

立法會
Legislative Council

LC Paper No. CB(1) 429/02-03
(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 Thursday, 24 October 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 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
- Members absent** : Hon Albert HO Chun-yan
Hon James TO Kun-sun
- Public officers attending** : Miss Vivian LAU
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 Danny LEUNG
Division Head, Banking Development Department, Hong
Kong Monetary Authority

Ms Lonnie NG
Senior Government Counsel

**Attendance by
invitation**

: Mr Mark DICKENS
Executive Director, Supervision of Markets, Securities and
Futures Commission

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

Mr Andrew YOUNG
Chief Counsel, Securities and Futures Commission

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

Mr Joe KENNY
Director, Intermediaries and Investment Products,
Securities and Futures Commission

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

Mr Raymond WONG
Associate 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

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

Ms 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

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 Confirmation of minutes of previous meetings

LC Paper No. CB(1) 115/02-03	--	Minutes of the meeting held on 16 September 2002
LC Paper No. CB(1) 116/02-03	--	Minutes of the meeting held on 18 September 2002
LC Paper No. CB(1) 117/02-03	--	Minutes of the meeting held on 20 September 2002

The minutes of meetings held on 16, 18 and 20 September 2002 were confirmed.

II Consideration of draft subsidiary legislation

LC Paper No. CB(1) 46/02-03(01)	--	Securities and Futures (Client Money) Rules (Revised draft Rules)
LC Paper No. CB(1) 46/02-03(02)	--	Securities and Futures (Client

LC Paper No. CB(1) 81/02-03(01)	--	Securities) Rules (Revised draft Rules)
LC Paper No. CB(1) 84/02-03(01)	--	Securities and Futures (Keeping of Records) Rules (Revised draft Rules)
LC Paper No. CB(1) 81/02-03(02)	--	Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (Revised draft Rules)
LC Paper No. CB(1) 81/02-03(03)	--	Securities and Futures (Investor Compensation - Claims) Rules (Revised draft Rules)
LC Paper No. CB(1) 81/02-03(03)	--	Securities and Futures (Licensing and Registration) (Information) Rules (Revised draft Rules)
LC Paper No. CB(1) 84/02-03(02)	--	Securities and Futures (Disclosure of Interests - Exclusions) Regulation (Revised draft Regulation)
LC Paper No. CB(1) 130/02-03(01)	--	Securities and Futures (Insurance) Rules
LC Paper No. CB(1) 81/02-03(04)	--	Securities and Futures (Unsolicited Calls - Exclusion) Rules
LC Paper No. CB(1) 81/02-03(05)	--	Securities and Futures (Professional Investor) Rules
LC Paper No. CB(1) 84/02-03(03)	--	Securities and Futures (Associated Entities) Rules
LC Paper No. CB(1) 84/02-03(04)	--	Securities and Futures (Accounts and Audit) Rules
LC Paper No. CB(1) 81/02-03(06)	--	Securities and Futures (Leveraged Foreign Exchange Trading - Exemption) Rules
LC Paper No. CB(1) 84/02-03(05)	--	Securities and Futures (Short Selling Exemption and Stock Lending) Rules
LC Paper No. CB(1) 99/02-03(01)	--	Securities and Futures (Financial Resources) 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:

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

To review the drafting of clause 7 of the revised draft Rules to better reflect the scope of the enabling provision, namely section 244(2)(h) of the Securities and Futures Ordinance (SFO).

(b) Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules

To review the proposed amendment of deleting the word "relevant" in clause 11(5)(d) of the revised draft, with reference to its usage word in other parts of the Rules to ensure consistency in drafting.

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

(i) To consider adopting the full form of "CPT" in clause 2 and other parts of the Rules;

(ii) To consider stipulating clearly the "relevant information" required to be provided to the Securities and Futures Commission by different types of regulatees in the Schedules;

(iii) To consider clarifying the information expected with respect to the requirement of "setting out the nature and reasons of application" in Schedule 1; and

(iv) To prepare revised draft Rules for Subcommittee's consideration by circulation.

(d) Securities and Futures (Disclosure of Interests - Exclusions) Regulation

To reconsider the need for providing the definition of "trading day" in clause 2.

(e) Securities and Futures (Insurance) Rules

To prepare the revised draft Rules in consultation with the industry and to submit the draft for scrutiny of the Subcommittee at a future meeting.

III Any other business

5. There being no other business, the meeting ended at 4:50 pm.

**Proceedings of the meeting of the
Subcommittee on draft subsidiary legislation
to be made under the Securities and Futures Ordinance
on Thursday, 24 October 2002 at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000138	Chairman	Opening Remarks Confirmation of minutes of previous meetings	
000138 - 000345	Chairman ALA6	Securities and Futures (Client Securities) Rules	
000345 - 000540	Chairman ALA6	Securities and Futures (Keeping of Records) Rules	
000540 - 000555	Chairman SFC	Confirmation that the Rules would be applicable to records in electronic form	
000555 - 000732	Chairman	Securities and Futures (Investor Compensation - Claims) Rules	
000732 - 001326	ALA6 SFC Chairman	Clause 2 - clarification on the definition of "specified securities or futures contracts"	
001326 - 001914	ALA6 Miss Margaret NG Securities and Futures Commission (SFC)	Clause 7 - concern on the basis and mechanism for determination of loss on compensation claims made by investors Request to review the drafting of the clause to better reflect the scope of the enabling provision, namely section 244(2)(h) of the Securities and Futures Ordinance (SFO)	Admin
001914 - 002113	Mr Henry WU SFC	Clause 2 - clarification on the term "associated person" under the definition of "default"	
002113 - 002644	Chairman SFC	Clause 8(2) - confirmation that "a reasonable opportunity of being heard" would cover claimant's request for an interview with SFC to state his case	
002644 - 002827	Chairman	Securities and Futures (Client Money) Rules	
002827 - 003427	Mr Henry WU ALA6 SFC	Clause 4(4) - concern that it might not be practicable for a licensed corporation or its associated entity to deposit client money into segregated	

Time marker	Speaker	Subject(s)	Action required
		trust accounts within one business day	
003427 - 005414	ALA6 Chairman SFC	<p>Clause 9 - concern about the loopholes that might be caused by cheque payment regarding as client money only after receipt of the proceeds of the cheque; and that client money deposited into licensed corporations' overseas accounts would not be subject to the Rules</p> <p>It would be very rare for a licensed corporation or its associated entity not to deposit client money, particularly made in cheque, into segregated trust accounts. A licensed corporation owed a fiduciary duty to its clients for taking proper safeguard of client's money. A breach to the fiduciary duty could be a misconduct on the part of the corporation and be subject to disciplinary action of SFC.</p> <p>The Administration would step up efforts to educate investors about the risk of depositing their money into a licensed corporation's overseas accounts.</p>	
005414 - 005645	Chairman	Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules	
005645 - 010000	Mr Henry WU Chairman SFC Administration	<p>Clause 11(5)(d) - enquiry on the proposed deletion of the word "relevant"</p> <p>Suggestion to review the proposed amendment of deleting the word "relevant" with reference to its usage in other parts of the Rules to ensure consistency in drafting</p>	Admin
010000 - 010132	Chairman	Securities and Futures (Licensing and Registration) (Information) Rules	

Time marker	Speaker	Subject(s)	Action required
010132 - 010459	Chairman Mr Henry WU Administration	Clause 2 - concern that the abbreviation "CPT" might cause confusion to users Consideration should be given to adopt the full form of the term.	Admin
010459 - 010611	ALA6 SFC Chairman	Clause 2(1) - clarification on the term "valid business registration certificates" in paragraph (b)(iv) under the definition on "basic information"	
010611 - 012929	Mr Henry WU Miss Margaret NG Mr Jasper TSANG Mrs Sophie LEUNG Chairman Administration SFC	Clause 2 - concern on the scope of "relevant information" to be provided to SFC The information required was related to the applicant's fitness and properness. The "relevant information" to be required from different classes of applicants would be specified in SFC application forms. The specific information requirements were the same as current requirements. For the sake of clarity, consideration should be given to stipulating clearly the "relevant information" required to be provided to SFC by different types of applicants/regulatees in the Schedules.	Admin
012929 - 013328	Mr Henry WU Administration SFC	Clause 2 - enquiry on the definition of the term "regulatory body"	
013328 - 013620	Mr Henry WU ALA6 SFC	Item 1(e) of Part 1 to Schedule 1 - enquiry on the proposed deletion of the term "principal business"	
013620 - 014240	Chairman Mr Henry WU ALA6 Administration SFC	Items 4 & 5 of Part 1 to Schedule 1 - enquiry on the need for the applicant to set out the nature and give the reasons for the application Suggestion to clarify what information was required to be provided for the application	Admin

Time marker	Speaker	Subject(s)	Action required
014240 - 014506	Mr Henry WU Administration SFC	Item 13 of Part 1 to Schedule 1 - enquiry on the term "business history" Item 19 of Part 1 to Schedule 1 - concern on the need to provide details on insurance policies maintained or to be maintained by an applicant	
014506 - 014845	Chairman Administration	Item 1 of Part 2 to Schedule 1 - enquiry on the term "CE number"	
014845 - 015031	Chairman Administration	Request that the further revised draft Rules be submitted for Subcommittee's consideration by circulation	Admin
015031 - 015120	Chairman Administration SFC	Securities and Futures (Disclosure of Interests - Exclusions) Regulation Explanation on the proposed new clauses 5 & 6 On reflection, SFC would withdraw the new clause 6 as it was considered unnecessary.	
015120 - 015217	Chairman SFC Administration	Clause 2 - enquiry on the definition of the term " trading day" Suggestion to reconsider the need for providing the definition of "trading day"	Admin
015217 - 020400	Chairman Administration Mr Henry WU	Securities and Futures (Insurance) Rules Concern on the regulatory considerations to require licensed corporations to take out insurance cover for fidelity risks in their business. Fidelity risks existed. Alternative to an insurance scheme would be higher capital requirement on licensees or strengthening protection offered by the new investor compensation scheme. The SFC would prepare the revised draft Rules in consultation with the industry and to submit the draft for	Admin/ SFC

Time marker	Speaker	Subject(s)	Action required
		scrutiny of the Subcommittee at a future meeting.	
020400 - 020485	Chairman	Security and Futures (Unsolicited Calls - Exclusion) Rules	
020485 - 020743	ALA6 Chairman Miss Margaret NG Administration SFC	Securities and Futures (Professional Investor) Rules Suggestion to define "relevant date" in clause 3 to facilitate calculation of assets in foreign currency The SFC considered the suggestion unnecessary as investors' financial statements would contain a valuation of assets as at a specific date.	
020743 - 021046	Chairman ALA6 Miss Margaret NG	Securities and Futures (Associated Entities) Rules Securities and Futures (Accounts and Audit) Rules Securities and Futures (Leveraged Foreign Exchange Trading - Exemption) Rules	
021046 - 021420	Chairman Administration Mr Henry WU	Securities and Futures (Short Selling Exemption and Stock Lending) Rules Securities and Futures (Financial Resources) Rules	
021420 - 021800	Chairman ALA6 Administration	Clarification that the commencement of the SFO and the relevant subsidiary legislation would not be affected if the Securities and Futures (Insurance) Rules were not in place The Administration was requested to provide the legal advice from the Department of Justice to ALA6 for consideration.	Admin

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