

立法會
Legislative Council

LC Paper No. CB(4)956/15-16
(These minutes have been seen
by the Securities and Futures
Commission and the Administration)

Ref : CB4/SS/3/15

Subcommittee on Securities and Futures
(Short Position Reporting)(Amendment) Rules 2016

Minutes of the meeting
held on Friday, 1 April 2016, at 8:30 am
in Conference Room 2B of the Legislative Council Complex

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SIN Chung-kai, SBS, JP

Public Officers attending : **Item II**

Financial Services and the Treasury Bureau

Ms Ada CHAN
Principal Assistant Secretary
(Financial Services)²

Securities and Futures Commission

Mr Rico LEUNG
Senior Director
Supervision of Markets Division

Mr Hokinson HO
Senior Manager
Supervision of Markets Division

Ms Sandra KING
Senior Counsel
Legal Services Division

Ms Teresa BARREIRA
Assistant Counsel
Legal Services Division

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (4)4

Staff in attendance : Miss Rachel DAI
Assistant Legal Advisor 2

Miss Mandy NG
Council Secretary (4)4

Ms Sandy HAU
Legislative Assistant (4)4

Action

I. Election of Chairman

Mr CHAN Kam-lam, the member present who had the highest precedence, presided at the meeting and called for nominations for the chairmanship of the Subcommittee. Mr Andrew LEUNG nominated Mr CHAN Kam-lam and the nomination was seconded by Mr Christopher CHEUNG. Mr CHAN Kam-lam accepted the nomination. There being no other nomination, Mr CHAN Kam-lam was elected Chairman of the Subcommittee.

II. Meeting with the Securities and Futures Commission and the Administration

*((Issued by the Securities and
Futures Commission on 24
February 2016))*

-- Legislative Council Brief

- LC Paper No. CB(4)771/15-16(02) -- Marked-up copy of the Securities and Futures (Short Position Reporting)(Amendment) Rules 2016
- L.N. 39 of 2016 -- Securities and Futures (Short Position Reporting) (Amendment) Rules 2016
- LC Paper No. LS41/15-16 -- Legal Service Division Report
- LC Paper No. CB(4)771/15-16(03) -- Background brief prepared by the Legislative Council Secretariat)

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).
3. The Chairman informed members that to allow more time for scrutiny, the Chairman of the House Committee gave notice to move a motion at the Council meeting of 16 March 2016 to extend the scrutiny period of the Securities and Futures (Short Position Reporting) (Amendment) Rules 2016 ("the Amendment Rules") to 20 April 2016. However, the motion was not dealt with when the said Council meeting was adjourned on 18 March 2016. The scrutiny period for the Amendment Rules had therefore lapsed at the said Council meeting.
4. The Subcommittee completed scrutiny of the Amendment Rules at the meeting and it would submit a report on its deliberations to the House Committee in due course.

III. Any other business

5. There being no other business, the meeting ended at 9:10 am.

Council Business Division 4
Legislative Council Secretariat
10 May 2016

**Proceedings of the
Subcommittee on Securities and Futures
(Short Position Reporting) (Amendment) Rules 2016
on Friday, 1 April 2016, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda Item I – Election of Chairman</i>			
000114-000154	Mr CHAN Kam-lam Mr Andrew LEUNG Mr Christopher CHEUNG	Election of Chairman	
000155-000338	Chairman	Remarks on the legislative timetable.	
<i>Agenda Item II - Meeting with the Securities and Futures Commission and the Administration</i>			
000339-000818	Securities and Futures Commission ("SFC")	SFC briefed members on the Securities and Futures (Short Position Reporting) (Amendment) Rules 2016 ("the Amendment Rules").	
000819-000914	Chairman SFC	The Chairman sought clarification on the number of specified shares that were subject to short position reporting. SFC explained that the current short position reporting regime covered the constituent stocks of the Hang Seng Index, Hang Seng China Enterprises Index and other financial stocks specified by SFC. As certain new stocks had been so specified by SFC in recent months, the up-to-date number of specified shares was 133.	
000915-001120	Mr SIN Chung-kai SFC	Mr SIN enquired about – (a) the regulatory objectives of the short position reporting regime; and (b) the regulatory measures that could be taken by SFC in case irregularities were detected. SFC advised that – (a) short position reporting could enhance the transparency and monitoring of short selling activities, and was particularly important for maintaining market orderliness and stability at times of volatilities. It could also enable SFC to ascertain whether there was a build-up of short positions by certain persons. Where necessary, SFC could take appropriate actions to deal with suspected market manipulation; and (b) SFC was empowered under relevant legislation to make inquiry with the persons concerned regarding	

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		<p>their holding of short positions. In extreme circumstances, SFC might specify a limit on the short positions held by certain persons or require them to reduce their short positions held in specified shares.</p>	
001121-001449	Mr Christopher CHEUNG SFC	<p>Mr CHEUNG considered that –</p> <ul style="list-style-type: none"> (a) the current reporting threshold (i.e. 0.02% of the market capitalization of the listed company or HK\$30 million, whichever was lower) was too low and might impose an undue compliance burden on market participants; (b) related parties might conduct multiple short selling activities but the value of each transaction was just below the reporting threshold and therefore not subject to the short position reporting regime; and (c) it might be necessary to specify an upper limit on the reportable short positions that could be held by a person so as to prevent manipulation of stock prices. <p>In reply, SFC informed members that –</p> <ul style="list-style-type: none"> (a) when devising the reporting threshold in 2012, SFC had made reference to the reporting requirements in overseas jurisdictions and found that there was no single international standard on the short position reporting threshold. For instance, some European markets adopt 0.2% of the issued share capital of the listed company as the reporting threshold, with no alternative reporting threshold set with reference to a fixed dollar amount. Each place should determine the reporting threshold with regard to its own circumstances. After taking into account the characteristics of the Hong Kong market, SFC had formulated the existing threshold for reporting short positions; (b) on whether different reporting thresholds should be set with reference to the market capitalization of listed companies, SFC considered that such an approach might be too complicated for the Hong Kong market. Since the implementation of short position reporting in 2012, SFC was not aware of any adverse feedback from the short position holders about any undue compliance burden arising from the reporting thresholds; and (c) to safeguard against stock price manipulation, naked short selling was prohibited and only covered short sales were allowed. Market participants were not allowed to short sell a stock unless they borrowed sufficient shares beforehand. In addition, 	

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		SFC was empowered to take special regulatory measures under contingency market conditions.	
001450-001740	Mr SIN Chung-kai SFC	<p>Mr SIN enquired whether –</p> <ul style="list-style-type: none"> (a) there had been any irregularities that warranted investigation by SFC; and (b) SFC had collected any useful market information under the existing short position reporting regime. <p>In response, SFC advised that –</p> <ul style="list-style-type: none"> (a) a few suspected cases of irregularities were under investigation, details of which could not be disclosed at the present stage; and (b) with short position reporting, short selling transactions were traceable by SFC. According to the information provided to SFC, over 70% of short positions in specified shares were held by investment banks while the remaining were mainly held by hedge funds. It appeared that short positions were held by the investment banks mainly for the purposes of hedging market risks arising from their over-the-counter transactions. 	
001741-002300	Mr Christopher CHEUNG SFC	<p>Mr CHEUNG expressed concern about –</p> <ul style="list-style-type: none"> (a) possible collusion between different parties to manipulate the stock prices through short selling activities; (b) the importance to maintain transparency of the information on reportable short positions; and (c) the requirement and arrangement of daily reporting in contingency situations. <p>SFC advised that –</p> <ul style="list-style-type: none"> (a) shares of listed companies with a smaller market capitalization were usually more vulnerable to manipulation. With the implementation of the Amendment Rules which would expand the scope of the short position reporting regime to cover all Designated Securities, SFC would be in a better position to monitor short selling activities; (b) at present, SFC published aggregated short positions for each specified share on an anonymous basis. This data was typically published on SFC's website three business days after the receipt of the weekly short position reports; 	

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		<p>(c) since the implementation of the short position reporting regime in 2012, SFC had not invoked the statutory power to require daily reporting on short positions of specified shares; and</p> <p>(d) under the Amendment Rules, daily reporting of short positions in contingency situations would apply to those specified shares as determined by SFC. In the event that daily reporting was required, a public notice identifying the relevant specified shares would be provided by SFC before daily reporting took effect and would also be published on SFC's website.</p>	
002301-003240	Chairman SFC	<p><u>Clause-by-clause examination of the Amendment Rules</u></p> <p><u>Sections 1 to 6 of the Amendment Rules</u></p> <p>Members raised no query.</p>	
003241-003650	Chairman Mr Christopher CHEUNG SFC	<p><u>Section 7 of the Amendment Rules</u></p> <p>Mr CHEUNG noticed that apart from the existing online communication system designated by SFC, i.e. Short Position Reporting Service, SFC proposed to provide for more than one electronic system for reporting. He was concerned whether the cost for providing additional system(s) would be transferred to market participants by way of an increase in levy.</p> <p>SFC explained that it had no immediate plan to designate more than one electronic system for reporting. The Amendment Rules were made to allow flexibility for SFC to keep pace with technological development and to explore the feasibility of providing a fully automated electronic reporting system. On cost implications, the existing reporting system was developed by SFC with its own resources without separately charging market participants for the development of the system.</p>	
003651-004030	Chairman SFC	<p><u>Sections 8 and 9 of the Amendment Rules</u></p> <p>Members raised no query.</p> <p>Summing up, the Chairman said that the Subcommittee had completed the scrutiny of the Amendment Rules and he would report to the House Committee in due course.</p>	
<i>Agenda Item III – Any other business</i>			
004031-004050	Chairman	Closing remarks.	