

**Comments of the Securities Law Committee of the Law Society of Hong Kong
on the Securities (Margin Financing) (Amendment) Bill 1999**

1. Introduction

Under the Bill, a new regulatory regime for securities margin financing would be introduced.

The Securities Law Committee recognises, particularly in the light of recent events, the importance of regulating and ensuring as far as possible the proper conduct of carrying on securities margin financing business in Hong Kong. Accordingly, the Committee welcomes, in principle, the Bill. However, the Committee has a number of concerns in respect of various matters covered by the Bill, particularly the scope of the regulatory net created under it.

2. Definitions

The Bill amends the Securities Ordinance to require that the business of securities margin financing is conducted only by “companies” which are registered securities margin financiers. However, exemptions are available for registered dealers, bankers, etc. (see below).

The definition of “securities margin financing” is clearly crucial, particularly since securities margin financiers are not allowed to carry on any business other than securities margin financing.

It means, as drafted:

“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.”

“Financial accommodation” 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.”

Comments

● *Companies*

It is not clear why partnerships, for example, cannot become securities margin financiers provided that they satisfy the other regulatory requirements (“fit and proper”, etc.).

● *Sole business requirement*

The sole business requirement appears to prevent registered financiers from, for example, providing funding to investors to buy unlisted securities (whether shares or, for instance, convertible or other bonds, funds or unit trusts), or from allowing them to enter into futures and options transactions to hedge their positions.

It would be preferable to adopt a “principal” business test or set out in regulations certain exemptions, including the above examples, from the requirement.

- *Unlisted securities*

It should also be noted that some of the provisions of the Bill will apply to securities dealers and exempt dealers who provide financial accommodation to clients and take securities collateral, regardless of whether that is done in relation to securities listed on a stock exchange.

- *Third party arrangers*

“Securities margin financing” may cover a person who arranges for a third party to provide credit to an investor for the acquisition of listed securities by that investor (whether through the arranger, the third party or indeed anyone else).

This may be of concern to licensed Money Brokers, where they introduce prospective investors to authorised institutions for the purposes of funding an acquisition or financing the continued holding of listed securities.

This may also be of concern to persons in Hong Kong who introduce investors to the services of a person outside Hong Kong who is involved in securities margin financing. There is an exemption, as mentioned above, for registered dealers and exempt dealers where financial accommodation is arranged by the dealer to facilitate acquisitions/holding of securities by its clients. That exemption is not apparently available where the Hong Kong dealer introduces an investor to an affiliate of the dealer outside Hong Kong for the investor to become a margin client of that affiliate (for instance, in connection with investments in overseas listed securities), since it would not be the Hong Kong dealer acquiring or holding securities for the dealer’s clients. Instead, it would be the affiliate who does so. The exemption should be extended accordingly.

- *“Purpose” of loans, etc.*

“Securities margin financing” means providing financial accommodation **in order to** facilitate acquisitions, etc. This appears potentially to introduce the somewhat unwelcome concept of subjectivity into the question of whether a person is engaging in securities margin financing.

This raises the concern of the extent to which lenders (or arrangers) would need to make themselves aware of the purpose of any borrowings or other financial accommodation.

Personal loans from money lenders may, for example, in some circumstances be used to acquire listed shares, although that may be only part of the reason, or the disclosed reason, for the loan application. Not all money lenders will be share margin financiers and the underlying purpose of the loan may not always be disclosed or apparent.

In addition, what would the position be where a loan is obtained in order to, say, pay off another loan and thereby free up a credit line or cash to invest in listed shares?

Arrangers of such loans would also be placed in a difficult position in needing to try to find out the underlying purpose of the loan or to control the use to which the loan proceeds are put.

Derivatives/structured products are not specifically dealt with in the above definitions, but may well nonetheless be caught in certain circumstances.

It may be appropriate to ensure that the legislation expressly refers to the purpose of the lender not the borrower. Where the lender actually knows the borrower's purpose, that could be deemed to be a purpose of the lender.

- “*Securities margin financiers*”

We suggest that the definition of “securities margin financier” should be limited to those carrying on business in Hong Kong, to be consistent with the rest of the Bill.

3. Exemptions

There are exemptions from the need to become a registered financier for bankers, securities dealers, etc., as discussed above.

However, there are no exemptions for:

- financing to assist in a take-over offer for a listed company
- financing to acquire substantial stakes in a listed company (the threshold could be defined by reference to a specific amount, say HK\$20 million, or a percentage of issued share capital, say 2% or 3%)
- financing of all off-market transactions
- prime brokerage or global custody arrangements which may involve the provision of financial accommodation to a major institutional investor
- money brokers (see above)
- vendor financing or share sales on deferred terms (although that may well not amount to a “business” in any event)
- loans to shareholders which do not amount to intra-group arrangements
- financing for employees to purchase listed shares (note: this type of arrangement is currently uncommon in Hong Kong, although it is likely to become more common, for instance in respect of Hong Kong based participants in overseas companies' schemes)
- exempted loans under Schedule 1, Part 2 of the Money Lenders Ordinance (including, for example, loans to listed companies)
- “non-retail” securities margin financing (that is, in the context of, say, financing to “professionals” as is covered in the Securities Ordinance and Protection of Investors Ordinance, given their ability to evaluate the relevant risks, etc.)
- subsidiaries of authorised institutions (as provided for under Schedule 1, Part 1 of the Money Lenders Ordinance). Note: The Money Lenders Ordinance also has an exemption for insurance companies and for persons whose ordinary business does not primarily or mainly involve (for these purposes) securities margin financing. We assume that these exemptions have not been adopted to ensure that lenders to persons who will use the funding to acquire listed shares will be caught. This will be of concern to, say, insurance companies who, as part of a “one stop shopping” service, may introduce clients to their affiliates where clients wish to acquire listed shares
- loans to securities margin financiers for the purposes of their business.

It may be appropriate to refine the definition of “financial accommodation” or to extend the exemptions (on a restricted basis) accordingly.

The Committee requests that LegCo looks into the scope of the exemptions to be included in the final form of the legislation to ensure as far as possible that the scope is sufficiently wide to cover proper business activities of market participants.

The Committee recognises that the SFC, under the Bill, would be able to waive or modify requirements for registered financiers (or applicants), and to make rules exempting certain classes of person, transactions, etc. from the provisions of the Ordinance, and if it is the SFC's intention to extend the exemptions list in that manner, then that is to be welcomed.

However, in the Committee's view, it is important that any such waivers, modifications or additional exemptions are kept to a minimum to maintain consistency as far as possible in the regulation of the market, so as to avoid piecemeal and arbitrary treatment of situations arising.

4. Client information

Each time there is any movement on the account of a client of a registered financier, such as a deposit or withdrawal of collateral or a deduction of charges, or whenever there is a change in the terms on which financial accommodation is provided (such as a change in interest rates or a change in the level of margin cover required) the client must be sent a statement of account by the end of the next business day. A detailed monthly statement of the account is also required, whether or not there have been any movements during the month.

The same onerous requirements apply to a securities dealer who provides financial accommodation to a client to facilitate the acquisition of securities (whether or not those securities are listed on a stock exchange).

We suggest that these provisions are reviewed in order to ensure that a balance is struck between client protection and the need to control the compliance burden and cost of doing business. Is it necessary, for instance, for the full range of information specified in section 121Y(3) (especially (d) to (f) and (i)) to be given in respect of all the transactions mentioned in sub-section (1)? We also suggest that the time requirement should be relaxed to (say) two business days and that it should be made clear that posting materials within this time frame satisfies the requirement to "give" them.

There is a concern that this could apply where the dealer does not intend to give the client a credit facility but financial accommodation is provided on an *ad hoc* basis, for example where the dealer has to settle a trade where a client has failed to provide cleared funds in time. We assume that this is not intended.

5. Securities collateral

Where securities are taken as collateral by a lender, it is of critical importance that the lender has a valid and enforceable security interest over those securities. A legal charge over shares would normally involve registering the securities in the name of the lender or its nominee (rather than the securities being registered in the name of the client or held in a safe custody account). In respect of shares held in CCASS, effective security would require those shares to be held in the chargee's CCASS account, or that of its nominee or in an account of another person but in such a way so as to ensure that those shares are controlled by, and the CCASS interests in those shares are "owned" by, that other person. (Holding shares in CCASS accounts in the names of individual clients is not practicable.) Any other forms of security than those described above (e.g. in accounts in clients' names) will provide less effective security as far as the chargee is concerned. This is an important structural point which could affect the securities financing industry generally. It is also essential to the lender that the charge can be readily enforced by disposing of the securities to meet the liabilities of the borrower.

Under the new provisions (sections 121AA and 81), which will apply to registered financiers and to dealers and exempt dealers, the lender will have to register the securities in the client's name or deposit them in a designated account with a bank or other institution which provides safe custody services. These requirements are not consistent with the needs for effective security described above. Further, they do not address effectively the fact that most shares will be held in CCASS and therefore in dematerialised form. Registration of those shares in any particular name will not be an option, and the concept of "deposited in safe custody" is not really consistent with how shares are held in dematerialised form in CCASS.

The lender will only be able to dispose of the securities with the client's written consent, which must be renewed annually, or in accordance with SFC rules, which have not yet been produced. The Committee is concerned that the operation of these provisions will affect the lender's security, for example if the client refuses to renew the annual consent at a time when the client owes money to the lender. A lender must be free to enforce security once a default has occurred on the part of the borrower. Such a provision would also have the undesirable effect of forcing lenders to liquidate security as the annual time limit approaches to avoid taking the risk of not obtaining renewal of client consent, in circumstances where they may otherwise have given the borrower more time. It may be that SFC rules will address this issue. We recommend that this legislation is not brought into effect until such rules have been produced.

The new provisions also mean that the lender will only be able to use the securities (even with the client's written consent) for certain specified purposes, and not generally for its business purposes.

The position of a third party who received the securities from the lender in circumstances where the lender was in breach of any of the above provisions is somewhat unclear. The Bill states that nothing in these provisions affects any lawful claim or lien that a person has in respect of securities collateral, but it is not clear whether, for example, if a lender had pledged client securities with a bank as collateral for a loan, but did not have authority from the clients to do so, the bank would have the right to dispose of the securities to discharge the loan. We recommend that "bona fide third party" provisions, similar to those in section 121AD, could be introduced to clarify this issue.

6. Safe custody

Amendments have also been made to Section 81 of the Securities Ordinance, which will apply to dealers and exempt dealers who provide custody of securities for clients to whom no financial accommodation is provided. Such securities must not be pledged, lent or dealt with except as permitted by rules made by the SFC, even if the client has given its consent to this. Similar concerns to those described in 5. above arise in this respect. In addition, read literally, this would appear to prevent the dealer from returning the securities to the client, or effecting stock lending for the client with the client's authority. Presumably this will be addressed in rules to be made by the SFC?

7. Miscellaneous

- The Bill talks throughout in terms of "margin" financing. This is inaccurate, as it relates to all securities acquisition financing and we recommend that this could helpfully be clarified.
- The Bill does not seek to regulate futures financing, although this must be an area of concern.

- The provisions of Section 121F (false or misleading information to the SFC) need to be considered in the context of the SFC proposals concerning false reporting on which the Committee has previously provided comments.
- The Hong Kong Stock Exchange rules, including the uniform client agreements, will need to be updated to take into account the proposed changes, including for example the Section 81 amendments.
- Presumably the Hong Kong Money Authority will publish guidelines or other guidance in relation to their treatment of exempt dealer banks in the context of the new legislation, to ensure as far as possible a “level playing field” in the market?
- Please see the attached extracts from the Bill on which we have marked, in manuscript, some drafting comments. In addition, we have the following miscellaneous comments on the Bill:
 - Section 121C(1) is wider in its scope than section 121B(1), and should be narrowed to make it consistent.
 - Section 121S(4) and similar provisions: the words “impose a penalty under this section” are unclear. We suggest these should read “take any action under sub-section (3)” (or the equivalent).
 - Section 121AK(1)(a): it may not be possible for a financier to comply with this requirement, in particular because it cannot control its auditors and what qualifications they may make.
 - Section 121AW(2)(a)(i): we suggest that this is too wide: for instance, a significant drop in profits is an adverse financial event but does not necessarily affect a financier’s ability to perform its obligations. We suggest this sub-section focuses on the latter and the financier’s balance sheet.
 - Schedule 1, item 1(c): we suggest that this exclusion should be widened, as the definition of “dealing in securities”, on which the definition of “dealer” is based, in particular the words “making.....an agreement.....with a view to acquiring.....securities”, is wide and could apply to most activities of a financier, including lending and taking security.

Securities Law Committee
The Law Society of Hong Kong
20 April 1999

本條例草案

旨在

修訂《證券條例》以規管證券保證金融資的進行，並就有關事宜訂定條文。

由立法會制定。

1. 簡綱及生效日期

- (1) 本條例可引稱為《1999年證券(保證金融資)(修訂)條例》。
- (2) 本條例自附錄中事務局長以憲報公告指明的日期起實施。

2. 釋義

- 《證券條例》(第333章)第2(1)條獲予修訂，加入
- “代理人”(agent) 包括根據與另一人之間的某項安排而行事的人；
- “金融管理專員”(Monetary Authority) 指根據《外匯基金條例》(第66章)第3A條獲委任為金融管理專員的人；
- “紀錄”(record) 指不論以任何方式編纂、紀錄或貯存的任何資料紀錄，並包括——
- (a) 任何簿冊、紀錄冊或載有資料的其他文件；及
 - (b) 任何能夠從中產生資料的紀錄帶、紀錄帶或其他物品；
- “保險業監督”(Insurance Authority) 指根據《保險公司條例》(第41章)第4條獲委任為保險業監督的公職人員；
- “高級人員”(officer) 就任何法團而言，指董事、秘書或其他涉及該法團的首席的人；

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” (查數) includes examine;
- “business day” (營業日) means a day (excluding Saturday) on which banks in Hong Kong are open for business;
- “financial accommodation” (財務安排) 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;

a

- (f) 提供如規某項包銷或分包銷證券安排的一項一為財務補償；
 - (g) 提供財務補償以便利按照某項章程的條款取得證券。
- (3) 就本條而言，“公司集團”(group of companies)的涵義與《公司條例》(第32章)中該詞的涵義相同。

第2分部——證券保證金融資人的註冊

**121C. 禁止註冊融資人以外的人進行
證券保證金融資**

- (1) 除註冊融資人外，任何人不得——
 - (a) 經營證券保證金融資業務；或
 - (b) 顯示自己是經營上述業務的人。
- (2) 任何人違反第(1)款，即屬犯罪——
 - (a) 一經循公訴程序定罪，可處罰款\$200,000及監禁2年，如屬持續的罪行，則可就該罪行持續期間的每一日另處罰款\$2,000；或
 - (b) 一經循簡略程序定罪，可處第5級罰款及監禁6個月，如屬持續的罪行，則可就該罪行持續期間的每一日另處罰款\$500。
- (3) 僅就本條而言，任何人在其註冊被暫時吊銷期間須視為並非註冊融資人。

**121D. 非註冊人士不得以註冊融資人
代表身分行事**

- (1) 除註冊融資人代表外，任何人不得——
 - (a) 以註冊融資人代表身分行事；或
 - (b) 顯示自己準備以該代表身分行事。

- (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)

and
prospectus

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) 任何人違反第(1)款，即屬犯罪，一經定罪，可處第4級罰款，如屬持續的罪行，則可就該罪行持續期間的每一日另處罰款 \$500。
- (3) 攝載本條面告，任何人在其註冊暫時結算期間須為並非註冊賬務人代表。

121B. 個人有資格根據本部註冊

- (1) 具有符合以下說明的人方有資格註冊為證券保證金融資人——
 - (a) 該人是一間公司；及
 - (b) 除證券保證金融資業務外，該人並無經營任何業務。
- (2) 只有年滿 18 歲的自然入方有資格註冊為證券保證金融資人代表。

121F. 註冊申請

- (1) 任何合資格的人均可向監察委員會申請註冊為證券保證金融資人或證券保證金融資人代表。
- (2) 註冊申請必須——
 - (a) 載有監察委員會規則所訂明的資料；及
 - (b) 連同如此訂明的文件及費用。
- (3) 如監察委員會提出要求，申請人必須向監察委員會提供與申請有關而監察委員會認為有需要的進一步資料。
- (4) 申請人或其他人在擬據本條提出的申請中，或就根據本條提出的申請，以口頭或書面方式作出他明知屬虛假或嚴重程度的申述或其虛構性極顯而易見的中述，即屬犯罪，一經循公訴程序定罪，可處監禁 5 年。
- (5) 就第(4)款而言，“申述”(representations)指——
 - (a) 對現在或過去的事實的中述；或
 - (b) 關於未來某事實的中述；或
 - (c) 關於現有的某意見、意見、信念、知識之事實或其他思想狀況的中述。
- (6) 就第(4)款所訂罪行而進行的法律程序，可在發現該罪行後 6 個月內在何時間提出。

- (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.

See Comments by Law Society & Securities Commission

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" (40*) 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.

what does this mean?

- (d) 申請人的信譽、在財政方面的穩健性及可靠性，以及申請人的高級人員的信譽、品格及他們在財政方面的穩健性及可靠性；
- (e) 以下人士就申請人提出的要求批准的申請而作出的賦予該項批准或拒絕給予該項批准的決定——
 - (i) 金融管理專員或保險業監理；或
 - (ii) 任何其他主管機關(不論在香港或其他地方)，而該主管機關所履行的職能是監察委員會認為與本條或第1211或1212條賦予監察委員會的職能相類似的。
- (6) 為本條的目的，監察委員會可考慮它所管有的任何有關資料，不論這些資料是由申請人或其他人提供。
- (7) 為本條的目的，監察委員會可考慮它有的關於以下人士的任何資料——
 - (a) 申請人就申請所關乎的業務而僱用或將會僱用的任何人，或就該業務與或將會與申請人有聯繫的任何人；及
 - (b) 將會就該業務以代表身分行事的任何人；及
 - (c) 申請人的任何大股東，或屬於同一公司集團的任何其他公司的任何大股東，或該等任何其他公司的任何高級人員。
- (8) 監察委員會不得在尚未事先給予申請人獲聆聽的機會的情況下拒絕有關申請。
- (9) 在拒絕任何根據本條提出的申請後，監察委員會必須在切實可行的範圍內盡快將該項拒絕以書面通知申請人，並必須在該通知內說明拒絕該項申請的理由。
- (10) 在條(5)款中，其應予批准，即包括提請註冊及發出牌照。

1211H. 批准或拒絕要求將某人註冊為證券保證金融資人代表的申請

- (1) 本條在任何自然人士提出申請註冊為證券保證金融資人代表的情況下具有效力。
- (2) 如有以下情況，監察委員會可拒絕有關申請——
 - (a) 申請人並無資格提出申請；或
 - (b) 申請並不符合第1211條的規定；或

reasonably

- (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 1211 or 1212.~~
- (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.

1211I. 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 1211, or

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 (修訂)條例草案

- (c) 申請人沒有向監察委員會提供由本條或(一)本條訂明的任何：或
- (d) 申請人根據《精神健康條例》(第175章)被關留在精神病院，或申請人患有或看來患有該條例所指的精神紊亂；或
- (e) 申請人是未獲解除破產的破產人，或已與其他債權人訂立《破產條例》(第5章)所指的自動安排。
- (3) 如申請人不能令監察委員會信納申請人是註冊為證券保證金融資人代表的適當人選，則監察委員會必須拒絕有關申請。
- (4) 監察委員會在考慮申請人是否註冊為證券保證金融資人代表的適當人選時，除考慮下列有關的資料外，亦必須考慮以下事項——
- (a) 申請人現時及過去的財政狀況；
- (b) 申請人的學歷或其他資歷或經驗，而在這方面的考慮必須顧及如申請一經獲准則申請人將會履行的職務的性質；
- (c) 申請人能否有效率、誠實及公正地履行該等職務；
- (d) 申請人的信譽、品格及在財政方面的穩健性及可靠性；
- (e) 以下人士就申請人提出的要求批准的申請而作的批准該項批准或拒絕批准該項批准的决定——
- (i) 金融管理專員或牌照業監督；或
- (ii) 任何其他主管當局(不論在香港或其他地方)，而該主管當局所執行的職能是監察委員會認為與本條或第121C或121E條授予監察委員會的職能相類似的；
- (f) 有關與申請人有聯繫或將會與申請人有聯繫的任何人的任何事宜，而該聯繫是與申請一經獲准時則由申請人代為行事的證券保證金融資人的業務有關的；
- (g) 申請人所經營或擬經營的任何業務。
- (5) 為本條的目的，監察委員會可考慮它擁有的任何資料，不論這些資料是否由申請人提供。

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- (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) *reasonably* 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 121C or 121E;
- (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.

(d) 註冊融資人或獲准代該融資人行事的註冊融資人代表的任何作為或不作為，而該作為或不作為是有損或相違可能有利投資大眾的利益的。

121F. 撤回及暫時吊銷註冊融資人代表的註冊

- (1) 任何註冊融資人代表如去世，其註冊即告廢止。
- (2) 如有以下情況，監察委員會可撤銷任何註冊融資人代表的註冊——
 - (a) 該代表根據《精神健康條例》(第136章)被關鎖在精神病院，或該代表患有或看來患有該條例所指的精神紊亂；或
 - (b) 該代表是一項破產令的債主或已與其債權人訂立《破產條例》(第6章)所指的自願安排；或
 - (c) 該代表在香港或其他地方因犯任何罪行而被定罪，而該罪行的定罪必然涉及其作出欺詐或不誠實作為的欺騙；或
 - (d) 該代表被裁定犯本條例所訂罪行；或
 - (e) 該代表不再代其註冊所關乎的註冊融資人行事；或
 - (f) 該代表的註冊所關乎的註冊融資人的註冊被撤銷或暫時吊銷。
- (3) 監察委員會不得在未事先給予註冊融資人代表獲聆聽的機會的情況下根據第(2)款撤銷該代表的註冊。
- (4) 監察委員會亦可應註冊融資人代表或由該代表代為行事的註冊融資人的要求而撤銷該代表的註冊。
- (5) 監察委員會可將註冊融資人代表的註冊暫時吊銷一段期間或直至某事件發生為止以代替根據第(2)款撤銷該項註冊，該期間及該事件由監察委員會決定。

(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.

121F. 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.

representative

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(修訂)第四十條

- (g) 在該日存入該帳戶及在該日從該帳戶提取的每種證券抵押品的數量；
- (h) 該融資人在該日對該帳戶持有的證券抵押品作出的一切處置，以及該等處置所產生的收益是如處理的；
- (i) 在該日記入該帳戶的貸項的收入的分類，及在該日記入該帳戶的借項的利息及其他收費的細目分類。
- (4) 任何註冊融資人必須在每個公曆月結結後的7個營業日內——
- (a) 為其每名客戶備一份符合第(5)款的帳戶結單；及
- (b) 將該帳戶結單給予該客戶。
- (5) 第(4)款所提述的帳戶結單必須包括以下資料——
- (a) 該融資人用以經營業務的名稱，以及在香港經營該業務的主要地點的地址；
- (b) 按第(4)款規定可獲該融資人提供帳戶結單的有關客戶的姓名或名稱、地址及帳戶號碼；
- (c) 該客戶帳戶在該月開始時和結結時的尚待結算餘額，以及在該月內該帳戶結餘的變動的細節；
- (d) 在該月內向該客戶提供的所有財務通融的細節，包括有關國庫的性質、限期及屆滿日期；
- (e) 在該月開始時為該客戶帳戶持有的每種證券抵押品的數量；
- (f) 在該月結結時為該帳戶持有的每種證券抵押品的數量、市場價格、市場價值、保證金比率及保證金價值；
- (g) 在該月內存入該帳戶及在該日內從該帳戶提取的每種證券抵押品的數量；
- (h) 該融資人在該月內對為該帳戶持有的證券抵押品作出的一切處置，以及該等處置所產生的收益是如處理的；
- (i) 在該月內記入該帳戶的貸項的收入的分類，及在該月內記入該帳戶的借項的利息及其他收費的細目分類。
- (6) 任何註冊融資人違反本條，即屬犯罪，一經定罪，可處第4級罰款。

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- (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.

Unclear:
See Sec. 41 by Law
Committee's of each calendar month
Committee's

121AB. 註冊融資人須能遵守財政資源規則通知監察委員會

- (1) 任何註冊融資人如察覺它不能遵守財政資源規則的規定，或察覺理解使它察覺它不能遵守財政資源規則的規定的資料，該融資人必須即時：
- 將此事通知監察委員會；及
 - 停止提供進一步的財務補救，但為履行在該融資人察覺此事之前已訂立的任何協議或安排而提供進一步的財務補救則屬例外。
- (2) 任何註冊融資人的董事如察覺或知悉盡合理努力亦會察覺該融資人不能遵守財政資源規則的規定一事，則該融資人須視為察覺此事。
- (3) 監察委員會如有合理理由相信任何註冊融資人不能遵守財政資源規則的規定，可暫時吊銷該融資人的註冊，聽候監察委員會就第 121B 條所述事項或就根據第 121AY 條委任的核數師所提交的報告作出審議。
- (4) 為確定任何註冊融資人是否正遵守財政資源規則的規定，監察委員會可——
- 要求該融資人及該融資人的任何高級人員、職員或代理人交出由該融資人持有的與該融資人的業務有關的所有會計記錄及其他紀錄，以供查閱；及
 - 要求該融資人的核數師交出該核數師持有的與上述業務有關的所有會計記錄及其他紀錄。
- (5) 第(4)款賦予監察委員會的權力，可由監察委員會為此目的而以書面授權的人行使，但該人在行使上述權力前須出示該書面授權。
- (6) 任何註冊融資人違反第(1)款，即屬犯罪，一經定罪，可處第 4 級罰款，如屬持續的罪行，則可就該罪行持續期間的每一日另處罰款 \$250。
- (7) 任何人無合理辯解而不遵從根據第(4)款對該人作出的要求，即屬犯罪，一經定罪，可處第 5 級罰款及監禁 2 年。

121B. 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

- reasonably
- notify the Commission of the fact, and
 - 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 121B 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—

- 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
- 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.

與

受影響的條文

修訂

與書押或以其他正式處理，即在於該交易向開戶戶本委託按揭(不論是否以書面授權)或交易前或於他人與該項交易的情況下，本款仍具有效力。

(5) 如證券抵押品由交易商的客户或由他人代該客戶存放於該交易商，或由該客戶以權利獲得該項交易商提供財務支援，則該交易商可——

- (a) 將有關的證券抵押品向該交易商提供財務支援的抵押品而存放於任何認可附屬機構；或
- (b) 處置該等證券，以履行該客戶所擔保協定的保證金水平的義務；或
- (c) 處置該等證券，以履行該客戶對項或解除由該交易商所擔保的財務支援的款項責任；或
- (d) 將該等證券——
 - (i) 按照聯合交易所的規則及規例指予或存放於某人；或
 - (ii) 按照香港中央結算有限公司的規則及規例指予或存放於某人；或
 - (iii) 指予或存放於監察委員會規例及施行本條例規定的某類的人；或
- (e) 將該等證券存放於香港中央結算有限公司，作為解除該交易商在結算上的義務和清償該交易商在結算上的負債的抵押品；或
- (f) 將該等證券存放於香港聯合交易所期權結算有限公司，作為該項交易商對期權合約的交還或與期權合約有關的交易的抵押品。

倘該交易商可在獲得該客戶的書面授權或在監察委員會規例規定的情況下方可採取上述行動。

- (6) 第(5)款所提及的授權——
 - (a) 只在該項授權指明其有效期間的情況下方具有效力；及
 - (b) 在該項指明的期間或12個月內(兩者取較長者為準)一直有效；及
 - (c) 可以書面方式延續，但最多於一次，每次不得超過12個月。

與

Provisions affected

Amendment

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 accommodations 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) *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 granted, and remains in force for the period as specified or 12 months, whichever is the shorter; and
 - (b) may be renewed in writing for one or more further periods, not exceeding 12 months at any one time.

*or similar...
(e.g. repos)*