

立法會
Legislative Council

LC Paper No. CB(1) 116/02-03
(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 Wednesday, 18 September 2002 at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)
Hon Margaret NG (Deputy Chairman)
Hon Eric LI Ka-cheung, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Henry WU King-cheong, BBS, JP
- Members absent** : Hon Albert HO Chun-yan
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 Audrey EU Yuet-mee, SC, 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

Mr Michael LAM
Senior Government Counsel

**Attendance by
invitation**

: Mrs Alexa LAM
Executive Director, Intermediaries and Investment
Products, Securities and Futures Commission

Mr Brian HO
Senior Director, Corporate Finance, Securities and Futures
Commission

Mr Andrew YOUNG
Chief Counsel, Securities and Futures Commission

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

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

Ms Tina SO
Director, Investment Products, Securities and Futures
Commission

Ms Sandra KING
Legal Consultant, Securities and Futures Commission

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

Ms Vania CHENG
Counsel, Securities and Futures Commission

Mr CHUNG Hing-hing
Associate Director, Licensing 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) 2490/01-02(02) -- Securities and Futures (Insurance) Rules
LC Paper No. CB(1) 2506/01-02(01) -- Securities and Futures (Fees) 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 (Insurance) Rules

- (a) to reconsider the draft Rules with further consultation with the market on the need and practicability of setting up a compulsory insurance scheme for licensed corporations to be arranged by the Securities and Futures Commission (SFC); and
- (b) to consider specifying criteria to be considered for allocating the premium to be borne by licensed corporations if a compulsory insurance scheme was to be set up.

(II) Securities and Futures (Fees) Rules

- (a) to delete Schedules 4 and 5 from the draft Rules as SFC's power to waive licensing fees during the two-year transitional period was already provided under Part 5 of the draft Rules; and
- (b) SFC would issue guidelines explaining to the industry on compliance with the new licensing regime, such as the need for application of licences for different types of regulated activities.

II Any other business

4. Members noted the following schedule of meetings for October 2002:

| <u>Date</u> | <u>Time</u> |
|---------------------------|--------------------|
| 7 October 2002 (Monday) | 8:30 am - 10:30 am |
| 8 October 2002 (Tuesday) | 2:30 pm - 4:30 pm |
| 15 October 2002 (Tuesday) | 8:30 am - 10:30 am |

(Post-meeting note: The meeting on 15 October 2002 was subsequently cancelled and rescheduled for Thursday, 24 October 2002 from 2:30 pm to 4:30 pm.)

5. There being no other business, the meeting ended at 4:30 pm.

**Proceedings of the meeting of the
Subcommittee on draft subsidiary legislation
to be made under the Securities and Futures Ordinance
on Wednesday, 18 September 2002 at 2:30 pm
in the Chamber of the Legislative Council Building**

| Time | Speaker | Subject(s) | Action required |
|-----------------|---|--|-----------------|
| 000000 - 000120 | Chairman | Opening remarks | |
| 000120 - 001605 | Chairman Miss Margaret NG Administration Securities and Futures Commission (SFC) | <p>Securities and Futures (Insurance) Rules</p> <p>Enquiry on the details on the compulsory insurance scheme to be set up by SFC for licensed corporations</p> <p>The compulsory insurance scheme would cover licensed corporations which dealt in securities, futures contracts, or provided securities margin financing. The scheme would replace the existing Brokers' Fidelity Insurance ("BFI") Scheme arranged by the Stock Exchange of Hong Kong (SEHK) to provide indemnity protection to licensees for losses in relation to specified risks. The SFC would arrange for the scheme and a Standing Committee would be set up with representatives from the relevant sectors of the industry and the insurance consultant to work out the scheme details, e.g. allocation of premium. The SFC would invite tender for the proposed scheme.</p> | |
| 001605 - 002121 | Miss Margaret NG Administration SFC | <p>Concern on the acceptability of the compulsory insurance scheme by the industry and the lack of scheme details in the draft Rules</p> <p>Emphasis on the need for thorough consultation with the industry</p> <p>The SFC had consulted the market</p> | |

| Time | Speaker | Subject(s) | Action required |
|-----------------|--|--|------------------------|
| | | which expressed general support for the proposed scheme. | |
| 002121 - 003052 | Mr Henry WU Miss Margaret NG Chairman Administration SFC | Concern on the determination and allocation of premium among licensed corporations participating in the scheme and the timing for commencing the scheme | |
| 003052 - 003608 | Mr Henry WU Administration SFC | <p>Enquiry on the feasibility of continuing the BFI Scheme</p> <p>The suggestion was impracticable since the existing BFI Scheme only covered licensed corporations which were exchange participants. The proposed scheme would cover non-exchange participants and would help minimize systemic risks in the market.</p> <p>The SEHK was not in a position to continue running an insurance scheme as the duty to regulate market participants had been transferred to SFC.</p> | |
| 003608 - 003856 | Miss Margaret NG Mr Henry WU Chairman Administration SFC | Concern about uncertainty on premium amount to be borne by licensed corporations under the compulsory insurance scheme | |
| 003856 - 004520 | Chairman Miss Margaret NG Administration SFC | Concern that the compulsory insurance scheme would lead to monopoly by certain insurers | |
| 004520 - 005250 | Mr Eric LI | Explanation on past experiences of the Hong Kong Tourist Association, Hong Kong Society of Accountants, The Law Society of Hong Kong, in arranging collective insurance schemes for their members | |
| 005250 - 005821 | Miss Margaret NG Chairman Administration SFC | Possibility of self-arranged insurance coverage by licensed corporations | |

| Time | Speaker | Subject(s) | Action required |
|-----------------|--|---|-----------------|
| 005821 - 010144 | Mr Henry WU Chairman Administration SFC | <p>Consideration be given to the following suggestions by members:</p> <p>(a) to reconsider the draft Rules with further consultation with the market on the need and practicability of setting up a compulsory insurance scheme for licensed corporations to be arranged by SFC; and</p> <p>(b) to specify in the draft Rules criteria to be considered for allocating the premium to be borne by licensed corporations if a compulsory insurance scheme was to be set up.</p> | Admin |
| 010144 - 010350 | Chairman Administration SFC | <p>Securities and Futures (Fees) Rules Clarification on the proposed reduction and discount on licensing fees</p> | |
| 010350 - 010930 | Mr Henry WU Administration SFC | Concern about financial burden on licensees and exempt persons under the new licensing regime after the two-year transitional period | |
| 010930 - 011850 | Mr Henry WU Miss Margaret NG Chairman Administration SFC | <p>Clarification on the definition of the term "wholly incidental" in respect of regulated activities. Concern on licensing requirements for conducting regulated activities "wholly incidental" to dealing in securities/future contracts.</p> <p>The term was used in the definitions of the various types of regulated activities in the Securities and Futures Ordinance.</p> <p>The SFC would issue guidelines to the industry on compliance with the new licensing regime, such as the need for application of licences for</p> | Admin |

| Time | Speaker | Subject(s) | Action required |
|-----------------|--|---|------------------------|
| | | different types of regulated activities. | |
| 011850 - 013910 | Mr Henry WU Miss Margaret NG Chairman Administration SFC | Comparison on prescribed fees paid by registered institutions (RIs) and licensed corporations for carrying on regulated activities | |
| 013910 - 014815 | Mr Henry WU Chairman Administration SFC | Clarification on the term "responsible officer" used in the draft Rules and possible situations where the same responsible officer appointed for more than one regulated activity would give rise to conflict of interests The SFC should consider preparing explanatory notes on this subject in its website or explaining this in its guidelines for the industry. | |
| 014815 - 015110 | Chairman Mr Henry WU Miss Margaret NG Administration SFC | Deletion of Schedules 4 and 5 | Admin |
| 015110 - 015200 | Chairman | Dates of next meetings | |

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

Legislative Council Secretariat
22 October 2002