

**立法會**  
**Legislative Council**

LC Paper No. CB(1)845/15-16  
(These minutes have been seen  
by the Administration)

Ref : CB1/SS/5/15/1

**Subcommittee on Six Pieces of Subsidiary Legislation Relating to  
Over-the-counter Derivative Transactions Gazetted on 5 February 2016**

**Minutes of the first meeting on  
Tuesday, 15 March 2016, at 2:30 pm  
in Conference Room 2B of the Legislative Council Complex**

**Members present** : Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon SIN Chung-kai, SBS, JP

**Member absent** : Hon Christopher CHEUNG Wah-fung, SBS, JP

**Public officers attending** : Ms Ada CHAN  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services)<sup>2</sup>

Ms Phyllis POON  
Senior Government Counsel  
Department of Justice

Ms Queenie WU  
Government Counsel  
Department of Justice

Mr Daryl HO  
Head (Financial Stability Surveillance)  
Hong Kong Monetary Authority

Ms Polly LEE  
Senior Manager (Financial Stability Surveillance)<sup>4</sup>  
Hong Kong Monetary Authority

Mr Andy CHEUNG  
Senior Manager (Banking Policy)<sup>A3</sup>  
Hong Kong Monetary Authority

Ms Daphne DOO  
Senior Director (Supervision of Markets Division)  
Securities and Futures Commission

Ms Thrity MUKADAM  
Director (Supervision of Markets Division)  
Securities and Futures Commission

Ms Eunice CHENG  
Senior Manager (Supervision of Markets Division)  
Securities and Futures Commission

Ms Hwan-Seng HEE  
Senior Manager (Supervision of Markets Division)  
Securities and Futures Commission

Ms Sandra KING  
Senior Legal Consultant (Legal Services Department)  
Securities and Futures Commission

Ms Amy LAM  
Counsel (Legal Services Department)  
Securities and Futures Commission

**Clerk in attendance :** Ms Connie SZETO  
Chief Council Secretary (1)<sup>4</sup>

**Staff in attendance :** Ms Vanessa CHENG  
Assistant Legal Adviser 5

Mr Jason KONG  
Council Secretary (1)<sup>4</sup>

Ms Sharon CHAN  
Legislative Assistant (1)4

Ms Vivian CHAN  
Clerical Assistant (1)4

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## **I Election of Chairman**

Mr Jeffrey LAM, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Subcommittee. He invited nominations for the chairmanship.

2. Mr Andrew LEUNG was nominated by Mr Jeffrey LAM and the nomination was seconded by Mr SIN Chung-kai. Mr Andrew LEUNG accepted the nomination. There being no other nomination, Mr Andrew LEUNG was elected Chairman of the Subcommittee. He then took the chair.

## **II Meeting with the Administration**

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|---------------------------|--|
| (File Ref: SF&C/1/2/11/6C | — Legislative Council Brief  |
| L.N. 27 of 2016           | — Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016   |
| L.N. 28 of 2016           | — Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules |
| L.N. 29 of 2016           | — Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules (Commencement) Notice                    |
| L.N. 30 of 2016           | — Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) (Amendment) Rules 2016                         |

- L.N. 31 of 2016 — Securities and Futures (OTC Derivative Transactions Reporting Obligation – Fees) Rules
- L.N. 32 of 2016 — Securities and Futures (Fees) (Amendment) Rules 2016
- LC Paper No. LS33/15-16 — Legal Service Division Report
- LC Paper No. CB(1)680/15-16(01) — Background brief on the six pieces of subsidiary legislation relating to over-the-counter derivative transactions gazetted on 5 February 2016 prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)680/15-16(02) — Marked-up copy of Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) (Amendment) Rules 2016 (L.N. 30 of 2016) prepared by the Legal Service Division (Restricted to members only)
- LC Paper No. CB(1)680/15-16(03) — Marked-up copy of Securities and Futures (Fees) (Amendment) Rules 2016 (L.N. 32 of 2016) prepared by the Legal Service Division (Restricted to members only)

Discussion

3. The Subcommittee deliberated (index of proceedings is in the **Appendix**).

Legislative timetable

4. At the invitation of the Chairman, the Clerk informed members that the scrutiny period of the six pieces of subsidiary legislation would expire at the Legislative Council meeting of 16 March 2016. Mr Jeffrey LAM had given notice to move a motion on behalf of the Subcommittee at the said Council meeting to extend the scrutiny period to the Council meeting of 13 April 2016. However, given the heavy agenda of the Council, it was unlikely that the motion

could be dealt with at the said Council meeting, and the scrutiny period was thus expected to lapse. Deliberations of the Subcommittee would be reported to the House Committee as soon as possible.

5. The Chairman concluded that the Subcommittee had completed scrutiny of the six pieces of subsidiary legislation and would not propose any amendment to them.

### **III Any other business**

6. There being no other business, the meeting ended at 3:42 pm.

Council Business Division 1  
Legislative Council Secretariat  
26 April 2016

**Proceedings of the first meeting of the  
Subcommittee on Six Pieces of Subsidiary Legislation Relating to  
Over-the-counter Derivative Transactions Gazetted on 5 February 2016  
on Tuesday, 15 March 2016, at 2:30 pm  
in Conference Room 2B of the Legislative Council Complex**

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000139 – 000229	Mr Jeffrey LAM Mr Andrew LEUNG Mr SIN Chung-kai	Election of Chairman	
000230 – 000422	Chairman	Introductory remarks	
000423 – 000902	Chairman Administration	Briefing by the Administration on the scope of the second stage implementation of the over-the-counter ("OTC") derivatives regulatory regime, and the six pieces of subsidiary legislation made for the purpose.	
000903 – 001503	Mr SIN Chung-kai Chairman Assistant Legal Adviser 5 ("ALA5") Administration Hong Kong Monetary Authority ("HKMA") Securities and Futures Commission ("SFC")	Mr SIN enquired about the basis for setting both the application fee and annual fee of designated central counterparties ("CCPs") at \$10,000; whether the proposed fee level could achieve full cost recovery; and the reason for deferring commencement of the expanded mandatory reporting ("phase 2 reporting") to 1 July 2017.  The Administration and HKMA explained that –  (a) any CCP seeking to become a designated CCP under the regulatory regime must either be a recognized clearing house or an authorized provider of automated trading services ("ATS");  (b) the proposed fees for designation of CCPs were made with reference to the current application and annual fees for ATS authorization, which were also set at \$10,000 respectively; and  (c) during the public consultation on phase 2 reporting, market participants stressed the need to provide sufficient time for them to set up new or enhance systems for complying with the expanded reporting requirements. Phase 1 reporting rules had	

Time Marker	Speaker	Subject(s)	Action Required
		<p>specified a concession period to cater for this purpose. To simplify the phase 2 reporting rules, the Administration proposed deferring commencement of the rules to 1 July 2017 instead of stipulating a concession period in the rules.</p> <p>ALA5 pointed out that certain provisions in the Securities and Futures (Amendment) Ordinance 2014 had not yet commenced. These included, among others, regulation of systemically important participants ("SIPs"), mandatory trading obligation and licensing of intermediaries to provide services relating to OTC derivative transactions.</p> <p>The Chairman and Mr SIN asked about the timetable for bringing the remaining provisions into operation.</p> <p>The Administration and SFC responded that implementation of the licensing regime for OTC intermediaries required the development of the relevant Financial Resources Rules ("FRRs"). SFC had just completed a consultation on proposed changes to the FRRs and was preparing the consultation conclusions. It was envisaged that the new licensing regime would be put in place in 2017-2018 the earliest. Moreover, the Administration would need to examine OTC derivatives information collected from the market before formulating the proposals for regulation of SIPs and mandatory trading obligation.</p>	
<p>Clause-by-clause examination of the subsidiary legislation</p>			
<p>001504 – 001916</p>	<p>Chairman Administration</p>	<p><u>Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016</u></p> <p>Members did not raise any question on the Notice.</p>	
<p>001917 – 002745</p>	<p>Chairman Mr SIN Chung-kai Administration HKMA</p>	<p><u>Securities and Futures (OTC Derivative Transactions — Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><b>Part 1</b></p> <p><b>Preliminary</b></p> <p><i>Rule 1 – Commencement</i></p> <p><i>Rule 2 – Interpretation</i></p> <p><i>Rule 3 – Designation as a financial services provider</i></p> <p><i>Rule 4 – Transactions that are specified OTC derivative transactions for purposes of clearing obligation</i></p> <p><i>Rule 5 – Transactions that are specified OTC derivative transactions for purposes of record keeping obligation</i></p> <p><b>Part 2</b></p> <p><b>Clearing Obligation</b></p> <p><i>Rule 6 – When clearing obligation arises</i></p> <p>The Chairman and Mr SIN enquired about the mechanism for exiting from the clearing obligation and expressed concern about potential abuse of the mechanism by prescribed persons.</p> <p>The Administration advised that the clearing obligation would cease to apply to an authorized financial institution ("AFI"), approved money broker ("AMB") or licensed corporation ("LC") if the person's total OTC derivative positions had stayed below US\$14 billion (i.e. 70% of the proposed clearing threshold) at the last business day of a month for 12 consecutive months. Any change to the exit threshold would require amendment to the Rules.</p> <p>HKMA said that it would require cooperation between a prescribed person and its counterparties to deliberately keep the OTC derivative positions below the clearing threshold at month end, hence there would be low risk of abuse of the exit mechanism. OTC regulatory regimes of other jurisdictions also incorporated</p>	



Time Marker	Speaker	Subject(s)	Action Required
		similar measurement of positions at month end only, and no apparent problems had been identified.	
002746 – 003932	Chairman Administration	<p><i>Rule 7 – Clearing obligation applies even if counterparty is, or transaction was entered into, outside Hong Kong</i></p> <p><i>Rule 8 – Clearing obligation does not apply to transactions with exempt affiliate</i></p> <p><i>Rule 9 – Clearing obligation does not apply to transactions recorded in exempt jurisdiction books</i></p> <p><i>Rule 10 – Clearing obligation does not apply to transactions resulting from multilateral portfolio compression cycle</i></p> <p><i>Rule 11 – Clearing obligation taken to have been complied with if transaction cleared under laws of designated jurisdiction</i></p> <p><b>Part 3</b></p> <p><b>Record Keeping Obligation</b></p> <p><i>Rule 12 – Prescribed persons to keep records in relation to transactions</i></p> <p><i>Rule 13 – Prescribed persons to keep records even if counterparty is, or transaction was entered into, outside Hong Kong</i></p> <p><i>Rule 14 – Records to be kept by prescribed persons</i></p> <p><i>Rule 15 – Manner in which records to be kept</i></p> <p><b>Part 4</b></p> <p><b>Designation as Central Counterparty</b></p> <p><i>Rule 16 – Designation as central counterparty</i></p> <p><i>Rule 17 – Refusal to designate</i></p> <p><i>Rule 18 – Revocation of designation</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><b>Schedule 1 – Specified OTC Derivative Transactions for the Purposes of Clearing Obligation and Record Keeping Obligation</b></p> <p><b>Schedule 2 – Calculation Periods, Clearing Thresholds and Prescribed Days</b></p>	
003933 – 004113	Chairman Administration	<p><u>Securities and Futures (OTC Derivative Transactions — Reporting and Record Keeping Obligations) Rules (Commencement) Notice</u></p> <p>Members did not raise any question on the Notice.</p>	
004114 – 010534	Chairman Administration	<p><u>Securities and Futures (OTC Derivative Transactions — Reporting and Record Keeping Obligations) (Amendment) Rules 2016</u></p> <p><i>Rule 1 – Commencement</i></p> <p><i>Rule 2 – Securities and Futures (OTC Derivative Transactions — Reporting and Record Keeping Obligations) Rules amended</i></p> <p><i>Rule 3 – Rule 2 amended (interpretation)</i></p> <p><i>Rule 4 – Rule 2A added</i> 2A. <i>Meaning of transaction information</i></p> <p><i>Rule 5 – Rule 3 amended (when prescribed person to be regarded as exempt person)</i></p> <p><i>Rule 6 – Rule 7 amended (transactions that are specified OTC derivative transactions for purposes of reporting obligation)</i></p> <p><i>Rule 7 – Rule 8 amended (transactions that are specified OTC derivative transactions for purposes of record keeping obligation)</i></p> <p><i>Rule 8 – Rule 10 amended (reporting by licensed corporations)</i></p> <p><i>Rule 9 – Rule 11 amended (reporting by authorized financial institutions incorporated in Hong Kong)</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>Rule 10 – Rule 12 amended (reporting by authorized financial institutions incorporated outside Hong Kong)</i></p> <p><i>Rule 11 – Rule 13 amended (reporting by approved money brokers)</i></p> <p><i>Rule 12 – Rule 16 heading amended (reporting obligation applies even if counterparty, or transaction entered into, outside Hong Kong)</i></p> <p><i>Rule 13 – Rule 19 repealed (interpretation of Division 3)</i></p> <p><i>Rule 14 – Rule 22 repealed (reporting outstanding transactions and transactions entered into during concession period)</i></p> <p><i>Rule 15 – Rule 23 amended (reporting outstanding transactions where no concession period)</i></p> <p><i>Rule 16 – Rule 24 amended (reporting transactions entered into after concession period, or where no concession period)</i></p> <p><i>Rule 17 – Rule 25 amended (reporting subsequent events)</i></p> <p><i>Rule 18 – Rules 25A and 25B added</i>  <i>25A. Submitting valuation transaction information</i>  <i>25B. Modified requirements for transactions reported to Monetary Authority under previous Rules</i></p> <p><i>Rule 19 – Rule 26 amended (submitting counterparty identifying particulars in certain circumstances)</i></p> <p><i>Rule 20 – Rule 28 heading amended (prescribed persons to keep records even if counterparty, or transaction entered into, or conducted, outside Hong Kong)</i></p> <p><i>Rule 21 – Rule 29 amended (records to be kept by prescribed persons)</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>Rule 22 – Rule 32 amended (reporting and record keeping obligations applicable to authorized financial institutions incorporated in Hong Kong in respect of specified subsidiaries)</i></p> <p><i>Rule 23 – Rule 33 added</i>  <i>33. Transitional arrangements for specification of subsidiary made before specification day</i></p> <p><i>Rule 24 – Schedule 1 substituted</i>  <i>Schedule 1 – Transaction Information to be Submitted to Monetary Authority</i></p> <p>Members did not raise any question on the Rules.</p>	
010535 – 010743	Chairman Administration	<p><u>Securities and Futures (OTC Derivative Transactions Reporting Obligation — Fees) Rules</u></p> <p><i>Rule 1 – Commencement</i></p> <p><i>Rule 2 – Interpretation</i></p> <p><i>Rule 3 – Fees for using electronic reporting system</i></p> <p><i>Rule 4 – Waiver of fees</i></p> <p><i>Schedule – Fee</i></p> <p>Members did not raise any question on the Rules.</p>	
010744 – 011035	Chairman Administration	<p><u>Securities and Futures (Fees) (Amendment) Rules 2016</u></p> <p><i>Section 1 – Commencement</i></p> <p><i>Section 2 – Securities and Futures (Fees) Rules amended</i></p> <p><i>Section 3 – Section 3 amended (time for payment of fees)</i></p> <p><i>Section 4 – Schedule 1 amended (fees prescribed for purposes of section 395(1)(a)(i), (iii) and (iv) of Ordinance)</i></p>	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<i>Section 5 – Schedule 3 amended (fees prescribed for purposes of section 395(1)(b) of Ordinance)</i>  Members did not raise any question on the Amendment Rules.	
011036 – 011201	Chairman Clerk	Legislative timetable, the way forward and concluding remarks	

Council Business Division 1  
Legislative Council Secretariat  
26 April 2016