

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

Check list of issues requiring actions of the Administration
(in meeting date order)

29 April 1999

1. To provide examples of the operation of the concentration discounting factor as defined in the FRR. **(Letter from the Administration dd 8/5)**
2. To provide comparative studies on the regulation of securities margin financing in other jurisdictions. **(Letter dd 19/5)**
3. To provide written response to the Law Society of Hong Kong's submission. **(Letter dd 8/5)**

11 May 1999

4. To provide an explanation of the judgement on CA Pacific's case. **(Letter dd 19/5)**
5. To review the use of warrants as collateral in securities margin financing and the related concentration factor and provide information on market volatility of warrants over the last six months. **(Letter dd 19/5)**
6. To clarify the concern of the Law Society of Hong Kong in respect of "unlisted securities". (See also 23) **(Minutes of 1/6 meeting)**
7. To give further thoughts to points raised by Law Society of Hong Kong on "Purpose of loans", etc, regarding difficulty for SMFs to find out the underlying purposes of the margin loans. **(Item 9 of Administration's summary table)**
8. To consider suggestions given under the "Exemptions" section. (See also 14 and 25) **(Items 8 and 43)**
9. Under the "Securities Collateral" section, to consider amending section 121AA (and 81A) to allow clients' securities to be registered in the name of the SMF or its nominee and to clarify the right of SMF to dispose of the securities collateral in case of client default. (see also 52 and 53) **(Items 33, 34, 54, 55)**
10. To consider the suggestion of waiving the monthly statement if there was no movement in the account over the month in the context of granting general waiver to requirements on client information. **(Awaiting response)**

20 May 1999

11. To provide further information on the "pooling" situation in Taiwan. (**Letter dd 19/6**)
12. To provide further information on whether credit balance of clients' accounts can be used for margin financing in US. (See also 17) (**Letter dd 19/6**)
13. To further explain the UK system of pooling. (**Letter dd 19/6**)

1 June 1999

14. To consider including the exemptions in a schedule to the Ordinance. (See also 8, 25) (**Items 8 and 43**)
15. To clarify existing SEHK rules on restricting the proportion of members' lending to margin financing clients in relation to their borrowing from banks. (**Letter dd 19/6**)
16. To further elaborate on Singapore's pooling system, particularly with regard to the cap on the sum of clients' assets which could be pledged for a loan. (**Letter dd 19/6**)
17. To clarify whether credit balance of client's accounts can be used for margin financing in US. (See also 12) (**Letter dd 19/6**)

2 June 1999

18. To provide a list of HSI constituent stocks showing the relationship between the companies. (**Letter dd 19/6**)
19. To provide written responses to deputation's views expressed at the meeting on 1 June 1999. (**Letter dd 19/6**)
20. To review the need for definitions of 'audit' and 'agent'. (**Items 1 and 6. Pending response on 'audit'**)
21. To conduct an overall review on drafting of the Bill.

21 June 1999

22. To consider relaxing the FRR on 'related securities' for HSI constituent stocks. (**Confirmed**)
23. To consider relaxing the rule to allow SMFs to engage in other businesses which were incidental to its normal course of business. (**Item 12**)

28 June 1999

24. To incorporate in the Bill the accepted suggestions of Mr Leo CHIU regarding provisions on "right to be heard", "statement of account", and "rescission". (see also 42) (**Items 21, 27, 28, 36, 49 and 50**)

25. To reconsider exemptions suggested by the Law Society of Hong Kong which were considered acceptable by the Administration.(See also 8, 14) **(Items 8 and 43 and letters dd 19/6, 25/6 and 16/7)**
26. To consider expanding the definition of 'representative' instead of using the proposed definition of 'agent' (see also 20). **(Items 1 and 6, also letters dd 6/7 and 16/7)**
27. To consider defining the meaning of "prospectus" in clause 3 - section 121B(2)(g).**(Letter dd 6/7, awaiting CSA)**
28. To consider provisions for allowing margin financiers to continue on with certain aspects of the business, e.g. winding down their positions, during suspension of registration, and for a third party to exercise its rights against a suspended registrant under such circumstances. **(Item 41, pending further response on third party rights)**

29 June 1999

29. To consider deleting the definitions of 'registered financier' and 'registered financier's representative' to avoid redundancy.**(Item 7)**
30. To review the provisions of sections 121C(3) and 121S(3), as well as those of sections 121D(3) and 121U(3) for any conflicts.**(Item 10 and letter dd 6/7)**
31. To consider the need for the phrase "is prepared to act" in clause 3 - section 121D(1)(b). **(Item 11)**
32. To propose a CSA to specify the types of information that SFC might require from an applicant in relation to the application for registration as a SMF or a SMF's representative to make section 121F(3) consistent with section 24 of SFCO. **(Item 13)**
33. To consider recasting section 121F(6) as '... under subsection (4) may not be brought more than six months after the discovery of the offence'. **(Item 15)**
34. To review the need of a financial penalty clause 3 - section 121F(4).**(Item 14 and letter dd 6/7)**
35. To consider the suggestion to recast clause 3 - section 121G(3) and (4) to include the condition stated under section 121G(2)(a).**(Items 16 and 17)**
36. To provide explanation for the difference between section 121H(5) and section 121G(6) and to consider just having "For the purposes of this section, the Commission may have regard to any information in its possession".**(Item 18)**
37. To consider proposing a CSA to section 121J(3) such that SFC would be required to furnish reasons if so requested.**(Item 19)**

38. To provide information on actions that could be undertaken against unregistered securities margin financiers conducting margin financing business particularly in respect of protection of clients' assets. **(Item 60 and letter dd 16/7)**

7 July 1999

39. To explicitly state in section 121S the power of inquiry under section 121R, and to include the entitlement to a hearing in sections 121R(5)-(6) and 121T(5)-(6) as in section 121R (3). **(Item 22)**
40. To apply the amendment already proposed for section 121S(4) to section 121U(4), i.e. to repeal "impose a penalty under this section" and substitute "take any action under sub-section (3)". **(Items 23 and 24)**
41. To add the words "without reasonable excuse" to section 121Y(6) in a similar manner to section 121Z(5). **(Items 31 and 48)**
42. To consider deleting section 121Z(3)(a) or shortening the 2 year period and to amend 121Y(1) to clarify that a SMF should not be required to provide a statement of account solely for the purpose of indicating interest charges (See also 24 and 67). **(Items 27, 28, 32, 49, 50 and 51)**
43. To adopt "revoke" in place of "cancel" in section 121V(3) and (4). **(Item 25)**
44. To delete "impose any other penalty on" and substitute it by "take any other action against" in section 121W (1) and (2). **(Item 26)**

20 July 1999

45. In relation to section 121AB, to lay out the powers of SFC under existing provisions of the SFC Ordinance in respect of investigations and inquiries. **(Letter dd 27/7)**
46. To review the relative severity of penalties under subsections 121AB(6) and (7). (See also 49, 55) **(Item 42)**
47. To take forward the proposal to link up subsection 121AB(4) with (3). **(Item 35)**
48. In view of members' concerns in relation to legal consequences of rescinding a contract under subsection 121AD(1)(a) and third party rights, etc., to review and/or revamp the provisions under Division 4 - Contracts with unregistered financiers. (See also 24) **(Item 36)**
49. To review the entire Bill with regard to the consistency of different levels of fines/penalties for different offences. (See also 46, 55) **(Item 42)**

50. Referencing similar provisions under the SFC Ordinance, to consider making the provisions under subsections 121BD(3), (4) and (6) more specific. **(Item 40)**
51. To provide a CSA to replace the word "section" by "division" in subsection 121AY(2). **(Item 39)**
52. To amend sections 81A and 121AA to allow clients' securities to be registered in name of the dealer's or financier's nominee with a view to providing better protection for dealers' or financiers' collateral interest. (see also 9) **(Items 33 and 55)**
53. To amend sections 81A and 121AA to allow dealers or financiers to dispose of securities collateral in case of client default if clients had given the authority at the outset and such authority would not be subject to annual renewal. **(Items 34 and 54)**
54. To add a new provision in Division 7 to put it beyond doubt that it is not necessary for a registered financier to appoint an auditor in addition to the one required under the Companies Ordinance. **(Item 38)**

27 July 1999

55. To review the appropriateness of penalty levels for different offences under the Bill, including those in respect of section 121C and 121D and the relative severity of the penalty levels provided under subsections 121AB(6) and (7). (see also 46, 49) **(Item 42)**
56. To review Division 4 in order to address the concerns about the legal consequences of rescinding a contract under subsection 121AD(1)(a) and the rights of bona fide third party. (See also 48) **(Item 36)**
57. To give examples of SFC exercising its power in obtaining working papers of auditors for the purposes of ascertaining compliance with the FRR. **(Awaiting response)**
58. To explore giving better protection to bona fide dealers with unregistered financiers by providing that amounts paid in respect of dealings with an unregistered financier would deem to be held on trust. **(Awaiting response)**
59. To consider lowering the threshold for SFC to refuse application for waiver/modification under section 121BG, by amending subsection 121BG(3)(b) to "whether the exercise of the power in the particular case would result in undue risk to clients or prospective clients of the applicant", and by adding a subsection (c) to include the interest of the investing public. **(Awaiting response)**

60. To require the SFC to state the reasons on refusal of an application made under section 121BG.(**Awaiting response**)
61. To reconsider the prescribed provisions in subsection 121BG(7), particularly with regard to giving examples of waiver that could be granted under section 121C, and including 121D as part of the prescribed provisions. (**Awaiting response**)
62. The SFS to consider stating at the resumption of Second Reading debate that applications to SFC for registration as a securities margin financier should be determined within a reasonable time limit, notwithstanding the possibility of a longer processing time for some exceptional cases.(**Awaiting confirmation**)

17 September 1999

63. To provide a summary table setting out the Administration's responses to the main issues raised so far and the corresponding CSAs, if applicable. (**Provided up to the meeting of 17 September 1999**)
64. To review the two conditions set out in the proposed section 2(1)(d) (i.e. item 1(c) in Schedule 1 to the Bill) under which a registered financier would not be regarded as a 'dealer' for purposes under the ordinance. The conditions were considered too narrow and might inadvertently catch a registered financier under the definition of a 'dealer'.(**Item 44**)
65. To replace all references to 'authorized financial institution' by 'authorized institution'.(**Item 45**)
66. To simplify the drafting of new section 75A (i.e. item 20 in Schedule 1) 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.(**Item 49**)
67. On record keeping requirements, to check consistency with other relevant legislation.(See also 42, 76) (**Items 32 and 51**)
68. To consider using the same approach of the composite Securities and Futures Bill to include specific rule making powers of SFC in relevant sections of the ordinance.(**Item 52**)
69. To amend section 81(4) (i.e. item 5 in Schedule 1) requiring the dealer to ensure that the securities were deposited with the custodian on the terms in accordance with section 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.(**Awaiting response**)

70. On the possibility of SFC making rules to allow securities dealers to use cash clients' securities under their authorization for the purpose of participating in the Stock Lending and Borrowing scheme in future, to review whether there would be any conflict between the Commission rules, which are subsidiary legislation, and section 81(4) of the principal ordinance and make amendments as necessary. **(Items 53)**

27 September 1999 (Awaiting response on all the following issues)

71. To review the drafting of the provisions to allow the use of securities held in safe custody for stock lending and borrowing (section 81(4)) to put beyond doubt that flexibility would be provided in using the securities held in safe custody and to reflect clearly the rationale for SFC to make rules in this respect.
72. To recast the last few words of 81A(3) as "...satisfactory facilities for such safe custody".
73. To review the drafting of section 81(4) and 81A(4) so that they would be better linked with sections 81(2) and 81A(2) respectively.
74. To consider retaining "or any related corporation" in section 83(3)(a)(vi) to include keeping of records of those securities which had been deposited with a third party as collateral for loans or advances made to the dealer or to any related corporation of the dealer.
75. To consider not replicating 'financial accommodation' in section 83(3)(a)(viii) since the full definition was provided under the amended section 2(1).
76. To re-examine section 83(5) regarding the period for which dealers were required to keep the relevant account records (see also 67).
77. To review the provision under 94(d) of SO which was considered too restrictive and to reconcile the drafting differences between the penalty provisions in section 94 of SO and section 59 of SFCO.
78. To review the drafting of proposed sections 95(3) and (5) in SO, sections 29A(9) and 33(12) in SFCO to avoid inconsistency.
79. To consider making Commission rules subject to "positive vetting" by LegCo
80. To consider recasting proposed section 29AA(4)(a) and (b) of SFCO to better reflect the intention of the provision that the exemption granted was to facilitate business operation without compromising interest of the investing public.

81. To review the need for the safety net provided under item 1 in Schedule 4 to the Bill which provided the CE in Council with the power to make regulations of a savings or transitional nature consequent on the enactment of the Ordinance.

- End -

Legislative Council Secretariat
3 November 1999