

立法會
Legislative Council

LC Paper No. CB(1)1152/14-15
(These minutes have been seen
by the Administration)

Ref : CB1/SS/11/14

**Subcommittee on Three Pieces of Subsidiary Legislation
Relating to Over-the-counter Derivative Transactions**

**Minutes of first meeting held on
Friday, 12 June 2015, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon SIN Chung-kai, SBS, JP (Chairman)
Hon NG Leung-sing, SBS, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP

**Public Officers
attending** : Agenda item II

Financial Services and the Treasury Bureau

Ms Ada CHAN
Principal Assistant Secretary
(Financial Services) 2

Miss Renita AU
Assistant Secretary (Financial Services)(2)2

Department of Justice

Ms Rayne CHAI
Acting Senior Assistant Law Draftsman

Ms Phyllis POON
Senior Government Counsel

Ms Mandy NG
Senior Government Counsel

Hong Kong Monetary Authority

Mr Daryl HO
Head (Financial Stability Surveillance)

Ms Polly LEE
Senior Manager
(Financial Stability Surveillance)4

Securities and Futures Commission

Ms Daphne DOO
Senior Director (Supervision of Markets)

Ms Thrity MUKADAM
Director (Supervision of Markets)

Ms Eunice CHENG
Senior Manager (Supervision of Markets)

Ms Sandra KING
Senior Legal Consultant
(Legal Services Division)

Ms Amy LAM
Counsel (Legal Services Division)

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Miss Carrie WONG
Assistant Legal Adviser 4

Mr Daniel SIN
Senior Council Secretary (1)7

Ms Michelle NIEN
Legislative Assistant (1)5

I Election of Chairman

Mr NG Leung-sing, the member with the highest precedence in the Council among all members of the Subcommittee present, presided over the election and called for nominations for the Chairmanship of the Subcommittee. Mr Christopher CHEUNG nominated Mr NG Leung-sing. The nomination was not seconded by Mr SIN Chung-kai, the only member of the Subcommittee present other than the nominating member and the nominee. Mr NG Leung-sing then nominated Mr Christopher CHEUNG, but Mr CHEUNG did not accept the nomination.

2. Mr NG Leung-sing then nominated Mr SIN Chung-kai to be Chairman of the Subcommittee and the nomination was seconded by Mr Christopher CHEUNG. Mr SIN Chung-kai accepted the nomination.

3. Mr SIN Chung-kai was elected Chairman of the Subcommittee.

II Meeting with the Administration

(L.N. 95 of 2015	— Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015
L.N. 96 of 2015	— Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules
L.N. 97 of 2015	— Securities and Futures (Stock Markets, Futures Markets and Clearing Houses) Notice
File Ref: SF&C/1/2/11/6C	— Legislative Council Brief
LC Paper No. LS70/14-15	— Legal Service Division Report
LC Paper No. LS66/14-15	— Legal Service Division Report
LC Paper No. CB(1)975/14-15(01)	— Assistant Legal Adviser's letter dated 26 May 2015 to the Administration
LC Paper No. CB(1)975/14-15(02)	— The Administration's reply letter dated 27 May 2015 to Assistant Legal Adviser
LC Paper No. CB(1)975/14-15(03)	— Background brief prepared by the Legislative Council Secretariat)

4. The Subcommittee deliberated (index of proceedings in the **Appendix**).

5. The Subcommittee completed clause-by-clause examination of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015, the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules and the Securities and Futures (Stock Markets, Futures Markets and Clearing Houses) Notice.

Follow-up actions to be taken by the Administration

6. The Administration was requested to provide supplementary information on the number (and percentage) of current market participants that would be exempted from mandatory reporting when, as a requirement for exemption under rule 3(2) of the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules, the ceiling of the sum of the notional amounts of all outstanding over-the-counter derivative transactions within the product class to which the prescribed person was a counterparty was set at US\$30 million.

III Any other business

Invitation of views

7. Members agreed that the Subcommittee would meet with deputations to receive views on the three pieces of subsidiary legislation.

(Post-meeting note: The second meeting was scheduled to be held at 4:30 pm on Monday, 22 June 2015.)

8. There being no other business, the meeting ended at 12:30 pm.

**Proceedings of first meeting of the
Subcommittee on Three Pieces of Subsidiary Legislation Relating to
Over-the-counter Derivative Transactions
on Friday, 12 June 2015, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Election of Chairman			
000115 – 000405	Mr NG Leung-sing Mr Christopher CHEUNG Mr SIN Chung-kai	Election of Chairman	
Meeting with the Administration			
000406 – 001320	Chairman Administration	Briefing by the Administration on the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 ("the Commencement Notice"), the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules ("the Reporting Rules"), and the Securities and Futures (Stock Markets, Futures Markets and Clearing Houses) Notice ("the Prescription Notice").	
001321 – 002325	Chairman Mr NG Leung-sing Mr Christopher CHEUNG Administration	<p>Mr NG Leung-sing suggested that a public hearing session be conducted on the three pieces of subsidiary legislation.</p> <p>The Administration explained that public consultation covering the proposed legislation had been conducted and the consultation papers had been issued to the relevant sectors. The majority of respondents supported the proposed mandatory reporting and related record keeping requirements.</p> <p>Mr Christopher CHEUNG asked when the mandatory reporting requirements would be extended to other derivative transactions.</p> <p>The Administration explained that consultation would be held in the next six months on the extension of the mandatory reporting requirements to transactions of other derivatives products such as credit, equity and commodity derivatives, with a view to implementation in mid-2016.</p>	
002326 – 002520	Chairman Mr Christopher CHEUNG Administration	Mr Christopher CHEUNG asked how the proposed mandatory reporting would affect the cost of business of "prescribed persons", and whether any assistance or compensation would be provided.	

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		<p>The Administration explained that measures would be introduced to reduce the compliance burden of prescribed persons, including the following –</p> <p>(a) authorized institutions ("AIs"), approved money brokers ("AMBs"), licensed corporations ("LCs") would be considered to have complied with the reporting obligation in respect of a transaction that they had conducted in Hong Kong on behalf of an affiliate; and</p> <p>(b) AIs, AMBs and LCs that were small players and not active in the over-the-counter ("OTC") derivative market would also be exempt from reporting transactions that they were counterparties to. The condition for exemption was that, on or at any time after the product class specification day, the sum of the notional amounts of all outstanding OTC derivative transactions within the product class to which the prescribed person was a counterparty did not exceed US\$30 million.</p>	
002521 – 002618	Chairman Mr Christopher CHEUNG Administration	<p>Mr Christopher CHEUNG asked if the Administration would regularly report to the Legislative Council ("LegCo") the progress of the implementation of the proposed new statutory requirements.</p> <p>The Administration advised that Members would be updated of the progress of the implementation of the mandatory reporting requirement in the context of the upcoming public consultation on the legislative proposals for the next phase of the implementation of the regime.</p>	
002618 – 002750	Chairman Administration	<p>The Chairman asked why the Prescription Notice was issued by the Financial Secretary ("FS"), whereas the Commencement Notice was issued by the Secretary for Financial Services and the Treasury ("SFST").</p> <p>The Administration explained that different authorities were specified under the respective principal ordinances for making the relevant pieces of subsidiary legislation. The Commencement Notice was made by SFST</p>	

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		pursuant to the Securities and Futures (Amendment) Ordinance 2014 and the Prescription Notice was made by FS pursuant to the Securities and Futures Ordinance (Cap. 571).	
<i>Clause-by-clause examination of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015, the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules, and the Securities and Futures (Stock Markets, Futures Markets and Clearing Houses) Notice</i>			
002751 – 003417	Chairman Administration	<p><u>Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015)</u></p> <p>Members had no comments on the provisions prescribed in the Commencement Notice.</p>	
003418 – 004229	Chairman Administration	<p><u>Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules (L.N. 96 of 2015)</u></p> <p><i>Rule 3(2)</i></p> <p>The Chairman asked whether there was objective basis for setting US\$30 million as the ceiling of the sum of the notional amounts of all outstanding OTC derivative transactions within a product class to which the prescribed person was a counterparty, for the purpose of qualifying for exemption from mandatory reporting of OTC derivative transactions.</p> <p>The Administration advised that the purpose of exemption was to reduce the compliance burden on small and inactive players and the line of US\$30 million was drawn having taken into account the prevailing situations in the OTC derivatives market and industry views.</p> <p>The Chairman asked, based on historical financial data, by setting the ceiling at US\$30 million, how many of the current market participants could be exempted from the mandatory requirements.</p> <p>The Administration undertook to provide the information after the meeting.</p>	The Administration to follow up as per paragraph 6 of the minutes.
004230 – 005444	Chairman Mr NG Leung-sing Administration	With respect to the interpretation of "transaction information" under Rule 2, Mr NG Leung-sing asked:	

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		<p>(a) for how long the persons involved in a transaction should retain the information and particulars relating to the transaction and a subsequent event;</p> <p>(b) whether the finance sector had a clear understanding about the interpretation of "subsequent event"; and</p> <p>(c) which parties would be responsible for problems arising from the submission of reports using the electronic reporting system.</p> <p>The Administration explained that –</p> <p>(a) section 6 in Part 4 of Schedule 1 to the Rules had set out the scope of a "subsequent event";</p> <p>(b) different OTC derivative transactions might have different situations which fell under the definition of "subsequent event". Specific details were usually set out in the agreement signed between the parties in a transaction; and</p> <p>(c) the use of the electronic reporting system in filing transaction records would be consistent with international standards and established practice by the industry in submitting transaction information to the repository operated by or on behalf of the Monetary Authority ("MA").</p>	
005445 – 005740	Chairman Administration	<p><i>Rule 10(3)</i></p> <p>In response to the Chairman, the Administration explained that the effect of Rule 10(3) was that a person who satisfied Rule 3(2) would be exempt from the mandatory reporting requirements.</p>	
005741 – 010052	Chairman Administration	<p><i>Rule 17 and Rule 18</i></p> <p>The Chairman asked whether reports of OTC derivative transactions were to be made on a daily, hourly or real-time basis; and whether the transactions were to be reported one by one or in batches.</p> <p>The Administration explained that the transactions should be reported within two days from the date</p>	

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		of entering into the transaction (i.e. "T+2"). The reports should be filed electronically into the MA's repository.	
010053 – 010330	Chairman Mr NG Leung-sing Administration	<p><i>Rule 16</i></p> <p>Mr NG Leung-sing asked if the Administration could enforce the statutory provision in respect of a counterparty who was a prescribed person outside Hong Kong, or where the transaction was entered into outside Hong Kong, as, under such circumstances, the counterparty or the transaction might be subject to the laws of the other jurisdictions.</p> <p>The Administration confirmed that there was a legal obligation for the prescribed person to report the transactions made outside Hong Kong.</p>	
010331 – 010533	Chairman Administration	<p>The Chairman sought clarification on whether there was a specific point of time or period, in respect of which the sum of the notional amount of outstanding OTC derivative transactions was calculated for the purpose of qualifying for exemption from mandatory reporting.</p> <p>The Administration explained that a prescribed person would be exempt from the mandatory reporting requirements so long as the sum of the notional amount of the relevant OTC derivative transactions that were outstanding at any time did not exceed US\$30 million.</p>	
010534 – 010907	Chairman Mr NG Leung-sing Administration	<p>Mr NG Leung-sing asked for clarification on the time when the above-mentioned upper limit for qualifying for exemption was set at US\$30 million.</p> <p>The Administration explained that the amount was proposed during the consultation stage and was supported by the relevant sectors.</p>	
010908 – 011131	Chairman Administration	<p><i>Rule 19</i></p> <p>The Chairman sought clarification on the difference between "concession period" and "grace period".</p> <p>The Administration explained that –</p>	

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		<p>(a) the six-month concession period was introduced to allow the prescribed person to carry out system enhancement to meet the new mandatory reporting requirements. Transactions made during this period would not need to be reported by T+2 but must be reported by the end of the grace period; and</p> <p>(b) the grace period, which was three months after the concession period, was to complete any backloading, i.e. to report: (i) transactions that had been entered into before the subsidiary legislation came into operation but had not yet matured at that time; and (ii) transactions entered into during the concession period.</p>	
011132 – 011810	Chairman Administration	<p>The Chairman sought clarification on the nature of the repository managed by the Administration for maintaining transaction records.</p> <p>The Administration advised that –</p> <p>(a) the trade repository was established by the MA as a centralized registry of electronic records of transactions; and</p> <p>(b) the establishment and operation of the trade repository for OTC derivative transactions were referred to in Rule 21.</p>	
011811 – 012022	Chairman Administration	<p><i>Rule 26</i></p> <p>The Chairman sought information on the jurisdictions which prohibited the submission of counterparty identifying particulars when the reporting entity reported particulars of a counterparty to a specified OTC derivative transaction.</p> <p>The Administration explained that –</p> <p>(a) 18 jurisdictions had data privacy laws which prohibited a prescribed person from revealing particulars of counterparties to specified OTC derivative transactions that would be designated by the Securities and Futures Commission ("SFC") with the MA's consent for the purposes of the masking relief; and</p>	

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		<p>(b) other jurisdictions such as Singapore, the United States and Australia provided similar masking relief which allowed reporting entities to submit counterparty masking particulars instead of counterparty identifying particulars in relation to a counterparty to a specified OTC derivative transaction.</p>	
012023 – 012948	Chairman Mr NG Leung-sing Administration	<p>Mr NG Leung-sing sought clarification on whether a prescribed person could decide on his/her own whether to mask the particulars of a counterparty (on the basis of Rule 26(1)(a)) when submitting transaction information to the MA.</p> <p>The Administration explained that –</p> <p>(a) a prescribed person could only mask the particulars of a counterparty subject to the conditions specified in Rule 26(1)(a); and</p> <p>(b) if the prescribed person was unable to provide counterparty identifying particulars due to data privacy laws of a jurisdiction other than those designated by the SFC with the MA's consent under the Rules, the prescribed person could write to the SFC to state the reason, supported by legal opinion, why a particular jurisdiction should also be added to the list of jurisdictions so designated.</p> <p><i>Rule 25</i></p> <p>Mr NG Leung-sing commented that Rule 25(3) was ambiguous as it might somehow give the impression that when more than one subsequent event occurred on the same day, the reporting entity was only required to submit the transaction information once for that day and it was unclear which one of the events the reporting entity should report.</p> <p>The Administration explained Rule 25(3) as drafted aimed to provide flexibility in reporting as some prescribed persons may report subsequent events one by one each day while others may report such events summarily once a day.</p>	

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013028 – 013445	Chairman Administration	<p><i>Rule 27</i></p> <p>The Chairman asked why the Reporting Rules only required a prescribed person to keep records in relation to a transaction for not less than five years, whereas in other similar legislation, the normal requirement for record-keeping was for a period of at least seven years.</p> <p>The Administration explained that the five-year period record-keeping requirement was concluded in response to the feedback received during public consultation, as the finance and banking sectors suggested that the requirement should be consistent with international practice.</p>	
013446 – 013617	Chairman Mr Christopher CHEUNG Administration	<p><i>Rule 30</i></p> <p>Mr Christopher CHEUNG asked for how long the records specified in Rule 29(1) should be kept by a prescribed person.</p> <p>The Administration explained that, as required under Rule 27, the records should be kept for not less than five years after the maturity or termination of the transaction.</p>	
013618 – 013814	Chairman Administration	<p><i>Rule 32</i></p> <p>The Chairman asked what institutions would be regarded as "specified subsidiary".</p> <p>The Administration explained that –</p> <ul style="list-style-type: none"> (a) at present, no institution fell within the scope of "specified subsidiary" for the purpose of Part 4 of the Report Rules; and (b) Rule 32 was designed to avoid large licensed institutions (e.g. banks) to circumvent the statutory requirements by conducting their transactions through their subsidiaries. 	
013815 – 014142	Chairman Administration	<p>In response to the Chairman, the Administration explained that any new product classes to be subject to the mandatory reporting requirement in future could be added to the Reporting Rules by amendments to Part 3 of Schedule 1.</p>	

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014143 – 014208	Chairman Administration	<p><u>Securities and Futures (Stock Markets, Futures Markets and Clearing Houses) Notice (L.N. 97 of 2015)</u></p> <p><i>Schedule</i></p> <p>The Chairman sought clarification on whether transactions carried out in the stock markets and futures markets listed in Part 1 of the Schedule would not be subject to the mandatory reporting requirements.</p> <p>The Administration confirmed that transactions carried out in those markets did not fall within the meaning of OTC derivative transactions and were therefore not subject to the mandatory reporting requirement.</p>	
014209 – 014506	Chairman Assistant Legal Adviser 4 ("ALA4") Administration	<p>ALA4 drew members' attention to the different ways in which prescribed markets in Part 1 of the Schedule were specified: (i) some were identified by reference to both the market operator and the market; and (ii) some by reference to the market operator only.</p> <p>The Administration referred members to its letter dated 27 May 2015 (LC Paper No. CB(1)975/14-15(02)) and explained that, as not all markets had official or legal names, it was considered more reliable to list the markets by reference to their operators. The Administration advised that some of the market operators operated traditional exchanges as well as other types of trading platforms, such as multilateral trading facilities. These markets were identified in the Schedule by reference to both the market operator and the market. As some market operators only operated traditional exchanges, it was sufficient to identify by reference to the market operators only.</p>	
014507 – 014627	Chairman Administration	<p>The Chairman declared that the Subcommittee had completed clause-by-clause examination of the three pieces of subsidiary legislation relating to OTC derivative transactions.</p> <p>Meeting arrangements</p>	