

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 996/99-00  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/13/98/2

**Bills Committee on  
Securities (Margin Financing) (Amendment) Bill 1999**

**Minutes of meeting held on  
Wednesday, 7 July 1999, at 8:30 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Ronald ARCULLI, JP (Chairman)  
Hon Albert HO Chun-yan  
Hon Jasper TSANG Yok-sing, JP  
Hon FUNG Chi-kin
- Members absent** : Hon Bernard CHAN  
Hon SIN Chung-kai
- Public officers attending** : Mr Bryan CHAN  
Principal Assistant Secretary for Financial Services
- Miss Hanny LAM  
Assistant Secretary for Financial Services
- Mr William MADDAFORD  
Senior Assistant Law Draftsman  
Department of Justice
- Ms Vicki LEE  
Government Counsel  
Department of Justice

- Attendance by Invitation :** Securities and Futures Commission
- Mr Andrew PROCTER  
Executive Director of Intermediaries and  
Investment Products
- Mr Richard YIN  
Director of Intermediaries Supervision
- Mr Leo LEE  
Director of Licensing
- Mr CHUNG Hing-hing  
Associate Director of Licensing
- Clerk in attendance :** Ms Estella CHAN  
Chief Assistant Secretary (1)4
- Staff in attendance :** Mr KAU Kin-wah  
Assistant Legal Adviser 6
- Ms Connie SZETO  
Senior Assistant Secretary (1)1
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## **I Discussion with the Administration**

Follow-up on outstanding issues arising from previous meetings  
(LC Paper No. CB(1)1675/98-99(01) - the Administration's response)

The Principal Assistant Secretary for Financial Services took members through the Administration's response paper on outstanding issues arising from previous meetings. He said that the Administration had accepted the Bills Committee's suggestion that the provision of financial accommodation to a company with paid up share capital of \$1 million or foreign currency equivalent and to a listed company or the subsidiary of a listed company should not be exempted from the Bill. Members noted from Enclosure B of the paper that the want of financial penalty for contravening section 121F(4) (i.e. the making of false statements upon application for registration as a securities margin financier (SMF) or a SMF's representative) would be supplied by another statute.

2. Despite the Administration's response confirming the Securities and Futures Commission (SFC)'s regulatory power over unregistered SMFs for the protection of clients' assets, the Chairman re-iterated his concern about the deficiency of the Bill in providing sufficient sanctions against unregistered operators carrying out margin financing activities. The Executive Director of Intermediaries and Investment Products, Securities and Futures Commission (ED/IIP(SFC)) responded that SFC recognised that some lower thresholds should be set for SFC to seek injunctions or appointment of receivers over the assets of unregistered persons. The proposal was being considered under the composite Securities and Futures Bill.

Clause-by-clause examination on the Bill

*Clause 3 - Division 2*

*(Registration of securities margin financier)*

3. On Section 121O, the Director of Licensing, Securities and Futures Commission confirmed that no fee would be charged for inspecting the registers of SMFs and SMF's representatives to be kept by SFC.

4. Members noted that SFC was required to provide a registered SMF with "an opportunity of being heard" before revoking its registration under section 121R(3). ED/IIP(SFC) explained that subsection (2) specified the situations where SFC "may" consider revoking the registration of a financier. Even under situations where revocation of registration was deemed appropriate, such as in subsection (2)(a) when "the financier is in liquidation or is ordered to be wound up", SFC might not revoke the registration after conducting a hearing with the financier if it was considered that continuing the registration of the financier was necessary for the latter to maintain its business which, in turn, would facilitate the winding down of the company.

5. As regards section 121R(2)(e), ED/IIP(SFC) said that information about a SMF entering into arrangement with its creditors would enable SFC to assess the financial soundness of the financier. Adverse financial position of a financier could be a reason for revocation of the registration.

6. On the Chairman's view that a registered financier should be provided with an opportunity of being heard before the imposition of suspension order or varying such order under section 121R(5) and subsection (6), ED/IIP(SFC) responded that SFC would be obliged to give registrants such opportunity as a matter of procedural fairness. SFC would review the provisions to consider whether it was necessary to provide this in the Bill expressly. Members pointed out that the same amendment should be made in section 121T(5) and subsection (6).

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Admin 7. The Chairman suggested that it would be advisable to amend 121S(1) to put beyond doubt SFC's power to inquire into any of the matters listed in 121R(2)(a) to (h). The Administration agreed to consider the suggestion.

8. Members noted that sections 121S and 121U were analogous to provisions under section 56 of the Securities Ordinance (SO) (Cap. 333). Pointing out that in section 121S(3)(c), "officers" of a registered financier would only be reprimanded for contravention of legal provisions vis-à-vis the heavy penalties of suspension or revocation of registration imposed on a SMF or its representatives under subsections 3(a) and (b) and section 121U(3), the Chairman enquired about the possibility of introducing other sanction, such as financial penalty, for offences committed by "officers" of firms. In response, ED/IIP(SFC) explained that "officers" of a registered financier were directors, secretaries or other persons involved in the management of the business. Other than the "approved director", they were not required to be registered as the financier's representatives. Hence, there would be no effect subjecting them to disciplinary actions such as suspension or revocation. He added that there would be proposals under the composite Securities and Futures Bill to subject "officers" of firms to heavier penalties for contravention of relevant ordinances.

Admin 9. On section 121S(4), the Administration accepted the Chairman's proposal of repealing "impose a penalty under this section" and substituting it by "take any action under subsection (3)". The same amendment would be applied to section 121U(4).

10. As regards the concept of "misconduct" in sections 121S and 121U, ED/IIP(SFC) explained that in respect of "misconduct" committed by a SMF's representative, if the act was in some ways facilitated by incompetence in the management or deficiency in internal control systems of the financier, it could constitute a separate offence of "misconduct" on the part of the financier. Under such circumstances, SFC would conduct inquiry in respect of both the financier and the concerned representative.

11. The Bills Committee noted that sections 121T(1) and 121T(2) were similar to the provisions under sections 55(1)(a) and 55(2)(a) of the existing SO respectively. As regards the concern about the possibility that section 121T(4), which provided that SFC might revoke the registration of a SMF's representative at the latter's request, could be abused by representatives who were under inquiry or likely to be subject to disciplinary actions in order to evade from penalty, ED/IIP(SFC) advised that under such circumstances, SFC would not accept the representative's request except, if for the sake of investor protection it was considered that revocation of registration was warranted. In the event that the concerned representative resigned from the financier so that his registration lapsed automatically, SFC could reprimand the "resigned

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representative" or prosecute him if it was later established that he did contravene certain legal provisions. Moreover, the representative might have difficulty in demonstrating his fitness and properness when he re-applied for registration as a financier's representative.

Admin 12. On subsections 121V(3) and (4), the Chairman requested the Administration to consider adopting the word "revoke" in place of "cancel" which would be more appropriate in the context.

Admin 13. As to subsections 121W(1) and (2), the Administration undertook to consider members' suggestion of deleting "impose any other penalty on" and substituting it by "take any other action against".

14. When examining section 121X, Mr Albert HO enquired about the possibility of issuing registered financier or its representatives with "compliance notice" requiring them to take remedial actions for breaches of regulations within a specified time before SFC imposing disciplinary action to suspend or revoke their registration. In response, ED/IIP(SFC) said that SFC had been operating a similar regime under which, where appropriate, registrants would be demanded to make remedies for their breaches. Registrants' responses and their remedial actions would be taken into consideration when SFC considered whether further disciplinary action should be taken. In this connection, the Chairman remarked that introducing a "compliance notice" system in the regulatory regime might reduce SFC's flexibility in taking disciplinary action, in particular, against serious breaches which had to be stopped immediately by suspending or revoking the registration of the financier or its representatives.

*Division 3*

*(Conduct of securities margin financing businesses)*

15. ED/IIP(SFC) explained that section 121Y dealt with the requirement on registered financiers to provide clients with statements of account which included firstly, transaction statement that had to be provided upon completion of transactions. The information to be included in such statement was specified under subsection (3). Secondly, monthly statements had to be provided showing details of the account as specified in subsection (5). Section 121Z which set out the duties of a registered financier with respect to clients accounts was analogous to section 77 of the existing SO. A registered financier was required under subsection (1) to provide its clients with copies of specified statements of account upon the latter's request.

Admin 16. Under section 121Y(6), the Administration agreed to add the words "without reasonable excuse" after "who" in a similar manner as in section 121Z(5).

17. Noting that there was duplication in information to be provided in transaction statement and monthly statement of account, members opined that the Administration should consider streamlining the requirement. Pointing out that a registered financier had to keep record of transaction statements for two years and monthly statements for six years as required under subsections 121Z(3)(a) and (b) respectively, members considered that since the information contained in the transaction statements should have been reflected in the monthly statements, the Administration should consider shortening the period for which a financier was required to keep record of transaction statements. Some members also questioned the reasons for requiring the keeping of record of monthly statements for six years.

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18. In response, ED/IIP(SFC) said that in order to address the concern about onerous requirement of account, amendments would be made in section 121Y(1) to clarify that a financier should not be required to provide a statement of account solely for the purpose of indicating interest charges. He took note of members' views to review section 121Z(3)(a) to shorten the record keeping period of transaction statements. As regards the record keeping requirement for monthly statements, ED/IIP(SFC) advised that the requirement was consistent with section 83(5) of the existing SO and was compatible with the requirement under the Inland Revenue Ordinance (Cap.112).

19. On the adoption of standard margin account agreement, ED/IIP(SFC) advised that whilst members of the Stock Exchange of Hong Kong would be required under the Exchange Rules to adopt standard margin contract document for their clients, non-exchange member securities dealers and newly registered SMFs would be required under the Code of Conduct to comply with the same requirement.

## **II Any other business**

### Date of next meeting

20. Members noted that the next meeting would be held on 20 July 1999, at 8:30 am.

21. There being no other business, the meeting ended at 10:30 am.