

## **Bills Committee on Securities and Futures (Amendment) Bill 2005**

### **Follow-up to sixth meeting on 14 February 2006**

This paper sets out the response of the Administration and the Securities and Futures Commission (“SFC”) to the issues raised at the sixth meeting of the Bills Committee held on 14 February 2006.

**(a) To examine further the proposed amendment to section 11(1) of the Securities and Futures Ordinance (“SFO”)**

2. At present, section 11 (1) of SFO requires the Chief Executive (“CE”) to consult the SFC Chairman before giving written directions to the Commission. At the last Bills Committee meeting on 14 February 2006, Members requested the Administration to give further thoughts to how section 11(1) should be amended in consultation with the SFC.

3. We have invited the SFC to reconsider the proposed amendment taking into account Members’ comments. We still consider the present proposal of consulting the Chief Executive Officer (“CEO”) only is more desirable and practicable due to the following reasons :

- (a) Section 11 of the SFO is essentially a re-enactment of section 11 of the repealed Securities and Futures Commission Ordinance so there has been such a provision in place since the establishment of the SFC in 1989. The provision has never been invoked. It is a reserve power and a tool of last resort for the Government to implement necessary remedial measures in the most pressing and extreme circumstances, which may include any major malfunction of the SFC, possible threats to the financial stability of Hong Kong or its reputation as an international financial centre. Requiring the CE to consult both the Chairman and the CEO or the whole SFC Board<sup>1</sup> before giving written directions to the SFC would add complexity to the matter and restrain the flexibility of the CE to give timely directions to the SFC during emergencies.

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<sup>1</sup> There is no definition of “SFC Board” in the SFO. According to the Split Bill, the Commission shall consist of the Chairman, the CEO, other Executive Directors and Non-executive Directors. To distinguish between the Commission and its employees or staff, the term “SFC Board” is used in this paper.

- (b) Being the head of the executive arm, the CEO will be responsible for the day-to-day running of the SFC and will thus understand best the detailed and daily operation of the Commission. The SFC therefore considers that the CEO would be in the best position to respond to or advise the CE on what is achievable as to the subject of the written directions particularly in an emergency situation.

4. Due to the above reasons, the SFC proposed that section 11(1) be amended so that the Chief Executive would consult the CEO instead of the Chairman before giving written directions to the SFC. In anticipation of the dire circumstances where Section 11 would need to be invoked, we consider it more appropriate to impose an administrative obligation on the CEO to consult the Chairman and any other member(s) of the Commission as appropriate, instead of imposing a legal obligation on the CE to consult both the Chairman and the CEO, or the SFC Board as a whole.

5. The Administration wishes to emphasize that giving written directions to the SFC is a reserve power not to be used lightly. It is the only statutory tool available to the Government for the effective application of remedial measures in a critical situation. It would only be exercised judiciously for unforeseen and extreme scenarios.

(b) **Measures to avoid conflict of interests**

6. We have previously set out the provisions or requirements concerning the avoidance of conflict of interests of the future Chairman of the SFC in our various papers to the Legislative Council, including the Panel on Financial Affairs and the Bills Committee, and they are recapped in the ensuing paragraphs.

7. The Administration attaches great importance to the independence of the Chairman, and indeed all members and staff of the SFC, from any perceived or real conflict of interests. These are achieved through statutory and administrative measures imposed on all members and staff of the SFC (including the Chairman), as well as additional safeguards to be imposed on the future Chairman.

(I) **Statutory safeguards**

8. At present, there are statutory safeguards in place to govern the preservation of secrecy (section 378 of the SFO, see **Annex A**) and avoidance of conflict of interests (section 379 of the SFO, see **Annex B**) of **all members**

**(including Chairman, EDs, and NEDs) and staff of the SFC.** The legal requirements in the Prevention of Bribery Ordinance are also applicable to all members (including Chairman, EDs and NEDs) and staff of the SFC.

*Section 378, SFO*

9. Under section 378 of the SFO, except in the performance of the SFC's functions or for the purpose of doing anything required or authorised under the relevant provisions<sup>2</sup>, all members and staff of the SFC must preserve secrecy in any matter which comes to their knowledge by virtue of their appointment under any of the relevant provisions, or whilst they are in the course of performing (or assisting in performing) the SFC's functions. In addition, they must not reveal or allow any person to have access to any record or document which has come into their possession while they are performing (or assisting in the performance of) the SFC's functions or as a result of their employment or appointment. This secrecy obligation **will continue to apply after the termination of employment** or appointment unless the information has already been made available to the public or is disclosed pursuant to some other exceptions as stated in section 378 of the SFO.

10. Failure to comply with the statutory secrecy provisions is an offence which is punishable on conviction on indictment by up to 2 years' imprisonment and a fine of up to \$1 million.

*Section 379, SFO*

11. All members and staff of the SFC are also subject to the provisions in the SFO regarding conflict of interests. Section 379(1) of the SFO prohibits all members and staff of the SFC from entering into any transaction (directly or indirectly or on their own account or for the benefit of others) regarding securities, futures contracts, leveraged foreign exchange contracts or an interest in any securities, futures contracts, leveraged foreign exchange contracts or collective investment schemes which they know is, or is connected with a transaction or a person that is, the subject of an investigation or proceedings by the SFC or which transaction they know is otherwise being considered by the SFC.

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<sup>2</sup> "Relevant provisions" is defined in SFO as meaning the provisions of the SFO and Parts II and XII of the Companies Ordinance which relate to the performance of functions relating to prospectuses, the purchase of a corporation of its own shares and a corporation giving financial assistance for the acquisition of its own shares.

12. Any breach of this section is an offence which is punishable on conviction on indictment by up to two years' imprisonment and a fine of up to \$1 million.

## **(II) Administrative safeguards**

13. The SFC's internal **Code of Conduct (Annex C)**, which sets out the requirements on confidentiality, conflict of interests, personal investments and prevention of bribery, is binding on all members (including Chairman, EDs and NEDs) and staff of the SFC and **shall continue to apply to the future Chairman under the splitting proposal**. The major requirements are set out as follows –

### *(i) Confidentiality*

14. All members and staff of the SFC are reminded of their statutory secrecy obligations under section 378 of the SFO (see paragraphs 9 – 10 above) and general confidentiality requirements.

### *(ii) Conflict of interests*

15. All members and staff of the SFC are subject to provisions in the SFO regarding conflict of interests (see paragraph 11 above). All members and staff are required to take appropriate steps to avoid an appearance of loss of impartiality in the performance of their duties.

16. To preserve public confidence in the integrity of the SFC and its staff, all members and staff must not exploit or appear to exploit for their personal advantage, any personal or professional relationship with an individual or organisation regulated by the SFC or who contracts with the SFC to supply goods or services. It is important to avoid situations where an independent party may reasonably take the view that there is a risk that the member of staff's actions or decisions might be affected (whether or not their actions or decisions are actually affected) by a personal interest.

### *(iii) Prohibited transactions*

17. All members and staff should observe the requirements as set out in section 379(1) of the SFO concerning prohibited transactions (see paragraph 11 above). In addition, all members and staff of the SFC are required to avoid entering into any transactions which as a result of their position with the SFC they know is, or is connected with a transaction or person that is, the subject of

an investigation or proceedings by an overseas financial regulator or which transaction they know is being considered by an overseas financial regulator.

(iv) Unofficial contacts

18. All members and staff of the SFC should exercise caution if they have social contact with any person who is connected with a case in which they are directly involved.

(v) Loans

19. All members and staff and their related persons or entities should not knowingly grant or guarantee a loan to, or accept a loan from or through the assistance of any individual or organisation having business dealings with the SFC. All members and staff are discouraged from lending or guaranteeing a loan to or borrowing money from colleagues.

(vi) Dealing with former SFC colleagues

20. All members and staff of the SFC are required to exercise caution when dealing with former colleagues in order to avoid any appearance that former staff are able to obtain advantageous treatment and to keep proper records to show fair and impartial treatment.

(vii) Personal dealings in securities & futures contracts and prohibition against leveraged foreign exchange trading

21. All members and staff are required to make initial and on-going disclosure (by way of declarations) relating to their direct or indirect holdings in securities and futures contracts. Their declarations must also include any securities and futures contracts that they know are held by a related person or entity. All members and staff are also reminded of their statutory duty to notify in certain situations under section 379(3) of the SFO, and the relevant statutory provisions (sections 270 and 291 of the SFO) prohibiting insider dealing and the possible consequences of any breach. As a matter of policy, the SFC prohibits all members and staff from directly or indirectly engaging in any transactions regarding leveraged foreign exchange trading with a licensed corporation or its representative.

(viii) Advantages, gifts and hospitality

22. All members and staff are reminded to exercise caution in accepting gifts and hospitality which could give rise to any criticism of undue influence or bribery. As a matter of prudence, all members and staff are required to decline any gift that is offered by a regulatee (including listed companies) or an applicant to be listed or registered unless the gift falls within the general policy expressly provided in the Code. All members and staff are also reminded of the relevant provisions of the Prevention of Bribery Ordinance and the possible consequences of any breach.

**(III) Additional safeguards to be imposed on the future Chairman**

23. In response to high public expectation on the independence of the SFC Chairman, in addition to the above statutory and administrative safeguards, we have proposed the following requirements with which the future Chairman must comply -

- (i) He/she should not be a director of any listed company in Hong Kong;
- (ii) He/she should not have any material interest in any principal business activity or be involved in any material business dealing with a listed company or any person or institution engaged in activities regulated by the SFC.

24. The above requirements will be included in the terms of appointment of the future Chairman. The prospective Chairman will be required to agree to comply with these requirements before his / her appointment takes effect.

**Individual Section Mode**Previous section of  
enactmentNext section of  
enactment

Switch language

Back to the List of  
Laws**Contents of Section**

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	23 of 2004
Section:	378	Heading:	<b>Preservation of secrecy, etc.</b>	Version Date:	08/09/2004

## PART XVI

## MISCELLANEOUS

**Division 1-Secrecy, conflict of interests, and immunity**

(1) Except in the performance of a function under, or for the purpose of carrying into effect or doing anything required or authorized under, any of the relevant provisions, a specified person-

(a) shall preserve and aid in preserving secrecy with regard to any matter coming to his knowledge by virtue of his appointment under any of the relevant provisions, or in the performance of any function under or in carrying into effect any of the relevant provisions, or in the course of assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions;

(b) shall not communicate any such matter to any other person; and

(c) shall not suffer or permit any other person to have access to any record or document which is in his possession by virtue of the appointment, or the performance of any such function under or the carrying into effect of any such provisions, or the assistance to the other person in the performance of any such function under or in carrying into effect any such provisions.

(2) Nothing in subsection (1) applies to-

(a) the disclosure of information which has already been made available to the public;

(b) the disclosure of information with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, or any investigation carried out under the laws of Hong Kong, in Hong Kong;

(c) 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;

- (d) the disclosure of information by a person in connection with any judicial or other proceedings to which the person is a party;
- (e) 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;
- (ea) the disclosure of information to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (Cap 581) for the purpose of enabling or assisting the Board to perform its functions under section 5(a), (d) and (e) of that Ordinance; (Added 7 of 2004 s. 55)
- (f) the communication of any information or opinion to which section 381(1) applies (whether with or without reference to section 381(2))-
  - (i) to the Commission in the manner described in section 381(1);
  - (ii) where section 381(4) applies, to the Insurance Authority or the Monetary Authority (as the case may be) in the manner described in section 381(4).

(3) Notwithstanding subsection (1), the Commission may disclose information-

- (a) in the form of a summary compiled from any information in the possession of the Commission, including information provided by persons under any of the relevant provisions, if the summary is so compiled as to prevent particulars relating to the business or identity, or the trading particulars, of any person from being ascertained from it;
- (b) to a person who is a liquidator appointed under the Companies Ordinance (Cap 32);
- (c) to the Market Misconduct Tribunal;
- (d) to the Securities and Futures Appeals Tribunal;
- (e) to the Monetary Authority, if-
  - (i) the information relates to-
    - (A) any business of a registered institution which constitutes a regulated activity for which the registered institution is registered; or
    - (B) any business of an associated entity that is an authorized financial institution, which is that of receiving or holding client assets of the intermediary of which the associated entity is an associated entity; or
  - (ii) in the opinion of the Commission the condition specified in subsection (5) is satisfied;
- (f) if in the opinion of the Commission the condition specified in subsection (5) is satisfied, to-
  - (i) the Chief Executive;
  - (ii) the Financial Secretary;
  - (iii) the Secretary for Justice;
  - (iv) (Repealed L.N. 106 of 2002);
  - (v) the Insurance Authority;
  - (vi) the Registrar of Companies;
  - (vii) the Official Receiver;
  - (viii) the Mandatory Provident Fund Schemes Authority;
  - (ix) the Privacy Commissioner for Personal Data;
  - (x) the Ombudsman;
  - (xi) a public officer authorized by the Financial Secretary under subsection (12);
  - (xii) an inspector appointed by the Financial Secretary to investigate the affairs of a corporation;
  - (xiii) a recognized exchange company;
  - (xiv) a recognized clearing house;
  - (xv) a recognized exchange controller;



- (xvi) a recognized investor compensation company;
- (xvii) a person authorized to provide authorized automated trading services under section 95(2);
- (g) if in the opinion of the Commission the condition specified in subsection (5) is satisfied-
  - (i) to an authority or regulatory organization outside Hong Kong which, or to a companies inspector outside Hong Kong who, in the opinion of the Commission satisfies the requirements referred to in subsection (6)(a) and (b);
  - (ii) to-
    - (A) the Hong Kong Institute of Certified Public Accountants; (Amended 23 of 2004 s. 56)
    - (B) any other body prescribed by rules made under section 397 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;
  - (h) to a person who is or was an auditor appointed under any provision of this Ordinance, for the purpose of enabling or assisting the Commission to perform its functions under any of the relevant provisions;
  - (i) where the information is obtained by an investigator under section 183, to-
    - (i) the Financial Secretary;
    - (ii) the Secretary for Justice;
    - (iii) the Commissioner of Police;
    - (iv) the Commissioner of the Independent Commission Against Corruption;
    - (v) the Market Misconduct Tribunal;
    - (vi) the Securities and Futures Appeals Tribunal;
  - (j) for the purpose of, or otherwise in connection with, an audit required by section 16;
  - (k) with the consent of the person from whom the information was obtained or received and, if the information relates to a different person, also with the consent of the person to whom the information relates.

(4) Notwithstanding subsection (1), a person who is or was an auditor appointed in relation to a licensed corporation or an associated entity of a licensed corporation under section 159 or 160, and a person who is or was an employee or agent of such auditor, may disclose information obtained or received by him in the course of performing his duties as such auditor or as an employee or agent of such auditor (as the case may be)-

- (a) for the purposes of any judicial or other proceedings arising out of the performance of his duties as such auditor or as an employee or agent of such auditor (as the case may be);
- (b) in the case of a person who is or was an employee or agent of an auditor, to the auditor.

(5) The condition referred to in subsection (3)(e), (f) and (g) is that-

- (a) it is desirable or expedient that the information should be disclosed pursuant to subsection (3)(e), (f) or (g) (as the case may be) in the interest of the investing public or in the public interest; or
- (b) the disclosure will enable or assist the recipient of the information to perform its or his functions and it is not contrary to the interest of the investing public or to the public interest that the information should be so disclosed.

(6) Where the Commission is satisfied, for the purposes of subsection (3)(g)(i), that an authority, regulatory organization or companies inspector outside Hong Kong-

- (a) performs any function similar to a function of the Commission or the Registrar of Companies, or regulates, supervises or investigates banking, insurance or other financial services or the affairs of corporations; and
- (b) is subject to adequate secrecy provisions,

the Commission shall as soon as reasonably practicable thereafter cause the name of the authority, regulatory organization or companies inspector (as the case may be) to be published in the Gazette.

(7) Where information is disclosed pursuant to subsection (1), or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (g)(i) and (k) and (4)(b))-

- (a) the person to whom that information is so disclosed; or
- (b) any other person obtaining or receiving the information, whether directly or indirectly, from the person referred to in paragraph (a),

shall not disclose the information, or any part thereof, to any other person, unless-

- (i) the Commission consents to the disclosure;
- (ii) the information or the part thereof (as the case may be) has already been made available to the public;
- (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.

(8) Where information is disclosed to an auditor in the circumstances described in subsection (4)(b)-

- (a) the auditor; or
- (b) any other person obtaining or receiving the information, whether directly or indirectly, from the auditor,

shall not disclose the information, or any part thereof, to any other person, unless-

- (i) in the case of the auditor, the disclosure is for the purpose described in subsection (4)(a);
- (ii) the Commission consents to the disclosure;
- (iii) the information or the part thereof (as the case may be) has already been made available to the public;
- (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.

(9) 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.

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

- (a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(11) Where a person discloses any information in contravention of subsection (7) or (8) and, at the time of the disclosure-

- (a) in the case of a contravention of subsection (7), he-
  - (i) knew or ought reasonably to have known that the information was previously disclosed to him or any other person (as the case may be) pursuant to subsection (1), or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (g)(i) and (k) and (4)(b)); and
  - (ii) had no reasonable grounds to believe that subsection (7)(i), (ii), (iii), (iv) or (v) applies to the disclosure of the information by him; or
- (b) in the case of a contravention of subsection (8), he-
  - (i) knew or ought reasonably to have known that the information was previously disclosed to him or an auditor (as the case may be) in the circumstances described in subsection (4)(b); and
  - (ii) had no reasonable grounds to believe that subsection (8)(i), (ii), (iii), (iv), (v) or (vi) applies to the disclosure of the information by him,

he commits an offence and is liable-

- (i) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(12) The Financial Secretary may authorize any public officer as a person to whom information may be disclosed under subsection (3)(f)(xi).

(13) Any matter published under subsection (6) is not subsidiary legislation.

(14) For the avoidance of doubt, it is hereby declared that subsection (1) does not preclude the disclosure of information under a reprimand under section 194(1)(iii) or 196(1)(ii).

(15) In this section-

"companies inspector" (公司審查員), in relation to a place outside Hong Kong, means a person whose functions under the laws of that place include the investigation of the affairs of a corporation carrying on business in that place;

"specified person" (指明人士) means-

- (a) the Commission;
- (b) any person who is or was a member, an employee, or a consultant, agent or adviser, of the Commission; or
- (c) any person who is or was-
  - (i) a person appointed under any of the relevant provisions;
  - (ii) a person performing any function under or carrying into effect any of

the relevant provisions; or  
(iii) a person assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions.

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[Previous section of  
enactment](#)

[Next section of  
enactment](#)

[Switch language](#)

[Back to the List of  
Laws](#)

**Individual Section Mode**Previous section of  
enactmentNext section of  
enactment

Switch language

Back to the List of  
Laws**Contents of Section**

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	<b>379</b>	Heading:	<b>Avoidance of conflict of interests</b>	Version Date:	01/04/2003

(1) Subject to subsection (2), any member of the Commission or any person performing any function under any of the relevant provisions shall not directly or indirectly effect or cause to be effected, on his own account or for the benefit of any other person, a transaction regarding any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme-

- (a) which transaction he knows is or is connected with a transaction or a person that is the subject of any investigation or proceedings by the Commission under any of the relevant provisions or the subject of other proceedings under any provision of this Ordinance; or
- (b) which transaction he knows is otherwise being considered by the Commission.

(2) Subsection (1) does not apply to any transaction which a holder of securities effects or causes to be effected by reference to any of his rights as such holder-

- (a) to exchange the securities or convert them to another form of securities;
- (b) to participate in a scheme of arrangement sanctioned by the Court of First Instance under the Companies Ordinance (Cap 32);
- (c) to subscribe for other securities or dispose of a right to subscribe for other securities;
- (d) to charge or pledge the securities to secure the repayment of money;
- (e) to realize the securities for the purpose of repaying money secured under paragraph (d); or
- (f) to realize the securities in the course of performing a duty imposed by law.

(3) Any member of the Commission or any person performing any function under any of the relevant provisions shall forthwith inform the Commission if, in the course of performing any function under any such provisions, he is required to consider any matter relating to-

- (a) any securities, futures contract, leveraged foreign exchange contract, regulated investment agreement, or an interest in any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or regulated investment agreement-

- (i) in which he has an interest;
- (ii) in which a corporation, in the shares of which he has an interest, has an interest; or
- (iii) which-
  - (A) in the case of securities, is of or issued by the same issuer, and of the same class, as those in which he has an interest; or
  - (B) in the case of a futures contract, is interests, rights or property based upon securities of or issued by the same issuer, and of the same class, as those in which he has an interest; or
- (b) a person-
  - (i) by whom he is or was employed;
  - (ii) of whom he is or was a client;
  - (iii) who is or was his associate; or
  - (iv) whom he knows is or was a client of a person with whom he is or was employed or who is or was his associate.

(4) A person who, without reasonable excuse, contravenes subsection (1) or (3) commits an offence and is liable-

- (a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

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[Previous section of enactment](#)

[Next section of enactment](#)

[Switch language](#)

[Back to the List of Laws](#)

**Extract of information provided by the  
Securities and Futures Commission (SFC) to the Bills Committee on  
Securities and Futures (Amendment) Bill 2005**

**(Extract of Annex A to LC Paper No. CB(1)1537/04/05(04))**

*Question 1(a):*

*SFC's internal Code of Conduct which sets out the standards of integrity and conduct required of its directors (including the Chairman of the SFC and the non-executive directors of the SFC) and its staff*

1. The SFC requires the highest standards of integrity and conduct from its staff, who have a vital role in promoting and maintaining public confidence in the SFC.
2. The SFC has an internal Code of Conduct which sets out the Commission's requirements and also the relevant legal requirements in respect of its staff. The Code was first issued in August 1994. It has been revised to incorporate changes that are required as a result of the commencement of the Securities and Futures Ordinance (SFO), to address the recommendations made by the Independent Commission Against Corruption (ICAC) during its occasional reviews of the work of the SFC and to implement a number of changes to the SFC's staff investment policy. The revised Code came into operation on 1 February 2005 (but 1 April 2005 for the additional staff investment restrictions).
3. The term "staff" in the Code refers to any employee of the SFC or any other person retained or appointed by the SFC for a fixed or indefinite term to perform any function of the SFC. The term covers Executive Directors (including the Chairman) (EDs) and Non-Executive Directors (NEDs) of the SFC unless otherwise stated.

4. The Code covers four main aspects which are summarised below:

(I) Confidentiality

5. Staff are reminded of their statutory secrecy obligations and general confidentiality requirements.

6. Under section 378 SFO, except in the performance of the SFC's functions or for the purpose of doing something required or authorised under the relevant provisions, staff must keep secret any matter which came to their knowledge whilst they were in the course of performing (or assisting in performing) the SFC's functions. In addition, they must not reveal or allow any person to have access to any record or document which has come into their possession while they were performing (or assisting in the performance of) the SFC's functions or as a result of their employment or appointment. This secrecy obligation will continue to apply after the termination of the staff employment or appointment unless the information has already been made available to the public or some other exceptions stated in section 378 apply.
7. Failure to comply with the statutory secrecy provisions is an offence which is punishable on conviction by up to 2 years' imprisonment and a fine of up to \$1 million.

(II) Conflicts of interest

8. Staff are required to take appropriate steps to avoid an appearance of loss of impartiality in the performance of their duties. Questions on impartiality may arise when their duties for the SFC impact upon their own personal or financial interests or those of a related person or entity.
9. To preserve public confidence in the integrity of the SFC and its staff, staff must not exploit or appear to exploit for their personal advantage, any personal or professional relationship with an individual or organisation regulated by the SFC or who contracts with the SFC to supply goods or services.
10. It is important to avoid situations where an independent party may reasonably take the view that there is a risk that staff's actions or decisions might be affected (whether or not their actions or decisions are actually affected) by a personal interest. If there is a reasonable appearance of conflict, staff should disclose the potential conflict to their superiors.

*Prohibited transactions*

11. Staff are subject to provisions in the SFO regarding conflicts of interest. Section 379(1) of the SFO prohibits staff from entering



into any transaction (directly or indirectly or on their own account or for the benefit of someone else) regarding securities, futures contracts, leveraged foreign exchange contracts or an interest in any securities, futures contracts, leveraged foreign exchange contracts or collective investment schemes which they know is, or is connected with a transaction or a person that is, the subject of an investigation or proceedings by the SFC or which transaction they know is otherwise being considered by the SFC. Any breach of this section is an offence which is punishable on conviction by up to two years' imprisonment and a fine of up to \$1 million.

12. As a matter of policy, staff are also required to avoid entering into any transactions mentioned in the paragraph above which as a result of their position with the SFC they know is, or is connected with a transaction or person that is, the subject of an investigation or proceedings by an overseas financial regulator or which transaction they know is being considered by an overseas financial regulator.

*Unofficial Contacts*

13. Staff should exercise caution if they have social contact with any person who is connected with a case in which they are directly involved. Staff should record the details of any work-related discussion as soon as possible and inform their superiors in writing.

*Loans*

14. Staff and their related persons or entities should not knowingly grant or guarantee a loan to, or accept a loan from or through the assistance of any individual or organisation having business dealings with the SFC. Staff are discouraged from lending or guaranteeing a loan to or borrowing money from colleagues. This principle aims to prevent situations where an independent party may reasonably take the view that there is a risk that an employee's actions or decisions may be affected (whether or not the employee's actions or decisions are actually affected) as a result of the loan or guarantee to or from the colleague.

*Dealing with former SFC colleagues*

15. Staff are required to exercise caution when dealing with former colleagues in order to avoid any appearance that former staff are able to obtain advantageous treatment and to keep proper records to show fair and impartial treatment.

(III) Personal dealings in securities & futures contracts and prohibition against leveraged foreign exchange trading

16. The Code sets out a clear policy for staff on personal dealings in securities and futures contracts.
17. Staff are required to make the initial and on-going disclosure (by way of declarations) relating to their direct or indirect holdings in securities and futures contracts. Their declarations must also include any securities and futures contracts that they know are held by a related person or entity.
18. Staff hold securities and futures contracts "indirectly" if they have been purchased and held by someone else on their behalf.
19. No ED (including the Chairman) shall deal in any securities except the Pilot Programme Securities and securities held through the medium of collective investment schemes or investment companies. No ED (including the Chairman) shall in any manner transact any trading in any futures contract as defined under the SFO. To the extent not already covered, the EDs are also subject to additional staff investment restrictions. Such additional staff investment restrictions do not however apply to NEDs.
20. Staff are also reminded of their statutory duty to notify in certain situations under section 379(3), SFO.
21. As a matter of policy, the SFC prohibits staff from directly or indirectly engaging in any transactions regarding leveraged foreign exchange trading with a licensed corporation or its representative.
22. Staff are reminded of the relevant statutory provisions (sections 270 and 291) prohibiting insider dealings and the possible consequences of any breach.

(IV) Advantages, gifts and hospitality

23. Staff are reminded to exercise caution in accepting gifts and hospitality which could give rise to any criticism of undue influence or bribery. As a matter of prudence, staff are required to decline any gift that is offered by a regulatee (including listed companies) or an applicant to be listed or registered unless the gift falls within the general policy expressly provided in the Code.

24. Staff are also reminded of the relevant provisions of the Prevention of Bribery Ordinance and the possible consequences of any breach.

Non-compliance with the Code

25. All SFC staff are required by their contracts of employment to comply with the terms of the Code. The SFC may take disciplinary action if staff infringe any provision of the Code. In serious cases, this may result in summary dismissal or termination of the staff employment.
26. So far as NEDs are concerned, as they are appointed by the Administration, they are not bound by SFC's contracts of employment as such. However, each of the NEDs has been provided with a copy of the Code and been reminded to observe its terms since they are applicable to all Directors (including NEDs) and staff unless otherwise specified.