

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1056/13-14  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/12/12

**Bills Committee on Securities and Futures (Amendment) Bill 2013**

**Seventh meeting on**  
**Tuesday, 10 December 2013, at 2:30 pm**  
**in Conference Room 2B of the Legislative Council Complex**

**Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)  
Hon Christopher CHEUNG Wah-fung, JP (Deputy Chairman)  
Hon WONG Ting-kwong, SBS, JP  
Hon CHAN Kin-por, BBS, JP  
Hon NG Leung-sing, SBS, JP  
Hon Steven HO Chun-yin  
Hon Kenneth LEUNG  
Hon Dennis KWOK  
Hon SIN Chung-kai, SBS, JP

**Member absent** : Hon James TO Kun-sun

**Public officers attending** : Financial Services and the Treasury Bureau  
  
Miss Ada CHAN  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services) 2  
  
Mr Alex LEUNG  
Assistant Secretary for Financial Services and the  
Treasury (Financial Services)(2)2

Department of Justice

Ms Rayne CHAI  
Acting Senior Assistant Law Draftsman

Hong Kong Monetary Authority

Mr Daryl HO  
Head (Market Development)

Ms Polly LEE  
Senior Manager (Market Development)<sup>3</sup>

Mr Andy CHEUNG  
Senior Manager (Banking Policy)<sup>A3</sup>

**Attendance by invitation** : Securities and Futures Commission

Mr Rico LEUNG  
Senior Director (Supervision of Markets)

Ms Daphne DOO  
Director (Supervision of Markets)

Ms Thrity MUKADAM  
Director (Supervision of Markets)

Ms Eunice CHENG  
Senior Manager (Supervision of Markets)

Mr Derek SHEK  
Director (Licensing, Intermediaries)

Mr Eric HO  
Associate Director  
(Licensing, Intermediaries)

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

**Staff in attendance** : Miss Winnie LO  
Assistant Legal Adviser 7

Ms Angel SHEK  
Senior Council Secretary (1)4

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Action

**I Meeting with the Administration**

Follow-up to issues arising from previous meeting

(LC Paper No. CB(1)495/13-14(01) — List of follow-up actions arising from the discussion at the meeting on 22 November 2013)

Clause-by-clause examination of the Bill

(LC Paper No. CB(3)742/12-13 — The Bill

LC Paper No. CB(1)1584/12-13(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)

File Ref: SUB 12/2/7 (2013) — Legislative Council Brief

LC Paper No. LS71/12-13 — Legal Service Division Report

LC Paper No. CB(1)1584/12-13(02) — Background brief on the Securities and Futures (Amendment) Bill 2013 prepared by the Legislative Council Secretariat)

Discussion

The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

## **II Any other business**

### Date of next meeting

2. The Chairman reminded members that the next meeting would be held on 20 December 2013 at 8:30 am.
3. There being no other business, the meeting ended at 4:32 pm.

Council Business Division 1  
Legislative Council Secretariat  
10 March 2014

**Proceedings of the  
Bills Committee on Securities and Futures (Amendment) Bill 2013  
Seventh meeting on Tuesday, 10 December 2013, at 2:30 pm  
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000139 – 000310	Chairman	Introductory remarks	
<b><u>Clause by Clause Examination of the Bill</u></b>			
000311 – 001630	Administration Chairman Mr Kenneth LEUNG Securities and Futures Commission ("SFC")	<p><u>Clause 53 – Schedule 5 amended (regulated activities)</u></p> <p>Mr LEUNG enquired about expansion in the scope of existing regulated activities ("RA") to cover over-the-counter ("OTC") derivative transactions and whether intermediaries of the existing Type 9 RA (asset management) would need to meet new/additional qualification requirements for undertaking the expanded Type 9 RA (asset management covering OTC derivative portfolios).</p> <p>The Administration and SFC explained that –</p> <p>(a) two new RAs (i.e. Type 11 RA – dealing in OTC derivative products or advising on OTC derivative transactions, and Type 12 RA – providing clearing agency services for OTC derivative transactions) would be added under Schedule 5 to the Securities and Futures Ordinance (Cap. 571) ("SFO") and the existing Type 7 RA (provision of automated trading services) and Type 9 RA (asset management) would be expanded to cover OTC derivative transactions and automated trading services, and management of OTC derivative portfolios respectively. Amendments would also be made to Schedule 5 to exclude certain activities from other existing RAs as appropriate to avoid overlapping with the new/expanded RAs;</p> <p>(b) transitional arrangements would be introduced so that existing intermediaries or service providers providing services in the OTC derivative market could continue their operation for a limited period of time during which period SFC could process their</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>applications for licence or registration for carrying out the new/expanded RAs; and</p> <p>(c) for persons who were already licensed/registered for Type 9 RA and wished to engage in the expanded Type 9 RA, they would need to submit a notification and confirmation to SFC within the application period that they had fulfilled the relevant criteria. The notification and confirmation would be subject to SFC's vetting.</p>	
001631 – 001826	Administration Chairman Mr Kenneth LEUNG	<p><u>Clause 54 – Schedule 8 amended (Securities and Futures Appeals Tribunal)</u></p> <p>In response to Mr LEUNG's enquiry, the Administration advised that –</p> <p>(a) the Securities and Futures Appeals Tribunal ("the Tribunal") reviewed regulatory decisions made by relevant regulatory authorities including the Hong Kong Monetary Authority; and</p> <p>(b) the hearings of the Tribunal would be conducted by a chairman of the Tribunal (who was a judge) and two members from its appeal panel.</p>	
001827 – 003242	Administration Chairman Mr Kenneth LEUNG	<p><u>Clause 55 – Schedule 11 added</u></p> <p><i>Schedule 11 – Transitional Provisions for Securities and Futures (Amendment) Ordinance 2013</i></p> <p>Mr LEUNG enquired whether SFC could complete processing all applications for licence or registration for undertaking the new/expanded RAs within the proposed six-month transitional period, and if not, what arrangements would be put in place to enable the applicants to continue with the new/expanded RAs beyond the six months.</p> <p>The Administration advised that –</p> <p>(a) the transitional arrangements would include (i) an application period of three months</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>from the date of implementation of the new/expanded RAs ("the implementation date") during which persons must submit their application for licence for the new/expanded RAs if they wished to benefit from the transitional arrangements; and (ii) a transitional period of six months from the implementation date during which persons carrying on the new RAs or the new component of the expanded RAs would not be regarded as carrying out unlicensed regulated activities; and</p> <p>(b) persons who submitted an application for licence during the application period and met certain qualification criteria would be deemed to be licensed for the relevant new/expanded RAs with effect from the expiry of the transitional period until the application was approved, refused or withdrawn. The deeming arrangement would allow SFC to do preliminary vetting for the applications within the six-month period pending detailed examination of the applications before making the decision on the applications. The persons could continue to engage in the new/expanded RAs if their applications were finally approved or they had to cease business in the relevant RA if their applications were finally rejected.</p>	
003243 – 015853	Administration Chairman Mr Kenneth LEUNG SFC	<p>Mr LEUNG enquired –</p> <p>(a) whether the annual fees (and any other fees as applicable) payable by applicants of the new/expanded RAs would take effect from the deeming date as defined in Schedule 11 to SFO; and</p> <p>(b) if the applications were rejected, whether SFC would take into account the actual duration of the deeming period to rebate fees to the applicants.</p> <p>The Chairman enquired whether the applicants for the new/expanded RAs would need to pay the annual fees if their applications were finally rejected.</p>	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>SFC advised that –</p> <ul style="list-style-type: none"><li data-bbox="603 383 1249 562">(a) applicants for licence/registration in respect of any new/expanded RAs would need to pay application fees upon submission of the applications, which were in effect the annual fees for the first year from the deeming date;</li><li data-bbox="603 600 1249 853">(b) as the annual fees on the licence/registration for any of the new/expanded RAs were only payable at the end of the first year from the deeming date, the applicants would not be required to pay the annual fees at all if their applications were rejected within the six-month transitional period; and</li><li data-bbox="603 891 1249 1294">(c) if the applications could not be determined by SFC within one year from the deeming date, the applicants concerned would need to pay the annual fees for continuing to carry on the new/expanded RAs in the second year. The annual fees, once collected, would not be rebated to the applicants if the applications were subsequently rejected within the second year. This was consistent with the current practice of regular licence applications.</li></ul>	
015854 – 015906	Chairman	Date of next meeting	