

**Bills Committee on
Securities and Futures Bill and Banking (Amendment) Bill 2000**

**Part XVII of and Schedule 9 to the Securities and Futures Bill
Committee Stage Amendments**

Members examined on a clause-by-clause basis Part XVII of and Schedule 9 to the Securities and Futures Bill on 26 October 2001.

Committee Stage Amendments

Part XVII

2. We propose no amendments to Part XVII of the Bill.

Schedule 9

3. We have since the above meeting made some amendments to Schedule 9 in the light of Members' comments and to further refine the drafting. All the amendments to Part 1 and Part 2 of Schedule 9 are marked up in **Annex 1** and **Annex 2** respectively with explanations therefor in the footnotes.

About the marked-up versions of the Bill in the Annexes

4. All the proposed amendments shown in the annexes to this paper are marked up against the Blue Bill, notwithstanding that they might have appeared in earlier marked-up versions issued to Members. Where the amendments are made since Members last considered the relevant Schedule to the Bill, such **new amendments are explained in the footnotes in bold type**, to distinguish them from the footnotes for amendments which Members have considered and proposed no further changes at the previous meeting.

SCHEDULE 9 [ss. 230, 232, 234,
392, 393, 394 & 395]

SAVINGS, TRANSITIONAL, CONSEQUENTIAL AND
RELATED PROVISIONS, ETC.

PART 1
SAVINGS, TRANSITIONAL AND SUPPLEMENTAL ARRANGEMENTS

Interpretation of Part 1

In this Part, a heading to any provision of this Part shall not have legislative effect and shall not in any way vary, limit or extend the interpretation of any provision of this Part.

**Part II of this Ordinance (Securities and
Futures Commission)**

Without prejudice to section 3 of this Ordinance -

- (a) anything done under or by virtue of the repealed Securities and Futures Commission Ordinance before the commencement of Part II of this Ordinance by or in relation to the Commission and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of any provision in that

Part, continue to have effect upon such commencement as if it had been done under or by virtue of that provision;

(b) anything which immediately before the commencement of Part II of this Ordinance is in the process of being done under or by virtue of the repealed Securities and Futures Commission Ordinance by or in relation to the Commission may, in so far as it could upon such commencement have been done under or by virtue of any provision in that Part, be continued upon such commencement under or by virtue of that provision;

(c) any person holding office as the chairman or deputy chairman, or as an executive director or non-executive director, of the Commission immediately before the commencement of Part II of this Ordinance shall upon such commencement continue to hold, on the same terms and conditions as were applicable had this Ordinance not been enacted, the corresponding office under this Ordinance as if he had been appointed on such terms and conditions in accordance with the provisions regarding appointment to such corresponding office under that Part and Schedule 2 to this Ordinance;

(d) the Advisory Committee constituted under section 10 of the repealed Securities and Futures

Commission Ordinance immediately before the commencement of Part II of this Ordinance shall upon such commencement continue in existence as if it had been constituted under section 7 of and Schedule 2 to this Ordinance;

(e) any committee which has been established under section 6 of the repealed Securities and Futures Commission Ordinance and which is in existence immediately before the commencement of Part II of this Ordinance shall upon such commencement continue in existence as if it had been established under section 8 of this Ordinance;

(f) any person holding office as a member of the Advisory Committee referred to in paragraph (d), or as a member of a committee referred to in paragraph (e), immediately before the commencement of Part II of this Ordinance shall upon such commencement continue to hold, on the same terms and conditions as were applicable had this Ordinance not been enacted, the corresponding office under this Ordinance as if he had been appointed on such terms and conditions in accordance with the provisions regarding appointment to such corresponding office under that Part and Schedule 2 to this Ordinance;

(g) any person employed or engaged in any office, other than that referred to in paragraph (c) or (f), by the Commission under or pursuant to any provision of the repealed Securities and Futures Commission Ordinance immediately before the commencement of Part II of this Ordinance shall upon such commencement continue to be so employed or engaged in the same office, on the same terms and conditions as were applicable had this Ordinance not been enacted, as if he had been employed or engaged under or pursuant to that Part on such terms and conditions.

**Part III of this Ordinance (Exchanges, Clearing
Houses and Investor Compensation Companies)**

3. In sections 6 and 9 -

"HKFECC" (期貨結算公司) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name HKFE Clearing Corporation Limited;

"HKSCC" (香港結算公司) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name Hong Kong Securities Clearing Company Limited;

"SEOCH" (期權結算公司) means the company incorporated under the

Companies Ordinance (Cap. 32) and registered under that Ordinance by the name The SEHK Options Clearing House Limited.

4. In sections 10 and 13 -

"HKEC" (交易結算公司) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name Hong Kong Exchanges and Clearing Limited.

5. On the commencement of Division 2 of Part III of this Ordinance -

(a) the Stock Exchange Company and the Futures Exchange Company shall each be deemed to be a recognized exchange company as if, upon such commencement, each of them had been served a notice under section 19(2) of this Ordinance recognizing it as an exchange company, and the other provisions of this Ordinance (including sections 19(3) and 28) shall apply accordingly with all necessary modifications;

(b) the rules of -

(i) the Stock Exchange Company made under section 34 (except subsection (1)(b)) of the repealed Stock Exchanges Unification Ordinance and approved under section 35 of that Ordinance; and

- (ii) the Futures Exchange Company approved under section 14 of the repealed Commodities Trading Ordinance, which are in effect immediately before such commencement shall upon such commencement continue to have effect as if they were rules made under section 23 of this Ordinance and approved under section 24(3) of this Ordinance;
- (c) the respective constitutions of the Stock Exchange Company and the Futures Exchange Company, which are in effect immediately before such commencement shall upon such commencement continue to have effect as if each of them had been approved under section 24 of this Ordinance; and
- (d) any appointment of a person as chief executive of the Stock Exchange Company or the Futures Exchange Company which is in effect immediately before such commencement shall upon such commencement continue to have effect, on the same terms and conditions as were applicable had this Ordinance not been enacted, as if the appointment had been approved under section 26 of this Ordinance.

6. On the commencement of Division 3 of Part III of this Ordinance, the HKSCC, HKFECC and SEOCH shall each be deemed to be a recognized clearing house as if, upon such commencement, each of them had been

served a notice under section 37(1) of this Ordinance recognizing it as a clearing house, and the other provisions of this Ordinance (including sections 37(2) and 43) shall apply accordingly with all necessary modifications.

7. Anything done under or by virtue of the repealed Securities and Futures (Clearing Houses) Ordinance before the commencement of Division 3 of Part III of this Ordinance and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, continue to have effect upon such commencement as if it had been done under or by virtue of that provision.

8. Anything which immediately before the commencement of Division 3 of Part III of this Ordinance is in the process of being done under or by virtue of the repealed Securities and Futures (Clearing Houses) Ordinance may, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, be continued upon such commencement under or by virtue of that provision.

9. Without limiting the generality of section 7 -

- (a) a notice which is published under section 4(4) of the repealed Securities and Futures (Clearing Houses) Ordinance and which is in effect

immediately before the commencement of Division 3 of Part III of this Ordinance shall upon such commencement continue to have effect as if it had been published under section 41(7) of this Ordinance; and

- (b) the rules of the HKSCC, HKFECC and SEOCH which -
 - (i) have been approved under section 4(7) of the repealed Securities and Futures (Clearing Houses) Ordinance; or
 - (ii) have been submitted or cause to be submitted under section 4(5) of that Ordinance,

and which are in effect immediately before the commencement of Division 3 of Part III of this Ordinance shall upon such commencement continue to have effect as if -

- (A) in the case of subparagraph (i), they were rules approved under section 41(3) of this Ordinance; or
- (B) in the case of subparagraph (ii), they were rules submitted or caused to be submitted under section 41(2)(b) of this Ordinance.

10. On the commencement of Division 4 of Part III of this Ordinance, the HKEC which is deemed to be a recognized exchange controller

under section 19 of the repealed Exchanges and Clearing Houses (Merger) Ordinance shall upon such commencement continue to be so deemed as if it had been served a notice under section 59(2) of this Ordinance recognizing it as an exchange controller, and the other provisions of this Ordinance (including sections 59(3) and 72) shall apply accordingly with all necessary modifications.

11. Anything done under or by virtue of the repealed Exchanges and Clearing Houses (Merger) Ordinance before the commencement of Division 4 of Part III of this Ordinance and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, continue to have effect upon such commencement as if it had been done under or by virtue of that provision.

12. Anything which immediately before the commencement of Division 4 of Part III of this Ordinance is in the process of being done under or by virtue of the repealed Exchanges and Clearing Houses (Merger) Ordinance may, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, be continued upon such commencement under or by virtue of that provision.

13. Without limiting the generality of section 11 -

(a) a notice which is published under section 10(6) of

the repealed Exchanges and Clearing Houses (Merger) Ordinance and which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect as if it had been published under section 67(7) of this Ordinance;

(b) the rules of the HKEC which have been approved under section 10(3) of the repealed Exchanges and Clearing Houses (Merger) Ordinance and which are in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect as if they were rules approved under section 67(3) of this Ordinance;

(c) any approval which is given under section 6(2) of the repealed Exchanges and Clearing Houses (Merger) Ordinance and which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect as if the approval had been given under section 61(1) of this Ordinance;

(d) any appointment of a person as chairman, chief executive or chief operating officer of a recognized exchange controller which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such

commencement continue to have effect, on the same terms and conditions as were applicable had this Ordinance not been enacted, as if the appointment had been approved under section 69 or 70 (as the case may be) of this Ordinance; and

- (e) the Risk Management Committee established under section 9 of the repealed Exchanges and Clearing Houses (Merger) Ordinance shall upon the commencement of Division 4 of Part III of this Ordinance continue in existence as if it had been established under section 65 of this Ordinance.

14. Anything done under or by virtue of -

- (a) section 50 of the repealed Securities and Futures Commission Ordinance before the commencement of section 92 of this Ordinance; or
- (b) section 51 of the repealed Securities and Futures Commission Ordinance before the commencement of section 93 of this Ordinance,

and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of section 92 or 93 of this Ordinance, continue to have effect upon such commencement as if it had been done under or by virtue of that section 92 or 93 (as the case may be).

15. Anything which immediately before the commencement of -

- (a) section 92 of this Ordinance is in the process of being done under or by virtue of section 50 of the repealed Securities and Futures Commission Ordinance; or
- (b) section 93 of this Ordinance is in the process of being done under or by virtue of section 51 of the repealed Securities and Futures Commission Ordinance,

may, in so far as it could upon such commencement have been done under or by virtue of section 92 or 93 of this Ordinance, be continued upon such commencement under or by virtue of that section 92 or 93 (as the case may be).

Part IV of this Ordinance (Offers of investments)

16. Subject to sections 18 and 19 -

- (a) any corporation or arrangement that is immediately before the commencement of Part IV of this Ordinance authorized under section 15 of the repealed Securities Ordinance as a mutual fund corporation or a unit trust; or
- (b) any matter in respect of which the issue of an advertisement, invitation or document is immediately before the commencement of Part IV of this Ordinance authorized pursuant to section

4(2)(g) of the repealed Protection of Investors Ordinance,

shall, where its name appears in a list published by the Commission for the purposes of this section on the date of commencement of Part IV of this Ordinance, upon such commencement be regarded as authorized under section 103 of this Ordinance as a collective investment scheme, subject to the same conditions as were applicable had this Ordinance not been enacted.

17. Subject to sections 18 and 19, the issue of an advertisement, invitation or document that is immediately before the commencement of Part IV of this Ordinance authorized pursuant to section 4(2)(g) of the repealed Protection of Investors Ordinance shall upon such commencement be regarded as authorized under section 104 of this Ordinance, subject to the same conditions as were applicable had this Ordinance not been enacted.

18. Where no individual has been nominated pursuant to section 103(3) or 104(3) of this Ordinance before the expiration of 6 months from the commencement of Part IV of this Ordinance, any authorization otherwise having effect by virtue of section 16 or 17 shall thereupon cease to have effect.

19. Where an individual has been nominated pursuant to section 103(3) or 104(3) of this Ordinance before the expiration of 6 months from the commencement of Part IV of this Ordinance, any

authorization otherwise having effect by virtue of section 16 or 17 shall continue to have effect until the Commission decides otherwise.

20. Where an application for -

(a) authorization of any corporation or arrangement under section 15 of the repealed Securities Ordinance as a mutual fund corporation or a unit trust; or

(b) authorization of the issue of an advertisement, invitation or document pursuant to section 4(2)(g) of the repealed Protection of Investors Ordinance,

has been made before the commencement of Part IV of this Ordinance but has not been finally determined by the Commission before such commencement, the application shall upon such commencement be regarded as -

(i) in the case of paragraph (a), an application for authorization of a collective investment scheme under section 103 of this Ordinance; or

(ii) in the case of paragraph (b), an application for authorization of a collective investment scheme under section 103 of this Ordinance, or an application for authorization of the issue of an advertisement, invitation or document under section 104 of this Ordinance, as the Commission considers appropriate.

21. A list published pursuant to section 16 is not subsidiary legislation.

Part V of this Ordinance (Licensing and ~~Exemption~~Registration)¹

Corporations other than exempt dealers
and exempt investment advisers

22. Subject to section 54, a corporation which immediately before the commencement of Part V of this Ordinance is -

- (a) registered under the repealed Securities Ordinance as a dealer shall, upon such commencement, be regarded as licensed under section 115(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;
- (b) registered under the repealed Securities Ordinance as an investment adviser shall, upon such commencement, be regarded as licensed under section 115(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated

¹ **We accept the comment of some Members that the term “exempt person” is a misnomer and does not reflect the proposed regulatory framework whereby authorized institutions engaging in regulated activities are subject to a whole range of regulatory requirements and disciplinary sanctions. We informed Members at the Bills Committee meeting on 14 September 2001 that we would replace “exempt person” with “registered institution”, “exempt” with “registered”, and “exemption” with “registration” throughout the Bill to duly reflect our policy intention.**

activities;

- (c) registered under the repealed Securities Ordinance as a securities margin financier shall, upon such commencement, be regarded as licensed under section 115(1) of this Ordinance for Type 8 regulated activity;
- (d) registered under the repealed Commodities Trading Ordinance as a dealer shall, upon such commencement, be regarded as licensed under section 115(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities;
- (e) registered under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be regarded as licensed under section 115(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities;
- (f) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a leveraged foreign exchange trader shall, upon such commencement, be regarded as licensed under section 115(1) of this Ordinance for Type 3 regulated activity,

and as having complied with the requirement of section 124(1)(a) and (b) of this Ordinance, and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

23. Subject to section 54, where a corporation is regarded under section 22 as licensed, any director of that corporation who is an individual and immediately before the commencement of Part V of this Ordinance is -

- (a) registered under the repealed Securities Ordinance as a dealer of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that corporation;
- (b) registered under the repealed Securities Ordinance as an investment adviser of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that corporation;
- (c) registered under the repealed Securities Ordinance as a securities margin financier's representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed

representative under section 119(1) of this Ordinance for Type 8 regulated activity and as accredited to that corporation;

(d) registered under the repealed Commodities Trading Ordinance as a dealer of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that corporation;

(e) registered under the repealed Commodities Trading Ordinance as a commodity trading adviser of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that corporation;

(f) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 3 regulated activity and as accredited to that corporation,

and as approved under section 125(1) of this Ordinance as a responsible officer of that corporation, and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

24. Subject to section 54, where a corporation is regarded under section 22 as licensed, any individual not being a director of that corporation who immediately before the commencement of Part V of this Ordinance is -

(a) registered under the repealed Securities Ordinance as a dealer's representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that corporation;

(b) registered under the repealed Securities Ordinance as an investment representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that corporation;

- (c) registered under the repealed Securities Ordinance as a securities margin financier's representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 8 regulated activity and as accredited to that corporation;
- (d) registered under the repealed Commodities Trading Ordinance as a dealer's representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that corporation;
- (e) registered under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that corporation;
- (f) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a representative of that corporation shall, upon such commencement, be

regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 3 regulated activity and as accredited to that corporation,

and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

Persons who are exempt dealers or
exempt investment advisers

25. Subject to section 54 -

(a) an authorized financial institution which immediately before the commencement of Part V of this Ordinance is -

(i) an exempt dealer within the meaning of the repealed Securities Ordinance shall, upon such commencement, be regarded as ~~exempt~~registered¹ under section 118(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;

(ii) an exempt investment adviser within the meaning of the repealed Securities Ordinance shall, upon such commencement,

be regarded as ~~exempt~~ registered¹ under section 118(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities,

and, subject to section 52, shall be so regarded for a period of 2 years from such commencement;

(b) a corporation (other than an authorized financial institution), partnership or individual who immediately before the commencement of Part V of this Ordinance is -

(i) an exempt dealer within the meaning of the repealed Securities Ordinance shall, upon such commencement, be regarded as a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;

(ii) an exempt investment adviser within the meaning of the repealed Securities Ordinance shall, upon such commencement, be regarded as a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 4, Type 6 and

(subject to the condition specified in section 50) Type 9 regulated activities, and, subject to section 52, shall be so regarded for a period of 2 years from such commencement, and for so long as such corporation, partnership or individual is so regarded, the requirement of section 124(1)(a) and (b) of this Ordinance shall not apply to it.

~~26. An individual who~~ Where immediately before the commencement of Part V of this Ordinance an individual is engaged -

~~(a) employed by an~~ authorized financial institution; or

~~(b) by a corporation (other than an authorized financial institution), partnership or individual,~~

~~exempt dealer or exempt investment adviser within the meaning of the repealed Securities Ordinance to perform any act which, after such commencement, would constitute a regulated function in relation to a regulated activity~~ for which the institution is regarded under section 25(a) as registered or the corporation, partnership or individual is regarded under

² Amendments consequential to the Committee Stage Amendments proposed to the Banking (Amendment) Bill 2000, as explained to Members at the Bills Committee meeting on 10 July 2001. The word “engaged” gives a wider catch than “employed”, as a bank may engage a person other than its employees to conduct a regulated activity. For the same rationale, we propose similar amendments in respect of individuals acting for other types of exempt person, and in relation to those activities not subject to regulation under current legislation. We have also made some technical drafting amendments for greater clarity.

section 25(b) as licensed (as the case may be), the first-mentioned individual shall, upon such commencement, be regarded as -

(ia) (if paragraph (a) applies to the first-mentioned individual) where the employer is an authorized financial institution and is regarded under section 25(a) as exempt for that regulated activity, a person whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as employed engaged by the institution employer in respect of that regulated activity;

(ii) (if paragraph (b) applies to the first-mentioned individual) where the employer is not an authorized financial institution and is regarded under section 25(b) as licensed for that regulated activity, licensed as a licensed representative under section 119(1) of this Ordinance for that regulated activity (subject to the condition specified in section 50) and as accredited to the employer corporation, partnership or individual (in its capacity as a licensed corporation by virtue of section 25(b)),

and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

Partnerships

27. Subject to section 54, a partnership which immediately before the commencement of Part V of this Ordinance is registered -

- (a) under the repealed Securities Ordinance as a dealer shall, upon such commencement, be regarded as a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;
- (b) under the repealed Securities Ordinance as an investment adviser shall, upon such commencement, be regarded as a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;
- (c) under the repealed Commodities Trading Ordinance as a dealer shall, upon such commencement, be regarded as a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities;

- (d) under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be regarded as a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities,

and as having complied with the requirement of section 124(1)(a) and (b) of this Ordinance, and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

28. Subject to section 54, where a partnership is regarded under section 27 as a licensed corporation, any partner of that partnership who immediately before the commencement of Part V of this Ordinance is registered -

- (a) under the repealed Securities Ordinance as a dealer of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that licensed corporation;
- (b) under the repealed Securities Ordinance as an investment adviser of that partnership shall, upon

such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that licensed corporation;

(c) under the repealed Commodities Trading Ordinance as a dealer of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that licensed corporation;

(d) under the repealed Commodities Trading Ordinance as a commodity trading adviser of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that licensed corporation,

and as approved under section 125(1) of this Ordinance as a responsible officer of that licensed corporation, and, subject to section 52, shall be so regarded for a period of

2 years from such commencement.

29. Subject to section 54, where a partnership is regarded under section 27 as a licensed corporation, any individual who immediately before the commencement of Part V of this Ordinance is registered -

- (a) under the repealed Securities Ordinance as a dealer's representative of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that licensed corporation;
- (b) under the repealed Securities Ordinance as an investment representative of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that licensed corporation;
- (c) under the repealed Commodities Trading Ordinance as a dealer's representative of that partnership shall, upon such commencement, be regarded as

licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that licensed corporation;

- (d) under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that licensed corporation,

and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

Sole-proprietorships

30. Subject to section 54, an individual who immediately before the commencement of Part V of this Ordinance is registered -

- (a) under the repealed Securities Ordinance as a dealer shall, upon such commencement, be regarded as -
 - (i) a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject

to the condition specified in section 50)
Type 9 regulated activities;

(ii) licensed as a licensed representative
under section 119(1) of this Ordinance
for Type 1, Type 4, Type 6 and (subject
to the condition specified in section 50)
Type 9 regulated activities and as
accredited to that licensed corporation;
and

(iii) approved under section 125(1) of this
Ordinance as a responsible officer of
that licensed corporation;

(b) under the repealed Securities Ordinance as an
investment adviser shall, upon such commencement,
be regarded as -

(i) a licensed corporation that is licensed
under section 115(1) of this Ordinance
for Type 4, Type 6 and (subject to the
condition specified in section 50) Type
9 regulated activities;

(ii) licensed as a licensed representative
under section 119(1) of this Ordinance
for Type 4, Type 6 and (subject to the
condition specified in section 50) Type
9 regulated activities and as accredited
to that licensed corporation; and

- (iii) approved under section 125(1) of this Ordinance as a responsible officer of that licensed corporation;
- (c) under the repealed Commodities Trading Ordinance as a dealer shall, upon such commencement, be regarded as -
 - (i) a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities;
 - (ii) licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that licensed corporation; and
 - (iii) approved under section 125(1) of this Ordinance as a responsible officer of that licensed corporation;
- (d) under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be regarded as -
 - (i) a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 5 and (subject to the condition

specified in section 51) Type 9 regulated activities;

(ii) licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that licensed corporation; and

(iii) approved under section 125(1) of this Ordinance as a responsible officer of that licensed corporation,

and as having complied with the requirement of section 124(1)(a) and (b) of this Ordinance, and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

31. Subject to section 54, where an individual is regarded under section 30 as a licensed corporation, any other individual who immediately before the commencement of Part V of this Ordinance is registered -

(a) under the repealed Securities Ordinance as a dealer's representative of the first-mentioned individual shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition

specified in section 50) Type 9 regulated activities and as accredited to that licensed corporation;

- (b) under the repealed Securities Ordinance as an investment representative of the first-mentioned individual shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that licensed corporation;
- (c) under the repealed Commodities Trading Ordinance as a dealer's representative of the first-mentioned individual shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that licensed corporation;
- (d) under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of the first-mentioned individual shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated

activities and as accredited to that licensed corporation, and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

Licensed banks

32. Where immediately before the commencement of Part V of this Ordinance, a licensed bank would have fallen within the meaning of the definition of "investment adviser" in section 2(1) of the repealed Securities Ordinance but for paragraph (i) of that definition, it shall, upon such commencement, be regarded as ~~exempt~~registered¹ under section 118(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities, and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

²33. ~~An individual who~~ Where immediately before the commencement of Part V of this Ordinance an individual is engaged ~~employed~~ by a licensed bank to perform any act which, after such commencement, would constitute a regulated function in relation to a regulated activity for which the bank is regarded under section 32 as registered, that

individual shall, upon such commencement, be regarded as a person whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as ~~employed~~engaged by the ~~employer~~bank in respect of that regulated activity, and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

Persons providing automated trading services

34. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in providing automated trading services, and the person is -

- (a) a corporation to which section 22(a) or (d) or 25(b)(i) applies;
- (b) a partnership to which section 25(b)(i) or 27(a) or (c) applies; or
- (c) an individual to whom section 25(b)(i) or 30(a) or (c) applies,

then in relation to the person, any of those sections that applies to the person as such corporation, partnership or individual (as the case may be) shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which the person is regarded as licensed (in its

capacity as a licensed corporation by virtue of that section), and the provisions of sections 22 to 59 shall be construed accordingly.

35. Where section 34 is applicable to a corporation, partnership or individual ("the first-mentioned individual"), then in relation to -

- (a) a director of the corporation to whom section 23(a) or (d) applies;
- (b) an individual (not being a director) of the corporation to whom section 24(a) or (d) applies;
- (c) a partner of the partnership to whom section 28(a) or (c) applies;
- (d) an individual (not being a partner) of the partnership to whom section 29(a) or (c) applies;
- (e) the first-mentioned individual, to whom section 30(a)(ii) and (iii) or (c)(ii) and (iii) applies;
- (f) an individual to whom section 31(a) or (c) applies in relation to the first-mentioned individual; or
- (g) an individual to whom section 26(~~ii~~)³ applies in relation to the corporation, partnership or first-mentioned individual,

³ **Technical amendment consequential to the renumbering of sub-clauses under clause 26.**

any of those sections that applies to such director, partner or individual (including the first-mentioned individual) (as the case may be) shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which such director, partner or individual is regarded as licensed (in his capacity as a licensed representative by virtue of that section) or approved (in his capacity as a responsible officer by virtue of that section) and the provisions of sections 22 to 59 shall be construed accordingly.

36. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in providing automated trading services, and the person is an authorized financial institution to which section 25(a)(i) applies, then in relation to the institution, that section shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which the institution is regarded as ~~exempt~~registered¹ and the provisions of sections 22 to 59 shall be construed accordingly.

37. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in providing automated trading services and none of sections 34, 35 and 36 is applicable in relation to the person, then the person

may continue carrying on the business for a period of 6 months from such commencement, and for such continuation of the business, this Ordinance shall not apply to -

- (a) the person; and
- (b) any individual ~~employed~~ engaged² by the person to perform any act in providing automated trading services in the business,

until the expiration of that period.

Persons dealing in certain interests
in collective investment scheme

38. For the purposes of sections 39, 40, 41, 42, 43 and 44, "excluded interests" (豁除權益) means interests in an collective investment scheme, where such interest does not fall within the meaning of "securities" as defined in section 2(1) of the repealed Securities Ordinance.

39. Where immediately before the commencement of Part V of this Ordinance, a person -

- (a) is carrying on a business in dealing in excluded interests; and

(b) is registered under the repealed Commodities Trading Ordinance as a dealer, other than as such dealer in the capacity of -

(i) a director of a corporation; or

(ii) a partner of a partnership,

that is registered as such dealer,

then the person may continue carrying on the business referred to in paragraph (a) for a period of 2 years from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to the person until the expiration of that period.

40. Where section 39 is applicable to a person, and immediately before the commencement of Part V of this Ordinance -

(a) (if the person is a corporation) a director of the person is registered as a dealer;

(b) (if the person is a partnership) a partner of the person is registered as a dealer;

(c) an individual is registered as a dealer's representative,

of the person under the repealed Commodities Trading Ordinance, then the director, partner or individual may deal in excluded interests in the business carried on by the person for a period of 2 years from such commencement, and solely for the purposes of dealing in excluded interests in such business, this

Ordinance shall not apply to such director, partner or individual until the expiration of that period.

41. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in dealing in excluded interests, and neither section 39 nor 40 is applicable to the person, then the person may continue carrying on the business in dealing in excluded interests for a period of 6 months from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to -

- (a) the person; and
- (b) any individual ~~employed~~^{engaged}² in the business by the person to deal in excluded interests,

until the expiration of that period.

Persons advising on certain interests
in collective investment scheme

42. Where immediately before the commencement of Part V of this Ordinance, a person -

- (a) is carrying on a business in advising on excluded interests (as defined in section 38); and

- (b) is registered under the repealed Commodities Trading Ordinance as a commodity trading adviser, other than as such adviser in the capacity of -
 - (i) a director of a corporation; or
 - (ii) a partner of a partnership,that is registered as such adviser,

then the person may continue carrying on the business referred to in paragraph (a) for a period of 2 years from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to the person until the expiration of that period.

43. Where section 42 is applicable to a person, and immediately before the commencement of Part V of this Ordinance -

- (a) (if the person is a corporation) a director of the person is registered as a commodity trading adviser;
- (b) (if the person is a partnership) a partner of the person is registered as a commodity trading adviser;
- (c) an individual is registered as a commodity trading adviser's representative,

of the person under the repealed Commodities Trading Ordinance, then the director, partner or individual may advise on excluded interests in the business carried on by the person for a period

of 2 years from such commencement, and solely for the purposes of advising on excluded interests in such business, this Ordinance shall not apply to such director, partner or individual until the expiration of that period.

44. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in advising on excluded interests, and neither section 42 nor 43 is applicable to the person, then the person may continue carrying on the business in advising on excluded interests for a period of 6 months from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to -

- (a) the person; and
- (b) any individual ~~employed~~ engaged² in the business by the person to advise on excluded interests,

until the expiration of that period.

Persons dealing in futures contracts solely with persons
outside Hong Kong

45. For the purposes of sections 46, 47, 48 and 49, "excluded clients" (豁除客戶) means persons outside Hong Kong.

46. Where immediately before the commencement of Part V of this Ordinance, a person -

- (a) is carrying on a business which does not fall within the meaning of "trading in commodity futures contracts", as defined in section 2(1) of the repealed Commodities Trading Ordinance, solely because the person while engaging in such trading only deals with excluded clients; and
- (b)
 - (i) is registered under the repealed Securities Ordinance as a dealer, other than as such dealer in the capacity of -
 - (A) a director of a corporation; or
 - (B) a partner of a partnership, that is registered as such dealer; or
 - (ii) is declared under the repealed Securities Ordinance as an exempt dealer,

then the person may continue carrying on the business referred to in paragraph (a) for a period of 2 years from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to the person until the expiration of that period.

47. Where section 46 is applicable to a person who falls within the description of section 46(b)(i), and immediately before

the commencement of Part V of this Ordinance -

- (a) (if the person is a corporation) a director of the person is registered as a dealer;
- (b) (if the person is a partnership) a partner of the person is registered as a dealer;
- (c) an individual is registered as a dealer's representative,

of the person under the repealed Securities Ordinance, then the director, partner or individual may deal in futures contracts solely with excluded clients in the business carried on by the person for a period of 2 years from such commencement, and solely for the purposes of dealing in futures contracts solely with excluded clients in such business, this Ordinance shall not apply to the director, partner or individual until the expiration of that period.

48. Where section 46 is applicable to a person who falls within the description of section 46(b)(ii), and immediately before the commencement of Part V of this Ordinance, an individual is ~~employed~~^{engaged} by the person to deal solely with excluded clients in the person's business referred to in section 46(a), then the individual may deal in futures contracts solely with excluded clients in such business for a period of 2 years from such commencement, and solely for the purposes of dealing in

futures contracts solely with excluded clients in such business, this Ordinance shall not apply to the person until the expiration of that period.

49. Where immediately before the commencement of Part V of this Ordinance, a person -

- (a) is carrying on a business which does not fall within the meaning of "trading in commodity futures contracts", as defined in section 2(1) of the repealed Commodities Trading Ordinance, solely because the person while engaging in such trading only deals with excluded clients; and
- (b) none of sections 46, 47 and 48 is applicable to the person,

then the person may continue carrying on the business referred to in paragraph (a) for a period of 6 months from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to -

- (i) the person; and
- (ii) any individual ~~employed~~^{engaged}² in the business by the person to deal in futures contracts solely with excluded clients,

until the expiration of that period.

Deemed condition for Type 9 regulated activity

50. Where a person is -

(a) immediately before the commencement of Part V of this Ordinance -

(i) registered under the repealed Securities Ordinance as a dealer, investment adviser, dealer's representative or investment representative;

(ii) declared under the repealed Securities Ordinance as an exempt dealer or an exempt investment adviser; or

(iii) a licensed bank referred to in section 32; and

(b) regarded under section 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 or 32 as licensed or ~~exempt~~registered¹ for Type 9 regulated activity under Part V of this Ordinance,

then without prejudice to section 54, such licence or ~~exemption~~registration¹ referred to in paragraph (b) shall be subject to a condition that the person shall not provide a service of managing a portfolio of futures contracts for another person.

51. Where a person is -

- (a) immediately before the commencement of Part V of this Ordinance registered under the repealed Commodities Trading Ordinance as a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative; and
- (b) regarded under section 22, 23, 24, 27, 28, 29, 30 or 31 as licensed for Type 9 regulated activity under Part V of this Ordinance,

then without prejudice to section 54, such licence referred to in paragraph (b) shall be subject to a condition that the person shall not provide a service of managing a portfolio of securities for another person.

Further provisions on transitional period

52. (1) Where, within 2 years from the commencement of Part V of this Ordinance -

- (a) a corporation regarded under section 22 or 25(b) as licensed for a regulated activity applies to be licensed for that regulated activity under section 115(1) of this Ordinance, then without prejudice to subsection (3)(C), it shall continue to be regarded -
 - (i) as so licensed; and

(ii) (in the case of a corporation regarded under section 22 as licensed) as having complied with the requirement of section 124(1)(a) and (b) of this Ordinance in relation to that regulated activity, until the notice in writing of the Commission's final decision of that application has been served on the applicant;

(b) a company, or an overseas company that has complied with the provisions of Part XI of the Companies Ordinance (Cap. 32) for the registration of documents, applies to be licensed under section 115(1) of this Ordinance for a regulated activity and -

(i) all the partners of a partnership regarded under section 25(b) or 27 as licensed for that regulated activity are shareholders of the applicant;

(ii) the collective shareholdings of such partners would have made them a majority shareholder of the applicant if they were one single shareholder of the applicant; and

(iii) the applicant satisfies the Commission that -

(A) it is incorporated for the purposes of taking over the business carried on by that partnership in that regulated activity; and

(B) sufficient arrangements have been or will be made to effect the transfer of such business from that partnership to the applicant,

then without prejudice to subsection (3)(C), that partnership shall continue to be regarded -

(A) as so licensed; and

(B) (in the case of a partnership regarded under section 27 as licensed) as having complied with the requirement of section 124(1)(a) and (b) of this Ordinance in relation to that regulated activity,

until the notice in writing of the Commission's final decision of that application has been served on the applicant;

(c) a company, or an overseas company that has complied with the provisions of Part XI of the Companies Ordinance (Cap. 32) for the registration of documents, applies to be licensed under section 115(1) of this Ordinance for a regulated activity and -

- (i) an individual regarded under section 25(b) or 30 as licensed for that regulated activity is a majority shareholder of the applicant; and
- (ii) the applicant satisfies the Commission that -
 - (A) it is incorporated for the purposes of taking over the business carried on by that individual in that regulated activity; and
 - (B) sufficient arrangements have been or will be made to effect the transfer of such business from that individual to the applicant,

then without prejudice to subsection (3)(C), that individual shall continue to be regarded -

- (A) as so licensed;
- (B) (in the case of an individual regarded under section 30 as licensed) as having complied with the requirement of section 124(1)(a) and (b) of this Ordinance in relation to that regulated activity; and
- (C) (in the case of an individual regarded under section 30 as licensed) as having been approved under section 125(1) of this Ordinance as a responsible officer

in relation to that licensed
corporation,

until the notice in writing of the Commission's
final decision of that application has been served
on the applicant;

(d) a director regarded under section 23, or a partner
regarded under section 28, as -

(i) licensed for a regulated activity and as
accredited to a corporation; and

(ii) approved as a responsible officer of that
corporation,

applies to be licensed for the regulated activity
under section 119(1) of this Ordinance, he shall,
subject to subsection (6), continue to be so
regarded -

(A) until the notice in writing of the
Commission's final decision of that
application has been served on him; or

(B) where the application is refused, until
the expiration of 21 days after the
notice in writing of the Commission's
final decision of that application has
been served on him or (if an application
is made under section 211 of this
Ordinance for review of that decision)
the determination of the review;

(e) an individual regarded under section 24, 26(~~ii~~)³, 29 or 31 as licensed for a regulated activity and accredited to a corporation applies to be licensed for the regulated activity under section 119(1) of this Ordinance, he shall, subject to subsection (6), continue to be so regarded -

- (i) until the notice in writing of the Commission's final decision of that application has been served on him; or
- (ii) where the application is refused, until the expiration of 21 days after the notice in writing of the Commission's final decision of that application has been served on him or (if an application is made under section 211 of this Ordinance for review of that decision) the determination of the review.

(2) Where, within 2 years from the commencement of Part V of this Ordinance, an authorized financial institution regarded under section 25(a) as ~~exempt~~registered¹, or a licensed bank regarded under section 32 as ~~exempt~~registered¹, for a regulated activity, applies to be ~~exempt~~registered¹ for that regulated activity under section 118(1) of this Ordinance, then without prejudice to subsection (3)(C) -

(a) it shall continue to be regarded as so
~~exempt~~registered¹; and

(b) an individual regarded under section 26(~~ia~~)³ or 33
as a person whose name is entered in the register
referred to in that section as ~~employed~~engaged² by
the institution or licensed bank (as the case may
be) in that regulated activity shall, subject to
subsection (6), continue to be so regarded,
until the notice in writing of the Commission's final decision
of that application has been served on the applicant.

(3)Where -

- (a) an application referred to in subsection (1)(a),
(b) or (c) or (2) in relation to a regulated activity
is refused; or
- (b) such an application is refused and the applicant
applies for review of the refusal under section 211
of this Ordinance ~~or appeals against the refusal
under section 225 of this Ordinance (as the case
may be)~~, and the refusal is confirmed by the
Securities and Futures Appeals Tribunal ~~or the
Chief Executive in Council (as the case may be)~~⁴,

then -

⁴ The amendment is consequential to the revised appeal mechanism under which all decisions are appealable to the Securities and Futures Appeals Tribunal under clause 211 of the Bill.

- (i) in the case of an application referred to in subsection (1)(a) or (2), the applicant;
- (ii) in the case of an application referred to in subsection (1)(b), the partnership from which the applicant intends to take over the business in that regulated activity; or
- (iii) in the case of an application referred to in subsection (1)(c), the individual from whom the applicant intends to take over the business in that regulated activity,

shall -

- (A) cease to carry on that regulated activity within 21 days of the refusal or the confirmation (as the case may be) or within such further period as the Commission notifies the applicant, partnership or individual (as the case may be) in writing;
- (B) comply with such reasonable conditions as the Commission may impose for such cessation; and
- (C) before such cessation but in any event not later than the 21 days or further period mentioned in paragraph (A) and solely for the purpose of winding up its business in that regulated activity, continue to be regarded as licensed or ~~exempt~~registered¹ or having complied with the requirement of section 124(1)(a) and (b) of this Ordinance or having been approved as a responsible

officer for or in relation to that regulated activity, as may be applicable, and may be subject to the exercise of the power of the Commission under section 193 of this Ordinance as if the licence or ~~exemption~~registration¹ referred to in paragraph (C) in respect of the applicant, partnership or individual (as the case may be) had been revoked on the occurrence of the circumstances specified in paragraphs (a) and (b) (whichever is applicable).

⁵(4) Where a person is regarded under section 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 or 32 as licensed or ~~exempt~~registered¹ for a regulated activity or approved as a responsible officer, ~~he shall, in the carrying on of that regulated activity, comply with the provisions of this Ordinance~~ shall that apply to or in relation to the person as they apply to or in relation to a person who is licensed or ~~exempt~~registered¹ for that regulated activity or approved as a responsible officer (as the case may be) ~~for that regulated activity~~ with such modifications under section 131 of this Ordinance as may be necessary in case he is a partnership or an individual carrying on a business in that regulated activity (as the case may be).

⁵(5) Where an individual's name is regarded -

⁵ We accept the comment of the Legal Service Division of the Legislative Council and propose the amendments to make clear that the provisions of the SF Bill shall apply to persons transited into the new regime as appropriate.

(a) under section 26(~~ia~~)³; or

(b) under section 33,

as entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as ~~employed~~engaged by the institution concerned or the bank concerned employer² in respect of a regulated activity, ~~the individual shall, in performing any act which constitutes a regulated function in relation to that regulated activity, comply with the provisions of this Ordinance that shall apply to or in relation to the individual as they apply to or in relation to an individual whose name is entered in such register a person who is so registered for~~ in respect of that regulated activity with such modifications under section 131 of this Ordinance as may be necessary.

(6) If -

(a) a director of a corporation who is regarded under section 23 as -

(i) licensed as a licensed representative and as accredited to that corporation; and

(ii) approved under section 125(1) of this Ordinance as a responsible officer of that corporation,

ceases to be a director of that corporation, he shall upon such cessation cease to be so regarded;

(b) a partner of a partnership who is regarded under section 28 as -

(i) licensed as a licensed representative and as accredited to that partnership (regarded under section 27 as a licensed corporation); and

(ii) approved under section 125(1) of this Ordinance as a responsible officer of that corporation,

ceases to be a partner of that partnership, he shall upon such cessation cease to be so regarded;

(c) an individual who is regarded under section 24, 26(~~ii~~)³, 29 or 31 as licensed as a licensed representative and as accredited to a licensed person ceases to act for or on behalf of that licensed person in relation to the regulated activity for which he is so regarded, he shall upon such cessation cease to be so regarded;

(d) an individual who is regarded under section 26(~~ia~~)³ or 33 as a person whose name is entered in the register referred to in that section ceases to be ~~employed~~engaged by the institution concerned or the bank concerned ~~employer~~² to perform any act which constitutes a regulated function in relation to the relevant regulated activity, he shall upon such cessation cease to be so regarded.

Certain unregistered persons to be permitted
to carry on limited business

53. A person who -

- (a) immediately before the commencement of Part XA of the repealed Securities Ordinance, carried on a business of securities margin financing; and
- (b) continues to collect interest accrued or accruing on sums already advanced under financial accommodation granted before the commencement of that Part,

is deemed not to be carrying on a business in Type 8 regulated activity for the purpose of section 114(1) of this Ordinance, but only if the person does not carry on, or hold itself out as carrying on, any a business in any other securities margin financing other than that as mentioned in paragraph (b)⁶.

Miscellaneous

54. Where a person is -

⁶ **Technical amendment for greater clarity.**

(a) immediately before the commencement of Part V of this Ordinance -

(i) registered under the repealed Securities Ordinance as a dealer, investment adviser, securities margin financier, dealer's representative, investment representative or securities margin financier's representative;

(ii) declared under the repealed Securities Ordinance as an exempt dealer or an exempt investment adviser;

(iii) registered under the repealed Commodities Trading Ordinance as a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative; or

(iv) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a leveraged foreign exchange trader or representative; and

(b) regarded under section 22, 23, 24, 25, 27, 28, 29, 30, 31 or 32 as licensed or ~~exempt~~registered¹ under Part V of this Ordinance,

any condition that has been attached or imposed by the Commission to the registration, exemption or licence referred

to in paragraph (a) which is in force immediately before such commencement shall, upon such commencement, be regarded as being imposed in respect of the licence or ~~exemption~~registration¹ referred to in paragraph (b).

55. Where -

- (a) approval for premises to be used for keeping records or documents has been given by the Commission under the repealed Securities and Futures Commission Ordinance; and
- (b) the approval subsists immediately before the commencement of Part V of this Ordinance,

the approval shall, upon such commencement, be regarded as given under section 129 of this Ordinance.

56. Where -

- (a) approval for a subordinated loan has been given by the Commission under the Financial Resources Rules (Cap. 24 sub. leg.) repealed under section 392 of this Ordinance or the Leveraged Foreign Exchange Trading (Financial Resources) Rules (Cap. 451 sub. leg.) repealed under section 392 of this Ordinance; and

(b) the approval subsists immediately before the commencement of Part V of this Ordinance, the approval shall, upon such commencement, be regarded as given under this Ordinance.

57. Where -

- (a) an application is made before the commencement of Part V of this Ordinance for approval to be a substantial shareholder under section 26A of the repealed Securities and Futures Commission Ordinance; and
- (b) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement, be treated as an application to become a substantial shareholder under section 130A⁷ of this Ordinance.

58. Where the Commission has commenced action (including the making of any inquiry) before the commencement of Part V of this Ordinance under -

- (a) section 55 or 56 of the repealed Securities Ordinance;

⁷ **Technical amendment consequential to the relocation of provisions relating to approval of substantial shareholders.**

(b) section 35 or 36 of the repealed Commodities Trading Ordinance; or

(c) section 11 or 12 of the repealed Leveraged Foreign Exchange Trading Ordinance,

and the action is pending immediately before such commencement, the action shall, upon such commencement, be regarded as having been commenced under this Ordinance and may be continued in accordance with section 175 or 187 of this Ordinance.

59.(1)Where -

(a) an application is made before the commencement of Part V of this Ordinance for -

(i) registration; or

(ii) a licence,

in any capacity specified in column 2 of the Table;

and

(b) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement, be treated as an application for a licence as specified opposite thereto in column 3 of the Table, and the Commission shall be entitled to determine the application accordingly.

TABLE

Item	Application pending at commencement of Part V of this Ordinance	To be treated as application for a licence
1.	For registration as a dealer under the repealed Securities Ordinance, by -	
	(a) a corporation	(a) Under section 115(1) of this Ordinance for Type 1, Type 4, Type 6, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
	(b) an individual	(b) Under section 119(1) of this Ordinance for Type 1, Type 4, Type 6, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable

2. For registration as an investment adviser under the repealed Securities Ordinance, by -

(a) a corporation

(a) Under section 115(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities, or any one or more of them, as may be applicable

(b) an individual

(b) Under section 119(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities, or any one or more of them, as may be applicable

3. For registration as a dealer's representative under the repealed

Under section 119(1) of this Ordinance for Type 1, Type 4, Type 6, Type 7 and Type 9

Securities Ordinance

regulated activities, or any one or more of them, as may be applicable

4. For registration as an investment representative under the repealed Securities Ordinance

Under section 119(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities, or any one or more of them, as may be applicable

5. For registration as a dealer under the repealed Commodities Trading Ordinance, by -

(a) a corporation

(a) Under section 115(1) of this Ordinance for Type 2, Type 5, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable

(b) an individual

(b) Under section 119(1) of this Ordinance for Type

2, Type 5, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable

6. For registration as a commodity trading adviser under the repealed Commodities Trading

Ordinance, by -

(a) a corporation

(a) Under section 115(1) of this Ordinance for Type 5 and Type 9 regulated activities, or any one of them, as may be applicable

(b) an individual

(b) Under section 119(1) of this Ordinance for Type 5 and Type 9 regulated activities, or any one of them, as may be applicable

- | | | |
|-----|----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| 7. | For registration as a dealer's representative under the repealed Commodities Trading Ordinance | Under section 119(1) of this Ordinance for Type 2, Type 5, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable |
| 8. | For registration as a commodity trading adviser's representative under the repealed Commodities Trading Ordinance | Under section 119(1) of this Ordinance for Type 5 and Type 9 regulated activities, or any one of them, as may be applicable |
| 9. | For a licence as a leveraged foreign exchange trader under the repealed Leveraged Foreign Exchange Trading Ordinance | Under section 115(1) of this Ordinance for Type 3 regulated activity |
| 10. | For a licence as a representative under the repealed Leveraged Foreign Exchange Trading Ordinance | Under section 119(1) of this Ordinance for Type 3 regulated activity |

11. For registration as a securities margin financier under the repealed Securities Ordinance Under section 115(1) of this Ordinance for Type 8 regulated activity

12. For registration as a securities margin financier's representative under the repealed Securities Ordinance Under section 119(1) of this Ordinance for Type 8 regulated activity

(2)Where -

(a) an application is made before the commencement of Part V of this Ordinance for a declaration as an exempt dealer under the repealed Securities Ordinance; and

(b) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement -

(i) where the applicant is an authorized financial institution, be treated as an application under section 118(1) of this Ordinance for registration ~~an exemption~~¹ for Type 1, Type 4, Type 6 and Type 9 regulated activities; or

- (ii) where the applicant is not an authorized financial institution, be treated as an application under section 115(1) of this Ordinance for Type 1, Type 4, Type 6 and Type 9 regulated activities.

(3)Where -

- (a) an application is made before the commencement of Part V of this Ordinance for a declaration as an exempt investment adviser under the repealed Securities Ordinance; and
- (b) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement -

- (i) where the applicant is an authorized financial institution, be treated as an application under section 118(1) of this Ordinance for registration ~~an exemption~~¹ for Type 4, Type 6 and Type 9 regulated activities; or
- (ii) where the applicant is not an authorized financial institution, be treated as an application under section 115(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities.

**Part VI of this Ordinance (Capital requirements,
client assets, records and audit relating
to intermediaries)**

60. Where -

- (a) immediately before the commencement of Part VI of this Ordinance -
 - (i) an appointment of an auditor under section 52 of the repealed Commodities Trading Ordinance in relation to a dealer within the meaning of that section is still in force;
 - (ii) an appointment of an auditor under section 90 of the repealed Securities Ordinance in relation to a dealer within the meaning of that section is still in force;
 - (iii) an appointment of an auditor under section 121AW of the repealed Securities Ordinance in relation to a registered financier within the meaning of that section is still in force; or
 - (iv) an appointment of an auditor under section 33 of the repealed Leveraged Foreign Exchange Trading Ordinance in

relation to a licensed leveraged foreign exchange trader within the meaning of that section is still in force; and

- (b) the dealer, the registered financier or the licensed leveraged foreign exchange trader (as the case may be) is under this Ordinance a licensed corporation,

the auditor shall upon such commencement be deemed to have been appointed under section 155 of this Ordinance, and section 155(4) and (5) and other provisions of this Ordinance shall apply accordingly.

61. Where -

- (a) immediately before the commencement of Part VI of this Ordinance -
 - (i) an appointment of an auditor under section 53 of the repealed Commodities Trading Ordinance in relation to a dealer within the meaning of that section is still in force;
 - (ii) an appointment of an auditor under section 91 of the repealed Securities Ordinance in relation to a dealer within the meaning of that section is still in force;

(iii) an appointment of an auditor under section 121AX of the repealed Securities Ordinance in relation to a registered financier within the meaning of that section is still in force; or

(iv) an appointment of an auditor under section 34 of the repealed Leveraged Foreign Exchange Trading Ordinance in relation to a licensed leveraged foreign exchange trader within the meaning of that section is still in force; and

(b) the dealer, the registered financier or the licensed leveraged foreign exchange trader (as the case may be) is under this Ordinance a licensed corporation,

the auditor shall upon such commencement be deemed to have been appointed under section 156 of this Ordinance, and section 156(8) and (9) and other provisions of this Ordinance shall apply accordingly.

Part VIII of this Ordinance (Supervision and investigations)

62. Where -

(a) any power has before the commencement of Part VIII of this Ordinance been exercised before such commencement under -

(i) section 29A, 30, 31, 33 or 36 of the repealed Securities and Futures Commission Ordinance; or

(ii) section 12, 41, 42, 44 or 47 of the repealed Leveraged Foreign Exchange Trading Ordinance; and

(b) the exercise of the power would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,

then -

(i) the exercise of the power shall continue to have force and effect as if this Ordinance had not been enacted; and

(ii) the provisions of the repealed Securities and Futures Commission Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) shall continue to apply to the exercise of the power and to any other matters relating thereto as if this Ordinance had not been enacted.

Part IX of this Ordinance (Discipline, etc.)

63. Where -

- (a) before the commencement of Part IX of this Ordinance any conduct, event, matter or thing that occurred can be the subject of -
 - (i) the exercise of any power under section 35 or 36 of the repealed Commodities Trading Ordinance;
 - (ii) the exercise of any power under section 55 or 56 of the repealed Securities Ordinance; or
 - (iii) the exercise of any power under section 11 or 12 of the repealed Leveraged Foreign Exchange Trading Ordinance; and
- (b) no such power has been exercised before such commencement,

then -

- (i) the power may be exercised as if this Ordinance had not been enacted; and
- (ii) subject to section 65, the provisions of the repealed Commodities Trading Ordinance, the repealed Securities Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) and the repealed Securities and Futures Commission Ordinance (where applicable)

shall continue to apply to the exercise of the power and to any matters relating thereto as if this Ordinance had not been enacted.

64. Where -

- (a) the exercise of any power under section 63 results in the revocation or suspension of any registration or licence; and
- (b) the registration or licence has, by virtue of sections 22 to 37, been regarded as a licence under this Ordinance,

the licence shall, notwithstanding sections 22 to 37, be regarded as having been revoked or suspended (as the case may be) on the same terms and conditions on which the registration or licence referred to in paragraph (a) is revoked or suspended.

⁸65. Where any power is exercised under section 63, an ~~application for review~~appeal ~~in respect of the exercise of the power~~ may be made to the Securities and Futures Appeals Tribunal and disposed of in all respects in respect of the exercise of the power as if the power had been exercised under Part IX of this Ordinance.

⁸ **“Appeal”, instead of “review” is referred to under existing law, and the amendment seeks to refer to the existing reference in this related transitional provision.**

**Part X of this Ordinance (Powers of intervention
and proceedings)**

66. Where -

- (a) before the commencement of Part X of this Ordinance, there has been served on any person a notice under -
 - (i) section 39(1), 40, 41(1), 42(4) or 43(1) of the repealed Securities and Futures Commission Ordinance; or
 - (ii) section 50, 51, 52(1), 53(4) or 54(1) of the repealed Leveraged Foreign Exchange Trading Ordinance; and
- (b) the prohibition or requirement to which the notice relates would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,

then -

- (i) the prohibition or requirement shall continue to have force and effect as if this Ordinance had not been enacted; and
- (ii) subject to section 67, the provisions of the repealed Securities and Futures Commission Ordinance or both the repealed Securities and Futures Commission Ordinance and the repealed Leveraged Foreign Exchange Trading Ordinance (as

the case may be) shall continue to apply to the prohibition or requirement and to any appeals and other matters relating thereto as if this Ordinance had not been enacted.

67. Where -

(a) before the commencement of Part X of this Ordinance an appeal has not been made in respect of a prohibition or requirement referred to in section 66 -

(i) under section 44 of the repealed Securities and Futures Commission Ordinance, whether by virtue of the application of section 66(ii) or not; or

(ii) under section 56 of the repealed Leveraged Foreign Exchange Trading Ordinance, whether by virtue of the application of section 66(ii) or not; and

(b) the time within which the appeal may be made under such section is running and has not expired or, in a case where section 66 applies, is running and has not expired or has not begun to run, upon such commencement,

~~an appeal~~ application for review⁹ in respect of the prohibition or requirement may be made to the Securities and Futures Appeals Tribunal and disposed of in all respects as if the prohibition or

⁹ Amendment to refer to “review” for consistency with the terminology in Part XI.

requirement had been imposed under that Part as a result of the exercise of any of the powers under sections 196, 197, 198,~~199~~¹⁰ and 201 of this Ordinance.

**Part XI of this Ordinance (Securities and
Futures Appeals Tribunal)**

68. Where a person has made an appeal to the Securities and Futures Appeals Panel before the commencement of Part XI of this Ordinance under -

- (a) Part III of the repealed Securities and Futures Commission Ordinance; or
- (b) Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance,

and the appeal has not been finally determined before such commencement, the appeal may be continued and disposed of in all respects as if this Ordinance had not been enacted.

69. Subject to sections 65 and 67, where -

- (a) before the commencement of Part XI of this Ordinance an appeal has not been made under -
 - (i) Part III of the repealed Securities and Futures Commission Ordinance; or

¹⁰ Amendment consequential to the proposed deletion of clause 199 in Part X.

(ii) Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance; and

(b) the time within which the appeal may be made under such Part is running and has not expired upon such commencement,

the appeal may be made to the Securities and Futures Appeals Panel and disposed of in all respects as if this Ordinance had not been enacted.

70. Where, by virtue of sections 66, 68 and 69, any appeal is or is to be made or continued, and disposed of, under -

(a) Part III of the repealed Securities and Futures Commission Ordinance; or

(b) Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance,

then, without limiting the generality of sections 66, 68 and 69 (including the power to appoint any person as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel established by section 18 of the repealed Securities and Futures Commission Ordinance or as a member of a tribunal appointed under that Ordinance) -

(i) any person who immediately before the commencement of Part XI of this Ordinance holds any office as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel or as a member of the tribunal to

determine the appeal shall, for the purposes of the appeal, continue to hold the same office on the same terms and conditions as if this Ordinance had not been enacted; and

(ii) the Securities and Futures Appeals Panel and the tribunal shall, for the purposes of the appeal, continue in existence as if this Ordinance had not been enacted.

Part XII of this Ordinance (Investor compensation)

71. (1) In sections 72 to 74 -

"Futures Exchange Compensation Fund" (期交所賠償基金) and "Unified Exchange Compensation Fund" (聯交所賠償基金) have the meanings respectively assigned to them in section 228 of this Ordinance;

"repealed Commodities Trading Rules" (已廢除的《商品交易規則》) means the Commodities Trading (Dealers, Commodity Trading Advisers and Representatives) Rules (Cap. 250 sub. leg.) repealed under section 392 of this Ordinance;

"repealed Contract Levy Rules" (已廢除的《合約徵費規則》) means the Commodities Trading (Contract Levy) Rules (Cap. 250 sub. leg.) repealed under section 392 of this Ordinance;

"repealed Securities Rules" (已廢除的《證券規則》) means the Securities (Miscellaneous) Rules (Cap. 333 sub. leg.) repealed under section 392 of this Ordinance.

(2) For the avoidance of doubt, it is hereby declared that nothing in sections 72 to 74 shall be construed as enabling a claim to be made which is barred under any enactment or rule of law.

Unified Exchange Compensation Fund

72. (1) Despite the repeals effected by section 392 of this Ordinance, Part X of the repealed Securities Ordinance shall, subject to this section, continue to apply to and in relation to

-

(a) any claim for compensation from the Unified Exchange Compensation Fund made under that Part before the appointed day; or

(b) any default occurring before the appointed day, as if that section had not been enacted, subject to the following modifications -

(i) section 112 of that Part X shall cease to apply as from the appointed day;

(ii) for any reference to the Unified Exchange, there shall be substituted a reference to a recognized stock market within the meaning of this Ordinance;

- (iii) for any reference to the Exchange Company, there shall be substituted a reference to the Stock Exchange Company within the meaning of this Ordinance; and
- (iv) the expressions "dealing in securities", "exchange participant", "listed", "securities" and "trading right" shall respectively be construed in accordance with this Ordinance.

(2) The Commission may after the appointed day pay into the compensation fund such sum of money from the Unified Exchange Compensation Fund as it considers appropriate, having regard to

-

- (a) the amounts which the Commission considers to be necessary to meet any claims or likely claims against the Unified Exchange Compensation Fund; and
- (b) ¹¹the amounts deposited in cash under section 104 of the repealed Securities Ordinance, which have not previously been reimbursed under this section.

¹¹(2A) Where the Commission considers that the amount at credit in the Unified Exchange Compensation Fund exceeds the total amount which the Commission considers to be necessary to meet any

¹¹ The proposed amendments confers the SFC with the flexibility to refund the cash deposit made under section 104 of the Securities Ordinance at an earlier time to the Stock Exchange Company if it is satisfied that the balance of the Unified Exchange Compensation Fund is sufficient to satisfy all possible claims against the fund. We expect that the Stock Exchange Company would return such deposit to its participants in a manner like that set out in section 106 of the Securities Ordinance. **Members considered the amendments and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

claims or likely claims against the Unified Exchange Compensation Fund, the Commission may after the appointed day apply the excess to reimburse the Stock Exchange Company or, if the Stock Exchange Company is in liquidation, the liquidator of the Stock Exchange Company, for the amounts deposited in cash under section 104 of the repealed Securities Ordinance.

(3) As soon as reasonably practicable after the appointed day, the Stock Exchange Company shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after the publication of the notice, on or before which a claim for compensation from the Unified Exchange Compensation Fund may be made by any person.

(4) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation from the Unified Exchange Compensation Fund, he shall lodge his claim in writing with the Stock Exchange Company -

- (a) if a notice under subsection (3) has been published, on or before the date specified in the notice; or
- (b) if no such notice has been published, within 6 months after he became aware of the default giving rise to the claim.

(5) A claim made under subsection (4) shall be regarded as a claim made under section 109 of the repealed Securities Ordinance and other provisions of Part X of that Ordinance shall apply

accordingly.

(6) A claim that is not made within the time limited by subsection (4) shall, unless the Stock Exchange Company otherwise determines, be barred.

(7) After -

(a) all claims made or continued under this section have been disposed of; and

(b) all outstanding liabilities against the Unified Exchange Compensation Fund have been satisfied, the Commission shall apply any balance remaining in the Fund in accordance with subsection (8).

¹¹(8) Any balance mentioned in subsection (7) shall -

(a) be used to ~~repay~~ reimburse the Stock Exchange Company or, if the Stock Exchange Company is in liquidation, the liquidator of the Stock Exchange Company, for the amounts deposited in cash under section 104 of the repealed Securities Ordinance, ~~to the extent that the balance is sufficient for this purpose and provided such deposits~~ which have not previously been reimbursed under this section ~~repaid; and on any such payment being made those amounts shall form part of the assets of the Stock Exchange Company and, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32);~~ and

(b) if there is any remaining balance, be paid into the compensation fund.

¹¹(8A) Upon any reimbursement referred to in subsection (2A) or (8)(a), the amount of the reimbursement shall form part of the assets of the Stock Exchange Company and, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32).

(9) Where a claim for compensation from the Unified Exchange Compensation Fund is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because the Commission is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the claim is allowed, after which time the Commission shall apply the amount in accordance with subsection (8).

(10) Except as provided in this section, no claim for compensation from the Unified Exchange Compensation Fund may be made after the appointed day.

(11) The Secretary for Financial Services may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section.

(12) In this section -
"appointed day" (指定日期) means the date appointed under subsection (11);

"default" (違責) means a ~~default~~ an act¹² referred to in section 109(1) of the repealed Securities Ordinance.

Futures Exchange Compensation Fund

73. (1) Despite the repeals effected by section 392 of this Ordinance, Part VIII of the repealed Commodities Trading Ordinance and the repealed Contract Levy Rules shall, subject to this section, continue to apply to and in relation to -

(a) any claim for compensation from the Futures Exchange Compensation Fund made under that Part before the appointed day; or

(b) any default occurring before the appointed day, as if that section had not been enacted, subject to the following modifications -

(i) section 89 of that Part VIII shall cease to apply as from the appointed day;

(ii) for any reference to the Commodity Exchange, there shall be substituted a reference to a recognized futures market within the meaning of this Ordinance;

(iii) for any reference to the Exchange Company, there shall be substituted a reference to the Futures

¹² As pointed out by the Legal Service Division of the Legislative Council that "act", instead of "default", is referred to in section 109(1) of the Securities Ordinance. We have therefore proposed the amendment.

Exchange Company within the meaning of this Ordinance; and

- (iv) the expressions "exchange participant", "futures contracts" and "trading right" shall respectively be construed in accordance with this Ordinance.

(2) The Commission may after the appointed day pay into the compensation fund such sum of money from the Futures Exchange Compensation Fund as it considers appropriate, having regard to

-

- (a) the amounts which the Commission considers to be necessary to meet any claims or likely claims against the Futures Exchange Compensation Fund; and
- (b) the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance, which have not previously been reimbursed under this section.¹³

¹³(2A) Where the Commission considers that the amount at credit in the Futures Exchange Compensation Fund exceeds the total amount which the Commission considers to be necessary to meet any claims or likely claims against the Futures Exchange Compensation Fund, the Commission may after the appointed day apply the excess to reimburse the Futures Exchange Company or, if the Futures Exchange Company is in liquidation, the liquidator of the Futures Exchange

¹³ This amendment is of similar nature to that proposed to clause 72 regarding the Unified Exchange Compensation Fund. Please refer to Note 1 for details. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

Company, for the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance.

(3) As soon as reasonably practicable after the appointed day, the Futures Exchange Company shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after the publication of the notice, on or before which a claim for compensation from the Futures Exchange Compensation Fund may be made by any person.

(4) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation from the Futures Exchange Compensation Fund, he shall lodge his claim in writing with the Futures Exchange Company -

- (a) if a notice under subsection (3) has been published, on or before the date specified in the notice; or
- (b) if no such notice has been published, within 6 months after he became aware of the default giving rise to the claim.

(5) A claim made under subsection (4) shall be regarded as a claim made under section 87 of the repealed Commodities Trading Ordinance and other provisions of Part VIII of that Ordinance shall apply accordingly.

(6) A claim that is not made within the time limited by subsection (4) shall, unless the Futures Exchange Company otherwise determines, be barred.

(7) After -

- (a) all claims made or continued under this section have been disposed of; and
- (b) all outstanding liabilities against the Futures Exchange Compensation Fund have been satisfied,

the Commission shall apply any balance remaining in the Fund in accordance with subsection (8).

(8) Any balance mentioned in subsection (7) shall -

- ¹³(a) be used to ~~repay~~reimburse the Futures Exchange Company or, if the Futures Exchange Company is in liquidation, the liquidator of the Futures Exchange Company, for the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance, ~~to the extent that the balance is sufficient for this purpose and provided such deposits which have not previously been reimbursed under this section repaid;~~ and on any such payment being made those amounts shall form part of the assets of the Futures Exchange Company and, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32);; and
- (b) if there is any remaining balance, be paid into the compensation fund.

¹³(8A) Upon any reimbursement referred to in subsection (2A) or (8)(a), the amount of the reimbursement shall form part of the assets of the Futures Exchange Company and, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32).

(9) Where a claim for compensation from the Futures Exchange Compensation Fund is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because the Commission is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the claim is allowed, after which time the Commission shall apply the amount in accordance with subsection (8).

(10) Except as provided in this section, no claim for compensation from the Futures Exchange Compensation Fund may be made after the appointed day.

(11) The Secretary for Financial Services may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section.

(12) In this section -
"appointed day" (指定日期) means the date appointed under subsection

(11);

"default" (違責) means a default referred to in section 87(1) of the repealed Commodities Trading Ordinance.

Dealers Deposit Scheme

74. (1) Despite the repeals effected by section 392 of this Ordinance -

- (a) sections 52 (except subsections (1), (1A) and (6)) and 52A of the repealed Securities Ordinance;
- (b) rules 2, 4, 5 and 6 (other than rule 6(4)) of the repealed Securities Rules;
- (c) section 33 of the repealed Commodities Trading Ordinance; and
- (d) ~~Parts I and~~¹⁴ III (other than rule 15(5)) of the repealed Commodities Trading Rules,

shall, subject to this section, continue to apply for the purposes of this section as if that section 392 had not been enacted.

(2) Where, prior to the appointed day -

- (a) there arises any of the circumstances described in section 52(2) or (11) of the repealed Securities Ordinance or section 33(1) or (11) of the repealed Commodities Trading Ordinance; and
- (b) no transfer, payment, forfeiture or application for release of the deposit (as the case may be) paid or deposited by the dealer concerned has been made pursuant to either of those sections,

then such transfer, payment, forfeiture or application for release

¹⁴ Technical amendment proposed in the light of the comment of the Legal Service Division of the Legislative Council.

and any subsequent application of such deposit may be made under the applicable provisions specified in subsection (1).

(3) A claim for compensation made before the appointed day in respect of a default occurring prior to that day that has not been disposed of may be continued and disposed of under subsection (1).

(4) As soon as reasonably practicable after the appointed day, the Commission shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after the publication of the notice, on or before which a claim for compensation against the deposit forfeited under section 52(2)(c) of the repealed Securities Ordinance or section 33(1)(c) of the repealed Commodities Trading Ordinance may be made.

(5) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation against any deposit referred to in subsection (4), he shall lodge his claim in writing with the Commission -

- (a) if a notice under subsection (4) has been published, on or before the date specified in the notice; or
- (b) if no such notice has been published, within 6 months after he became aware of the default giving rise to the claim.

(6) A claim made under subsection (5) shall be regarded as a claim made under rule 6(5) of the repealed Securities Rules or rule 15(6) of the repealed Commodities Trading Rules(as the case may be), and other provisions of the Rules shall apply accordingly.

(7) A claim that is not made within the time limited by subsection (5) shall, unless the Commission otherwise determines, be barred.

(8) Where a claim made or continued under this section is not allowed or the amount or amounts determined to be payable as compensation do not exceed the amount of the deposit, the Commission shall repay the deposit to which the claim relates or the remaining balance of the deposit (as the case may be) to the dealer concerned.

(9) Where -

(a) a deposit made under section 52 of the repealed Securities Ordinance or section 31 of the repealed Commodities Trading Ordinance has not been or is not required to be disposed of under the Ordinance; and

(b) the deposit is not required to be disposed of under this section,

the Commission shall repay the deposit to the dealer concerned.

(10) Where a claim made or continued under this section is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because the Commission is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the

claim is allowed, after which time the Commission shall repay the amount to the dealer concerned.

(11) Where -

(a) a deposit or its remaining balance is required to be repaid to a dealer under subsection (8) or (9) or any amount is required to be repaid to a dealer under subsection (10); but

(b) the Commission is unable to locate the dealer for the purpose of repayment during the period of 3 years beginning with -

(i) in the case of subsection (8), the date of the determination of the claim;

(ii) in the case of subsection (9), the appointed day; or

(iii) in the case of subsection (10), the end of the 3-year period referred to in that subsection,

the Commission shall pay the deposit or the remaining balance or the amount (as the case may be) to the compensation fund.

(12) Except as provided in this section, no claim for compensation may be made against any deposit forfeited under section 52(2)(c) of the repealed Securities Ordinance or section 33(1)(c) of the repealed Commodities Trading Ordinance after the appointed day.

(13) The Secretary for Financial Services may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section.

(14) In this section -
"appointed day" (指定日期) means the date appointed under subsection (13);

"default" (違責) means a default referred to in rule 6(2) of the repealed Securities Rules or rule 15(2) of the repealed Commodities Trading Rules.

Part XIII of this Ordinance (Market Misconduct Tribunal)

75. Where -

- (a) the repealed Securities (Insider Dealing) Ordinance would but for the enactment of this Ordinance have effect with respect to an insider dealing; ~~and within the meaning of the repealed Securities (Insider Dealing) Ordinance¹⁵; and~~
- (b) the insider dealing ~~does not take place on or after~~ has taken place before¹⁵ the commencement of Part XIII of this Ordinance, ~~then~~

and the Financial Secretary has before the commencement of Part XIII of this Ordinance instituted an inquiry with reference to the

¹⁵ **Technical amendments for greater clarity.**

insider dealing under section 16(2) of the repealed Securities (Insider Dealing) Ordinance, ~~(i) that then the repealed Securities (Insider Dealing)~~¹⁶ Ordinance shall continue to have application in connection with the insider dealing ~~or~~¹⁵ and with any inquiry, appeal, ~~or~~¹⁵ other matters related¹⁵ thereto as if this Ordinance had not been enacted; and.

~~— (ii) without limiting the generality of paragraph (i), section 16(1) of that Ordinance shall have application accordingly.~~

¹⁷75A. Where -

- (a) the repealed Securities (Insider Dealing) Ordinance would but for the enactment of this Ordinance have effect with respect to an insider dealing within the meaning of the repealed Securities (Insider Dealing) Ordinance; and
- (b) the insider dealing has in whole or in part taken place before the commencement of Part XIII of this Ordinance,

¹⁶ The amendment clarifies that where insider dealing has taken place prior to the commencement date of the Securities and Futures Ordinance (SF Ordinance) and where the Financial Secretary has before the commencement date instituted an inquiry under the Securities (Insider Dealing) Ordinance (SIDO) for the insider dealing concerned, the provisions of the SIDO would continue to apply. With the above clarification, the original paragraph (ii), which refers to the power of the Financial Secretary to institute an inquiry under the SIDO, is no longer relevant as the inquiry covered by this provision is one which has already been instituted.

¹⁷ This clause is new and provides that where insider dealing has in whole or in part taken place before the commencement date of the SF Ordinance, but the Financial Secretary has not instituted an inquiry under the SIDO before the commencement date, the provisions of the SIDO would continue to apply to such insider dealing as amended by clause 75C. See Footnote 19 below.

but the Financial Secretary has not before the commencement of Part XIII of this Ordinance instituted an inquiry with reference to the insider dealing under section 16(2) of the repealed Securities (Insider Dealing) Ordinance, then the repealed Securities (Insider Dealing) Ordinance shall continue to have application in connection with the insider dealing and with any inquiry, appeal, and other matters relating thereto as if -

- _____ (i) this Ordinance had not been enacted; and
- _____ (ii) the repealed Securities (Insider Dealing) Ordinance had been amended in the manner described in section 75C.

¹⁸75B. For the purposes of section 75A, where -

- (a) a series of conduct has taken place, partly before the commencement of Part XIII of this Ordinance, and partly on or after such commencement;
- (b) apart from this section, such series of conduct -

¹⁸ **This clause seeks to clarify the situation where a series of conduct constituting insider dealing under the SIDO started before the commencement date of the SF Ordinance and continued after the commencement date, and if the suspect of insider dealing has taken advantage of the same inside information, such conduct would be dealt with as an insider dealing that has in part taken place under clause 75A. The rationale is that the wrong committed by an insider dealer lies in the use of the relevant inside information. For example, where an insider buys shares regularly on a day to day basis, each purchase would be a separate act of insider dealing. The amendment provides where such purchases straddle the commencement date of the SF Ordinance, and the relevant information taken advantage of remains the same, then the whole series of transactions are to be treated in like manner under the SIDO. We propose to take this approach because it is more logical and provides certainty, consistency of treatment and cost savings, for suspected insider dealers, the Administration and judiciary, to deal with all the relevant acts of insider dealing which concern the same inside information and hence same circumstances and probably the same or related individuals in the one manner and the one set of proceedings.**

(i) by reason of the part that has taken place before the commencement of Part XIII of this Ordinance, would constitute one or more insider dealing taking place under the repealed Securities (Insider Dealing) Ordinance by reference to information which constitutes relevant information within the meaning of section 9(1)(a), (b), (c), (d), (e) or (f) or (2) of the repealed Securities (Insider Dealing) Ordinance; and

(ii) by reason of the part that has taken place on or after the commencement of Part XIII of this Ordinance, would but for the enactment of this Ordinance also constitute one or more insider dealing taking place under the repealed Securities (Insider Dealing) Ordinance by reference to information which constitutes relevant information within the meaning of section 9(1)(a), (b), (c), (d), (e) or (f) or (2) of the repealed Securities (Insider Dealing) Ordinance; and

(c) the information referred to in paragraph (b)(i) and
(ii) is the same or substantially the same
information,

the series of conduct shall be regarded as constituting an
insider dealing which has in part taken place before the
commencement of Part XIII of this Ordinance.

¹⁹75C. Where section 75A applies, the repealed Securities
(Insider Dealing) Ordinance shall apply as if it had been
amended -

(a) by adding -

"27A. Recommendations to Financial Secretary to
institute inquiry

At the conclusion of any inquiry or as soon
as is reasonably practicable thereafter,
where it appears to the Tribunal that insider
dealing has taken place or may have taken

¹⁹ **Clause 75C amends the SIDO for application during the transitional period. The amendment in clause 75C(b) is made in the light of comments made by Members on the proceedings of the Market Misconduct Tribunal (MMT) at the Bills Committee meeting on 19 September 2001. Members questioned the need for bringing in additional persons to the MMT proceedings in the middle of the proceedings (clause 16 of Schedule 8), and expressed concern over the protection given to these persons to ensure fair hearing. On reflection, we agree that clause 16 of Schedule 8 should be deleted. For the same reason, we consider it logical to introduce the same modification to IDT inquiry to ensure that no additional "defendants" could be brought before the Insider Dealing Tribunal (IDT) in the middle of an inquiry. We therefore propose to amend paragraph 17 of the Schedule to the SIDO to require the IDT to determine the identity of the suspected insider dealers at its first sitting. In the course of the inquiry, should the IDT identify any persons other than those identified at its first sitting as suspected insider dealers, we propose to empower the IDT by adding a new section to the SIDO through clause 75C(a), where it considers appropriate, to recommend to the Financial Secretary any such persons to be dealt with in a separate IDT inquiry. We have proposed to give the MMT a similar power to make recommendations to the Financial Secretary in Schedule 8 to the Bill.**

place by reference to the conduct of any person, it may, where it considers appropriate, recommend the Financial Secretary to institute an inquiry under section 16 to inquire into the matter.";

(b) in the Schedule, in paragraph 17, by adding ", at the first sitting of the Tribunal relating to the inquiry," after "shall determine".

76. Where, by virtue of sections 75 and 75A²⁰, any inquiry is or is to be instituted or continued, and²⁰ disposed of, under the repealed Securities (Insider Dealing) Ordinance, then, without limiting the generality of sections 75 and 75A²⁰ (including the power to appoint any person as a member (whether as the chairman or other member) or as a temporary member of the Insider Dealing Tribunal referred to in section 15 of that Ordinance) -

(a) any person who immediately before the commencement of Part XIII of this Ordinance holds any office as a member (whether as the chairman or other member) or as a temporary member of the Insider Dealing Tribunal shall, for the purposes of the inquiry, continue to hold the same office on the same terms

²⁰ Technical amendments consequential to the amendment to add new clause 75A.

and conditions as if this Ordinance had not been enacted; and

- (b) the Insider Dealing Tribunal shall, for the purposes of the inquiry, continue in existence as if this Ordinance had not been enacted.

Part XV of this Ordinance (Disclosure of Interests)

77. The repeal of the Securities (Disclosure of Interests) Ordinance (Cap. 396) shall not affect any duty of disclosure or duty to give notification that has arisen under that Ordinance, and such duty shall be performed in accordance with that Ordinance as if this Ordinance had not been enacted, whether or not -

- (a) a duty of disclosure or duty to give notification in respect of the same subject matter (or part thereof) has arisen under this Ordinance; or
- (b) the duty referred to in paragraph (a) has been performed in accordance with this Ordinance.

78. Any exemption that is granted under section 2A of the repealed Securities (Disclosure of Interests) Ordinance and is in effect immediately before the commencement of Part XV of this Ordinance shall, upon such commencement, continue to have effect as if it were granted, subject to the same conditions, under section 300 of this Ordinance.

79. Where an application has been made under the repealed Securities (Disclosure of Interests) Ordinance but has not been finally determined before the commencement of Part XV of this Ordinance, the application shall, upon such commencement, continue to be dealt with in accordance with that Ordinance as if this Ordinance had not been enacted.

80. Any restrictions imposed, or any orders made, by the court or the Financial Secretary (as the case may be) under the repealed Securities (Disclosure of Interests) Ordinance and are in effect immediately before the commencement of Part XV of this Ordinance shall, upon such commencement, continue to have effect as if this Ordinance had not been enacted.

81. Where an investigation is carried out under the repealed Securities (Disclosure of Interests) Ordinance but has not been concluded before the commencement of Part XV of this Ordinance, any power that is exercisable under that Ordinance for the purposes of the investigation shall, upon such commencement, remain exercisable as if this Ordinance had not been enacted.

82. Any register (including any part of it and any index) or report that is kept or maintained under the repealed Securities (Disclosure of Interests) Ordinance immediately before the commencement of Part XV of this Ordinance shall, upon such

commencement, be regarded as kept under this Ordinance and, subject to section 83, the relevant provisions of this Ordinance relating to the keeping and inspection of such register or report (as the case may be) shall apply, and the penalty for non-compliance with such provisions may be imposed, accordingly.

83. Where a register (including any part of it and any index) or report is kept or maintained under the repealed Securities (Disclosure of Interests) Ordinance immediately before the commencement of Part XV of this Ordinance, and such register or report is required to be kept, or any entry of such register is not to be removed, under that Ordinance until the elapse of 6 years, the 6-year period shall be computed in accordance with the relevant provisions of that Ordinance as if this Ordinance had not been enacted.

General

²¹83A. Where any rules have been published in the Gazette for the purposes of section 28(2) of the Interpretation and General Clauses Ordinance (Cap. 1), as rules made by the Commission under any

²¹ **Clause 83A is added to cater for the proposed public consultation requirement provided for under clause 384A in Part XVI for rules made by the SFC under the SF Bill. It provides that such rules, if published in the Gazette after the enactment of the SF Ordinance but before the commencement of Part XVI, shall be taken to have satisfied the consultation requirement under clauses 384A(1) to (3). In practice, the SFC will follow the consultation requirement in making the rules in advance of the commencement of the SF Ordinance so that the rules can come into effect on commencement of the principal Ordinance without delay.**

provision of this Ordinance, after the enactment of this Ordinance but before the commencement of Part XVI of this Ordinance, section 384A(1) to (3) of this Ordinance shall for all purposes be deemed to have been complied with in relation to those rules.

84. For the purposes of section 385 of this Ordinance -

- (a) the code published by the Commission as the Code on Takeovers and Mergers and in use immediately before the commencement of Part XVI of this Ordinance; and
- (b) the code published by the Commission as the Code on Share Repurchases and in use immediately before such commencement,

shall upon such commencement be regarded as the codes published under section 385(2)(a) and (b) respectively of this Ordinance, and the provisions of this Ordinance shall apply to the codes accordingly.

85. Where -

- (a) any provision of an Ordinance repealed under section 392 of this Ordinance provides for the issue, giving or service to, on or by the Commission of any document (whether described as a notice or otherwise) or information;

(b) the document or information has been issued, given or served to, on or by the Commission under or pursuant to the provision; and

(c) any provision in this Ordinance also provides for the issue, giving or service to, on or by the Commission of the document or information,

the document or information shall be deemed to have been issued, given or served to, on or by the Commission under or pursuant to such provision in this Ordinance.

86. Where -

(a) any period of time specified for the purposes of any provision ("repealed provision") of an Ordinance repealed under section 392 of this Ordinance is running at the time of the repeal of the repealed provision; and

(b) there is a provision ("corresponding provision") in this Ordinance which in the opinion of the Commission corresponds to the repealed provision,

then, in reckoning the period of time for the purposes of the corresponding provision, this Ordinance shall have effect on the basis that -

(i) the period of time specified for the purposes for the repealed provision is to apply, whether or not any other period of time is specified for the purposes of the corresponding provision; and

(ii) subject to paragraph (i), the corresponding provision had come into operation when the period of time, which is to apply under paragraph (i), began to run.

87. Subject as otherwise provided in this Part, any judicial proceedings commenced under, or by virtue of the exercise of any function conferred by, any provision of an Ordinance repealed under section 392 of this Ordinance, and pending or otherwise not finally determined at the time of the repeal of the provision may be continued and disposed of in all respects after the repeal as if this Ordinance had not been enacted.

the Securities and Futures Ordinance
(of 2000~~2~~)";

(c) repeal paragraph 3 and substitute -
"3. Any unit trust or mutual fund
authorized as a collective
investment scheme under section
103 of the Securities and Futures
Ordinance (of 2000~~2~~).";

(d) in paragraph 7 -

(i) repeal "market listed in
Schedule 5 to the Financial
Resources Rules (Cap. 24 sub.
leg.)" and substitute
"recognized stock market,
specified stock exchange,
recognized futures market or
specified futures exchange as
these terms are defined in
section 1 of Part 1 of
Schedule 1 to the Securities
and Futures Ordinance (of
2000~~2~~)";

(ii) in subparagraph (b), repeal
"an investment adviser (as
defined in section 2 of the
Securities Ordinance (Cap.
333)) or of a commodity
trading adviser (as defined
in section 2 of the
Commodities Trading Ordinance
(Cap. 250))" and substitute
"a person licensed or exempt,
a corporation licensed to
carry on, or an authorized
financial institution

registered for carrying on²,
~~to carry on~~ a business in
advising on securities,
advising on futures
contracts, advising on
corporate finance or asset
management under Part V of
the Securities and Futures
Ordinance (of 2000~~2~~);

(e) in paragraph 8 -

(i) repeal the definition of
"exempted body" and
substitute -

" "exempted body" (豁免團體)
means a body
specified in Part 4
of Schedule 4 to
the Securities and
Futures Ordinance
(of 2000~~2~~) but
does not include a
body referred to in
item ~~15-11~~³ of that
Part;";

(ii) repeal the definition of
"Unified Exchange".

3. Companies Ordinance
(Cap. 32)

(a) In section 2(1) -

(i) in the definition of
"Commission" -

² We accept the comment of some Members that the term "exempt person" is a misnomer and does not reflect the proposed regulatory framework whereby authorized institutions engaging in regulated activities are subject to a wide range of regulatory requirements and disciplinary sanctions. We informed Members at the meeting on 14 September 2001 that we would replace "exempt person" with "registered institution" and "exempt" with "registered" throughout the Bill to duly reflect the policy intention. Consequential amendments of a technical nature are made to refer to the "corporation" or "authorized financial institution" directly (as the case may be).

³ Minor consequential amendment due to renumbering of items in Part 4 of Schedule 4 to the SF Bill.

(A) in paragraph (a), repeal "established by section 3 of the Securities and Futures Commission Ordinance (Cap. 24)" and substitute "referred to in section 3(1) of the Securities and Futures Ordinance (of 2000~~2~~)";

(B) repeal paragraph (b) and substitute -

"(b) where any relevant transfer order made under section 25 of that Ordinance is in force, the recognized exchange company concerned or both the Securities and Futures Commission and the recognized exchange company concerned, in accordance with the provisions of that order;"

(ii) repeal the definition of "Exchange Company" and substitute -

"recognized exchange company" (認可交易所) means a company recognized under section 19(2) of the Securities and Futures Ordinance (of 2000~~2~~) as an exchange company for operating a stock market;"

(iii) in the definition of "listed company", repeal "the Unified Exchange" and substitute "a recognized stock market";

(iv) repeal the definition of "Unified Exchange" and substitute -

"recognized stock market" (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000~~2~~);"

(v) in the definition of "unlisted company", repeal "the Unified Exchange" and substitute "a recognized stock market".

(b) In section 38(5)(b), repeal "the Unified Exchange" and substitute "a recognized stock market".

(c) In section 38B(2)(c), repeal "section

4(2)(g) of the Protection of Investors Ordinance (Cap. 335)" and substitute "section 104 of the Securities and Futures Ordinance (of 20002)".

- (d) In section 38D(2)(a), repeal everything after "issue by" and substitute "a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (of 20002), state that neither the Commission nor the recognized exchange company nor the Registrar takes any responsibility as to the contents of the prospectus;".
- (e) In section 40(1A), repeal everything after "authorized by" and substitute "a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (of 20002), shall not apply to the Commission nor the recognized exchange company."
- (f) In section 40A(3), repeal everything after "authorized by" and substitute "a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (of 20002), shall not apply to the Commission nor the recognized exchange company."
- (g) In section 49B(5), repeal "the Unified Exchange" and substitute "a recognized stock market".

(h) In section 49BA -

(i) in subsections (1)(b) and (c) and (2)(b) -

(A) repeal "the Unified Exchange" and substitute "a recognized stock market";

(B) repeal "a recognized stock exchange" and substitute "an approved stock exchange";

(ii) in subsection (8), repeal "registered or exempt investment adviser within the meaning of the Securities Ordinance (Cap. 333)" and substitute "~~person licensed or exempt to carry on corporation licensed to carry on, or an authorized financial institution registered for carrying on¹, a~~ business in advising on securities or advising on corporate finance under Part V of the Securities and Futures Ordinance (of 2000~~2~~)";

(iii) in subsection (9), repeal the definition of "recognized stock exchange" and substitute -

~~"approved stock exchange" (核准證券交易所) means a stock exchange approved for the purposes of this section by the~~

~~Commission and the
recognized exchange
company by notice
published in the
Gazette;".~~

⁴"approved stock

exchange" (核准證券交
易所) means a stock
exchange approved,
by notice published
in the Gazette, for
the purposes of
this section by -
(a) the Commission;
and
(b) the recognized
exchange company
that operates
the recognized
stock market on
which the shares
concerned are
listed;".

(i) In section 71A -

(i) in subsections (3) and
(4)(a), repeal "Unified
Exchange" and substitute
"recognized stock market
concerned";

(ii) in subsection (5) -

(A) repeal "The Unified
Exchange" and substitute
"Each recognized stock
market";

⁴ **In the light of comments made by the Legal Service Division of the Legislative Council at the Bills Committee meeting on 26 October 2001, we have clarified that "the recognized exchange company" is the one that operates the recognized stock market on which the shares concerned are listed.**

- (B) repeal "the exchange" and substitute "it";
 - (iii) in subsection (8), repeal "Unified Exchange" and substitute "recognized stock market concerned";
 - (iv) in subsection (12), in the definition of "company", repeal "the Unified Exchange" and substitute "a recognized stock market".
- (j) In section 114A(2)(a), repeal "the Unified Exchange" and substitute "a recognized stock market".
- (k) In section 115(1A), repeal "section 2 of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420)" and substitute "section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 200~~0~~2)".
- (l) In section 141D(3)(c), repeal "a dealer registered under the Securities Ordinance (Cap. 333)" and substitute "a ~~person-corporation~~¹ licensed under Part V of the Securities and Futures Ordinance (of 200~~0~~2) to carry on a business in any regulated activity within the meaning of that Ordinance".
- (m) In section 153(2), repeal "the Unified Exchange" and substitute "a recognized stock market".
- (n) In section 154A(3), repeal "the Unified Exchange" and substitute "a recognized

stock market".

- (o) In section 155A(1)(a), repeal "the Unified Exchange" and substitute "a recognized stock market".
- (p) In section 157H(1)(in the definition of "company", in paragraph (b)(ii)) and (9)(a), repeal "the Unified Exchange" and substitute "a recognized stock market".
- (q) Repeal section 168R(5) and substitute -
 - "(5) For the purposes of this section -
 - "court" (法院) includes -
 - (a) a magistrate;
 - (b) a Tribunal within the meaning of section 2 of the repealed Ordinance; and
 - (c) the Market Misconduct Tribunal within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000~~2~~);
 - "disqualification order" (取消資格令) means an order of the court under -
 - (a) section 168E, 168F, 168G, 168H, 168J or 168L;
 - (b) section 23(1)(a) or 24(1) of the

repealed Ordinance;

or

(c) section 207(2)(d),
249(1)(a), 250(1) or
295(2)(a) of the
Securities and
Futures Ordinance
(of 20002);

"repealed Ordinance" (已廢除條例)

means the Securities (Insider
Dealing) Ordinance (Cap. 395)
repealed under the Securities
and Futures Ordinance (of
20002).".

- (r) In section 333(2)(a) and (aa), repeal
"the Unified Exchange" and substitute
"a recognized stock market".
- (s) In section 342(5)(b), repeal "the
Unified Exchange" and substitute "a
recognized stock market".
- (t) In section 342B(1A)(a), repeal "shares
in a body corporate authorized as a
mutual fund corporation under section
15 of the Securities Ordinance (Cap.
333)" and substitute "interests in a
mutual fund authorized as a collective
investment scheme under section 103 of
the Securities and Futures Ordinance
(of 20002)".
- (u) In section 342F(3), repeal everything
after "authorized by" and substitute "a
recognized exchange company pursuant to
a transfer order made under section 25
of the Securities and Futures Ordinance

(of 2000~~2~~), shall not apply to the Commission nor the recognized exchange company."

~~⁵(v) In section 345(2)(c), repeal everything after "business as" and substitute "an exchange participant as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000) and consisting of persons each of whom is an exchange participant;"~~

(v) In section 345(2), repeal paragraph (c).

(w) In the Ninth Schedule, in Part 1, in paragraphs 1 and 2, repeal "the Unified Exchange" and substitute "a recognized stock market".

(x) In the Tenth Schedule, in paragraphs 9(3) and 31(a), repeal "the Unified Exchange" and substitute "a recognized stock market".

(y) In the Sixteenth Schedule, in Part I, repeal items 3, 4, 5, 6 and 7 and substitute -

"3. A ~~person~~¹ corporation licensed under Part V of the Securities and Futures Ordinance (of 2000~~2~~) to carry on a business in any regulated activity within the meaning of Schedule

⁵ **Paragraph (c) of section 345(2) of the Companies Ordinance is repealed as obsolete. The provision originally assumes that a member of the Unified Exchange can be a partnership consisting of more than 20 members of the Unified Exchange. This will no longer be possible under the Bill, as all exchange participants must be corporations licensed by the SFC.**

6 to that Ordinance and an associated entity of the ~~person corporation~~¹ within the meaning of Part VI of that Ordinance."

4. Companies (Disqualification Orders) Regulation (Cap. 32 sub. leg.)
- (a) Repeal section 3(1)(aa) and substitute -
- "(aa) where a disqualification order is made by the Tribunal within the meaning of section 2 of the repealed Ordinance (within the meaning of section 168R(5) of the Ordinance) or the Market Misconduct Tribunal within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000~~2~~), the clerk to the Tribunal concerned, except that, where there is no clerk to the first-mentioned Tribunal, then the clerk to the second-mentioned Tribunal;"
- (b) In Schedule 1, in Form D.O. 1, in item (1)-
- (i) repeal "or Securities (Insider Dealing) Ordinance ("SIDO")" and substitute ", the repealed Securities (Insider Dealing) Ordinance ("SIDO") or the Securities and Futures Ordinance ("SFO")";

(ii) add at the end of the table -

Section 207(2)(d) of SFO	
Section 249(1)(a) of SFO	
Section 250(1) of SFO	
Section 295(2)(a) of SFO	

(c) In Schedule 3, in Form D.O. 3, repeal "or the Securities (Insider Dealing) Ordinance (Cap. 395)" and substitute ", the repealed Securities (Insider Dealing) Ordinance (Cap. 395) or the Securities and Futures Ordinance (_____ of 2002)".

⁶4A. Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32 sub. leg.)

(a) Repeal section 2 and substitute -

"2. Interpretation

In this Notice -

"GEM" (創業板) means the recognized stock market called the Growth Enterprise Market;

"listing rules" (《上市規則》) means the rules made under section 23 of the Securities and Futures Ordinance (_____ of 2002) by a recognized exchange company

⁶ Enacted after publication of the Blue Bill and commenced on 11 May 2001 (L.N. 76 of 2001). **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 26 October 2001.**

that governs the listing of securities on a stock market it operates."

(b) In section 4 -

(i) in subsections (1)(b) and (2)(b), repeal "the Unified Exchange for listing on the Unified Exchange or on GEM" and substitute "a recognized exchange company for listing on a stock market it operates";

(ii) in subsection (3)(a), repeal "SEHK Listing Rules or the GEM Listing Rules" and substitute "listing rules applicable to the stock market referred to in subsection (1)(b) or (2)(b)".

(c) In section 5(1)(b) and (2)(b), repeal "Unified Exchange" and substitute "recognized exchange company that operates GEM".

(d) In section 6 -

(i) in subsections (1)(b) and (2)(b), repeal "the Unified Exchange for listing on the Unified Exchange or on GEM" and substitute "a recognized exchange company for listing on a stock market it

operates";

(ii) in subsection (3) -

(A) in paragraph (a), repeal
"SEHK Listing Rules or
the GEM Listing Rules"
and substitute "listing
rules applicable to the
stock market referred to
in subsection (1)(b) or
(2)(b)";

(B) in paragraph (c)(i),
repeal "Unified
Exchange" and substitute
"recognized exchange
company referred to in
subsection (1)(b) or
(2)(b), as the case may
be".

5. Insurance
Companies
Ordinance (Cap.
41)

(a) In section 51 -

(i) repeal paragraph (h) and
substitute -

"(h) a recognized
clearing house
within the meaning
of section 1 of Part
1 of Schedule 1 to
the Securities and
Futures Ordinance
(of 2000~~2~~) only
to the extent that
it guarantees the
settlement of
transactions in
securities or
futures contracts as

defined in that
section;";

(ii) add -

"(i) a person who is
authorized under
Part III of the
Securities and
Futures Ordinance
(of 2000~~2~~) to
provide automated
trading services
within the meaning
of Schedule 6 to
that Ordinance only
to the extent that
it guarantees the
settlement of
transactions in
securities or
futures contracts as
defined in section 1
of Part 1 of
Schedule 1 to that
Ordinance.".

(b) In section 53A(3B)(b), repeal
"established under the Securities and
Futures Commission Ordinance (Cap. 24)"
and substitute "referred to in section
3(1) of the Securities and Futures
Ordinance (of 2000~~2~~)".

(c) In the Eighth Schedule -

(i) in paragraph 1(i), repeal
"unit trust" (單位信託), as
defined in the Securities
Ordinance (Cap. 333)," and
substitute "unit trust";

(ii) add -

"2. For the purpose of paragraph 1(i), "unit trust" (單位信託) means any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever."

6. Insurance Companies (General Business) (Valuation) Regulation (Cap. 41 sub. leg.)
- In section 2, in the definition of "listed" -
- (a) repeal "the Unified Exchange as defined in the Stock Exchange Unification Ordinance (Cap. 361)" and substitute "a recognized stock market as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000~~2~~)";
- (b) repeal "of the Unified Exchange" and substitute "of such a recognized stock market".
7. Control of Exemption Clauses Ordinance (Cap. 71)
- In Schedule 1, in paragraph 1(f) -
- (a) repeal "participant within the meaning of section 2 of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420)" and substitute "clearing participant within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000~~2~~)";

(b) in sub-subparagraph (ii), add "該" before "參".

8. Commodity Exchanges (Prohibition) Ordinance (Cap. 82)
- In section 3 -
- (a) repeal paragraph (e) and substitute -
- "(e) a recognized futures market as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000~~2~~);";
- (b) add -
- "(f) any activity which under section 19(8) of the Securities and Futures Ordinance (of 2000~~2~~) shall not be regarded as contravening section 19(1)(b) of that Ordinance.".
9. Telecommunications Ordinance (Cap. 106)
- Repeal section 13J(4)(b)(iii) and substitute -
- "(iii) an exchange participant as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000~~2~~), or ~~a person licensed or exempt to carry on a corporation licensed to carry on, or an authorized financial institution registered for carrying on¹, a business in~~ dealing in securities or securities margin financing under Part V of that Ordinance,".
10. Estate Duty Ordinance (Cap. 111)
- (a) In section 3(1), repeal the definition of "Unified Exchange" and substitute -
- "recognized stock market" (認可證券市

場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000~~2~~);_

~~⁷"recognized futures market" (認可期貨市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000);".~~

(b) In section 34(5)(b), repeal "the Unified Exchange and the shares were quoted in any list of that exchange" and substitute "a recognized stock market ~~or recognized futures market~~⁷ and the shares were quoted in any list of that market".

(c) In section 44(4), repeal "the Unified Exchange in the ordinary course of business on that exchange" and substitute "a recognized stock market ~~or recognized futures market~~⁷ in the ordinary course of business on that market".

11. Inland Revenue ⁸(aa) In section 15E -

⁷ The original consequential amendments in the Blue Bill (item 10) have inadvertently expanded the scope of the Estate Duty Ordinance by substituting references to "Unified Exchange" with "recognized stock market or recognized futures market". In line with the consequential amendments to other Ordinances, amendment is made to substitute references to "Unified Exchange" with "recognized stock market". **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 26 October 2001.**

⁸ The consequential amendments to section 15E of the Inland Revenue Ordinance were not included in the Blue Bill pending confirmation of the amendments to the Stamp Duty Ordinance (Cap. 117), to which it cross-

Ordinance (Cap.
112)

(i) in subsection (8) -

(A) in the definition of
"borrower", "borrowed
stock", "lender",
"specified purpose",
"stock borrowing", "stock
borrowing and lending
agreement", "stock
return" and "Unified
Exchange" -

(I) after "lender"

(借出人)", add "
"recognized stock
market" (認可證券市
場)";

(II) repeal ", "stock

return" (證券交還)
and "Unified
Exchange" (聯合交易
所)" and
substitute "and
"stock return" (證
券交還)";

(B) in the definition of

"specified securities",
repeal "the Unified
Exchange" and substitute
"a recognized stock
market";

(ii) in subsection (9), repeal "the

refers. See Footnote 9 below. Members considered the amendment and did not propose
further changes at the Bills Committee meeting on 26 October 2001.

Unified Exchange" and
substitute "a recognized stock
market".

(a) In section 16(2)(f)(ii)(B), repeal "section 4(2)(g) of the Protection of Investors Ordinance (Cap. 335)" and substitute "section 104 of the Securities and Futures Ordinance (of 2000~~2~~)".

(b) In section 20AA(6) -

(i) repeal the definition of "approved investment adviser" and substitute -

"approved investment adviser" (認可投資顧問) means -

(a) a ~~person~~
corporation
¹licensed
to carry on a business in advising on securities or asset management under Part V of the Securities and Futures Ordinance (of 2000~~2~~); or

(b) a ~~person~~
~~exempt to~~
carry an

authorized
financial
institution
registered
for
carrying¹
on such a
business
under that
Part, only
to the
extent that
the ~~person~~
institution
¹carries
on such a
business;";

- (ii) repeal the definition of
"broker" and substitute -
"broker" (經紀) means -
- (a) a ~~person~~
corporation¹
licensed to
carry on a
business in
dealing in
securities
under Part V
of the
Securities
and Futures
Ordinance
(of
2000~~2~~); or
 - (b) a ~~person~~
~~exempt to~~
~~carry an~~
authorized

financial
institution
registered
for
carrying¹ on
such a
business
under that
Part, only
to the
extent that
the ~~person-~~
institution¹
carries on
such a
business;".

(c) In section 26A -

(i) in subsection (1A) -

(A) repeal paragraph (a)(i)
to (v) and substitute -

"(i) a person
chargeable to
tax under this
Part in respect
of a mutual
fund, unit
trust or
similar
investment
scheme that is
authorized as a
collective
investment
scheme under
section 103 of
the Securities
and Futures

Ordinance (of
200~~0~~2); or

- (ii) a person chargeable to tax under this Part in respect of a mutual fund, unit trust or similar investment scheme where the Commissioner is satisfied that the mutual fund, unit trust or investment scheme is a bona fide widely held investment scheme which complies with the requirements of a supervisory authority within an acceptable regulatory regime.";

- (B) in paragraph (b)(i) -
 - (I) in subparagraph (A), repeal "or (ii)";
 - (II) in subparagraph

- (B), repeal
 "(iii), (iv) or
 (v)" and
 substitute "(ii)";
 - (C) in paragraph (b)(ii) -
 - (I) in subparagraph
 (A), repeal "or
 (ii)";
 - (II) in subparagraph
 (B), repeal
 "(iii), (iv) or
 (v)" and
 substitute "(ii)";
- (ii) in subsection (2) -
 - (A) repeal the
 definition of
 "authorized";
 - (B) in the definition of
 "Commission", repeal
 "established by section 3
 of the Securities and
 Futures Commission
 Ordinance (Cap. 24)" and
 substitute "referred to
 in section 3(1) of the
 Securities and Futures
 Ordinance (of 200~~0~~2)";
 - (C) repeal the definition of
 "mutual fund corporation"
 and substitute -
 - "mutual fund" (互惠基
 金) means any
 arrangement
 made for the
 purpose, or
 having the

effect, of
providing
facilities for
investment in
shares in a
corporation
which is or
hold itself out
as being
engaged
primarily in
the business of
investing,
reinvesting or
trading in
securities and
which is
offering for
sale or has
outstanding any
redeemable
shares of which
it is the
issuer;"

(D) repeal the definition of
"unit trust" and
substitute -

"unit trust" (單位信
託) means any
arrangement
made for the
purpose, or
having the
effect, of
providing
facilities for

the
participation
by persons, as
beneficiaries
under a trust,
in profits or
income arising
from the
acquisition,
holding,
management or
disposal of
securities or
any other
property
whatsoever."

⁹11A. Stamp Duty Ordinance (Cap. 117) (a) In section 2(1) -
 (i) repeal the definition of "Exchange Company" and substitute -
 "recognized exchange company" (認可交易所)
 means a company recognized under section 19(2) of the Securities and Futures Ordinance (of 2002) as an exchange company for operating a stock market;"

⁹ To ensure that the collection of stamp duty would not be affected by the new regulatory regime provided for under the SF Bill, particularly as a result of the introduction of new arrangements for authorizing Automated Trading Services (ATS) providers, the consequential amendments to the Stamp Duty Ordinance (SDO) (Cap. 117) and Stamp Duty (Jobbing Business)(Options Market Makers) Regulation (Cap. 117 sub. leg.) were not included in the Blue Bill, pending outcome of a public consultation conducted by the SFC on the detailed regulatory arrangements for ATS providers under the Bill. The current amendments are proposed after consultation with the Finance Bureau and the Inland Revenue Department.

The amendments basically follow the convention adopted for other Ordinances, with one exception as explained below. Under current section 5(2A) of the SDO, the Collector of Stamp Revenue (Collector) may authorize any person to stamp contract notes for the purpose of section 5 of the SDO to the effect that stamp duty will be paid through the Exchange Company (i.e. the Stock Exchange of Hong Kong (SEHK)). In practice, the Collector authorises the exchange participants to stamp contract notes made by them in relation to the Stamp Duty Collection Agreement between the SEHK and the Collector under section 5A of the SDO. As a result of the introduction of new arrangements for authorizing ATS providers, we have, through amendments to sections 5(2A) and 5A of the Stamp Duty Ordinance, empowered the Collector to enter into an agreement with an authorized ATS provider apart from the Exchange Company (to be amended to "recognized exchange company") for stamp duty collection to maintain flexibility and efficiency in stamp duty collection.

Members considered the amendments and did not propose further changes at the Bills Committee meeting on 26 October 2001. We have since made some technical amendments to rename "rules" of an exchange in Chinese as "規章" to tally with the terminology used in Part III of the Bill.

(ii) in the definition of "exchange participant", repeal "section 2(1) of the Stock Exchanges Unification Ordinance (Cap. 361)" and substitute "section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2002)";

(iii) in the definition of "loan capital", in paragraph (c), repeal "the Unified Exchange" and substitute "a recognized stock market";

(iv) repeal the definition of "Unified Exchange" and substitute -

"recognized stock market" (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2002);";

(v) add -

"authorized ATS provider" (認可自動化交易服務提供者) means a person authorized under Part III of the Securities and Futures Ordinance

(_____ of 2002) to provide automated trading services within the meaning of Part 2 of Schedule 6 to that Ordinance;".

(b) In section 5(2A)(b), repeal "the Exchange Company" and substitute "a recognized exchange company or an authorized ATS provider".

(c) In section 5A -

(i) in subsection (1), repeal "the Exchange Company" and substitute "a recognized exchange company or an authorized ATS provider";

(ii) in subsections (2)(b) and (c) and (3), repeal "Exchange Company" and substitute "recognized exchange company or authorized ATS provider".

(d) In section 19 -

(i) in subsection (1B)(a), repeal "規則" and substitute "規章";

(ii) in subsection (8)(c), repeal "規則" and substitute "規章";

(iii) in subsection (12AA)(c), repeal "Unified Exchange" and substitute "relevant

recognized stock market";

(iv) in subsection (16) -

(A) in the definition of

"market contract", repeal
"section 2 of the
Securities and Futures
(Clearing Houses)
Ordinance (Cap. 420)" and
substitute "section 1 of
Part 1 of Schedule 1 to
the Securities and
Futures Ordinance (of
2002)";

(B) in the definition of

"previous closing price",
repeal "Unified Exchange"
and substitute
"recognized exchange
company that operates the
relevant stock market";

(C) in the definition of

"recognized clearing
house", repeal "section 2
of the Securities and
Futures (Clearing Houses)
Ordinance (Cap. 420)" and
substitute "section 1 of
Part 1 of Schedule 1 to
the Securities and
Futures Ordinance (of
2002)";

(D) repeal the definition of

"rules" and substitute -
"rules" (規章), in

relation to a
recognized
clearing house
and a
recognized
exchange
company, has
the same
meaning as it
has in relation
to those bodies
in section 1 of
Part 1 of
Schedule 1 to
the Securities
and Futures
Ordinance
(of 2002);";

(E) in the definition of
"stock borrowing" -

(I) repeal "Unified
Exchange" and
substitute
"recognized
exchange company
that operates
the relevant
stock market";

(II) in paragraph (b),
repeal "規則" and
substitute "規章
";

(F) in the definition of "證

券交還", in paragraph
(ii), repeal "規則" and
substitute "規章";

(G) in the definition of "證
券借用及借出協議", in
paragraph (b), repeal "規
則" wherever it appears
and substitute "規章".

(e) In the First Schedule, in head 2(4), in
the Note, in paragraph (b), repeal "規則
" and substitute "規章";

(f) In the Fourth Schedule -

(i) in section 1, repeal "the
Unified Exchange" and
substitute "a recognized stock
market";

(ii) repeal section 2 and
substitute -

"2. For the purpose of
this Schedule, a
recognized exchange
company that operates a
stock market may, by
notice in the Gazette,
specify any regional
stock exchange as an
approved regional
exchange.";

(iii) in section 3 -

(A) in the definition of

"approved basket stock",
in paragraph (a) -

(I) in subparagraph
(i), repeal
"stock";

(II) in subparagraph
(ii), repeal "the
Unified Exchange"
and substitute "a
recognized stock
market";

(B) in the definition of
"approved regional
stock", repeal "stock"
before "exchange";

(C) repeal the definition of
"approved regional stock
exchange" and substitute

=

"approved regional
exchange" (認可
地區性交易所)
means a
regional stock
exchange
specified as an
approved
regional
exchange under
section 2;"

(D) in the definition of
"previous closing price"

=

(I) in paragraph (a)

=

(aa) repeal

"stock"

before

"exchange";

(bb) in

subparagraph

(i), repeal

"規則" and

substitute

"規章";

(II) in paragraph (b)

=

(aa) repeal "the

Unified

Exchange"

where it

first

appears and

substitute

"a

recognized

stock

market";

(bb) repeal "the

Unified

Exchange"

where it

secondly

appears and

substitute

"the

recognized
exchange
company that
operates the
stock
market";

(E) repeal the definition of

"rules" and substitute -

"rules" (規章), in

relation to -

(a) an approved

regional

exchange,

means the

rules

governing

the

operation

and

management

of the

approved

regional

exchange or

the conduct

of its

members, by

whatever

name called

and

wherever

contained;

(b) a

recognized

exchange
company,
has the
same
meaning as
in section
19(16) of
this
Ordinance;
i

(F) in the definition of
"specified derivative",
in paragraph (a), repeal
"Unified Exchange" and
substitute "recognized
exchange company that
operates the relevant
stock market";

(G) in the definition of
"value" -

(I) repeal "stock
exchange or on the
Unified Exchange"
and substitute
"exchange or a
recognized stock
market";

(II) repeal "stock
exchange or the
Unified Exchange"
and substitute
"exchange or the
recognized stock
market".

- °11B. Stamp Duty (a) In section 2 -
(Jobbing (i) in the definition of "options
Business) contract" , repeal "the
(Options Market Unified Exchange" and
Makers) substitute "a recognized
Regulation exchange company";
(Cap. 117 sub. (ii) in the definition of "options
leg.) market maker", repeal "the
Unified Exchange" and
substitute "a recognized
exchange company";
(iii) repeal the definition of
"rules" and substitute -
"rules" (規章), in
relation to a
recognized exchange
company, has the
same meaning as in
section 19(16) of
the Ordinance;".
- (b) In section 3(a) and (b), repeal "the
Unified Exchange" and substitute "a
recognized stock market".
12. Gambling (a) In section 2, repeal the definition of
Ordinance (Cap. "Unified Exchange".
148)
- (b) Repeal section 29 and substitute -
**"29. Exclusion of contracts under
the Securities and Futures
Ordinance**

~~Without prejudice to section~~

~~390 of the Securities and Futures Ordinance (of 2000), it is declared that t~~This Ordinance shall not apply to any contract for differences which is listed on any specified stock exchange, or traded on any specified futures exchange, within the meaning of section 1 of Part 1 of Schedule 1 to ~~that Ordinance~~the Securities and Futures Ordinance (of 2002), save to the extent that this Ordinance applies to the contract by viture of section 390(2) of that Ordinance¹⁰."

(c) Repeal the Schedule.

13. Banking Ordinance (Cap. 155)

(a) In section 2(1), repeal the definition of "Unified Exchange" and substitute -
"recognized stock market" (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 20002);".

(b) In section 3(1) -

(i) repeal paragraphs (j), (ja), (k) and (ka) and substitute -
"(j) a ~~person~~
corporation¹ who is

¹⁰ **Technical amendment consequential to the proposed rule-making power of the SFC under clause 390(2) of the Bill to prescribe transactions or activities to be dealt with under the Gambling Ordinance (GO). In response to a query raised by the Legal Service Division of the Legislative Council, with clause 390(2) in place, we do not consider it necessary to retain a similar power of the Secretary for Financial Services under section 29(2) of the GO.**

licensed to carry
on a business in
dealing in
securities, dealing
in futures
contracts,
leveraged foreign
exchange trading or
securities margin
financing under
Part V of the
Securities and
Futures Ordinance
(of 2000~~2~~)
where rules made
under section 145
of that Ordinance
apply to such
deposit;

(ja) a mutual fund or
unit trust
authorized as a
collective
investment scheme
under section 103
of the Securities
and Futures
Ordinance (of
2000~~2~~);

(k) a person authorized
under Part III of
the Securities and
Futures Ordinance
(of 2000~~2~~) to
provide automated
trading services as
defined in Part 2
of Schedule 6 to

that Ordinance,
where such deposit
is provided as
security in
relation to a
transaction
referred to in
paragraph (c) of
that definition;"

- (ii) in paragraph (1), repeal "section 2 of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420)" and substitute "section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000~~2~~)".
- (c) In section 79(1), in the definition of "non-listed company", repeal "the Unified Exchange" and substitute "a recognized stock market".
- (d) In section 92(5)(b), repeal everything after "which" and substitute "section 102(1) of the Securities and Futures Ordinance (of 2000~~2~~) does not apply by virtue of section 102(3)(f), (g) ~~or (h)~~ (h) or (ha)¹¹ of that Ordinance or the issue of which is authorized under section 104(1) of that Ordinance; or".
- (e) In section 137B(2), repeal "Securities Ordinance (Cap. 333)" and substitute

¹¹ **Amendment consequential to the addition of new paragraph (ha) to clause 102(3) of the Bill (see Paper No. CSA03/01 issued to Members on 17 November 2001). Section 92 of the Banking Ordinance (Cap. 155) prohibits an advertisement that invites deposits from the public except for certain advertisements including those permitted under the specified sections of the Protection of Investors Ordinance (Cap. 335) now embodied in clause 102 of the Bill.**

"Securities and Futures Ordinance
(of 20002)".

- (f) In the Third Schedule, in paragraph 3(i), repeal "Unified Exchange or on any exchange referred to in the Schedule to the Securities (Specification of Approved Assets, Liquid Assets and Ranking Liabilities) Notice 1990 (Cap. 333 sub. leg.)" and substitute "recognized stock market or on any stock exchange referred to in Part 3 of Schedule 1 to the Securities and Futures Ordinance (of 20002)".

14. Banking Ordinance
(Declaration Under Section 2(14)(b))
Notice 1998
(Cap. 155 sub. leg.)

Repeal section 2 and substitute -

"2. Declaration

It is hereby declared that a ~~person-corporation~~¹ licensed to carry on a business in leveraged foreign exchange trading under Part V of the Securities and Futures Ordinance (of 20002) is not a money broker for the purposes of the definition of "money broker".

15. Money Lenders Ordinance (Cap. 163)

In Schedule 1 -

- (a) in Part 1, repeal paragraphs 10 and 11 and substitute -

"10. A ~~person-corporation~~¹ licensed to carry on a business in securities margin financing under Part V of the Securities and Futures Ordinance (of 20002).

11. ~~A person licensed or exempt to carry on~~ A corporation

licensed to carry on, or an authorized financial institution registered for carrying on¹, a business in dealing in securities under Part V of the Securities and Futures Ordinance (of 2000~~2~~) who engages in securities margin financing in order to facilitate acquisitions or holdings of securities by the ~~person-~~ corporation or institution for ~~his~~its client."

(b) in Part 2, in paragraph 14 -

(i) repeal subparagraph (a) and substitute -

"(a) a recognized stock market as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000~~2~~); or";

(ii) in subparagraph (b), repeal "established under the Securities and Futures Commission Ordinance (Cap. 24)" and substitute "referred to in section 3(1) of the Securities and Futures Ordinance (of 2000~~2~~)".

¹²15A. Census and In section 1(1), in the definition of

¹² The Census and Statistics (Survey of External Claims, Liabilities and Income) (Amendment) Order 2001(L.N.240 of 2001) was gazetted on 16 November 2001 and due to commence on 1 January 2002.

Statistics "listed corporation", repeal "the Unified
(Survey of Exchange as defined in section 2(1) of the
External Stock Exchange Unification Ordinance (Cap.
Claims, 361)" and substitute "a recognized stock
Liabilities and market as defined in section 1 of Part 1 of
Income) Order Schedule 1 to the Securities and Futures
(Cap. 316 sub. Ordinance (of 2002)".
leg.)

16. Exchanges
(Special Levy)
Ordinance
(Cap. 351)

Add -

"10. Provisions consequential to the Securities and Futures Ordinance

(1) Subject to subsections (2) and (3), a reference in this Ordinance to a repealed Ordinance, or an expression in a repealed Ordinance, is a reference to the repealed Ordinance or that expression (as the case may be) as it existed immediately before the repeal of the repealed Ordinance.

(2) Any transfer under section 5(2)(a) effected after the compensation fund referred to in that section ceases to exist shall be effected in favour of the compensation fund within the meaning of Part XII of the Securities and Futures Ordinance (of 200~~0~~2).

(3) The reference to the Commission in sections 5(2)(b) and 8 (in the case of paragraphs (b) and (d)) shall on the commencement of Part II of the Securities and Futures Ordinance (of 200~~0~~2) mean the Commission within the meaning of section 1 of Part 1 of Schedule 1 to that Ordinance.

(4) In this section, "repealed Ordinance" (已廢除條例) means -

(a) the Securities and

- Futures Commission Ordinance (Cap. 24);
- (b) the Commodities Trading Ordinance (Cap. 250);
- (c) the Securities Ordinance (Cap. 333); or
- (d) the Stock Exchanges Unification Ordinance (Cap. 361),

repealed under the Securities and Futures Ordinance (of 2000~~2~~).".

17. Occupational Retirement Schemes Ordinance (Cap. 426)

In section 27 -

¹³~~(a) in subsection (1), repeal the definition of "mutual fund corporation" and substitute -~~

~~----- "mutual fund" (互惠基金) means any arrangement made for the purpose, or having the effect, of providing facilities for investment in shares in a corporation which is or hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities and which is offering for sale or has outstanding any redeemable shares of which it is the issuer;"~~

(b) repeal subsection (2)(c)(i) and (ii) and substitute -

"(i) listed on a recognized stock

¹³ **In response to a query from the Legal Service Division of the Legislative Council, we have reviewed the consequential amendments to the Occupational Retirement Schemes Ordinance (ORSO) (Cap. 426) in consultation with the Mandatory Provident Fund Schemes Authority, which oversees the ORSO. On reflection, we consider that there is no need to make consequential amendments to sections 27(1) and 27(3)(b) of the ORSO as they do not make express references to the Bill.**

market as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000~~2~~); or (ii) publicly listed on a specified stock exchange as defined in that section.";

~~11(c) in subsection (3)(b), repeal "redeemable shares in a mutual fund corporation" and substitute "interests in a mutual fund".~~

18. Organized and Serious Crimes Ordinance (Cap. 455) In section 24A, in the definition of "remittance agent", repeal paragraph (b)(iii) and (iv) and substitute -
"(iii) a person-corporation¹ licensed under Part V of the Securities and Futures Ordinance (of 2000~~2~~) to carry on a business in any regulated activity within the meaning of Schedule 6 to that Ordinance or the licensed representative of such person-corporation¹ within the meaning of that Ordinance;".

19. Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.) (a) In section 2 -
(i) repeal the definitions of "authorized mutual fund" and "authorized unit trust" and substitute -
" "authorized mutual fund" (認可互惠基金) means a mutual fund authorized as a collective investment scheme by the Securities

and Futures
Commission under
section 103 of the
Securities and
Futures Ordinance
(of 2000~~2~~);

"authorized unit trust"
(認可單位信託) means
a unit trust
authorized as a
collective
investment scheme
by the Securities
and Futures
Commission under
section 103 of the
Securities and
Futures Ordinance
(of 2000~~2~~);";

- (ii) in the definition of
"financial futures contract",
repeal "a recognized futures
exchange" and substitute "an
approved futures exchange";
- (iii) in the definition of
"financial option contract",
repeal "a recognized futures
exchange or a recognized
stock exchange" and
substitute "an approved
futures exchange or an
approved stock exchange";
- (iv) repeal the definition of
"Futures Exchange" and
substitute -
"recognized futures
market" (認可期貨市
場) has the same

meaning as in
section 1 of Part 1
of Schedule 1 to
the Securities and
Futures Ordinance
(of 200~~0~~2)";

(v) repeal the definition of
"recognized futures exchange"
and substitute -

"approved futures
exchange" (核准期貨交
易所) means -

- (a) a
recognize
d futures
market;
or
- (b) any
futures
exchange
establish
ed in a
place
outside
Hong Kong
that is
declared
by the
Authority
by notice
published
in the
Gazette
to be an
approved
futures
exchange
for the

purposes
of this
Regulation;
";

(vi) repeal the definition of
"recognized stock exchange"
and substitute -

"approved stock
exchange" (核准證券交
易所) means -

- (a) a
recognized stock
market;
or
- (b) any stock
exchange
established in a
place
outside
Hong Kong
that is
declared
by the
Authority
by notice
published
in the
Gazette
to be an
approved
stock
exchange
for the
purposes
of this
Regulation

n;";

(vii) in the definition of "securities", repeal "section 2 of the Securities Ordinance (Cap. 333)" and substitute "section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000~~2~~)";

(viii) add -
"recognized stock market" (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000~~2~~)".

(b) In section 13(a), repeal "an overseas bank within the meaning of section 2 of the Protection of Investors Ordinance (Cap. 335)" and substitute "a bank incorporated outside Hong Kong and not holding a valid banking licence under the Banking Ordinance (Cap. 155)".

(c) Repeal section 44(3)(c) and substitute -

"(c) ~~is licensed or exempt to carry on a corporation~~
licensed to carry on, or an authorized financial institution registered for carrying on¹, a business in asset management under Part V of the Securities and Futures

Ordinance (of 20002).".

(d) In section 45 -

(i) repeal subsection (3)(b) and substitute -

"(b) ~~a person licensed or exempt to carry on a corporation licensed to carry on, or an authorized financial institution registered for carrying on¹, a~~ business in asset management under Part V of the Securities and Futures Ordinance (of 20002).";

(ii) in subsection (4) -

(A) repeal paragraph (b) and substitute -

"(b) is an associate of a ~~person licensed or exempt to carry on a corporation licensed to carry on, or an authorized financial institution registered for carrying on¹, a~~

business in
asset
management
under Part V
of the
Securities and
Futures
Ordinance
(of 2000~~2~~);
or";

- (B) in paragraph (c), repeal
"registered as an
investment adviser under
that Ordinance" and
substitute "~~a person
licensed or exempt to
carry on a corporation
licensed to carry on, or
an authorized financial
institution registered
for carrying on¹, a~~
business in asset
management under Part V
of the Securities and
Futures Ordinance (of
2000~~2~~)".

(e) In Schedule 1 -

(i) in Part I, in section 1(1) -

- (A) in the definition of
"call warrant", repeal
"a recognized stock
exchange or a recognized
futures exchange" and
substitute "an approved
stock exchange or an
approved futures
exchange";

- (B) in the definition of "put warrant", repeal "a recognized stock exchange or a recognized futures exchange" and substitute "an approved stock exchange or an approved futures exchange";
 - (C) in the definition of "warrant", repeal "a recognized stock exchange" where it twice appears and substitute "an approved stock exchange";
- (ii) in Part II -
- (A) in sections 3(2)(a), 7(2)(d), 8(1) and (2)(a) and (b), 9(a) and 13(1)(b), repeal "a recognized stock exchange" and substitute "an approved stock exchange";
 - (B) in section 14 -
 - (I) in subsection (2), repeal "a recognized futures exchange" and substitute "an approved futures exchange";
 - (II) in subsection (3), repeal "a recognized futures exchange"

investment adviser under the Securities Ordinance (Cap. 333)" and substitute "~~a person licensed or exempt to carry on~~ a corporation licensed to carry on, or an authorized financial institution registered for carrying on¹, a business in asset management under Part V of the Securities and Futures Ordinance (of 2000~~2~~)".

20. Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.)
- In Schedule 3, in section 3(1) -
- (a) repeal paragraph (a) and substitute -
- "(a) is a ~~person licensed or exempt to carry on~~ corporation licensed to carry on, or an authorized financial institution registered for carrying on¹, a business in asset management under Part V of the Securities and Futures Ordinance (of 2000~~2~~); or";
- (b) in paragraph (b), repeal "business as an investment adviser under a law of a place outside Hong Kong" and substitute "under the law of a place outside Hong Kong the business referred to in paragraph (a)".
21. Personal Data (Privacy)
- In section 2(1), in the definition of "financial regulator", repeal paragraphs

Ordinance (Cap. 486) (b), (c), (d), (e) and (ea) and substitute -

- "(b) the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (of 2000~~2~~);
- (c) a recognized clearing house, a recognized exchange company, a recognized exchange controller or a recognized investor compensation company within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000~~2~~);
- (d) a person authorized under Part III of the Securities and Futures Ordinance (of 2000~~2~~) to provide automated trading services as defined in Schedule 6 to that Ordinance;"

22. Legislative Council Ordinance (Cap. 542)

- (a) In section 20U -
 - (i) repeal subsection (1)(a) and (b) and substitute -
 - "(a) subject to subsection (2), exchange participants of a recognized exchange company; and";
 - (ii) in subsection (2) -
 - (A) in paragraph (a), repeal "an Exchange Company" and substitute "a recognized exchange company";
 - (B) in paragraph (b) -
 - (I) repeal "an Exchange

Company" and
substitute "a
recognized
exchange
company";

(II) in
subparagraph
(i), repeal
"Exchange
Company" and
substitute
"recognized
exchange
company";

(iii) in subsection (3) -

(A) repeal the definition of
"Exchange Company" and
substitute -

" "recognized
exchange
company" (認可
交易所) has the
same meaning
as in section
1 of Part 1 of
Schedule 1 to
the Securities
and Futures
Ordinance
(of
2000~~2~~);";

(B) repeal the definition of
"exchange participant"
and substitute -

" "exchange
participant"
(交易所參與者)
has the same

meaning as in
section 1 of
Part 1 of
Schedule 1 to
the Securities
and Futures
Ordinance
(of
20002);";

(C) in the definition of
"rules" -

(I) repeal "an
Exchange
Company" and
substitute "a
recognized
exchange
company";

(II) repeal "the
Exchange
Company" and
substitute
"the
recognized
exchange
company".

(b) In section 25(4), repeal "and (b)".

23. Electronic
Transactions
Ordinance
(Cap. 553)

In Schedule 2 -

(a) in paragraph (m), after "(Cap. 395)",
add "repealed under the Securities and
Futures Ordinance (of 20002)";

(b) add -

"(ma) the Securities and Futures
Appeals Tribunal or the
Market Misconduct Tribunal
established under Part XI or
XIII of the Securities and

Futures Ordinance (of 20002);

(mb) any person arbitrating disputes in accordance with rules made under section 117(2) of the Securities and Futures Ordinance (of 20002);";

(c) repeal paragraphs (zk) and (zl).

24. Mass Transit Railway Ordinance (Cap. 556)

Repeal section 58(2)(c) and substitute -
"(c) the listing of any shares in the Corporation on a recognized stock market or a specified stock exchange as these terms are defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 20002),".

25. Broadcasting Ordinance (48 of 20002)

In Schedule 1 -
(a) in section 1(1), in the definition of "qualified voting controller", in paragraph (b)(i), repeal "corporation authorized under section 15 of the Securities Ordinance (Cap. 333)" and substitute "authorized as a collective investment scheme under section 103 of the Securities and Futures Ordinance (of 20002)";
(b) in sections 15(1) and 29(1), repeal "section 18 of the Securities (Disclosure of Interests) Ordinance (Cap. 396)" and substitute "section 320 of the Securities and Futures Ordinance (of 20002)".