

particular description of securities collateral;

“margin value” (), in relation to each description of securities collateral, means the maximum amount of money which a client is generally permitted to borrow (or otherwise secure other forms of financial accommodation) from a securities dealer or securities margin financier against that particular description of securities collateral;”;

(d) in paragraph (a) of the definition of “securities margin financier’s representative” by deleting “an employee or agent of” and substituting “a person in the employment of, or acting for or by arrangement with,”.

3 (a) in the proposed section 121B by repealing subsections (2) and (3) and substituting -

“(2) Subject to subsection (3), this part does not apply to any of the kinds of business listed in Schedule 4, and a person who carries on such kinds of business and no other securities margin

financing, need not be registered as a securities margin financier.

(3) Where a person carries on a business of securities margin financing to which this Part does apply and, in addition, carries on any of the kinds of business listed in Schedule 4, then this Part applies to such other kinds of business.

(4) The Commission, by Commission rules, may add to, delete from or modify and of the provisions in Schedule 4.”;

(b) in the proposed section 121C -

(i) in subsection (1) -

(A) by deleting “A” and substituting “Subject to section 121B(2), a”;

(B) by adding “in Hong Kong” after “financier”;

(ii) in subsection 2(a) -

(A) by deleting “\$200,000” and substituting “\$1,000,000”;

(B) by deleting “2” and substituting “5”;

(iii) in subsection (2)(b), by deleting “level 5” and substituting “level 6”;

(iv) by adding -

“(2A) Where a person provides financial accommodation and reasonably believes that it is not to be used to facilitate the acquisition of securities listed on a stock exchange or the continued holding of such securities, the person providing the financial accommodation does not contravene this section.”;

(c) in the proposed section 121D(1) (b) by deleting “prepared to act as”;

(d) in the proposed section 121E(1) (b) -

(i) by deleting “company” and substituting “person”;

(ii) by adding”, except business that is necessarily incidental to carrying on such business” after “financing”;

(e) in the proposed section 121F by deleting subsection (3) and substituting -

“(3) An applicant must furnish to the Commission, at the time of the application, such information as may

reasonably be required by the Commission -

- (a) regarding the services which, if the application is allowed, the applicant will hold himself out as being able to provide; and
- (b) regarding the business which the applicant proposes to carry on and to which the application relates, or relating to any person whom the applicant intends or proposes to employ in such business or any person with whom the applicant intends to be associated in the course of carrying on such business; and
- (c) to enable the Commission to take into account any matter relating to -
 - (i) any person who is or is to be employed by, or

associated with, the applicant for the purposes of the proposed business to which the application relates; and

(ii) any person who will be acting as a representative in relation to such business; and

(iii) any substantial shareholder, director or officer of the applicant, any other company in the same group of companies or to any director or officer of any such other

company.”;

(f) in the proposed section 121G(2) by deleting paragraph (a);

(g) in the proposed section 121H -

(i) in subsection (2) by deleting paragraph (a);

(ii) by deleting subsection (5) and substituting -

“(5) 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.”;

(h) in the proposed section 121(J) (3), by adding “, and the Commission must provide reasons for its decision when requested to do so” after “heard”;

(i) in the proposed section 121R(2) (h), by deleting “(whether convicted of the contravention or not)”;

(j) in the proposed sections 121S(4) and 121U(4), by deleting “impose a penalty under this section” and substituting “take any action under subsection (3)”;

- (k) in the proposed section 121V(3) and (4), by deleting “cancel” and substituting “revoke”;
- (l) in the proposed section 121W(1) and (2), by deleting “impose any other penalty on” and substituting “take any other action against”;
- (m) in the proposed section 121Y -
 - (i) by deleting subsection (1) (d) and (e) and substituting -
 - “(d) an adjustment of the amount of financial accommodation provided to the client by the financier (except as a result of interest charged by the financier);
 - (e) an adjustment of the terms on which financial accommodation is provided to the client, whether by extension, reduction, credit or debit (except as a result of a change in market value of securities collateral provided by the client).”;
 - (ii) in subsection (3) -

- (A) in paragraph (d) by adding “together with the interest rate and basis of the interest calculation thereon” after “the accommodation”;
- (B) in paragraph (h) by adding “initiated” after “all disposals”;
- (C) by deleting paragraph (i);
- (iii) in subsection (4)(b) by deleting “give” and substituting “provide”;
- (iv) in subsection (5)(h) by adding “initiated” after “all disposals”;
- (v) in subsection (6), by adding “without reasonable excuse” after “who”;
- (n) in the proposed section 121Z(3) (a) by deleting “2 years” and substituting “3 months”;
- (o) in the proposed section 121AA -
 - (i) in subsection (1) -
 - (A) by adding -
 - “(aa) registered in the name of the financier or a nominee controlled by the financier; or”;

(B) in paragraph (b), by deleting “financial”;

(C) by repealing “; or” at the end of paragraph (b) and substituting a fullstop and by repealing paragraph (c);

(ii) in subsection (4)(a), by deleting “financial” after “authorized”;

(iii) in subsection (7) -

(A) in paragraph (a), by adding “and imprisonment for 2 years” at the end;

(B) in paragraph (b), by deleting “5” and substituting “6”;

(p) in the proposed section 121AB -

(i) in subsection (4), by deleting the introductory words and substituting -

“Where the Commission reasonably believes that a registered financier cannot comply with the financial resources rules, it may, for the purpose of ascertaining whether or not such compliance is taking place -”;

- (ii) in subsection (6) -
 - (A) by deleting “4” and substituting “6”;
 - (B) by deleting “\$250” and substituting “\$1,000”;
- (q) in the proposed section 121AK(4), by deleting “2” and substituting “3”;
- (r) in the proposed section 121AS(1) -
 - (i) by deleting “(and without intent to defraud)”;
 - (ii) by deleting “3” and substituting “5”;
- (s) in the proposed section 121AT -
 - (i) in subsection (1), by adding “, but such auditor may be the same auditor as the one appointed for the purposes of the Companies Ordinance (Cap. 32)” after “records”;
 - (ii) by deleting subsection (3) and substituting -
 - “(3) A person who -
 - (a) is an employee of the financier; or
 - (b) is an officer of the financier; or

(c) is an employee of a person referred to
in paragraph (a) or (b); or

(d) belongs to any other class of persons
prescribed by Commission rules,

is ineligible for appointment under this section.”;

(t) in the proposed section 121AY(2), by deleting “section” and
substituting “Division”;

(u) in the proposed section 121BE, by deleting “5” and substituting
“6”;

(v) in the proposed section 121BF, by deleting “5” and substituting
“6”;

(w) in the proposed section 121BH(4), by deleting all the words after
“offence” and substituting -

“and is liable -

(a) on conviction on indictment, to a fine of
\$1,000,000 and imprisonment for 5 years;

- (b) on summary conviction, to a fine at level 6 and imprisonment for 6 months”.

New By adding the following -

“3A. The following Schedule is added -

“SCHEDULE 4
KINDS OF BUSINESS EXEMPTED
FROM PART XA

- (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 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 that forms part of an arrangement to underwrite or sub-underwrite securities;
- (f) the provision of financial accommodation to facilitate an acquisition of securities in accordance with the terms of a prospectus, regardless of whether the offer of securities is made in Hong Kong or elsewhere;
- (g) the provision of financial accommodation by a company to its directors or employees to facilitate acquisitions or holdings of its own securities;
- (h) the provision of financial accommodation to a registered financier, registered securities dealer or an authorized institution to facilitate the securities margin financing business carried on by such financier, dealer or institution;
- (i) the provision of financial accommodation by a company to its subsidiary or holding company to facilitate acquisitions or holdings of securities;

- (j) the provision of financial accommodation by an individual to a company in which he holds 10% or more of its issued share capital.

- Schedule 1
- (a) In the definition of “dealer”, by adding the following at the end -
item 1 “(e) a registered financier, if the only dealing in securities is entering into agreements with a person (or the act of offering to enter into an agreement, or inducing or attempting to induce a person to enter into or offer to enter into an agreement) for or with a view to the other person acquiring securities, provided these agreements or acts are made solely for the purposes of providing financial accommodation as a registered financier to that person;”;
 - (b) In the proposed new definition of “authorized financial institution”, by deleting “financial”.

Schedule 1 By adding -

“financial”;

(b) in subsection (5) (a), by deleting “financial” after
“authorized”;

(c) in subsection (8) (b), by deleting “5” and substituting “6”.

Schedule 3 By adding the following before item 1 -

“1 Banking Ordinance (Cap. 155)	In section 3(1), add - “(ja) a person who is a registered financier within the meaning of the Securities Ordinance (Cap. 333), where section 121AM of that Ordinance applies to such a
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deposit;”.

Schedule 4 In the proposed section 3, by renumbering it as section 3(1) and adding

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“(2) Notwithstanding subsection (1), a dealer shall not be obliged to comply with section 81 in respect of securities referred to in subsection (1) for a period of 3 months after section 81 comes into operation.”.