

LC Paper No. CB(1)106/99-00  
(These minutes have been  
seen by the Administration)

Ref: CB1/BC/13/98/2

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

**Minutes of meeting held on  
Friday, 17 September 1999, at 4:30 pm  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Ronald ARCULLI, JP (Chairman)  
Hon SIN Chung-kai  
Hon Jasper TSANG Yok-sing, JP  
Hon FUNG Chi-kin
- Members absent** : Hon Albert HO Chun-yan  
Hon Bernard CHAN
- 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
- 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

Mrs Yvonne MOK  
Associate Director of Intermediaries Supervision

**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**  
(LC Paper No. CB(1)1922/98-99)

Follow-up on outstanding issues arising from previous meetings

Admin

Members noted that the Administration had provided with its letter dated 15 September 1999 some of the draft Committee Stage amendments (CSAs) which it intended to move. The Principal Assistant Secretary for Financial Services (PAS/FS) advised that the Administration intended to provide for members' reference a summary table setting out the Administration's responses to the main issues raised so far and the corresponding draft CSAs, if applicable. The Chairman suggested and the meeting agreed that the Bills Committee would follow up the outstanding issues when the summary table was available.

Clause-by-clause examination on the Bill

*Clause 4 - Consequential amendment of Securities Ordinance*

2. Members noted from Clause 4 that consequential amendment of the Securities Ordinance (Cap 333) (SO) was set out in Schedule 1 to the Bill.

3. Members noted that most of the amendments under item 1 in Schedule 1 were of a technical nature. PAS/FS elaborated on the amendment under item

1(b) as there were many other similar amendments under Clause 4. He advised that the Securities and Futures Commission (SFC) was empowered under section 146 of the SO to make rules. To avoid confusion, the law draftsman amended the title of the section from 'Regulations' to 'Commission rules' and any reference to 'regulations' in the Ordinance would need to be amended accordingly. These consequential amendments would make no material change to the provisions. He also confirmed that Commission rules were subsidiary legislation to be subjected to Legislative Council's negative vetting procedure. The Chairman requested the Assistant Legal Adviser to confirm whether any material difference was caused by these amendments.

ALA

4. As to item 1(c), where the conditions under which a registered financier would not be regarded as a 'dealer' for purposes under the ordinance were added, the Chairman opined that the two conditions as set out under (i) and (ii) were too narrow and might inadvertently catch a registered financier under the definition of a 'dealer'. In view of the wide definition of 'dealing in securities', which in turn, formed part of the definition of 'dealer', the Executive Director of Intermediaries and Investment Products, Securities and Futures Commission (EDII/SFC), agreed to review the provision.

SFC

5. On item 1(i), EDII/SFC pointed out that authorized institutions, as defined under the Banking Ordinance (Cap 155), were exempted from the requirement to be registered as a securities margin financier. To ensure consistency with other legislation, he proposed and the meeting agreed that the reference to "authorized financial institution" in the Bill should be repealed and replaced by "authorized institution".

SFC

6. Members noted that items 2 and 3 were technical amendments. Under items (4)(b) and (5)(a), members noted that the words 'or director' were repealed because there was a new definition of 'officer' in the Bill which already included a director in the definition. The same applied to item 6. Members also noted that the amendment stated under item 4(e) was consequential to the replacement of 'regulations' by 'Commission rules' in the Bill. On item 5(b), PAS/FS pointed out that the reference to 'section 65B' was deleted because section 65B of SO had already been repealed, and the reference was substituted by 'financial resources rules' as defined under item 1(i).

7. Item 5 sought to amend section 55 which dealt with revocation and suspension of certificates or registration in certain cases. EDII/SFC explained that as the notice required in the case of revocation or suspension of registration in respect of securities margin financiers or his representative was dealt with in another section, the amendment under item 5(c) was to substitute subsection 55(5) by the provision that this section did not apply to securities margin financiers or his representatives in order to avoid duplication. Members noted that the notification requirement originally provided in subsection 55(5) was included in the existing subsection 57(4) and the new subsection 57(5).

8. Under item 10(b), the Chairman questioned the need for the proposed subsection (4) under section 64, as the word 'prescribed' should already be understood to mean prescribed by Commission rules. The Senior Assistant Law Draftsman pointed out that apart from empowering SFC to make rules under section 146, the legislation also empowered the Chief Executive in Council to make regulations under section 146A, hence it was necessary to specify in the subsection that 'prescribed' meant prescribed by Commission rules.

9. On new section 75A to be added under item 20, members noted that the new section intended to put on a dealer who carried on securities margin financing business the same obligations as a registered securities margin financier, which in turn, were stipulated under proposed section 121Y. Hence sections 75A and 121Y ought to be in identical terms applying to two different classes of registered persons. For the sake of clarity, the Chairman suggested that the drafting should be simplified to the effect that in the case of a dealer carrying on securities margin financing business, the obligations of the dealer should be the same as those of a registered securities margin financier. Members also noted that there were some Committee Stage amendments (CSAs) being proposed by the Administration to section 121Y which would also be applied to section 75A. They agreed to revisit the two sections and the relevant CSAs, after the Administration had reviewed the drafting as suggested by the Chairman.

Admin

10. Members noted that under item 22, the existing section 77 was to be substituted by an amended version. EDII/SFC advised that the new section 77 would include provisions under the new section 121Z as well as some existing provisions, hence it would be much more complicated if the same drafting practice as agreed for section 75A under item 20 were to be adopted. The Chairman agreed. On the requirement to keep a statement of account for six years under subsection 77(4)(b), EDII/SFC advised that it was related to the requirement to keep accounting records for six years in other legislation such as the Inland Revenue Ordinance (Cap 112). Noting that there would be a CSA to subsection 121Z(3)(a) changing the requirement to keep certain statement of accounts from two years to three months, the Chairman requested the Administration to consult other relevant legislation to ensure that the record keeping requirements were consistent.

Admin

11. Under item 23, the Chairman questioned the need for subsection 79(9) which set out the terms (a) and (b) under which rules might be made under section 146. Since the empowering provision to enable SFC to make rules under the ordinance was already present in section 146, he said that the terms should be more appropriately included under section 146, if they were not already there, instead of being specified anywhere else in the ordinance. EDII/SFC responded that section 146 provided the general terms under which

SFC was empowered to make rules while 79(9)(a) and (b) stated the specific rule making powers of SFC. The Chairman opined that as a matter of tidiness and to avoid possible conflict, it was desirable to include the empowering provisions under one section. On EDII/SFC's advice that the approach being taken in drafting the composite Securities and Futures Bill was to include specific rule making powers of SFC in relevant sections such as 79(9), the Chairman requested the Administration to consider using the same approach in the present Bill.

Admin

12. Regarding the revised section 81 under item 25, the Chairman wondered how dealers could be required to ensure that securities deposited with a custodian were not 'deposited, transferred, lent, pledged, repledged or otherwise dealt with' except under certain conditions as stipulated in the ordinance or subsidiary legislation. Unless the dealer could be certain that securities deposited would be kept in designated accounts as in the case of the Central Clearing and Settlement System (CCASS) of the Hong Kong Securities Clearing Co Ltd (HKSCC), the need for the dealer to ascertain that there was no breach of the terms on which the deposit was made would be too onerous on the dealer. He suggested that subsection (4) be amended requiring the dealer to ensure that the securities were deposited with the custodian on the terms in accordance with subsection 81(2) instead of requiring him to ensure that certain actions were carried out or not carried out by the custodian in respect of the securities deposited. Hence the offence in this respect would simply be a failure to deposit the securities on such terms.

SFC/  
Admin

13. Referring to the provision under subsection 81(4), Mr FUNG Chi-kin considered it unreasonable to disallow dealers to use securities held for safe custody for other purposes such as stock lending and borrowing even with the written authorization of the client. PAS/ES advised that the provision was intended to provide protection to clients in order to prevent them from being misled into signing such authorization without knowing the implications. He further advised that in order to enable participation in HKSCC's Stock Lending and Borrowing (SLB) scheme, SFC might make rules to allow securities dealers to use cash clients' securities under their authorization for the purpose of participating in the SLB scheme in future. It was considered that the SLB scheme operated by HKSCC would not incur undue risk for the clients. The provision did not preclude SLB schemes operated by other entities from being approved for the same purpose under Commission rules. Separately, the Chairman pointed out that if Commission rules were made in this respect, conflicts between the Commission rules, which were subsidiary legislation, and section 81(4) of the principal ordinance might arise. The Administration was invited to review and amend the provisions if necessary.

Admin

14. The Chairman advised that the Bills Committee would discuss further the issues raised on section 81 at the next meeting, which would be held on 27 September 1999 at 8:30 am to 12: 30 pm.

**II Any other business**

15. There being no other business, the meeting ended at 6:35 pm.

Legislative Council Secretariat

12 October 1999