

**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 Wednesday, 4 July 2001, at 10:45 am  
in Conference Room A of the Legislative Council Building**

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

Mr Arthur YUEN  
Division Head, Banking Supervision Department, Hong  
Kong Monetary Authority

Mr Gilbert MO  
Deputy Law Draftsman

Ms Fanny IP  
Senior Assistant Law Draftsman

**Attendance by invitation** : Mr Andrew PROCTER  
Executive Director, Intermediaries and Investment  
Products, Securities and Futures Commission

Mr Leo LEE  
Director, Licensing Department, Securities and Futures  
Commission

Mr Andrew YOUNG  
Legal Consultant, 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：**

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3 委員會在上次會議剛好完成討論第V部第118(4)條。我們今天將會  
4 參閱的文件主要是立法會CB(1)1654/00-01(01)號文件及《證券及期貨條例草  
5 案》的文本。現請政府的代表進入會議室。

6

7 李家祥議員表示希望提問關於監管成本的問題。將來由兩個規管機  
8 構進行監管時，有關人士是否需要支付雙倍的成本？我容許李議員先提出  
9 他的問題。

10

11 **李家祥議員：**

12

13 問題其實是很簡單的。最初訂立條例草案的原意之一，是希望有一  
14 個較精簡及統一的架構，在某程度上，減輕這行業的營運成本。其中最主  
15 要及最明顯的一點，就是金管局與證監會的工作無需重疊。當然，我也明  
16 白同事關注到多方面的問題。現時在作出修訂及訂立合作備忘錄後，有關  
17 情況似乎並非十分清晰，也就是說，把規管工作分開處理。究竟這樣的做  
18 法真的能夠節省成本，還是與以往一樣呢？這問題從來沒有人提出過。由  
19 於這也是政府訂立條例草案的主要政策目標，我認為到了某個階段，例如  
20 當政府就整條條例草案提出所有修訂後，我們需要考慮條例草案究竟能否  
21 達到有關的政策目標？這問題是較為明顯的，我認為適宜在現階段提出。  
22 請問當局曾否考慮有關成本的問題？

23

24 **主席：**

25

26 副局長。

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28 **財經事務局副局長區環智女士：**

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30 當局最初向各位解釋有關規管銀行證券部的建議時，說明有關這方

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1 面的數個政策目標。規管負擔是其中之一。當然，所需考慮的最重要一點，  
2 就是有否為投資者提供水平相若的保障。第二，規管重疊是否減到最少。  
3 這與李議員剛才提出的問題息息相關。如果規管工作有很多重疊之處，規  
4 管負擔及規管成本相對也會增加。當然，亦要考慮到業界所關注的問題，  
5 即有否提供公平競爭的環境。以上所述的都是我們在制訂有關建議時所考  
6 慮的政策要點。

7  
8 李議員剛才問到，當局就有關建議作出修訂後，對當初的政策是否  
9 有明顯的影響？當局在5月28日向各位提交了一份文件，當中解釋政府與業  
10 界商討後就有關建議作出的修訂。各位從該份文件可以知道，我們主要就  
11 處分制度作出修訂，也就是說，當有關人士違規後，兩者所作出的處分方  
12 式、罰則等是否可以更貫徹一致？有關的修訂主要是針對處分制度及上訴  
13 渠道。我們盡量對銀行證券部及證監會發牌的持牌經紀，採取一致的處理  
14 方法。至於李議員剛才表示關注到會否對規管工作及規管成本造成影響，  
15 當局就這兩方面作出的修訂，應不會令規管工作有所重疊，亦不會影響規  
16 管成本。當局的修訂建議主要是對違規者採取一致的處分安排。當該等人  
17 士對處分的決定有所不滿時，有關的上訴安排也是一致的。或者我請Mr  
18 CARSE作出補充。

19

20 **副主席：**

21

22 Sorry, Mr CARSE. 關於副局長提到的處分，我記得委員會曾收到有  
23 關文件，請問副局長所提到的是哪一項條款？

24

25 **財經事務局副局長區璟智女士：**

26

27 在5月28日發出的文件。

28

29 **副主席：**

30

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1           不，請問是哪一項條款？

2  
3 **財經事務局副局長區璟智女士：**

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5           關於第IX部的。我們在5月28日發出的文件，當中提及建議修訂的  
6 主要內容。

7  
8 **Deputy Chairman:**

9  
10           Sorry, Mr CARSE.

11  
12 **Chairman:**

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14           Mr CARSE, please.

15  
16 **Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:**

17  
18           I think there are two ways of looking at cost. There is the cost to the regulatory  
19 institutions, and there is a cost of the regulators. One of the objectives – I am speaking in  
20 relation to exempt authorized institutions – has been to try to reduce regulatory costs as much  
21 as possible by leveraging off the existing supervision exercised by the Monetary Authority.  
22 Certainly from the banks' point of view, they have expressed a desire to deal as much as  
23 possible with only one regulator.

24  
25           Obviously there will be an increased compliance burden on the banks as a result of  
26 the whittling away of the exempt status of the AIs which we have been talking about with the  
27 Committee, but I think there is balance to be struck there between the desire to have  
28 appropriate protection for investors and a level playing field for the brokers, and the cost of  
29 compliance.

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1           That is one point, but we are trying to minimize the costs of compliance as much as  
2 possible, as I say, leveraging off the existing supervision exercised by the Monetary Authority.  
3 If you look at it from the regulator point of view in terms of regulatory costs, again this  
4 leveraging, using the existing knowledge that the Monetary Authority has of exempt  
5 authorized institutions, of their management and of their systems of controls, using our own  
6 existing examination resources should help to reduce the overall costs of the two regulators.

7  
8 ***Hon Eric LI Ka-cheung, JP:***

9  
10           I think that confirms my suspicion that actually the whole exercise at the end of the  
11 day is more or less a shake-up to save the cost of the regulator; but as far as the banks are  
12 concerned, actually it is probably worse than before, because of the loss of some exempt  
13 status.

14  
15           In terms of compliance requirement and costs, I just wonder, if that is the case,  
16 whether there is any potential method whereby some of the savings of the regulator can be  
17 passed on. I think if you look at the Financial Services Authority in the UK, one of the main  
18 reasons for combining the licences is to reduce the costs of compliance as well as the licence  
19 fees of the individual institutions concerned. I think that is a fairer formula as far as the  
20 banks are concerned. I just wonder whether that can be considered.

21  
22 **主席：**

23  
24           副局長。

25  
26 **財經事務局副局長區璟智女士：**

27  
28           或者首先讓我簡單解釋有關情況，然後由Mr CARSE再作詳細解  
29 釋。我們提出今次的建議，其實主要是加強對銀行證券部的規管。在條例  
30 草案獲得通過後，雖然他們仍然稱為獲豁免認可機構，但這項豁免與以往

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1 的已有所不同。我們其實是要考慮應怎樣加強規管，並且與證券界的規管  
2 水平貫徹一致。從這個角度而言，成本將會增加，但我們同時會考慮能否  
3 將不必要的規管重疊減至最少。我們可以做的，就是在增加成本的程度方  
4 面，盡量減至最低。

5

6 **Chairman:**

7

8 David.

9

10 **Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:**

11

12 Thank you. I think Mr Eric LI's point is correct, that the compliance costs for the  
13 banks and presumably also for the brokers will increase, but I think that is inevitable if you  
14 are strengthening the regulatory framework and, as I say, whittling away at the original  
15 concept of exempt status. We have not disagreed with that, because we accept the point that  
16 the banks in the securities business should be subject to the same standards as the brokers, and  
17 that will impose a cost on the banks.

18

19 In terms of the cost of the regulators, our costs will also rise because we will be  
20 intensifying our supervision of the banks' securities business, just as the SFC will be  
21 intensifying their supervision of the brokers' securities business. I think our costs will go up,  
22 and the costs of the supervisors' institutions will go up, but I suppose the argument from our  
23 point of view would be that the costs of the regulators will perhaps rise by less than they  
24 would have done, given the kind of sharing of responsibility that we would have with the SFC  
25 in relation to exempt AIs and the ability to leverage off the existing supervision of the  
26 HKMA.

27

28 **胡經昌議員：**

29

30 主席，我以往也曾提出這問題，但當局一直沒有作出回應。當時，

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1 我並沒有具體問及成本的計算方法。我十分同意李家祥議員剛才提出的意  
2 見。關於成本方面，其實涉及兩方面的考慮。一方面，經紀或銀行證券部  
3 的成本會否有所增加？同樣的監管工作，不論由證監會或金管局作出也  
4 好，有關費用應該是一樣的。金管局所作出的監管，並無理由因需要達到  
5 某個效果而成本有很大的分別。我所關注的是，如果將來真的要這樣做，  
6 金管局需要增加多少人手呢？我以往也曾提出這問題，但直至現時為止還  
7 未得到回覆。

8  
9 同樣，屆時證監會的人事編制又如何呢？我們需要考慮所涉及的人  
10 力資源。根據現時的建議，獲豁免認可機構會由金管局負責監管，證監會  
11 的持牌人由證監會監管。其實，假如有關銀行的部分也交由證監會監管，  
12 人事編制的架構可能不會那麼臃腫。我希望當局向委員會提供一些數據，  
13 但直至現時為止還未收到。我以往也曾要求當局提供數據，說明需要多少  
14 人負責這方面的事宜。如果人數太少，便無法進行同樣的監管工作。所以，  
15 當局必須向我們提供一些數據，我們才能清楚知道有關情況。我認為，這  
16 樣下去會出現很多重疊之處。上次會議也提到，金管局與證監會簽訂MOU。  
17 根據以往的那一套做法，據我記憶所及，金管局與證監會需要經常開會，  
18 那麼是否需要訂立MOU？第二，上次會議也提到，將來的MOU會更加複  
19 雜。但問題是，由於有關的MOU不會載於《證券及期貨條例草案》中，那  
20 麼由誰負責審核MOU的內容？直至現時為止，我們仍未收到新的MOU。與  
21 舊有的MOU比較，新的MOU應該較詳細，但我們還未有機會參閱新MOU的  
22 內容。

23  
24 我也十分關注成本的問題。立法會負責監管政府的運作，我們也希  
25 望當局的架構是合理的，不會過分臃腫。關於成本的問題，這涉及兩方面，  
26 包括用家的成本及監管的成本。如果政府能夠提供一些數據讓我們參考，  
27 對我們會有很大幫助。擬議規管架構的整體費用開支，會否較由一個規管  
28 機構進行監管所需的開支還要多？

29  
30 **主席：**



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1  
2 副局長。

3  
4 **財經事務局副局長區璟智女士：**

5  
6 我相信無論是證監會或金管局，都會致力善用資源。在落實這次法  
7 律改革後，即使他們有一些新增的規管功能，他們首先會考慮怎樣重新運  
8 用及調配現有的資源，然後才考慮是否需要增加資源。就證券行業而言，  
9 現時他們需要就每項活動申請註冊。經紀從業員為了完成一宗生意，有時  
10 可能需要提出3項或4項註冊申請，成本是十分昂貴的。對SFC從事規管工作  
11 的同事來說，他們的工作亦可能會有所重疊。日後經紀從業員只須申請單  
12 一牌照便可以了。雖然新增的規管要求或會令成本有所增加，但在此長彼  
13 消的情況下，兩者可能互相抵銷，所以我們相信新的規管措施不會令成本  
14 大幅增加。Mr PROCTER稍後會就這方面作出補充。

15  
16 胡議員剛才問到金管局會增加多少人手，我在委員會會議上至少曾  
17 一次或兩次回答這問題，蔡先生或阮先生也曾在有關文件中或在會議上交  
18 代了這方面的情況，金管局會就此成立3個小組。金管局已展開這方面的工作，  
19 並與證監會的同事就人事及知識兩方面互相交流意見。如果胡議員希  
20 望知道有關的具體情況，我們完全不介意提供這些資料給胡議員參考，不  
21 過我們以往確曾向各位提供這方面的資料。我請Mr PROCTER及Mr CARSE  
22 作出補充。

23  
24 **Chairman:**

25  
26 Andrew.

27  
28 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**  
29 **Securities and Futures Commission:**

30

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1 Chairman, I think so far as our registrants are concerned, there is no doubt that  
2 these arrangements would result in a reduction in costs. I do not think there will be any  
3 material increase in compliance costs, but there will certainly be some significant savings by  
4 reason of the regulatory structure that we put in place. First of all, a single licence  
5 arrangement will mean that it is no longer necessary to hold several licences, each of which  
6 carries a minimum regulatory capital requirement. There will be one single start-up capital  
7 requirement, so there will be a great saving in the order of millions of dollars for any  
8 registrant that holds multiple licences at the moment.

9  
10 Secondly, on a week-by-week, month-by-month, year-by-year basis, it will only be  
11 necessary to get representative status or to file returns or to file annual filings and so on, in  
12 respect of one licence. So the ongoing compliance costs in that respect will also be quite  
13 significantly reduced. Whilst I cannot give Mr WU the number he seeks, in fact in terms of  
14 fees on an ongoing basis, our current thinking is that in each case the fee would either be  
15 reduced or stay the same. So we are working on a schedule of fees at the moment which  
16 does not include any proposal to increase, and in most respects I think would result in a  
17 saving, particularly to any registrant that had more than one licence.

18  
19 I understand the concerns that have been expressed about overlap of effort, but I  
20 think it is worth just keeping clearly in mind what Mr CARSE is saying about the possibility  
21 of leveraging off other information that the HKMA has about its registrants or the banks that  
22 perform dealing business. Because the reality would be that if the SFC were to go in and  
23 start inspecting that discrete aspect of the bank's business, we would also need to gain an  
24 understanding of the other aspects of its operations, its systems and its controls, of the risks  
25 that affected it.

26  
27 The way it is usually described is to use some terminology which is actually in  
28 some of the earlier documents that have been provided to the Committee, but let me just  
29 quickly go over it again. The banks internationally – and the HKMA does the same –  
30 supervise on a consolidated basis. That is, they look at all the operations of a group and

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1 understand the risks of the whole group, and actually look and consolidate out those financial  
2 risks and issues.

3  
4 So they would, in any event, want to understand the risks associated with the  
5 broking business, even if we were the supervisors of it. Conversely, the SFC and other  
6 securities regulators supervise in what is described as “a group-wide basis”. We do not  
7 consolidate typically in an accounting sense, but we do need to understand the whole of the  
8 risks and operations of the business, because there are contagions; there are intra-group risks  
9 that flow. Again, if we were the supervisors of that discrete business, we would need to  
10 understand what was happening in the rest of the banking group. So I do not think there is  
11 much doubt that whilst there may be areas where you can identify overlap, and whilst there  
12 may be a need for regular and frequent meetings between ourselves and the HKMA, the  
13 alternative would result in much more overlap. Also much greater need for those kinds of  
14 meetings, and actually a much heavier compliance cost, particularly on the banks and their  
15 broking business, just because of the need for the regulator to understand the risks of the  
16 operation as a whole.

17

18 **Chairman:**

19

20 David, do you have anything to supplement? Do you want to add anything?

21

22 **Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:**

23

24 No. I do not.

25

26 **主席：**

27

28 胡議員，你希望作出跟進？

29

30 **胡經昌議員：**

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1  
2 對。我剛才提及人事編制，其實我希望政府能夠向委員會說明在金  
3 管局的架構內，該3個小組處於甚麼位置？對我來說，他們所處的位置相當  
4 重要，這涉及公平與否的問題。如果該3個小組所處的位置很低，便失去了  
5 責任性及重要性，這對整個架構會有影響的。我希望當局能夠提供一圖表，  
6 說明金管局的人事編制，以便我們瞭解該3個小組處於哪一層。我並非要求  
7 當局說明成立了多少個小組或該等小組的實際人數，因為即使有這些資  
8 料，我也無法將有關情況與證監會的作一比較。如果政府能夠提供這方面  
9 的實際資料，便會較理想。

10  
11 ***Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:***

12  
13 Well, Mr Chairman, these teams are just on a par with our bank examination teams.  
14 I mean, there are no lower status than those. They report through senior managers to head of  
15 division in exactly the same way as the bank examination teams do, so from our point of view  
16 they are just the equivalent of a bank examination team except that they are concentrating on  
17 a particular area. Similarly we have the examination teams that concentrate on MPF  
18 business, for example, and on things like electronic banking; so that they are just specialist  
19 examination teams within the HKMA.

20  
21 ***Chairman:***

22  
23 Margaret.

24  
25 ***Deputy Chairman:***

26  
27 Mr Chairman, of course I have voiced this concern before, where you have two  
28 separate regulators so I am not going to repeat that. I will just register that personally I find  
29 this rather a dissatisfactory kind of arrangement, but this probably is not the stage to talk  
30 about such matters of principle, whether banks carrying out securities-dealing business should

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1 be regulated by the SFC or the HKMA. We register a different point of view, and I leave it  
2 at that.

3  
4 Under this framework I think that things have developed further. Now with the  
5 removal of the interest rate agreement, we are hearing all sorts of comments that in order to  
6 survive, we may see banks branching out in a more proactive way, more aggressive way, in  
7 other kinds of services, including securities investment and so on. So we may really expect  
8 the banks to do a lot more in the future than now.

9  
10 Assuming we are looking at the scenario of banks being regulated by HKMA for  
11 everything they do, we may have to look at two kinds of supervision. You have prudential  
12 supervision that we have no particular problem about. HKMA is experienced and tested in  
13 the business of prudential supervision of banks. But as to conduct supervision, what are you  
14 going to do about that? How are you going to increase your staff? As far as I understand it,  
15 and I try my best to understand this Bill, you sort of delegate that power to the officer  
16 responsible in each bank, instead of a direct hands-on supervision as is carried out in the SFC.

17  
18 I would like to know the kind of approach you will take, the manpower, the actual  
19 administration you are going to take towards this increasing activity in the banks' securities  
20 business.

21  
22 Thank you.

23  
24 ***Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:***

25  
26 Thank you. As you say, we have got a difference of principle. My own view is  
27 that the distinction between functional and institutional supervision and between prudential  
28 supervision and conduct of business supervision is a bit more blurred than you think. I think  
29 in the banking area it is going to become generally more blurred. It is perfectly true at the  
30 moment that the HKMA is predominantly a prudential regulator, but that does not mean to say

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1 that we do not look at conduct of business issues in relation to the banks.

2  
3 To give you one obvious example, we look at money laundering in relation to the  
4 banks. That is a very important part of our supervision, and that is essentially a conduct of  
5 business issue related to “know your customer”. We are also getting increasingly involved  
6 in consumer-related conduct of business issues. We already act as a complaint body for  
7 consumers in relation to complaints that they have about banking services. We have issued  
8 quite recently a paper to the LegCo Financial Affairs Panel which looks at the arrangements  
9 for consumer protection in the UK and Australia, and contrast that with the Hong Kong  
10 situation, to see whether improvements or enhancements should be made here.

11  
12 I think the dichotomy between prudential supervision and conduct of business  
13 supervision is becoming blurred, and that will apply on the SFC side as well as ourselves.  
14 They are not purely a conduct of business supervisor; they also supervise the prudential  
15 position of brokerage companies.

16  
17 I suppose the first point to make is that in carrying out conduct of business  
18 supervision under the Bill, we will not be reinventing the wheel. We will be applying the  
19 same standards as are applied by the SFC, and they will be the main standard-setter. They  
20 will consult us in relation to those standards that have a bearing on exempt AIs, but they are  
21 in the driving seat in terms of establishing the standards, and we will then apply these  
22 standards, using our on-site examination capability as well as off-site review.

23  
24 We have already set up the mechanism for doing that. In fact we have been doing  
25 it since 1995. What is different is the intensity with which we do it, and the formality with  
26 which we do it. You said that this is just going to be left to the management of the banks.  
27 It is perfectly true that we think the prime responsibility for making sure the banks are  
28 prudently run rests with the management itself. That is a cardinal principle that all banking  
29 regulators have, and I would suspect also securities regulators have, because otherwise there  
30 is a moral hazard, if we are actually seen to be managing the banks.

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1  
2           However, we will on top of that have our own on-site examination capability. We  
3 will supervise compliance with the SFC standards. The banks will be subject directly to a  
4 number of the provisions in the Securities and Futures Bill legally, on a statutory basis,  
5 whether we exercise discretion or not. Therefore they will be much more directly subject to  
6 the same standards and the same degree of supervision as the brokers have, in relation to their  
7 securities business. The point in relation to management applies particularly in relation to  
8 bank staff where we have said we think in relation to front-line staff, the main responsibility  
9 for checking that they are fit and proper should rest with the banks themselves. In the same  
10 way as the ordinary banking staff are subject to that vetting by management; but we will do  
11 our own basic vetting of the names that are on the register. We are also looking at means of  
12 enhancing the provisions relating to front-line staff as a proposed amendment to section 118.  
13 We are also proposing in the Banking Ordinance to take the power to remove individuals from  
14 the register if they commit misconduct or if they are considered to be not fit and proper by  
15 reason of their conduct.

16  
17           So there will be a statutory overlay, even in relation to the treatment of front-line  
18 staff. We will try and supervise the conduct of business – just to sum up – according to the  
19 same standards that we apply to the supervision of banks’ other activities which are  
20 increasingly intertwined with securities business; and we will do that on the basis of the  
21 standards set by the SFC.

22  
23           Thank you.

24  
25 ***Deputy Chairman:***

26  
27           Mr Chairman, just to follow up. Mr CARSE, I am looking at clause 114. This is  
28 the restriction on carrying on business in regulated activities. That is C1713. You see at  
29 the end of the page (4): “Section 3 shall not apply” – that is really who can conduct this  
30 business. You have (a): “A licensed representative who carries on for his principal a

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1 regulated activity for which the representative is licensed...”

2

3           So as far as this “known exempt people” is concerned, you have to be a licensed  
4 representative before you can carry on the business. In (b), if it is an exempt person then  
5 you see an individual – “(i) who carries on for an exempt person a regulated activity for  
6 which the exempt person is exempt” and “(ii) whose name is entered in the register  
7 maintained by the HKMA...”. So here this individual is not a licensed representative, you  
8 have a difference here.

9

10 ***Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:***

11

12           Well, this is a difference that we talked about previously.

13

14 ***Deputy Chairman:***

15

16           I know.

17

18 ***Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:***

19

20           I have tried to explain that we are looking at first of all the way in which the front-  
21 line staff of banks are dealt with at the moment. There is no requirement for banking staff  
22 to be licensed, and they can carry out transactions that may be as equally complex as those  
23 involved in the securities business, and which may have just as big a bearing in relation to the  
24 financial position of the people within the deal as the securities business.

25

26           Now, the second point is that we think it right that the senior management of the  
27 banks should have a clear responsibility to ensure that their staff doing this type of business is  
28 fit and proper. They will have a requirement to do that, which will be embodied as a  
29 statutory condition under section 118.

30



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1 *Deputy Chairman:*

2

3 Mr CARSE, I understand you, and I know that I have referred to this before, but  
4 this is what I mean by the SFC directly supervises the licensed representative. The HKMA  
5 only indirectly supervises such people, because, as you pointed out, they are under the direct  
6 supervision of the bank staff. It is their responsibility. So I see a difference there. This is  
7 okay if you are talking about a prudential kind of supervision, but is it a different level of  
8 conduct, this conduct of business supervision. How is the HKMA going to do that? Are  
9 you content to allow this to be indirect?

10

11 *Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:*

12

13 I think, just as I presume the SFC put to you, when you look at whether individual  
14 members of staff are carrying out their business properly, first of all you are looking at the  
15 overall system of controls and management within the institution itself. I do not imagine  
16 that you go into a brokerage company and individually vet the past conduct of every  
17 employee, to check to see whether they are behaving properly. It does boil down to the  
18 systems of management and control within the institution we are dealing with.

19

20 I think the difference we are talking about is the initial vetting of the employees.  
21 After that those employees are subject to the same code of conduct provisions as the SFC  
22 licensees. They are directly subject to those statutory requirements. If they breach those  
23 requirements, under the proposed amendments, we have submitted to the Committee, they  
24 will be subject to disciplinary proceedings. They can be removed from the register by the  
25 HKMA; they can be subject to fines by the SFC, or a public reprimand.

26

27 We have responded to your previous concerns by beefing up these provisions. All  
28 we are talking about is the initial entry on to the register. Whether we check every one of  
29 these employees, or we say “You, the bank, are responsible for the prudent running of your  
30 business and you should make sure that these people are responsible”. Otherwise we are in a

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1 situation of where, if you are on the front line, the counter in a branch, dealing with securities  
2 business, you are subject to individual vetting by the HKMA. But the person next door to  
3 you who is carrying on banking business, is not subject to individual vetting by the HKMA.

4

5 ***Deputy Chairman:***

6

7 Mr Chairman, I do not want to occupy too much time now, and Mr CARSE, I am  
8 not cutting you short because I do not want to listen or am impatient with your explanation.  
9 It is just that I realize we are going into details, and I am making a point perhaps which cannot  
10 be dealt with in the exercise of vetting this Bill. I want to say in the clearest terms that I am  
11 concerned about the actual administration of supervision by HKMA in the context of a fast-  
12 developing business in the banks, to offer these kinds of services to the wide public.

13

14 The HKMA is a small concern. It was not established for this kind of thing.  
15 When HKMA was established it was not looking forward to doing a large number of conduct  
16 supervisions of securities services in banks. If you are having to face the situation because  
17 of this Bill passing into law, then I think there is a need for us to re-examine the role of  
18 HKMA, the set-up of HKMA, whether it is strong enough to rise to this new challenge. This  
19 is what we are talking about.

20

21 ***Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:***

22

23 From our point of view it is not a new challenge. That is why we place so much -

24 -

25

26 ***Deputy Chairman:***

27

28 I understand you. You are saying that in fact you do a certain amount of conduct  
29 supervision. You do not just do financial prudential supervision. I understand this.

30

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1 *Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:*

2

3           It is not even simply that. I mean, all I am saying is that we already supervise the  
4 banks' securities business, and the conduct of that business, using examination teams which  
5 we have built up for that purpose. We do that according to standards, which are agreed with  
6 the SFC. We use the SFC's examination guidelines. We use the training resources of the  
7 SFC. We use the standards set by the SFC, and we agree the risk areas we will focus each  
8 year with the SFC. We agree the intensity of the examination. We agree the frequency of  
9 the examination.

10

11           If anything, we look at the banks' securities business more frequently and more  
12 intensively than the SFC does, in relation to brokers. Andrew may have his own views on  
13 that, but it is my impression that our examinations probably take a bit longer of individual  
14 institutions than the SFC does. I would accept your point if you were saying "This is  
15 something that we're going to promise to do at some stage in the future, and we will develop  
16 the capability to do it". But the fact is that we already are doing it, and we already have the  
17 capability to do it.

18

19           We accept that conduct of business has not in the past been a primary role of  
20 HKMA, but it is something that we are getting into, whether we like it or not. It is  
21 something that is going to arise in the banking business increasingly, and as I mentioned many  
22 times before, it is actually very difficult to distinguish between banking business and  
23 securities business in the banks. If you take something like Internet banking, for example,  
24 Internet banking services offer a securities broking service alongside it. Are we going to say  
25 that we are just going to look at the Internet banking service and not look at the securities  
26 service which is grafted on to that?

27

28           This is something we are already doing. I know that life is becoming more  
29 complex, but that is something we are just going to have to deal with.

30

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1 *Deputy Chairman:*

2

3 Mr CARSE, when talking about the role of HKMA becoming more diversified, it is  
4 more inclined at least as a matter of quantity, in terms of how far you go that is still a change.  
5 In fact, you have referred to consumer protection. Up to very recently HKMA was saying  
6 that consumer protection is none of its business. Now of course I hear you, that you have  
7 incorporated that, and that of course is inevitable, because if you have the role of supervising  
8 the conduct of certain business, then you have got to look at consumer protection, complaints  
9 mechanisms and so on. You take on all this sort of thing, and the role of HKMA will change,  
10 as your capability and your manpower. I would like to see at some point that there is  
11 reference once this becomes law, or even before that, we would like very much, I personally  
12 would like very much to see a description of the role of the HKMA in the future – the balance  
13 of its functions, how it meets its challenge, and so on. We are looking certainly at a situation  
14 when securities and other business and services offered by the banks are going to be much  
15 more diversified and more active.

16

17 **財經事務局副局長區璟智女士：**

18

19 讓我簡單作出回應。副主席剛才提出了一些綱領性問題，提到金管  
20 局的長遠角色。其實，就投資者保障方面而言，金管局在現階段正諮詢業  
21 界的意見，所以正如副主席所說，當局稍後可能會將這課題提交立法會討  
22 論。

23

24 就副主席剛才所提到的數個原則性問題，我們也曾解釋，關於規管  
25 證券業務的工作，全世界其實並無一個單一模式是最優勝的。一些地方以  
26 機構為本的方式進行規管，它們依賴有關的負責人員管理其下屬。現時，  
27 澳洲的證券規管機構便是採用這種方式。香港或英國的證券規管機構除規  
28 管公司外，還直接規管有關人士。這需要視乎當地市場的發展及經營者本  
29 身的運作模式而定。我希望指出一點，就是現時並沒有一個單一模式是最  
30 好或最不可取的。現時有幾種方式規管證券業務。至於採用哪一種做法，

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1 這需要視乎有關當局希望高層負責人員需肩負何種責任，以及有關公司的  
2 資源及內部監控措施是否完備。

3

4 至於副主席剛才問及金管局是否有能力對一些行為作出規管，我們  
5 希望強調一點，就是金管局現正進行這方面的工作。我們絕對相信金管局  
6 有能力把這份工作做好。

7

8 **主席：**

9

10 李家祥議員。

11

12 **李家祥議員：**

13

14 其實我也知道，我所提出的問題，與條例草案的審議工作並沒有直  
15 接關係。我明白現時應逐項審議條例草案的條文，我也希望盡快完成這方  
16 面的討論，按照時間表繼續進行審議工作。

17

18 當我提出這問題時，同事們表示已知道或很有興趣知道有關情況，  
19 我在此多謝他們。我們在完成審議這1 000多頁的條例草案後，屆時可能仍  
20 未能掌握到日後的運作情況。

21

22 我十分同意副主席的看法。其實我一直也希望建議，在完成整條條  
23 例草案的審議工作後，又或在通過條例草案前，政府與委員會應討論有關  
24 成本的問題，以及預計在執行時所出現的情況。

25

26 我所擔心的是，由於我們十分着重法例的嚴謹性，可能到最後成本  
27 會很高。在執行有關規定時，業界可能會有很大的反應，尤其是胡議員所  
28 代表的金融服務界。就銀行業而言，有關問題可能相對較輕微。雖然各位  
29 十分關注銀行會從事很多與證券有關的工作，但其實在銀行的眾多業務  
30 中，證券業務所佔的比例只是九牛一毛。無論怎樣發展這方面的業務，也

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1 不容易增加有關業務的比重。如果成本大幅增加，各位便要考慮是否值得  
2 推行這些規管措施，以及這些規管措施是否真的符合消費者的利益。

3

4 在完成條例草案的審議工作後，政府應與委員會討論有關成本及行  
5 政方面的問題。如果可以作出這方面的安排，我們便無需在現階段深入討  
6 論這問題。

7

8 關於成本方面，我希望當局說明有關的監管措施對規管機構本身的  
9 成本有何影響。第二，這些措施對受監管人士，包括銀行業及證券業人士  
10 的成本有何影響。第三，這些措施能否達到條例草案的其中一項政策目標，  
11 就是增加香港的競爭力。關於香港在國際社會的競爭力，情況並非只要加  
12 強監管，便能夠爭取客戶。雖然這是其中一項重要條件，但財政司司長及  
13 立法會亦多次表示十分關注整體成本的問題，尤其是本港的stockbrokers並  
14 非超級跨國大機構，他們對成本十分敏感。在通過條例草案前，我認為議  
15 員應對情況有所掌握，不然的話，屆時可能會出現一些未能預見的問題。  
16 也就是說，在立法的時候，假如我們只考慮立法精神，當條例草案通過成  
17 為法例後，屆時可能會發覺有關的運作完全是另一回事。所以，我希望在  
18 完成逐項審議條例草案的條文後，我們有機會與當局研究有關成本及行政  
19 方面的問題。

20

21 **主席：**

22

23 各位對這做法有沒有意見？如沒有其他意見，那麼委員會希望在暑  
24 假後，又或在完成逐項審議條例草案的條文後，當局說明該項擬議制度對  
25 規管機構的規管成本，以及對銀行及經紀的經營成本有何影響。

26

27 **財經事務局副局長區璟智女士：**

28

29 我們在現階段唯一可以對委員說的是，我們與委員一樣，也十分關  
30 注規管成本不可以無謂地增加。我們需要考慮市場人士的競爭力，不單是

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1 對內的競爭，還有對外的競爭。我們需要在保障投資者及維持市場人士的  
2 競爭力兩者之間取得一個平衡。

3

4 **主席：**

5

6 OK。關於第118(4)條，各位有沒有問題？

7

8 **胡經昌議員：**

9

10 關於“shall”和“may”的問題，請問政府需要再作研究，還是會在今  
11 次會議上回答有關問題？

12

13 **主席：**

14

15 首先回答“shall”和“may”的問題，好嗎？

16

17 **財經事務局副局長區璟智女士：**

18

19 據我記憶所及，在上次會議上，委員提出的關注是，第118條怎樣  
20 可以充分體現證監會批給豁免認可的權力。其實該條文已載有這意思，而  
21 我們已解釋，證監會和金管局會透過諒解備忘錄，將細節清楚列明。此外，  
22 金管局在考慮銀行是否適當人選時，會整間銀行作考慮，銀行的證券部只  
23 是其中一部分。所以，由金管局負責這方面的工作，是十分適當。據我記  
24 憶所及，我們與委員在上次會議上討論到這一點。請問還有沒有其他的提  
25 問？

26

27 **主席：**

28

29 Audrey.

30

**Bills Committee on  
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1 **余若薇議員：**

2

3 我們在上次會議討論這題目時，有建議指既然銀行方面並非真的獲  
4 豁免，他們也受金管局的監管，那麼為何稱他們為exempt persons呢？關於  
5 這問題，當局經詳細考慮後，結果是怎樣？是否仍然稱他們為exempt  
6 persons，抑或有一個更好的用語，能夠體現到他們實際上也受到監管？

7

8 **財經事務局副局長區璟智女士：**

9

10 我們曾與法律草擬科的律師專家商討有關問題。如果作出更改，這  
11 其實是形式多於意義。然而，這做法可能涉及大量工作，因此我們暫時把  
12 有關問題擱置。待委員會完成第V部的討論後，我們會視乎委員是否有很強  
13 烈的意見，認為該名稱在形式上也要再作考慮，然後才決定如何處理有關  
14 問題。葉律師，當時我們的建議是這樣，對嗎？

15

16 **高級助理法律草擬專員葉鳳瓊女士：**

17

18 當時有這樣的一個想法。

19

20 **財經事務局副局長區璟智女士：**

21

22 我們曾考慮有關問題。

23

24 **主席：**

25

26 關於第118(4)條，還有沒有補充？那麼政府的建議是仍然採用  
27 “shall”，還是改用“may”？

28

29 **財經事務局副局長區璟智女士：**

30



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1 我們先要考慮委員有沒有其他意見。

2

3 **主席：**

4

5 Margaret.

6

7 **副主席：**

8

9 關於這一點，我希望指出的是，“名不正則言不順，言不順則事不  
10 成”，所以不單是名稱的問題。當局向委員會也需要解釋這麼多次，還要我  
11 們每次提出這問題，所以在面對公眾時情況會如何呢？這也是值得考慮的。

12

13 關於這條文，我只有一個問題。根據第118(4)條，雖然有關決定由  
14 證監會作出，但證監會必須根據金管局的意見行事。根據第118(5)條，證監  
15 會在批給豁免時，可以施加一些條件。我們較早前問及第(4)款及第(5)款的  
16 決定的上訴機制時，當局表示，有關人士可針對該等決定向行政長官會同  
17 行政會議提出上訴。當時我曾提出意見，表示這麼重大的問題，應該交由  
18 證券及期貨事務上訴審裁處審理。請問當局現時的決定是怎樣？

19

20 **財經事務局副局長區璟智女士：**

21

22 我剛才提到在5月28日發出的文件，當中詳細載列我們的建議。我  
23 們會根據該等建議作出修訂，當討論第XII部時，屆時便會向各位提交有關  
24 的CSA。

25

26 **副主席：**

27

28 政府可否告訴我們，有關人士究竟應到哪裏提出上訴？

29

30 **財經事務局副局長區璟智女士：**

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1  
2 在5月28日發出的文件已清楚訂明，有關人士可針對該等決定向證  
3 券及期貨事務上訴審裁處提出上訴。

4  
5 **副主席：**

6  
7 多謝。

8  
9 **主席：**

10  
11 關於第(5)款，各位有沒有問題？胡經昌議員。

12  
13 **胡經昌議員：**

14  
15 我希望再次提出有關“may”和“shall”的問題。第(5)款訂明，“.....the  
16 Commission may at any time.....”。然而，該條款是subject to第(9)款的規定。  
17 第(9)款訂明，“證監會不得在沒有事先諮詢專員的情況下，行使該會在第(5)  
18 或(8)(b)款下的權力”。該條文沒有提到在諮詢金管局後，證監會是否必須接  
19 受金管局的advice。

20  
21 但有一點十分明顯，就是如果證監會諮詢金管局，而金管局向證監  
22 會提出意見，在這情況下，便會採用“may”一字。我的意思是，從第118(3)  
23 條開始，證監會所擔當的角色，儼如一名信差，程序如下：任何人如希望  
24 取得exempt status，便要向證監會提出申請。根據第(2)款，證監會必須將該  
25 項申請轉交金管局。根據第(3)款，金管局shall consider the application，然  
26 後consult the Commission，並advise the Commission。在這種情況下，其實  
27 金管局才是前線規管機構。證監會只負責將該項申請轉交金管局，然後由  
28 金管局決定是否批准該項申請。如果金管局並不反對該項申請，證監會便  
29 批准該項申請。換句話說，證監會其實是完全沒有權力的。

30

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1 當局表示，條例草案賦予證監會權力作出規管。但在這件事中，我  
2 們已清楚知道，有關申請是否獲得批准，其實由金管局決定，其他情況更  
3 不用說了。我認為，該等條文至少應改用“may”一字，給予證監會一點面子，  
4 不應“白紙黑字”訂明證監會只擔當像信差般的角色。我認為並沒有理由這  
5 樣做。

6  
7 我再次在此指出，並無理由要議員替證監會爭取權力。我們經常表  
8 示，證監會有很大的權力。但在這樣的情況下，證監會本身也不主動爭取，  
9 這令我感到十分失望。證監會實在並無理由同意這做法，讓當局堅持不對  
10 條文作出修改。我希望政府就這一點再作考慮。

11  
12 **財經事務局副局長區璟智女士：**

13  
14 我們會考慮第(4)款所採用的字眼，研究可否令該項條文的寫法更清  
15 晰。不過，我要強調一點，草擬法例並非為面子這回事，最重要的，就是  
16 詳細列出有關的概念，也就是說，金管局在那方面是前線規管者，所以才  
17 會有這樣的安排。正如副主席剛才所說，第(5)款訂明，證監會絕對有權施  
18 加條件。雖然第(9)款訂明證監會必須諮詢金管局，但證監會在進行諮詢後，  
19 不一定要聽從有關意見。這是一項相輔相成的安排。

20  
21 **主席：**

22  
23 我在上次會議結束前已指出，如果雙方並無異議，這是沒有問題  
24 的。不過，如果雙方有不同的看法，縱使證監會必須根據金管局的意見批  
25 給豁免，但在批給豁免時，證監會可施加多項條件，而這些條件是金管局  
26 所不能接受。屆時，證監會根據第(9)款又必須諮詢金管局對該等條件的意  
27 見。在這情況下，雙方可能會陷入爭持不下的僵局。結果，雙方還是需要  
28 透過磋商解決有關問題。所以，即使第(4)款改用“may”一字，實際上並無太  
29 大分別。不過，這做法能夠體現最終的權力，因為是由證監會批給豁免。  
30 請問這份修訂有沒有中文本？

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**財經事務局副局長區璟智女士：**

關於這份文件的中文本，據我所知，毛律師和顧律師應該可以在這一、兩天完成有關的討論。我們在星期五完成第V部的討論時，屆時應該有這份文件的中文本。我希望顧律師和毛律師可以在這兩天加把勁，盡快完成這方面的工作。

**主席：**

第118(6)條、第118(7)條及第118(8)條。

**Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:**

Mr Chairman, in subsection (8): I mentioned last time that the intention is to make an addition here, which is to make it a statutory condition that any individual whose name is entered in the register maintained by the Monetary Authority shall be fit and proper. I mean, this is just intended to give statutory effect to what we expect the management to do, to make it more formal.

**Deputy Chairman:**

Mr Chairman, just for clarification, reference to section 20 of the Banking Ordinance is section 20(1)(f) and (3). Is that right? This is where you say the Monetary Authority “shall maintain a register in such form as he thinks fit, which shall contain, among other things, such other particulars of banks, local representative officers...” and that sort of thing.

**Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:**

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1 Yes.

2

3 **Deputy Chairman:**

4

5 And then is there any difference, actually, between 20(1)(f) and section 20(3) where  
6 you require the bank, local representing office, and so on, to submit “such information for the  
7 purposes of subsection (1) as he may reasonably require”?

8

9 **Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:**

10

11 There will be an addition to section 20(1), a new paragraph, (ea), which shall  
12 require each exempt authorized institution to submit the name and business address of every  
13 relevant individual. A relevant individual being someone who is engaged in securities  
14 business for the bank. The capacity in which each relevant individual is employed. We  
15 will probably change that to “engaged”, because they may not necessarily be employed by the  
16 institution; and the date on which every relevant individual begin to act in that capacity.  
17 There will be a specific provision relating to the names on the register, and then there are  
18 more general provisions that relate to the power to obtain proper particulars in relation to  
19 those individuals, if it seems necessary.

20

21 **Deputy Chairman:**

22

23 I may have missed that. Is that in the amendment, in the Banking Amendment  
24 Bill?

25

26 **Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:**

27

28 It is in the Banking Amendment Bill; yes.

29

30 **Deputy Chairman:**

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I'll have a look at that. Thank you.

**財經事務局副局長區璟智女士：**

主席，我有一個建議，當我們完成第V部的討論後，便討論《2000年銀行業(修訂)條例草案》的有關條文。由於委員會同時也要審議《2000年銀行業(修訂)條例草案》，屆時便可相互參照兩條條例草案的條文。

**主席：**

我剛才詢問委員會秘書，究竟我們的程序應該是先完成《證券及期貨條例草案》的審議工作，然後再審議《2000年銀行業(修訂)條例草案》，還是在完成這部分的討論後，先行研究《2000年銀行業(修訂)條例草案》的相關部分？

**副主席：**

我認為委員會也要formally審議《2000年銀行業(修訂)條例草案》的條文。

**財經事務局副局長區璟智女士：**

在完成第V部的討論後，屆時會是一個很好的時間，研究《2000年銀行業(修訂)條例草案》的有關條文。

**副主席：**

我建議委員會屆時只參閱《2000年銀行業(修訂)條例草案》的有關條文，而不是處理該條例草案的條文。我寧願先參閱有關的條文，到最後

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1 才正式審議該條例草案，否則我們會將兩者混淆，日後可能會出現問題。

2

3 **財經事務局副局長區璟智女士：**

4

5 請各位注意，《證券及期貨條例草案》有幾個部分與《2000年銀行  
6 業(修訂)條例草案》有關的，分別是第V、VI、VII及IX部。

7

8 **主席：**

9

10 我們完成第V部的討論後，然後參閱《2000年銀行業(修訂)條例草  
11 案》的相關條文。屆時委員會只會參閱有關的條文，不會進行clause-by-clause  
12 examination的工作。

13

14 關於第118(8)(b)條，各位有沒有問題？

15

16 第118(a)(ii)條提及金管局備存的statutory register。據我記憶所及，  
17 條例草案的較後部分亦規定證監會所備存的register可供市民查閱。我相信  
18 同事屆時會要求，金管局所備存有關於證券活動的register，也採取同樣的做  
19 法。

20

21 第119條。

22

23 **胡經昌議員：**

24

25 主席，在上次會議席上，由於我誤以為根據政府提交的文件進行討  
26 論，而政府的文件由第118條開始，所以.....

27

28 **主席：**

29

30 你希望就已討論的條文提出問題？

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**胡經昌議員：**

對。

**主席：**

我容許你這樣做。

**胡經昌議員：**

真的不好意思，多謝主席。關於第114(6)條，該部分與 margin financing 有關。Group of nine investment bankers 就這方面提出了一個問題，政府所作的答覆似乎不是很清晰的。該條文規定，有關人士必須清楚知道所提供的財務通融並非用作炒賣股票。Group of nine investment bankers 所提出的問題是，在借出款項時，貸款人有時可能不會詢問借款的原因。借款人在取得該項財務通融後，便會按本身的計劃用作某種用途。那麼該條文所訂的“reasonably believes”，是否真的可以豁免貸款人的責任？貸款人如果違反了第(6)款的規定，可被處以第(7)款所訂的罰則，有關罰則包括罰款及監禁。他們十分關注當局怎樣能夠確保真的不會出現問題。在提供財務通融時，貸款人有時真的不知道借款人會怎樣運用該項通融。他們所擔心的是，會否因在實際環境運作上出現了問題，導致他們犯法，而干犯這項罪行的刑罰很重，屬於刑事罪行。

**財經事務局副局長區璟智女士：**

或者讓 Mr PROCTER 掌握有關翻譯後，才作出回應。

**Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,  
Securities and Futures Commission:**



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1  
2 Chairman, we are well aware of the concerns expressed by the group of  
3 international investment houses. We do not agree that the situation or the difficulties they  
4 foresee actually arising on the drafting. We are satisfied that the drafting is sufficiently clear.  
5 We have actually set out a response in respect of that particular concern, and the reference is  
6 in paper 5D/01. I have in mind also that it was taken out in another letter, and it is that other  
7 letter that I am looking for. In paper 5H/01 we also discuss this, in fact in paragraphs 5  
8 through 9: defence for carrying on securities margin financing business without a licence.  
9 We entirely understand the concerns and anxieties that have been expressed, but we think it is  
10 a relatively straightforward matter, that the person who is providing the financing has some  
11 obligation to inquire as to its use.

12  
13 Of course they might be deceived by the person who takes the loan, and in those  
14 circumstances, as we have said in this paper and as we have said in paper 5D/01, we think  
15 they would have a defence, provided they reasonably believe what they are told. If they are  
16 put on inquiry, for some reason, that what they are told is false, then the situation is different.  
17 But it is a question of fact. They are allowed to lend money for certain purposes and not  
18 others, and they are allowed to rely upon, on a reasonable basis, what they are told by the  
19 person who takes the loan.

20

21 **財經事務局副局長區璟智女士：**

22

23 當局在5月12日向秘書處提交該份文件。我們的reference no.是  
24 5H/01。該份文件是因應委員的提問而擬備的。

25

26 **胡經昌議員：**

27

28 我的意見是，在實際運作上可能會出現困難，因為在借出款項後，  
29 款項交到借款人的手中，借款人怎樣運用該筆款項，貸款人無法知道。該  
30 條文訂明，“by reason only of providing financial accommodation if he

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1 reasonably believes that the financial accommodation is not to be used.....” ,  
2 也就是說，情況是否一如我剛才提到，只要貸款人獲告知有關通融並非用  
3 作炒賣股票便可以了？如果是這樣的話，業界便會安心。

4

5 ***Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,***  
6 ***Securities and Futures Commission:***

7

8 Well, it would be in fact the opposite of the situation you describe. If someone  
9 says: “I’m borrowing money from you as a margin financier, and I’m going to use it to buy  
10 stock” then you’re okay. If they say: “I’m going to take a loan from you, and I’m going to  
11 buy a speedboat with it”, you’re not. What I think is important to understand is that the basis  
12 of the belief has to be a reasonable one. If, for example, a loan was made and it was said  
13 that the money was going to be used to buy shares, and you later became aware that that had  
14 not been the use to which the money had been put. Then the same person came along and  
15 said: “I’d like to borrow some more money to buy shares”, then you would have to inquire;  
16 you would actually have to be a little bit more on your guard on that second occasion.

17

18 In other words, what is reasonable is a question of fact. It depends upon your  
19 course of dealings, to some extent, with the individual who is taking the benefit of the loan.  
20 In that sense, reasonableness has to be judged in the circumstances of the case. But in the  
21 example you give, if someone says: “I’m using the money for this purpose”, you are not on  
22 any notice. There is nothing to put you on your guard that there is anything untrue about it.  
23 You would be safe. You would have the benefit of the defence.

24

25 **胡經昌議員：**

26

27 其實這問題可以從兩方面來看，如果借款人表示有關款項用作炒賣  
28 股票，在取得借款後，該人其實可以隨意運用該筆款項。如果該人將款項  
29 用作另一用途，在這情況下，便會出現問題。

30

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1 **主席：**

2

3 你是否有具體的建議？

4

5 **胡經昌議員：**

6

7 Group of nine investment bankers其實已就這方面提出建議。

8

9 **余若薇議員：**

10

11 主席，我可否提出一個具體建議？

12

13 **主席：**

14

15 好的。Audrey.

16

17 **Hon Audrey EU Yuet-mee, SC, JP:**

18

19 Is it possible to put it in the reverse? If you look at subsection (6) the words at the  
20 moment are: "... if he reasonably believes that the financial accommodation is not to be used  
21 to facilitate (a) and (b)". Is it possible to put it in the reverse, to read: "... unless he has  
22 reasonable grounds to believe that the financial accommodation will be used to facilitate..."?  
23 The reason for the change - -

24

25 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**  
26 **Securities and Futures Commission:**

27

28 I understand. I mean, to describe the effect of this section, cast as it is, is not easy  
29 to do. In fact, if you look at the paper 5H/01, where we discuss the section, I must say it  
30 took some time to get the descriptive paragraph right, just because of the use of the negative

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1 in the section. I think what you describe has the same effect, and we could certainly  
2 consider whether or not it could be recast in a more positive term.

3  
4 ***Hon Audrey EU Yuet-mee, SC, JP:***

5  
6 I think there is one difference, Mr PROCTER. The difference is whether as a  
7 lender you have the obligation to inquire. The Honourable Henry WU is talking about a  
8 later situation. He is talking about a situation when the borrower has already got the money.  
9 I am not worried about that. I am worried about the situation beforehand: that is, if you are a  
10 lender and somebody comes to you and wants to borrow money, and says: "Well, I have  
11 securities" or "I have the financial ability to repay", as a lender do I have an obligation to ask  
12 and say: "What are you going to do with the money?"

13  
14 Alternatively, can I just say as a lender: "It's just a business. I'm in the business  
15 of lending. I don't care what you're going to use the money for. Provided I know that you  
16 are good for the money, that you can repay me, then I will lend you the money"? That is  
17 why I would have thought that in real life as a lender I do not have the obligation to inquire.  
18 Provided I do not know, which is the point I am making - unless he has reasonable grounds -  
19 that you are going to use it for that purpose, then I can lend.

20  
21 Drafted in this way, in your subparagraph (6), if he reasonably believes, this may  
22 lead people to think there is an obligation on the lender to inquire. Because then you have to  
23 ask, because the way you have been asking these questions is that you put an onus on the  
24 lender that he has to ask the purpose. With the way I suggest it, which is in the reverse, it is  
25 clear there is no obligation. Provided I do not know, I am not liable. So that is the  
26 suggestion.

27  
28 ***Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,***  
29 ***Securities and Futures Commission:***

30

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1 Yes.

2

3 **Chairman:**

4

5 Mr PROCTER, you will consider?

6

7 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**  
8 **Securities and Futures Commission:**

9

10 Yes.

11

12 **主席：**

13

14 胡經昌議員，你還有沒有其他問題需要提問的？我的意思是，關於  
15 這一點，你還有沒有問題提問？

16

17 **胡經昌議員：**

18

19 關於這一點，我並沒有其他提問。

20

21 **主席：**

22

23 Eric.

24

25 **李家祥議員：**

26

27 據我記憶所及，在進行諮詢期間，業界曾提出這問題。當時，一些  
28 業界代表表示，如果當局規定他們必須證明借款人將款項用作某種用途，  
29 當局是否應該與業界建立有關的proper procedures？也就是說，假如業界已  
30 採取有關的步驟，例如已要求借款人填寫表格，或已要求借款人簽署借款

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1 書，業界便可以此作為免責辯護。只有這樣做才能明確知道會怎樣引用這  
2 條文的規定。據我記憶所及，在諮詢期間，當局表示會再與業界商討這問  
3 題。請問這方面現時有何進展？如果沒有解決這問題，這條文永遠都會有  
4 一個element of doubt，究竟有關人士作出何種作為，才算是合理的懷疑？  
5 怎樣才算是合理的程序呢？這一點似乎有欠明確。我希望瞭解現時有關這  
6 方面的情況。

7

8 **主席：**

9

10 副局長 or.....

11

12 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**  
13 **Securities and Futures Commission:**

14

15 It does depend on which way the section is cast. I think if it is cast as it is now,  
16 some inquiry would have to be made. If it is cast in the way that we were just discussing,  
17 then the question would be whether or not there was anything that alert the lender to the  
18 possibility that the money was to be used for a purpose which would trigger the licensing  
19 requirement. That is a long way of saying we cannot do anything until it is decided which  
20 way to go.

21

22 I think there are two aspects to this Type 8 issue. One is that those who are not  
23 licensed and who knowingly or unknowingly are induced into giving a loan which is for use  
24 for the purpose of buying shares or financial accommodation, as it is defined, and those who  
25 are licensed under Type 8 and who again knowingly or unknowingly are induced into giving a  
26 loan which is used for some other purpose – that is the speedboat example I gave before – we  
27 need to cover both of those things. In the context of the first category, those who are not  
28 licensed for Type 8 but who give a loan which actually then used for the financial  
29 accommodation as defined, if they are authorized institutions or they fall into one of the other  
30 exemption categories, they are fine. There is nothing they need to be concerned about.

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1 They would not even be on inquiry.

2

3           The difficult category is actually the category of the moneylender under the  
4 Moneylenders Ordinance. They are the people about whom the concerns arose in the first  
5 instance, in respect of margin financing. I think the reason why the section is cast in the way  
6 it is now – that is, some onus of inquiry; some reasonable inquiry – is that it is recognized that  
7 those who can legitimately advance money, lawfully do so, but are not banks, are the money  
8 lenders under the Moneylenders Ordinance. There was a real concern about them; so the  
9 regulatory approach was to say: “You have to take this issue seriously. You have to make  
10 some inquiry and understand the purpose for which the money is to be used”.

11

12           That is where we get to the structure of the section as it currently stands. But, as I  
13 said, we will look again and see whether, notwithstanding that history of CA Pacific and  
14 otherwise, we can go back and simply leave it so that someone is safe unless they are on  
15 notice by reason of conduct.

16

17 **李家祥議員：**

18

19           如果當局打算作出修改的話，有關問題在某程度上是解決了。如果  
20 當局打算採用原有條文的寫法，當然需要解釋為何要這樣做，當局或有需  
21 要給予一些指引，說明當局究竟要求……

22

23 **主席：**

24

25           或者我們可以這樣做，李議員，我希望清楚知道，你是否支持余若  
26 薇議員的意見？

27

28 **李家祥議員：**

29

30           對業界來說，余若薇議員所提出的意見是較容易做到的。我當然支

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1 持有關的做法。

2

3 **主席：**

4

5 如果是這樣的話，委員會可以向政府提出有關意見。

6

7 Margaret.

8

9 **Deputy Chairman:**

10

11 Mr Chairman, I just want to ask whether the only group realistically targeted by (1)  
12 and (6) are the moneylenders qualifying under Moneylenders Ordinance?

13

14 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**  
15 **Securities and Futures Commission:**

16

17 It is true, of course, effectively that people who are not permitted to advance  
18 money – that is, loan sharks of all sorts – would more naturally be dealt with, because they  
19 would have breached the Moneylenders Ordinance, for example, rather than trying to deal  
20 with them under this provision. However, you are right.

21

22 I was dealing with those who would be, in fact, permitted to lend money, but not  
23 provide financial accommodation, and they are the key areas, the moneylenders under the  
24 Moneylenders Ordinance, because the banks are, by reason of the way financial  
25 accommodation is defined, excluded from the definition. Dealers, those, who are licensed as  
26 Type 1 securities dealers, are also excluded under the definition of Type 8 activity. So the  
27 only people we are really concerned about – not “the only”, because there are other people  
28 who stay right outside the law, but those who are permitted to advance money that we are  
29 concerned about would be the moneylenders.

30



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1 *Deputy Chairman:*

2

3 Yes. You are talking about people who unlawfully lend money to other people.

4

5 *Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,*

6 *Securities and Futures Commission:*

7

8 Yes.

9

10 *Deputy Chairman:*

11

12 But this would catch people who lend commercially.

13

14 *Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,*

15 *Securities and Futures Commission:*

16

17 Yes.

18

19 *Deputy Chairman:*

20

21 As far as moneylenders are concerned, under the law do they have a duty of inquiry  
22 for any other reason?

23

24 *Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,*

25 *Securities and Futures Commission:*

26

27 No.

28

29 *Deputy Chairman:*

30

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1           You put them on inquiry in (6). Is this the exception rather than the rule, or do  
2 they have a list of things which they have to do?

3  
4 ***Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,***  
5 ***Securities and Futures Commission:***

6  
7           They have a list of things they have to do, but I do not think I can fairly  
8 characterize inquiry as one of them. What they have to do is comply with certain  
9 documentary requirements.

10  
11 ***Deputy Chairman:***

12  
13           No, but as to purpose.

14  
15 ***Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,***  
16 ***Securities and Futures Commission:***

17  
18           I understand; and they also have some obligations in respect of interest rates, but  
19 not as to purpose of the loan. That is because they are actually generally permitted to lend  
20 money, except in this area now, by virtue of this legislation. Curiously, it is in their interests  
21 to inquire so that they do not inadvertently cross the line. It is possible, I think, to take up  
22 Mr LI's suggestion and say: "This is the kind of thing you should do". But I do think we  
23 have to be wary of a formulaic approach to inquiry, because the fact is that the facts and  
24 circumstances of a case obviously enough could put you on inquiry; could alert you to a  
25 particular use or conduct; and merely following a formula may not be sufficient.

26  
27 ***Deputy Chairman:***

28  
29           Mr Chairman, I do not know how this will turn out, since the Administration is  
30 going to think about it, but if it should turn out that the money lender would get into trouble if

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1 he lends for purposes under this Ordinance without reasonable belief or anything of the sort, I  
2 think it would be right to warn him in the Moneylenders Ordinance, because a money lender  
3 does not automatically apply his mind, or even know about the Securities and Futures  
4 Ordinance. So you may want to consider that together.

5

6 *Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,*  
7 *Securities and Futures Commission:*

8

9 I think that is a very good point. Actually I stand to be corrected, but I think the  
10 Moneylenders Ordinance does in fact alert the money lender to this legislation, because at the  
11 time of amending the Securities Ordinance to deal with securities margin financiers, the  
12 Money Lenders Ordinance was also amended to exclude the possibility of lending for the  
13 purpose of financial accommodation.

14

15 **財經事務局副局長區璟智女士：**

16

17 有關條例大概運作了一年多。或者我們需要與證監會檢討，這一年  
18 來，在落實《證券條例》中有關證券保證金融資的部分時，在執行方面有  
19 否遇到實際的困難。這可能會是有用的參考資料。

20

21 **主席：**

22

23 讓我作出初步的總結。委員會較為接受余若薇議員的建議，請政府  
24 考慮一下。如果採取余若薇議員建議的做法，便解決了Eric提出的問題。我  
25 們第一次討論這部分時，其實已觸及這問題。當時我們曾指出，這樣的規  
26 定可能會使很多人在不知情的情況下犯了罪。余若薇議員提出的建議解決  
27 了大部分人士在不知情的情況下觸犯法例的問題。

28

29 胡經昌議員，你還有沒有其他問題需要提問？

30

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1 **胡經昌議員：**

2  
3 第115(2)(c)條訂明，存放records or documents的地方，必須經由證  
4 監會批准。我並非不同意需經由證監會批准，但在運作上，這是有問題的。  
5 有關人士必須在租用某個地方後，才可以將該地方用作存放紀錄或文件。  
6 然而，該人屆時又必須得到證監會的批准，才可以這樣做。如果證監會不  
7 批准的話，該人又應該怎樣呢？所以，在運作上，這是有問題的。其實，  
8 該條文是否只應該規定有關人士必須notify證監會存放紀錄或文件的  
9 地方？證監會只要知道該人在哪裏存放records便已足夠。所以，該條文應規  
10 定有關人士必須notify證監會，而不是規定該人必須得到證監會的  
11 approval。該條文採用“approval”一字，在運作上，這其實會構成技術上的  
12 困難。

13  
14 **主席：**

15  
16 是否一定要證監會批准呢？

17  
18 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**  
19 **Securities and Futures Commission:**

20  
21 I understand the timing issue that Mr WU raises. That is, of course, why 2(c) is  
22 expressed in terms of an application having been lodged rather than having been approved. I  
23 think there is an acceptance that one has to be wary of forcing someone to meet commitments  
24 in the conduct of a business for which they may not get licensing approval. In fact, if there  
25 were a real difficulty, the process would be: application for licence; application under section  
26 129; indication that the licence could be granted subject to going ahead and securing the  
27 premises that are the subject of the 129 application. People would not actually be forced to  
28 make the commitment, and I think the way it is structured does address the concern you  
29 express. It does not require that the actual application under 129 be approved before the  
30 licence is granted. The 129 process obviously is integral to the licensing process, but it is

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1 not a prerequisite that there be approval under 129.

2  
3 **胡經昌議員：**

4  
5 第129(3)條訂明，“a licensed corporation shall not, without the prior  
6 approval in writing of the Commission, use any premises for the keeping of  
7 records”。該條文訂明，如果未得到證監會批准，便不能夠使用那個地方。  
8 證監會解釋，第115(3)條只規定有關人士提出申請。其實，該條文最主要的  
9 原意，就是證監會希望知道他們在哪裏存放records。只要他們告知證監會  
10 存放records的地方，不是已經足夠嗎？為何規定他們必須得到證監會批  
11 准，才可把records存放在該處呢？有關過程有先後次序之分。他們需要物  
12 色地方，在找到合適地方後，又必須要求證監會批准。在得到證監會批准  
13 後，如果該地方已被他人租用了，那麼又要再物色另一地方。究竟是否真  
14 的有需要取得證監會approval呢？

15  
16 **主席：**

17  
18 胡經昌議員，讓我提出不同的意見。對證監會來說，證券業的情況  
19 可能是這樣，但由於現時很多大機構將公司的後勤基地遷離香港，那麼完  
20 全不作任何監管，這是否一個可取的做法？這也是要考慮的問題。

21  
22 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**  
23 **Securities and Futures Commission:**

24  
25 I think, Chairman, the situation you describe is one that is increasingly arising, and  
26 in those situations we may, and in fact usually do, grant approval subject to some  
27 undertakings to make documents available, give us access to records, and so on. The fact  
28 that the premises are outside the jurisdiction of Hong Kong is not necessarily conclusive of  
29 whether or not we would approve it.

30

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1           In terms of Mr WU's concern, the section requiring approval of premises is a  
2 section that exists in the present law. We are concerned to make sure that not only are  
3 records stored appropriately, but that they are accessible to the regulator. It has not proved to  
4 be a problem so far as we are aware; that people have had difficulty in getting approval and  
5 thereby lost access to premises or lost the potential to rent or purchase. It is a very  
6 straightforward procedure, and I think generally what happens is that we get early notice,  
7 together with the licensing application, and when people are changing premises once they  
8 have been licensed, we again get early notice and we deal with the application very quickly.  
9 There is not an inconvenience or a risk that they do not secure the premises.

10  
11           It would be worse, conversely, of course, if they did commit to a lease and then we  
12 said: "I'm sorry. Those are unacceptable". It is actually I think in their interests to get  
13 our acknowledgment in advance that the premises are acceptable.

14  
15 **主席：**

16  
17           是否有其他問題？

18  
19 **胡經昌議員：**

20  
21           還有第115(7)條，這也是group of nine investment bankers提出的問  
22 題。政府並沒有就他們提出的問題作出回應。這條文訂明，持牌法團必須  
23 使用牌照上指明的名稱，而不得使用其他名稱。由於一些大型公司有trade  
24 name，他們會否因這條文的規定而不能使用有關的trade name？這是他們提  
25 出的問題，但當局似乎並無作出回應。他們認為，大型公司通常會有trade  
26 name，這條文會否對該等公司作出限制？

27  
28 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**  
29 **Securities and Futures Commission:**

30

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1 I think the answer is “No”, Chairman. I understand the concern, but certainly this  
2 is the existing law. We are talking about 115(7). People do get a licence in a particular  
3 name, but then they are permitted, for example, to offer investment products or services using  
4 a brand name. That is not a difficulty. The concern is that they hold themselves out as a  
5 licensee under a different name. It does not prevent them using some kind of generic label  
6 for their products or services as part of the group. That is exactly what happens now.

7  
8 **主席：**

9  
10 是否有其他問題？

11  
12 **胡經昌議員：**

13  
14 關於第117條 — Licensing conditions in certain cases, 第(1)(b)款訂  
15 明, 如果有任何爭議, 會以仲裁方式解決。不過, 這只適用於第3類受規管  
16 活動。第3類受規管活動是foreign exchange trading。請問為何會有這樣的規  
17 定？

18  
19 **主席：**

20  
21 第117條是新訂的。

22  
23 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**  
24 **Securities and Futures Commission:**

25  
26 The Leverage Foreign Exchange Trading Ordinance already provides for a system  
27 of arbitration, and essentially what this clause does is continue it in operation. It is not very  
28 often used. Where it is used it is quite effective, but to extend it more generally across the  
29 other sectors of the industry would be a very significant shift, and it would actually have very  
30 significant resource and cost implications.

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1  
2           Although we think it is a good system in the context of the LFETO, on a cost  
3 benefit analysis we could not justify extending it to other areas of activity. It would be  
4 expensive to force everyone into arbitration. In effect the SFC would have to support the  
5 system in the way it happens in the US under the NASDAQ, the self-regulatory organization.  
6 It is not a straightforward cost-free approach to regulation. We can get by with it in the  
7 LFETO context, using volunteers effectively, to get a panel of about a dozen industry  
8 practitioners who volunteer their time to act as arbitrators.

9  
10           We can get by with it there, because there are so few disputes, and most of the  
11 dozen practitioners have never had to hear an arbitration – to be exact, 11 of the dozen have  
12 never had to hear an arbitration; but that would not be true in other areas. It would be a  
13 significant cost to the industry. We just could not justify it, on our analysis.

14  
15 **胡經昌議員：**

16  
17           如果仲裁制度不適用於其他類別的受規管活動，關於該等受規管活  
18 動的爭議，又怎樣解決呢？如果當局不希望為其他類別的受規管活動引入  
19 仲裁制度，那麼應該取消適用於第3類受規管活動的仲裁制度，使該類活動  
20 與其他活動的做法一致。為何特別規定第3類受規管活動可以仲裁方式解決  
21 爭議？

22  
23 **主席：**

24  
25           這類活動一直可以仲裁方式解決爭議，這渠道較便宜。如果取消適  
26 用於這類活動的仲裁制度，屆時有關方面只能夠透過法律訴訟程序解決爭  
27 議。

28  
29 **胡經昌議員：**

30



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1 就其他類別的受規管活動而言，如果出現爭議，也要透過法律訴訟  
2 程序解決。我的意思是，雖然這類活動一直可以仲裁方式解決爭議，但並  
3 不代表這是公平的做法。為何仲裁制度只適用於第3類受規管活動，而不適  
4 用於其他類別的受規管活動？證監會表示這是成本的問題，那麼為求做法  
5 一致，當局應取消適用於第3類受規管活動的仲裁制度。

6  
7 **主席：**

8  
9 副局長。

10  
11 **財經事務局副局長區璟智女士：**

12  
13 我們對此並無強烈意見，因為一如Mr PROCTER剛才所說，自該條  
14 例制定以來，直至現時為止，很少人曾使用仲裁制度。在我印象之中，可  
15 能只有一、兩宗個案以仲裁方式解決，所以很多panelists從未曾協助處理個  
16 案。

17  
18 **主席：**

19  
20 你希望取消這制度？

21  
22 **胡經昌議員：**

23  
24 由於第117(2)條的規定特別為施行第(1)(b)款而設的，例如成立  
25 arbitration panel。我不知其他.....

26  
27 **主席：**

28  
29 我認為不應隨便取消仲裁制度，這做法並不穩妥。如果foreign  
30 exchange的業內人士向我們提交意見書，表示他們也認為仲裁制度的作用不

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1 大，建議我們取消這制度，在這情況下，取消這制度並沒有問題。然而，  
2 現時他們可以仲裁方式解決爭議，我們把有關制度取消，這做法是否妥當？  
3 是否需要諮詢業界？

4

5 **胡經昌議員：**

6

7 我其實希望政府就這方面詳加考慮。由於我們均希望能夠令條例草  
8 案精簡一點，如果該項仲裁制度也適用於其他類別的受規管活動，這是最  
9 好不過的。據我記憶所及，英國也有類似的安排。當出現爭議時，很多時  
10 候無需交由法庭審理，雙方可透過磋商的方式解決。既然政府表示這方法  
11 較便宜，那麼可否將有關制度extend至其他類別的受規管活動？我其實並非  
12 希望取消該制度，而是希望當局考慮把該制度extend至其他類別的受規管活  
13 動。

14

15 **財經事務局副局長區璟智女士：**

16

17 如果委員會有強烈意見，我們不介意徵詢外匯業的有關市場組織，  
18 詢問他們這仲裁小組是否有需要繼續存在。

19

20 **主席：**

21

22 不過，我們也要考慮徵詢意見的方向，究竟是取消仲裁制度，還是  
23 將該制度的適用範圍擴展至其他類別的受規管活動？

24

25 **胡經昌議員：**

26

27 我認為應將該制度的適用範圍擴展至其他類別的受規管活動，因為  
28 根據政府的說法，擴大該制度的適用範圍，在很多情況下，這做法會較為  
29 理想。

30

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1 **財經事務局副局長區璟智女士：**

2

3 不，我們剛才不是這樣說的。

4

5 **主席：**

6

7 政府表示可以取消該制度，你則建議擴大該制度的適用範圍。你現  
8 時希望擴大該制度的適用範圍，還是把該制度取消？

9

10 **胡經昌議員：**

11

12 我希望擴大該制度的適用範圍。

13

14 **主席：**

15

16 你希望擴大該制度的適用範圍？

17

18 **胡經昌議員：**

19

20 是的。

21

22 **主席：**

23

24 政府會否考慮徵詢其他……

25

26 **財經事務局副局長區璟智女士：**

27

28 我們在草擬條例草案的初期，曾檢討這項安排。但政策上，我們很  
29 難支付這做法。正如Mr PROCTER剛才提到，外匯買賣比較具體，個案也沒  
30 有那麼多，所以資源上可以承擔。至於其他界別，這類個案可能涉及很多

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1 資源。

2

3 **主席：**

4

5 關於外匯買賣，其實大部分都是指“大手”買賣，對嗎？

6

7 **財經事務局副局長區璟智女士：**

8

9 在我的印象中，雖然LFETO訂有仲裁機制，但使用率十分低。

10

11 **主席：**

12

13 我所提出的問題是，關於外匯買賣，這是否指“大手”買賣？

14

15 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**  
16 **Securities and Futures Commission:**

17

18 No. I mean, there are less than 20 Forex traders that we are talking about, not  
19 doing very much business; and there are very few disputes, in fact, that need to be arbitrated,  
20 or litigated, for that matter. We can get away with it on a cheaper way by using industry  
21 practitioners who volunteer their time. I do not think that would be true if we were to extend  
22 it particularly into the securities dealing area. It would be a much more extensive program.  
23 It would have to be properly supported and resourced, and you could not expect people to act  
24 as arbitrators for free. It just would not be practical. There would be far too many matters  
25 to deal with, so it would be a fundamentally different system.

26

27 **主席：**

28

29 從消費者的角度來說，我會贊成把仲裁制度extend至其他界別，因  
30 為這通常是較便宜的方法解決爭議。但我相信業界不一定贊成的，各位需

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1 要考慮這問題。

2

3 **財經事務局副局長區璟智女士：**

4

5 我們在諮詢期間，並無收到意見要求將這機制引伸致其他市場。我  
6 們從資源方面考慮這問題時，也認為是有困難的。其實，現時有其他途徑  
7 處理有關的糾紛。業界人士和顧客出現爭議時，他們會自行處理。

8

9 **主席：**

10

11 我們到英國考察的時候，察悉英國有Ombudsman的制度。不過，政  
12 府在現階段一定不希望推行有關制度。否則，我們可以考慮在條例草案加  
13 入一部分，訂明有關設立Ombudsman的規定，這也是一個好方法。

14

15 **胡經昌議員：**

16

17 我剛才就是希望指出英國有Ombudsman的制度。

18

19 **主席：**

20

21 Arbitration也不一定是好的。如果設立Financial Service Ombudsman  
22 的制度，可能會更加完整。他們全部也是這樣做。

23

24 **財經事務局副局長區璟智女士：**

25

26 這部分針對有關持牌人士的活動，Ombudsman則針對規管機構，兩  
27 者有點不同。

28

29 **主席：**

30

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1 胡經昌議員。

2  
3 **胡經昌議員：**

4  
5 我沒有其他意見。如果不能extend至其他界別，政府可以諮詢業界  
6 是否需要在這條文訂明有關規定。我認為，假如真的希望精簡整條條例草  
7 案，那麼沒有需要的，便不必寫出來。

8  
9 **主席：**

10  
11 關於取消仲裁制度的建議，如果那20多名dealers不反對，我想委員  
12 會並沒有強烈的意見。如果要保留的話，我亦不會有任何異議。

13  
14 **財經事務局副局長區璟智女士：**

15  
16 這也是我們在條例草案保留有關做法的原因。由於一直以來，該制  
17 度的運作情況尚可接受，雖然市場對這方面的需要真的很低，但業界並沒  
18 有建議取消該制度。

19  
20 **主席：**

21  
22 雖然該條文的寫法是這樣，但嚴格來說，這並非針對顧客與機構的  
23 關係，對嗎？關於第3類受規管活動，當局所說的20多名dealers，其實他們  
24 互相進行dealing，是嗎？

25  
26 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**  
27 **Securities and Futures Commission:**

28  
29 It is actually deal principal to principal in the Leverage Foreign Exchange Trading  
30 market, so the customer is a principal in that sense. It does - -

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**Chairman:**

Actually it is corporation to corporation.

**Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,  
Securities and Futures Commission:**

It could be, but it could be individual to corporation as well. The arbitration system is particularly designed to allow for resolutions of disputes about pricing of a contract; and it is usually a very discrete issue.

**主席 :**

你是否希望討論Ombudsman的問題？

**副主席 :**

這部分其實與Ombudsman無關的。

**主席 :**

還有沒有其他問題？

**胡經昌議員 :**

沒有。

**主席 :**

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1 我們現在討論第119條。

2

3 **財經事務局副局長區璟智女士：**

4

5 請問委員會是否不介意保留第117(b)條？

6

7 **主席：**

8

9 除非有人提出要求。

10

11 **財經事務局副局長區璟智女士：**

12

13 好的。

14

15 **胡經昌議員：**

16

17 他們不是諮詢業界嗎？

18

19 **主席：**

20

21 請問政府會否諮詢業界？

22

23 **財經事務局副局長區璟智女士：**

24

25 如果委員會提出有關建議，我們便會這樣做。

26

27 **主席：**

28

29 好吧，我們就這樣建議。

30



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1 現在討論第119條。關於第119條，各位有沒有問題？

2  
3 如果沒有問題的話，請各位參閱第120條。關於第120條，各位有沒  
4 有問題？

5  
6 如沒有問題的話，請各位參閱第121條。關於第121條，各位有沒有  
7 問題？

8  
9 現在討論第122條。

10  
11 **副主席：**

12  
13 第122條並沒有drafting的問題，對嗎？

14  
15 **主席：**

16  
17 該條文並無作出修改。

18  
19 **財經事務局副局長區璟智女士：**

20  
21 我們現正構思作出一項修訂，嘗試分開處理該條文所訂的刑事責  
22 任。第122(1)(b)條規定，當有關人士終止其業務時，須將牌照交還證監會。  
23 業界認為，當終止業務時，他們只要通知證監會便已足夠，為何還要規定  
24 他們必須在7天內將牌照交還證監會，否則便負上刑事責任？我們已解釋為  
25 何作出這樣的規定。

26  
27 我們現時的構思是，有關人士如能夠作出合理的解釋，便可以此作  
28 為辯護理由。因此，在第122(2)條，我們將第(1)(a)款和第(1)(b)款分開處理。  
29 也就是說，如違反第122(1)(a)條的規定，處理方法就像現時第122(2)條所訂  
30 的一樣。如違反第122(1)(b)條的規定，處理方法有所不同。我們現在嘗試

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1 把第122(1)(b)條的不同處理方法寫出來。

2

3 **副主席：**

4

5 待當局作出修訂後，我們才研究這條文。請問甚麼時候會有該項修  
6 訂？

7

8 **財經事務局副局長區璟智女士：**

9

10 其實我們已經有一個初稿，只是中文本的修訂還未準備妥當。我們  
11 不希望各位只能夠參閱該條文英文本的修正案，而無法參閱中文本的修正  
12 案。

13

14 **副主席：**

15

16 我的意思是，我希望待有關的CSA準備妥當後，才處理這部分。

17

18 **主席：**

19

20 好的。那麼我們把第122條列作待議事項。

21

22 **副主席：**

23

24 關於Part V，請問當局還有沒有就其他條文提出CSAs，而該等CSAs  
25 是我們仍未收到的？

26

27 **財經事務局副局長區璟智女士：**

28

29 在審議有關條文時，如我們已就該條文作出修訂，便會向委員會指  
30 出。這部分並沒有太多的修正案。這部分有兩項主要的修訂，包括對第118

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1 條作出的修訂，我們向各位提交的文件已列出該等修訂。

2

3 **副主席：**

4

5 區小姐可否在現階段告訴我們，在Part V，當局曾對哪些條文作出  
6 修訂，而委員會將會在稍後才收到有關的修正案？

7

8 **財經事務局副局長區璟智女士：**

9

10 當委員會研究有關條文時，屆時我再向各位指出，這會比較容易。  
11 這會否是較好的做法？

12

13 **副主席：**

14

15 不要緊。

16

17 **主席：**

18

19 關於第123條，各位有沒有問題？

20

21 第124條，各位有沒有問題？

22

23 第125條，各位有沒有問題？

24

25 **副主席：**

26

27 關於這幾項條文，曾有團體提出一些意見。政府在作出回應後，有  
28 沒有再與那些人士商討？他們有沒有進一步的回應？

29

30 **主席：**

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很多人士就第124及125條提出意見。

**財經事務局副局長區璟智女士：**

我們已知會有關團體在網頁參閱當局的回應。如果他們需要 hard copy，我們都會提供的。也就是說，我們向委員會提交的回應文件，他們也可參閱有關的內容。

**副主席：**

他們並無作出進一步的回應？

**財經事務局副局長區璟智女士：**

如果他們有進一步意見，我相信他們會將意見提交立法會秘書處。

**主席：**

第125條的中文本。李先生。

**高級助理法律顧問李裕生先生：**

關於對第V部中文本作出的修訂，由於政府仍未完成這方面的各項草擬工作，所以我建議委員會先研究這部分英文本的條文。如果法律事務部稍後發覺中文本有問題的話，我們再向委員會提出。

**主席：**

好的。關於第126條，各位有沒有問題？那麼第127條呢？

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**胡經昌議員：**

請各位參閱第C1741頁第127(2)條。業界十分關注該條文的規定，因為該條文訂明，證監會可考慮“any information”，不論這些資料是否由申請人提供。我們從其他條文也留意到，證監會在索取資料時，所採取的手法可能是unlawful的，又或所取得的是一些未經證實的資料。舉例來說，如果證監會從報章或其他地方取得有關資料，這對業界是否不公平呢？如果那些資料由申請人提供，這樣是合理的。然而，如果有關資料並非申請人提供的，而證監會可以考慮該等資料的內容，這會否是一個很大的問題？政府可否考慮怎樣才可以釋除業界對這方面的疑慮？

**Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products, Securities and Futures Commission:**

Mr Chairman, I think one thing that we have to be clear about is that we could not confine ourselves to information provided by the applicants, for two reasons. One is that the applicants will not always have all the relevant information, even about themselves. Sometimes that is information which is in the possession of others, including, for example, overseas regulators or the police. Secondly, unfortunately it is true that applicants sometimes choose to hide information from us, which is why we undertake inquiries of other agencies to ascertain whether or not we have all the relevant information.

If we just put aside for the moment those two possibilities, and even think about newspaper gossip and clippings, the question is not so much the source of the information but what the SFC does with it. The SFC's obligation in dealing with these applications is to be fair. You cannot simply arbitrarily rely upon unreliable or unsafe or unsubstantiated information. It has to put its case; it has to put its concerns to the applicant, and give the applicant a fair opportunity to answer any concerns that we may have about that application.

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1           In these licensing applications the onus is on the applicant to satisfy us that they are  
2 fit and proper, so I think the focus has to be not so much on where we get the information, but  
3 rather what we do with it. We have to bear in mind that if we do act in reliance upon  
4 irrelevant, unsafe or unreliable information, then the decision we take is liable to be  
5 challenged on that basis, and it is liable to be set aside and another decision substituted.

6  
7           In the extreme case of information which was obtained unlawfully, again the focus  
8 should be on what is done with the information. I do not say that lightly. Obviously if the  
9 SFC acts unlawfully it deserves to be dealt with accordingly, but we should not also get into a  
10 situation where the SFC or anyone, for that matter, is becoming an arbiter of whether or not  
11 the information itself has been unlawfully obtained in the context of the licensing application  
12 whilst the SFC is considering it.

13  
14           These are not judicial proceedings. There is not a judge sitting there watching the  
15 SFC as it undertakes its licensing decision. There is not anyone who can say the information  
16 has or has not been obtained unlawfully. If it has been obtained unlawfully then the proper  
17 and better way of dealing with it is to seek redress through the processes of review of the  
18 decision, and to take action against the SFC for its unlawful conduct; not to in some way try  
19 and arbitrate at the decision making point as to whether or not it has been obtained unlawfully.

20  
21 **胡經昌議員：**

22  
23           從這問題可以看到，證監會在這方面的權力其實十分廣闊。

24  
25           我並非完全不認同政府的說法。如果證監會從其他規管機構取得一  
26 些資料，我認為是合理的。然而，這條文並沒有訂明證監會從哪個層次取  
27 得有關資料，這是值得各位擔憂的。

28  
29           據我所理解，如果是exempt AI的staff，便由他們的主管人員作決  
30 定。就他們的情況而言，將不會出現這方面的爭拗，亦不會出現做法過於

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1 寬鬆或過於嚴格的問題。政府對這兩類人士採取截然不同的做法。

2  
3 *Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,*  
4 *Securities and Futures Commission:*

5  
6 Chairman, if you think about where we might obtain information about an applicant  
7 that is not from another regulator, then you have, I guess, amongst the possibilities their ex-  
8 employers, a former client who may have made a complaint about them, or there may in fact  
9 be information we have on file as a result of our earlier inquiries, whether it is an inspection  
10 or an investigation.

11  
12 It may, however, also be that they are the subject of some press comment or  
13 speculation, and again I would come back to the point that it is not where the information  
14 comes from, but how we deal with it, and whether we act fairly in our use of the information.  
15 Of course some information is more reliable than other information; has greater weight than  
16 other information. We are in fact obliged to alert an applicant to any concerns we have  
17 about their application, and if we got information from a source which was perhaps not  
18 deserving of full weight, full faith and credit, then we would be obliged to ask the applicant to  
19 address us on the matter that is the subject of that information, and we would have to weigh  
20 the applicant's information accordingly.

21  
22 We would look at the press article and we would say: "Well, that's  
23 unsubstantiated", or we may go to somebody else who is quoted in the press article, and  
24 actually speak to them – in which case it would become a case of whether we accept their  
25 view or the applicant's view. I think the focus has to be on what we do and whether we act  
26 fairly, rather than trying to identify and divide the world up according to sources of  
27 information.

28  
29 **主席：**

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1 我也希望提出一個問題，接著由Margaret提問。申請人是否有權知  
2 道證監會所管有的一些資料並非由他本人提供的？Margaret，請你提出你的  
3 問題，然後政府一併回答。

4  
5 **副主席：**

6  
7 我所希望提出的問題並不相同。

8  
9 **余若薇議員：**

10  
11 主席，我也希望就這一點提出問題。請問我可否先行提出我的問  
12 題？

13  
14 **主席：**

15  
16 好的。

17  
18 **余若薇議員：**

19  
20 其實我也希望知道，如果有關人士申請牌照時，程序是怎樣的？

21  
22 Mr PROCTER剛才提到，如果證監會有任何懷疑，便會詢問申請人。  
23 也就是說，證監會需要讓申請人知道該會有一些對他不利的資料，並正在  
24 考慮有關資料。此外，證監會亦會讓申請人有機會答辯或作出解釋。

25  
26 倘若證監會最後決定拒絕該人領取牌照的申請，證監會會否告知申  
27 請人有關的原因？此外，當他提出上訴時，證監會是否需要向appeal tribunal  
28 交代拒絕申請的所有原因？

29  
30 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**



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1 *Securities and Futures Commission:*

2

3 Yes. I think the answer to all those questions is “Yes”. The process is that the  
4 applicant files with the SFC an application, which also requires that they file certain  
5 information about their work history and qualifications, and so on. We undertake inquiries  
6 of other regulators or of the Hong Kong police, if that is suggested by the information that  
7 they have provided to us. We also look at our files to see if we have any information about  
8 the particular individual. They may have been previously licensed, for example. If we  
9 have any doubts about their qualifications or about their work history, if there is anything that  
10 suggests that they are not fit and proper, what we would do typically is actually have a face-  
11 to-face interview with them. Sometimes we can deal with it through correspondence, but  
12 typically we would actually sit down face-to-face and put our concerns directly to them.

13

14 There then follows, in a typical case where this sort of issue arises, an exchange of  
15 correspondence in which our views, having discussed it with the person, and any residual  
16 concerns we have are then set out in writing, and they are given an opportunity to respond.  
17 If we are minded to refuse the application, then yes; we do give reasons, and they are reasons  
18 that are made available to the Appeals Tribunal. In fact if you look at clause 137, there are  
19 some procedural requirements that set out in the legislation itself - - I do not think it really  
20 takes it very far beyond, if at all beyond, the obligations of procedural fairness at common law;  
21 but it does say, for example, in subclause (1)(c) – in fact it is the hanging paragraph at the end  
22 of subclause (1): “The Commission shall, before making a final decision, inform the  
23 applicant of preliminary views and give them a reasonable opportunity to be heard, and when  
24 it makes a final decision, notify the applicant in writing of its decision and its reasons for  
25 making such decision”. That is the formal requirement, but in fact the process is as I have  
26 described it.

27

28 **主席：**

29

30 也是同一點，是嗎？

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**余若薇議員：**

我希望知道，會不會……

**主席：**

你希望提出的問題是否relevant？

**余若薇議員：**

有一點相關的。如果該人未能成功向證監會取得牌照，該人會否能夠加入某間銀行從事同一類的工作？也就是說，就銀行方面而言，有關的監管程序是否一樣，亦即需要經過多個步驟提出申請，才可以從事有關證券的工作？

**Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products, Securities and Futures Commission:**

The SFC will have on file a record of the refusal to license the person. The HKMA has already said that notwithstanding that the management of a bank has the primary responsibility, it will check, and it will check with us, and it will check with the police, and it would soon become apparent that this person has been refused by us.

**Chairman:**

Margaret?

**Deputy Chairman:**

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1 Mr Chairman, it is on a different point of the same case. Mr CARSE seems to be a little left  
2 out of the discussion, and that's not nice.

3

4 I am referring to the paper CB(1) 658/00-01, government will be paper 5D/01. If  
5 we go to 127(2), we see the first part on page 12. That is something we just dealt with. On  
6 the next page, on the Administration's response part, here the point is being made about the  
7 difference between the exempt institution and the non-exempt people. The last paragraph  
8 complains a difference of treatment to an exempt person inconsistent with the concept of a  
9 level playing field.

10

11 I am not so concerned about level playing field, but the Administration's response  
12 is the conduct of a regulated activity is the core business, if not the sole business of the  
13 licensed corporation. That is not the case for exempted AIs apparently.

14

15 **主席：**

16

17 那份文件是5D/01。

18

19 **副主席：**

20

21 第5D/01號文件第13頁。關於第127(2)條，在右方的第一格載有政府  
22 當局的回應。On the Administration's response, if you go to the last paragraph on this point,  
23 you see the conduct of regulated persons. "Regulated activities is the core business, if not  
24 sole business, of the licensed corporation. Such is not the case for exempt AIs apparently.  
25 Therefore the assessment of their fitness and properness is accordingly confined to top  
26 management and executive officers involved in the conduct of the regulated business."

27

28 The operative words here are "core business". Supposing you are looking at the  
29 situation where the bank does not become the bank's main sole business certainly, but if it is  
30 one of its major businesses, would your position change?

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1

2 *Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:*

3

4           To some extent it is an academic question, because at the moment, even for the  
5 large banks, securities business is a fairly small part of their overall activities. I think the  
6 principle would still apply that for banks you expect the assessment of fitness and properness  
7 of staff in general – and remember the staff may switch from one activity to another within  
8 the bank – to be carried out by senior management.

9

10           Now, there will be an overlay of supervision over that. There will be a certain  
11 amount of checking that is done from the application, when the name is entered on the  
12 register. We will check with the SFC and law enforcement authorities, etc. We will also,  
13 through our supervision, conduct spot checks of whether these criteria have been properly  
14 applied. This is getting back to the point you were mentioning earlier, as to how we do it.

15

16           So I think for the foreseeable future we would apply that, even if this business is to  
17 increase in size within individual authorized institutions. I doubt if it will get to a level for  
18 the retail banks within their core that it will constitute the main part of their business.

19

20 *Deputy Chairman:*

21

22           Mr Chairman, you see I keep going back to this point, because this is really one of  
23 the main reasons you provide for treating them in a somewhat different way. Whether it is a  
24 core business, whether it is an important part of a bank's business and so on. This is very  
25 much part of your argument. I expect that when the situation, the factual situation, further  
26 develops and changes, then you will revisit this argument.

27

28 *Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:*

29

30           Well, I do not think that is necessarily the case. I mean, the argument I would

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1 make - -

2

3 *Deputy Chairman:*

4

5 I am sorry. Let me focus my question. The question really is: why should  
6 whether something is a core business or not a core business matter as to how you deal with  
7 this?

8

9 *Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:*

10

11 Well, I think in relation to a brokerage company, if that is their only business, their  
12 only business is engaging in regulated activities in the securities business, it is perfectly  
13 arguable that we may wish to apply higher standards in relation to the scrutiny of the people  
14 who are undertaking that business than we would in relation to a bank where they have an  
15 overall system of controls and senior management oversight which is applying to something  
16 as fundamental as taking a deposit. That is one reason for it, I think.

17

18 The other point I think is that we have actually responded to the issue that you have  
19 identified. If you look at how the concept of exempt status has changed compared with what  
20 it is now, or what it was a year or so ago and what it is now, and what it will be under the Bill,  
21 there is an enormous change in the way in which this business will be supervised. As you  
22 said, the concept of the title of "exempt AI" is probably no longer an accurate term. I think  
23 it would, in practice, be very difficult to change it because it is embedded throughout the Bill  
24 and it is actually difficult to come up with a different term.

25

26 But the concept is very much removed from what it was previously, and it is  
27 actually very much removed from what was set out in the original SFC consultation paper on  
28 the subject. That is because there has been an interchange between ourselves and the SFC,  
29 and also we have taken account of the points you have been making.

30

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1 *Deputy Chairman:*

2

3 Yes. So is it right that this particular fact does not rate so much with you any more?  
4 Whether it is an incidental or - - I forgot what the term is - - business; or whether it is a core  
5 business.

6

7 *Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:*

8

9 I think it is a factor to be taken into account. The way I would put it is to say that  
10 the banks have an overall spot check of management and controls, which applies to their  
11 deposit-taking business. You can leverage off that in relation to regulation of their securities  
12 business. Deposit-taking is fundamental to the whole economy. If you trust them to carry  
13 on the business of taking deposits without us approving every individual member of staff who  
14 is engaged in deposit-taking business or lending business, then I think it is reasonable to say  
15 that you do not have to approve in advance all those staff that are taking part in securities  
16 business. Even allowing for that point, we will actually be applying more supervision to  
17 staff engaged in securities business than to those people, the staff engaged in banking  
18 business.

19

20 *Deputy Chairman:*

21

22 I do not want to go on interminably, but I want to indicate that I could go on.

23

24 *Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:*

25

26 Well, I think I could go on as well, actually, but it is getting near lunch time.

27

28 *Chairman:*

29

30 That reminds us that we are heading for lunch. I think there is a comment that the

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1 question is not only - - it is not always academic. There could be situations that a big foreign  
2 brokerage house comes to Hong Kong, and swallows a small bank and become an exempt  
3 person. There could be cases. Many banks are vulnerable to be bought out right at the  
4 moment, and the core business of a bank could be brokerage rather than deposit-taking. I  
5 do not know. There are cases, as when we went to the United States, where we were told  
6 that recently some brokerage firms in the United States bought a small bank and pushed all  
7 the brokerage business into the banks, for some reason.

8

9 We do not want to lengthen the discussions. Next meeting on the coming Friday.

10 Thanks.

11

12

13

14

15 m2999