

立法會
Legislative Council

LC Paper No. CB(1)1266/17-18
(These minutes have been seen
by the Administration)

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**Subcommittee on Securities and Futures (Professional Investor)
(Amendment) Rules 2018**

**Minutes of the first meeting on
Friday, 1 June 2018, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

- Members present** : Hon Holden CHOW Ho-ding (Chairman)
Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, GBS, JP
Hon Kenneth LEUNG
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon CHIANG Lai-wan, JP
Hon CHAN Chun-ying
- Public officers attending** : Miss Carrie CHANG
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)1

Miss Renita AU
Assistant Secretary for Financial Services and the
Treasury (Financial Services)(1)1
- Attendance by Invitation** : Ms Joanne LI
Director (Intermediaries Supervision, Intermediaries)
Securities and Futures Commission

Ms Elise CHEUNG
Manager (Intermediaries Supervision, Intermediaries)
Securities and Futures Commission

Ms Sandra KING
Senior Legal Consultant (Legal Services Division)
Securities and Futures Commission

Ms Valerie CHAN
Assistant Counsel (Legal Services Division)
Securities and Futures Commission

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

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 4

Miss Sharon LO
Senior Council Secretary (1)9

Ms Sharon CHAN
Legislative Assistant (1)4

Ms Vivian CHAN
Clerical Assistant (1)4

Action

I Election of Chairman (and Deputy Chairman)

Election of Chairman

Mr Abraham SHEK, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Subcommittee and invited nominations for the chairmanship.

2. Mr Holden CHOW was nominated by Dr CHIANG Lai-wan and the nomination was seconded by Mr CHAN Chun-ying. Mr Holden CHOW accepted the nomination. There being no other nominations, Mr Abraham SHEK declared that Mr Holden CHOW was elected the Chairman of the Subcommittee. Mr CHOW then took the chair.

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

Action

II Meeting with the Administration

(issued by the Securities and Futures Commission on 16 May 2018) — Legislative Council Brief

L.N. 99 of 2018 — Securities and Futures
(Professional Investor)
(Amendment) Rules 2018

LC Paper No. LS61/17-18 — Legal Service Division Report

LC Paper No. CB(1)1053/17-18(01) — Marked-up copy of the
Securities and Futures
(Professional Investor)
(Amendment) Rules 2018
prepared by the Legal Service
Division (Restricted to
members only)

LC Paper No. CB(1)1053/17-18(02) — Background brief prepared by
the Legislative Council
Secretariat)

Discussion

4. Mr Abraham SHEK, Dr CHIANG Lai-wan and Mr CHAN Chun-ying declared that they had a portfolio meeting the monetary threshold to qualify as an individual professional investor ("PI"). Mr Christopher CHEUNG said that he had rich investment experience but was not sure if he was a PI.

5. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

6. The Administration and the Securities and Futures Commission ("SFC") were requested to provide:

- (a) a table listing out the circumstances under which a holding company and the subsidiaries of a holding company could qualify as a PI, including a corporation as defined under the existing paragraph (i) of

Action

the definition of PI under Section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

- (b) information on the procedures an intermediary was required to take in ascertaining whether a corporation qualified as a PI (e.g. how an intermediary could determine the investment experience and investment objectives of a corporation, the parties involved in the suitability assessment, etc.);
- (c) a table comparing the differences in investment choices between PIs and non-PIs;
- (d) information on the measures adopted by the Administration and SFC to enhance investor protection (in respect of PIs and non-PIs) after the Lehman Brothers incident (e.g. enhancement in the know-your-client procedures); and
- (e) clarification on whether, and if so how, the portfolio under an investment-linked assurance scheme owned by an individual would be taken into account in calculating the individual's portfolio when ascertaining whether he/she met the monetary threshold as a PI.

7. The Administration and SFC were requested to provide response to a member's view that a holding company should not be regarded as a PI only if it wholly owned another corporation which had been ascertained to have met the asset or portfolio threshold to be qualified as a PI because the shareholding structure of the holding company might not be the same as its wholly owned subsidiary.

(Post meeting note: The written responses were issued to members vide LC Paper No. CB(1)1104/17-18(02) on 11 June 2018.)

(At 12:21 pm, noting that the Panel on Education which was concurrently holding a meeting in Conference Room 3 called for a division, the Chairman ordered that the meeting be suspended to enable Panel members to vote at the said meeting. The meeting resumed at 12:25 pm.)

Action

III Any other business

Date of next meeting

8. The Chairman informed members that the next meeting was tentatively scheduled for 12 June 2018, at 8:30 am.

(Post-meeting note: The second meeting was scheduled for 12 June 2018 to meet with the Administration. The notice of meeting was issued vide LC Paper No. CB(1)1063/17-18 on 4 June 2018.)

Legislative timetable

9. The Subcommittee noted that the scrutiny period of the Securities and Futures (Professional Investor) (Amendment) Rules 2018 ("the Amendment Rules") would expire at the Council meeting of 20 June 2018. To allow sufficient time for the Subcommittee to study the Amendment Rules, members agreed that the Chairman would move a motion at a Council meeting to extend the scrutiny period to the Council meeting of 11 July 2018. Members noted that, upon extension of the scrutiny period, the deadline for giving notice of motion to amend the Amendment Rules would be 4 July 2018.

(Post-meeting note: The Chairman has given notice to move a proposed resolution at the Council meeting of 13 June 2018 to extend the scrutiny period of the Amendment Rules to the Council meeting of 11 July 2018.)

10. There being no other business, the meeting ended at 12:33 pm.

Council Business Division 1
Legislative Council Secretariat
13 July 2018

**Proceedings of the first meeting of
the Subcommittee on Securities and Futures
(Professional Investor) (Amendment) Rules 2018
on Friday, 1 June 2018, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
Agenda item I — Election of Chairman (and Deputy Chairman)			
000427 – 000528	Mr Abraham SHEK Mr Christopher CHEUNG Dr CHIANG Lai-wan Mr CHAN Chun-ying	Declaration of interests	
000529 – 000622	Mr Abraham SHEK Dr CHIANG Lai-wan Mr CHAN Chun-ying Mr Holden CHOW	Election of Chairman	
Agenda item II — Meeting with the Administration			
000623 – 000949	Chairman Administration the Securities and Futures Commission ("SFC")	Briefing by the Administration and SFC on the Securities and Futures (Professional Investor) (Amendment) Rules 2018 ("the Amendment Rules") [Legislative Council Brief issued by SFC on 16 May 2018]	
000950 – 001431	Chairman Mr CHAN Chun-ying Administration SFC	Mr CHAN's enquiries about – (a) whether SFC would grant further modifications of the requirements of the Securities and Futures (Professional Investor) Rules (Cap. 571D) ("PI Rules") after the Amendment Rules came into effect; and (b) whether SFC would review the monetary thresholds of \$8 million (for a portfolio) and \$40 million (for total assets) respectively for an individual and a corporation to qualify as a professional investor ("PI") given the	

Time Marker	Speaker	Subject(s)	Action Required
		<p>escalating property prices in recent years and that an individual/a corporation holding a property could easily become a PI.</p> <p>SFC advised that –</p> <ul style="list-style-type: none"> (a) around 40 modifications had been granted in recent years under section 134 of the Securities and Futures Ordinance (Cap. 571) ("SFO") to improve the operational efficiency of the PI Rules. The modifications were considered suitable for standardization and their general application to the market would not compromise investor protection; (b) SFC had no intention to grant new modifications after the present exercise of amending the PI Rules; (c) real property was not included in the definition of "portfolio" in ascertaining whether an individual met the monetary threshold of \$8 million to qualify as a PI; and (d) during SFC's consultations conducted in 2009 and 2014, there was no feedback requesting for a review of the monetary thresholds for prescribing PIs. 	
001432 – 001956	Chairman Mr Christopher CHEUNG Administration SFC	Mr CHEUNG asked whether SFC would consider an individual's investment experience in determining whether he/she could qualify as a PI instead of simply adopting the monetary threshold of \$8 million. He was concerned that investors with rich investment experience but did not meet the \$8 million monetary threshold were restricted in their investment choices.	

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		<p>SFC responded that –</p> <ul style="list-style-type: none"> (a) under the PI Rules, any individual having a portfolio of not less than \$8 million could qualify as a PI regardless of his/her investment experience; (b) the current definition of PI (i.e. investors with wealth meeting the relevant monetary thresholds set out in the PI Rules) was clear and simple, widely accepted by the market and easy for intermediaries to follow; and (c) according to the Code of Conduct for Persons Licensed by or Registered with SFC ("Code of Conduct"), an intermediary, when providing services to a client (including an individual or a corporate PI), should seek information from the client. Such information should include the financial situation, investment experience and investment objectives of the client. 	
001957 – 002405	Chairman Mr Kenneth LEUNG Administration SFC	<p>Mr LEUNG sought information on the investment choices available for PIs and non-PIs, in particular if non-PIs could invest in over-the-counter ("OTC") derivatives.</p> <p>SFC explained that –</p> <ul style="list-style-type: none"> (a) PIs could invest in products that were not authorized by SFC, such as private placements of unauthorized funds; (b) sections 103, 174 and 175 of SFO provided that certain requirements imposed on intermediaries might be dis-applied when they served PIs. The requirements which might be dis-applied included an offer should not be made unless the issue was authorized by SFC, an offer should be accompanied by an offering document 	

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		<p>containing specified information, etc.; and</p> <p>(c) both PIs and non-PIs could invest in OTC derivatives that were authorized by SFC.</p>	
002406 – 003234	Chairman Mr Abraham SHEK Administration SFC	<p>Mr SHEK pointed out that the Lehman Brothers incident had exposed the loophole that many victims were treated by banks as PIs without their knowledge, and such victims had difficulties in seeking compensation from the banks. He considered that the Administration and SFC should review the \$8 million monetary threshold for individual PIs. He also urged the Administration and SFC to enhance protection for PIs and non-PIs, in particular ensuring the proper conduct of the know-your-client procedures by intermediaries.</p> <p>The Administration and SFC said that –</p> <p>(a) SFC had introduced various measures to enhance investor protection after the Lehman Brothers incident, including imposing requirements on intermediaries to disclose certain information when making investment offers to clients;</p> <p>(b) the Code of Conduct required intermediaries to ensure the suitability of a financial product for a client (regardless of whether the client was a PI or non-PI) when they solicited the sale of or recommended the product to the client;</p> <p>(c) the Investor Education Centre was established in 2012 to provide financial education to the public and enhance their investment knowledge; and</p> <p>(d) the Administration and SFC would keep in view the development of PI</p>	

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		<p>regime in light of the operational experience and consider the need for reviewing the monetary thresholds where necessary.</p>	
003235 – 003724	Chairman Administration SFC	<p>The Chairman sought clarification on –</p> <p>(a) whether an investment-linked assurance scheme purchased by an individual would be taken into account in calculating the monetary threshold for an individual PI; and</p> <p>(b) whether there would be any timeframe for a corporation in meeting the proposed criterion on having "principal business in investment holding" to qualify as a corporate PI, including if a newly set up corporation holding \$40 million of assets could qualify as a PI.</p> <p>SFC advised that –</p> <p>(a) insurance products were not counted towards the portfolio threshold of individual PIs. According to the definition of "portfolio" under the PI Rules, the term only covered securities, certificates of deposits issued by banks or money held by custodians for an individual; and</p> <p>(b) a corporation would qualify as a PI if, at the relevant date on which an offer was made, it had assets of not less than \$40 million or a portfolio of not less than \$8 million and its principal business was investment holding and was wholly owned by one or more PIs.</p>	The Administration to take action as per paragraph 6(e) of the minutes
003725 – 004916	Chairman Mr James TO Administration SFC	<p>Mr TO's views and requests as follows –</p> <p>(a) investor protection would become an issue with more people qualifying as PIs pursuant to the Amendment Rules;</p>	

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		<p>(b) the situation that individual investors with rich investment experience but not meeting the portfolio threshold of \$8 million could not be regarded as PIs would be a valid concern, as their investment choices would be unreasonably restricted;</p> <p>(c) SFC should list out in a table the circumstances under which a holding company and its subsidiaries could qualify as a PI, including a corporation as defined under the existing paragraph (i) of the definition of PI under Section 1 of Part 1 of Schedule 1 to SFO; and</p> <p>(d) it was inappropriate to regard a company as a PI merely because it wholly owned another corporation which had been ascertained to have met the monetary threshold to be qualified as a PI, because the shareholding structure of the holding company might not be the same as its wholly owned subsidiary.</p> <p>SFC said that –</p> <p>(a) it had adopted a package of measures to enhance investor protection after the Lehman Brothers incident, including requiring the provision of product key facts statements summarizing the key features and risks of investment products, requiring issuers to provide a post-sale "cooling-off" period for investors, strengthening conduct requirements for intermediaries to enhance practices in the selling of investment products, etc.;</p> <p>(b) SFC had also stepped up inspection on intermediaries and conducted a mystery shopper programme to ensure intermediaries' compliance with the guidelines during the sales process;</p>	<p>The Administration to take action as per paragraph 6(a) of the minutes</p> <p>The Administration to take action as per paragraph 7 of the minutes</p>

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		<p>(c) the proposal to allow a corporation ("the holding company") to qualify as a PI if it wholly owned another corporation which had met the threshold as a PI had been made in response to views collected during SFC's consultations;</p> <p>(d) SFC noted that it might be difficult to ascertain the assets of the holding company mentioned in (c) above when the company was an offshore company which was not required to prepare an audited financial statement. Since a holding company had control over the assets or portfolios held by a wholly-owned subsidiary, SFC considered that the proposal to expand the categories of PI to include such holding companies was a natural extension of the existing categories of PI;</p> <p>(e) intermediaries would still be subject to the suitability requirement when making an offer to PIs; and</p> <p>(f) directors or shareholders of a corporation were reminded to review its corporate governance structure, in particular to ensure that the shareholders would be properly informed of the implications on them if and when the corporation qualified as a PI.</p>	
004917 – 005243	Chairman Mr Christopher CHEUNG Administration SFC	Mr CHEUNG re-iterated that a sophisticated investor not meeting the \$8 million monetary threshold should be allowed to invest in securities listed in the Stock Exchange of Hong Kong ("SEHK"), including securities of biotech companies and emerging and innovative companies with weighted voting right ("WVR") structures.	

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005244 – 005751	Chairman Mr Kenneth LEUNG Administration SFC	<p>Mr LEUNG sought clarification on whether non-PIs could invest in securities listed in SEHK, and whether time deposits would be taken into account when calculating the portfolio threshold of \$8 million for individual PIs. He also enquired about the reasons for the proposal of allowing the portfolio held in a joint account with non-associates to be included in the calculation of the monetary thresholds for individual PIs and corporate PIs.</p> <p>SFC advised that –</p> <ul style="list-style-type: none"> (a) both PIs and non-PIs could invest in securities listed in SEHK; (b) time deposits (i.e. certificates of deposits issued by an authorized financial institution or a bank) was included in the definition of "portfolio" when calculating the monetary threshold of \$8 million; (c) under the existing PI Rules, an individual would qualify as a PI if he/she, either alone or held in a joint account with his/her spouse and children (i.e. his/her associates), had a portfolio of not less than \$8 million; (d) intermediaries had pointed out that it was common for an individual to set up a joint account with family members (e.g. siblings and parents) other than associates, or with business partners; and (e) an individual's share of a portfolio on a joint account with persons other than his/her associates would be the individual's share as specified in a written agreement among the account holders, or in the absence of such agreement, an equal share of the portfolio. 	

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005752 – 010426	Chairman Mr CHAN Chun-ying Administration SFC	<p>Mr CHAN enquired about the measures to enhance protection for PIs after the Lehman Brothers incident, and how the Administration/SFC would strengthen investor education to enhance investors' understanding of their rights and risks involved in becoming PIs.</p> <p>SFC responded that the following measures had been implemented –</p> <p>(a) the suitability requirement on intermediaries was still applicable though intermediaries could dis-apply certain requirements when they served PIs;</p> <p>(b) a new clause must be incorporated in a client agreement indicating that the financial products offered by the intermediary were reasonably suitable for the investor (including PI) concerned having regard to the investor's financial situation, investment experience and investment objectives; and</p> <p>(c) publication of a Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products.</p>	
010427 – 011046	Chairman Mr James TO Administration SFC	<p>Mr TO requested information on –</p> <p>(a) the procedures an intermediary was required to take in ascertaining whether a corporation qualified as a PI (e.g. how an intermediary could determine the investment experience and investment objectives of a corporation, the parties involved in the suitability assessment, etc.); and</p> <p>(b) the comparison in the investment choices available to PIs and non-PIs, in particular if non-PIs could invest in</p>	<p>The Administration to take action as per paragraph 6(b) of the minutes</p> <p>The Administration to take action as per paragraph 6(c) of</p>

Time Marker	Speaker	Subject(s)	Action Required
		securities of higher risk such as securities of biotech companies.	the minutes
011047 – 011604	Chairman Administration SFC	The Chairman requested the Administration and SFC to provide information on the measures adopted to enhance investor protection after the Lehman Brothers incident, in particular enhancements in regulation of investment products and the know-your-client procedures.	The Administration to take action as per paragraph 6(d) of the minutes
011605 – 012005	Chairman Mr Kenneth LEUNG Administration SFC	<p>Mr LEUNG was of the view that the Administration and SFC should conduct another review of the PI Rules, in particular the level of the monetary thresholds of \$8 million and 40 million.</p> <p>The Administration explained that the purpose of the Amendment Rules was to incorporate into the PI Rules the modifications already granted under section 134 of SFO to individual intermediaries, so as to standardize the application of the PI Rules. The Administration and SFC would take note of the views and suggestions of members and keep in view the development of the PI regime, and propose further amendments in the future if necessary.</p>	
012006 – 013223	Chairman Mr James TO Administration SFC	<p>Mr TO's views that the Administration and SFC should seek views from the public and general investors when reviewing the PI Rules.</p> <p>SFC advised that in assessing the suitability of a corporate PI for an investment product, intermediaries had to ensure that –</p> <ul style="list-style-type: none"> (a) the corporate PI had the appropriate corporate governance structure and investment process and controls; (b) the person(s) responsible for making investment decisions on behalf of the corporate PI had sufficient investment knowledge; and 	

Time Marker	Speaker	Subject(s)	Action Required
		(c) the person(s) responsible for making investment decisions for the corporate PI were aware of the risks involved.	
013224 – 014012	Chairman Mr Abraham SHEK Administration SFC	<p>Mr SHEK pointed out that, in general, the investment decision of a corporation would be made in accordance with its corporate governance structure and the decision of its investment committee. He enquired about the rationale for automatically qualifying the holding company as a PI if it wholly owned another corporation which had met the threshold of a PI. He was of the view that the holding company should also be required to meet the relevant monetary threshold.</p> <p>SFC reiterated that –</p> <p>(a) it might be difficult to ascertain the assets or portfolio of a holding company when it was an offshore company which was not required to prepare an audited financial statement. Since a holding company had control over the assets or portfolios held by a wholly-owned subsidiary, SFC considered that the proposal to expand the categories of PI to include such holding companies was a natural extension of the existing categories of PI; and</p> <p>(b) intermediaries would still be subject to the suitability requirement when making an offer to a holding company having PI status.</p>	
014013 – 014429		Suspension of the meeting	
014430 – 014951	Chairman Mr Christopher CHEUNG Administration SFC	Mr CHEUNG sought clarification on whether non-PIs could invest in listed securities of biotech companies and emerging and innovative companies with WVR structures.	

Time Marker	Speaker	Subject(s)	Action Required
		The Administration advised that both PIs and non-PIs could invest in securities listed in SEHK regardless of the nature of the business of the listed companies and their voting right structures.	
Agenda item III — Any other business			
014952 – 015208	Chairman	Legislative timetable and date of next meeting	

Council Business Division 1
Legislative Council Secretariat
13 July 2018