

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2609/01-02  
(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 Monday, 15 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  
Hon NG Leung-sing, JP  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Henry WU King-cheong, BBS, JP  
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Albert HO Chun-yan  
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
- Public officers attending** : Miss Vivian LAU  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services)
- Ms Salina YAN  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services)

Miss Emmy WONG  
Assistant Secretary for Financial Services and the  
Treasury (Financial Services)

Mr Howard YAM  
Assistant Secretary for Financial Services and the  
Treasury (Financial Services)

Mr Frank TSANG  
Assistant Secretary for Financial Services and the  
Treasury (Financial Services)

Ms Lonnie NG  
Senior Government Counsel

**Attendance by invitation** : Mr Mark DICKENS  
Executive Director, Supervision of Markets, Securities  
and Futures Commission

Mr Andrew YOUNG  
Chief Counsel, Securities and Futures Commission

Miss Stella LEUNG  
Senior Director, Supervision of Markets, Securities and  
Futures Commission

Miss Alexandra YEONG  
Senior Manager, Supervision of Markets, Securities and  
Futures Commission

Mr Alvin LOK  
Senior Manager, Licensing 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

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Action

**I Confirmation of minutes of previous meeting**

LC Paper No. CB(1) 2231/01-02 -- Minutes of meeting held on  
29 April 2002

The minutes of meeting held on 29 April 2002 were confirmed.

**II Consideration of draft subsidiary legislation**

LC Paper No. CB(1) 2232/01-02(01) -- Securities and Futures (Leveraged  
Foreign Exchange Trading -  
Exemption) Rules

LC Paper No. CB(1) 2232/01-02(02) -- Securities and Futures (Short  
Selling Exemption and Stock  
Lending) Rules

LC Paper No. CB(1) 2232/01-02(03) -- Securities and Futures (Disclosure  
of Interests - Securities Borrowing  
and Lending) Rules

LC Paper No. CB(1) 2252/01-02(01) -- Securities and Futures (Disclosure  
of Interests - Exclusions)  
Regulation

2. 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.

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

Admin 4. The Administration undertook to take follow-up actions as follows:

(I) Securities and Futures (Leveraged Foreign Exchange Trading - Exemption) Rules

to provide a list of corporations currently engaged in leveraged foreign exchange trading activities which would qualify for exemption under clause 4(2) of the draft Rules

(II) Securities and Futures (Short Selling Exemption and Stock Lending) Rules

to consult Linklaters and Alliance whether clause 3 of the draft Rules had addressed its concern that other parties, such as offshore affiliates, which hedged position and used the relevant market maker merely to execute the trade, could rely on the exemption

**III Any other business**

5. Members noted the following schedule of meetings in September 2002:

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 3:25 pm.

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 Monday, 15 July 2002, at 2:30 pm  
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
000000 - 000136	Chairman	Opening remarks  <b>Securities and Futures (Leveraged Foreign Exchange Trading - Exemption) Rules</b> - clause-by-clause examination	
000136 - 000340	Mr Henry WU Administration	Clause 4(2)(a) - clarification that the definition of the term "qualifying credit rating" was set out in Part 5 of Schedule 1 to the Securities and Futures Ordinance (SFO)	
000340 - 000415	Chairman Administration	Clarification that authorized financial institutions (AIs) were exempted under Schedule 5 to SFO from licence requirement for engaging in leveraged foreign exchange trading activities	
000415 - 001855	ALA6 Miss Margaret NG Mr Eric LI Administration Chairman	Clauses 4(2) and 4(3) - concern about procedures to be qualified for the exemption and requirement to notify the Securities and Futures Commission (SFC) about the qualification after the end of the financial year  A corporation which satisfied the conditions set out in clause 4(2) could qualify for exemption. No application for exemption was required but the corporation needed to notify SFC of its qualification for exemption under clause 4(3). In case that the conditions were not met, the corporation concerned should cease the activities and notify SFC under clause 4(4) accordingly.	

Time	Speaker	Subject(s)	Action required
		<p>Clause 4 was modelled on the current Leveraged Foreign Exchange (Exemption) Rules under the Leveraged Foreign Exchange Trading Ordinance. The Rules had been operated for seven years and generally accepted by market practitioners. No operational problems had arisen so far.</p>	
001855 - 002048	Administration	<p>Undertook to provide a list of corporations currently engaged in leveraged foreign exchange trading activities which would qualify for exemption under clause 4(2)</p>	Admin
002048 - 002357	Chairman Administration	<p>Clause 6 - clarification on the definition of "listed currency warrant"</p> <p>The definition was provided in clause 2.</p>	
002357 - 002441	Chairman	<p><b>Securities and Futures (Short Selling Exemption and Stock Lending) Rules</b> - clause-by-clause examination</p>	
002441 - 003211	Mr Henry WU Administration	<p>Clauses 2 and 3(2) - concern that the definition of "securities market maker" and the types of "jobbing business" might not cover parties who merely used the market maker to execute their trade</p> <p>The intention was to provide exemption to any person whom the Exchanges recognized as performing market making or liquidity providing activities</p>	
003211 - 003226	Administration	<p>Undertook to consult Linklaters and Alliance whether clause 3 had addressed its concern that other parties, such as offshore affiliates, which hedged position and used the relevant market maker merely to execute the trade, could rely on the</p>	Admin

Time	Speaker	Subject(s)	Action required
		exemption	
003226 - 003604	Mr Henry WU Administration Chairman	Corresponding amendments would be made to the Rules of the Stock Exchange of Hong Kong (SEHK) for implementing the exemptions	
003604 - 004122	Mr Henry WU Administration	<p>Clauses 4(5) and 5(1) - clarification that the purpose of recording the time a securities borrowing and lending order/agreement was given or entered into was to create a proper audit trail for short selling and stock lending activities</p> <p>It was important for lenders and borrowers to record the time before the short sell order was passed down the track. The draft Rules provided flexibility to the industry in compliance with the requirement. A tape recording or time stamped record was acceptable.</p>	
004122 - 005033	Chairman ALA6 Mr Henry WU Administration	<p><b>Securities and Futures (Disclosure of Interests - Securities Borrowing and Lending) Rules</b> - clause-by-clause examination</p> <p>Clause 8 - enquiry on the criteria for becoming an approved lending agent to be exempted from disclosure requirements</p> <p>SFC was consulting the industry to work out the details. Generally, the corporations had to be fit and proper. In case of overseas corporations, they had to be properly regulated by respectable regulatory bodies.</p> <p>Clauses 9 and 10 - enquiry on the requirements to keep records of transactions for three years by an approved lending agent and a regulated person</p>	

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		The three-year requirement would tie in with the requirement in SFO and would facilitate investigation of share interests where appropriate.	
005033 - 005218	Chairman ALA6 Mr Henry WU Administration	<b>Securities and Futures (Disclosure of Interests - Exclusions) Regulation</b> - clause-by-clause examination	
005218 - 005240	Chairman	Date of future meetings	

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

Legislative Council Secretariat  
30 September 2002