

立法會
Legislative Council

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by the Administration)

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**Subcommittee on Banking (Disclosure) (Amendment) Rules 2016 and
Banking (Specification of Class of Exempted Charges) (Amendment) Notice 2016**

**Minutes of first meeting
held on Thursday, 19 January 2017, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon CHAN Chun-ying (Chairman)
Hon WONG Ting-kwong, SBS, JP
Hon YIU Si-wing, BBS
Dr Hon KWOK Ka-ki
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon YIU Chung-yim
- Member attending** : Hon WU Chi-wai, MH
- Public Officers attending** : **For item II**
Financial Services and the Treasury Bureau
Ms Eureka CHEUNG
Principal Assistant Secretary (Financial Services)5
Mr Henry YIM
Assistant Secretary (Financial Services)(5)2
Hong Kong Monetary Authority
Ms Karen Deborah KEMP, JP
Executive Director (Banking Policy)

Mr Richard CHU
Head (Banking Policy)B

Mr Andy CHEUNG
Senior Manager (Banking Policy)A3

Department of Justice

Miss Emma WONG
Senior Government Counsel

Mr Manuel NG
Senior Government Counsel

Mr WONG Lok-king
Government Counsel

Clerk in Attendance : Ms Angel SHEK
Chief Council Secretary (1)1

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Ms Doris LO
Senior Council Secretary (1)1

Miss Mandy POON
Legislative Assistant (1)1

Action

I. Election of Chairman

Mr WONG Ting-kwong, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Subcommittee. He invited nominations for the chairmanship of the Subcommittee.

2. Mr CHAN Chun-ying was nominated by Mr YIU Si-wing and the nomination was seconded by Dr KWOK Ka-ki. Mr CHAN Chun-ying accepted the nomination. There being no other nominations, Mr CHAN Chun-ying was declared Chairman of the Subcommittee.

3. Members agreed that there was no need to elect a Deputy Chairman.

Action

II. Meeting with the Administration

- | | |
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| (L.N. 195 of 2016 | — Banking (Disclosure) (Amendment) Rules 2016 |
| L.N. 196 of 2016 | — Banking (Specification of Class of Exempted Charges) (Amendment) Notice 2016 |
| <i>(issued by the Financial Services and the Treasury Bureau and Hong Kong Monetary Authority on 28 December 2016)</i> | — Legislative Council Brief |
| LC Paper No. LS22/16-17 | — Legal Service Division Report |
| LC Paper No. CB(1)448/16-17(01) | — Marked-up copy of relevant provisions to be amended by the subsidiary legislation prepared by the Legal Service Division (Restricted to members) |
| LC Paper No. CB(1)448/16-17(02) | — Background brief prepared by the Legislative Council Secretariat) |

Discussion

4. The Subcommittee deliberated (index of proceedings attached at the **Annex**).
5. Members agreed that there was no need to invite views from the public on the Banking (Disclosure) (Amendment) Rules 2016 ("BDAR 2016") and Banking (Specification of Class of Exempted Charges) (Amendment) Notice 2016 ("the Amendment Notice").

Action

III. Any other business

Legislative timetable

6. The Chairman concluded that the Subcommittee had completed scrutiny of BDAR 2016 and the Amendment Notice, and would not move amendments to them. To enable the Subcommittee to report its deliberations to the House Committee before the deadline for giving notice of motion to amend the said two pieces of subsidiary legislation, members agreed that the Chairman would move a motion at the Council meeting of 8 February 2017 to extend the scrutiny period of the subsidiary legislation to the Council meeting of 1 March 2017. Upon extension of the scrutiny period, the deadline for giving notice of motion to amend the two pieces of subsidiary legislation would be 22 February 2017. The Chairman would report the Subcommittee's deliberations to the House Committee at its meeting on 10 February 2017.

(Post-meeting note: At the Council meeting of 8 February 2017, the motion to extend the scrutiny period of BDAR 2016 and the Amendment Notice to the Council meeting of 1 March 2017 was passed.)

7. There being no other business, the meeting ended at 9:55 am.

Council Business Division 1
Legislative Council Secretariat
14 February 2017

**Subcommittee on Banking (Disclosure) (Amendment) Rules 2016 and
Banking (Specification of Class of Exempted Charges) (Amendment) Notice 2016**

**Proceedings of the first meeting
on Thursday, 19 January 2017, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I — Election of Chairman</i>			
000211 - 000511	Mr WONG Ting-kwong Mr YIU Si-wing Dr KWOK Ka-ki Mr CHAN Chung-ying	Election of Chairman	
<i>Agenda Item II — Meeting with the Administration</i>			
000512 - 000649	Chairman	Opening remarks	
000650 - 001229	Chairman Administration	Briefing by the Administration on the Banking (Disclosure) (Amendment) Rules 2016 ("BDAR 2016") and Banking (Specification of Class of Exempted Charges) (Amendment) Notice 2016 ("the Amendment Notice") [Legislative Council Brief (File Ref: B&M/2/1/63C)]	
001230 - 003349	Chairman Dr KWOK Ka-ki Administration	Dr KWOK Ka-ki enquired about: (a) whether the exemption under the Amendment Notice on charges relating to the provision of initial margin for over-the-counter ("OTC") derivatives transactions from the existing limitations imposed under the Banking Ordinance (Cap. 155) on the creation by an authorized institution ("AI") of security in the form of charges over the AI's assets, as well as any exemptions from the revised disclosure requirements under BDAR 2016, would undermine protection of the interests of depositors of the AI and investors of the OTC derivatives; and (b) whether the Administration had consulted the public on BDAR 2016 and the Amendment Notice. The Administration explained that: (a) under the margin and risk mitigation standards	

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		<p>promulgated by the Basel Committee on Banking Supervision ("BCBS") and/or the International Organisation of Securities Commissions ("the margin and risk mitigation standards"), which would be implemented in Hong Kong, the contracting parties to an OTC derivatives transaction were required to exchange initial margin with each other ("initial margin") with a view to reducing counterparty risks;</p> <p>(b) taking into account the industry's concern that the exchange of initial margin would create a "charge" as defined under section 119A(1) of Cap. 155, and thus had implications for AIs' compliance with the limitations under section 119A(2) which prohibited an AI from creating charges under certain circumstances (e.g. if the aggregate value of all charges existing over its total assets is 5% or more of the value of those total assets), the Monetary Authority ("MA") considered it necessary to exempt, by way of the Amendment Notice, charges relating to the provision of initial margin from the said prohibition, up to a value equivalent to 5% of an AI's total assets;</p> <p>(c) the revised disclosure requirements under BDAR 2016 would be applicable to locally incorporated AIs, and BDAR 2016 introduced an exemption for AIs that had not commenced business; and</p> <p>(d) given that BDAR 2016 and the Amendment Notice aimed at implementing internationally agreed regulatory standards for strengthening the banking sector's resilience, the Administration had consulted the relevant stakeholders in line with the established practice.</p> <p>In response to the Chairman's and Dr KWOK's enquiries, the Administration advised that the initial margin posted/collected by an AI must be segregated from the AI's assets and might be held by an unaffiliated custodian appointed by the AI. While AIs were given the flexibility to choose the custodians, it was common among AIs to engage international clearing houses (e.g. Euroclear) as custodians of the initial margin.</p>	

Time marker	Speaker	Subject(s)	Action required
003350 - 004705	Chairman Dr YIU Chung-yim Mr YIU Si-wing Administration	<p>Mr YIU Si-wing enquired about AIs' views regarding the new quarterly disclosure requirements, and the potential compliance burden on AIs.</p> <p>Dr YIU Chung-yim relayed the concern of some AIs about adapting to the revised disclosure requirements.</p> <p>The Chairman enquired if there would be sufficient time for AIs to prepare for the implementation of the revised disclosure requirements.</p> <p>The Administration explained the purposes of the legislative amendments and the consultation process, and pointed out that:</p> <ul style="list-style-type: none"> (a) the quarterly disclosure requirements to be introduced were meant to address the lack of quarterly disclosure in Hong Kong of certain key regulatory capital and leverage ratios (and their constituent components), as identified by BCBS; (b) it was envisaged that such quarterly disclosure requirements would not create much burden to AIs as they were relatively limited in number and scope and the relevant information should already be available to AIs. Some AIs might need to upgrade their information technology systems to cater for the revised disclosure requirements but this would not involve substantial costs; (c) upon implementation of BDAR 2016, a set of standard templates would be used by AIs for making disclosures; and (d) given the long lead time between consultation and commencement of the revised disclosure requirements, AIs should be well-prepared for adjusting to the requirements. <p>Regarding Mr YIU Si-wing's enquiry on verification of the information disclosed by AIs, the Administration advised that pursuant to section 6(5) of the Banking (Disclosure) Rules (Cap. 155M), an AI was required to lodge a copy of its disclosure statement with MA before publishing the statement. Further, section 8 of Cap. 155M as amended by BDAR 2016 required</p>	

Time marker	Speaker	Subject(s)	Action required
		the board of directors (or a committee designated by the board) and senior management of an AI to ensure that the information being disclosed was subject to scrutiny and internal review such that the information was not false or misleading in any material respect.	
<p><i>Examination of the provisions of BDAR 2016 (L.N. 195 of 2016)</i> [Marked-up copy of relevant provisions to be amended by the subsidiary legislation prepared by the Legal Service Division (LC Paper No. LC Paper No. CB(1)448/16-17(01)]</p>			
004706 - 011229	Chairman Dr YIU Chung-yim Administration	<p><u>Banking (Disclosure) (Amendment) Rules 2016 (L.N. 195 of 2016)</u></p> <p><i>1 – Commencement</i></p> <p><i>2 – Banking (Disclosure) Rules amended</i></p> <p><i>3 – Section 2 amended (interpretation)</i></p> <p><i>4 – Section 3 amended (application)</i></p> <p><i>5 – Section 4 amended (references to authorized institution in Part 2)</i></p> <p><i>6 – Section 5 amended (disclosure policy)</i></p> <p><i>7 – Section 6 amended (medium and location of disclosure and issue of press release)</i></p> <p><i>8 – Section 7 repealed (interaction of other requirements)</i></p> <p><i>9 – Section 8 amended (verification)</i></p> <p><i>10 – Section 11 amended (consolidated group level disclosures)</i></p> <p><i>11 – Section 12 amended (basis of disclosure)</i></p> <p><i>12 – Section 13 repealed (comparative information)</i></p> <p><i>13 – Section 14 substituted</i></p> <p><i>14 – Section 15 amended (group-wide disclosures made by parent bank of authorized institution)</i></p> <p><i>15 – Parts 2A and 2B added</i></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><i>16 – Part 3 heading amended (interim financial disclosures to be made by authorized institutions incorporated in Hong Kong)</i></p> <p><i>17 – Section 17 substituted</i></p> <p><i>18 – Sections 19 to 22 repealed</i></p> <p><i>19 – Section 24 amended (capital disclosures)</i></p> <p><i>20 – Section 24A amended (leverage ratio disclosures)</i></p> <p><i>21 – Section 24B amended (countercyclical capital buffer ratio disclosures)</i></p> <p><i>22 – Section 28 substituted</i></p> <p><i>23 – Section 29 amended (currency risk)</i></p> <p><i>24 – Part 3A heading added</i></p> <p><i>25 – Sections 29A and 29B added</i></p> <p><i>26 – Part 4 heading amended (annual financial disclosures to be made by authorized institutions incorporated in Hong Kong)</i></p> <p><i>27 – Section 31 amended (references to authorized institution in Part 4)</i></p> <p><i>28 – Sections 32, 33 and 34 repealed</i></p> <p><i>29 – Section 35 substituted</i></p> <p><i>30 – Sections 36 to 43 repealed</i></p> <p><i>31 – Sections 45, 45A and 45B repealed</i></p> <p><i>32 – Section 45C amended (disclosure requirements for G-SIBs)</i></p> <p><i>33 – Section 46 amended (general disclosures)</i></p> <p><i>34 – Section 47 substituted</i></p> <p><i>35 – Sections 48, 49 and 50 repealed</i></p> <p><i>36 – Sections 51C and 51D added</i></p>	

Time marker	Speaker	Subject(s)	Action required
		<p>37 – Part 5 repealed (additional annual disclosures to be made by authorized institution using STC approach to calculate its credit risk for non-securitization exposures)</p> <p>38 – Part 6 repealed (additional annual disclosures to be made by authorized institution using BSC approach to calculate its credit risk for non-securitization exposures)</p> <p>39 – Part 7 repealed (additional annual disclosures to be made by authorized institution using IRB approach to calculate its credit risk for non-securitization exposures)</p> <p>40 – Section 87 amended (references to authorized institution, etc. in Part 8)</p> <p>41 – Section 92A added</p> <p>42 – Section 96 amended (provisions supplementary to section 94: derivative transactions)</p> <p>43 – Section 101 substituted</p> <p>Dr YIU chung-yim sought clarifications regarding:</p> <p>(a) the relevant provisions for enforcement against non-compliance with the revised disclosure requirements, including the verification requirements under section 8 of Cap. 155M as amended by BDAR 2016;</p> <p>(b) the legislative effect of the new section 12(2)(b) of Cap. 155M; and</p> <p>(c) whether there were any guidelines for MA to determine whether an AI "would be capable of having a significant impact on the effective working and stability of the global financial system were the institution to become non-viable" for exercising the power under the new section 45C(2A)(b) of Cap. 155M to require the AI to disclose information regarding its systemic importance.</p> <p>The Administration explained that:</p> <p>(a) contravention of the revised disclosure requirements would constitute a criminal</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>offence by the directors and senior officials of an AI pursuant to section 60A of Cap. 155;</p> <p>(b) the effect of the new section 12(2)(b) of Cap. 155M was to add a disclosure requirement obliging an AI to disclose the fact that it was exempted, under the Banking (Capital) Rules (Cap. 155L), (where this was the case) from the requirement to calculate its capital requirements or capital charge for its credit risk, market risk or operational risk (as the case required); and</p> <p>(c) MA would be required, as a public officer, to act reasonably and in line with the objectives of Cap. 155 when considering whether an AI would be capable of having a global systemic impact and would consider an AI's characteristics including its risk profile and business before exercising his powers to direct an AI to disclose information regarding its systemic importance. The banking industry had raised no particular views on the new section 45C(2A)(b) of Cap. 155M.</p>	
<p><i>Examination of the provisions of the Amendment Notice (L.N. 196 of 2016)</i> [Marked-up copy of relevant provisions to be amended by the subsidiary legislation prepared by the Legal Service Division (LC Paper No. LC Paper No. CB(1)448/16-17(01)]</p>			
011230 - 012519	Chairman Dr YIU Chung-yim Mr WU Chi-wai Administration Assistant Legal Adviser 8 ("ALA8")	<p><u>Banking (Specification of Class of Exempted Charges)(Amendment) Notice 2016 (L.N. 196 of 2016)</u></p> <p><i>1 – Commencement</i></p> <p><i>2 – Banking (Specification of Class of Exempted Charges) Notice amended</i></p> <p><i>3 – Title substituted</i></p> <p><i>4 – Section 1A added</i></p> <p><i>5 – Section 2 substituted</i></p> <p>ALA8 asked about the reasons for deleting "by an authorized institution incorporated in Hong Kong" after "charges created in favour of Euroclear Bank S.A. (acting as operator of the Euroclear System)" and after "charges created in favour of Clearstream Banking S.A." in the revised section 2 of the Banking (Specification of Class of Exempted Charges) Notice (Cap. 155K).</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration responded that the deletion was meant to simplify the drafting.</p> <p>In response to Dr YIU Chung-yim's enquiry, the Administration explained how the standard templates for making disclosure as prescribed by the 2015 Basel Package would be specified by MA under Cap. 155M and hence become mandatory for AIs under BDAR 2016.</p> <p>In response to Mr WU Chi-wai's enquiry about the monitoring of build-up of exposures to OTC derivatives transactions conducted by AIs, the Administration advised that under the current regulatory regime for the OTC derivatives markets, there were mandatory clearing and reporting requirements for interest rate swaps and non-deliverable forwards transacted in Hong Kong.</p>	
<i>Agenda Item III — Any other business</i>			
012520 - 012653	Chairman	Extension of scrutiny period and legislative timetable	