

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1147/13-14  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/12/12

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

**Ninth meeting on**  
**Monday, 17 February 2014, at 10:45 am**  
**in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)  
Hon Christopher CHEUNG Wah-fung, JP (Deputy Chairman)  
Hon James TO Kun-sun  
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

**Public officers attending** : Financial Services and the Treasury Bureau

Ms 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)3

Mr Andy CHEUNG  
Senior Manager (Banking Policy)A3

**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)

Ms Carolyn CHIU  
Senior Manager (Licensing, Intermediaries)

**Clerk in attendance** : Ms Connie SZETO  
Chief Council Secretary (1)4

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

Ms Angel SHEK  
Senior Council Secretary (1)4

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## **I Confirmation of minutes of meetings**

(LC Paper No. CB(1)857/13-14 — Minutes of the meeting on 28 October 2013

LC Paper No. CB(1)858/13-14 — Minutes of the meeting on 12 November 2013)

The minutes of the meetings held on 28 October and 12 November 2013 were confirmed.

## **II Meeting with the Administration**

### Clause-by-clause examination of Part 3 of the Bill and related Committee Stage amendments proposed by the Administration

(LC Paper No. CB(1)874/13-14(01) — Letter dated 11 February 2014 from Legal Service Division to the Administration

LC Paper No. CB(1)874/13-14(02) — Reply letter from the Administration to Legal Service Division

LC Paper No. CB(1)874/13-14(03) — Administration's proposed Committee Stage amendments)

### Follow-up to issues arising from previous meetings

(LC Paper No. CB(1)874/13-14(04) — Administration's response dated 13 February 2014 to the issues arising from the meetings held on 28 October, 12 November, 22 November and 20 December 2013

LC Paper No. CB(1)251/13-14(01) — List of follow-up actions arising from the discussion at the meeting on 28 October 2013

LC Paper No. CB(1)376/13-14(01) — List of follow-up actions arising from the discussion at the meeting on 12 November 2013

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

LC Paper No. CB(1)874/13-14(05) — List of follow-up actions arising from the discussion at the meeting on 20 December 2013

Committee Stage amendments proposed by the Administration for other parts of the Bill

(LC Paper No. CB(1)874/13-14(03) — Administration's proposed Committee Stage amendments)

Other relevant papers

(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

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

**III Any other business**

Way forward

3. The Chairman said that the Bills Committee had completed clause-by-clause examination of the Bill and the English version of the Administration's proposed Committee Stage amendments ("CSAs") (LC Paper No. CB(1)874/13-14(03)).

4. Members agreed that the Chinese version of the Administration's proposed CSAs would be provided to the Legal Adviser of the Bills Committee ("the Legal Adviser") for comment on the legal and drafting aspects, and circulated to members when ready. Subject to views which members or the Legal Adviser might have on the Chinese version of the proposed CSAs, the Chairman would decide whether it was necessary to hold a further meeting. If no further meeting would be held, the Bills Committee would complete scrutiny of the Bill. Members noted that the Administration planned to resume the Second Reading debate on the Bill tentatively in April 2014, and would further advise the Bills Committee on the proposed date in due course.

*(Post-meeting note: Subsequent to the meeting, the Legal Adviser indicated that she has no comment on the proposed CSAs except a couple of drafting points. The Administration has agreed to make amendments to both the English and Chinese versions of the proposed CSAs to deal with those drafting points. The Chinese version of the Administration's proposed CSAs, which incorporated the said amendments, was issued to members on 3 March 2014 vide LC Paper No. CB(1)1024/13-14(01). The Administration has proposed to resume the Second Reading debate on the Bill at the Council meeting on 26 March 2014.)*

5. There being no other business, the meeting ended at 11:39 am.

Council Business Division 1  
Legislative Council Secretariat  
24 March 2014

**Proceedings of the  
Bills Committee on Securities and Futures (Amendment) Bill 2013  
Ninth meeting on Monday, 17 February 2014, at 10:45 am  
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000208 – 000311	Chairman	Confirmation of minutes for meetings held on 28 October and 12 November 2013 (LC Paper Nos. CB(1)857/13-14 and CB(1)858/13-14)	
000312 – 000955	Chairman Administration	Briefing by the Administration on its written response to the issues raised by the Legal Adviser of the Bills Committee regarding amendments relating to protections under Part III of the Securities and Futures Ordinance (Cap. 571) (LC Paper No. CB(1)874/13-14(02))	
<b>Clause-by-clause examination of Part 3 of the Bill and related Committee Stage amendments proposed by the Administration</b>			
000956 – 003153	Securities and Futures Commission ("SFC") Chairman Mr Kenneth LEUNG	<p><u>Part 3 - Amendments Relating to Protections under Part III of Securities and Futures Ordinance</u> (pages 95 to 108 of LC Paper No. CB(1)874/13-14(03))</p> <p><i>Clause 56 – Securities and Futures Ordinance amended</i></p> <p><i>Clause 57 – Section 18 amended (interpretation of Part III)</i></p> <p><i>Clause 58 – Section 40 amended (rules by recognized clearing houses)</i></p> <p><i>New Clause 58A – Section 45 amended (proceedings of recognized clearing house take precedence over law of insolvency)</i></p> <p><i>Clause 59 – Section 47 amended (duty to report on completion of default proceedings)</i></p> <p><i>Clause 60 – Schedule 3 amended (exchange companies, clearing houses and exchange controllers)</i></p> <p>Mr LEUNG enquired –</p> <p>(a) whether a clearing participant was required to segregate individual clients' accounts on over-the-counter ("OTC") derivative positions and collateral; and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) whether rules would be set to restrict clearing participants from re-hypothecating clients' assets or using them for purposes other than covering losses arising from clients' positions.</p> <p>SFC advised that –</p> <p>(a) there were requirements under the Securities and Futures (Client Money) Rules (Cap. 571I) for licensed corporations to establish and maintain one or more segregated accounts for client money (i.e. the client account); and the rules of a recognized clearing house ("RCH") might provide for different clearing accounts which enabled the clearing participants to hold all clients' positions/collateral maintained by them in an omnibus client account, or to open an account for individual client upon the client's request;</p> <p>(b) in most jurisdictions, collateral provided by clients for covering losses arising from their positions could only be used for such purpose but there were also new market practices allowing clearing participants to convert low-quality client collateral to higher quality asset in meeting RCH's collateral requirements; and</p> <p>(c) SFC was monitoring the development in this aspect and would establish regulatory requirements in due course. The details of the client asset protection rules would be set out in subsidiary legislation subject to the negative vetting procedure of the Legislative Council.</p>	
003154 – 004033	SFC Chairman Mr Kenneth LEUNG	<p>Referring to the new Section 5A in Part 5 of Schedule 3 under the proposed CSAs to clause 60, which stated that "a reference to set-off or offset included a netting arrangement" in that part of the Schedule, Mr LEUNG enquired about the rationale for the amendment given that netting and set-off/offsetting were different concepts.</p> <p>SFC advised that the amendment was meant to clarify that references to "set-off" or "offset" should be construed as including the concept of</p>	

Time Marker	Speaker	Subject(s)	Action Required
		"netting" when dealing with the amounts payable by/to the clearing participant in respect of transactions recorded in client account/house account under Part 5 of Schedule 3.	
<b>Follow-up to issues arising from previous meetings</b>			
004034 – 004632	Administration	Briefing by the Administration on its written responses to issues arising from the discussions at the meetings on 28 October, 12 November, 22 November and 20 December 2013 (LC Paper No. CB(1)874/13-14(04))	
<b>Committee Stage amendments proposed by the Administration for other parts of the Bill</b>			
004633 – 005150	Chairman Mr NG Leung-sing Administration	<p>Briefing by the Administration on its proposed CSAs other than those for Part 3 of the Bill (pages 1 to 94 of LC Paper No. CB(1)874/13-14(03))</p> <p>In connection with the proposed CSAs to clause 9 of the Bill, Mr NG enquired about the standards and requirements in respect of the "record keeping obligation". He expressed concern about the fees (e.g. levy for electronic record-keeping), if any, and other potential compliance cost arising from the obligation.</p> <p>The Administration advised that –</p> <p>(a) the record keeping obligation would supplement each of the mandatory reporting, clearing and trading obligations under the Bill in respect of OTC derivative transactions, and aimed to better ensure that adequate records (e.g. signed agreements of OTC derivative transactions, transaction confirmations) were maintained to show compliance with the mandatory obligations. The obligation would not require a separate or electronic system on the part of industry to keep the relevant records;</p> <p>(b) the introduction of the record keeping obligation was in line with the practices of other major jurisdictions. HKMA had consulted the industry, including The Hong Kong Association of Banks, on the matter and they had no objection in principle; and</p>	



<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		(c) details of the record keeping obligation would be prescribed by subsidiary legislation, for which SFC and HKMA would conduct public consultation.	
005151 – 005359	Chairman Administration	Completion of scrutiny of the Bill  Follow-up arrangements and legislative time table	

Council Business Division 1  
Legislative Council Secretariat  
24 March 2014