

立法會
Legislative Council

LC Paper No. CB(1) 115/02-03
(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, 16 September 2002 at 5:00 pm
in Conference Room B of the Legislative Council Building**

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

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

Ms Vicki LEE
Senior Government Counsel

Attendance by invitation : Miss Stella LEUNG
Senior Director, Supervision of Markets, Securities and
Futures Commission

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

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

Mrs Mary AHERN
Legal Consultant, Securities and Futures Commission

Mr Anthony WOOD
Senior Counsel, Securities and Futures Commission

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

Mr Eugene GOYNE
Director, Enforcement, 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) 2479/01-02 -- Minutes of meeting held on
6 June 2002

The minutes of meeting held on 6 June 2002 were confirmed.

II Consideration of draft subsidiary legislation

LC Paper No. CB(1) 2490/01-02(01) -- Securities and Futures (Licensing
and Registration) (Information)
Rules

LC Paper No. CB(1) 2490/01-02(03) -- Securities and Futures
(Miscellaneous) Rules

LC Paper No. CB(1) 2490/01-02(03) -- Securities and Futures (Offence
and Penalties) Regulation

LC Paper No. CB(1) 2490/01-02(04) -- Securities and Futures (Contracts
Limits and Reportable Positions)
Rules

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:

Securities and Futures (Licensing and Registration) (Information) Rules

- (a) to add appropriate subtitles for each part of Schedule 1;
- (b) to include "a regulatory body" under clauses 3(2) and 4(9);
- (c) to review the phrase "that might reasonably be considered relevant" in the beginning of item 6 of Part 1 in Schedule 1 and the same phrases as appeared in the rest of the draft Rules as appropriate, to enhance certainty of the provisions;
- (d) to review item 15 in Part 1 of Schedule 1, and item 8 in Parts 2 and 3 of Schedule 1 as the provisions were too broad and allowed the Securities and Futures Commission (SFC) to add any requirement without the scrutiny of the Legislative Council;

- (e) to review drafting of item 6(a)(iii) in Part 2 of Schedule 1 to make clear what information was required to be provided to SFC;
- (f) to specify clearly what particulars were required as regards “the mental health of the applicant” under item 7 in Part 2 of Schedule 1;
- (g) to include “spent convictions” explicitly as matters relevant to the applicant’s fitness and properness to be licensed or registered in Schedules 1 and 2;
- (h) to review the drafting of item 12 in Part 1 and item 11 in Part 2 of Schedule 2 to specify clearly that only reasons of the change in the auditor were to be reported to SFC;
- (i) to review the drafting of item 11 in Part 1 of Schedule 2 to specify clearly what changes in the status of bank accounts were required to be reported to SFC; and
- (j) to review item 2 in Parts 1 and 2 of Schedule 3 as the provisions were too general and it was unclear what information would be required under the draft Rules.

III Any other business

5. In order to allow more time for members to study the draft Securities and Futures (Financial Resources) Rules, the Subcommittee agreed to defer the item for discussion at meetings to be scheduled in October 2002.

6. Members were reminded that the next meeting would be held on 18 September 2002 from 2:30 pm to 6:30 pm.

7. There being no other business, the meeting ended at 6:30 pm.

Legislative Council Secretariat

22 October 2002

**Proceedings of the meeting of the
Subcommittee on draft subsidiary legislation
to be made under the Securities and Futures Ordinance
on Monday, 16 September 2002 at 5:00 pm
in Conference Room B of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
000000 - 000100	Chairman	Opening remarks; Confirmation of minutes of previous meeting	
000100 - 000520	Chairman Mr Henry WU Administration Securities and Futures Commission (SFC)	Securities and Futures (Licensing and Registration) (Information) Rules Enquiry on the term “related corporations” The definition was provided in Schedule 1 to the Securities and Futures Ordinance.	
000520 - 000939	Mr Henry WU Administration SFC Chairman	Clarification on whether representatives of registered institutions (RIs) would be subject to the same requirements as licensed representatives under the draft Rules The Hong Kong Monetary Authority (HKMA) had issued a guideline requiring RIs to submit the same information to be included in HKMA register.	
000939 - 001435	Mr Henry WU Administration SFC	Suggestion to include “a regulatory body” in clauses 3(2) and 4(9)	Admin
001435 - 001538	Mr Henry WU Administration SFC	Suggestion to add appropriate subtitles for each part of Schedule 1	Admin
001538 - 003210	Ms Audrey EU Miss Margaret NG Mr Henry WU Mr Ambrose LAU Chairman Administration SFC	Suggestion to include “spent convictions” explicitly as matters relevant to the applicant’s fitness and properness to be licensed or registered in Schedules 1 and 2 Suggestion to review the phrase “that might reasonably be considered relevant” in the beginning of item 6 of Part 1 in Schedule 1 and the same phrases as appeared in the rest of the	Admin Admin

Time	Speaker	Subject(s)	Action required
		<p>draft Rules as appropriate, to enhance the certainty of the provisions.</p> <p>Concern about the penalties for under-reporting of information under the draft Rules</p>	
003210 - 003326	ALA6 Chairman Administration SFC	Suggestion to review item 15 of Part 1 in Schedule 1, and item 8 of Parts 2 and 3 in Schedule 1 as the provisions were too broad and allowed SFC to add any requirement without the scrutiny of the Legislative Council	Admin
003326 - 003433	Ms Audrey EU Administration SFC	Clarification on the meaning of “business plan” in item 10 of Part 1 in Schedule 1	
003433 - 004000	Mr Henry WU Miss Margaret NG Chairman Administration SFC	<p>Concern that it would be difficult for applicants to provide the details of any examination passed in secondary level education under item 6(a)(iii) in Part 2 of Schedule 1</p> <p>Suggestion to clarify the information to be provided to the SFC</p>	Admin
004000 - 004146	Mr Henry WU Miss Margaret NG Chairman Administration SFC	<p>Consideration be given to specify clearly what particulars were required as regards “the mental health of the applicant” under item 7 of Part 2 in Schedule 1</p> <p>Reference should be made to the definition provided in the Mental Health Ordinance (Cap. 136).</p>	Admin
004146 - 004320	Mr Henry WU Miss Margaret NG Ms Audrey EU Chairman Administration SFC	Suggestion that item 12 in Part 1 and item 11 in Part 2 of Schedule 2 be reviewed to specify clearly that only reasons of the change in the auditors were required to be reported to SFC	Admin
004320 - 004845	Ms Audrey EU Miss Margaret NG Chairman Administration SFC	Suggestion to review the drafting of item 11 in Part 1 of Schedule 2 to specify clearly what changes in the status of bank accounts were required to be reported to SFC	Admin
004845 - 005100	ALA6 Miss Margaret NG Chairman	Consideration be given to review item 2 in Parts 1 and 2 of Schedule 3 as the provisions were too general	Admin

Time	Speaker	Subject(s)	Action required
	Administration SFC	and it was unclear what information was required under the draft Rules	
005100 - 005815	Mr Henry WU Ms Audrey EU Chairman ALA6 Administration SFC	Concern that the five-year period for keeping disciplinary records of licensed intermediaries in the public register was too long The SFC had made reference to the overseas practices and considered the rule appropriate.	
005815 - 005925	Chairman Mr Henry WU	Securities and Futures (Miscellaneous) Rules	
005925 - 010033	Chairman Administration SFC	Supported to remove the proposal of requiring intermediaries to establish a complaints register open for public inspection on concerns about data privacy and client confidentiality issues Noted that SFC would consider including a similar requirement in the Code of Conduct applicable to intermediaries. The register would be made available for inspection by regulatory authorities.	
010033 - 010044	Chairman	Securities and Futures (Offence and Penalties) Regulation	
010044 - 010115	Chairman	Securities and Futures (Contracts Limits and Reportable Positions) Rules	
010115 - 011200	Chairman Administration SFC	Enquiry about means to facilitate the industry in complying with reporting requirements The Hong Kong Futures Exchange was exploring with the industry on the feasibility of notifying the Exchange on reportable positions through electronic means.	

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