

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 Tuesday, 10 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 Bernard CHAN
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Jasper TSANG Yok-sing, JP
Hon Abraham SHEK Lai-him, JP
- Members absent** : Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, JP
Hon James TO Kun-sun
Hon Ambrose LAU Hon-chuen, JP
Hon Henry WU King-cheong, BBS
Hon Audrey EU Yuet-mee, SC, JP
- Public officers attending** : Parts V & VI of the Securities and Futures Bill

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

Mr Danny LEUNG
Division Head, Banking Development Department, Hong
Kong Monetary Authority

Part V of the Securities and Futures Bill

Mr Gilbert MO
Deputy Law Draftsman

Ms Fanny IP
Senior Assistant Law Draftsman

Part VI of the Securities and Futures Bill

Ms Sherman CHAN
Senior Assistant Law Draftsman

Ms Vicki LEE
Government Counsel

Attendance by invitation : Parts V & VI of the Securities and Futures Bill

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

Mr Andrew YOUNG
Legal Consultant, Securities and Futures Commission

Part V of the Securities and Futures Bill

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

Part VI of the Securities and Futures Bill

Mr Stephen PO
Director, Intermediaries Supervision Department,
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

2 **主席：**

3

4 由於颱風關係，上星期五的會議被迫取消，亦由於因颱風取消會
5 議，內務委員會定於今天中午12時召開內務會議，法案委員會亦因此需在
6 中午12時完結，讓我們出席內務委員會會議。

7

8 上次會議結束後，政府分發了一批文件給各位參考。上次討論到第
9 V部分的第127條，今天我們從第128條開始討論。第V部分和附表6的中文
10 本，昨天已分發給各位，政府亦在上個星期提交了第130條的英文本和中文
11 本的修訂。委員會亦同意，如果今天的會議就《證券及期貨條例草案》討
12 論完畢，將會討論Banking (Amendment) Bill。我們現在討論第128條，各位
13 同事就第128條是否有問題？

14

15 在第128(1)(d)條提到證監會會考慮以下事項：“the reputation,
16 character, reliability and financial integrity”；信譽、品格、可靠程度及財政
17 方面的穩健性。財政方面的穩健性似乎可能比較容易；但信譽、品格和可
18 靠程度其實是一些比較主觀的事項；相對而言，第128(1)(a)、128(1)(b)及
19 128(1)(c)條的部份內容比較客觀，可以作出評審。當局會否習慣在某些情況
20 下，基於信譽、品格和可靠程度的考慮而不會發牌給某些人士？

21

22 **財經事務局副局長區環智女士：**

23

24 請博學德先生講述實際運作的情況，現在發出的適當人選守則，可
25 能亦可為業界提供指引。

26

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

29

30 I think, Mr Chairman, whether those words, “reputation, character and reliability”

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1 would typically be read in conjunction with (1)(c), the references to honesty and fairness and
2 the capacity to behave in that way. Certainly if someone had, for example, a series of
3 criminal convictions going back over a number of years that called into question, their
4 honesty and character that would leave us to doubt whether or not they would act in the best
5 interests of clients. Where they had demonstrated an unwillingness to abide by the law;
6 where they had such a reputation in the community – this would be an extreme example, but
7 where they had such a reputation in the community that to license them for a position of trust
8 might call into question consumer confidence. This would be an extreme incidence and I do
9 not think we have ever had such a situation. It is more closely connected with issues to do
10 with previous misconduct, demonstrating that it would not be safe for us to rely upon them
11 given that, for example in the case of a dealer, they would have access to clients’ assets and
12 they would be in a position of trust and upon which they were relied upon.

13
14 “Reliability” there actually also has regard to the fact that someone must be
15 expected to be able to continue to meet our standards and expectations. Including for
16 example, our financial requirements and so, if there was something about their circumstances
17 that called into question their ongoing ability to meet financial obligations, meet liquid asset
18 requirements, meet capital requirements, then that would also cause us to doubt their
19 reliability in that sense. But it certainly is a subjective set of criteria.

20
21 **主席：**

22
23 就你剛才所提到的指引，會否因為以前曾有多少個小過或數個小過
24 和一個大過，就不會發牌給那些有關人士？例如曾被reprimand多少次，會
25 否有這樣的客觀條件？

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

29
30 We do not do it so much on a points system, Chairman, but we do do something a

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1 little similar to that. First of all, we have a document called the Fit and Proper Criteria
2 which sets out our views and expectations in respect of all of these matters. It is slightly
3 different actually, the list under the existing law because it does not include one of the words
4 in (c) but in the Fit and Proper Criteria we explain what we think it means in the legislation by
5 terms like “reputation”, “character”, “reliability” and “financial integrity”.

6
7 So, for example, in the case of someone who has a history of criminal misconduct,
8 we actually say that if the crime exhibits certain characteristics and if it is of sufficient
9 recency, then that is the sort of thing that would lead us to refuse a licence. Where a person
10 has demonstrated over a number of years a good record then, by reason of the lapse of time in
11 that good record, then we would be more inclined to give them a licence. So we use that
12 kind of approach, rather than a points scoring system.

13
14 **主席：**

15
16 其他同事是否有問題？如沒有問題，我們就討論第129條；若第129
17 條沒有問題，就討論第130條。第130條有一個修訂，就在CB(1) 1705/00-01(01)
18 號文件，文件已分發給各位，我想問“substantial”是否有一個比較客觀的定
19 義？

20
21 **財經事務局副局長區環智女士：**

22
23 主席，是有的。持有該經紀行相當於10%的股份，就是大股東。我
24 簡單地解釋建議修訂的目的：原來的第130條賦權證監會，要求持牌人的大
25 股東必須得到證監會的事先批准。原有的條文源自現有的《證監會條例》
26 第26(a)條。但是在沿用原有的條文後再作詳細檢討，發覺在執行上有些地
27 方不是很實際。原有的限制就是，如果某人不是事先得到證監會的批准而
28 成為大股東，有關的股份交易就會失效，該人也不可以行使投票權。經檢
29 討後，我們覺得股份交易本身可能是合法的，很難讓它失效，對第三方的
30 權益可能會產生不良的影響，所以我們覺得那部分的限制應該取消。其實，

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1 有關限制主要是針對不適合做大股東的有關人士，他們不應該參與這股票
2 行的管理和制訂政策等工作。我們現在作出修訂後，限制集中在他不可以
3 行使投票權。主要的修訂就是把限制的範圍收窄，股份在進行交易後會繼
4 續有效，而證監會可能有方法發出指示，請他減持股份，若他不是持有10%
5 的股權，就不是證監會規定的大股東。

6

7 **主席：**

8

9 但刑責是比較重。我有一個問題，第(3)(b)款提到“where he
10 subsequently becomes aware of...”，在某些情況下，某人可能是由於增購股
11 份而成為大股東，則他可能要負上一定的責任；但在一些情況下，可能是
12 市場的行為，包括公司回購股份等，他並沒有做任何事情卻成為大股東。
13 在這樣的情況下，他會誤墮法網。若他不在本港，而董事局透過回購股份
14 或其他作為，令他所持的股份比例變成10%的股權，這樣的情況怎樣處理？

15

16 **財經事務局副局長區璟智女士：**

17

18 我們在法例上訂明，希望他在察覺到這情況下，於3天之內盡快提
19 交申請。

20

21 **主席：**

22

23 但是“察覺”是否比較含糊。例如我買股份，我不知道自己買多少才
24 是10%的股權，通常一般人會不會這樣做？當然10%是很大的比例。這裏是
25 否針對某些行為，即刻意購買10%股權這種行為？

26

27 **財經事務局副局長區璟智女士：**

28

29 主席，如果他擁有這麼多的股份，那他就有投票權。監管機構最關
30 注的，其實是他作為大股東所行使的投票權，他可循這方法影響股票公司

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1 的運作及政策，我們最擔心的是會直接影響公眾投資者。所以在草擬法例
2 的時候，並不是針對他循什麼途徑買到這些股份，而是希望他知道自己成
3 為大股東之後，在3天之內立刻作出申請。例如你剛才假設出現的情況，他
4 可能不在香港，或當初沒有察覺到，待他察覺的時候，希望他能採取補救
5 的措施。

6

7 **主席：**

8

9 我不知我的理解是否正確，我同意在他未經批准的前提下沒有投票
10 權，但須爭議的一點是罰則方面。現在clause 130(1)訂明：“A person shall
11 not become a substantial shareholder of a corporation licensed under section
12 115 without first being approved by the Commission to become a substantial
13 holder.”，違反第(1)款，就可處罰款 \$1,000,000及監禁2年。

14

15 **財經事務局副局長區璟智女士：**

16

17 這個要與第(3)款一併看，第(3)(a)款和第(3)(b)款是免責辯護，已考
18 慮了你剛才所提到的情況。

19

20 **主席：**

21

22 倘若他不知情又怎麼辦呢？

23

24 **財經事務局副局長區璟智女士：**

25

26 他若不知情，就沒有違反條例；如果他知情，就要在3天之內作出
27 申請。

28

29 **主席：**

30

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1 實際的執行是怎麼樣的？

2
3 **財經事務局副局長區璟智女士：**

4
5 這條條例的修訂是在96年引進的，到現在已有5年的時間了。

6
7 **主席：**

8
9 這條例有否使用過？

10
11
12 **財經事務局副局長區璟智女士：**

13
14 這條例還沒有使用過，但是業界人士一直遵行這規定。如果他是10%
15 的股權持有人，就要向證監會申請成為大股東。

16
17 Andrew, do you want to speak on the compliance issues introduced since 1996?

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

21
22 Chairman, there has not been a difficulty with the application of what is a very
23 similar provision in the existing law. Where there has sometimes been a timing issue that the
24 Commission has had to address in terms of approval has been on downstream acquisition of
25 an interest. The definition of “substantial shareholder” and, just so that the Committee is
26 clear and not under a misapprehension, it is as Miss AU said, primarily where someone holds
27 an interest of 10%, there is a downstream provision that you can find in Schedule 1 at page
28 C2403 that if you hold 35% or more of an upstream company which itself holds 10%, then
29 you become a substantial shareholder.

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1 However, as a practical matter, there has not been a difficulty even in those cases
2 with the Commission dealing with these cases in the 5 years since the law was most recently
3 amended. Even in the situation that you described, the 3-day period we think should be
4 sufficient to enable someone to make the necessary application. Bear in mind, all they have
5 to do is make the application which is very straightforward.

6
7 There is also a third possibility and that is that if they appreciate that there is going
8 to be some difficulty for whatever reason, they could actually apply for a modification of the
9 provisions as they relate to substantial shareholding. In a moment we will come to what is
10 clause 131, Modification and Waivers, which includes the possibility of waiver or
11 modification of the requirements in respect of substantial shareholders. There is another
12 way of dealing with it as well.

13
14 **主席：**

15 第130A條，法律顧問。

16
17
18 **高級法律顧問李裕生先生：**

19 現在還未開始討論第130B條？

20
21
22 **主席：**

23 第130B條，請你繼續。

24
25
26 **高級法律顧問李裕生先生：**

27
28 第130B(1)條提到：任何人未經證監會事先核准下，如果成為大股
29 東，證監會可以指示有關的持牌法團，不准許或默許那個人參與法團的業
30 務或管理。以現在的字眼來看，就是這個大股東，在證監會批准他成為大

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1 股東之前或之後，證監會都可以發出有關的指示，讓法團不讓他參加管理，
2 我覺得應該考慮草擬的字眼。

3

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

6

7 That is right. In fact, there is one particular instance of someone who is a
8 substantial shareholder, an SFC registrant, where, in our view, that person would not be an
9 appropriate person to manage an SFC registrant. So there are very strict conditions that
10 apply in respect of that person's involvement in the operation of the firm and that person is
11 the subject of restrictions and so too are those who manage the firm. We have said, "Unless
12 you are prepared to abide by these restrictions and exclude that person from management, a
13 management right to which they would ordinarily be entitled given their shareholding, then
14 we would judge you to be not fit and proper and we would revoke your licence."

15

16 So even where someone is a substantial shareholder we do, on occasion, impose
17 restrictions on their capacity to be involved in management. They make a choice then.
18 Obviously they have the potential for a dividend stream or income stream from the company
19 but they are not entitled to manage it.

20

21 **主席：**

22

23 第130A條、第130B條，是否有問題？如果沒有問題，我們討論CB(1)
24 1654/00-01號文件內政府對第131條的一個修訂，請政府代表簡單介紹。

25

26 **財經事務局副局長區璟智女士：**

27

28 多謝，主席。第131條的修訂，主要是回應上一次的討論，議員建
29 議證監會行使權力，在批准一些寬免或撤消某些條件時，例如第130條的要
30 求條件，在作出要求時增加透明度。我們經過商討及參考英國的做法後，

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1 在文件附件英文本的第8頁，建議作出修訂，規定證監會在批准一些寬免或
2 撤消某些規管要求時，須將有關的資料向外發布。

3

4 **主席：**

5

6 是的，向外發布。

7

8 **財經事務局副局長區璟智女士：**

9

10 我們建議的發布渠道，是通過在年報刊登資料。

11

12 **主席：**

13

14 我們逐個 clause 研究。第 131(1)、131(2)、131(3)、131(4)和 131(5)
15 條？第 131(6)條是最後的一個修訂，這些 Gazette 的資料可以在政府的
16 website 瀏覽得到，是嗎？

17

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

20

21 Yes, we would expect so.

22

23 **主席：**

24

25 第 131(7)、131(8)、131(9)、131(10)、131(11)和 131(12)條？

26

27 如果沒有問題，我們將討論第 132 條，有關“Events to be reported by
28 licensed persons and exempt persons”。關於第 133 條，我曾經嘗試用委員會
29 的網址查詢“licensed persons”，亦有相關的資料，但並不完整。在這方面是
30 否可以令到資料更豐富，方便需要查詢資料的人士？這是一個責任，是需

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1 要 maintain 一個登記冊可以方便查閱。

2
3 **財經事務局副局長區璟智女士：**

4
5 主席，這確實是一個很好的意見。第134條已列明證監會需要發表
6 什麼資料，但經過檢討後，資料確實不夠，但現在的法例只需要列明姓名
7 及地址。我們會建議一個委員會階段的修訂，要求證監會需要發表持牌人
8 士可以進行哪些規管活動，例如期貨、證券或外匯買賣等等。這部分將會
9 是一個簡單的修訂，草擬大概也完成。

10
11 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**
12 **Securities and Futures Commission :**

13
14 I think, Chairman, there is another way in which we had thought of doing it and
15 that is, we have to make some rules in respect of the content of the register and that will allow
16 us to include conditions as well. I think by those two routes we will get the information that
17 you are prescribing. At the moment we do not have the power actually to disclose that
18 information.

19
20 **Chairman :**

21
22 So obviously the users would like to know the previous sanctions these guys
23 received by definitions or any convicted cases in the past.

24
25 **Miss AU King-chi, Deputy Secretary for Financial Services :**

26
27 I think they do post records of reprimand on the website, including previous
28 sanctions.

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

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1 ***Securities and Futures Commission :***

2

3 Chairman, I imagine you are aware that that has been a very controversial issue in
4 the United States about publishing disciplinary records. The proposal at the moment is not
5 that a person's disciplinary record would be published alongside their name. The questions
6 would arise in respect of how long that should remain on the register, for example. That has
7 been a great controversy in the United States, about whether it should remain there for all
8 time. At the moment, I have to say that the proposal is, name, address and conditions that
9 attach, not the disciplinary records. The disciplinary records and any information about the
10 disciplinary records would be available through looking at a different part of the website and
11 looking at press releases or so on the issues. At this stage, we are not proposing to link it to
12 the individual but I understand your point.

13

14 **主席 :**

15

16 Reprimand是如何處理？

17

18 **財經事務局副局長區環智女士 :**

19

20 公開譴責是有公布的。不過，剛才Mr PROCTER提到：要列入網址
21 多長的時間，並要考慮這樣做對那個人是否一個加倍的懲罰？

22

23 **主席 :**

24

25 其實對他作出懲罰，比如口頭上的警誡、reprimand等，也是希望讓
26 公眾知道。當然，在制度上是要考慮時間的長短，如果是永久性，將會很
27 過份。就不同程度的懲罰，應就時間的長短列明不同的準則，不然的話，
28 對一些比較精細的user，他們是在千挑萬選下才作出決定的。如果沒有一個
29 對比，他們怎麼知道那個人有否被罰的紀錄。對於他們來說，reprimand的
30 作用就是，讓人可以作出選擇，這才是最終的目標。因為透過口頭警告或

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1 懲罰，目的就是讓使用者，即客戶，他們知道誰有這些記錄、誰沒有這些
2 記錄，從而作出選擇。其他國家是否亦會這樣做？我們亦是希望透過市民
3 力量去……

4

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

7

8 Chairman, there are different practices in different countries and actually the
9 practices are evolving. People are changing their attitudes to these kinds of issues but what
10 we have – we have not come to the rule-making power. We do have a rule-making power on
11 the content of the register and between now and when we discuss that we will certainly
12 consider your points about what could go on to the register and what use we could make of
13 that rule-making power. It would not just be the public reprimands obviously. There are a
14 whole lot of other disciplinary sanctions from public reprimands through to revocation,
15 including suspension and fines that would also be potentially within the categories of things
16 we would include on the register.

17

18 We will have a look at the rule-making power and see, first of all, whether it would
19 encompass that information and, secondly, whether we could come up with some views about
20 what could go on and for how long, having regard to international practice.

21

22 **主席：**

23

24 好的。我亦希望在register內能找到更多的資料。第135條 —— 年
25 費及申報表，如果沒有問題，接着討論第136條。我就第136條提出的唯一
26 問題是，為何要列入法例內，而不用附表的形式？因為將來法例通過之後，
27 很難斷定有否其他更有創意的名稱是不能使用的，所以列入附表內，就寫
28 明“prohibition of use of certain titles”，需要修訂時亦較為容易。由於市場
29 的變化很大，若將來加入Internet Stock Adviser又如何處理？說不定可能有
30 很多新的版本。

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1

2 **財經事務局副局長區璟智女士：**

3

4 主席，我們可以考慮這部分。

5

6 **主席：**

7

8 在政策方面，我同意有些名稱是不可以使用的。各位對第136條是
9 否有問題？

10

11 第137條，“Procedural requirements”，我們上次討論程序部分時提
12 到很多關於這部分的問題。這牽涉到拒絕申請時證監會也需要給予解釋的
13 問題。各位如果沒有問題的話，第138條、第139條、附表6，Part 1 ——
14 Regulated Activities。

15

16 **財經事務局副局長區璟智女士：**

17

18 主席，我就這部分作一些匯報，在《藍紙草案》公布後，市場亦提
19 出了一些意見，就是是否可以稍為收窄有關的定義？我們與證監會磋商
20 後，認為有些活動可能不需要向證監會申請牌照，因為這些活動並不影響
21 投資者的利益。

22

23 我們對這部分作出兩項修訂：第一項是針對就企業融資提供意見的
24 活動，就某些部分的寫法現時可以較為清晰，如果有些機構進行企業融資
25 的活動，而有關的活動並不包括證券的話，就不需要向證監會申請牌照；
26 第二項是針對自動化交易服務。現在的寫法對於業界亦可能比較廣泛，我
27 們接受了業界的提議：如果一些電子公告版並無提供對盤服務，純粹是提
28 供資料，就不需要向證監會申請牌照。我們現正從這兩方面去做。

29

30 **主席：**

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並沒有involve transaction，是嗎？

財經事務局副局長區璟智女士：

是的。

主席：

請各位研究Schedule 6的Part 2是否有問題？。我們逐版來看，第C2447、C2449、C2451、C2453、C2455、C2457、C2459和C2461頁，Part 3是否有問題？日後政府有CSA時，我們再研究這個部分。

我們已參閱Part V的英文本，中文本又應該如何處理？

副主席：

逐條處理吧。

主席：

是逐條處理。是否已經看完，李先生？

高級法律顧問李裕生先生：

Part V的中文本應該可以與律政司之間達成協議，據我最新的理解是：律政司仍有小部分需要修改，所以現在還不能正式確認已經完成審閱。

主席：

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1 接著我們研究 Banking (Amendment) Bill，阮先生。

2
3 **財經事務局副局長區璟智女士：**

4
5 我請阮先生簡單地向議員們解釋《銀行業(修訂)條例草案》有哪幾
6 個條款與我們剛才商討的第V部分是有關的。日後我們亦要就這條條例再進
7 行商討。

8
9 **香港金融管理局銀行監理處處長阮國恒先生：**

10
11 多謝，主席。正如上次開會時亦曾提到，我們日後會重新審閱《銀
12 行業(修訂)條例草案2000》，今天我不再詳細地逐條解釋。

13
14 與第V部分有關連的主要是《銀行業(修訂)條例草案》的第3與第4
15 條。第3條是關於金融管理專員職責的問題。在現時的條例之下，金融管理
16 專員的職責要確保銀行在經營銀行業務或接受存款業務時，須達到某個水
17 平。由於我們作為“前線”監管者，將來會直接規管銀行的證券業務，所以
18 也建議在職能方面，加入一個稱為其他業務的條款。如果銀行經營其他非
19 銀行業務，或非接受存款業務時，也同樣須達到一個高水平。

20
21 第4條是關於我們需要保持與建立一個名冊的問題。各位也記得，
22 《證券及期貨條例草案》要求銀行“前線”工作人員的名字需要列入名冊。
23 根據《銀行業(修訂)條例草案》第4條對《銀行業條例》第20條作出的修訂，
24 要求金管局保存一個名冊，名冊的內容包括有關人士的姓名、工作地址、
25 業務範圍和何時開始從事此類業務。剛才曾討論證監會的名冊應該列入哪
26 些資料？如果證監會名冊要額外加入一些資料，在這部分亦要考慮如何作
27 出相應的修改，以達到一致性。

28
29 另外，我不再詳細地逐條解釋。第4條主要是關乎名冊的問題，其
30 中部分會因應市場的意見而作出修訂，例如這條經常用“聘用(employ)”這個

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1 詞，但據我們收到的市場意見表示：在一些情況下，若員工未必採用聘用的
2 的形式，就會在法律的框架之外。我們因此會作出一個修訂，將“聘用”這
3 個詞改為“engage”，現時還未有中文的翻譯，暫時未能提供這方面的資料。

4
5 至於《銀行業(修訂)條例草案》的其他條款，由於是關於其他部分
6 的；所以暫時不會在此討論。

7
8 **主席：**

9
10 如果是這樣，我們待修訂完成後再審閱。各位同事是否有意見？接
11 著進行第VI部的討論。第VI部的中、英文本均已備妥，英文本的文件編號
12 為CB(1) 1705/00-01，中文本的文件編號為CB(1) 1733/00-01。

13
14 對第140條和第141條的中英文本，是否有問題？第142條有少許修
15 訂，是否可以就有關轉變作出解釋？

16
17 **財經事務局副局長區璟智女士：**

18
19 我請Mr PROCTER作出解釋，是關於時間性的重要。

20
21 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**
22 **Securities and Futures Commission :**

23
24 Chairman, I think the amendment is quite a simple one. Really, what it says is that
25 if someone is in breach of the Financial Resources Rules, then it is not safe to let them go on
26 trading without first discussing that matter with the Commission. So what is given effect
27 here under 142(1) (b) as amended is that when a firm realizes that it is in breach, it has to
28 immediately stop trading. That is actually the same as the current law; and 142(1)(a)
29 requires that as soon as reasonably practicable after they become aware of that they have to
30 tell us. Then the provisions that follow would allow for one of two things to happen.

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1 Either they continue to cease trading because we, having discussed it with them, judge that it
2 is not safe for their clients or for the clearing and settlement system to allow them to go no
3 trading, or we can impose conditions under which they can continue to trade and that is set in
4 subclause (2). So it is very simple. If you find out you are in breach you stop trading.
5 You tell the Commission. The Commission makes a judgment can you go on trading and, if
6 so, what conditions have to apply.

7

8 **主席：**

9

10 證監會實際上會否通知聯交所？令所有“盤”也不能入，實際上會否
11 這樣處理？

12

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

15

16 In terms of discussion with the exchange, actually it is both the exchange and the
17 clearing and settlement house - which, of course, strictly speaking, are separate companies.
18 We have gateways under the information sharing provisions that we come to in Part XVI that
19 would allow us to share that information with both the exchange and the clearing house and
20 we have, under a recently renegotiated Memorandum of Understanding, clearly identified this
21 as one of the issues that we would communicate in every instance to the clearing house and to
22 the exchange.

23

24 So the gateways are there and we would immediately inform them of the problems
25 that we perceived because, I think, as is implicit in your question, if we were to impose
26 conditions upon the trading of the firm that was in this situation, probably the clearing house
27 would want to confirm those conditions by imposing its own trading restrictions or trading
28 caps on their operations, so there does need to be very close liaison.

29

30 Actually it works the other way as well. If they find out about a problem, they are

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1 obliged under the rules to tell us as well.

2

3 **主席：**

4

5 第141條的中文本。新加的第(7A)款是什麼？

6

7 **財經事務局副局長區璟智女士：**

8

9 在上一輪的討論時，有代表曾向我們提出，尤其是經紀界的代表，
10 就是在突發的情況下，他們希望繼續營業，證監會雖准許他們繼續營業，
11 但要施加一些新的條件。在溝通方面最快的方法，是以口頭通知的形式，
12 告知他們可在這些條件下繼續營業，構思是這樣。

13

14 但有些業界朋友會憂慮，僅作口頭通知，日後會否出現爭議。部分
15 業界人士希望有書面通知。我們在考慮雙方的意見後，決定給予他們一個
16 選擇。證監會也會給他們一個陳述的機會，他們可在陳述時要求採用其中
17 一類的通知形式。第(7A)款的意思就是希望給業界一個選擇，就所施加的
18 條件用口頭或書面作出通知。

19

20 **主席：**

21

22 如果口頭通知可行，會否過於輕率？

23

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

26

27 On the contrary, actually the situation is often where we have very short notice.
28 We typically, in fact, find out about these sorts of situations at 9:00 or 9:30 in the morning,
29 and we have half an hour before the market opens to make a judgment about it. That is why
30 subclause (7) says that where we impose a condition by oral discussion – through oral

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1 discussion – we then go on and reduce it to writing as soon as reasonably practicable. That
2 is actually what we think is an adequate position and that is actually quite often what happens
3 but, as I say, the brokers are concerned that in some cases that may lead to uncertainty and so
4 they have an option. They can opt for the (7A) route, which is writing in the first instance.
5 That will actually slow the process down and, in some cases, it may mean that there is a delay
6 in them being able to resume trading subject to conditions but that is their choice.

7

8 **主席：**

9

10 法律顧問。

11

12 **助理法律顧問顧建華先生：**

13

14 多謝，主席。第(7A)款似乎給了業界一個選擇，但同時要考慮的一
15 點是：如果業界這樣選擇，便須自負後果，因為有關的書面決定並沒有規
16 定會何時發出。正如證監會所提到，如果在有時間性限制的情況下，這個
17 選擇是否實際可行？我相信業界應該很歡迎一些即時的決定，但他們所憂
18 慮的是，純粹作出口頭通知，有時會因為傳達方面或接收時有所誤會，會
19 變成違反有關的規定，業界會很難找到辯解的理由。我相信業界所關心的
20 也是這一方面，當局會否就這方面作出考慮？

21

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

24

25 You could, in certain areas, say that – first of all, let us just remind ourselves that
26 this is a matter for the brokers' choice. They will have had to stop trading by reason of the
27 earlier provision so if time is of concern to them then they can opt for the (7A) route. In fact,
28 we have had on many occasions to address this kind of issue through oral conditions and I am
29 not aware of any concerns that have arisen but if they opt for the (7A) route that is their
30 choice. You could go on and say at the end of (7A) that we have to provide the conditions in

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1 writing as soon as reasonably practicable but I am not sure that really adds very much because,
2 obviously, we have to act reasonably, anyway. We cannot unreasonably withhold permission
3 subject to conditions so we would actually have an obligation to act reasonably, anyway, I
4 think.

5

6 **財經事務局副局長區璟智女士：**

7

8 主席，可以告訴各位的是，這個建議已經提交給經紀協會，經紀界
9 也表示支持。

10

11 **主席：**

12

13 好的。

14

15 **梁劉柔芬議員：**

16

17 就剛才法律顧問提到第(7A)款的問題，我有不明白之處。法律顧問
18 指出這條條款雖然提供一個選擇，但是後果需要自負。不過，從那條文中、
19 英文的字眼中，我都看不到有後果自負的情況。請法律顧問解釋他認為哪
20 裏訂明有後果自負。因為我看到的是，尤其是中文本提到：“證監會均不得
21 藉給予這個法團的口頭通知而施加或修訂條件”。

22

23 **主席：**

24

25 顧先生。

26

27 **助理法律顧問顧建華先生：**

28

29 多謝，主席。多謝劉議員的提問。有關這方面的理解，是從證監會
30 代表剛才的發言中所理解到的。他的意思是：如果經紀希望盡快處理的話，

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1 最好用口頭通知；如果用書面通知的形式，可能會阻遲決定的通知。就他
2 是否可以繼續經營業務的決定，如果較遲作出，是會影響他能否繼續經營
3 業務，結果是由他承擔後果。

4

5 **梁劉柔芬議員：**

6

7 我希望法律顧問同意，就是字面上是沒有這個indication，我不希望
8 read beyond那個letter。

9

10 **助理法律顧問顧建華先生：**

11

12 字面來說，並無明文寫明，但這條條文的其中一個後果實際上是可
13 以這樣，這個是不需要說明的。由於條文中沒有提到書面形式通知需要在
14 什麼時候送達，也沒有提到首要的條件是證監會要考慮受規管人士業務的
15 利益。證監會只要是有良好意願、善意和忠實地履行職務時，如果因為作
16 出決定而在傳達的時間上引致損失，證監會是完全不會負責任，業界也不
17 可以作出追究。我不是說文字上有這樣的規定，而是說在實際運作上可以
18 產生這個後果，因為那個決定很多時會影響有關受規管人士的業務是否可
19 以繼續的，我純粹是根據法律的後果而論。

20

21 **梁劉柔芬議員：**

22

23 主席，我不希望在這方面浪費時間，我接受那個字面的寫法，但覺
24 得那裏可能有一些揣測的意味，或者我稍後再跟進，好嗎？

25

26 **主席：**

27

28 我想知道第(7A)款與第(9A)款有沒有邏輯上的矛盾，第(7A)款說明
29 即時生效，例如“at the time specified in the notice whichever is the later”。
30 但第(9A)款則訂明：“unless the Commission has given the licensed

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1 corporation a reasonable opportunity of being heard ”。在暫停牌照時，情況
2 應該怎樣？他在收到證監會暫停其牌照的notice時，若希望有機會作出辯
3 解，情況會是如何？

4

5 **財經事務局副局長區璟智女士：**

6

7 我請Mr PROCTER解釋程序上實際是如何運作的，即在撤銷牌照前
8 是有一些程序。

9

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

12

13 I am not sure this is going to answer your question, Chairman, but the procedure is
14 that where we are minded to exercise our powers under (5)(a) and to serve a notice on a
15 licensed corporation suspending its activities because, in our view, it is in breach of a
16 specified amount requirement, then under the subclause to which you have just referred, we
17 would be first obliged to give that licensed corporation a reasonable opportunity of being
18 heard. (9A) would require that. Actually, so would the common law. That is really just
19 preparatory of our obligations, anyway.

20

21 So we give them an indication of our concerns. We say, “We have not reached a
22 concluded view. We invite submissions. We consider those submissions. Then we reach
23 a concluded view.” If we are still minded to, having considered the submissions, go on and
24 issue a notice under (5)(a), we do that and then (7)(b) kicks in and the effect of that is that the
25 licence is suspended with effect from the time that the notice is served or at some other time
26 specified in the notice. That is the process.

27

28 **主席：**

29

30 第142條的英文本及中文本，是否有其他問題？第143條第(3)款都加

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1 了“by notice in writing served on the licensed corporation.”，第(4)款、第(5)
2 款，是否可以解釋一下第(5A)款的意思？

3
4 **財經事務局副局長區璟智女士：**

5
6 這與剛才142條第(7A)款是一樣的。

7
8 **主席：**

9
10 是一樣的。第(5B)款呢？等於第(7B)款，是嗎？

11
12 **財經事務局副局長區璟智女士：**

13
14 也是一樣的。

15
16 **主席：**

17
18 第(6)款、第(7)款、第(7A)款、第(8)款。Division 3 —— Client assets，
19 第144(1)條，那裏有甚麼含義？“on their behalf”改為“on behalf of the
20 intermediaries”的寫法有什麼意思？

21
22 **財經事務局副局長區璟智女士：**

23
24 請陳律師作出解釋。

25
26 **高級助理法律草擬專員陳子敏女士：**

27
28 多謝，主席。純粹是希望清晰地表達那個意思，以解釋their的含意。
29 後面在第(e)段或其他的改動也是一樣的意思。

30

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1 **主席：**

2

3 全部都是這樣的理由。

4

5 **高級助理法律草擬專員陳子敏女士：**

6

7 是的。

8

9 **主席：**

10

11 第144(1)、144(2)、144(3)、144(4)、144(5)、144(6)和144(7)條？第
12 144條的中文本，法律顧問。

13

14 **助理法律顧問顧建華先生：**

15

16 主席，希望政府方面澄清一個一般性的問題：據我理解，客人的證
17 券可以由有關的中介人士機構持有，但是對於有關機構的性質，卻並無特
18 別的界定。

19

20 **主席：**

21 Associated company，是嗎？

22

23 **助理法律顧問顧建華先生：**

24

25 Associated entities。

26

27 **財經事務局副局長區璟智女士：**

28

29 主席，各位可能要參考附表1。

30

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1 **助理法律顧問顧建華先生：**

2
3 附表1是界定他與中介人士的關係，我的意思是說：對於有關業務
4 的性質，並沒有特別的規定。

5
6 **財經事務局副局長區璟智女士：**

7
8 法律顧問是否提問第160條的資料？

9
10 **主席：**

11
12 還沒有到第160條。

13
14 **財經事務局副局長區璟智女士：**

15
16 請陳律師解釋Schedule 1，其中一個釋義的解釋能解答法律顧問所
17 提問的資料。

18
19 **主席：**

20
21 陳律師。

22
23 **高級助理法律草擬專員陳子敏女士：**

24
25 多謝，主席。在第C2375頁有“associated entity”的定義，就是“有聯
26 繫實體”。這裏用了一個字眼，就是在第VI部的“有聯繫實體”，即持有有
27 關“clients assets”的機構，必須有一個“controlling entity relationship”。
28 “Controlling entity relationship”在第2381頁也有一個定義，這裡有一連串
29 的關係，(a)、(b)、(c)再界定“controlling entity relationship”。在“controlling
30 entity relationship”的定義內，也提到持有股份的數量要求。“Controlling

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1 entity relationship”需要持有的股份量基本上應該是20%，也有其他關於投票
2 權的規定。這些一系列的定義基本上界定了“associated entity”的關係。

3
4 **助理法律顧問顧建華先生：**

5
6 正如我所提到的，只是提到兩者之間的關係，但對於“associated
7 entity”本身的業務，並沒有任何的規定。換句話說，“正達”的情況一樣會出
8 現，“正達”本身是中介人士，他有一間附屬的財務公司，根據現行的草擬，
9 “正達”作為中介人士，可以以財務公司名義持有客人的資產。因為只要是
10 符合“controlling entity”的關係，就可以這樣做。換句話說，在這樣的情況
11 下，即使“related entity”完全符合證監會的規定，也不可以避免有關客人的
12 資產因為附屬公司本身的負債或有關問題而受到牽連。

13
14 **財經事務局副局長區璟智女士：**

15
16 請Mr PROCTER作出解釋，因為在整個新的規例內，其實主要針對
17 的是可以把資產放在“有聯繫實體”，但將來證監會的規管範圍會包括“有聯
18 繫實體”。各位要考慮的是規管安排是否足夠？請Mr PROCTER解釋，我們
19 構思中的規管是怎樣的？就是雖然容許有靈活性，但我們也會規管那些機
20 構。

21
22 **Chairman：**

23
24 Andrew.

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

28
29 I understand the Legal Adviser’s question. I think it is important to keep in mind
30 that 144 is a rule-making power and what the provision is intended to do is reflect the market

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1 practice of using nominees that are subsidiaries as licensed intermediaries and it clearly
2 extends the rule-making power to those nominees' associated entities. In fact, if you look at
3 a later provision – 161 – there are, for example, requirements that associated entities notify
4 the Commission of their status as such. So what the new provisions do in a much clearer
5 and stronger way than the existing law does is to apply directly the requirements of the SFC
6 in respect of the handling of client assets. Not only to our registrants but also to the
7 associated entities of those registrants, recognizing that that is the common industry practice.

8
9 So 144 is all about the rules and when you say that an associated entity may hold
10 client assets merely by reason of it being a subsidiary of an intermediary, that really begs the
11 question, on what terms and on what conditions and in what ways is it permitted to deal with
12 those assets. That is what is set out in the rules. The rules are actually now a much tighter
13 way of regulating the conduct of those associated entities than exists under the current law.

14
15 We actually have a set of draft rules which have been developed in consultation
16 with the industry and which are now out for public consultation. The consultation period has
17 already closed. I think we have had about 40 submissions in respect of those rules so we
18 should expect to finalize them within the next couple of weeks.

19
20 **助理法律顧問顧建華先生：**

21
22 多謝，主席。我也參考過有關的草擬，即是現在正在諮詢中的條文。
23 我的理解似乎還有可能性，換句話說，有關的條文並不能夠防止中介人士
24 藉著附屬公司持有客人的證券。我暫時沒有看到有任何條文，可以有效防
25 止屬custody的證券不會因為附屬公司本身的債務而給債權人執行強制的情
26 況。我純粹希望指出這方面，而這一點事實上也在第145條同樣出現，不過，
27 現在所提出的修正應該已有所更改，但是在client's security and collateral
28 這方面，我覺得還是有這個可能性。

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

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1 *Securities and Futures Commission :*

2
3 Chairman, it is a real possibility that they will use the associated entities for
4 custodian arrangements. They will use them. They do use them and there is no doubt they
5 will continue to use them and that is precisely why the rule-making power is very clearly
6 extended to apply to associated entities. Of course there may be difficulties in the custodian
7 arrangements in relation to those associated entities, just as there may be problems within a
8 regulated entity in its holding of client assets. It is not uncommon for there to be reports of
9 misappropriation of client assets by intermediaries. That is exactly why again there are rules
10 that apply to both intermediaries and to associated entities.

11
12 I do not have any disagreement with the legal adviser that these associated entities
13 can be used. As I have said, they will be used and the rules will apply to them. They will
14 be subject to the rules in exactly the same way as an intermediary. The level of protection
15 will be exactly the same. In fact, it will be much better than it is now.

16
17 **財經事務局副局長區璟智女士 :**

18
19 主席，有關建議是容許現有的市場繼續運作，即是持牌人可以選擇
20 用另外一間公司去持有客戶的資產，達到靈活性的要求。最重要的考慮是，
21 將來第161條對“有聯繫實體”的規管綱領是否合理？例如第161(3)款訂明，
22 如果是中介人士的“有聯繫實體”，就不可以經營其他業務，純粹是持有客
23 戶資產。這也就可以兼顧剛才法律顧問提到的其他風險。

24
25 **主席 :**

26
27 我們知悉此事，因為這件事應該是剛剛重新整理的。

28
29 第145條，第145(6)款與第145(7)款的作用是什麼？這個是新加的，
30 是嗎？

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1

2 **財經事務局副局長區璟智女士：**

3

4 與“聯繫實體”有關的全部條款都是在這次立法建議中加入的，原有
5 的條例並沒有的。

6

7 **主席：**

8

9 “No rules made under this section shall apply to associated entities
10 that are authorized financial institution”，這是豁免銀行的，意思是否這樣？

11

12 **財經事務局副局長區璟智女士：**

13

14 我請阮先生解釋。

15

16 **主席：**

17

18 好的。

19

20 **香港金融管理局銀行監理處處長阮國恒先生：**

21

22 多謝，主席。我們以前也曾指出，因為銀行本身日常的業務也是處
23 理客戶的款項，所以在這一節內有關於客戶款項的規則，並不適用於銀行。

24

25 **主席：**

26

27 第145(7)款的作用是什麼？

28

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

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1
2 Chairman, I think perhaps to understand this in context, if you look at the start of
3 144 it refers to the Commission's part in requiring intermediaries. "Intermediaries" is
4 defined to include our registrants and banks. The start of 145 says we can make rules with
5 respect to licensed corporations. That is just our registrants, not banks, and as Mr YUEN
6 has referred to, that is because the judgment is the way in which banks hold client money, it is
7 their business. The rules that apply in respect of our registrants' holding of client money just
8 would not make sense in a bank environment where money is taken on deposit and becomes
9 fungible.

10
11 The way in which 145 operates, is to say that we can make a rule with respect to
12 our registrants and their associated entities. It is possible that their associated entities might
13 themselves be banks and so the clause that you just referred to says, "Well, if they are banks,
14 then the same logic applies." You cannot have these rules applying to banks because they
15 are dealing with deposits and money all the time. It is just a complement, if you like, or a
16 corollary of the fact that the primary rule-making power does not apply to banks.

17
18 **主席：**

19
20 有沒有問題？第146條 —— Claims and liens not affected, 中文本；
21 第147條 —— Records。第147條是新條文，是嗎？

22
23 "Their associated entities", 第(1)款、第(2)款、第(3)款、第(4)款、
24 第(5)款、第(6)款、第(7)款，中文本有沒有問題？

25
26 第148的第(1)、(2)、(3)、(4)、(5)和(6)款，第148條的中文本有沒有
27 問題？

28
29 第149條 —— Auditors, 第149(4)(a)(ii)條的"does not belong"變成
30 "belongs", 為什麼有這麼大的改變？

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30

高級助理法律草擬專員陳子敏女士：

主席，我或許可以作出解釋。最主要是按照將來的規則的內容。因為這裏提到，他可以或者不可以做auditor，那個情況就是說，如果規則寫明屬於某一個類別的人，就可以或者不可以，我們就將相反的方式改寫為正面的方式，其實是照著規則的內容來提出的，於是屬於某一類別的人士，是不可以做auditor，那麼規則將會寫哪些人是不可以做auditor的。

主席：

到時這個規則會……

高級助理法律草擬專員陳子敏女士：

所以其實是technical amendment。

主席：

第149(1)、149(2)、149(3)、149(4)、149(5)、149(6)、149(7)、149(8)條，第149條的中文本？

第150條，有沒有問題？中文本？

我們就此結束這個會議，因為我們還要出席另一個會議。下次舉行會議的時間是下星期一，我們下次從第151條開始討論。

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