

立法會
Legislative Council

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**Subcommittee on draft subsidiary legislation
to be made under the Securities and Futures Ordinance**

**Minutes of meeting
held on Monday, 29 April 2002, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, (Chairman)
Hon NG Leung-sing, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Jasper TSANG Yok-sing, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Henry WU King-cheong, BBS
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Margaret NG, (Deputy Chairman)
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
- Public officers attending** : Miss Vivian LAU
Principal Assistant Secretary for Financial Services
- Miss Emmy WONG
Assistant Secretary for Financial Services
- Mr Frank TSANG
Assistant Secretary for Financial Services

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

Attendance by invitation : Mrs Alexa LAM
Executive Director, Intermediaries and Investment
Products, Securities and Futures Commission

Mr Andrew YOUNG
Chief Counsel, Securities and Futures Commission

Mr Stephen PO
Director, Intermediaries Supervision Department,
Securities and Futures Commission

Miss Lucinda WONG
Director, Licensing Department, Securities and Futures
Commission

Mrs Yvonne MOK
Associate Director, Intermediaries Supervision
Department, Securities and Futures Commission

Mr Johnny SHIH
Senior Manager, Intermediaries Supervision Department,
Securities and Futures Commission

Mr Anthony WOOD
Senior Counsel, Securities and Futures Commission

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

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mr S C TSANG
Senior Assistant Secretary (1)7

I Consideration of draft subsidiary legislation

- LC Paper No. CB(1) 1564/01-02(01) -- Information paper provided by the Administration on Securities and Futures (Unsolicited Calls – Exclusion) Rules
- LC Paper No. CB(1) 1564/01-02(02) -- Information paper provided by the Administration on Securities and Futures (Licensed Persons and Registered Institutions)
- LC Paper No. CB(1) 1564/01-02(03) -- Information paper provided by the Administration on Securities and Futures (Recognized Counterparty) Rules

Members agreed that the Subcommittee would scrutinize the English version of the draft subsidiary legislation. The Legislative Council (LegCo) Legal Service Division (LSD) was requested to examine the Chinese version of the draft subsidiary legislation 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 Subcommittee deliberated (Index of proceedings attached at the **Annex**).

Admin 3. The Administration undertook to take follow-up actions as follows:

(I) General

to consider providing references to relevant provisions in the Securities and Futures Ordinance (SFO) in the title(s), margin or relevant clauses of the rule(s) to facilitate users in understanding the power and bases for making the rules.

(II) Securities and Futures (Unsolicited Calls - Exclusion) Rules

- (a) to review clause 2 on definition on “Monetary Authority guidelines” to clarify that the guideline refers to the guideline in force at the material time;
- (b) to amend clause 3(1) to the effect that section 174 of SFO will not apply to “any agreement to sell or purchase securities of a corporation to or from a person who is already the holder of securities of that corporation”; and

- (c) to review clauses 3(3) and (4) to clarify that the purpose of sub-clause (4) is to provide some indications on “interactive dialogue” referred to in sub-clause (3)(c).

(III) Securities and Futures (Licensed Persons and Registered Institutions) Rules

- (a) to provide guidelines to be developed by the Hong Kong Monetary Authority (HKMA) for banks on provision of particulars of their staff engaging in securities business for inclusion in the register maintained by HKMA;
- (b) to consider whether a new set of subsidiary legislation should be made on information to be provided by applicants under section 128 of SFO;
- (c) to consider the appropriateness of the term “disciplinary action” in clauses 3(2)(g) and 3(3)(g) and whether such information should be included in the register if the disciplinary action is under appeal;
- (d) to consider specifying in clauses 3(2), (3) and (4) that particulars not spelt out in the rules would not be included in the register of licensed persons and registered institutions;
- (e) to consider developing procedures under clause 4 to minimize errors in putting information supplied by licensed persons and registered institutions into the register;
- (f) to review clause 6(1) and consider whether procedures should be developed for cancellation of licence when an intermediary or a licensed representative ceases to carry out the regulated activity;
- (g) to consider whether it is appropriate to extend clause 7(3)(e) to registered institution;
- (h) to consider providing guidance notes on criminal offences which are relevant to “fitness and properness” and hence required to be notified by licensed corporations under clauses 7(3)(h)(i), 7(4)(i)(i) and 7(5)(d)(i);
- (i) to review clauses 7(3)(h)(i), (iii), (v); 7(4)(i)(i), (iii), (iv) and 7(5)(d)(i), (iii) and (v) to ensure consistency in drafting; and
- (j) to review clauses 7(3)(l) and 7(4)(k) on the need to require information on changes in solvency status of associated entities.

4. Members agreed that the Administration should provide revised versions on the three sets of draft rules for their consideration. The drafts should be circulated to members by the Secretariat. If members raised further issues, the Chairman would decide whether the revised draft rules should be discussed at meetings.

II Any other business

5. Members agreed to hold the next two meetings on **Thursday, 6 June** and **Friday, 7 June 2002 from 8:30 am to 12:45 pm**. The agendas for the meetings would be fixed in due course.

6. There being no other business, the meeting ended at 11:40 am.

Legislative Council Secretariat

12 July 2002

**Proceedings of the meeting of the
Subcommittee on draft subsidiary legislation to be made under
the Securities and Futures Ordinance
on Monday, 29 April 2002 at 8:30 am
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
0000-0223	Chairman	Opening remarks; Securities and Futures (Unsolicited Calls - Exclusion) Rules – clause-by-clause examination	
0224-0401	Mr Henry WU	Clarification on the definition of "existing clients" under section 174(7) of Securities and Futures Ordinance (SFO)	
0402-0507	Administration	ditto	
0508-0521	Chairman	ditto	
0522-0540	Mr Henry WU	ditto	
0541-0600	Chairman	ditto	
0601-0621	Mr Henry WU	ditto	
0622-0624	Chairman	ditto	
0625-0702	Administration	ditto	
0703-0728	Chairman	ditto	
0729-0745	Mr Henry WU	Enforcement authority against breaches of rules by registered institutions and their securities staff	
0746-0838	Administration	ditto	
0839-0900	Chairman	ditto	
0901-1114	ALA6	Drafting of clause 3(1)	
1115-1134	Chairman	ditto	
1135-1229	ALA6	ditto	
1230-1300	Administration	ditto	
1301-1350	Chairman	ditto	
1351-1423	Mr Henry WU	Clause 3(1) - suggestion to amend the clause to the effect that section 174 of SFO also not applicable to "any agreement to sell or purchase securities of a corporation to or from a person who is already holder of securities of that corporation"	Admin
1424-1436	Administration	ditto	
1437-1451	Chairman	ditto	
1452-1504	ALA6	ditto	
1505-1514	Chairman	ditto	
1515-1550	Administration	ditto	
1551-1640	Chairman	ditto	
1641-1757	Ms Audrey EU	Clause 2 - interpretation of "Monetary Authority guideline"	

Time	Speaker	Subject(s)	Action required
1758-1825	Administration	ditto	
1826-1927	Ms Audrey EU	ditto	
1928-2021	Administration	ditto	
2022-2031	Ms Audrey EU	ditto	
2032-2041	Chairman	ditto	
2042-2053	Ms Audrey EU	Clause 2 – to review the interpretation of "Monetary Authority guideline"	Admin
2054-2214	Administration	ditto	
2215-2412	Ms Audrey EU	Clauses 3(3) & 3(4) - clarification on definition of "permissible communication"	
2413-2459	Administration	ditto	
2500-2553	Ms Audrey EU	ditto	
2554-2607	Chairman	ditto	
2608-2618	Administration	ditto	
2619-2722	Ms Audrey EU	ditto	
2723-2958	Administration	ditto	
2959-3007	Chairman	ditto	
3008-3018	Administration	ditto	
3019-3029	Ms Audrey EU	ditto	
3030-3035	Chairman	ditto	
3036-3127	Ms Audrey EU	ditto	
3128-3154	Chairman	ditto	
3155-3226	Ms Audrey EU	Clauses 3(3)(c) & 3(4) - to review the clauses and to clarify their relationship	Admin
3227-3238	Administration	ditto	
3239-3347	Chairman	Securities and Futures (Licensed Persons and Registered Institutions) Rules – clause-by-clause examination	
3348-3528	Mr Henry WU	Clause 3 – concern about the wide coverage of particulars to be included in the register of licensed persons and registered institutions	
3529-3556	Administration	ditto	
3557-3607	Chairman	ditto	
3608-3744	Mr Henry WU	Clause 7 - concern about changes to be notified by licensed persons but not required by registered institutions or their securities staff	
3745-3830	Administration	ditto	
3831-3854	Mr Henry WU	ditto	
3855-3950	Administration	ditto	
3951-4038	Chairman	ditto	
4039-4128	Mr Henry WU	ditto	
4129-4137	Chairman	ditto	
4138-4220	Mr Henry WU	Reference to overseas jurisdictions on particulars to be included in the	

Time	Speaker	Subject(s)	Action required
		register of licensed persons and registered institutions	
4221-4240	Chairman	ditto	
4241-4253	Mr Henry WU	ditto	
4254-4430	Administration	ditto	
4431-4612	Mr Henry WU	ditto	
4613-4753	Administration	ditto	
4754-4830	Chairman	Clause 3 - to provide guidelines to be developed by the Hong Kong Monetary Authority (HKMA) for banks on provision of particulars of their staff engaging in securities business for inclusion in the register maintained by HKMA	Admin
4831-4840	Administration	ditto	
4841-4847	Chairman	ditto	
4848-4915	Mr Henry WU	ditto	
4916-5020	Administration	ditto	
5021-5113	Mr Henry WU	ditto	
5114-5157	Administration	ditto	
5158-5248	Mr Henry WU	ditto	
5249-5306	Chairman	ditto	
5307-5326	Mr Henry WU	ditto	
5327-5517	Administration	ditto	
5518-5604	Mr Henry WU	ditto	
5605-5647	Administration	ditto	
5648-5659	Chairman	ditto	
5700-5855	Mr Henry WU	ditto	
5856-5912	Administration	ditto	
5913-5951	Mr Henry WU	ditto	
5952-10122	Administration	ditto	
10123-10154	Chairman	ditto	
10155-10232	Mr Henry WU	ditto	
10233-10242	Chairman	ditto	
10243-10309	Mr Henry WU	ditto	
10310-10346	Administration	ditto	
10347-10358	Mr Henry WU	ditto	
10359-10624	Administration	ditto	
10625-10631	Chairman	ditto	
10632-10735	Ms Audrey EU	Clause 7(3)(h)(v) - concern about the wide scope of the clause to require notification of any other matters relevant to "fitness and properness"	
10736-10751	Chairman	ditto	
10752-10853	Administration	ditto	
10854-10915	Ms Audrey EU	ditto	
10916-10950	Administration	ditto	

Time	Speaker	Subject(s)	Action required
10951-11014	Ms Audrey EU	ditto	
11015-11117	Administration	ditto	
11118-11139	Ms Audrey EU	ditto	
11140-11236	Administration	ditto	
11237-11252	Mr Henry WU	Consultation with the securities industry on the draft rules by the Securities and Futures Commission (SFC)	
11253-11321	Administration	ditto	
11322-11347	Mr Henry WU	ditto	
11348-11423	Administration	ditto	
11424-11442	Mr Henry WU	ditto	
11443-11505	Chairman	ditto	
11506-11618	ALA6	ditto	
11619-11716	Ms Audrey EU	ditto	
11717-11741	Administration	ditto	
11742-11817	Ms Audrey EU	ditto	
11818-11851	Chairman	ditto	
11852-11908	Ms Audrey EU	ditto	
11909-11918	Chairman	ditto	
11919-11924	Ms Audrey EU	ditto	
11925-11930	Chairman	ditto	
11931-12017	Ms Audrey EU	ditto	
12018-12111	Administration	Section 128 of SFO - to consider whether a new set of subsidiary legislation should be made on information to be provided by applicants under section 128 of SFO	Admin
12112-12328	Ms Audrey EU	ditto	
12329-12359	Administration	ditto	
12400-12414	Ms Audrey EU	ditto	
12415-12435	Chairman	ditto	
12436-12457	Ms Audrey EU	ditto	
12458-12536	Chairman	ditto	
12537-12614	Mr Henry WU	ditto	
12615-12621	Administration	ditto	
12622-12642	Chairman	ditto	
12643-12804	Ms Audrey EU	Clauses 3(2)(g) & 3(3)(g) - to consider the appropriateness of the term "disciplinary action" in the clauses and whether such information should be included in the register if the disciplinary action is under appeal	Admin
12805-12837	Administration	ditto	
12838-12846	Chairman	ditto	
12847-12936	Mr Henry WU	Clauses 3(2)(g) & 3(3)(g) - retention period of disciplinary records	

Time	Speaker	Subject(s)	Action required
12937-13005	Administration	ditto	
13006-13017	Chairman	ditto	
13018-13035	Mr Henry WU	ditto	
13036-13110	Administration	ditto	
13111-13125	Chairman	ditto	
13126-13130	Administration	ditto	
13131-13142	Ms Audrey EU	ditto	
13143-13148	Chairman	ditto	
13149-13201	Ms Audrey EU	Clauses 3(2), (3) and (4) - to consider specifying in the clauses that particulars not spelt out in the rules would not be included in the register of licensed persons and registered institutions	Admin
13202-13223	Administration	ditto	
13224-13243	Chairman	ditto	
13244-13257	Administration	ditto	
13258-13304	Ms Audrey EU	ditto	
13305-13355	Chairman	ditto	
13356-13444	Mr Henry WU	Clause 4 - to consider developing procedures under the clause to minimize errors in putting information supplied by licensed persons and registered institutions into the register	Admin
13445-13451	Administration	ditto	
13452-13503	Mr Henry WU	ditto	
13504-13518	Chairman	ditto	
13519-13524	Administration	ditto	
13525-13650	Mr Henry WU	Clause 5 - enquiry on the authority and method for certifying licence or certificate of registration	
13651-13700	Administration	ditto	
13701-13712	Chairman	ditto	
13713-13813	ALA6	Clause 6(1) - to review the clause and consider whether procedures should be developed for cancellation of licence when an intermediary or a licensed representative ceases to carry out the regulated activity	Admin
13814-13850	Administration	ditto	
13851-13952	ALA6	ditto	
13953-14051	Mr Henry WU	Clauses 6(2) & 6(3) - interim arrangements when the licence or certification of an intermediary or licensed representative had to be returned for amendment or correction by SFC	

Time	Speaker	Subject(s)	Action required
14052-14126	Administration	ditto	
14127-14234	Mr Henry WU	ditto	
14235-14300	Administration	ditto	
14301-14314	Chairman	ditto	
14315-14409	Mr Henry WU	Clause 7 - concern about different notification requirements imposed on licensed incorporations and registered institutions	
14410-14537	Administration	ditto	
14538-14651	Mr Henry WU	ditto	
14652-14704	Administration	ditto	
14705-14719	Mr Henry WU	ditto	
14720-14828	Administration	ditto	
14829-14923	Mr Henry WU	Clause 7(3)(e) - to consider whether it is appropriate to extend the clause to registered institution	Admin
14924-15004	Administration	ditto	
15005-15021	Chairman	ditto	
15022-15037	Mr Henry WU	ditto	
15038-15047	Chairman	ditto	
15048-15148	Mr Jasper TSANG	Clause 7(3)(h)(i) – criminal offences relevant to "fitness and properness" of licensed corporations which should be notified	
15149-15223	Administration	ditto	
15224-15243	Mr Jasper TSANG	ditto	
15244-15326	Administration	ditto	
15327-15338	Chairman	ditto	
15339-15406	Mr Jasper TSANG	ditto	
15407-15452	Administration	ditto	
15453-15547	Chairman	ditto	
15548-15646	Administration	ditto	
15647-15709	Chairman	ditto	
15710-15853	Ms Audrey EU	Clauses 7(3)(h)(i), 7(4)(i)(i) and 7(5)(d)(i) - to consider providing guidance notes on criminal offences which are relevant to “fitness and properness” and hence required to be notified by licensed corporations under the clauses	Admin
15854-15902	Chairman	ditto	
15903-15931	Ms Audrey EU	ditto	
15932-20015	Administration	ditto	
20016-20105	Mr Henry WU	ditto	
20106-20121	Administration	ditto	
20122-20140	Mr Henry WU	ditto	
20141-20147	Administration	ditto	

Time	Speaker	Subject(s)	Action required
20148-20305	Ms Audrey EU	Clauses 7(3)(h)(i), (iii), (v); 7(4)(i)(i), (iii), (iv) and 7(5)(d)(i), (iii) and (v) - to review the clauses to ensure consistency in drafting	Admin
20306-20309	Chairman	ditto	
20310-21648	Break	-	
21649-21817	Administration	Clause 7 - difference in requirements for notification of insolvency by licensed corporations and registered institutions	
21818-21852	Administration	ditto	
21853-21905	Mr Henry WU	ditto	
21906-21911	Chairman	ditto	
21912-21936	Mr Henry WU	Clauses 7(3)(h)(i) & (j) – suggestion to extend the notification requirements to registered institutions	
21937-21959	Administration	ditto	
22000-22009	Chairman	ditto	
22010-22043	Administration	ditto	
22044-22059	Mr Henry WU	ditto	
22100-22110	Administration	ditto	
22111-22116	Mr Henry WU	ditto	
22117-22121	Administration	ditto	
22122-22133	Administration	ditto	
22134-22213	Chairman	ditto	
22214-22257	Mr Henry WU	ditto	
22258-22307	Administration	ditto	
22308-22332	Mr Henry WU	ditto	
22333-22336	Chairman	ditto	
22337-22442	Ms Audrey EU	Clauses 7(3)(l) & 7(4)(k) - to review the clauses on the need to require information on changes in solvency status of associated entities	Admin
22443-22535	Administration	ditto	
22536-22555	Ms Audrey EU	ditto	
22556-22605	Administration	ditto	
22606-22619	Ms Audrey EU	ditto	
22620-22640	Chairman	ditto	
22641-22700	Ms Audrey EU	ditto	
22701-22708	Administration	ditto	
22709-22744	Ms Audrey EU	ditto	
22745-22821	Chairman	ditto	
22822-22827	Administration	ditto	
22828-22837	Chairman	ditto	
22838-22849	Mr Henry WU	ditto	
22850-22852	Administration	ditto	

Time	Speaker	Subject(s)	Action required
22853-22927	Chairman	Securities and Futures (Recognized Counterparty) rules - clause-by-clause examination	
22928-23010	Mr Henry WU	ditto	
23011-23037	Chairman	ditto	
23038-23150	ALA6	Clause 2 - clarification on definitions on "currency" and "equivalent corporation"	
23151-23259	Administration	ditto	
23300-23411	Administration	ditto	
23412-23415	Chairman	ditto	
23416-23459	Mr Henry WU	Clause 2 - clarification on definition on "specified jurisdiction" and "specified bank regulator" and the bases for selection of the eight jurisdictions listed in Schedule 1	
23500-23638	Administration	ditto	
23639-23702	Mr Henry WU	ditto	
23703-23721	Administration	ditto	
23722-23734	Chairman	ditto	
23735-23823	Mr Henry WU	ditto	
23824-23954	Administration	ditto	
23955-24000	Mr Henry WU	ditto	
24001-24007	Administration	ditto	
24008-24044	Mr Henry WU	Clauses 3(b) & 3(c) – clarification on drafting of the clauses	
24045-24112	Administration	ditto	
24113-24134	Mr Henry WU	ditto	
24135-24210	Administration	ditto	
24211-24218	Ms Audrey EU	ditto	
24219-24223	Chairman	ditto	
24224-24343	ALA6	Clause 3(d) - clarification on definition on “qualifying credit rating”	
24344-24432	Administration	ditto	
24433-24441	Chairman	ditto	
24442-24807	Ms Audrey EU	To consider providing references to relevant provisions in the Securities and Futures Ordinance (SFO) in the title(s), margin or relevant clauses of the rule(s) to facilitate users in understanding the power and bases for making the rules.	Admin
24808-24914	Administration	ditto	
24915-25027	ALA6	ditto	
25028-25047	Chairman	ditto	
25048-25213	Administration	ditto	
25214-25328	Ms Audrey EU	ditto	

Time	Speaker	Subject(s)	Action required
25329-25342	Chairman	ditto	
25343-25511	Administration	ditto	
25512-25621	Chairman	Follow-up on the draft rules	
25632-25644	Mr Henry WU	ditto	
25645-25719	Chairman	ditto	

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

Legislative Council Secretariat
12 July 2002