

立法會
Legislative Council

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Legislative Council
Panel on Financial Affairs

Minutes of Special Meeting held on
Friday, 10 November 2000 at 9:00 am
in the Chamber of the Legislative Council Building

- Members present** : Hon Ambrose LAU Hon-chuen, JP (Chairman)
Hon Henry WU King-cheong, BBS (Deputy Chairman)
Hon James TIEN Pei-chun, JP
Dr Hon David LI Kwok-po, JP
Hon NG Leung-sing
Hon James TO Kun-sun
Hon CHAN Kam-lam
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong
- Non-Panel Member attending** : Hon LI Fung-ying, JP
- Members absent** : Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Eric LI Ka-cheung, JP
Hon Bernard CHAN
Hon Jasper TSANG Yok-sing, JP
Hon Emily LAU Wai-hing, JP

- Public officers attending** : Mr Stephen IP
Secretary for Financial Services
- Miss AU King-chi
Deputy Secretary for Financial Services
- Miss Vivian LAU
Principal Assistant Secretary for Financial Services
- Mr Nelson MAN
Division Head (Banking Supervision)
Hong Kong Monetary Authority
- Attendance by invitation** : Securities and Futures Commission
- Mr Mark DICKENS
Acting Chairman
- Mr Andrew PROCTER
Executive Director of Intermediaries and Investment Products
- Mr Paul BAILEY
Executive Director of Enforcement
- Mrs Alexa LAM
Chief Counsel
- Clerk in attendance** : Ms LEUNG Siu-kum
Chief Assistant Secretary (1)4
- Staff in attendance** : Assistant Legal Adviser 6
Mr KAU Kin-wah
- Ms Connie SZETO
Senior Assistant Secretary (1)1
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I Briefing by the Administration on the Securities and Futures Bill, Banking (Amendment) Bill 2000 and the Process Review Panel

(LC Paper No. CB(1) 164/00-01: LegCo Briefs on the two Bills, an information paper on the Process Review Panel and presentation materials tabled at the meeting)

Briefing by the Administration

The Secretary for Financial Services (SFS) said that the objective of the Securities and Futures Bill (SF Bill) was to consolidate ten existing ordinances governing the securities and futures market with a view to building up a modern and user-friendly regulatory regime for the development of a fair, orderly and transparent market. The proposed regulatory regime aimed at promoting market confidence, securing appropriate investor protection, reducing market malpractice and financial crimes, and facilitating innovation and competition. The market and the Legislative Council (LegCo) were consulted on the major proposals in mid 1999. The SF Bill was published as a White Bill for public consultation in April 2000. Since then, the Administration had met with the LegCo Subcommittee established for the White Bill and various market and professional bodies intensively to explain the policy objectives and consider issues of practical implementation. The consultation had been very fruitful. In the light of comments received, refinements had been made to the White Bill to address market concerns without affecting the overall effectiveness of the new regulatory regime.

2. As regards the Banking (Amendment) Bill 2000 (BA Bill), SFS said that it was to enhance the Hong Kong Monetary Authority (HKMA)'s supervisory framework for authorized institutions (AIs) and bring it in line with the framework for intermediaries licensed by the Securities and Futures Commission (SFC) under the SF Bill.

3. On the legislative timetable for the two Bills, SFS said that they would be introduced into LegCo by the end of November 2000 and it was the Administration's intention that they be enacted within the current legislative session. He appealed to Members for support of early passage of the Bills so as to bring Hong Kong on par with international standards and to maintain the territory's competitiveness as a major international financial centre.

4. SFS further informed Members that the Process Review Panel (PRP) was established on 1 November 2000 to conduct reviews of SFC's internal operations and procedures. The establishment of PRP ahead of the enactment of the SF Bill was to demonstrate the Administration's resolve to enhance the transparency of SFC's operations, and SFC's determination to win public confidence and trust.

5. The Deputy Secretary for Financial Services (DS/FS) gave an audio-visual presentation on the key proposals of the SF Bill highlighting the refinements made

after the public consultation in mid 2000. There were four major regulatory initiatives enshrined in the Bill -

- (a) Improving the regulation of market intermediaries by introducing a single licensing regime for SFC registrants engaging in regulated activities and enhancing the responsibility of senior management of licensed corporations. While the criminal penalty maxima for some less serious offences in the licensing provisions would be reduced and the custodial penalties for breaches of some less serious administrative requirements would be removed, conviction by indictment for a few serious offences would be added to enhance the deterrent effect. The SF Bill would help level the playing field between the securities arm of AIs and licensed securities corporations. The BA Bill would empower HKMA to conduct effective front-line regulation of the regulated activities of AIs.
- (b) Combating market misconduct by establishing a Market Misconduct Tribunal (MMT) as a civil regime and expanding the existing criminal regime. No person would be subject to both civil proceedings before the MMT and criminal prosecution for the same misconduct. The SF Bill would clearly define the six types of market misconduct, stipulate the requisite mental element for committing the misconduct and put the burden of proof on the prosecution unless otherwise justified. A private cause of action for victims to sue another person for recovery of losses resulting from the latter's market misconduct would be created to help strengthen the deterrent against market misconduct. The court could accept findings of the MMT or criminal convictions of market misconduct as evidence in a private action. Moreover, the SF Bill would provide SFC with power to request access to the working papers of the corporations' auditors. Adequate safeguards had been built in to avoid "fishing expeditions".
- (c) Enhancing market transparency by promoting timely and accurate disclosure of price sensitive information to enable investors to make better informed investment decisions. The initial shareholding disclosure threshold for persons other than directors and chief executives would be lowered from 10% to 5% and the disclosure notification period shortened from five days to three business days. Certain disclosure requirements would be extended to share interests held through derivatives. The level of details to be disclosed would be compressed while preserving the essential aggregate data. Separately, a person would be civilly liable for knowingly, recklessly or negligently disclosing to the public false or misleading information which might affect the price of securities or futures contracts. The civil liability provision would be restricted to persons who had participated in or approved the disclosure of the false information.

- (d) Meeting new market needs by adopting a flexible approach to the regulation of automated trading services and providing a flexible framework for the establishment of a new investor compensation scheme.

6. DS/FS stressed that as the SF Bill would vest new powers in SFC, it was necessary to provide adequate checks and balances to guard against possible abuse and to ensure transparency and accountability of SFC. Besides preserving all existing accountability arrangements and the establishment of PRP to review SFC's internal procedures, SFC's regulatory objectives would be stipulated in the Bill as the benchmarks for public assessment of its performance. Moreover, the Securities and Future Appeals Tribunal (SFAT) would be established to review many important SFC decisions including all licensing and disciplinary decisions.

Discussion with members

7. Responding to Mr SIN Chung-kai's concern about the adequacy of the new investor compensation scheme for the protection of investors given the rapid increase in the number of investors in the market, DS/FS said that the best means of investor protection was by enhancing the regulation of market intermediaries. The new regulatory framework would introduce a "management responsibility" concept under which each licensed intermediary would be required to nominate at least two "responsible officers" (ROs) who were actively participating in or responsible for directly supervising the business of the regulated activities for approval by SFC. Moreover, an intermediary had to ensure that at least one RO would be available at all times to supervise the business. Such requirements would strengthen the internal controls of corporations and raise the professional standard and quality of intermediary service.

8. As regards details of the new investor compensation scheme, Mr Mark DICKENS, Acting Chairman of SFC, advised that SFC had commissioned a consultancy study on the scheme with a view to putting forward detailed proposals for market consultation soon.

9. In reply to Mr James TIEN's enquiry about the single licensing system for market intermediaries, Mr Andrew PROCTER, Executive Director of Intermediaries and Investment Products, SFC said that except for securities margin financiers, who were subject to the sole-business requirement, other intermediaries would only need one single licence to conduct different activities regulated by SFC including dealing in securities, futures and other investment products, as well as providing investment advice and asset management. A licensed corporation would be allowed to carry on more than one of the "regulated activities". In considering an application for a corporate licence by a corporation engaging in other business not regulated by SFC, SFC would take into consideration a number of matters, such as whether the non-

regulated activities would carry risks which would adversely affect the business of the regulated activities, and whether operation of such business would render the applicant not a "fit and proper" person to be licensed.

10. Concerning the responsibility of the senior management of a licensed corporation for criminal offences committed by the corporation, Mr PROCTER clarified that they would be held criminally liable if they had participated in, consented to or connived in the misconduct of the corporation, or had recklessly allowed the misconduct to occur. The onus of proof would be on the prosecution. He further advised that all ROs would be licensed representatives and subject to the "fit and proper" criteria of SFC. Their reputation and ability to manage the corporation properly were important elements for the assessment of their suitability to be licensed.

11. While expressing support for the Administration's initiative to enhance HKMA's supervisory framework for AIs in line with the framework for SFC licensed intermediaries, Mr Henry WU was concerned about the conformity in the regulatory approaches of HKMA and SFC.

12. In response, DS/ES explained that under the new regulatory regime, AIs would have to apply to SFC for an exempt status and SFC had to act on the advice of HKMA in deciding such applications. HKMA would be vested with adequate powers like the SFC in order to conduct effective front-line regulation of the regulated activities of exempt AIs in a manner and according to standards that were consistent with those applied to SFC licensees as set out in various rules and codes of conduct made by SFC. However, where equivalent regulatory measures had already been put in place by HKMA, SFC could grant modification or waiver to exempt AIs from relevant requirements. Mr PROCTER supplemented that the "management responsibility" concept proposed in the SF Bill would be introduced in the BA Bill. Executive officers appointed by an exempt AI for directly supervising its securities business had to be approved by HKMA. Employees of exempt AIs' securities business would also be required to be "fit and proper". HKMA would maintain a register of these employees for public inspection. As regards reporting requirements on exempt AIs' securities business, while generally speaking SFC would not require AIs to furnish the information already supplied to HKMA, the two regulators would exchange supervisory information in carrying out their regulatory duties. Currently, SFC and HKMA already established a Memorandum of Understanding (MOU) regarding the regulation of AIs' securities business and had been meeting regularly to discuss regulatory issues of mutual concern. The new regulatory framework would be underpinned by a revised MOU. Appropriate guidelines would be drawn up to facilitate HKMA to apply the same regulatory standards to exempt AIs as employed by SFC for its registrants.

13. On concern about the proposed power for HKMA to issue reprimands against AIs in respect of misconduct committed in their securities business, Mr PROCTER stressed that the grounds for issuing a reprimand would be similar to those applicable

to SFC licensees as set out in the SF Bill. Concerned AIs would be given an opportunity of being heard and provided with the right to appeal to the Chief Executive in Council. Mr Paul BAILEY, Executive Director of Enforcement, SFC added that for SFC licensees, public reprimand was a sanction for more serious misconduct to be published in press release and the SFC web site. A private reprimand was usually issued to a licensee for minor and inadvertent breaches of rules and regulations which did not cause any damage to the interest of the investing public. A record of a private reprimand would be kept in the file on the concerned intermediary for future reference.

14. Mr Henry WU expressed concerns about the composition and the limited power of PRP. He raised query about the balanced representation on PRP where currently four out of the nine non-ex-officio members were from the banking sector.

15. In response, SFS explained that PRP was a non-statutory independent body to review SFC's operational procedures on an on-going basis to ensure fairness and reasonableness. It was a new element in the regulatory regime and was not found in other international financial centres. PRP would demonstrate SFC's openness to independent scrutiny and would send a clear message to market participants that adequate checks and balances were in place to ensure SFC exercised its regulatory powers in a fair and consistent manner. While PRP would focus on the internal processes of SFC and would not conduct review of merits, SFAT would review many important decisions of SFC, including all licensing and disciplinary decisions. PRP would make regular reports to the Financial Secretary on its review findings which would be published subject to SFC's secrecy obligations. In addition, SFC would continue to be subjected to other checks and balances including judicial review and scrutiny by the Ombudsman and the ICAC.

16. On the composition of PRP, SFS advised that PRP consisted of 12 members appointed by the Chief Executive including nine broadly-based independent members and three ex-officio members. The current membership of PRP represented a good mix of knowledge, experience and expertise from the industry, academia and the legal and accountancy professions.

17. In reply to Mr James TIEN's enquiry about proposals under the SF Bill to address problems exposed by the Asian financial turmoil, SFS said that the Asian financial crisis did reveal gaps in the regulatory framework for the securities and futures market which called for urgent reform. Majority of the 30-point measures and three-pronged reform had been undertaken in the past two years including the merger and demutualization of the exchanges and the associated clearing houses, enhancement and improvement in the financial infrastructure, legislative amendments to regulate share margin financing activities, short selling and the provision of false and misleading information. Coupled with the proposals under the SF Bill, the Administration believed that the regulation and transparency of the market would be further enhanced and the market's capability be further improved to better enable Hong

Kong to meet challenges of globalization of financial services and advancement in information technology.

18. Mr James TIEN expressed dissatisfaction that the special meeting had been called in short notice and that relevant information papers had not been issued before the meeting to facilitate members to study the various complicated proposals.

19. SFS apologized that due to the confidentiality constraint on Executive Council (ExCo) business, the Administration could not inform LegCo Members of this meeting in advance before the two Bills were discussed by ExCo on 7 November 2000. He stressed that the Administration had seized the first opportunity to brief Members on the two Bills once they had been approved by ExCo before releasing them to the public. The Administration had been working under a very tight schedule to produce the LegCo briefs and information papers to facilitate discussion at the meeting. He stressed that the purpose of the meeting was to brief Members on the key proposals of the two Bills. There would be time for Members to scrutiny the Bills in detail when the Bills Committee was formed.

II Any other business

20. There being no other business, the meeting ended at 10:15 am.

Legislative Council Secretariat

1 March 2001