

立法會
Legislative Council

LC Paper No. CB(1)2608/01-02
(These minutes have been seen
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 Tuesday, 9 July 2002, at 2:30 pm
in Conference Room A of the Legislative Council Building**

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

Miss Emmy WONG
Assistant Secretary for Financial Services and the Treasury
(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 Laurence LI
Director, Corporate Finance Department, Securities and
Futures Commission

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

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

Ms Sandra KING
Legal Consultant, Securities and Futures Commission

Mrs Mary AHERN
Legal Consultant, Securities and Futures Commission

Ms Daisy LAI
Senior Manager, Corporate Finance Department, Securities
and Futures Commission

Mr Leo LAM
Senior Manager, Intermediaries Supervision Department,
Securities and Futures Commission

Ms Linda CHIANG
Senior Manager, Intermediaries Supervision Department,
Securities and Futures Commission

Mr Wilson LO
Senior Manager, Intermediaries Supervision Department,
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) 2168/01-02(01) | -- Securities and Futures (Client Money) Rules |
| LC Paper No. CB(1) 2168/01-02(02) | -- Securities and Futures (Client Securities) Rules |
| LC Paper No. CB(1) 2168/01-02(03) | -- Securities and Futures (Keeping of Records) Rules |
| LC Paper No. CB(1) 2168/01-02(04) | -- Securities and Futures (Accounts and Audit) Rules |
| LC Paper No. CB(1) 2168/01-02(05) | -- Securities and Futures (Price Stabilizing) Rules |

Members agreed that the Subcommittee would scrutinize the English version of the draft subsidiary legislation. The Legal Service Division (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.

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 (Client Money) Rules

- (a) to provide information on time limit for putting client money in segregated trust accounts in overseas jurisdictions, including inter alia, the United States, United Kingdom and Australia;
- (b) to clarify the situations when client money would be regarded as "received or held" by a licensed corporation, in particular, in relation to clauses 3(1) and 9;
- (c) to reconsider applying the segregation requirements for client money received or held outside Hong Kong;
- (d) to consider specifying in the Rules that agreement for interests on client money to be retained by a licensed corporation under clause 6(2) should be a "written agreement" between the corporation and its clients; and
- (e) to provide information on whether AIs are subject to reporting requirement in cases of non-compliance with regulatory requirements and whether failure to report would constitute a criminal offence.

(II) Securities and Futures (Client Securities) Rules

To review clause 3(3) in respect of application of the Rules to client securities or securities collateral that were subject of a repurchase transaction.

(III) Securities and Futures (Accounts and Audit) Rules

To specify clearly that the "business and risk management questionnaire" referred to in clause 3(1)(c) would be in the form prescribed by the SFC.

II Any other business

- 4. Members noted Mr Bernard CHAN's resignation from the Subcommittee.
- 5. Members were reminded that the next meeting would be held on **Monday, 15 July 2002 at 2:30 pm.**
- 6. There being no other business, the meeting ended at 12:00 noon.

**Proceedings of the meeting of the
Subcommittee on draft subsidiary legislation
to be made under the Securities and Futures Ordinance
on Tuesday, 9 July 2002, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
000000 - 000542	Deputy Chairman	Securities and Futures (Client Money) Rules	
000542 - 001219	Mr Henry WU Deputy Chairman Administration	Clause 4(4) - Concern that the "one business day" time limit for client money to be paid into segregated accounts would be difficult for licensed corporations to comply with Clause 12 - Reservation on criminal sanction against non-compliance with the Rules	
001219 - 001241	Administration	To provide information on time limit for client money to be put into segregated accounts in overseas jurisdictions	Admin
001241 - 001544	Mr Henry WU ALA6 Administration Deputy Chairman	Clauses 3(1) & 9 - Considered that client money should be regarded as "received or held" only when such money had been proved "good" To clarify situations when client money would be regarded as "received or held"	Admin
001544 - 003126	Mr Eric LI Chairman Administration	Concern on the lack of guidelines for auditors to determine whether a licensed corporation had put in place systems of control for compliance with relevant Rules The Securities and Futures Commission (SFC) would develop guidelines in consultation with the Hong Kong Society of Accountants.	
003126 - 005152	Mr Henry WU Miss Margaret NG Mr James TO Chairman Administration	Concern that the Rules would not be applicable to authorized institutions (AIs) and their associated entities	

Time	Speaker	Subject(s)	Action required
005152 - 005628	Mr Henry WU Miss Margaret NG Administration Chairman	Enquiry about whether any unclaimed client money could cease to be treated as "client money"	
005628 - 010012	Mr Henry WU Administration Chairman	Clarification that dividends or other income payments should be deposited into segregated accounts once the licensed corporations were aware of the receipt of such client money	
010012 - 011256	ALA6 Administration Ms Audrey EU Chairman	<p>Clause 3(2) - Concern that the Rules would not apply to client money received or held outside Hong Kong</p> <p>Some countries, like Taiwan, did not have trust law requiring the segregation of client money into trust accounts.</p> <p>The corporation was obliged to keep records of client money received or held by it under the Securities and Futures (Keeping of Records) Rules.</p>	
011256 - 011930	Administration ALA6 Chairman	<p>To check market comments received and reconsider applying the segregation requirements for client money received or held outside Hong Kong</p> <p>It was necessary to step up investors education about the risk of having client money transferred outside Hong Kong.</p>	Admin
011930 - 012551	ALA6 Administration	Clause 4(3)(a)(ii) - Clarification on the term "margin requirements"	
012551 - 013431	ALA6 Administration	Clause 6(2) - To consider specifying that interest entitled to be retained by a licensed corporation should be made in a "written agreement" between the corporation and its clients	Admin
013431 - 013720	Mr Henry WU Administration	Clause 8(4) - Concern on the need and cost implication for a licensed corporation or its associated entities to give a written confirmation of	

Time	Speaker	Subject(s)	Action required
		the renewal of the standing authority to its clients	
013720 - 014737	Mr Henry WU Mr Eric LI Mrs Sophie LEUNG Administration Chairman	Clause 12 - Concern about criminal sanctions applicable to AIs To provide an information paper on whether AIs are subject to reporting requirement in cases of non-compliance with regulatory requirements and whether failure to report would constitute a criminal offence	Admin
014737 - 015945	Break		
015945 - 020030	Chairman	Securities and Futures (Client Securities) Rules	
020030 - 021203	ALA6 Administration	Clause 3(3) - Clarification on the concept of "repurchase transaction" To review the clause	Admin
021203 - 023233	Mr Henry WU ALA6 Administration	Clauses 10(1) & 10(2) - Clarification on the meaning of the term "deposited"	
023233 - 023250	Chairman	Securities and Futures (Keeping of Records) Rules	
023250 - 023839	Mr Henry WU Administration	Clause 10 - Enquiry on the record retention period in relation to tape recordings of telephone conversation	
023839 - 024531	Chairman Mr Eric LI Mrs Sophie LEUNG Administration	Clause 4(iv) - Clarification that the monthly reconciliation requirement was in line with existing market practice Concern that there was no requirement on intermediaries to reconcile the assets held on behalf of clients	
024531 - 024602	Chairman Mr Henry WU Administration	Clarification that the definition of "records" in the Securities and Futures Ordinance included electronic records	
024602 - 025515	Mr Henry WU Chairman Administration	Clause 11 - Suggestion that only breaches of material requirements should be reported to the SFC	
025515 - 030019	Mr Henry WU Administration	Clauses 3, 5 & 8 - Clarification on application of the Rules	

Time	Speaker	Subject(s)	Action required
030019 - 030516	Chairman Administration	Clause 9(1)(b) - Concern about the language requirement on the records to be kept	
030516 - 030553	Chairman	Securities and Futures (Accounts and Audit) Rules	
030553 - 030936	ALA6 Mr Henry WU Mr Eric LI Administration	Clause 3(1)(c) - Suggest to specify clearly that the "business and risk management questionnaire" referred to the one prescribed by SFC	Admin
030936 - 031718	Mr Henry WU Mr Eric LI Administration	Clause 4(1)(e) - The industry was concerned about the cost implication of requiring auditors to confirm adequacy of licensed corporations' systems of control for compliance with relevant Rules	
031718 - 031813	Chairman	Securities and Futures (Price Stabilizing) Rules	
031813 - 032241	Mr Henry WU ALA6 Administration Chairman	Schedule 4 - Enquiry about recognized jurisdictions to be specified in the Schedule	
032241 - 033654	Mr Henry WU Mr Eric LI Administration Chairman	Concern about the appropriateness of the proposed threshold amount of HK\$100 million for offers under the Rules	

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