

D R A F T

SECURITIES AND FUTURES BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Financial Services

<u>Clause</u>	<u>Amendment Proposed</u>
2(3)	By adding ", 3A" after ", 3".
3(2)	By adding "條文" after "本條例".
4	(a) In paragraph (c), by deleting "secure an appropriate degree of" and substituting "provide". (b) In paragraph (f), by adding "財政司" before "司".
5(1)	(a) By deleting "to" where it first appears. (b) In paragraphs (a) to (r), by adding "to" at the beginning. (c) In paragraphs (b) and (m), by deleting "exempt persons" where it twice appears and substituting "registered institutions". (d) In paragraphs (o) and (q), by adding "財政司" before

"司" wherever it appears.

5(3) (a) By deleting "an exempt person" where it twice appears and substituting "a registered institution".

(b) By adding "金融管理" before "專".

5(4) (a) By deleting everything before "may" and substituting -

"(4) For the purposes of this Ordinance,
the Commission".

(b) In paragraph (d), by adding "財政司" before "司".

(c) In paragraphs (e) and (f), by deleting ", however described," and substituting "(however described)".

8(4) By adding "向委員會" after "款".

8(5) (a) In paragraph (a), by adding "從委員會" before "撤".

(b) In paragraph (b), by adding "委員會委員或主席的" before "委任".

8(7) By adding "條文" after "例".

8(8) (a) By adding "委員" after "該" where it twice appears.

(b) By adding "證監會" after "及".

10(6) By deleting "it is" and substituting "it shall be".

11(1) By adding "書面" after "此發出".

11(2) By adding "書面" after "的".

11(3) By deleting everything before "會某" and substituting -
"(3) 如行政長官根據第(1)款發出書面指示且該指示關乎證
監".

11(4) By adding "書面" after "的".

12 By adding "財政司" before "司" where it twice appears.

13(3) By adding "財政司" before "司".

15(2) By deleting "結束" where it twice appears and
substituting "終結".

15(3) (a) By deleting "結束" and substituting "終結".

(b) By adding "財政司" before "司" where it twice
appears.

- 16(1) By adding "財政司" before "司".
- 16(2) By deleting "結束" and substituting "終結".
- 16(3) (a) By adding "to the Financial Secretary" after ",
send".
- (b) By deleting "the Financial Secretary." and
substituting "which the report relates".
- (c) By deleting "上述" and substituting "根據第(2)款送交
他們的".
- 16(4) By deleting "結束" and substituting "終結".
- 16(6) By adding "財政司" before "司".
- 17 By adding "財政司" before "司".

- 18(1) (a) In the definition of "relevant corporation", by deleting "the" where it twice appears and substituting "a".
- (b) In the definition of "relevant office-holder" -
- (i) in paragraph (a), by deleting everything after "Receiver" and substituting a semicolon;
- (ii) in paragraph (b), by deleting "provisional liquidator,".
- (c) In the definition of "relevant recognized exchange controller", by deleting "the controller" and substituting "a controller".
- 18(6) By deleting "the controller" and substituting "a controller".
- 19(1) (a) In paragraph (a)(ii), by deleting "the" and substituting "a".
- (b) In paragraph (c), by deleting everything after "is" and substituting "operated in contravention of this subsection;".
- (c) In paragraph (d), by deleting everything after "is" and substituting "operated in contravention of this

subsection."

19(2) By adding "財政司" before "司長".

19(3) In paragraph (b), by adding "財政司" before "司".

19(5) By deleting everything after "who" and before "commits" and substituting ", without reasonable excuse, contravenes subsection (1)".

19 By adding -

"(7A) Where the Commission refuses to recognize a company as an exchange company under subsection (2), the Commission shall, by notice in writing served on the company, inform the company of the refusal and of the reasons for it."

19(8) (a) In paragraph (a)(i)(A), by deleting "exempt" and substituting "registered".

(b) In paragraph (a)(i)(B), by deleting "exemption" and substituting "registration".

(c) In paragraph (a)(ii)(A), by deleting "exempt" and substituting "registered".

(d) In paragraph (a)(ii)(B), by deleting "exemption" and substituting "registration".

(e) In paragraph (b), by deleting "段或 (a)" and substituting "或".

20(1) In paragraph (b), by deleting "in writing by the Commission" and substituting "by the Commission by notice published in the Gazette".

20(2) By deleting "in writing by the Commission" and substituting "by the Commission by notice published in the Gazette".

20 By adding -

"(3) A notice under subsection (1) or (2) is not subsidiary legislation."

21(2) (a) By deleting "duties" and substituting "duty".

(b) In paragraph (a), by deleting "interests" where it twice appears and substituting "interest".

(c) In paragraph (b), by deleting everything after "that the" and substituting "interest of the public prevails where it conflicts with the interest of the recognized exchange company."

22(1) By deleting everything after "duties" and substituting "of the company under section 21 or in the performance

or purported performance of its functions under its rules."

22 By deleting subclauses (2) and (3) and substituting -

"(2) Where, in the discharge or purported discharge of its duties under section 63, a recognized exchange controller gives an instruction or direction or makes a request to a recognized exchange company of which it is a controller, the company's duties under section 21 or under its rules are not applicable to the company in respect of anything done or omitted to be done in good faith by the company in compliance with the instruction, direction or request."

23(2) By adding -

"(da) the admission of securities which are regulated in a jurisdiction outside Hong Kong to trading on a recognized stock market operated by the recognized exchange company;"

23 By adding -

"(3A) Before making a request under subsection (3), the Commission shall consult the Financial Secretary and the recognized exchange company to

which the request relates."

- 23(5) (a) By adding "or anyone who seeks to become any such person" after "persons".
- (b) In paragraph (c), by adding "and" at the end.
- (c) In paragraph (d), by deleting everything after "director" and substituting "or adviser of a listed corporation."
- (d) By deleting paragraph (e).

24(6) By adding "財政司" before "司".

28(1) By adding "財政司" before "司長".

28 By adding -

"(1A) The Commission may by the notice served under subsection (1) permit the recognized exchange company to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Commission may specify in the notice for the purpose of -

- (a) closing down the operations of the company or ceasing to provide the services specified in the notice; or

(b) protecting the interest of the investing public or the public interest.

(1B) Where the Commission has granted a permission to a recognized exchange company under subsection (1A), the company shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 19(1)."

29(2) By adding "market" after "stock" where it twice appears.

30 By adding ", without reasonable excuse" after "who".

31(1) In paragraph (b), by deleting "at" where it twice appears and substituting "on".

31(2) In paragraph (b), by deleting "at" where it twice appears and substituting "on".

34(1) (a) By deleting "authorization of the Commission" and substituting "authority of the Commission or reasonable excuse".

(b) By adding -

"(ea) "unified exchange";

(eb) "united exchange";".

(c) In paragraph (1), by deleting "," and substituting
";".

(d) By adding -

"(m) "聯合交易所",".

35(1) By deleting "384(9) and (10)" and substituting "384A(7)
and (8)".

35(2) By adding "財政司" before "司".

35(4) By deleting "384(9) and (10)" and substituting "384A(7)
and (8)".

35(5) By adding ", without reasonable excuse," after "who".

36(1) By deleting "384(9) and (10)" and substituting "384A(7)
and (8)".

36(2) In paragraph (a), by adding "財政司" before "司".

37(1) By adding "財政司" before "司長".

37(2) In paragraph (b), by adding "財政司" before "司".

37 By adding -

"(6) Where the Commission refuses to recognize a company as a clearing house under subsection (1), the Commission shall, by notice in writing served on the company, inform the company of the refusal and of the reasons for it."

- 38(2) (a) By deleting "duties" and substituting "duty".
- (b) In paragraph (a), by deleting "interests" where it twice appears and substituting "interest".
- (c) In paragraph (b), by deleting everything after "that the" and substituting "interest of the public prevails where it conflicts with the interest of the recognized clearing house."

39(1) By deleting everything after "duties" and substituting "of the clearing house under sections 38 and 47 or in the performance or purported performance of its functions under its rules, including its default rules."

39 By deleting subclause (2) and substituting -

"(2) Where, in the discharge or purported discharge of its duties under section 63, a recognized exchange controller gives an instruction or direction or makes a request to a recognized clearing house of which it is a controller, the

clearing house's duties under sections 38 and 47 or under its rules (including its default rules) are not applicable to the clearing house in respect of anything done or omitted to be done in good faith by the clearing house in compliance with the instruction, direction or request."

- 39(3) (a) In paragraph (a) -
- (i) by deleting "discharging" and substituting "performing";
 - (ii) by deleting "duty" and substituting "function".
- (b) By deleting everything after "in the" and substituting "performance and purported performance of that function."
- 40(1) In paragraph (a), by adding "or settlement" after "clearing".
- 40 By adding -
- "(4A) Before making a request under subsection (4), the Commission shall consult the Financial Secretary and the recognized clearing house to which the request relates."
- 41(6) By adding "財政司" before "司".

43(1) By adding "財政司" before "司長".

43 By adding -

"(1A) The Commission may by the notice served under subsection (1) permit the recognized clearing house to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Commission may specify in the notice for the purpose of -

(a) closing down the operations of the clearing house; or

(b) protecting the interest of the investing public or the public interest.".

46(3) By deleting "Sections 12, 14 and 20" and substituting "Section 12, 14 or 20 to 20K".

51(3) In the definition of "prescribed event", in paragraph (a), by deleting everything before "against" and substituting -

"(a) grounds exist for a creditor to present a bankruptcy petition".

- 56 In the heading, by deleting "**Securities**" and substituting "**Property**".
- 56(1) (a) By deleting "securities are deposited" and substituting "any property is deposited as market collateral".
- (b) By deleting "those securities" and substituting "such property".
- 56(2) By deleting "securities deposited" and substituting "any property deposited as market collateral".
- 58(1) By adding "財政司" before "司".
- 58(2) By adding "財政司" before "司".
- 59(1) By deleting "the controller" and substituting "a controller".
- 59(2) By adding "財政司" before "司長".
- 59(3) (a) By deleting "new condition" and substituting "new conditions".
- (b) In paragraph (b), by adding "財政司" before "司".

- 59(5) By deleting everything after "who" and before "commits" and substituting "contravenes subsection (1)".
- 59(6) (a) By deleting everything after "prove" and before "that the person did".
- (b) By deleting "the controller" and substituting "a controller".
- (c) By deleting "effect;" and substituting "effect.".
- (d) By deleting paragraph (b).
- 59(9) In paragraph (b), by adding ", except for the purpose of ceasing to be such controller" after "by the person".
- 59(11) By deleting "the controller" and substituting "a controller".
- 59(15) By deleting "contravention" and substituting "failure".
- 59(16) (a) By deleting "(a)".
- (b) By deleting "the controller" where it twice appears and substituting "a controller".
- 59 By adding -
- "(18A) Where the Commission refuses to recognize a company or a person as an exchange controller under subsection (2) or (8)(b), the Commission

shall, by notice in writing served on the company or the person (as the case may be), inform the company or the person of the refusal and of the reasons for it."

- 59(19) By deleting "the controller" and substituting "a controller".
- 61(1) (a) By deleting "on and" and substituting "on or".
(b) In paragraphs (a) and (b), by adding "財政司" before "司".
- 61(4) By deleting everything after "who" and before "commits" and substituting "contravenes subsection (1)".
- 61(5) (a) By deleting everything after "prove" and before "that the person -".
(b) By deleting paragraph (b).
(c) In subparagraph (ii), by deleting ";" and substituting ".".
- 61(8) By deleting "is the minority" and substituting "is a minority".
- 61(9) (a) By deleting "has contravened subsection (1) or" and

substituting -

"is a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house in contravention of subsection (1) or has".

(b) By deleting "or failure" where it first appears.

(c) In paragraph (a), by adding ", except for the purpose of ceasing to be such controller" after "by the person".

61(15) By deleting "contravention" and substituting "failure".

61(16) By adding "財政司" before "司".

62(1) By adding "財政司" before "司" where it twice appears.

62(2) By adding "財政司" before "司" where it twice appears.

62(5) By adding "財政司" before "司".

62(6) By adding "財政司" before "司".

63(1) By deleting "the controller" and substituting "a controller".

- 63(2) (a) In paragraph (a), by deleting "interests" where it twice appears and substituting "interest".
- (b) In paragraph (b), by deleting everything after "that the" and substituting "interest of the public prevails where it conflicts with the interest of the recognized exchange controller.".
- 64(1) By deleting everything after "duties" and substituting "of the controller under section 63 or in the performance or purported performance of its functions under its rules.".
- 64 By deleting subclause (2).
- 65(1) By deleting "the controller" and substituting "a controller".
- 65(2) In paragraph (b), by deleting "3" and substituting "4".
- 65(3) By adding "財政司" before "司".
- 66(1) In paragraph (a), by deleting "performance" and substituting "discharge".
- 66(2) By adding "財政司" before "司".

- 67(6) By adding "財政司" before "司".
- 70(2) By adding "財政司" before "司".
- 72 In the heading, by deleting "符合".
- 72(1) By adding "財政司" before "司".
- 72(4) By deleting "the controller" and substituting "a controller".
- 72(9) By adding "in relation to the failure" after "(7)".
- 74(1) By deleting "The" and substituting "A".
- 75(1) By deleting "may by" and substituting "may, by".
- 75(3) By adding ", without reasonable excuse," after "which".
- 76(1) In paragraph (b)(i), by deleting "the controller" and substituting "a controller".
- 76(2) In paragraph (b), by adding "地方" after "外".

- 77 In the heading, by deleting "**recognized exchange controller**" and substituting "**HKEC**".
- 77(1) (a) By deleting "a recognized exchange controller" and substituting "the HKEC".
(b) By adding "財政司" before "司".
- 77(2) (a) By deleting the comma after "that".
(b) By deleting "recognized exchange controller" where it twice appears and substituting "HKEC".
(c) By adding "財政司" before "司".
- 77(3) By deleting "recognized exchange controller" and substituting "HKEC".
- 77(4) By deleting "recognized exchange controller" where it twice appears and substituting "HKEC".
- 77 By adding -
 "(5) In this section, "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."

79(1) By adding "財政司" before "司長".

79(2) (a) By deleting "new condition" and substituting "new conditions".

(b) By adding "財政司" before "司長".

79 By adding -

"(6) Where the Commission refuses to recognize a company as an investor compensation company under subsection (1), the Commission shall, by notice in writing served on the company, inform the company of the refusal and of the reasons for it."

80(2) By deleting "than section" and substituting "than sections 232(4) and (9) and".

81 By deleting subclause (3).

83(6) By adding "財政司" before "司長".

85(1) By adding "財政司" before "司長".

85 By adding -

"(1A) The Commission may by the notice served under subsection (1) permit the recognized investor

compensation company to continue, on or after the date on which the withdrawal is to take effect, to carry on such activities affected by the withdrawal as the Commission may specify in the notice for the purpose of -

- (a) closing down the operations of the company; or
- (b) protecting the interest of the investing public or the public interest."

85(2) By adding "認可投資者賠償" after "某".

85(3) By adding "認可投資者賠償" after "某".

87(1) (a) In paragraph (a) -

- (i) by deleting "of that payment" and substituting -

"which that payment bears to the loss sustained (without taking into account any compensation paid or payable out of the compensation fund for the loss) by the claimant by reason of the default on which the claim was based";

(ii) by deleting everything after "relation to the loss" and substituting "; and".

(b) By deleting paragraph (b) and substituting -

"(b) the respective rights of the claimant and the company in bankruptcy or winding up or by legal proceedings or otherwise to receive in respect of the loss -

(i) any sum out of the assets of the person concerned who is in default; or

(ii) any property held on trust by that person for the claimant, shall rank equally.".

87(2) (a) By deleting "amounts" and substituting "assets (whether in cash or otherwise)".

(b) By deleting "paid" and substituting "dealt with".

88(1) In paragraph (b), by deleting "完" and substituting "終".

88(4) By adding "財政司" before "司長".

88 By adding -

"(5) A reference in this section to financial

statements shall not be construed as including a reference to financial statements of the compensation fund."

89(2) By deleting "employees" and substituting "employees,".

91(1) By deleting paragraph (d) and substituting -

"(d) in the case of a recognized investor compensation company, any claim made against the compensation fund, if the supply of information is reasonably required for the performance of -

(i) in the case where the information is supplied to the Commission, the functions of the Commission under the relevant provisions; or

(ii) in any other cases, the functions of the recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company to which the information is supplied, under this Part or their respective rules."

91(2) By adding "any of" after "under".

92(2) In paragraph (a), by adding "財政司" before "司".

92 By adding -

"(3A) The decision of the Chief Executive in Council on an appeal under subsection (3) shall be final."

92(6) By adding "財政司" before "司長".

93(1) (a) By deleting "issue a suspension order" and substituting "make an order ("suspension order")".

(b) By deleting "司長後,發" and substituting "財政司司長後,作".

(c) In paragraph (iv), by deleting ", of" and substituting "of".

93 By adding -

"(2A) A recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company may appeal to the Chief Executive in Council against a suspension order made in respect of the exchange company, clearing house, exchange controller or investor compensation company.

(2B) The decision of the Chief Executive in Council on an appeal under subsection (2A) shall be final."

93(7) By adding "財政司" before "司".

93(10) By deleting "costs or" and substituting "costs and".

93(11) By deleting "costs or" and substituting "costs and".

95 By deleting subclause (1) and substituting -

"(1) No person shall -

(a) provide automated trading services;

or

(b) offer to provide automated trading services,

unless that person -

(i) is authorized under subsection (2);

(ii) is an employee or agent of a person authorized under subsection (2), and is acting in that capacity for or on behalf of that person;

(iii) is an intermediary licensed or registered for Type 7 regulated activity;

(iv) is a licensed representative for

Type 7 regulated activity, and is acting in that capacity for the licensed corporation to which the representative is accredited; or

- (v) is an individual whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged in respect of Type 7 regulated activity by a registered institution registered for that regulated activity, and is acting in that capacity for the registered institution."

95(2) By deleting everything after "may" and substituting -
"upon application by a person, by notice in writing served on that person, authorize that person to provide automated trading services -

- (a) subject to such conditions as it considers appropriate specified in the notice; and
- (b) with effect from a date specified in the notice for the purpose."

95(3) By deleting everything after "person" and before "is".

95(4) (a) By deleting everything after "a person" and before "is seeking".

(b) By deleting everything after "the person" and before "a reasonable".

95 By adding -

"(4A) Where the Commission refuses to authorize a person to provide automated trading services under subsection (2), the Commission shall, by notice in writing served on the person, inform the person of the refusal and of the reasons for it."

95 By adding -

"(7) Subject to subsection (8), for the purposes of subsection (1)(b), a person offers to provide automated trading services only if the services are actively marketed, whether in Hong Kong or elsewhere, to persons in Hong Kong by the first-mentioned person or by another person on his behalf.

(8) For the purposes of subsection (1)(b), a person shall not be regarded as offering to provide automated trading services if the persons to whom the offer is made are persons to whom the first-

mentioned person or a related corporation thereof,
at any time during the period of 3 years
immediately preceding the day on which the offer is
made, has provided or has agreed to provide any
financial services, including automated trading
services.".

96(1) By deleting "(2)(a)" and substituting "(2)".

96(2) (a) By deleting "(2)(a)" and substituting "(2)".

(b) In paragraph (b), by deleting "any" and
substituting "and any".

96(3) By deleting "(2)(a)" and substituting "(2)".

97(1) By deleting "(a)".

97(3) (a) By deleting "(2)(a)" and substituting "(2)".

(b) In paragraph (f), by deleting "at which" and
substituting "on which".

(c) In paragraph (h), by deleting "(3)" and
substituting "(2)".

98(1) By deleting "or a stock exchange or futures exchange"
and substituting "who has been".

98

By adding -

"(1A) The Commission may by the notice served under subsection (1) permit the person to continue, on or after the date on which the withdrawal is to take effect, to carry on such activities affected by the withdrawal as the Commission may specify in the notice for the purpose of -

- (a) ceasing to provide the automated trading services to which the withdrawal relates; or
- (b) protecting the interest of the investing public or the public interest.

(1B) Where the Commission has granted a permission to a person under subsection (1A), the person shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 95."

98(2)

- (a) By deleting everything after "a person" and before "granted" and substituting "who has been".
- (b) By deleting everything after "the person" and before "a reasonable".

New

By adding -

"98A. Commission to maintain register of authorized automated trading

services

(1) The Commission shall maintain a register of authorized automated trading services in such form as it considers appropriate.

(2) The register maintained under subsection (1) shall contain in relation to each person who has been granted an authorization under section 95(2) -

(a) the name and business address of the person;

(b) such conditions of the authorization as the Commission considers appropriate; and

(c) such other particulars as are prescribed by rules made under section 384 for the purposes of this subsection.

(3) The register may be maintained -

(a) in a documentary form; or

(b) by recording the information required under subsection (2) otherwise than in a legible form, so long as the information is capable of being reproduced in a legible form.

(4) For the purposes of enabling any member

of the public to ascertain whether he is dealing with a person who has been granted an authorization under section 95(2) in matters of or connected with any automated trading services and to ascertain the particulars of the authorization of such person, the register shall be made available for public inspection at all reasonable times.

(5) At all reasonable times, a member of the public may -

- (a) inspect the register, or (where the register is maintained otherwise than in a documentary form) a reproduction of the information or the relevant part of it in a legible form; and
- (b) obtain a copy of an entry in or extract of the register on payment of a fee prescribed by rules made under section 382.

(6) A document purporting to be -

- (a) a copy of an entry in or extract of the register maintained under this section; and
- (b) certified by an authorized officer of the Commission as a true copy of the entry or extract referred to in

paragraph (a),

shall be admissible as evidence of its contents in any legal proceedings.

(7) Without derogating from the other provisions of this section, the Commission shall, in addition, cause the register to be available to the public in the form of an on-line record."

99(1) (a) By deleting "384(9) and (10)" and substituting "384A(7) and (8)".

(b) In paragraph (a), by deleting "(2)(a)" and substituting "(2)".

99(3) (a) In paragraph (a), by deleting "of \$500,000" and substituting "at level 6".

(b) In paragraph (b), by deleting "level 6" and substituting "level 3".

100 By deleting everything before "commits" and substituting -

"100. Providing automated trading services without authorization

A person who, without reasonable excuse, contravenes section 95(1)".

- 101(1) (a) In the definition of "issue" -
- (i) by deleting "any advertisement, invitation or document" and substituting "any material (including any advertisement, invitation or document)";
 - (ii) by deleting "the advertisement, invitation or document" where it twice appears and substituting "the material";
 - (iii) in paragraph (g), by deleting "computer" and substituting "any information system".
- (b) By deleting the definition of "multilateral agency".
- (c) In the definition of "representative" -
- (i) in paragraph (b), by deleting "an exempt person" and substituting "a registered institution";
 - (ii) in paragraph (b)(i), by deleting "employed by the exempt person" and substituting "engaged by the registered institution";
 - (iii) in paragraph (b)(i), by adding "金融管理" before "專";

(iv) in paragraph (b)(ii), by deleting "exempt person" and substituting "registered institution".

(d) In the definition of "文件", in paragraph (b), by adding "不論是" before "以".

(e) In the definition of "監管當局", by adding "金融管理" before "專".

101(2) In paragraph (b), by adding "廣告、邀請或文件(視屬何情況而定)" before "。".

102(1) (a) By deleting "(5)" and substituting "(4A)".

(b) By adding "whether in Hong Kong or elsewhere," after "issue,".

102(2) (a) By deleting everything after "apply to" and before paragraph (d) and substituting -

"the issue, or the possession for the purposes of issue, of any advertisement, invitation or document -

(a) made by or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or

agent) in respect of
securities;

(b) made by or on behalf of an
intermediary licensed or
registered for Type 2 or Type 5
regulated activity (whether
acting as principal or agent)
in respect of futures
contracts;

(c) made by or on behalf of -

(i) an authorized
financial institution
(whether acting as
principal or agent);
or

(ii) an intermediary
licensed for Type 3
regulated activity
(whether acting as
principal or agent),
in respect of leveraged foreign
exchange contracts;".

(b) In paragraph (d), by deleting "該所" and
substituting "該認可交易所或認可結算所(視屬何情況而定)".

(c) In paragraph (e), by deleting "corporation which is

a".

(d) In paragraph (i) -

(i) by adding "or on behalf of" after "by";

(ii) by deleting ", whether as principal or agent," and substituting "(whether acting as principal or agent)".

102(3) (a) By adding "the issue, or the possession for the purposes of issue" after "apply to".

(b) In paragraph (a), by deleting "the issue".

(c) In paragraph (b) -

(i) by deleting "the issue";

(ii) by adding "the" before "securities".

(d) In paragraph (b)(ii), by deleting "company" where it twice appears and substituting "corporation".

(e) In paragraph (c) -

(i) by deleting "the issue";

(ii) by deleting "shares or debentures of a company" and substituting "the shares or debentures of a corporation, where it is issued, or the possession is for the purposes of issue".

(f) In paragraph (c)(i) -

(i) by adding "with respect to those shares or debentures" after "prospectus";

(ii) by deleting "該公司" and substituting "該

法團".

- (g) In paragraph (c)(ii), by deleting everything after "containing" and substituting -
- "all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body corporate were a corporation incorporated outside Hong Kong and the document were a prospectus issued by that corporation with respect to those shares or debentures;".
- (h) In paragraph (d) -
- (i) by deleting "the issue";
- (ii) by adding ", where it is issued, or the possession is for the purposes of issue," after "corporation".
- (i) In paragraph (e), by deleting "the issue" where it first appears.
- (j) In paragraph (f), by deleting "the issue" where it first appears.
- (k) In paragraph (f)(ii)(B), by adding "金融管理" before "專".
- (l) In paragraph (g) -
- (i) by deleting "the issue" where it first appears;
- (ii) by deleting "15" wherever it appears and

substituting "11".

- (m) In paragraph (g)(iii), by deleting "that corporation" and substituting "which".
- (n) In paragraph (h), by deleting "the issue" where it first appears.
- (o) By adding -
 - "(ha) of any advertisement, invitation or document made in respect of securities regulated in a jurisdiction outside Hong Kong which have been admitted to trading on a recognized stock market under or pursuant to rules made under section 23 or 36;".
- (p) In paragraph (i), by deleting "the issue".
- (q) In paragraph (j) -
 - (i) by deleting "the issue";
 - (ii) by deleting ", whether as principal or agent".

102

By adding -

"(4A) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue -

- (a) as or on behalf of an intermediary licensed or registered for Type 1,

Type 4 or Type 6 regulated activity (whether acting as principal or agent), any advertisement, invitation or document made in respect of securities;

(b) as or on behalf of an intermediary licensed or registered for Type 2 or Type 5 regulated activity (whether acting as principal or agent), any advertisement, invitation or document made in respect of futures contracts;

(c) as or on behalf of -

(i) an authorized financial institution (whether acting as principal or agent); or

(ii) an intermediary licensed for Type 3 regulated activity (whether acting as principal or agent), any advertisement, invitation or document made in respect of leveraged foreign exchange contracts."

- 102(5) (a) By deleting ", or has" and substituting "any advertisement, invitation or document, or has any advertisement, invitation or document".
- (b) In paragraph (a) -
- (i) by adding "in the case of" before "any";
 - (ii) by deleting ", which is";
 - (iii) by deleting "exempt" and substituting "registered".
- (c) In paragraph (b) -
- (i) by adding "in the case of" before "any";
 - (ii) by deleting ", which is";
 - (iii) by deleting "exempt" and substituting "registered";
 - (iv) by adding "or" at the end.
- (d) In paragraph (c) -
- (i) by adding "in the case of" before "any";
 - (ii) by deleting ", which is".
- (e) In paragraph (c)(ii), by deleting "表," and substituting "表。".
- (f) By deleting "而視為犯第(1)款所訂罪行。".

102 By deleting subclause (6).

102(7) By deleting everything after "under subsection (1)" and substituting -

"by reason only that he issues, or has in his possession for the purposes of issue, any advertisement, invitation or document if -

(a) the advertisement, invitation or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was receiving and issuing materials provided by others;

(b) the contents of the advertisement, invitation or document (as the case may be) were not, wholly or partly, devised -

(i) where the business was carried on by him, by himself or any officer, employee or agent of his;
or

(ii) where the business was not carried on by him, by himself; and

(c) for the purposes of the issue -

(i) where the business was

carried on by him, he or
any officer, employee or
agent of his; or

(ii) where the business was not
carried on by him, he,
did not select, add to, modify or
otherwise exercise control over the
contents of the advertisement,
invitation or document (as the case
may be).".

102(8) By deleting everything after "under subsection (1)" and
substituting -

"by reason only that he issues by way of live
broadcast, or has in his possession for the
purposes of issue by way of live broadcast, any
advertisement, invitation or document if -

(a) the advertisement, invitation or
document (as the case may be) was so
issued, or possessed for the
purposes of issue, in the ordinary
course of the business of a
broadcaster (whether or not he was
such broadcaster);

(b) the contents of the advertisement,
invitation or document (as the case

may be) were not, wholly or partly,
devised -

(i) where he was the
broadcaster, by himself or
any officer, employee or
agent of his; or

(ii) where he was not the
broadcaster, by himself;

(c) for the purposes of the issue -

(i) where he was the
broadcaster, he or any
officer, employee or agent
of his; or

(ii) where he was not the
broadcaster, he,

did not select, add to, modify or
otherwise exercise control over the
contents of the advertisement,
invitation or document (as the case
may be); and

(d) in relation to the broadcast -

(i) where he was the
broadcaster, he; or

(ii) where he was not the
broadcaster, he believed
and had reasonable grounds

to believe that the
broadcaster,
acted in accordance with the terms
and conditions of the licence (if
any) by which he or the broadcaster
(as the case may be) became entitled
to broadcast as a broadcaster and
with any code of practice or
guidelines (however described)
issued under or pursuant to the
Telecommunications Ordinance (Cap.
106) or the Broadcasting Ordinance
(Cap. 562) and applicable to him or
the broadcaster (as the case may be)
as a broadcaster."

102(11) (a) By adding "or (4A)(a), (b) or (c)" after "(i)".

(b) By adding "證監會" after "經".

102 By deleting subclause (12).

103(7) By deleting "或(3)款給予認可或核准" and substituting "款認可
任何集體投資計劃，或拒絕依據第(3)款核准某人為核准人士".

104(7) By deleting "或(3)款給予認可或核准" and substituting "款認可

任何集體投資計劃，或拒絕依據第(3)款核准某人為核准人士”。

- 105(1) (a) In paragraphs (a) and (c), by deleting "is" and substituting "was at the time when it was provided".
- (b) By deleting "或104條" where it first appears and substituting "條就某集體投資計劃或根據第104條就某廣告、邀請或文件的發出所".
- 105(3) (a) By adding "對某集體投資計劃或對某廣告、邀請或文件的發出的" after "回" where it first appears.
- (b) In paragraph (a) -
- (i) by adding "對" after "就";
 - (ii) by adding "該項" after "回".
- 106(1) By deleting everything after "he" and before "another" and substituting "makes any fraudulent misrepresentation or reckless misrepresentation for the purpose of inducing".
- 106 By deleting subclause (3) and substituting -
- (3) For the purposes of this section -
 - (a) "fraudulent misrepresentation" (欺詐的失實陳述) means -

- (i) any statement which, at the time when it is made, is to the knowledge of its maker false, misleading or deceptive;
- (ii) any promise which, at the time when it is made, its maker has no intention of fulfilling, or is to the knowledge of its maker not capable of being fulfilled;
- (iii) any forecast which, at the time when it is made, is to the knowledge of its maker not justified on the facts then known to him; or
- (iv) any statement or forecast from which, at the time when it is made, its maker intentionally omits a material fact, with the result that -
 - (A) in the case of the statement, the statement is rendered false, misleading or deceptive; or
 - (B) in the case of the

forecast, the forecast is rendered misleading or deceptive;

(b) "reckless misrepresentation" (罔顧實情的失實陳述) means -

(i) any statement which, at the time when it is made, is false, misleading or deceptive and is made recklessly;

(ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made recklessly;

(iii) any forecast which, at the time when it is made, is not justified on the facts then known to its maker and is made recklessly; or

(iv) any statement or forecast from which, at the time when it is made, its maker recklessly omits a material fact, with the result that -

(A) in the case of the statement, the statement

is rendered false,
misleading or deceptive;
or

(B) in the case of the
forecast, the forecast is
rendered misleading or
deceptive."

107(1) (a) By deleting everything before paragraph (a) and
substituting -

"(1) Where a person makes any fraudulent
misrepresentation, reckless misrepresentation
or negligent misrepresentation by which
another person is induced -".

(b) By deleting "shall, in addition to any other
liability he may incur" and substituting "the
first-mentioned person shall, whether or not he
also incurs any other liability".

107(2) (a) By deleting everything after "has" and before "to
do any" and substituting "made any fraudulent
misrepresentation, reckless misrepresentation or
negligent misrepresentation by which another person
is induced".

(b) By deleting everything after "to have" and
substituting "made the misrepresentation."

107(3) By deleting "do so" and substituting "entertain an application for an injunction".

107 By deleting subclause (7) and substituting -

"(7) For the purposes of this section -

(a) "fraudulent misrepresentation" (欺詐的失實陳述) means -

- (i) any statement which, at the time when it is made, is to the knowledge of its maker false, misleading or deceptive;
- (ii) any promise which, at the time when it is made, its maker has no intention of fulfilling, or is to the knowledge of its maker not capable of being fulfilled;
- (iii) any forecast which, at the time when it is made, is to the knowledge of its maker not justified on the facts then known to him; or
- (iv) any statement or forecast from

which, at the time when it is made, its maker intentionally omits a material fact, with the result that -

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive;

(b) "reckless misrepresentation" (罔顧實情的失實陳述) means -

(i) any statement which, at the time when it is made, is false, misleading or deceptive and is made recklessly;

(ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made recklessly;

(iii) any forecast which, at the time when it is made, is not

justified on the facts then known to its maker and is made recklessly; or

(iv) any statement or forecast from which, at the time when it is made, its maker recklessly omits a material fact, with the result that -

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive;

(c) "negligent misrepresentation" (疏忽的失實陳述) means -

(i) any statement which, at the time when it is made, is false, misleading or deceptive and is made without reasonable care having been taken to ensure its accuracy;

(ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made without reasonable care having been taken to ensure that it can be fulfilled;

(iii) any forecast which, at the time when it is made, is not justified on the facts then known to its maker and is made without reasonable care having been taken to ensure the accuracy of those facts; or

(iv) any statement or forecast from which, at the time when it is made, its maker negligently omits a material fact, with the result that -

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is

rendered misleading or
deceptive.".

108 By deleting the clause.

109(1) (a) By deleting "(2) and (4)" and substituting "(3A)".

(b) In paragraph (a), by deleting everything after
"knowledge" and substituting -

"-

(i) a person holds himself out as being
prepared to carry on Type 4, Type 5,
Type 6 or Type 9 regulated activity;
and

(ii) the person is not licensed or
registered for such regulated
activity as required under this
Ordinance; or".

109 By deleting subclause (2).

109 By adding -

"(3A) A person shall not be regarded as
committing an offence under subsection (1) by
reason only that he issues any advertisement or
document, or has any advertisement or document in
his possession for the purposes of issue -

- (a) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type 4 regulated activity, to an intermediary licensed or registered for Type 4 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary;
- (b) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type 5 regulated activity, to an intermediary licensed or registered for Type 5 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary;
- (c) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type 6 regulated activity, to an intermediary licensed or registered for Type 6 regulated activity, or a representative of such intermediary that carries on such regulated

activity for such intermediary; or
(d) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type 9 regulated activity, to an intermediary licensed or registered for Type 9 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary."

109 By deleting subclause (4).

109(5) By deleting everything after "under subsection (1)" and substituting -

"by reason only that he issues, or has in his possession for the purposes of issue, any advertisement or document if -

(a) the advertisement or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was receiving and issuing materials provided by others;

(b) the contents of the advertisement or document (as the case may be) were not, wholly or partly, devised -

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself; and

(c) for the purposes of the issue -

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he, did not select, add to, modify or otherwise exercise control over the contents of the advertisement or document (as the case may be).".

109(6) By deleting everything after "under subsection (1)" and substituting -

"by reason only that he issues by way of live

broadcast, or has in his possession for the purposes of issue by way of live broadcast, any advertisement or document if -

(a) the advertisement or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);

(b) the contents of the advertisement or document (as the case may be) were not, wholly or partly, devised -

(i) where he was the broadcaster, by himself or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, by himself;

(c) for the purposes of the issue -

(i) where he was the broadcaster, he or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, he,

did not select, add to, modify or

otherwise exercise control over the contents of the advertisement or document (as the case may be); and

(d) in relation to the broadcast -

(i) where he was the broadcaster, he; or

(ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster,

acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster."

- 110 In subclauses (1)(b) and (3)(a), by deleting "15" and substituting "11".
- 111(1) By deleting everything after "any" and before "shall" and substituting "written notice, decision or direction or other document (however described) to be, or required to be, issued or served (however described) to or on an approved person by the Commission for the purposes of this Ordinance".
- 111(2) (a) By deleting "decision," and substituting "decision or".
- (b) By deleting "to or served" where it twice appears and substituting "or served to or".
- 112 In the heading, by deleting "**Schedules 4 and 5**" and substituting "**Schedule 4**".
- 112(1) By adding "財政司" before "司".
- 112(2) (a) By deleting "3,".
- (b) By adding "財政司" before "司".
- 112 By deleting subclause (3).

Part V In the heading, by deleting "EXEMPTION" and substituting
"REGISTRATION".

113(1) (a) In the definition of "regulated function", by
deleting the full stop and substituting a
semicolon.

(b) By adding -

"prescribed manner" (訂明方式) means such
manner as is prescribed by rules made
under section 384;

"specified titles" (指明稱銜) means the titles
specified in column 3 of Schedule 6A."

113(3) By deleting everything before "for carrying on a
business" and substituting -

"(3) Registration for a regulated activity
under section 118 shall be construed as
registration".

114(2) (a) In paragraph (b), by deleting "exempt" and
substituting "registered".

(b) In paragraph (c), by adding "(2)" after "95".

- 114(4) (a) In paragraph (b)(i), by deleting everything after "on for" and substituting "a registered institution a regulated activity for which the registered institution is registered; and".
- (b) In paragraph (b)(ii), by deleting "employed by the exempt person" and substituting "engaged by the registered institution".
- (c) In paragraph (c) -
- (i) by adding "(2)" after "95";
 - (ii) by deleting "進行任何" and substituting "進行某類";
 - (iii) by deleting "該活" and substituting "該類活".

114(5) By deleting "than one".

114(6) In paragraph (a), by adding "地方" after "外".

114 By adding -

"(6A) For the purposes of subsection (6), where it is proved in any proceedings for a contravention of subsection (1) that the person had obtained, before providing the financial accommodation to a borrower, a written confirmation from the borrower that the financial accommodation was not to be used to facilitate such acquisition or continued holding

as referred to in subsection (6)(a) and (b), that person shall be presumed, unless the contrary is proved, to have reasonably believed that the financial accommodation was not to be so used."

114(7) By deleting "Any" and substituting "A".

114(8) By deleting "Any" and substituting "A".

New By adding -

**"114A. Application of section 114
in relation to conduct or
activities outside
Hong Kong**

(1) If -

- (a) a person actively markets, whether by himself or another person on his behalf and whether in Hong Kong or from a place outside Hong Kong, to the public any services that he provides; and
- (b) such services, if provided in Hong Kong, would constitute a regulated activity,

then -

- (i) the provision of such services so marketed shall be regarded for the

purposes of section 114(1)(a) as carrying on a business in that regulated activity;

(ii) the person's marketing of such services as referred to in paragraph (a) shall be regarded for the purposes of section 114(1)(b) as holding himself out as carrying on a business in that regulated activity; and

(iii) to the extent that the provision of such services involves the performance by a person of a function that, if performed in Hong Kong in relation to a regulated activity, would constitute a regulated function, the performance of such function by that person shall be regarded for the purposes of section 114(3)(a) as performance of that regulated function in relation to that regulated activity.

(2) If -

(a) a person actively markets, whether by himself or another person on his behalf and whether in Hong Kong or

from a place outside Hong Kong, to the public any function that he performs; and

- (b) such function, if performed in Hong Kong in relation to a regulated activity carried on as a business, would constitute a regulated function,

then -

- (i) the performance of such function so marketed shall be regarded for the purposes of section 114(3)(a) as performance of that regulated function in relation to that regulated activity; and
- (ii) the person's marketing of such function as referred to in paragraph (a) shall be regarded for the purposes of section 114(3)(b) as holding himself out as performing that regulated function in relation to that regulated activity."

- 115(2) (a) In paragraph (a)(i), by deleting "or".
- (b) In paragraph (a)(ii), by adding "or" at the end.
- (c) In paragraph (a), by adding -

"(iii) a corporation (other than a company or an overseas company) -

- (A) which carries on a business principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute the regulated activity;
- (B) to which section 114(1) would not apply but for the provisions of section 114A(1)(i) and (ii); and
- (C) to which Part XI of the Companies Ordinance (Cap. 32) would apply if it established a place of business in Hong Kong;".

(d) In paragraph (c), by adding "(1)" after "129".

115(3) In paragraph (c)(ii), by deleting everything after "insured" and substituting "in accordance with rules made under subsection (4A).".

115(4) (a) By adding "(i)" after "(3)(c)".

(b) By deleting "以" after "規則, ".

(c) In the Chinese text, by deleting paragraph (c) and substituting -

"(c) 須按甚麼條款將該等保證保持有效;".

115 By adding -

"(4A) The Commission may make rules for the purposes of subsection (3)(c)(ii) that provide for -

- (a) insurance coverage for specified amounts to be taken out and maintained by a licensed corporation in relation to specified risks;
- (b) the terms on which the insurance is to be taken out and maintained;
- (c) any other matter relating to the insurance."

115(8) (a) By deleting "section 117(1)(c) and the Commission's powers in" and substituting "the Commission's powers under".

(b) By adding "(2)" after "95".

116(1) By adding "(other than Type 3, Type 7, Type 8 and Type 9 regulated activities)" after "activity".

116(2) (a) In paragraph (a), by deleting "假若該項活動" and substituting "該項活動如".

(b) By deleting paragraph (d) and substituting -

"(d) the granting of the licence would not

result in its being granted licences under subsection (1) for respective licence periods that in total exceed 6 months in any period of 24 months;".

(c) In paragraph (e) -

(i) by deleting "so";

(ii) by deleting "and" at the end.

(d) By adding -

"(ea) it has nominated at least one individual for approval by the Commission for the purposes of subsection (4A)(a); and".

(e) In paragraph (f), by adding "(1)" after "129".

116

By adding -

"(4A) Without limiting the generality of subsection (3), it shall be a condition of a licence granted under subsection (1) for carrying on a regulated activity -

(a) that, in relation to the regulated activity, there is at least one individual who is -

(i) nominated by the licensed corporation and approved by the Commission for the purposes of this paragraph; and

(ii) available at all times to supervise the business of the regulated activity for which the corporation is licensed; and

(b) that the licensed corporation shall not hold any client assets in carrying on the regulated activity."

117(1) (a) By deleting "the carrying on of -" and substituting "carrying on -".

(b) In paragraph (a)(i)(B), by deleting everything after "security," and substituting "in accordance with rules made under section 115(4A); and".

(c) In paragraph (a)(ii) -

(i) by deleting "that regulated" and substituting "the regulated";

(ii) by deleting everything after "團" and before "該" and substituting "須有至少一名負責人員可時刻監督".

(d) In paragraph (c) -

(i) by adding "(2)" after "95";

(ii) by deleting everything after ", and" and substituting "the regulated activity shall be operated in such manner as may

be specified in the notice pending the revocation of the licence under section 188(2);".

(e) In paragraph (d)(ii), by deleting "than one".

117(2) (a) In paragraph (b), by adding "財政司" before "司".

(b) In paragraph (f), by deleting "the exercise of" and substituting "performing".

(c) By deleting "以" after "規則, ".

118 By deleting the heading and substituting -
"Registered institutions".

118(1) (a) By deleting "grant a declaration of exemption to" and substituting "register".

(b) By deleting "carrying on".

(c) By deleting everything after "activities)" and substituting "and shall, upon such registration, grant to the applicant a certificate of registration specifying the regulated activity for which it is registered.".

118(2) By adding "金融管理" before "專".

118(3) (a) By deleting "an exemption" and substituting

"registration".

(b) In paragraph (c), by deleting "granted the exemption" and substituting "registered".

(c) By adding "金融管理" before "專".

118 By deleting subclause (4) and substituting -

"(4) In deciding whether to register or refuse to register an applicant under subsection (1), the Commission -

(a) shall have regard to any advice given to it by the Monetary Authority pursuant to subsection (3)(c); and

(b) may rely wholly or partly on that advice in making that decision.".

118(5) (a) By deleting "An exemption granted" and substituting "Any registration".

(b) By deleting "exempt person" and substituting "registered institution".

118(7) (a) By deleting everything after "prejudice to" and before "Type 7" and substituting "the Commission's powers under Part IX, the registration of an authorized financial institution for".

(b) By adding "(2)" after "95".

118(8) By deleting everything after "condition of" and substituting -

"any registration under subsection (1) for -

(a) a regulated activity, that -

(i) in relation to the

regulated activity, there

is at least one executive

officer of the registered

institution who is

available at all times to

supervise the business of

the regulated activity for

which the institution is

registered; and

(ii) any individual whose name

is entered in the register

maintained by the Monetary

Authority under section 20

of the Banking Ordinance

(Cap. 155) as engaged by

the registered institution

in respect of the regulated

activity is a fit and

proper person to be so

engaged;

(b) Type 7 regulated activity, that if

the Commission in its absolute discretion requires by notice in writing, the registered institution shall apply, within such reasonable period as may be specified in the notice, for an authorization under section 95(2) for that regulated activity, and the regulated activity shall be operated in such manner as may be specified in the notice pending the revocation of the registration under section 190(2).".

118(9) By deleting everything after "詢" and substituting "金融管理專員的情況下，根據第(5)或(8)(b)款行使其權力。".

119(3) By deleting "so".

119(6) In paragraph (a) -

(a) by deleting "將" and substituting "令證監會知悉";

(b) by deleting "告知證監會".

119(10) By deleting everything after "discretion," and substituting "by notice in writing served on the

licensed representative concerned, revoke a provisional licence granted under subsection (2).".

119(12) By deleting "Any" and substituting "A".

120 By deleting the heading and substituting -
"Temporary licences for representatives".

120(1) By adding "(other than Type 3, Type 7, Type 8 and Type 9 regulated activities)" after "activity".

120(2) (a) By deleting "licence for" and substituting "licence to carry on".

(b) In paragraph (a), by deleting "假若該項活動" and substituting "該項活動如".

(c) By deleting paragraph (d) and substituting -
"(d) that the granting of the licence would not result in his being granted licences under subsection (1) for respective licence periods that in total exceed 6 months in any period of 24 months; and".

(d) In paragraph (e), by deleting "so".

120(4) (a) By deleting "shall" where it secondly appears.

(b) In paragraph (a) -

(i) by adding "shall" before "at";

(ii) by deleting "and" at the end.

(c) In paragraph (b) -

(i) by adding "shall" before "inform";

(ii) by deleting the full stop and
substituting "; and".

(d) By adding -

"(c) shall not hold any client assets in
carrying on the regulated activity for
which he is so licensed."

122(1) In paragraph (c), by deleting "90" and substituting
"180".

122(2) (a) By deleting "Any" and substituting "A".

(b) By deleting "or (b)".

122 By adding -

"(3) A person who, without reasonable excuse,
contravenes subsection (1)(b) commits an offence and
is liable on conviction to a fine at level 6."

123(1) By deleting everything after "person or" and
substituting -

"a registered institution on the ground that his
licence or certificate of registration is lost,

defaced or destroyed, issue to the licensed person or the registered institution a duplicate of the licence or certificate of registration (as the case may be).".

- 123(2) (a) By deleting "support of his" and substituting "support of an".
- (b) By deleting "person" where it twice appears and substituting "licensed person or the registered institution".
- (c) In paragraph (a) -
- (i) by deleting "his" and substituting "the";
 - (ii) by deleting "exemption" and substituting "certificate of registration".
- 124(2) (a) By deleting "An exempt person" and substituting "A registered institution".
- (b) By deleting "is exempt" and substituting "is registered".
- 124(3) (a) By deleting "an exempt person" and substituting "a registered institution".
- (b) By deleting "or exempt person" and substituting "or registered institution".
- (c) By deleting "summary".

- 125(3) By adding "any" after "revoke".
- 125(4) In paragraph (b), by deleting "受僱於" and substituting "隸屬".
- 126 In the heading, by deleting "**exemption**" and substituting "**certificate of registration**".
- 126(1) By deleting "exemption" and substituting "certificate of registration".
- 126(2) (a) By deleting "exemption by" and substituting "certificate of registration by".
(b) By deleting "exemption (as" and substituting "registration (as".
- 127(1) (a) In paragraph (b), by deleting "an exemption" and substituting "registration".
(b) In paragraph (e), by deleting "exempt" and substituting "registered".
(c) In paragraph (f), by adding "(1)" after "129".
(d) In paragraph (g) -
(i) by adding "or continue to be (as the case may be)" after "become";
(ii) by deleting "130" and substituting

"130A".

- 127(3) (a) In paragraph (a) -
- (i) by deleting "types of";
 - (ii) by deleting "applicants" and substituting "an applicant";
 - (iii) by deleting "their applications" and substituting "his application".
- (b) By deleting "以" after "規則, ".
- 128(1) (a) In paragraph (ii), by deleting "and" at the end and substituting "or".
- (b) In paragraph (iii), by adding "chief executive," after "director,".
- (c) By adding "金融管理" before "專".
- 128(2) (a) By deleting "and the" and substituting "or the".
- (b) In paragraph (b)(ii), by deleting everything after "116" and substituting -
- "to carry on a regulated activity or any registration for a regulated activity under section 118 or an application for the licence or registration, any other person who will be acting for or on behalf of the person in relation to the regulated activity; or".

(c) In paragraph (b)(iii)(B), by deleting "該人" and substituting "該法團".

(d) In paragraph (c) -

(i) by deleting "an exemption" and substituting "any registration under section 118";

(ii) by deleting "or exemption" and substituting "or registration".

(e) By adding "金融管理" before "專" wherever it appears.

129(2) By deleting "shall not" and substituting "shall refuse to".

130 By deleting the clause and substituting -

"130. Restriction on substantial shareholding, etc.

(1) A person shall not become and continue to be a substantial shareholder of a corporation licensed under section 115 without first being approved by the Commission under section 130A(1)(a).

(2) A person who contravenes subsection (1) commits an offence and is liable -

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years, and to a further fine of \$5,000 for every day during which the

person continues to be such substantial shareholder without the Commission's approval under section 130A(1)(b); or

- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months, and to a further fine of \$500 for every day during which the person continues to be such substantial shareholder without the Commission's approval under section 130A(1)(b).

(3) It is a defence for a person charged with an offence under subsection (2) to prove -

- (a) that he did not know, and could not have by the exercise of reasonable diligence ascertained, the existence of the act or circumstances by virtue of which he became such a substantial shareholder; and
- (b) where he subsequently became aware of such act or circumstances, that he applied under section 130A(1)(b), as soon as reasonably practicable and in any event within 3 business days after he became so aware, for approval to continue to be a

substantial shareholder of the corporation.

(4) If a person becomes a substantial shareholder of a corporation licensed under section 115 without the Commission's prior approval under section 130A(1)(a) by virtue of -

- (a) a transfer of shares;
- (b) an issue of shares; or
- (c) a transfer of the right to be issued with shares,

then, unless and until the Commission approves the person to continue to be a substantial shareholder of the corporation under section 130A(1)(b), the voting rights conferred by the shares concerned are not exercisable.

(5) A person who purportedly exercises any voting right that is not exercisable by virtue of subsection (4) commits an offence and is liable -

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(6) It is a defence for a person charged with an offence under subsection (5) to prove that he -

(a) did not know; and
(b) could not have by the exercise of
reasonable diligence known,
that the voting right which he purportedly exercised
is by virtue of subsection (4) not exercisable."

New By adding -

**"130A. Approval to become or continue to be
substantial shareholder**

(1) The Commission may, upon application in
the prescribed manner and payment of the prescribed
fee, approve the applicant -

(a) to become; or

(b) to continue to be,

as the case may be, a substantial shareholder of a
corporation licensed under section 115.

(2) The Commission shall refuse to approve an
applicant to become or continue to be (as the case
may be) a substantial shareholder of the licensed
corporation concerned unless the applicant satisfies
the Commission that the corporation will remain a
fit and proper person to be licensed if the
application is approved.

(3) An approval under subsection (1)(a) or (b)
shall be subject to such reasonable conditions as
the Commission may impose on the applicant and on

the licensed corporation concerned, and the Commission may at any time, by notice in writing served on the approved substantial shareholder and the corporation, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(4) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (3), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(5) Without limiting the generality of subsection (3), it shall be a condition of an approval under subsection (1)(a) or (b) that the approved substantial shareholder shall -

(a) at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his business address, residential address, telephone and facsimile numbers and electronic mail address; and

(b) inform the Commission of any change in the particulars within 14 days after the change takes place.

**130B. Commission's power to
give directions**

(1) Where a person became a substantial shareholder without the Commission's prior approval under section 130A(1)(a), whether or not he has applied under section 130A(1)(b) for approval to continue to be such shareholder and regardless of whether such approval is granted or not, the Commission may by notice in writing direct the licensed corporation concerned -

- (a) not to permit or acquiesce in the involvement of the person in the management of the business of the corporation;
- (b) to deem void and of no effect any votes cast by the person and any of his associates (if any) at any meeting of the corporation;
- (c) to reconvene any such meeting for voting anew on the business on which the votes were cast; and
- (d) to take such other reasonable steps as it may specify in the notice.

(2) Without prejudice to the operation of subsection (1), where the Commission refuses to

approve an application to continue to be a substantial shareholder made under section 130A(1)(b), it may by notice in writing direct the applicant -

(a) to reduce, within such reasonable time as the Commission may require, the interest in shares by virtue of which he became a substantial shareholder of the licensed corporation concerned to the extent that he is no longer a substantial shareholder of the corporation; and

(b) to take such other reasonable steps as the Commission may specify in the notice.

(3) If a person fails to comply with any direction under subsection (1) or (2), the Commission may, by originating summons or originating motion, make an application to the Court of First Instance in respect of the failure, and the Court may inquire into the case and -

(a) if the Court is satisfied that there is no reasonable excuse for the person not to comply with the direction, order the person to comply with the direction within the period

specified by the Court; and

- (b) if the Court is satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.

(4) An originating summons under subsection (3) shall be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg.).".

- 131(1) (a) In paragraph (c), by deleting "an exempt person" and substituting "a registered institution".
- (b) In paragraph (d), by deleting "an exemption" and substituting "registration under section 118".
- (c) In paragraph (h), by deleting "130" and substituting "130A".
- (d) In paragraph (i), by deleting "130 to become" and substituting "130A to become or continue to be (as the case may be)".
- (e) By deleting "or 130" and substituting "or 130A".
- (f) By adding -
 - "(iiia) section 120(2)(a);".
- (g) In paragraph (xi), by deleting "or".

(h) By adding -

"(xia) section 169A(1), (2) and (3); or".

(i) By deleting "任何條文或規則" and substituting "條文或規則的任何".

131(2) By deleting "person applying for it" and substituting "applicant".

131(3) In paragraph (b), by deleting "imposed under section 119, 120, 125 or 130 or specified in section 117" and substituting "specified in section 117 or imposed under section 119, 120, 125 or 130A".

131(4) (a) By adding a comma after "time".

(b) In paragraph (b), by deleting "and" and substituting "or".

(c) In paragraph (c), by adding "所隸屬" after "該人".

131(5) (a) In paragraph (b)(ii), by deleting "and" and substituting "or".

(b) In paragraph (b)(iii), by adding "所隸屬" after "該人".

131(6) (a) By adding "granted" before "under subsection (1)".

(b) By deleting everything after paragraph (c) and

substituting -

"by notice published in the Gazette specifying,
subject to subsection (6A) -

- (i) the name of the person;
- (ii) the event referred to in paragraph (a), (b) or (c) (as the case may be) and the reasons for the event;
- (iii) any condition imposed on the modification or waiver on its grant, or the condition amended or revoked or newly imposed subsequently under subsection (4) (as the case may be); and
- (iv) (if applicable) the period for which the grant or amendment or the condition so imposed is valid."

131

By adding -

"(6A) If the applicant satisfies the Commission that specifying any condition in compliance with subsection (6)(iii) would prejudice, to an unreasonable degree, the commercial interests of the applicant, the Commission may, in lieu of specifying the condition, include in the notice referred to in

subsection (6) -

- (a) a brief account of its reasons for not specifying the condition; and
- (b) such appropriate information on the condition as the Commission considers incapable of prejudicing, to an unreasonable degree, the commercial interests of the applicant."

131(7) By deleting "exempt persons" and substituting "registered institutions".

131(11) (a) By deleting "exempt person" and substituting "registered institution".
(b) By deleting "在事先諮詢" and substituting "事先諮詢金融管理".

131(12) (a) By deleting "Any" and substituting "A".
(b) By deleting "證監會".

132 In the heading, by deleting "**exempt persons**" and substituting "**registered institutions**".

132(1) (a) By deleting "or exempt person" and substituting "or registered institution".

- (b) By deleting "exempt shall" and substituting "registered shall".
- (c) By deleting "an exempt person" and substituting "a registered institution".
- (d) By adding "金融管理" before "專".

- 132(2)
- (a) By deleting "A licensed person or exempt person" and substituting "An intermediary".
 - (b) By deleting "an exempt person" and substituting "a registered institution".
 - (c) By deleting "he" where it twice appears and substituting "it".
 - (d) By deleting "exempt" and substituting "registered".
 - (e) By adding "金融管理" before "專".

- 132(4)
- In paragraph (b) -
- (a) by deleting "an exempt person" and substituting "a registered institution";
 - (b) by adding "金融管理" before "專".

- 132(7)
- By deleting "Any" and substituting "A".

- 133
- In the heading, by deleting "**exempt persons**" and substituting "**registered institutions**".

- 133(1) By deleting "exempt persons" and substituting "registered institutions".
- 133(2) (a) By deleting "or exemption" and substituting "or registration".
- (b) In paragraphs (a) and (d), by deleting "exempt person" and substituting "registered institution".
- (c) In paragraph (b), by deleting "the exemption" and substituting "registration".
- (d) By deleting "登記" where it twice appears and substituting "紀錄".
- 133(3) (a) In paragraph (b), by deleting "legible form," and substituting "documentary form,".
- (b) By deleting "登記" and substituting "紀錄".
- 133(4) (a) By deleting "an exempt person" and substituting "a registered institution".
- (b) By deleting "exemption of such person" and substituting "registration of such person or institution (as the case may be)".
- (c) By deleting "登記" and substituting "紀錄".
- 133(5) (a) In paragraph (a), by deleting "非可閱讀" and substituting "非以文件".

(b) By deleting "登記" wherever it appears and substituting "紀錄".

133(6) In paragraph (a), by deleting "登記" and substituting "紀錄".

133 By adding -

"(7) Without derogating from the other provisions of this section, the Commission shall, in addition, cause the register to be available to the public in the form of an on-line record.".

134 In the heading, by deleting "**exempt persons**" and substituting "**registered institutions**".

134(1) By deleting everything after "publish" and before "as the" and substituting -

"at such time and in such manner as it considers appropriate the name and address of each licensed person and registered institution, the regulated activities for which the person or institution is licensed or registered and such conditions of the licence or registration".

134(2) By deleting everything after "name of a" and

substituting -

"licensed person or registered institution or varying the regulated activity for which a licensed person or registered institution is licensed or registered or any condition of a licence or registration, it shall publish particulars of the amendment within one month after making the amendment.".

135(1) By deleting "an exempt person" and substituting "a registered institution".

135(2) (a) By deleting "on or before each successive" and substituting "within one month after each".

(b) By deleting "exemption" and substituting "certificate of registration".

135(3) (a) In paragraph (a), by adding "or such part of the fee (as the case may be) that remains unpaid" after "fee".

(b) By deleting paragraph (b) and substituting -

"(b) 20% of the fee or such part of the fee (as the case may be) for each subsequent month when it remains unpaid,".

(c) By deleting "purpose" and substituting "purposes".

(d) By adding "全數" after "規定".

136 By deleting subclauses (1) to (8) and substituting -

"(1) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6A unless -

- (a) the person is licensed or registered for Type 1 regulated activity; or
- (b) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by a person registered for that regulated activity, while acting in that capacity.

(2) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6A unless -

- (a) the person is licensed or registered for Type 2 regulated activity; or
- (b) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in

respect of Type 2 regulated activity by a person registered for that regulated activity, while acting in that capacity.

(3) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6A unless the person -

- (a) is licensed for Type 3 regulated activity;
- (b) is an authorized financial institution; or
- (c) is engaged by an authorized financial institution, while acting for the institution in an activity that would have fallen within the meaning of the definition of "leveraged foreign exchange trading" in Part 2 of Schedule 6 but for paragraph (xii) of that definition.

(4) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6A unless -

- (a) the person is licensed or registered for Type 4 regulated activity; or

(b) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 4 regulated activity by a person registered for that regulated activity, while acting in that capacity.

(5) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6A unless -

- (a) the person is licensed or registered for Type 5 regulated activity; or
- (b) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 5 regulated activity by a person registered for that regulated activity, while acting in that capacity.

(6) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6A unless -

- (a) the person is licensed or registered for Type 6 regulated activity; or
- (b) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 6 regulated activity by a person registered for that regulated activity, while acting in that capacity.

(7) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6A unless -

- (a) the person is licensed or registered for Type 7 regulated activity;
- (b) the person is granted an authorization under section 95(2) to provide automated trading services;
- (c) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 7 regulated activity by a person registered for that regulated activity, while acting in

that capacity; or

- (d) the person is an employee of a person authorized under section 95(2) to provide automated trading services, while acting for that person in that regulated activity.

(8) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6A unless the person -

- (a) is licensed for Type 8 regulated activity;
- (b) is an authorized financial institution; or
- (c) is engaged by an authorized financial institution, while acting for the institution in an activity that would have fallen within the meaning of the definition of "securities margin financing" in Part 2 of Schedule 6 but for paragraph (v) of that definition."

136(9) By deleting "title specified" and substituting "specified title referred to".

- 136(10) By deleting "Any" and substituting "A".
- 137(1) (a) In paragraph (c)(i), by deleting "an exemption granted" and substituting "any registration".
- (b) In paragraph (c)(iii) -
- (i) by deleting "or to be" and substituting "or to become or continue to be (as the case may be)";
- (ii) by deleting "130" and substituting "130A".
- (c) In paragraph (i), by deleting "exempt person" and substituting "registered institution".
- (d) In paragraph (ii), by deleting "向其給予" and substituting "給予該人".
- 137(2) By deleting "exempt person, license" and substituting "registered institution, licensed".
- 138(1) (a) By deleting everything after "any" and before "as duly" and substituting -
- "written notice, decision or direction or other document (however described) to be, or required to be, issued or served (however described) to or on a licensed person for the purposes of this Ordinance shall for all purposes be

regarded".

(b) In paragraph (a), by deleting "、指" and substituting "或指".

(c) In paragraph (b), by deleting everything after "is -" and substituting -

"(i) delivered to any officer of the corporation by hand; or

(ii) (A) left at, or sent by post to, the last address;

(B) sent by facsimile transmission to the last facsimile number; or

(C) sent by electronic mail transmission to the last electronic mail address, provided by the corporation to the Commission pursuant to section 115, 116, 129(1), 132(2) or 135(4) (as the case may be).".

138(2) By deleting everything after "decision" and before "on the" and substituting -

"or direction or other document (however described) is regarded as duly issued or served to or on a licensed person under subsection (1)(a)(ii) or (b)(ii), it shall for all purposes be regarded as issued or served to or".

139 By adding "財政司" before "司".

New In Part V, by adding -

"139A. Amendment of Schedule 6A

The Commission may, by notice published in the Gazette, amend Schedule 6A."

- 141(1) By adding "財政司" before "司長".
- 141(2) (a) By deleting "384(9) and (10)" and substituting "384A(7) and (8)".
- (b) By deleting everything after "下," and before the dash where it first appears and substituting "證監會可在第(1)款提述的規則中".
- 142(1) (a) By deleting "on the day on which it becomes aware of such inability".
- (b) In paragraph (a), by adding "as soon as reasonably practicable" before "notify".
- (c) In paragraph (b), by adding "immediately" after "(2),".
- 142(5) In paragraph (a), by adding "by notice in writing served on the licensed corporation" before "suspend".
- 142(7) (a) By deleting "to" where it thirdly appears.
- (b) By deleting the comma before "或根據".
- (c) By adding "另行" after "快".
- 142 By adding -

"(7A) Notwithstanding anything in this section, the Commission shall not impose any conditions pursuant to subsection (2) or (5)(b), or amend any conditions under subsection (6), by notice given to a licensed corporation otherwise than in writing if the licensed corporation has on the occasion of being heard pursuant to subsection (9A) in respect of the imposition or amendment (as the case may be) made a request to the Commission that the conditions shall only be so imposed, or amended, by notice given to it in writing.

(7B) The suspension of a licence under subsection (5)(a) takes effect at the time when notice is served in respect of it pursuant to that subsection or at the time specified in the notice, whichever is the later."

142 By adding -

"(9A) Notwithstanding anything in this section, the Commission shall not exercise any power under subsection (1)(b), (2), (4)(b), (5), (6), (7), (7B) or (8) in respect of a licensed corporation unless the Commission has given the licensed corporation a reasonable opportunity of being heard."

142 By adding -

"(15) A licensed corporation is not excused from complying with subsection (3) only on the ground that to do so might tend to incriminate it.".

143(3) In paragraph (a), by adding "by notice in writing served on the licensed corporation" before "suspend".

143(5) (a) By deleting "to" where it thirdly appears.

(b) By adding "另行" after "快".

143 By adding -

"(5A) Notwithstanding anything in this section, the Commission shall not impose any conditions pursuant to subsection (3)(b), or amend any conditions under subsection (4), by notice given to a licensed corporation otherwise than in writing if the licensed corporation has on the occasion of being heard pursuant to subsection (7A) in respect of the imposition or amendment (as the case may be) made a request to the Commission that the conditions shall only be so imposed, or amended, by notice given to it in writing.

(5B) The suspension of a licence under subsection (3)(a) takes effect at the time when notice is served in respect of it pursuant to that

subsection or at the time specified in the notice,
whichever is the later.".

143 By adding -

"(7A) Notwithstanding anything in this
section -

(a) the Commission or any person
authorized by the Commission under
subsection (9) shall not exercise
any power under subsection (2) in
respect of a licensed corporation;

(b) the Commission shall not exercise
any power under subsection (3), (4),
(5), (5B) or (6) in respect of a
licensed corporation,

unless the Commission or the person (as the case
may be) has given the licensed corporation a
reasonable opportunity of being heard.".

144(1) By deleting "their behalf" and substituting "behalf of
the intermediaries or the associated entities (as the
case may be)".

144(2) (a) By deleting "384(9) and (10)" and substituting
"384A(7) and (8)".

(b) In paragraph (e), by deleting everything after

"hold" and before "comply" and substituting "the client securities and collateral on behalf of the intermediaries or the associated entities (as the case may be)".

- (c) By deleting everything after "則下," and before the dash and substituting "證監會可在第(1)款提述的規則中".

144 By adding -

"(5A) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(i) to give notification to the Commission only on the ground that to do so might tend to incriminate the person."

144(6) In paragraph (a) -

- (a) by deleting "exempt persons," and substituting "registered institutions,";
- (b) by deleting everything after "constitute" and substituting "any regulated activities for which they are registered;".

144(7) In paragraph (a) -

- (a) by deleting "an exempt person" and substituting "a registered institution";
- (b) by deleting "exempt person in" and

substituting "registered institution in";

(c) by deleting "exempt person is exempt" and substituting "registered institution is registered".

145(2) (a) By deleting "384(9) and (10)" and substituting "384A(7) and (8)".

(b) By deleting everything after "則下," and before the dash and substituting "證監會可在第(1)款提述的規則中".

145(4) By adding ", without reasonable excuse," before "contravenes".

145 By adding -

"(5A) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(k) to give notification to the Commission only on the ground that to do so might tend to incriminate the person."

145(7) (a) By deleting "apply to" and substituting "prevent".

(b) By adding "from being taken in execution against the associated entity" before the full stop.

147(2) (a) By deleting "384(9) and (10)" and substituting

"384A(7) and (8)".

(b) In paragraph (e), by deleting "by intermediaries and" and substituting ", whether by intermediaries or".

(c) By deleting everything after "下," and before the dash and substituting "證監會可在第(1)款提述的規則中".

147(3) By deleting everything after "shall," and substituting "in the absence of evidence to the contrary, be deemed to have been made by or with the authority of the intermediary or the associated entity (as the case may be).".

147 By adding -

"(6A) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(d) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.".

147(7) (a) By deleting "exempt persons," and substituting "registered institutions,".

(b) By deleting everything after "constitute" and substituting "any regulated activities for which they are registered.".

- 148(2) (a) By deleting "384(9) and (10)" and substituting "384A(7) and (8)".
- (b) In paragraph (a), by deleting everything after "constitute" and before ", to" and substituting "any regulated activities for which they are licensed or registered".
- (c) In paragraph (b), by deleting "they" and substituting "the intermediaries".
- (d) In paragraph (d), by deleting "them" and substituting "the intermediaries or the associated entities (as the case may be)".
- (e) In paragraph (g), by deleting "by the intermediaries and" and substituting ", whether by the intermediaries or".
- (f) By deleting everything after "下," and before the dash and substituting "證監會可在第(1)款提述的規則中".

148 By adding -

"(4A) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(f) to give notification to the Commission only on the ground that to do so might tend to incriminate the person."

148(5) (a) By deleting "exempt persons," and substituting

"registered institutions,".

(b) By deleting everything after "constitute" and substituting "any regulated activities for which they are registered.".

149 In the heading, by deleting "**their associated entities**" and substituting "**associated entities of intermediaries**".

149(2) By deleting "a licensed corporation" and substituting "an intermediary".

149(3) By deleting "a licensed corporation" and substituting "an intermediary".

149(4) In paragraph (a)(ii), by deleting "does not belong" and substituting "belongs".

149(5) By deleting "a licensed corporation" and substituting "an intermediary".

149(6) By deleting "a licensed corporation" and substituting "an intermediary".

149(8) By deleting "a licensed corporation" and substituting "an intermediary".

- 150 In the heading, by deleting "**their associated entities**" and substituting "**associated entities of intermediaries**".
- 150(1) By deleting "a licensed corporation" and substituting "an intermediary".
- 150(2) By deleting "a licensed corporation" and substituting "an intermediary".
- 150(3) By deleting "a licensed corporation" and substituting "an intermediary".
- 151 In the heading, by deleting "**their associated entities, etc.**" and substituting "**associated entities of intermediaries, etc.**".
- 151 In subclause (1) -
- (a) by deleting "a licensed corporation" and substituting "an intermediary";
 - (b) in the Chinese text, by deleting the subclause and substituting -
- "(1) 持牌法團、及中介人的有聯繫實體須在下

述限期內，以書面將其財政年度結束的日期通知證監會 -

(a) (就持牌法團而言)在它獲發牌後一個
月內；或

(b) (就有聯繫實體而言)在它成為該實
體後一個月內。".

151(2) (a) By deleting "a licensed corporation" and
substituting "an intermediary".

(b) In paragraph (a), by adding "證監會的其財政年度結束"
after "通知".

151(3) (a) By deleting "of a licensed corporation" and
substituting "of an intermediary".

(b) In paragraph (a), by adding "證監會的其財政年度結束"
after "通知".

151(4) By deleting "a licensed corporation" and substituting
"an intermediary".

151(6) By deleting "a licensed corporation" and substituting
"an intermediary".

152 In the heading, by deleting "**their associated entities**"
and substituting "**associated entities of**

intermediaries".

152(1) By deleting "of a licensed corporation" and substituting "of an intermediary".

152(2) (a) By deleting "any" and substituting "all".
(b) By deleting "of a licensed corporation" and substituting "of an intermediary".

152(5) By deleting "a licensed corporation" and substituting "an intermediary".

152(6) By deleting "a licensed corporation" and substituting "an intermediary".

152(7) By deleting "a licensed corporation" and substituting "an intermediary".

153 In the heading, by deleting "**their associated entities**" and substituting "**associated entities of intermediaries**".

153(1) (a) By deleting "of a licensed corporation" wherever it appears and substituting "of an intermediary".
(b) In paragraph (i)(B), by adding "金融管理" before "專

員".

- 153(2) (a) By deleting "of a licensed corporation" and substituting "of an intermediary".
- (b) In paragraphs (a) to (c), by adding "法團或該實體(視屬何情況而定)的" after "該".
- 153(3) (a) In the definition of "prescribed requirement", by deleting everything after "means" and substituting "such of the requirements under any of the rules made under section 144, 145, 147 or 148 as are prescribed by rules made under section 384 for the purposes of this definition;".
- (b) In the definition of "reportable matter" -
- (i) in paragraph (b), by deleting "a licensed corporation" and substituting "an intermediary";
- (ii) by adding "的人" before "而言".
- 154 In the heading, by deleting "**their associated entities**" and substituting "**associated entities of intermediaries**".
- 154(1) (a) By deleting "of a licensed corporation" where it twice appears and substituting "of an

intermediary".

(b) In paragraph (b), by adding "金融管理" before "專員".

(c) By deleting everything after "達予" and before "的要" and substituting "證監會或金融管理專員(視屬何情況而定), 則不論他是否應證監會或金融管理專員(視屬何情況而定)".

154(2) By deleting everything after "is" and substituting -
"an auditor appointed under section 149 by a licensed corporation or an associated entity of an intermediary, or appointed for the purposes of the Banking Ordinance (Cap. 155) by an associated entity of an intermediary, subsection (1) also applies to -

(a) a person whose appointment as an auditor appointed under section 149 by a licensed corporation or an associated entity of an intermediary, or appointed for the purposes of the Banking Ordinance (Cap. 155) by an associated entity of an intermediary, has ceased, in which case a reference to a matter in that subsection shall be construed on the basis that paragraph (a) of that subsection

requires the matter to be one which he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor) before the appointment has ceased;

- (b) an auditor appointed, whether or not under section 149 or for the purposes of the Banking Ordinance (Cap. 155), by a former licensed corporation or by a former associated entity of an intermediary, in which case a reference to a matter in that subsection shall be construed on the basis that paragraph (a) of that subsection requires the matter to be one which he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor); and
- (c) a person whose appointment as an auditor, whether or not under section 149 or for the purposes of the Banking Ordinance (Cap. 155), by a former licensed corporation or by

a former associated entity of an intermediary, has ceased, in which case a reference to a matter in that subsection shall be construed on the basis that paragraph (a) of that subsection requires the matter to be one which he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor) before the appointment has ceased."

154(3) By deleting the definition of "former associated entity of a licensed corporation" and substituting -

"former associated entity of an intermediary" (中介人的前有聯繫實體) means a corporation which was formerly an associated entity of an intermediary;".

155(2) By adding "of the licensed corporation" after "assets".

155(3) By adding "金融管理" before "專員".

155(4) (a) By deleting "Where" and substituting "Subject to subsection (4A), where".

(b) By deleting "該部分(視屬何情況而定)" and substituting "部分".

155 By adding -

"(4A) The Commission shall not give a direction under subsection (4) unless it has given the licensed corporation or the associated entity to which the direction is to be given a reasonable opportunity of being heard.".

155(6) By deleting everything after "means" and substituting "such of the requirements under any of the rules made under section 144, 145, 147 or 148 as are prescribed by rules made under section 384 for the purposes of this definition.".

156(1) (a) In paragraph (a), by adding "as a client of the licensed corporation" before "for".

(b) In paragraph (b), by adding "as a client of the licensed corporation" before "to the licensed".

(c) In paragraph (b)(i), by deleting "循他" and substituting "循該人".

156(2) By adding "of the licensed corporation" after "assets".

156(3) In paragraph (c), by deleting "待" and substituting "代".

156(5) By adding "金融管理" before "專員".

156 By deleting subclause (8) and substituting -

"(8) Subject to subsection (8A), where an auditor appointed under subsection (1) has examined and audited the accounts and records of a licensed corporation or an associated entity of a licensed corporation, the Commission may, where it is of the opinion that it is appropriate to do so having regard to the conduct (whether before or after the appointment) of the licensed corporation or the associated entity (as the case may be) and of the person making the application pursuant to subsection (1) in respect of the appointment, by notice in writing direct the licensed corporation or the associated entity (as the case may be) or the person making the application to pay a specified amount, being -

(a) in the case of the licensed corporation or the associated entity (as the case may be), the whole or a part of the costs and expenses of

the examination and audit; or

- (b) in the case of the person making the application, the whole or a part of the costs and expenses of the examination and audit to the extent that they have been reasonably incurred for the purpose of ascertaining matters to which the application relates,

within the specified time and in the specified manner."

156 By adding -

"(8A) The Commission shall not give a direction under subsection (8) unless it has given the licensed corporation, the associated entity or the person to which or to whom the direction is to be given a reasonable opportunity of being heard."

157 (a) By renumbering the clause as clause 157(1).

(b) By adding -

"(2) A report referred to in subsection (1) shall be made within such time and in such manner as the Commission may direct.

(3) The Commission may, if it considers appropriate, forward a copy of any report made

to it under subsection (1) to the licensed corporation or the associated entity the accounts and records of which are the subject of the examination and audit referred to in the report."

- 158(1) (a) In paragraph (a) -
- (i) by deleting ", affirmation";
 - (ii) by deleting "and affirmations";
 - (iii) by deleting "有關或" and substituting "有關的事宜, 或任何";
 - (iv) by deleting everything after "人士" and before the dash;
 - (v) in the Chinese text, by adding "以及為進行訊問的目的而監誓" after subparagraph (ii).
- (b) In the Chinese text, in paragraph (a)(ii), by deleting the semicolon and substituting a comma.
- (c) In paragraph (b), by adding "任何" before "高級".
- (d) In the Chinese text, by deleting paragraph (b)(i) and substituting -
- "(i) 交出帳目及紀錄, 而該等帳目及紀錄是關乎任何與該法團或該實體(視屬何情況而定)的業務有關的事宜, 或任何與該法團或該實體(視屬何情況而定)所收取或持有的該法團的客戶資產有關的事宜的; 及".

(e) In the Chinese text, by deleting paragraph (c)(i) and substituting -

"(i) 交出他持有的帳目及紀錄，而該等帳目及紀錄是關乎任何與該法團或該實體(視屬何情況而定)的業務有關的事宜，或任何與該法團或該實體(視屬何情況而定)所收取或持有的該法團的客戶資產有關的事宜的；及".

(f) In paragraph (d)(i), by deleting everything after "備存的" and substituting "帳目及紀錄或它管有的資料，而該等帳目及紀錄或該等資料是關乎任何與該法團或該實體(視屬何情況而定)的業務有關的事宜，或任何與該法團或該實體(視屬何情況而定)所收取或持有的該法團的客戶資產有關的事宜的；及".

(g) In paragraph (e), by adding "of the licensed corporation" before "on".

(h) In paragraph (f), by adding "他獲委任進行的" before "該項".

(i) In paragraph (g) -

(i) by adding "carrying out" after "purpose of";

(ii) by deleting everything after "subsection" and substituting "(except to examine a person on oath under paragraph (a) or to exercise any power conferred by this paragraph)".

158(2) (a) In paragraph (a), by deleting everything after "is licensed" and before "such business" and substituting -

"and to any business of any of its associated entities, in which case any reference to "any matter relating to the business of the licensed corporation or the associated entity (as the case may be)" in subsection (1)(a) to (g) shall be construed on the basis that it refers to any matter relating to such other business carried on by the licensed corporation or to".

(b) By deleting paragraph (b)(i) to (iv) and substituting -

"(i) any reference to "any officer, employee and agent of the licensed corporation or the associated entity (as the case may be)" in subsection (1)(a) to (g) shall be construed on the basis that it refers to any officer, employee and agent of the related corporation;

(ii) any reference to "any auditor appointed by the licensed corporation or the associated entity (as the case may be) under section 149 or, where the associated entity is an authorized

financial institution, for the purposes of the Banking Ordinance (Cap. 155)" in subsection (1)(a) to (g) shall be construed on the basis that it refers to any auditor appointed by the related corporation, whether under this Ordinance or otherwise;

- (iii) any reference to "any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be)" in subsection (1)(a) to (g) shall be construed on the basis that it refers, apart from the matter originally referred to, also to any matter relating to the business of the related corporation; and
- (iv) any reference to "any person receiving or holding client assets of the licensed corporation on behalf of the licensed corporation or the associated entity (as the case may be)" in subsection (1)(a) to (g) shall be construed on the basis that it refers to any person receiving or

holding client assets of the licensed corporation on behalf of the related corporation."

- 159(1) (a) In paragraph (a), by deleting everything after "documents" and before ", or" and substituting "related to such examination and audit".
- (b) In paragraph (b), by deleting everything after "property" and before ", or" and substituting "related to such examination and audit".
- 159(3) (a) By deleting everything after "documents" and before ", or" and substituting "related to any examination and audit which an auditor appointed under this Part is required to carry out".
- (b) By deleting everything after "out of" and substituting "such examination and audit".
- 160(3) In paragraph (b), by adding "which or" before "whom" where it twice appears.
- 161 By adding -
- "(7A) An associated entity of an intermediary is not excused from complying with subsection (6) only on the ground that to do so might tend to incriminate it."

New In Part VI, by adding -

**"161A. Use of incriminating evidence
in proceedings**

Notwithstanding any other provisions of this Ordinance, where a person -

- (a) is required under section 142(3) to notify the Commission of any matter;
- (b) is required under section 161(6) to notify the Commission of any matter;
- or
- (c) is required by rules made pursuant to section 144(2)(i), 145(2)(k), 147(2)(d) or 148(2)(f) to notify the Commission of any matter,

and the notification might tend to incriminate the person, then the notification shall not be admissible in evidence against the person in criminal proceedings in a court of law other than those in which -

- (i) he is charged with an offence under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the notification;
- (ii) in the case of paragraph (a), he is charged with an offence under

section 142(12) in respect of the notification;

(iii) in the case of paragraph (b), he is charged with an offence under section 161(7) in respect of the notification; or

(iv) in the case of paragraph (c), he is charged with an offence under any rules made under section 144(4) or (5), 145(4) or (5), 147(5) or (6), 148(3) or (4) (as the case may be) in respect of a contravention taking place by reason of a failure to comply with the requirement described in paragraph (c) relating to the notification."

162

(a) In the definition of "representative" -

(i) in paragraph (b), by deleting "an exempt person" and substituting "a registered institution";

(ii) in paragraph (b)(i), by deleting "employed by the exempt person" and substituting "engaged by the registered institution";

(iii) in paragraph (b)(i), by adding "金融管理" before "專員";

(iv) in paragraph (b)(ii), by deleting "exempt person" and substituting "registered institution".

(b) By adding -

"client contract" (客戶合約) means any contract or arrangement between an intermediary and another person, which contains terms on which the intermediary is to provide services the provision of which constitutes a regulated activity;".

163(1)

(a) By deleting "their conduct" and substituting "the conduct of the intermediaries or the

representatives (as the case may be)".

(b) By deleting "exempt" and substituting "registered".

(c) By deleting "任何".

163(2) (a) By deleting "384(9) and (10)" and substituting "384A(7) and (8)".

(b) In paragraph (e) -

(i) by deleting "when" and substituting "to take specified steps before";

(ii) by deleting everything after "the intermediary" and substituting a semicolon;

(iii) by adding "任何" after "人的".

(c) By adding -

"(ea) require an intermediary, and any representative of an intermediary, when making any recommendation concerning any financial product to any client of the intermediary, to disclose to the client in the specified manner any interest the intermediary or the representative (as the case may be) may have in the financial product;".

(d) In paragraph (j), by deleting "to avoid" and substituting "in".

(e) In paragraph (n), by deleting "exempt" and

substituting "registered".

(f) By deleting everything after "則下," and before the dash and substituting "證監會可在第(1)款提述的規則中".

163(4) By deleting "(as the case may be)".

163 By deleting subclause (5).

164(1) (a) By deleting "setting out guidelines" and substituting "giving guidance".

(b) By deleting "exempt" and substituting "registered".

164(2) By deleting "setting out guidelines" and substituting "giving guidance".

164(3) In paragraph (a), by deleting "the" where it secondly appears.

164(4) (a) By deleting "(as the case may be)" where it twice appears.

(b) In paragraph (a), by deleting "exempt" and substituting "registered".

(c) In paragraph (b), by deleting "licensed person" and substituting "licensed corporation".

(d) In paragraph (c) -

(i) by deleting everything after "is" and

before "entered" and substituting "a registered institution, whether he is a fit and proper person to be or to remain a person whose name is";

(ii) by deleting "employed by the exempt person" and substituting "engaged by a registered institution";

(iii) by adding "金融管理" before "專員".

165(1) In paragraph (b), by deleting "reasonably and honestly believes" and substituting "believes and has reasonable grounds to believe".

165(3) By deleting "in the reasonable and honest belief" where it twice appears and substituting ", believing and having reasonable grounds to believe".

166(8) By deleting paragraph (b) and substituting -
"(b) upon request made at any time within that year by the Commission, give the Commission access to the document, and produce to the Commission, within the time and at the place specified by the Commission, the document.".

166 In the Chinese text, by deleting subclause (9) and substituting -

"(9) 在根據本條例於任何法庭進行的法律程序中，第(1)、(2)、(3)、(4)、(5)或(6)款提述的保證或資料須獲接納為以下事項的表面證據 -

- (a) 就任何保證而言，第(1)、(3)或(5)款(視屬何情況而定)中指明的該保證所關乎的事項；或
- (b) 就任何資料而言，第(2)、(4)或(6)款(視屬何情況而定)提述的規則中指明的該資料所關乎的事項(如有的話)。

166(11) In paragraph (a), by deleting everything before "that" and substituting -

"(a) believed and had reasonable grounds to believe".

167(2) (a) By deleting "A" and substituting "Subject to subsection (3), a".

(b) By deleting "lawful" and substituting "reasonable".

167 By deleting subclause (3) and substituting -

"(3) A person shall not be regarded as committing an offence under subsection (2) if he contravenes subsection (1) by reason only of his inadvertence, carelessness or negligence."

168(2) By adding ", without reasonable excuse," before

"contravenes".

- 168(3) By deleting "exempt" where it twice appears and substituting "registered".
- 169(1) (a) By deleting "a licensed or exempt person" and substituting "an intermediary, or a representative of an intermediary,".
- (b) By deleting "by" and substituting ", whether in Hong Kong or elsewhere, by it or".
- (c) In paragraph (a)(ii), by deleting everything after "agreement" and before ", to" and substituting "to provide, or with a view to providing".
- (d) By adding "it or" before "he".

169 By deleting subclause (2) and substituting -

"(2) An intermediary, or a representative of an intermediary, shall not be regarded as contravening subsection (1) by reason only that it or he -

- (a) makes a call on another person who is a solicitor or professional accountant acting in his professional capacity, or is a licensed person, registered institution, money lender or

professional investor, or its or his existing client; and

- (b) whether as principal or agent, makes or offers to make with that other person an agreement referred to in subsection (1)(a), or induces or attempts to induce that other person to enter into such an agreement.".

169(5) By deleting "A person who" and substituting "An intermediary, or a representative of an intermediary, that".

169(6) (a) By deleting everything after "Where" and before "may" and substituting -
"a person on whom an unsolicited call is made enters into an agreement with another person in consequence of a contravention of subsection (1), the person on whom the unsolicited call is so made".

(b) By deleting everything after "effect to" and substituting -
"that other person, within 28 days after the day on which the agreement is entered into or 7 days after the day on which he becomes aware of the contravention, whichever is the earlier.".

- 169(7) (a) By deleting the definition of "client".
- (b) In the definition of "existing client", by deleting everything after "to" and substituting -
- "an intermediary or a representative of an intermediary, means a person -
- (a) who has entered into a client contract with the intermediary at any time during the period of 3 years immediately preceding the day on which the call is made, and remains a party to the client contract when the call is made; or
- (b) for whom the intermediary has provided a service, the provision of which constitutes a regulated activity, at any time during the period of 3 years immediately preceding the day on which the call is made;".

New By adding -

"169A. Requirements for offers by intermediaries or representatives for Type 1, Type 4 or Type 6 regulated activity

- (1) Subject to subsection (5), a Type 1 intermediary or representative, a Type 4

intermediary or representative or a Type 6 intermediary or representative shall not communicate an offer to acquire or dispose of any securities of, or issued by, a body unless -

(a) the offer -

(i) is contained in a written document in an official language; or

(ii) if communicated otherwise than in the form of a written document satisfying the requirement of subparagraph (i), is reduced to a written document in an official language and delivered to the person or persons to whom it was made not later than 24 hours after the communication;

(b) the offer -

(i) contains a description of the securities sufficient to enable them to be identified;

(ii) specifies the terms of the

offer, including where appropriate the amount of consideration proposed to be paid for the securities to be acquired pursuant to the offer;

(iii) where a dividend has been declared or recommended in respect of the securities, or it is anticipated that a dividend may be so declared or recommended before the transfer of the securities, states whether the securities are to be transferred with or without the dividend;

(iv) specifies -

(A) whether, in the event of a person accepting the offer, the offeror will pay any stamp duty which the person so accepting the offer will become liable to pay in

respect of the
transaction under the
Stamp Duty Ordinance
(Cap. 117); and

(B) if the offeror will
not so pay the stamp
duty, the rate of the
stamp duty that the
person so accepting
the offer will become
liable to pay in
respect of the
transaction under
that Ordinance;

(v) specifies whether, in the
event of a person accepting
the offer, any fees will be
payable by that person to -

(A) where the Type 1
intermediary or
representative, the
Type 4 intermediary
or representative or
the Type 6
intermediary or
representative (as

the case may be) is regarded as such by virtue of being an intermediary, the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be); or

(B) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being a representative of an intermediary, the intermediary;

(vi) if contained in a written document referred to in paragraph (a)(i) -

(A) specifies the name and address of the offeror and, where any person is making the offer on behalf of the offeror, the name and address of that person;

(B) bears a date which is not more than 3 days before the date on which the offer is communicated;

(C) where the offer is for the acquisition of securities, satisfies the requirements of Part 1 of Schedule 6B;

(D) where the offer is for the disposal of securities, satisfies the requirements of

Part 2 of Schedule

6B; and

(E) where a report of an expert in connection with the offer is included in or annexed to the offer, contains a statement to the effect that the expert has consented to the inclusion or annexure, and has not, before the communication of the offer, withdrawn that consent; and

(vii) if communicated in the manner described in paragraph (a)(ii), where there is a report of an expert in connection with the offer, specifies the place at which the report is available for inspection, and contains a

statement to the effect
that the expert has
consented to the contents
of the report, and has not,
before the communication of
the offer, withdrawn that
consent; and

(c) where the offer is contained in a
written document referred to in
paragraph (a)(i) or is reduced to a
written document referred to in
paragraph (a)(ii) but the written
document is in only one official
language, the written document
includes a translation, in the other
official language, of all the
particulars required in respect of
the offer under paragraph (b),
except where the Commission has
previously agreed that the
requirements of this paragraph may
be dispensed with in any particular
case.

(2) Where an offer contained in a written
document referred to in subsection (1)(a)(i) is to
contain a statement referred to in subsection

(1)(b)(vi)(E) regarding the consent of an expert, the offer shall not be communicated unless the expert has given, and has not before the communication of the offer withdrawn, his consent to the offer being communicated with the inclusion of the statement in the form and context in which it is included in the written document.

(3) Where an offer communicated in the manner described in subsection (1)(a)(ii) is to contain a statement referred to in subsection (1)(b)(vii) regarding the consent of an expert, the offer shall not be communicated unless the expert has given, and has not before the communication of the offer withdrawn, his consent to the offer being communicated with a reference to the statement in the form and context in which it is referred to.

(4) Any Type 1 intermediary or representative, Type 4 intermediary or representative or Type 6 intermediary or representative who communicates an offer to acquire or dispose of any securities without having complied with subsections (1), (2) and (3) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$20,000 for every day during which the offence continues.

- (5) This section does not apply to -
- (a) an offer regulated by, and made in accordance with, the requirements of -
 - (i) the rules made under section 23 or 36 governing the listing of securities;
 - (ii) the code published under section 385(2)(a); or
 - (iii) Part II of the Companies Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance;
 - (b) an offer communicated to persons who already hold securities of, or issued by, a body, for those persons to acquire securities of, or issued by, the body;
 - (c) an offer communicated by a Type 1 intermediary or representative, a Type 4 intermediary or representative or a Type 6 intermediary or representative if the offer is made to a person with

whom, or on whose behalf -

(i) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being an intermediary, the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be); or

(ii) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such

by virtue of being a
representative of an
intermediary, the
intermediary,

has transacted the sale or purchase
of securities on at least 3
occasions during the period of 3
years immediately preceding the date
of the offer;

- (d) an offer made to -
 - (i) a professional investor;
 - (ii) a solicitor or professional accountant acting in his professional capacity; or
 - (iii) any other person who is of a class prescribed by rules made under section 384 for the purposes of this paragraph;
- (e) an offer communicated by an exchange participant in the ordinary course of trading on a recognized stock market;
- (f) an offer communicated by a person who is of a class prescribed by rules made under section 384 for the

purposes of this paragraph;

- (g) an offer which is of a class prescribed by rules made under section 384 for the purposes of this paragraph.

(6) Where -

- (a) a person has accepted an offer to acquire or dispose of any securities of, or issued by, a body which is an offer to which this section applies; and

- (b) the offer has been communicated without subsections (1), (2) and (3) having been complied with in a material particular,

that person may, subject to the rights of a subsequent purchaser of the securities in good faith for value, rescind the acceptance, by giving notice in writing to that effect to the offeror, within 28 days after the date of acceptance or 7 days after the day on which he becomes aware of the matter described in paragraph (b), whichever is the earlier.

(7) For the purposes of this section -

- (a) where a Type 1 intermediary or representative, a Type 4

intermediary or representative or a Type 6 intermediary or representative communicates an invitation to a person to acquire or dispose of any securities of, or issued by, a body, the invitation shall be deemed to be an offer, and a reference in this section to acceptance shall be construed accordingly;

(b) an offer to acquire or dispose of a right to acquire or dispose of securities or an interest in securities shall be deemed to be an offer to acquire or dispose of securities, and a reference in this section to a person who holds securities includes a person who holds a right to acquire securities or an interest in securities;

(c) an offer to acquire or dispose of securities in consideration or part consideration for other securities shall be deemed to be both an offer to acquire and an offer to dispose of securities.

(8) In this section, a reference to securities of a body shall, unless the context otherwise requires, be construed as a reference to securities (having the meaning under section 1 of Part 1 of Schedule 1) which are -

(a) issued, made available or granted by the body; or

(b) proposed to be issued, made available or granted by the body.

(9) In this section -

"body" (團體) means a corporation, a multilateral agency, or a government or municipal government authority;

"expert" (專家) includes an engineer, valuer, professional accountant, solicitor, and any other person whose profession gives authority to a statement made by him;

"Type 1 intermediary or representative" (第1類中介人或代表) means -

(a) an intermediary licensed or registered for Type 1 regulated activity; or

(b) its representative that carries on Type 1 regulated activity for it;

"Type 4 intermediary or representative" (第4類中介人

或代表) means -

(a) an intermediary licensed or registered for Type 4 regulated activity; or

(b) its representative that carries on Type 4 regulated activity for it;

"Type 6 intermediary or representative" (第6類中介人

或代表) means -

(a) an intermediary licensed or registered for Type 6 regulated activity; or

(b) its representative that carries on Type 6 regulated activity for it;

"written document" (書面文件) means any document or similar material, or any other medium (whether effected as such mechanically, electronically, magnetically, optically, manually or by any other means), by which words are represented in a visible form."

170(2) By deleting "exempt" and substituting "registered".

170(3) By deleting "中介人的" and substituting "其".

New By adding -

"Division 5 - Miscellaneous

170A. Amendment of Schedule 6B

The Chief Executive in Council may, by order published in the Gazette, amend Schedule 6B."

- 171 In the definition of "調查員", by deleting "進行調查" and substituting "調查任何事宜".
- 172 In the heading, by adding ", etc." after "corporations".
- 172(1) (a) By deleting ", or was at the relevant time," and substituting "or was".
- (b) In paragraph (a), by deleting everything after "suggesting that" and before "has" and substituting "at any relevant time the business of the corporation".
- (c) In paragraph (d), by deleting everything after "suggesting that" and before "have" and substituting "at any relevant time persons involved in the management of the affairs of the corporation".
- (d) In paragraph (e), by adding "at any relevant time" after "suggesting that".
- (e) In paragraph (f), by adding "並在該段描述的" after "示的".
- (f) In paragraph (ii), by deleting "relevant" and substituting "material".

- 172(2) (a) By adding "某人" after "條要求".
- (b) In paragraph (b), by deleting "錄及" and substituting "錄或".
- 172(5) By deleting "relevant" and substituting "material".
- 172(6) (a) In paragraph (b)(ii), by deleting "is or".
- (b) In paragraph (b)(ii)(A), by deleting everything after "考慮" and before "事宜" and substituting "該款提述的情況所顯示的並在該款描述的".
- 172(7) (a) In paragraph (b)(ii), by deleting "is or".
- (b) In paragraph (b)(ii)(A), by deleting everything after "考慮" and before "事宜" and substituting "該款提述的情況所顯示的並在該款描述的".
- 172(8) (a) In paragraph (b)(ii), by deleting "is or".
- (b) In paragraph (b)(ii)(A), by deleting everything after "考慮" and before "事宜" and substituting "該款提述的情況所顯示的並在該款描述的".
- 172(9) In paragraph (b), by deleting everything after "described in" and substituting "subsection (1)(e) as being suggested by the circumstances referred to in that

subsection (1)(e).".

- 172(10) (a) In paragraph (a) -
- (i) by deleting "the controller" and substituting "a controller";
 - (ii) by deleting "the same controller as" and substituting "a controller that is also a controller of";
 - (iii) by adding "金融管理" before "專".

172 By adding -

"(15A) A person is not excused from complying with a requirement imposed on the person by an authorized person under this section only on the ground that to do so might tend to incriminate the person.".

- 172(16) (a) By deleting the definition of "relevant time" and substituting -
- "relevant time" (有關時間) -
- (a) in relation to a corporation which is listed, means any time since the formation of the corporation; or
 - (b) in relation to a corporation

which was listed, means any time since the formation of the corporation but before the corporation ceased to remain listed."

(b) By adding -

"material time" (關鍵時間) means -

- (a) where subsection (1)(a), (b), (c), (d) or (e) applies, the time at which the matter described in such subsection as being suggested by the circumstances referred to in such subsection appears to the Commission as occurring; or
- (b) where subsection (1)(f) applies, the time at which the matter in respect of the investigation of which the Commission decides to provide assistance under section 179 appears to the Commission as occurring;"

(c) In the definition of "獲授權人", by deleting ". " and substituting ";".

173(1) (a) By deleting paragraph (a)(i)(B) and substituting -
"(B) where it is a registered institution, the
premises of the registered institution;
or".

(b) In paragraph (a)(ii), by adding "中介人的有聯繫"
after "就該".

173(2) In paragraph (c), by deleting "a licence or an
exemption" and substituting "any licence or
registration".

173(4) In paragraph (b), by adding "任何" before "為".

173(9) By deleting "which is not an intermediary" and
substituting ", not being the intermediary or the
associated entity in question as referred to in
subsection (1) or a related corporation of the
intermediary or the associated entity (as the case may
be),".

173(10) (a) By deleting everything after "section" and before
the dash and substituting "(other than subsection
(1)(c)(iii) or (3)(c)) in respect of a
corporation".

(b) In paragraph (a) -

- (i) by deleting "the controller" and substituting "a controller";
- (ii) by deleting "the same controller as" and substituting "a controller that is also a controller of";
- (iii) by deleting "並非中介人且";
- (iv) by adding "金融管理" before "專".

(c) In paragraph (b), by deleting "並非中介人且".

173(17) In the definition of "relevant authority", by deleting paragraph (a) and substituting -

"(a) where -

- (i) the intermediary in question as referred to in subsection (1) is a registered institution; or
- (ii) the associated entity in question as referred to in that subsection is the associated entity of a registered institution,

the Monetary Authority; or".

174(1) (a) By deleting "performing a function of the Commission" and substituting "enabling or assisting the Commission to perform a function".

(b) In paragraph (d), by deleting "or exempt person through whom" and substituting "person or registered institution through whom or which".

174(2) In paragraph (a), by adding "(視屬何情況而定)" after "該人的".

175(1) By deleting paragraph (e)(i) and (ii) and substituting -

"(i) for the purpose of considering whether to exercise any power under section 187 or 189A, has reason to inquire whether any person is or was at any time guilty of misconduct, or is not a fit and proper person, as described in section 187(1) or (2) or 189A(1) or (2); or

(ii) for the purpose of assisting the Monetary Authority to consider whether to exercise any power under section 58A or 71C of the Banking Ordinance (Cap. 155), has reason to inquire whether any person -

(A) is or was at any time guilty of misconduct, or is not or has ceased to be a fit and proper person, as described in section 58A(1) of that Ordinance; or

(B) is or was at any time guilty of misconduct, or should cease to be

regarded as a fit and proper person, as described in section 71C(4) of that Ordinance;".

175(1) By adding "財政司" before "司".

175(2) By deleting "or" and substituting "and".

175 By adding -

"(4) Before the Commission directs any of its employees, or appoints any person -

(a) to investigate any matter under subsection (1)(e)(i), to the extent that the investigation is for the purpose of considering whether to exercise any power under section 189A; or

(b) to investigate any matter under subsection (1)(e)(ii),

the Commission shall consult the Monetary Authority."

176(1) (a) In paragraph (a), by adding "項" after "與該".

(b) In paragraph (b), by deleting "to".

(c) In paragraph (c), by adding "reasonably" before

"requires".

- (d) In paragraph (d) -
 - (i) by deleting "to" where it first appears;
 - (ii) by adding "項" after "就該".

176(4) (a) In paragraph (a), by adding "項" after "與該".

(b) In paragraph (b), by adding "項" after "就該".

176 In the Chinese text, by deleting subclause (5) and substituting -

"(5) 調查員可向證監會作出中期調查報告，如證監會有所指示，則調查員須向該會作出中期調查報告，而在調查完成後，調查員須向該會作出最後調查報告。".

177(3) (a) In paragraph (b)(ii), by deleting "produces" and substituting "produce".

(b) In paragraph (b)(iii), by deleting "gives" and substituting "give".

177 By adding -

"(3A) A person is not excused from complying with a requirement imposed on the person by an investigator under section 176 only on the ground that to do so might tend to incriminate the person.".

177(4) By deleting everything after "whole or" and before "as a civil" and substituting "a part of the costs and expenses of the investigation and the Commission may recover the whole or the part (as the case may be) of the costs and expenses".

177(5) By deleting everything after "of any" and before "expenses have" and substituting "of the costs and expenses of an investigation, and all or any of the costs and".

178 In the heading, by deleting "**Certification**" and substituting "**Application**".

- 178(1) (a) By deleting ", without reasonable excuse,".
- (b) By deleting everything after "motion," and before ", and the" and substituting "make an application to the Court of First Instance in respect of the failure".
- (c) In paragraph (a), by adding "if the Court is satisfied that there is no reasonable excuse for the person not to comply with the requirement," before "order".
- (d) In paragraph (b) -
- (i) by deleting "who appears to have been"

and substituting "knowingly";

(ii) by deleting everything before "懲罰該" and substituting -

"(b) 原訟法庭信納該人是在無合理辯解的情況下沒有遵從該要求的，則原訟法庭可".

178(3) (a) In paragraph (a), by deleting "under subsection" and substituting "for the purposes of subsection".

(b) In paragraph (a)(i) and (ii)(B), by deleting "該行" and substituting "同一行".

(c) In paragraph (b)(i) and (ii)(B) -

(i) by deleting "under" and substituting "for the purposes of";

(ii) by deleting "該行" and substituting "同一行".

179(3) In paragraph (a), by deleting "該款" and substituting "第(1)或(2)款(視屬何情況而定)".

179(4) In paragraphs (a)(i) and (b)(i), by adding "of the" before "costs".

179(6) (a) By deleting "obliged" and substituting "required".

(b) By deleting everything after "而該解釋" and before

"的證據" and substituting -

"或陳述或說明、該解釋或詳情或該答案(視屬何情況而定)可能會導致該人入罪，而該人在提供或作出該解釋或陳述或說明、提供該解釋或詳情或給予該答案(視屬何情況而定)前又聲稱如此，則在不局限第180條的原則下，該獲授權人或調查員(視屬何情況而定)不得向任何在香港以外地方的主管當局、規管機構或公司審查員提供該要求及該解釋或陳述或說明、該解釋或詳情或該問題及答案(視屬何情況而定)".

- 179(7) By deleting everything after "of any" and before "expenses have" and substituting "of the costs and expenses incurred in providing assistance under this section, and all or any of the costs and".
- 179(9) By deleting "及職責".
- 180 In the heading, by deleting "**answers**" and substituting "**evidence**".
- 180(1) By adding "or reminded (as the case may be)" after "informed".
- 180(2) By deleting everything after paragraph (b) and substituting -

"and the explanation or statement, the explanation or further particulars, or the answer (as the case may be) might tend to incriminate the person and the person so claims before providing or making the explanation or statement, giving the explanation or further particulars, or giving the answer (as the case may be), then the requirement as well as the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be) shall not be admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged with an offence under section 172(13), (14) or (15) or 177, or under section 213(2)(a), 245(2)(a) or 246(6)(a) or (b), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the explanation or statement, the explanation or further particulars, or the answer (as the case may be).".

182 In the heading, by deleting "**computerized information**" and substituting "**information in information systems, etc.**".

182(b) By deleting "a computer" and substituting "an information system".

184(2) By deleting "授權的" and substituting "指明的人或所授權的警
務人員或其他".

186(1) In the definition of "misconduct" -

- (a) in paragraph (b), by deleting "a licence or an exemption" and substituting "any licence or registration";
- (b) in paragraph (c), by adding ", or of any condition attached or amended under section 71C(2)(b) or (5) or 71E(3) of the Banking Ordinance (Cap. 155)" before the semicolon;
- (c) in paragraph (d) -
 - (i) by deleting "exempt" and substituting "registered";
 - (ii) by deleting "證監會認為" and substituting "按證監會的意見, ".

186(2) By deleting everything after "where" and before "shall also be regarded" and substituting -

"an intermediary is, or was at any time, guilty of misconduct within the meaning of paragraph (a), (b), (c) or (d) of the definition of "misconduct" in subsection (1) as a result of the commission of any conduct occurring with the consent or connivance of, or attributable to any neglect on the part of -

- (a) in the case of a licensed

corporation, another person

as -

(i) a responsible officer
of the licensed
corporation; or

(ii) a person involved in
the management of the
business of the
licensed corporation;
or

(b) in the case of a registered
institution, another person

as -

(i) an executive officer
of the registered
institution; or

(ii) a person involved in
the management of the
business constituting
any regulated
activity for which
the registered
institution is or was
(as the case may be)
registered,

the conduct".

186 By adding -

"(3) For the purposes of paragraph (d) of the definition of "misconduct" in subsection (1), the Commission shall not form any opinion that any act or omission is or is likely to be prejudicial to the interest of the investing public or to the public interest, unless it has had regard to such of the provisions set out in any code of conduct published under section 164 or any code or guideline published under section 385 as are in force at the time of occurrence of, and applicable in relation to, the act or omission."

- 187(1) (a) By deleting "189" and substituting "191".
- (b) In paragraph (b), by deleting everything after "person to be or to remain" and substituting "the same type of regulated person,".
- (c) In paragraphs (i), (ii) and (iii), by deleting "該人" wherever it appears and substituting "該受規管人士".
- (d) In paragraph (ii), by deleting "licensed person" and substituting "licensed corporation".
- (e) By deleting paragraph (iv) and substituting -
- "(iv) prohibit the regulated person from doing

all or any of the following in relation to such regulated activity or regulated activities, and for such period or until the occurrence of such event, as the Commission may specify -

- (A) applying to be licensed or registered;
- (B) applying to be approved under section 125(1) as a responsible officer of a licensed corporation;
- (C) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance (Cap. 155);
- (D) seeking through a registered institution to have his name entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution in respect of a regulated activity."

187(2) (a) By deleting "subsection (7) and section 189" and substituting "sections 191 and 191A".

(b) In paragraph (b), by deleting everything after "person to be or to remain" and substituting "the same type of regulated person,".

(c) In paragraph (ii), by deleting everything after "profit" and before "by" and substituting "gained or loss avoided".

(d) By deleting "該人" wherever it appears and substituting "該受規管人士".

187(3) By deleting everything after "外 , " and substituting "亦可考慮該會認為在有關個案的情況下適宜考慮的該受規管人士現時或過往的行為。".

187(4) By deleting everything after "days" and substituting ", or such further period as the Commission may specify by notice under section 191(2), after the order has taken effect as a specified decision under section 224.". .

187(5) By deleting "各方面" and substituting "所有目的".

187 By deleting subclause (7).

187 By deleting subclause (8).

- 187(9) (a) In the definition of "regulated person", by deleting everything after "was" and substituting -
- "any of the following types of person -
- (a) a licensed person;
 - (b) a responsible officer of a licensed corporation; or
 - (c) a person involved in the management of the business of a licensed corporation;".
- (b) In the definition of "relevant time", by deleting paragraph (b) and substituting -
- "(b) where subsection (1)(b) or (2)(b) applies, the time of occurrence of any matter which, whether with any other matter or not, leads the Commission to form the opinion that the person is not a fit and proper person within the meaning of such subsection.".
- 188(1) (a) By deleting "189" and substituting "191".
- (b) In paragraph (a)(i), (ii) and (iii), by deleting "他" wherever it appears and substituting "該持牌人".
- (c) In paragraph (a)(iii), by adding ", which in the opinion of the Commission impugns the fitness and

properness of the licensed person to remain licensed" before the semicolon.

(d) In paragraph (a)(iv) -

(i) by deleting "他在" and substituting "該持牌人在";

(ii) by deleting "該人" and substituting "該持牌人".

(e) In paragraph (b)(i), (ii), (iii), (iv), (v), (vi) and (vii), by deleting "該法團" wherever it appears and substituting "該持牌人".

(f) In paragraph (b)(vi), by adding ", which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed" before the semicolon.

(g) In paragraph (c), by adding "or" at the end.

(h) By deleting paragraph (d).

(i) In paragraph (e), by deleting "要" and substituting "請".

188(2) (a) By deleting "189" and substituting "191".

(b) By deleting paragraph (a) and substituting -

"(a) the Commission has required under section 117(1)(c) that the licensed person should apply for an authorization under section 95(2) for that regulated activity; and".

(c) By deleting paragraph (b)(i) and substituting -

"(i) the licensed person has failed to make an application for the authorization under section 95(2) in accordance with the requirement, or has otherwise informed the Commission that he proposes not to make an application for the authorization under section 95(2); or".

(d) In paragraph (b)(ii) -

(i) by adding "(2)" after "95";

(ii) by adding "持牌" before "人".

188(3) (a) In paragraph (a), by deleting "他" and substituting "該持牌人".

(b) In paragraph (b), by deleting "該法團" and substituting "該持牌人".

188(4) (a) By deleting paragraph (a) and substituting -

"(a) the licensed person fails to make full payment of any annual fee payable by him under section 135, or any additional sum payable by him under that section as a result of any default in making full payment of any annual fee payable by him under that section, within 3 months after

the due date for payment of the annual fee under that section; or".

(b) In paragraph (b), by deleting everything after "after the" and substituting "due date for submission of the annual return under that section,".

188(5) (a) In paragraph (a) -

- (i) by deleting "pay" where it twice appears and substituting "make full payment of";
- (ii) by adding "因沒有全數繳付任何年費或附加款項一事而" before "當".

(b) In paragraph (b), by adding "因沒有呈交周年申報表一事而" before "當".

188(6) (a) By deleting "date" and substituting "day".

(b) By deleting "款當作" and substituting "款".

(c) By deleting "過後" where it twice appears and substituting "內".

188(7) By deleting everything after "to section" and before "is convicted" and substituting "191, where a person who is a responsible officer of a licensed corporation".

189 By deleting the clause.

New By adding -

"189A. Disciplinary action in respect of registered institutions, etc.

(1) Subject to section 191, where -

(a) a regulated person is, or was at any time, guilty of misconduct; or

(b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,

the Commission may exercise such of the following powers as it considers appropriate in the circumstances of the case -

(i) where the regulated person is a registered institution -

(A) revoke its registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered; or

(B) suspend its registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered for such

period or until the occurrence of such event as the Commission may specify;

- (ii) publicly or privately reprimand the regulated person;
- (iii) prohibit the regulated person from doing all or any of the following in relation to such regulated activity or regulated activities, and for such period or until the occurrence of such event, as the Commission may specify -
 - (A) applying to be licensed or registered;
 - (B) applying to be approved under section 125(1) as a responsible officer of a licensed corporation;
 - (C) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance (Cap. 155);
 - (D) seeking through a registered institution to have his name

entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution in respect of a regulated activity.

- (2) Subject to sections 191 and 191A, where -
- (a) a regulated person is, or was at any time, guilty of misconduct; or
 - (b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,
- the Commission may, separately or in addition to any power exercisable under subsection (1), order the regulated person to pay a pecuniary penalty not exceeding the amount which is the greater of -
- (i) \$10,000,000; or
 - (ii) 3 times the amount of the profit gained or loss avoided by the regulated person as a result of his misconduct, or of his other conduct which leads the Commission to form the opinion (as the case may be).

(3) The Commission, in determining whether a regulated person is a fit and proper person within the meaning of subsection (1)(b) or (2)(b), may, among other matters (including those specified in section 128), take into account such present or past conduct of the regulated person as it considers appropriate in the circumstances of the case.

(4) A regulated person ordered to pay a pecuniary penalty under subsection (2) shall pay the penalty to the Commission within 30 days, or such further period as the Commission may specify by notice under section 191(2), after the order has taken effect as a specified decision under section 224.

(5) The Court of First Instance may, on an application of the Commission made in the manner prescribed by rules made under section 384 for the purposes of this subsection, register an order made under subsection (2) in the Court of First Instance and the order shall, on registration, be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.

(6) Any pecuniary penalty paid to or recovered by the Commission pursuant to an order

made under subsection (2) shall be paid by the Commission into the general revenue.

(7) Without prejudice to the exercise by the Monetary Authority of any powers under the Banking Ordinance (Cap. 155), the Commission may make such recommendations to the Monetary Authority in respect of the exercise by the Monetary Authority of any of its powers under sections 58A(1) and 71C(4) of that Ordinance as the Commission considers appropriate.

(8) In this section -
"regulated person" (受規管人士) means a person who is or at the relevant time was any of the following types of person -

- (a) a registered institution;
- (b) an executive officer of a registered institution;
- (c) a person involved in the management of the business constituting any regulated activity for which a registered institution is or was (as the case may be) registered; or
- (d) an individual whose name is or was (as the case may be) entered in the register maintained by the Monetary Authority under section 20 of the

Banking Ordinance (Cap. 155) as that of a person engaged by a registered institution in respect of a regulated activity;

"relevant time" (有關時間), in relation to a

person, means -

- (a) where subsection (1)(a) or (2)(a) applies, the time when the person is, or was, guilty of misconduct; or
- (b) where subsection (1)(b) or (2)(b) applies, the time of occurrence of any matter which, whether with any other matter or not, leads the Commission to form the opinion that the person is not a fit and proper person within the meaning of such subsection."

190(1) (a) By deleting everything before paragraph (d) and substituting -

"190. Other circumstances for disciplinary action in respect of registered institutions, etc.

(1) Subject to section 191, the Commission may revoke a registered institution's registration, whether in relation to all or any, or any part of all or

any, of the regulated activities for which it is registered, or suspend a registered institution's registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered for such period or until the occurrence of such event as the Commission may specify -".

- (b) In paragraph (d), by deleting "exempt person" wherever it appears and substituting "registered institution".
- (c) In paragraph (d)(v), by deleting "remain exempt" and substituting "remain registered".
- (d) In paragraph (e) -
 - (i) by deleting "exempt person" and substituting "registered institution";
 - (ii) by adding "or suspension (as the case may be)" after "revocation".
- (e) In paragraph (f) -
 - (i) by deleting "exempt person" and substituting "registered institution";
 - (ii) by deleting "the exemption" and substituting "or suspend the registration";
 - (iii) by deleting "豁免" and substituting

"註冊";

(iv) by deleting "要" and substituting "請".

190 By deleting subclause (2) and substituting -

"(2) Subject to section 191, but without limiting the generality of subsection (1), the Commission may revoke a registered institution's registration in relation to Type 7 regulated activity or any part thereof if -

(a) the Commission has required under section 118(8)(b) that the registered institution should apply for an authorization under section 95(2) for that regulated activity; and

(b) (i) the registered institution has failed to make an application for the authorization under section 95(2) in accordance with the requirement, or has otherwise informed the Commission that it proposes not to make an application for the authorization under section 95(2); or

(ii) the registered institution has made an application for the authorization under section 95(2), but the application is not granted."

190(3) (a) By deleting everything before "shall" and substituting -

"(3) The registration of a registered institution".

(b) In paragraphs (a) and (b), by deleting "exempt person" and substituting "registered institution".

190 By deleting subclause (4).

190 By deleting subclause (5) and substituting -

"(5) Subject to subsection (6), the registration of a registered institution shall be deemed to be suspended if the registered institution fails to make full payment of any annual fee payable by it under section 135, or any additional sum payable by it under that section as a result of any default in making full payment of any annual fee payable by it under that section, within 3 months after the due date for payment of the annual fee under that section, and, subject to

subsection (7), the suspension shall remain in force until such time as the Commission considers it appropriate that the registration should no longer be suspended and informs the registered institution to that effect by notice in writing."

- 190(6) (a) By deleting "An exemption" and substituting "Any registration".
- (b) By deleting "pay" where it twice appears and substituting "make full payment of".
- (c) By deleting "exempt person" and substituting "registered institution".

190 By deleting subclause (7) and substituting -

"(7) Where any registration is suspended under subsection (5) and the failure to make full payment of the annual fee or additional sum described in that subsection has not been remedied within 30 days after the day on which the suspension becomes effective under that subsection, or such further period as the Commission may specify by notice in writing to the registered institution, the registration shall be deemed to be revoked."

191 By adding before the clause -

"Division 3 - Miscellaneous".

191 In the heading, by deleting "**section 190**" and
substituting "**Part IX**".

191 By deleting subclause (1) and substituting -

"(1) The Commission shall not exercise any power under section 187(1) or (2), 188(1)(a), (b) or (c), (2) or (7), 189A(1) or (2) or 190(1)(d) or (e) or (2) without first giving the person in respect of whom the power is to be exercised a reasonable opportunity of being heard."

191 By adding -

"(1A) The Commission shall not exercise any power under section 189A(1) or (2) or 190(1) or (2) unless it has first consulted the Monetary Authority."

191(2) (a) By deleting everything before ", and" and substituting -

"(2) Where the Commission decides to exercise any power under section 187(1) or (2), 188(1), (2) or (7), 189A(1) or (2) or 190(1) or (2), the Commission shall inform the person in respect of whom the power is exercised of its decision to do so by notice

in writing".

(b) In paragraph (a), by deleting "and".

(c) By deleting "effect." and substituting -

"effect;

(c) in so far as applicable, the duration and terms of any revocation, suspension or prohibition to be imposed under the decision;

(d) in so far as applicable, the terms in which the person is to be reprimanded under the decision; and

(e) in so far as applicable, the amount of any pecuniary penalty to be imposed under the decision and the period (being specified as a period after the decision has taken effect as a specified decision under section 224) within which it is required to be paid.".

New By adding immediately after clause 191 -

"191A. Guidelines for performance of functions under section 187(2) or 189A(2)

(1) The Commission shall not perform any of its functions under section 187(2) or 189A(2) unless -

(a) it has published, in the Gazette and

in any other manner it considers appropriate, guidelines to indicate the manner in which it proposes to perform such functions; and

- (b) in performing such functions, it has had regard to the guidelines so published.

(2) Without prejudice to the inclusion of any other factors that the Commission may consider relevant, guidelines published under subsection (1) shall include the following as factors that the Commission shall take into account in performing any of its functions under section 187(2) or 189A(2) -

- (a) whether the conduct of the regulated person in question was intentional, reckless or negligent;
- (b) whether the conduct damaged the integrity of the securities and futures market;
- (c) whether the conduct caused loss to, or imposed costs on, any other person; and
- (d) whether the conduct resulted in a benefit to the regulated person or any other person.

(3) Guidelines published under subsection (1) are not subsidiary legislation."

192 By deleting the subheading before the clause.

192(1) (a) In paragraph (a), by adding "條文" after "例".

(b) In paragraph (b), by deleting "him" and substituting "the person".

192(2) (a) By deleting "licensed person" and substituting "licensed corporation".

(b) In paragraph (a) -

(i) by adding "條文" after "例";

(ii) by deleting "人的" and substituting "法團的".

(c) In paragraph (b), by deleting "him" and substituting "the person".

192(3) (a) By deleting everything after "If" and before ", then" and substituting "any registration of a person is suspended under section 189A or 190 in relation to all or any, or any part of all or any, of the regulated activities for which the person is registered".

(b) In paragraph (a) -

(i) by deleting "exempt" and substituting
"registered";

(ii) by adding "條文" after "例".

(c) In paragraph (b), by deleting everything after
"relating to" and before "not" and substituting "a
registered institution as would apply to the person
were the registration".

192(5) By deleting "licensed person" and substituting "licensed
corporation".

192 By deleting subclause (6) and substituting -

"(6) Any registration of a person may be
revoked under section 189A or 190 notwithstanding
that, at the time of revocation, the registration
is suspended, whether in relation to all or any, or
any part of all or any, of the regulated activities
for which the person is registered, under any
provision of this Ordinance."

193(1) By deleting "or 190(1)" and substituting ", 189A(1) or
(2) or 190(1) or (2)".

193(2) (a) By deleting "a licence or an exemption" and
substituting "any licence or registration".

(b) In paragraph (a), by deleting "exempt person" and

substituting "registered institution".

- 193(3) (a) By deleting everything after "or (2)" and before ", it" and substituting ", 188(1)(a), (b) or (c), (2) or (7), 189A(1) or (2) or 190(1)(d) or (e) or (2)".
- (b) In paragraph (a), by deleting "under such section" and substituting "the Commission may exercise in respect of the person under this Part (whether or not the same as the power the exercise of which has been contemplated)".

193 By deleting subclause (4) and substituting -

"(4) Where the Commission exercises any power or takes any additional action in respect of a person under subsection (3) -

- (a) it shall comply with section 191(1A) and (2), as if section 191(1A) and (2), in addition to applying to the exercise of power under the sections specified therein, also applies with necessary modifications to the taking of any additional action under subsection (3); and
- (b) subject to the agreement of the person, it is not obliged to comply with section 191(1)."

- 194 In the heading, by deleting "**exemption**" and substituting "**registration**".
- 194(1) (a) By deleting everything after "Where" and before "to transfer" and substituting -
"any licence or registration is revoked or suspended under this Part, the Commission may by notice in writing require the person to whom the licence or registration (as the case may be) was granted".
- (b) By deleting "reasonably specifies" and substituting "may reasonably specify".
- 195 In the heading, by deleting "**exemption**" and substituting "**registration**".
- 195(1) (a) By deleting everything after "Where" and before "to -" and substituting "any licence or registration is revoked or suspended under this Part, the Commission may by notice in writing permit the person to whom the licence or registration (as the case may be) was granted".
- (b) In paragraphs (a) and (b), by deleting "豁免" and substituting "註冊".

197 By renumbering the clause as clause 197(1).

197(1) By deleting everything after "the Commission" and substituting -

"may by notice in writing -

(a) prohibit a licensed corporation -

(i) from -

(A) disposing of any relevant property;

(B) dealing with any relevant property in a specified manner or other than in a specified manner;

(ii) from assisting, counselling or procuring another person to -

(A) dispose of any relevant property;

(B) deal with any relevant property in a specified manner or other than in a

specified manner;

- (b) require a licensed corporation to deal with any relevant property in, and only in, a specified manner."

197 By adding -

"(2) In this section, "relevant property" (有關財產), in relation to a licensed corporation, means -

- (a) any property held by the licensed corporation, acting within the capacity for which the licensed corporation is licensed, on behalf of any of the clients of the licensed corporation, or held by any other person on behalf or to the order of the licensed corporation acting within such capacity;
- (b) any other property which the Commission reasonably believes to be owned or controlled by the licensed corporation."

199 By deleting the clause.

200 (a) In the heading, by deleting ", 198 or 199" and

substituting "**or 198**".

(b) By deleting ", 198 or 199" and substituting "or 198".

(c) In paragraph (c), by deleting "is" and substituting "was at the time when it was furnished".

201 In the heading, by deleting ", **198 or 199**" and substituting "**or 198**".

201(1) By deleting everything before "is in" and substituting -
"(1) Where a prohibition or requirement imposed under section 196, 197 or 198".

201 By deleting subclause (2).

201(3) By deleting everything before ", or a prohibition or requirement substituting" and substituting -
"(3) A prohibition or requirement imposed under section 196, 197 or 198".

201(4) By deleting ", 198 or 199" and substituting "or 198".

201 By deleting subclause (5).

202 In the heading, by deleting ", **199**".

202(1) By deleting ", 198 or 199" and substituting "or 198".

202(2) By deleting ", 198 or 199" and substituting "or 198".

202(4) In paragraph (a), by deleting ", 198 or 199" and substituting "or 198".

202 By deleting subclause (5).

202(6) (a) By deleting "to (5)" and substituting "and (4)".

(b) By adding "其他條文" after "部" where it twice appears.

202(7) By deleting everything after "Commission" and before ", or" and substituting "shall publish in the Gazette, and may publish by such additional means as it may consider appropriate, a notice regarding the imposition under section 196, 197 or 198".

202 By deleting subclause (8).

202(9) By deleting "or (8)".

202(10) (a) In paragraph (a), by deleting ", 198 or 199" and substituting "or 198".

(b) In paragraph (b) -

(i) by deleting "該所," and substituting "有關的認可交易所或認可結算所(視屬何情況而定),";

(ii) by deleting "所." and substituting "認可交易所或認可結算所(視屬何情況而定)".

202(11) (a) By deleting ", 199" wherever it appears.

(b) By deleting "該等條文" and substituting "第196、197、198或201條".

202(12) (a) By deleting "virtue" and substituting "reason".

(b) By deleting ", 199" where it twice appears.

202(13) By deleting "or (8)".

203(1) (a) In paragraph (a)(i), by deleting ", 198 or 199" and substituting "or 198".

(b) By adding "的一般性" after "用)".

203(2) (a) In paragraph (b), by deleting ", 198 or 199" and substituting "or 198".

(b) By deleting everything before ", 如" and substituting -

"(2) 不論第192(1)條(不論是否參照第142(9)或143(7)條而適用)有任何規定".

203(3) In paragraph (a), by deleting ", 198 or 199" and substituting "or 198".

203 By adding -

"(4) For the avoidance of doubt, nothing in this section affects the power of the Commission to -

(a) impose under section 196, 197 or 198 a prohibition or requirement in respect of or with reference to; or

(b) withdraw, substitute or vary under section 201 a prohibition or requirement imposed in respect of or with reference to,

a licensed corporation the licence of which has been suspended under any provision of this Ordinance."

204 By deleting the heading and substituting -

"Application to Court of First Instance relating to non-compliance with prohibitions or requirements under section 196, 197, 198 or 201".

204(1) (a) By deleting everything before paragraph (a) and substituting -

"(1) If a person fails to comply with a

prohibition or requirement in force in respect of him as a result of the exercise of any of the powers under sections 196, 197, 198 and 201, the Commission may, by originating summons or originating motion, make an application to the Court of First Instance in respect of the failure, and the Court may inquire into the case and -".

(b) In paragraph (a), by adding "if the Court is satisfied that there is no reasonable excuse for the person not to comply with the prohibition or requirement (as the case may be)," before "order".

(c) In paragraph (b) -

(i) by deleting "who appears to have been" and substituting "knowingly";

(ii) by deleting everything before "懲罰該" and substituting -

"(b) 原訟法庭信納該人是在無合理辯解的情況下沒有遵從該項禁止或要求(視屬何情況而定)的,則原訟法庭可".

204(2) By deleting ", 199".

205(1) By deleting "section 177 of".

- 205(2) By deleting "person" wherever it appears and substituting "representative".
- 205(3) (a) In paragraph (a), by deleting everything after "under" and before "that" and substituting "subsection (1) against a corporation".
- (b) In the Chinese text, by deleting everything before the dash and substituting -
"(3) 證監會".
- (c) In the Chinese text, by deleting paragraph (b) and substituting -
"(b) 如沒有在提出呈請之前，以書面將擬提出呈請一事通知有關的認可交易所或認可結算所（視屬何情況而定），則須在提出呈請之後立即以書面將提出呈請一事通知該認可交易所或認可結算所（視屬何情況而定）。".
- 206(1) (a) In paragraph (a)(i)(C), by deleting "a licence or an exemption" and substituting "any licence or registration".
- (b) In paragraph (b), by deleting everything after "whether" and before "that" and substituting "or not during the course or as a result of the exercise of any power under Part VIII, to the Commission".
- 206(2) (a) In paragraphs (a) and (b), by adding "任何" after

"述的".

(b) In paragraph (c), by adding "任何" after "明的".

206 In the Chinese text, by deleting subclause (3) and substituting -

"(3) 證監會 -

(a) 在依據第(1)款申請某項影響某屬交易所參與者或結算所參與者的人的命令之前,須盡最大努力以書面將擬提出申請一事通知有關的認可交易所或認可結算所(視屬何情況而定);及

(b) 如沒有在提出申請之前,以書面將擬提出申請一事通知有關的認可交易所或認可結算所(視屬何情況而定),則須在提出申請之後立即以書面將提出申請一事通知該認可交易所或認可結算所(視屬何情況而定)。

206(4) By deleting "確定" where it twice appears and substituting "信納".

206 By deleting subclause (7).

207 In the heading, by adding "**of listed corporations, etc.**" at the end.

207(1) (a) By deleting everything before "conducted" and

substituting -

"(1) Where, in relation to a corporation which is or was listed, it appears to the Commission that at any relevant time the business or affairs of the corporation have been".

(b) By deleting everything after paragraph (d) and substituting -

"the Commission may, subject to subsection (3), by petition apply to the Court of First Instance for an order under this section."

207(2) (a) By deleting everything after ", on" and before "have" and substituting "an application under this section, the Court of First Instance is of the opinion that the business or affairs of a corporation".

(b) In paragraph (c), by adding "unless the corporation is an authorized financial institution," before "appoint".

(c) In paragraph (d), by deleting everything before "so" and substituting -

"(d) order that a person wholly or partly responsible for the business or affairs of the corporation having been".

207 By deleting subclause (3) and substituting -

"(3) The Commission shall not make an application under this section unless it has first consulted -

- (a) the Financial Secretary; and
- (b) where the corporation in question is an authorized financial institution or a corporation which, to the knowledge of the Commission, is a controller of an authorized financial institution, or has as its controller an authorized financial institution, or has a controller that is also a controller of an authorized financial institution, the Monetary Authority."

207(5) By adding "其他條文" after "章)".

207(8) (a) By deleting "level 2" and substituting "level 3".

(b) By deleting "\$200" and substituting "\$300".

207 By adding -

"(9) In this section -

"controller" (控制人) means a person who is an

indirect controller or a majority shareholder

controller as defined in section 2(1) of the
Banking Ordinance (Cap. 155);

"relevant time" (有關時間) -

- (a) in relation to a corporation which is listed, means any time since the formation of the corporation; or
- (b) in relation to a corporation which was listed, means any time since the formation of the corporation but before the corporation ceased to remain listed."

208 By deleting the clause.

(a) By deleting the definition of "excluded decision".

(b) In the definition of "parties" -

(i) by deleting paragraph (a) and
substituting -

"(a) the relevant authority making
the specified decision in
question; and";

(ii) in the Chinese text, by deleting
paragraph (b) and substituting -

"(b) 提出有關的覆核申請的人;".

(c) By deleting the definition of "specified decision"
and substituting -

"specified decision" (指明決定) means -

(a) a decision of the Commission
which -

(i) is made under or
pursuant to any of
the provisions set
out in column 2 of
Division 1 of Part 2
of Schedule 7; and

(ii) is within the
description set out,

opposite such
provisions, in column
3 of Division 1 of
Part 2 of Schedule 7;

(b) a decision of the Monetary
Authority which -

(i) is made under or
pursuant to any of
the provisions set
out in column 2 of
Division 2 of Part 2
of Schedule 7; and

(ii) is within the
description set out,
opposite such
provisions, in column
3 of Division 2 of
Part 2 of Schedule 7;

or

(c) a decision of the Commission or
a recognized investor
compensation company which -

(i) is made under or
pursuant to any of
the provisions set
out in column 2 of

Division 3 of Part 2
of Schedule 7; and

- (ii) is within the
description set out,
opposite such
provisions, in column
3 of Division 3 of
Part 2 of Schedule
7;".

(d) By adding -

"relevant authority" (有關當局) -

- (a) in relation to a specified
decision within the meaning of
paragraph (a) of the definition
of "specified decision" in this
section, means the Commission;
- (b) in relation to a specified
decision within the meaning of
paragraph (b) of the definition
of "specified decision" in this
section, means the Monetary
Authority; or
- (c) in relation to a specified
decision within the meaning of
paragraph (c) of the definition
of "specified decision" in this

section, means the Commission or the recognized investor compensation company by which the decision is made (as the case may be);".

210(1) By adding ", and to hear and determine any question or issue arising out of or in connection with any review," after "decisions".

210(2) In paragraph (b), by deleting "等" and substituting "2名".

210(3) By deleting "other 2" and substituting "2 other".

210(4) (a) By deleting "members and temporary".

(b) By deleting "或" and substituting "及".

210 By deleting subclause (5) and substituting -

"(5) Where the Chief Executive considers appropriate, additional Tribunals may be established for the purposes of any reviews, whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each of such additional Tribunals

(including appointment of the chairman and other members of, and all matters concerning, each of such additional Tribunals) as they apply to the Tribunal."

210(6) By deleting "原訟法庭法官或暫委法官的主席除外)可獲付一筆" and substituting "第209條中 "法官" 的定義的(a)段所指的法官的主席除外)可獲付一筆財政司".

210 In the Chinese text, by deleting subclause (7) and substituting -

"(7) 凡任何屬第209條中 "法官" 的定義的(a)段所指的法官的人獲委任為審裁處主席，該項委任及他擔任或免任主席之事，均不影響 -

- (a) 他作為該段所指的法官的任期，或他作為該段所指的法官而行使權力；
- (b) 他擔任該職位而具有的職級、稱銜、地位、排名、薪金或其他權利或特權；
- (c) 他擔任該職位須遵守的條款及條件。".

211(1) (a) By deleting "Commission" and substituting "relevant authority".

(b) By deleting "served on" and substituting "given to".

211(2) By deleting "served on" and substituting "given to".

211(3) (a) By deleting "Commission" and substituting "relevant authority".

(b) In paragraph (b), by deleting everything after "decision is" and before "applies" and substituting "a specified decision which is described in column 2 of Division 1 of Part 3 of Schedule 7 and to which the provision set out, opposite such description of the specified decision, in column 3 of that Division".

211 By adding -

"(3A) Notwithstanding subsection (3), the Tribunal, upon application in writing by any person, may, subject to subsection (3B), by order extend the time within which an application for review of a specified decision of the relevant authority shall be made under subsection (3), whereupon the time within which such an application shall be made under subsection (3) shall be extended accordingly.

(3B) The Tribunal shall not grant an extension under subsection (3A) unless -

(a) the person who has applied for the grant of the extension pursuant to

that subsection and the relevant authority have been given a reasonable opportunity of being heard; and

(b) it is satisfied that there is a good cause for granting the extension."

211(4) (a) By deleting "served on it".
(b) By deleting "Commission" and substituting "relevant authority".

212(1) By deleting everything before ", the" and substituting -
"(1) After an application for review has been made".

212(2) (a) In paragraph (a) -
(i) by adding ", where the decision is set aside," after "and";
(ii) by deleting ", whether more or less onerous".
(iii) by adding "任何" after "的".
(b) In paragraph (b), by deleting "Commission" where it twice appears and substituting "relevant authority".

212 By adding -

"(2A) Where the Tribunal varies, or substitutes any decision for, a specified decision under subsection (2)(a), the decision as varied or the decision substituting for the specified decision (as the case may be) may be any decision (whether more or less onerous) that the relevant authority had power to make in respect of the person making the application for review in question, whether or not under the same provision as that under which the specified decision has been made.

(2B) Without limiting the generality of subsections (2)(a) and (2A) but subject to subsection (3A) -

(a) where the specified decision in question is a specified decision described in column 2 of Division 2 of Part 3 of Schedule 7, the decision that the Tribunal may substitute under subsection (2)(a) for the specified decision may also include (whether or not in addition to the decision that the Tribunal may, apart from this subsection, substitute under subsection (2)(a) for the specified decision) any decision that the Monetary Authority

had power to make in respect of the person making the application for review in question under or pursuant to any of the provisions set out, opposite such description of the specified decision, in column 3 of that Division; and

- (b) where the specified decision in question is a specified decision described in column 2 of Division 3 of Part 3 of Schedule 7, the decision that the Tribunal may substitute under subsection (2)(a) for the specified decision may also include (whether or not in addition to the decision that the Tribunal may, apart from this subsection, substitute under subsection (2)(a) for the specified decision) any decision that the Commission had power to make in respect of the person making the application for review in question under or pursuant to any of the provisions set out, opposite such description of the specified decision, in column 3 of

that Division.".

212(3) By deleting "The" and substituting "Notwithstanding anything in this section, the".

212 By adding -

"(3A) Without limiting the generality of subsection (3), the Tribunal shall not exercise any power pursuant to subsection (2B)(a) or (b) without first giving a reasonable opportunity of being heard to -

(a) in the case of subsection (2B)(a),
the Monetary Authority; or

(b) in the case of subsection (2B)(b),
the Commission.".

212 By deleting subclause (4) and substituting -

"(4) Subject to section 214(3), the standard of proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings in a court of law.".

213(1) (a) In paragraph (a), by deleting ", documents or otherwise" and substituting "or documents".

(b) In paragraph (b), by deleting "relating to the

review".

- (c) In paragraph (c), by deleting "and affirmations".
- (d) In paragraph (d), by deleting ", affirmation".
- (e) In paragraph (e), by deleting "or affirmation".
- (f) In paragraph (g), by deleting "a sitting, or" and substituting "any sitting, or any".
- (g) In paragraph (j), by deleting "connection with".
- (h) By deleting "各方或" and substituting "各方中的".

213(2) In paragraph (a), by deleting "refuses or".

213 By adding -

"(4) A person is not excused from complying with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1) only on the ground that to do so might tend to incriminate the person."

New By adding -

**"213A. Use of incriminating evidence
required by Tribunal**

Notwithstanding any other provisions of this Ordinance, where the Tribunal -

- (a) requires a person to give evidence under section 213(1)(b);
- (b) requires a person to answer any

question under section 213(1)(d);

(c) orders a person to provide evidence under section 213(1)(e); or

(d) otherwise orders or requires a person to provide any information under section 213(1)(k),

and the evidence, answer or information (as the case may be) might tend to incriminate the person, then the requirement or order as well as the evidence, the question and answer, or the information (as the case may be) shall not be admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged with an offence under section 213(2)(a), 245(2)(a) or 246(6)(a) or (b), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the evidence, answer or information (as the case may be).".

214(4) (a) In paragraph (a), by deleting everything before "in respect of any" and substituting -

"(a) no power may be exercised under or pursuant to this section to determine whether to punish any person for contempt".

(b) In paragraph (a)(i) and (ii)(B), by deleting "該行" and substituting "同一行".

(c) By deleting paragraph (b)(i) and (ii) and substituting -

"(i) any power has previously been exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct; and

(ii) (A) proceedings arising from the exercise of such power remain pending; or

(B) by reason of the previous exercise of such power, no power may again be lawfully exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct."

216 By deleting subclause (4).

217(3) By deleting "refuses or".

218(1) By deleting "when the order is made".

220 In the heading, by adding "**execution of**" after "**of**".

220 By adding before subclause (1) -

"(1A) Subject to subsections (1) and (2), the making of an application for review does not by itself operate as a stay of execution of the specified decision to which the application relates.".

220(1) (a) By deleting "may, at any time before the review" and substituting "or an application pursuant to section 211(3A) may, at any time before the review or the application (as the case may be)".

(b) By adding "execution of" after "of".

220(2) By deleting "grant a stay of" and substituting "by order grant a stay of execution of".

New By adding immediately after clause 220 -

"220A. Applications for stay of execution of decisions of Tribunal

A party to a review may, at any time after the determination of the review, apply to the Tribunal for a stay of execution of a decision of the Tribunal relating to the review, whereupon the Tribunal may, where it considers appropriate, by

order grant the stay, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Tribunal considers appropriate."

221(1) By deleting everything after "with a" and before "on" and substituting "decision of the Tribunal relating to the review may appeal to the Court of Appeal against the decision".

221(2) By adding -

"(ba) vary or set aside the decision in question, and, where the decision is set aside, substitute for the decision any other decision it considers appropriate;"

221 By adding -

"(2A) Where the Court of Appeal varies, or substitutes any other decision for, a decision under subsection (2)(ba), the decision as varied or the other decision substituting for the decision (as the case may be) may be any decision (whether more or less onerous) that the Tribunal had power to make in respect of the review in question, whether or not under the same provision as that under which the decision has been made."

- 222 (a) By deleting "The" and substituting "Without prejudice to section 220A, the".
- (b) By deleting everything after "does not" and before "unless" and substituting "by itself operate as a stay of execution of a decision of the Tribunal".
- 224(1) By deleting "that to which section 142(8) or 143(6)" and substituting "a specified decision which is described in column 2 of Division 4 of Part 3 of Schedule 7 and to which the provision set out, opposite such description of the specified decision, in column 3 of that Division".
- 224(2) (a) By deleting everything after "than" and before paragraph (b) and substituting -
- "a specified decision which is described in column 2 of Division 5 of Part 3 of Schedule 7 and to which the provision set out, opposite such description of the specified decision, in column 3 of that Division applies, takes effect -
- (a) where, prior to the expiration of the period of 21 days specified in section 211(3), the person in respect of whom the decision is made notifies

the relevant authority that he will not make an application for review of the decision, at the time when he so notifies the relevant authority;".

(b) In paragraph (b), by deleting everything after "within the" and before "so" and substituting "period of 21 days specified in section 211(3), at the time when the period".

(c) In paragraph (c), by deleting everything after "within the" and before the dash and substituting "period of 21 days specified in section 211(3)".

224(3) (a) By deleting "Commission" and substituting "relevant authority".

(b) By adding "的其他條文" after "他條例".

224 By adding -

"(4) Nothing in this section affects the power of the Tribunal to grant a stay of execution of a specified decision under section 220.".

225 By deleting the clause.

226 (a) In paragraphs (a) to (f), by deleting "以".

(b) By adding -

"(ea) providing for the issue or service of any document (however described) for the purposes of this Part or Part 1 of Schedule 7;".

228

By adding -

"default" (違責) means a default prescribed by rules made under section 236;".

229

By deleting the clause and substituting -

"229. Establishment of compensation fund

(1) The Commission shall establish and maintain a compensation fund, to be known as the Investor Compensation Fund in English and "投資者賠償基金" in Chinese, for the purpose of providing, in accordance with rules made under section 236, a measure of compensation to clients of a specified person who sustain a loss by reason of a default committed by the specified person or any of his associated persons in connection with specified securities or futures contracts.

(2) In this section -

"associated person" (相聯者), in relation to a specified person, means -

(a) a person employed or otherwise engaged by the specified person;

- (b) a person ("first-mentioned person") who may under section 160 receive or hold client assets of the specified person, or an employee of the first-mentioned person; or
- (c) such other persons as may be prescribed by rules made under section 236;

"specified person" (指明人士) means -

- (a) an intermediary licensed or registered for Type 1 or Type 2 regulated activity;
- (b) an intermediary licensed for Type 8 regulated activity; or
- (c) such other person as may be prescribed by rules made under section 236;

"specified securities or futures contracts" (指明證券

或期貨合約) means any securities or futures contracts listed or traded or to be listed or traded on -

- (a) a recognized stock market or recognized futures market; or
- (b) such other markets as may be prescribed by rules made under

section 236."

- 230(1) (a) By adding -
- "(aa) all amounts paid by the Commission into the compensation fund under subsection (2)(b);".
- (b) In paragraph (c) -
- (i) by deleting "amounts" and substituting "assets (whether in cash or otherwise)";
- (ii) by deleting "87 or 235" and substituting "235 or 87".
- (c) In paragraph (d), by adding "(a)" after "(2)".
- (d) By deleting "列款" and substituting "列各".

- 230(2) By deleting everything after "Commission" and substituting -
- "may -
- (a) for the purpose of the compensation fund, borrow from any authorized financial institution on such terms and at such rates of interest as it considers acceptable and charge any investments acquired under section 233 by way of security for any such loan;
- (b) pay into the compensation fund from

its reserves such amount of money as
it considers appropriate."

New By adding -

"230A. Management of compensation fund

(1) Subject to this Part, the Commission shall be responsible for the management and administration of the compensation fund, including the determination of a claim for compensation.

(2) The Commission may realize any of the non-cash assets of the compensation fund at such times as it considers appropriate and the proceeds of realization shall become part of the compensation fund."

231 By adding "該帳戶或" after "帳入".

232(3) In paragraph (a), by adding ", in respect of the accounts of the compensation fund" after "year".

232(5) By deleting "帳目".

232(9) (a) By deleting "結束" and substituting "終結".

(b) In paragraph (a), by deleting "提交司長" and substituting "文本提交財政司司長".

(c) In paragraph (b), by adding "文本" after "表".

232 By adding -

"(9A) The Financial Secretary shall cause to be laid on the table of the Legislative Council any financial statement and report sent to him under subsection (9)(a).".

233(3) By deleting "money" and substituting "moneys".

234(1) (a) In paragraph (a)(i), by adding "賠償" before "申索".

(b) In paragraph (a)(iv), by deleting "exercise" and substituting "performance".

(c) In paragraph (c), by deleting "可向賠償基金提出的" and substituting "提出的賠償".

(d) In paragraph (d), by adding "(a)" after "(2)".

(e) By adding "的" after "合本部".

234(2) By deleting "equitable" and substituting "appropriate".

234 By deleting subclause (4).

235(1) (a) In paragraph (a), by deleting everything after "extent" and substituting -

"which that payment bears to the loss sustained

(without taking into account any compensation paid or payable out of the compensation fund for the loss) by the claimant by reason of the default on which the claim was based, to all the rights and remedies of the claimant in relation to the loss; and".

(b) By deleting paragraph (b) and substituting -

"(b) the respective rights of the claimant and the Commission in bankruptcy or winding up or by legal proceedings or otherwise to receive in respect of the loss -

(i) any sum out of the assets of the person concerned who is in default; or

(ii) any property held on trust by that person for the claimant, shall rank equally.".

(c) By adding "賠償" after "提出".

235(2) By deleting "amounts" and substituting "assets (whether in cash or otherwise)".

236(2) (a) By deleting "384(9) and (10)" and substituting "384A(7) and (8)".

(b) In paragraph (a), by adding ", including any matter referred to in section 228 or 229(2) which may be

prescribed by rules made under this section" after
"compensation".

(c) By deleting paragraph (h) and substituting -

"(h) the determination and payment of and the
procedures for dealing with a claim for
compensation;".

236(3) By adding "財政司" before "司".

236 By adding -

"(4) In making any rules under subsection
(1)(a), the Chief Executive in Council shall ensure
that the funds of the compensation fund shall, so
far as reasonably practicable, be borne by
participants or any particular class of
participants in the securities and futures
market.".

237(1) In the definition of " 控制人 ", in paragraph (b), by adding "任何" before "有聯" where it twice appears.

237(2) (a) By adding -

"listed" (上市) means listed on a recognized stock market, and for the purposes of this definition, securities shall continue to be regarded as listed during a period of suspension of dealings in those securities on the recognized stock market;".

(b) In the definition of "上市法團", by deleting "發生關乎該法團的內幕交易" and substituting "與該法團有關的內幕交易發生".

(c) In the definition of "上市證券", by deleting "發生關乎某法團的內幕交易" wherever it appears and substituting "與某法團有關的內幕交易發生".

(d) In the definition of "證券" -

(i) by deleting paragraph (b) and substituting -

"(b) 在該等股份、股額、債權證、債權股額、基金、債券或票據中的或關乎該等股份、股

額、債權證、債權股額、基金、債券或票據
的權利、期權或權益(不論以單位或其他方式
描述);";

(ii) in paragraph (c), by deleting "(a)段所述各
項目" and substituting "該等股份、股額、債權
證、債權股額、基金、債券或票據".

238 By adding "whatsoever" after "kind".

239(1) (a) In paragraph (d)(ii), by adding "有關" before
"消息".

(b) In paragraph (e), by deleting "關乎該法團" and
substituting "與該法團有關".

239(3) By deleting "of any kind".

240(2) (a) By deleting "'指明人士'" and substituting "提述指明人
士之處, ".

(b) In paragraph (h), by adding "財政司" before "司".

240(3) By adding "財政司" before "司".

241 By deleting "作出上述作為" and substituting "售賣、購買、交

換或認購任何上市證券或其衍生工具".

243(2) In paragraph (b), by deleting "等" and substituting "2名".

243(3) By deleting "other 2" and substituting "2 other".

243(5) By deleting "a counsel or a" and substituting "counsel or".

243(6) (a) By deleting "and temporary members".

(b) By deleting "或" and substituting "及".

243 By deleting subclause (7) and substituting -

"(7) Where the Chief Executive considers appropriate, additional Tribunals may be established for the purposes of any proceedings instituted under section 244, whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each of such additional Tribunals (including appointment of the chairman and other members of, and all matters concerning, each of such additional Tribunals) as they apply to the Tribunal."

- 243(8) (a) By adding "財政司" before "司".
- (b) In the Chinese text, by deleting paragraph (a) and substituting -
- "(a) 審裁處成員(身為第237(1)條中 "法官" 的定義的(a)段所指的法官的主席除外);".
- 243(9) (a) By deleting "原訟法庭法官或暫委法官" and substituting "屬第237(1)條中 "法官" 的定義的(a)段所指的法官的人".
- (b) In the Chinese text, by deleting paragraph (a) and substituting -
- "(a) 他作為該段所指的法官的任期, 或他作為該段所指的法官而行使權力;".
- (c) In paragraph (b), by deleting "原訟法庭法官或暫委法官一職" and substituting "該職位".
- (d) In paragraph (c), by deleting "原訟法庭法官或暫委法官" and substituting "該職位".
- 244(1) By adding "any notification" after "(8) or".
- 244(2) (a) By deleting "to the chairman of".
- (b) By deleting "written".
- (c) By adding "財政司" before "司".
- 244(3) (a) In paragraph (b), by adding "失當" before "行為".

(b) In paragraph (c), by deleting everything after "profit" and before "as" and substituting "gained or loss avoided".

244(4) In paragraph (b)(ii), by deleting everything after "misconduct" and before "as" and substituting "occurred with his consent or connivance".

244(5) By deleting "因某市場失當行為或".

244(7) By deleting "that" and substituting "the standard of proof".

244(8) By adding "財政司" before "司".

244(9) By deleting "report to the Financial Secretary" and substituting "notify the Financial Secretary of".

244(10) By adding "any notification" after "(8) or".

245(1) (a) In paragraph (a), by deleting ", documents or otherwise" and substituting "or documents".

(b) In paragraph (b), by deleting "relating to the proceedings".

(c) In paragraph (c), by deleting "and affirmations".

- (d) In paragraph (d), by deleting ", affirmation".
- (e) In paragraph (e), by deleting "or affirmation".
- (f) In paragraph (g), by deleting "a sitting, or" and substituting "any sitting, or any".
- (g) In paragraph (j), by deleting "connection with".

245(2) In paragraph (a), by deleting "refuses or".

245 By adding -

"(4) A person is not excused from complying with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1) only on the ground that to do so might tend to incriminate the person."

246(2) (a) In paragraph (a), by deleting "there are" and substituting "the Tribunal has".

(b) In paragraph (c) -

(i) by adding "或製作" after "擬備";

(ii) by deleting "示的詳情" and substituting "令的細節".

(c) In paragraph (d), by deleting "at" and substituting "on".

246 By adding -

"(8) A person is not excused from complying with subsection (4) or (5) only on the ground that to do so might tend to incriminate him."

- 247 (1) (a) By deleting "is admissible" and substituting "shall be admissible".
- (b) By deleting everything after "subject to" and before "proceedings (civil or criminal) in" and substituting "subsection (2), shall not be admissible in evidence against that person for any other purposes in any".
- (c) By deleting "(在本條中統稱"研訊程序證據")".
- 247(2) (a) By deleting "is admissible in evidence against that person in" and substituting "shall be admissible in evidence against that person".
- (b) By adding before paragraph (a) -
- "(aa) in civil proceedings instituted under or pursuant to Part XI;
- (ab) in proceedings instituted under section 296;".
- (c) In paragraph (a), by adding "in" before "civil".
- (d) In paragraph (b) -
- (i) by adding "in" before "criminal";
- (ii) by adding "under section 213(2)(a), or" after "offence".

247 By deleting subclause (3).

249(1) (a) By deleting "The" and substituting "Subject to subsection (3), the".

(b) By deleting ", or more than one," and substituting "or more".

(c) In paragraph (d), by deleting everything after "profit" and before "by" and substituting "gained or loss avoided".

(d) In paragraph (e), by deleting "expenses" and substituting "costs and expenses reasonably".

(e) In paragraph (f), by deleting "expenses" and substituting "costs and expenses reasonably".

249(4) By deleting everything before "可" and substituting -
"(4) 審裁處如根據第(1)(a)款作出命令，".

249 By adding -

"(5A) Where the Tribunal makes an order under subsection (1)(e) or (f) requiring the payment of costs as costs reasonably incurred in relation or incidental to any proceedings instituted under section 244, subject to any rules made by the Chief Justice under section 260, Order 62 of the Rules of

the High Court (Cap. 4 sub. leg.) applies to the taxation of the costs.".

249(6) By deleting "該人" and substituting "他".

249(8) By deleting "or exempt person" and substituting "person or registered institution".

249(9) By deleting "refuses or".

250(1) (a) By deleting "Where" and substituting "Subject to subsection (3), where".

(b) By deleting ", or more than one," and substituting "or more".

250 By adding -

"(5A) Where the Tribunal makes under subsection (1) an order referred to in section 249(1)(e) or (f) requiring the payment of costs as costs reasonably incurred in relation or incidental to any proceedings instituted under section 244, subject to any rules made by the Chief Justice under section 260, Order 62 of the Rules of the High Court (Cap. 4 sub. leg.) applies to the taxation of the costs.".

250(8) By deleting "or exempt person" and substituting "person or registered institution".

250(9) By deleting "refuses or".

251 By deleting the clause and substituting -

"251. Interest on moneys payable under order referred to in section 249(1)(d)

Where the Tribunal makes an order referred to in section 249(1)(d), whether under section 249(1) or 250(1), requiring the payment of money by a person, the Tribunal may also order that the payment shall carry compound interest calculated -

(a) from the date of occurrence of the market misconduct in question; and

(b) at the rate from time to time applicable to judgment debts under section 49 of the High Court Ordinance (Cap. 4) and with such rests and in such manner as the Tribunal considers appropriate."

252 By deleting subclause (4).

253(2) In paragraph (c), by deleting "refuses or".

253(4) (a) In paragraph (a), by deleting everything before "in respect of any" and substituting -

"(a) no power may be exercised under or pursuant to this section to determine whether to punish any person for contempt".

(b) In paragraph (a)(i) and (ii)(B), by deleting "該行" and substituting "同一行".

(c) By deleting paragraph (b)(i) and (ii) and substituting -

"(i) any power has previously been exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct; and

(ii) (A) proceedings arising from the exercise of such power remain pending; or

(B) by reason of the previous exercise of such power, no power may again be lawfully exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct.".

- 254(1) (a) In paragraph (a), by deleting "sections 249 and" and substituting "section 249 or".
- (b) In paragraph (b), by adding "251 or" before "252".

254(2) By deleting "一份報告" wherever it appears and substituting "報告的文本".

254(3) By adding "財政司" before "司" where it twice appears.

255(1) By deleting "when the order is made".

New By adding immediately after clause 256 -

"256A. Applications for stay of execution of orders of Tribunal under section 249, 250, 251 or 252

Any person in respect of whom an order has been made under section 249, 250, 251 or 252 may apply to the Tribunal for a stay of execution of the order, whereupon the Tribunal may, where it considers appropriate, by order grant the stay, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Tribunal considers appropriate."

- 257(1) (a) By deleting ", after".
- (b) By adding "and" after "244,".
- (c) By adding ", after the Tribunal has made orders (if any) under section 249, 250, 251 or 252 for the purposes of the proceedings," before "appeal".
- 257(2) By deleting "or 252" and substituting ", 251, 252 or 256A".
- 258(1) (a) By adding -
- "(ba) vary or set aside the finding or determination, and, where the finding or determination is set aside, substitute for the finding or determination any other finding or determination it considers appropriate;".
- (b) In paragraph (c), by deleting "案件" and substituting "事宜".
- 258(2) (a) In paragraph (a), by adding "and" at the end.
- (b) By deleting paragraph (b) and substituting -
- "(b) where the order is set aside, substitute for the order any other order it considers appropriate.".

258

By adding -

"(2A) Where the Court of Appeal varies, or substitutes any other finding, determination or order for, a finding, determination or order under subsection (1)(ba) or (2)(a) or (b), the finding, determination or order as varied or the other finding, determination or order substituting for the finding, determination or order (as the case may be) may be -

(a) in the case of subsection (1)(ba), any finding or determination

(whether more or less onerous) that the Tribunal had power to make for the purposes of the proceedings in question; or

(b) in the case of subsection (2)(a) or (b), any order (whether more or less onerous) that the Tribunal had power to make in respect of the appellant,

whether or not under the same provision as that under which the finding, determination or order has been made.

(2B) Where on appeal the Court of Appeal remits any matter to the Tribunal under section

258(1)(c), unless the Court of Appeal otherwise directs, members of the Tribunal disposing of the matter may be the same as, or different from, those of the Tribunal from which the appeal lies."

259 (a) By deleting "Neither" and substituting "Without prejudice to section 256A, neither".

(b) By adding "by itself" after "257".

260 (a) In paragraph (a), by adding "taxation of costs required to be paid under an order referred to in section 249(1)(e) or (f), whether made under section 249(1) or 250(1), and for the" after "for the".

(b) In paragraphs (b) to (f), by deleting "以".

(c) By adding -

"(ea) providing for the issue or service of any document (however described) for the purposes of this Part or Schedule 8;"

261(1) (a) In paragraph (a)(ii), by deleting "上述" and substituting "該等證券或工具的".

(b) In paragraph (b)(ii), by deleting "他人進行上述" and substituting "另一人進行該等證券或工具的".

(c) In paragraph (e), by deleting "得" and substituting

"收".

(d) In paragraph (e)(ii), by deleting "上述" and substituting "該等證券或工具的".

(e) In paragraph (f), by deleting "取得" and substituting "收到".

(f) In paragraph (f)(ii), by deleting "上述" and substituting "該等證券或工具的".

262

By deleting subclause (1) and substituting -

"(1) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be) -

(a) for the sole purpose of acquiring shares required for his being qualified as a director or intending director of a corporation;

(b) in the performance in good faith of an underwriting agreement for the listed securities or derivatives in

question; or

- (c) in the performance in good faith of his functions as a liquidator, receiver or trustee in bankruptcy."

262(2) By deleting everything after "A corporation" and before paragraph (c) and substituting -

"shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through its dealing in or counselling or procuring another person to deal in listed securities or derivatives if it establishes that -

- (a) although one or more of its directors or employees had the relevant information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question, each person who took the decision for it to deal in or counsel or procure the other person to deal in such listed securities or derivatives (as the case may be) did not have the relevant information up to (and

including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be);

(b) arrangements then existed to secure that -

(i) the relevant information was, up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be), not communicated to any person who took the decision; and

(ii) none of its directors or employees who had the relevant information gave advice concerning the decision to any person who took the decision at any time before it dealt in or counselled or procured the other person to deal in

such listed securities or derivatives (as the case may be); and".

262 By deleting subclauses (3) to (7) and substituting -

"(3) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives or his disclosure of information if he establishes that the purpose for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) was not, or, where there was more than one purpose, the purposes for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) did not include, the purpose of securing or increasing a profit or avoiding or reducing a loss, whether for himself or another, by using relevant information.

(4) A person shall not be regarded as having engaged in market misconduct by reason of an

insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that -

- (a) he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be) as agent;
- (b) he did not select or advise on the selection of such listed securities or derivatives; and
- (c) he -
 - (i) did not know that the person for whom he acted as agent was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives; or
 - (ii) did not know that the person for whom he acted as

agent had the relevant
information in question.

(5) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that -

(a) at the time when he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question, the dealing in question was not required to be recorded on a recognized stock market or to be notified to a recognized exchange company under its rules; and

(b) (i) where the insider dealing took place through his dealing in listed securities or derivatives -
(A) he and the other party to the dealing in question entered into the dealing directly with each other; and

(B) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, of the relevant information in question; or

(ii) where the insider dealing took place through his counselling or procuring another person to deal in listed securities or derivatives -

(A) he counselled or procured the other party to the dealing in question to enter into the dealing directly with him; and

(B) at the time when he counselled or procured the other party to enter into

the dealing, the other party knew, or ought reasonably to have known, of the relevant information in question.

(6) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in listed securities or derivatives if he establishes that -

(a) he entered into the dealing in question, otherwise than as a person who has counselled or procured the other party to the dealing to deal in listed securities or their derivatives; and

(b) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, that he was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in

question.

(7) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his counselling or procuring another person to deal in listed securities or derivatives if he establishes that -

(a) the other person did not counsel or procure the other party to the dealing in question to deal in listed securities or their derivatives; and

(b) at the time when he counselled or procured the other person to deal in the listed securities or derivatives in question, the other party to the dealing in question knew, or ought reasonably to have known, that the other person was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives."

"(7A) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that -

(a) he acted -

(i) in connection with any dealing in listed securities or their derivatives (whether by himself or another person) which was under consideration or was the subject of negotiation, or in the course of a series of such dealings; and

(ii) with a view to facilitating the accomplishment of the dealing or the series of dealings; and

(b) the relevant information in question was market information arising directly out of his involvement in the dealing or the series of dealings."

262 By deleting subclause (8) and substituting -

"(8) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that the dealing in question is a market contract."

262 By adding -

"(9) For the purposes of subsection (7A), "market information" (市場消息) means information consisting of one or more of the following facts -

- (a) that there has been or is to be any dealing in listed securities or derivatives of listed securities of a particular kind, or that any such dealing is under consideration or is the subject of negotiation;
- (b) that there has not been or is not to be any dealing in listed securities or derivatives of listed securities of a particular kind;
- (c) the quantity of listed securities or derivatives of listed securities in

which there is or is to be any dealing, or in which any dealing is under consideration or is the subject of negotiation;

- (d) the price (or range of prices) at which listed securities or derivatives of listed securities have been or are to be dealt in, or the price (or range of prices) at which listed securities or derivatives of listed securities in which any dealing is under consideration or is the subject of negotiation may be dealt in;
- (e) the identity of the persons involved or likely to be involved in any capacity in any dealing in listed securities or derivatives of listed securities."

263 (a) By deleting everything after "who" and before the dash and substituting -

"is a trustee or personal representative shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or

counselling or procuring another person to deal in listed securities or derivatives if he establishes that".

(b) By adding before paragraph (a) -

"(aa) he acted on advice obtained in good faith from another person;".

(c) In paragraph (a), by adding "他當時覺得" before "該".

(d) In paragraph (b), by deleting everything after "had that other person" and substituting "dealt in the listed securities or derivatives in question, an insider dealing would take place.".

(e) In the Chinese text, by deleting everything after paragraph (b).

264

By deleting everything after "person" and substituting -
"shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in listed securities or derivatives if he establishes that -

(a) he dealt in the listed securities or derivatives in question by way of his exercise of a right to subscribe for or otherwise acquire such listed securities or derivatives; and

(b) the right was granted to him or was derived from securities or their

derivatives that were held by him before he became aware of any relevant information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives."

- 265(1) (a) By deleting everything after "person" and before "a false" and substituting "does anything or causes anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating".
- (b) In paragraph (ii), by deleting "象," and substituting "象。".
- (c) By deleting "則虛假交易即告發生。".
- 265(2) (a) By deleting everything after "person" and before "a false" and substituting "does anything or causes anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating".
- (b) In paragraph (ii), by deleting "象," and substituting "象。".

(c) By deleting "則虛假交易即告發生。".

265(3) (a) By deleting "在香港或其他地方".

(b) By adding "在香港或其他地方" before "直".

265(4) (a) By deleting "在香港".

(b) By adding "在香港" before "直".

265(5) (a) By deleting "a person who" and substituting "where a person".

(b) In paragraphs (b) and (c), by deleting "same," and substituting "same".

(c) By deleting everything after paragraph (c) and before "a false" and substituting -

"then, unless the transaction in question is an off-market transaction, the person shall, for the purposes of subsections (1) and (2), be regarded as doing something or causing something to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating".

265 By adding -

"(6A) In subsection (5), "off-market transaction" (場外交易) means a transaction which -

- (a) in the case of securities traded on a relevant recognized market, is not required to be recorded on the relevant recognized market, or to be notified, under the rules of the person by whom the relevant recognized market is operated, to such person;
- (b) in the case of securities traded by means of authorized automated trading services, is not required to be recorded by means of authorized automated trading services, or to be notified, under the rules of the person by whom the authorized automated trading services are operated, to such person; or
- (c) in the case of securities traded on a relevant overseas market, is not required to be recorded on the relevant overseas market, or to be notified, under the rules of the person by whom the relevant overseas market is operated, to such person."

- 265(7)
- (a) By adding "在" before "本".
 - (b) In paragraph (a), by deleting "凡提述證券買賣交易" and substituting "提述證券買賣交易之處".
 - (c) In paragraph (b), by deleting "凡提述訂立或履行買賣交易" and substituting "提述訂立或履行買賣交易之處".
- 266(1)
- (a) By deleting "在香港或其他地方".
 - (b) In paragraph (a), by adding "在香港或其他地方" before "直".
 - (c) In paragraph (b) -
 - (i) by adding "在香港或其他地方" before "直";
 - (ii) by adding "的價格" after "券" where it twice appears;
 - (iii) by adding "交易" after "約" where it twice appears.
- 266(2)
- (a) By deleting "在香港".
 - (b) In paragraph (a), by adding "在香港" before "直".
 - (c) In paragraph (b) -
 - (i) by adding "在香港" before "直";
 - (ii) by adding "的價格" after "券" where it twice appears;
 - (iii) by adding "交易" after "約" where it twice appears.

appears.

- 266(4) By deleting everything after "purchase of securities" and before "if" and substituting "referred to in subsection (1)(a) or (2)(a)".
- 266(5) (a) By adding "在" before "本".
- (b) In paragraph (a), by deleting "凡提述證券買賣交易" and substituting "提述證券買賣交易之處".
- (c) In paragraph (b), by deleting "凡提述訂立或履行買賣交易" and substituting "提述訂立或履行買賣交易之處".
- 267(1) By deleting "或某期貨合約" and substituting "的價格或期貨合約交易".
- 267(2) By deleting everything after "a benefit" and before ", if" and substituting "referred to in subsection (1)(b)".
- 267(3) In paragraph (a), by deleting ""受禁交易"" and substituting "提述受禁交易之處, ".
- 268(1) (a) In paragraph (a), by deleting "另一人認購香港的" and substituting "他人在香港認購".
- (b) In paragraph (b), by deleting "另一" and

substituting "他".

(c) In the Chinese text, by deleting paragraph (c) and substituting -

"(c) 在香港維持、提高、降低或穩定證券的價格或期貨合約
交易的價格,".

(d) By deleting "以外" and substituting "其他".

(e) In paragraph (ii) -

(i) by deleting "或忽視";

(ii) by deleting "。" and substituting ",或在
該資料是否屬第(i)段所述的資料方面有疏忽。".

268(2) By deleting everything after "if" and substituting -
"the disclosure has taken place by reason only of
the issue or reproduction of the information and he
establishes that -

(a) the issue or reproduction of the
information took place in the
ordinary course of a business
(whether or not carried on by him),
the principal purpose of which was
issuing or reproducing materials
provided by others;

(b) the contents of the information were
not, wholly or partly, devised -

(i) where the business was

carried on by him, by
himself or any officer,
employee or agent of his;
or

(ii) where the business was not
carried on by him, by
himself;

(c) for the purposes of the issue or
reproduction -

(i) where the business was
carried on by him, he or
any officer, employee or
agent of his; or

(ii) where the business was not
carried on by him, he,
did not select, add to, modify or
otherwise exercise control over the
contents of the information; and

(d) at the time of the issue or
reproduction, he did not know that
the information was false or
misleading as to a material fact or
was false or misleading through the
omission of a material fact."

"the disclosure has taken place by reason only of the re-transmission of the information and he establishes that -

(a) the re-transmission of the information took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;

(b) the contents of the information were not, wholly or partly, devised -

(i) where the business was carried on by him, by himself or any officer, employee or agent of his;
or

(ii) where the business was not carried on by him, by

himself;

(c) for the purposes of the re-transmission -

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he, did not select, add to, modify or otherwise exercise control over the contents of the information;

(d) the re-transmission of the information was accompanied by a message to the effect, or was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding, that -

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, the person who carried on the

business or any officer,
employee or agent of that
person,

did not devise the contents of the
information, and neither took
responsibility for it nor endorsed
its accuracy; and

(e) at the time of the re-transmission -

(i) he did not know that the
information was false or
misleading as to a material
fact or was false or
misleading through the
omission of a material
fact; or

(ii) he knew that the
information was false or
misleading as to a material
fact or was false or
misleading through the
omission of a material
fact, but -

(A) where the business
was carried on by
him, in the
circumstances of the

case he could not
reasonably be
expected to prevent
the re-transmission;
or

(B) where the business
was not carried on
by him, in the
circumstances of the
case he has taken
all reasonable steps
to bring the fact
that the information
was so false or
misleading to the
attention of a
person in a position
to take steps to
cause the re-
transmission to be
prevented (even if
the re-transmission
in fact took
place).".

"the disclosure has taken place by reason only of the live broadcast of the information and he establishes that -

(a) the broadcast of the information took place in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);

(b) the contents of the information were not, wholly or partly, devised -

(i) where he was the broadcaster, by himself or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, by himself;

(c) for the purposes of the broadcast -

(i) where he was the broadcaster, he or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, he,

did not select, add to, modify or otherwise exercise control over the contents of the information;

(d) in relation to the broadcast -

(i) where he was the
broadcaster, he; or

(ii) where he was not the
broadcaster, he believed
and had reasonable grounds
to believe that the
broadcaster,

acted in accordance with the terms
and conditions of the licence (if
any) by which he or the broadcaster
(as the case may be) became entitled
to broadcast as a broadcaster and
with any code of practice or
guidelines (however described)
issued under or pursuant to the
Telecommunications Ordinance (Cap.
106) or the Broadcasting Ordinance
(Cap. 562) and applicable to him or
the broadcaster (as the case may be)
as a broadcaster; and

(e) at the time of the broadcast -

(i) he did not know that the
information was false or
misleading as to a material
fact or was false or

misleading through the
omission of a material
fact; or

(ii) he knew that the
information was false or
misleading as to a material
fact or was false or
misleading through the
omission of a material
fact, but -

(A) where he was the
broadcaster, in the
circumstances of the
case he could not
reasonably be
expected to prevent
the broadcast; or

(B) where he was not the
broadcaster, in the
circumstances of the
case he has taken all
reasonable steps to
bring the fact that
the information was
so false or
misleading to the

attention of a person
in a position to take
steps to cause the
broadcast to be
prevented (even if
the broadcast in fact
took place).".

- 268(5) (a) By adding "or the contents thereof" before
", whether -".
- (b) In paragraph (g), by deleting "computer" and
substituting "any information system".

- 269(1) (a) In paragraph (a) -
- (i) by deleting "issued by the corporation or
by" and substituting "of the corporation
or of";
 - (ii) by deleting "出售" and substituting
"售賣";
 - (iii) by adding "2宗或" before "多".
- (b) In paragraphs (b) and (c) -
- (i) by deleting "issued by the corporation or
by" and substituting "of the corporation
or of";
 - (ii) by adding "2宗或" before "多".

- 269(2) In paragraphs (a), (b) and (c) -
- (a) By deleting "issued by the corporation or by" and substituting "of the corporation or of";
 - (b) By adding "2宗或" before "多".
- 269(3)
- (a) By adding "在" before "本".
 - (b) In paragraph (a), by deleting "凡提述交易" and substituting "提述交易之處".
 - (c) In paragraph (b), by deleting "凡提述訂立或履行交易" and substituting "提述訂立或履行交易之處".
- 271
- (a) In the heading, by deleting "**constituting**" and substituting "**relating to**".
 - (b) By deleting everything after "only" and substituting "that any market misconduct has taken place in relation to or as a result of it."
- 272(1)
- (a) By deleting "apart from any other liability he may incur" and substituting "whether or not he also incurs any other liability".
 - (b) By adding "or not" after ", whether".
 - (c) By deleting ", or otherwise".
- 272(3)
- (a) By deleting paragraphs (b) and (c) and

substituting -

- "(b) (i) another person which is a corporation has committed a relevant act in relation to market misconduct under paragraph (a); and
- (ii) the market misconduct occurred with his consent or connivance as an officer of the corporation; or
- (c) (i) any other person has committed a relevant act in relation to market misconduct under paragraph (a); and
- (ii) he assisted or connived with that other person in the perpetration of any conduct which constitutes the market misconduct, with the knowledge that such conduct constitutes or might constitute market misconduct."

(b) By deleting "作出與市場失當行為有關的" and substituting "就市場失當行為作出有關".

- 272(4) (a) By deleting "因某市場失當行為或".
- (b) By deleting "作出與該行為有關的" and substituting "就市場失當行為作出有關".
- 272(6) (a) By deleting "do so" and substituting "entertain an application for an injunction".
- (b) By deleting "對根據第(1)款提出的訴訟作出裁定" and substituting "裁定根據第(1)款提出的訴訟".
- 272(7) (a) In paragraph (a), by adding "the fact that there is" before "a".
- (b) In paragraph (b) -
- (i) by adding "the fact that there is" before "a determination";
- (ii) by deleting "中," and substituting "中".
- (c) By deleting "凡" and substituting "在根據第(1)款提出的訴訟中".
- (d) By deleting "則在根據第(1)款提出的訴訟中,".
- 272(8) (a) By deleting everything after "(1)" and before paragraph (a)(i) and substituting -
- " , where the fact that there is a determination referred to in subsection (7)(a) or (b) is admissible in evidence under subsection (7) -

(a) then -".

(b) In paragraph (a)(i), by deleting "第(7)(a)款提述的裁定" and substituting "就第(7)(a)款提述的裁定而言".

(c) In paragraph (a)(ii), by deleting "第(7)(b)款提述的裁定" and substituting "就第(7)(b)款提述的裁定而言".

(d) In paragraph (b) -

(i) by adding "as evidence of the determination or" after "admissible evidence";

(ii) by deleting "that" and substituting "such".

272(9) (a) In paragraph (a), by adding "the fact that there is" before "a".

(b) By deleting "凡在根據第(1)款提出的訴訟中" and substituting "在根據第(1)款提出的訴訟中,如".

272 By adding -

"(9A) In this section, a reference to a transaction includes an offer and an invitation (however expressed).".

273 In the heading, by deleting "**Transactions**" and substituting "**Conduct**".

- 273 By adding before subclause (1) -
- "(1A) Notwithstanding anything in this Part, a person shall not be regarded as having engaged in market misconduct by reason of any market misconduct under this Part if he establishes that the conduct in question is, according to the rules made under subsection (1), not to be regarded as constituting market misconduct."
- 273(1) By deleting everything before "may" and substituting -
- "(1) For the purposes of subsection (1A), the Commission, after consultation with the Financial Secretary,".
- 273 By deleting subclauses (2) to (4).
- 273(5) By deleting "constituted a criminal offence" and substituting "been unlawful".
- 274 In paragraphs (a) and (b)(ii), by deleting "就該" and substituting "就同一".
- 276 By deleting the clause.

277(1) In the definition of "控制人", in paragraph (b), by adding "任何" before "有聯" where it twice appears.

277(2) (a) By adding -

"listed" (上市) means listed on a recognized stock market, and for the purposes of this definition, securities shall continue to be regarded as listed during a period of suspension of dealings in those securities on the recognized stock market;".

(b) In the definition of "上市法團", by deleting "發生關乎該法團的違例事件" and substituting "與該法團有關的違例事件發生".

(c) In the definition of "上市證券", by deleting "發生關乎某法團的違例事件" wherever it appears and substituting "與某法團有關的違例事件發生".

(d) In the definition of "證券" -

(i) by deleting paragraph (b) and substituting -

"(b) 在該等股份、股額、債權證、債權股額、基金、債券或票據的或關乎該等股

份、股額、債權證、債權股額、基金、
債券或票據的權利、期權或權益(不論
以單位或其他方式描述);";

(ii) in paragraph (c), by deleting "(a)段所
述各項目" and substituting "該等股份、股
額、債權證、債權股額、基金、債券或票據".

278 (a) By adding "whatsoever" after "kind".

(b) By deleting "條及第" and substituting "及".

279(1) (a) In paragraph (d)(ii), by adding "有關" before "消
息".

(b) In paragraph (e), by deleting "關乎該法團" and
substituting "與該法團有關".

279(3) By deleting "of any kind".

280(2) (a) By deleting "'指明人士'" and substituting "提述指明
人士之處, ".

(b) In paragraph (h), by adding "財政司" before
"司".

280(3) By adding "財政司" before "司".

- 281 By deleting "作出上述作為" and substituting "售賣、購買、
交換或認購任何上市證券或其衍生工具".
- 283(1) In paragraph (b), by deleting "上述" and substituting
"該等證券或工具的".
- 283(2) In paragraph (b), by deleting "他人進行上述" and
substituting "另一人進行該等證券或工具的".
- 283(5) (a) By deleting "人得" and substituting "人收".
(b) In paragraph (b), by deleting "上述" and
substituting "該等證券或工具的".
- 283(6) (a) By deleting "取得" and substituting "收到".
(b) In paragraph (b), by deleting "上述" and
substituting "該等證券或工具的".
- 284 By deleting subclause (1) and substituting -
"(1) Where a person is charged with an
offence under section 283(8) in respect of a
contravention of section 283 taking place through
his dealing in or counselling or procuring
another person to deal in listed securities or
derivatives, it is a defence to the charge for

the person to prove that he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be) -

(a) for the sole purpose of acquiring shares required for his being qualified as a director or intending director of a corporation;

(b) in the performance in good faith of an underwriting agreement for the listed securities or derivatives in question; or

(c) in the performance in good faith of his functions as a liquidator, receiver or trustee in bankruptcy."

284(2) (a) By deleting everything after "of section 283" and before paragraph (c) and substituting -
"taking place through its dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the corporation to prove that -

(a) although one or more of its

directors or employees had the relevant information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question, each person who took the decision for it to deal in or counsel or procure the other person to deal in such listed securities or derivatives (as the case may be) did not have the relevant information up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be);

(b) arrangements then existed to secure that -

(i) the relevant

information was, up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be), not communicated to any person who took the decision; and

(ii) none of its directors or employees who had the relevant information gave advice concerning the decision to any person who took the decision at any time before it dealt in or counselled or

procured the other person to deal in such listed securities or derivatives (as the case may be); and".

(b) In paragraph (c), by adding "有關" before "消" where it twice appears.

284(3) By deleting everything after "of section 283" and before "did" and substituting -

"taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives or his disclosure of information, it is a defence to the charge for the person to prove that the purpose for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) was not, or, where there was more than one purpose, the purposes for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be)".

284

By deleting subclauses (4) to (7) and substituting -

"(4) Where a person is charged with an offence under section 283(8) in respect of a contravention of section 283 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that -

(a) he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be) as agent;

(b) he did not select or advise on the selection of such listed securities or derivatives; and

(c) he -

(i) did not know that the person for whom he acted as agent was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities

of which were, such
listed securities or
derivatives; or

(ii) did not know that the
person for whom he acted
as agent had the
relevant information in
question.

(5) Where a person is charged with an
offence under section 283(8) in respect of a
contravention of section 283 taking place through
his dealing in or counselling or procuring
another person to deal in listed securities or
derivatives, it is a defence to the charge for
the person to prove that -

(a) at the time when he dealt in or
counselled or procured the other
person to deal in the listed
securities or derivatives in
question, the dealing in question
was not required to be recorded on
a recognized stock market or to be
notified to a recognized exchange
company under its rules; and

(b) (i) where the contravention
took place through his

dealing in listed
securities or
derivatives -

(A) he and the other
party to the
dealing in question
entered into the
dealing directly
with each other;
and

(B) at the time when he
entered into the
dealing, the other
party to the
dealing knew, or
ought reasonably to
have known, of the
relevant
information in
question; or

(ii) where the contravention
took place through his
counselling or procuring
another person to deal
in listed securities or
derivatives -

(A) he counselled or
procured the other
party to the
dealing in question
to enter into the
dealing directly
with him; and

(B) at the time when he
counselled or
procured the other
party to enter into
the dealing, the
other party knew,
or ought reasonably
to have known, of
the relevant
information in
question.

(6) Where a person is charged with an
offence under section 283(8) in respect of a
contravention of section 283 taking place through
his dealing in listed securities or derivatives,
it is a defence to the charge for the person to
prove that -

(a) he entered into the dealing in
question, otherwise than as a

person who has counselled or procured the other party to the dealing to deal in listed securities or their derivatives; and

- (b) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, that he was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question.

(7) Where a person is charged with an offence under section 283(8) in respect of a contravention of section 283 taking place through his counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that -

- (a) the other person did not counsel or procure the other party to the dealing in question to deal in listed securities or their

derivatives; and

- (b) at the time when he counselled or procured the other person to deal in the listed securities or derivatives in question, the other party to the dealing in question knew, or ought reasonably to have known, that the other person was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives."

284

By adding -

"(7A) Where a person is charged with an offence under section 283(8) in respect of a contravention of section 283 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that -

- (a) he acted -

- (i) in connection with any dealing in listed

securities or their derivatives (whether by himself or another person) which was under consideration or was the subject of negotiation, or in the course of a series of such dealings; and

(ii) with a view to facilitating the accomplishment of the dealing or the series of dealings; and

(b) the relevant information in question was market information arising directly out of his involvement in the dealing or the series of dealings."

284(8) By deleting everything after "of section 283" and substituting -

"taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that the dealing in question is a market

contract."

284

By adding -

"(9) For the purposes of subsection (7A), "market information" (市場消息) means information consisting of one or more of the following facts -

- (a) that there has been or is to be any dealing in listed securities or derivatives of listed securities of a particular kind, or that any such dealing is under consideration or is the subject of negotiation;
- (b) that there has not been or is not to be any dealing in listed securities or derivatives of listed securities of a particular kind;
- (c) the quantity of listed securities or derivatives of listed securities in which there is or is to be any dealing, or in which any dealing is under consideration or is the subject of negotiation;
- (d) the price (or range of prices) at which listed securities or

derivatives of listed securities have been or are to be dealt in, or the price (or range of prices) at which listed securities or derivatives of listed securities in which any dealing is under consideration or is the subject of negotiation may be dealt in;

- (e) the identity of the persons involved or likely to be involved in any capacity in any dealing in listed securities or derivatives of listed securities."

285

- (a) By deleting everything after "a person" and before the dash and substituting -

"who is a trustee or personal representative is charged with an offence under section 283(8) in respect of a contravention of section 283 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that".

- (b) By adding before paragraph (a) -

"(aa) he acted on advice obtained in good

faith from another person;".

- (c) In paragraph (a), by adding "他當時覺得" before "該".
- (d) In paragraph (b), by deleting everything after "had that other person" and substituting "dealt in the listed securities or derivatives in question, a contravention of section 283 would take place."

286

By deleting everything after "of section 283" and substituting -

"taking place through his dealing in listed securities or derivatives, it is a defence to the charge for the person to prove that -

- (a) he dealt in the listed securities or derivatives in question by way of his exercise of a right to subscribe for or otherwise acquire such listed securities or derivatives; and
- (b) the right was granted to him or was derived from securities or their derivatives that were held by him before he became aware of any relevant information in

relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives.".

287(1) By deleting everything after "elsewhere," and before "a false" and substituting "do anything or cause anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating".

287(2) By deleting everything after "Kong," and before "a false" and substituting "do anything or cause anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating".

287(3) (a) By deleting "在香港或其他地方".
(b) By adding "在香港或其他地方" before "直".

287(4) (a) By deleting "在香港".
(b) By adding "在香港" before "直".

- 287(5) (a) By deleting "a person who" and substituting "where a person".
- (b) In paragraphs (b) and (c), by deleting "same," and substituting "same".
- (c) By deleting everything after paragraph (c) and before "a false" and substituting -
- "then, unless the transaction in question is an off-market transaction, the person shall, for the purposes of subsections (1) and (2), be regarded as doing something or causing something to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating".

287(7) By deleting "by reason of having committed" and substituting "taking place through the commission of".

287 By adding -

"(7A) In subsection (5), "off-market transaction" (場外交易) means a transaction which -

(a) in the case of securities traded on a relevant recognized market, is not required to be recorded on

the relevant recognized market, or to be notified, under the rules of the person by whom the relevant recognized market is operated, to such person;

(b) in the case of securities traded by means of authorized automated trading services, is not required to be recorded by means of authorized automated trading services, or to be notified, under the rules of the person by whom the authorized automated trading services are operated, to such person; or

(c) in the case of securities traded on a relevant overseas market, is not required to be recorded on the relevant overseas market, or to be notified, under the rules of the person by whom the relevant overseas market is operated, to such person."

287(8) (a) By adding "在" before "本".

- (b) In paragraph (a), by deleting "凡提述證券買賣交易" and substituting "提述證券買賣交易之處".
- (c) In paragraph (b), by deleting "凡提述訂立或履行買賣交易" and substituting "提述訂立或履行買賣交易之處".

288(1)

- (a) By deleting "在香港或其他地方".
- (b) In paragraph (a), by adding "在香港或其他地方" before "直".
- (c) In paragraph (b) -
 - (i) by adding "在香港或其他地方" before "直";
 - (ii) by deleting "或期貨合約" where it twice appears and substituting "的價格或期貨合約交易".

288(2)

- (a) By deleting "在香港".
- (b) In paragraph (a), by adding "在香港" before "直".
- (c) In paragraph (b) -
 - (i) by adding "在香港" before "直";
 - (ii) by deleting "或期貨合約" where it twice appears and substituting "的價格或期貨合約交易".

- 288(5) (a) By deleting everything after "purchase of" and before "securities,".
- (b) By deleting "他買賣" and substituting "買賣該等".
- (c) By adding "的" before "價".
- 288(6) (a) By adding "在" before "本".
- (b) In paragraph (a), by deleting "凡提述證券買賣交易" and substituting "提述證券買賣交易之處".
- (c) In paragraph (b), by deleting "凡提述訂立或履行買賣交易" and substituting "提述訂立或履行買賣交易之處".
- 289(1) (a) By deleting "或某期貨合約" and substituting "的價格或期貨合約交易".
- (b) By deleting "該期" and substituting "該等期".
- 289(3) (a) By deleting everything after "a benefit" and before ", it" and substituting "referred to in subsection (1)(b)".
- (b) In paragraph (b), by deleting "。" and substituting -
- " ,
- 即可以此作為免責辯護。".

- 289(4) In paragraph (a), by deleting "受禁交易" and substituting "提述受禁交易之處, ".
- 290(1) (a) In paragraph (a), by deleting "另一人認購香港的" and substituting "他人 在香港認購".
- (b) In paragraph (b), by deleting "另一" and substituting "他".
- (c) In the Chinese text, by deleting paragraph (c) and substituting -
- "(c) 在香港維持、提高、降低或穩定證券的價格或期貨合約交易的價格, ".
- (d) In paragraph (ii), by deleting "or negligent".
- 290(3) By deleting everything after "place" and substituting -
- "by reason only of the issue or reproduction of information, it is a defence to the charge for the person to prove that -
- (a) the issue or reproduction of the information took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by others;

(b) the contents of the information
were not, wholly or partly,
devised -

(i) where the business was
carried on by him, by
himself or any officer,
employee or agent of
his; or

(ii) where the business was
not carried on by him,
by himself;

(c) for the purposes of the issue or
reproduction -

(i) where the business was
carried on by him, he or
any officer, employee or
agent of his; or

(ii) where the business was
not carried on by him,
he,

did not select, add to, modify or
otherwise exercise control over
the contents of the information;
and

(d) at the time of the issue or
reproduction, he did not know that

the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact."

290(4) By deleting everything after "place" and substituting -

"by reason only of the re-transmission of information, it is a defence to the charge for the person to prove that -

(a) the re-transmission of the information took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;

(b) the contents of the information

were not, wholly or partly,
devised -

(i) where the business was
carried on by him, by
himself or any officer,
employee or agent of
his; or

(ii) where the business was
not carried on by him,
by himself;

(c) for the purposes of the re-
transmission -

(i) where the business was
carried on by him, he or
any officer, employee or
agent of his; or

(ii) where the business was
not carried on by him,
he,

did not select, add to, modify or
otherwise exercise control over
the contents of the information;

(d) the re-transmission of the
information was accompanied by a
message to the effect, or was
effected following acknowledgment

by the persons to whom it was re-
transmitted of their
understanding, that -

(i) where the business was
carried on by him, he or
any officer, employee or
agent of his; or

(ii) where the business was
not carried on by him,
the person who carried
on the business or any
officer, employee or
agent of that person,

did not devise the contents of the
information, and neither took
responsibility for it nor endorsed
its accuracy; and

(e) at the time of the re-
transmission -

(i) he did not know that the
information was false or
misleading as to a
material fact or was
false or misleading
through the omission of
a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but -

(A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or

(B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or

misleading to the
attention of a
person in a
position to take
steps to cause the
re-transmission to
be prevented (even
if the re-
transmission in
fact took place).".

290(5) By deleting everything after "place" and
substituting -

"by reason only of the live broadcast of
information, it is a defence to the charge for
the person to prove that -

(a) the broadcast of the information
took place in the ordinary course
of the business of a broadcaster
(whether or not he was such
broadcaster);

(b) the contents of the information
were not, wholly or partly,
devised -

(i) where he was the
broadcaster, by himself

or any officer, employee
or agent of his; or

(ii) where he was not the
broadcaster, by himself;

(c) for the purposes of the
broadcast -

(i) where he was the
broadcaster, he or any
officer, employee or
agent of his; or

(ii) where he was not the
broadcaster, he,

did not select, add to, modify or
otherwise exercise control over
the contents of the information;

(d) in relation to the broadcast -

(i) where he was the
broadcaster, he; or

(ii) where he was not the
broadcaster, he believed
and had reasonable
grounds to believe that
the broadcaster,

acted in accordance with the terms
and conditions of the licence (if
any) by which he or the

broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster; and

(e) at the time of the broadcast -

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but -

(A) where he was the broadcaster, in the circumstances of the case he could not reasonably be expected to prevent the broadcast; or

(B) where he was not the broadcaster, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the broadcast to be prevented (even if the broadcast in fact took place).".

- 290(6) (a) By adding "or the contents thereof" before ",
whether -".
- (b) In paragraph (c), by deleting "或告示" and
substituting "、告示、啟事或通知".
- (c) In paragraph (g), by deleting "computer" and
substituting "any information system".
- 291(1) In paragraphs (a), (b) and (c) -
- (a) by deleting "issued by the corporation or
by" and substituting "of the corporation or
of";
- (b) by adding "2宗或" before "多".
- 291(2) In paragraphs (a), (b) and (c) -
- (a) by deleting "issued by the corporation or
by" and substituting "of the corporation or
of";
- (b) by adding "2宗或" before "多".
- 291(4) (a) By adding "在" before "本".
- (b) In paragraph (a), by deleting "凡提述交易" and
substituting "提述交易之處".
- (c) In paragraph (b), by deleting "凡提述訂立或履行交易"
and substituting "提述訂立或履行交易之處".

292(3) By deleting "凡提述交易" and substituting ", 提述交易之處".

293(1) In paragraph (b), by deleting "or negligent".

293(3) By deleting everything after "place" and substituting -

"by reason only of the issue or reproduction of information, it is a defence to the charge for the person to prove that -

(a) the issue or reproduction of the information took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by others;

(b) the contents of the information were not, wholly or partly, devised -

(i) where the business was carried on by him, by himself or any officer, employee or agent of

his; or

- (ii) where the business was not carried on by him, by himself;

(c) for the purposes of the issue or reproduction -

- (i) where the business was carried on by him, he or any officer, employee or agent of his; or

- (ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the information; and

(d) at the time of the issue or reproduction, he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact."

293(4) By deleting everything after "place" and substituting -

"by reason only of the re-transmission of information, it is a defence to the charge for the person to prove that -

(a) the re-transmission of the information took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;

(b) the contents of the information were not, wholly or partly, devised -

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was
not carried on by him,
by himself;

(c) for the purposes of the re-
transmission -

(i) where the business was
carried on by him, he or
any officer, employee or
agent of his; or

(ii) where the business was
not carried on by him,
he,

did not select, add to, modify or
otherwise exercise control over
the contents of the information;

(d) the re-transmission of the
information was accompanied by a
message to the effect, or was
effected following acknowledgment
by the persons to whom it was re-
transmitted of their
understanding, that -

(i) where the business was
carried on by him, he or
any officer, employee or
agent of his; or

(ii) where the business was not carried on by him, the person who carried on the business or any officer, employee or agent of that person, did not devise the contents of the information, and neither took responsibility for it nor endorsed its accuracy; and

(e) at the time of the re-transmission -

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but -

(A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or

(B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the re-transmission to be prevented (even

if the re-
transmission in
fact took place).".

293(5) By deleting everything after "place" and
substituting -

"by reason only of the live broadcast of
information, it is a defence to the charge for
the person to prove that -

(a) the broadcast of the information
took place in the ordinary course
of the business of a broadcaster
(whether or not he was such
broadcaster);

(b) the contents of the information
were not, wholly or partly,
devised -

(i) where he was the
broadcaster, by himself
or any officer, employee
or agent of his; or

(ii) where he was not the
broadcaster, by himself;

(c) for the purposes of the
broadcast -

(i) where he was the

broadcaster, he or any
officer, employee or
agent of his; or

(ii) where he was not the
broadcaster, he,

did not select, add to, modify or
otherwise exercise control over
the contents of the information;

(d) in relation to the broadcast -

(i) where he was the
broadcaster, he; or

(ii) where he was not the
broadcaster, he believed
and had reasonable
grounds to believe that
the broadcaster,

acted in accordance with the terms
and conditions of the licence (if
any) by which he or the
broadcaster (as the case may be)
became entitled to broadcast as a
broadcaster and with any code of
practice or guidelines (however
described) issued under or
pursuant to the Telecommunications
Ordinance (Cap. 106) or the

Broadcasting Ordinance (Cap. 562)
and applicable to him or the
broadcaster (as the case may be)
as a broadcaster; and

(e) at the time of the broadcast -

(i) he did not know that the
information was false or
misleading as to a
material fact or was
false or misleading
through the omission of
a material fact; or

(ii) he knew that the
information was false or
misleading as to a
material fact or was
false or misleading
through the omission of
a material fact, but -

(A) where he was the
broadcaster, in the
circumstances of
the case he could
not reasonably be
expected to prevent
the broadcast; or

(B) where he was not the broadcaster, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the broadcast to be prevented (even if the broadcast in fact took place).".

- 293(6)
- (a) By adding "or the contents thereof" before ", whether -".
 - (b) In paragraph (c), by deleting "或告示" and substituting "、告示、啟事或通知".
 - (c) In paragraph (g), by deleting "computer" and

substituting "any information system".

294(1) By deleting everything after "services," and substituting -

"if -

(a) in fact he has not so dealt in, or facilitated or arranged for the dealing in, the futures contract; and

(b) he knows that, or is reckless as to whether, in fact he has not so dealt in, or facilitated or arranged for the dealing in, the futures contract."

294(2) By deleting everything after "Kong," and substituting -

"if -

(a) in fact he has not so dealt in, or facilitated or arranged for the dealing in, the contract or other instrument; and

(b) he knows that, or is reckless as to whether, in fact he has not so dealt in, or facilitated or arranged for the dealing in, the

contract or other instrument.".

294(3) By deleting "Subject to subsection (4), a" and substituting "A".

294 By deleting subclause (4).

295(2) By deleting ", or more than one," and substituting "or more".

295(6) By deleting "or exempt person" and substituting "person or registered institution".

295(7) By deleting "refuses or".

New By adding -

"295A. Transactions relating to contravention of Divisions 2 to 4 not void or voidable

A transaction is not void or voidable by reason only that a contravention of any of the provisions of Divisions 2 to 4 has taken place in relation to or as a result of it.".

296 In the heading, by deleting "違反本部" and substituting "就違反本部須負".

- 296(1) (a) By deleting "apart from any other liability he may incur" and substituting "whether or not he also incurs any other liability".
- (b) By adding "or not" after ", whether".
- (c) By deleting ", or otherwise".
- 296(5) (a) By deleting "do so" and substituting "entertain an application for an injunction".
- (b) By deleting "對根據第(1)款提出的訴訟作出裁定" and substituting "裁定根據第(1)款提出的訴訟".
- 296(6) (a) In paragraph (a), by adding "the fact that there is" before "a".
- (b) In paragraph (b) -
- (i) by adding "the fact that there is" before "a determination";
- (ii) by deleting "中," and substituting "中".
- (c) By deleting "凡" and substituting "在根據第(1)款提出的訴訟中".
- (d) By deleting "則在根據第(1)款提出的訴訟中,".
- 296(7) (a) By deleting everything after "(1)" and before paragraph (a)(i) and substituting -
- " , where the fact that there is a

determination referred to in subsection
(6)(a) or (b) is admissible in evidence
under subsection (6) -

(a) then -".

(b) In paragraph (a)(i), by deleting "第(6)(a)款提述
的裁定" and substituting "就第(6)(a)款提述的裁定而
言".

(c) In paragraph (a)(ii), by deleting "第(6)(b)款提述
的裁定" and substituting "就第(6)(b)款提述的裁定而
言".

(d) In paragraph (b) -

(i) by adding "as evidence of the
determination or" after "admissible
evidence";

(ii) by deleting "that" and substituting
"such".

296(8) (a) In paragraph (a), by adding "the fact that there
is" before "a".

(b) By deleting "凡在根據第(1)款提出的訴訟中" and
substituting "在根據第(1)款提出的訴訟中，如".

(c) By deleting "具" and substituting "則具".

296(9) By deleting "凡提述交易" and substituting ", 提述交易之
處".

297 In the heading, by deleting "**Transactions**" and substituting "**Conduct**".

297 By adding before subclause (1) -

"(1A) Notwithstanding anything in this Part, where a person is charged with an offence under this Part (other than section 292 or 294) by reason of any conduct, it is a defence to the charge for the person to prove that the conduct is, according to the rules made under subsection (1), not to be regarded as constituting an offence."

297(1) By deleting everything before "may" and substituting -

"(1) For the purposes of subsection (1A), the Commission, after consultation with the Financial Secretary,".

297 By deleting subclauses (2) to (4).

298 In paragraphs (a) and (b)(ii), by deleting "就該" and substituting "就同一".

- 299(1)
- (a) In the definition of "associated corporation", in paragraph (b), by deleting "any" and substituting "a".
 - (b) In the definition of "custodian", by adding a comma after "person".
 - (c) In the definition of "deliver", by deleting ", debentures or equity derivatives" where it twice appears and substituting "or debentures".
 - (d) In the definition of "Exchange Company", by deleting "Company (" and substituting "Company" (".
 - (e) In the definition of "founder of the trust" -
 - (i) by deleting "of the trust" where it first appears;
 - (ii) in paragraph (b), by adding "已" after "; 或".
 - (f) In the definition of "off-exchange transaction", by adding "an" before "event".
 - (g) In the definition of "physically settled equity derivatives", by deleting everything after "which" and before "to settle" and substituting "the holder, writer or issuer of the equity derivatives may choose".

- (h) In the definition of "relevant event" -
 - (i) in paragraph (a)(v), by deleting everything after ", 指" and substituting "就該條提述的調低作出規定的規例的生效; 或";
 - (ii) in paragraph (b)(iv), by adding "or" at the end;
 - (iii) in paragraph (b)(v), by deleting "; or" and substituting "of a listed corporation;";
 - (iv) by deleting paragraph (b)(vi).
- (i) In the definition of "relevant share capital", in paragraph (b), by deleting "any" and substituting "a".
- (j) In the definition of "short position" -
 - (i) in paragraph (a), by deleting everything after "或義務" and substituting "在任何情況下是附有條件或是絕對的; 或";
 - (ii) in paragraph (b), by deleting "the shares" where it twice appears and substituting "shares".
- (k) By deleting the definition of "trustee".
- (l) By adding -
 - "qualified lender" (合資格借出人) means a person who is -
 - (a) an authorized financial

institution;

- (b) an insurer authorized under the Insurance Companies Ordinance (Cap. 41);
- (c) an exchange participant of a recognized exchange company;
- (d) an intermediary licensed or registered for Type 1 or Type 8 regulated activity; or
- (e) a corporation authorized under the law of any place outside Hong Kong recognized for the purposes of section 304(11), 308(6), 314(5) or (6) or 332(5) by the Commission to carry on business -

- (i) as a bank;

- (ii) as an insurance company; or

- (iii) in an activity that is in the opinion of the Commission equivalent to any of the regulated activities carried on by an intermediary

referred to in
paragraph (d);

"rights issue" (供股) means an offer or issue by a listed corporation of shares in the listed corporation (whether issued or unissued) to all persons holding issued shares in the listed corporation at a certain date (other than a person whose address is in a place where such offer or issue is not permitted under the law of that place) in proportion to the number of those issued shares held by them at that date, but does not include an offer or issue of shares in the listed corporation in lieu of all or part of a cash dividend;".

(m) In the definition of "股本衍生工具", in paragraph (c)(ii), by adding "或" at the end.

(n) In the definition of "相關股份" -

(i) in paragraph (a)(i), by deleting "是否在任何情況下附有條件" and substituting "在任何情況下是附有條件或是絕對的";

(ii) in paragraph (b)(i), by deleting "是否在任何情況下附有條件" and substituting "在任何

情況下是附有條件或是絕對的";

(iii) by deleting everything after "者" and substituting a semicolon.

299 By deleting subclause (2).

299(3) By deleting "in any" and substituting "in a".

299 By deleting subclause (6) and substituting -

"(6) In the case of equity derivatives -

(a) where -

(i) no less than 5 listed corporations' shares will be required to be delivered on the exercise of rights or fulfilment of obligations under the equity derivatives; and

(ii) at the time of the issue of the equity derivatives, no more than -

(A) subject to sub-subparagraph (B), 30%; or

(B) where any other

percentage is
prescribed by
regulations for the
purposes of this
subsection, such
other percentage,
of the value of all the
shares which, but for this
subsection, would have
been the underlying shares
of the equity derivatives
is represented by the
shares in any one of those
listed corporations; or

(b) where -

- (i) the prices or values of no
less than 5 listed
corporations' shares play
a part in the derivation
or determination of the
price or value of the
equity derivatives; and
- (ii) at the time of the issue
of the equity derivatives,
no more than -
 - (A) subject to sub-

subparagraph (B),

30%; or

(B) where any other

percentage is

prescribed by

regulations for the

purposes of this

subsection, such

other percentage,

of the price or value of

the equity derivatives is

derived from or determined

by the prices or values of

the shares in any one of

those listed corporations,

those equity derivatives are taken to have no

underlying shares.".

299

By adding -

"(7) In subsection (6), a reference to shares shall be construed as -

- (a) for the purposes of, and otherwise in relation to, Divisions 2 to 6, a reference to shares comprised in the relevant share capital of the listed corporation concerned; or

(b) for the purposes of, and otherwise in relation to, Divisions 7 to 10, a reference to shares in the listed corporation concerned.

(8) In subsections (6) and (7), a reference to a listed corporation includes a reference to a corporation that is listed on a specified stock exchange."

300(1) By deleting "corporation" and substituting "person".

300(2) (a) By deleting "pursuant to" and substituting "under".

(b) By adding a comma after "corporation" where it secondly and thirdly appears.

(c) By adding "申請" after "免該".

300(3) (a) By deleting "pursuant to" and substituting "under".

(b) By deleting "a".

300 By adding -

"(4A) The Commission shall publish, by the use of an on-line medium, such particulars of the exemptions granted, suspended or withdrawn under this section as it considers appropriate."

300(5) By deleting "pursuant to" and substituting "under".

- 301(1) (a) In paragraph (a), by adding "having or" before "retaining".
- (b) In paragraph (b), by adding "(or part thereof)" after "interest".
- 301(2) In paragraph (b), by adding "上市" after "在某".
- 301(4) (a) In paragraph (a), by adding "(whether or not having or retaining a short position in other shares so comprised)" before "; or".
- (b) By deleting paragraph (b) and substituting -
- "(b) any change occurs affecting facts relevant to the application of section 304 to a person's existing short position (or part thereof) in shares comprised in a listed corporation's share capital of any description,".
- 301(5) (a) By deleting "擁" and substituting "持".
- (b) By deleting "權益" and substituting "的淡倉".
- 302(1) By deleting "300" and substituting "301".
- 302(2) (a) In paragraph (b), by adding ", or against," before

"him".

(b) By adding "上市法團有關股本中的" after "凡提述".

304(1) In paragraph (d), by adding "(or part thereof)" after "his interest".

304(5) By deleting everything after "interest" and substituting "immediately after the relevant time, and has a short position in shares comprised in the relevant share capital of the listed corporation concerned immediately after the relevant time of a percentage level equal to or more than the specified percentage level.".

304(7) (a) In paragraph (a), by deleting everything after "is" and before "given" and substituting "the same as or less than the percentage level of his interest in shares so comprised at the time of the relevant event giving rise to the last notification".

(b) In paragraph (b)(i), by deleting everything after "(13)(a)," and substituting "at all times since the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c); and".

(c) In paragraph (b)(ii) -

(i) by deleting "required to be";

(ii) by deleting "該等" and substituting "有關上市法團有關股本中的".

304 By adding -

"(7A) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (1)(d) is not under such a duty where the percentage level of his interest (excluding that part of his interest the nature of which has changed immediately after the relevant time) in shares comprised in the relevant share capital of the listed corporation concerned, calculated in accordance with section 305(1) (by construing the reference in that section to the aggregate nominal value of all the shares in which a person is interested as a reference to the aggregate nominal value of the shares the nature of the person's interest in which has not changed), immediately after the relevant time -

(a) is the same as the percentage level of his interest in shares so comprised at the time of the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the

circumstances specified in
subsection (1)(a), (c) or (d)
(whichever is the latest); or

(b) is the same as or less than the
percentage level of his interest in
shares so comprised at the time of
the relevant event giving rise to
the last notification given by him
where the duty of disclosure arose
in the circumstances specified in
subsection (1)(c), and the
difference between -

(i) the percentage figure of
his interest in shares so
comprised, calculated in
accordance with subsection
(13)(a) (by construing the
reference in that
subsection to section
305(1) in the manner
aforementioned in this
subsection), at all times
since the relevant event
giving rise to the last
notification given by him
where the duty of

disclosure arose in the
circumstances specified in
subsection (1)(c); and

(ii) the percentage figure of
his interest in shares so
comprised disclosed in the
last notification given by
him where the duty of
disclosure arose in the
circumstances specified in
subsection (1)(c),

is less than 0.5%."

- 304(8)
- (a) In paragraph (a), by deleting everything after "is" and before "given" and substituting "the same as or less than the percentage level of his short position in shares so comprised at the time of the relevant event giving rise to the last notification".
 - (b) In paragraph (b)(i), by deleting everything after "(13)(b)" and substituting "at all times since the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (4)(c); and".
 - (c) In paragraph (b)(ii), by deleting "required to be".

304 By deleting subclause (9) and substituting -

"(9) Subject to subsection (9A), a qualified corporation which would otherwise come under a duty of disclosure in the circumstances specified in subsection (1) or (4) is not under such a duty if its holding company (or where its holding company is a qualified corporation of another holding company, that other holding company) -

(a) is, at the relevant time, taken under section 307(2) -

(i) to be interested in any shares in which the qualified corporation is interested; and

(ii) to have a short position in any shares in which the qualified corporation has a short position; and

(b) accordingly complies with the duty of disclosure."

304 By adding -

"(9A) If a corporation ceases to be a qualified corporation of its holding company and in such circumstances the holding company is regarded

as having ceased to be interested, or have a short position, in shares under section 307(6), the corporation is taken to have acquired that interest or come to have that short position (as the case may be).".

304 By deleting subclause (10) and substituting -

"(10) In subsections (9), (9A) and (11), "qualified corporation" (合資格法團), in relation to a holding company, means a wholly owned subsidiary of the holding company (whether or not the holding company is itself a wholly owned subsidiary of another holding company).".

304(11) (a) In paragraph (a), by deleting "or".

(b) In paragraph (b) -

(i) by deleting "interests" and substituting "interest";

(ii) by deleting the comma and substituting a semicolon.

(c) By adding -

"(c) any of the person's interest in shares so comprised, which are the underlying shares of equity derivatives, on the exercise by, or against, him of rights under the equity derivatives; or

(d) any of the person's interest in shares so comprised in such other circumstances as are prescribed by rules made under section 365A for the purposes of this section,".

(d) In paragraph (i) -

(i) by adding "is notifiable, or" before "has";

(ii) by adding a comma after "company".

(e) In paragraph (ii), by deleting "or".

(f) By deleting paragraph (iii) and substituting -

"(iii) on -

(A) the exercise of rights to subscribe for shares granted to him as part of a rights issue; or

(B) delivery of shares to him pursuant to a rights issue;".

(g) By adding -

"(iv) where another person, being a qualified lender, comes to have an interest in his shares by way of security; or

(v) where the person is a holding company, due to the acquisition of an interest in those shares by a qualified corporation of the person from another qualified corporation of the person.".

- 304 By deleting subclause (12).
- 304(13) (a) In paragraph (a), by deleting "subsection (7)(b)" and substituting "subsections (7)(b) and (7A)(b) and section 317(1)(b)".
- (b) In paragraph (b), by adding "and section 317(1)(c)" after "(8)(b)".
- 305(1) By deleting everything after "(2)" and before ", means" and substituting ", (3) and (5), "percentage level" (百分率水平), in section 304(1)(c), (7) and (7A)".
- 305 By deleting subclause (2) and substituting -
- "(2) For the purposes of subsection (1) and section 302(3), where the listed corporation concerned grants to the person rights to subscribe for, or offers to the person, as part of a rights issue, shares comprised in its relevant share capital, the nominal value of the issued equity share capital of the listed corporation at all times from the grant or offer (as the case may be) up to the completion or termination of the rights issue (whichever is the earlier) is taken to be the aggregate of -

- (a) the nominal value of the issued equity share capital of the listed corporation immediately before the grant or offer (as the case may be); and
- (b) the nominal value of the new shares to be issued upon the completion of the rights issue."

305(3) By adding "and section 302(3)" after "(1)".

305(4) (a) By deleting "section 304(4) and (8)" and substituting "sections 304(4), (5), (6) and (8), 316(4) and 317(1)(k)".

(b) By deleting everything after "字：" and before "有關股" and substituting "在緊接有關時間之前或之後(視屬何情況而定)由有關的人持有淡倉的有關上市法團".

305 By deleting subclause (5) and substituting -

"(5) Where the listed corporation's share capital is divided into different classes of shares -

- (a) a reference in this section and section 302(3) to the aggregate nominal value of shares comprised in

the relevant share capital of the listed corporation in which the person is interested or has a short position shall be construed as a reference to the aggregate nominal value of the shares comprised in each of the classes taken separately; and

- (b) a reference in this section to a percentage of the nominal value of the listed corporation's issued equity share capital shall be construed as a reference to a percentage of the nominal value of the issued shares comprised in each of the classes taken separately."

305 By adding -

"(6) In subsection (2), "completion" (完成), in relation to a rights issue, means the issue of shares comprised in the relevant share capital of the listed corporation pursuant to the rights issue."

306(1) (a) By deleting everything before "shall" and substituting -

"(1) A reference to notifiable percentage level in this Part".

(b) In paragraph (b), by adding "for the purposes of this subsection" after "regulations".

306(2) (a) By deleting everything before "shall" and substituting -

"(2) A reference to specified percentage level in this Part".

(b) In paragraph (b), by adding "for the purposes of this subsection" after "regulations".

307(5) (a) By deleting "subsection (2)(ii)" and substituting "subsections (2) and (3)".

(b) In paragraph (i), by deleting "with" and substituting "in".

(c) In paragraph (ii), by adding "or any related corporation of the person" before "; and".

(d) In paragraph (iii) -

(i) by deleting "with" and substituting "in";

(ii) by adding "or any related corporation of the person" after "person".

307 By deleting subclause (7).

307(8) By deleting everything after "(5)" and substituting -
"-

(a) "investment manager" (投資經理)

means -

(i) an intermediary licensed
or registered for Type 9
regulated activity; or

(ii) a corporation which is
licensed, registered or
exempt in a place outside
Hong Kong recognized for
the purposes of this
section by the Commission
for an activity which is
equivalent to Type 9
regulated activity,

and is authorized to manage
investments in securities for
another person under a written
agreement; and

(b) "trustee" (受託人) means a

corporation the principal business
of which is to hold property
belonging to another person under
the provisions of a trust deed."

- 308(1) In paragraph (b), by deleting "any part" and substituting "part".
- 308(6) By deleting everything after "business as" and substituting "a qualified lender.".
- 308(7) (a) In paragraph (a)(i), by deleting "35%" and substituting "30%".
(b) By adding "其" after "同".
- 309(2) By deleting "section 310" and substituting "sections 310 and 317(5)(b)".
- 309(3) By adding "and section 310" after "(1)".
- 310(5) By deleting "根據本條作出" and substituting "向其他人作出本條規定的".
- 313(2) By deleting "的任何一種" and substituting "中任何種類的".
- 313(5) In paragraph (a), by adding "權益" after "份".
- 313(7) In paragraph (a), by adding "subscribe for the shares or" before "call".

- 313(10) (a) In paragraph (a)(i), by deleting "or".
- (b) In paragraph (a)(ii), by adding "or" at the end.
- (c) In paragraph (a), by adding -
- "(iii) pursuant to a right to require the other person to take delivery of the shares;".
- (d) In paragraph (b), by adding "subscribe for or" before "call".
- (e) In paragraph (c), by adding "or" at the end.
- (f) In paragraph (d) -
- (i) by adding "assignment or" before "settlement";
- (ii) by deleting "; or" and substituting a full stop.
- (g) By deleting paragraph (e).
- 313 By deleting subclause (12).
- 313(14) By deleting "settled by delivery of the shares" and substituting "by delivery of shares or otherwise".
- 314 In the heading, by adding "**and short positions**" after "**Interests**".
- 314(1) (a) By adding ", and short positions," after "following interests".

- (b) By adding -
- "(aa) an exempt custodian interest;".
- (c) In paragraph (b), by deleting everything after "interest" and substituting -
- "in shares comprised in the property under -
- (i) a collective investment scheme authorized under section 103;
- (ii) a pension scheme or a provident fund scheme registered under section 21 or 21A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
- or
- (iii) a qualified overseas scheme, of a holder, trustee or custodian of the scheme;".
- (d) In paragraph (f), by deleting "held by" and substituting "of".
- (e) In paragraph (g), by deleting "held by the Registrar of the High Court" and substituting "of the Registrar of the High Court held".
- (f) In paragraph (h), by deleting "exempt" and substituting "registered".
- (g) In paragraph (h)(iv), by deleting "and".
- (h) By deleting paragraph (i) and substituting -
- "(i) such interests or interests of such a class, or such short positions or short

positions of such a class, as are prescribed by regulations for the purposes of this section; and".

(i) By adding -

"(j) subject to section 365A, such interests or interests of such a class, or such short positions or short positions of such a class, as are prescribed by rules made under section 365A for the purposes of this section."

314 By adding -

"(2A) For the purposes of subsection (1)(aa), an interest in shares is an exempt custodian interest if -

(a) it is held by a corporation which carries on a business of holding securities in custody for another person, whether on trust or by contract; and

(b) the corporation has no authority to exercise discretion in dealing in the interest, or in exercising rights attached to the interest."

314(3) By deleting everything after "interest" and substituting

"in shares of a holder, trustee or custodian of a scheme referred to in subsection (1)(b)(i), (ii) or (iii), comprised in the property under the scheme, shall not be disregarded under subsection (1)(b) if the holder, trustee or custodian (as the case may be) is also a manager of the scheme."

314(4) (a) By deleting everything after "(1)(b)," and before "which -" and substituting "qualified overseas scheme" (合資格海外計劃) means a collective investment scheme, pension scheme or provident fund scheme".

(b) In paragraph (a), by adding "and" at the end.

(c) By deleting everything after paragraph (a) and substituting -

"(b) is authorized by or registered with the authority (if any) responsible for the authorization or registration of such scheme in the place where it is established, and complies with the requirements of such authority,

but does not include -

(i) an arrangement operated by a person otherwise than by way of

business;

- (ii) an arrangement under which less than 100 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to the income or property of the arrangement;
- (iii) an arrangement under which less than 50 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to 75% or more of the income or property of the arrangement; and
- (iv) such other arrangement as may be specified by the Commission by notice published in the Gazette."

314(5) By deleting everything after "held" and substituting "by a qualified lender by way of security only for the purposes of a transaction entered into in the ordinary

course of his business as such a qualified lender."

- 314(6) (a) By deleting "person holding the interest in the shares by way of security referred to in subsection (5) ("the lender")" and substituting "qualified lender holding the interest in the shares by way of security".
- (b) In paragraph (a), by adding "qualified" before "lender".
- (c) In paragraph (a)(i), by deleting "持" and substituting "擁".
- (d) In paragraph (b), by adding "qualified" before "lender".

314 By deleting subclauses (8) to (11) and substituting -

"(8) A notice published pursuant to subsection (4)(a) or (iv) is not subsidiary legislation."

315(2) By deleting everything after "given" and substituting "to the listed corporation concerned and the relevant exchange company at the same time or (if it is not practicable to do so) one immediately after the other."

315 By adding -

"(3A) For the purposes of subsection (3), the

Commission may specify any form by referring in a notice published in the Gazette to the form as separately published by such electronic means as the Commission considers appropriate, instead of setting out the form in a notice published in the Gazette, whereupon the Commission shall for all purposes be regarded as having duly specified the form under subsection (3).".

315(6) By deleting "內容實質" and substituting "實質內容".

316(2) (a) In paragraph (a), by deleting "第315條規定的具報".

(b) In paragraph (b), by deleting everything before "within" and substituting -

"(b) in the case that at the time at which the relevant event occurs the person concerned is not aware that he has a notifiable interest,".

(c) By adding ", 第315條規定的具報須" after "生的".

316 By deleting subclause (3).

316(4) (a) By deleting "301(6)" and substituting "301(5) or (6)".

(b) In the Chinese text, by deleting paragraph (a) and

substituting -

"(a) 在有關事件發生當日後10個營業日內作出；或".

(c) In paragraph (b), by deleting everything before

"within" and substituting -

"(b) in the case that at the time at which the relevant event occurs the person concerned is not aware that he has a short position of a percentage level equal to or more than the specified percentage level,".

317(1) (a) In paragraph (a)(ii), by deleting ", (3)(b)".

(b) In paragraph (b)(i), by deleting "the percentage level and".

(c) In paragraph (b)(ii), by deleting "the percentage level and".

(d) In paragraph (c)(i), by deleting "the percentage level and".

(e) In paragraph (c)(ii), by deleting "the percentage level and".

(f) In paragraph (f)(i), by adding "per share" before "for".

(g) In paragraph (f)(ii), by deleting "amount and nature of the consideration given or received" and substituting "nature of the consideration given or received, and the highest amount and the average

amount of the consideration given or received per share,".

(h) By deleting paragraph (g).

(i) In paragraph (j)(ii), by adding ", and his relationship with," before "each".

(j) By deleting paragraph (k) and substituting -

"(k) where -

(i) he no longer has a notifiable interest; or

(ii) he has a notifiable interest, but he no longer has a short position of a percentage level equal to or more than the specified percentage level,

the fact that he no longer has such an interest or short position; and".

(k) By deleting "(盡其)" and substituting "(就他)".

317(2) In paragraph (d), by deleting "條" and substituting "段".

317(4) By deleting everything before "shall" and substituting -

"(4) Unless a corporation is -

(a) a listed corporation;

(b) a wholly owned subsidiary of a

listed corporation;

(c) a corporation listed on a specified stock exchange; or

(d) a wholly owned subsidiary of a corporation listed on a specified stock exchange,

it".

317 By adding -

"(4A) For the purposes of subsection (4), a person shall not be regarded as a person in accordance with whose directions or instructions a corporation or its directors are accustomed or obliged to act by reason only that the corporation or its directors act on advice given by him in a professional capacity."

317(5) (a) In paragraph (b)(i), by deleting "他所知悉的" and substituting "就他所知".

(b) In paragraph (b)(ii), by adding "(apart from the agreement)" after "interested".

(c) In paragraph (e), by adding "書面" after "類".

317(6) In paragraph (b), by deleting "他知悉的" and substituting "就他所知".

- 318 In the heading, by adding "金融管理" before "專員".
- 318(1) By adding "or any regulations made, or rules made by the Commission, for the purposes of this Division" after "Division".
- 318(2) (a) By adding "任何人" after "獲".
(b) By adding "金融管理" before "專員".
- 319(1) (a) In paragraph (a), by deleting everything before "applicable" and substituting -
 "(a) who, without reasonable excuse, fails to perform, within the period specified in section 316(1)(a) or (b), (2)(a) or (b) or (4)(a) or (b) (as the case may be), a duty of disclosure arising under Division 2 in accordance with the provisions of this Part".
- (b) In paragraph (b)(i), by deleting "等".
- (c) In paragraph (c), by deleting everything before "applicable" and substituting -
 "(c) who, without reasonable excuse, fails to perform, within the period specified in section 310(5), a duty to give another

person a notification required by section 310 in accordance with the provisions of this Part".

(d) In paragraph (d), by deleting "fails, without reasonable excuse," and substituting ", without reasonable excuse, fails".

319 By deleting subclauses (2) to (6).

320 In the heading, by deleting "進行調查的權力等" and substituting "等進行調查的權力".

320(1) (a) By adding "或持有" before ", 或".

(b) In paragraph (ii), by adding "或持有" before "或在".

320(2) (a) In paragraph (a)(i), by adding "的詳情" after "倉".

(b) In paragraph (a)(ii), by adding "的詳情" after "倉".

320(5) By adding "財政司" before "司長".

320(7) In the Chinese text, in paragraph (a), by adding "及" at the end.

321 In the heading, by adding "金融管理" before "專員".

321(3) By adding "金融管理" before "專員".

323 In the heading, by adding "上市" before "法".

323(3) By deleting "各別的".

323(4) By deleting everything after "shall be" and substituting -

"-

(a) made available at the listed corporation's registered office within 10 business days after the end of the period to which it relates; and

(b) published by the listed corporation at such time, in such manner and for such period as may be specified by the Commission by notice published in the Gazette."

323(9) By deleting "(4)" and substituting "(4)(a) or (b)".

323 By adding -

"(10) A notice published pursuant to

subsection (4)(b) is not subsidiary legislation."

324 In the heading, by adding "金融管理" before "專員".

324(3) By adding "金融管理" before "專員".

325 In the heading, by deleting everything after
"corporation".

325 By deleting subclauses (1) to (3).

325(4) (a) By deleting "subsections (5) and" and substituting
"subsection".

(b) In paragraph (a), by adding ", without reasonable
excuse," after "who".

325 By deleting subclause (5).

325(6) By adding "財政司" before "司長".

326(1) By deleting "323(8)" and substituting "323(8)(b)".

326(3) By deleting "specified period" and substituting "period
specified in subsection (2)".

- 326(5) By deleting "specified period" and substituting "period specified in subsection (2)".
- 327(1) By deleting "for the purposes of Divisions 2 to 5".
- 327(10) By deleting paragraph (b) and substituting -
- "(b) shall, for the purposes of Divisions 2 to 5 and for the purposes of -
 - (i) enabling members of the public to ascertain -
 - (A) the identities and the particulars of persons who are or were the true owners of, or have or had any interest or short position in, shares comprised in the relevant share capital of the listed corporation;
 - (B) the nature and the particulars of the interest or short position; and
 - (C) the capacity in which a person holds or held the interest or short position; and
 - (ii) providing the investing public with information to enable them to make

informed investment decisions,
be made available, subject to subsection (11),
for inspection in accordance with section
331."

328(1) By deleting everything after "冊" and before "的人" and substituting "(視屬何情況而定)的一個獨立部分，在擁有該等股份權益或持有該等股份的淡倉".

328 By deleting subclauses (3) and (4).

331(3) By deleting "specified period" and substituting "period specified in subsection (2)".

331(5) By deleting "specified period" and substituting "period specified in subsection (2)".

332(1) (a) In paragraph (a), by adding "(whether or not having or retaining an interest in other shares in or debentures of that corporation)" before the semicolon.

(b) In paragraph (d), by adding "of the listed corporation" before ", of".

(c) In paragraph (e) -

(i) by adding "(or part thereof)" after

"interest";

(ii) by deleting "第(2)款或(a)、(b)、(c)或(d)段" and substituting "(a)、(b)、(c)或(d)段或第(2)款".

(d) In paragraph (f), by deleting ", or the short position he has in those shares changes" and substituting "(whether or not having or retaining a short position in other shares in that corporation)".

- 332(2)
- (a) In paragraph (a), by deleting "the director" and substituting "a director".
- (b) In paragraph (b)(i), by adding ", and that interest has not previously been disclosed to the listed corporation and the Exchange Company under the Securities (Disclosure of Interests) Ordinance (Cap. 396) before its repeal under section 392" before "; or".
- (c) In paragraph (b)(ii), by deleting the comma and substituting a semicolon.
- (d) In paragraph (b), by deleting everything after subparagraph (ii).
- (e) In paragraph (d), by deleting everything before "and" and substituting -
- "(d) is a director or chief executive of a

listed corporation when a corporation becomes an associated corporation of the listed corporation".

- 332(5)
- (a) In paragraph (a), by deleting "or" at the end.
 - (b) In paragraph (b), by deleting the comma and substituting "; or".
 - (c) By adding -
 - "(c) any of his interest in the shares, which are the underlying shares of equity derivatives, on the exercise by, or against, him of rights under the equity derivatives,".
 - (d) By deleting "in -" and substituting "in the nature of his interest in the shares or debentures -".
 - (e) In paragraph (i) -
 - (i) by deleting "the nature of his interest in the shares or debentures";
 - (ii) by adding "is notifiable, or" before "has previously";
 - (iii) by adding a comma after "company";
 - (iv) by deleting "or" at the end.
 - (f) In paragraph (ii) -
 - (i) by adding "due to a change in" before "the terms";
 - (ii) by deleting the full stop and

substituting "; or".

(g) By adding -

"(iii) where another person, being a qualified lender, comes to have an interest in his shares or debentures by way of security."

333(1) By adding "(whether issued or unissued)" before the full stop.

333(2) (a) In paragraph (a), by adding "股本衍生" before "工具".

(b) In paragraph (b), by adding ", or against," before "him".

(c) In paragraph (c), by adding "股本衍生" before "工具".

(d) By deleting "提述股份" and substituting "提述上市法團或其任何相聯法團的股份的".

335(1) In paragraph (b)(ii), by deleting "該等子女" and substituting "上市法團的董事或最高行政人員的任何未成年子女(不論親生或領養, 而本身並非該法團的董事或最高行政人員者)".

335 By deleting subclauses (3) to (5).

335 By adding -

"(7A) For the purposes of subsections (6) and

(7), a person is entitled to exercise or control the exercise of voting power if -

- (a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or
- (b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled."

335 By deleting subclause (9).

336(2) By deleting "的任何一種" and substituting "中任何種類的".

336(5) In paragraph (a), by deleting "股份或債權證" and substituting "權益".

336(7) In paragraph (a), by adding "subscribe for the shares or debentures or" before "call".

336(9) In the Chinese text, by deleting paragraph (a) and substituting -

"(a) 是 -

- (i) 他有權要求另一人向他交付的；或
- (ii) 他有義務提取的，

有關衍生工具的相關股份的數目；".

- 336(10) (a) In paragraph (a)(i), by deleting "or" at the end.
- (b) In paragraph (a)(ii), by adding "or" at the end.
- (c) In paragraph (a), by adding -
- "(iii) pursuant to a right to require the other person to take delivery of the shares or debentures;".
- (d) In paragraph (b), by adding "subscribe for or" before "call".
- (e) In paragraph (c), by adding "or" at the end.
- (f) In paragraph (d) -
- (i) by adding "assignment or" before "settlement";
- (ii) by deleting "; or" and substituting a full stop.
- (g) By deleting paragraph (e).
- 336 By deleting subclause (12).
- 336(14) By deleting "settled by delivery of the shares" and substituting "by delivery of shares or otherwise.".
- 337 In the heading, by adding "**and short positions**" after "**Interests**".

337(1) (a) By adding ", and short positions," after "following interests".

(b) In paragraph (c), by deleting everything after "interest" and substituting -

"in shares or debentures comprised in the property under -

(i) a collective investment scheme authorized under section 103;

(ii) a pension scheme or a provident fund scheme registered under section 21 or 21A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
or

(iii) a qualified overseas scheme, of a holder, trustee or custodian of the scheme;".

(c) By deleting paragraph (e) and substituting -

"(e) such interests or interests of such a class, or such short positions or short positions of such a class, as are prescribed by regulations for the purposes of this section.".

337(3) By deleting everything after "interest" and substituting "in shares or debentures of a holder, trustee or custodian of a scheme referred to in subsection

(1)(c)(i), (ii) or (iii), comprised in the property under the scheme, shall not be disregarded under subsection (1)(c) if the holder, trustee or custodian (as the case may be) is also a manager of the scheme.".

- 337(4) (a) By deleting everything after "(1)(c)," and before "which -" and substituting "qualified overseas scheme" (合資格海外計劃) means a collective investment scheme, pension scheme or provident fund scheme".
- (b) In paragraph (a), by adding "and" at the end.
- (c) By deleting everything after paragraph (a) and substituting -

"(b) is authorized by or registered with the authority (if any) responsible for the authorization or registration of such scheme in the place where it is established, and complies with the requirements of such authority,

but does not include -

- (i) an arrangement operated by a person otherwise than by way of business;
- (ii) an arrangement under which less

than 100 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to the income or property of the arrangement;

(iii) an arrangement under which less than 50 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to 75% or more of the income or property of the arrangement; and

(iv) such other arrangement as may be specified by the Commission by notice published in the Gazette."

337 By deleting subclauses (6) to (9) and substituting -

"(6) A notice published pursuant to subsection (4)(a) or (iv) is not subsidiary legislation."

338(2) By deleting everything after "given" and substituting

"to the listed corporation concerned and the relevant exchange company at the same time or (if it is not practicable to do so) one immediately after the other."

338 By adding -

"(3A) For the purposes of subsection (3), the Commission may specify any form by referring in a notice published in the Gazette to the form as separately published by such electronic means as the Commission considers appropriate, instead of setting out the form in a notice published in the Gazette, whereupon the Commission shall for all purposes be regarded as having duly specified the form under subsection (3)."

338(5) By deleting "301條" and substituting "332條".

338(6) By deleting "內容實質" and substituting "實質內容".

338(7) By deleting "第(3)款提述" and substituting "依據第(3)款刊登".

339(2) In paragraph (b), by adding "at the time at which the relevant event occurs" after "case that".

- 340(1)
- (a) By adding a comma before "and his address".
 - (b) In paragraph (a)(ii), by deleting "339(2)" and substituting "339(2)(b)".
 - (c) In paragraph (b)(ii), by deleting "的該等" and substituting "的有關上市法團及其任何相聯法團的".
 - (d) In paragraph (c)(ii), by deleting "該等" and substituting "有關上市法團及其任何相聯法團的".
 - (e) In paragraph (d)(ii), by deleting "的該等" and substituting "有關上市法團及其任何相聯法團的".
 - (f) By adding -
 - "(fa) where he acquires or disposes of the interest referred to in paragraph (f)(i)(A) -
 - (i) through an on-exchange transaction, the highest price and the average price paid or received per share for the interest he acquires or disposes of (or, in the case that no price is paid or received, that fact); or
 - (ii) through an off-exchange transaction, the nature of the consideration given or received, and the highest

amount and the average amount of the consideration given or received per share, for the interest he acquires or disposes of (or, in the case that no consideration is given or received, that fact);".

- (g) In paragraph (g), by deleting "(f)(i)(A) or (ii)(A)" and substituting "(f)(ii)(A)".
- (h) In paragraph (g)(i), by adding "per unit" before "for".
- (i) In paragraph (g)(ii), by deleting "amount and nature of the consideration given or received" and substituting "nature of the consideration given or received, and the highest amount and the average amount of the consideration given or received per unit,".
- (j) By deleting paragraph (h).
- (k) In paragraph (k), by deleting "335(3), 335(7)" and substituting "335(2), 335(6)".
- (l) In paragraph (k)(i), by deleting "總數" and substituting "數目".
- (m) In paragraph (k)(ii), by adding ", and his relationship with," before "each".

- 340(3)
- (a) In paragraph (a), by deleting "in which".
 - (b) In paragraph (a)(i), by adding "in the shares in or debentures of which" before "he".
 - (c) In paragraph (a)(ii), by adding "in the shares in or debentures of which" before "he".
 - (d) In paragraph (a)(iii), by adding "in the shares in or debentures of which" after "interest".
 - (e) In paragraph (b)(i)(C), by adding "(或視作有所改變)" after "變".
 - (f) In the Chinese text, in paragraph (b)(ii)(A), by adding "或" at the end.
 - (g) In paragraph (b)(ii)(B), by deleting "; and" and substituting a full stop.
 - (h) By deleting paragraph (c).
- 340(4)
- (a) In paragraph (a), by deleting everything after "disclosure acquired" and substituting -
 - "-
 - (i) through an on-exchange transaction, the highest price and the average price paid per share for the interest acquired within 4 months immediately before the day on which the relevant event occurred; or
 - (ii) through an off-exchange transaction,

the nature of the consideration given, and the highest amount and the average amount of the consideration given per share, for the interest acquired within 4 months immediately before the day on which the relevant event occurred; and".

(b) In paragraph (b), by deleting everything after "his interest" and substituting -

"in the debentures which are the subject of the disclosure acquired -

(i) through an on-exchange transaction, the highest price and the average price paid per unit for the interest acquired within 4 months immediately before the day on which the relevant event occurred; or

(ii) through an off-exchange transaction, the nature of the consideration given, and the highest amount and the average amount of the consideration given per unit, for the interest acquired within 4 months immediately before the day on which the relevant event occurred."

340(5) (a) By deleting everything before ", means" and substituting -

"(5) For the purposes of subsection (1)(b), "percentage figure" (百分率數字), subject to subsections (6) and (7)".

(b) By deleting "any" and substituting "the".

(c) By deleting "of the same class".

340 By deleting subclause (6) and substituting -

"(6) For the purposes of subsection (5), where the listed corporation concerned or the associated corporation of the listed corporation grants to the person rights to subscribe for, or offers to the person, its shares, as part of a rights issue, the number of the issued shares in the listed corporation or associated corporation (as the case may be) at all times from the grant or offer (as the case may be) up to the completion or termination of the rights issue (whichever is the earlier) is taken to be the aggregate of -

(a) the number of the issued shares in the listed corporation or associated corporation (as the case may be) immediately before the grant or offer (as the case may be); and

(b) the number of the new shares to be issued upon the completion of the rights issue."

340(7) (a) By deleting everything before paragraph (a) and substituting -

"(7) For the purposes of subsection (5) -".

(b) In paragraph (a), by adding "in determining the number of shares in which a person is interested," before "there".

(c) In paragraph (b), by adding "the" before "particulars".

340(8) (a) By deleting everything before "means" and substituting -

"(8) For the purposes of subsection (1)(d), "percentage figure" (百分率數字)".

(b) By deleting "any" and substituting "the".

(c) By deleting "of the same class".

340 By deleting subclause (9) and substituting -

"(9) Where the share capital of the listed corporation or the associated corporation of the listed corporation is divided into different classes of shares -

- (a) a reference in this section to the number of shares in the listed corporation or associated corporation (as the case may be) in which the person is interested or has a short position shall be construed as a reference to the number of the shares in each of the classes taken separately; and
- (b) a reference in this section to a percentage of the number of the issued shares in the listed corporation or associated corporation (as the case may be) shall be construed as a reference to a percentage of the number of the issued shares in each of the classes taken separately."

340

By adding -

"(9A) In subsection (6), "completion" (完成), in relation to a rights issue, means the issue of shares in the listed corporation or the associated corporation of the listed corporation pursuant to the rights issue."

- 340(12) By deleting everything after "定" and before "工具支" and substituting "須在有關具報中，指明已就或可能須就(或已根據或可能須根據)該等股本衍生".
- 341 In the heading, by adding "金融管理" before "專員".
- 341(1) By deleting "section 335" and substituting "any regulations made, or rules made by the Commission, for the purposes of this Division".
- 341(2) By deleting "or section 335".
- 342(1) In paragraph (a), by deleting everything before "applicable" and substituting -
 "(a) who, without reasonable excuse, fails to perform, within the period specified in section 339(1)(a) or (b) or (2)(a) or (b) (as the case may be), a duty of disclosure arising under Division 7 in accordance with the provisions of this Part".
- 342 By deleting subclause (2).
- 343(1) By deleting everything after "positions" and substituting a full stop.

343(3) In paragraph (d), by deleting "付出" and substituting "支付".

343(4) In paragraph (c)(ii), by adding "登記" after "下".

343(11) By deleting paragraph (b) and substituting -

"(b) shall, for the purposes of Divisions 7 to 9
and for the purposes of -

(i) enabling members of the public to
ascertain -

(A) the identities and the
particulars of directors and
chief executives (as well as
their spouses and minor
children) who have or had any
interest or short position in
shares in, or any interest in
debentures of, the listed
corporation or any associated
corporation of the listed
corporation;

(B) the nature and the particulars
of the interest or short
position; and

(C) the capacity in which a person holds or held the interest or short position; and

(ii) providing the investing public with information to enable them to make informed investment decisions, be made available, subject to subsection (12), for inspection in accordance with section 346."

343(14) By adding "如此" after "在".

343(17) By deleting "在《公司條例》(第32章)第283條中," and substituting "《公司條例》(第32章)第283條中".

344(1) In paragraph (a), by adding "or any associated corporation of the corporation" after "corporation".

344(2) By adding "or any associated corporation of the corporation" after "in, the corporation".

344(4) By deleting "or to include the information in question in the register (as the case may be)".

345 In the heading, by deleting everything after "下" and

substituting "除去董事及最高行政人員權益及淡倉登記冊內的記項".

346 In the Chinese text, by deleting the heading and substituting "查閱董事及最高行政人員權益及淡倉登記冊".

346(3) (a) By deleting "specified period" and substituting "period specified in subsection (2)".

(b) By adding "而" after "冊".

346(5) By deleting "specified period" and substituting "period specified in subsection (2)".

347(1) (a) By deleting everything after "grounds to" and before the dash and substituting "conduct an investigation for the purposes of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of a listed corporation or able to control or materially influence its policy, he may appoint one or more inspectors to investigate and report for such purposes".

(b) In paragraph (a) -

(i) by adding "on" before "the ownership";

(ii) by deleting "any" and substituting "the".

(c) In paragraph (b), by adding "on" before "persons".

- (d) In paragraph (c), by adding "on" after the comma.
- (e) In paragraph (d), by deleting the comma and substituting a full stop.
- (f) By deleting everything after paragraph (d).

347(2) By adding "財政司" before "司長".

347(3) By adding "財政司" before "司長" wherever it appears.

347 By deleting subclause (5) and substituting -

"(5) Before appointing an inspector upon application under subsection (3), the Financial Secretary -

(a) shall give the applicants an estimate of the amount of the costs and expenses that may be incurred in connection with the investigation; and

(b) may require the applicants to give security in such amount as he may specify, which shall not be greater than the amount of the estimated costs and expenses, for payment of the costs and expenses of the investigation."

347(6) By deleting "other than a director or chief executive of a listed corporation" and substituting "who is subject to the requirements of Divisions 2 to 4".

347(7) (a) By deleting "308, 309,".

(b) By deleting "a director or chief executive of a listed corporation" and substituting "subject to the requirements of Divisions 7 to 9".

348 By adding "財政司" before "司長" where it twice appears.

349(1) By deleting "如此" and substituting "進行該項".

349(2) By adding "財政司" before "司長".

350(4) (a) By adding "only" after "inspector".

(b) By deleting "the answer are not" and substituting "answer shall not be".

350 By adding -

"(4A) Where an inspector requires a person to answer a question put to him under this section, the inspector shall ensure that the person has first been informed or reminded (as the case may

be) of the limitations imposed by subsection (4) on the admissibility in evidence of the requirement and of the question and answer."

352(2) (a) By adding "refuses to comply with an inspector's requirement to" before the dash.

(b) In paragraph (a), by deleting "refuses to produce to an" and substituting "produce to the".

(c) By deleting paragraph (b) and substituting -
"(b) attend before the inspector; or".

(d) In paragraph (c), by deleting "refuses to".

(e) By deleting everything after "inspector may" and substituting ", by originating summons or originating motion, make an application to the Court of First Instance in respect of the refusal."

352(3) By deleting everything after "Instance may" and substituting -

"then inquire into the case and -

(a) if the Court is satisfied that there is no reasonable excuse for the officer, agent or person (as the case may be) not to comply with the requirement under subsection (2), order the officer, agent or person

(as the case may be) to comply with the requirement within the period specified by the Court; and

- (b) if the Court is satisfied that the refusal was without reasonable excuse, punish the officer, agent or person (as the case may be), and any other person knowingly involved in the refusal, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court."

353(3) (a) In paragraph (b), by adding "for the purposes of this section" after "regulations".

(b) In paragraph (c), by deleting "printed and".

353 By adding "財政司" before "司長" wherever it appears.

354 In the heading, by deleting "費用" and substituting "開支".

354(1) (a) In paragraph (e), by adding ", subject to the limit of the estimate given under section 347(5)," after "(if any)".

(b) By deleting "費用" where it twice appears and substituting "開支".

(c) By adding "財政司" before "司長" wherever it appears.

354(2) By adding "財政司" before "司長".

354(4) By deleting everything after "the direction" and substituting "is made under subsection (3), until the appeal is withdrawn, abandoned or determined.".

354 By deleting subclause (5).

355 By deleting the clause.

356(1) By adding "財政司" before "司長".

356(2) In paragraph (c), by deleting "are" and substituting "is".

356(3) In paragraph (c), by deleting "are" and substituting "is".

356(4) In paragraph (a), by adding ", without reasonable excuse," after "who".

357 By adding "財政司" before "司長".

Part XV, In the heading, by deleting "**under section 319, 325 or**
Division 355".
12

New By adding immediately before clause 358 -

**"357A. Power of Court of First Instance to impose
restrictions on shares, etc. in case of
failure to provide information required
by listed corporation**

(1) Where -

(a) a notification is given by a listed corporation under section 320 to a person who is or was interested in shares comprised in the relevant share capital of the corporation that are registered on the Hong Kong register; and

(b) that person fails to give the corporation any information required by the notification within the time specified in it,

the listed corporation may apply to the Court of First Instance for an order directing that the shares in question be subject to the restrictions under this Division.

(2) Where -

- (a) a notification is given by a listed corporation under section 320 to a person who is or was interested in equity derivatives; and
- (b) that person fails to give the corporation any information required by the notification within the time specified in it,

the listed corporation may apply to the Court of First Instance for an order directing that the equity derivatives in question be subject to the restrictions under this Division.

(3) An order under subsection (1) or (2) (as the case may be) may be made notwithstanding any power contained in the applicant corporation's memorandum or articles enabling the listed corporation itself to impose similar restrictions on the shares or equity derivatives in question.

357B. Power of Financial Secretary to impose restrictions on shares, etc. in case of conviction of offences for non-compliance of notification requirements

(1) Where a person is convicted of an offence under section 319 or 342, the Financial Secretary may by order direct that -

(a) the shares in relation to which the offence was committed that are registered on the Hong Kong register; or

(b) if the shares in relation to which the offence was committed are unissued shares, those unissued shares which on issue are to be registered on the Hong Kong register,

shall, until further order, be subject to the restrictions under this Division.

(2) Without prejudice to subsection (1), where a person is convicted of an offence under section 319 or 342 and the shares in relation to which the offence was committed are the underlying shares of any equity derivatives, the Financial Secretary may by order direct that the equity derivatives shall, until further order, be subject to the restrictions under this Division.

(3) An order under subsection (1) or (2) (as the case may be) may be made notwithstanding any power contained in a corporation's memorandum or articles enabling the corporation itself to impose similar restrictions on the shares or equity derivatives in question.

357C. Power of Financial Secretary to impose restrictions on shares, etc. in connection with investigation

(1) If, in connection with an investigation under section 347, 348 or 349, it appears to the Financial Secretary that there is difficulty in finding out the relevant facts about any shares (whether issued or unissued), he may by order direct that -

(a) the shares registered on the Hong Kong register; or

(b) the unissued shares which on issue are to be registered on the Hong Kong register,

shall, until further order, be subject to the restrictions under this Division.

(2) If, in connection with an investigation under section 347, 348 or 349, it appears to the Financial Secretary that there is difficulty in finding out the relevant facts about any equity derivatives, he may by order direct that the equity derivatives shall, until further order, be subject to the restrictions under this Division."

358(3) In paragraph (c), by deleting "the Hong Kong register" and substituting "a register maintained in Hong Kong".

- 359(1) (a) In paragraph (a)(i), by deleting everything after "derivatives" and substituting "; or".
- (b) In paragraph (a)(ii) -
- (i) by deleting "such" where it twice appears;
 - (ii) by deleting "; or" and substituting a comma.
- (c) In paragraph (a), by adding after subparagraph (ii) -
- "knowing that such shares or equity derivatives are for the time being subject to the restrictions under this Division; or".
- (d) In paragraph (b), by deleting "such shares or equity derivatives" and substituting "shares or equity derivatives which, to his knowledge, are for the time being subject to the restrictions under this Division".
- 359(3) In paragraph (c), by deleting "the Hong Kong register" and substituting "a register maintained in Hong Kong".
- 360(1) By deleting "319 or 355" and substituting "357B or 357C".
- 360(2) (a) In paragraph (a), by deleting "325" and

substituting "357A or subsection (14)(a)".

(b) In paragraph (b), by deleting "319 or 355" and substituting "357B or 357C".

360(3) By adding "財政司" before "司長".

360(4) (a) In paragraph (b), by deleting "319 or 355" and substituting "357B or 357C".

(b) By adding "財政司" before "司長" wherever it appears.

360(5) (a) By deleting "also direct" and substituting "further order".

(b) By adding "因某項命令以致" before "受本".

360(6) (a) In paragraph (a), by deleting "325" and substituting "357A or subsection (14)(a)".

(b) By adding "向原訟法庭" before "提出".

360(7) By adding "財政司" before "司長".

360(9) (a) In paragraph (a), by deleting "325" and substituting "357A or subsection (14)(a)".

(b) By adding "向原訟法庭" before "提出的".

- 360(10) By adding "財政司" before "司長".
- 360(11) (a) By deleting "also direct" and substituting "further order".
(b) By adding "因某項命令以致" before "受本".
- 360(12) In paragraph (a), by deleting "325" and substituting "357A or subsection (14)(a)".
- 360(13) By adding "財政司" before "司長".
- 360(14) By deleting "also direct" and substituting "further order".
- 361(1) By adding ", or with the approval of the Court of First Instance or the Financial Secretary," after "Instance".
- 361(2) By adding "原訟法庭" before "命" where it twice appears.
- 361(3) By adding "a" before "part".
- 361(4) By adding "財政司" before "司長".
- 361(5) (a) In paragraph (a)(ii), by deleting "interests" and substituting "interest".

(b) In paragraph (b), by deleting "interests" where it twice appears and substituting "interest".

361(6) (a) By deleting "or (11)" and substituting ", (11) or (14)(b)".

(b) By adding "財政司" before "司長".

363 (a) By deleting everything after "notification" and before "if -" and substituting ", requirement, report or other document (however described) to be, or required to be, given, delivered, issued or sent for the purposes of this Part shall be regarded as duly given, delivered, issued or sent".

(b) In paragraph (a), by deleting "a listed" and substituting "a".

(c) By adding before paragraph (a)(i) -

"(ia) delivered to any officer of the corporation by hand;".

(d) In paragraph (a)(i), by deleting "of the listed" and substituting ", or the last known principal place of business, of the".

(e) By deleting paragraph (a)(ii).

(f) In paragraph (a)(iii), by deleting "facsimile number of the listed" and substituting "last known facsimile number of the".

(g) In paragraph (a)(iv), by deleting "electronic mail

address of the listed" and substituting "last known electronic mail address of the".

- (h) In paragraph (a)(v), by adding "for the purposes of this section" before the semicolon.
- (i) In paragraph (b)(iv), by adding "for the purposes of this section" before the semicolon.
- (j) In paragraph (c)(iv), by adding "for the purposes of this section" before the semicolon.
- (k) In paragraph (d)(iv), by adding "for the purposes of this section" before the semicolon.
- (l) In paragraph (d), by adding "金融管理" before "專員" wherever it appears.

364(2) By deleting "宜" and substituting "項".

New In Part XV, by adding -

"365A. Rules by Commission

The Commission may, after consultation with the Financial Secretary, make rules which are not inconsistent with regulations made by the Chief Executive in Council under section 365, to -

- (a) prescribe interests and short positions in shares comprised in the relevant share capital of a listed corporation, that are or are to be

dealt with pursuant to the provisions of a securities borrowing and lending agreement, to be disregarded for the purposes of section 314 subject to such conditions as may be specified in the rules;

(b) prescribe circumstances of change in the nature of interests for the purposes of section 304(11);

(c) provide for exclusions, subject to such conditions as may be specified in the rules, from the requirement to give notification under any provision of this Part in respect of interests, or short positions, in shares comprised in the relevant share capital of a listed corporation that are or are to be dealt with pursuant to the provisions of a securities borrowing and lending agreement.".

- 366(1)
- (a) By deleting "是在" wherever it appears and substituting "是".
 - (b) In paragraph (a), by deleting "另一" and substituting "任何其他".
 - (c) In paragraph (b), by adding "任何其" after "予".
 - (d) In paragraph (c) -
 - (i) by adding "任何其" after "許";
 - (ii) by deleting "另一" where it twice appears and substituting "該其他".

- 366(2)
- (a) In paragraph (a), by deleting everything after "public" and before the semicolon.
 - (b) By adding -
 - "(ba) the disclosure of information for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;
 - (bb) the disclosure of information by a person in connection with any judicial

or other proceedings to which the person is a party;

(bc) the disclosure of information in accordance with an order of a court, or in accordance with a law or a requirement made under a law;".

(c) In paragraph (c)(ii), by adding "金融管理" after "或".

366(3)

(a) By deleting paragraph (b).

(b) In paragraph (f), by adding "金融管理" after "向".

(c) By deleting paragraph (f)(i)(A) and substituting -

"(A) any business of a registered institution which constitutes a regulated activity for which the registered institution is registered; or".

(d) In paragraph (g), by adding -

"(via) the Official Receiver;".

(e) By deleting paragraph (h)(ii) and (iii) and substituting -

"(ii) to -

(A) the Hong Kong Society of Accountants;

(B) any other body prescribed by rules made under section 384 for the purposes of this subparagraph, with a view to its taking of, or otherwise for the purposes of, any disciplinary action against any of its members;".

(f) In paragraph (i), by deleting "discharge" and substituting "perform".

(g) In paragraph (j)(iii), by deleting "police" and substituting "Commissioner of Police".

(h) In paragraph (j)(iv), by adding "Commissioner of the" before "Independent".

(i) In paragraph (l), by adding "or received" after "obtained".

366(4) (a) By deleting "that comes to his knowledge" and substituting "obtained or received by him".

(b) By deleting "或機構".

366(5) In paragraph (b), by deleting "獲得該等資料的人能夠執行其職能或會協助該人" and substituting "該等資料的收受者能夠執行其職能或會協助該收受者".

366(7) (a) By deleting ", (b)" and substituting ", (h)(i)".

- (b) In paragraph (i), by deleting "or".
- (c) In paragraph (ii), by deleting everything after "public" and substituting a semicolon.
- (d) By adding -
 - "(iii) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;
 - (iv) the disclosure is in connection with any judicial or other proceedings to which the person or the other person referred to in paragraph (a) or (b) (as the case may be) is a party; or
 - (v) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law."

366(8)

- (a) In paragraph (ii), by deleting everything after "Commission" and substituting "consents to the disclosure;".
- (b) In paragraph (iii), by deleting everything after

"public" and substituting a semicolon.

(c) By adding -

"(iv) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;

(v) the disclosure is in connection with any judicial or other proceedings to which the auditor or the other person referred to in paragraph (a) or (b) (as the case may be) is a party; or

(vi) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law."

366

By adding -

"(8A) The Commission, in disclosing any information in any of the circumstances described in subsection (3) or in granting any consent pursuant to subsection (7)(i) or (8)(ii), may impose such conditions as it

considers appropriate."

- 366(10) (a) In paragraph (a)(i) -
- (i) by adding "(as the case may be)" before "pursuant";
 - (ii) by deleting ", (b)" and substituting ", (h)(i)".
- (b) In paragraph (a)(ii), by deleting "or (ii)" and substituting ", (ii), (iii), (iv) or (v)".
- (c) In paragraph (b)(i), by deleting "any other auditor" and substituting "an auditor (as the case may be)".
- (d) In paragraph (b)(ii), by deleting "or (iii)" and substituting ", (iii), (iv), (v) or (vi)".
- 366 By deleting subclause (11).
- 366(12) By deleting "財政司" before "司".
- 366(14) By adding "or 189A(1)(ii)" before the full stop.
- 366(15) In the definition of "指明人士", in paragraph (c), by deleting "任何現" and substituting "現".
- 367(1) By deleting "完成或安排完" and substituting

"達成或安排達".

368 By deleting subclauses (4) and (5) and substituting -

"(4) Subject to subsection (5), nothing in this Ordinance affects any claims, rights or entitlements which would, apart from this Ordinance, arise on the ground of legal professional privilege.

(5) Nothing in subsection (4) affects any requirement under this Ordinance to disclose the name and address of a client of a legal practitioner (whether or not the legal practitioner is qualified in Hong Kong to practise as counsel or to act as a solicitor).".

369(1) (a) By deleting everything after "auditor of a" and before "corporation, shall" and substituting "corporation which is listed, or of any associated corporation of the".

(b) In paragraph (a), by deleting everything after "that" and before "has" and substituting "at any time since the formation of the corporation the business of the corporation".

(c) In paragraph (b), by deleting "listed".

(d) In paragraph (c), by deleting "listed" where it first appears.

(e) In paragraph (d), by deleting everything after "that" and before "have" and substituting "at any time since the formation of the corporation persons involved in the management of the affairs of the corporation".

(f) In paragraph (e), by deleting "members of the listed" and substituting "at any time since the formation of the corporation members of the".

369(2)

(a) By deleting everything after "auditor of a" and before "corporation, subsection" and substituting "corporation which is listed, or of any associated corporation of the".

(b) In paragraph (a), by deleting "that was formerly a listed corporation" and substituting "which was formerly listed".

(c) In paragraph (a)(i), by deleting everything after "the" and substituting "corporation first referred to in this paragraph ceased to remain listed;".

(d) In paragraph (a)(ii), by deleting everything after "under" and substituting "paragraph (a), (b), (c), (d) or (e) of that subsection relate, instead of to the corporation referred to in such paragraph, to the corporation first referred to in this paragraph; and".

(e) In paragraph (a), by adding -

"(iii) the circumstances required to be suggested by the matter under paragraph (a), (d) or (e) of that subsection occurred at any time since the formation of the corporation but before the corporation ceased to remain listed; and".

(f) In paragraph (b), by deleting everything after "a corporation" and before ", in which" and substituting "which was formerly an associated corporation of a corporation which is listed".

(g) In paragraph (b)(i), by deleting everything after "after the" and substituting "corporation first referred to in this paragraph ceased to remain an associated corporation of the corporation which is listed; and".

(h) In paragraph (b)(ii), by deleting everything after "under" and before "was" and substituting "paragraph (a), (b), (c), (d) or (e) of that subsection relate, instead of to the corporation referred to in such paragraph, to the corporation of which the corporation first referred to in this paragraph".

369(3) By deleting everything after "以" and before "的任" and substituting "第(1)款提述的方式傳達第(1)款適用(不論是否參照第(2)款而適用)".

369(4) In paragraph (b), by adding "金融管理" before "專".

369(5) In the definition of "associated corporation", by deleting "listed" wherever it appears.

370 By renumbering the clause as clause 370(1).

370(1) By deleting "obstructs any other" and substituting ", without reasonable excuse, obstructs any specified".

370 By adding -

"(2) In this section, "specified person"

(指明人士) means -

(a) the Commission;

(b) any member, employee, or consultant, agent or adviser, of the Commission; or

(c) any person appointed to investigate any matter under section 175(1).".

- 372(2) By deleting everything after "則" and substituting "第(1)款不適用於提供該等資料。".
- 372(3) In paragraph (a), by deleting everything after "he," and before "any record" and substituting -
"otherwise than in purported compliance with a requirement to provide information imposed by or under any of the relevant provisions but in connection with the performance by a specified recipient of a function under any of the relevant provisions, provides to the specified recipient".
- 372(5) (a) By deleting "was".
(b) In paragraph (a), by adding "was" before "misled".
- 373(1) By adding "財政司" before "司長".
- 374(2) By deleting "(1) prevents" and substituting -
"(1) -
(a) affects any other law requiring or providing for a stay of any proceedings or action under this

Ordinance;

(b) prevents".

375 (a) By deleting "a court or".

(b) In paragraph (a)(iii), by deleting "a licence or an exemption" and substituting "any licence or registration".

(c) By deleting everything after paragraph (f) and substituting -

"it is sufficient for the Commission to establish, or to be satisfied as to, the matter referred to in paragraph (a), (b), (c), (d), (e) or (f) (as the case may be) on the standard of proof applicable to civil proceedings in a court of law.".

New By adding immediately after clause 378 -

"378A. Civil liability for false or misleading public communications concerning securities and futures contracts

(1) Subject to subsections (3) to (7),

where -

(a) a person is responsible for a relevant communication being made or issued to the public, or to a group of persons comprising

members of the public (including the shareholders of a listed corporation or the holders of listed securities);

- (b) the relevant communication concerns securities or futures contracts, or may affect the price of securities or the price for dealings in futures contracts;
- (c) the relevant communication is false or misleading in a material particular; and
- (d) the person knows that, or is reckless or negligent as to whether, the relevant communication is false or misleading in a material particular,

that person shall, whether or not he also incurs any other liability, be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of his acting, or refraining from acting in a manner in which he would otherwise have acted, in reliance on the relevant communication.

(2) For the purposes of subsection (1), a person responsible for a relevant communication being made or issued includes -

- (a) any person making or issuing it;
and
- (b) any person who in a material manner participated in, or approved, the making or issuing of it.

(3) No person shall be liable to pay compensation under subsection (1) to any other person in respect of a relevant communication unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.

(4) No person shall be liable to pay compensation under subsection (1) to any other person by reason only of the issue or reproduction of a relevant communication if -

- (a) the issue or reproduction of the relevant communication took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by

others;

(b) the contents of the relevant communication were not, wholly or partly, devised -

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(c) for the purposes of the issue or reproduction -

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the relevant communication; and

(d) at the time of the issue or

reproduction, he did not know that the relevant communication was false or misleading in a material particular.

(5) No person shall be liable to pay compensation under subsection (1) to any other person by reason only of the re-transmission of a relevant communication if -

(a) the re-transmission of the relevant communication took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;

(b) the contents of the relevant communication were not, wholly or partly, devised -

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(c) for the purposes of the re-transmission -

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the relevant communication;

(d) the re-transmission of the relevant communication was accompanied by a message to the effect, or was effected following acknowledgment by the persons to

whom it was re-transmitted of
their understanding, that -

(i) where the business was
carried on by him, he or
any officer, employee or
agent of his; or

(ii) where the business was
not carried on by him,
the person who carried
on the business or any
officer, employee or
agent of that person,

did not devise the contents of the
relevant communication, and
neither took responsibility for it
nor endorsed its accuracy; and

(e) at the time of the re-
transmission -

(i) he did not know that the
relevant communication
was false or misleading
in a material
particular; or

(ii) he knew that the
relevant communication
was false or misleading

in a material

particular, but -

(A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or

(B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the relevant communication was so false or misleading to the attention of a person in a position to take

steps to cause the re-transmission to be prevented (even if the re-transmission in fact took place).

(6) No person shall be liable to pay compensation under subsection (1) to any other person by reason only of the live broadcast of a relevant communication if -

(a) the broadcast of the relevant communication took place in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);

(b) the contents of the relevant communication were not, wholly or partly, devised -

(i) where he was the broadcaster, by himself or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, by himself;

(c) for the purposes of the broadcast -

(i) where he was the
broadcaster, he or any
officer, employee or
agent of his; or

(ii) where he was not the
broadcaster, he,
did not select, add to, modify or
otherwise exercise control over
the contents of the relevant
communication;

(d) in relation to the broadcast -

(i) where he was the
broadcaster, he; or

(ii) where he was not the
broadcaster, he believed
and had reasonable
grounds to believe that
the broadcaster,

acted in accordance with the terms
and conditions of the licence (if
any) by which he or the
broadcaster (as the case may be)
became entitled to broadcast as a
broadcaster and with any code of
practice or guidelines (however
described) issued under or

pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster; and

(e) at the time of the broadcast -

(i) he did not know that the relevant communication was false or misleading in a material particular; or

(ii) he knew that the relevant communication was false or misleading in a material particular, but -

(A) where he was the broadcaster, in the circumstances of the case he could not reasonably be expected to prevent the broadcast; or

(B) where he was not the broadcaster, in

the circumstances
of the case he has
taken all
reasonable steps to
bring the fact that
the relevant
communication was
so false or
misleading to the
attention of a
person in a
position to take
steps to cause the
broadcast to be
prevented (even if
the broadcast in
fact took place).

(7) Where an action is brought against a person under subsection (1) by reference to subsection (2)(b) in respect of a relevant communication, it is a defence for the person to prove -

(a) that he only participated in, or approved, the making or issuing of a part of the relevant communication and that the part

was not false or misleading in a material particular; or

- (b) where the action is brought on the basis that he participated in the making or issuing of the relevant communication, that at the time when it was made or issued, he opposed the making or issuing of it because it was false or misleading in a material particular.

(8) For the avoidance of doubt, where a court has jurisdiction to determine an action brought under subsection (1), it may, where it is, apart from this section, within its jurisdiction to entertain an application for an injunction, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(9) This section does not confer a right of action in any case to which section 40 of the Companies Ordinance (Cap. 32)(whether with or without reference to section 342E of that Ordinance) or section 107 applies.

(10) Nothing in this section affects, limits or diminishes any rights conferred on a

person, or any liabilities a person may incur, under the common law or any other enactment.

(11) In this section -

"issue" (發出), in relation to any material

(including any relevant communication),

includes publishing, circulating,

distributing or otherwise disseminating the

material or the contents thereof, whether -

(a) by any visit in person;

(b) in a newspaper, magazine, journal or other publication;

(c) by the display of posters or notices;

(d) by means of circulars, brochures, pamphlets or handbills;

(e) by an exhibition of photographs or cinematograph films;

(f) by way of sound or television broadcasting;

(g) by any information system or other electronic device; or

(h) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of

light, image or sound or any other
medium,

and also includes causing or authorizing
the material to be issued;

"relevant communication" (有關通訊) means any
communication, including any announcement,
disclosure and statement, and any
combination thereof."

379 In the heading, by adding "財政司" before
"司".

379(1) By adding "財政司" before "司".

380 In the heading, by adding "財政司" before
"司".

380(1) In paragraphs (a) and (b), by adding "財政司" before
"司".

381(3) By deleting "Subject to subsection (4), each" and
substituting "Each".

381 By deleting subclause (4).

- 381(6) In paragraph (c), by deleting everything after "collection" and substituting "and payment to the Commission of such levies."
- 382(1) In paragraph (a)(iii), by adding "金融管理" before "專".
- 382(2) By adding "金融管理" before "專".
- 382(3) By adding "金融管理" before "專".
- 382(4) In paragraph (c), by deleting "任何".
- 382(5) By adding "金融管理" before "專" where it twice appears.
- 383(1) By adding "財政司" before "司".
- 383(2) By adding "財政司" before "司".
- 384(1) (a) In paragraph (a), by deleting everything after "applications for" and before ", and" and substituting "licence and registration, the issue of licences and certificates of registration".

(b) In paragraph (b), by deleting "exemptions" where it twice appears and substituting "certificates of registration".

(c) In paragraph (d), by deleting "licences or exemptions" and substituting "licence or registration".

384(2) (a) By deleting "Subject to subsections (3) and (4), in" and substituting "In".

(b) By adding "財政司" before "司".

384 By deleting subclauses (3) and (4).

384(5) In paragraph (a), by deleting everything after "intermediaries are" and substituting "registered institutions, be regarded as the power to make rules in respect of the intermediaries only in relation to the businesses which constitute any regulated activities for which they are registered;".

384 By deleting subclauses (7) to (10).

New By adding -

"384A. General provisions for rules by Commission

(1) Notwithstanding any other provisions

of this Ordinance but subject to subsection (3), where the Commission proposes to make rules under any provision of this Ordinance, it shall publish a draft of the proposed rules, in such manner as it considers appropriate, for the purpose of inviting representations on the proposed rules by the public.

(2) Where the Commission makes any rules under any provision of this Ordinance after a draft is published under subsection (1) in relation to the rules, it shall -

(a) publish, in such manner as it considers appropriate, an account setting out in general terms -

(i) the representations made on the draft; and

(ii) the response of the Commission to the representations; and

(b) where the rules are made with modifications which in the opinion of the Commission result in the rules being significantly different from the draft, publish, in such manner as it considers appropriate, details of the

difference.

(3) Subsections (1) and (2) do not apply if the Commission considers, in the circumstances of the case, that -

(a) it is inappropriate or unnecessary that such subsections should apply; or

(b) any delay involved in complying with such subsections would not be -

(i) in the interest of the investing public; or

(ii) in the public interest.

(4) Notwithstanding any other provisions of this Ordinance, the Commission shall consult the Monetary Authority regarding rules it proposes to make under any provision of this Ordinance in so far as such rules apply to authorized financial institutions by reason of their being registered institutions, or associated entities of intermediaries.

(5) For the avoidance of doubt, nothing in subsections (1) to (4) affects any other requirements which, apart from such subsections, apply to the making of any rules

under any provision of this Ordinance.

(6) Where rules are made by the Commission under any provision of this Ordinance and it has not been provided in this Ordinance that the rules may provide that a contravention of any specified provision of the rules constitutes an offence, the Chief Executive in Council may make regulations to provide that a person who contravenes any specified provision of the rules that applies to him commits an offence and is liable to a specified penalty not exceeding -

(a) on conviction on indictment a fine of \$500,000 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(7) Except as otherwise provided in this Ordinance, rules made by the Commission under any provision of this Ordinance may provide that, subject to the terms and conditions specified in the rules, the provisions of this Ordinance specified in the rules -

(a) shall not have effect, or shall only have effect to a specified

extent, in relation to any specified person or to members of a specified class of persons -

(i) who is or are or may be required to be licensed by reason only of his or their doing anything that is incidental to another business;

(ii) who does not or do not, on behalf of any other person, deal in securities or futures contracts or trade in interests in collective investment schemes or leveraged foreign exchange contracts; or

(iii) who is or are or may be required to be licensed by reason only of his or their entering into a specified class of transactions;

(b) shall not have effect in relation to any specified transaction or

class of transactions entered into by any specified person or class of persons;

- (c) shall, where they require any application, statement, notice or other document (however described) to be lodged or filed with or submitted to the Commission, be regarded as having been complied with if the application, statement, notice or other document (as the case may be) is lodged or filed with or submitted to any other specified person.

(8) Except as otherwise provided in this Ordinance, rules made by the Commission under any provision of this Ordinance -

- (a) may be of general or special application and may be made so as to apply only in specified circumstances;
- (b) may make different provisions for different circumstances and provide for different cases or classes of cases;
- (c) may authorize any matter or thing

to be determined, applied or regulated by any specified person;

(d) may provide for the exercise of discretion in specified cases;

(e) may, for the better and more effectual carrying into effect of any provision of this Ordinance or the rules, include any savings, transitional, incidental, supplemental, evidential and consequential provisions (whether involving the provisions of any principal legislation or the provisions of any subsidiary legislation).".

385(2) (a) In paragraph (a), by deleting everything after "code to" and before "provide".

(b) In paragraph (b), by deleting everything after "code to" and before "provide".

385(3) (a) In paragraph (a) -

(i) by deleting "exempt persons," and substituting "registered institutions,";

(ii) by deleting everything after

"constitute" and substituting "any regulated activities for which they are registered";

(iii) by deleting "訂立" where it twice appears and substituting "刊登或發表".

(b) In paragraph (b), by deleting "訂立" where it twice appears and substituting "刊登或發表".

385(5) In paragraph (a), by deleting "the" where it secondly appears.

385(9) (a) By deleting "exempt persons" and substituting "registered institutions".

(b) By adding "認可財務" before "機構, ".

(c) By adding "金融管理" before "專".

386 (a) By deleting everything after "363" and before "shall" and substituting "and any rules made under section 226 or 260, any written notice or direction or other document (however described) to be, or required to be, issued or served (however described) to or on any person, other than the Commission, for the purposes of this Ordinance".

(b) By adding before paragraph (b)(i) -

"(ia) delivered to any officer of the company by hand;".

(c) In paragraph (e)(i), by deleting "an" and substituting "any".

388(1)

(a) By deleting "The" and substituting "Except as otherwise provided in sections 315 and 338, the".

(b) By adding before paragraph (a) -

"(aa) include directions and instructions relating to the compilation of the application, statement, notice, return or other document (as the case may be);".

(c) In paragraph (a), by deleting everything after "particulars in" and substituting "it; and".

(d) In paragraph (b), by deleting "有關文件" and substituting "申請、陳述、通知、報表或其他文件(視屬何情況而定)".

(e) By deleting "(在本條中統稱 "有關文件")".

388

By adding -

"(1A) For the purposes of subsection (1), the Commission may specify any form by referring in a notice published in the Gazette

to the form as separately published by such electronic means as the Commission considers appropriate, instead of setting out the form in a notice published in the Gazette, whereupon the Commission shall for all purposes be regarded as having duly specified the form under subsection (1).".

- 388(3) (a) In paragraph (a), by deleting "有關文件" and substituting "申請、陳述、通知、報表或其他文件(不論實際如何稱述)".
- (b) In paragraph (b), by deleting "有關文件" and substituting "申請、陳述、通知、報表或其他文件(視屬何情況而定)".
- (c) By adding -
 "(ia) is compiled in accordance with such directions and instructions as are included in the form;".
- (d) In paragraph (ii), by deleting "made in respect of the particulars in it,".
- (e) By deleting "非該有關文件" and substituting "非該申請、陳述、通知、報表或其他文件(視屬何情況而定)".
- 388(4) By deleting "by notice published pursuant to" and substituting "under".

388(5) By adding "(ia)," after "(i),".

389 In paragraph (b), by adding "is" after "the
omission".

390 By renumbering the clause as clause 390(1).

390(1) By deleting everything before "which is regulated"
and substituting -

"(1) Subject to subsection (2), the
Gambling Ordinance (Cap. 148) shall not apply
to any transaction or activity".

390 By adding -

"(2) The Commission may make rules to
prescribe any class of transactions or
activities (being transactions or activities to
which the Gambling Ordinance (Cap. 148) would
apart from this section apply), whether by
reference to the nature of the transactions or
activities or all or any of the parties to or
persons involved in the transactions or
activities or otherwise, as a class of
transactions or activities to which that
Ordinance shall apply, whereupon that Ordinance

shall have application accordingly.".

Schedule 1 Within the square brackets, by deleting everything after "66," and substituting "160, 166, 169, 169A, 194 & 392 & Sch. 8".

Schedule 1, (a) In the definition of "accredited", by adding
Part 1, "with the Commission's approval" after
section 1 "corporation".

(b) In the definition of "bank", by deleting everything after "to" and before "it" and substituting -

"-

(a) the banking business within the meaning of the Banking Ordinance (Cap. 155) as carried on by an authorized financial institution;
or

(b) the business of taking deposits within the meaning of that Ordinance as carried on by an authorized financial institution,
whether".

(c) By deleting the definition of "broadcast live".

(d) In the definition of "client money" -

(i) in paragraph (b), by deleting "an

exempt person" and substituting "a registered institution";

(ii) in paragraph (b), by deleting "the exempt person" wherever it appears and substituting "the registered institution";

(iii) in paragraph (b)(i), by deleting "is exempt" and substituting "is registered".

(e) In the definition of "client securities" -

(i) in paragraph (b), by deleting "an exempt person" and substituting "a registered institution";

(ii) in paragraph (b), by deleting "the exempt person" wherever it appears and substituting "the registered institution";

(iii) in paragraph (b)(i), by deleting "is exempt" and substituting "is registered".

(f) By deleting the definition of "computer".

(g) In the definition of "controlling entity" -

(i) in paragraph (c)(ii), by deleting "vary" and substituting "amend";

(ii) in paragraph (c), by deleting "附有"

and substituting "帶有".

- (h) By deleting the definition of "dealing in futures contracts".
- (i) By deleting the definition of "dealing in securities".
- (j) In the definition of "document", by deleting "computer input or output" and substituting "input or output into or from an information system".
- (k) In the definition of "executive director" -
 - (i) by deleting "a" and substituting "the chairman of the Commission, or any other";
 - (ii) by deleting "section 2" and substituting "section 1".
- (l) In the definition of "executive officer" -
 - (i) in paragraph (b), by deleting "an exempt person" and substituting "a registered institution";
 - (ii) in paragraph (b), by deleting "the exempt person" and substituting "the registered institution".
- (m) By deleting the definition of "exempt person".
- (n) By deleting the definition of "exemption".
- (o) In the definition of "financial year" -
 - (i) in paragraph (b), by deleting "a

licensed corporation" where it twice appears and substituting "an intermediary";

(ii) in paragraph (b)(ii), by adding "金融管理" before "專" where it twice appears.

- (p) By deleting the definition of "Independent Commission Against Corruption".
- (q) In the definition of "information system", by deleting everything after "means" and substituting "an information system as defined in section 2(1) of the Electronic Transactions Ordinance (Cap. 553)";".
- (r) In the definition of "intermediary", by deleting "an exempt person" and substituting "a registered institution".
- (s) By deleting the definition of "licensed or exempt person".
- (t) In the definition of "member", by adding "(whether or not acting as the chairman or deputy chairman)" before "or".
- (u) In the definition of "Monetary Authority", by deleting "(專" and substituting "(金融管理專".
- (v) In the definition of "money laundering activities", by deleting everything after

"property" and substituting -

"-

(a) which is the proceeds obtained from the commission of an offence under the laws of Hong Kong, or of any conduct which if occurred in Hong Kong would constitute an offence under the laws of Hong Kong; or

(b) which in whole or in part, directly or indirectly, represents such proceeds,

not to appear to be or so represent such proceeds;".

(w) In the definition of "non-executive director", by deleting "section 2" and substituting "section 1".

(x) In the definition of "Ombudsman", by deleting "appointed under section 3" and substituting "referred to in section 3(1)".

(y) By deleting the definition of "opportunity of being heard".

(z) In the definition of "other collateral" -

(i) in paragraph (b), by deleting "an exempt person" and substituting "a registered institution";

(ii) in paragraph (b), by deleting "the exempt person" wherever it appears and substituting "the registered institution";

(iii) in paragraph (b)(i), by deleting "is exempt" and substituting "is registered";

(iv) in paragraph (b)(B), by deleting "他" and substituting "它".

(za) In the definition of "professional investor" -

(i) in paragraph (a), by adding ", or any person authorized to provide automated trading services under section 95(2) of this Ordinance" before the semicolon;

(ii) in paragraph (b), by deleting "licensed or exempt person" and substituting "intermediary";

(iii) by deleting paragraph (e);

(iv) by deleting paragraphs (f) and (g) and substituting -

"(f) any scheme which -

(i) is a collective investment scheme authorized under

section 103 of
this Ordinance; or

(ii) is similarly
constituted under
the law of any
place outside Hong
Kong and, if it is
regulated under
the law of such
place, is
permitted to be
operated under the
law of such place,

or any person by whom any
such scheme is operated;

(g) any registered scheme as
defined in section 2(1) of
the Mandatory Provident Fund
Schemes Ordinance (Cap.
485), or its constituent
fund as defined in section 2
of the Mandatory Provident
Fund Schemes (General)
Regulation (Cap. 485 sub.
leg.), or any person who, in
relation to any such

registered scheme, is an approved trustee or service provider as defined in section 2(1) of that Ordinance or who is an investment manager of any such registered scheme or constituent fund;"

(v) by adding -

"(ga) any scheme which -

(i) is a registered scheme as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426); or

(ii) is an offshore scheme as defined in section 2(1) of that Ordinance and, if it is regulated under the law of the place in which it is domiciled, is

permitted to be
operated under the
law of such place,
or any person who, in
relation to any such scheme,
is an administrator as
defined in section 2(1) of
that Ordinance;" ;

(vi) in paragraph (h), by deleting "; or"
and substituting ", any institution
which performs the functions of a
central bank, or any multilateral
agency;" ;

(vii) by adding -

"(ha) except for the purposes of
Schedule 6 to this
Ordinance, any corporation
which is -

(i) a wholly owned
subsidiary of -

(A) an
intermediary,
or any other
person
carrying on
the business

of the
provision of
investment
services and
regulated
under the law
of any place
outside Hong
Kong; or

(B) an authorized
financial
institution,
or any bank
which is not
an authorized
financial
institution
but is
regulated
under the law
of any place
outside Hong
Kong;

(ii) a holding company
which holds all
the issued share

capital of -

- (A) an intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong; or
- (B) an authorized financial institution, or any bank which is not an authorized financial institution but is regulated

under the law
of any place
outside Hong
Kong; or

(iii) any other wholly
owned subsidiary
of a holding
company referred
to in subparagraph
(ii); or";

(viii) in paragraph (i), by deleting
everything after "class" and
substituting -

"which is prescribed by rules made
under section 384 of this
Ordinance for the purposes of
this paragraph as within the
meaning of this definition for
the purposes of the provisions of
this Ordinance, or to the extent
that it is prescribed by rules so
made as within the meaning of
this definition for the purposes
of any provision of this
Ordinance;";

(zb) In the definition of "recognized counterparty" -

(i) in paragraph (b), by deleting everything after "so licensed" and before "; or";

(ii) in paragraph (c), by adding "而藉" before "根".

(zc) In the definition of "relevant provisions", in paragraph (b), by adding "or 68" after "25".

(zd) In the definition of "securities collateral" -

(i) in paragraph (b), by deleting "an exempt person" and substituting "a registered institution";

(ii) in paragraph (b), by deleting "the exempt person" wherever it appears and substituting "the registered institution";

(iii) in paragraph (b)(i), by deleting "is exempt" and substituting "is registered";

(iv) in paragraph (b)(B), by deleting "他" and substituting "它".

(ze) By adding -

"Commissioner of the Independent Commission Against Corruption" (廉政專員) means the Commissioner of the Independent

Commission Against Corruption
appointed under section 5 of the
Independent Commission Against
Corruption Ordinance (Cap. 204);

"dealing" (交易) -

(a) in relation to securities,
means, whether as principal
or agent, making or offering
to make an agreement with
another person, or inducing
or attempting to induce
another person, to enter
into or to offer to enter
into an agreement -

(i) for or with a view
to acquiring,
disposing of,
subscribing for or
underwriting
securities; or

(ii) the purpose or
pretended purpose
of which is to
secure a profit to
any of the parties
from the yield of

securities or by
reference to
fluctuations in
the value of
securities; or

(b) in relation to futures
contracts, means, whether as
principal or agent -

(i) making or offering
to make an
agreement with
another person to
enter into, or to
acquire or dispose
of, a futures
contract;

(ii) inducing or
attempting to
induce another
person to enter
into, or to offer
to enter into, a
futures contract;
or

(iii) inducing or
attempting to

induce another
person to acquire
or dispose of a
futures contract;

"live broadcast" (直播), in relation to any
material (however described), means
having the material broadcast without
its being recorded in advance;

"multilateral agency" (多邊機構) means a body
specified in Part 3A;

"Official Receiver" (破產管理署署長) means the
Official Receiver appointed under
section 75 of the Bankruptcy Ordinance
(Cap. 6);

"public" (公眾、大眾) means the public of
Hong Kong, and includes any class of
that public;

"registered" (註冊) means registered under
section 118 of this Ordinance, and
"registration" (註冊) shall be
construed accordingly;

"registered institution" (註冊機構) means an
authorized financial institution which
is registered under section 118 of
this Ordinance;".

- (zf) In the definition of "已廢除的《交易所及結算所(合併)條例》", by adding "》" before "(第".
- (zg) By deleting the definition of "司長".
- (zh) In the definition of "收購要約" -
- (i) by deleting "重的該等" and substituting "例的該等";
 - (ii) by adding "該類別股份的" after "外的" where it secondly appears;
 - (iii) by deleting "重的該類" and substituting "例的該類".
- (zi) In the definition of "有聯繫實體", in paragraph (b), by adding "在香港" before "收".
- (zj) In the definition of "期貨市場" -
- (i) in paragraph (i), by deleting "章" and substituting "則";
 - (ii) in paragraph (ii), by deleting "該" before "市";
 - (iii) in paragraph (ii), by deleting "章" and substituting "則".
- (zk) In the definition of "集體投資計劃", in paragraph (v), by deleting "按" and substituting "保證".

- (a) In paragraph (a), by deleting "擁有或與其有聯繫者共

- section 6(1) 同" and substituting "或聯同其任何有聯繫者".
- (b) In paragraph (a)(ii), by adding "任何" after "其".
- (c) In paragraph (b) -
- (i) by deleting "持有或聯同其有聯繫者共同" and substituting "或聯同其任何有聯繫者";
- (ii) by adding "任何" before "有聯繫者)" where it twice appears.

- Schedule 1,
Part 1,
section 6(2)
- (a) By deleting "擁有或聯同其有聯繫者共同" and substituting "或聯同其任何有聯繫者".
- (b) By adding "任何" before "有聯繫者)" where it twice appears.

- Schedule 1,
Part 1,
section 7
- (a) In the heading, by adding "的" after "團".
- (b) By adding "(however described) as those" before "of".

Schedule 1,
Part 1

By adding -

"7A. References to interest of investing public

In this Ordinance, a reference to the interest of the investing public does not include any interest the taking into consideration of which is or is likely to be

contrary to the public interest."

Schedule 1,
Part 1,
section 9

- (a) In paragraphs (a)(ii) and (b), by adding "(1)" after "113".
- (b) In paragraph (b), by deleting everything before "for or" and substituting -

"(b) a person shall be regarded as carrying
on a regulated activity for an
intermediary if he performs".
- (c) By deleting paragraph (c)(ii).

Schedule 1,
Part 2

By deleting the Part and substituting -

"PART 2

SPECIFIED FUTURES EXCHANGES

1. Australian Stock Exchange
2. Bourse de Montréal Inc.
3. Chicago Board of Trade
4. Chicago Board Options Exchange
5. Chicago Mercantile Exchange Inc.
6. Commodity Exchange, Inc. (New York)
7. Eurex
8. Euronext Amsterdam
9. Hong Kong Futures Exchange Limited
10. Korea Stock Exchange
11. London International Financial Futures and

Options Exchange

12. London Metal Exchange
13. Marché a Terme International de France
14. Marché des Options Négociables de Paris
15. New York Cotton Exchange, Inc.
16. New York Futures Exchange
17. New York Mercantile Exchange
18. New Zealand Futures and Options Exchange
19. Osaka Securities Exchange
20. Pacific Exchange
21. Philadelphia Stock Exchange
22. Singapore Exchange Derivatives Trading
Limited
23. Stockholmsbörsen
24. Sydney Futures Exchange, Ltd.
25. Tokyo Grain Exchange
26. Tokyo International Financial Futures
Exchange
27. Tokyo Stock Exchange
28. Winnipeg Commodities Exchange Inc."

Schedule 1,
Part 3

By deleting the Part and substituting -

"PART 3

SPECIFIED STOCK EXCHANGES

1. American Stock Exchange

2. Australian Stock Exchange
3. Bolsa de Madrid
4. Borsa Italiana S.p.A.
5. Bourse de Montréal Inc.
6. Copenhagen Stock Exchange
7. Deutsche Börse AG
8. Euronext Amsterdam
9. Euronext Brussels
10. Euronext Paris
11. Helsinki Exchanges
12. Japanese Association of Securities Dealers
Automated Quotations
13. Korea Stock Exchange
14. Kuala Lumpur Stock Exchange
15. London Stock Exchange
16. Luxembourg Stock Exchange
17. Nagoya Stock Exchange
18. National Association of Securities Dealers
Automated Quotations
19. New York Stock Exchange
20. New Zealand Stock Exchange
21. Osaka Securities Exchange
22. Oslo Børs
23. Philippine Stock Exchange Inc.
24. Singapore Exchange Securities Trading
Limited

25. The Stock Exchange of Hong Kong Limited
26. Stock Exchange of Thailand
27. Stockholmsbörsen
28. SWX Swiss Exchange
29. Tokyo Stock Exchange
30. Toronto Stock Exchange
31. Wiener Börse AG".

Schedule 1 By adding -

"PART 3A

MULTILATERAL AGENCIES

1. The African Development Bank
2. The Asian Development Bank
3. The European Bank for Reconstruction and
Development
4. The European Investment Bank
5. The Inter-American Development Bank
6. The International Bank for Reconstruction
and Development (commonly known as the
World Bank)
7. The International Finance Corporation (an
affiliate of the World Bank)".

Schedule 2, Part 1, section 1 In the subheading before the section, by adding "**other**" before "**members**".

Schedule 2, Part 1, section 1 By deleting everything after "The Commission" and substituting -

"shall consist of a chairman and such number of executive directors and non-executive directors as is determined by the Chief Executive, all of whom shall be appointed by the Chief Executive as follows -

(a) the number of members of the Commission shall not be less than 8; and

(b) the majority of the members of the Commission shall be non-executive directors of the Commission.".

Schedule 2, Part 1, section 2 By deleting the section and substituting -
"2. The chairman of the Commission shall, by virtue of holding that office, be regarded as an executive director of the Commission.".

Schedule 2, Part 1, section 3 By deleting "sections 1 and 2" and substituting "section 1".

Schedule 2,
Part 1,
section 7

- (a) In paragraph (a), by deleting "作出委任" and substituting "委任證監會副主席".
- (b) In paragraph (b), by adding "證監會" before "副".
- (c) By adding "財政司" before "司".

Schedule 2,
Part 1,
section 8

- (a) In paragraph (a), by adding "財政司" before "司".
- (b) In paragraph (c) -
 - (i) by deleting "no longer unable" and substituting "able";
 - (ii) by deleting "due to illness, absence from Hong Kong or any other cause".

Schedule 2,
Part 1,
section 16

By deleting everything after "is" and substituting "not less than one third of the executive directors of the Commission and not less than one third of the non-executive directors of the Commission."

Schedule 2,
Part 1,
section 20

By adding "財政司" before "司".

Schedule 2,
Part 1,
section 21

In paragraph (b), by deleting everything after "by" and substituting -

"such number of members of the Commission as -

- (i) would include all of the members of the

Commission who are, at any time when the resolution is made available for signature, present in Hong Kong and capable of signing the resolution; and
(ii) is also not less than one third of the executive directors of the Commission and not less than one third of the non-executive directors of the Commission,".

Schedule 2, Part 1, section 22 In paragraph (b), by deleting "executive directors or non-executive directors" and substituting "members".

Schedule 2, Part 1, section 23 By deleting everything after "signatures of" and substituting "such number of members of the Commission as is specified in section 21(b)(i) and (ii).".

Schedule 2, Part 1, section 24 (a) By deleting "an executive director or non-executive director" where it twice appears and substituting "a member".
(b) In paragraph (a), by deleting everything after "signature of the" and substituting "member; and".
(c) In paragraph (b), by adding "項" after "為該".

Schedule 2, Part 1, section 27 (a) In paragraph (b), by adding "other" before "executive".

- (b) In paragraph (c), by deleting "其他8至12名人士" and substituting "8至12名其他成員".

Schedule 2,
Part 1,
section 31

By deleting everything after "根據" and substituting -
"第 27 (b) 或 (c) 條委任的諮詢委員會成員, 可隨時 -

(a) (如根據第 27 (b) 條委任該成員) 以書面通知證
監會而辭職;

(b) (如根據第 27 (c) 條委任該成員) 以書面通知行
政長官而辭職。".

Schedule 2,
Part 2,
section 2

(a) In paragraph (17), by adding "財政司" before "司".

(b) In paragraph (31), by adding "財政司" before "司".

(c) In paragraph (42), by adding "財政司" before "司".

(d) In paragraph (60), by adding "財政司" before "司".

(e) In paragraph (67), by deleting "issue" and
substituting "make".

(f) In paragraph (71), by deleting ", 198 or 199" and
substituting "or 198".

(g) In paragraph (73), by deleting "(1)".

(h) By adding -

"(75A) to specify the time at which a specified
decision is to take effect, under section
224(3) of this Ordinance;".

(i) In paragraph (77), by adding "(a)" after "(2)".

- (j) In paragraph (80), by adding "財政司" before "司".
- (k) In paragraph (83), by adding "財政司" before "司".

Schedule 3, By deleting "(1) or (3)" and substituting "(3) or
Part 6,
section 3(7) (4)".

Schedule 4 Within the square brackets, by deleting "& Sch. 9".

Schedule 4, By deleting the Part.
Part 3

Schedule 4, By deleting the Part and substituting -
Part 4

"PART 4

EXEMPTED BODIES

1. The Government.
2. Hong Kong Housing Authority.
3. Airport Authority.
4. Kowloon-Canton Railway Corporation.
5. Urban Renewal Authority.
6. Hong Kong Export Credit Insurance Corporation.
7. Hong Kong Science and Technology Parks Corporation.
8. Hong Kong Productivity Council.
9. Hong Kong Tourism Board.
10. Hong Kong Trade Development Council.
11. Any other corporation which has any of its shares listed and any wholly owned subsidiary of such a corporation, whether incorporated in Hong Kong or elsewhere."

Schedule 6 Within the square brackets, by deleting everything after "139 &" and substituting "Sch. 1".

Schedule 6, (a) In the definition of "advising on corporate
Part 2 finance" -

(i) in paragraph (c), by adding "in respect of securities" after "restructuring";

(ii) by adding -

"(ia) a person who is licensed for Type 1 regulated activity who gives such advice wholly incidental to the carrying on of that regulated activity;

(ib) an authorized financial institution which is registered for Type 1 regulated activity which gives such advice wholly incidental to the carrying on of that regulated activity;

(ic) an individual -

(A) whose name is entered in the register maintained by the Monetary Authority

under section 20 of the
Banking Ordinance (Cap.
155) as engaged in respect
of Type 1 regulated
activity by an authorized
financial institution
registered for that
regulated activity; and

(B) who gives such advice
wholly incidental to the
carrying on of that
regulated activity;"

(iii) in paragraph (iii), by deleting "a";

(iv) in paragraph (vi)(B), by deleting "or a
section of the public".

(b) In the definition of "advising on futures
contracts" -

(i) in paragraph (iii), by deleting "exempt"
and substituting "registered";

(ii) in paragraph (iv), by deleting everything
after "individual -" and substituting -

"(A) whose name is entered in the
register maintained by the
Monetary Authority under
section 20 of the Banking
Ordinance (Cap. 155) as engaged

in respect of Type 2 regulated activity by an authorized financial institution registered for that regulated activity; and

(B) who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;"

(iii) in paragraph (vi), by deleting "a" where it twice appears;

(iv) in paragraph (ix)(B), by deleting "or a section of the public".

(c) In the definition of "advising on securities" -

(i) in paragraph (iii), by deleting "exempt" and substituting "registered";

(ii) in paragraph (iv), by deleting everything after "individual -" and substituting -

"(A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution

registered for that regulated activity; and

(B) who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;"

(iii) in paragraph (vi), by deleting "a" where it twice appears;

(iv) in paragraph (ix)(B), by deleting "or a section of the public".

(d) In the definition of "asset management" -

(i) in paragraph (c), by deleting "exempt" and substituting "registered";

(ii) in paragraph (d), by deleting everything after "individual -" and substituting -

"(i) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 or Type 2 (as the case may be) regulated activity by an authorized financial institution registered for that regulated activity; and

(ii) who provides such service wholly incidental to the carrying on of that regulated activity;" ;

(iii) in paragraph (f), by deleting "a".

(e) In the definition of "automated trading services" -

(i) in paragraph (a), by adding "in a way that forms or results in a binding transaction in accordance with established methods, including any method commonly used by a stock market or futures market" after "accepted";

(ii) in paragraph (b), by adding "in a way that forms or results in a binding transaction in accordance with established methods, including any method commonly used by a stock market or futures market" after "contracts";

(iii) by deleting paragraph (c) and substituting -

"(c) transactions -

(i) referred to in paragraph (a);

(ii) resulting from the activities referred to in paragraph (b);

or

(iii) effected on, or
subject to the rules
of, a stock market or
futures market,
may be novated, cleared,
settled or guaranteed,".

(f) In the definition of "dealing in futures
contracts" -

(i) in paragraph (ii)(A), by deleting
"exempt" and substituting "registered";

(ii) by deleting paragraph (ii)(B) and
substituting -

"(B) whose name is entered in the
register maintained by the
Monetary Authority under
section 20 of the Banking
Ordinance (Cap. 155) as engaged
in respect of Type 2 regulated
activity by an authorized
financial institution
registered for that regulated
activity,";

(iii) in paragraph (iv), by deleting "of an"
and substituting "of a commodity";

(iv) in paragraph (vi), by deleting "exempt"

and substituting "registered";

(v) in paragraph (vii), by deleting everything after "investor" and before "(whether".

(g) In the definition of "dealing in securities" -

(i) by deleting everything after "means" and before "the person," and substituting -

"making or offering to make an agreement with another person, or inducing or attempting to induce another person to enter into or to offer to enter into an agreement -

(a) for or with a view to acquiring, disposing of, subscribing for or underwriting securities;

(b) the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities,

by";

(ii) in paragraph (iii), by adding "(2)" after

"95";

(iii) in paragraph (iv), by deleting "referred to in paragraph (a)" where it first appears;

(iv) in paragraph (iv)(A), by deleting "exempt" and substituting "registered";

(v) by deleting paragraph (iv)(B) and substituting -

"(B) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity,";

(vi) in paragraph (iv)(I), (II), (III) and (V), by adding "or (b)" after "(a)";

(vii) by deleting paragraph (v)(A) and (B) and substituting -

"(A) performs the act by way of dealing with a person who is a professional investor (whether acting as principal or agent);

or

(B) acquires, disposes of,
subscribes for or underwrites
securities;" ;

(viii) in paragraph (viii)(A) and (B), by
deleting "was" and substituting "were";

(ix) in paragraph (ix), by adding "the" before
"shares";

(x) in paragraph (ix)(A), by deleting "該公司"
and substituting "該法團";

(xi) in paragraph (x), by deleting everything
after "to a" and substituting -

"collective investment scheme that is
a corporation -

(A) which is or holds itself out as
being engaged primarily in the
business of investing,
reinvesting or trading in any
property (including securities
and futures contracts); and

(B) the shares in which are
exclusively, or primarily,
redeemable shares,

or issues together with the
prospectus a form of application for

the shares in the corporation;"

- (xii) in paragraph (xi), by adding "發出" after "可";
 - (xiii) in paragraph (xii), by deleting "referred to in paragraph (a)";
 - (xiv) in paragraph (xiii), by deleting "exempt" and substituting "registered";
 - (xv) in paragraph (xiii), by deleting "108" where it twice appears and substituting "169A";
 - (xvi) in paragraph (xiv), by deleting "exempt" and substituting "registered";
 - (xvii) in paragraph (xiv), by deleting "referred to in paragraph (a)".
- (h) In the definition of "foreign exchange trading", by deleting "(xiv)" and substituting "(xv)".
- (i) In the definition of "leveraged foreign exchange trading" -
- (i) in paragraph (ii)(C), by deleting "company" and substituting "corporation";
 - (ii) in paragraph (iv), by deleting everything after "by" and before "is" and substituting "an approved money broker within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) and every

party to which";

(iii) in paragraphs (vi) and (viii), by deleting "exempt" and substituting "registered";

(iv) in paragraph (vii), by adding "金融管理" before "專" where it twice appears;

(v) in paragraph (ix), by adding "or registered" after "licensed";

(vi) in paragraph (xiii), by deleting "or" at the end;

(vii) in paragraph (xiv), by adding "or" at the end;

(viii) by adding -

"(xv) by -

(A) a collective investment scheme; or

(B) a person in the course of business for the purpose of operating a collective investment scheme,

authorized by the Commission under section 103 of this Ordinance;".

(j) In the definition of "securities margin financing" -

- (i) in paragraph (iii), by deleting "exempt" and substituting "registered";
- (ii) in paragraph (iv)(A), by deleting "它" and substituting "本身";
- (iii) in paragraph (iv)(B), by adding a comma after "primarily";
- (iv) in paragraph (v), by deleting "or" at the end;
- (v) in paragraph (vi), by deleting the full stop and substituting "; or";
- (vi) by adding -
 - "(vii) by an intermediary by way of effecting an introduction between a person and a related corporation of the intermediary in order that the corporation may provide the person with financial accommodation."

New

By adding -

"SCHEDULE 6A [ss. 113, 136 & 139A]

SPECIFIED TITLES

Item	Provision	Specified titles
1.	Section 136(1) of this Ordinance	"bond broker", "bond dealer", "securities dealer", "stock dealer", "stockbroker", "股票經紀", "債券交易商", "債券經紀", "證券交易商" and "證券經紀"
2.	Section 136(2) of this Ordinance	"futures broker", "futures dealer", "期貨交易商" and "期貨經紀"
3.	Section 136(3) of this Ordinance	"leveraged foreign exchange trader" and "槓桿式外匯交易商"
4.	Section 136(4) of this Ordinance	"securities adviser", "securities consultant", "stock adviser", "股票顧問" and "證券顧問"

5. Section "futures adviser", "futures
136(5) of consultant" and "期貨顧問"
this
Ordinance
6. Section "corporate finance adviser",
136(6) of "corporate finance consultant" and
this "機構融資顧問"
Ordinance
7. Section "automated trading service provider"
136(7) of and "自動化交易服務提供者"
this
Ordinance
8. Section "margin lender", "securities margin
136(8) of financier" and "證券保證金融資人".
this
Ordinance

Schedule 5 By deleting "108 & 112]" and substituting "169A & 170A]".

Schedule 5 By deleting the heading and substituting -
"OFFERS BY INTERMEDIARIES OR REPRESENTATIVES FOR
TYPE 1, TYPE 4 or TYPE 6 REGULATED ACTIVITY
UNDER SECTION 169A OF THIS ORDINANCE".

Schedule 5, Part 1, section 1 By adding "任何其他" after "方的".

Schedule 5, Part 1, section 2 (a) By adding "任何其他" after "方的".
(b) By adding "的" after "報價".

Schedule 5, Part 1, section 4 By deleting everything after "contain" and substituting -

"in a prominent position -

(a) in the case of the English text,
the following notice printed in
type of a size not smaller than
the type known as 8 point Times -

"IMPORTANT

If you are in doubt as to any
aspect of this offer, you should
consult a licensed securities
dealer, bank manager, solicitor,
professional accountant or other

professional adviser."; and

- (b) in the case of the Chinese text, the following notice printed in type the face of which is not less than 2.5 mm in depth -

"重要提示

如你對此要約的任何方面有疑問，應諮詢持牌證券交易商、銀行經理、律師、專業會計師或其他專業顧問。".

Schedule 5, By deleting "108(10)" and substituting "169A(9)".
Part 1,
section 5(1)

Schedule 5, (a) By deleting "108(9)" and substituting "169A(8)".
Part 1,
section 5(2) (b) By deleting "section 108" and substituting
"section 169A".
(c) By adding "某" before "團" where it twice
appears.

Schedule 5, By adding "任何其他" after "方的".
Part 2,
section 1

Schedule 5, By adding "任何其他" after "方的".
Part 2,
section 2

Schedule 5, (a) In paragraph (b)(ii) -
Part 2,
section 3

(i) by deleting "等";

(ii) by deleting "終結" and substituting "結束".

(b) In paragraph (b)(iii), by deleting "等資本所分屬的" and substituting "資本分為哪些".

(c) In paragraph (c)(ii), by deleting "所分屬的" and substituting "分為哪些股份".

(d) In paragraph (e)(iii), by deleting "任何該等年度中" and substituting "該等年度中的任何年度".

Schedule 5,
Part 2,
section 6

(a) In paragraph (b), by deleting "結束" and substituting "終結".

(b) In paragraph (d), by adding "任何其他" after "方的".

(c) In paragraph (e)(iii), by deleting "外的" and substituting "外地方的任何其他".

Schedule 5,
Part 2,
section 8

By deleting everything after "contain" and substituting -

"in a prominent position -

(a) in the case of the English text,
the following notice printed in
type of a size not smaller than
the type known as 8 point Times -

"IMPORTANT

If you are in doubt as to any aspect of this offer, you should consult a licensed securities dealer, bank manager, solicitor, professional accountant or other professional adviser."; and

- (b) in the case of the Chinese text, the following notice printed in type the face of which is not less than 2.5 mm in depth -

"重要提示

如你對此要約的任何方面有疑問，應諮詢持牌證券交易商、銀行經理、律師、專業會計師或其他專業顧問。".".

Schedule 5, By deleting everything after "Part" and substituting Part 2, section 9(1) ", "body" (團體) has the meaning assigned to it by section 169A(9) of this Ordinance."

Schedule 5, (a) By deleting "108(9)" and substituting "169A(8)". Part 2, section 9(2) (b) By deleting "section 108" and substituting "section 169A".

Schedule 5 By renumbering the Schedule as Schedule 6B.

Schedule 7 Within the square brackets, by deleting "213, 215"
and substituting "211, 212, 213, 215, 224".

Schedule 7, (a) In the definition of "appeal panel" by deleting
Part 1, "7" and substituting "1A".
section 1

(b) By deleting the definition of "temporary
member".

(c) By adding -

"relevant authority" (有關當局) has the
meaning assigned to it by section 209
of this Ordinance;

"specified decision" (指明決定) has the
meaning assigned to it by section 209
of this Ordinance;".

Schedule 7, By adding immediately after section 1 -
Part 1

"Appointment of appeal panel

1A. The Chief Executive shall appoint persons
to a panel comprising such number of members,
who are not public officers, as he considers
appropriate.

1B. Subject to sections 1C and 1D, a panel

member shall be appointed for such period as the Chief Executive considers appropriate, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

1C. A panel member may at any time resign his office by notice in writing to the Chief Executive.

1D. The Chief Executive may by notice in writing remove a panel member from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.

1E. For the avoidance of doubt, section 210(5) of this Ordinance does not require the appointment of persons to more than one panel under section 1A."

Schedule 7,
Part 1,
section 5

By deleting the section and substituting -

"5. The Chief Executive, after consultation with the Chief Justice, may by notice in writing remove the chairman from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct."

Schedule 7, Part 1, section 6 By deleting everything after "term of office" and before ", the".

Schedule 7, Part 1, section 7 (a) By deleting the subheading before the section.
(b) By deleting the section.

Schedule 7, Part 1, section 8 By deleting the section.

Schedule 7, Part 1, section 9 By deleting the section.

Schedule 7, Part 1, section 10 By deleting the section.

Schedule 7, Part 1, section 11 By adding "on the recommendation of the chairman" after "Secretary".

Schedule 7, Part 1, section 12 By deleting "to 15" and substituting "and 14".

Schedule 7, Part 1, section 15 By deleting the section.

Schedule 7, Part 1, section 16 (a) By deleting the subheading before the section.
(b) By deleting the section.

Schedule 7, By deleting the section.
Part 1,
section 17

Schedule 7, By deleting the section.
Part 1,
section 18

Schedule 7, By deleting the section.
Part 1,
section 19

Schedule 7, By deleting the section.
Part 1,
section 20

Schedule 7, By deleting "項".
Part 1,
section 26

Schedule 7, By deleting everything after "entitled" and
Part 1,
section 27 substituting -

 "to be heard -

- (a) in person or, in the case of the relevant authority or a corporation, through an officer or employee of the relevant authority or the corporation (as the case may be); and
- (b) through counsel or a solicitor

or, with the leave of the
Tribunal, through any other
person."

Schedule 7, Part 1,
section 28

By deleting the section.

- Schedule 7, Part 1,
section 31
- (a) By adding before paragraph (a) -
" (aa) on his own motion or on the
application of any of the parties to
the review;".
 - (b) In paragraph (a), by adding "for review" after
"application".
 - (c) In paragraph (b), by adding "or, in the case of
an application made by any party pursuant to
paragraph (aa), the other party agrees" after
"agree".
 - (d) By deleting everything after "by the chairman"
and substituting -
"shall be held for the purposes of -
 - (i) enabling the parties to
prepare for the conduct of
the review;
 - (ii) assisting the Tribunal to
determine issues for the
purposes of the review; and

- (iii) generally securing the just, expeditious and economical conduct of the review."

Schedule 7, Part 1, By adding -

"31A. At a conference held in accordance with a direction of the chairman under section 31, the chairman may -

- (a) give any direction he considers necessary or desirable for securing the just, expeditious and economical conduct of the review; and
- (b) endeavour to secure that the parties to the review make all agreements as they ought reasonably to have made in relation to the review.

31B. After a conference has been held in accordance with a direction of the chairman under section 31, the chairman shall report to the Tribunal on such matters relating to the conference as he considers appropriate."

Schedule 7, Part 1, (a) By deleting "即使" and substituting "不論".

- section 33 (b) By deleting "另有" and substituting "有任何".
- (c) By adding "任何" before "命令 ,".

Schedule 7, Part 1 By adding immediately after section 33 -

"33A. In sections 32 and 33, "order" (命令)

includes any finding, determination and any other decision."

Schedule 7, Part 1, section 34 By deleting "served on" and substituting "given to".

Schedule 7, Part 1, section 35 By deleting the section and substituting -

"35. Where -

(a) an application is made to the Tribunal pursuant to section 211(3A) of this Ordinance for the grant of an extension of the time within which an application for review shall be made; or

(b) an application is made to the Tribunal under section 220(1) of this Ordinance for a stay of execution of a specified decision,

the chairman may determine the application as

the sole member of the Tribunal."

Schedule 7, Part 1 By adding -

"36A. After the chairman has made any determination under section 34, or made any determination in respect of an application described in section 35(b), the chairman shall report to the Tribunal the making of the determination and the reasons therefor and such other matters relating to the determination as he considers appropriate."

Schedule 7, Part 1, section 37

- (a) In paragraph (a), by deleting "35;" and substituting "35(b); and".
- (b) In paragraph (b), by deleting "; and" and substituting a comma.
- (c) By deleting paragraph (c).
- (d) By deleting "described in section 35" where it last appears.
- (e) In the Chinese text, by deleting everything after paragraph (c) and substituting "本條例第209條中 "法官" 的定義的(a)段所指的法官，須在獲終審法院首席法官為此目的委任後裁定該申請，猶如他是根據本條例妥為委任的主席一樣，而本條例的條文據此適用於他。 " .

Schedule 7, (a) By adding under the heading "SPECIFIED
Part 2 DECISIONS" -

"Division 1

Specified decisions made by Commission".

- (b) In the heading of column 2, by deleting "次" and substituting "文".
- (c) In column 3, by deleting the column heading and substituting "Description of decision".
- (d) By deleting item 2 and substituting -
- | | |
|---|--|
| "2. Section 95(2)
of this
Ordinance | Refusal to grant an
authorization, or
imposition of any
condition." |
|---|--|
- (e) By renumbering items 6 and 7 as items 7 and 6 respectively.
- (f) By renumbering items 10 and 11 as items 11 and 10 respectively.
- (g) In item 14, by deleting "upon request".
- (h) By adding -
- | | |
|--|---|
| "19A. Section 118(1)
of this
Ordinance | Refusal to grant
registration. |
| 19B. Section 118(5)
of this
Ordinance | Imposition,
amendment or
revocation of any
condition, or
imposition of any
new condition." |
- (i) In item 28, by adding "or certificate of registration" after "licence".

(j) By deleting item 33 and substituting -

"33. Section 130A(1) Refusal to approve a
of this person to become or
Ordinance continue to be a
substantial
shareholder.".

(k) In item 34, by deleting "130(5)" and
substituting "130A(3)".

(l) By adding -

"34A. Section 130B(1) Direction to a
of this licensed
Ordinance corporation.

34B. Section 130B(2) Direction to a
of this person."
Ordinance

(m) In item 35, by adding "(c), (d)," after "(b),".

(n) In item 47, by deleting everything after ", or
to" and substituting "impose a prohibition on a
person.".

(o) In item 48, by deleting "requiring payment of"
and substituting "to pay".

(p) In item 49, by deleting ", (c) or (d)" and
substituting "or (c)".

(q) By adding -

"51A. Section Exercise of power to
189A(1)(i), revoke or suspend any
(ii) or (iii) registration, to
of this publicly or privately
Ordinance reprimand a person,
or to impose a
prohibition on a
person.

51B. Section 189A(2) Order to pay a
of this pecuniary penalty.
Ordinance

- 51C. Section 190(1)(d) or (e) of this Ordinance Revocation or suspension of any registration.
- 51D. Section 190(2) of this Ordinance Revocation of any registration."

(r) By deleting item 55 and substituting -

- "55. Section 197(1) (a) or (b) of this Ordinance Prohibition or requirement imposed on a licensed corporation concerning relevant property."

(s) By adding after item 64 -

"Division 2

**Specified decisions made by
Monetary Authority**

Item	Provision	Description of decision
1.	Section 58A(1)(c) or (d) of the Banking Ordinance (Cap. 155)	Removal or suspension of relevant particulars of a relevant individual from the register.
2.	Section 71C(1) of the Banking Ordinance (Cap. 155)	Refusal to give consent.
3.	Section 71C(2)(b) of the Banking Ordinance (Cap. 155)	Attachment of any condition.
4.	Section 71C(4)(c) or (d) of the	Withdrawal or suspension of consent.

Banking
Ordinance
(Cap. 155)

5. Section 71C(5) of the Banking Ordinance (Cap. 155) Attachment or amendment of any condition.
6. Section 71E(3) of the Banking Ordinance (Cap. 155) Attachment or amendment of any condition.

Division 3

Specified decisions made by Commission or recognized investor compensation company

Item	Provision	Description of decision".
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Schedule 7, Part 3 By deleting the Part and substituting -

"PART 3

Division 1

Specified decisions referred to in section 211(3)(b) of this Ordinance

Item	Description of specified decision	Provision
1.	A specified decision set out in item 37 or 39 of Division 1 of Part 2.	Section 142(8) of this Ordinance.
2.	A specified decision set out in item 41 or 42 of Division 1 of Part 2.	Section 143(6) of this Ordinance.

Division 2

**Specified decisions referred to in section
212(2B)(a) of this Ordinance**

Item	Description of specified decision	Provisions
1.	A specified decision set out in item 51A or 51B of Division 1 of Part 2.	Sections 58A(1) and 71C(4) of the Banking Ordinance (Cap. 155).

Division 3

**Specified decisions referred to in section
212(2B)(b) of this Ordinance**

Item	Description of specified decision	Provisions
1.	A specified decision set out in item 1 or 4 of Division 2 of Part 2.	Section 189A(1) and (2) of this Ordinance.

Division 4

**Specified decisions referred to in section
224(1) of this Ordinance**

Item	Description of specified decision	Provision
1.	A specified decision set out in item 37 or 39 of Division 1 of Part 2.	Section 142(8) of this Ordinance.
2.	A specified decision set out in item 41 or 42 of Division 1 of Part 2.	Section 143(6) of this Ordinance.

Division 5

**Specified decisions referred to in section
224(2) of this Ordinance**

Item	Description of specified decision	Provision
1.	A specified decision set out in item 3 of Division 1 of Part 2.	Section 97(2) of this Ordinance.
2.	A specified decision set out in item 4 of Division 1 of Part 2.	Section 98(4) of this Ordinance.
3.	A specified decision set out in item 17 of Division 1 of Part 2.	Section 115(6) of this Ordinance.
4.	A specified decision set out in item 19 of Division 1 of Part 2.	Section 116(4) of this Ordinance.
5.	A specified decision set out in item 19B of Division 1 of Part 2.	Section 118(6) of this Ordinance.
6.	A specified decision set out in item 22 of Division 1 of Part 2.	Section 119(8) of this Ordinance.
7.	A specified decision set out in item 25 of Division 1 of Part 2.	Section 120(6) of this Ordinance.
8.	A specified decision set out in item 34 of Division 1 of Part 2.	Section 130A(4) of this Ordinance.
9.	A specified decision set out in item 38 of Division 1 of Part 2.	Section 142(7B) of this Ordinance.
10.	A specified decision set out in item 37 or 39 of Division 1 of Part 2.	Section 142(8) of this Ordinance.
11.	A specified decision	Section 143(5B)

- | | | |
|-----|---|--|
| | set out in item 40
of Division 1 of
Part 2. | of this
Ordinance. |
| 12. | A specified decision
set out in item 41
or 42 of Division 1
of Part 2. | Section 143(6)
of this
Ordinance. |
| 13. | A specified decision
set out in item 53 of
Division 1 of Part 2. | Section 195(3)
of this
Ordinance. |
| 14. | A specified decision
set out in item 54, 55,
56 or 57 of Division 1
of Part 2. | Section 202(1)
of this
Ordinance. |
| 15. | A specified decision
set out in item 6 of
Division 2 of Part 2. | Section 71E(3A)
of the Banking
Ordinance (Cap.
155)". |

Schedule 8, section 1 (a) By deleting the definition of "temporary member".

(b) By adding "在" before "本附表".

Schedule 8, section 3 By deleting "to 8" and substituting ", 6A and 8".

Schedule 8, section 5 By deleting "to 8" and substituting "and 7".

Schedule 8 By adding -

"6A. The Chief Executive, after consultation with the Chief Justice, may by notice in writing remove the chairman from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct."

Schedule 8, section 7 By deleting the section and substituting -

"7. The Chief Executive may by notice in writing remove an ordinary member from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct."

Schedule 8,
section 8

- (a) By deleting everything after "term of office" and before ", the".
- (b) By deleting "or the member (as the case may be)".
- (c) By deleting "or a member (as the case may be) of the Tribunal".

Schedule 8,
section 9

- (a) In the subheading before the section, by deleting "**temporary**" and substituting "**persons to replace ordinary**".
- (b) By deleting everything after "Subject to" and before ", and" and substituting -

"section 9A, the Chief Executive may appoint a person, who is not a public officer, to replace an ordinary member if the ordinary member has died, or has resigned from office under section 6 or has been removed from office under section 7".

Schedule 8 By adding -

"9A. The Chief Executive shall not appoint a person to replace an ordinary member of the Tribunal under section 9 unless the chairman of the Tribunal -

- (a) has recommended that a person should be so appointed having

regard to the interests of
justice; and

(b) has given a reasonable opportunity
of being heard to -

(i) any person whose
identity is specified
pursuant to section
14(b) in the statement
for the proceedings as
described in section 14;
and

(ii) the Presenting Officer
appointed for the
proceedings."

Schedule 8, By deleting the section.
section 10

Schedule 8, By deleting the section.
section 11

Schedule 8, By deleting the section.
section 12

Schedule 8, By deleting the section and substituting -
section 13

"13. A person appointed to replace an ordinary
member under section 9 shall be deemed for all

purposes to be the ordinary member."

Schedule 8,
section 14

- (a) In the subheading before the section, by deleting "**Written statements**" and substituting "**Statements**".
- (b) By deleting "written".
- (c) By deleting "to the chairman".
- (d) In paragraph (b), by adding "the identity of the person, and" before "such".
- (e) By adding "財政司" before "司".

Schedule 8,
section 15

- (a) By deleting "written".
- (b) By adding "財政司" before "司".

Schedule 8,
section 16

By deleting the section.

Schedule 8,
section 17

By deleting the section and substituting -

"17. The Tribunal may at any time during the course of any proceedings order the Presenting Officer appointed for the proceedings to amend the statement for the proceedings as described in section 14 in such manner as it considers appropriate, except that -

- (a) there shall be no amendment to the

identity of the person originally specified pursuant to section 14(b) in the statement; and

- (b) after the amendment the financial product which is the subject of any market misconduct specified in the statement shall remain the same as the financial product which is the subject of the market misconduct originally specified in the statement."

Schedule 8,
section 18

By deleting everything after "Tribunal" and before "statement described" and substituting "shall have jurisdiction exercisable by reference to a statement as amended under section 17 in the same manner as it has jurisdiction exercisable by reference to a".

Schedule 8

By adding -

"18A. Notwithstanding anything in Part XIII of this Ordinance, unless the identity of a person is specified pursuant to section 14(b) in a statement described in section 14 -

- (a) he shall not be identified as having engaged in market misconduct pursuant to section

244(3)(b) of this Ordinance; and

(b) no order shall be made in respect of him under section 249 or 250 of this Ordinance."

Schedule 8, section 19 By deleting everything before "statement as" and substituting -

"19. Any person whose identity is specified pursuant to section 14(b) in a statement described in section 14 shall be provided with a copy of the statement and, where the statement is amended under section 17, of the".

Schedule 8 By adding immediately after section 19 -

"19A. After the conduct of any proceedings instituted under section 244 of this Ordinance, where it appears to the Tribunal that market misconduct has or may have taken place by reference to the conduct of any person, it may, where it considers appropriate, include in the report prepared by it in respect of the proceedings under section 254(1) of this Ordinance a recommendation to the Financial Secretary to institute proceedings under section 244 of this Ordinance concerning the matter.

19B. In section 17, "financial product" (金融產品) means -

- (a) where the market misconduct in question is an insider dealing, listed securities or derivatives of listed securities as defined in section 237(2) of this Ordinance; or
- (b) where the market misconduct in question is any other market misconduct, securities or futures contracts as defined in Schedule 1 to this Ordinance."

Schedule 8, section 25 By deleting everything after "unless the" and before "that in" and substituting -

"Tribunal -

- (a) on its own motion; or
- (b) on the application of -
 - (i) any person whose identity is specified pursuant to section 14(b) in the statement for the proceedings as

described in section 14;

or

(ii) the Presenting Officer

appointed for the

proceedings,

determines".

Schedule 8, section 26 By deleting "項".

Schedule 8, section 27 By deleting the section and substituting -

"27. At any sitting of the Tribunal relating to any proceedings, a person whose identity is specified pursuant to section 14(b) in the statement for the proceedings as described in section 14 shall be entitled to be heard -

(a) in person or, in the case of a corporation, through an officer or employee of the corporation; and

(b) through counsel or a solicitor or, with the leave of the Tribunal, through any other person.".

Schedule 8, section 28 By deleting the section.

Schedule 8, section 29 By deleting the section.

Schedule 8,
section 31

(a) By adding before paragraph (a) -

"(aa) on his own motion or on the
application of -

(i) any person whose identity
is specified pursuant to
section 14(b) in the
statement for the
proceedings as described in
section 14; or

(ii) the Presenting Officer
appointed for the
proceedings;".

(b) In paragraph (a), by deleting everything after
"by" and substituting -

"any person who is entitled to make an
application pursuant to paragraph (aa)(i) or
(ii); and".

(c) By deleting everything after paragraph (a) and
substituting -

"(b) if all persons who are
entitled to make, but have
not made, an application
pursuant to paragraph
(aa)(i) or (ii) agree,

direct that a conference, to be attended by the parties to the proceedings or their representatives and presided over by the chairman, shall be held for the purposes of -

- (i) enabling the parties to prepare for the conduct of the proceedings;
- (ii) assisting the Tribunal to determine issues for the purposes of the proceedings; and
- (iii) generally securing the just, expeditious and economical conduct of the proceedings."

Schedule 8 By adding -

"31A. At a conference held in accordance with a direction of the chairman under section 31, the chairman may -

- (a) give any direction he considers necessary or desirable for securing the just, expeditious and economical conduct of the proceedings; and

(b) endeavour to secure that the parties to the proceedings make all agreements as they ought reasonably to have made in relation to the proceedings.

31B. After a conference has been held in accordance with a direction of the chairman under section 31, the chairman shall report to the Tribunal on such matters relating to the conference as he considers appropriate."

Schedule 8 By adding immediately after section 33 -
" 33A. In sections 32 and 33, "order" (命令)
includes any finding, determination and any
other decision."

Schedule 8, By deleting "served on" and substituting "given to".
section 34

Schedule 8 By adding immediately after section 35 -
" 35A. After the chairman has made any
determination under section 34, the chairman
shall report to the Tribunal the making of the
determination and the reasons therefor and such
other matters relating to the determination as

he considers appropriate.".

Schedule 8, By deleting "在該程序中" and substituting "就該程序".
section 36

Schedule 9 In the heading, by deleting "相關" and substituting
"有關".

Schedule 9,
Part 1,
section 2 (a) In paragraph (a), by deleting "continue to have
effect upon such commencement as if it had" and
substituting "upon such commencement continue to
have effect and be deemed to have".

(b) In paragraph (c) -

(i) by deleting everything after "hold"
and before "corresponding office
under that" and substituting "the
corresponding office under that Part
and Schedule 2 to this Ordinance and
be deemed to have been appointed, on
the same terms and conditions as were
applicable had this Ordinance not
been enacted, to the";

(ii) by deleting "董" where it twice
appears and substituting "理".

(c) In paragraphs (d) and (e), by deleting "as if it
had" and substituting "and be deemed to have".

(d) In paragraph (f), by deleting everything after
"hold" and before "corresponding office under
that" and substituting "the corresponding office

under that Part and Schedule 2 to this Ordinance and be deemed to have been appointed, on the same terms and conditions as were applicable had this Ordinance not been enacted, to the".

(e) In paragraph (g) -

(i) by deleting everything after "be" and substituting "employed or engaged in the same office under or pursuant to that Part and be deemed to have been employed or engaged in the same office, on the same terms and conditions as were applicable had this Ordinance not been enacted, under or pursuant to that Part.";

(ii) by adding "任何條文" before "僱用".

Schedule 9,
Part 1,
section 5

(a) In paragraph (a), by deleting everything after "to" and substituting "have been recognized as an exchange company under section 19(2) of this Ordinance;".

(b) In paragraph (b), by deleting "as if they were rules" and substituting "and be deemed to have been".

(c) In paragraph (c), by deleting everything after "Futures Exchange Company" and substituting "which are in effect immediately before such

commencement shall upon such commencement continue to have effect and be deemed to have been approved under section 24(3) of this Ordinance; and".

- (d) In paragraph (d), by deleting everything after "effect" and before "been approved" and substituting "and be deemed to have".

Schedule 9,
Part 1,
section 6 By deleting everything after "to" and substituting "have been recognized as a clearing house under section 37(1) of this Ordinance.".

Schedule 9,
Part 1,
section 7 By deleting "continue to have effect upon such commencement as if it had" and substituting "upon such commencement continue to have effect and be deemed to have".

Schedule 9,
Part 1,
section 8 By adding "任何" after "行的".

Schedule 9,
Part 1,
section 9 (a) In paragraph (a), by deleting "as if it had" and substituting "and be deemed to have".

(b) In paragraph (b), by deleting "as if" and substituting "and be deemed to have been".

(c) In paragraph (b)(ii), by deleting "予證監會".

(d) In paragraph (b)(A), by deleting "they were

rules".

(e) In paragraph (b)(B), by deleting "they were rules".

Schedule 9,
Part 1,
section 10

By deleting everything after "HKEC" and substituting "shall be deemed to have been recognized as an exchange controller under section 59(2) of this Ordinance."

Schedule 9,
Part 1,
section 11

By deleting "continue to have effect upon such commencement as if it had" and substituting "upon such commencement continue to have effect and be deemed to have".

Schedule 9,
Part 1,
section 12

By adding "任何" after "行的".

Schedule 9,
Part 1,
section 13

(a) In paragraph (a), by deleting "as if it had" and substituting "and be deemed to have".

(b) In paragraph (b), by deleting "as if they were rules" and substituting "and be deemed to have been".

(c) In paragraph (c), by deleting "as if the approval had" and substituting "and be deemed to have".

(d) By adding -

"(ca) Any approval in writing of the Chief Executive for a person to hold the office of the chairman 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 and be deemed to have been given under section 69 of this Ordinance;".

(e) In paragraph (d) -

(i) by deleting "chairman,";

(ii) by deleting everything after "have effect" and substituting "and be deemed to have been approved under section 70 of this Ordinance; and".

(f) In paragraph (e), by deleting "as if it had" and substituting "and be deemed to have".

Schedule 9,
Part 1,
section 14

By deleting "continue to have effect upon such commencement as if it had" and substituting "upon such commencement continue to have effect and be deemed to have".

Schedule 9,
Part 1,
section 15

In paragraphs (a) and (b), by adding "任何" after "行的".

- Schedule 9,
Part 1,
section 16 By deleting "regarded as" and substituting "deemed
to have been".
- Schedule 9,
Part 1,
section 17 By deleting "regarded as" and substituting "deemed
to have been".
- Schedule 9,
Part 1,
section 20 By deleting "regarded as" and substituting "deemed
to be".
- Schedule 9,
Part 1,
section 21 In the subheading after the section, by deleting
"**Exemption**" and substituting "**registration**".
- Schedule 9,
Part 1,
section 22 (a) In paragraphs (a) to (f), by deleting "regarded
as" and substituting "deemed to have been".

(b) By deleting "as having" and substituting "to
have".

(c) By deleting "regarded for" and substituting
"deemed for".
- Schedule 9,
Part 1,
section 23 (a) By deleting "regarded under section 22 as" and
substituting "deemed under section 22 to have
been".

(b) In paragraphs (a) to (f) -

(i) by deleting "regarded as" and
substituting "deemed to have been";

- (ii) by deleting "as" before "accredited";
- (iii) by deleting "並隸屬該法團的持牌代表" and substituting "為持牌代表，並當作已隸屬該法團".

(c) By deleting "as" before "approved".

(d) By deleting "regarded for" and substituting "deemed for".

Schedule 9,
Part 1,
section 24

(a) By deleting "regarded under section 22 as" and substituting "deemed under section 22 to have been".

(b) In paragraphs (a) to (f) -

- (i) by deleting "regarded as" and substituting "deemed to have been";
- (ii) by deleting "as" before "accredited";
- (iii) by deleting "並隸屬該法團的持牌代表" and substituting "為持牌代表，並當作已隸屬該法團".

(c) By deleting "regarded for" and substituting "deemed for".

Schedule 9,
Part 1,
section 25

In the sub-subheading before the section, by deleting "個".

Schedule 9,
Part 1,
section 25

(a) In paragraph (a)(i) and (ii), by deleting

"regarded as exempt" and substituting "deemed to have been registered".

(b) In paragraph (a), by deleting "regarded for" and substituting "deemed for".

(c) In paragraph (b)(i) and (ii) -

(i) by deleting "regarded as a licensed corporation that is" and substituting "deemed to be a licensed corporation that has been";

(ii) by deleting "並非認可財務機構的法團" and substituting "認可財務機構除外".

(d) In paragraph (b) -

(i) by deleting "so regarded" where it twice appears and substituting "so deemed";

(ii) by deleting "requirement of section 124(1)(a) and (b)" and substituting "requirements of sections 124(1)(a) and (b) and 130(1)".

Schedule 9,
Part 1,
section 26

By deleting the section and substituting -

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

(a) by an authorized financial institution; or

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

to perform any act which, after such commencement, would constitute a regulated function in relation to a regulated activity for which the institution is deemed under section 25(a) to have been registered or the corporation, partnership or individual is deemed under section 25(b) to have been licensed (as the case may be), the first-mentioned individual shall, upon such commencement, be deemed -

(i) (if paragraph (a) applies to the first-mentioned individual) to be a person whose name has been entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the institution in respect of that regulated activity;

(ii) (if paragraph (b) applies to the first-mentioned individual) to

have been 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 accredited to the 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 deemed for a period of 2 years from such commencement."

Schedule 9,
Part 1,
section 27

- (a) In paragraphs (a) to (d), by deleting "regarded as a licensed corporation that is" and substituting "deemed to be a licensed corporation that has been".
- (b) By deleting "as having" and substituting "to have".
- (c) By deleting "regarded for" and substituting "deemed for".

Schedule 9,
Part 1,
section 28

- (a) By deleting "regarded under section 27 as" and substituting "deemed under section 27 to be".
- (b) In paragraphs (a) to (d) -

- (i) by deleting "regarded as" and substituting "deemed to have been";
- (ii) by deleting "as" before "accredited";
- (iii) by deleting "並隸屬該法團的持牌代表" and substituting "為持牌代表，並當作已隸屬該持牌法團".

(c) By deleting "as" before "approved".

(d) By deleting "regarded for" and substituting "deemed for".

Schedule 9,
Part 1,
section 29

(a) By deleting "regarded under section 27 as" and substituting "deemed under section 27 to be".

(b) In paragraphs (a) to (d) -

- (i) by deleting "regarded as" and substituting "deemed to have been";
- (ii) by deleting "as" before "accredited";
- (iii) by deleting "並隸屬該法團的持牌代表" and substituting "為持牌代表，並當作已隸屬該持牌法團".

(c) By deleting "regarded for" and substituting "deemed for".

Schedule 9,
Part 1,
section 30

(a) In paragraphs (a) to (d), by deleting "regarded as" and substituting "deemed".

(b) In paragraphs (a)(i), (b)(i), (c)(i) and (d)(i),

by deleting "a licensed corporation that is" and substituting "to be a licensed corporation that has been".

(c) In paragraphs (a)(ii), (b)(ii), (c)(ii) and (d)(ii) -

(i) by adding "to have been" before "licensed as";

(ii) by deleting "as" before "accredited".

(d) In paragraphs (a)(iii), (b)(iii), (c)(iii) and (d)(iii), by adding "to have been" before "approved".

(e) By deleting "as having" and substituting "to have".

(f) By deleting "regarded for" and substituting "deemed for".

Schedule 9,
Part 1,
section 31

(a) By deleting "regarded under section 30 as" and substituting "deemed under section 30 to be".

(b) In paragraphs (a) to (d) -

(i) by deleting "regarded as" and substituting "deemed to have been";

(ii) by deleting "as" before "accredited";

(iii) by deleting "並隸屬該法團的持牌代表" and substituting "為持牌代表，並當作已隸屬該持牌法團".

(c) By deleting "regarded for" and substituting

"deemed for".

Schedule 9,
Part 1,
section 32

- (a) By deleting "regarded as exempt" and substituting "deemed to have been registered".
- (b) By deleting "regarded for" and substituting "deemed for".

Schedule 9,
Part 1,
section 33

By deleting the section and substituting -

"33. Where immediately before the commencement of Part V of this Ordinance an individual is engaged 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 deemed under section 32 to have been registered, that individual shall, upon such commencement, be deemed to be a person whose name has been entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the bank in respect of that regulated activity, and, subject to section 52, shall be so deemed for a period of 2 years from such commencement."

Schedule 9,
Part 1,
section 34

By deleting "regarded as" and substituting "deemed

to have been".

Schedule 9, (a) In paragraph (g), by deleting "(b)" and
Part 1, substituting "(ii)".
section 35

(b) By deleting "regarded as" and substituting
"deemed to have been".

Schedule 9, By deleting "regarded as exempt" and substituting
Part 1, "deemed to have been registered".
section 36

Schedule 9, By deleting "employed" and substituting "engaged".
Part 1,
section 37(b)

Schedule 9, By deleting "an" and substituting "a".
Part 1,
section 38

Schedule 9, By deleting "employed" and substituting "engaged".
Part 1,
section 41(b)

Schedule 9, By deleting "employed" and substituting "engaged".
Part 1,
section 44(b)

Schedule 9, By adding -
Part 1
"45A. For the purposes of sections 47, 48 and
49, "dealing in futures contracts" (期貨合約交易)
has the meaning assigned to it by Part 2 of

Schedule 6 to this Ordinance."

Schedule 9, Part 1, section 48 By deleting "employed" and substituting "engaged".

Schedule 9, Part 1, section 49(ii) By deleting "employed" and substituting "engaged".

Schedule 9, Part 1, section 50 (a) In paragraph (b), by deleting everything before "for" and substituting -
"(b) deemed under section 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 or 32 to have been licensed or registered".
(b) By deleting "exemption" and substituting "registration".

Schedule 9, Part 1, section 51(b) By deleting everything before "licensed" and substituting -
"(b) deemed under section 22, 23, 24, 27, 28, 29, 30 or 31 to have been".

Schedule 9, Part 1, section 52(1) (a) By deleting paragraph (a) and substituting -
"(a) a corporation deemed under section 22 or 25(b) to have been 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 be deemed

-

(i) to have been so licensed;

and

(ii) (in the case of a corporation deemed under section 22 to have been licensed) to have complied with the requirement of section 124(1)(a) and (b) of this Ordinance in relation to that regulated activity,

until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 224 of this Ordinance (as the case may be);".

(b) In paragraph (b)(i), by deleting "regarded under section 25(b) or 27 as" and substituting "deemed under section 25(b) or 27 to have been".

(c) In paragraph (b), by deleting everything after "shall" and substituting -

"be deemed -

- (A) to have been so licensed; and
- (B) (in the case of a partnership deemed under section 27 to have been licensed) to have complied with the requirement of section 124(1)(a) and (b) of this Ordinance in relation to that regulated activity,

until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 224 of this Ordinance (as the case may be);".

- (d) In paragraph (c)(i), by deleting "regarded under section 25(b) or 30 as" and substituting "deemed under section 25(b) or 30 to have been".
- (e) In paragraph (c), by deleting everything after "shall" and substituting -

"be deemed -

- (A) to have been so licensed;
- (B) (in the case of an individual deemed under section 30 to have been licensed) to have 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 deemed under section 30 to have been licensed) to have been approved under section 125(1) of this Ordinance as a responsible officer in relation to that licensed corporation,

until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 224 of this Ordinance (as the case may be);".

- (f) By deleting paragraph (d) and substituting -

"(d) a director deemed under section 23, or a partner deemed under section 28 -

- (i) to have been licensed for a regulated activity and accredited to a corporation; and

- (ii) to have been 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), be so deemed until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 224 of this Ordinance (as the case may be);".

(g) By deleting paragraph (e) and substituting -

"(e) an individual deemed under section 24, 26(ii), 29 or 31 to have been 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), be so deemed until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 224 of this Ordinance (as the case may be).".

(h) By adding "日期" before "起計".

Schedule 9,
Part 1,
section 52

By deleting subsection (2) and substituting -

"(2) Where, within 2 years from the

commencement of Part V of this Ordinance, an authorized financial institution deemed under section 25(a) to have been registered, or a licensed bank deemed under section 32 to have been registered, for a regulated activity, applies to be registered for that regulated activity under section 118(1) of this Ordinance, then without prejudice to subsection (3)(C) -

(a) it shall be deemed to have been so registered; and

(b) an individual deemed under section 26(i) or 33 to be a person whose name has been entered in the register referred to in that section as engaged by the institution or licensed bank (as the case may be) in that regulated activity shall, subject to subsection (6), be so deemed,

until the applicant is registered pursuant to the application or the Commission's refusal to register the applicant takes effect as a specified decision under section 224 of this Ordinance (as the case may be).".

Schedule 9, (a) In paragraph (b), by deleting everything after
Part 1,
section 52(3)

"211 of this Ordinance" and substituting ", and the refusal is confirmed by the Securities and Futures Appeals Tribunal,".

(b) In paragraph (C) -

(i) by deleting "mentioned" and substituting "referred to";

(ii) by deleting everything after "to be" and before "been" and substituting "deemed to have been licensed or registered or to have complied with the requirement of section 124(1)(a) and (b) of this Ordinance or to have".

(c) By deleting "exemption" and substituting "registration".

Schedule 9,
Part 1,
section 52

By deleting subsection (4) and substituting -

"(4) Where a person is deemed under section 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 or 32 to have been licensed or registered for a regulated activity or approved as a responsible officer, the provisions of this Ordinance shall -

(a) apply to or in relation to the person as they apply to or in relation to a person who is licensed or registered for that

regulated activity or approved as a responsible officer (as the case may be); and

- (b) in case the person is a partnership or an individual (as the case may be) carrying on a business in that regulated activity, so apply with such modifications under section 131 of this Ordinance as may be necessary."

Schedule 9,
Part 1,
section 52

By deleting subsection (5) and substituting -

"(5) Where an individual's name is deemed -

(a) under section 26(i); or

(b) under section 33,

to have been entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the institution concerned or the bank concerned in respect of a regulated activity, the provisions of this Ordinance 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 in respect of that regulated activity with such modifications under

section 131 of this Ordinance as may be necessary."

Schedule 9, Part 1, section 52 By deleting subsection (6) and substituting -
" (6) If -

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

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

(ii) to have been 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 deemed;

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

(i) to have been licensed as a licensed representative and accredited to that partnership (deemed under section 27 to be a licensed

corporation); and

- (ii) to have been 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 deemed;

- (c) an individual who is deemed under section 24, 26(ii), 29 or 31 to have been licensed as a licensed representative and 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 deemed, he shall upon such cessation cease to be so deemed;

- (d) an individual who is deemed under section 26(i) or 33 to be a person whose name has been entered in the register referred to in that section ceases to be engaged by the institution concerned or the bank concerned 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 deemed."

Schedule 9,
Part 1,
section 53

- (a) By deleting "purpose" and substituting "purposes".
- (b) By deleting everything after "carrying on," and substituting "any business in securities margin financing other than that as referred to in paragraph (b)".

Schedule 9,
Part 1,
section 54

- (a) In paragraph (b), by deleting everything before "under Part" and substituting -
 - "(b) deemed under section 22, 23, 24, 25, 27, 28, 29, 30, 31 or 32 to have been licensed or registered".
- (b) By deleting everything after "be" and substituting "deemed to have been imposed in respect of the licence or registration referred to in paragraph (b)".

Schedule 9,
Part 1,
section 55

- (a) In paragraph (a), by adding "Ordinance or the repealed Leveraged Foreign Exchange Trading" before "Ordinance".
- (b) By deleting "regarded as given under section

129" and substituting "deemed to have been granted under section 129(1)".

Schedule 9, Part 1, section 56 By deleting "regarded as given" and substituting "deemed to have been granted".

Schedule 9, Part 1 By adding -

 "56A. Where -

 (a) approval to be a substantial shareholder has been given by the Commission under the repealed Securities and Futures Commission Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance; and

 (b) the approval subsists immediately before the commencement of Part V of this Ordinance,

 the approval shall, upon such commencement, be deemed to have been granted under section 130A of this Ordinance."

Schedule 9, Part 1, section 57 (a) In paragraph (a), by adding "Ordinance or section 14A of the repealed Leveraged Foreign Exchange Trading" after "Commission".

(b) By deleting "130" and substituting "130A".

Schedule 9, By deleting the section.
Part 1,
section 58

Schedule 9, In paragraph (i), by deleting "an exemption" and
Part 1,
section 59(2) substituting "registration".

Schedule 9, In paragraph (i), by deleting "an exemption" and
Part 1,
section 59(3) substituting "registration".

Schedule 9, By deleting the section and substituting -
Part 1,
section 60 "60. Where -

(a) before the commencement of Part
VI of this Ordinance, any power
could have been, but was not,
exercised under -

(i) section 52 or 53 of the
repealed Commodities
Trading Ordinance;

(ii) section 90, 91, 121AW
or 121AX of the
repealed Securities
Ordinance; or

(iii) section 33 or 34 of the
repealed Leveraged

Foreign Exchange

Trading Ordinance; or

(b) before such commencement any power has been exercised under any of the provisions referred to in paragraph (a)(i), (ii) and (iii), and 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) (A) where paragraph (a) applies, the power may be exercised; or

(B) where paragraph (b) applies, 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 Commodities Trading Ordinance, the repealed Securities 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 matters relating thereto (including any further exercise of power) as if this Ordinance had not been enacted."

Schedule 9, Part 1, section 61 By deleting the section.

Schedule 9, Part 1, section 62 By deleting the section and substituting -
"62. Where -

(a) before the commencement of Part VIII of this Ordinance, any power could have been, but was not, exercised 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; or

(b) before such commencement any power has been exercised under any of the provisions referred to in paragraph (a)(i) and (ii), and 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) (A) where paragraph (a) applies, the power may be exercised; or
- (B) where paragraph (b) applies, 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 matters relating thereto (including any further exercise of

power) as if this Ordinance had not been enacted.".

Schedule 9, Part 1 By adding immediately after section 62 -

"62A. Without prejudice to section 62, section 172 of this Ordinance applies even if -

- (a) in the case of subsection (1)(a), (b), (c), (d) or (e) of that section 172, the matter described in such subsection as being suggested by the circumstances referred to in such subsection has occurred, or appears to the Commission as occurring, before the commencement of Part VIII of this Ordinance; or
- (b) in the case of subsection (1)(f) of that section 172, the matter in respect of the investigation of which the Commission decides to provide assistance under section 179 of this Ordinance has occurred, or appears to the Commission as occurring, before such commencement.".

Schedule 9, By deleting the section and substituting -
Part 1,
section 63 "63. Where -

(a) before the commencement of Part IX of this Ordinance, any power could have been, but was not, exercised under -

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

(ii) section 55, 56, 60(5), 61(2), 121R, 121S, 121T, 121U, 121V or 121X of the repealed Securities Ordinance;
or

(iii) section 11 or 12 of the repealed Leveraged Foreign Exchange Trading Ordinance; or

(b) before such commencement any power has been exercised under any of the provisions referred to in paragraph (a)(i), (ii) and (iii), and 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) (A) where paragraph (a) applies, the
power may be exercised; or
(B) where paragraph (b) applies, the
exercise of the power shall
continue to have force and
effect,

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 appeals and
other matters relating thereto
(including any further exercise of
power) as if this Ordinance had not
been enacted."

Schedule 9,
Part 1,
section 64

By deleting the section and substituting -

"64. Where -

(a) the exercise of any power under section 63 results in the revocation of any declaration of exemption or the revocation or suspension of any registration or licence of any person, or the suspension of any such registration or licence continues to have force and effect by virtue of that section; and

(b) the person has, by reason of the declaration or registration or licence referred to in paragraph (a), been deemed under any of the provisions of sections 22 to 37 to have been registered or licensed under this Ordinance,

the registration or licence of the person under this Ordinance 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 declaration or registration or licence referred to in paragraph (a) is revoked or suspended, and

sections 192(1) to (3), 193(2) and (5), 194 and 195 of this Ordinance shall apply, with necessary modifications, in relation to the revocation or suspension as if it were a revocation or suspension under Part IX of this Ordinance."

Schedule 9,
Part 1,
section 65

By deleting the section and substituting -

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

Schedule 9,
Part 1,
section 66

By deleting the section and substituting -

"66. Where -

(a) before the commencement of Part X of this Ordinance, any power could have been, but was not, exercised under -

(i) section 39, 40, 41 or 43 of the repealed Securities and Futures Commission Ordinance;

or

(ii) section 50, 51, 52 or
54 of the repealed
Leveraged Foreign
Exchange Trading
Ordinance; or

(b) before such commencement any
power has been exercised under
any of the provisions referred to
in paragraph (a)(i) and (ii), and
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) (A) where paragraph (a)
applies, the power may be
exercised; or
- (B) where paragraph (b)
applies, the exercise of
the power 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 exercise of the power and to any appeals and other matters relating thereto (including any further exercise of power) as if this Ordinance had not been enacted."

Schedule 9,
Part 1,
section 67

By deleting the section and substituting -

"67. Where any power is exercised under section 66, an application for review in respect of the exercise of the power may be made to the Securities and Futures Appeals Tribunal and disposed of in all respects as if the power had been exercised under Part X of this Ordinance."

Schedule 9,
Part 1

By adding immediately after section 67 -

"67A. Section 207 of this Ordinance applies

even if the conduct of business or affairs in question has occurred, or appears to the Commission as occurring, before the commencement of Part X of this Ordinance."

Schedule 9,
Part 1,
section 68

By deleting the section and substituting -

"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."

Schedule 9,
Part 1,
section 69

By deleting the section and substituting -

"69. 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

(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."

Schedule 9,
Part 1,
section 70

By deleting the section and substituting -

"70. Where, by virtue of section 68 or 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 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."

Schedule 9, (a) In paragraph (iii), by deleting "and".
Part 1,
section 72(1) (b) By adding -

"(iiia) the expression "dealing in securities" shall be construed in accordance with Part 2 of Schedule 6 to this Ordinance; and".

(c) In paragraph (iv), by deleting "dealing in securities", "

Schedule 9, In paragraph (b), by adding ", which have not
Part 1,
section 72(2) previously been reimbursed under this section"
before the full stop.

Schedule 9, By adding -
Part 1,
section 72 "(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 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

section 73(2) previously been reimbursed under this section"
before the full stop.

Schedule 9,
Part 1,
section 73

By adding -

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

Schedule 9,
Part 1,
section 73(8)

By deleting paragraph (a) and substituting -

"(a) be used to 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, which have not previously been reimbursed

under this section; and".

Schedule 9,
Part 1,
section 73

By adding -

"(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).".

Schedule 9,
Part 1,
section 74(1)

In paragraph (d), by deleting "Parts I and" and substituting "Part".

Schedule 9,
Part 1,
section 75

By deleting the section and substituting -

"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 within the meaning of the repealed Securities (Insider Dealing) Ordinance; and
- (b) the insider dealing has taken place before the commencement of

Part XIII of this Ordinance, and the Financial Secretary has 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 this Ordinance had not been enacted."

Schedule 9, By adding -
Part 1

"75A. 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,

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.

75B. 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 -

- (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.

75C. 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 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".".

Schedule 9,
Part 1,
section 76

By deleting everything after "virtue of" and before "(including" and substituting "section 75 or 75A, any inquiry is or is to be instituted or continued, and disposed of, under the repealed Securities (Insider Dealing) Ordinance, then, without limiting the generality of sections 75 and 75A".

Schedule 9,
Part 1,
section 78

By deleting everything after "have effect" and substituting "and be deemed to have been granted, subject to the same conditions as were applicable had this Ordinance not been enacted, under section 300 of this Ordinance.".

Schedule 9,
Part 1,
section 79

By deleting "被" and substituting "已".

Schedule 9,
Part 1,
section 80

By deleting "司長(視屬何情況而定)根據被" and substituting "財政司司長(視屬何情況而定)根據已".

Schedule 9,
Part 1,
section 81

By deleting everything after "Part XV" and substituting -

"of this Ordinance -

- (a) 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;
and

- (b) the provisions of the repealed Securities (Disclosure of Interests) Ordinance 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."

Schedule 9, Part 1, section 82 By deleting "被" and substituting "已".

Schedule 9, Part 1, section 83 By deleting "被" and substituting "已".

Schedule 9, Part 1 By adding immediately before section 84 -
"83A. 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 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."

Schedule 9,
Part 1,
section 87

- (a) By deleting "exercise" and substituting "performance".
- (b) By deleting "be continued and disposed of in all respects after the repeal" and substituting "after the repeal be continued and disposed of in all respects".

Schedule 9,
Part 2,
item 2

- (a) In paragraph (b), by deleting "3 of Schedule 4" and substituting "3A of Schedule 1".
- (b) In paragraph (d)(ii), by deleting "person licensed or exempt to carry on" and substituting "corporation licensed to carry on, or an authorized financial institution registered for carrying on,".
- (c) In paragraph (e)(i), in the proposed definition of "exempted body", by deleting "15" and substituting "11".

Schedule 9,
Part 2,
item 3

- (a) By deleting paragraph (a)(i) and substituting -
 - "(i) repeal the definition of "Commission" and substitute -
 - " "Commission" (監察委員會) means-
 - (a) subject to paragraphs (b) and (c), the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (of 2002);
 - (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; or

- (c) where any relevant transfer order made under section 68 of that Ordinance is in force, the recognized exchange controller concerned or both the Securities and Futures Commission and the recognized exchange controller concerned, in accordance with the provisions of that order;";".

- (b) In paragraph (a)(ii), in the proposed definition of "認可交易所", by adding "的公司" after "司".
- (c) In paragraph (a)(v), by deleting the full stop and substituting a semicolon.
- (d) In paragraph (a), by adding -
- "(vi) add -
- ""recognized exchange controller" (認可
控制人) has the same meaning as in
section 1 of Part 1 of Schedule 1
to the Securities and Futures
Ordinance (of 2002);".
- (e) By deleting paragraphs (d) to (f) and substituting -
- "(d) Repeal section 38D(2)(a) and substitute -
- "(a) on the face of it, state that a
copy has been registered as
required by this section and
immediately after such statement -
- (i) state that neither the
Commission nor the
Registrar takes any
responsibility as to the
contents of the
prospectus;
- (ii) where the prospectus is
or is to be authorized

for issue by a
recognized exchange
company pursuant to a
transfer order made
under section 25 of the
Securities and Futures
Ordinance (of 2002),
state that neither the
Commission nor the
recognized exchange
company nor the
Registrar takes any
responsibility as to the
contents of the
prospectus; or

(iii) where the prospectus is
or is to be authorized
for issue by a
recognized exchange
controller pursuant to a
transfer order made
under section 68 of that
Ordinance, state that
neither the Commission
nor the recognized

exchange controller nor the Registrar takes any responsibility as to the contents of the prospectus;".

(e) Repeal section 40(1A) and substitute -

"(1A) Subsection (1)(d) shall not apply -

- (a) to the Commission;
- (b) where the relevant prospectus is authorized by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (of 2002), to the Commission or the recognized exchange company; or
- (c) where the relevant prospectus is authorized by a recognized exchange controller pursuant to a transfer order made

under section 68 of that Ordinance, to the Commission or the recognized exchange controller."

(f) Repeal section 40A(3) and substitute -

"(3) Subsection (1) shall not apply

-

- (a) to the Commission;
- (b) where the relevant prospectus is authorized by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (of 2002), to the Commission or the recognized exchange company; or
- (c) where the relevant prospectus is authorized by a recognized exchange

controller pursuant to a transfer order made under section 68 of that Ordinance, to the Commission or the recognized exchange controller."."

(f) In paragraph (h)(ii), by deleting "person licensed or exempt to carry on" and substituting "corporation licensed to carry on, or an authorized financial institution registered for carrying on,".

(g) In paragraph (h)(iii), by deleting the proposed definition of "approved stock exchange" and substituting -

" "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;".

(h) In paragraph (l), by deleting "person" and substituting "corporation".

(i) By deleting paragraphs (u) and (v) and substituting -

"(u) Repeal section 342F(3) and substitute -

"(3) Subsection (1) shall not
apply -

- (a) to the Commission;
- (b) where the relevant prospectus is authorized by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (of 2002), to the Commission or the recognized exchange company; or
- (c) where the relevant prospectus is authorized by a recognized exchange controller pursuant to a transfer order made under section 68 of that Ordinance, to the Commission or the recognized exchange

controller.".

(v) Repeal section 345(2)(c).".

(j) In paragraph (y), in the proposed item 3, by deleting "person" where it twice appears and substituting "corporation".

Schedule 9,
Part 2

By adding -

"4A. Companies (a) Repeal section 2 and Ordinance substitute - (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32 sub. leg.)

"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 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".

Schedule 9,
Part 2,
item 9

In the proposed section 13J(4)(b)(iii), by deleting "person licensed or exempt to carry on" and substituting "corporation licensed to carry on, or an authorized financial institution registered for carrying on,".

Schedule 9,
Part 2,
item 10

(a) In paragraph (a), by deleting the proposed definition of "recognized futures market".

(b) In paragraphs (b) and (c), by deleting "or recognized futures market".

Schedule 9,
Part 2,
item 11

(a) By adding before paragraph (a) -

(aa) In section 15E -

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

(b) In the Chinese text, by renumbering paragraph (c) as paragraph (b).

- (c) In paragraph (b)(i), in the proposed definition of "approved investment adviser" -
- (i) in paragraph (a), by deleting "person" and substituting "corporation";
 - (ii) in paragraph (b), by deleting "a person exempt to carry" and substituting "an authorized financial institution registered for carrying";
 - (iii) in paragraph (b), by deleting "the person" and substituting "the institution".
- (d) In paragraph (b)(ii), in the proposed definition of "broker" -
- (i) in paragraph (a), by deleting "person" and substituting "corporation";
 - (ii) in paragraph (b), by deleting "a person exempt to carry" and substituting "an authorized financial institution registered for carrying";
 - (iii) in paragraph (b), by deleting "the person" and substituting "the institution".
- (e) In the Chinese text, by renumbering paragraph (d) as paragraph (c).

Schedule 9,
Part 2

By adding -

"11A. 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;" ;

- (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 sub-
paragraph
(i), repeal
"stock";

(II) in sub-
paragraph
(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 sub-

paragraph

(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;" ;

(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".

Schedule 9,
Part 2

By adding -

"11B. Stamp Duty (a) In section 2 -
(Jobbing (i) in the definition of
Business) "options contract" ,
(Options Market repeal "the Unified
Makers) Exchange" and
Regulation substitute "a
(Cap. 117 recognized exchange
sub. leg.) company" ;

(ii) in the definition of "options 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".

Schedule 9, Part 2, item 12 In paragraph (b), by deleting the proposed section 29 and substituting -

"29. Exclusion of contracts under the Securities and Futures Ordinance

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 the Securities and Futures Ordinance (of 2002), save to the extent that this Ordinance applies to the contract by virtue of section 390(2) of that Ordinance."

Schedule 9, Part 2, item 13 (a) In paragraph (b)(i), in the proposed section 3(1)(j), by deleting "person" and substituting "corporation".

- (b) In paragraph (d) -
- (i) by deleting "'which'" and substituting "'to which";
 - (ii) by deleting "or (h)" and substituting ", (h) or (ha)".

Schedule 9, Part 2, item 14 In the proposed section 2, by deleting "person" and substituting "corporation".

Schedule 9,
Part 2,
item 15

- (a) In paragraph (a), in the proposed paragraph 10, by deleting "person" and substituting "corporation".
- (b) In paragraph (a), in the proposed paragraph 11 -
 - (i) by deleting "person licensed or exempt to carry on" and substituting "corporation licensed to carry on, or an authorized financial institution registered for carrying on,";
 - (ii) by deleting "person for his" and substituting "corporation or institution for its".

Schedule 9,
Part 2

By adding -

- "15A. Census and Statistics (Survey of External Claims, Liabilities and Income) Order (Cap. 316 sub. leg.) In section 1(1), in the definition of "listed corporation", repeal "the Unified Exchange as defined in section 2(1) of the Stock Exchanges 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 2002)".

Schedule 9,
Part 2,
item 17

By deleting paragraphs (a) and (c).

- Schedule 9,
Part 2,
item 18
- In the proposed paragraph (b)(iii), by deleting "person" where it twice appears and substituting "corporation".
- Schedule 9,
Part 2,
item 19
- (a) In paragraph (c), in the proposed section 44(3)(c), by deleting "licensed or exempt to carry on" and substituting "a corporation licensed to carry on, or an authorized financial institution registered for carrying on,".
- (b) In paragraph (d)(i), in the proposed section 45(3)(b), by deleting "person licensed or exempt to carry on" and substituting "corporation licensed to carry on, or an authorized financial institution registered for carrying on,".
- (c) In paragraph (d)(ii)(A), in the proposed section 45(4)(b), by deleting "person licensed or exempt to carry on" and substituting "corporation licensed to carry on, or an authorized financial institution registered for carrying on,".
- (d) In paragraph (d)(ii)(B), by deleting "person licensed or exempt to carry on" and substituting "corporation licensed to carry on, or an authorized financial institution registered for carrying on,".

(e) In paragraph (e)(iv)(B), by deleting " person licensed or exempt to carry on" and substituting "corporation licensed to carry on, or an authorized financial institution registered for carrying on,".

Schedule 9,
Part 2,
item 20

In paragraph (a), in the proposed section 3(1)(a), by deleting "person licensed or exempt to carry on" and substituting "corporation licensed to carry on, or an authorized financial institution registered for carrying on,".

Schedule 9,
Part 2

By adding -

"26. Banking (Amendment) Ordinance 2001 (32 of 2001) In section 19, in the new section 92(2)(b), repeal everything after "which" and substitute "section 102(1) of the Securities and Futures Ordinance (of 2002) does not apply to the advertisement, invitation or document by virtue of section 102(3)(f), (g), (h) or (ha) of that Ordinance or the issue of which is authorized under section 104(1) of that Ordinance;".".

BANKING (AMENDMENT) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Secretary
for Financial Services

Clause

Amendment Proposed

2

By deleting the clause and substituting -

"2. Interpretation

Section 2(1) of the Banking Ordinance (Cap.
155) is amended by adding -

"certificate of registration" (註冊證明書) means
a certificate of registration -

- (a) granted under section 118 of
the Securities and Futures
Ordinance (of 2002); and
- (b) which is in force;

“executive officer” (主管人員), in relation to a registered institution, means an executive officer appointed under section 71D in respect of the institution;

“opportunity of being heard” (陳詞機會) means a reasonable opportunity of being heard;

“registered institution” (註冊機構) means an authorized institution -

(a) to which section 25(a) or 32 of Schedule 9 to the Securities and Futures Ordinance (of 2002) applies; or

(b) granted a certificate of registration;

“regulated activity” (受規管活動), in relation to a registered institution, means a regulated activity -

(a) within the meaning of Schedule 1 to the Securities and Futures Ordinance (of 2002); and

(b) in respect of which the institution is registered -

(i) to carry on the activity; and

(ii) by virtue of -

(A) in the case of

an institution
falling within
paragraph (a) of
the definition
of "registered
institution",
section 25(a) or
32 of Schedule 9
to the
Securities and
Futures
Ordinance
(of 2002);

(B) in any other
case, the
certificate of
registration
granted to it;

"Securities and Futures Commission" (證監會)

means the Securities and Futures
Commission referred to in the Securities
and Futures Ordinance (of 2002);".

4 (a) In paragraph (a), by deleting the proposed section
20(1)(ea) and substituting -

"(ea) in the case of a registered institution,

and not later than 12 months after the commencement of this paragraph -

- (i) the name and business address of every relevant individual;
- (ii) the capacity in which every relevant individual is engaged in relation to a regulated function in a regulated activity;
- (iii) the date on which every relevant individual was first so engaged; and
- (iv) such other particulars as the Monetary Authority thinks fit having regard to rules made under section 384 of the Securities and Futures Ordinance (of 2002) for the purposes of section 133(2) of that Ordinance; and".

(b) In paragraph (b) -

- (i) in the proposed section 20(3), by deleting "an exempt authorized" and substituting "a registered";
- (ii) in the proposed section 20(4A) -
 - (A) by deleting "an exempt authorized" and substituting "a registered";

- (B) by deleting "is employed" and substituting "is engaged";
- (C) by deleting "so employed" and substituting "first so engaged";
- (iii) by adding after the proposed section 20(4A) -

"(4B) Without prejudice to the generality of any other provisions of this section, the Monetary Authority shall cause the register, to the extent to which it relates to subsection (1)(ea), to be made available to the public inspection in the form of an on-line record."

- (c) By adding -

"(ba) in subsection (5), by repealing "Any" and substituting "Subject to subsection (5A), any";

- (bb) by adding -

"(5A) The fee mentioned in subsection (5) shall not be payable in the case of an inspection, or the obtaining of a copy or an extract, mentioned in that subsection where the register or document concerned is available to the public inspection in the form of an on-line

record." ;".

(d) In paragraph (e) -

(i) in the proposed section 20(9)(a), by deleting "26(a) or 33" and substituting "25(a) or 32";

(ii) in the proposed section 20(10), by deleting the definitions of "regulated function" and "relevant individual" and substituting -

"regulated function" (受規管職能), in

relation to a regulated activity carried on as a business by a registered institution, means any function performed for or on behalf of or by an arrangement with the institution relating to the regulated activity, other than work ordinarily performed by an accountant, clerk or cashier;

"relevant individual" (有關人士), in

relation to a registered institution, means an individual who performs for or on behalf of or by an arrangement with the

institution any regulated
function in a regulated
activity.".

5 By deleting the proposed section 58A and substituting -

**"58A. Disciplinary action in
respect of relevant
individuals**

(1) Where -

(a) a relevant individual is, or was at
any time, guilty of misconduct; or

(b) the Monetary Authority is of the
opinion that a relevant individual
is not, or has ceased to be, a fit
and proper person in his capacity as
that type of relevant individual,

then the Monetary Authority may, after consultation
with the Securities and Futures Commission -

(c) remove all or part of the
individual's relevant particulars
from the register; or

(d) suspend all or part of the
individual's relevant particulars
from the register for such period or
until the occurrence of such event
as the Monetary Authority specifies.

(2) Without limiting the generality of

subsection (1) or the operation of any other

provisions of this Ordinance, for the avoidance of doubt, it is hereby declared that the Monetary Authority may exercise his power under that subsection wholly or partly on the basis of information disclosed to the Monetary Authority by the Securities and Futures Commission, and whether or not the information arises from an investigation under section 175 of the Securities and Futures Ordinance (of 2002).

(3) The Monetary Authority shall not exercise his power under subsection (1) against a relevant individual without first giving the individual an opportunity of being heard.

(4) Where the Monetary Authority decides to exercise his power under subsection (1) against a relevant individual, the Monetary Authority shall inform the individual of his decision to do so by notice in writing served on him, and the notice shall include -

- (a) a statement of the reasons for which the decision is made;
- (b) the time at which the decision is to take effect; and
- (c) in so far as applicable, the duration and terms of the removal or suspension of particulars from the register to be imposed under the

decision.

(5) Without prejudice to the exercise of any powers by the Securities and Futures Commission under the Securities and Futures Ordinance (of 2002), the Monetary Authority may make such recommendations to the Securities and Futures Commission concerning any relevant individual in respect of the exercise of the power under section 189A or 190 of that Ordinance as he considers appropriate.

(6) In this section -
“misconduct” (失當行為), in relation to a relevant individual, means -

- (a) a contravention of any of the relevant provisions, within the meaning of Schedule 1 to the Securities and Futures Ordinance (of 2002), which are applicable to the individual; or
- (b) an act or omission of the individual relating to the carrying on of any regulated activity -
 - (i) by the registered institution in relation to which the individual is a relevant individual; and

(ii) which, in the opinion of the Monetary Authority, is or is likely to be prejudicial to the interest of the investing public or to the public interest,

and "guilty of misconduct" (犯失當行為) shall be construed accordingly;

"relevant individual" (有關人士) means relevant individual within the meaning of section 20(10);

"relevant particulars" (有關資料), in relation to a relevant individual, means the information contained in the register maintained under section 20(1)(ea) in relation to the individual.

(7) For the purposes of paragraph (b) of the definition of "misconduct" in subsection (6), the Monetary Authority shall not form any opinion that any act or omission is or is likely to be prejudicial to the interest of the investing public or to the public interest, unless he has had regard to such of the provisions set out in any code of conduct published under section 164 of the Securities and Futures Ordinance (of 2002) or

any code or guideline published under section 385 of that Ordinance as are in force at the time of occurrence of, and applicable in relation to, the act or omission.".

6 In the proposed section 59B(4) -

- (a) in paragraph (a), by deleting "and to imprisonment for 2 years";
- (b) in paragraph (b), by deleting "and to imprisonment for 6 months".

New By adding -

"8A. Section added

The following is added -

"63B. Auditors of registered institutions to submit report to Monetary Authority in certain cases

Where a person in the course of performing his functions as an auditor -

- (a) appointed under -
 - (i) section 59(2) or 63(3) or (3A); or
 - (ii) section 131 of the Companies Ordinance (Cap. 32); and
- (b) in relation to a registered institution,

becomes aware of a matter that, in the opinion of the person, is a matter that constitutes on the part of the institution a failure to comply with any prescribed requirements within the meaning of section 153 of the Securities and Futures Ordinance (of 2002)(but excluding any requirements under section 145 of that Ordinance or of rules made under that section), then he shall, as soon as reasonably practicable after he becomes aware of the matter, submit to the Monetary Authority a report in writing on the matter."."

9

(a) In the proposed section 71C -

(i) in the heading, by deleting "**exempt**

authorized" and substituting "**registered**";

(ii) in subsection (1) -

(A) in paragraph (a), by deleting "an exempt authorized" and substituting "a registered";

(B) in paragraph (b), by deleting "主管";

(iii) by deleting subsection (2)(a)(i), (ii) and (iii) and substituting -

"(i) is a fit and proper person to be an executive officer of the registered institution

concerned; and

(ii) has sufficient authority within the institution to be such executive officer;" ;

(iv) in subsection (3)(a) and (b), by deleting "exempt authorized" and substituting "registered";

(v) by deleting subsection (4) and substituting -

"(4) Where -

(a) an executive officer is, or was at any time, guilty of misconduct; or

(b) the Monetary Authority has ceased to be satisfied that an executive officer of a registered institution -

(i) is a fit and proper person to be such type of officer; or

(ii) has

sufficient
authority
within the
institution
to be such
officer,

then the Monetary Authority may,
after consultation with the
Securities and Futures Commission,
by notice in writing served on the
officer and the institution -

(c) withdraw the consent;

or

(d) suspend the consent
for such period or
until the occurrence
of such event as the
Monetary Authority
specifies.

(4A) Without limiting the
generality of subsection (4) or the
operation of any other provisions of
this Ordinance, for the avoidance of
doubt, it is hereby declared that
the Monetary Authority may exercise
his power under that subsection
wholly or partly on the basis of

information disclosed to the Monetary Authority by the Securities and Futures Commission, and whether or not the information arises from an investigation under section 175 of the Securities and Futures Ordinance (of 2002).

(4B) The Monetary Authority shall not exercise his power under subsection (4) against an executive officer without first giving the officer an opportunity of being heard.

(4C) Where the Monetary Authority decides to exercise his power under subsection (4) against an executive officer, the Monetary Authority shall inform the officer of his decision to do so by notice in writing served on him, and the notice shall include -

- (a) a statement of the reasons for which the decision is made;
- (b) the time at which the decision is to take effect; and

(c) in so far as applicable, the duration and terms of the withdrawal or suspension of the consent to be imposed under the decision.

(4D) Without prejudice to the exercise of any powers by the Securities and Futures Commission under the Securities and Futures Ordinance (of 2002), the Monetary Authority may make such recommendations to the Securities and Futures Commission concerning any executive officer in respect of the exercise of the power under section 189A or 190 of that Ordinance as he considers appropriate.”;

- (vi) in subsection (5), by deleting “獲豁免認可” and substituting “註冊”;
- (vii) in subsection (7), by deleting “an exempt authorized” and substituting “a registered”;
- (viii) by adding -

"(8) In this section -
"misconduct" (失當行為), in relation
to an executive officer,
means -

(a) a contravention of
any of the relevant
provisions, within
the meaning of
Schedule 1 to the
Securities and
Futures Ordinance
(of 2002), which
are applicable to the
officer;

(b) a contravention of -
(i) any
conditions
attached
under
subsection
(2)(b), or
attached or
amended
under
subsection
(5), to the

consent

under

subsection

(1) which

relates to

the officer;

or

(ii) any

conditions

attached or

amended

under

section

71E(3) to

the

provisional

consent

under

section

71E(1)

which

relates to

the officer;

or

(c) an act or omission of

the officer relating

to the carrying on of

any regulated

activity -

(i) by the
registered
institution
in relation
to which
the officer
is an
executive
officer;
and

(ii) which, in
the opinion
of the
Monetary
Authority,
is or is
likely to
be
prejudicial
to the
interest of
the
investing
public or
to the

public

interest,

and "guilty of misconduct" (犯失當行為) shall be construed accordingly.

(9) Where any registered institution is, or was at any time, guilty of misconduct within the meaning of paragraph (a), (b), (c) or (d) of the definition of "misconduct" in section 186(1) of the Securities and Futures Ordinance (of 2002) as a result of the commission of any conduct occurring with the consent or connivance of, or attributable to any neglect on the part of, an executive officer of the institution, the conduct shall also be regarded as misconduct on the part of the officer, and "guilty of misconduct" shall also be construed accordingly.

(10) For the purposes of paragraph (c) of the definition of "misconduct" in subsection (8), the Monetary Authority shall not form

any opinion that any act or omission is or is likely to be prejudicial to the interest of the investing public or to the public interest, unless he has had regard to such of the provisions set out in any code of conduct published under section 164 of the Securities and Futures Ordinance (of 2002) or any code or guideline published under section 385 of that Ordinance as are in force at the time of occurrence of, and applicable in relation to, the act or omission.".

(b) By deleting the proposed section 71D and substituting -

"71D. Appointment of executive officers

Subject to section 71F, every registered institution shall appoint not less than 2 executive officers -

(a) in the case of an institution -

(i) incorporated in Hong Kong, to be responsible for directly supervising the conduct of each

business conducted by
the institution that
constitutes a
regulated activity;

- (ii) incorporated outside
Hong Kong, to be
responsible for
directly supervising
the conduct of each
business in Hong Kong
conducted by the
institution that
constitutes a
regulated activity;
and

(b) each of whom shall be an
individual.".

(c) In the proposed section 71E -

- (i) in subsections (2)(a) and (3), by
deleting "exempt authorized" and
substituting "registered";

(ii) by adding -

"(3A) The attachment or
amendment under subsection (3) of
conditions shall take effect at the
time of -

- (a) giving the

provisional consent;

or

- (b) service of the notice concerned under that subsection or at the time specified in the notice, whichever is the later,

as the case may be.";

- (iii) in subsection (4), by deleting "exempt authorized" and substituting "registered";

- (iv) in subsection (5) -

- (A) by deleting "exempt authorized" and substituting "registered";

- (B) by deleting "to a person by giving notice in writing to the person and the institution withdrawing the consent." and substituting -

- "to a person -

- (a) by giving notice in writing to the person and the institution withdrawing the consent;

- (b) with effect on such date as is

specified in the notice, being a date not earlier than 7 days after the notice is so given."

(d) In the proposed section 71F -

(i) in the heading, by deleting "**exempt authorized**" and substituting "**registered**";

(ii) by deleting "an exempt authorized" and substituting "a registered";

(iii) by deleting "of "exempt authorized" and substituting "of "registered".

10

(a) By adding before paragraph (a) -

"(aa) by adding -

"(aa) any person who is a relevant individual within the meaning of section 20(10);"

(b) In paragraph (a), by deleting "an exempt authorized" and substituting "a registered".

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(a) In paragraph (a), in the proposed section 120(5)(fa)(i), by deleting "an exempt authorized" and substituting "a registered".

(b) By deleting paragraph (d).

- 12 (a) In paragraph (a), by deleting subparagraph (iii).
(b) By deleting paragraph (b) and substituting -

"(b) by adding -

"(6) A person aggrieved by a specified decision of the Monetary Authority made in respect of the person may, by notice in writing given to the Securities and Futures Appeals Tribunal established by section 210 of the Securities and Futures Ordinance (of 2002), apply to the Tribunal for a review of the decision.

(7) The provisions of Part XI of the Securities and Futures Ordinance (of 2002) shall apply to and in relation to a notice under subsection (6) as they apply to and in relation to a notice under section 211(1) of that Ordinance.

(8) A specified decision, other than a specified decision mentioned in paragraph (c) of the definition of "specified decision" in subsection (10), shall take effect -

(a) where, prior to the

expiration of the period of 21 days specified in section 211(3) of the Securities and Futures Ordinance (of 2002) as that within which an application for review of the decision shall be made, the person to whom the decision relates notifies the Monetary Authority that he will not make the application, at the time when he so notifies the Monetary Authority;

- (b) subject to paragraph (a), where the person does not make an application for review of the decision within the period of 21 days

specified in section
211(3) of the
Securities and
Futures Ordinance
(of 2002) as that
within which the
application shall be
made, at the time
when the period so
specified expires; or

(c) where the person
makes an application
for review of the
decision within the
period of 21 days
specified in section
211(3) of the
Securities and
Futures Ordinance
(of 2002) as that
within which the
application shall be
made -

(i) where the
decision is
confirmed
by the

Securities
and Futures
Appeals
Tribunal
established
by section
210 of that
Ordinance,
at the time
when the
decision is
so
confirmed;

(ii) where the
decision is
varied, or
substituted
by another
decision,
by that
Tribunal,
at the time
when the
decision is
so varied
or
substituted,

subject
however to
the terms
of the
variation
or
substitu-
tion; or

(iii) where the
application
is
withdrawn,
at the time
when it is
so
withdrawn.

(9) Notwithstanding subsection (8) and any other provisions of this or any other Ordinance, the Monetary Authority may, in respect of a specified decision, where he considers it appropriate in the interest of the investing public or in the public interest to do so, specify in a notice served on the person to whom the decision relates any time, other than that at which

the decision is apart from this subsection to take effect, as the time at which the decision is to take effect, in which case the decision takes effect at the time so specified.

(10) In this section -

"specified decision" (指明決定) means

a decision of the Monetary Authority -

- (a) in a notice under section 58A(4) served on the person concerned;
- (b) to refuse to grant consent under section 71C(1), to attach pursuant to section 71C(2)(b) conditions to such consent, to withdraw or suspend under section 71C(4) such consent, to attach pursuant to section 71C(5) conditions to such

consent or to amend
pursuant to section
71C(5) any such
conditions; or

(c) to attach pursuant to
section 71E(3)
conditions to
provisional consent
given under section
71E(1) or to amend
pursuant to section
71E(3) any such
conditions."."