do not want to  
22 reveal because by revealing it they may be front-run by other people, and that may upset their  
23 trading strategy. These are what we call the sort of exemptions that we need to put up in the  
24 subsidiary legislation.

25  
26 ***Deputy Chairman:***

27  
28 Mr Chairman, I understand and I am aware of the underlying philosophy. I would  
29 just like to have the specific explanation. Thank you.

30

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1 *Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures*  
2 *Commission:*

3  
4 It is not that complex and costly. The houses concerned, by definition, have 5 per  
5 cent or more of at least one listed company, so if you are a small broker you are probably not  
6 caught by this. They have to keep track of their positions anyway, in order to do their own  
7 risk management, and as Miss AU said, we sat down with the firms, in particular to discuss  
8 derivatives, and one of the firms was good enough to show us their book in the particular  
9 stock which they picked. The amount of information they had was quite lengthy. It  
10 covered, from memory, four pages line by line.

11  
12 The point I am trying to make is that they had that information and it was real-time  
13 information. They needed that information in order to know how much they were exposed  
14 to the particular company, so that they could engage in hedging activities to balance the book,  
15 as the jargon has it. The collection of information is not the major difficulty. In some of  
16 the international houses it is awkward, and that is why we went for a 3-day disclosure period,  
17 because while they do collect the information they do not collect it in Hong Kong. They  
18 collect it in New York or in London or in Switzerland, so the information goes from all over  
19 the world, because you can trade a number of Hong Kong shares in more than one market. It  
20 goes from all over the world to a central point, and then it needs to come back to Hong Kong  
21 to be disclosed. So we gave them the extra day.

22  
23 It is not the cost of collecting the information. It is the burden, if you like, of  
24 measuring whether you have gone through a 1 per cent band, if you are over 5 per cent, and  
25 then lodging the notice. We would say that in relation to the size of the transactions  
26 concerned, because we are talking a large shareholding by definition, and in relation to the  
27 size of the firms, these firms have multi-billion dollar US revenues, and the information is not  
28 costly to disclose. In terms of very large numbers of disclosures, it is hard to get a bearing  
29 on that, but we did ask the firms to go through a particular example with us, which is in  
30 relation to stock borrowing and lending. What the picture was there was that the houses

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1 represented here would typically have, at least at some part of the year, interests in three or  
2 four listed corporations that would take them over 5 per cent; and they would therefore have  
3 to track, in relation to those three or four corporations, these changes and put in notices.  
4 They are tracking anyway, because they need to manage their risk, but they would have to  
5 track their disclosure under Part XV.

6  
7           Given that, and given the benefit to the general market of being able to see what is  
8 driving the share prices, which is quite often the hedging transactions and these large OTC  
9 transactions that have been affecting the market, we do not think it is very complex and costly.  
10 There is a familiarization period with the new legislation, but we have spent a lot of times  
11 with the firms going through this, and we are still in the process of redesigning the forms with  
12 the firms, so that all they have to do is put the number of shares and enter a code we have  
13 given them for each sort of transaction. They do not have to write things out in longhand or  
14 disclose a lot of detail.

15  
16           Miss AU referred to the front-running problem. We think we have got rid of that,  
17 and now we are only talking about the problem of knowing when you have got to lodge a  
18 form, and lodging a form. That is the only additional burden of the legislation.

19  
20 **主席：**

21  
22           就第XV部，各位同事是否還有其他問題？

23  
24           胡經昌議員。

25  
26 **胡經昌議員：**

27  
28           我希望澄清，希望主席不要介意。

29  
30 **主席：**

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沒問題。

**胡經昌議員：**

我想問關於第320(2)(d)(ii)條，C2209頁，第4行括弧內“(so far as he is aware)”，section 18提到“so far as he lies within his knowledge”。我想問為什麼會轉換了這個字眼？

**財經事務局副局長區璟智女士：**

我請法律草擬的同事高律師回答。

**高級助理法律草擬專員高意潔女士：**

主席，原因其實很簡單，只不過希望在整部分內使用統一的字眼。我相信那個字眼所包含的含義分別應該不是很大，你會見到其他的條文永遠都是用“aware”這個字，我們覺得作出統一會較好。

謝謝。

**主席：**

這是否因為合併多條條例，所以要統一？

**高級助理法律草擬專員高意潔女士：**

是的。在統一所有條文之間的用字方面，其實花了一些時間。

**主席：**

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何俊仁議員。

**何俊仁議員：**

主席，我希望提問第11分部，關於財政司司長可以委任一名或多名 inspector 調查一些公司。

**主席：**

第11分部？第XV部分的第11分部。

**Hon Albert HO Chun-yan:**

Division 11.

**Chairman:**

Page number?

**何俊仁議員：**

C2279頁，關於委派審查員的部分。我知道現有的《公司條例》內也有，是嗎？

**主席：**

這是舊例。

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是現存的條例。

**何俊仁議員：**

我想問的是，這裏訂明他有合理的理由就可以委任、委派審查員，以斷定那間公司當中有或曾有經濟上的利害關係，或誰人真正能夠或曾經能夠控制或在實質上影響該法團的政策。那不就很簡單地說明，目的就是瞭解那間公司的起落興衰，也就是誰控制那間公司，實際的層面是很闊的。實際報告完成之後，與警察的商業罪案調查科行使的權力，會否有重覆的地方？

**主席：**

條例是否曾用於百富勤的個案？

**何俊仁議員：**

佳寧的個案用過，百富勤我不知道有否用過。

**財經事務局副局長區璟智女士：**

我請Mr DICKENS解釋以往的歷史，也就是這個條款的用法。

**Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures Commission:**

This provision has been invoked, I am advised, four times in 10 years. I can only remember two of the investigations myself, but in one of the investigations we recommended to the FS that he appoint us as inspectors, in order to get to the bottom of who truly owned a



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1 company which had lost most of its money, and the directors of which had fled the  
2 jurisdiction. We needed to know who really was pulling the string in that company. We  
3 were appointed to give a report, and I think from memory it was published.

4  
5 Another investigation is on at the moment in response to shareholder complaints to  
6 the Financial Secretary, and again he has appointed us as inspectors. We are conducting an  
7 inspection under this provision. The reason for the FS is to line it up with the Companies  
8 Ordinance inspection powers, where it is the FS who can commence an inspection under the  
9 Companies Ordinance. Part XV falls between companies law and securities law. Part of  
10 what you are interested in is what is happening in the market, in the shares. The other thing  
11 you are interested in is who owns and controls this company, so it dovetails quite nicely with  
12 the other Financial Secretary's power to investigate fraud and misfeasance in companies, or to  
13 appoint inspectors to do so.

14  
15 There have been a number of inspections. They led to dramatic results. There  
16 have been restriction orders made as a result of them, where the shares have been frozen for a  
17 period of time, and then either sold or there has been disclosure of the true ownership to the  
18 market, and the restrictions have been lifted. So it is a provision that is not used very often,  
19 but it is a backup to the Companies Ordinance type of inspection. It is a specific inspection.  
20 The real question is the true persons who are or have been financially interested in the success  
21 or failure, real or apparent, of the listed corporation, or are able materially to influence its  
22 policy. In other words, who really stands to gain from this corporation and who really pulls  
23 the strings in this corporation? They are the questions the inspector tries to answer.

24  
25 ***Hon Albert HO Chun-yan:***

26  
27 So the ultimate aim is to hack whether or not commercial crimes or other crimes  
28 have - -

29  
30 ***Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures***

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1 **Commission:**

2  
3 No. The ultimate aim of this inspection – it is perfectly within power – is to find  
4 out who runs the company. There may or may not be fraud associated with that. Normally  
5 I would say to you that there is; that the normal reason why the controller of a company stays  
6 hidden is so that he can engage in non-arm's length transactions without transparency, and  
7 divert the assets of the company without transparency.

8  
9 That is not always the case. You may have situations where he just prefers  
10 anonymity and does nothing wrongful in relation to the management of the company.

11  
12 **Hon Albert HO Chun-yan:**

13  
14 Is there a particular reason why the power should be vested in the Financial  
15 Secretary? And not in the regulatory body?

16  
17 **Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures**  
18 **Commission:**

19  
20 We can conduct inspections not quite the same, but we can investigate these sorts of  
21 issues under section 33, our normal investigation power, because there is a contravention of  
22 Part XV that we have reason to suspect. What has happened in some of the cases is that we  
23 have got suspicious about the true control of a company; we have conducted an investigation  
24 using our normal powers, and then for the purpose of going further and enabling access to the  
25 remedies in this part, like restriction orders and so on, and to transparency, because we cannot  
26 publish anything, we have gone to the FS and said “Will you please an inspection?” because  
27 the results of an inspection can be public, and the results of an SFC investigation cannot.

28  
29 **Hon Albert HO Chun-yan:**

30

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1           So the only difference is to make public the result of the investigation. How about  
2 the power - -

3  
4 ***Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures***  
5 ***Commission:***

6  
7           The powers are a little bit broader and they are better remedies, because you can get  
8 restriction orders under this part, and you cannot under our normal powers.

9  
10 ***Hon Albert HO Chun-yan:***

11  
12           I see. How about the Commercial Crimes Bureau? Are there situations where  
13 there are error investigations being undertaken by the inspector and the CCB?

14  
15 ***Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures***  
16 ***Commission:***

17  
18           There would be no circumstances where we were doing it unwittingly. We have a  
19 regular liaison with CCB to make sure that if we are both interested in the same company or  
20 same individual, we coordinate our investigations. Normally we go behind them, because  
21 they are investigating more serious things, but in a circumstance like this they may say “Look,  
22 it is hard for us to get into the following jurisdictions. Will you do your bit so that we can at  
23 least freeze the shares?” It has never happened, but I can imagine it happening.

24  
25 **主席：**

26  
27           如果沒有問題，我們今天就可以提早結束。我們下一次的會議...

28  
29           Sophie。

30

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1 **梁劉柔芬議員：**

2  
3 主席，你是否知道你們海外考察的報告什麼時候可以分發給我們？  
4 即劉漢銓議員的報告。我這樣提問的原因，是因為我們在6月1日與6月5日  
5 特別召開兩次會議，我們希望自己能清晰地作內部討論，但現在到6月1日，  
6 還不到一個星期，我希望有多點時間給我們absorb一下。因為你們曾進行考  
7 察，但是對我而言是很新的事情，我希望能有多一點時間理解，還可能向  
8 幾位同事提問一些問題。

9  
10 **劉漢銓議員：**

11  
12 我們的小組在上個星期三召開了會議，就初稿進行討論。有關初稿  
13 不連附件在內也有60頁。在會議完畢後，大家盡量提供意見，希望小組的  
14 成員在星期二晚前向助理秘書長提供意見，由她再將那些意見綜合後擬備  
15 一份比較全面的文件。我們也希望能盡快將報告呈交內務委員會。但由於  
16 所牽涉的範圍實際上十分廣泛，所以我們只能答應盡快完成。

17  
18 **主席：**

19  
20 Margaret。

21  
22 **副主席：**

23  
24 主席，我稍作補充，其實在上個星期三的會議上，我曾提出請助理  
25 秘書長特別為我們6月1日和6月5日的兩次會議做一份簡略的報告。因為那  
26 次的訪問有些地方，但不是全部，是特別和這條《證券及期貨條例草案》  
27 有關的。我們請她將這些特別有關的問題，用一個比較簡括的形式寫出來，  
28 供我們討論之用，助理秘書長已經答應了。

29  
30 **主席：**

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希望在這個星期應該收到。Sophie。

**梁劉柔芬議員：**

主席，一聽到60多頁，就算簡略也好，我還是有點擔心。即使我們看完簡略的部分，也希望能大概地審閱全面的部分，因為我們不希望只做一部分的工作。

**副主席：**

主席，不只60多頁的，如果Sophie希望能做得更完善，就會不只60多頁，而是幾百頁。因為我們還要引述他人的法例、文件等等，所以是長命工夫。

**梁劉柔芬議員：**

主席，究竟你希望6月1日和6月5日會議的討論有多透徹？如果真的要較為透徹，我們希望能多一點時間消化60多頁的文件，因為我不希望我們只在其中一部分作出貢獻。

**主席：**

我明白。我也借這個機會講述一下那個internal meeting的最主要目的。因為這次會議結束後，這個星期五就應該討論第XVI部，下個星期就要討論第XVII部，所有的policy issues已討論過一次。

秘書也協助我們做"areas of concerns"的文件，概述以前提問得較多的問題。接著有劉漢銓議員的報告書，將一些國際趨勢和我們比較爭議的地方，作一個交流。各位可以對法案委員會的意見有一個感覺，如果大家

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1 可以達致一些意見的，便可能呈交給政府，若不能達致一致的意見，各位  
2 也可知道可能是胡經昌議員的意見和我的意見不相同，或者Sophie的意見和  
3 我的意見不相同，這樣就有個感覺。完成這兩部分後，我們接下來的時間  
4 會進行clause by clause的審議。政府也多次提到，會分發一份marked up copy  
5 的文件給各位，因為有很多committee stage amendment需要我們一次過審  
6 閱。假若在審閱amendment的時候，有些同事有很強烈的意見，希望能達成  
7 共識。如果不能達成共識，就可能要自行提出修訂。

8  
9 Sophie。

10  
11 **梁劉柔芬議員：**

12  
13 主席，正因為這樣，如果我們沒有時間詳細審閱外國的experience，  
14 也就是你們考察的資料，那些資料還沒有時間消化，而要在6月1日與6月5  
15 日有個共識，我擔心不一定可以達到。

16  
17 第二點，Margaret剛才提到60多頁的報告會有個撮要，其實會否在  
18 60多頁內，有一些地方可能不一定接觸到我們希望要參考的部分，是否只  
19 mark或highlight我們要留意的地方，是否這個意思？這樣對我們可能會方便  
20 一點。

21  
22 **副主席：**

23  
24 主席，那60多頁，我們已看過初稿，倘若Sophie有興趣，我可以請  
25 助理秘書長給她一份。

26  
27 例如前半部，只是描述英國的制度、美國的制度，不過是背景的資  
28 料，而不是直接與我們審議的條例草案有關。至於與我們比較直接有關的  
29 地方，我想不會有60頁。除非你希望參考原裝版本，例如討論到美國的法  
30 例，你希望參考法例本身的條文，那樣就會牽涉到很多的文獻，但我們是

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1 具備那些資料的。所以要視乎你從那一個角度審閱問題，你可能會接觸到  
2 一些在報告內沒有提及的事情。

3

4 主席，在這方面我不希望多談，因為始終是由助理秘書長處理，由  
5 她直接去做，我們也很難預料討論過程的進度。

6

7 多謝主席。

8

9 **主席：**

10

11 我們的法律顧問有一點補充。

12

13 **助理法律顧問顧建華先生：**

14

15 主席，我不知道是否一個適當的時間，我們可否借這個機會提問一  
16 些關於技術性的問題。

17

18 **主席：**

19

20 就第XV部提問？

21

22 **助理法律顧問顧建華先生：**

23

24 是的。

25

26 **主席：**

27

28 請提出問題。

29

30 **助理法律顧問顧建華先生：**

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多謝主席。為方便政府理解，我希望用英文反映。

I would like to have some background information relating to the equity derivatives. I wonder whether the Administration is able to say how big is, in terms of value, the equity derivatives of Hong Kong listed shares?

**財經事務局副局長區璟智女士：**

有關問題是否衍生工具市場的規模有多大？我不明白為何你覺得是技術性的問題。你是否希望知道capitalization的數值或計算方法？

**助理法律顧問顧建華先生：**

一般市場的計算方式，例如一個月內衍生工具方面有多少交易？

**財經事務局副局長區璟智女士：**

我要查看SFC是否有這樣的資料。不過，剛才我提到衍生工具未必一定是上市。

我相信絕大部分是場外交易，稱為OTC。

**助理法律顧問顧建華先生：**

是的。你估計多少的百分比是場外交易？

**財經事務局副局長區璟智女士：**

要看SFC是否有資料。我知道全世界的監管機構都希望有這個問題



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1 的答案。

2  
3 **助理法律顧問顧建華先生：**

4  
5 這個問題是沒有答案的？

6  
7 **財經事務局副局長區璟智女士：**

8  
9 我請Mark作出解釋。

10  
11 ***Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures***  
12 ***Commission:***

13  
14 It is a guesstimate and by definition these are non-transparent and because they are  
15 not transparent we cannot measure them. Based on our discussions with the firm, the  
16 observation is that, we think, may be hedging activity in the market and with the firm saying,  
17 they think maybe three or four listed companies would be caught for each of them and they  
18 would probably be Hang Seng index stocks. It is probably fair to guess that the volume of  
19 equity delivered is under 5 per cent of the total value of the market but I would not be  
20 surprised to find that I would be proven wrong, but that seems consistent with the level of  
21 activity in the physical market because everything hedges back into the physical market and  
22 consistent with the anecdotal evidence that we would get in when we were discussing their  
23 books as they were talking with Miss NG before, but it is a guesstimate because it is not  
24 transparent.

25  
26 ***Mr KAU Kin-wah, Assistant Legal Adviser:***

27  
28 Let us assume that it is so, that it is only 5 per cent of the market capitalization.

29  
30 ***Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures***

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1 **Commission:**

2  
3 Less than 5 per cent.

4  
5 **Mr KAU Kin-wah, Assistant Legal Adviser:**

6  
7 How much of that – of course, this is again a guess – would be comprising of  
8 derivatives that is perhaps more than one underlying share?

9  
10 **Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures**

11 **Commission:**

12  
13 The great bulk of it would be delivered as just one underlying and this again is a  
14 guesstimate. The binary options that you are talking about – those things with more than  
15 one underlying in the baskets – are at the moment rarish. They would probably be twenty  
16 per cent of the total activity at most but again I am going on anecdotes and information. We  
17 have absolutely no hard numbers on this because the transactions are OTC and unreported  
18 and they take place in unlicensed entities so we do not see this on inspection. They take  
19 place in unlicensed entities because the Financial Resources Rules make it uneconomic to put  
20 these transactions in the licensed entities if you can avoid it because you need more capital.

21  
22 **Mr KAU Kin-wah, Assistant Legal Adviser:**

23  
24 So our present provisions would, according to the estimation, record about 80 per  
25 cent of the OTC equity derivatives.

26  
27 **Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures**

28 **Commission:**

29  
30 It is worse than that because it has been cash settled. We are missing even more.

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1 Most of the OTC stuff is cash settled, or what they call “total return swaps” where the  
2 underlying is purely notional so that is why there is so much concern by G9 about the cash  
3 settled derivatives because that is the majority of what happens off market – is cash settled.  
4 Physicals are very rare.

5

6 ***Mr KAU Kin-wah, Assistant Legal Adviser:***

7

8 Yes, but to record under our present provisions, the new Bill would record cash  
9 derivatives, so we would get about 80 per cent of the OTC?

10

11 ***Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures***  
12 ***Commission:***

13

14 Yes, assuming that the people reporting are over 5 per cent. You also lose quite a  
15 lot because it is under 5 per cent.

16

17 ***Mr KAU Kin-wah, Assistant Legal Adviser:***

18

19 So it is actually much, much less than 80 per cent and that would mean much less  
20 than 4 per cent of the total market value.

21

22 ***Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures***  
23 ***Commission:***

24

25 Yes, but can I just make one point? A lot of this is company specific. If you are  
26 looking at second or third line of stock, there is actually a small proportion of what market  
27 had, so a 10 per cent or 20 per cent transaction then is still a very small proportion of the  
28 overall market but it is very significant in the market in relation to that particular stock. All  
29 of this is company specific. It is not going to tell us a lot about broad market aggregate but  
30 it will tell us a lot about stocks where there is significant interest.

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1

2 *Mr KAU Kin-wah, Assistant Legal Adviser:*

3

4           What would be the situation if, because of you allowing equity derivatives with  
5 more than one underlying share to go undisclosed? How would you estimate the possibility  
6 that the issuers would resort to tactics which would give a notion of second underlying shares  
7 so that it would take the whole out of the net?

8

9 *Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures*  
10 *Commission:*

11

12           What we are doing at the moment is exploring a grasping concept where no stock  
13 in the basket is allowed to be more than 30 per cent of its buy value at the time the basket is  
14 created so, in other words, it would have to be a true basket with prices determined by 70 per  
15 cent by other things in the particular stock and we think that is enough to prevent it being  
16 merely used as an avoidance mechanism.

17

18           But there is a trade-off. Everything you do leads to the possibility that people  
19 will structure transactions to avoid disclosure and whether 30 per cent is the right number or  
20 25 per cent is the right number – I cannot say I know but that is what we are exploring with  
21 the industry.

22

23 *Mr KAU Kin-wah, Assistant Legal Adviser:*

24

25           So we are putting quite a lot of energy into the drafting to record about less than 4  
26 per cent of the total market value and, at the same time, we do not know how much may  
27 escape because of the structuring which we know we cannot avoid, in any event. Would it  
28 really be very effective in enhancing the transparency that we are striving at, in view of the  
29 cost?

30

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1 **Mr Mark DICKENS, Executive Director, Supervision of Markets, Securities and Futures**  
2 **Commission:**

3  
4 The answer is: “very much so”. The cost at the moment is mainly falling on the  
5 government. That is where the people are putting all the investment into the basket. Very  
6 much so. We have had a number of situations where we have been aware that the market in  
7 particular stocks – and I am not talking Hong Kong Bank here but in particular stocks – is  
8 being driven by derivative transactions which are non-transparent. In those stocks – and  
9 they tend to be the sorts of stocks that retail investors are particularly attracted to because  
10 they show a lot of activity – these transactions are extremely important. They are a small  
11 proportion of market capitalization but they are very important to investor confidence and to  
12 perceptions of transparency in our market.

13  
14 **Mr KAU Kin-wah, Assistant Legal Adviser:**

15  
16 Thank you. If I may ask a further technical question concerning derivatives:  
17 that the SFC would not prescribe the form of the register of the share interest and short  
18 position?

19  
20 I think the SFC would prescribe the forms for - - I mean, the notice of reporting the  
21 share interest and the short position but not the register to be kept by the listed corporation.

22  
23 **Chairman:**

24  
25 This is related to clause 364?

26  
27 **Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:**

28  
29 Yes. It is proposed it will be separate, a part of it would be cash derivatives that  
30 stands for ordinary interest in shares.

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1

2 *Mr KAU Kin-wah, Assistant Legal Adviser:*

3

4 Yes, but no specific forms to be prescribed.

5

6 *Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:*

7

8 There is no provision for us prescribing any forms.

9

10 *Mr KAU Kin-wah, Assistant Legal Adviser:*

11

12 So you would ask for the separate interest to be recorded separately.

13

14 *Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:*

15

16 Correct.

17

18 *Mr KAU Kin-wah, Assistant Legal Adviser:*

19

20 But since you are requiring disclosure of the short position as well as the long  
21 position which may cancel out each other and if you separate them then it would cause very  
22 great – well, I do not know. As a layman, I suppose it would be very difficult indeed to  
23 involve searching and matching the entries to make sure you have the true picture because if  
24 you look at the short position you have a picture; if you look at the long position you have a  
25 picture; but actually when you are netting, they would actually be at the zero point.

26

27 *Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:*

28

29 We have required that short positions have not been netted off from the long  
30 positions for the purposes of determining the percentage of shares that a person is interested

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1 in. In order to identify these interests, if they are all amalgamated onto one register it will  
2 be very difficult to identify which interests are actually derivatives or out of direct interest in  
3 shares.

4  
5 **Mr KAU Kin-wah, Assistant Legal Adviser:**

6  
7 I am not asking for them to be mixed but I suppose some sort of simple cross  
8 reference would solve the problem but you have not expressed in the primary legislation.

9  
10 **Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:**

11  
12 We have not gone into that in the primary legislation.

13  
14 **Mr KAU Kin-wah, Assistant Legal Adviser:**

15  
16 I do not think you have that power as it is now drafted.

17  
18 **Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:**

19  
20 There are provisions for the Chief Executive to make regulations to provide for the  
21 better carrying out of the objectives of this part. This is one of the details which we would  
22 have to look into to make sure these registers were workable.

23  
24 **主席：**

25  
26 這樣做是否會廣泛了一點？

27  
28 **財經事務局副局長區璟智女士：**

29  
30 我會研究一下SFC現有的form是怎樣的，將來如果加入新品種之

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1 後，他是否需要多一點權力？或發出一些guidelines提醒業界，如何做這些  
2 記錄才比較適當。

3

4 ***Deputy Chairman:***

5

6 It has to be more specific. I think the legal adviser has the point.

7

8 ***Chairman:***

9

10 Yes. I understand that under 365 you have the same power to make regulations.  
11 The Committee is expecting it to be more specific.

12

13 好的，多謝各位。今天我們可以提早結束會議。星期五要討論的是  
14 第XVI部分，文件已經分發給各位。

15

16

17

18

19

20 m2785