

**Ref.: SU B49/99**

## **LEGISLATIVE COUNCIL BRIEF**

Securities Ordinance  
(Chapter 333)

### **SECURITIES (MARGIN FINANCING) (AMENDMENT) BILL 1999**

#### **INTRODUCTION**

At the meeting of the Executive Council on 9 March 1999, the Council ADVISED and the Chief Executive ORDERED that the Securities (Margin Financing)(Amendment) Bill 1999, at Annex A, should be introduced into the Legislative Council.

#### **BACKGROUND AND ARGUMENT**

##### **General Background**

2. Securities margin financing has been a popular market activity in Hong Kong. In some cases, securities margin financing is conducted within a licensed securities dealer entity and subject to applicable rules on capital requirement and the treatment of client assets. Such operations are generally sound and do not pose any undue risk to investors or the market. However, securities margin financing is more often provided through finance companies which are largely unregulated.

3. These companies, though usually associated with stockbrokers, are independent finance companies (or called money lender companies) licensed under the Money Lenders Ordinance ("MLO") (Cap. 163). The practice of using money lender companies to operate securities margin financing business has become more widely used since the late 1980's and early 1990's, with the introduction of higher financial resources requirements and tighter regulatory standards for securities dealers (which cover also any securities margin financing activities conducted by the registered dealers), apparently to circumvent the more stringent regulation that the regulated entities are subject to.

4. Over these years, notwithstanding the absence of regulation over securities margin financing activities operated outside securities dealers, there had not been many reported problems. In fact, there were arguments that the absence of prudential regulation had enabled significant operational and capital efficiencies to be achieved, particularly by the smaller, less well-capitalised local brokerages, and helped inject additional liquidity in the retail sector that had supported market growth.

5. The bull run in 1997 however saw a marked increase in retail participation in the market that concentrated essentially on second and third liners, as reflected in the substantial fall of the share of blue chips in the total market turnover from the historical pattern of two-thirds to below 30%. The increased retail participation was accompanied by a substantial increase in margin trading. A review undertaken by the Securities and Futures Commission ("SFC") and the Stock Exchange of Hong Kong ("SEHK") in late spring of 1997 indicated that about 60 medium-sized local brokers with a predominantly local retail investor base accounted for outstanding margin loans amounting to HK\$18.6 billion, of which some HK\$10.5 billion were borrowed from banks, with client securities amounting to some HK\$68 billion being held as collateral. The overwhelming majority of these brokerage firms provided margin financing through a related finance company operating side by side with the brokerage. Many of these finance companies were thinly capitalised and failed to undertake prudent risk management measures. This led to over-lending to margin clients and other non-securities related borrowers, and over-exposure to specific stock collateral and individual borrowers.

6. The SFC and SEHK conducted another round of inspections in respect of these finance companies in October 1997 to ensure that they were not over-extending themselves in their credit provision. This resulted in more prudent management of risks by these companies and contributed to a great extent to their ability to withstand the sharp market fall which occurred in the latter half of that month. However, notwithstanding these efforts, some of these companies still failed to avoid coming into financial difficulties under tightened liquidity and extreme volatilities that followed the Asian financial turmoil. One collapsed primarily as a result of poor management of its securities margin financing business.

### **The Identified Problems**

7. While some of the companies that operate securities margin financing finance their operations with their own capital, the vast majority

rely on a combination of credit balances maintained by margin clients and facilities from banks as their main sources of working capital. The facilities from banks are themselves secured by the pooled stocks of many clients. The money so provided by the banks are not necessarily applied for the benefit of the clients whose stock has been used to secure the advance. Indeed in many cases the stock which secures the bank loan is owned by clients who do not themselves borrow money for securities trading.

8. The practice among companies which provide securities margin financing outside the licensed entity varies. Some of these companies do have measures to limit the exposure of the finance company to particular investors or stocks, ensure sufficient collateral coverage against the loan value and require clients to maintain margin positions over adverse market movements (or the so-called margin call policies). Unfortunately, many others are not prudently managed and, moreover, clients are not usually adequately informed of the risk associated with the pooling and repledging of their shares by the finance companies in return for credits from banks.

9. The absence of regulation has also led to other problems that became visible under adverse market conditions. For instance, clients are not properly explained of the terms of their margin agreements with the companies which are usually in English only and contain provisions that give undue privilege to the finance companies vis-à-vis their clients and excessive flexibility to the company in the management of clients' assets and credit balances. There are also complaints that clients do not fully understand their relationship with the securities dealers and the finance companies. Because of the over-reliance on clients' resources to support their business, many finance companies are also thinly capitalised, making them particularly vulnerable to liquidity pressure and clients' withdrawals in adverse market situations.

10. As a policy response, an inter-agency working group<sup>1</sup> ("the Working Group") was established in December 1997 under the Financial Services Bureau to study the issue of regulating the securities margin financing activities carried out by finance companies associated with stockbrokers in particular.

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<sup>1</sup> The Working Group comprised representatives of the FSB, the Hong Kong Monetary Authority, the SFC, the SEHK, the Companies Registry and the Department of Justice.

11. The Working Group completed its study and put forward its recommendations for public consultation in early May 1998 in the form of a Consultation Paper. The public consultation ended on 8 July 1998 and comments from a total of 88 parties were received. While the respondents were generally in support of the proposed regulatory regime, they also expressed various views and comments on individual recommendations contained in the Consultation Paper.

## **The Proposal**

12. In drafting its proposals, the Working Group has borne in mind the strong retail element in the securities margin financing market and the fact that the provision of securities margin financing facilities is clearly responsive to a demand in the market place. However, the Working Group is equally conscious that securities margin financing should be permitted only where adequate safeguards are in place for the protection of investors and market integrity. Similarly, capital requirements and other prudential regulation imposed on the operators should be set at levels consistent with the risks undertaken and not as a barrier to deter bona-fide and properly managed companies.

13. The proposed regulatory regime aims to increase protection for investors through prudential regulation of the securities margin finance operators while maintaining the latter's commercial viability to meet local market needs. Its key features include -

- (a) registration under the Securities Ordinance ("SO");
- (b) prudential rules on financial resources;
- (c) enhanced protection for clients' assets; and
- (d) standards for business practices.

### ***(a) Registration under Securities Ordinance***

14. The proposed regulatory regime will bring the securities margin financing activities and their operators clearly into the purview of the SO, thereby subjecting them to regulation by the SFC. A new class of registrants, known as securities margin financiers ("SMF"), will be introduced under the SO for these companies. The sole business

requirement will apply to restrict their business to the financing of securities trading only.

15. Existing securities dealers (including SEHK members) may continue to provide securities margin financing to their clients but such business will be subject to the same level of regulation as that for SMF.

16. The proposed regulatory regime also seeks to subject the new class of registrants to those requirements which are currently applicable to securities dealers and relevant to the operation of securities margin financing business. These include registration of securities margin financiers and their representatives, issue of statement of accounts, standards of accounts and audits, and keeping of proper books and records by the registrants. The power of SFC to investigate and make rules, as well as suspension and revocation of registration also apply in respect of securities margin financiers.

***(b) Financial Resources Rules***

17. It is also necessary to amend the Financial Resources Rules (“FRR”, subsidiary legislation under the SFC Ordinance (“SFCO”) (Cap. 24)) to ensure that licensed entities engaged in securities margin financing are financially sound. The current FRR came into force in December 1993. They set the minimum prudential standards on the financial resources of market intermediaries including securities and futures dealers and investment advisers and form an important part of intermediary regulation in Hong Kong. The proposed regulatory regime will extend the applicability of these rules to SMF and strengthen the rules to reflect the nature of the securities margin financing activities. The key elements of these rules after the proposed amendments include -

- a) Minimum paid-up capital. A minimum paid-up capital of \$10 million is required for SMF;
- b) Minimum liquid capital. SMF will be required to maintain at all times liquid capital not less than \$3 million or 5% of their total liabilities, whichever is the higher;
- c) Value of stocks held as collateral to be discounted (or known as “haircut”). To allow for price fluctuations due to market volatility, the value of stocks held by SMF as collateral against margin loans extended to clients are

discounted on a client by client basis when calculating asset values for FRR purposes;

- d) Concentrated risk adjustments. In calculating asset values for FRR purposes, assets arising from over-exposure to individual or related clients or stock collateral beyond specified thresholds will be discounted. For example, loan receivable from any individual client in excess of 10% of the total loan portfolio will be subject to additional haircuts in the calculation of the SMF's liquid assets. Similarly, excessive collateral in the form of any single stocks beyond certain thresholds in relation to the total stock collateral portfolio will be further discounted; and
- e) Reporting requirements. SMF are required to disclose their top margin clients, summary of bank lines and their utilisation to the SEHK and SFC on a regular basis.

18. The SFC has also taken the opportunity to amend the FRR to bring it up-to-date in the light of the changing market practices<sup>2</sup>. The proposed amendments to the FRR will be incorporated in the Financial Resources Rules 1999 to be introduced into the Legislative Council for negative vetting.

***(c) Protection of Clients' Assets***

19. The sections in the SO in relation to the disposition of security documents and handling of clients' assets will be substantially revised to provide better protection to investors by limiting the use of clients' assets by the securities dealers and securities margin financiers. More specifically,

- a) securities dealers will need to have clients' written authorisation to use stocks entrusted to them by their clients to support their margin financing activities. Such

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<sup>2</sup> The existing FRR was first introduced in December 1993 and amended in mid 1995. To ensure that the FRR is able to cope with the changes in market practices and strategies and to remove any anomalies and deficiencies identified in operating the rules since its introduction, the SFC conducted a thorough review of the FRR and published the results of the review for public consultation in March 1997. Proposed amendments to the FRR included the required liquid capital; position risk adjustments; counterparty risk adjustments; liquidity adjustments; requirement for advisers; returns and notifications; and other technical issues. Separately, pursuant to section 28 of the SFCO, the SFC may make the rules after consultation with the Financial Secretary.

authorisation will have to be renewed on an annual basis and even with authorisation, the permitted uses of clients' stocks will still be confined to specific purposes. Furthermore, it will be specified in the proposed revised Code of Conduct (paragraph 22 refers) that the authorisation can be withdrawn by clients by five days' notice;

- b) under the proposed revised Code of Conduct, such authorisation must be prepared in plain language in both Chinese and English, with clear risk disclosure provisions; and
- c) cash and margin accounts must be clearly segregated.

***(d) Standards of Business Practices***

20. A revised Code of Conduct will be introduced by the SFC for SMF to lay out the standards of business practices expected by regulators, including margin call policies, cash flow management and sufficient disclosure to clients on account status.

**Encumbrance of Stock Collateral**

21. The proposed regulatory regime will continue to permit the current practice of "pooling" of clients' assets. Before putting the proposal for consultation, the Working Group had thoroughly considered the matter and believes that disallowing pooling might in effect render most margin financing operations as practised in Hong Kong commercially non-viable. The Working Group believes that the proposed regulatory regime as a whole would help ensure the capital adequacy of these companies and render better protection to margin clients. It is therefore recommended that pooling of client assets may continue to be allowed insofar as clients are adequately informed of the risks involved.

**Transitional Arrangements**

22. Subject to and following the legislative amendments, existing registered securities dealers and non-registered entities now carrying on securities margin financing business will have 30 days to indicate to the SFC their interest to continue to provide securities margin financing. Registered securities dealers will have six months to bring themselves into

conformity with certain requirements under the new FRR including minimum paid-up capital requirement. All other parties are required to apply for necessary registration as SMF, and to fully comply with the regulation once their licence as SMF is granted by SFC.

### **Consequential Amendments**

23. It is necessary to make consequential amendments to the SFC Ordinance to extend the regulatory powers of SFC to cover securities margin financiers and their representatives.

24. Consequential amendments to the MLO are also necessary. The MLO covers all kinds of money lending activities, including securities margin financing activities. To avoid duplication of regulation, securities dealers who provide securities margin financing and securities margin financiers registered with the SFC will be exempted from the MLO. However, the provision under the MLO which prohibits the imposition of excessive interest rates will still be applicable to the exempted entities.

### **Other Subsidiary Legislation**

25. Subject to the enactment of the principal legislation embodied in the current Bill, the SFC will in due course introduce amendments to other relevant subsidiary legislation under the SO as are necessary for the administration and operation of the proposed regulatory regime. The SFC will also introduce a new piece of subsidiary legislation under the SO to specify the information to be provided by a company for registration as SMF and by its representatives.

### **THE BILL**

26. Clauses 2 and 3 of the Bill at Annex A amend the SO to introduce a new Part XA to provide for matters relating to -

- a) registration requirements for persons applying to be registered as securities margin financiers and securities margin financier's representatives, revocation and suspension of registration of securities margin financiers and representatives;
- b) the conduct of securities margin financing businesses by registered securities margin financiers;

- c) right of rescission conferred on clients of financiers not registered with the SFC<sup>3</sup>;
- d) the particulars to be included in the accounting records of financiers and requirements for keeping those records;
- e) the auditing requirements applicable to registered financiers; and
- f) transitional arrangements.

27. Clause 4 of the Bill gives effect to Schedule 1 which contains amendments to the SO. Those amendments will impose similar requirements on securities dealers engaging in securities margin financing activities in respect of the maintenance of accounting records, issue of statement of accounts, treatment of securities deposited by clients and credit balances held or maintained on behalf of clients and rule making power of the SFC. Necessary consequential amendments to the SO are made.

28. Consequential amendments to the SFCO are made for the purpose of placing securities margin financing activities clearly under the regulatory and supervisory ambit of SFC (clause 5).

29. The MLO is amended to exempt registered securities margin financiers and registered securities dealers who carry on businesses in securities margin financing from that Ordinance (clause 6).

30. Extracts of the relevant provisions in the SO, the SFCO and the MLO are at Annex B for ease of reference.

## **PUBLIC CONSULTATION**

31. As mentioned in paragraph 11 above, the two-month public consultation on the proposed regulatory regime for securities margin financing closed on 8 July 1998. Respondents are in general supportive of

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<sup>3</sup> Division 4 of the Part XA provides that, if an unregistered securities margin financier enters into a contract with a client that relates to securities margin financing, the client will have a right to rescind the contracts unless the rescission of the contract would prejudice a right, or an interest in property, acquired by a third party where that right or interest has been acquired in good faith, for valuable consideration and without notice of the facts entitling the client to rescind the contract.

the initiative to bring securities margin financing into proper and prudential regulation under the supervision of the SFC and their views on specific proposed requirements have been taken in account when the present proposal was finalised.

32. The Administration briefed the Financial Affairs Panel of the Legislative Council at its meeting on 7 January 1999 on the proposed regulation as well as the comments and suggestions received during the public consultation. Members of the Panel raised no objection to the proposed regulatory regime though there had been divergent and opposing views as to the level of regulation proposed.

### **BASIC LAW IMPLICATIONS**

33. The Department of Justice advises that the proposed legislation does not conflict with those provisions of the Basic Law which carry no human rights implications.

### **HUMAN RIGHTS IMPLICATIONS**

34. The Department of Justice advises that the proposed legislation is consistent with the human rights provisions of the Basic Law.

### **BINDING EFFECT OF THE BILL**

35. The amendments will not affect the current binding effect of the existing provisions of the various Ordinances covered by the Bill.

### **FINANCIAL AND STAFFING IMPLICATIONS**

36. The proposal has no financial and staffing implications for the Government. As it will expand the regulatory functions of the SFC, it may have resources implications for the Commission. The SFC expects that it should be able to absorb the additional resources requirements arising from the implementation of the proposal.

### **ECONOMIC IMPLICATIONS**

37. Bringing securities margin financing activities into proper regulation will engender greater prudence and soundness in conducting

such activities, and hence will be conducive to the healthy development of the securities market.

## **LEGISLATIVE TIMETABLE**

38. The legislative timetable as approved by the Executive Council is as follows -

Publication in the Gazette	19 March 1999
First Reading and commencement of Second Reading debate	31 March 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **PUBLICITY**

39. A press release will be issued on 17 March 1999 and the Bill will be published in the Gazette on 19 March 1999. A spokesman will be available for answering media enquiries.

## **ENQUIRIES**

40. For any enquiries on this brief, please contact Mr Bryan Chan, Principal Assistant Secretary for Financial Services at 2528 9161.

Financial Services Bureau  
File Reference: SU B49/99

**SECURITIES (MARGIN FINANCING)(AMENDMENT) BILL 1999**

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## A BILL

To

Amend the Securities Ordinance to regulate securities margin financing and to provide for related matters.

Enacted by the Legislative Council.

### 1. Short title and commencement

(1) This Ordinance may be cited as the Securities (Margin Financing) (Amendment) Ordinance 1999.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services by notice published in the Gazette.

### 2. Interpretation

Section 2(1) of the Securities Ordinance (Cap. 333) is amended by adding -

““accounting records” (會計紀錄) includes any records relating to trust accounts required to be kept under this Ordinance;

“agent” (代理人) includes a person who acts under an arrangement with another;

“audit” (審計) includes examine;

“business day” (營業日) means a day (excluding Saturday) on which banks in Hong Kong are open for business;

“financial accommodation” (財務通融) means a loan or other arrangement under which a person is or is to be provided with credit, whether directly or through a third party, and in particular includes an overdraft, discounted negotiable instrument, guarantee, a forbearance from enforcing a debt that in substance is a loan, and also includes an agreement to secure the payment or repayment of any such accommodation;

“Insurance Authority” (保險監督) means the public officer appointed as the Insurance Authority under section 4 of the Insurance Companies Ordinance (Cap. 41);

“Monetary Authority” (金融管理專員) means the person appointed as the Monetary Authority under section 5A of the Exchange Fund Ordinance (Cap. 66);

“officer” (高級人員), in relation to a corporation, means a director, secretary or other person concerned in the management of the corporation;

“record” (紀錄), when used as a noun, means any record of information, however compiled, recorded or stored, and includes -

- (a) any book, register or other document containing information;  
and
- (b) any disc, tape or other article from which information is capable of being produced;

“record” (紀錄), when used as a verb, includes compile and store;

“registered financier” (註冊融資人) means a person registered as a securities margin financier;

“registered financier’s representative” (註冊融資人代表) means a person registered as a securities margin financier’s representative;

“securities collateral” (證券抵押品), in relation to a dealer or a securities margin financier, means securities deposited -

- (a) with the dealer or financier as security for the provision by the dealer or financier of financial accommodation; or
- (b) with any other person to facilitate the provision of financial accommodation by the dealer or financier under an arrangement that confers on the dealer or financier a collateral interest in the securities;

“securities margin financier” (證券保證金融資人) means a person who carries on a business of securities margin financing, whether the person carries on any other business or not;

“securities margin financier’s representative” (證券保證金融資人代表), in relation to a securities margin financier, means -

- (a) an employee or agent of a securities margin financier who for remuneration performs for the financier any function relating to the business of securities margin financing carried on by the financier, other than work normally performed by an accountant, clerk or cashier; or

- (b) a director of the financier who actively participates in, or is directly responsible for supervising, the financier's business of securities margin financing;

“securities margin financing” (證券保證金融資) means providing financial accommodation in order to facilitate the acquisition of securities listed on a stock exchange and, where applicable, the continued holding of those securities, whether or not those or other securities are pledged as security for the accommodation;”.

### 3. Part added

The following is added -

“PART XA  
SECURITIES MARGIN FINANCING

*Division 1 - Preliminary*

#### **121B. Application of Part XA**

- (1) This Part applies only to a business of securities margin financing carried on in Hong Kong in so far as the business relates to securities listed on a stock exchange (whether located in Hong Kong or elsewhere).
- (2) This Part does not apply to any of the following kinds of business -
  - (a) the provision of financial accommodation by a registered or exempt dealer in order to facilitate acquisitions or holdings of securities by the dealer for the dealer's clients;
  - (b) the provision of financial accommodation by a mutual fund corporation in order to finance investment in any of the corporation's mutual funds;
  - (c) the provision of financial accommodation by an authorized financial institution for the purpose of facilitating acquisitions or holdings of securities by the institution's clients;

- (d) securities margin financing that is or forms part of a stock borrowing, or a stock return, as defined by section 19(16) of the Stamp Duty Ordinance (Cap. 117), or any transaction in securities similar to such a borrowing or return;
- (e) the provision of financial accommodation by a member of a group of companies to another member of the group in order to facilitate acquisitions or holdings of securities by that other member;
- (f) the provision of financial accommodation that forms part of an arrangement to underwrite or sub-underwrite securities;
- (g) the provision of financial accommodation to facilitate an acquisition of securities in accordance with the terms of a prospectus.

(3) For the purposes of this section, “group of companies” (公司集團) has the same meaning as in the Companies Ordinance (Cap. 32).

*Division 2 - Registration of securities margin financiers*

**121C. Securities margin financing prohibited except by registered financier**

- (1) A person must not -
  - (a) carry on a business of securities margin financing; or
  - (b) hold out that the person carries on such a business,

unless the person is registered as a securities margin financier.

- (2) A person who contravenes subsection (1) commits an offence and is liable -
  - (a) on conviction on indictment, to a fine of \$200,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues; or
  - (b) on summary conviction, to a fine at level 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$500 for each day during which the offence continues.

(3) For the purposes of this section only, a person is taken not to be registered as a securities margin financier while the registration is suspended.

**121D. Unregistered person not to act as representative of registered financier**

(1) A person must not -  
(a) act as a representative of a registered financier; or  
(b) hold out that the person is prepared to act as such a representative, unless the person is registered as a securities margin financier's representative.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$500 for each day during which the offence continues.

(3) For the purposes of this section only, a person is taken not to be registered as a securities margin financier's representative while the registration is suspended.

**121E. Who is eligible to be registered under this Part**

(1) A person is eligible to be registered as a securities margin financier only if -

- (a) the person is a company; and
- (b) the company carries on no business other than securities margin financing.

(2) Only a natural person who has reached 18 years of age is eligible to be registered as a securities margin financier's representative.

**121F. Application for registration**

(1) Any eligible person may apply to the Commission to be registered as a securities margin financier or a securities margin financier's representative.

- (2) An application for registration must -
- (a) contain such information as is prescribed by Commission rules; and
  - (b) be accompanied by such documents and by such fee as are so prescribed.

(3) An applicant must, if so required by the Commission, provide the Commission with such further information in relation to the application as the Commission thinks necessary.

(4) An applicant or other person who, in or in relation to an application under this section, makes any representation, whether orally or in writing, that the person knows to be materially false or misleading commits an offence and is liable on conviction on indictment to imprisonment for 5 years.

(5) For the purposes of subsection (4), “representation” (申述) means a representation -

- (a) of a matter of fact, either present or past; or
- (b) about a future event; or
- (c) about an existing intention, opinion, belief, knowledge or other state of mind.

(6) Proceedings for an offence under subsection (4) may be brought at any time within 6 months after the discovery of the offence.

**121G. Grant or refusal of application for registration as securities margin financier**

(1) This section applies to an application for registration as a securities margin financier.

(2) The Commission may refuse the application if -

- (a) the applicant is not eligible to make the application; or
- (b) the application does not comply with section 121F; or
- (c) the applicant has not provided the Commission with such information relating to it or any person employed by or associated with it, and to any circumstances likely to affect its method of conducting business as may be prescribed by or under this Ordinance; or
- (d) any director of the applicant is detained under the Mental Health Ordinance (Cap. 136) in a mental hospital or is a person suffering or appearing to suffer from mental disorder within the meaning of that Ordinance; or

- (e) any director of the applicant is an undischarged bankrupt or has entered into a voluntary arrangement with the director's creditors within the meaning of the Bankruptcy Ordinance (Cap. 6); or
- (f) the applicant does not have the financial resources specified in the financial resources rules as being necessary to enable a business of securities margin financing to be carried on.

(3) The Commission must refuse the application unless at least one director of the applicant is or will be approved by the Commission under section 121I.

(4) The Commission must also refuse the application if the applicant does not satisfy the Commission that it is a fit and proper person to be registered as a securities margin financier.

(5) In considering whether the applicant is a fit and proper person to be registered as a securities margin financier, the Commission must, in addition to any other matter that the Commission considers relevant, have regard to the following matters -

- (a) the current and past financial status of the applicant and its officers;
- (b) the educational or other qualifications or experience of the applicant's officers having regard to the nature of the functions that they will perform if the application is granted;
- (c) the ability of the applicant's officers to perform those functions efficiently, honestly and fairly;
- (d) the reputation, financial integrity and reliability of the applicant and the reputation, character, financial integrity and reliability of the applicant's officers;
- (e) any decision granting or refusing an application for authorization made in respect of the applicant -
  - (i) by the Monetary Authority or the Insurance Authority; or
  - (ii) by any other authority (whether in Hong Kong or elsewhere) that in the opinion of the Commission performs a function similar to that imposed on the Commission by this section or section 121H or 121I.

(6) For the purposes of this section, the Commission may take into account any relevant information in its possession whether provided by the applicant or by some other person.

(7) For the purposes of this section, the Commission may take into account any information that it has relating to -

- (a) any person who is or is to be employed by, or associated with, the applicant for the purposes of the business to which the application relates; and
- (b) any person who will be acting as a representative in relation to that business; and
- (c) any substantial shareholder of the applicant or of any other company belonging to the same group of companies, or any officer of any such other company.

(8) The Commission must not refuse the application without first giving the applicant an opportunity of being heard.

(9) As soon as practicable after refusing an application made under this section, the Commission must give written notice of the refusal to the applicant and must include in the notice the reasons why the application was refused.

(10) In subsection (5), a reference to authorization includes a reference to registration and licensing.

**121H. Grant or refusal of application for registration as securities margin financier's representative**

(1) This section has effect where a natural person makes an application for registration as a securities margin financier's representative.

(2) The Commission may refuse the application if -

- (a) the applicant is not eligible to make the application; or
- (b) the application does not comply with section 121F; or

- (c) the applicant has not provided the Commission with such information as may be prescribed by or under this Ordinance; or
- (d) the applicant is detained under the Mental Health Ordinance (Cap. 136) in a mental hospital or is a person suffering or appearing to suffer from mental disorder within the meaning of that Ordinance; or
- (e) the applicant is an undischarged bankrupt or has entered into a voluntary arrangement with the applicant's creditors within the meaning of the Bankruptcy Ordinance (Cap. 6).

(3) The Commission must refuse the application if the applicant does not satisfy the Commission that the applicant is a fit and proper person to be registered as a securities margin financier's representative.

(4) In considering whether the applicant is a fit and proper person to be registered as a securities margin financier's representative, the Commission must, in addition to any other matter that the Commission considers relevant, have regard to the following matters -

- (a) the applicant's current and past financial status;
- (b) the applicant's educational or other qualifications or experience having regard to the nature of the functions that the applicant will perform if the application is granted;
- (c) the applicant's ability to perform those functions efficiently, honestly and fairly;
- (d) the applicant's reputation, character, financial integrity and reliability;
- (e) any decision granting or refusing an application for authorization made in respect of the applicant -
  - (i) by the Monetary Authority or the Insurance Authority; or
  - (ii) by any other authority (whether in Hong Kong or elsewhere) that in the opinion of the Commission performs a function similar to that imposed on the Commission by this section or section 121G or 121I;

- (f) any matter relating to a person who is or is to be associated with the applicant in relation to the business of the securities margin financier for whom the applicant will act if the application is granted;
- (g) any business carried on or proposed to be carried on by the applicant.

(5) For the purposes of this section, the Commission may have regard to any information in its possession whether provided by the applicant or not.

(6) The Commission must not refuse the application without first giving the applicant an opportunity of being heard.

(7) As soon as practicable after refusing an application made under this section, the Commission must give written notice of the refusal to the applicant and must include in the notice the reasons why the application was refused.

(8) In subsection (4), a reference to authorization includes a reference to registration and licensing.

#### **121I. Registered financier not to carry on business unless it has an approved director**

(1) A registered financier must not carry on a business of securities margin financing unless at least one director of the financier is approved by the Commission under this section.

(2) A registered financier that carries on business in contravention of subsection (1) commits an offence and is liable -

- (a) on conviction on indictment, to a fine of \$200,000 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues; or
- (b) on summary conviction, to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$500 for each day during which the offence continues.

(3) A director of a registered financier, or of a company that has applied to be registered as a securities margin financier, may apply in writing to the Commission to be approved under this section.

(4) The Commission may refuse the application if the applicant -

(a) is not, or has not applied to be, registered as a securities margin financier's representative; or

(b) does not satisfy the Commission that the applicant -

(i) actively participates or will actively participate in the business of securities margin financing that the registered financier or the company that has applied to be so registered carries on or proposes to carry on; or

(ii) is or will be directly responsible for the supervision of that business; or

(iii) is a fit and proper person to supervise that business.

(5) In considering whether the applicant is a fit and proper person to be approved under this section, the Commission must, in addition to any other matter that the Commission considers relevant, have regard to the matters specified in section 121H(4).

(6) For the purposes of subsection (4), the Commission may have regard to any information in its possession whether provided by the applicant or not.

(7) The Commission must not refuse the application without first giving the applicant an opportunity of being heard.

(8) As soon as practicable after refusing an application made under this section, the Commission must give written notice of the refusal to the applicant and must include in the notice the reasons why the application was refused.

**121J. Commission may impose conditions and restrictions in granting application for registration**

(1) Registration as a securities margin financier or as a securities margin financier's representative is subject to -

- (a) such conditions and restrictions (if any) as are prescribed by Commission rules; and
  - (b) such conditions and restrictions (if any) as the Commission imposes when granting the application for registration or at any time while registration remains in force.
- (2) The Commission may, at any time, revoke or vary conditions or restrictions imposed under subsection (1)(b).
- (3) The Commission must not impose conditions or restrictions under subsection (1)(b), or vary any such conditions or restrictions, without first giving the registered financier or registered financier's representative an opportunity of being heard.

**121K. Special conditions applicable to registered financiers**

- (1) Conditions and restrictions that may be imposed on a registered financier under section 121J include (but are not limited to) a condition requiring the financier to lodge and maintain with the Commission a security approved by the Commission for such amount not exceeding the amount prescribed by Commission rules for such purpose.
- (2) If a security is lodged with the Commission in accordance with a condition to which registration is subject in accordance with subsection (1), the Commission may apply the security in such circumstances, for such purposes and in such manner as is prescribed by Commission rules.

**121L. Special condition applicable to registered financiers' representatives**

It is a condition of registration as a registered financier's representative that the representative must not act for a registered financier other than the financier whose name currently appears in the representative's certificate of registration.

**121M. Commission to issue certificate of registration**

(1) On granting an application for registration as a securities margin financier, the Commission must issue the applicant with a certificate of registration authorizing the applicant to carry on a business of securities margin financing.

(2) On granting an application for registration as a securities margin financier's representative, the Commission must issue the applicant with a certificate of registration authorizing the applicant to act as a securities margin financier's representative. The certificate must specify the name of the registered financier for whom the applicant is authorized to act.

**121N. Information and statements to be given to Commission**

(1) A registered financier must lodge such written information or statements in relation to the securities margin financing business carried on by the financier as the Commission from time to time directs.

(2) If the Commission requires a registered financier to have a statement specified in a direction given under subsection (1) audited by an auditor of the financier before it is lodged, the financier must comply with the requirement.

(3) The Commission may extend the period for compliance with a direction given under subsection (1).

**121O. Commission to keep Registers of Securities Margin Financiers and Securities Margin Financiers' Representatives**

(1) The Commission must keep a Register of Securities Margin Financiers and a Register of Securities Margin Financiers' Representatives for the purposes of this Part.

(2) The Commission must enter in the Register of Securities Margin Financiers the following particulars in relation to each registered financier -

- (a) the financier's name;
- (b) the name of each of the directors of the financier approved under section 121I;

- (c) the address of the financier's principal place of business;
- (d) the date on which the application for registration was granted;
- (e) any other matters prescribed by Commission rules.

(3) The Commission must enter in the Register of Securities Margin Financiers' Representatives the following particulars in relation to each registered financier's representative -

- (a) the representative's name;
- (b) the address of the principal place of business of the registered financier for whom the representative is authorized to act;
- (c) the date on which the application for registration was granted;
- (d) any other matters prescribed by Commission rules.

(4) If a person has ceased to be registered under this Part, the Commission must cancel the registration and record the cancellation in the relevant Register.

(5) Whenever the office of the Commission is open for business, any person may, in accordance with Commission rules, inspect the Registers and make a copy of an entry in the Registers relating to a particular person.

(6) A copy of an entry in a Register that purports to be certified by an officer authorized by the Commission is admissible in any legal proceedings as evidence of its contents until the contrary is proved.

**121P. Names of registered financiers and registered financiers' representatives to be published in Gazette**

(1) The Commission must, not less than once in each calendar year, publish in the Gazette the names and addresses of all persons who are registered as securities margin financiers and securities margin financiers' representatives.

(2) If either of the Registers kept under section 121O is amended by adding or removing a person's name, the Commission must publish in the Gazette particulars of the amendment within 1 month after making it.

**121Q. Registered financier and registered financier's representative to notify change in particulars**

(1) Within 7 business days after a change occurs in a particular prescribed by Commission rules that relates to a registered financier, the financier must give written notice of the change to the Commission.

(2) Within 1 business day after a registered financier ceases to carry on the business of securities margin financing, the financier must give written notice of that fact to the Commission.

(3) Within 7 business days after a person is appointed or ceases to be appointed as a director of a registered financier, the financier must give written notice to the Commission of the appointment or cessation of appointment and the person's name and address.

(4) Within 7 business days after a change occurs in a particular prescribed by Commission rules that relates to a registered financier's representative, the representative must give written notice of the change to the Commission.

(5) Within 1 business day after a registered financier's representative ceases to act for a registered financier, the financier and representative must each give written notice of that fact to the Commission.

(6) A notice required to be given under this section must be in a form provided or approved by the Commission.

(7) A registered financier or registered financier's representative who, without reasonable excuse, fails to comply with a requirement of this section commits an offence and is liable on conviction to a fine at level 2.

**121R. Revocation and suspension of registration of registered financier**

(1) The registration of a registered financier is revoked if the financier is struck off the register of companies or is otherwise dissolved.

(2) The Commission may revoke the registration of a registered financier if

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- (a) the financier is in liquidation or is ordered to be wound up; or
- (b) a receiver, or a receiver and manager, of the financier's property is appointed; or
- (c) the financier is not carrying on a business of securities margin financing; or
- (d) a levy of execution relating to the financier has not been satisfied; or
- (e) the financier enters into a compromise or an arrangement with its creditors; or
- (f) the financier or any of the financier's officers is convicted, whether in Hong Kong or elsewhere, of an offence the conviction for which necessarily involved a finding that the officer acted fraudulently or dishonestly; or
- (g) the financier or any of the financier's officers is convicted of an offence against this Ordinance; or
- (h) the financier contravenes section 121I(1)(whether convicted of the contravention or not).

(3) The Commission must not revoke the registration of a registered financier under subsection (2) without first giving the financier an opportunity of being heard.

(4) The Commission may also revoke a registered financier's registration at the financier's request.

(5) The Commission may, instead of revoking the registration of a registered financier under subsection (2), suspend that registration for such period, or until the happening of such event, as it determines.

(6) The Commission may at any time vary or revoke a suspension of registration of a registered financier if it believes it to be appropriate to do so.

#### **121S. Powers of Commission in relation to misconduct of registered financier**

(1) The Commission may at any time inquire into any of the following matters -

- (a) whether a registered financier -

- (i) has failed to provide the Commission, whether before or after becoming registered under this Part, with such information relating to the financier, and to any circumstances likely to affect the financier's method of carrying business, as may be required by or under this Ordinance; or
  - (ii) has provided the Commission with any such information but the information is materially false or misleading; or
  - (iii) is or has been guilty of any misconduct in relation to the carrying on of the financier's business; or
  - (iv) for any other reason, is no longer a fit and proper person to be registered as a securities margin financier; or
- (b) whether any of the financier's officers -
- (i) is or has been guilty of any misconduct; or
  - (ii) is a fit and proper person to be concerned in the management of the financier's business.

(2) In considering whether a registered financier is a fit and proper person to continue to be registered, the Commission must, in addition to any other matter that the Commission considers relevant, have regard to the following matters -

- (a) the current and past financial status of the financier and its officers;
- (b) the educational or other qualifications or experience of the financier's officers having regard to the nature of the functions that they are required to perform;
- (c) the ability of the financier's officers to continue to perform those functions efficiently, honestly and fairly;
- (d) the financier's reputation, financial integrity and reliability and the reputation, character, financial integrity and reliability of the financier's officers.

(3) After inquiring under this section into a matter relating to a registered financier or an officer of the financier, the Commission may if it thinks fit -

- (a) revoke the financier's registration; or

- (b) suspend the financier's registration for such time, or until the happening of such event, as it may determine; or
  - (c) reprimand the financier or officer.
- (4) The Commission must not impose a penalty under this section without first giving the financier or officer concerned an opportunity of being heard.
- (5) For the purposes of this section, "misconduct" (失當行爲) means -
- (a) a contravention of a provision of this Ordinance or of the Securities and Futures Commission Ordinance (Cap. 24) that relates to carrying on a business of securities margin financing; or
  - (b) a failure to comply with a requirement made by the Commission under this Ordinance or the Securities and Futures Commission Ordinance (Cap. 24) that relates to carrying on a business of securities margin financing; or
  - (c) a contravention of a condition or restriction of the registration of a registered financier or of the registration of a registered financier's representative who is authorized to act for the financier; or
  - (d) an act or omission by a registered financier, or by a registered financier's representative who is authorized to act for the financier, that is or is likely to be prejudicial to the interests of members of the investing public.

**121T. Revocation and suspension of registration of registered financier's representative**

- (1) The registration of a registered financier's representative is revoked by the representative's death.
- (2) The Commission may revoke the registration of a registered financier's representative if -
- (a) the representative is detained under the Mental Health Ordinance (Cap. 136) in a mental hospital or is a person suffering or appearing to suffer from mental disorder within the meaning of that Ordinance; or

- (b) the representative is the subject of a bankruptcy order or enters into a voluntary arrangement with the representative's creditors within the meaning of the Bankruptcy Ordinance (Cap. 6); or
- (c) the representative is convicted, whether in Hong Kong or elsewhere, of an offence the conviction for which necessarily involved a finding that the person acted fraudulently or dishonestly; or
- (d) the representative is convicted of an offence against this Ordinance; or
- (e) the representative ceases to act for the registered financier in relation to whom the representative is registered; or
- (f) the registration of the registered financier in relation to whom the representative is registered is revoked or suspended.

(3) The Commission must not revoke the registration of a registered financier's representative under subsection (2) without first giving the representative an opportunity of being heard.

(4) The Commission may also revoke the registration of a registered financier's representative at the request of the representative or the registered financier for whom the representative acts.

(5) The Commission may, instead of revoking the registration of a registered financier's representative under subsection (2), suspend that registration for such period, or until the happening of such event, as it determines.

(6) The Commission may at any time vary or revoke a suspension of registration of a registered financier's representative if it believes it to be appropriate to do so.

#### **121U. Powers of Commission in relation to misconduct of registered financier's representative**

(1) The Commission may at any time inquire into whether a registered financier's representative -

- (a) has failed to provide the Commission, whether before or after becoming registered under this Part, with such information relating to the representative as may be required by or under this Ordinance; or
- (b) has provided the Commission with any such information but the information is materially false or misleading; or
- (c) is or has been guilty of any misconduct in relation to the business of the registered financier for whom the representative acts or formerly acted; or
- (d) for any other reason, is no longer a fit and proper person to be registered as a securities margin financier's representative.

(2) In considering whether a registered financier's representative is a fit and proper person to continue to be registered, the Commission must, in addition to any other matter that the Commission considers relevant, have regard to the following matters-

- (a) the representative's current and past financial status;
- (b) the representative's educational or other qualifications or experience, having regard to the nature of the functions that the representative is required to perform;
- (c) the representative's ability to perform those functions efficiently, honestly and fairly;
- (d) the representative's reputation, character, financial integrity and reliability.

(3) After inquiring into a matter relating to a registered financier's representative, the Commission may if it thinks fit -

- (a) revoke the representative's registration; or
- (b) suspend the representative's registration for such time, or until the happening of such event, as it may determine; or
- (c) reprimand the representative.

(4) The Commission must not impose a penalty under this section without first giving the representative concerned an opportunity of being heard.

(5) For the purposes of this section, "misconduct" (失當行爲) means -

- (a) a contravention of a provision of this Ordinance or of the Securities and Futures Commission Ordinance (Cap. 24) that relates to carrying on a business of securities margin financing; or
- (b) a failure to comply with a requirement made by the Commission under this Ordinance or the Securities and Futures Commission Ordinance (Cap. 24) that relates to carrying on a business of securities margin financing; or
- (c) a contravention of a condition or restriction of the registration of a registered financier's representative; or
- (d) an act or omission by a registered financier's representative that is or is likely to be prejudicial to the interests of members of the investing public.

**121V. Powers of Commission in relation to approved director of registered financier**

(1) The Commission may at any time inquire into whether a director of a registered financier approved under section 121I is no longer a fit and proper person to be responsible for supervising the financier's business of securities margin financing.

(2) In considering whether a director is a fit and proper person to continue to be responsible for supervising the financier's business of securities margin financing, the Commission must, in addition to any other matter that the Commission considers relevant, have regard to the following matters -

- (a) the director's ability to be responsible for supervising the financier's business of securities margin financing;
- (b) the director's reputation, character, financial integrity and reliability.

(3) After inquiring into a matter relating to a director approved under section 121I, the Commission may, if it thinks fit, cancel the approval.

(4) The Commission must not cancel the approval of a director under this section without first giving the director an opportunity of being heard.

**121W. Commission to give written notice of decisions**

- (1) On deciding to revoke or suspend the registration of a registered financier under section 121R or 121S, or to impose any other penalty on a registered financier or an officer of the financier under section 121S, the Commission -
  - (a) must give written notice of the decision to the financier or officer; and
  - (b) must include in the decision a statement of the reasons on which it is based.
- (2) On deciding to revoke or suspend the registration of a registered financier's representative under section 121T or 121U, or to impose any other penalty on a registered financier's representative under section 121U, the Commission -
  - (a) must give written notice of the decision to the representative; and
  - (b) must include in the decision a statement of the reasons on which it is based.
- (3) On deciding to cancel the approval of a director of a registered financier under section 121V, the Commission -
  - (a) must give written notice of the decision to the director; and
  - (b) must include in the decision a statement of the reasons on which it is based.

**121X. Effect of revoking or suspending registration**

- (1) Except as provided by Division 4, the revocation or suspension of the registration of a person under this Part does not operate so as -
  - (a) to avoid or affect an agreement, transaction or arrangement relating to securities margin financing entered into by the person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension; or
  - (b) to affect any right, obligation or liability arising under any such agreement, transaction or arrangement.
- (2) A person whose registration is revoked under -
  - (a) section 121R (other than under subsection (2)(c) or (h) or (4) of that section); or

- (b) section 121S; or
- (c) section 121T (other than subsection (2)(e) or (f) or (4) of that section); or
- (d) section 121U,

is not eligible to apply to be registered under this Part, whether as a securities margin financier or a securities margin financier's representative, before the end of 12 months from the revocation.

### *Division 3 - Conduct of securities margin financing businesses*

#### **121Y. Registered financier to provide client with statement of account**

(1) This section applies to the following kinds of transactions entered into between a registered financier and a client of the financier -

- (a) a deposit of securities collateral or money by or on behalf of the client;
- (b) a withdrawal of securities collateral or money by or on behalf of the client;
- (c) a disposal by the financier of any of the client's securities collateral;
- (d) an adjustment of the terms on which financial accommodation is provided to the client, whether by extension, reduction, credit or debit;
- (e) a crediting of income to, or a deduction of charges from, the client's account.

(2) A registered financier must prepare and give to each client of the financier, no later than the end of the next business day after entering into any transaction to which this section applies, a statement of account that complies with subsection (3).

(3) The statement referred to in subsection (2) must include the following information -

- (a) the name under which the financier carries on business and the address of the principal place in Hong Kong at which the business is carried on;
- (b) the name, address and account number of the client to whom the financier is required to give the statement of account;

- (c) the outstanding balance of the account of the client at the beginning and at the end of each day on which a transaction involving the client takes place and details of changes in the balance of that account during that day;
  - (d) details of all financial accommodation provided to the client, including the nature, limit and expiry date of the accommodation;
  - (e) the quantity of each description of securities collateral held for the account of the client at the beginning of that day;
  - (f) the quantity, market price, market value, margin ratio and margin value of each description of securities collateral held for that account at the end of that day;
  - (g) the quantity of each description of securities collateral deposited to or withdrawn from that account during that day;
  - (h) all disposals by the financier of securities collateral held for that account during that day and what happened to the proceeds of those disposals;
  - (i) a breakdown of the income credited, and the interest and other charges debited, to that account on that day.
- (4) A registered financier must, within 7 business days after the end of each calendar month -
- (a) prepare for each client of the financier a statement of account that complies with subsection (5); and
  - (b) give the statement to the client.
- (5) The statement referred to in subsection (4) must include the following information -
- (a) the name under which the financier carries on business and the address of the principal place in Hong Kong at which the business is carried on;
  - (b) the name, address and account number of the client to whom the financier is required to give the statement of account;

- (c) the outstanding balance of the account of the client at the beginning and at the end of that month and details of changes in the balance of that account during that month;
- (d) details of all financial accommodation provided to the client during that month, including the nature, limit and expiry date of the accommodation;
- (e) the quantity of each description of securities collateral held for the account of the client at the beginning of that month;
- (f) the quantity, market price, market value, margin ratio and margin value of each description of securities collateral held for that account at the end of that month;
- (g) the quantity of each description of securities collateral deposited to or withdrawn from that account during that month;
- (h) all disposals by the financier of securities collateral held for that account during that month and what happened to the proceeds of those disposals;
- (i) a breakdown of the income credited, and the interest and other charges debited, to that account during that month.

(6) A registered financier who fails to comply with this section commits an offence and is liable on conviction to a fine at level 4.

### **121Z. Duties of registered financier with respect to clients accounts**

(1) As soon as practicable after a client of a registered financier requests the financier to provide the client with a copy of a specified statement of the client's account with the financier, the financier must comply with the request.

(2) If the Commission, on the application by a client of a registered financier, so directs, the financier must make available for inspection by the client during the financier's ordinary hours of business the financier's copies of the client's statements of account.

(3) A registered financier is not required to provide or keep available for inspection a copy of a statement of account if -

- (a) in the case of a statement of account referred to in section 121Y(2), the statement that was prepared more than 2 years before the request; or
  - (b) in the case of a statement of account referred to in section 121Y(4), the statement that was prepared more than 6 years before the request.
- (4) A registered financier may impose a charge not exceeding an amount prescribed by Commission rules for a copy of a document provided under subsection (1).
- (5) A registered financier who, without reasonable excuse, fails to comply with subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 4.

**121AA.Restrictions on disposition of securities collateral by registered financiers**

- (1) As soon as practicable after securities collateral is deposited with a registered financier, or with another person to facilitate the provision of financial accommodation by the financier, by or on behalf of a client of the financier, the financier must ensure that the relevant securities are -
- (a) registered in the name of the client; or
  - (b) deposited in safe custody in a designated account with an authorized financial institution, a registered dealer or some other institution approved by the Commission for the purposes of this section; or
  - (c) deposited with a registered dealer in an account that is in the name of the client.
- (2) The Commission may, by written notice given to the institution concerned, approve an institution for the purposes of subsection (1)(b) only if it is satisfied that the institution provides satisfactory facilities for the safe custody of documents.
- (3) If securities collateral is deposited with a registered financier, or with another person to facilitate the provision of financial accommodation by the financier, by or on behalf of a client of the financier, the financier must ensure that the relevant securities are not deposited, transferred, lent, pledged, or repledged or otherwise dealt with except as provided by subsections

(1) and (4). This subsection has effect even if the client of the financier purports to have authorized (whether in writing or not) the financier or other person to enter into the transaction.

(4) If securities collateral is deposited with a registered financier, or with another person to facilitate the provision of financial accommodation by the financier, by or on behalf of a client of the financier, the financier may -

- (a) deposit the relevant securities with an authorized financial institution or a registered dealer as collateral for financial accommodation provided to the financier; or
- (b) dispose of those securities in settlement of the client's obligation to maintain an agreed level of margin; or
- (c) dispose of those securities in settlement of any liability of the client to repay or discharge the financial accommodation provided by the financier,

but only with the written authority of the client or as permitted by Commission rules.

(5) An authority referred to in subsection (4) -

- (a) is effective only if it specifies the period for which it is current; and
- (b) remains in force for the period so specified or 12 months, whichever is the shorter; and
- (c) may be renewed in writing for one or more further periods not exceeding 12 months at any one time.

(6) A registered financier who, without reasonable excuse, fails to comply with subsection (1) commits an offence and is liable on conviction to a fine at level 3.

(7) A registered financier who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable -

- (a) on conviction on indictment, to a fine of \$200,000; and
- (b) on summary conviction, to a fine at level 5.

(8) Nothing in this section affects a lawful claim or lien that a person has in respect of securities collateral deposited with a registered financier or another person to facilitate the provision of financial accommodation by the financier.

**121AB. Registered financier to notify Commission if unable to comply with financial resources rules**

(1) If a registered financier becomes aware, or becomes aware of information that ought to make the financier aware, that the financier cannot comply with the financial resources rules, the financier must immediately -

- (a) notify the Commission of the fact; and
- (b) cease to provide further financial accommodation, otherwise than for the purpose of giving effect to any agreement or arrangement entered into before the time when the financier became so aware.

(2) A registered financier is taken to be aware that the financier is unable to comply with the financial resources rules if any director of the financier is aware or would, with the exercise of reasonable diligence, have been aware of that matter.

(3) If the Commission reasonably believes that a registered financier cannot comply with the financial resources rules, the Commission may suspend the financier's registration pending consideration by the Commission of the matter under section 121R or the report of an auditor appointed under section 121AY.

(4) For the purposes of ascertaining whether or not a registered financier is complying with the financial resources rules, the Commission may -

- (a) require the financier and any of its officers, employees or agents to produce for inspection all accounting and other records held by the financier that relate to the financier's business; and
- (b) require an auditor of the financier to produce all accounting and other records held by the auditor relating to that business.

(5) The power conferred on the Commission by subsection (4) may be exercised by a person authorized in writing by the Commission for the purpose, subject to the person producing the written authorization before exercising the power.

(6) A registered financier that contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$250 for each day during which the offence continues.

(7) A person who, without reasonable excuse, fails to comply with any requirement made to the person under subsection (4) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

#### ***Division 4 - Contracts with unregistered financiers***

##### **121AC. Application and interpretation of this Division**

(1) This Division applies to contracts entered into after the commencement of this Division by unregistered securities margin financiers with their clients in connection with the business of securities margin financing carried on by those financiers.

(2) A reference in this Division to an unregistered securities margin financier is a reference to a securities margin financier -

- (a) who is not registered under Division 2; or
- (b) whose registration under that Division is suspended.

but does not include a reference to a person who does not contravene section 121C because of the operation of section 121BH(1).

##### **121AD. Client may give notice of rescission to unregistered financier**

(1) A client of an unregistered securities margin financier who has entered into a contract with the financier may do either of the following -

- (a) subject to this section, give to the financier a written notice stating that the client wishes to rescind the contract on the ground that the financier was an unregistered securities margin financier at the time when the contract was entered into;
- (b) exercise the entitlement conferred by section 121AF.

(2) A client of an unregistered securities margin financier ceases to be entitled to give a notice under subsection (1)(a) at the end of 28 days after the client has become aware of the facts entitling the client to give the notice.

(3) A client of an unregistered securities margin financier ceases to be entitled to give a notice under subsection (1)(a) if, after becoming aware of the facts entitling the client to give the notice, the client's conduct shows that the client has affirmed the contract.

(4) A notice given under subsection (1)(a) rescinds the contract unless the rescission would prejudice a right, or an interest in property, that has been acquired by a person (other than the unregistered securities margin financier) -

- (a) in good faith; and
- (b) for valuable consideration; and
- (c) without notice of the facts entitling the client to give the notice.

**121AE. Court may make certain consequential orders when notice of rescission has been given**

(1) If a contract to which this Division applies is effectively rescinded under section 121AD, either the client or the unregistered securities margin financier concerned may apply to the Court for orders under subsection (2).

(2) On hearing an application under subsection (1), the Court may make such orders as it would have power to make if the client had rescinded the contract for misrepresentation by the financier.

(3) The Court is empowered to make an order under this section only to the extent that the order would not prejudice a right, or an interest in property, that has been acquired by a person (other than the unregistered securities margin financier) -

- (a) in good faith; and
- (b) for valuable consideration; and
- (c) without notice of the facts entitling the client to give the notice.

**121AF. Client may apply to Court for order instead of giving notice to rescind contract**

(1) A client of an unregistered securities margin financier who decides to exercise the right conferred by section 121AD(1)(b) may, within a reasonable period after becoming aware of the relevant facts, make an application to the Court for an order under subsection (3).

(2) If an application is made under this section, the Court may make such orders as it thinks equitable, expressed to have effect until the application is determined.

(3) On hearing an application under this section, the Court -

(a) may make an order that will place the client as nearly as possible in the same position as if the client had effectively rescinded the contract for misrepresentation by the financier; and

(b) may, if the order varies the contract, declare the contract to have had effect as so varied at and after the time when it was originally made.

(4) If the Court makes an order under subsection (3), it may make such ancillary orders as it thinks equitable.

(5) The Court is empowered to make an order under this section only to the extent that the order would not prejudice a right, or an interest in property, that has been acquired by a person, other than the unregistered securities margin financier -

(a) in good faith; and

(b) for valuable consideration; and

(c) without notice of the facts entitling the client to give the notice.

**121AG. Client may apply to Court for partial rescission**

(1) If a client of an unregistered securities margin financier gives a notice under section 121AD purporting to rescind a contract but the notice is not effective because of section 121AD(4), the client may, within a reasonable period after giving the notice, make an application to the Court for an order under subsection (3).

(2) If an application is made under this section, the Court may make such orders as it thinks equitable, expressed to have effect until the application is determined.

- (3) On hearing an application under this section, the Court may make an order -
- (a) varying the contract in such a way as would place the client in the same position, as nearly as possible without prejudicing an existing right or interest of the kind referred to in section 121AD(4), as if the contract had not been entered into; and
  - (b) declaring the contract to have had effect as so varied at and after the time when it was originally made.
- (4) If the Court makes an order under subsection (3), it may make such ancillary orders as it thinks equitable.

#### **121AH. Saving**

The provisions of this Division do not affect the operation of the rules of law relating to misrepresentation (whether under the common law or any enactment), except to the extent that such rules are inconsistent with those provisions.

#### ***Division 5 - Accounting records of registered financiers***

#### **121AI. Registered financier to keep accounting records**

- (1) A registered financier -
- (a) must keep such accounting records as will record and explain the transactions entered into by, and the financial position of, the financier; and
  - (b) must ensure that those records are kept as required by this section.
- (2) The financier's accounting records must be kept in such a way -
- (a) as will enable true and fair profit and loss accounts and balance sheets of the securities margin financing business carried on by the financier to be prepared from time to time; and

- (b) as will enable those accounts and balance sheets to be conveniently and properly audited; and
  - (c) as will enable it to be readily established whether or not the financier had complied with the financial resources rules.
- (3) The records must be kept in writing in the Chinese or English language or in such a manner as will enable them to be readily accessible and readily converted into writing in the Chinese or English language.
- (4) The records must be kept in sufficient detail to show particulars of -
- (a) all money received or paid by the financier, including money paid to or disbursed from a trust account; and
  - (b) all financial accommodation provided by the financier to clients and all payments received from clients; and
  - (c) all disposals of securities collateral by the financier held for the account of clients, showing in the case of each disposal of securities collateral -
    - (i) the name of the client; and
    - (ii) the name of the dealer who effected the disposal; and
    - (iii) the charge made for effecting the disposal; and
    - (iv) what happened to the proceeds of the disposal; and
  - (d) all income received by the financier from other sources; and
  - (e) all outgoings (including interest) paid by the financier; and
  - (f) all the financier's assets and liabilities (including contingent liabilities); and
  - (g) all securities that are not the financier's property and for which the financier is accountable, and all securities that are deposited with a person under an arrangement that confers on the financier a collateral interest in the securities, showing by whom, and for whom, the securities or the documents of title to the securities are held, distinguishing those that are held by a third party for safe custody from those that are deposited as security for financial accommodation provided to the financier.

(5) The records must include copies of acknowledgements of the receipt of securities or of documents of title to securities received by the financier from or on behalf of clients. Each acknowledgement must specify the name of the client and give particulars of the securities concerned.

(6) Without limiting subsection (4), the records must be kept in sufficient detail to show separately particulars of all transactions entered into by the financier with or for the account of its clients.

(7) A registered financier must retain -

- (a) for a period of not less than 2 years, a copy of each statement of account referred to in section 121Y(2); and
- (b) for a period of not less than 6 years, the records referred to in subsection (1) and a copy of each statement of account referred to in section 121Y(4).

(8) An entry in the accounting and other records of a registered financier is taken to have been made by, or with the authority of, the financier.

(9) A record required to be kept by a registered financier under this section may be kept either by making entries in a bound book or by recording the relevant matters in an electronic device or in any other convenient manner.

(10) A registered financier who keeps records required by this section otherwise than in a bound book must take reasonable precautions to guard against falsification of the records and to facilitate discovery of any such falsification.

(11) A person who -

- (a) includes in a record required to be kept by this section information that the person knows to be materially false or misleading; or
- (b) destroys, removes or falsifies information that is included in such a record; or
- (c) fails to record information in such a record with intent to falsify an entry made or to be made from that information,

commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

**121AJ. Registered financier to notify Commission of its financial year**

(1) A registered financier must, not later than 1 month after becoming registered, give to the Commission written notice of the date on which its financial year ends.

(2) The Commission may, on the written application of a registered financier, allow the financier to vary the date on which its financial year ends. The application may be approved on such conditions as the Commission considers appropriate.

(3) A registered financier must ensure that, except with the Commission's approval, its financial year does not exceed 12 months.

(4) This section does not affect the operation of section 122 of the Companies Ordinance (Cap. 32) in relation to a registered financier.

**121AK. Registered financier to prepare annual financial statements**

(1) A registered financier must, in respect of each financial year of the financier ending after it became registered -

- (a) prepare financial statements, consisting of a true and fair profit and loss account and a balance sheet made up to the last day of the financial year, on the basis of such accounting principles (if any) and containing such information as is prescribed by Commission rules; and
- (b) lodge the statements with the Commission not later than 4 months after the end of that financial year, together with the report of the financier's auditor containing the information so prescribed.

(2) The Commission may, on an application made by a registered financier or the financier's auditor before the deadline for lodging financial statements with the Commission or, if that period has been extended by an approval or approvals previously given under this subsection, before the end of the period as so extended, approve an extension of the period.

(3) An approval under subsection (2) may be given subject to such conditions (if any) as the Commission decides to impose.

- (4) A registered financier who -
- (a) fails to lodge financial statements with the Commission before the deadline; or
  - (b) fails to comply with conditions imposed under subsection (3),
- commits an offence and is liable on conviction to a fine at level 2.

***Division 6 - Registered financiers' trust accounts***

**121AL. Registered financier required to keep trust accounts**

A registered financier must establish and maintain in a licensed bank one or more accounts, to be designated as trust accounts.

**121AM. What is to be paid into trust account**

- (1) A registered financier must pay into a trust account -
- (a) all amounts received from or on account of a client other than amounts -
    - (i) used to reduce the amount owed by the client to the financier; or
    - (ii) paid to the client, or paid in accordance with the client's directions, within 4 business days after receipt; and
  - (b) subject to any agreement with a client to the contrary, all amounts derived as interest from the retention in a trust account of any amount mentioned in paragraph (a).
- (2) The financier must ensure that all amounts required to be paid into a trust account under subsection (1) are retained there -
- (a) until paid to the client or in accordance with the client's directions; or
  - (b) until required to pay money that the client owes to the financier.
- (3) The financier also must ensure that no amount other than an amount of a kind referred to in subsection (1) is paid into a trust account.

**121AN. Interest accruing to money in trust account to belong to client**

All amounts that accrue as interest from the holding of money in a trust account kept by a registered financier belong to the client to whom the financier is accountable, subject to any agreement between the financier and the client to the contrary.

**121AO. When money to be paid into trust account**

A registered financier must ensure that money required by this Division to be paid into a trust account is paid into the account within 4 business days after it is received by the financier.

**121AP. Money in trust account not available to meet financier's own debts**

- (1) Subject to this Division, money held in a trust account of a registered financier -
  - (a) is not available for the payment of any of the financier's debts or liabilities; and
  - (b) is not liable to be attached, or taken in execution, under the order or process of a court at the instance of a person who sues to recover such a debt or to enforce such a liability.
- (2) A payment of money made from a trust account otherwise than in accordance with this Division is void and a person to whom such a payment is made does not get title to the money concerned.

**121AQ. Claim and lien over money held in trust account not affected**

Nothing in this Division affects a lawful claim or lien that a person has in respect of -

- (a) money held in a trust account; or
- (b) money received by a registered financier that has not yet been paid into a trust account kept by the financier.

**121AR. Registered financier to keep accounting records relating to trust account**

A registered financier must, in relation to each trust account kept by the financier under this Division, keep accounting records that record -

- (a) all amounts paid into the account, the names of the clients on whose behalf the amounts are held, and the dates on which the amounts were paid into the account; and
- (b) all withdrawals from the trust account, the names of the clients on whose behalf the withdrawals were made, and the dates of the withdrawals; and
- (c) such other information (if any) as may be prescribed by Commission rules.

#### **121AS. Offences against this Division**

(1) A person who, without reasonable excuse (and without intent to defraud), contravenes any provision of this Division commits an offence and is liable on summary conviction to a fine at level 3.

(2) A person who, with intent to defraud, contravenes a provision of this Division commits an offence and is liable on conviction on indictment to a fine of \$200,000 and to imprisonment for 5 years.

#### ***Division 7-Auditing of accounting and other records***

#### **121AT. Registered financier to appoint auditor**

(1) A registered financier must appoint an auditor to audit the financier's accounting and other records.

(2) As soon as practicable after an auditor retires, resigns or for any other reason ceases to be the auditor of a registered financier, the financier must appoint another auditor to audit the financier's accounting and other records.

(3) A person who -

- (a) is an employee of the financier or is an employee of such an employee; or
  - (b) is an officer of the financier or is an employee of such an officer;
- or

(c) belongs to any other class of persons prescribed by Commission rules, is ineligible for appointment under this section.

**121AU. Registered financier to give notice to the Commission if auditor ceases to hold office or notice of motion to remove or not reappoint auditor is given**

- (1) If -
- (a) a registered financier gives notice to its members of a motion, to be moved at a general meeting of the financier -
    - (i) to remove an auditor of the financier from office; or
    - (ii) to replace or not reappoint such an auditor at the end of the auditor's term of office; or
  - (b) an auditor of a registered financier is removed from office otherwise than in consequence of such a motion, or resigns from or otherwise ceases to hold office as auditor,

the financier must, within 1 business day after the relevant event, inform the Commission in writing that the notice has been given or that the auditor has ceased to be an auditor of the financier.

(2) A registered financier who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine at level 4.

**121AV. Auditor of registered financier to notify Commission of resignation or removal from office**

An auditor of a registered financier who -

- (a) resigns or is removed from office; or
- (b) is not reappointed at the end of the auditor's term of office,

is required to give to the Commission written notice of the resignation, removal or non-reappointment within 1 business day after the resignation, removal or non-reappointment occurs.

**121AW.Auditor to report to Commission on certain matters**

(1) If an auditor, in the course of performing duties as auditor of a registered financier, becomes aware of a reportable matter, the auditor is required, as soon as practicable after becoming aware of the matter, to lodge with the Commission a written report on the matter and send a copy of the report to the financier.

(2) In this section, “reportable matter” (須予報告的事項) means -

- (a) a matter that, in the opinion of the auditor -
  - (i) adversely affects the financier’s financial position to a material extent; or
  - (ii) constitutes a contravention by the financier of section 121AA or 121AI, Division 6 or the financial resources rules; or
- (b) any qualification or adverse statement that the auditor has included or intends to include in the auditor’s report on the financier’s annual financial statements.

**121AX.Protection for auditor**

(1) An auditor of a registered financier does not contravene a duty owed by the auditor in law only because the auditor has given to the Commission in good faith information, an opinion or a document concerning a matter if -

- (a) the auditor became aware of the matter in the auditor’s capacity as such; and
- (b) the matter is relevant to a function of the Commission under this Ordinance or the Securities and Futures Commission Ordinance (Cap. 24).

(2) Subsection (1) has effect with respect to information, an opinion or a document given to the Commission whether or not it is given in response to a request of the Commission.

(3) Subsection (1) also applies -

- (a) to a person whose appointment or engagement as an auditor has ceased; and
- (b) to an auditor who was appointed by a registered financier whose registration has been revoked or suspended.

*Division 8 - Audits by auditors appointed by Commission*

**121AY. Commission may appoint auditor**

- (1) The Commission may appoint an auditor to audit and report on the accounting and other records of, and securities held by, a registered financier if -
  - (a) the financier has failed to comply with section 121AK; or
  - (b) the Commission has received a report under section 121AW in relation to the financier; or
  - (c) the Commission reasonably believes that the financier has failed to comply with the financial resources rules.
- (2) If the Commission is of the opinion that the whole or any part of the expenses of an auditor appointed under this section should be borne by the registered financier concerned, it may, by order in writing, direct the financier to pay a specified amount, being the whole or part of those expenses, within the period and in the manner specified.
- (3) If a registered financier fails within the permitted period to comply with an order made under this section, the Commission may, by proceedings brought in any court of competent jurisdiction, recover as a debt the amount specified in the order.

**121AZ. Commission may appoint auditor on application of client of registered financier**

- (1) On receiving an application from a client of a registered financier who alleges that the financier has failed to account to the client for money or securities received for the client by the financier, the Commission may appoint an auditor to audit and report on the accounting and other records of, and securities held by, the financier. The appointment must be in writing.
- (2) The application must be in writing and must specify -
  - (a) the circumstances under which the financier received the money or securities in respect of which the financier is alleged to have failed to account; and

- (b) particulars of that money or those securities, and of related transactions between the applicant and the financier; and
  - (c) such other information (if any) as may be prescribed by Commission rules.
- (3) The applicant must verify by statutory declaration all statements made in the application.
- (4) A statement made in the application has qualified privilege if made in good faith and without malice.
- (5) The Commission may appoint an auditor under subsection (1) only if -
- (a) it has given the registered financier an opportunity to give an explanation for the alleged failure; and
  - (b) it is satisfied that the applicant has good reason for making the application; and
  - (c) it is satisfied that it is in the interests of the financier or the applicant or the public generally that the accounting and other records of, and securities held by, the financier should be audited, and reported on.

#### **121BA.Auditor to report to Commission**

An auditor appointed under this Division is required to provide the Commission, as soon as practicable after completing the audit in respect of which the auditor was appointed, with a written report of the audit.

#### **121BB.Special powers of auditor appointed by Commission**

- (1) An auditor appointed under this Division to audit the accounting and other records kept, and securities held, by a registered financier may, for the purpose of carrying out the audit -
- (a) examine on oath the financier, any of the financier's officers, employees or agents, and any other auditor appointed under this Part in relation to the financier's business; and

(b) employ such persons as the auditor considers necessary for the conduct of the audit.

(2) The auditor may authorize in writing any of the auditor's employees to do, in relation to the audit, anything that the auditor is permitted or required to be done under this Division, except to examine a person on oath or to exercise the power conferred by this subsection.

**121BC.Auditor and auditor's employees not to disclose certain matters**

(1) This section applies to an auditor appointed under this Division and all employees of the auditor.

(2) A person to whom this section applies must not disclose any information which may come to the person's knowledge in the course of performing duties relating to the conduct of an audit under this Division, to any person other than -

- (a) the Commission; and
- (b) if the person is an employee, the auditor by whom the employee is employed.

(3) Subsection (2) does not prevent the disclosure of information for the purpose of giving effect to this Ordinance, or for the purposes of any criminal or civil proceedings.

(4) A person who, without lawful authority, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

**121BD.Accounting and other records to be produced on request**

(1) On being requested to do so by an auditor appointed under this Division or a person authorized under section 121BB(2), a registered financier, or any of its officers, employees and agents, must produce for inspection all accounting and other records, and any securities held by the financier, that relate to the financier's business.

(2) On being requested to do so by an auditor appointed under this Division or a person authorized under section 121BB(2), an auditor appointed by a registered financier must produce

for inspection all accounting and other records held by the auditor relating to the financier's business.

(3) If an auditor appointed under this Division, or a person authorized under section 121BB(2), puts to a registered financier, or any of its officers, employees and agents, or any auditor appointed by the financier, a question that is relevant to the audit, the financier, officer, employee, agent or auditor must answer the question.

(4) A person to whom a question is put under subsection (3) is not excused from answering the question on the ground that the answer to the question might incriminate the person, but neither the question nor the answer is admissible in evidence in criminal proceedings brought against the person, other than criminal proceedings for giving an answer that is false or misleading.

(5) A person who, without reasonable excuse, fails to comply with any request made to the person under subsection (1) or (2) commits an offence.

(6) A person referred to in subsection (3) who -

- (a) without reasonable excuse, fails to answer a question put to the person under that subsection; or
- (b) gives an answer that is, to the person's knowledge, materially false or misleading,

commits an offence.

(7) A person who commits an offence against subsection (5) or (6) is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

(8) A person authorized under section 121BB(2) may exercise a power conferred by subsections (1) or (2) or the power to put a question for the purposes of subsection (3) only after producing the person's written authorization.

### *Division 9 - Supplementary provisions relating to auditing*

#### **121BE. Offence to destroy, conceal or alter records or send records**

**or other property outside Hong Kong**

Any person who, with intent to prevent, delay or obstruct the conduct of an audit under Division 7 or 8 -

- (a) destroys, conceals or alters an accounting or other record relating to the business of a registered financier; or
- (b) sends or attempts to send, or conspires with any other person to send, out of Hong Kong any such record, or any property belonging to or under the control of a registered financier,

commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

**121BF.Obstruction of audit**

Any person who, with intent to prevent, delay or obstruct the conduct of an audit under Division 7 or 8, leaves or attempts to leave Hong Kong commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

*Division 10 - Miscellaneous provisions*

**121BG.Commission may waive or modify requirements imposed by this Part**

(1) A person who is a registered financier or an applicant for registration as a securities margin financier may apply in writing to the Commission to waive or modify a requirement of a prescribed provision in its application to the person.

(2) On considering an application made under subsection (1), the Commission may waive or modify the requirement specified in the application in its application to the applicant, either unconditionally or subject to conditions or may refuse the application.

(3) In deciding whether or not to grant an application made under subsection (1), the Commission must have regard to the circumstances applicable to the applicant and to the

particular kind of business carried on or to be carried on by the applicant. The Commission must have particular regard as to -

- (a) whether compliance with the requirement in question would be unduly burdensome for the applicant; and
  - (b) whether the exercise of the power in the particular case would result in undue risk to the investing public.
- (4) On granting or refusing an application made under this section, the Commission must give written notification of its decision to the applicant.
- (5) A waiver or modification granted under this section remains in force -
- (a) for such period as is specified in the notification; or
  - (b) if no such period is specified, until revoked by the Commission.
- (6) This section does not limit the powers conferred on the Commission by section 55A of the Securities and Futures Commission Ordinance (Cap. 24).
- (7) For the purpose of this section, the prescribed provisions are -
- (a) sections 121C, 121I, 121Y, 121Z, 121AA, 121AB, 121AI, 121AJ, 121AK, 121AL, 121AM, 121AO, 121AR, 121AT and 121AU; and
  - (b) any provision of the Commission rules that is applicable to registered financiers or applicants for registration as securities margin financiers.

**121BH. Certain unregistered persons to be permitted to carry on business or to act pending registration**

(1) If a person who is, immediately before the commencement of this Part, carrying on a business of securities margin financing applies to the Commission to be registered as a securities margin financier within 30 days after that commencement, the person does not contravene section 121C -

- (a) pending the determination of the application by the Commission; or
- (b) if the Commission subsequently refuses the application, until -

- (i) the expiry of 14 days immediately after the Commission has notified the refusal to the applicant; or
- (ii) the expiry of such further period as the Commission notifies to the applicant in writing.

(2) If a person who is, immediately before the commencement of this Part, acting for a person carrying on a business of securities margin financing applies to the Commission to be registered as a securities margin financier's representative within 30 days after that commencement, the person does not contravene section 121D -

- (a) pending the determination of the application by the Commission; or
- (b) if the Commission subsequently refuses the application, until -
  - (i) the expiry of 14 days immediately after the Commission has notified the refusal to the applicant; or
  - (ii) the expiry of such further period as the Commission notifies to the applicant in writing.

(3) The Commission may, by order served on an applicant referred to in subsection (1), require the applicant to do all or any of the following -

- (a) to carry on the business of securities margin financing in a specified manner; or
- (b) not to carry on such a business in a manner so specified; or
- (c) to deal in a specified manner with assets (whether located in Hong Kong or elsewhere) that are under the applicant's control; or
- (d) not to deal with any such assets in a specified manner; or
- (e) to keep in Hong Kong such assets, or such assets of a specified kind, as will, in the opinion of the Commission, ensure that the applicant will be able to meet the applicant's liabilities in relation to the business of securities margin financing carried on by the applicant.

(4) A person who, without reasonable excuse, fails to comply with an order served on the person under subsection (3) commits an offence and is liable on conviction to a fine at level 6.”.

**4. Consequential amendment of Securities Ordinance**

The Securities Ordinance (Cap. 333) is further amended as indicated in Schedule 1.

**5. Consequential amendment of Securities and Futures Commission Ordinance**

The Securities and Futures Commission Ordinance (Cap. 24) is amended as indicated in Schedule 2.

**6. Consequential amendment of other Ordinances**

The Ordinances specified in column 2 of Schedule 3 are amended as indicated in column 3 of that Schedule.

**7. Savings and transitional provisions**

The savings and transitional provisions set out in Schedule 4 have effect.

SCHEDULE 1

[s.4]

CONSEQUENTIAL AMENDMENT OF SECURITIES ORDINANCE

Item	Provision affected	Amendment
1.	Section 2(1)	<p>(a) In the definition of “certificate of registration”, and “or XA” after “Part VI”.</p> <p>(b) In paragraph (e) of the definition of “corporation”, repeal “by regulations” and substitute “, by Commission rules,”.</p>

- (c) In the definition of “dealer”, add -
- “(d) a registered financier if the only dealings in securities entered into by the financier are disposals of securities collateral held for a client -
    - (i) in settlement of the client’s obligation to maintain an agreed level of margin; or
    - (ii) in settlement of the client’s liabilities to repay or discharge financial accommodation provided by the financier;”.
- (d) In the definition of “financial year”, add -
- “(aa) in the case of a registered financier, the period notified by the financier under section 121AJ or approved by the Commission under that section; or”.
- (e) In the definition of “registered”, repeal “or investment representative” and substitute “, investment representative, securities margin financier or securities margin financier’s representative”.
- (f) In the definition of “representative”, repeal “or an investment representative” and substitute “, an investment representative or a securities margin financier’s representative”.
- (g) In paragraph (ii) of the definition of “securities”, repeal “regulations” and substitute “Commission rules”.
- (h) Repeal the definition of “trust account” and substitute -
- ““trust account” (信託帳戶) -
    - (a) in relation to a dealer, means a trust account required to be kept under section 84; and
    - (b) in relation to a registered financier, means a trust account” required to be kept under section

121AL;”.

(i) Add -

““authorized financial institution” (認可財務機構)

means an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap. 155);

“Commission rules” (監察委員會規則) means rules made under section 146;

“financial resources rules” (財政資源規則) means rules made under section 28 of the Securities and Futures Commission Ordinance (Cap. 24);”.

2. Section 5(7)(d) Repeal “regulations” and substitute “Commission rules”.
3. Section 27(1) and Repeal “bank trading days” and substitute “business days”.  
(3)
4. Section 52
  - (a) In subsections (1) and (1A), repeal “in regulations” and substitute “by Commission rules”.
  - (b) In subsection (2)(c), repeal “director or”.
  - (c) In subsections (3) and (4), repeal “regulations made under this Ordinance” and substitute “Commission rules”.
  - (d) In subsection (6)(d), repeal “regulations” and substitute “Commission rules”.
  - (e) In subsection (7), repeal “to enable liabilities under subsection (2), or such other liabilities as may be prescribed by regulations, to be satisfied” and substitute “to ensure that liabilities under subsection (2), and any other liabilities of a kind prescribed by Commission rules, are satisfied”.

5. Section 55
- (a) In subsection (2)(b)(viii) -
    - (i) repeal “a director, secretary, or other person concerned in the management” and substitute “an officer”;
    - (ii) repeal “a director, secretary, or other person” and substitute “an officer”.
  - (b) In subsection (2A), repeal “section 65B” and substitute “the financial resources rules”.
  - (c) Repeal subsection (5) and substitute -
    - “(5) In this section, “registered person” (註冊人) does not include a securities margin financier or securities margin financier’s representative registered under Part XA.”.
6. Section 56
- (a) In subsection (2)(c), repeal “any director, secretary or person concerned in its management” and substitute “any officer of the corporation”.
  - (b) In subsection (3), repeal “and, in the case of a registered person that is a corporation, any director, secretary or person concerned in its management,” and substitute “and, if that person is a corporation, any officer of the corporation referred to in that subsection,”.
  - (c) Repeal subsection (4) and substitute -
    - “(4) In this section, “registered person” (註冊人) does not include a securities margin financier or securities margin financier’s representative registered under Part XA.”.
7. Section 57
- (a) In subsection (3), add “or (3)” after “(b)(iii)”.
  - (b) Add -

“(5) Except as provided by section 21 of the Securities and Futures Commission Ordinance (Cap. 24) (procedure for appeals), a decision of the Commission under section 55 or 56 takes effect on the date on which the decision is notified under subsection (4) or such later date as is specified in the decision or notice.”.

8. Section 60(4)(c) Repeal “in regulations” and substitute “by Commission rules”.
  
9. Section 63
  - (a) In subsection (1)(b), repeal “regulations” and substitute “Commission rules”.
  - (b) Add -
 

“(6) In this section, “registered person” (註冊人) does not include a securities margin financier or securities margin financier’s representative registered under Part XA.”.
  
10. Section 64
  - (a) In subsection (2), repeal “and on payment of any fee prescribed by regulations”.
  - (b) Add -
 

“(4) In this section, “prescribed” (訂明) means prescribed by Commission rules.”.
  
11. Section 65A(1)(c), (3)(c) and (4) Repeal “section 65B” and substitute “the financial resources rules”.
  
12. Section 65C(1) and (2) Repeal “section 65B” and substitute “the financial resources rules”.

13. Section 65D(1) Repeal “section 65B” and substitute “the financial resources rules”.
14. Section 66(1)(b) Repeal “in regulations” and substitute “by Commission rules”.
15. Section 67(3) Repeal “regulations” and substitute “Commission rules”.
16. Section 68(4) and (5) Repeal “in the form prescribed by regulations” and substitute “on a form provided or approved by the Commission”.
17. Section 72(5)(c)(iii) Repeal “in regulations” and substitute “by Commission rules”.
18. Section 73(3)(c)(iii) Repeal “in regulations” and substitute “by Commission rules”.
19. Section 74(2)(b) Repeal “in regulations” and substitute “by Commission rules”.
20. New Add -

**“75A. Dealer to provide client with statement of account**

(1) This section applies to the following kinds of transactions entered into between a dealer and a client of the dealer -

- (a) a deposit of securities collateral or money by or on behalf of the client;
- (b) a withdrawal of securities collateral or money by or on behalf of the client;
- (c) a disposal by the dealer of any of the client’s securities collateral;
- (d) an adjustment of the terms on which financial accommodation is provided to the client,

whether by extension, reduction, credit or debit;

- (e) a crediting of income to, or a deduction of charges from, the client's account.

(2) A dealer who provides financial accommodation to a client to facilitate the acquisition and, where applicable, the continued holding of securities must prepare and give to the client, no later than the end of the next business day after the entering into of any transaction to which this section applies, a statement of account that complies with subsection (3).

(3) The statement referred to in subsection (2) must include the following information -

- (a) the name under which the dealer carries on business and the address of the principal place in Hong Kong at which the business is carried on;
- (b) the name, address and account number of the client to whom the dealer is required to give the statement of account;
- (c) the outstanding balance of the account of the client at the beginning and at the end of each day on which a transaction involving the client takes place and details of all changes in the balance of that account during that day;
- (d) details of all financial accommodation provided to the client during that day, including the nature, limit and expiry date of the accommodation;
- (e) the quantity of each description of securities

- collateral held for the account of the client at the beginning of that day;
- (f) the quantity, market price, market value, margin ratio and margin value of each description of securities collateral held for that account at the end of that day;
- (g) the quantity of each description of securities collateral deposited to or withdrawn from that account during that day;
- (h) all disposals by the dealer of securities collateral held for that account during that day and what happened to the proceeds of those disposals;
- (i) a breakdown of the income credited, and the interest and other charges debited, to that account on that day.

(4) A dealer must, within 7 business days after the end of each calendar month, prepare and give to each client to whom the dealer has, during the month, provided financial accommodation to facilitate the acquisition of securities and, where applicable, the continued holding of those securities a statement of account that complies with subsection (5).

(5) The statement referred to in subsection (4) must include the following information -

- (a) the name under which the dealer carries on business and the address of the principal place in Hong Kong at which the business is carried on;
- (b) the name, address and account number of the

- client to whom the dealer is required to give the statement of account;
- (c) the outstanding balance of the account of the client at the beginning and at the end of that month and details of all changes in the balance of that account during that month;
  - (d) details of all financial accommodation provided to the client during that month, including the nature, limit and expiry date of the accommodation;
  - (e) the quantity of each description of securities collateral held for the account of the client at the beginning of that month;
  - (f) the quantity, market price, market value, margin ratio and margin value of each description of securities collateral held for that account at the end of that month;
  - (g) the quantity of each description of securities collateral deposited to or withdrawn from that account during that month;
  - (h) all disposals by the dealer of securities collateral held for that account during that month and what happened to the proceeds of those disposals;
  - (i) a breakdown of the income credited, and the interest and other charges debited, to that account during that month.

(6) A dealer who, without reasonable excuse, fails to comply with a requirement of this section commits an offence and is liable on conviction to a fine at level 4.”.

21. Section 76(1) Repeal “in regulations” and substitute “by Commission rules”.
22. Section 77 Repeal and substitute -
- “77. Duties of dealer with respect to clients accounts**
- (1) In this section, a reference to a dealer includes a reference to an exempt dealer (except in relation to a statement of account prepared under section 75A).
- (2) As soon as practicable after a client of a dealer requests the dealer to provide the client with a copy of -
- (a) any specified contract note relating to the client; or
  - (b) any specified account kept by the dealer in respect of the client; or
  - (c) any specified statement of account kept by the dealer in respect of the client under section 75A,
- the dealer must comply with the request.
- (3) If the Commission, on an application made by a client of a dealer, so directs, the dealer must make available for inspection by the client during the dealer’s ordinary hours of business -
- (a) any specified contract note relating to the client; or
  - (b) any specified account kept by the dealer in respect of the client; or
  - (c) any specified statement of account prepared for the client under section 75A.
- (4) This section does not require a dealer -
- (a) to provide, or make available for inspection, a copy of -
    - (i) a contract note; or

- (ii) a statement of account referred to in section 75A(2), that relates to a dealing transacted more than 2 years before the date of the relevant request; or
- (b) to provide, or make available for inspection, a copy of -
  - (i) an account; or
  - (ii) a statement of account referred to in section 75A(4), that relates to a dealing transacted more than 6 years before the date of the relevant request.

(5) A dealer may impose a charge not exceeding an amount prescribed by Commission rules for a copy of a document provided under subsection (2).

(6) A dealer who, without reasonable excuse, fails to comply with subsection (2) or (3) commits an offence and is liable on conviction to a fine at level 4.”.

23. Section 79
- (a) In subsection (6), repeal “regulations” and substitute “Commission rules”.
  - (b) In subsection (9), repeal “Without prejudice to the power to make regulations under section 146, regulations may be made under that section-” and substitute “Rules may be made under section 146 -”.
24. Section 80(4)(d) Repeal “regulations” and substitute “Commission rules”.
25. Section 81 Repeal and substitute -
- “81. Restrictions on disposition of securities by dealer**

(1) In this section, a reference to a dealer includes a reference to an exempt dealer.

(2) If securities for which a dealer, or a nominee controlled by the dealer, is accountable to a client of the dealer are held for safe custody in Hong Kong, the dealer must ensure that the securities are either -

- (a) registered in the name of the client or in the name of the nominee; or
- (b) deposited in safe custody in a designated account with an authorized financial institution or some other institution approved by the Commission for the purposes of this section.

(3) The Commission may, by written notice given to the institution concerned, approve an institution for the purposes of subsection (2)(b) only if it is satisfied that the institution provides satisfactory facilities for the safe custody of documents.

(4) A dealer to whom subsection (2) applies must ensure that the securities referred to in that subsection are not deposited, transferred, lent, pledged, repledged or otherwise dealt with except as provided by that subsection or as permitted by Commission rules. This subsection has effect even if the client of the dealer purports to have authorized (whether in writing or not) the dealer or nominee to enter into the transaction.

(5) A dealer who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 3.

(6) A dealer who, without reasonable excuse, contravenes subsection (4) commits an offence and is liable

-

- (a) on conviction on indictment, to a fine of \$200,000 and to imprisonment for 2 years; or
- (b) on summary conviction, to a fine at level 5.

(7) This section does not apply to securities collateral deposited -

- (a) with a dealer; or
- (b) with another person to facilitate the provision of financial accommodation by the dealer,

by or on behalf of a client of the dealer.

**81A. Restrictions on disposition of securities collateral by dealer**

(1) In this section, a reference to a dealer includes a reference to an exempt dealer.

(2) As soon as practicable after securities collateral is deposited with a dealer, or with another person to facilitate the provision of financial accommodation by the dealer, by or on behalf of a client of the dealer, the dealer must ensure that the relevant securities are either -

- (a) registered in the name of the client; or
- (b) deposited in safe custody in a designated account with an authorized financial institution or some other institution approved by the Commission for the purposes of this section.

(3) The Commission may, by written notice given to the institution concerned, approve an institution for the purposes of subsection (2)(b) only if it is satisfied that the institution provides satisfactory facilities for the safe custody of documents.

(4) If securities collateral is deposited with a dealer, or with

another person to facilitate the provision of financial accommodation by the dealer, by or on behalf of a client of the dealer, the dealer must ensure that the relevant securities are not deposited, transferred, lent, pledged, repledged or otherwise dealt with except as provided by subsections (2) and (5). This subsection has effect even if the client of the dealer purports to have authorized (whether in writing or not) the dealer or other person to enter into the transaction.

(5) If securities collateral is deposited with a dealer, or with another person to facilitate the provision of financial accommodation by the dealer, by or on behalf of a client of the dealer, the dealer may -

- (a) deposit the relevant securities with an authorized financial institution as collateral for financial accommodation provided to the dealer; or
- (b) dispose of those securities in settlement of the client's obligation to maintain an agreed level of margin; or
- (c) dispose of those securities in settlement of any liability of the client to repay or discharge the financial accommodation provided by the dealer; or
- (d) lend or deposit the securities to -
  - (i) a person in accordance with the rules and regulations of the Unified Exchange; or
  - (ii) a person in accordance with the rules and regulations of the Hong Kong Securities Clearing Company Limited; or
  - (iii) a person of a class specified in Commission

rules for the purposes of this section; or

- (e) deposit the securities with the Hong Kong Securities Clearing Company Limited as collateral for the discharge and satisfaction of the dealer's clearing obligations and liabilities; or
- (f) deposit the securities with the SEHK Options Clearing House Limited as collateral in respect of the dealer's transactions in or relating to options contracts,

but only with the written authority of the client or as permitted by Commission rules.

- (6) An authority referred to in subsection (5) -
  - (a) is effective only if it specifies the period for which it is current; and
  - (b) remains in force for the period so specified or 12 months, whichever is the shorter; and
  - (c) may be renewed in writing for one or more further periods not exceeding 12 months at any one time.

(7) A dealer who, without reasonable excuse, fails to comply with subsection (2) commits an offence and is liable on conviction to a fine at level 3.

(8) A dealer who, without reasonable excuse, contravenes subsection (4) commits an offence and is liable

-

- (a) on conviction on indictment, to a fine of \$200,000 and to imprisonment for 2 years; and
- (b) on summary conviction, to a fine at level 5.

#### **81B. Claims and liens over securities not affected**

Nothing in section 81 or 81A affects any lawful claim or lien that a person has in respect of -

- (a) any securities deposited for safe custody with a dealer or a nominee controlled by a dealer; or
- (b) securities collateral deposited with a dealer or another person to facilitate the provision of financial accommodation by the dealer.”.

- 26. Section 82(2) Repeal “books, accounts,” where it twice appears and substitute “accounting and other”.
  
- 27. Section 83
  - (a) In subsection (3)(a)(vi) -
    - (i) repeal “or any related corporation”;
    - (ii) repeal “and” at the end.
  - (b) In subsection (3)(a), add -
    - “(viii) all financial accommodation provided by the dealer to clients to facilitate the acquisition and, where applicable, the continued holding of securities and all payments received from clients; and”.
  - (c) Repeal subsection (4A) and substitute -
    - “(4A) Without limiting subsections (1) and (3) but subject to Commission rules, the dealer shall keep records that are sufficient to enable it be readily established whether or not the financial resources rules have been complied with.”.
  - (d) In subsection (5)(a), add “and a copy of each statement of account referred to in section 121Y(4)” after “subsection (1)”.
  - (e) In subsection (5)(b)(ii), repeal the full stop and substitute “;and”.
  - (f) In subsection (5)(b), add -

“(iii) a copy of each statement of account referred to in section 75A(2).”.

28. Section 84
- (a) In subsection (1)(a) and (b), repeal “bank trading days” and substitute “business days”.
  - (b) In subsection (1)(b), repeal “and” at the end.
  - (c) In subsection (1), add -
    - “(ba) all amounts that are received from or on account of a client to whom the dealer provides financial accommodation to facilitate the acquisition and, where applicable, the continued holding of securities, except those amounts that are -
      - (i) used to reduce the amount owed by the client to the dealer; or
      - (ii) paid to the client, or paid in accordance with the client’s directions, within 4 business days after receipt; and”.
  - (d) In subsection (1)(c), repeal “or (b)” and substitute”, (b) or (ba)”.
  - (e) In subsection (3), repeal “bank trading days” and substitute “business days”.
  - (f) In subsection (6)(c), repeal “regulations” and substitute “Commission rules”.
29. Section 87(2)(d) Repeal “in regulations” and substitute “by Commission rules”.
30. Section 88(1) Repeal “regulations” and substitute “Commission rules”.
31. Section 89(1)(b) (a) Repeal “65B,”.

- (b) Add “or the financial resources rules” after “or 84”.
  
- 32. Section 90(1)
  - (a) In paragraph (c), repeal “section 65B” and substitute “the financial resources rules”.
  - (b) Repeal “examine, audit, and” and substitute “audit and”.
  - (c) Repeal “books, accounts, and” and substitute “accounting and other”.
  
- 33. Section 91
  - (a) In subsection (1), repeal “examine, audit, and” and substitute “audit and”.
  - (b) In subsections (1) and (4)(b), repeal “books, accounts, and” and substitute “accounting and other”.
  - (c) In subsection (2)(c), repeal “regulations” and substitute “Commission rules”.
  - (d) In subsection (4)(b), repeal “examined, audited,” and substitute “audited”.
  
- 34. Section 92 Repeal “examination and”.
  
- 35. Section 93
  - (a) Repeal “examine and”.
  - (b) Repeal “books, accounts, and” and substitute “accounting and other”.
  - (c) Repeal “examination and” where it twice appears.
  - (d) In paragraph (a), repeal “books, account,” and substitute “accounting and other”.
  
- 36. Section 94
  - (a) Renumber it as section 94(1).
  - (b) Add -

“(2) A person who, without lawful authority, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.”.

37. Section 95

- (a) In subsection (1), repeal “books, accounts, and” where it twice appears and substitute “accounting and other”.
- (b) In subsection (2), repeal “examination and”.
- (c) Repeal subsection (3) and substitute -

“(3) A person to whom a question is put under subsection (2) is not excused from answering the question on the ground that the answer to the question might incriminate the person, but neither the question nor the answer is admissible in evidence in criminal proceedings brought against the person, other than criminal proceedings for giving an answer that is false or misleading.

(4) A person referred to in subsection (1) who, without reasonable excuse, fails to comply with a request made to the person under that subsection commits an offence.

(5) A person referred to in subsection (2) who -

- (a) without reasonable excuse, fails to answer a question put to the person under that subsection; or
- (b) gives an answer that is, to the person’s knowledge, materially false or misleading,

commits an offence.

(6) A person who commits an offence against subsection (4) or (5) is liable on conviction to a fine at level 5

and to imprisonment for 2 years.”.

38. Section 96 (a) Repeal “examination and” wherever it appears.  
 (b) In subsection (1)(a), repeal “book, account, record or document” and substitute “accounting or other record”.  
 (c) In subsections (1)(b) and (2), repeal “book, account, record, or document” wherever it appears and substitute “accounting or other record”.
39. Section 97(c) Repeal “accounts, books, and” and substitute “accounting and other”.
40. Section 127 (a) In subsection (1)(b), repeal “advice,” and substitute “advice; or”.  
 (b) In subsection (1), add -  
     “(c) any matter concerning securities margin financing,”.  
 (c) In subsection (3) -  
     (i) repeal “by notice in the form prescribed by regulations given in the manner as prescribed”;  
     (ii) add at the end -  
         “A requirement under this subsection must be in a form provided by the Commission and be given in the manner prescribed by Commission rules.”.  
 (d) In subsection (10), repeal “regulations” and substitute “Commission rules”.
41. Section 137 Repeal “regulations” and substitute “Commission rules”.
42. Section 144(1) (a) Add “or to securities margin financing” after “dealing in securities”.

- (b) Add -
  - “(aa) an order restraining a person who is not registered as a securities margin financier from engaging in securities margin financing;”.
- (c) Add -
  - “(ba) in relation to a registered financier, an order appointing a person to administer the property of the financier;”.
- (d) In paragraph (c), add “or securities margin financing” after “relating to securities”.

43. Section 146 Repeal and substitute -

**“146. Commission rules**

- (1) The Commission may make rules for all or any of the following purposes -
  - (a) prescribing the class of persons in relation to whom, and the manner and circumstances in which, registered dealers, registered dealing partnerships and registered dealers’ representatives may deal in securities;
  - (b) prescribing the class of persons in relation to whom, and the manner and circumstances in which, registered investment advisers, registered investment advisers’ partnerships and registered investment representatives may carry on business as investment advisers or as investment representatives;
  - (c) prescribing the class of persons in relation to whom, and the manner and circumstances in which,

- registered financiers may carry on the business of securities margin financing;
- (d) prescribing the class of persons in relation to whom, and the manner and circumstances in which, registered financiers' representatives may act for registered financiers;
  - (e) requiring registered dealers, registered dealing partnerships, registered investment advisers, registered investment advisers' partnerships, registered financiers and registered financiers' representatives to exhibit their certificates of registration at their places of business;
  - (f) prescribing requirements with respect to the conduct of business by registered dealers, registered investment advisers, registered dealing partnerships, registered investment advisers' partnerships, registered financiers, registered dealers' representatives, registered investment representatives and registered financiers' representatives;
  - (g) providing for matters incidental to the registration of dealers, investment advisers, dealing partnerships, investment advisers' partnerships, securities margin financiers, dealers' representatives, investment representatives and securities margin financiers' representatives under this Ordinance;
  - (h) enabling the Commission to correct any errors in

- any register kept under this Ordinance;
- (i) enabling the Commission, on payment of the fee (if any) prescribed by Commission rules, to issue a duplicate certificate of registration if the original certificate or any duplicate certificate is lost or destroyed;
  - (j) prescribing forms for the purposes of this Ordinance or enabling the Commission to specify, or to provide or approve, forms for those purposes;
  - (k) prescribing the manner in which applications are to be made for registration under Part VI or XA;
  - (l) prescribing the particulars to be recorded in relation to trust accounts;
  - (m) prescribing the particulars to be recorded in relation to the profit and loss account and balance sheet required to be prepared by a dealer or registered financier;
  - (n) prescribing the procedure for holding investigations under Part XI, and providing for the reception of evidence, whether written or oral, and for the summoning and examination of witnesses, during the course of such an investigation;
  - (o) requiring a person of a specified description, when selling securities at or through the Unified Exchange and when the person's right to vest the securities in the purchaser (or, if acting as agent, the principal's right to do so) is derived from an arrangement of a specified kind, to notify the

stockbroker through whom the sale is being effected, of the fact that the right to vest the securities in the purchaser is derived from such an arrangement;

- (p) prescribing limits on, or conditions to be complied with in respect of, the number of options contracts which may be held or controlled, directly or indirectly, by any person where those contracts are traded through the facilities of the Unified Exchange;
- (q) prescribing or providing for any matter that is required or permitted by this Ordinance to be prescribed by Commission rules.

(2) Except as otherwise provided in this Ordinance, a rule made under this section may do all or any of the following -

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;
- (c) authorize any matter or thing to be determined, applied or regulated by any specified person.

(3) A rule made under this section may provide that, subject to such terms and conditions as may be prescribed, the provisions of Parts VI to IX and XA, or such of them as are specified -

- (a) do not have effect in relation to any specified person or to any person who is a member of a specified class of persons -
  - (i) who is or may be a dealer, investment

adviser or securities margin financier only because the person does anything that is incidental to another business; or

- (ii) who does not deal in securities for or on behalf of any other person; or
- (iii) who is a dealer, investment adviser or securities margin financier only because the person has entered into a specified transaction or class of transactions; or

- (b) do not have effect in relation to a representative of any such person, or a member of any such class of persons, as is referred to in paragraph (a); or
- (c) has effect in relation to any such person or member, or a representative of any such person or member, to such extent as is prescribed in the rule; or
- (d) do not have effect in relation to a specified transaction or class of transactions entered into by a specified person or class of persons.”.

44. Section 146A Repeal and substitute -

**“146A. Regulations**

The Chief Executive in Council may make regulations providing that a contravention of any specified provision of Commission rules is an offence and may prescribe penalties for the offence not exceeding a fine at level 1 and imprisonment for 3 months.”.

45. Section 147(1) Repeal and substitute -

“(1) If an offence against this Ordinance committed by a corporation is proved -

(a) to have been committed with the consent or connivance of; or

(b) to be attributable to neglect by, an officer of the corporation, or any person who purported to act as such an officer, the officer or person also commits the offence and is liable to be proceeded against and punished in the same way as the corporation.”.

SCHEDULE 2 [s. 5]

CONSEQUENTIAL AMENDMENT OF SECURITIES  
AND FUTURES COMMISSION ORDINANCE

Item	Provision affected	Amendment
1.	Section 2(1)	In the definition of “registered person”, repeal “investment representative or a commodity trading advisers’ representative” and substitute “securities margin financier, investment representative, commodity trading adviser’s representative or securities margin financier’s representative”.
2.	Section 4	<p>(a) In subsection (1)(a) and (b), repeal “futures contracts and property investment arrangements” wherever it appears and substitute “futures contracts, property investment arrangements and securities margin financing”.</p> <p>(b) In subsection (1)(e), add “or securities margin financing</p>

- transactions” after “property investment arrangements”.
- (c) In subsection (1)(g), add “or securities margin financing transactions” after “entering into property investment arrangements”.
  - (d) In subsection (1)(g) and (i), repeal “and property investment arrangements” and substitute “, property investment arrangements and securities margin financing”.
3. Section 19
- (a) In subsection (1)(e), add “(2) or (2A)” after “section 55”.
  - (b) Add -
    - “(1A) Where -
      - (a) an application of a person for registration under Part XA of the Securities Ordinance (Cap. 333) is refused; or
      - (b) an application for registration under that Part is granted subject to a condition (not being a condition prescribed by that Part or by Commission rules) or a restriction with which the applicant is dissatisfied; or
      - (c) a condition or restriction of registration of a securities margin financier or a securities margin financier’s representative is varied under that Part and the financier or representative is dissatisfied with the variation of the condition or restriction; or
      - (d) the registration of a securities margin financier or a securities margin financier’s representative is revoked or suspended

under section 121R(2), 121S,  
121T(2) or 121U of the  
Securities Ordinance (Cap.  
333),

the applicant, financier or representative may,  
subject to section 21, appeal to the Panel against the  
refusal, the imposition or variation of the condition  
or restriction, revocation or suspension.

(1B) Where the Commission -

- (a) refuses to approve a director  
of a registered securities  
margin financier under  
section 121I of the Securities  
Ordinance (Cap. 333); or
- (b) cancels the approval of such a  
director under section 121V  
of that Ordinance,

the director may, subject to section 21, appeal to the  
Panel against the refusal or cancellation.”.

- (c) In subsection (2)(e), add “(2)” after “section 35”.
- (d) In subsection (4), add “, (1A)(c)” after “(1)(d)”.

4. Section 21(4) Add“, (1A)(b) or (c)” after “19(1)(b) or (d)”.

5. Section 27
- (a) In subsection (10)(a) -
    - (i) repeal “trading adviser.” and substitute  
“trading adviser; or”;
    - (ii) add -
      - “(iii) a securities margin  
financier.”.
  - (b) In subsection (10)(b), add -

““securities margin financier” (證券保證金融資人)  
has the meaning assigned to it by section  
2(1) of the Securities Ordinance (Cap.  
333).”.

6. Section 28
- (a) In subsection (2)(d), repeal “rules.” and substitute “rules;”.
  - (b) In subsection (2), add -
    - “(e) empower the Commission to grant approvals for such purposes as are specified in the rules and to amend or revoke those approvals, and require the Commission to publish those approvals and any amendment or revocation of them in a manner so specified.”.
  - (c) Repeal subsection (4).
7. New
- Add after section 29 in Part IV -
- “29AA. Commission may exempt persons from operation of financial resources rules**
- (1) The Commission may, by notice published in the Gazette, exempt a specified person, or persons of a specified class, from the operation of the financial resources rules or of any specified provision of the rules.
  - (2) An exemption under this section may be granted unconditionally or subject to conditions.
  - (3) Subject to subsection (5), an exemption granted under this section remains in force -
    - (a) if a period is specified in the exemption, until the end of the period; or
    - (b) if no such period is specified, until revoked by the Commission.

(4) The Commission may not grant an exemption under this section unless it is satisfied that -

- (a) compliance with the financial resources rules or the specified provision of those rules would be unduly burdensome for the person or persons concerned as compared with the benefit that compliance would confer on the investing public; and
- (b) the exemption would not, if granted in the particular case, result in any undue risk to the investing public.

(5) The Commission may, by notice published in the Gazette, amend or revoke an exemption granted under this section. Such an exemption may be revoked even though a period specified in the exemption has not yet expired.”.

- 8. Section 31(2) Repeal “or commodity trading adviser” and substitute “, commodity trading adviser, securities margin financier”.
- 9. Section 33
  - (a) In subsection (1)(b) -
    - (i) in subparagraphs (i) and (ii), add “or” at the end;
    - (ii) add -
      - “(v) in relation to any transaction involving securities margin financing; or”.
  - (b) Repeal subsection (1)(d) and substitute -
    - “(d) the Commission reasonably believes that the manner in which a person is engaging or has engaged in -

- (i) dealing in securities or trading in futures contracts; or
  - (ii) managing investment in securities or futures contracts; or
  - (iii) making property investment arrangements; or
  - (iv) giving advice of the kind referred to in paragraph (b)(iv); or
  - (v) entering into transactions involving securities margin financing,
- is not in the interest of the investing public or the public interest; or”.

10. Section 38
- (a) In subsection (2), repeal “55 or 56” and substitute “55, 56, 121R or 121S”.
  - (b) In subsection (4) -
    - (i) repeal “adviser or a partner in an investment advisers’ partnership” and substitute “adviser, a partner in an investment advisers’ partnership or securities margin financier”;
    - (ii) repeal “and “investment advisers’ partnership” (投資顧問合夥商行)” and substitute “, “investment advisers’ partnership” (投資顧問合夥商行) and “securities margin financier” (證券保證金融資人)”.

11. Section 55
- Repeal subsection (1) and substitute -
- “(1) If, on the application of the Commission, the Court of First Instance is satisfied that a person has contravened or is contravening, or that there is a reasonable likelihood that a

person will contravene a prescribed provision, the Court may -

- (a) grant an injunction restraining the person from repeating or continuing, or from committing, the contravention; and
- (b) if in the opinion of the Court it is desirable to do so, make an order requiring the person to take any specified action.

(1A) The following provisions are prescribed for the purposes of subsection (1) -

- (a) a rule made under section 28;
- (b) a direction given under section 29;
- (c) a notice given under Part V;
- (d) a requirement imposed by or under Part XA of the Securities Ordinance (Cap. 333).”.

12. Section 55A(1)(b) Repeal “81(1)” and substitute “81(2) and (4), 81A(2) and (4)”.

SCHEDULE 3

[s. 6]

CONSEQUENTIAL AMENDMENT OF OTHER ORDINANCES

Item	Provision affected	Amendment
1.	Money Lenders Ordinance (Cap.	In Part 1 of Schedule 1, add - “10. A securities margin financier registered under the

163)

Securities Ordinance (Cap. 333).

11. A dealer registered under the Securities Ordinance (Cap.333) who, in the course of carrying on a business of dealing in securities, engages in securities margin financing as defined in that Ordinance.”.

2. Commodities Trading Ordinance (Cap. 250)
- (a) In section 35, add -
- “(6) Except as provided by section 21 of the Securities and Futures Commission Ordinance (Cap. 24)(procedure for appeals), a decision of the Commission under this section takes effect on the date on which the decision is notified under subsection (5) or such later date as is specified in the decision or notice.”.
- (b) In section 36, add -
- “(7) Except as provided by section 21 of the Securities and Futures Commission Ordinance (Cap. 24)(procedure for appeals), a decision of the Commission under this section takes effect on the date on which the decision is notified under subsection (4) or such later date as is specified in the decision or notice.”.
- (c) In section 37(3), add “subsection (3) or” after “other than”.
- (d) Renumber section 57 as section 57(1).
- (e) In section 57, add -
- “(2) A person who, without lawful authority, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.”.

3. Stock Exchanges (a) Repeal section 15(1) and substitute -  
 Unification Ordinance (Cap. 361)
- “(1) It is the duty of the Exchange Company to ensure -
- (a) that its members comply with the financial resources rules in so far as those rules apply to them; and
  - (b) where those rules apply to a member subject to a condition or other modification, that the member complies with those rules in accordance with the condition or modification.”.
- (b) In section 15(2), repeal “section 65B and”.
- (c) Repeal section 34(1)(b) and substitute -
- “(b) to ensure that its members comply with the financial resources rules for the better fulfilment by the Exchange Company of the duty imposed on it by section 15; and”.
- (d) In section 34, add -
- “(1A) Rules made for the purpose of subsection (1)(b) may provide for all or any of the following -
- (a) the returns to be made by members, the form of, and the kinds of information to be included in those returns and the manner in which the information must be verified;
  - (b) the manner in which assets are to be valued and the payment by members of the costs of valuation;
  - (c) the manner in which members are required to keep records of assets that may be taken into

- account for the purposes of the financial resources rules and the places at which the records must be maintained;
- (d) the inspection of records by officers of the Exchange Company authorized by it.”.

## SCHEDULE 4

[s. 7]

## SAVINGS AND TRANSITIONAL PROVISIONS

**1. Chief Executive in Council may make savings and transitional regulation**

(1) The Chief Executive in Council may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Ordinance.

(2) A provision referred to in subsection (1) may, if the regulation so provides, take effect from the date on which the enactment of this Ordinance is notified in the Gazette or a later date.

(3) To the extent to which a provision referred to in subsection (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as -

- (a) to affect, in a manner prejudicial to any person (other than the Government or a public body), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the Government or a public body) in respect of anything done, or omitted to be done, before the date of its publication.

**2. Prescribed forms**

If a form is, in accordance with a provision of the Securities Ordinance (Cap.333), prescribed by rules in force under that Ordinance immediately before the commencement of item 43 of Schedule 1 and the provision is amended by this Ordinance to enable forms required or permitted for the purposes of the

provision to be specified, or to be provided or approved, by the Securities and Futures Commission, the prescribed form is taken to have been specified, or provided or approved, by the Commission until it specifies, or provides or approves, a new form for the purposes of that provision.

### **3. Restrictions on disposition of securities by dealer**

Section 81 of the Securities Ordinance (Cap.333)(as substituted by item 25 of Schedule 1) applies to securities held for safe custody by a dealer or a nominee controlled by the dealer, for the account of a client of the dealer immediately before the commencement of that item.

### **4. Saving for rules**

A rule in force under section 146 or 146A of the Securities Ordinance (Cap.333) immediately before the commencement of item 43 of Schedule 1 continues in force as a Commission rule made under section 146 of that Ordinance, as in force after that commencement.

### **5. Saving for certain regulations**

A regulation in force under section 146(2) of the Securities Ordinance (Cap. 333) immediately before the commencement of item 44 of Schedule 1 continues in force as a regulation made under section 146A of that Ordinance, as in force after that commencement.

## **Explanatory Memorandum**

The main purpose of this Bill is to amend the Securities Ordinance (Cap. 333) to provide a measure of protection to investors in securities by regulating the activities of those persons who carry on securities margin financing businesses.

2. The Bill contains the following provisions -

- (a) Clause 1 specifies the short title of the Bill and provides for its commencement.
- (b) Clause 2 adds new definitions to section 2(1) of the Securities Ordinance (Cap. 333) (including definitions of “financial accommodation”, “registered financier”, “registered

financier's representative", "securities collateral", "securities margin financier", "securities margin financier's representative" and "securities margin financing"). Securities margin financing is engaged in when financial accommodation (such as a loan) is provided in order to facilitate the acquisition of securities listed on a stock exchange (and, where applicable, the continued holding of those securities). It is immaterial that those or other securities are pledged as security for the financial accommodation.

- (c) Clause 3 adds new Part XA (Securities margin financing), which is divided into the following 10 Divisions -
- Division 1 provides that the new Part will apply only to businesses of securities margin financing conducted in Hong Kong. The new Part will not apply to securities margin financing engaged in by certain classes of persons, such as registered and exempt dealers and mutual fund corporations.
  - Division 2 contains a provision which will make it an offence for persons to carry on businesses of securities margin financing unless they are registered under the new Part as securities margin financiers. Another provision will make it an offence for persons to act for securities margin financiers unless they are registered under the new Part as securities margin financiers' representatives. Other provisions specify which persons are eligible for registration under the new Part, prescribe requirements for applications for registration and provide for the granting or refusal of applications. Registration will be subject to certain conditions and restrictions and the Securities and Futures Commission will be empowered to impose conditions or restrictions on financiers and representatives registered under the new Part. A registered financier will not be able to carry on a business of securities margin financing unless at least one of the financier's directors is approved by the Commission as a responsible director. Further provisions will require the Commission to issue certificates of registration to applicants whose applications are granted and require registered financiers to

provide information and statements about their businesses on being directed to do so by the Commission. The Commission will be required to keep Registers of Securities Margin Financiers and Securities Margin Financiers' Representatives and to publish the names of those financiers and representatives in the Government Gazette. Registered financiers and registered financiers' representatives will be required to notify the Commission of changes in certain particulars that relate to them. The Commission will be empowered to revoke or suspend the registration of a registered financier or registered financier's representative in certain specified circumstances, such as if the financier or representative has committed some act of misconduct. The Commission will also be empowered to reprimand a registered financier, registered financier's representative or an officer of a registered financier who is found to have committed misconduct. Decisions of the Commission revoking or suspending registration will be required to be notified to the persons affected and to specify the grounds on which they were based. Persons whose registration is revoked will not normally be able to apply for re-registration until after 12 months from the revocation.

- Division 3 contains provisions relating to the conduct of securities margin financing businesses. Among those provisions is a provision requiring a registered financier to provide its clients with statements of account. Another provision sets out the duties of a registered financier with respect to clients accounts. Further provisions will impose restrictions on the disposition by registered financiers of securities collateral (i.e. the security given by clients for margin finance) and will require registered financiers to notify the Commission if at any time they are unable to comply with the financial resources rules (which are made under section 28 of the Securities and Futures Commission Ordinance (Cap. 24)).

- Division 4 provides that, if an unregistered securities margin financier enters into a contract with a client that relates to securities margin financing, the client will have a right to rescind the contract, unless the rescission of the contract would prejudice a right, or an interest in property, acquired by a third party where that right or interest has been acquired in good faith, for valuable consideration and without notice of the facts entitling the client to rescind the contract.
- Division 5 deals with the accounting and other records of registered financiers. Among those provisions is a provision requiring a registered financier to keep proper accounting records of all transactions entered into in connection with the financier's securities margin financing business so as to enable true and fair profit and loss accounts and balance sheets to be prepared. A registered financier will be required to notify the Commission of its financial year and prepare an annual statement of accounts comprising a profit and loss account and balance sheet.
- Division 6 will require each registered financier to establish and maintain one or more trust accounts. Except in certain specified cases, a registered financier will be required to pay all clients' money into a trust account. Money held in a trust account will not be available for meeting the debts of a registered financier.
- Division 7 will require a registered financier to appoint an auditor to audit the financier's accounting and other records and annual statement of accounts. Certain persons, such as employees of a registered financier, will not be eligible for appointment as auditors. An auditor who resigns or is removed from office or whose appointment as auditor is not renewed will be required to notify the Commission. An auditor who becomes aware of a "reportable matter" will have a duty to notify the matter to the Commission. ("Reportable matter" includes one that, in the auditor's opinion, has adversely affected the financier's financial position.)
- Division 8 will empower the Commission to appoint an auditor to audit and report on the accounting and other records of a registered financier in certain

circumstances, such as when the Commission has received a report from the financier's auditor under Division 7. The Commission will also be empowered to appoint an auditor on the application of a client of a registered financier. An auditor appointed under this Division will be required to report the auditor's findings to the Commission. Such an auditor will be empowered to examine on oath the financier and its officers, employees and agents. Auditors appointed to carry out an audit under this Division and their staff will, except in certain limited circumstances, be prohibited from disclosing to persons other than the Commission information that comes to their knowledge while carrying out the audit. A registered financier and its officers, employees and agents will, on request, be required to produce its accounting and other records to an auditor appointed under this Division to audit those records.

- Division 9 will make it an offence to destroy, conceal or alter the accounting and other records relating to a securities margin financier's business, or to send out of Hong Kong those records or other property of or under the control of the financier. It will also be an offence for a person, with intent to prevent, delay or obstruct the conduct of an audit under Division 7 or 8, to leave or attempt to leave Hong Kong.
- Division 10 contains miscellaneous provisions. One provision will empower the Commission to waive requirements of certain provisions of the new Part or of Commission rules in their application to particular registered financiers or applicants for registration as securities margin financiers. The other provision contains transitional provisions designed to facilitate the phasing in of the new Part.

(d) Clause 4 gives effect to Schedule 1, which contains consequential amendments to the Securities Ordinance (Cap. 333). Among the amendments are amendments adding new sections 75A and 81A and substituting new sections for sections 77 and 81 of that

Ordinance. The new sections correspond to similar provisions contained in Division 3 of the new Part.

- (e) Clause 5 gives effect to Schedule 2, which contains consequential amendments to the Securities and Futures Commission Ordinance (Cap. 24).
- (f) Clause 6 gives effect to Schedule 3, which contains consequential amendments to the Money Lenders Ordinance (Cap. 163) and the Commodities Trading Ordinance (Cap. 250).
- (g) Clause 7 gives effect to Schedule 4, which contains certain savings and transitional provisions.

Chapter: 333 Title: SECURITIES ORDINANCE Gazette Number: 25 of 1998 s. 2

Section: 2 Heading: Interpretation Version Date: 01/07/1997

Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

- (1) In this Ordinance, unless the context otherwise requires-
- “auditor” (核數師) means a professional accountant registered and holding a practising certificate under the Professional Accountants Ordinance (Cap 50);
- “banker’s books” (銀行簿冊) means-
- (a) books of a banker;
  - (b) cheques, orders for the payment of money, bills of exchange, and promissory notes in the possession of or under the control of a banker; and
  - (c) securities in the possession or under the control of a banker, whether by way of pledge or otherwise;
- “books” (簿冊) includes accounts and deeds;
- “business” (業務), in relation to a dealer, means the business of dealing in securities;
- “certificate of registration” (註冊證明書) means a certificate of registration issued under Part VI;
- “Commission” (監察委員會) means the Securities and Futures Commission established under the Securities and Futures Commission Ordinance (Cap 24); (Amended 10 of 1989 s. 65)
- “committee” (委員會) in relation to the Exchange Company, means the committee, by whatever name called, for the management and control of the Exchange Company; (Replaced 58 of 1985 s. 33)
- “company” (公司) means a company as defined in section 2 of the Companies Ordinance (Cap 32), a company to which Part XI of that Ordinance applies, and any body corporate incorporated in Hong Kong having a share capital;
- “constitution” (章程), in relation to a company, means the memorandum and articles of association of the company or other instrument providing the constitution of the company;
- “corporate member” (法團會員) means a body corporate which is a member of the Exchange Company; (Replaced 58 of 1985 s. 33)
- “corporation” (法團) means any company or other body corporate formed or incorporated either in Hong Kong or elsewhere; but does not include-
- (a) any body corporate that is incorporated in Hong Kong and is a public authority or an organ or agency of the Crown;
  - (b) any corporation sole;
  - (c) any credit union registered under the Credit Unions Ordinance (Cap 119);
  - (d) any corporation registered under the Building Management Ordinance (Cap 344); (Amended 27 of 1993 s. 50)
  - (e) any corporation which has been exempted by regulations from the provisions of this Ordinance that affect corporations, or any corporation that belongs to a class of corporations that has been so exempted;
- “Court” (法院) means the Court of First Instance; (Amended 25 of 1998 s. 2)
- “dealer”, (交易商), subject to section 82(1), means a person who carries on a business of dealing in securities, whether he carries on any other business or not, and, in the case of a corporation which is a dealer, includes any director of the corporation who actively participates in, or is in any way directly responsible for the supervision of, the corporation’s business of dealing in securities; but does not include- (Amended 62 of 1976 s. 2)
- (a) a solicitor or professional accountant whose carrying on business as a dealer is wholly incidental to the practice of his profession;
  - (b) except where specifically provided in this Ordinance, an exempt dealer;

- (c) a recognized clearing house; (Added 68 of 1992 s. 20)
- “dealer’s representative” (交易商代表) means a person in the employment of, or acting for or by arrangement with, a dealer, not being an exempt dealer who performs for that dealer any of the functions of a dealer (other than work ordinarily performed by an accountant clerk, or cashier) whether his remuneration is by way of salary, wages, commission, or otherwise, but, in the case of a corporation which is a dealer, does not include a director of the corporation; (Replaced 62 of 1976 s. 2)
- “dealing director” (交易董事) means a director of a corporation who, either alone or with others, actively participates in, or is directly responsible for the supervision of, the corporation’s business of dealing in securities; (Added 58 of 1985 s. 2)
- “dealing in securities” (證券交易), in relation to any person (whether acting as principal or agent), subject to section 3(1), means making or offering to make an agreement with any other person, or inducing or attempting to induce any other person to enter into or offer to enter into any agreement- (Amended 24 of 1991 s. 2)
- (a) for or with a view to acquiring, disposing of, subscribing for or underwriting securities;
  - (b) the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; (Amended 62 of 1976 s. 2)
- “dealing partnership” (交易合夥) means a partnership which carries on the business of dealing in securities; (Added 58 of 1985 s. 2)
- “defalcation” (虧空) means a misapplication of money, securities, or other property;
- “director” (董事) has the same meaning as in section 2 of the Companies Ordinance (Cap 32); (Added 62 of 1976 s. 2)
- “document” (文件) includes any register, books, record, tape recording, any form of computer input or output, and any other document or similar material (whether produced mechanically, electrically, or manually, or by any other means whatsoever);
- “Exchange Company” (交易所公司) means the company recognized as the Exchange Company under section 3 of the Stock Exchanges Unification Ordinance (Cap 361); (Added 58 of 1986 s. 33)
- “exempt dealer” (獲豁免交易商) means a person declared under section 60 to be an exempt dealer for the purposes of this Ordinance;
- “exempt investment adviser” (獲豁免投資顧問) means a person declared under section 61 to be an exempt investment adviser for the purposes of this Ordinance; (Added 62 of 1976 s. 2)
- “financial year” (財政年度) means-
- (a) in the case of a dealer, the period notified by him under section 87A or permitted by the Commission under that section; (Amended 10 of 1989 s. 65)
  - (b) in any other case, a period of 12 months ending on the 31st March in any calendar year; (Replaced 62 of 1976 s. 2)
- “foreign stock exchange” (外地證券交易所) means a stock exchange which is permitted to operate in a country or territory outside Hong Kong by the law of that country or territory or, in the case of a country or territory which has no written law relating to stock exchanges, is not prevented from operating by the law of that country or territory;
- “individual member” (個人會員) means a natural person who is a member of the Exchange Company; (Replaced 58 of 1985 s. 33)
- “investment adviser” (投資顧問) means any person who-
- (a) for remuneration carries on a business of advising other persons concerning securities;
  - (b) for remuneration as part of a regular business issues analyses or reports concerning securities; or
  - (c) for remuneration pursuant to a contract or arrangement with a client, undertakes on behalf of the client the management of a portfolio of securities, including the arranging of purchases, sales, or exchanges of securities through a dealer or exempt dealer, (Amended

10 of 1989 s. 65)

and, in the case of a corporation which is an investment adviser, includes any director of the corporation who actively participates in, or is in any way directly responsible for the supervision of, the corporation's business as an investment adviser; but does not include-

- (i) a licensed bank;
- (ii) a solicitor or professional accountant whose carrying on business as an investment adviser is wholly incidental to the practice of his profession;
- (iii) the proprietor or publisher of, or any contributor to, a bona fide newspaper, magazine, journal, or other periodical publication that is generally available to the public, otherwise than on subscription, who, only in that bona fide newspaper, magazine, journal, or periodical publication, advises other persons concerning securities, or issues analyses or reports concerning securities, not being the proprietor or publisher of, or a contributor to, a newspaper, journal, magazine, or other periodical publication whose principal or only object is to advise others concerning securities or to issue analyses or reports concerning securities;
- (iv) a dealer or exempt dealer to the extent that his giving of investment advice is incidental to his carrying on business as a dealer or exempt dealer;
- (v) a trustee company registered under Part VIII of the Trustee Ordinance (Cap 29);
- (vi) an exempt investment adviser; (Replaced 62 of 1976 s. 2)
- (vii) a recognized clearing house; (Added 68 of 1992 s. 20)

“investment advisers’ partnership” (投資顧問合夥) means a partnership which carries on the business of an investment adviser; (Added 58 of 1985 s. 2)

“investment representative” (投資代表) means a person in the employment of, or acting for or by arrangement with, an investment adviser, not being an exempt investment adviser, who performs for that investment adviser any of the functions of an investment adviser (other than work ordinarily performed by an accountant, clerk or cashier) whether his remuneration is by way of salary, wages, commission, or otherwise, but, in the case of a corporation which is an investment adviser, does not include a director of the corporation; (Replaced 62 of 1976 s. 2)

“issue” (發出、發行) includes distribute and circulate; (Added 62 of 1976 s. 2)

“licensed bank” (持牌銀行) means a bank within the meaning of section 2 of the Banking Ordinance (Cap 155); (Replaced 49 of 1995 s. 53)

“limited partnership” (有限責任合夥) means a limited partnership registered under the Limited Partnerships Ordinance (Cap 37); (Added 58 of 1985 s. 2)

“listing” (上市), in relation to a security, means the procedure whereby a security is listed on the Unified Exchange; (Amended 58 of 1985 s. 33)

“market contract” (市場合約) means a market contract within the meaning of section 2 of the Securities and Futures (Clearing Houses) Ordinance (Cap 420); (Added 68 of 1992 s. 20. Amended 62 of 1995 s. 12)

“member” (會員), in relation to the Exchange Company or the Unified Exchange, means a member within the meaning of section 2 of the Stock Exchanges Unification Ordinance (Cap 361), of the Exchanges Company; (Added 58 of 1985 s. 33)

“mutual fund corporation” (互惠基金法團) means any corporation which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities and which is offering for sale or has outstanding any redeemable shares of which it is the issuer;

“purchase” (購買), in relation to any securities, includes subscribing for those securities;

“recognized clearing house” (認可結算所) means a recognized clearing house within the meaning of section 2 of the Securities and Futures (Clearing Houses) Ordinance (Cap 420); (Added 68 of 1992 s. 20. Amended 62 of 1995 s. 12)

“registered” (註冊), in relation to a dealer, dealing partnership, dealer's representative, investment

adviser, investment advisers' partnership or investment representative, means registered under this Ordinance; (Amended 58 of 1985 s. 2)

“registered company” (註冊公司) means a company formed and registered under the Companies Ordinance (Cap 32);

“representative” (代表) means a dealer's representative or an investment representative;

“rules” (規則), in relation to the Exchange Company or the Unified Exchange, means the rules governing the operation and management of the Unified Exchange or the conduct of its members, by whatever name they may be called and wherever contained; (Replaced 58 of 1985 s. 33)

“securities” (證券) means any shares, stocks, debentures, loan stocks, funds, bonds, or notes of, or issued by, any body, whether incorporated or unincorporated, or of any government or local government authority; and includes- (Amended 62 of 1976 s. 2)

- (a) rights, options, or interests (whether described as units or otherwise) in or in respect of any of the foregoing;
- (b) certificates of interest or participation in, or temporary or interim certificates for, receipts for, or warrants to subscribe to or purchase, any of the foregoing; or
- (c) any instruments commonly known as securities;

but does not include-

- (i) any shares or debentures of any company which is a private company within the meaning of section 29 of the Companies Ordinance (Cap 32);
- (ii) any interest arising under a partnership agreement or proposed partnership agreement (other than an agreement creating a limited partnership), unless the agreement or proposed agreement relates to an undertaking, scheme, enterprise, or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises, or investment contracts, whether or not that person is, or is to become, a party to the agreement or proposed agreement, or unless the agreement is or would be an agreement, or is or would be within a class of agreements, prescribed by regulations for the purposes of this paragraph;
- (iii) any negotiable receipt or other negotiable certificate or document evidencing the deposit of a sum of money, or any rights, or interest arising under any such receipt, certificate, or document;
- (iv) any bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap 19) and any promissory note within the meaning of section 89 thereof; (Added 62 of 1976 s. 2)
- (v) any debenture that specifically provides that it is not negotiable or transferable; (Added 62 of 1976 s. 2)

“share” (股份) means a share in the capital of a corporation; and includes the stock or any part of the stock of a corporation;

“stockbroker” (股票經紀) means a member of the Exchange Company; (Replaced 58 of 1985 s. 33)

“stock market” (證券市場) means a place where persons regularly meet together to negotiate sales and purchases of securities (including prices), or a place at which facilities are provided for bringing together sellers and purchasers of securities; but does not include the office of-

- (a) a stockbroker;
- (b) a registered dealing partnership of which a stockbroker is a partner; or
- (c) a recognized clearing house; (Amended 58 of 1985 s. 33; 68 of 1992 s. 20)

“title” (名稱) includes name or description;

“trust account” (信託帳戶) means a trust account established under section 84;

“underwriter” (包銷商) means a person who for remuneration undertakes to subscribe for or purchase on specified terms such specified securities as are offered to the public by a person issuing or selling those securities, but are not subscribed for or purchased by the public; (Amended L.N. 377 of 1981)

“Unified Exchange” (聯合交易所) or “exchange” (交易所) means the stock market established under section 27 of the Stock Exchanges Unification Ordinance (Cap 361); (Added 58 of 1985 s. 33)

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

(2) In this Ordinance a reference to securities of a corporation is a reference to securities-

- (a) issued, made available, or granted by the corporation;
- (b) proposed to be issued, made available, or granted by the corporation;
- (c) proposed to be issued, made available, or granted by the corporation when it is formed.

(3) In this Ordinance a security is regarded as listed on the Unified Exchange when the exchange has on the application of the company which issued the security, or on the application of any holder of the security, agreed to allow, subject to the requirements of this Ordinance, dealings in that security to take place on the Unified Exchange. (Amended 58 of 1985 s. 33)

(4) (Repealed 58 of 1985 s. 2)

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
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Section: 5	Heading: <b>Interests in securities</b>	Version Date: 30/06/1997
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(1) Subject to this section, a person has an interest in securities for the purposes of sections 19, 67, 79 and 135 if he has authority (whether formal or informal or express or implied) to dispose of, or to exercise control over the disposal of, those securities. (Amended 8 of 1978 s. 2; 62 of 1990 s. 38)

(2) It is immaterial for the purposes of subsection (1) that the authority of a person to dispose of, or to exercise control over the disposal of, particular securities is, or is capable of being made, subject to restraint or restriction.

(3) For the purposes of subsection (1), a person shall not be deemed not to have authority to dispose of, or to exercise control over the disposal of, particular securities by reason only that his authority is exercisable jointly with another person.

(4) For the purposes of subsection (1), where a corporation has authority (whether formal or informal or express or implied) to dispose of, or to exercise control over the disposal of, securities and-

- (a) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions of a person in relation to those securities; or
- (b) a person, or an associate of a person, has a controlling interest in the corporation, that person shall be deemed to have authority to dispose of, or to exercise control over the disposal of, those securities.

(5) For the purposes of subsection (4) of this section, and of subsection (4) of section 135, a person is an associate of another person if the first-mentioned person is-

- (a) a corporation that, by virtue of section 4, is deemed to be related to that other person;
- (b) a person in accordance with whose directions that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to the securities referred to in those subsections;
- (c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions of that other person in relation to those securities;
- (d) a corporation that is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions of that other person in relation to those securities; or
- (e) a corporation in accordance with the directions of which, or of the directors of which, that

other person is accustomed or under an obligation, whether formal or informal, to act in relation to those securities.

- (6) Where a person-
- (a) has entered into a contract to purchase securities;
  - (b) has a right to have securities transferred to him or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
  - (c) has the right to acquire securities, or an interest in securities, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not,

that person shall, to the extent to which he could do so on completing the contract, enforcing the right or exercising the option, be deemed to have authority to dispose of, or to exercise control over the disposal of, those securities.

- (7) There shall be disregarded-
- (a) for the purposes of section 67, an interest in securities of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
  - (b) for the purposes sections 67 and 79, an interest in securities of a person who holds that interest only by virtue of his having control over the securities as a manager, agent, trustee, or nominee for, or as an employee of, another;
  - (c) where securities referred to in section 135(4) are subject to a trust, the interest of a trustee in those securities if a person who is not a trustee has an interest in those securities by virtue of subsection (6)(b) of this section;
  - (d) for the purposes of any prescribed provision of section 19,67,79 or 135, a prescribed interest in securities, being an interest of such person, or of the persons included in such class of persons, as is prescribed by regulations; and (Amended 62 of 1976 s. 4; 8 of 1978 s. 2; 62 of 1990 s. 38; 68 of 1992 s. 20)
  - (e) for the purposes of section 67, an interest in securities of a person who holds that interest only as a result of having entered into a market contract. (Added 68 of 1992 s. 20)

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 27	Heading: <b>Commission may order closure of Unified Exchange in emergencies, etc.</b>	Version Date: 30/06/1997

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(1) Without prejudice to the powers of the Commission under section 26, the Commission may, after consultation with the Exchange Company, order that the Unified Exchange be closed for the transaction of dealings in securities for a period not exceeding 5 bank trading days.

(2) The Commission may make an order under subsection (1) on the ground that, in his opinion, the orderly transaction of business on the Unified Exchange is being or is likely to be prevented because-

- (a) an emergency or natural disaster has occurred in Hong Kong; or
- (b) there exists an economic or financial crisis, whether in Hong Kong or elsewhere, or any other circumstances, which is likely to prevent orderly trading on the Unified Exchange.

(3) An order made under subsection (1) may be renewed by a further order for a further period of not more than 10 bank trading days.

(4) Any dealer who deals in securities listed on the Unified Exchange while an order made under subsection (1) or (3) is in force (being an order which has been notified to the committee of the Exchange Company) shall be guilty of an offence and shall be liable on conviction to a fine of \$50000.

(5) Where an order under subsection (1) or (3) has been made, the Commission may take such steps as are necessary to secure compliance with the order and may, in particular, cause the premises of the Unified Exchange to be locked and secured.

(6) Any person who, without the authority of the Commission, enters or attempts to enter the premises of the Unified Exchange which have been locked and secured under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine of \$20000.

(Replaced 58 of 1986 s. 43. Amended 10 of 1989 s. 65)

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 52	Heading: <b>Deposit required before registration as a dealer</b>	Version Date: 30/06/1997

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(1) Subject to subsection (6), the Commission shall not register an applicant as a dealer unless the applicant has deposited with the Commission such amount as is prescribed in regulations.

(1A) Subject to subsection (6), where an applicant is a corporation the Commission shall not register the corporation as a dealer unless there has been deposited with the Commission in respect of each director of the corporation who actively participates in, or is in any way directly responsible for, the corporation's business of dealing in securities in Hong Kong such amount as is prescribed in regulations. (Added 62 of 1976 s. 13)

(2) If-

- (a) the dealer, being an individual person or member of a partnership of dealers, becomes bankrupt, the Commission shall pay the deposit to the dealer's trustee in bankruptcy;
- (b) the dealer, being a corporation, is ordered to be wound up by or under the supervision of the Court, the Commission shall pay the deposit to the liquidator of the corporation; or
- (c) the certificate of registration of the dealer is revoked, or the dealer or any servant of the dealer, or where the dealer is a partnership or a corporation any member of the partnership or director or officer of the corporation, is convicted of an offence necessarily involving a finding that he or it was guilty of a breach of trust, defalcation, fraud, or misfeasance in respect of any money or securities of a person who is a client of the dealer, the Commission may direct that all or any part of the deposit be forfeited.

(3) In the event of the deposit or any part of the deposit being paid to the dealer's trustee in bankruptcy or liquidator under subsection (2)(a) or (b), the amount paid shall be applied by the trustee or liquidator, as the case may be, in accordance with regulations made under this Ordinance for the purposes of this subsection.

(4) In the event of the deposit or any part of the deposit being forfeited under subsection (2)(c), the amount forfeited shall be applied by the Commission subject to and in accordance with regulations made under this Ordinance for the purposes of this subsection.

(5) Except as provided in this section or under regulations made under this Ordinance, no person may withdraw or transfer any deposit made under this section. (Amended 62 of 1976 s. 13)

(6) The following persons are exempt from being required to deposit the amount required under this section-

- (a) a member of the Exchange Company;
- (b) a dealing director of a corporation which is a member of the Exchange Company unless he is also a dealing director of another corporation which is a registered dealer and which is not a member of the Exchange Company;
- (c) a corporation which is not a member of the Exchange Company, each of whose dealing directors has deposited the amount so required; and
- (d) any other dealer who belongs to a class of dealers exempted from the provisions of this section by regulations. (Replaced 58 of 1985 s. 48)

(7) The Commission shall open one or more accounts at a licensed bank into which he shall pay all sums received from dealers by way of deposit under this section, and shall then ascertain what proportion of those sums ought, in his opinion, to be retained in the accounts to enable liabilities under subsection (2), or such other liabilities as may be prescribed by regulations, to be satisfied.

(8) After ascertaining the amount required to be retained under subsection (7), the Commission shall cause the balance of the sums to be invested in such manner as it thinks fit.

(8A) Any document relating to the investment of money under subsection (8) may be kept in the office of the Commission or deposited by it for safe keeping with a licensed bank. (Added 62 of 1976 s. 13)

(9) Where the Commission has invested the balance of the sums under subsection (8), it shall, as soon as practicable after the end of each financial year, by notice in the Gazette,-

- (a) declare a rate of interest to be paid for that financial year in respect of each sum deposited under this section; (Amended 62 of 1976 s. 13)
- (b) specify the manner and time of payment of that interest; and
- (c) specify an amount to be charged for management expenses incurred by the Commission in administering that sum under this section.

(10) As soon as practicable after the publication of the notice referred to in subsection (9), the Commission shall, after deducting the appropriate amount chargeable in respect of management expenses, pay to each person who has deposited the prescribed sum under this section, or to that person's duly authorized agent or personal representative, the appropriate amount of interest due in respect of that sum for the financial year in question. (Amended 62 of 1976 s. 13)

(11) If any person who has made a deposit under this section ceases to be registered as a dealer and the deposit has not been or is not required to be disposed of under subsection (2), that person, or his agent or personal representative, may apply to the Commission for the deposit to be released to him. (Amended 62 of 1976 s. 13)

(12) On making an application under subsection (11), the applicant shall-

- (a) satisfy the Commission by a statutory declaration-
  - (i) that he knows of no other person who has made or is entitled to make a claim in respect of the deposit;
  - (ii) if he is not the dealer who made the deposit, that he is entitled to give a good discharge for the deposit and stating the circumstances in which he is so entitled; and
- (b) provide the Commission with such information as will satisfy him that an advertisement in a form approved by him has been inserted once in an English language newspaper, and once in a Chinese language newspaper, circulating in Hong Kong.

(13) The Commission, on being so satisfied, shall cause the amount of the deposit to be released to the applicant.

(Amended 10 of 1989 s. 65)

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number: L.N. 158 of 1998
Section: 55	Heading: <b>Revocation and suspension of certificates of registration in certain cases</b>	Version Date: 01/04/1998

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- (1) Where any registered person-
- (a) being an individual, dies; or
  - (b) being a corporation or, subject to section 54A, a partnership, is dissolved, (Replaced 58 of 1985 s. 13)

the registration of that person is deemed to be revoked.

(2) The Commission may revoke the registration of a registered person or, if it thinks it appropriate to do so, suspend the registration of such a person for such time, or until the happening of such event, as it may determine- (Amended 10 of 1989 s. 65)

- (a) in the case of a registered person who is an individual, if that person-
  - (i) suffers or appears to suffer from mental disorder within the meaning of the Mental Health Ordinance (Cap 136); (Replaced 46 of 1988 s. 33)
  - (ii) has a bankruptcy order made against him or enters into a voluntary arrangement with his creditors within the meaning of the Bankruptcy Ordinance (Cap 6); (Replaced 76 of 1996 s. 83)
  - (iii) is convicted, whether in Hong Kong or elsewhere, of an offence the conviction for which necessarily involved a finding that he acted fraudulently or dishonestly;
  - (iv) is convicted of an offence against this Ordinance;
  - (v) does not carry on business in Hong Kong; or (Amended 26 of 1992 s. 2)
  - (vi) is registered as a representative and the registration of the dealer or investment adviser, in relation to whom the certificate of registration of the representative was granted, is revoked or suspended; or
- (b) in the case of a registered person that is a corporation if-
  - (i) the corporation goes into liquidation or is ordered to be wound up;
  - (ii) a receiver or manager of the property of the corporation is appointed;
  - (iii) the corporation does not carry on business; (Amended 26 of 1992 s. 2)
  - (iv) a levy of execution in respect of the corporation has not been satisfied;
  - (v) the corporation has entered into a compromise or scheme of arrangement with its creditors;
  - (vi) any director of the corporation is convicted, whether in Hong Kong or elsewhere, of an offence the conviction for which necessarily involved a finding that he acted fraudulently or dishonestly;
  - (vii) any director of the corporation is convicted of an offence against this Ordinance;
  - (viii) a director, secretary, or other person concerned in the management of the corporation who is required to be registered under this Part is not so registered or the registration of such a director, secretary, or other person has been revoked or suspended.

\*(2A) The Commission may-

- (a) revoke the registration of a registered dealer or a registered dealing partnership;
- or
- (b) suspend the registration of a registered dealer or registered dealing partnership for such time, or until the happening of such event, as it may determine,

if such dealer or partnership fails to comply with section 65B. (Added 58 of 1985 s. 49)

(2B) The Commission shall not revoke the registration of a registered person under subsection (2) without first giving such person an opportunity of being heard. (Added 26 of 1992 s. 2)

(3) The Commission may revoke a certificate of registration at the request of its holder.

(4) The Commission may at any time remove the suspension of the registration of a registered person if it appears to it desirable to do so.

(5) Every decision of the Commission revoking or suspending the registration of a registered person shall be notified to that person in writing and shall include a statement of the reasons on which it is based and take effect from the date on which it is notified to that person or such later date as is specified in the notice. (Replaced 62 of 1976 s. 16)

(Amended 10 of 1989 s. 65)

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\* The operation of this subsection is affected by s. 28(4) of the Securities and Futures Commission Ordinance (Cap 24). For convenience, s. 28(4) is reproduced at the end of this Ordinance.

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(1) The Commission may at any time make inquiry concerning any of the following matters-

- (a) whether a registered person, being an individual, corporation or partnership-
  - (i) has provided the Commission, whether before or after becoming registered under this Ordinance or the Securities and Futures Commission Ordinance (Cap 24), with such information relating to him, and to any circumstances likely to affect his method of conducting business, as may be required by or under either of those Ordinances;
  - (ii) is or has been guilty of any misconduct in relation to the conduct of his business; or
  - (iii) is a fit and proper person to be registered by reason of any other circumstances; or
- (b) whether, in the case of a registered person that is a corporation, any director, secretary or person concerned in the management of the corporation-
  - (i) is or has been guilty of any misconduct; or
  - (ii) is a fit and proper person to be a director, secretary or person concerned in the management of the corporation.

(2) After making such inquiry in respect of a registered person, or where such person is deemed to be guilty of misconduct for the purposes of this section under subsection (6), the Commission may if it thinks fit- (Amended 62 of 1990 s. 39)

- (a) revoke the registration of the person;
- (b) suspend the registration of the person for such time, or until the happening of such event, as it may determine; or
- (c) reprimand him or, in the case of a registered person that is a corporation, reprimand any director, secretary or person concerned in its management.

(3) The Commission shall not impose any penalty under subsection (2) without first giving the registered person and, in the case of a registered person that is a corporation, any director, secretary or person concerned in its management, an opportunity of being heard.

(4) Every decision of the Commission imposing a penalty under subsection (2) on a person shall be notified to that person in writing and shall include a statement of the reasons on which it is based.

(5) For the purposes of this section “misconduct” (失當行爲) means-

- (a) any failure to comply with any requirement of or imposed by or under this Ordinance or the Securities and Futures Commission Ordinance (Cap 24) with respect to dealers, investment advisers or representatives;
- (b) any failure to observe the terms and conditions of a certificate of registration;
- (c) any act or omission relating to the conduct of business of a dealer, investment adviser or representative which is or is likely to be prejudicial to the interests of members of the investing public.
- (d) any failure to comply with any requirement of or imposed by or under any of the rules made by the Commission under this Ordinance or the Securities and Futures Commission Ordinance (Cap 24). (Added 8 of 1994 s. 2)

(6) Where a person has been identified as an insider dealer, in a written report of the Insider Dealing Tribunal prepared under section 22(1) of the Securities (Insider Dealing) Ordinance (Cap 395) such person shall be deemed to be guilty of misconduct for the purposes of this section. (Added 62 of 1990 s. 39)

(Replaced 10 of 1989 s. 65)

Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 57	Heading: <b>Effect of revoking or suspending registration</b>	Version Date: 30/06/1997

- (1) (Repealed 10 of 1989 s. 65)
- (2) A revocation or suspension under this Part does not operate so as to-
  - (a) avoid or affect any agreement transaction or arrangement relating to a dealing in securities entered into by a person whose registration has been suspended or revoked, whether the agreement, transaction, or arrangement was entered into before or after the suspension or revocation of the registration; or
  - (b) affect any right, obligation, or liability arising under any such agreement, transaction, or arrangement.
- (3) A person whose registration is revoked under section 55 (other than under subsection (2)(a)(v) or (vi) or (b)(iii)) or 56 may not apply to be registered under this Part, whether as a dealer, investment adviser, or representative, until the expiration of at least 12 months from the revocation. (Amended 58 of 1985 s. 15)
- (4) Where the Commission revokes or suspends the registration of any person under section 55 or 56 or imposes any other penalty under section 56, it shall notify that person in writing of the revocation, suspension, or other penalty, and shall include in the notice a statement of the reasons as to why the registration of the person was revoked or suspended or, as the case may be, the penalty was imposed.

(Amended 10 of 1989 s. 65)

Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 60	Heading: <b>Exempt dealers</b>	Version Date: 30/06/1997

- (1) The Commission may declare any person to be an exempt dealer for the purposes of this Ordinance if it is satisfied that the business of that person complies with the following requirement, that is to say-
  - (a) the main business of that person consists of one or both of the following activities-
    - (i) carrying on some business other than the business of dealing in securities;
    - (ii) dealing in securities in one or more of the ways specified in subsection (2); and
  - (b) the greater part of any business of dealing in securities done by him in Hong Kong, otherwise than in one of the ways specified in subsection (2), is effected with or through the agency of one or more of the following persons-
    - (i) a registered dealer;
    - (ii) an exempt dealer; or
    - (iii) a member of a stock exchange outside Hong Kong.
- (2) The ways of dealing in securities referred to in subsection (1) are-
  - (a) issuing any document which is or is to be deemed to be a prospectus within the meaning of the Companies Ordinance (Cap 32) or any prospectus approved by the Commission that is issued by a mutual fund corporation or unit trust authorized by the Commission;
  - (b) making or offering to make with any person an agreement for or with a view to the underwriting of securities by that person;
  - (c) making any invitation to persons to subscribe for securities or to purchase securities on the first occasion that they are sold;
  - (d) making any invitation to persons to subscribe for or purchase securities of the Government or the government of any country or territory outside Hong Kong;

- (e) effecting any transaction with a person whose business involves the acquisition and disposal or the holding of securities, being a transaction with that person as a principal.
- (3) (Repealed 10 of 1989 s. 65)
- (4) Without prejudice to subsection (1), the Commission may, by notice in the Gazette, declare-
- (a) any licensed bank;
- (b) any trustee company registered under Part VIII of the Trustee Ordinance (Cap 29); or
- (c) any person belonging to class of persons, or carrying on a type of business, prescribed in regulations for the purposes of this paragraph, to be an exempt dealer for the purposes of this Ordinance.
- (5) The Commission may at any time revoke a declaration made under this section.
- (6) The Commission shall cause to be published in the Gazette at least once in every year the names and addresses of all persons who are exempt dealers.
- (Amended 10 of 1989 s. 65)

Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 63	Heading: <b>Information to be provided by registered person other than a representative, etc.</b>	Version Date: 30/06/1997

- (1) Every registered person other than a representative shall forthwith notify the Commission in writing of any change which, while his certificate of registration is in force, may occur (Amended 58 of 1985 s. 16)
- (a) in the address in Hong Kong at which he carries on the business of dealing in securities or of investment adviser, as the case may be; or
- (b) in any information supplied in or in connection with his application for registration or renewal of registration, being information prescribed by regulations.
- (2) Every registered person other than a representative shall forthwith, on ceasing to carry on business in Hong Kong as a dealer or an investment adviser, notify the Commission in writing of that fact. (Amended 58 of 1985 s. 16)
- (3) If, at any time while a corporation is registered as a dealer or investment adviser, any person becomes or ceases to be a director of the corporation, the corporation shall within 7 days after that event notify the Commission in writing of the name and address of that person and also his nationality or the fact that he has no nationality.
- (4) If, at any time while a person is registered as a dealer's representative or investment representative, that person leaves or enters the service of, or becomes or ceases to be an agent of, any dealer or investment adviser, that person and the dealer or investment adviser as the case may be, shall within 7 days after that event notify the Commission in writing of the fact and of the name and address of the dealer or investment adviser. (Amended 58 of 1985 s. 16)
- (4A) Where-
- (a) in any registered dealing partnership or registered investment advisers' partnership-
- (i) any partner ceases to be a partner or a further partner is admitted to the partnership; or
- (ii) any partner dies or becomes bankrupt or, being a corporation goes into liquidation or is ordered to be wound up; or
- (b) any registered dealing partnership or registered investment advisers' partnership is dissolved by order of court,
- the persons who were partners in such partnership immediately prior to such event and, in the case of any person who is deceased, his personal representative, shall forthwith notify the Commission in writing of the fact. (Added 58 of 1985 s. 16)

(5) Any person who, without reasonable excuse, contravenes any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine of \$2000. (Amended 10 of 1989 s. 65)

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: <b>64</b>	Heading: <b>Commission to keep a register of dealers, etc.</b>	Version Date: 30/06/1997

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- (1) The Commission shall establish and maintain at its office- (Amended 10 of 1989 s. 65)
- (a) a register of dealers in which shall be entered the name of every registered dealer and such other particulars as may be prescribed in relation to registered dealers;
  - (b) a register of investment advisers in which shall be entered the name of every registered investment adviser and such other particulars as may be prescribed in relation to registered investment adviser;
  - (c) a register of dealers' representatives in which shall be entered the name of every registered dealer's representative and such other particulars as may be prescribed in relation to registered dealers' representatives;
  - (d) a register of investment representatives in which shall be entered the name of every registered investment representative and such other particulars as may be prescribed in relation to registered investment representatives; (Amended 58 of 1985 s. 17)
  - (e) a register of dealing partnerships in which shall be entered the name of the partnership and of each partner thereof together with such other particulars as may be prescribed in relation to registered dealing partnerships; and (Added 58 of 1985 s. 17)
  - (f) a register of investment advisers' partnerships in which shall be entered the name of the partnership and of each partner thereof together with such other particulars as may be prescribed in relation to registered investment advisers' partnerships. (Added 58 of 1985 s. 17)
- (2) The registers kept under this section and, after registration or renewal of registration, as the case may be, all applications made for registration or renewal of registration under this Part shall, during such hours as may be prescribed and on payment of any fee prescribed by regulations, be open to inspection by members of the public.
- (3) A copy of any extract of or entry in the registers kept under this section, purporting to be certified by an authorized officer of the Commission, shall be admissible as evidence in any legal proceedings, whether under this Ordinance or otherwise. (Amended 10 of 1989 s. 65)

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: <b>65A</b>	Heading: <b>Qualifications for registration as a dealer</b>	Version Date: 30/06/1997

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## PART VIA

### SPECIAL PROVISIONS RELATING TO DEALERS

- (1) No person, being an individual, may be registered as a dealer unless he can show that-
- (a) he has sufficient qualifications or experience in dealing in securities;
  - (b) (Repealed 10 of 1989 s. 65)

- (c) he is able to comply with the requirements of section 65B. (Added 58 of 1985 s. 50)
- (2) No person shall be regarded as having sufficient qualifications or experience for the purpose of subsection (1)(a) unless he has-
- (a) not less than 3 years' experience in dealing in securities-
    - (i) in Hong Kong; or
    - (ii) on any other stock market recognized by the Commission for the purposes of this paragraph by notice in the Gazette; or
  - (b) passed an examination approved for the purposes of this paragraph by the Commission by notice in the Gazette.
- (3) No corporation may be registered as a dealer unless-
- (a) it is-
    - (i) a registered company; or
    - (ii) an overseas company to which Part XI of the Companies Ordinance (Cap 32) applies and which has complied with the provisions of that Part relating to the registration of documents;
  - (b) every person who will be a dealing director is a registered dealer; and
  - (c) it is able to comply with the requirements of section 65B. (Added 58 of 1985 s. 50)
- (4) No partnership may be registered as a dealing partnership unless-
- (a) all the partners, in the case of a general partnership; or
  - (b) all the general partners, in the case of a limited partnership,
- are able to comply with the requirements of section 65B. (Added 58 of 1985 s. 50)

Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 65C	Heading: <b>*Failure to comply with section 65B</b>	Version Date: 30/06/1997

- (1) If a registered dealer becomes aware of any inability by him or of any registered dealing partnership of which he is a partner to comply with section 65B he shall forthwith-
- (a) notify the Commission thereof; and
  - (b) cease dealing in securities and cause any registered dealing partnership of which he is a member so to cease, otherwise than for the purpose of giving effect to any agreement or arrangement entered into before the time when he becomes so aware.
- (2) Where the Commission becomes aware of any inability by a registered dealer or registered dealing partnership to comply with section 65B it may, whether or not notice has been given under subsection (1)-
- (a) suspend the registration of the registered dealer or registered dealing partnership pending consideration by it of the matter under section 55 or the report of an auditor appointed under section 90; or
  - (b) (Repealed 63 of 1990 s. 4)
- (3) A person shall be deemed to be aware of any such inability as is described in subsection (1) if he would, with the exercise of reasonable diligence, have been aware of such inability and, if such person is a corporation, if any dealing director of that corporation is aware or would, with the exercise of reasonable diligence, have been aware of such inability.
- (4) Any person who contravenes subsection (1) or who fails to comply with any condition imposed by the Commission under subsection (2)(b) shall be guilty of an offence and shall be liable on conviction to a fine of \$25000 and, in the case of a continuing offence, to a further fine of \$250 for each day during which the offence continues.

(Added 58 of 1985 s. 51)

\* The operation of this section is affected by s. 28(4) of the Securities and Futures Commission Ordinance (Cap 24). For convenience, s. 28(4) is reproduced at the end of this Ordinance.

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: <b>65D</b>	Heading: <b>*Books, accounts and records to be produced on demand</b>	Version Date: 30/06/1997

(1) For the purposes of ascertaining whether or not a registered dealer or registered dealing partnership complies with section 65B the Commission and any person who produces written authority in that behalf signed by the Commission, shall have the powers of an auditor under section 95(1).

(2) For the purposes of section 95(3) a request made under section 95(1) by the Commission, or by any person authorized by it, in pursuance of the powers vested in it or him, as the case may be, by subsection (1) shall be deemed to have been made under section 95(1).  
(Added 58 of 1985 s. 51. Amended 10 of 1989 s. 65; L.N. 259 of 1989)  
(Part VIA added 58 of 1985 s. 19)

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\* The operation of this section is affected by s. 28(4) of the Securities and Futures Commission Ordinance (Cap 24). For convenience, s. 28(4) is reproduced at the end of this Ordinance.

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: <b>66</b>	Heading: <b>Application of Part VII</b>	Version Date: 30/06/1997

## PART VII

### RECORDS

- (1) This Part applies to and in relation to-
- (a) a person who is-
    - (i) a dealer;
    - (ii) a dealer's representative;
    - (iii) an investment adviser; or
    - (iv) an investment representative; and
  - (b) securities listed on the Unified Exchange and any other securities of a class prescribed in regulations for the purposes of this subsection.  
(Amended 58 of 1985 s. 52)

(2) The Governor in Council may, by order, apply any of the provisions of this Part, with such modifications and additions as he thinks fit, to financial journalists.

(3) For the purposes of subsection (2) "financial journalist" (財經新聞工作者) means a person who, in the course of his business or employment, contributes advice concerning securities for publication in a newspaper, magazine, journal, or other periodical publication.

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
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(1) A person to whom this Part applies shall maintain a register of the securities in which he has an interest and of the particulars relating to their acquisition and disposal in a manner and form approved by the Commission. (Amended 10 of 1989 s. 65)

(2) Particulars of the securities in which a person to whom this Part applies has an interest and particulars of his interest in those securities shall be entered by that person in the register within 14 days after he becomes aware of the acquisition of the interest or after the commencement of this section, whichever is the later.

(3) Where there is a change (not being a change prescribed by regulations) in the interest or interests in securities of a person to whom this Part applies, he shall, within 14 days after he becomes aware of the change, enter in the register full particulars of the change, including the date when the change occurred and the circumstances by reason of which the change occurred.

(4) For the purposes of this section, where a person acquires or disposes of securities there shall be deemed to be a change in the interest or interests of that person.

(4A) Where a person to whom this Part applies is a registered dealer who is a partner in a registered dealing partnership or a registered investment adviser in a registered investment advisers' partnership it shall be sufficient compliance with this section if the register required to be maintained by this section is maintained by the partnership in relation to all the partners of the partnership who are registered dealers or registered investment advisers. (Added 58 of 1985 s. 20)

(5) A person who contravenes any provision of this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine of \$5000.

(1) A person to whom this Part applies shall notify in writing to the Commission the place at which he keeps or intends to keep the register of his interests in securities: (Replaced 62 of 1976 s. 19. Amended 58 of 1985 s. 21)

Provided that where the person to whom this Part applies is a registered dealer who is a partner in a registered dealing partnership or a registered investment adviser in a registered investment advisers' partnership such notice may be given by the partnership or any partner thereof on behalf of such person, and if such partnership or partner does so, such notice shall, for the purposes of this section, be deemed to have been given by that person. (Added 58 of 1985 s. 21)

(2) Notice under subsection (1) shall be given-

- (a) if the person is a person to whom this Part applies at the commencement of this section, within one month after that date; or
- (b) in any other case, in or as part of the person's application for registration under this Ordinance.

(3) A notice under paragraph (a) of subsection (2) shall be given as provided in that paragraph notwithstanding that the person has ceased to be a person to whom this Part applies before the expiration of the appropriate time referred to in that paragraph.

(4) A person to whom this Part applies shall keep the register of his interests in securities at the place specified in the notice given under subsection (1) unless he gives a subsequent notice to the Commission in the form prescribed by regulations to the effect that the register is kept at some other place specified in the subsequent notice, in which case he shall keep the register-

- (a) where only one such subsequent notice has been given, at the other place specified in that

- notice, or
- (b) where more than one such subsequent notice has been given, at the other place specified in the later or latest of those notices.
- (5) A person who ceases to be a person to whom this Part applies shall give notice in the form prescribed by regulations to the Commission of that fact within 14 days thereafter.
- (6) A person who contravenes any provision of this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine of \$2000.
- (Amended 10 of 1989 s. 65)

Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 72	Heading: <b>Offers by dealers</b>	Version Date: 30/06/1997

## PART VIII

### TRADING IN SECURITIES

- (1) A dealer shall not in Hong Kong communicate an offer to acquire or dispose of securities of a corporation unless-
- (a) the offer-
- (i) is written in the English or Chinese language; or
  - (ii) if communicated verbally, is reduced to writing in the English or Chinese language and delivered to the person or persons to whom it was made not later than 24 hours after the verbal communication; and
- (b) the offer-
- (i) specifies the name and address of the offeror and, if any person is making the offer on behalf of the offeror, the name and address of that person;
  - (ii) contains a description of securities sufficient to identify them;
  - (iii) specifies the terms of the offer (including where appropriate the amount of consideration proposed to be paid for securities acquired pursuant to the offer);
  - (iv) where a dividend has been declared or recommended in respect of the securities, or it is anticipated that a dividend will be so declared or recommended before the transfer of the securities, states whether the securities are to be transferred with or without that dividend;
  - (v) specifies whether, in the event of a person accepting the offer, the offeror will pay any stamp duty which that person will become liable to pay in respect of the contract note as a result of the transaction;
  - (vi) bears a date which is not more than 3 days before the date on which the offer is communicated;
  - (vii) if the offer relates to the acquisition of securities, satisfies the requirements of Schedule 1;
  - (viii) if the offer relates to the disposal of securities satisfies the requirements of Schedule 2;
  - (ix) where a report of an expert in connection with the offer is included in or annexed to the offer, contains a statement to the effect that the expert has consented to the inclusion or annexure, and has not, before the communication of the offer, withdrawn that consent;
- (c) the offer includes a translation, as the case requires, in the Chinese or English language of all the particulars required under paragraph (b), except where the Commission has previously agreed that the requirements of this paragraph may be dispensed with in any

particular case. (Amended 10 of 1989 s. 65)

(2) A document containing an offer to which subsection (1) relates which includes a statement purporting to be made by an expert shall not be communicated unless the expert has given and has not, before communication of a copy of the offer, withdrawn his written consent to the communication of the offer with the inclusion of the statement in the form and context in which it is included.

(3) Subject to subsection (5), any dealer who communicates an offer for the acquisition or disposal of securities without having complied with subsections (1) and (2) shall be guilty of an offence and shall be liable on conviction to a fine of \$10000.

(4) Where any person has accepted an offer for the disposal or acquisition of securities under this section and the offer has been made without the requirements of subsections (1) and (2) having been complied with in a material particular, that person may, subject to the rights of any bona fide purchaser of the securities for value, rescind the acceptance, by notice in writing, within 14 days after the date of the acceptance. (Replaced 62 of 1976 s. 20)

(5) Without prejudice to the provisions of section 3, this section does not apply to-

- (a) any offer to dispose of securities of a corporation to persons who already hold securities of that corporation;
- (b) any offer by a dealer if the offer is made to a person with whom, or on whose behalf, the dealer has transacted the sale or purchase of securities on at least 3 occasions during the period of 3 years immediately preceding the offer;
- (c) any offer made to-
  - (i) a person whose business involves the acquisition or disposal or holding of securities; or
  - (ii) a solicitor or professional accountant; or
  - (iii) any other person who belongs to a class of persons prescribed in regulations for the purposes of this paragraph; or (Amended 62 of 1976 s. 20)
- (d) any offer made by a stockbroker in the ordinary course of trading on the Unified Exchange. (Amended 58 of 1985 s. 53)

(6) Where a dealer communicates an invitation which invites a person to acquire or dispose of any security held by that person in a corporation, then for the purposes of this section-

- (a) that invitation is deemed to be an offer; and
- (b) an offer to acquire or dispose of that security made by that person in response to the invitation is deemed to be an acceptance by that person of an offer to acquire or, as the case may be, an offer to dispose of the security,

and references in this section to "acceptance" (承約) shall be construed accordingly.

(7) An offer to acquire or dispose of a right to acquire or dispose of a security or an interest in a security is deemed to be an offer to acquire or dispose of a security; and a reference to a person who holds securities includes a reference to a person who holds a right to acquire a security or an interest in a security.

(8) For the purposes of this section "expert" (專家) includes an engineer, valuer, professional accountant, and solicitor, and any other person whose profession gives authority to a statement made by him.

(9) For the purposes of this section an offer to acquire or dispose of securities in consideration or part consideration for other securities is deemed to be both an offer to acquire and an offer to dispose of securities.

- (1) Subject to subsection (3), a dealer shall not during, or as a consequence of, a call on any person, whether at his place of residence or his place of employment or otherwise, enter into any contract for the sale of securities unless he-
- (a) calls on the person at the invitation of that person; and
  - (b) before entering into the contract provides the person with a written statement containing all the information which he would have been required to give to that person if the contract had been entered into as a result of an offer made under section 72.
- (2) Any dealer who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$10000 and to imprisonment for 2 years.
- (3) Subsection (1) does not apply to -
- (a) any contract for the sale of securities of a corporation with a person who already holds securities of that corporation;
  - (b) any contract for the sale of securities by a dealer with a person with whom the dealer has transacted the sale or purchase of securities on at least 3 occasions during the period of 3 years immediately preceding the date of the contract; or
  - (c) any contract for the sale of securities with-
    - (i) a person whose business involves the acquisition or disposal or holding of securities;
    - (ii) a solicitor or professional accountant;
    - (iii) any other person who belongs to a class of persons prescribed in regulations for the purpose of this paragraph.
- (4) Where any contract for the sale of securities is entered into in contravention of subsection (1), the purchaser may, subject to the rights of any bona fide purchaser of the securities for value, rescind the contract by giving notice in writing to the seller within 28 days after the date on which the contract was entered into.
- (5) In this section "call" (造訪) includes a visit in person and a communication by telephone.

Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 74	Heading: Hawking of securities	Version Date: 30/06/1997

- (1) Subject to subsections (2) and (3), a person shall not, whether on his own behalf or otherwise and whether by appointment or otherwise, call from place to place-
- (a) making or offering to make with any person-
    - (i) an agreement for or with a view to having that other person purchase specific securities; or
    - (ii) an agreement the purpose or pretended purpose of which is to secure a profit to that other person from the yield of specific securities or by reference to fluctuations in the value of specific securities; or
  - (b) inducing or attempting to induce any other person to enter into an agreement of the type referred to in paragraph (a)(i) or (ii), whether or not in calling from place to place he does any other act or thing.
- (2) Subsection (1) does not apply to-
- (a) a person in so far as-
    - (i) he calls at the place of another person who is a banker, solicitor, professional accountant, registered or exempt dealer, registered or exempt investment adviser or registered dealer's representative or registered investment representative; and
    - (ii) whether as principal or agent, he makes, or offers to make, with that other person an agreement referred to in subsection (1) or induces, or attempts to induce, that other person to enter into such an agreement; or

(b) any other person calling from place to place who belongs to a class of persons prescribed in regulations for the purpose of this subsection.  
(Replaced 62 of 1976 s. 21)

(3) Nothing in this section applies to securities or any class of securities which have been exempted by the Commission for the purposes of this section provided that any conditions subject to which the exemption was granted have been fulfilled.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$50000 and to imprisonment for 2 years.

(5) If in any proceedings for an offence against subsection (4) it is proved that the accused did any of the acts mentioned in subsection (1)(a) or (b) on 2 or more occasions within any period of 14 days, he shall, until the contrary is proved, be deemed to have been calling from place to place.

(6) In this section "to call" (造訪) includes to visit in person and to communicate by telephone.

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 76	Heading: <b>Dealers not to engage in option or forward trading</b>	Version Date: 30/06/1997

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(1) Except as provided in regulations, a dealer (including an exempt dealer) shall not transact in Hong Kong, or hold himself out as being prepared to transact in Hong Kong-

(a) any dealing whereby the dealer confers on any person an option to purchase from or sell to the dealer any securities listed on the Unified Exchange; or (Amended 58 of 1985 s. 54)

(b) any dealing in any such securities which is completed later than the end of the next trading day after the dealing was entered into.

(2) Any dealer who contravenes subsection (1) shall, subject to subsection (3), be guilty of an offence and shall be liable on conviction to a fine of \$5000.

(3) It shall be a defence to any criminal proceedings brought under subsection (2) in respect of a dealing mentioned in paragraph (b) of subsection (1) for the accused to prove that he took all reasonable and practicable steps to secure completion of the transaction within the period permitted by that paragraph.

(4) A contract entered into in contravention of subsection (1) shall not be enforceable by either the dealer or the other contracting party.

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 77	Heading: <b>Dealers to provide certain information, etc. to client</b>	Version Date: 30/06/1997

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(1) Subject to subsection (2), every dealer (including an exempt dealer) shall, on being requested to do so by any person on whose behalf he has transacted a dealing in securities -

(a) provide that person with a copy of the contract note relating to the dealing, and a copy of his account with the dealer; and

(b) if the Commission on the application of the person so directs, make available for inspection by that person, at all reasonable times during the dealer's ordinary hours of business, the dealer's copy of the contract note and the person's account with the dealer. (Amended 10 of 1989 s. 65)

(2) Subsection (1) does not require a dealer (including an exempt dealer) to-

- (a) provide, or keep available for inspection, a copy of any contract note which relates to a dealing transacted more than 2 years before the date of the request; or
  - (b) provide a copy of, or keep available for inspection, any account which relates to a dealing transacted more than 6 years before the date of the request.
- (3) Any such dealer may impose a charge not exceeding an amount prescribed by regulations for a copy of a document provided pursuant to subsection (1).
- (4) Any dealer who, without reasonable excuse, fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$2000.

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 79	Heading: <b>Disclosure of certain interests</b>	Version Date: 30/06/1997

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(1) Where, in a circular or other written communication issued in Hong Kong by him to more than one person, a dealer or an investment adviser (including an exempt dealer or exempt investment adviser) makes a recommendation, whether expressly or by implication, with respect to any securities or any class of securities of a corporation, he shall include in the circular or other communication, in type not less bold and not less legible than that used in its text, a statement as to whether or not he has, at the date specified in the circular or communication pursuant to subsection (5), an interest in any of the securities of that corporation.

(2) Subsection (1) does not require in the case of a circular or other written communication issued by a stockbroker the inclusion of a statement in relation to an interest that consists of the right to charge commission as provided by the rules of the Exchange Company on the sale or purchase of the securities or class of securities that are being recommended. (Amended 58 of 1985 s. 55)

(3) For the purposes of subsection (1), a person who has entered into an underwriting agreement in respect of any securities shall be deemed to have a financial interest in the sale or purchase of those securities.

(4) Where an offer to the public of securities is not fully subscribed, a person who has subscribed for or taken up, or is required to subscribe for or take up, any of those securities under an underwriting agreement shall not, during the period of 90 days after the close of the offer, make any offer or recommendation in respect of those securities unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities that he has acquired, or is or will be required to acquire, under an underwriting agreement as a result of the offer to the public not being fully subscribed.

(5) Every circular or other written communication to which this section relates shall be dated and shall contain on its face the name of the dealer or investment adviser who issued it.

(6) A dealer or investment adviser who issues a circular or communication to which this section relates shall retain a copy of it bearing his signature in such manner, and for such time or until the happening of such event, as may be prescribed by regulations.

(7) For the purposes of this section, a circular or other written communication shall be deemed to have been issued by the person whose name is contained on its face.

(8) In this section a reference to securities does not include a reference to the stock or debentures of, or bonds made available by, a government or a local government authority, or to securities guaranteed by a government or a local government authority.

(9) Without prejudice to the power to make regulations under section 146, regulations may be made under that section-

- (a) requiring the lodging with the Commission of copies of any circular or other written communication issued by a dealer or investment adviser; and (Amended 10 of 1989 s. 65)

- (b) making provision for or with respect to the keeping of records of circulars or other similar written communications issued by a dealer or by an investment adviser.
- (10) Any dealer or investment adviser, whether registered or exempted from registration, who-
  - (a) issues a circular or other written communication in contravention of subsection (1) or (5);
  - (b) contravenes subsection (4); or
  - (c) fails to retain a copy of a circular or other written communication as required by subsection (6),

shall be guilty of an offence and shall be liable on conviction to a fine of \$5000.

(11) An offence against subsection (10) is not committed by reason only that a circular or other written communication is issued to a person whose business involves the acquisition, disposal, or holding of securities.

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: <b>80</b>	Heading: <b>Short selling prohibited</b>	Version Date: 30/06/1997

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- (1) A person shall not sell securities at or through the Unified Exchange unless, at the time he sells them- (Amended 58 of 1985 s. 56)
  - (a) he has or, where he is selling as agent, his principal has; or
  - (b) he reasonably and honestly believes that he has or, where he is selling as agent, that his principal has,a presently exercisable and unconditional right to vest the securities in the purchaser of them.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$10000 and to imprisonment for 6 months. (Amended L.N. 57 of 1988)
- (3) For the purposes of subsection (1)-
  - (a) a person shall be deemed to be selling securities if he-
    - (i) purports to sell the securities;
    - (ii) offers to sell the securities;
    - (iii) holds himself out as entitled to sell the securities; or
    - (iv) instructs a dealer to sell the securities;
  - (b) a person who, at a particular time, has a presently exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be deemed to have at that time a presently exercisable and unconditional right to vest the securities in a purchaser of them; and
  - (c) a right of a person to vest securities in a purchaser thereof shall not be deemed not to be unconditional by reason only of the fact that the securities are charged or pledged in favour of some other person to secure the repayment of money.
- (4) Subsection (1) does not apply to or in relation to-
  - (a) a person acting in good faith in the reasonable and honest belief that he has a right, title, or interest to or in securities that he purports to sell, offers for sale, or holds himself out as capable of selling;
  - (b) a dealer acting in good faith for or on behalf of some other person in the reasonable and honest belief that such other person has a right, title, or interest to or in securities that he purports to sell, offers for sale, or holds himself out as capable of selling;
  - (c) a sale of securities by a stockbroker acting as principal when he acts as an odd lot specialist in accordance with the rules of the Exchange Company, being a sale made solely for the purpose of- (Amended 58 of 1985 s. 56)
    - (i) accepting an offer to purchase an odd lot of securities; or
    - (ii) disposing of a parcel of securities that is less than one board lot of securities, by means of the sale of one board lot of those securities; or (Amended L.N. 57 of

- 1988)
- (d) a sale of securities falling within a class of transaction prescribed by regulations for the purposes of this paragraph.

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: <b>81</b>	Heading: <b>Disposition of security documents</b>	Version Date: 30/06/1997

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(1) Where securities that are not the property of a dealer (including an exempt dealer) and for which the dealer, or any nominee controlled by the dealer, is accountable are held for safe custody in Hong Kong, the dealer shall, subject to subsection (2), either cause the securities-

- (a) (not being bearer securities) to be registered as soon as practicable in the name of the person to whom the dealer or nominee is accountable or in the name of the dealer's nominee; or
- (b) to be deposited in safe custody in a designated account with the dealer's bankers or with any other institution which provides facilities for the safe custody of documents to the satisfaction of the Commission.

(2) (Repealed 63 of 1990 s. 4)

(3) No dealer shall, without the specific authority in writing of the person to whom he is accountable, deposit any securities of which the dealer is not the owner as security for loans or advances made to the dealer or lend or otherwise part with the possession of any such securities for any purpose. (Replaced 62 of 1976 s. 22)

(4) An authority conferred under subsection (3) shall specify the period for which it is current, but shall not in any event, subject to subsection (5), remain in force for a period of more than 12 months.

(5) An authority conferred under subsection (3) may be renewed in writing for one or more further periods not exceeding 12 months at any one time.

(6) Any dealer who, without lawful authority or reasonable excuse, contravenes subsection (1) or (3) shall be guilty of an offence.

(7) Any person guilty of an offence under subsection (6) shall be liable on conviction-

- (a) in the case of a contravention of subsection (1), to a fine of \$2000; and
- (b) in the case of a contravention of subsection (3), to a fine of \$20000 and to imprisonment for 2 years.

(Amended 10 of 1989 s. 65)

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: <b>82</b>	Heading: <b>Application and interpretation of Part IX</b>	Version Date: 30/06/1997

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## PART IX

### ACCOUNTS AND AUDIT

(1) This Part applies to the business of a registered dealer, other than a registered dealer who is a director of a corporation when acting for or on behalf of the corporation in its business of dealing in securities; and every reference in this Part to the term "dealer" (交易商) shall be construed accordingly.

(Replaced 62 of 1976 s. 23)

(2) In this Part, unless the context otherwise requires, any reference to the books, accounts, records, securities, trust accounts, or business of, or in relation to, a dealer who carries on business in partnership shall be read and construed as a reference to the books, accounts, records, securities, trust accounts, or business (as the case requires) of or in relation to the partnership.

(2A) Any obligation imposed by this Part on a dealer shall, where a dealer is a partner in a dealing partnership, be deemed to be imposed on the partnership; and all the partners of the partnership, if it is a general partnership, and all the general partners of a limited partnership shall jointly and severally be responsible for the performance of that duty. (Added 58 of 1985 s. 22)

(3) The Governor in Council may, by order published in the Gazette, apply all or any of the provisions of this Part, with or without modifications, to registered investment advisers.

Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 83	Heading: <b>Accounts to be kept by dealers</b>	Version Date: 30/06/1997

- (1) A dealer shall-
- (a) cause to be kept such accounting and other records as will sufficiently explain the transactions, and reflect the financial position, of the business of dealing in securities carried on by him, and will enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and
  - (b) cause those records to be kept in such a manner as will enable them to be conveniently and properly audited.
- (2) The records referred to in subsection (1) shall be kept-
- (a) in writing in the English language; or
  - (b) in such a manner as to enable them to be readily accessible and readily converted into written form in the English language.
- (3) Without affecting the generality of subsection (1), a dealer shall cause records to be kept-
- (a) in sufficient detail to show particulars of-
    - (i) all money received and paid by the dealer, including money paid to, and disbursed from, a trust account;
    - (ii) all purchases and sales of securities made by the dealer, the charges and credits arising from them, and the names of the buyer and seller, respectively, of each of those securities;
    - (iii) all income received from commissions, interest, and other sources, and all expenses, commissions, and interest paid by the dealer;
    - (iv) all the assets and liabilities (including contingent liabilities) of the dealer;
    - (v) all securities that are the property of the dealer, showing by whom the security documents are held and, where they are held by some other person, whether or not they are held as security against loans or advances;
    - (vi) all securities that are not the property of the dealer and for which the dealer or any nominee controlled by the dealer is accountable, showing by whom, and for whom, the security documents are held distinguishing those which are held for safe custody, and those which are deposited with a third party whether as security for loans or advances made to the dealer or any related corporation or for any other purposes; and (Amended 62 of 1976 s. 24)
    - (vii) all underwriting and sub-underwriting transactions entered into by the dealer; and
  - (b) containing copies of acknowledgements of the receipt of securities received by the dealer from or on behalf of clients, clearly identifying in respect of each receipt of securities the

client and the securities. (Amended 62 of 1976 s. 24)

(4) Without prejudice to subsection (3), a dealer shall keep records in sufficient details to show separately particulars of all transactions by the dealer with, or for the account of-

- (a) clients of the dealer; and
- (b) the dealer himself. (Replaced 62 of 1976 s. 24)

\*(4A) Without affecting the generality of subsections (1) and (3) and subject to regulations under section 146, the dealer shall cause records to be kept which are sufficient to readily establish whether or not section 65B has been complied with. (Added 58 of 1985 s. 57)

(5) A dealer shall retain-

- (a) for a period of not less than 6 years, the records referred to in subsection (1); and
- (b) for a period of not less than 2 years-
  - (i) each contract note received by him or made out to himself as principal; and
  - (ii) a copy of each contract note made out by him as agent.

(6) An entry in the accounting and other records of a dealer kept in accordance with this section shall be deemed to have been made by, or with the authority of, the dealer -

(7) Where matter that is intended to be used in connection with the keeping of a record referred to in this section is recorded or stored by means of a mechanical device, an electronic device, or any other device in an illegible form, a person who wilfully-

- (a) records or stores in that device matter that he knows to be false or misleading in a material particular;
- (b) destroys, removes, or falsifies matter that is recorded or stored in that device; or
- (c) fails to record or store matter in that device with intent to falsify any entry made or intended to be compiled, wholly or in part, from that matter,

shall be guilty of an offence and shall be liable on conviction to a fine of \$10000 and to imprisonment for 6 months.

(8) For the purposes of this section, a record required to be kept by a dealer may be kept either by making entries in a bound book or by recording the relevant matters in any other manner.

(9) Where a record required by this section to be kept is not kept by making entries in a bound book but by some other means, the dealer shall take reasonable precautions for guarding against falsification and for facilitating discovery of any falsification.

(10) Notwithstanding any other provision of this section, a dealer shall not be deemed to have failed to keep a record referred to in subsection (1) by reason only that the record is kept as a part of, or in conjunction with, the records relating to any business other than dealing in securities that is carried on by him.

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\* The operation of this subsection is affected by s. 28(4) of the Securities and Futures Commission Ordinance (Cap 24). For convenience, s. 28(4) is reproduced at the end of this Ordinance.

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 84	Heading: <b>Certain money received by dealer to be paid into a trust account</b>	Version Date: 30/06/1997

(1) A dealer shall establish and keep at a licensed bank one or more trust accounts designated or evidenced as such into which he shall pay-

- (a) all amounts (less brokerage and other proper charges) which are received for or on account of any person (other than a stockbroker) from the sale of securities, except those amounts paid to that person or in accordance with his directions within 4 bank trading days after their receipt;

- (b) all amounts (less any brokerage and other proper charges) which are received from or on account of any person (other than a stockbroker) for the purchase of securities, except those amounts attributable to the purchase of securities which are delivered to the dealer within 4 bank trading days after receipt of the amounts; and
- (c) subject to any agreement to the contrary, all amounts derived by way of interest from the retention in a trust account of any amount mentioned in paragraph (a) or (b).

(2) All amounts required to be paid into a trust account under subsection (1) shall be retained there by the dealer until they are paid to the person on whose behalf they are being held or in accordance with his directions or, as the case may be, until they are required to complete payment in respect of the purchase of securities on behalf of any such person.

(3) Money required by this section to be paid into a trust account shall be so paid within 4 bank trading days after it is received by the dealer.

(4) All sums derived by way of interest from the payment of money by a dealer into a trust account under this section shall, subject to any agreement to the contrary, belong to the person to whom the dealer is accountable.

(5) No amount other than an amount referred to in subsection (1)(a) or (b) shall be paid into a trust account.

(6) Every dealer shall keep records of-

- (a) all amounts paid into a trust account kept by him, specifying the persons on whose behalf the amounts are held and the dates on which they were paid into the account;
- (b) all withdrawals from the trust account, the dates of those withdrawals, and the names of the persons on whose behalf the withdrawals are made; and
- (c) such other particulars (if any) as may be prescribed by regulations.

(7) A person who-

- (a) without reasonable excuse, contravenes any provision of this section shall be guilty of an offence and shall be liable on conviction to a fine of \$10000; or
- (b) with intent to defraud, contravenes any provision of this section shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$50000 and to imprisonment for 5 years.

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 87	Heading: <b>Dealer to appoint auditor</b>	Version Date: 30/06/1997

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(1) A dealer shall appoint an auditor to audit his accounts (including all trust accounts required to be kept by the dealer under section 84) and, where for any reason the auditor ceases to act for the dealer, the dealer shall, as soon as practicable thereafter, appoint another auditor to replace him.

(2) A person is not eligible for appointment under subsection (1) if-

- (a) he is a servant of the dealer or is in the employment of any such servant;
  - (b) where the dealer is a partnership, he is a member of the partnership or in the employment of any such member;
  - (c) where the dealer is a corporation, he is an officer of the corporation or is in the employment of any such officer; or
  - (d) he belongs to any other class of persons prescribed in regulations for the purposes of this paragraph.
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- (1) A dealer shall, in respect of the financial year beginning before and ending after-
- (a) the day on which this section commences; or
  - (b) the day on which the dealer commences to carry on business as a dealer,
- whichever is the later day, and in respect of each subsequent financial year, prepare a true and fair profit and loss account and a balance sheet made up to the last day of the financial year and cause those documents to be lodged with the Commission not later than 4 months after the end of the financial year, together with an auditor's report containing the information prescribed by regulations. (Amended 62 of 1976 s. 26)
- (2) Notwithstanding subsection (1), the period within which the documents referred to in subsection (1) are required to be lodged may be extended by the Commission for such period as it thinks fit, where an application for the extension is made by the dealer and the Commission is satisfied there are special reasons for requiring the extension. (Amended 63 of 1990 s. 4)
- (3) An extension under subsection (2) may be allowed subject to such conditions, if any, as the Commission thinks fit to impose.
- (4) Any dealer who fails to lodge the documents required by this section with the Commission within the time allowed by or under this section shall be guilty of an offence and shall be liable on conviction to a fine of \$5000.
- (Amended 10 of 1989 s. 65)

- (1) If, during the performance of his duties as auditor for a dealer, an auditor-
- (a) becomes aware of any matter which in his opinion adversely affects the financial position of the dealer to a material extent; or
  - (b) discovers evidence of a contravention by the dealer of section 65B, 81, 83 or 84, (Amended 58 of 1985 s. 58)
- he shall, as soon as practicable thereafter, send to the Commission and to the dealer a report in writing of the matter or, as the case may be, concerning the contravention.
- (2) An auditor of a dealer appointed under section 87 shall immediately give written notice to the Commission if he-
- (a) resigns before the expiration of his term of office;
  - (b) decides not to seek re-appointment; or
  - (c) decides to include any qualification or adverse statement in his report on the dealer's accounts. (Added 26 of 1992 s. 4)

\* The operation of this section is affected by s. 28(4) of the Securities and Futures Commission Ordinance (Cap 24). For convenience, s. 28(4) is reproduced at the end of this Ordinance.

- (1) Where-
- (a) a dealer has failed to lodge an auditor's report under section 88;
  - (b) the Commission has received a report under section 89; or
  - (c) the Commission has reason to believe that a dealer has failed to comply with section 65B, (Added 58 of 1985 s. 59)

the Commission may, if it is satisfied that it is in the interests of the dealer concerned, the dealer's clients, or the general public, to do so, appoint in writing an auditor to examine, audit, and report, either generally or in relation to any matter, on the books, accounts, and records of, and securities held by, the dealer. (Amended 58 of 1985 s. 59)

(2) Where the Commission is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by it under this section should be borne by the dealer concerned or the Exchange Company, it may, by order in writing, direct the dealer or the Exchange Company to pay a specified amount, being the whole or part of those costs and expenses, within the time and in the manner specified. (Amended 58 of 1985 s. 59)

(3) Where a dealer or Exchange Company has failed to comply with an order of the Commission under subsection (2), the amount specified in the order may be sued for and recovered by the Commission as a debt in any court of competent jurisdiction. (Amended 58 of 1985 s. 59)

(Amended 10 of 1989 s. 65)

\* The operation of this section is affected by s. 28(4) of the Securities and Futures Commission Ordinance (Cap 24). For convenience, s. 28(4) is reproduced at the end of this Ordinance.

(1) On receipt of an application in writing from a person who alleges that a dealer has failed to account to him in respect of any money or securities held or received by that dealer for him or on his behalf, the Commission may, after first giving the dealer an opportunity to give an explanation of the failure, appoint in writing an auditor to examine, audit, and report, either generally or in relation to any particular matter, on the books, accounts, and records of, and securities held by, that dealer.

- (2) Every application under subsection (1) shall state-
- (a) particulars of the circumstances under which the dealer received the money or securities in respect of which he is alleged to have failed to account;
  - (b) particulars of that money or those securities and of the transactions of the applicant and the dealer relating thereto; and
  - (c) such other particulars as may be prescribed by regulations.

(3) Every statement in any such application shall be verified by statutory declaration made by the applicant and shall, if made in good faith and without malice, be privileged.

(4) The Commission shall not appoint an auditor under subsection (1) unless it is satisfied-

- (a) that the applicant has good reason for making the application; and
- (b) that it is in the interests of the dealer or the applicant or the public generally that the books, accounts, and records of, and securities held by, the dealer should be examined, audited, and reported on.

(Amended 10 of 1989 s. 65)

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 92	Heading: <b>Auditor to report to Commission</b>	Version Date: 30/06/1997

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An auditor appointed under section 90 or 91 shall, on the conclusion of the examination and audit in respect of which he was appointed, make a report thereon to the Commission.

(Amended 10 of 1989 s. 65)

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 93	Heading: <b>Powers of auditors</b>	Version Date: 30/06/1997

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An auditor appointed by the Commission to examine and audit the books, accounts, and records of, and securities held by, a dealer may for the purpose of carrying out the examination and audit-(Amended 10 of 1989 s. 65)

- (a) examine on oath the dealer concerned and, where the dealer carries on business in partnership or is a corporation, any of the members of the partnership or, as the case may be, any director of the corporation and any of the dealer's servant and agents and any other auditor appointed under this Ordinance in relation to those books, accounts, records, and securities;
  - (b) employ such persons as he considers necessary; and
  - (c) by instrument in writing under his hand, authorize any person employed by him to do, in relation to the examination and audit, any act or thing that he could do himself as an auditor, except to examine any person on oath or to exercise any other powers conferred by this paragraph.
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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 94	Heading: <b>Right of auditors and employees to communicate certain matters</b>	Version Date: 30/06/1997

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Except for the purpose of carrying into effect the provisions of this Ordinance or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an auditor appointed under section 90 or 91 and an employee of any such auditor shall not divulge any information which may come to his knowledge in the course of performing his duties as an auditor or employee under section 90 or 91, as the case may be, to any person other than-

- (a) the Commission; and (Amended 10 of 1989 s. 65)
  - (b)-(c) (Repealed 10 of 1989 s. 65)
  - (d) in the case of an employee, the auditor by whom he is employed.
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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 95	Heading: <b>Books, accounts, and records to be produced on demand</b>	Version Date: 30/06/1997

- (1) On request by an auditor appointed under this Part a person who produces a written authority in that behalf under section 93(c)-
- (a) a dealer and, where the dealer is a corporation or carries on business in partnership, the directors of the corporation or the other members of the partnership, and the dealer's servants and agents, shall produce any books, accounts, and records of any securities held by the dealer relating to the dealer's business; and
  - (b) an auditor appointed by a dealer shall produce any books, accounts, and records held by him relating to the business of the dealer.
- (2) A dealer and, where the dealer is a corporation or carries on business in partnership, the directors of the corporation or the other members of the partnership, as the case may be, and the dealer's servants and agents and any auditor appointed by the dealer shall answer all questions relevant to an examination and audit which are put to him by an auditor appointed under this Part or a person who produces a written authority in that behalf given under section 93(c).
- (3) Any person mentioned in subsection (1) who, without reasonable excuse, fails to comply with any request made to him under that subsection, or any person mentioned in subsection (2) who, without reasonable excuse, refuses or fails to answer any question put to him under that subsection, shall be guilty of an offence and shall be liable on conviction to a fine of \$10000 and to imprisonment for 2 years.

Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 96	Heading: <b>Offence to destroy, conceal, or alter records or send records or other property outside Hong Kong</b>	Version Date: 30/06/1997

- (1) Any person who, with intent to prevent, delay, or obstruct the carrying out of any examination and audit under this Part-
- (a) destroys, conceals or alters any book, account, record or document relating to the business of a dealer; or
  - (b) sends or attempts to send, or conspires with any other person to send, out of Hong Kong any such book, account, record, or document, or any property of any description belonging to or in the disposition of or under the control of a dealer,
- shall be guilty of an offence and shall be liable on conviction to a fine of \$50000 and to imprisonment for 2 years.
- (2) If, in a prosecution for an offence under subsection (1), it is proved that the person charged-
- (a) destroyed, concealed, or altered any book, account, record, or document mentioned in that subsection; or
  - (b) sent or attempted to send, or conspired to send, out of Hong Kong any such book, account, record, or document or any property mentioned in paragraph (b) of that subsection,
- the onus of proving that in so doing he did not act with intent to prevent, delay, or obstruct the carrying out of an examination and audit under this Part shall lie on him.
- (3) Any person who, with intent to prevent, delay, or obstruct the carrying out of an examination and audit under this Part, leaves, or attempts to leave, Hong Kong shall be guilty of an offence and shall

be liable on conviction to a fine of \$50000 and to imprisonment for 2 years.

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 97	Heading: <b>Right of committee to impose obligations, etc., on members of Exchange Company not affected by this Part</b>	Version Date: 30/06/1997

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Nothing in this Part shall prevent the committee of the Exchange Company from imposing on members of the Exchange Company any further obligations or requirements which the committee thinks necessary with respect to-

- (a) the audit of accounts;
- (b) the information to be given in reports by auditors; or
- (c) the keeping of accounts, books, and records.

(Amended 58 of 1985 s. 60)

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 127	Heading: <b>Investigation by inspector</b>	Version Date: 30/06/1997

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(1) Where it appears to the Commission that it is desirable for the protection of the public or of the holders of securities to appoint an inspector to investigate-

- (a) any alleged breach of trust, defalcation, fraud, or misfeasance; or
- (b) any matter concerning dealing in securities or the giving of investment advice,

the Commission may, by instrument in writing, appoint a person as an inspector to investigate the allegation or matter and to report on it in such manner as the Commission directs.

(Replaced 62 of 1976 s. 32)

(2) The Commission shall, in an instrument appointing an inspector, specify full particulars of the appointment including-

- (a) the matters into which the investigation is to be made; and
- (b) the terms and conditions of the appointment including terms and conditions relating to remuneration.

(3) An inspector may require a prescribed person by notice in the form prescribed by regulations given in the manner as prescribed-

- (a) to produce to the inspector such documents relating to a matter with which his investigation is concerned as are in the custody or under the control of that person;
- (b) to give to the inspector all reasonable assistance in connection with the investigation; and
- (c) to appear before the inspector for examination on oath,

and may administer the oath referred to in paragraph (c).

(4) Where documents are produced to an inspector under this section the inspector may take possession of them for such period as he considers necessary for the purposes of his investigation, and during that period he shall permit a person who would be entitled to inspect any one or more of those documents if they were not in the possession of the inspector to inspect at all reasonable times such of them as that person would be so entitled to inspect.

(5) A prescribed person-

- (a) shall comply with a requirement of an inspector under subsection (3);
- (b) shall not knowingly furnish to the inspector, whether on examination in pursuance of

- such requirement or otherwise, information that is false or misleading in a material particular; or
- (c) when appearing before an inspector for examination in pursuance of such a requirement, shall take an oath in accordance with the requirement.
- (6) Any person who, without reasonable excuse, contravenes any of the provisions of subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine of \$5000.
- (7) A solicitor or counsel acting for a prescribed person-
- (a) may attend an examination of that person; and
- (b) may, to the extent that the inspector permits-
- (i) address the inspector; and
- (ii) examine that person,
- in relation to matters in respect of which the inspector has questioned that person.
- (8) A prescribed person is not excused from answering a question put to him by an inspector on the ground that the answer might tend to incriminate him but, where that person claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under subsection (6) or in relation to a charge of perjury in respect of the answer.
- (9) A person who complies with the requirement of an inspector under subsection (3) shall not incur any liability to any person by reason only of that compliance.
- (10) A person required to attend for examination under this section is entitled to such allowances and expenses as may be prescribed by regulations.
- (11) Where a prescribed person fails to comply with a requirement of an inspector under subsection (3), the inspector may, unless that person proves that he had a lawful authority for his failure, certify the failure by writing under his hand to the Court.
- (12) Where an inspector gives a certificate under subsection (11), the Court may inquire into the case and-
- (a) order the prescribed person to whom the certificate relates to comply with the requirement of the inspector within such period as is fixed by the Court; or
- (b) if the Court is satisfied that that person failed without lawful authority to comply with the requirement of the inspector, punish him in the same manner as if he had been guilty of contempt of court.

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 137	Heading: <b>Restrictions on fixing, etc. prices for securities</b>	Version Date: 30/06/1997

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A person shall not, either alone or with one or more other persons, effect any series of transactions for the purchase or sale of securities, or the purchase and sale, of any securities for the purpose of pegging or stabilizing the price of securities of that class in contravention of any regulations made for the purposes of this section.

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 144	Heading: <b>Court may make certain orders</b>	Version Date: 30/06/1997

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- (1) Where, on the application of the Commission, it appears to the Court that a person has

contravened this Ordinance or any conditions of registration thereunder, or is about to do an act with respect to dealing in securities that, if done, would be such a contravention, the Court may, without prejudice to any orders it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders - (Amended 10 of 1989 s. 65)

- (a) an order restraining a person from acquiring, disposing of, or otherwise dealing with any securities specified in the order;
  - (b) in relation to a registered dealer or registered dealing partnership, an order appointing a person to administer the property of the dealer or the partnership; (Amended 58 of 1985 s. 27)
  - (c) an order declaring a contract relating to securities to be void or voidable;
  - (d) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act; or
  - (e) any ancillary order which it considers necessary in consequence of the making of an order under paragraphs (a) to (d).
- (2) The Court shall, before making an order under subsection (1), satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.
- (3) The Court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.
- (4) The Court may reverse, vary, or discharge an order made by it under this section or suspend the operation of such an order.

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Chapter: 333	Title: SECURITIES ORDINANCE	Gazette Number:
Section: 146	Heading: Regulations	Version Date: 30/06/1997

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- (1) The Commission may make rules for all or any of the following matters- (Amended 10 of 1989 s. 65)
- (a)-(b) (Repealed 58 of 1985 s. 28)
  - (c) the class of persons in relation to whom, and the manner and circumstances in which, registered dealers, registered dealing partnerships and registered dealers' representatives may deal in securities; (Amended 58 of 1985 s. 28)
  - (d) the class of persons in relation to whom, and the manner and circumstances in which, registered investment advisers, registered investment advisers' partnerships and registered investment representatives may carry on business as investment advisers or as investment representatives, as the case may be; (Amended 58 of 1985 s. 28)
  - (e) prescribing the amount of deposit required to be made for the purposes of section 52, and providing for the application of deposits under subsections (3) and (4) of that section;
  - (f) requiring registered dealers, registered dealing partnerships, registered investment advisers and registered investment advisers' partnerships to exhibit their certificates of registration at their places of business; (Amended 58 of 1985 s. 28)
  - (g) prescribing the information to be notified for the purposes of section 63(1)(b);
  - (h)-(j) (Repealed 58 of 1985 s. 28)
  - (k) prescribing the manner, time, or circumstances for retaining copies of circulars for the purposes of section 79(6); (Amended 58 of 1985 s. 28)
  - (i) prescribing the particulars to be recorded in relation to accounts kept under section 84;
  - (m) prescribing the particulars to be recorded in relation to the profit and loss account and balance sheet and the information to be contained in the auditor's report required to be lodged under section 88; (Replaced 62 of 1976 s. 34)
  - (n) prescribing any matters for giving better effect to section 65B and, without derogation

from the generality of the foregoing, may for that purpose-

- (i) prescribe the returns to be made by registered dealers and registered dealing partnerships, the information to be included therein and the manner in which such information is to be verified;
- (ii) provide for the manner in which any assets are to be valued and for the payment by any person of the costs of valuation;
- (iii) provide for the manner in which records are to be kept of any assets which may be taken into account for the purposes of section 65B and the places at which such records are to be maintained; and
- (iv) make separate provision for different classes or categories of registered dealer or registered dealing partnership; (Replaced 58 of 1985 s. 86)
- (o) (Repealed 58 of 1985 s. 28)
- (p) (Repealed 10 of 1989 s. 65)
- (q) prescribing public offices for the purposes of section 122; (Amended 33 of 1988 s. 3)
- (r) prescribing the procedure for the holding of investigations under Part XI, and providing for the reception of evidence, whether written or oral, and for the summoning and examination of witnesses, during the course of such an investigation;
- (ra) requiring a person of any description specified in the rules, when selling securities at or through the Unified Exchange and where his right to vest them in the purchaser (or, where he is acting as agent, his principal's right to do so) is derived from an arrangement of a type specified in the rules, to notify the stockbroker through whom the sale is being effected, of the fact that the right to vest the securities in the seller is derived from such an arrangement; (Added 63 of 1995 s. 2)
- (rb) prescribing limits on, or conditions to be complied with in respect of, the number of options contracts which may be held or controlled, directly or indirectly, by any person where such contracts are traded through the facilities of the Unified Exchange; (Added 63 of 1995 s. 2)
- (s) prescribing anything which is to be or may be prescribed by regulations.

(2) Where rules are made by the Commission under subsection (1), the Governor in Council may make regulations providing that a contravention of specified provisions of the rules shall be an offence and may provide penalties therefor not exceeding a fine of \$2000 and imprisonment for 3 months. (Replaced 10 of 1989 s. 65)

(3) Except as otherwise provided in this Ordinance, regulations made under this section may be of general or special application.

(4) Regulations made under this section may provide that, subject to such terms and conditions as may be prescribed thereby, the provisions of Parts VI to IX, or such of them as are specified in the regulations-

- (a) shall not have effect in relation to any specified person or to any person who is a member of a specified class of persons-
    - (i) who is or may be a dealer or investment adviser by reason only of his doing anything that is incidental to another business;
    - (ii) who does not deal in securities for or on behalf of any other person; or
    - (iii) who is a dealer or investment adviser by reason only of his entering into any specified transaction or class of transactions;
  - (b) shall not have effect in relation to a representative of any such person, or a member of any such class of persons, as is referred to in paragraph (a);
  - (c) shall have effect in relation to any such person or member, or a representative of any such person or member, to such extent as is prescribed; or
  - (d) shall not have effect in relation to a specified transaction or class of transactions entered into by a specified person or class of persons.
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- (1) The Commission may make rules for all or any of the following matters-
  - (a) the conduct of business by registered dealers, registered investment advisers, registered dealing partnerships, registered investment advisers' partnerships, registered dealers' representatives and registered investment representatives;
  - (b) matters incidental to the registration of dealers, investment advisers, dealing partnerships, investment advisers' partnerships, dealers' representatives and investment representatives under this Ordinance;
  - (c) prescribing the particulars to be recorded in relation to registered dealers, registered investment advisers, registered dealing partnerships, registered investment advisers' partnerships, registered dealers' representatives and registered investment representatives under section 64;
  - (d) enabling the Commission to correct any errors in any register kept under this Ordinance;
  - (e) enabling the Commission, on payment of the fee (if any) prescribed under the regulations, to issue duplicate certificates of registration in the event of loss or destruction of the original certificate or any duplicate certificate;
  - (f) prescribing forms for the purposes of this Ordinance;
  - (g) prescribing the manner in which applications are to be made for registration under Part VI;
  - (h) prescribing anything which is to be or may be prescribed by rules under this section. (Amended 10 of 1989 s. 65)
- (2) Rules made under this section may be of general or special application.  
(Added 58 of 1985 s. 29)

- (1) Where an offence under this Ordinance committed by a corporation is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary, or other similar officer of the corporation, or any person who was purporting to act in any such capacity, he, as well as the corporation, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (2) Subject to subsection (3), for the purposes of this section, a person is deemed to be a director of a corporation if he occupies the position of a director by whatever name he may be called or is a person in accordance with whose directions or instructions the directors of the corporation or any of them act.
- (3) A person shall not, by reason only that the directors of a corporation act on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.
- (4) Where an offence committed by a partner in a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any other partner of the partnership, that other partner shall be guilty of the offence and liable to be proceeded against and punished accordingly. (Added 58 of 1985 s. 30)

Chapter: 333	Title: SECURITIES AND FUTURES COMMISSION ORDINANCE	Gazette Number:
Section: 2	Heading: Interpretation	Version Date: 30/06/1997

- (1) In this Ordinance, unless the context otherwise requires-  
“associate” (有聯繫人士), in relation to a person, means-
- (a) the spouse or minor child or minor step-child of the person;
  - (b) a corporation of which the person is a director;
  - (c) an employee or partner of the person;
  - (d) the trustee of a trust of which the person, his spouse, minor child or minor step-child, is a beneficiary or a discretionary object;
  - (e) another person who has agreed or arranged to act together with the person to acquire, hold or dispose of shares or other interests in a corporation or to act together in voting in the corporation;
  - (f) another person in accordance with whose directions the person is accustomed or obliged to act;
  - (g) another person accustomed or obliged to act in accordance with the directions of the person;
  - (h) a corporation in accordance with whose directions or the directions of its directors the person is accustomed or obliged to act;
  - (i) a corporation accustomed or obliged to act, or whose directors are accustomed or obliged to act, in accordance with the directions of the person;
  - (j) a corporation of which the person, either alone or together with his spouse, minor child or minor step-child, is directly or indirectly entitled to exercise or control the exercise of 35% or more of the voting power;
  - (k) a corporation of which the person, either alone or together with another, including a corporation in which the person is entitled to exercise or control the exercise of 35% or more of its voting power, is directly or indirectly entitled to exercise or control the exercise of 35% or more of the voting power;
  - (l) a corporation of which the person controls the composition of the board of directors of the corporation;
  - (m) if the person is a corporation-
    - (i) a director of the corporation;
    - (ii) a corporation which is a holding company of the corporation or a subsidiary of the holding company;
    - (iii) a subsidiary of the corporation;
    - (iv) a director or employee of the subsidiary;
    - (v) a pension fund, provident fund or employee share scheme of the corporation or of a subsidiary of the corporation; (Added 9 of 1996 s. 2)
- “clearing house” (結算所) means a clearing house within the meaning of section 2(1) of the Commodities Trading Ordinance (Cap 250) or a recognized clearing house within the meaning of section 2 of the Securities and Futures (Clearing Houses) Ordinance (Cap 420). (Amended 66 of 1990 s. 2; 68 of 1992 s. 20; 62 of 1995 s. 12)
- “the Commission” (監察委員會) means the Securities and Futures Commission established by section 3;
- “Commodity Exchange” (商品交易所) has the meaning assigned to it by section 2(1) of the Commodities Trading Ordinance (Cap 250);
- “company” (公司) means any company within the meaning of the Companies Ordinance (Cap 32) and includes an oversea company within the meaning of that Ordinance or any other body corporate incorporated in Hong Kong having a share capital;

“controls the composition of the board of directors of the corporation” means to be able, either alone or with the consent or concurrence of another person, to appoint or remove a majority of the directors and a person is taken as having the power to appoint or remove a director if-

- (a) a director cannot be appointed without the person exercising a power in favour of the prospective director; or
- (b) a person’s appointment as a director follows necessarily from his being a director or other officer of the person; (Added 9 of 1996 s. 2)

“corporation” (法團) means any company or other body corporate incorporated in Hong Kong or elsewhere, but does not include-

- (a) any body corporate that is incorporated in Hong Kong and is a public authority or an organ or agency of the Government;
- (b) any corporation sole;
- (c) any credit union registered under the Credit Unions Ordinance (Cap 119); or
- (d) any corporation registered under the Building Management Ordinance (Cap 344); (Added 9 of 1996 s. 2)

“data equipment” (數據設備) has the meaning assigned to it by section 27;

“data material” (數據資料) means any document or other material used in connection with or produced by data equipment;

“establishment day” (成立日) means the day on which section 3 comes into operation;

“Exchange Company” (交易所) means-

- (a) the Stock Exchange Company; or
- (b) the Futures Exchange Company,

and “Exchange Companies” means both of those companies;

“executive director” (執行理事) and “non-executive director” (非執行理事) mean a director of the Commission who is appointed under section 5 as an executive director and a non-executive director thereof, respectively;

“exempt dealer” (獲免註冊交易商) has the meaning assigned to it by section 2(1) of the Securities Ordinance (Cap 333);

“financial resources rules” (財政資源規則) means rules made under section 28;

“financial year” (財政年度) means the period specified in section 14(1);

“firm” (商號) has the meaning assigned to it by section 2(1) of the Commodities Trading Ordinance (Cap 250);

“function” (職能) includes power and duty;

“futures contract” (期貨合同) has the meaning assigned to it by section 2(1) of the Commodities Trading Ordinance (Cap 250);

“Futures Exchange Company” (期貨交易所) means the Exchange Company within the meaning of section 2(1) of the Commodities Trading Ordinance (Cap 250);

“group of companies” (公司集團) has the meaning assigned to it by section 2(1) of the Companies Ordinance (Cap 32);

“listed company” (上市公司) means a company which has any of its shares listed on the Unified Exchange; (Added 73 of 1994 s. 2)

“Monetary Authority” (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66); (Added 82 of 1992 s. 6)

“officer” (高級人員), in relation to a company, has the meaning assigned to it by section 2(1) of the Companies Ordinance (Cap 32);

“Panel” (上訴委員會) means the Securities and Futures Appeals Panel established by section 18;

“property investment arrangements” (財產投資安排) means investment arrangements as defined in relation to property other than securities by section 2 of the Protection of Investors Ordinance (Cap

335);

“record or other document” (紀錄或其他文件) includes-

- (a) a book, voucher, receipt or data material, or information which is recorded in a non-legible form but is capable of being reproduced in a legible form; and
- (b) any document, disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of other equipment) of being reproduced and any film (including a microfilm), tape or other device in which visual images are embodied so as to be capable (as aforesaid) of being reproduced;

“registered person” (註冊人) means a person who is registered under the Securities Ordinance (Cap 333), the Commodities Trading Ordinance (Cap 250) (or both those Ordinances) as a dealer, dealing partnership, dealer’s representative, investment adviser, commodity trading adviser, investment advisers’ partnership, investment representative or a commodity trading adviser’s representative;

“the relevant Ordinances” (有關條例) means this Ordinance, Part II of the Companies Ordinance (Cap 32) (insofar as that Part relates, whether directly or indirectly, to the performance of functions by the Commission in relation to prospectuses and purchase by a company of its own shares) and Part XII of that Ordinance (insofar as that part relates, whether direct or indirectly, to the performance of functions by the Commission in relation to prospectuses), the Securities Ordinance (Cap 333), the Commodity Exchanges (Prohibition) Ordinance (Cap 82), the Commodities Trading Ordinance (Cap 250), the Protection of Investors Ordinance (Cap 335), the Stock Exchanges Unification Ordinance (Cap 361), the Securities and Futures (Clearing Houses) Ordinance (Cap 420), the Securities (Disclosure of Interests) Ordinance (Cap 396) and the Securities (Insider Dealing) Ordinance (Cap 395); (Amended 62 of 1990 s. 41; 68 of 1992 s. 20; 87 of 1992 s. 2; 62 of 1995 s. 12)

“securities” (證券) has the meaning assigned to it by section 2(1) of the Securities Ordinance (Cap 333);

“Stock Exchange Company” (證券交易所) means the Exchange Company within the meaning of section 2(1) of the Stock Exchanges Unification Ordinance (Cap 361);

“substantial shareholder” (大股東), of a company, means a person who, either alone or with an associate-

- (a) has an interest in shares in the company-
  - (i) the nominal value of which is equal to more than 10% of the issued share capital of the company;
  - (ii) which entitles the person, either alone or with an associate, and either directly or indirectly to exercise or control the exercise of more than 10% of the voting power at any general meeting of the company; or
- (b) holds shares in another corporation or corporations which holdings allow him either alone or with an associate and either directly or indirectly to exercise or control the exercise of 35% or more of the voting power of the other corporation, or of a further corporation, which is itself entitled either alone or with an associate and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power of the company; (Added 9 of 1996 s. 2)

“trading in commodity futures contracts” (期貨合同買賣) has the meaning assigned to it by section 2(1) of the Commodities Trading Ordinance (Cap 250);

“tribunal” (審裁小組) means a tribunal appointed under section 20;

“Unified Exchange” (聯合交易所) has the meaning assigned to it by section 2(1) of the Stock Exchanges Unification Ordinance (Cap 361). (Amended 9 of 1996 s. 2)

(2) For the purposes of the definition of “substantial shareholder”, a person is deemed to be entitled to exercise or control the exercise of 35% or more of the voting power of a corporation indirectly if he, either alone or with an associate, has an interest in shares in a further corporation which entitles him, either alone or with an associate, to exercise or control the exercise of 35% or more of the voting

power of the further corporation which is itself entitled, either alone or with an associate, to exercise or control the exercise of 35% or more of the voting power of the first mentioned corporation. (Added 9 of 1996 s. 2)

(Enacted 1989)

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Chapter: 333	Title: SECURITIES AND FUTURES COMMISSION ORDINANCE	Gazette Number:
Section: 4	Heading: <b>Functions of Commission</b>	Version Date: 30/06/1997

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- (1) The Commission shall have the following functions-
- (a) to advise the Financial Secretary on all matters relating to securities, futures contracts and property investment arrangements;
  - (b) without prejudice to any duties imposed or powers conferred on any other person in regard to the enforcement of the law relating to securities, futures contracts and property investment arrangements, to be responsible for ensuring that the provisions of the relevant Ordinances, and the provisions of any other Ordinance so far as they relate to securities, futures contracts and property investment arrangements, are complied with;
  - (c) to report to the Financial Secretary the occurrence of any dealing in relation to securities which it reasonably believes or suspects to be an insider dealing within the meaning of section 9 of the Securities (Insider Dealing) Ordinance 1990 (62 of 1990); (Amended 62 of 1990 s. 42)
  - (d) to be responsible for supervising and monitoring the activities of the Exchange Companies and clearing houses;
  - (e) to take all reasonable steps to safeguard the interests of persons dealing in securities or trading in futures contracts or entering into property investment arrangements;
  - (f) to promote and encourage proper conduct amongst members of the Exchange Companies and clearing houses, and other registered persons;
  - (g) to suppress illegal, dishonourable and improper practices in dealing in securities, trading in futures contracts, entering into property investment arrangements, and the provision of investment advice or other services relating to securities, futures contracts and property investment arrangements;
  - (h) to promote and maintain the integrity of registered persons and encourage the promulgation by registered persons of balanced and informed advice to their clients and to the public generally;
  - (i) to consider and suggest reforms of the law relating to securities, futures contracts and property investment arrangements;
  - (j) to encourage the development of securities and futures markets in Hong Kong and the increased use of such markets by investors in Hong Kong and elsewhere;
  - (k) to promote and develop self-regulation by market bodies in the securities and futures industries;
  - (ka) subject to the provisions of this Ordinance, to co-operate with and assist authorities or regulatory organizations, in Hong Kong or elsewhere, that are concerned with securities and futures, or with banking, insurance or other financial services or with the affairs of corporations; (Added 67 of 1991 s. 2)
  - (l) to perform any other functions conferred by or under any other Ordinance.

(2) As regards any function, the Commission may, for the guidance of registered persons and others, prepare and cause to be published in the Gazette guidelines indicating the manner in which, in the absence of any particular consideration or circumstance, it proposes to perform the function.

(3) The Commission may from time to time engage such consultants or advisers as it may consider necessary to assist the Commission in the performance of its functions.

(4) Nothing in subsection (1)(k) shall be regarded as limiting or otherwise affecting any other function of the Commission.

(Enacted 1989)

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Chapter: 24	Title: SECURITIES AND FUTURES COMMISSION ORDINANCE	Gazette Number:
Section: 19	Heading: <b>Appeals (registration, forfeiture and notices)</b>	Version Date: 30/06/1997

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- (1) Where-
- (a) an application of a person for registration under Part VI of the Securities Ordinance (Cap 333) is refused; or
  - (b) an application of a person for registration under Part VI of that Ordinance is granted subject to conditions with which he is dissatisfied; or
  - (c) the deposit of a registered dealer is forfeited under section 52(2)(c) of that Ordinance; or
  - (d) conditions are attached or amended under section 53A of that Ordinance and the registered person concerned is dissatisfied with the conditions or, as may be appropriate, the amendment; or
  - (e) the registration of any registered person is revoked or suspended under section 55 or 56 of that Ordinance,

subject to section 21, the person or dealer may appeal to the Panel against the refusal, conditions, forfeiture, revocation or suspension, as the case may be.

- (2) Where-
- (a) a certificate of registration is issued by the Commission under section 30(2) of the Commodities Trading Ordinance (Cap 250) subject to conditions; or
  - (b) the Commission refuses to register an applicant under section 31 or 32 of that Ordinance; or
  - (c) a deposit is transferred or forfeited by the Commission under section 33 of that Ordinance; or
  - (d) conditions are attached or amended under section 33A of that Ordinance and the registered person concerned is dissatisfied with the conditions or, as may be appropriate, the amendment; or
  - (e) the registration of a registered person is revoked or suspended by the Commission under section 35 or 36 of that Ordinance,

subject to subsection (4) and section 21, a person in relation to whom such conditions are imposed, the applicant whose application is so refused, any person aggrieved by the transfer or forfeiture or the registered person whose registration is so revoked or suspended, as the case may be, may appeal in respect thereof to the Panel.

(2A) An applicant for the Commission's approval to be a substantial shareholder of a registered person that is a corporation who is aggrieved by a decision of the Commission may appeal to the Panel. (Added 9 of 1996 s. 3)

(3) A person upon whom a notice referred to in section 44 is served by the Commission under Part V may appeal to the Panel.

(4) An appeal under this section against the attachment or amendment of a condition referred to in subsection (1)(d) or (2)(d) shall not affect the coming into force of the condition to which the appeal relates.

(5) An appeal under subsection (2A) does not affect the coming into force of the notice of refusal or conditions imposed to which the appeal relates. (Added 9 of 1996 s. 3)  
(Enacted 1989)

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Chapter: 24	Title: SECURITIES AND FUTURES COMMISSION ORDINANCE	Gazette Number: 25 of 1998 s. 2
Section: 21	Heading: <b>Procedure for appeals</b>	Version Date: 01/07/1997

Remarks:  
Amendments retroactively made - see 25 of 1998 s. 2

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(1) Subject to section 20 and this section, the Governor in Council may make rules regulating the procedure and proceedings of a tribunal and providing for the payment of remuneration and allowances to the members of a tribunal.

(2) Until rules are made under subsection (1) the rules made under section 45 of the Securities Ordinance (Cap 333) and in force immediately before the commencement of this Part shall apply, with the necessary modifications and subject to this section, to appeals to the Panel under this Part and, for that purpose, shall be deemed to have been made under that subsection.

(3) (a) An appeal shall be made to the Panel within 30 days beginning on the day on which written notification of the decision to which the appeal relates is served on the appellant or, in the case of an appeal relating to a notice referred to in section 44, the day on which the notice is served on the appellant.

(b) An appeal under this section shall be heard and determined as soon as reasonably practicable.

(4) Subject to section 44(2), a decision in respect of which an appeal may be made to the Panel other than a decision to impose conditions referred to in section 19(1)(b) or (d) or (2)(a) or (d) shall not come into operation until the time for making the appeal has expired or, where an appeal is made, the appeal is determined or withdrawn.

(5) For the purpose of the hearing of an appeal under this Part-

(a) the appellant and the Commission shall be entitled to be heard either in person or through counsel or solicitor and if the appellant is a company, through any of its directors or employees or if a partnership through any of the partners or, with the leave of the tribunal hearing the appeal, through any other person;

(b) the tribunal hearing the appeal may-

(i) receive such evidence as it considers relevant, whether it would be admissible in a court or not;

(ii) require evidence to be given on oath or affirmation and orally or in writing;

(iii) require any record or other document specified by it and relating to the subject-matter of the appeal to be produced by the appellant or the Commission;

(c) the tribunal hearing the appeal may by notice in writing signed by the member presiding and served on the person to whom it is addressed, require that person to attend and give evidence before it at the hearing of the appeal, and to produce such record or other document in that person's custody or under his control relating to the subject-matter of the appeal as may be specified in the notice;

(d) the member presiding at the hearing of the appeal may administer an oath or affirmation to any person.

(6) Without affecting the generality of section 56(2), a tribunal and its members, and witnesses, counsel and any solicitor, and any other person who is a party to or who otherwise has an interest in the

proceedings shall have the same privileges and immunities in respect of the hearing of an appeal under this Part as they would have in proceedings before the Court of First Instance. (Amended 25 of 1998 s. 2)

(7) A tribunal hearing an appeal under this Part may confirm, vary or reverse the decision under appeal and every decision of a tribunal shall contain a statement of the reasons for the decision.

(8) Subject to section 22, the determination of an appeal by a tribunal hearing an appeal under this Part or any order as to costs made by a tribunal shall be final and shall not be appealable.

- (9) (a) A tribunal hearing an appeal under this Part may award costs to any party to the appeal, and costs so awarded shall be recoverable as a civil debt.
- (b) A tribunal may order any party to an appeal to pay, in accordance with rules made under this section by the Governor in Council, the costs and expenses incurred by the tribunal in hearing and determining the appeal and the amount of such costs and expenses shall be determined by the tribunal in accordance with such rules, and any sum so ordered to be paid shall be recoverable by the person to whom they are payable under such rules as a civil debt.

- (10) Any person who, without reasonable excuse, refuses or fails-
- (a) to attend and give evidence when required to do so by a tribunal hearing an appeal under this Part; or
- (b) to answer truthfully and fully questions put to him by a member of such tribunal; or
- (c) to produce any record or other document which he is required by such tribunal to produce,

commits an offence.

(Enacted 1989)

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Chapter: 24	Title: SECURITIES AND FUTURES COMMISSION ORDINANCE	Gazette Number:
Section: 27	Heading: <b>Registered persons to notify Commission where records etc. kept</b>	Version Date: 30/06/1997

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- (1) (a) Every person who on the commencement of this section is a person to whom this section applies or who before such commencement applied to be registered under the relevant Ordinances and who becomes a person to whom this section applies shall-
- (i) if immediately before such commencement he was a registered person described in subsection (10), within the period of 30 days beginning on such commencement;
- (ii) if he becomes so registered on or after such commencement, within the period of 30 days beginning on the date of his registration,
- notify the Commission in writing of the location of the premises at which any record or other document relating to the business in respect of which he is registered is, or is to be, kept by him and in case every such record or other document is not, or is not to be, kept at a single premises he shall so notify the Commission of the location of each of the premises at which any such document or record is, or is to be, so kept.
- (b) Every person who applies to be a registered person and who, if his application is allowed, will be a person to whom this section applies shall in his application specify the location of the premises at which any record or other document relating to the business in respect of which he applies to be registered is to be kept by him and in case every such record or other document is not to be kept at a single premises, he shall so specify the location of each of the premises at which any such document or other record is to be so kept.

(2) A person to whom this section applies shall give to the Commission not less than 30 days' notice in writing of any intended change in the location of premises at which any record or other document referred to in subsection (1) is to be kept by him. (Amended 63 of 1990 s. 2)

(3) Every person referred to in subsection (1) or (2) shall, as regards any premises referred to in his notification or application, state whether or not those premises are used or are to be used partly or wholly for residential purposes.

(4) A person to whom this section applies shall not keep any record or other document relating to the business in respect of which he is registered at-

(a) any premises the location of which has not been notified to the Commission under this section; or

(b) any premises which are not regarded by the Commission as suitable:

Provided that this subsection shall not operate as regards a person to whom subsection (1)(a) applies until the period mentioned in subparagraph (i) or, as may be appropriate, subparagraph (ii) of that subsection has expired.

(5) References to a record or other document in subsections (1), (2) and (4) include references to any record or other document which a registered person is required to keep under the relevant Ordinances, and shall also include all data equipment used in connection therewith.

(6) The Commission may require any registered person or applicant for registration who notifies a location of premises under this section to notify it in respect of other premises for the purpose of complying with this section if, in the opinion of the Commission, the first-mentioned premises are unsuitable.

(7) (a) Where premises are, or are to be, used partly or wholly for residential purposes, the Commission shall not regard the premises as being suitable unless it is satisfied by the registered person or applicant concerned that the use by him of the premises to keep a record or other document referred to in subsection (1) will not affect the exercise in relation to the record or other document of any power under Part V.

(b) Where the Commission decides that premises referred to in paragraph (a) are suitable, it shall inform the registered person or applicant concerned of its decision by letter and the letter shall also state that the premises may be entered pursuant to section 30 or 36.

(c) Where the Commission decides that premises are unsuitable, it shall inform the registered person or applicant concerned of its decision by letter.

(8) The Commission shall maintain a register and shall record therein the location of any premises notified to it in accordance with subsection (1) or (2).

(9) In this section, "data equipment" (數據設備) means any equipment which-

(a) automatically processes information;

(b) automatically records or stores information;

(c) can be used to cause information to be automatically recorded, stored or otherwise processed on other equipment (wherever situated);

(d) can be used to retrieve information, whether the information is recorded or stored in the equipment itself or in other equipment (wherever situated).

(10) (a) This section applies to any person who is a registered person and who is also-

(i) a dealer but who is not a dealing director; or

(ii) a dealing partnership, investment adviser, investment advisers' partnership or commodity trading adviser.

(b) In this subsection-

"commodity trading adviser" (商品交易顧問) has the meaning assigned to it by section 2(1) of the Commodities Trading Ordinance (Cap 250);

"dealer" (交易商) means any person who is a dealer within the meaning of section 2(1) of the Commodities Trading Ordinance (Cap 250) or section 2(1) of the Securities Ordinance (Cap 333) but who, in either case, is not a director or employee accredited to, or a partner in, a corporation or firm which is itself a dealer;

"dealing director" (交易董事), "dealing partnership" (交易合夥商行), "investment

adviser” (投資顧問) and “investment advisers’ partnership (投資顧問合夥商行) have the meanings assigned to them, respectively, by section 2(1) of the Securities Ordinance (Cap 333).

(Enacted 1989)

Chapter: 24	Title: SECURITIES AND FUTURES COMMISSION ORDINANCE	Gazette Number:
Section: 28	Heading: <b>Financial resources rules</b>	Version Date: 30/06/1997

(1) The Commission may, after consultation with the Financial Secretary, make rules requiring registered persons to have and maintain, in respect of the businesses as regards which they are registered, such financial resources as are required by the rules.

(2) Financial resources rules may-

- (a) impose requirements which are absolute or which are to vary from time to time by reference to factors which either are specified in, or are to be determined in accordance with, the rules;
- (b) impose requirements which take account of any business carried on by the person concerned in conjunction with, or in addition to, the business carried on by him and referred to in subsection (1);
- (c) make provision as to the assets, liabilities and other matters to be taken into account in determining a person’s financial resources for the purposes of the rules and the extent to which, and the manner in which, they are to be taken into account for that purpose;
- (d) impose requirements which are different for different classes or descriptions of registered persons as specified in the rules. (Added 87 of 1992 s. 5)

(3) Financial resources rules may provide that the rules or any provision thereof shall not apply, or shall apply with such modifications or only in such circumstances as shall be specified in the rules, to persons who have and maintain financial resources (in Hong Kong or elsewhere) in accordance with an authorization of an authority (in Hong Kong or elsewhere) which in the opinion of the Commission performs any function which is similar to a function conferred on the Commission by this section.

(3A) Financial resources rules may require registered persons to submit to the Commission-

- (a) quarterly or other periodical returns containing information about their financial resources, in such form and at such intervals as may be prescribed by the rules;
  - (b) written notice of such changes in circumstances relating to their financial resources as may be prescribed by the rules, and of reasons for the changes. (Added 87 of 1992 s. 5)
- (4)
- (a) On the commencement of the rules first made under this section, section 65B of the Securities Ordinance (Cap 333) shall cease to have effect.
  - (b) On and from the commencement referred to in paragraph (a), sections 65C and 65D of the Securities Ordinance (Cap 333) shall each be construed and have effect as if-
    - (i) for each of the references in those sections to section 65B there were substituted a reference to financial resources rules;
    - (ii) for each of the references in section 65C(1) to “registered dealer” and “registered dealing partnership” there were substituted the references to “person registered under this Ordinance” and “partnership registered under this Ordinance” respectively;
    - (iii) for the reference in section 65C(1)(b) to “dealing in securities”, there were substituted a reference to “carrying on the business for which he is registered”;
    - (iv) for each of the references in sections 65C(2) and 65D(1) to “registered dealer or registered dealing partnership”, there were substituted a reference to “person

- registered under this Ordinance”. (Amended 87 of 1992 s. 5)
- (c) On and from the commencement referred to in paragraph (a), sections 55(2A), 83(4A), 89 and 90 of the Securities Ordinance (Cap 333) shall each be construed and have effect as if for each of the references in those sections to section 65B there were substituted a reference to financial resources rules. (Added 87 of 1992 s. 5)
- (5) Section 34 of the Interpretation and General Clauses Ordinance (Cap 1) applies to financial resources rules.

(Enacted 1989)

Chapter: 24	Title:	SECURITIES AND FUTURES COMMISSION ORDINANCE	Gazette Number:
Section: 31	Heading:	<b>Information relating to transactions</b>	Version Date: 30/06/1997

- (1) The Commission or any person authorized in writing by the Commission for the purposes of this section may require-
- (a) a person registered as the holder of any securities of futures contracts; or
  - (b) a person reasonably believed by the Commission or the person so authorized to be the holder of any securities or futures contracts or to hold any interest in property investment arrangements; or
  - (c) a person reasonably believed by the Commission or the person so authorized to hold any securities or futures contracts or to have an interest in property investment arrangements, as beneficial owner; or
  - (d) a person reasonably believed by the Commission or the person so authorized to hold, to have acquired or disposed of, purchased or sold, any securities, futures contracts or interest in property investment arrangements, or any interest therein, whether directly or through a nominee, trustee, or agent, and whether as beneficial owner nominee, trustee, agent or otherwise; or
  - (e) a registered person or an exempt dealer,
- in relation to any acquisition, disposal, purchase, sale or holding of securities, futures contracts or interest in property investment arrangements to disclose to it or him the name (including any aliases), address and occupation of the person (or other particulars that are capable of establishing the identity of the person) from, to or through whom, or on whose behalf, the securities or futures contracts or interest in property investment arrangements were acquired, disposed of, purchased, sold or were or are held, together with the quantity of securities or futures contracts or interests in property investment arrangements so acquired, disposed of, purchased, sold or held, and the instructions given to or by such last-mentioned person in respect thereof.
- (2) For the purpose of enabling this section to have effect, every investment adviser or commodity trading adviser and registered person who is a dealer within the meaning of section 27(10) shall keep, in such manner and form as may be specified in rules made for the purposes of this section by the Commission (which rules the Commission is hereby authorized to make), any record or other document as may be so specified.
- (3) Where a requirement is made under subsection (1), a person who-
- (a) without reasonable excuse fails to disclose to the Commission information required to be disclosed under subsection (1) and which is in his possession or under his control;
  - (b) furnishes to the Commission in purported compliance with the requirement information which he knows to be false or misleading in a material particular; or
  - (c) fails to comply with any provision of rules made under this section which applies to him,

commits an offence.

(Enacted 1989)

Chapter: 24	Title: SECURITIES AND FUTURES COMMISSION ORDINANCE	Gazette Number: 25 of 1998 s. 2
Section: 33	Heading: <b>Investigations</b>	Version Date: 01/07/1997

Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

- (1) Where-
- (a) the Commission has reason to believe that an offence under any of the relevant Ordinances may have been committed; or
  - (b) the Commission has reason to believe that a person may have committed a defalcation or other breach of trust, fraud or misfeasance-
    - (i) in dealing in securities or trading in futures contracts;
    - (ii) in the management of investment in securities or in futures contracts;
    - (iii) in making property investment arrangements; or
    - (iv) in giving advice as regards the acquisition, disposal, purchase or sale, or otherwise investing in, any security or futures contract or as regards any property investment arrangements; or
  - (c) the Commission has reason to believe that insider dealing for the purposes of the Securities (Insider Dealing) Ordinance 1990 (62 of 1990) may have taken place; or (Amended 62 of 1990 s. 43)
  - (d) the Commission has reason to believe that the manner in which a person has engaged or is engaging in any of the following activities referred to in paragraph (b) namely, the dealing or trading mentioned in subparagraph (i) thereof, the management mentioned in subparagraph (ii) thereof, the making of property investment arrangements or the giving of advice described in subparagraph (iv) thereof is not in the interest of the investing public or the public interest; or
  - (e) if the Commission decides to provide assistance to investigate a matter under section 59A, the circumstances giving rise or pertaining to the matter are, in the opinion of the Commission, of a nature similar to the circumstances giving rise or pertaining to a matter referred to in paragraph (a), (b), (c) or (d), (Added 7 of 1995 s. 3)

the Commission may in writing direct one or more of its employees or, with the consent of the Financial Secretary, appoint one or more other persons to be an investigator (“the investigator”(調査員)) to investigate any matter referred to in paragraphs (a) to (e) and report to the Commission thereon. (Amended 7 of 1995 s. 3)

(2) Where any matter is investigated under subsection (1) in relation to any person, that person is, for the purposes of this section, referred to as “the person under investigation” (受調査員).

(3) Any costs or expenses incurred by a person (other than an employee of the Commission) acting as the investigator under this section shall be paid out of moneys provided by the Legislative Council.

(4) The person under investigation or any person who is reasonably believed or suspected by the investigator to have in his possession or under his control any record or other document which contains, or which is likely to contain, information relevant to an investigation under this section, or who is so believed or suspected of otherwise having such information in his possession or under his control, shall-

- (a) produce to the investigator, within such time and at such place as he may reasonably

require, any record or other document specified by the investigator which is, or may be, relevant to the investigation, and which is in his possession or under his control;

- (b) if so required by the investigator, give to him such explanation or further particulars in respect of a record or other document produced in compliance with a requirement under paragraph (a) as the investigator shall specify;
  - (c) attend before the investigator at such time and place as he may require in writing, and answer truthfully and to the best of his ability such questions relating to the matters under investigation as the investigator may put to him; and
  - (d) give to the investigator all assistance in connection with the investigation which he is reasonably able to give.
- (5) A barrister or solicitor acting for the person under investigation may-
- (a) attend an examination of that person; and
  - (b) to the extent that the investigator shall reasonably permit-
    - (i) examine that person; and
    - (ii) address the investigator,in relation to matters in respect of which the investigator has questioned that person.

(6) A person shall be obliged to answer questions put to him under this section by the investigator, but if the answers might tend to incriminate him, and he so claims before answering the question, neither the question nor the answer shall be admissible in evidence against him in criminal proceedings other than proceedings for an offence under subsection (12) or section 36 of the Crimes Ordinance (Cap 200), or for perjury, in respect of the answer but shall be admissible for all the purposes of the Securities (Insider Dealing) Ordinance 1990 (62 of 1990); the investigator shall, before asking any question under this section, inform the person concerned of the limitation imposed by this subsection in respect of the admissibility in evidence of the question and any answer given. (Amended 62 of 1990 s. 43)

(7) The investigator shall be furnished by the Commission with a copy of the direction or appointment under subsection (1) and shall, before exercising any power under this section, produce the copy to the person concerned for his inspection.

(8) Where any explanation, particulars, answer or statement is or are made or given under subsection (4) to the investigator, he may further require, in writing, the person making or giving the same-

- (a) to verify the explanation, particulars, answer or statement by statutory declaration (which may be taken and received by the investigator); or
- (b) in case such explanation, particulars, answer or statement is or are not made or given in accordance with a requirement under subsection (4) to verify by a statutory declaration (which may be so taken and received) that he was unable to comply or, as the case may be, fully to comply, with that requirement because the matter which he failed to furnish was not within his knowledge or was neither in his possession nor under his control,

and where a requirement under this subsection is made, the person to whom it is made shall comply with the requirement within such reasonable period as is specified in the requirement.

(9) The investigator may, and if so directed by the Commission shall, make interim reports to the Commission, and on the conclusion of his investigation shall make a final report to the Commission.

(10) Notwithstanding section 59, the Commission may, with the consent of the Attorney General, cause a report under this section to be published.

(11) Nothing in this section shall be construed as requiring an institution authorized to carry on banking business or the business of taking deposits under the Banking Ordinance (Cap 155) to disclose any information or produce any record or other document relating to the affairs of a customer to the investigator unless-

- (a) the customer is a person whom the investigator has reason to believe may be able to give information relevant to the investigation; and
- (b) the Commission is satisfied that the disclosure or production is necessary for the purposes of the investigation and certifies in writing that that is the case,

and, where the conditions in paragraphs (a) and (b) are met in respect of any such institution, such

institution shall comply with any provision of subsection (4) or (8) that applies in its case.

(12) Any person who-

- (a) without reasonable excuse fails to produce any record or other document which he is required to produce under subsection (4)(a);
- (b) without reasonable excuse fails to comply with any requirement under subsection (4)(b);
- (c) without reasonable excuse fails to comply with a requirement under subsection (4)(c) to attend before the investigator;
- (d) without reasonable excuse fails to answer any question put to him by the investigator under subsection (4)(c), or in answering such a question says anything which he knows to be false or misleading in a material particular or who in so answering recklessly makes a false statement;
- (e) without reasonable excuse fails to comply with subsection (4)(d);
- (f) without reasonable excuse fails to comply with a requirement under subsection (8), or fails to do so within the period specified therein,

commits an offence.

(13) If any person, without reasonable excuse, fails to do anything which he is required to do under subsection (4), the investigator may certify the failure to the Court of First Instance and the Court of First Instance may thereupon inquire into the case and-

- (a) order such person to comply with the requirement within such period as may be fixed by the Court of First Instance; or
- (b) if the Court of First Instance is satisfied that such person has failed without reasonable excuse to comply with such requirement, punish him in the same manner as if he had been guilty of contempt of court.  
(Amended 25 of 1998 s. 2)

(14) A person shall not be punished under subsections (12) and (13) in respect of the same failure.

- (15) (a) Where the person under investigation or any other person is convicted by a court or magistrate on a prosecution instituted as a result of an investigation under this section, the court or magistrate may order him to pay to the Commission the whole or part of the costs or expenses of the investigation.
- (b) Where an amount is paid to the Commission pursuant to an order under this subsection in respect of the costs or expenses of an investigation and the costs or expenses of that investigation are paid out of moneys provided by the Legislative Council, the Commission shall pay to the Financial Secretary an amount equal to the amount of those moneys or, if the amount paid pursuant to the order is less than the amount of those moneys, an amount equal to that so paid.
- (c) Where any sum of money is paid to the Commission in respect of the costs and expenses referred to in section 59A(3) and the costs and expenses have been paid out of moneys provided by the Legislative Council, the Commission shall pay to the Financial Secretary an amount equal to the amount of the sum of money so paid to the Commission.  
(Added 7 of 1995 s. 3)

(Enacted 1989)

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Chapter: 24

Title: SECURITIES AND  
FUTURES COMMISSION  
ORDINANCE

Gazette Number:

Section: 38

Heading: **Power of intervention**

Version Date: 30/06/1997

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(1) Any power conferred on the Commission by section 39, 40 or 41 may be exercised in relation to any registered person if he is a registered person to whom this section applies and if, and only if, it appears to the Commission that-

- (a) the exercise of the power is desirable in the interest of the investing public;
- (b) the registered person is not a fit and proper person (having regard, amongst other matters, to the matters specified in section 23(3)) to carry on any one or more of the businesses in respect of which he is registered under the Securities Ordinance (Cap 333) or the Commodities Trading Ordinance (Cap 250), as the case may be, to extent to which he is carrying it on or proposes to carry it on; or
- (c) the registered person has contravened or failed to comply with any provision of or requirement under the relevant Ordinances or, in purported compliance with any such provision, has furnished the Commission with information which, in a material particular, is false, inaccurate or misleading.

(2) The powers conferred on the Commission by section 39, 40 or 41 may be exercised in relation to a person whose registration is suspended or revoked under section 55 or 56 of the Securities Ordinance (Cap 333) or section 35 or 36 of the Commodities Trading Ordinance (Cap 250) where an appeal is made under section 19 or the time for making such an appeal has not expired, and references in section 39, 40 or 41 to a registered person shall be construed accordingly.

(3) The Commission shall not exercise any power conferred on it by section 39, 40 or 41 with respect to a registered person who is a member of an Exchange Company or a clearing house unless the Commission has given written notification of its intention to that Exchange Company or, as the case may be, that clearing house.

(4) This section applies to any registered person who is a dealer, a partner of a dealing partnership, an investment adviser, a commodity trading adviser or a partner in an investment advisers' partnership; and for the purposes of this subsection "dealer" (交易商), "dealing partnership" (交易合夥商行), "investment adviser" (投資顧問), "commodity trading adviser" (商品交易顧問) and "investment advisers' partnership" (投資顧問合夥商行) have the meanings assigned to them respectively by section 27(10).

(Enacted 1989)

Chapter: 24	Title: SECURITIES AND FUTURES COMMISSION ORDINANCE	Gazette Number: 25 of 1998 s. 2
Section: 55	Heading: <b>Injunctions to restrain contraventions</b>	Version Date: 01/07/1997

Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

## PART VIII

### MISCELLANEOUS

(1) If on the application of the Commission the Court of First Instance is satisfied that there is a reasonable likelihood that any person will contravene any provision of any rules or direction made or given under section 28 or 29 or any notice under Part V, the court may grant an injunction restraining the contravention or, as the case may be, make an order that any person who appears to the court to have been knowingly involved in the contravention take such steps as the Court of First Instance may direct. (Amended 25 of 1998 s. 2)

(2) No application shall be made by the Commission under subsection (1) for an order affecting any person who is a member of an Exchange Company unless the Commission has given written notification of its intention to that Exchange Company.

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Chapter: 24	Title: SECURITIES AND FUTURES COMMISSION ORDINANCE	Gazette Number:
Section: 55A	Heading: <b>Waiver or modification of requirements</b>	Version Date: 30/06/1997

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(1) The Commission may, in relation to any registered person or a person applying to become a registered person, waive or modify the requirements of any of the following sections-

- (a) sections 23(2)(b) and 27 of this Ordinance;
- (b) sections 48(1A), 49(1A), 65B, 67, 81(1) and 84 of the Securities Ordinance (Cap 333);
- (c) sections 26(2) and (3) and 46 of the Commodities Trading Ordinance (Cap 250).

(2) In exercising the power to waive or modify a requirement under this section in relation to any person, the Commission shall have regard to the circumstances of the person and of the particular kind of business carried on or to be carried on by him and, in particular-

- (a) to whether compliance with the requirement in question would be unduly burdensome for the person; and
- (b) to whether the exercise of the power in the particular case would result in undue risk to the investing public.

(3) On making any waiver or modification under this section, the Commission may impose such conditions as it thinks fit.

(4) A waiver or modification of any requirement under this section shall continue in force until withdrawn by the Commission.

(Added 63 of 1990 s. 3)

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Chapter: 163	Title: MONEY LENDERS ORDINANCE	Gazette Number:
Schedule 1	Heading:	Version Date: 30/06/1997

[sections 2, 24,  
25, 33 & 33C]

## PART 1

### EXEMPTED PERSONS

1. Any subsidiary of an authorized institution within the meaning of the Banking Ordinance (Cap 155).
2. A co-operative society registered under the Co-operative Societies Ordinance (Cap 33).
3. A credit union registered under the Credit Unions Ordinance (Cap 119) and the Credit Union League of Hong Kong incorporated under Part XI of that Ordinance.
4. A trade union registered under the Trade Unions Ordinance (Cap 332).
5. An insurer, within the meaning of the Insurance Companies Ordinance (Cap 41), authorized under that Ordinance to carry on a class, or classes, of insurance business specified in Part 2 of the First Schedule to that Ordinance.
6. (Repealed L.N. 140 of 1991)
7. University Grants Committee. (Amended L.N. 35 of 1995)
8. A bank which is-
  - (a) incorporated or established outside Hong Kong;
  - (b) recognized as a bank by the relevant banking supervisory authority (within the meaning of section 2(9) of the Banking Ordinance (Cap 155)) which has been declared in writing by the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66) to be a banking supervisory authority in respect of which he is of the opinion that it exercises adequate prudential supervision for the purposes of this paragraph; and (Replaced 49 of 1995 s. 53)
  - (c) carrying on banking business in the place where that banking supervisory authority is located. (Replaced 49 of 1995 s. 53)
9. An organization-
  - (a) which is a member of the International Union of Credit and Investment Insurers ("The Berne Union"); or
  - (b) in respect of which the Registrar has declared in writing that he is satisfied that it was established by one or more national governments with the object of financing, or guaranteeing the financing of, the export of a country's goods or services.

## PART 2

### EXEMPTED LOANS

1. A loan made bona fide by an employer to his employee.

2. A loan made to a company secured by a mortgage, charge, lien or other encumbrance-
  - (a) registered, or to be registered, under the Companies Ordinance (Cap 32); or
  - (b) which would, in the case of a company referred to in paragraph (b) or (c) of the definition of “company” (公司) in section 2(1), be able to be registered under that Ordinance if that company were a company referred to in paragraph (a) of that definition.
3. A loan made by a company under a bona fide credit-card scheme operated by the company to any holder of a credit-card issued under that scheme.
4. A loan made bona fide for the purchase of immovable property on the security of a mortgage of that property and a loan made bona fide to refinance such a mortgage.
5. A loan made by a company or a firm or individual whose ordinary business does not primarily or mainly involve the lending of money, in the ordinary course of that business.
6. A loan made by a licensed pawnbroker under the Pawnbrokers Ordinance (Cap 166), being a loan to which that Ordinance applies.
7. A loan made by any statutory body under any power conferred by law in that behalf.
8. A loan made from-
  - (a) a fund established by resolution of the Legislative Council or by or under an Ordinance;
  - (b) any superannuation or provident fund.
9. A loan made from any chit-fund operated under the Chit-Fund Businesses (Prohibition) Ordinance (Cap 262).
10.
  - (a) A loan made by a holding company to its subsidiary or by a subsidiary to its holding company or another subsidiary company of the same holding company.
  - (b) Section 2(7) and (8) of the Companies Ordinance (Cap 32) shall apply to the interpretation of this paragraph as it applies to the interpretation of that Ordinance.
11. A loan made to a company where the loan-
  - (a) forms part of a transaction involving the export from, or the import into, Hong Kong of goods or services; and
  - (b) is for the purpose of facilitating that export or import, as the case may be, of those goods or services.
12.
  - (a) A loan made to a company that has a paid up share capital of not less than \$1000000 or an equivalent amount in any other approved currency.
  - (b) For the purposes of this paragraph “approved currency” (認可貨幣) means a currency-
    - (i) freely convertible into Hong Kong dollars; or
    - (ii) approved in writing by the Registrar for the purposes of this paragraph.
13. A loan upon terms involving the issue by a company of debentures or other securities in respect of which a prospectus has been registered under the Companies Ordinance (Cap 32).
14. A loan made to a company the shares or debentures of which are listed on-
  - (a) the Unified Exchange within the meaning of the Stock Exchanges Unification Ordinance (Cap 361); or
  - (b) any other stock market declared in writing, by the Securities and Futures Commission

established under the Securities and Futures Commission Ordinance (Cap 24),  
to be approved for the purposes of this paragraph. (Amended 10 of 1989 s.  
65)

15. A loan made to the subsidiary of a company referred to in paragraph 14. (Replaced  
69 of 1988 s. 33)
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Chapter: 250 Title: COMMODITIES TRADING Gazette Number:  
ORDINANCE

Section: 35 Heading: **Revocation of registration** Version Date: 30/06/1997

- (1) The registration of a registered person is deemed to be revoked, in the case of-
  - (a) an individual, if the individual dies;
  - (b) a corporation, if the corporation is wound up;
  - (c) a firm, if the partnership is dissolved.
- (2) The Commission may revoke the registration of a registered person-
  - (a) in the case of a registered person who is an individual-
    - (i) on any ground on which the Commission may refuse to register under section 32(1)(a);
    - (ii) if a levy of execution in respect of him has not been satisfied;
    - (iii) if he does not carry on the business for which he was registered;  
or
    - (iv) if, in the case of a representative, the registration of the dealer or commodity trading adviser, in relation to whom the certificate of registration of the representative was granted, is revoked;
  - (b) in the case of a registered person that is a corporation-
    - (i) on any ground on which the Commission may refuse to register under section 32(1)(b);
    - (ii) if it is being or will be wound up;
    - (iii) if a levy of execution in respect of it has not been satisfied;
    - (iv) if it has entered into any composition or scheme of arrangement with its creditors; or
    - (v) if it does not carry on the business for which it was registered; or
  - (c) in the case of a registered person that is a firm-
    - (i) on any ground on which the Commission may refuse to register under section 32(1)(c);
    - (ii) if the partnership is being or will be dissolved;
    - (iii) if a levy of execution in respect of it has not been satisfied;
    - (iv) if it has entered into any composition or scheme of arrangement with its creditors; or
    - (v) if it does not carry on the business for which it was registered.  
(Amended 25 of 1992 s. 2)
- (3) The Commission may revoke the registration of a registered person at the request of such person.
- (4) The Commission shall not revoke the registration of registered person under subsection (2) without first giving such person an opportunity of being heard.
- (5) Where the Commission revokes the registration of a registered person under subsection (2) it shall notify such person in writing to that effect stating the reasons for the revocation and specifying the date on which the revocation shall take effect.  
(Amended 10 of 1989 s. 65)

Chapter: 250 Title: COMMODITIES TRADING Gazette Number:  
ORDINANCE

Section: 36 Heading: **Powers of the Commission in relation to misconduct** Version Date: 30/06/1997

- (1) The Commission may at any time make inquiry concerning any of the following matters-
- (a) whether a registered person-
    - (i) has provided the Commission, whether before or after becoming registered under this Ordinance or the Securities and Futures Commission Ordinance (Cap 24), with such information relating to him, and to any circumstances likely to affect his method of conducting business, as may be required by or under either of those Ordinances;
    - (ii) is or has been guilty of any misconduct; or
    - (iii) is a fit and proper person to continue to remain registered by reason of any other circumstances;
  - (b) whether, in the case of a registered person that is a corporation or firm, any director, partner or person concerned in the management of the corporation or firm-
    - (i) is or has been guilty of any misconduct; or
    - (ii) is a fit and proper person to be a director, partner or person concerned in the management of the corporation or firm.
- (2) After making such inquiry in respect of a registered person, or where such person is deemed to be guilty of misconduct for the purposes of this section under subsection (6), the Commission may if it thinks fit- (Amended 62 of 1990 s. 37)
- (a) revoke the registration of the person;
  - (b) suspend the registration of the person for such time, or until the happening of such event, as it may determine; or
  - (c) reprimand him or, in the case of a registered person that is a corporation or firm, reprimand any director, partner or person concerned in its management.
- (3) The Commission shall not impose any penalty under subsection (2) without first giving the registered person and, in the case of a registered person that is a corporation or firm, any director, partner or person concerned in its management, an opportunity of being heard.
- (4) Every decision of the Commission imposing a penalty under subsection (2) on a person shall be notified to that person in writing and shall include a statement of the reasons on which it is based.
- (5) For the purposes of this section “misconduct” (失當行爲) means-
- (a) any failure to comply with the requirements of this Ordinance or the Securities and Futures Commission Ordinance (Cap 24) or any regulations made thereunder with respect to dealers, commodity trading advisers, dealers’ representatives or commodity trading advisers’ representatives, as the case may be;
  - (b) any failure to observe the terms and conditions of a certificate of registration;
  - (c) any act or omission relating to the conduct of business of a dealer, commodity trading adviser, dealer’s representative or commodity trading adviser’s representative, as the case may be, which is or is likely to be prejudicial to the interest of members of the investing public.
  - (d) any failure to comply with any of the rules made by the Commission under this Ordinance or the Securities and Futures Commission Ordinance (Cap 24). (Added 7 of 1994 s. 2)
- (6) Where a person has been identified as an insider dealer, in a written report of the Insider Dealing Tribunal prepared under section 22(1) of the Securities (Insider Dealing) Ordinance (Cap 395) such person shall be deemed to be guilty of misconduct for the purposes of this section. (Added 62 of 1990 s. 37)

(Replaced 10 of 1989 s. 65)

- (1)    (Repealed 10 of 1989 s. 65)
- (2)    A revocation or suspension of the registration of a person does not operate so as to-
- (a)    avoid or affect any agreement, transaction or arrangement relating to the trading in commodity futures contracts entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the registration; or
  - (b)    affect any right, obligation or liability arising under any such agreement, transaction or arrangement.
- (3)    A person whose registration is revoked under section 35 (other than paragraph (a)(iii) or (iv), paragraph (b)(ii) or (v) or paragraph (c)(ii) or (v) of subsection (2) of that section) or 36 may not apply to be registered under this Part, whether as a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative, until the expiration of at least 12 months from the date of revocation.
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Except as may be necessary for the carrying into effect of the provisions of this Ordinance or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an auditor appointed under section 52 or 53 or any employee of such auditor shall not divulge any information which may come to his knowledge in the course of performing his duties as such auditor or employee, as the case may be, to any person other than-

- (a)    the Commission; and (Amended 10 of 1989 s. 65)
  - (b)-(c)    (Repealed 10 of 1989 s. 65)
  - (d)    in the case of an employee, the auditor by whom he is employed.
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Chapter: 361	Title: STOCK EXCHANGES UNIFICATION ORDINANCE	Gazette Number:
Section: 15	Heading: <b>Duty of Exchange Company to ensure compliance by its members with section 65B of the Securities Ordinance</b>	Version Date:30/06/1997

(1) It shall be the duty of the Exchange Company to ensure compliance by its members with section 65B of the Securities Ordinance (Cap 333), and by any of its members to whom financial resources rules apply or, in case such rules so apply subject to a condition or other modification, that they are complied with by the member concerned in accordance with the condition or modification.

- (2) The Committee shall forthwith notify the Commissioner if it becomes aware-
- (a) that any member is unable to comply with section 65B and any financial resources rules or, where appropriate, with any such rules as modified; or
  - (b) of any financial irregularity or other matter which in the opinion of the Committee, indicates or may indicate that the financial standing or integrity of any member is in question.

(Replaced 59 of 1985 s. 7. Amended 10 of 1989 s. 65)

Chapter: 361	Title: STOCK EXCHANGES UNIFICATION ORDINANCE	Gazette Number:
Section: 34	Heading: <b>Rules of the Unified Exchange</b>	Version Date: 30/06/1997

## PART V

### MISCELLANEOUS

- (1) The Exchange Company may, subject to this Ordinance and to the Securities Ordinance (Cap 333), make rules-
- (a) respecting-
    - (i) applications for the listing of securities and the requirements to be met before securities may be listed on the Unified Exchange;
    - (ii) the entering into of agreements between the Exchange Company and other persons in connection with the listing of securities on the Unified Exchange and the enforcement of those agreements by the Exchange Company;
    - (iii) the cancellation and withdrawal of the listing of, and the suspension of dealings in, securities listed on the Unified Exchange;
    - (iv) the imposition on any person of obligations to observe specified standards of conduct or to perform, or refrain from performing, specified acts as may reasonably be imposed in connection with the listing or continued listing of securities on the Unified Exchange;
    - (v) the penalties or sanctions which may be imposed by the Exchange Company for a breach of rules made under this paragraph; and
    - (vi) procedures or conditions which may be imposed, or circumstances which are required to exist, in relation to matters which are provided for in rules made under

this paragraph; (Replaced 74 of 1994 s. 2)

- (b) to ensure compliance by its members with section 65B of the Securities Ordinance (Cap 333) and financial resources rules for the better fulfillment by the Exchange Company of the duty imposed on it by section 15 and, without derogation from the generality hereof such rules may-(Amended 10 of 1989 s. 65)
  - (i) prescribe the returns to be made by members, the form of such returns, the information to be included therein and the manner in which such information is to be verified;
  - (ii) provide for the manner in which any assets are to be valued and for the payment by members of the costs of valuation;
  - (iii) prescribe the manner in which records are to be kept by members of any assets which may be taken into account for the purposes of section 65B of the Securities Ordinance (Cap 333) and financial resources rules and the places at which such records are to be maintained;
  - (iv) provide for the inspection of records by any duly authorized officer of the Exchange Company; and (Added 59 of 1985 s. 11. Amended 10 of 1989 s. 65)
- (c) in respect of such other matters as are necessary or desirable for the proper and efficient operation and management of the Unified Exchange. (Amended 59 of 1985 s. 11)

(2) The Commission may in writing direct the Exchange Company to make or amend any rules referred to in subsection (1), if, after requesting the Exchange Company to make or amend such rules, the Commission is satisfied that such request has not been complied with.

(3) The power of the Exchange Company to make rules under subsection (1)(a) includes the power to perform any function-

- (a) that is conferred on the Exchange Company under the rules; or
- (b) that reasonably arises out of the administration or enforcement by the Exchange Company of the rules. (Added 74 of 1994 s. 2)

(4) In making rules under subsection (1)(a) the Exchange Company shall take into account that a solicitor or professional accountant (as defined in section 2 of the Professional Accountants Ordinance (Cap 50)) acting in his professional capacity in private practice has duties imposed by law and by virtue of rules of professional conduct. (Added 74 of 1994 s. 2)

(5) The Exchange Company shall, in circumstances stipulated in arrangements agreed from time to time between it and The Law Society of Hong Kong or the Hong Kong Society of Accountants, refer breaches of rules made under subsection (1)(a)-

- (a) which are alleged to have been committed by a solicitor or professional accountant in private practice; and
- (b) which may also constitute a breach of duty imposed by law or by virtue of rules of professional conduct,

to The Law Society of Hong Kong or, as the case may be, the Hong Kong Society of Accountants, for determination of whether to make a finding, impose a penalty or sanction or take other disciplinary action. (Added 74 of 1994 s. 2)

(6) For the purpose of subsections (4) and (5), a person shall be regarded as acting in the capacity of a solicitor or professional accountant in private practice if in the course of private practice he provides legal or professional accountancy services to a client, but he shall not be regarded as so acting where, in respect of a matter governed by rules made under subsection (1)(a), he is also connected with that matter in any other capacity. (Added 74 of 1994 s. 2)

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