

立法會
Legislative Council

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(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 second meeting on
Tuesday, 12 June 2018, at 8:30 am
in Conference Room 2B 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** : Mr Keith CHOY
Senior Director (Intermediaries Supervision,
Intermediaries)
Securities and Futures Commission

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

Action

I Meeting with the Administration

Matters arising from previous meeting

(LC Paper No. CB(1)1104/17-18(01) — List of follow-up actions arising from the discussion at the meeting on 1 June 2018

LC Paper No. CB(1)1104/17-18(02) — Administration's response to the list of follow-up actions arising from the discussion at the meeting on 1 June 2018)

Action

Other relevant papers

(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)

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

Discussion

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

Follow-up actions to be taken by the Administration

2. Under the Securities and Futures (Professional Investor) (Amendment) Rules 2018 ("PI Amendment Rules"), a corporation would qualify as a professional investor ("PI") if it wholly owned another corporation which had met the portfolio threshold of \$8 million or total assets threshold of \$40 million to qualify as a PI. Some members of the Subcommittee expressed concern about how the shareholders of a corporation (in particular a small and medium sized corporation) would be informed of the consequences and impacts on them when the corporation qualified as a PI, and how an intermediary could become aware of the shareholders' views. The Administration and the Securities and Futures Commission ("SFC") were required to consider some members' suggestions to (a) impose requirements on a corporation to obtain shareholders' agreement for it to become a PI (e.g. through passing a resolution at a general meeting); and/or (b) incorporate requirements in the PI Amendment Rules or the

Action

Code of Conduct for Persons Licensed by or Registered with SFC to obtain documents from the corporation concerned confirming shareholders' agreement for the corporation to become a PI.

3. Under the Securities and Futures (Professional Investor) Rules (Cap. 571D) ("PI Rules"), real property was not included in ascertaining whether an individual met the portfolio threshold of \$8 million for qualifying as a PI but would be counted for ascertaining whether a corporation met the total assets threshold of \$40 million for qualifying as a PI. The Administration and SFC were requested to explain:

- (a) how the value of a property would be assessed in determining the monetary threshold for a corporate PI;
- (b) the rationale for including different classes of assets in calculating the monetary thresholds of individual and corporate PIs; and
- (c) the considerations in aligning the classes of assets in the calculation of the monetary thresholds for individual and corporate PIs.

4. Some members of the Subcommittee had reservations over only adopting the monetary thresholds under the PI Rules for prescribing PIs. The Administration and SFC were requested to respond to members' views/suggestions that individual investors with in-depth knowledge and rich investment experience should qualify as PIs even if they could not meet the monetary threshold of \$8 million, and investors who had received relevant training provided by SFC or intermediaries and passed the relevant examinations could qualify as PIs.

5. With the escalating property prices in recent years, some members of the Subcommittee were concerned that the existing portfolio threshold of \$8 million (for individual and corporate PIs) and total assets threshold of \$40 million (for corporate PIs) under the PI Rules could not provide sufficient protection for investors. These members considered that it was high time for SFC to review the monetary thresholds and adjust the thresholds upward. The Administration and SFC were requested to respond to the members' views above and advise the timetable for the review.

6. The Administration and SFC were requested to respond to a member's views that in order to enhance protection for investors, SFC should strengthen its work in approving investment products, including rating investment products according to their risk levels and advising the suitability of the products for various investors.

Action

7. The Administration and SFC were requested to consider some members' views that the PI Rules should clearly specify that intermediaries could refer to a certificate issued by a lawyer or a statement issued by a bank in ascertaining the portfolio or total assets of a PI (i.e. the new section 8(b) of the PI Rules as added by section 6 of the PI Amendment Rules).

(Post meeting note: The Administration's written responses were issued to members vide LC Paper No. CB(1)1175/17-18(02) on 25 June 2018.)

(At 10:31 am, the Chairman ordered that the meeting be extended for 15 minutes to 10:45 pm. Members agreed.)

II Any other business

Invitation of views

8. Members considered it not necessary for the Subcommittee to meet with deputations for views on the PI Amendment Rules.

Legislative timetable

9. The Chairman concluded that the Subcommittee had completed clause-by-clause examination of the PI Amendment Rules.

10. The Subcommittee noted that the Chairman would move a motion at the Council meeting of 13 June 2018 to extend the scrutiny period of the PI Amendment Rules 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 PI Amendment Rules would be 4 July 2018.

(Post meeting note: The motion moved by the Chairman to extend the scrutiny period was passed at the Council meeting of 20 June 2018.)

11. There being no other business, the meeting ended at 10:44 am.

**Proceedings of the second meeting of
the Subcommittee on Securities and Futures
(Professional Investor) (Amendment) Rules 2018
on Tuesday, 12 June 2018, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
Agenda item I — Meeting with the Administration			
000545 – 001755	Chairman Administration the Securities and Futures Commission ("SFC")	Briefing by SFC on its written responses to issues raised by members at the meeting on 1 June 2018 [LC Paper No. CB(1)1104/17-18(02)]	
001756 – 002640	Chairman Mr James TO SFC	Mr TO noted that under the Securities and Futures (Professional Investor) (Amendment) Rules 2018 ("PI Amendment Rules"), a corporation would qualify as a professional investor ("PI") if it wholly owned another corporation which had met the monetary threshold of \$8 million (portfolio) or \$40 million (total assets) and qualified as a PI. He was concerned how the shareholders of a corporation (in particular a small and medium sized corporation) would be informed of the consequences and impacts on them when the corporation qualified as a PI, and how an intermediary could become aware of the shareholders' views. He asked if SFC would consider (a) imposing requirements on a corporation to obtain shareholders' agreement for it to become a PI (e.g. through passing a resolution at a general meeting); and/or (b) incorporating requirements in the PI Amendment Rules or the Code of Conduct for Persons Licensed by or Registered with SFC ("Code of Conduct") to obtain documents from the corporation concerned confirming shareholders' agreement for the corporation to become a PI.	The Administration to take action as per paragraph 2 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>SFC responded that –</p> <ul style="list-style-type: none"> (a) a holding company had control over the assets or portfolios held by a wholly-owned subsidiary, hence a holding company which wholly owned another corporation meeting the relevant monetary threshold to qualify as PI should also be regarded as having met the relevant monetary threshold to qualify as PI; (b) as part of the know-your-client ("KYC") procedures, an intermediary should collect information about its clients (e.g. their investment experience and knowledge), and the intermediary would still be subject to the suitability requirement when making an offer to PIs; and (c) directors or shareholders of a corporation had been reminded in SFC's consultation conclusions of May 2018 to review the corporate governance structure to ensure that the shareholders would be properly informed of the implications on them if and when the corporation qualified as a PI. 	
002641 – 002915	Chairman SFC	<p>In response to the Chairman's enquiry, SFC advised that –</p> <ul style="list-style-type: none"> (a) according to the Securities and Futures (Professional Investor) Rules (Cap. 571D) ("PI Rules"), "portfolio" covered securities, certificates of deposits issued by banks or money held by custodians for an individual, corporation or partnership; and (b) insurance products, including investment-linked assurance schemes, were not counted towards the portfolio threshold in determining whether an individual qualified as a PI. 	

Time Marker	Speaker	Subject(s)	Action Required
002916 – 003430	Chairman Mr CHAN Chun-ying SFC	<p>Mr CHAN sought clarification or confirmation on whether –</p> <ul style="list-style-type: none"> (a) the PI status of existing PIs would be grandfathered; (b) only existing holding companies which wholly owned another corporation which had met the monetary threshold of \$8 million or \$40 million would qualify as PIs, i.e. the PI status would not be further extended to the parent companies of the aforementioned holding companies; and (c) prior to providing services to a holding company, an intermediary would only be required to obtain confirmation from the authorized person(s) that the shareholders of the holding company had been informed of the company's corporate PI status by reason of its wholly-owned subsidiary meeting the relevant monetary threshold. <p>SFC confirmed that the PI status would not be further extended to the parent companies of the holding companies. SFC would further consider whether, and if so, how intermediaries should be required to ascertain that the shareholders of a holding company had been properly informed of the corporate PI status when the company became a PI pursuant to the PI Amendment Rules.</p>	
003431 – 003837	Chairman Mr Christopher CHEUNG SFC	<p>Mr CHEUNG enquired why PIs were allowed to invest in complex investment products, in particular products that were not authorized by SFC. He was of the view that SFC should strengthen its work in regulating investment products.</p> <p>SFC advised that an intermediary should:</p> <ul style="list-style-type: none"> (a) exercise its professional judgment to assess whether the characteristics and risks of a recommended product were suitable for 	

Time Marker	Speaker	Subject(s)	Action Required
		<p>a client after taking into account the client's relevant circumstances, such as the client's investment objectives and investment knowledge, and (b) make adequate disclosure of the relevant information in its dealings with clients.</p>	
003838 – 004304	<p>Chairman Mr James TO SFC</p>	<p>Mr TO reiterated his views that SFC should consider: (a) imposing requirements on a corporation to obtain shareholders' agreement for it to become a PI; and/or (b) incorporating requirements in the PI Amendment Rules or the Code of Conduct to obtain documents from the corporation concerned confirming shareholders' agreement for the corporation to become a PI.</p> <p>The Chairman was of the view that an intermediary might refer to the resolution passed by a corporation in ascertaining whether the corporation had obtained shareholders' agreement for it to become a PI.</p>	
Clause-by-clause examination of the subsidiary legislation			
004305 – 010155	<p>Chairman Administration SFC Assistant Legal Adviser 4 ("ALA4") Mr James TO Mr Christopher CHEUNG</p>	<p>Securities and Futures (Professional Investor) (Amendment) Rules 2018</p> <p><u>Section 1 – Commencement</u></p> <p><u>Section 2 – Securities and Futures (Professional Investor) Rules amended</u></p> <p><u>Section 3 – Section 2 amended (interpretation)</u></p> <p>In reply to ALA4, the Administration confirmed that the amendments to the English version of section 2 of the PI Rules were editorial amendments.</p> <p>Mr TO enquired about the reason for adding the definition of "public filing" to section 2 of the PI Rules as amended by section 3(3) of the PI Amendment Rules, and how the value of a real property would be assessed in</p>	<p>The Administration to take action as per paragraph 3(a) of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>ascertaining the total assets threshold for a corporate PI.</p> <p>The Administration and SFC advised that –</p> <ul style="list-style-type: none"> (a) the PI Amendment Rules provided that alternative forms of evidence, namely public filings and certificates issued by custodians would be used as allowable forms of evidence in ascertaining if an individual/corporation met the relevant monetary threshold; (b) "public filing" was defined in the PI Amendment Rules as documents submitted to a legal or regulatory authority and made available for public inspection pursuant to legal or regulatory requirements in Hong Kong or in a place outside Hong Kong; (c) real property would be included in ascertaining the total assets of a corporate PI; and (d) an intermediary might refer to the audited financial statements or statements issued by custodians in ascertaining the value of assets (including real property) for PI qualification. <p>Noting that real property was not included in ascertaining whether an individual met the portfolio threshold of \$8 million for qualifying as a PI, but would be counted for ascertaining whether a corporation met the total assets threshold of \$40 million for qualifying as a PI, the Chairman enquired about the rationale for including different classes of assets in calculating the monetary thresholds of individual and corporate PIs.</p> <p>SFC responded that in order to provide flexibility to corporations in allocating investments, real property was included in ascertaining whether a corporation met the</p>	<p>The Administration to take action as per paragraph 3(b) of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>total assets threshold of \$40 million for qualification as a PI.</p> <p>Mr CHEUNG and Mr TO suggested that individual investors who had received training provided by SFC or intermediaries and passed the relevant examinations should qualify as PIs even though they did not have a portfolio with \$8 million. Mr TO also requested SFC to consider reminding intermediaries that when they conducted suitability assessment on corporate PIs, they should pay particular attention to those PIs whose total assets comprised primarily of real property, especially if such property was held for self-occupation.</p>	<p>The Administration to take action as per paragraph 4 of the minutes</p>
<p>010156 – 011841</p>	<p>Chairman Administration SFC Mr James TO Dr CHIANG Lai-wan</p>	<p><u>Section 4 – Section 2A added</u></p> <p>2A. <i>Amount in Hong Kong dollars includes its equivalent in any foreign currency</i></p> <p>Mr TO enquired about the definition of "total assets" under the PI Rules.</p> <p>The Administration and SFC advised that the term "total assets" was not defined under the PI Rules. Intermediaries were required to observe the requirements under the new section 8 of the PI Rules as added by section 6 of the PI Amendment Rules in ascertaining the total assets of a corporate PI or the portfolio of an individual PI.</p> <p>Dr CHIANG's enquiries and concerns as follows –</p> <p>(a) whether retail banks could provide investment related services to PIs;</p> <p>(b) the existing portfolio threshold of \$8 million (for individual and corporate PIs) and total assets threshold of \$40 million (for corporate PIs) under the PI Rules might not provide sufficient protection for investors; and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(c) SFC should strengthen its work in approving investment products, including rating products according to their risk levels and advising the suitability of the products for various investors.</p> <p>SFC advised that –</p> <p>(a) both retail banks and private banks, after obtaining the relevant licences or registration from the SFC, could solicit the sale of or make recommendations on suitable financial products to PIs;</p> <p>(b) the monetary thresholds for individual and corporate PIs had been adopted since the PI Rules were first promulgated in 2003. The thresholds provided a simple and easy-to-interpret method for evaluating whether an individual or a corporation qualified as a PI;</p> <p>(c) PIs were also subject to the KYC procedures, suitability requirement, etc. before being sold a product;</p> <p>(d) an intermediary should collect information, such as the financial situation, investment experience, investment objectives and investment knowledge of a PI so as to ensure that the product recommended to the PI was suitable under all circumstances;</p> <p>(e) the PI Amendment Rules aimed at standardizing the modifications granted by SFC under section 134 of the Securities and Futures Ordinance (Cap. 571) ("SFO") to individual intermediaries over the years; and</p> <p>(f) the Administration and SFC fully understood concerns raised by members over the monetary thresholds in the PI regime, and would actively</p>	<p>The Administration to take action as per paragraph 6 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>consider members' suggestion to carry out a review on the thresholds.</p>	
<p>011842 – 014036</p>	<p>Chairman Administration SFC Mr James TO ALA4</p>	<p><u>Section 5 – Section 3 amended (persons prescribed as professional investors)</u></p> <p>Mr TO expressed concern on including different classes of assets in calculating the monetary thresholds of individual and corporate PIs. He also cast doubt on whether SFC could grant modifications to the requirements of the PI Rules.</p> <p>The Administration responded that on request by intermediaries, SFC, pursuant to section 134 of SFO, had granted a number of modifications to the PI Rules.</p> <p>In response to the Chairman, the Administration explained that –</p> <p>(a) section 3 of the PI Rules had been restructured for better presentation; and</p> <p>(b) matters relating to the documents by reference to which a person's total assets or portfolio were to be ascertained had been moved to the new section 8 of the PI Rules as added by section 6 of the PI Amendment Rules.</p> <p>Mr TO sought information on the list of documents provided under the new section 8(b) of the PI Rules, in particular if intermediaries could refer to a certificate issued by a lawyer or a statement issued by a bank in ascertaining the portfolio or total assets of a PI.</p> <p>ALA4 said that in view of the phrase "are to be ascertained", the list of documents provided under the new section 8 of the PI Rules appeared to be exhaustive for the purpose of ascertaining the total assets or the portfolio of a PI other than "at the relevant date", but that it was unclear what other information might also be taken into account</p>	<p>The Administration to take action as per paragraph 7 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>in ascertaining whether the monetary threshold was met "at the relevant date".</p> <p>The Administration and SFC advised that –</p> <p>(a) bank statements were allowable evidence in ascertaining PI qualification as set out in the new section 8(b)(i) of the PI Rules (i.e. a certificate issued by a custodian) by virtue of the definition of "custodian" in section 2 which included an authorized financial institution and a foreign bank; and</p> <p>(b) as an alternative to ascertaining PI qualification in accordance with the new section 8, an intermediary might satisfy itself that an investor met the relevant monetary threshold at the relevant date to qualify as a PI by relying upon methods that were appropriate in the circumstances (see the new sections 4 to 7 of the PI Rules).</p>	
014037 – 020442	Chairman Dr CHIANG Lai-wan Mr James TO Administration SFC ALA4	<p>Dr CHIANG and Mr TO reiterated their concerns that the existing monetary thresholds under the PI Rules might not provide sufficient protection for investors, in particular with the escalating real property prices in recent years. They urged the Administration and SFC to review the monetary thresholds and adjust the levels upward. Given that the PI Amendment Rules had not proposed changes to the monetary thresholds, Mr TO said that he would oppose the PI Amendment Rules.</p> <p>The Administration and SFC advised that –</p> <p>(a) the PI Amendment Rules were to standardize the modifications granted by SFC under section 134 of SFO to individual intermediaries over the years and the public consultation conducted in 2017 was on the standardization proposal only;</p>	The Administration to take action as per paragraph 5 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) SFC had been keeping in close view the operation of the PI regime and would review, amongst other things, the monetary thresholds for qualification as PIs from time to time;</p> <p>(c) any alterations to the existing regime would have considerable impact on the investors and the operation of the industry, and must be considered in a holistic manner (including to study the implementation, and if applicable, transitional details) and after a due consultation process; and</p> <p>(d) in addition to the monetary thresholds, PIs were also subject to the KYC procedures, suitability requirement, etc. before being sold a product.</p> <p>In response to the Chairman and Dr CHIANG, the Administration said that the PI Amendment Rules were subject to the negative vetting procedure of the Legislative Council, and would come into operation on 13 July 2018.</p> <p>ALA4 advised that –</p> <p>(a) the scrutiny period of the PI Amendment Rules would expire on 20 June 2018 and the Chairman would move a resolution at the Council meeting of 13 June 2018 to extend the scrutiny period to the Council meeting of 11 July 2018;</p> <p>(b) Members could move a motion in a Council meeting to amend or repeal the PI Amendment Rules; and</p> <p>(c) the deadline for giving notice of amendment or repeal would be 12 June 2018 if no extension on the scrutiny period could be made.</p>	

Time Marker	Speaker	Subject(s)	Action Required
020443 – 020648	Chairman Administration Dr CHIANG Lai-wan	<p><u>Section 6 – Sections 4 to 8 added</u></p> <p>4. <i>Trust corporations</i></p> <p>5. <i>Individuals</i></p> <p>Dr CHIANG restated her request for the Administration and SFC to adjust the monetary thresholds under the new sections 4 to 7 of the PI Rules.</p>	
020649 – 020914	Chairman Administration SFC ALA4	<p><u>Section 6 – Sections 4 to 8 added</u></p> <p>6. <i>Corporations</i></p> <p>In response to ALA4's enquiry on the new section 6(b)(v) of the PI Rules, SFC advised that paragraphs (b), (c) and (i) of section 1 of Part 1 of Schedule 1 to SFO already defined intermediaries and banks, as well as their holding companies and wholly owned subsidiaries as PIs; and hence these entities were not required to be included in section 6(b)(v) of the PI Rules.</p>	
020915 – 021748	Chairman Administration Mr CHAN Chun-ying Dr CHIANG Lai-wan	<p><u>Section 6 – Sections 4 to 8 added</u></p> <p>7. <i>Partnerships</i></p> <p>8. <i>Ascertaining total assets or portfolio</i></p> <p>Mr CHAN expressed the following views –</p> <p>(a) SFC should consider reviewing the monetary thresholds under the PI Rules in a future legislative exercise;</p> <p>(b) there was no evidence suggesting that PIs would invariably be subject to mis-selling by intermediaries; and</p> <p>(c) SFC should review the complaints against intermediaries received after the Lehman Brothers Minibonds Incident in order to evaluate the effectiveness of the measures adopted by SFC in</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>enhancing investor protection after the Incident, in particular the new requirements imposed on intermediaries in relation to the selling of investment products to clients.</p> <p>Dr CHIANG called on SFC to strengthen its work in approving investment products. She added that financial regulators in some jurisdictions, like Singapore, had also taken up the role in rating investment products.</p> <p>The Chairman requested the Administration to provide written response to members' views and concerns raised at the meeting.</p>	
Agenda item II — Any other business			
021749 – 021839	Chairman	Invitation of views, legislative timetable and concluding remarks	