

**Note on Legislative Provisions relating to the Regulation
of Banking Institutions engaging in the Sale of
Financial Products**

This paper seeks to provide a quick reference to legislative provisions relating to the regulation of banking institutions engaging in the sale of financial products. The provisions are extracted and attached as Appendix for Members' easy reference.

Functions of SFC

2. The Securities and Futures Commission (SFC) has been set up to, inter alia, maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry and to provide protection for members of the public investing in or holding financial products¹. Its functions include -

- (a) supervising, monitoring and regulating the activities carried on by persons carrying on activities regulated by SFC under the relevant provisions of SFO;
- (b) promoting, encouraging and enforcing the proper conduct, competence and integrity of persons carrying on activities regulated by SFC under SFO in the conduct of such activities; and
- (c) taking such steps as it considers appropriate to ensure that the relevant provisions are complied with².

The activities regulated by SFC are listed in Part 1 of Schedule 5 to SFO (regulated activities). In a sale of a financial product, two regulated activities may be involved, namely, dealing in securities and advising on securities.

¹ Section 4(a) and (c) of Securities and Futures Ordinance (Cap. 571) (SFO).

² Section 5(1)(b), (d) and (f) of SFO.

Authorization of collective investment schemes

3. SFC may, if it considers appropriate, authorize any collective investment scheme subject to such conditions as it may consider appropriate³. “Collective investment scheme (集體投資計劃)” is defined in Part 1 of Schedule 1 to SFO. Subject to stated exceptions, it chiefly covers any arrangements in respect of any property –

- (a) under which the participating persons do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management;
- (b) under which -
 - (i) the property is managed as a whole by or on behalf of the person operating the arrangements;
 - (ii) the contributions of the participating persons and the profits or income from which payments are made to them are pooled; or
 - (iii) the property is managed as a whole by or on behalf of the person operating the arrangements, and the contributions of the participating persons and the profits or income from which payments are made to them are pooled; and
- (c) the purpose or effect, or pretended purpose or effect, of which is to enable the participating persons, whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise, to participate in or receive –
 - (i) profits, income or other returns represented to arise or to be likely to arise from the acquisition, holding, management or disposal of the property or any part of the property, or sums represented to be paid or to be likely to be paid out of any such profits, income or other returns; or

³ Section 104(1) of SFO.

- (ii) a payment or other returns arising from the acquisition, holding or disposal of, the exercise of any right in, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property.

4. No advertisement, invitation or document which is or contains an invitation to the public to enter into or offer to enter into an agreement to acquire, dispose of, subscribe for or underwrite securities or a regulated investment agreement may be issued without the authorization of SFC⁴. “Invitation” is defined in SFO to include an offer and an invitation, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means⁵. Any breach would be a criminal offence subject upon indictment to a fine of \$500,000 and to imprisonment for 3 years and upon summary conviction to a fine of \$100,000 and to imprisonment for 6 months⁶. Daily fine is also prescribed for continuing offence.

Regulation of registered institutions

Registration of banks as registered institutions

5. The regulation by SFC of persons carrying on regulated activities is effected through a licensing regime. The regime covers brokerage firms, which must be corporations (licensed corporations), and representatives (licensed representatives). The relevant provisions are contained in Part V of SFO. For Authorised Institutions (認可機構), i.e. banks, which carry on regulated activities, they are required to be registered with SFC under section 119 of SFO⁷. Upon completion of registration, the registered institution (註冊機構) (RI) will be issued a certificate of registration specifying the regulated activities for which it is registered⁸. It is a condition of the registration that for each regulated activity, there must be at least one executive officer of RI who is available at all times to supervise the business of the regulated activity for which the institution is registered and each individual engaged by RI in respect of the activity must be a fit and proper person⁹. In general, RIs are

⁴ Section 103(1) of SFO.

⁵ Section 102(1).

⁶ Section 103(4) of SFO.

⁷ Section 114(1) and (2)(b) of SFO.

⁸ Section 119(1) of SFO.

⁹ Section 119(8) of SFO.

subject to the provisions of SFO, and the subsidiary legislation made thereunder, in the same way as licensed corporations in respect of their regulated activities¹⁰. The major areas of difference are capital requirements and handling of client money. RIs are not subject to the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N) and the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I), because these areas are already subject to the regulation of the Monetary Authority (MA).

Supervision of RIs and individuals engaged by RIs in carrying on regulated activities

6. Under section 20(1)(ea) of BO, a register is kept by MA of each individual who is engaged by a RI in a regulated activity. Each RI is required to submit to MA information relating to each individual so engaged by it¹¹.

7. By a Memorandum of Understanding dated 12 December 2002, SFC and the Hong Kong Monetary Authority (HKMA) agreed that whilst the ultimate responsibility for the regulation of intermediaries in the securities market rested with SFC, HKMA would remain the front-line supervisor for RIs and be responsible for the day-to-day supervision of the regulated activities of RIs. In the circumstances, RIs carrying on a regulated activity are legally required to be registered with SFC but not licensed under SFO and persons engaged by RIs in a regulated activity do not appear to be required to be licensed as representatives under SFO. Since it is a condition of registration that each individual engaged by RIs in a regulated activity must be a fit and proper person and the Supervisory Policy Manual of HKMA expressly provides that in determining whether such individual is and remains a fit or proper person, RIs should ensure that the Fit and Proper Guidelines, the Guidelines on Competence and the Guidelines on Continuous Professional Training issued by SFC are complied with¹², an individual engaged by a RI in a regulated activity should have the same qualification and competence as a representative licensed under SFO.

8. When a RI forms the view that an individual is no longer fit and proper to be engaged in the conduct of any regulated activity, it should promptly inform HKMA to remove the individual's name from the HKMA

¹⁰ Para. 3.2.1 of SB-1 of the Supervisory Policy Manual of HKMA.

¹¹ Section 20(3) of BO.

¹² Para. 3.1.7 of SB-1 of the Supervisory Policy Manual of HKMA.

register¹³. MA has power under section 58A(1) of BO to remove or suspend the name of an individual concerned from the HKMA register after consultation with SFC, if the individual is, or was at any time, guilty of misconduct or MA is of the opinion that the individual is not, or has ceased to be, a fit and proper person. If an individual is guilty of misconduct or SFC is of the opinion that the individual is not fit and proper to be, or to remain, entered in the register maintained by MA, SFC may impose such disciplinary action provided in SFO, including pecuniary penalty, as may be appropriate in the circumstances of the case¹⁴.

9. In the event of any misconduct of a RI or SFC having the opinion that a RI is not a fit and proper person to be, or remain, registered as RI for a regulated activity, SFC may revoke or suspend the registration of the RI or take other appropriate disciplinary actions as provided in SFO¹⁵. The registration of a RI may also be revoked if it has become insolvent or has been convicted of any offence that impugns the fitness and properness of the RI to remain registered¹⁶.

Standards of conduct for RIs

10. HKMA requires RIs to comply with all relevant legislation, rules and regulations and to conduct their regulated activities in a responsible, honest and business-like manner. Senior management should ensure that policies, procedures and controls are in place for such purposes. Failure of RIs or individuals to observe and abide by any applicable legal and regulatory requirement will call into question their fitness and propriety for the conduct of regulated activities, and may lead to disciplinary action¹⁷.

11. The Code of Conduct for Persons Licensed or Registered with SFC¹⁸ (the Conduct Code) is applicable to RIs, and individuals engaged by them, in the conduct of regulated activities. Under the general principle of honesty and fairness, a person engaged in a regulated activity when advising, or acting on behalf of a client, must ensure that any representation made and

¹³ Para.3.1.17 of SB-1 of the Supervisory Policy Manual of HKMA.

¹⁴ Section 196 of SFO.

¹⁵ Section 196 of SFO.

¹⁶ Section 197 of SFO.

¹⁷ Para. 4.1.1 of SB-1 of the Supervisory Policy Manual of HKMA.

¹⁸ The Conduct Code is made by SFC pursuant to its powers under section 169 of SFO.

information provided to the client are accurate and not misleading¹⁹. Under the general principle of diligence, such person must act in the best interests of the clients in providing services or recommending the services of an affiliated person to the clients²⁰. Under the general principle of know your client, when making a recommendation or solicitation, the person must ensure the suitability of the recommendation or solicitation for a client is reasonable in all the circumstances having regard to information about the client which the person is or should be aware through the exercise of due diligence²¹. When providing services in derivative products, the person must make sure that the client understands the nature and risks of the products and has sufficient net worth to be able to assume the risk and bear the potential loss of trading in the products²².

12. Section 169 of SFO stipulates that a failure by any intermediary or representative to comply with the provisions of any applicable code of conduct shall not by itself render it or him liable to any judicial or other proceedings, but may be considered, for the purposes of any provision of SFO, whether the intermediary or the representative is a fit and proper person to be, or to remain, licensed or registered, and in any proceeding under SFO before any court the code or the guideline shall be admissible in evidence, and if any provision of the code or guideline appears to the court to be relevant to any question in the proceedings, it shall be taken into account in determining that question.

Prepared by

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¹⁹ Para. 2.1 of the Conduct Code.

²⁰ Para. 3.10 of the Conduct Code.

²¹ Para. 5.2 of the Conduct Code.

²² Para. 5.3 of the Conduct Code.

節錄自規管從事售賣金融產品的銀行機構相關的法律條文

章：	571	標題：	證券及期貨條例	憲報編號：	L.N. 12 of 2003
條：	4	條文標題：	證監會的規管目標	版本日期：	01/04/2003

證監會的規管目標是—

- (a) 維持和促進證券期貨業的公平性、效率、競爭力、透明度及秩序；
- (b) 提高公眾對證券期貨業的運作及功能的了解；
- (c) 向投資於或持有金融產品的公眾提供保障；
- (d) 盡量減少在證券期貨業內的犯罪行為及失當行為；
- (e) 減低在證券期貨業內的系統風險；及
- (f) 採取與證券期貨業有關的適當步驟，以協助財政司司長維持香港在金融方面的穩定性。

章：	571	標題：	證券及期貨條例	憲報編號：	L.N. 12 of 2003
條：	5	條文標題：	證監會的職能及權力	版本日期：	01/04/2003

- (1) 證監會的職能是在合理地切實可行的範圍內—
- (a) 採取該會認為適當的步驟，以維持和促進證券期貨業的公平性、效率、競爭力、透明度及秩序；
 - (b) 監管、監察和規管—
 - (i) 認可交易所、認可結算所、認可控制人或認可投資者賠償公司所進行的活動，以及進行受證監會根據任何有關條文規管的活動的人(註冊機構除外)所進行的活動；及
 - (ii) 註冊機構所進行並須受證監會根據任何有關條文規管的活動；
 - (c) 促進和發展證券期貨業內適當程度的自律規管；
 - (d) 促進、鼓勵和以強制方式確保進行受證監會根據任何有關條文規管的活動的人在進行該等活動時操守正當、力足勝任和廉潔自持；
 - (e) 鼓勵就與金融產品有關的交易或活動提供明智的、不偏不倚的和有根據的意見；
 - (f) 採取該會認為適當的步驟，以確保有關條文獲得遵守；

章：	571	標題：	證券及期貨條例	憲報編號：	L.N. 197 of 2005
附表：	5	條文標題：	受規管活動	版本日期：	06/01/2006

[第 114、118、139 及
142 條及附表 1]

第 1 部

以下各項為受規管活動—

- 第 1 類：證券交易；
- 第 2 類：期貨合約交易；
- 第 3 類：槓桿式外匯交易；
- 第 4 類：就證券提供意見；
- 第 5 類：就期貨合約提供意見；
- 第 6 類：就機構融資提供意見；
- 第 7 類：提供自動化交易服務；
- 第 8 類：提供證券保證金融資；
- 第 9 類：提供資產管理。

章：	571	標題：	證券及期貨條例	憲報編號：	L.N. 12 of 2003
條：	104	條文標題：	證監會可認可集體投資計劃	版本日期：	01/04/2003

(1) 證監會如認為適當，可應任何人向該會提出的申請而認可任何集體投資計劃，而該項認可受第(2)款指明的條件及該會認為適當的任何其他條件規限。

(2) 根據第(1)款認可任何集體投資計劃的條件，是在該計劃獲認可的期間內須持續符合以下規定—

(a) 須有一名個人獲證監會根據第(3)款核准為該會可就該計劃送達通知或決定的核准人士；及

(b) 須—

(i) 在不抵觸第(ii)節的條文下，將(a)段提述的核准人士現時的聯絡辦法資料的詳情告知證監會，包括(在適用範圍內)其地址、電話號碼、傳真號碼及電子郵件地址；

(ii) 在第(i)節提述的資料有所改變後 14 日內，將該項改變的詳情告知證監會。

章：	571	標題：	證券及期貨條例	憲報編號：	L.N. 154 of 2004
條：	103	條文標題：	在某些情況下發出關於投資的廣告、邀請或文件的罪行	版本日期：	03/12/2004

第 2 分部—投資要約的規管等

(1) 除第(2)、(3)及(5)至(9)款另有規定外，任何人在香港或其他地方發出任何廣告、邀請或文件，或為在香港或其他地方發出而管有任何廣告、邀請或文件，而他知道該廣告、邀請或文件(視屬何情況而定)屬或載有請公眾作出以下作為的邀請的，即屬犯罪—

- (a) 訂立或要約訂立—
 - (i) 旨在取得、處置、認購或包銷證券的協議；或
 - (ii) 受規管投資協議；或
- (b) 取得或要約取得集體投資計劃的權益，或參與或要約參與集體投資計劃，

但如該項發出獲證監會根據第 105(1)條認可，則屬例外。

(2) 第(1)款不適用於發出或為發出而管有在以下情況下作出的廣告、邀請或文件—

- (a) 由就第 1、4 或 6 類受規管活動獲發牌或獲註冊的中介人(不論以主事人或代理人身分行事)或由他人代該中介人(不論該中介人以主事人或代理人身分行事)就證券而作出；
- (b) 由就第 2 或 5 類受規管活動獲發牌或獲註冊的中介人(不論以主事人或代理人身分行事)或由他人代該中介人(不論該中介人以主事人或代理人身分行事)就期貨合約而作出；
- (c) 由下述者或由他人代下述者就槓桿式外匯交易合約而作出—
 - (i) 認可財務機構(不論以主事人或代理人身分行事)；或
 - (ii) 就第 3 類受規管活動獲發牌的中介人(不論以主事人或代理人身分行事)；
- (d) 由認可交易所或認可結算所或由他人代認可交易所或認可結算所就該認可交易所或認可結算所(視屬

何情況而定)的服務的提供而作出；

(e) 由某法團或由他人代某法團向該法團(或其有連繫法團)的證券持有人或債權人，或向該法團(或其有連繫法團)的僱員，或向以專業身分代該法團(或其有連繫法團)行事的代理人，就該法團或該有連繫法團的證券而作出；

(f) 由政府或由他人代政府就政府發行的證券而作出；

(g) 由某儲蓄互助社或由他人代某儲蓄互助社就該社的股份而作出；

(ga) 在該廣告、邀請或文件所關乎的要約屬《公司條例》(第 32 章)第 2(1)條中“招股章程”定義的(b)(ii)段所指的要約範圍內；(由 2004 年第 30 號第 3 條增補)

(h) 由以不是集體投資計劃的某信託的受託人身分行事的人或由他人代該人向該信託的受益人作出；或

(i) 由從事買賣非證券財產的業務的人(不論以主事人或代理人身分行事)或由他人代該人(不論該人以主事人或代理人身分行事)在該業務的日常運作過程中作出。

(3) 第(1)款不適用於—

(a) 發出或為發出而管有—

(i) 符合或獲豁免而無需符合《公司條例》(第 32 章)第 II 部的招股章程；

(ii) (如屬在香港以外地方成立的法團)符合或獲豁免而無需符合該條例第 XII 部的招股章程；

(iii) 屬《公司條例》(第 32 章)第 38B(2)條範圍內的刊登文件；(由 2004 年第 30 號第 3 條代替)

(b) 發出或為發出而管有與在香港成立的不是註冊公司的法人團體的證券有關的文件，而—

(i) 假若該法人團體是註冊公司，該文件便會是《公司條例》(第 32 章)第 38 條適用或(若該文件沒有被該條例第 38(5)(b)或 38A 條豁除)會適用的招股章程；及

(ii) 假若該法人團體是在香港以外地方成立的法團而該文件是該法團發出的招股章程，則由

於該條例第 XII 部，該文件須載有某些事項，而該文件已載有所有該等事項；

(c) 發出或為發出而管有申請某法團股份或債權證的表格，而該表格是連同下述招股章程或文件發出的，或管有該表格是為連同下述招股章程或文件發出該表格的一

(i) 關乎該等股份或債權證且符合或獲豁免而無需符合《公司條例》(第 32 章)第 II 部的招股章程，或(如該法團是在香港以外地方成立的法團)符合或獲豁免而無需符合該條例第 XII 部的招股章程；或

(ii) (如該法團是在香港成立的不是註冊公司的法人團體)一份文件，其中載有假若該法人團體是在香港以外地方成立的法團而該文件是該法團就該等股份或債權證發出的招股章程，則該文件便會憑藉該條例第 XII 部而須載有的所有事項；

(d) 向任何人發出或為向任何人發出而管有申請某法團證券的表格，而該表格是在與邀請他就該等證券訂立包銷協議而真誠地向他作出的邀請有關連的情況下發出的，或管有該表格是為在與該項邀請有關連的情況下發出該表格的；

(e) 發出或為發出而管有就認可財務機構在香港或其他地方發行存款證而作出的任何廣告、邀請或文件；

(f) 發出或為發出而管有就在香港或其他地方發行存款證而作出的任何廣告、邀請或文件，而一

(i) 該存款證的款額或面額不少於附表 4 第 1 部指明的金額；及

(ii) 該存款證是一

(A) 由多邊機構發行的；或

(B) 由在香港沒有營業地點且在香港以外地方成立為法團的銀行發行的，而金融管理專員已作出書面聲明，指他信納該銀行相當可能獲得該地方或其主要營業地點所在地的監管當局的充分監管；

(g) 發出或為發出而管有就在香港或其他地方發行附表 4 第 2 部指明的票據(存款證除外)而作出的任何廣

告、邀請或文件，而該票據的款額或面額不少於附表 4 第 1 部指明的金額，且該票據是—

(i) 由認可財務機構或多邊機構發行的，或由獲豁免團體發行的，但該團體如屬附表 4 第 3 部第 11 項指明的法團或全資附屬公司，則須符合有關條件；

(ii) 由符合有關條件的法團發行，並獲認可財務機構或多邊機構作出擔保或獲得獲豁免團體(附表 4 第 3 部第 11 項指明的但不符合有關條件的法團或該法團的全資附屬公司除外)作出擔保的；或

(iii) 由附表 4 第 3 部第 11 項指明的全資附屬公司發行，並獲該公司所屬的符合有關條件的法團作出擔保的；

(h) 發出或為發出而管有就發行已獲某認可交易所批准在該交易所營辦的認可證券市場上市的證券而作出的任何廣告、邀請或文件，而該廣告、邀請或文件是符合根據第 23 或 36 條就管限證券上市而訂立的規章或規則的(在按照該等規章或規則而免除、修改或不要求符合的範圍內除外)；

(i) 發出或為發出而管有某些在香港以外的司法管轄區內受規管的證券而作出的任何廣告、邀請或文件，而該等證券是根據或依據在第 23 或 36 條下訂立的規章或規則獲容許在認可證券市場進行交易的；

(j) 發出或為發出而管有就證券或就集體投資計劃或受規管投資協議的權益而作出的任何廣告、邀請或文件，而該等證券或權益是只轉讓予或擬只轉讓予在香港以外地方的人；

(k) 發出或為發出而管有就證券或就集體投資計劃或受規管投資協議的權益而作出的任何廣告、邀請或文件，而該等證券或權益是只轉讓予或擬只轉讓予專業投資者。

(4) 任何人犯第(1)款所訂罪行—

(a) 一經循公訴程序定罪，可處罰款\$500000 及監禁 3 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款\$20000；或

(b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6

個月，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款\$10000。

(5) 任何人不得僅因—

(a) 他以就第 1、4 或 6 類受規管活動獲發牌或獲註冊的中介人身分(不論以主事人或代理人身分行事)發出或為發出而管有就證券而作出的廣告、邀請或文件，或他代該等中介人(不論該等中介人以主事人或代理人身分行事)發出或為代該等中介人(不論該等中介人以主事人或代理人身分行事)發出而管有該等廣告、邀請或文件；

(b) 他以就第 2 或 5 類受規管活動獲發牌或獲註冊的中介人身分(不論以主事人或代理人身分行事)發出或為發出而管有就期貨合約而作出的廣告、邀請或文件，或他代該等中介人(不論該等中介人以主事人或代理人身分行事)發出或為代該等中介人(不論該等中介人以主事人或代理人身分行事)發出而管有該等廣告、邀請或文件；

(c) 他—

(i) 以認可財務機構身分(不論以主事人或代理人身分行事)發出或為發出而管有就槓桿式外匯交易合約而作出的廣告、邀請或文件，或他代該等機構(不論該等機構以主事人或代理人身分行事)發出或為代該等機構(不論該等機構以主事人或代理人身分行事)發出而管有該等廣告、邀請或文件；或

(ii) 以就第 3 類受規管活動獲發牌的中介人身分(不論以主事人或代理人身分行事)發出或為發出而管有就槓桿式外匯交易合約而作出的廣告、邀請或文件，或他代該等中介人(不論該等中介人以主事人或代理人身分行事)發出或為代該等中介人(不論該等中介人以主事人或代理人身分行事)發出而管有該等廣告、邀請或文件，

而視為犯第(1)款所訂罪行。

(6) 任何人不得僅因他向以下的人發出任何廣告、邀請或文件，或為向以下的人發出而管有任何廣告、邀請或文件，而視為犯第(1)款所訂罪行—

(a) (如有關廣告、邀請或文件是就證券而作出的)就第 1、4 或 6 類受規管活動獲發牌或獲註冊的中介人，或為該中介人進行該等活動的該中介人的代表；

(b) (如有關廣告、邀請或文件是就期貨合約而作出的)就第 2 或 5 類受規管活動獲發牌或獲註冊的中介人，或為該中介人進行該等活動的該中介人的代表；或

(c) (如有關廣告、邀請或文件是就槓桿式外匯交易合約而作出的)以下的人—

(i) 認可財務機構；或

(ii) 就第 3 類受規管活動獲發牌的中介人，或為該中介人進行該類活動的該中介人的代表。

章：	571	標題：	證券及期貨條例	憲報編號：	L.N. 12 of 2003
條：	102	條文標題：	第 IV 部的釋義	版本日期：	01/04/2003

第 IV 部

投資要約

第 1 分部—釋義

(1) 在本部中，除文意另有所指外—

“文件” (document) 指符合以下說明的刊物(包括報章、雜誌、期刊、海報、公告、啓事、通知、通告、冊子、小冊子、傳單，或招股章程)—

- (a) 以公眾為對象的，或公眾相當可能會取得或閱讀 (不論是同時取得和閱讀或在其他情況下取得或閱讀) 其內容的；及
- (b) 不論是以機械、電子、磁力、光學、人手或其他方式製作的；

“代表” (representative)—

- (a) 就持牌法團而言，指符合以下說明的個人—
 - (i) 就某類受規管活動獲發牌為持牌代表；及
 - (ii) 以隸屬該法團的身分為該法團進行該類活動的；或
- (b) 就註冊機構而言，指符合以下說明的個人—
 - (i) 名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為受該機構就某類受規管活動聘用的；及
 - (ii) 為該機構進行該類活動的；

“核准人士” (approved person)—

- (a) 就集體投資計劃而言，指證監會根據第 104(3)條核准的個人；或
- (b) 就廣告、邀請或文件的發出而言，指證監會根據第 105(3)條核准的個人；

“發出” (issue) 就任何材料(包括任何廣告、邀請或文件)而言，包括—

- (a) 藉親自造訪；
- (b) 在報章、雜誌、期刊或其他刊物；

- (c) 藉海報、公告、啓事或通知的展示；
- (d) 以通告、冊子、小冊子或傳單的方式；
- (e) 藉照片展覽或放映電影片；
- (f) 藉聲音或電視廣播；
- (g) 藉資訊系統或其他電子器材；或
- (h) 以其他方式(不論是以機械、電子、磁力、光學、人手或其他媒介，或藉光、影像或聲音或其他媒介的產生或傳送)，

發表、傳遞、分發或以其他方式散發該材料或其內容，並包括安排或授權發出該材料；

“監管當局” (relevant authority) 就香港以外地方而言，指金融管理專員信納是該地方的認可銀行監管機構的機構；

“廣告” (advertisement) 包括各種形式的廣告，不論是口頭作出的，或是以機械、電子、磁力、光學、人手或其他方式製作的；

“邀請” (invitation) 包括要約及邀請，不論是口頭作出的，或是以機械、電子、磁力、光學、人手或其他方式製作的；

“獲豁免團體” (exempted body) 指附表 4 第 3 部指明的團體。

(2) 就本部而言—

- (a) 在任何人安排或授權下發出廣告、邀請或文件期間的每一天，該廣告、邀請或文件(視屬何情況而定)須視爲由他發出的；
- (b) 由某人代另一人發出的廣告、邀請或文件，須視爲由該二人發出的廣告、邀請或文件(視屬何情況而定)。

章：	571	標題：	證券及期貨條例	憲報編號：	L.N. 12 of 2003
條：	114	條文標題：	對經營受規管活動的業務的限制等	版本日期：	01/04/2003

- (1) 除第(2)、(5)及(6)款另有規定外，任何人不得—
 - (a) 經營某類受規管活動的業務；或
 - (b) 顯示自己經營某類受規管活動的業務。
- (2) 第(1)款不適用於—
 - (a) 就有關類別的受規管活動而根據第 116 或 117 條獲發牌的法團；
 - (b) 就有關類別的受規管活動而根據第 119 條獲註冊的認可財務機構；或
 - (c) 根據第 95(2)條獲認可進行有關類別的受規管活動的人。
- (3) 在不損害第(1)款的原則下但在第(4)款的規限下，任何人不得—
 - (a) 就任何以業務形式進行的受規管活動執行任何受規管職能；或
 - (b) 顯示自己執行該項職能。

章：	571	標題：	證券及期貨條例	憲報編號：	L.N. 12 of 2003
條：	119	條文標題：	註冊機構	版本日期：	01/04/2003

(1) 證監會可應任何認可財務機構以訂明方式提出的申請並在訂明費用獲繳付後，將申請人註冊，使申請人可進行一類或多於一類受規管活動(第 3 及 8 類受規管活動除外)，該會並須在註冊後向申請人發給註冊證明書，指明該申請人獲註冊進行的受規管活動。

(2) 證監會須將任何根據第(1)款提出的申請轉交金融管理專員。

(3) 金融管理專員在收到根據第(2)款轉交的、要求就某類受規管活動獲註冊的申請後，須—

- (a) 考慮該申請；
- (b) 就應否批准該申請諮詢證監會；及
- (c) 通知證監會申請人是否令他信納申請人是就該類活動獲註冊的適當人選。

(4) 證監會在決定根據第(1)款將申請人註冊或拒絕根據第(1)款將申請人註冊時—

- (a) 須顧及金融管理專員依據第(3)(c)款給予該會的意見；及
- (b) 可完全或局部依賴該意見，以作出該決定。

(5) 根據第(1)款所作的註冊須受證監會施加的合理條件規限，而證監會可隨時藉送達書面通知予有關註冊機構，修訂或撤銷任何該等條件或施加新的條件，但該項修訂、撤銷或施加須是在有關情況下屬合理的。

(6) 凡證監會根據第(5)款藉送達書面通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間(兩者以較遲者為準)生效。

(7) 在不損害證監會在第 IX 部下的權力的原則下，凡某認可財務機構就第 7 類受規管活動獲註冊，在該機構根據第 95(2)條獲認可提供自動化交易服務時，該項註冊須當作就該類活動而被撤銷。

(8) 在不局限第(5)款的一般性的原則下，根據第(1)款所作的註冊—

- (a) 如是就某類受規管活動所作的，則該項註冊須受以下條件規限—
 - (i) 就該類活動而言，註冊機構須有至少一名主管人員可時刻監督該類活動的業務；及
 - (ii) 名列於金融管理專員根據《銀行業條例》(第

155章)第20條備存的紀錄冊並顯示為受註冊機構就該類活動聘用的個人屬獲如此聘用的適當人選；

(b) 如是就第7類受規管活動所作的，則該項註冊須受以下條件規限：如證監會行使其絕對酌情決定權藉書面通知提出要求，則註冊機構須在該通知指明的合理期間內，根據第95(2)條申請獲認可進行該類活動，而在該項註冊有待根據第197(2)條撤銷前，該類活動須以該通知指明的方式營辦。

(9) 證監會不得在沒有事先諮詢金融管理專員的情況下，根據第(5)或(8)(b)款行使其權力。

章：	155	標題：	銀行業條例	憲報編號：	L.N. 16 of 2003
條：	20	條文標題：	認可機構的紀錄冊等	版本日期：	01/04/2003

(1) 金融管理專員須以他認為適當的形式，備存載有下述資料的紀錄冊

- (a) 每間銀行的名稱及其在香港的主要營業地點的地址；
- (b) 有本地代表辦事處的每間銀行的名稱，以及每個本地代表辦事處在香港的營業地點的地址；
- (c) 每間接受存款公司的名稱及其在香港的主要營業地點的地址；
- (d) 每間有限制牌照銀行的名稱及其在香港的主要營業地點的地址；
- (e) 如屬在香港以外成立為法團的銀行(包括(b)段所提述的銀行)、接受存款公司或有限制牌照銀行，它在香港以外的主要營業地點的地址；(由 2002 年第 6 號第 4 條修訂)
- (ea) 如屬註冊機構—
 - (i) 每名有關人士的姓名及營業地址；
 - (ii) 每名有關人士以何種身分就某類受規管活動中的受規管職能而受聘用；
 - (iii) 每名有關人士首次如此受聘用的日期；及
 - (iv) 金融管理專員在顧及為施行《證券及期貨條例》(第 571 章)第 136(2)條而根據該條例第 397 條訂立的規則後認為合適的其他資料，
 而金融管理專員須在本段生效日期之後 12 個月內備存載有本段所指的資料的紀錄冊；及 (由 2002 年第 6 號第 4 條增補)
- (f) 金融管理專員認為適當的其他與銀行、本地代表辦事處、接受存款公司或有限制牌照銀行有關的詳情(包括原訟法庭根據第 53E(1)條作出的任何命令的詳情)。(由 1998 年第 25 號第 2 條修訂)

(2) 紀錄冊須存放於金融管理專員的辦事處或金融管理專員在憲報公布的其他地點。

(3) 金融管理專員可規定任何認可機構(包括謀求成為註冊機構的認可機構)或本地代表辦事處，為施行第(1)款而向他呈交他為備存紀錄冊而合理地要求提供的資料，但該等資料只限於與該機構或該辦事處(視屬何情況而定)有關的資料。該等資料須在金融管理專員規定的限期內按他規定的方式呈交。(由 2002 年第 6 號第 4 條代替)

(4) 根據第(3)款呈交的任何資料如在呈交後有所改變，呈交該等資料的認可機構或本地代表辦事處須在以下期間內，將該等改變以書面通知金融管理專員—

(a) 除(b)段另有規定外，在該改變發生後 21 天內；

(b) 如屬第(1)(ea)款適用者，在該改變發生後 7 個營業日內。(由 2002 年第 6 號第 4 條代替)

(4A) 為使任何公眾人士能確定與其往來的人是否就某註冊機構而言為有關人士；及在該人為該有關人士的情況下，得以確定該人以何種身分就受規管活動中的受規管職能而受聘用及其首次如此受聘用的日期，根據第(1)(ea)款而載於紀錄冊的資料須根據第(5)款供公眾查閱。(由 2002 年第 6 號第 4 條增補)

(4B) 在不損害本條其他條文的一般性的原則下，金融管理專員須安排在紀錄冊與第(1)(ea)款有關的範圍內，將紀錄冊以聯機紀錄形式提供予公眾查閱。(由 2002 年第 6 號第 4 條增補)

章：	155	標題：	銀行業條例	憲報編號：	L.N. 148 of 2005
條：	58A	條文標題：	就有關人士採取紀律行動	版本日期：	02/12/2005

(1) 如一

(a) 某有關人士犯失當行為或曾在任何時間犯失當行為；或

(b) 金融管理專員認為某有關人士並非或已不再是作為有關類別的有關人士的適當人選，

則金融管理專員可在諮詢證監會後—

(c) 將該人士的有關資料的全部或部分自紀錄冊刪除；或

(d) 將該人士的有關資料的全部或部分暫時中止載在紀錄冊中，為期一段金融管理專員指明的期間或直至金融管理專員指明的事件發生為止。

(2) 在不局限第(1)款的一般性及不局限本條例其他條文的施行的原則下，為免生疑問，現宣布金融管理專員可完全或局部基於證監會向他披露的資料而行使他可根據該款行使的權力，不論該等資料是否由於根據《證券及期貨條例》(第 571 章)第 182 條進行的調查而產生的。

(3) 金融管理專員須事先給予所涉有關人士陳詞機會，否則不得根據第(1)款針對該人士行使權力。

章：	571	標題：	證券及期貨條例	憲報編號：	L.N. 12 of 2003
條：	196	條文標題：	就註冊機構等採取紀律行動	版本日期：	01/04/2003

(1) 在符合第 198 條的規定下，如一

- (a) 某受規管人士犯失當行為或曾在任何時間犯失當行為；或
- (b) 按證監會的意見，某受規管人士並非擔任或留任同一類受規管人士的適當人選，

則證監會可行使該會認為就有關個案的情況而言屬適當的下述權力—

- (i) 如該受規管人士是註冊機構—
 - (A) 就該受規管人士獲註冊進行的所有或任何受規管活動或其中任何部分，撤銷該項註冊；或
 - (B) 就該受規管人士獲註冊進行的所有或任何受規管活動或其中任何部分，將該項註冊暫時撤銷一段證監會指明的期間或直至該會指明的事件發生為止；
- (ii) 公開地或非公開地譴責該受規管人士；
- (iii) 禁止該受規管人士在證監會指明的期間內或在該會指明的事件發生之前就該類受規管活動或該等受規管活動作出以下所有或其中任何事情—
 - (A) 申請牌照或註冊；
 - (B) 申請根據第 126(1)條獲核准成為持牌法團的負責人員；
 - (C) 申請根據《銀行業條例》(第 155 章)第 71C 條獲給予同意以或繼續以註冊機構的主管人員的身分行事；
 - (D) 透過註冊機構，尋求名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示該受規管人士就某類受規管活動受聘於該機構。

(2) 在符合第 198 及 199 條的規定下，如一

(a) 某受規管人士犯失當行爲或曾在任何時間犯失當行爲；或

(b) 按證監會的意見，某受規管人士並非擔任或留任同一類受規管人士的適當人選，

則證監會不論是否同時行使第(1)款所賦權力，均可命令該受規管人士繳付最高數額如下的罰款(以金額較大者為準)一

(i) \$10000000；或

(ii) 因該失當行爲或因該受規管人士其他導致證監會得出該意見的行爲(視屬何情況而定)而令該受規管人士獲取的利潤金額或避免的損失金額的 3 倍。

(3) 證監會在斷定某受規管人士是否第(1)(b)或(2)(b)款所指的適當人選時，除可考慮其他事宜(包括第 129 條指明的事宜)外，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爲。

(4) 根據第(2)款被命令繳付罰款的受規管人士，須在該命令根據第 232 條作為指明決定而生效後 30 日(或證監會根據第 198(3)條藉通知而指明的較長限期)內，向該會繳付該罰款。

(5) 原訟法庭可應證監會按為施行本款而藉根據第 397 條訂立的規則訂明的方式而提出的申請，在原訟法庭登記根據第(2)款作出的命令，而該命令一經登記，即就所有目的而言視為原訟法庭在其民事司法管轄權範圍內就繳付款項而作出的命令。

(6) 依據一項根據第(2)款作出的命令而付予證監會或由該會追討所得的罰款，須由該會撥入政府一般收入。

(7) 在不損害金融管理專員根據《銀行業條例》(第 155 章)行使任何權力的原則下，證監會可就金融管理專員根據該條例第 58A(1)或 71C(4)條行使其任何權力方面，向金融管理專員作出該會認為適當的建議。

(8) 在本條中一

“有關時間”(relevant time) 就某人而言一

(a) 就第(1)(a)或(2)(a)款而言，指該人犯失當行爲或曾犯失當行爲的時間；或

(b) 就第(1)(b)或(2)(b)款而言，指某事件發生的時間，而該事件(不論是否連同任何其他事件)令證監會得出該人並非該款所指的適當人選的意見；

“受規管人士” (regulated person) 指屬或曾在有關時間屬以下任何類別人士的人—

- (a) 註冊機構；
- (b) 註冊機構的主管人員；
- (c) 參與構成註冊機構現時或曾經(視屬何情況而定)獲註冊進行的受規管活動的業務的管理的人；或
- (d) 現時或曾經(視屬何情況而定)名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為受註冊機構就某類受規管活動聘用的個人。

章：	571	標題：	證券及期貨條例	憲報編號：	L.N. 12 of 2003
條：	197	條文標題：	在其他情況下就註冊版本日期：01/04/2003 機構等採取紀律行動		

(1) 在符合第 198 條的規定下，證監會可在以下情況下，就註冊機構獲註冊進行的所有或任何受規管活動或其中任何部分，撤銷該項註冊或將該項註冊暫時撤銷一段該會指明的期間或直至該會指明的事件發生為止—

- (a) (i) 有人獲委任為該機構的財產或業務的接管人或經理人；
- (ii) 該機構沒有清償某項實施執行所涉及的款項；
- (iii) 該機構與債權人作出債務妥協或債務償還安排；
- (iv) 該機構正在清盤或被下令清盤；
- (v) 該機構在香港或其他地方被裁定犯某罪行(任何有關條文所訂罪行除外)，而證監會認為該項定罪損害該機構作為繼續獲註冊的人選的適當性；
- (b) 該機構不進行該項撤銷或暫時撤銷(視屬何情況而定)所關乎的受規管活動或其中部分活動；或
- (c) 該機構請求證監會如此撤銷或暫時撤銷該項註冊。

(2) 在符合第 198 條的規定下，並在不局限第(1)款的一般性的原則下，證監會可在以下情況下，就第 7 類受規管活動或該類活動中的任何部分，撤銷註冊機構的註冊—

- (a) 證監會根據第 119(8)(b)條要求該機構應根據第 95(2)條就該類活動申請認可；而
- (b) (i) 該機構沒有按照該要求根據第 95(2)條申請認可，或該機構已以其他方式告知證監會它不擬根據第 95(2)條申請認可；或
- (ii) 該機構已根據第 95(2)條申請認可，但該項申請不獲批准。

(3) 在以下情況下，註冊機構的註冊當作被撤銷—

- (a) 該機構不再是認可財務機構；或
- (b) 該機構已清盤、自公司登記冊中剔除，或以其他方式解散。

(4) 除第(5)款另有規定外，如註冊機構沒有在該機構須根據第 138 條繳付年費之日後 3 個月內全數繳付該年費，或沒有在該 3 個月內繳付因它沒有全數繳付該年費而致它根據該條須繳付的附加款項，該機構的註冊即當作被暫時撤銷，而除第(6)款另有規定外，暫時撤銷屬持續有效，直至證監會認為該項註冊不應再被暫時撤銷並藉表明此意的書面通知告知該機構為止。

(5) 在以下條件獲符合前，任何註冊不得因沒有全數繳付年費或附加款項一事而根據第(4)款當作被暫時撤銷：證監會已在該項暫時撤銷生效前給予不少於 10 個營業日的書面通知，告知註冊機構須全數繳付有關年費或附加款項(視屬何情況而定)，以及如沒有遵從該規定則根據本條會有何後果。

(6) 如任何註冊根據第(4)款被暫時撤銷，而在該款所述的沒有全數繳付年費或附加款項之事在該項暫時撤銷根據該款生效之日後 30 日內仍未補救，或在證監會藉向有關註冊機構發出書面通知而指明的較長限期內仍未補救，該項註冊即當作被撤銷。

章：	571	標題：	證券及期貨條例	憲報編號：	L.N. 12 of 2003
條：	169	條文標題：	中介人及其代表的業務操守守則	業版本日期：	01/04/2003

(1) 在不損害證監會根據第 168 條訂立規則的權力的原則下，該會可在憲報刊登及以該會認為適當的任何其他方式發表操守守則，就在通常情況下期望中介人及其代表在進行該中介人獲發牌或獲註冊進行的受規管活動方面須遵守的常規和標準，作出指引。

(2) 在不局限第(1)款的一般性的原則下，第(1)款提述的任何操守守則在作出該款提述的指引時，可提述—

(a) 遵守並非由證監會發出或施加的任何其他守則或規定的義務；

(b) 履行持續義務(包括以下的義務)的義務—

(i) (就中介人而言)向中介人的代表提供持續訓練的義務；或

(ii) (就中介人的代表而言)接受持續訓練的義務；

(c) 遵守關乎第 168(2)條所述任何事宜的常規和標準的義務。

(3) 證監會可不時以符合該會根據本條刊登及發表操守守則的權力的方式，修訂該守則的全部或任何部分，而—

(a) 本條其他條文在作出必要的變通後，適用於該等修訂，猶如它們適用於該守則一樣；及

(b) 除非文意另有所指，否則在本條例或其他條例中對該守則(不論實際如何稱述)的提述，須解釋為對經如此修訂的該守則的提述。

(4) 任何中介人或其代表如沒有遵守根據本條刊登及發表並適用於他的任何操守守則所列條文，並不會僅因此而令他在任何司法或其他法律程序中被起訴，但在為施行本條例任何條文而考慮以下事項時，可顧及上述事實—

(a) (就中介人而言)該中介人是否獲發牌或獲註冊或繼續持牌或獲註冊的適當人選；

(b) (就屬持牌法團的中介人的代表而言)該代表是否獲發牌或繼續持牌的適當人選；或

(c) (就屬註冊機構的中介人的代表而言)該代表是否

名列於或繼續名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為受該機構就某類受規管活動聘用的適當人選，

而在根據本條例於任何法庭進行的法律程序中，該守則須獲接納為證據；如法庭覺得該守則的任何條文與法律程序中產生的任何問題有關，則在裁定該問題時須考慮該條文。

(5) 根據本條刊登及發表的任何操守守則可—

(a) 在一般或特別情況下適用，而在不局限前文的一般性的原則下，該守則亦可—

(i) 在指明的範圍內適用於或不適用於任何指明人士或屬某指明類別的人；

(ii) 在某些指明情況下適用或不適用；

(b) 就不同情況訂定不同條文，亦可就不同個案或不同類別的個案訂定不同條文。

(6) 根據本條刊登及發表的操守守則不是附屬法例。

章：	571	標題：	證券及期貨條例	憲報編號：	L.N. 12 of 2003
條：	399	條文標題：	證監會訂立守則或指引	版本日期：	01/04/2003

(1) 證監會可在憲報刊登及以該會認為適當的任何其他方式發表該會認為適當的守則及指引，就以下事宜提供指引—

- (a) 達致該會的任何規管目標；
- (b) 關乎任何有關條文授予該會的職能的任何事宜；
- (c) 本條例任何條文的施行。

(2) 在不局限第(1)款的一般性的原則下，證監會可根據該款刊登或發表—

- (a) 一份守則，就與收購及合併有關的事宜以及附帶事宜，訂定條文；
- (b) 一份守則，就與股份購回有關的事宜以及附帶事宜，訂定條文。

(3) 不論本條有任何規定—

- (a) 證監會根據本條就中介人刊登或發表守則或指引的權力，在該等中介人屬註冊機構的情況下，須視為只就該等中介人刊登或發表與構成他們作為註冊機構獲註冊進行的任何受規管活動的業務有關的守則或指引的權力；
- (b) 證監會根據本條就中介人的有聯繫實體刊登或發表守則或指引的權力，在該等有聯繫實體屬認可財務機構的情況下，須視為只就該等有聯繫實體刊登或發表與他們收取或持有中介人的客戶資產的業務有關的守則或指引的權力。

(4) 為免生疑問，證監會根據本條刊登或發表守則或指引的權力，增補而非減損該會根據本條例或其他條例發表守則或指引的其他權力。

(5) 證監會可不時修訂根據本條刊登或發表的守則或指引的全部或部分，修訂的方式須與該會根據本條刊登或發表該守則或指引的權力相符，而—

- (a) 本條其他條文在作出必要的變通後，適用於該等守則或指引的修訂條文，一如該等條文適用於該等守則或指引；及

(b) 本條例或其他條例中提述該等守則或指引(不論實際如何稱述)之處，除非文意另有所指，否則須解釋為提述經如此修訂的該等守則或指引。

(6) 如任何人沒有遵守根據本條刊登或發表的守則或指引內列出並適用於他的條文，此事本身不會令致他可在任何司法或其他法律程序中被起訴，但在根據本條例提起而於任何法庭進行的法律程序中，該守則或指引可獲接納為證據，如該法庭覺得該守則或指引內所列條文與該法律程序中產生的問題有關，在裁定該問題時，須考慮該條文。

(7) 根據本條刊登或發表的守則或指引—

(a) 可一般地適用或適用於特別情況，並可只於指明的情況下適用；

(b) 可就不同情況訂定不同條文，並可就不同個案或不同類別的個案訂定條文。

(8) 根據本條刊登或發表的守則或指引不是附屬法例。

(9) 不論本條例其他條文有任何規定，如證監會擬根據本條或本條例其他條文刊登或發表的某些守則或指引或對某些守則或指引的修訂，因某些認可財務機構屬註冊機構或屬中介人的有聯繫實體而適用於該等認可財務機構，則在該範圍內，該會須就該等守則或指引或該等修訂(視屬何情況而定)諮詢金融管理專員。

**Extracts of Legislative Provisions relating to the Regulation
of Banking Institutions engaging in the Sales of
Financial Products**

Functions of SFC

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	4	Heading:	Regulatory objectives of Commission	Version Date:	01/04/2003

The regulatory objectives of the Commission are-

- (a) to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
- (b) to promote understanding by the public of the operation and functioning of the securities and futures industry;
- (c) to provide protection for members of the public investing in or holding financial products;
- (d) to minimize crime and misconduct in the securities and futures industry;
- (e) to reduce systemic risks in the securities and futures industry; and
- (f) to assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the securities and futures industry.

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	5	Heading:	Functions and powers of Commission	Version Date:	01/04/2003

- (1) The functions of the Commission are, so far as reasonably practicable-
- (a) to take such steps as it considers appropriate to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
 - (b) to supervise, monitor and regulate-
 - (i) the activities carried on by recognized exchange companies, recognized clearing houses, recognized exchange controllers or recognized investor compensation companies, or by persons carrying on activities regulated by the Commission under any of the relevant provisions, other than registered institutions; and
 - (ii) such of the activities carried on by registered institutions as are required to be regulated by the Commission under any of the relevant provisions;
 - (c) to promote and develop an appropriate degree of self-regulation in the securities and futures industry;
 - (d) to promote, encourage and enforce the proper conduct, competence and integrity of persons carrying on activities regulated by the Commission under any of the relevant provisions in the conduct of such activities;
 - (e) to encourage the provision of sound, balanced and informed advice regarding transactions or activities related to financial products;
 - (f) to take such steps as it considers appropriate to ensure that the relevant provisions are complied with;

Chapter: 571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 197 of 2005
Schedule: 5	Heading:	REGULATED ACTIVITIES	Version Date:	06/01/2006

[sections 114, 118, 139 &
142 & Schedule 1]

PART 1

The following are regulated activities-

- Type 1 : dealing in securities;
- Type 2 : dealing in futures contracts;
- Type 3 : leveraged foreign exchange trading;
- Type 4 : advising on securities;
- Type 5 : advising on futures contracts;
- Type 6 : advising on corporate finance;
- Type 7 : providing automated trading services;
- Type 8 : securities margin financing;
- Type 9 : asset management.

Authorization of collective investment schemes

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	104	Heading:	Commission may authorize collective investment schemes	Version Date:	01/04/2003

(1) On an application to the Commission, the Commission may, where it considers appropriate, authorize any collective investment scheme, subject to the condition specified in subsection (2) and to any other conditions it considers appropriate.

(2) It shall be a condition of authorization of a collective investment scheme under subsection (1) that at any time when the scheme is authorized-

(a) there is an individual approved by the Commission under subsection (3) as an approved person for the purpose of being served by the Commission with notices and decisions for the scheme; and

(b) the Commission is informed of particulars-

(i) subject to subparagraph (ii), of the current contact details of the approved person referred to in paragraph (a), including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address of the approved person;

(ii) where there is any change in the contact details referred to in subparagraph (i), of the change, within 14 days after the change takes place.

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 154 of 2004
Section:	103	Heading:	Offence to issue advertisements, invitations or documents relating to investments in certain cases	Version Date:	03/12/2004

Division 2-Regulation of offers of investments, etc.

(1) Subject to subsections (2), (3) and (5) to (9), a person commits an offence if he issues, or has in his possession for the purposes of issue, whether in Hong Kong or elsewhere, an advertisement, invitation or document which to his knowledge is or contains an invitation to the public-

(a) to enter into or offer to enter into-

(i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or

(ii) a regulated investment agreement; or

(b) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme,

unless the issue is authorized by the Commission under section 105(1).

(2) Subsection (1) does not apply to 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;

- (d) made by or on behalf of a recognized exchange company or recognized clearing house in respect of the provision of services by such recognized exchange company or recognized clearing house (as the case may be);
- (e) made by or on behalf of a corporation to holders of securities or creditors of, or employees employed by or agents acting in a professional capacity on behalf of, that corporation, or a related corporation of that corporation, in respect of securities of that corporation or that related corporation;
- (f) made by or on behalf of the Government in respect of securities issued by it;
- (g) made by or on behalf of a credit union in respect of shares in the credit union;
- (ga) to the extent that the advertisement, invitation or document relates to an offer falling within paragraph (b)(ii) of the definition of "prospectus" in section 2(1) of the Companies Ordinance (Cap 32); (Added 30 of 2004 s. 3)
- (h) made by or on behalf of a person acting as a trustee of a trust, not being a collective investment scheme, to beneficiaries under the trust; or
- (i) made by or on behalf of a person who is engaged in the business of selling and purchasing property other than securities (whether acting as principal or agent) in the ordinary course of that business.

(3) Subsection (1) does not apply to the issue, or the possession for the purposes of issue-

- (a) of-
 - (i) a prospectus which complies with or is exempt from compliance with Part II of the Companies Ordinance (Cap 32);
 - (ii) in the case of a corporation incorporated outside Hong Kong, a prospectus which complies with or is exempt from compliance with Part XII of that Ordinance;
 - (iii) a publication falling within section 38B(2) of the Companies Ordinance (Cap 32); (Replaced 30 of 2004 s. 3)

(b) of a document relating to the securities of a body corporate incorporated in Hong Kong that is not a registered company, being a document which-

(i) would, if the body corporate were a registered company, be a prospectus to which section 38 of the Companies Ordinance (Cap 32) applies, or would apply if not excluded by section 38(5)(b) or 38A of that Ordinance; and

(ii) contains 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;

(c) of a form of application for the shares or debentures of a corporation, where it is issued, or the possession is for the purposes of issue, together with-

(i) a prospectus with respect to those shares or debentures which complies with or is exempt from compliance with Part II of the Companies Ordinance (Cap 32) or, in the case of a corporation incorporated outside Hong Kong, complies with or is exempt from compliance with Part XII of that Ordinance; or

(ii) in the case of a body corporate incorporated in Hong Kong that is not a registered company, a document containing 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;

(d) of a form of application for the securities of a corporation, where it is issued, or the possession is for the purposes of issue, in connection with an invitation made in good faith to a person to enter into an underwriting agreement with respect to those securities;

(e) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a certificate of deposit by an authorized financial institution;

(f) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a certificate of deposit-

(i) the amount or denomination of which is not less than the sum specified in Part 1 of Schedule 4; and

(ii) by-

(A) a multilateral agency; or

(B) a bank incorporated outside Hong Kong and having no place of business in Hong Kong, where the Monetary Authority has declared in writing that he is satisfied that the bank is likely to be adequately supervised by the relevant authority of any place in which it is incorporated or has its principal place of business;

(g) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of any instrument specified in Part 2 of Schedule 4 (other than a certificate of deposit), where the amount or denomination of the instrument is not less than the sum specified in Part 1 of Schedule 4 and the instrument-

(i) is issued by an authorized financial institution or a multilateral agency, or by an exempted body which, if it is a corporation or a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4, complies with the relevant condition;

(ii) is issued by a corporation which complies with the relevant condition, and is guaranteed by an authorized financial institution or a multilateral agency, or by an exempted body (other than a corporation specified in item 11 of Part 3 of Schedule 4 which does not comply with the relevant condition, or a wholly owned subsidiary of the corporation); or

(iii) is issued by a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4 and is guaranteed by the corporation of which it is such a subsidiary and which complies with the relevant condition;

(h) of any advertisement, invitation or document made in respect of the issue of securities the listing of which on a

recognized stock market has been approved by the recognized exchange company by which the recognized stock market is operated, where the advertisement, invitation or document complies with the rules made under section 23 or 36 governing the listing of securities, except to the extent that compliance is, in accordance with those rules, waived, modified or not required;

(i) 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;

(j) of any advertisement, invitation or document made in respect of securities, or interests in any collective investment scheme or regulated investment agreement, which are or are intended to be disposed of only to persons outside Hong Kong;

(k) of any advertisement, invitation or document made in respect of securities, or interests in any collective investment scheme or regulated investment agreement, which are or are intended to be disposed of only to professional investors.

(4) A person who commits an offence under subsection (1) is liable-

(a) on conviction on indictment to a fine of \$500000 and to imprisonment for 3 years and, in the case of a continuing offence, to a further fine of \$20000 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$10000 for every day during which the offence continues.

(5) 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.

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

(a) in the case of any advertisement, invitation or document made in respect of securities, to an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary;

(b) in the case of any advertisement, invitation or document made in respect of futures contracts, to an intermediary licensed or registered for Type 2 or Type 5 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary; or

(c) in the case of any advertisement, invitation or document made in respect of leveraged foreign exchange contracts, to-

(i) an authorized financial institution; or

(ii) an intermediary licensed for Type 3 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary.

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	102	Heading:	Interpretation of Part IV	Version Date:	01/04/2003

PART IV

OFFERS OF INVESTMENTS

Division 1-Interpretation

(1) In this Part, unless the context otherwise requires-

"advertisement" (廣告) includes every form of advertising, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means;

"approved person" (核准人士)-

(a) in relation to a collective investment scheme, means an individual approved by the Commission under section 104(3);
or

(b) in relation to the issue of an advertisement, invitation or document, means an individual approved by the Commission under section 105(3);

"document" (文件) means any publication (including a newspaper, magazine or journal, a poster or notice, a circular, brochure, pamphlet or handbill, or a prospectus)-

(a) directed at, or the contents of which are likely to be accessed or read (whether concurrently or otherwise) by, the public; and

(b) whether produced mechanically, electronically, magnetically, optically, manually or by any other means;

"exempted body" (獲豁免團體) means a body specified in Part 3 of Schedule 4;

"invitation" (邀請) includes an offer and an invitation, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means;

"issue" (發出), in relation to any material (including any advertisement, invitation or document), 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 authority" (監管當局), in relation to a place outside Hong Kong, means an authority which the Monetary Authority is satisfied is a recognized banking supervisory authority of that place;

"representative" (代表)-

- (a) in relation to a licensed corporation, means an individual-
 - (i) who is licensed as a licensed representative for a regulated activity; and
 - (ii) who carries on that regulated activity for the licensed corporation as a licensed corporation to which he is accredited; or
- (b) in relation to a registered institution, means an individual-
 - (i) 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 by the registered institution in respect of a regulated activity; and
 - (ii) who carries on that regulated activity for the registered institution.

Regulation of registered institutions

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	114	Heading:	Restriction on carrying on business in regulated activities, etc.	Version Date:	01/04/2003

- (1) Subject to subsections (2), (5) and (6), no person shall-
- (a) carry on a business in a regulated activity; or
 - (b) hold himself out as carrying on a business in a regulated activity.
- (2) Subsection (1) shall not apply to-
- (a) a corporation licensed under section 116 or 117 for the regulated activity;
 - (b) an authorized financial institution registered under section 119 for the regulated activity; or
 - (c) a person authorized under section 95(2) for the regulated activity.
- (3) Without prejudice to subsection (1) but subject to subsection (4), no person shall-
- (a) perform any regulated function in relation to a regulated activity carried on as a business; or
 - (b) hold himself out as performing such function.

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	119	Heading:	Registered institutions	Version Date:	01/04/2003

- (1) The Commission may, upon application by an authorized financial institution in the prescribed manner and payment of the prescribed fee, register the applicant for one or more than one regulated activity (other than Type 3 and Type 8 regulated activities) and shall, upon such registration, grant to the applicant a certificate of registration specifying the regulated activity for which it is registered.
- (2) The Commission shall refer to the Monetary Authority any application made to it under subsection (1).
- (3) Upon receiving an application for registration for a regulated activity referred to him under subsection (2), the Monetary Authority shall-
- (a) consider the application;
 - (b) consult the Commission upon the merits of the application;
 - and
 - (c) advise the Commission whether he is satisfied by the applicant that the applicant is a fit and proper person to be registered for that regulated activity.
- (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.
- (5) Any registration under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the registered institution concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.
- (6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), 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.
- (7) Without prejudice to the Commission's powers under Part IX, the registration of an authorized financial institution for Type 7 regulated activity shall be deemed to be

revoked in respect of that regulated activity upon the institution's being granted an authorization under section 95(2) to provide automated trading services.

(8) Without limiting the generality of subsection (5), it shall be a condition of 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 197(2).

(9) The Commission shall not exercise its power under subsection (5) or (8)(b) unless the Commission has first consulted the Monetary Authority.

Chapter:	155	Title:	BANKING ORDINANCE	Gazette Number:	L.N. 16 of 2003
Section:	20	Heading:	Register of authorized institutions, etc.	Version Date:	01/04/2003

(1) The Monetary Authority shall maintain a register, in such form as he thinks fit, which shall contain-

- (a) the name and the address of the principal place of business in Hong Kong of every bank;
- (b) the name of every bank which has a local representative office and the address of the place of business in Hong Kong of every local representative office;
- (c) the name and the address of the principal place of business in Hong Kong of every deposit-taking company;
- (d) the name and the address of the principal place of business in Hong Kong of every restricted licence bank;
- (e) in the case of a bank (including a bank referred to in paragraph (b)), deposit-taking company or restricted licence bank, incorporated outside Hong Kong, the address of its principal place of business outside Hong Kong; (Amended 6 of 2002 s. 4)
- (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 397 of the Securities and Futures Ordinance (Cap 571) for the purposes of section 136(2) of that Ordinance; and (Added 6 of 2002 s. 4)

(f) such other particulars of banks, local representative offices, deposit-taking companies or restricted licence banks as the Monetary Authority thinks fit (including particulars of any order of the Court of First Instance under section 53E(1)).

(Amended 25 of 1998 s. 2)

(2) The register shall be kept at the office of the Monetary Authority or at such other place as may be notified by the Monetary Authority in the Gazette.

(3) The Monetary Authority may require an authorized institution (including an authorized institution seeking to be a registered institution) or local representative office to submit such information for the purposes of subsection (1) as he may reasonably require in order to maintain the register in so far as it relates to that authorized institution or local representative office, as the case may be, and such information shall be submitted within such period and in such manner as the Monetary Authority may require. (Replaced 6 of 2002 s. 4)

(4) Where any information submitted to the Monetary Authority under subsection (3) changes subsequent to the submission, the authorized institution or local representative office which submitted the information shall give notice in writing to the Monetary Authority of such change-

(a) subject to paragraph (b), not later than 21 days after such change takes place;

(b) where subsection (1)(ea) is applicable, within 7 business days after such change takes place. (Replaced 6 of 2002 s. 4)

(4A) For the purposes of enabling any member of the public to ascertain whether a person he is dealing with is a relevant individual in relation to a registered institution and, if so, the capacity in which the relevant individual is engaged in relation to a regulated function in a regulated activity and the date on which the relevant individual was first so engaged, the information contained in the register under subsection (1)(ea) shall be made available to public inspection under subsection (5). (Added 6 of 2002 s. 4)

(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 public inspection in the form of an on-line record. (Added 6 of 2002 s. 4)

Chapter:	155	Title:	BANKING ORDINANCE	Gazette Number:	L.N. 148 of 2005
Section:	58A	Heading:	Disciplinary action in respect of relevant individuals	Version Date:	02/12/2005

(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 182 of the Securities and Futures Ordinance (Cap 571).

(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.

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	196	Heading:	Disciplinary action in respect of registered institutions, etc.	Version Date:	01/04/2003

(1) Subject to section 198, 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 126(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 198 and 199, 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) \$10000000; 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 129), 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 198(3), after the order has taken effect as a specified decision under section 232.

(5) The Court of First Instance may, on an application of the Commission made in the manner prescribed by rules made under section 397 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 his 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.

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	197	Heading:	Other circumstances for disciplinary action in respect of registered institutions, etc.	Version Date:	01/04/2003

(1) Subject to section 198, 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-

(a) if-

- (i) a receiver or manager of the property or business of the registered institution is appointed;
- (ii) the registered institution fails to satisfy a levy of execution;
- (iii) the registered institution enters into a compromise or scheme of arrangement with its creditors;
- (iv) the registered institution goes into liquidation or is ordered to be wound up;
- (v) the registered institution is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the registered institution to remain registered;

(b) if the registered institution does not carry on the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the revocation or suspension (as the case may be) relates; or

(c) if the registered institution requests the Commission to so revoke or suspend the registration.

(2) Subject to section 198, 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 119(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.

(3) The registration of a registered institution shall be deemed to be revoked if-

(a) the registered institution ceases to be an authorized financial institution; or

(b) the registered institution is wound up, struck off the register of companies or is otherwise dissolved.

(4) Subject to subsection (5), 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 138, 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 (6), 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.

(5) Any registration shall not be regarded as suspended under subsection (4) by reference to any failure to make full payment of any annual fee or additional sum, unless and until the Commission has, by notice in writing given not less than 10 business days before the suspension is to take effect, informed the registered institution of the requirement to make full payment of the annual fee or additional sum (as the case may be), and of the consequence of the failure to comply with the requirement under this section.

(6) Where any registration is suspended under subsection (4) 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.

Standards of conduct for RIs

Chapter: 571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section: 169	Heading:	Codes for business conduct of intermediaries and their representatives	Version Date:	01/04/2003

(1) Without prejudice to the power of the Commission to make rules under section 168, the Commission may publish, in the Gazette and in any other manner it considers appropriate, codes of conduct for the purpose of giving guidance relating to the practices and standards with which intermediaries and their representatives are ordinarily expected to comply in carrying on the regulated activities for which the intermediaries are licensed or registered.

(2) Without limiting the generality of subsection (1), any code of conduct referred to in that subsection may, in giving guidance referred to in that subsection, refer to obligations to observe-

- (a) any other codes or requirements issued or imposed otherwise than by the Commission;
- (b) continuing obligations, including any such obligations-
 - (i) in the case of an intermediary, to provide for the continuous training of its representatives; or
 - (ii) in the case of a representative of an intermediary, to undergo continuous training;
- (c) practices and standards concerning any of the matters described in section 168(2).

(3) The Commission may from time to time amend the whole or any part of any code of conduct published under this section in a manner consistent with the power to publish the code of conduct under this section, and-

- (a) the other provisions of this section apply, with necessary modifications, to such amendments to the code as they apply to the code; and
- (b) any reference in this or any other Ordinance to the code (however expressed) shall, unless the context otherwise requires, be construed as a reference to the code as so amended.

(4) A failure on the part of an intermediary, or a representative of an intermediary, to comply with the provisions set out in any code of conduct published under this section that apply to it or him shall not by itself render it or him liable to any judicial or other proceedings, but may be taken into account in considering, for the purposes of any provision of this Ordinance-

(a) in the case of an intermediary, whether it is a fit and proper person to be or to remain licensed or registered;

(b) in the case of a representative of an intermediary that is a licensed corporation, whether he is a fit and proper person to be or to remain licensed as a representative; or

(c) in the case of a representative of an intermediary that is a registered institution, whether he is a fit and proper person to be or to remain a person 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 by a registered institution in respect of a regulated activity,

and in any proceedings under this Ordinance before any court the code shall be admissible in evidence, and if any provision set out in the code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(5) Any code of conduct published under this section-

(a) may be of general or special application and, without limiting the generality of the foregoing, may be made so as to apply, or so as not to apply-

(i) to a specified extent in relation to any specified person or to members of a specified class of persons;

(ii) in specified circumstances;

(b) may make different provisions for different circumstances and provide for different cases or classes of cases.

(6) Any code of conduct published under this section is not subsidiary legislation.

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	399	Heading:	Codes or guidelines by Commission	Version Date:	01/04/2003

(1) The Commission may publish, in the Gazette and in any other manner it considers appropriate, such codes and guidelines as it considers appropriate for providing guidance-

- (a) for the furtherance of any of its regulatory objectives;
- (b) in relation to any matter relating to any of the functions of the Commission under any of the relevant provisions;
- (c) in relation to the operation of any provision of this Ordinance.

(2) Without limiting the generality of subsection (1), the Commission may publish under that subsection-

- (a) a code to provide for matters concerning takeovers and mergers and matters incidental thereto;
- (b) a code to provide for matters concerning share repurchases and matters incidental thereto.

(3) Notwithstanding anything in this section-

- (a) the power of the Commission to publish codes or guidelines under this section in respect of any persons as intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to publish codes or guidelines in respect of the intermediaries only in relation to the businesses which constitute any regulated activities for which they are registered;
- (b) the power of the Commission to publish codes or guidelines under this section in respect of any persons as associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to publish codes or guidelines in respect of the associated entities only in relation to their businesses of receiving or holding client assets of intermediaries of which they are associated entities.

(4) For the avoidance of doubt, the power of the Commission to publish codes or guidelines under this section is in addition to and not in derogation of any other power of the Commission to publish codes or guidelines under any provision of this or any other Ordinance.

(5) The Commission may from time to time amend the whole or any part of any code or guideline published under this section in a manner consistent with the power to publish the code or guideline under this section, and-

(a) the other provisions of this section apply, with necessary modifications, to such amendments to the code or guideline as they apply to the code or guideline; and

(b) any reference in this or any other Ordinance to the code or guideline (however expressed) shall, unless the context otherwise requires, be construed as a reference to the code or guideline as so amended.

(6) A failure on the part of any person to comply with the provisions set out in any code or guideline published under this section that apply to him shall not by itself render him liable to any judicial or other proceedings, but in any proceedings under this Ordinance before any court the code or guideline shall be admissible in evidence, and if any provision set out in the code or guideline appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(7) Any code or guideline published under this section-

(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.

(8) Any code or guideline published under this section is not subsidiary legislation.

(9) Notwithstanding any other provisions of this Ordinance, the Commission shall consult the Monetary Authority regarding codes or guidelines it proposes to publish under this section or any other provision of this Ordinance, or amendments it proposes to make to codes or guidelines published under this section or any other provision of this Ordinance, in so far as such codes or guidelines or such amendments (as the case may be) apply to authorized financial institutions by reason of their being registered institutions, or associated entities of intermediaries.