

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 1102/01-02  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/4/00/2

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

**Minutes of meeting  
held on Friday, 14 December 2001, at 8:30 am  
in Conference Room A of the Legislative Council Building**

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

Miss Emmy WONG  
Assistant Secretary for Financial Services

Mr Peter A DAVIES  
Senior Assistant Law Officer

Ms Sherman CHAN  
Senior Assistant Law Draftsman

Mr K F CHENG  
Senior Assistant Law Draftsman

Ms Fanny IP  
Senior Assistant Law Draftsman

Ms Beverly YAN  
Senior Government Counsel

Mr Michael LAM  
Senior Government Counsel

Miss Betty CHEUNG  
Senior Government Counsel

Ms Francoise LAM  
Government Counsel

**Attendance by  
invitation**

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

Mrs Alexa LAM  
Executive Director, Intermediaries and Investment  
Products, Securities and Futures Commission

Mr Alan LINNING  
Executive Director, Enforcement, Securities and Futures  
Commission

Mr Andrew YOUNG  
Chief Counsel, Securities and Futures Commission

Mr Eugene GOYNE  
Associate Director, Enforcement, Securities and Futures  
Commission

Mr CHUNG Hing-hing  
Associate Director, Licensing Department, Securities and  
Futures Commission

Mr Joe KENNY  
Consultant, Securities and Futures Commission

Mrs Mary AHERN  
Legal Consultant, Securities and Futures Commission

**Clerk in attendance** : Ms Connie SZETO  
Chief Assistant Secretary (1)4

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

Mr KAU Kin-wah  
Assistant Legal Adviser 6

Mr S C TSANG  
Senior Assistant Secretary (1)7

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**I. Consideration of Committee Stage Amendments (CSA) to the Securities and Futures Bill (SFB) proposed by the Administration**

Parts XIII, XIV & XVII of and Schedules 1, 8 & 9 to SFB

- (LC Paper No. CB(1) 484/01-02(04) -- Marked-up version of CSA to Parts XIII and XIV of and Schedule 8 to the English version of SFB
- LC Paper No. CB(1) 540/01-02(01) -- Marked-up version of CSA to Parts XIII and XIV of and Schedule 8 to the Chinese version of SFB
- LC Paper No. CB(1) 528/01-02 -- Marked-up version of CSA to Part XVII of and Schedule 9 to the English version of SFB
- LC Paper No. CB(1) 551/01-02 -- Marked-up version of CSA to Part XVII of and Schedule 9 to the Chinese version of SFB
- LC Paper No. CB(1) 452/01-02(02) -- Marked-up version of CSA to Schedule 1 to the English version of SFB

- LC Paper No. CB(1) 540/01-02(02) -- Marked-up version of CSA to Schedule 1 to the Chinese version of SFB
- LC Paper No. CB(1) 423/01-02(03) -- Information paper on “Investigation costs of market misconduct cases” relating to Part XIII of SFB
- LC Paper No. CB(1) 483/01-02 -- Information paper on “Civil liability for market misconduct” relating to Part XIII of SFB
- LC Paper No. CB(1) 529/01-02(01) -- Information paper on "No-Action Letters” relating to Clause 273 of Part XIII of SFB
- LC Paper No. CB(1) 529/01-02(02) -- Information paper on "NASDAQ and OTC Stocks” relating to Part XIII of SFB
- LC Paper No. CB(1) 573/01-02(01) -- Update on areas of concern raised by members during discussions on SFB and follow-up actions required from the Administration (Parts XIII, XIV and XVII of SFB)
- LC Paper No. CB(1) 601/01-02(01) -- Administration’s response to Legal Service Division’s observations in relation to Part 1 of Schedule 9 to SFB
- LC Paper No. CB(1) 131/01-02(01) -- Supplement to the marked-up copy of SFB (Consequential and Supplemental Amendments)
- LC Paper No. CB(1) 131/01-02(02) -- Marked-up copy of CSA to Part 2 of Schedule 9 to SFB
- LC Paper No. CB(1) 335/00-01 -- Marked-up copy of SFB (Consequential and Supplemental Amendments)

Action                    Members agreed that the Bills Committee would scrutinize the English version of CSA proposed by the Administration. The LegCo Legal Service Division (LSD) was requested to examine the Chinese version of CSA and follow up with the Law Draftsmen on drafting and other technical matters. In the event that there were unresolved issues, LSD would raise them at meetings.

2.            The Bills Committee deliberated (Index of proceedings attached at the **Annex**).

Admin        3.            The Administration undertook to take follow-up actions in respect of SFB as follows:

- (a) to review clause 243 and relevant clauses in Schedule 8 to avoid using the term "replacement member";
- (b) to review clause 243(7) in relation to the word "divided";
- (c) to consider drafting comment to delete the word "a" before the word "notice" in clause 244(2);
- (d) to consider drafting comment to replace "the consent or connivance of him" by "his consent or connivance" in clauses 244(4)(b)(ii) and 272(3)(b)(ii);
- (e) to consider drafting comment to simplify clause 244(5);
- (f) to consider drafting comment to replace "that applicable" by "the standard of proof applicable" in clause 244(7);
- (g) to review the use of "or otherwise" in clause 245(1)(a);
- (h) to review the use of "relating to the proceedings" in clause 245(1)(b);
- (i) to consider drafting comment to delete the words "connection with" in clause 245(1)(j);
- (j) to review the need of clauses 249(5A)(b), 250(5A)(b) and 252(4);
- (k) to review clause 253(4) in relation to the word "exercised";
- (l) to consider drafting comment to simplify clause 258(2A);
- (m) to review clauses 258(2B) and (2C) in relation to their practicability;
- (n) to review the use of "in question" in clauses 258(2A), (2B), (2C), 262(3) and other relevant clauses in Part XIII;
- (o) to review definitions on "dealing in futures contracts" and "dealing in securities" in Schedule 1;
- (p) to consider drafting comment to replace the word "issue" by "issuing" in clause 268(2)(a);
- (q) to review the drafting of clauses 273(1A) & (1), and 297(1A) & (1) to clarify that the safe-harbour rules prescribed by the Securities and Futures Commission (SFC) would provide defences for market misconduct on a general ground rather than on a case-by-case basis;

- (r) to review clauses 272(7)(a) & (b), and 296(6)(a) & (b) in relation to admissibility of MMT evidence for proving civil liability for market misconduct;
- (s) to consider drafting comments to replace "subject to the requirement that" by "provided that" in clause 17 before sub-clause (a) of Schedule 8 and to simplify clauses 17(a) & (b);
- (t) to consider drafting comment to add "the" before "statement as amended" in clause 18 of Schedule 8;
- (u) to consider drafting comment to delete the words "given to" in clause 34 of Schedule 8;
- (v) to follow up with the Legal Service Division (LSD) and provide written responses to its concern about different legal effects arising from the terms "deemed", "as if" and "regarded as" used in various contexts in Part 1 of Schedule 9;
- (w) to follow-up with the LSD and to provide written response to its enquiries about the status and requirements applicable to existing registrants after they have successfully transited into the new regime before the expiry of the two-year period, and whether a separate register would be provided for these registrants transiting into the new regime; and
- (x) to provide information on alternative terms of "professional investor" (defined in Schedule 1) adopted by the US, UK jurisdictions.

4. As the Bills Committee had completed the scrutiny of CSA for SFB and the Banking (Amendment) Bill 2000 (BAB), members agreed to cancel the meeting scheduled for Monday, 17 December 2001.

5. As a number of members would not be able to attend the meeting scheduled for Tuesday, 8 January 2002, members agreed to reschedule the meeting. Members would be informed of the date of meeting in due course.

*(Post-meeting note: Members were informed vide LC Paper No. CB(1) 664/01-02 dated 20 December 2001 that the next meeting would be held on Monday, 14 January 2002 from 8:30 am to 12:45 pm to discuss outstanding CSA proposed by the Administration and CSA intended to be moved by the Bills Committee or other members.)*

**II. Any other business**

6. There being no other business, the meeting ended at 12:30 pm.

Legislative Council Secretariat  
19 February 2002

**Proceedings of the meeting of the  
Bills Committee on Securities and Futures Bill and  
Banking (Amendment) Bill 2000  
on Friday, 14 December 2001 at 8:30 am  
in Conference Room A of the Legislative Council Building**

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
0000-0203	Chairman	Clause 237	
0204-0225	ALA6	Clause 237 - definition on "listed"	
0226-0303	Administration	ditto	
0304-0332	Chairman	ditto	
0333-0406	Administration	ditto	
0407-0518	ALA6	ditto	
0519-0614	Ms Audrey EU	ditto	
0615-0900	Administration	ditto	
0901-0930	Chairman	Clauses 238 to 242	
0931-1459	Ms Margaret NG	Clause 243 & relevant clauses in Schedule 8 - suggestion to review the clause and avoid using the term "replacement members"	Admin
1500-1515	Administration	ditto	
1516-1525	Chairman	ditto	
1526-1615	Administration	ditto	
1616-1643	Chairman	ditto	
1644-1717	Ms Margaret NG	ditto	
1718-1726	Chairman	Clause 243(7) - suggestion to review the appropriateness of the word "divided"	Admin
1727-1755	Administration	ditto	
1756-1805	Chairman	ditto	
1806-2017	Ms Margaret NG	Clause 244(2) - suggestion to delete the article "a" before the words "notice in writing"	Admin
2018-2107	Administration	ditto	
2108-2131	Ms Margaret NG	Clause 244(4)(b)(ii) - suggestion to replace the words "the consent or connivance of him" by "his consent or connivance"	Admin
2132-2211	Administration	ditto	
2212-2340	Ms Margaret NG	Clause 244(5) – suggestion to simplify the clause	Admin
2341-2346	Administration	ditto	
2347-2438	Ms Margaret NG	Clause 244(7) – suggestion to replace the words “that applicable” by “the standard of proof applicable”	Admin
2439-2445	Administration	ditto	
2446-2539	Ms Margaret NG	ditto	
2540-2607	Administration	ditto	
2608-2653	Ms Margaret NG	ditto	



<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
2654-2721	Administration	ditto	
2722-2737	Ms Margaret NG	ditto	
2738-2741	Chairman	ditto	
2742-2747	Administration	ditto	
2748-2800	Ms Margaret NG	ditto	
2801-2812	Administration	ditto	
2813-2841	Ms Margaret NG	Clause 245(1)(b) – suggestion to review the use of “relating to the proceedings”	Admin
2842-2910	Ms Audrey EU	Clause 245(1)(a) – suggestion to review the use of “or otherwise”	Admin
2911-2926	Ms Margaret NG	Clause 245(1)(j) – suggestion to delete “connection with”	Admin
2927-2934	Chairman	Clauses 246 to 248	
2935-3103	Ms Margaret NG	ditto	
3104-3134	Administration	ditto	
3135-3148	Chairman	ditto	
3149-3244	Ms Margaret NG	ditto	
3245-3437	Administration	ditto	
3438-3522	Ms Margaret NG	ditto	
3523-3551	Administration	ditto	
3552-3610	Ms Margaret NG	ditto	
3611-3706	Administration	ditto	
3707-3721	Chairman	ditto	
3722-3851	Administration	ditto	
3852-3923	Chairman	Clause 249(1)(e) – comments on the phrase “expenses reasonably incurred by the Government”	
3924-3941	Administration	ditto	
3942-4040	Ms Margaret NG	ditto	
4041-4056	Chairman	ditto	
4057-4212	Ms Margaret NG	ditto	
4213-4331	Ms Audrey EU	ditto	
4332-4357	Chairman	ditto	
4358-4501	Ms Margaret NG	Clauses 249(5A)(b), 250(5A)(b) and 252(4) - suggestion to review the need of these clauses	Admin
4502-4526	Administration	ditto	
4527-4544	Ms Margaret NG	ditto	
4545-4614	Chairman	Clauses 251 to 252	
4615-4635	Ms Margaret NG	ditto	
4636-4721	Administration	ditto	
4722-4737	Chairman	ditto	
4738-4852	Ms Margaret NG	Clause 253(4) – suggestion to review the clause in relation to the word “exercised”	Admin
4853-4940	Administration	ditto	
4941-5046	Ms Margaret NG	ditto	
5047-5120	Administration	ditto	

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
5121-5224	Ms Margaret NG	ditto	
5225-5237	Chairman	ditto	
5238-5254	ALA6	ditto	
5255-5308	Chairman	ditto	
5309-5417	ALA6	ditto	
5418-5543	Administration	ditto	
5544-5628	Ms Margaret NG	ditto	
5629-5633	Chairman	Clauses 254 to 257	
5634-5709	ALA6	Clause 258(2A) - suggestion to review drafting	Admin
5710-5738	Administration	ditto	
5739-5803	ALA6	Clause 258(2B) & (2C) – suggestion to review their practicability	Admin
5804-5841	Administration	ditto	
5842-5855	Ms Margaret NG	ditto	
5856-5939	Administration	ditto	
5940-10050	Ms Margaret NG	ditto	
10051-10123	Administration	ditto	
10124-10206	Ms Margaret NG	ditto	
10207-10427	Ms Audrey EU	ditto	
10428-10703	Administration	ditto	
10704-10844	Ms Audrey EU	ditto	
10845-10916	Administration	ditto	
10917-10954	Ms Audrey EU	ditto	
10955-11038	Administration	ditto	
11039-11045	Ms Audrey EU	ditto	
11046-11132	Ms Margaret NG	ditto	
11133-11157	Chairman	Clauses 259 to 261	
11158-11211	Ms Margaret NG	ditto	
11212-11304	Administration	ditto	
11305-11345	Ms Margaret NG	ditto	
11346-11400	Chairman	Clause 262(2) – the meaning of the term “Chinese walls”	
11401-11437	Administration	ditto	
11438-11449	Chairman	ditto	
11450-11507	Ms Margaret NG	Clauses 258(2A), (2B), (2C), 262(3) and other relevant clauses in Part XIII - suggestion to review the use of the words “in question”	Admin
11508-11546	Chairman	Clauses 263 to 264	
11547-11707	ALA6	Clause 265(1)(b) – suggestion to review the definitions on “dealing in securities” and “ dealing in futures contracts” in Schedule 1	Admin
11708-11817	Administration	ditto	
11818-11830	Chairman	ditto	
11831-11945	ALA6	Clause 265(6A) – clarification on “off-	

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		market transaction”	
11946-12027	Administration	ditto	
12028-12039	Chairman	Clauses 266 to 267	
12040-12121	Ms Margaret NG	ditto	
12122-12201	Administration	ditto	
12202-12220	Ms Margaret NG	ditto	
12221-12231	Administration	ditto	
12232-12250	Chairman	ditto	
12251-12400	Ms Margaret NG	Clause 268(2)(a) – suggestion to replace the word “issue” by “issuing”	Admin
12401-12428	Chairman	ditto	
12429-12610	ALA6	ditto	
12611-12707	Administration	ditto	
12708-12718	Chairman	Clauses 269 to 271	
12719-12735	Ms Margaret NG	Clause 272(3)(b)(ii) - suggestion to replace the words "the consent or connivance of him" by "his consent or connivance"	Admin
12736-12814	Chairman	ditto	
12815-12915	Administration	ditto	
12916-12934	Chairman	ditto	
12935-13020	Administration	ditto	
13021-13137	Ms Margaret NG	ditto	
13138-13157	Administration	ditto	
13158-13206	Ms Margaret NG	ditto	
13207-13210	Administration	ditto	
13211-13223	Chairman	ditto	
13224-13242	ALA6	ditto	
13243-13303	Chairman	Clauses 273(1A) & (1) – suggestion to clarify that the safe-harbour rules prescribed by SFC would provide defences for market misconduct on a general ground	Admin
13304-13440	Administration	ditto	
13441-13723	ALA6	ditto	
13724-13734	Chairman	ditto	
13735-13830	ALA6	ditto	
13831-14040	Ms Audrey EU	Clauses 272(7)(a) & (b) – admissibility of MMT evidence for proving civil liability for market misconduct	Admin
14041-14241	Administration	ditto	
14242-14358	Ms Audrey EU	ditto	
14359-14409	Administration	ditto	
14410-14651	Ms Margaret NG	ditto	
14652-14737	Administration	ditto	
14738-14802	Ms Audrey EU	ditto	
14803-14836	Chairman	ditto	

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
14837-14915	Ms Audrey EU	ditto	
14916-14925	Ms Margaret NG	ditto	
14926-14959	Chairman	Clauses 274 to 276	
15000-15936	Break	-	
15937-20018	Chairman	Clauses 1 to 16 of Schedule 8	
20019-20242	Ms Margaret NG	Clause 17 of Schedule 8 – suggestion to replace the phrase “subject to the requirement that” by “provided that”; Clause 18 of Schedule 8 – suggestion to add the word “the” before “statement as amended”; and Clause 34 of Schedule 8 – to delete the words “given to” after “notice in writing”	Admin
20243-20557	Chairman	Clauses 19 to 33, 35 & 36 of Schedule 8 Clauses 277 to 295	
20558-20606	Ms Margaret NG	Clause 296(6)(a) & (b) - admissibility of MMT evidence for proving civil liability for market misconduct	Admin
20607-20721	Chairman	Clauses 297(1A) & (1) - suggestion to clarify that the safe-harbour rules prescribed by SFC would provide defences for market misconduct on a general ground	Admin
20722-21232	ALA6	Schedule 9 – LegCo Legal Service Division (LSD)’s concern on the different legal effects of the terms “deemed”, “as if” and “regarded as”	Admin
21233-21407	Administration	ditto	
21408-21417	Chairman	ditto	
21418-21610	Administration	ditto	
21611-21724	Ms Margaret NG	ditto	
21725-21907	Administration	ditto	
21908-21925	Ms Margaret NG	ditto	
21926-21941	Chairman	ditto	
21942-22042	Administration	ditto	
22043-22112	Ms Margaret NG	ditto	
22113-22124	Chairman	ditto	
22125-22142	Ms Margaret NG	ditto	
22143-22154	Administration	ditto	
22155-22223	Ms Margaret NG	ditto	
22224-22232	Administration	ditto	
22233-22321	Ms Margaret NG	ditto	
22324-22343	Administration	ditto	
22344-22407	Chairman	ditto	
22408-22424	Ms Margaret NG	ditto	
22425-22608	Administration	ditto	
22609-22921	ALA6	ditto	

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
22922-22931	Chairman	ditto	
22932-22943	Administration	ditto	
22944-22950	Chairman	ditto	
22951-23041	Ms Margaret NG	ditto	
23042-23114	Chairman	ditto	
23115-23257	Administration	ditto	
23258-23438	Ms Margaret NG	ditto	
23439-23452	Chairman	ditto	
23453-23514	Ms Margaret NG	ditto	
23515-23522	ALA6	ditto	
23523-23549	Ms Margaret NG	ditto	
23550-23609	ALA6	ditto	
23610-23614	Ms Margaret NG	ditto	
23615-23633	Chairman	ditto	
23634-23718	Ms Margaret NG	ditto	
23719-23751	Administration	ditto	
23752-23831	Ms Margaret NG	ditto	
23832-23928	Administration	ditto	
23929-23947	Ms Margaret NG	ditto	
23948-23958	Chairman	ditto	
23959-24004	ALA6	ditto	
24005-24016	Chairman	ditto	
24017-24019	Ms Margaret NG	ditto	
24020-24039	ALA6	ditto	
24040-24049	Ms Margaret NG	ditto	
24050-24059	Chairman	ditto	
24100-24259	ALA6	ditto	
24300-24316	Ms Margaret NG	ditto	
24317-24324	Administration	ditto	
24325-24334	Ms Margaret NG	ditto	
24335-24342	Administration	ditto	
24343-24426	Ms Margaret NG	ditto	
24427-24438	Chairman	ditto	
24439-24444	Ms Margaret NG	ditto	
24445-24739	Chairman	Clauses 1 to 64 of Schedule 9	
24740-24754	Ms Margaret NG	Clause 65 – replacement of the term “an appeal” by “application for review”	
24755-24833	Administration	ditto	
24834-24914	Chairman	Clauses 66 to 73	
24915-25007	ALA6	Clause 74(1)(d) – comment on inclusion of Part II under the clause	
25008-25035	Administration	ditto	
25036-25310	Chairman	ditto	
25311-25321	Administration	ditto	
25322-25402	Chairman	Clauses 75 to 86 Consequential and Supplemental Amendments	

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
25403-25448	ALA6	LSD's concern about the status and arrangements applicable to existing registrants after their transition into the new regime during the period before the expiry of the two-year transitional period & the provision of a separate register for these registrants	Admin
25449-25508	Ms Margaret NG	ditto	
25509-25516	Chairman	ditto	
25517-25640	Administration	ditto	
25641-25722	Ms Margaret NG	ditto	
25723-25815	Chairman	ditto	
25816-25836	Administration	ditto	
25837-25913	Chairman	ditto	
25914-25930	Administration	ditto	
25931-30152	Chairman	Schedule 1 – clarification on definition of “broadcaster”	
30153-30247	Administration	ditto	
30248-30320	Chairman	Request for information on the use of alternative terms of “professional investors” in overseas jurisdictions	Admin
30321-30352	Administration	ditto	
30353-30405	Chairman	ditto	
30406-30412	Administration	ditto	
30413-30449	Administration	ditto	
30450-30517	Chairman	ditto	
30518-30549	Administration	ditto	
30550-30606	Chairman	ditto	
30607-30643	Administration	ditto	
30644-30907	Chairman	Date of future meetings & legislative timetable	
30908-30918	Administration	ditto	
30919-30932	Ms Margaret NG	ditto	
30933-30957	SALA	ditto	
30958-31039	Chairman	ditto	
31040-31054	Ms Margaret NG	ditto	
31055-31058	Chairman	ditto	
31059-31107	Ms Margaret NG	ditto	
31108-31223	Chairman	ditto	

**Note: The audio records of the above proceedings are kept at the Legislative Council Library**

Legislative Council Secretariat  
19 February 2002