

立法會
Legislative Council

LC Paper No. CB(1)2607/01-02
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by the Administration)

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

**Minutes of meeting
held on Friday, 7 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 Albert HO Chun-yan
Hon NG Leung-sing, JP
Hon Bernard CHAN
Hon Jasper TSANG Yok-sing, JP
Hon Henry WU King-cheong, BBS
- Members absent** : Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon James TO Kun-sun
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, 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

Miss Millie KIANG
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

Ms Carmen CHU
Senior Government Counsel

Ms Phyllis POON
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

Mr Gerald GREINER
Senior Director, Supervision of Markets, Securities and
Futures Commission

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

Mrs Irene TANG
Associate Director, Supervision of Markets, Securities and
Futures Commission

Mr Anthony WOOD
Senior Counsel, Securities and Futures Commission

Ms Sandra KING
Legal 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 KAU Kin-wah
Assistant Legal Adviser 6

Mr S C TSANG
Senior Assistant Secretary (1)7

Action

I Consideration of draft subsidiary legislation

- LC Paper No. CB(1) 1895/01-02(01) -- Securities and Futures (Levy) Order
Securities and Futures (Levy) Rules
- LC Paper No. CB(1) 1895/01-02(02) -- Securities and Futures (Investor
Compensation - Levy) Rules
Securities and Futures (Investor
Compensation - Compensation Limits)
Rules
Securities and Futures (Investor
Compensation - Claims) Rules
Securities and Futures (Transfer of
Functions - Investor Compensation
Company) Order
- LC Paper No. CB(1) 1895/01-02(03) -- Securities and Futures (Leveraged
Foreign Exchange Trading)
(Arbitration) Rules
- LC Paper No. CB(1) 1895/01-02(04) -- Securities and Futures (Contract Notes,
Statements of Account and Receipts)
Rules

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 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) Securities and Futures (Leveraged Foreign Exchange Trading) (Arbitration) Rules

To consider making reference to overseas practices and consulting relevant arbitration bodies regarding arrangements on appointment of arbitrators.

(II) Securities and Futures (Investor Compensation - Claims) Rules

(a) to review clause 7 in relation to calculation of loss, in particular, in respect of breach of trust, defalcation, fraud or misfeasance;

(b) to consider providing claimants, whose claims were disallowed, with an opportunity of being heard; and

(c) to consult the Shareholders' Group of the Securities and Futures Commission (SFC) on the draft Rules.

4. Members agreed to the other six sets of draft rules proposed by the Administration.

II Any other business

5. Members agreed to the following schedule for meetings in July and September 2002:

9 July 2002 (Tuesday)	2:30 pm to 6:30 pm
15 July 2002 (Monday)	2:30 pm to 6:30 pm
18 July 2002 (Thursday)	2:30 pm to 6:30 pm
16 September 2002 (Monday)	2:30 pm to 6:30 pm
18 September 2002 (Wednesday)	2:30 pm to 6:30 pm
20 September 2002 (Friday)	8:30 am to 12:45 pm

6. There being no other business, the meeting ended at 12:00 noon.

Legislative Council Secretariat
30 September 2002

**Proceedings of the meeting of the
Subcommittee on draft subsidiary legislation
to be made under the Securities and Futures Ordinance
on Friday, 7 June 2002, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
000000 - 000108	Chairman	Opening remarks	
000108 - 000302	Miss Margaret NG	<p>Securities and Futures (Leveraged Foreign Exchange Trading) (Arbitration) Rules - clause-by-clause examination</p> <p>Concern that both an arbitrator and a representative from the Hong Kong International Arbitration Centre (HKIAC) responsible for conducting the arbitration proceedings might increase the arbitration cost</p>	
000302 - 000530	Administration	Clarification that the HKIAC representative was to give advice on matters relating to the practice and procedure of an arbitration	
000530 - 000653	Administration	<p>The existing arbitration panel consisted of members who were experienced market practitioners of foreign exchange trading and were appointed on a non-remunerated basis. HKIAC charged according to its own scale of fees.</p> <p>Consideration would be given to appoint persons with both knowledge on arbitration and foreign exchange trading as arbitrators in the arbitration panel in future.</p>	
000653 - 000718	Chairman	Suggested to provide proper arbitration training to members appointed to the arbitration panel	

Time	Speaker	Subject(s)	Action required
000718 - 000951	Miss Margaret NG Mr Henry WU Administration	The Administration should consider making reference to overseas practices and consulting relevant arbitration bodies regarding the appointment of arbitrators.	
000951 - 001010	Mr NG Leung-sing	Enquiry on the time taken and cost incurred for arbitration proceedings	
001010 - 001030	Administration	There was only one arbitration proceeding held so far. Each party to the case had to pay \$2,140 as cost for the arbitration.	
001030 - 001117	Chairman	Securities and Futures (Levy) Order - clause-by-clause examination	
001117 - 001444	ALA6 Administration	Clause 2 - clarification on the definition of "exchange traded fund"	
001444 - 001546	ALA6 Administration	Clause 2 - clarification on whether the definition of "new futures contract" would cover commodity futures contracts	
001546 - 001619	Chairman	Securities and Futures (Levy) Rules - clause-by-clause examination	
001619 - 001640	ALA6	Concerned that no sanction would be imposed for failure to pay levies	
001640 - 001710	Administration	The Securities and Futures Commission (SFC) might recover the levy payable to it under Section 394(4) of the Securities and Futures Ordinance (SFO) as a civil debt.	
001710 - 001810	ALA6	Clause 4 - enquiry on procedures for remittance of levies payable to SFC	
001810 - 002014	Administration Chairman ALA6	The Exchange Company would be required under clause 4(b) of the Rules to pay the collected levies by way of remittance to the	

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		SFC on the 15th day of the month following the month of the collection of the levies. The interests earned from the levies would not be included.	
002014 - 002109	ALA6	Clause 6 - concerned that whether it was appropriate to adjust previous errors related to the amount of levy remittance in a subsequent return	
002109 - 002131	Administration	<p>The arrangements for collection and payment of levies to SFC were based on existing arrangements which were operating well.</p> <p>Exchange Company could correct previous errors in the annual report on levy remittances it submitted to SFC under clause 10.</p>	
002131 - 002437	ALA6 Administration	Clause 11 - clarification on conditions for refund of levy	
002437 - 002450	Chairman	Securities and Futures (Investor Compensation - Levy) Rules - clause-by-clause examination	
002450 - 002908	Mr Henry WU Administration	Clauses 9, 10 & 11 - drafting in relation to the term "levy"	
002908 - 003020	Mr Henry WU	Clause 20(3) - whether it was appropriate to specify the timing for the Exchange Company to submit the first remittance report to SFC	
003020 - 003301	Administration Mr Henry WU Chairman	Clarified that the Exchange Company would have one month to prepare the report as provided under clause 20(1)	
003301 - 003528	Chairman Administration	Discussion on the prudent level for the Investor Compensation Fund. As the coverage of the new compensation fund would be expanded, the target size would be raised from \$800 million to \$1	

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		billion.	
003528 - 003650	ALA6 Administration	Clause 14 - concern on arrangement for interests generated from levies deposited in bank pending remittance to SFC	
003650 - 003748	Chairman	Securities and Futures (Investor Compensation - Compensation Limits) - clause-by-clause examination	
003748 - 004007	Mr Henry WU ALA6 Chairman	Clause 3 - concern about the compensation limits for claimants of joint accounts Concern about how "related assets" on accounts were to be determined	
004007 - 004733	Administration	The maximum amount of compensation for a claimant was \$150,000 for loss as a result of a default in relation to securities and \$150,000 for loss as a result of default in relation to future trading activities. The compensation limit would be applicable to individual holders of a joint account. The arrangement was in line with practices in overseas jurisdictions. SFC would take into account facts and information submitted by claimants in establishing their interests to the joint accounts.	
004733 - 004808	Chairman	Securities and Futures (Investor Compensation - Claims) Rules - clause-by-clause examination	
004808 - 005014	Mr Henry WU Administration	Clause 2 - clarification on the definition of "qualifying client" and protection for investors in relation to third party clearing activities	
005014 - 005140	Chairman	Clause 3 - concern on the need to	

Time	Speaker	Subject(s)	Action required
	Administration	<p>set a "three-month" deadline for submission of claims</p> <p>The "three-month" deadline was existing arrangement. SFC could accept late claims where they were justified.</p>	
005140 - 005743	Mr Jasper TSANG Chairman ALA6 Administration	<p>Clause 5(2) - concern that the clause was too loose and would pose difficulties for SFC in processing claims</p> <p>The clause provided flexibility to claimants. SFC would judge each claim on its own merits.</p>	
005743 - 010736	Mr Albert HO Administration	<p>Clause 7 - whether SFC would proceed to determine the claim for loss pending court proceedings related to the default</p> <p>SFC would proceed with the determination of claim, make the payment and subrogate the claimants' rights in the court proceedings if appropriate.</p>	
010736 - 010909	Chairman	<p>Clause 11 - enquiry on arrangement where the money available to the compensation fund was insufficient to meet claims</p>	
010909 - 011143	Administration	<p>Emphasized that such situation was unlikely to happen. The levy would provide a stable source of income to the compensation fund and the fund could borrow money. In the event that fund was insufficient to meet the claims, it would be apportioned among the claimants. The unpaid amount would be paid when fund became available.</p>	
011143 - 011716	Mr Henry WU	<p>Clause 2 - clarification on the</p>	

Time	Speaker	Subject(s)	Action required
	Administration	term "associate" in paragraph (i) of the definition of "qualifying client"	
011716 - 013314	ALA6 Chairman Administration	Clause 2 - clarification on the definition of "associated persons"	
013314 - 013435	ALA6	Clause 7 - concern on how loss was to be determined	
013435 - 013533	Administration	Loss sustained by the claimant to be determined having regarded to the market value, as at the date of the default of the securities or futures contracts and related assets. Undertook to review the calculation for loss related to default in respect of breach of trust, defalcation, fraud or misfeasance.	Admin
013533 - 014439	ALA6 Chairman Administration	Clause 4(3) - concern on the time limit for lodging claims The existing Rules also required a claimant to submit claim within six months after he was first aware of the default if a claim notice was not published. SFC could accept late claims if justified.	
014439 - 015517	ALA6 Mr Henry WU Administration Mr Albert HO Miss Margaret NG Chairman	Clause 11 - concern that SFC had wide discretionary power to determine the apportionment of fund to pay the compensation. Consideration should be given to provide claimants with an opportunity of being heard. Claimants with their claims rejected could appeal to the Securities and Futures Appeals Tribunal.	Admin
015517 - 020213	Miss Margaret NG Mr Albert HO	The Administration should consult SFC's Shareholders'	Admin

Time	Speaker	Subject(s)	Action required
	Mr Henry WU Chairman	Group on the draft Rules.	
020213 - 021310	Break	-	
021310 - 021346	Chairman	Securities and Futures (Transfer of Functions - Investor Compensation Company) Order - clause-by-clause examination	
021346 - 021700	Mr Henry WU Administration	Clarification on the functions to be transferred to the Investor Compensation Company (ICC) ICC would be responsible for management and administration of the compensation fund including determination of claims. SFC would resume overall responsibility with the fund including keeping of account for the entire fund.	
021700 - 022455	ALA6 Mr Henry WU Administration	Clause 3(2) - concerned about the concurrent discharge of functions by ICC and SFC The provision could enable SFC to step in to perform ICC's functions under emergency situations. Item 8 of Schedule - concern about ICC's ability to invest part of the compensation fund ICC's investment function would be subject to requirements under Section 241 of SFO.	
022455 - 022654	Chairman	Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules - clause-by-clause examination	
022654 - 023048	ALA6 Administration	Clause 2 - enquiry on the scope of "financial or investment services"	

Time	Speaker	Subject(s)	Action required
		<p>in the definition of "foreign intermediary"</p> <p>The UK and the US were the approved jurisdictions under the definition.</p>	
023048 - 023245	Mr Henry WU Administration	<p>Clause 2 - enquiry on the definition of "designated persons", and the "hold mail" practice for contract notes to be deposited with brokerage firms upon investors' requests</p> <p>There were rules in the code of conduct for intermediaries for regulation of "hold mail" practice.</p>	
023245 - 023529	Miss Margaret NG ALA6 Administration	<p>Whether the Administration had further consulted the respondent parties on the revised draft Rules</p> <p>Some of the revisions were made in consultation with market participants and in response to market comments.</p>	
023529 - 023732	Chairman	Schedule of meetings in July and September 2002	

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

Legislative Council Secretariat
30 September 2002