

立法會
Legislative Council

LC Paper No. CB(1) 2479/01-02
(These minutes have been seen
by the Administration)

Ref: CB1/HS/1/01/1

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

**Minutes of meeting
held on Thursday, 6 June 2002, 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 Henry WU King-cheong, BBS
- 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 Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Jasper TSANG Yok-sing, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
- 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

Ms Marie SIU
Senior Government Counsel

Mr Michael LAM
Senior Government Counsel

**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

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

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

Mr Alvin LOK
Senior Manager, Licensing Department, Securities and
Futures Commission

Mr Harold KO
Senior Manager, Investment Products, Securities and
Futures Commission

Mr Gary HO
Manager, Investment Products, Securities and Futures
Commission

Mr Anthony WOOD
Senior Counsel, Securities and Futures Commission

Ms Vania CHENG
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 Confirmation of minutes of previous meeting

LC Paper No. CB(1) 1794/01-02 -- Minutes of meeting held on
28 March 2002

The minutes of meeting held on 28 March 2002 were confirmed.

II Submission of the Subcommittee's report to the House Committee

LC Paper No. CB(1) 1896/01-02 -- Paper prepared by the Secretariat on
submission of the Subcommittee's
report to the House Committee

2. As the Administration intended to introduce the 38 sets of draft subsidiary legislation for negative vetting of the Legislative Council (LegCo) in batches and might gazette the scrutinized rules during the summer recess, in order to tie in with the Administration's plan, members agreed that the Subcommittee would submit interim report(s) to the House Committee (HC) upon completion of scrutiny of draft subsidiary legislation in batches during the recess period. HC would consider the Subcommittee's report(s) together with the Legal Service Division (LSD)'s report(s) in October 2002 when the new legislative session commenced.

III Consideration of draft subsidiary legislation

LC Paper No. CB(1) 1848/01-02(01) -- Securities and Futures (Registration
of Commission Disciplinary Orders)
Rules
Securities and Futures (Securities
and Futures Appeals Tribunal -
Registration of Orders) Rules
Securities and Futures (Market
Misconduct Tribunal - Registration
of Orders) Rules

- LC Paper No. CB(1) 1848/01-02(02) -- Securities and Futures (Exempted Instruments - Information) Rules
- LC Paper No. CB(1) 1877/01-02(01) -- Securities and Futures (Collective Investment Schemes) Notice
- LC Paper No. CB(1) 1877/01-02(02) -- Securities and Futures (Professional Investor) Rules
- LC Paper No. CB(1) 1877/01-02(03) -- Securities and Futures (Associated Entities) Rules

3. Members agreed that the Subcommittee would scrutinize the English version of the draft subsidiary legislation. The LSD was requested to examine the Chinese version and follow up with the Law Draftsman on drafting and other technical matters. In the event that there were unresolved issues, LSD would raise them at meetings.

4. The Subcommittee deliberated (Index of proceedings attached at the **Annex**).

Admin 5. The Administration undertook to take follow-up actions as follows:

- (a) to consider clarifying the concept of "relevant date" in clause 3 of the Securities and Futures (Professional Investor) Rules; and
- (b) to review clauses 3(2)(1) & 4(2)(d) in the Securities and Futures (Associated Entities) Rules to clarify the term "circumstances".

6. Members agreed to the other five set of draft rules proposed by the Administration.

IV Any other business

7. Members were reminded that the next meeting was scheduled for **Friday, 7 June from 8:30 am to 12:45 pm** to discuss eight set of draft rules.

8. There being no other business, the meeting ended at 9:35 am.

**Proceedings of the meeting of the
Subcommittee on draft subsidiary legislation to be made under
the Securities and Futures Ordinance
on Thursday, 6 June 2002, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
000000 - 000023	Chairman	Opening remarks Confirmation of minutes of meeting held on 28 March 2002	
000023 - 000142	Clerk	Briefing on the proposed arrangement for submission of the Subcommittee's report to the House Committee	
000142 - 000305	Chairman	Securities and Futures (Registration of Commission Disciplinary Orders) Rules - clause-by-clause examination Securities and Futures (Securities and Futures Appeals Tribunal - Registration of Orders) Rules - clause-by-clause examination Securities and Futures (Market Misconduct Tribunal - Registration of Orders) Rules - clause-by-clause examination	
000305 - 000524	ALA6 Miss Margaret NG	Concern on the need to spell out the existing registration practices in the Rules to facilitate compliance	
000524 - 000711	Administration Mr Henry WU ALA6	The Rules were modelled on existing arrangements in the subsidiary legislation under the Securities (Insider Dealing) Ordinance. The Department of Justice and Judiciary Administrator had been consulted on the Rules and were content with the drafts.	
000711 - 000744	Miss Margaret NG	Concern on the lack of flexibility if registration practices were to be specified in the Rules. The need of codifying the registration practices should be reviewed if problems arose in the future.	
000744 - 000820	Chairman	Securities and Futures (Exempted Instruments - Information) Rules - clause-by-clause examination	

Time	Speaker	Subject(s)	Action required
		Securities and Futures (Collective Investment Schemes) Notice - clause-by-clause examination	
000820 - 001208	Mr Henry WU	<p>Concern that the existing practice whereby gold sellers took safe custody of purchased gold on behalf of clients could be included under the Securities and Futures (Collective Investment Schemes) Notice and hence subject to regulation applicable to "collective investment schemes"</p> <p>Suggestion to change the name of the draft Notice to better reflect the scope which was related to gold purchase arrangements</p>	
001208 - 002527	Administration Mr Henry WU Miss Margaret NG Chairman	<p>The draft Notice intended to include "paper gold schemes" as "collective investment schemes" and bring them within the regulatory framework for the offering of investment products. The business practice mentioned by Mr Henry WU would not be regarded as offering of "paper gold schemes".</p> <p>The proposed name of the draft Notice would better reflect the scope of the provisions under section 393 of the Securities and Futures Ordinance (SFO) which related to the term of "collective investment schemes". The proposed name would also facilitate adding of new collective investment schemes to the subsidiary legislation in the future.</p>	
002527 - 002547	Chairman	Securities and Futures (Professional Investor) Rules - clause-by-clause examination	
002547 - 002936	Mr Henry WU Chairman	<p>Clause 2 - enquiry on whether the definition of "associate" should be extended to cover "parents"</p> <p>Clause 3 - enquiry on whether "professional investors" would include agencies of overseas</p>	

Time	Speaker	Subject(s)	Action required
		governments	
002936 - 003341	Administration Mr Henry WU	Based on the modern concept of family, it was considered appropriate to limit the definition of "associate" to either the spouse or children of an individual.	
003341 - 003606	Administration Mr Henry WU Chairman	The draft Rules and paragraph (i) of the definition of "professional investors" in Part 1 of Schedule 1 to SFO should have covered the organizations referred to by Mr Henry WU.	
003606 - 003642	ALA6	Comment that the definition of "professional investors" would not cover charitable and religious organizations	
003642 - 004152	Mr Henry WU Administration Chairman	Clause 2 - clarification on requirement to produce custodian statement for being qualified as professional investors	
004152 - 004239	Chairman	Clause 3 - enquiry on whether it was necessary to prescribe procedures for designating classes of persons as "professional investors"	
004239 - 004412	Administration Chairman	The code of conduct for intermediaries would specify the responsibilities of intermediaries in this respect.	
004412 - 004453	ALA6	Clause 3 - whether the "relevant date" for calculating assets in foreign currency should be specified	
004453 - 004611	Administration Chairman	Will consider whether the concept of "relevant date" should be further clarified	Admin
004611 - 004713	Chairman	Securities and Futures (Associated Entities) Rules - clause-by-clause examination	
004713 - 004753	Mr Henry WU	Clauses 3(2)(l) & 4(2)(d) - suggestion to review the clauses to clarify the term "circumstances"	Admin
004753 - 004909	Administration Mr Henry WU Chairman	Clauses meant how a corporation became or ceased to be an associated entity of an intermediary	
004909 - 005149	ALA6 Administration	Clause 3(2)(j) - clarification on particulars of "controlling entity" to be provided to the SFC	

Time	Speaker	Subject(s)	Action required
005149 - 005228	Mr Henry WU	Clause 3(2)(m) - concern that the associated entities were required to report matters relating to their insolvency while authorized financial institutions (AIs) regulated by Hong Kong Monetary Authority (HKMA) were exempted	
005228 - 010026	Administration ALA6 Mr Henry WU Chairman	AIs were required under the Banking Ordinance to report matters relating to their insolvency to HKMA. According to the Memorandum of Understanding with SFC, HKMA would share its information on AIs with SFC.	

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

Legislative Council Secretariat
6 September 2002