

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1353/17-18  
(These minutes have been seen  
by the Administration)

Ref : CB1/SS/13/17/1

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

**Minutes of the third meeting on  
Wednesday, 27 June 2018, at 9:00 am  
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon Holden CHOW Ho-ding (Chairman)  
Hon James TO Kun-sun  
Hon Kenneth LEUNG  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Dr Hon CHIANG Lai-wan, JP  
Hon CHAN Chun-ying
- Member absent** : Hon Abraham SHEK Lai-him, GBS, JP
- 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

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Action

**I Meeting with the Administration**

Matters arising from previous meeting

(LC Paper No. CB(1)1175/17-18(01) — List of follow-up actions arising from the discussion at the meeting on 12 June 2018

LC Paper No. CB(1)1175/17-18(02) — Administration's response to issues raised at the meeting on 12 June 2018

Action

- LC Paper Nos. CB(1)1136/17-18(01) — Letters dated 12 and 13 June  
and (02) 2018 from Hon James TO  
Kun-sun (Chinese version  
only)
- LC Paper No. CB(1)1175/17-18(03) — Administration's response to  
letter dated 13 June 2018 from  
Hon James TO Kun-sun
- LC Paper No. CB(1)1136/17-18(03) — Letter dated 15 June 2018 from  
Dr Hon CHIANG Lai-wan  
(Chinese version only)
- LC Paper No. CB(1)1175/17-18(04) — Administration's response to  
letter dated 15 June 2018 from  
Dr Hon CHIANG Lai-wan)

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

Action

Discussion

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

**II Any other business**

Legislative timetable

2. The Chairman concluded that the Subcommittee had completed the scrutiny of the Securities and Futures (Professional Investor) (Amendment) Rules 2018 ("PI Amendment Rules") and would not propose any amendment to the PI Amendment Rules.

*(Post meeting note: Members were informed vide LC Paper No. CB(1)1194/17-18 issued on 27 June 2018 that the Subcommittee had completed scrutiny of the subsidiary legislation.)*

3. The Subcommittee noted that the motion to extend the scrutiny period of the PI Amendment Rules to the Council meeting of 11 July 2018 had been passed at the Council meeting of 20 June 2018. The Chairman would report the deliberations of the Subcommittee at the House Committee meeting on 29 June 2018. The deadline for giving notice of motion to amend the PI Amendment Rules was 4 July 2018.

4. There being no other business, the meeting ended at 10:23 am.

Council Business Division 1  
Legislative Council Secretariat  
27 August 2018

**Proceedings of the third meeting of  
the Subcommittee on Securities and Futures  
(Professional Investor) (Amendment) Rules 2018  
on Wednesday, 27 June 2018, at 9:00 am  
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
<b>Agenda item I — Meeting with the Administration</b>			
000445 – 001250	Chairman Administration	<p>Briefing by the Administration on its written responses to issues raised by members at the meeting on 12 June 2018, and the letters from Mr TO dated 13 June 2018 and Dr CHIANG dated 15 June 2018.</p> <p>[LC Paper No. CB(1)1175/17-18(02)] [LC Paper No. CB(1)1175/17-18(03)] [LC Paper No. CB(1)1175/17-18(04)]</p>	
001251 – 002014	Chairman Mr James TO Administration The Securities and Futures Commission ("SFC")	<p>Given that real property was included in ascertaining whether a corporation met the total assets threshold of \$40 million for qualification as a professional investor ("PI"), Mr TO 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 real property, especially if such property was held for self-occupation by shareholders of the corporation.</p> <p>The Administration and SFC advised that –</p> <p>(a) under the Securities and Futures (Professional Investor) Rules (Cap. 571D) ("the PI Rules"), any individual having a portfolio of not less than \$8 million and any corporation having a portfolio of not less than \$8 million or total assets of not less than \$40 million qualified as a PI;</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) real property was not included in ascertaining whether an individual or corporation met the portfolio threshold of \$8 million but was included in the total assets threshold of \$40 million;</p> <p>(c) in addition to the monetary thresholds, PIs were subject to the know-your-client ("KYC") procedures and suitability requirement before being sold a product; and</p> <p>(d) an intermediary should collect information about its clients (e.g. their investment experience and knowledge) through the KYC procedures so as to ensure that the product recommended to the PI was suitable under all circumstances.</p>	
002015 – 002754	Chairman Dr CHIANG Lai-wan Administration SFC	<p>Noting response from the Administration and SFC that they would actively consider members' suggestion to carry out a review on the monetary thresholds adopted under the PI regime, Dr CHIANG sought details on the plan and timetable for the review.</p> <p>The Administration and SFC responded that –</p> <p>(a) 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>(b) during the reviews conducted by SFC in 2009 and 2014, comparisons were made on the monetary thresholds adopted in Hong Kong and other jurisdictions and the results indicated that the thresholds adopted in Hong Kong were higher than those in the United Kingdom;</p> <p>(c) any alterations to the existing PI regime would have considerable impact on the investors and the operation of the industry, and must be considered in</p>	

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		<p>a holistic manner (including studying the implementation, and if applicable, transitional details) and after a due consultation process; and</p> <p>(d) given the complexity of the issues involved, it would be difficult to commit to a timetable for the review at the present stage.</p> <p>Dr CHIANG expressed concern about including different classes of assets in calculating the portfolio threshold of individual and corporate PIs on the one hand and the total assets threshold of corporate PIs on the other, and enquired about the rationale for the arrangement. She was of the view that the Administration and SFC should consider aligning the classes of assets in the calculation of the monetary thresholds for individual and corporate PIs.</p> <p>SFC advised that, in general, a corporation would have an adequate and proper governance structure over its investment decision-making process, hence real property was included in ascertaining whether a corporation met the total assets threshold of \$40 million for qualification as a PI. This would provide flexibility to corporations in their allocation of investments. Meanwhile, the definition of the portfolio threshold was the same for both individual and corporate PIs.</p>	
002755 – 003438	Chairman Administration SFC	<p>The Chairman enquired if SFC would consider strengthening its work in approving investment products.</p> <p>The Administration and SFC responded that –</p> <p>(a) investment products that could be offered to retail investors must be authorized by SFC;</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) approval for and rating investment products would fall outside the remit of the PI regime;</p> <p>(c) when conducting the suitability assessment, an intermediary should not merely match a product's risk rating with a client's risk tolerance level. The intermediary should assess whether the characteristics and risk exposures of a recommended product were suitable for a client after taking into account the client's relevant circumstances (e.g. the client's investment objectives, investment horizon, investment knowledge, financial situation, etc.); and</p> <p>(d) SFC had no plans to change the above arrangements adopted under the current regulatory regime.</p>	
003439 – 003744	Chairman Mr Christopher CHEUNG Administration	<p>Mr CHEUNG was of the view that the \$8 million portfolio threshold was an effective means in ascertaining whether an individual qualified as a PI and hence should be maintained. He considered that in order to enhance protection for investors, SFC should strengthen its work in approving investment products, including grading investment products according to their risk levels.</p> <p>The Administration said that the Securities and Futures (Professional Investor) (Amendment) Rules 2018 ("PI Amendment Rules") aimed to standardize the modifications granted by SFC under section 134 of the Securities and Futures Ordinance (Cap. 571) ("SFO") to individual intermediaries over the years. The Administration and SFC fully understood the concerns raised by members over the PI regime and would consider members' suggestions when conducting a review on the PI regime in the future.</p>	



Time Marker	Speaker	Subject(s)	Action Required
003745 – 004342	Chairman Mr James TO Administration	<p>Mr TO re-iterated his request that SFC should remind intermediaries to pay particular attention to those PIs whose total assets comprised primarily real property, in particular small companies without a proper corporate governance structure. He also requested the Administration and SFC to commit to a timetable for conducting a review on the monetary thresholds adopted under the PI regime.</p> <p>The Administration responded that it would be difficult to commit to a timetable for the review at the present stage. That said, the Administration, together with SFC, would actively consider members' suggestion to carry out a review on the monetary thresholds.</p> <p>In the absence of a clear commitment from the Administration and SFC to conduct a review on the monetary thresholds and provide the timetable, Mr TO indicated that he would move a motion at a Council meeting to repeal the PI Amendment Rules.</p>	
004343 – 004842	Chairman Mr CHAN Chun-ying Administration	<p>Mr CHAN pointed out that the monetary thresholds were a measure to ascertain whether an individual or a corporation qualified as a PI. He opined that, in addition to the portfolio of an individual, the Administration and SFC should also consider the investment knowledge and experience of as well as the total assets held by an individual in determining whether he/she qualified as a PI (e.g. PI status might be granted to individual investors with in-depth investment knowledge and rich investment experience but could not meet the portfolio threshold of \$8 million). He urged the Administration and SFC to strengthen investor education in order to enhance investors' understanding of their rights and risks involved in becoming PIs.</p> <p>The Administration responded that the monetary threshold test was a simple and easy-to-interpret method for evaluating</p>	

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		<p>whether an individual or a corporation qualified as a PI. PIs were further subject to the KYC procedures, suitability requirement, etc. before being sold a product.</p>	
004843 – 005634	<p>Chairman Dr CHIANG Lai-wan Administration SFC</p>	<p>Dr CHIANG urged the Administration and SFC to review the PI regime, in particular the monetary thresholds for qualification as PIs. She sought information on the investment choices for PIs and non-PIs, and called on SFC to strengthen its work in approving and rating investment products. She added that financial regulators in some jurisdictions had also taken up the role in rating investment products.</p> <p>The Administration and SFC said that –</p> <ul style="list-style-type: none"> <li>(a) investment products that could be offered to retail investors must be authorized by SFC (e.g. authorized collective investment schemes and listed shares);</li> <li>(b) PIs could invest in products that were not authorized by SFC, such as private placements of unauthorized funds; and</li> <li>(c) PIs were subject to the suitability requirement before being sold a product.</li> </ul>	
005635 – 010727	<p>Chairman Mr Kenneth LEUNG Mr CHAN Chun-ying Administration SFC</p>	<p>In response to Mr LEUNG's enquiry, SFC advised that financial products sold through private placement did not require SFC's authorization and intermediaries could engage PIs in such private placement activities.</p> <p>Mr CHAN said that intermediaries would offer the same private placement products to different groups of PIs by imposing different terms and conditions on each offer.</p> <p>Given that PIs were facing higher investment risks, Mr LEUNG had reservation over merely adopting the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>monetary thresholds for prescribing who qualified as PIs.</p> <p>The Administration responded that SFC would enhance investor education so that investors, including PIs, would be aware of the risks involved in various investment products and could make informed decisions on their investment choices.</p>	
010728 – 011217	Chairman Mr James TO Administration	Mr TO expressed reservation over merely adopting the monetary thresholds for prescribing who qualified as PIs as the existing monetary thresholds might not provide sufficient protection for investors. He reiterated that he would move a motion to repeal the PI Amendment Rules as the Administration and SFC had failed to provide a clear commitment to conducting a review on the monetary thresholds and a timetable for the review.	
011218 – 011430	Chairman Dr CHIANG Lai-wan	Dr CHIANG reiterated her request for the Administration and SFC to review the monetary thresholds under the PI regime, including whether other criteria should be adopted for prescribing who qualified as PIs in addition to the monetary thresholds.	
011431 – 011640	Chairman Mr CHAN Chun-ying	Mr CHAN urged the Administration and SFC to strengthen investor education to enhance investors' understanding of their rights and risks involved in becoming PIs. He also suggested that the Administration should consider including the level of investment experience as one of the criteria for qualification as PIs.	
011641 – 012549	Chairman Administration Assistant Legal Adviser 4 ("ALA4") Mr Kenneth LEUNG	<p>The Chairman enquired about the possible impacts if the PI Amendment Rules were repealed or amended.</p> <p>The Administration appealed for members' support for the PI Amendment Rules and explained that –</p> <p>(a) SFC had issued a public consultation paper on its proposed amendments to the</p>	

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		<p>PI Rules in March 2017 and the relevant consultation conclusions were issued in May 2018;</p> <p>(b) the PI Amendment Rules aimed to standardize the modifications granted by SFC to individual intermediaries under section 134 of SFO over the years, and incorporate these modifications into the PI Rules;</p> <p>(c) the PI Amendment Rules could ensure consistency in the application of the PI Rules and provide a level playing field for the market, and hence should be implemented as soon as possible;</p> <p>(d) any amendments made in haste and without a proper consultation with stakeholders might cause market confusion, and would compromise the protection for investors; and</p> <p>(e) the Administration, together with SFC, would actively consider members' suggestion to carry out a review on the monetary thresholds.</p> <p><i>(Post meeting note: The Administration issued a letter to the Subcommittee dated 29 June 2018 (LC Paper No. CB(1)1211/17-18(01) issued on 29 June 2018) indicating that SFC would commence a review of the monetary thresholds adopted under the PI regime in 2019.)</i></p> <p>In response to the Chairman and Mr LEUNG, ALA4 advised that –</p> <p>(a) the scrutiny period of the PI Amendment Rules would expire on 11 July 2018 and the PI Amendment Rules would come into operation on 13 July 2018;</p> <p>(b) subject to the President's direction under Rule 30(3) of the Rules of Procedure, Members could give notice to move</p>	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>a motion in a Council meeting to amend or repeal the PI Amendment Rules;</p> <p>(c) any amendment proposed by Members to the PI Amendment Rules would be subject to the President's ruling, including whether the proposed amendment was within the scope of the PI Amendment Rules, taking into account all relevant materials such as the provisions in the PI Amendment Rules, the Explanatory Note, and the information contained in the relevant Legislative Council Brief; and</p> <p>(d) the deadline for giving notice of amendment or repeal would be 4 July 2018.</p>	
<b>Agenda item II — Any other business</b>			
012550 – 012652	Chairman	Legislative timetable and concluding remarks	

Council Business Division 1  
Legislative Council Secretariat  
27 August 2018