

Prohibit persons from being controllers of Exchange Companies or clearing houses unless the persons are recognized exchange controllers; to regulate recognized exchange controllers; to regulate Exchange Companies and clearing houses which have recognized exchange controllers as their controllers; to regulate the ownership of recognized exchange controllers, Exchange Companies and clearing houses; and to provide for matters incidental thereto or connected therewith.

Enacted by the Legislative Council.

PART I

Preliminary

1. Short title and commencement

(1) This Ordinance may be cited as the Exchanges and Clearing Houses (Merger) Ordinance.

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

2. Interpretation

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

"associate" (有聯繫者), in relation to a person entitled to exercise, or control the exercise of, voting power in relation to, or holding shares in, a company---

(a) means any other person in respect of whom that first-mentioned person has an agreement or arrangement, whether oral or in writing, express or implied, with respect to the acquisition, holding or disposal of shares or other interests in that company or under which they act together in exercising their voting power in relation to it; and

(b) includes a person, or a person belonging to a class of persons, specified in a notice under subsection (2) to be an associate for the purposes of this Ordinance;

"clearing house" (結算所) means a recognized clearing house within the meaning of section 2(1) of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420);

"clearing participant" (結算所參與者) means a clearing participant within the meaning of section 2(1) of the Securities and Futures Commission Ordinance (Cap. 24);

"Commission" (證監會) means the Securities and Futures Commission established by section 3 of the Securities and Futures Commission Ordinance (Cap. 24);

"company" (公司) means---

(a) a company within the meaning of section 2(1) of the Companies Ordinance (Cap. 32); or

(b) any other body corporate;

"condition" (條件) includes any deemed condition under this Ordinance;

"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;

"controller" (控制人), in relation to a company, means any person who is---

(a) a shareholder controller of the company; or

(b) an indirect controller of the company;

"Exchange Company" (交易所) means an Exchange Company within the meaning of section 2(1) of the Securities and Futures Commission Ordinance (Cap. 24);

"exchange participant" (交易所參與者) means an exchange participant within the meaning of section 2(1) of the Securities and Futures Commission Ordinance (Cap. 24);

"fee" (費用) includes a charge;

"futures contract" (期貨合約) means a futures contract within the meaning of section 2(1) of the Commodities Trading Ordinance (Cap. 250);

"indirect controller" (間接控制人), in relation to a company, means any person in accordance with whose directions or instructions the directors of the company or of another company of which it is a subsidiary are accustomed to act, but does not include any person in accordance with

whose directions or instructions those directors are accustomed to act by reason only that they act on advice given by him in his professional capacity;

"officer" (高級人員) means an officer within the meaning of section 2(1) of the Companies Ordinance (Cap. 32);

"recognized exchange controller" (認可控制人) means a company recognized as an exchange controller under section 3(2);

"Risk Management Committee" (風險管理委員會), in relation to a recognized exchange controller, means the committee of that name established under section 9(1) by the controller;

"rules of a recognized exchange controller" (認可控制人規章) and "rules of the recognized exchange controller" (該認可控制人規章) mean the rules, by whatever name they may be called and wherever contained, governing the conduct or procedure of---

(a) the recognized exchange controller;

(b) the Risk Management Committee;

(c) any person or body of persons declared in a notice under subsection (3) to be a person or body of persons, as the case may be, to which this definition shall apply;

"securities" (證券) means securities within the meaning of section 2(1) of the Securities Ordinance (Cap. 333);

"served" (送達) includes given;

"shareholder controller" (股東控制人), in relation to a company, means any person who, either alone or with any associate or associates, is entitled to exercise, or

control the exercise of, more than 35% of the voting power at any general meeting of the company or of another company of which it is a subsidiary;

"shares" (股份) includes securities;

"subsidiary" (附屬公司) has the same meaning as in the Companies Ordinance (Cap. 32);

"working day" (工作天) means any day other than---

(a) a public holiday; or

(b) a gale warning day or black rainstorm warning day within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

(2) The Chief Executive in Council may, by notice in the Gazette, declare a person, or a person belonging to a class of persons, specified in the notice to be an associate for the purposes of this Ordinance.

(3) The Commission may, after consultation with the Financial Secretary, by notice in the Gazette, declare a person or body of persons specified in the notice to be a person or body of persons, as the case may be, to which the definition of "rules of a recognized exchange controller" and "rules of the recognized exchange controller" shall apply.

(4) Where there is a reference in this Ordinance or any other enactment to the controller of an Exchange Company or clearing house (howsoever expressed), the term controller shall be construed in accordance with the provisions of this section.

(5) Where under this Ordinance---

(a) an act cannot be done; or

(b) an omission cannot be made,

except with, or unless with, the approval in writing of the Commission, then---

(i) the approval may be subject to such conditions, if any, as the Commission thinks fit and specified in the approval (including conditions failure to comply with which causes the approval to lapse); and

(ii) for the purposes of any pecuniary, custodial or other sanction which may be imposed under this Ordinance in relation to any such act done or omission made without such approval, the approval shall have no effect to the extent that the act is done or the omission made, as the case may be, otherwise than in accordance with any such conditions.

(6) For the avoidance of doubt, it is hereby declared that a notice under subsection (2) or (3) is subsidiary legislation.

PART II

Recognition and Withdrawal of Recognition of Exchange Controller

3. Recognition of exchange controller

(1) Subject to section 7, no person shall become or continue to be the controller

of an Exchange Company or clearing house unless the person is a recognized exchange controller.

(2) Where the Commission is satisfied that it is appropriate to do so---

(a) in the interest of the investing public or in the public interest; or

(b) for the proper regulation of markets in securities or futures contracts,

it may, with the consent in writing of the Financial Secretary, by notice in writing served on a company which is a company referred to in paragraph (a) of the definition of "company", recognize the company as an exchange controller---

(i) subject to such conditions as it thinks fit specified in the notice; and

(ii) with effect from a date specified in the notice for the purpose.

(3) Without prejudice to the generality of conditions which may be specified in a notice under subsection (2), there shall be deemed to be a condition specified in the notice empowering the Commission, by notice in writing served on a recognized exchange controller, to add conditions to, or to vary or repeal any conditions specified in, the first-mentioned notice where the Commission---

(a) is satisfied it is appropriate to do so on a ground specified in paragraph (a) or (b) of that subsection; and

(b) has the consent in writing of the Financial Secretary to do so.

(4) Subject to subsection (5), a person who---

(a) contravenes subsection (1); or

(b) fails to comply with a condition specified in a notice under subsection (2) served on the person,

commits an offence and is liable---

(i) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;

(ii) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months.

(5) Where a person is charged with an offence under subsection (4), it shall be a defence for the person to prove---

(a) in the case of subsection (4)(a), that the person did not know the acts or circumstances by virtue of which the person became the controller of the Exchange Company or clearing house concerned were such as to have that effect;

(b) in the case of subsection (4)(b), that the person exercised all due diligence to comply with the condition concerned.

(6) Where a person is the controller of an Exchange Company or clearing house in contravention of subsection (1) (and whether or not the person is charged with an offence under subsection (4) in relation to the contravention), the Commission may, by notice in writing served on the person, direct the person to take such steps

as are specified in the notice---

- (a) for the purpose of causing the person to cease to be such controller; and
- (b) within such period as is specified in the notice for the purpose.

(7) The steps specified in a notice under subsection (6) may be framed so as to afford the person on whom the notice is served a choice between different ways of ceasing to be the controller of the Exchange Company or clearing house concerned.

(8) The period specified in a notice under subsection (6) for taking the steps specified in the notice shall not expire before the end of the period specified in subsection (9) within which an appeal against the notice may be made and, if such an appeal is made, those steps need not be taken pending the determination, withdrawal or abandonment of the appeal.

(9) A person served with a notice under subsection (6) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period, if any, as the Commission specifies in the notice.

(10) Subject to subsection (11), a person served with a notice under subsection (6) who contravenes the notice commits an offence and is liable---

- (a) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;
- (b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months.

(11) It shall be a defence for a person charged with an offence under subsection (10) to prove that the person exercised all due diligence to comply with the notice concerned under subsection (6) served on the person.

(12) Where a person served with a notice under subsection (6) contravenes the notice (and whether or not the person is charged with an offence under subsection (10)), the provisions of Schedule 1 shall immediately apply.

(13) The provisions of this section, except subsection (4)(a), shall apply to a person who became the controller of an Exchange Company or clearing house before the commencement of this section as they apply to a person who became the controller of an Exchange Company or clearing house on or after that commencement.

(14) Where a company becomes a recognized exchange controller, the Commission shall cause notice of that fact to be published in the Gazette.

(15) Where a company is seeking to be a recognized exchange controller and the Commission is minded not to recognize the company under subsection (2), the Commission shall give the company a reasonable opportunity of being heard before making a decision to so recognize or not recognize the company.

4. Withdrawal of recognition

of exchange controller

(1) Subject to subsection (2), where the Commission is satisfied that it is appropriate to do so---

(a) in the interest of the investing public or in the public interest; or

(b) for the proper regulation of markets in securities or futures contracts, it may, with the consent in writing of the Financial Secretary, by notice in writing served on a recognized exchange controller stating the reasons in support of the ground or grounds for the notice---

(i) withdraw the company's recognition as an exchange controller with effect from a date specified in the notice for the purpose;

(ii) if the company is the controller of an Exchange Company or clearing house, direct the company to take such steps as are specified in the notice---

(A) for the purpose of causing the company to cease to be such controller; and

(B) within such period as is specified in the notice for the purpose.

(2) The Commission shall not exercise its power under subsection (1) in relation to a recognized exchange controller unless it has given the company a reasonable opportunity of being heard.

(3) The steps, if any, specified in a notice under subsection (1) may be framed so as to afford the company on which the notice is served a choice between different ways of ceasing to be the controller of the Exchange Company or clearing house concerned.

(4) The period specified in a notice under subsection (1) for taking the steps, if any, specified in the notice shall not expire before the end of the period specified in subsection (5) within which an appeal against the notice may be made and, if such an appeal is made, those steps need not be taken pending the determination, withdrawal or abandonment of the appeal.

(5) A company served with a notice under subsection (1) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period, if any, as the Commission specifies in the notice.

(6) Subject to subsection (7), a company served with a notice under subsection (1) which contravenes the notice commits an offence and is liable---

(a) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;

(b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months.

(7) It shall be a defence for a company charged with an offence under subsection (6) to prove that the company exercised all due diligence to comply with the notice

concerned under subsection (1) served on the company.

(8) Where a company served with a notice under subsection (1) contravenes the notice (and whether or not the company is charged with an offence under subsection (6)), the provisions of Schedule 1 shall immediately apply.

5. Interest of recognized exchange controller
in Exchange Company or clearing house
cannot be increased or decreased except
with approval of Commission

Where a recognized exchange controller is the controller of an Exchange Company or clearing house, then, by virtue of this section and notwithstanding any other enactment or rule of law---

(a) any interest the recognized exchange controller has in the Exchange Company or clearing house, as the case may be, as such controller cannot be increased or decreased except with the approval in writing of the Commission;

(b) any attempt (whether in the form of an agreement or otherwise and by whomsoever) to increase or decrease any such interest in contravention of paragraph (a) is void for all purposes.

6. Person not to become minority controller
of recognized exchange controller, etc.
without approval of Commission

(1) In this section, "minority controller" (次要控制人), in relation to a company---

(a) means any person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 5% or more of the voting power at any general meeting of the company or of another company of which it is a subsidiary;

(b) does not include a recognized exchange controller.

(2) Subject to subsection (12), on and after the commencement of this section a person shall not become a minority controller of a recognized exchange controller, Exchange Company or clearing house except with the approval in writing of the Commission after consultation with the Financial Secretary (which approval shall be deemed to be subject to a condition that the person shall not increase the interest the person has as such minority controller except with the further approval in writing of the Commission after consultation with the Financial Secretary).

(3) Subject to subsection (4), a person who---

(a) contravenes subsection (2); or

(b) fails to comply with a condition specified in an approval under subsection (2), commits an offence and is liable---

(i) on conviction upon indictment to a fine of \$1,000,000 and, in the case of

an individual, to imprisonment for 2 years;

(ii) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months.

(4) Where a person is charged with an offence under subsection (3), it shall be a defence for the person to prove---

(a) in the case of subsection (3)(a), that the person did not know that the acts or circumstances by virtue of which the person became a minority controller of the recognized exchange controller, Exchange Company or clearing house concerned were such as to have that effect;

(b) in the case of subsection (3)(b), that the person exercised all due diligence to comply with the condition concerned.

(5) Where a person has contravened subsection (2) or failed to comply with a condition specified in an approval under that subsection (and whether or not the person is charged with an offence under subsection (3) in relation to the contravention or failure), the Commission may, by notice in writing served on the person, direct the person to take such steps as are specified in the notice---

(a) for the purpose of causing the person to cease to be a minority controller of the recognized exchange controller, Exchange Company or clearing house the subject of that contravention or failure; and

(b) within such period as is specified in the notice for the purpose.

(6) The steps specified in a notice under subsection (5) may be framed so as to afford the person on whom the notice is served a choice between different ways of ceasing to be a minority controller of the recognized exchange controller, Exchange Company or clearing house concerned.

(7) The period specified in a notice under subsection (5) for taking the steps specified in the notice shall not expire before the end of the period specified in subsection (8) within which an appeal against the notice may be made and, if such an appeal is made, those steps need not be taken pending the determination, withdrawal or abandonment of the appeal.

(8) A person served with a notice under subsection (5) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period, if any, as the Commission specifies in the notice.

(9) Subject to subsection (10), a person served with a notice under subsection (5) who contravenes the notice commits an offence and is liable---

(a) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;

(b) on summary conviction to a fine at level 6 and, in the case of an individual,

to imprisonment for 6 months.

(10) It shall be a defence for a person charged with an offence under subsection (9) to prove that the person exercised all due diligence to comply with the notice concerned under subsection (5) served on the person.

(11) Where a person served with a notice under subsection (5) contravenes the notice (and whether or not the person is charged with an offence under subsection (9)), the provisions of Schedule 1 shall immediately apply.

(12) The Commission may, after consultation with the Financial Secretary, make rules to exempt a person, or a person belonging to a class of persons, specified in the rules from one or more of the requirements of subsection (2) subject to such conditions, if any, as are specified in the rules.

(13) Where a person is seeking to be a minority controller of a recognized exchange controller, Exchange Company or clearing house and the Commission is minded not to give approval under subsection (2) in relation thereto, the Commission shall give the person a reasonable opportunity of being heard before making a decision to give or not give such approval.

(14) For the avoidance of doubt, it is hereby declared that---

(a) nothing in this section shall operate to prevent the Commission from approving under this Ordinance or any other enactment the provisions of the constitution, or the provisions of an amendment to the constitution, of a recognized exchange controller, Exchange Company or clearing house which impose requirements additional to this section in relation to---

(i) interests held in the recognized exchange controller, Exchange Company or clearing house, as the case may be, including, but not limited to, the exercise, or the control of the exercise, of voting power at any general meeting of the recognized exchange controller, Exchange Company or clearing house, as the case may be; or

(ii) steps to be taken for the purpose of causing a person to dispose of any such interest including, but not limited to, ceasing to be a minority controller (by whatever name called) of the recognized exchange controller, Exchange Company or clearing house, as the case may be;

(b) rules made under subsection (12) are subsidiary legislation.

7. Exemption from section 3(1) and revocation of exemption

(1) Where the Financial Secretary is satisfied that it is appropriate to do so---

(a) in the interest of the investing public or in the public interest; or

(b) for the proper regulation of markets in securities or futures contracts,

he may, by notice in writing served on a person, exempt the person from section 3(1)---

(i) subject to such conditions as he thinks fit specified in the notice; and

(ii) with effect from a date specified in the notice for the purpose.

(2) Where the Financial Secretary is satisfied that it is appropriate to do so---
(a) in the interest of the investing public or in the public interest; or
(b) for the proper regulation of markets in securities or futures contracts,
he may, by notice in writing served on a person the subject of an exemption under
subsection (1) stating the reasons in support of the ground or grounds for the notice,
revoke the exemption---

(i) subject to such conditions as he thinks fit specified in the notice; and

(ii) with effect from a date specified in the notice for the purpose, being
a date reasonable in all the circumstances of the case.

(3) Subject to subsection (4), a person who fails to comply with a condition
specified in a notice under subsection (1) or (2) commits an offence and is liable---

(a) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an
individual, to imprisonment for 2 years;

(b) on summary conviction to a fine at level 6 and, in the case of an individual,
to imprisonment for 6 months.

(4) It shall be a defence for a person charged with an offence under subsection
(3) to prove that the person exercised all due diligence to comply with the notice
concerned under subsection (1) or (2) served on the person.

(5) For the avoidance of doubt, it is hereby declared that the Financial
Secretary's power under subsection (2) to revoke an exemption under subsection (1)
includes the power to revoke and replace the exemption.

PART III

Duties of Recognized Exchange Controller to
Ensure Orderly and Fair Market and to
Establish Risk Management Committee

8. Duty to ensure orderly and fair market, etc.

(1) It shall be the duty of a recognized exchange controller which is the
controller of an Exchange Company or clearing house to ensure---

(a) so far as is reasonably practicable, and in its capacity as such controller, an
orderly and fair market in securities or futures contracts traded on or through the
Exchange Company;

(b) that risks are managed prudently by the recognized exchange controller in its
capacity as a recognized exchange controller;

(c) so far as is reasonably practicable, that the Exchange Company or clearing house
comply with any lawful requirement placed on it under any enactment or rule of law
and with any other legal requirement placed on it.

(2) In performing its duty under subsection (1)(a) or (b), a recognized exchange

controller shall---

(a) act in the interests of the public, having particular regard to the interests of the investing public; and

(b) ensure that where the interests referred to in paragraph (a) conflict with any other interests that it is required to serve under any other law, the former shall prevail.

(3) Without prejudice to the generality of section 56(1) of the Securities and Futures Commission Ordinance (Cap. 24), no liability shall be incurred by a recognized exchange controller or any person acting on behalf of a recognized exchange controller, in respect of anything done in good faith in the performance or purported performance of the duty referred to in subsection (1).

9. Establishment and functions of Risk Management Committee

(1) A recognized exchange controller shall, not later than 3 months after the commencement of this section or the date on which it becomes a recognized exchange controller, whichever first occurs, establish and keep established a committee, to be called the Risk Management Committee, to formulate policies on risk management matters relating to the activities of the recognized exchange controller and of any Exchange Company or clearing house of which the recognized exchange controller is the controller.

(2) The Risk Management Committee shall consist of---

(a) the chairman of the recognized exchange controller who shall also be the chairman of the Committee; and

(b) not less than 3 or more than 7 other members.

(3) The Financial Secretary shall appoint not less than 3 or more than 5 of the members referred to in subsection (2)(b).

(4) The recognized exchange controller shall appoint not more than 2 of the members referred to in subsection (2)(b).

(5) Where a policy referred to in subsection (1) is submitted by the Risk Management Committee to the board of directors of the recognized exchange controller with the recommendation of the Committee that the board pass a resolution to adopt and implement the policy, then the board shall, as soon as is reasonably practicable, pass a resolution to adopt and implement the policy unless not less than two-thirds of the total membership of the board pass a resolution stating that the board declines to adopt and implement the policy.

PART IV

Regulation of Recognized Exchange Controller

10. Approval of amendments to the constitution
or rules of recognized exchange controller

(1) No---

(a) amendment of the constitution of a recognized exchange controller; or
(b) rule of a recognized exchange controller or any amendment thereto,
shall have effect unless it has the approval in writing of the Commission.

(2) A recognized exchange controller shall submit or cause to be submitted to
the Commission for its approval---

(a) every amendment of the constitution of the controller;
(b) the rules of the controller and every amendment thereto.

(3) The Commission shall, not later than 6 weeks after the receipt of a submission
under subsection (2) from a recognized exchange controller, by notice in writing
served on the controller, give its approval or refuse to give its approval to the
amendment of the constitution, rules or amendment of the rules, as the case may be,
or any part thereof, the subject of the submission.

(4) The Commission may in a particular case, with the agreement of the recognized
exchange controller, extend the time prescribed in subsection (3).

(5) The Financial Secretary may, on the advice of the Commission and generally
or in a particular case, extend the time prescribed in subsection (3).

(6) The Commission may, by notice in the Gazette, declare any class of rules of
a recognized exchange controller to be a class of rules which are not required to
be approved under subsection (1) and, accordingly, any rules of the controller which
belong to that class (including any amendment thereto) shall have effect
notwithstanding that they have not been so approved.

(7) For the avoidance of doubt, it is hereby declared that a notice under
subsection (6) is not subsidiary legislation.

11. Chairman of recognized exchange controller

(1) No person shall be the chairman of a company which is a recognized exchange
controller, whether he became such chairman before, on or after the commencement of
this section, unless he has the approval in writing of the Chief Executive to hold
that office.

(2) Where the Chief Executive is satisfied that it is appropriate to do so--

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(a) in the interest of the investing public or in the public interest; or
(b) for the proper regulation of markets in securities or futures contracts,
he may, by notice in writing served on a person who is the chairman of a recognized
exchange controller, remove the person from that office with effect from a date
specified in the notice for the purpose.

12. Appointment of chief executive or chief operating officer of recognized exchange controller requires approval of Commission

(1) No appointment of a person as chief executive or chief operating officer of a company which is a recognized exchange controller, whether made before, on or after the commencement of this section, shall have effect unless the appointment has the approval in writing of the Commission.

(2) Where the Commission, after consultation with the Financial Secretary and the chairman of a recognized exchange controller, is satisfied that it is appropriate to do so---

(a) in the interest of the investing public or in the public interest; or

(b) for the proper regulation of markets in securities or futures contracts, it may, by notice in writing served on a person who is the chief executive or chief operating officer of the controller, remove the person from that office with effect from a date specified in the notice for the purpose.

(3) A person served with a notice under subsection (2) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period, if any, as the Commission specifies in the notice, but the notice shall take effect immediately notwithstanding that an appeal has been or may be made under this subsection.

13. Provisions applicable where recognized exchange controller, etc. seeks to be listed company

(1) In this section---

"listed company" (上市公司) means a listed company within the meaning of section 2(1) of the Securities and Futures Commission Ordinance (Cap. 24);

"relevant company" (相關公司) means a company of which the relevant recognized exchange controller is the controller;

"relevant recognized exchange controller" (相關認可控制人) means a recognized exchange controller which is the controller of the Stock Exchange Company;

"Stock Exchange Company" (證券交易所) means the Stock Exchange Company within the meaning of section 2(1) of the Securities and Futures Commission Ordinance (Cap. 24).

(2) The relevant recognized exchange controller, or a relevant company, shall not become a listed company unless and until the Commission states in writing that it is satisfied that---

(a) subject to subsection (3), rules made under section 34 of

the Stock Exchanges Unification Ordinance (Cap. 361) adequately deal with possible conflicts of interest that might arise if the relevant recognized exchange controller or relevant company, as the case may be, were to be a listed company;

and

(b) the relevant recognized exchange controller or relevant company, as the case may be, has entered into arrangements with the Commission that adequately ensure---

(i) the integrity of the market in securities or futures contracts traded on or through the Exchange Company concerned; and

(ii) the compliance with obligations as a listed company which would fall on the relevant recognized exchange controller or relevant company, as the case may be, if it were to become a listed company.

(3) Rules referred to in subsection (2)(a) shall make provision to the effect that the Commission shall, instead of the Stock Exchange Company, take all actions and make all decisions in relation to the relevant recognized exchange controller or relevant company that would be taken by the Stock Exchange Company in the case of a company that was neither a recognized exchange controller nor a relevant company except in the case of any action or decision in respect of which the Commission states in writing that it is satisfied that a conflict of interest will not arise if that action or decision were to be taken or made, as the case may be, by the Stock Exchange Company.

(4) By virtue of this section, the Commission shall have such powers and functions as are provided for it under---

(a) rules made for the purposes of subsections (2)(a) and (3);

(b) arrangements referred to in subsection (2)(b).

(5) Where a fee is payable to the Stock Exchange Company by a person for the taking of an action or the making of a decision which may be taken or made, as the case may be, by the Commission by virtue of subsections (2)(a) and (3), then, notwithstanding any other enactment or rule of law, that person shall pay that fee to the Commission in any case where the Commission takes that action or makes that decision, as the case may be, by virtue of those subsections.

14. Commission may give directions to recognized exchange controller where it is satisfied that conflict of interest exists, etc.

(1) Where the Commission is satisfied that---

(a) a conflict of interest exists or may come into existence between---

(i) the interest of a recognized exchange controller or a company of which the recognized exchange controller is the controller ("relevant company"); and

(ii) the interest of the proper performance of the functions conferred by this Ordinance or any other enactment (including any rules made under any enactment, whether or not they are subsidiary legislation) on the controller or the relevant company; or

(b) such a conflict of interest has existed in circumstances that make it likely that the conflict of interest will continue or be repeated, then the Commission may by notice in writing served on the controller or relevant company, as the case may be, stating the reason or reasons in support of the ground or grounds for the notice, direct the controller or relevant company, as the case may be, to forthwith take such steps as are specified in the notice (including steps in relation to any of its affairs, business and property whatsoever) for the purposes of remedying the conflict of interest or the matters occasioning the conflict of interest, as the case may be.

(2) A recognized exchange controller or relevant company served with a notice under subsection (1) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period, if any, as the Commission specifies in the notice, but the notice shall take effect immediately notwithstanding that an appeal has been or may be made under this subsection.

(3) A recognized exchange controller or relevant company served with a notice under subsection (1) which contravenes the notice commits an offence and is liable---

(a) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;

(b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months.

PART V

Miscellaneous

15. Fees to be approved by Commission

(1) No fee imposed on or after the commencement of this section by---

(a) a recognized exchange controller in its capacity as a recognized exchange controller; or

(b) an Exchange Company or clearing house---

(i) of which the recognized exchange controller is the controller; and

(ii) in its capacity as an Exchange Company or clearing house, as the case may be,

shall have effect unless the fee is specified in the rules of the recognized exchange controller, Exchange Company or clearing house, as the case may be, and has the approval in writing of the Commission.

(2) The Commission shall, in deciding whether or not to approve a fee referred to in subsection (1), have regard to---

(a) the level of competition in Hong Kong for the matter for which the fee is to be imposed; and

(b) the level of fee, if any, imposed by another recognized exchange controller, Exchange Company or clearing house, or any similar body outside Hong Kong, for the same or a similar matter to which the fee relates.

16. Amendment of Schedule 1

The Chief Executive in Council may, by notice in the Gazette, amend Schedule 1.

17. Application of Companies Ordinance

to recognized exchange controller

The provisions of the Companies Ordinance (Cap. 32) shall apply to a recognized exchange controller to the extent that they are not inconsistent with this Ordinance.

PART VI

Transitional Provisions, Savings Provisions

and Consequential Amendments

18. Interpretation

In this Part, unless the context otherwise requires---

"HKEC" (交易結算公司) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name Hong Kong Exchanges and Clearing Limited;

"HKFE" (期交所) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name Hong Kong Futures Exchange Limited;

"HKFECC" (期貨結算公司) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name HKFE Clearing Corporation Limited;

"HKSCC" (香港結算公司) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name Hong Kong Securities Clearing Company Limited;

"SEHK" (聯交所) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name The Stock Exchange of Hong Kong Limited;

"SEOCH" (期權結算公司) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name The SEHK Options Clearing House Limited.

19. HKEC deemed to be recognized exchange controller

On the commencement of section 3(1), the HKEC shall be deemed to be a recognized exchange controller as if, on that commencement, it had been recognized as an exchange controller under section 3(2), and the other provisions of this Ordinance (including sections 3(3) and 4) shall apply to the HKEC accordingly.

20. Financial Secretary may appoint not more than 8 persons to board of directors of HKEC

(1) Notwithstanding any enactment or rule of law---

(a) the Financial Secretary may appoint not more than 8 persons to be members of the board of directors of the HKEC where the Financial Secretary is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest;

(b) no person appointed under paragraph (a) as a member of the board of directors may be removed from that office except by the Financial Secretary revoking the person's appointment.

(2) Subject to subsection (1)(b), a member of the board of directors of the HKEC who is such a member by virtue of an appointment under subsection (1)(a) shall have the same rights, privileges, obligations and liabilities under any enactment or rule of law as a member of that board who is such a member otherwise than by virtue of such an appointment.

21. SEHK and HKFE deemed to be exempted from section 3(1) in relation to SEOCH and HKFECC

On the commencement of section 3(1)---

(a) the SEHK shall be deemed to be exempted from that section in so far as the SEHK is the controller of the clearing house which is the SEOCH as if, on that commencement, the SEHK had been so exempted under section 7(1), and the other provisions of this Ordinance (including section 7(2) and (5)) shall apply accordingly;

(b) the HKFE shall be deemed to be exempted from that section in so far as the HKFE is the controller of the clearing house which is the HKFECC as if, on that commencement, the HKFE had been so exempted under section 7(1), and the other provisions of this Ordinance (including section 7(2) and (5)) shall apply accordingly.

22. HKSCC to be converted from company limited by guarantee to company limited by shares

(1) Notwithstanding any other enactment or rule of law, the constitution of the HKSCC may be amended by special resolution for the purposes of converting the HKSCC from a company limited by guarantee to a company limited by shares.

(2) An amendment for the purposes referred to in subsection (1) shall not have

effect unless it is approved by the Commission.

(3) Notwithstanding any other enactment or rule of law, on the commencement of this subsection, if the constitution of the HKSCC has been amended for the purposes referred to in subsection (1), then---

(a) the HKSCC shall cease to be a company limited by guarantee and shall be deemed to be a company limited by shares in accordance with its constitution as so amended;

(b) the HKSCC shall, as required by the HKEC, issue its shares to the HKEC and any nominee of the HKEC;

(c) the liability of each member and past member of the HKSCC immediately before that commencement as a guarantor on the winding-up of the HKSCC is extinguished;

(d) the HKEC shall, not later than 30 days after that commencement, give a guarantee---

(i) in favour of the HKSCC to the effect that the HKEC undertakes to contribute to the assets of the HKSCC on the winding-up of the HKSCC of an amount not less than the amount of guarantee the HKSCC had immediately before that commencement; and

(ii) in a form approved in writing by the Commission;

(e) the HKSCC shall, not later than 5 working days after that commencement, file a copy of any resolution made for the purposes referred to in subsection (1), and a copy of its constitution as amended pursuant to that or any other resolution, with the Registrar within the meaning of the Companies Ordinance (Cap. 32);

(f) that Registrar shall, not later than 14 days after HKSCC has complied with paragraph (e), issue a certificate stating that the HKSCC has ceased to be a company limited by guarantee and is a company limited by shares with effect on and after that commencement.

(4) It is hereby declared that---

(a) this section does not operate to---

(i) create a new legal entity;

(ii) prejudice or affect the continuity of the HKSCC;

(iii) subject to subsection (3)(c), affect any right, privilege, obligation or liability acquired, accrued or incurred by the HKSCC before the commencement of subsection (3);

(iv) render defective any legal or other proceedings instituted or to be instituted by or against the HKSCC or any other person;

(v) make the HKSCC a company incorporated by an enactment;

(vi) cause any provisions of the Companies Ordinance (Cap. 32) to cease to apply to the HKSCC except to the extent necessary for the purposes of subsections (1), (2) and (3) and paragraphs (b), (c) and (d);

(vii) prevent the HKSCC from converting itself, in accordance with any

enactment or rule of law, from a company limited by shares to another type of company;

(viii) prevent the HKSCC from amending its constitution or rules (within the meaning of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420)) in accordance with any enactment or rule of law;

(b) the memorandum of association of the HKSCC shall not have names subscribed to it;

(c) sections 5(4)(b) and (c), 6 and 12(c) of the Companies Ordinance (Cap. 32) shall not apply to the HKSCC;

(d) section 9 of the Companies Ordinance (Cap. 32) shall apply to the HKSCC as if the words "signed by the subscribers to the memorandum and" were omitted.

23. Certain registered dealers deemed to be exchange participants

(1) A person who was, immediately before the commencement of this section---

(a) a member within the meaning of section 2 of the Securities Ordinance (Cap. 333); and

(b) a registered dealer within the meaning of that section,

shall be deemed to be an exchange participant within the meaning of that section until---

(i) he ceases to be a person who, in accordance with the rules of the Exchange Company referred to in paragraph (a) of the definition of "exchange participant" in that section, may trade on or through the Exchange Company; or

(ii) his name is entered in the list, roll or register referred to in paragraph (b) of that definition, whichever first occurs.

(2) A person who was, immediately before the commencement of this section---

(a) a shareholder within the meaning of section 2 of the Commodities Trading Ordinance (Cap. 250); and

(b) a registered dealer within the meaning of that section,

shall be deemed to be an exchange participant within the meaning of that section until---

(i) he ceases to be a person who, in accordance with the rules of the Exchange Company referred to in paragraph (a) of the definition of "exchange participant" in that section, may trade on or through the Exchange Company; or

(ii) his name is entered in the list, roll or register referred to in paragraph (b) of that definition, whichever first occurs.

24. Consequential amendments

The enactments specified in Schedule 2 are amended as set out in that Schedule.

SCHEDULE 1 [ss. 3(12), 4(8),
6(11) & 16]
Provisions Applicable Where There Is Contravention
of Notice Under Section 3(6), 4(1) or 6(5)

1. Restrictions on and sale of shares

(1) The powers conferred by this section shall be exercisable where a person has contravened a notice under section 3(6), 4(1) or 6(5) of this Ordinance.

(2) The Commission may, by notice in writing served on the person concerned, direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions---

(a) any transfer of those shares or, in the case of unissued shares, any transfer of the right to be issued with them, and any issue of such shares, shall be void;

(b) no voting rights shall be exercisable in respect of the shares;

(c) no further shares shall be issued in right of them or pursuant to any offer made to their holder;

(d) except in a liquidation, no payment shall be made of any sums due from the company concerned on the shares, whether in respect of capital or otherwise.

(3) Where shares are subject to the restrictions under subsection (2)(a), any agreement to transfer the shares or, in the case of unissued shares, the right to be issued with them, shall be void.

(4) Where shares are subject to the restrictions under subsection (2)(c) or (d), an agreement to transfer any right to be issued with other shares in right of those shares, or to receive any payment on them (otherwise than in a liquidation), shall be void.

(5) Where shares are subject to any restrictions under subsection (2), any person affected by any of those restrictions may request the Commission to make an application referred to in subsection (6)(a) in respect of those shares and, where such a request is made, the Commission shall, not later than 30 days after that request has been made---

(a) comply with that request; or

(b) serve a notice in writing on that person stating that it does not propose to comply with that request.

(6) The Court of First Instance may---

(a) on the application of the Commission, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions;

(b) on the application of a person who has made a request under subsection (5) where

he has been served with a notice under paragraph (b) of that subsection in respect of that request, order the sale of any shares to which that request relates and that they shall cease to be subject to any restrictions under subsection (2).

(7) Where an order has been made under subsection (6), the Court of First Instance may, on the application of the Commission, make such further order relating to the sale or transfer of the shares as it thinks fit.

(8) Where shares are sold pursuant to an order under this section, the proceeds of the sale, less the costs of the sale, shall be paid into court for the benefit of the persons beneficially interested in them, and any such person may apply to the Court of First Instance for an order that the whole or part of the proceeds be paid to him.

(9) This section shall apply---

(a) to all the shares in the company concerned by virtue of which the person concerned is a shareholder controller, or minority controller within the meaning of section 6 of this Ordinance, of the company which are held by him or any associate of his and were not so held immediately before he became such a controller; and

(b) where the person concerned became a shareholder controller, or minority controller within the meaning of section 6 of this Ordinance, of the company concerned by virtue of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held immediately before he became such a controller.

(10) A copy of a notice served under subsection (2) on the person concerned shall be served on the company to whose shares it relates and, if it relates to shares held by any associate of that person, on that associate.

(11) The Chief Justice may make rules regulating the practice and procedure in connection with applications (including any class of applications) made under subsection (6).

2. Punishment for attempted evasion of restrictions

(1) Any person who---

(a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to any restrictions under section 1(2) or of any right to be issued with any such shares;

(b) votes in respect of any such shares (whether as holder or proxy), or appoints a proxy to vote in respect of them;

(c) being the holder of any such shares, fails to notify of their being subject to those restrictions any person whom he does not know to be aware of that fact but does know to be entitled (apart from the restrictions) to vote in respect of those shares

whether as holder or as proxy; or

(d) being the holder of any such shares, or being entitled to any right to be issued with other shares in right of them, or to receive any payment on them (otherwise than in a liquidation), enters into any agreement which is void under section 1(3) or (4), commits an offence and is liable---

(i) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;

(ii) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months.

(2) Where shares in a company are issued in contravention of restrictions under section 1(2) or payments are made by a company in contravention of such restrictions, every director and every manager of the company who knowingly and wilfully permits such an issue of shares or the making of such a payment, as the case may be, commits an offence and is liable---

(a) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;

(b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months.

3. Prohibition on certain person acting as indirect controllers

(1) In this section, "prohibited person" (受禁制的人), in relation to a company, means any person who has contravened a notice under section 3(6) or 4(1) of this Ordinance in relation to the company in so far as the notice relates to a controller who is an indirect controller.

(2) No person who is a prohibited person in respect of a company shall act or continue to act, as the case may be, as an indirect controller of the company and, accordingly, as such a controller shall not give or shall cease to give, as the case may be, any directions or instructions to the directors of the company or of another company of which it is a subsidiary.

(3) Where any director of a company or of another company of which it is a subsidiary is given (whether directly or indirectly) any directions or instructions---

(a) by a person whom the director knows, or ought reasonably to know, is a prohibited person in respect of the first-mentioned company; and

(b) which are, or might reasonably be construed as being, prohibited from being so given by virtue of subsection (2),

the director shall forthwith give notice in writing to the Commission of those directions or instructions and the circumstances in which they were so given.

(4) Any prohibited person who contravenes subsection (2) commits an offence and is liable---

(a) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;

(b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months,

and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

(5) Any director who without reasonable excuse contravenes subsection (3) commits an offence and is liable---

(a) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;

(b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months,

and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

(6) In this section, a reference to a continuing offence means an offence consisting of

a person's continued default, refusal or other contravention of subsection (1) or (2), and notwithstanding that any period (howsoever expressed) specified in that subsection for complying with it has expired.

SCHEDULE 2 [s. 24]

Consequential Amendments

Securities and Futures Commission Ordinance

1. Interpretation

Section 2(1) of the Securities and Futures Commission Ordinance (Cap. 24) is amended---

(a) in the definition of "the relevant Ordinances", by adding ", the Exchanges and Clearing Houses (Merger) Ordinance (of 1999)" after "(Cap. 396)";

(b) by adding---

""clearing participant" (結算所參與者) means a participant within the meaning of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420);

"exchange participant" (交易所參與者) means a person---

(a) who, in accordance with the rules of an Exchange Company, may trade on or through the Exchange Company; and

(b) whose name is entered in a list, register or roll kept by the Exchange Company as a person who may trade on or through the Exchange Company;

"recognized exchange controller" (認可控制人) means a recognized exchange controller within the meaning of section 2 of the Exchanges and Clearing Houses (Merger) Ordinance (of 1999);".

2. Functions of Commission

Section 4(1) is amended---

(a) in paragraph (d), by repealing "and clearing houses" and substituting ", clearing houses and recognized exchange controllers";

(b) in paragraph (f), by repealing "members of the Exchange Companies and clearing houses" and substituting "exchange participants of the Exchanges Companies and clearing participants of the clearing houses".

3. Powers of intervention

Section 38(3) is amended by repealing "a member of an Exchange Company or a clearing house" and substituting "an exchange participant of an Exchange Company or clearing participant of a clearing house".

4. Winding-up orders

Section 45(2) is amended by repealing "a member of an Exchange Company or a clearing house" and substituting "an exchange participant of an Exchange Company or clearing participant of a clearing house".

5. Bankruptcy orders

Section 46(2) is amended by repealing "a member of an Exchange Company or a clearing house" and substituting "an exchange participant of an Exchange Company or clearing participant of a clearing house".

6. Transfer and resumption of functions

Section 47 is amended---

(a) by repealing subsection (1) and substituting---

"(1) If it appears to the Commission that an Exchange Company, or a recognized exchange controller which is the controller of the Exchange Company, is willing and able to perform all or any of the functions to which this section applies, it may request the Chief Executive in Council to make an order ("transfer order") transferring all or any of those functions to the Exchange Company or recognized exchange controller ("designated company"), as the case may be, or transfer the functions in so far as they or it apply or applies to the exchange participants or applicants to be exchange participants of the designated company which is that Exchange Company.";

(b) in subsections (3), (4), (5), (6) and (7), by repealing "Exchange Company" and substituting "company".

7. Information: Exchange Companies, clearing houses and recognized exchange controllers

Section 48 is amended---

(a) in subsection (1)---

(i) by repealing "or any clearing house" and substituting ", any clearing house or any recognized exchange controller";

(ii) by repealing "members" and substituting "exchange participants";

(b) in subsection (2)---

(i) by repealing "or clearing house" and substituting ", clearing house or recognized exchange controller";

(ii) by adding ", in the case of an Exchange Company or clearing house," after "including";

(iii) by repealing "members" and substituting "exchange participants or clearing participants, as the case may be".

8. Additional powers---restriction notices relating to Exchange Companies, clearing houses and recognized exchange controllers

Section 50 is amended---

(a) (i) in subsections (1), (2)(b) and (c)(i) and (ii), (3)(a) and (8), by repealing "or clearing house" wherever it appears and substituting ", clearing house or recognized exchange controller";

(ii) in subsection (9), by repealing "或結算所" and substituting "、結算所或認可控制人";

(b) in subsection (10), by repealing "or clearing house, or any member, officer or servant of an Exchange Company or clearing house" and substituting ", clearing house or recognized exchange controller, or any exchange participant, clearing participant, officer or servant of an Exchange Company, clearing house or recognized exchange controller".

9. Additional powers---suspension orders relating to Exchange Companies, clearing houses and recognized exchange controllers

Section 51 is amended---

(a) in subsection (1)---

(i) by repealing "or clearing house," and substituting ", clearing house or recognized exchange controller,";

(ii) by repealing "or clearing house---" and substituting ", clearing house or recognized exchange controller---";

(iii) in paragraph (a), by repealing "or clearing house" and substituting ",

clearing house or recognized exchange controller";

(iv) in paragraph (d), by repealing "or clearing house" and substituting ", clearing house or recognized exchange controller or the functions of the chief operating officer of the recognized exchange controller";

(b) in subsections (2)(a), (4)(a) and (b)(i), (6)(a) and (7), by repealing "or clearing house" and substituting ", clearing house or recognized exchange controller".

10. Injunctions to restrain contraventions

Section 55(2) is amended by repealing "a member" and substituting "an exchange participant".

11. Preservation of secrecy, etc.

Section 59(2)(f) is amended---

(a) in subparagraph (iv), by repealing "or";

(b) by repealing subparagraph (v) and substituting---

"(v) a clearing house; or

(vi) a recognized exchange controller,".

12. Functions of Commission to which

section 9 does not apply

The Schedule is amended, in paragraph 5, by repealing ", 36(1) or 44(3)" and substituting "or 36(1)".

Telecommunication Ordinance

13. Temporary restriction on

disposal or acquisition

Section 13J(4)(b)(iii) of the Telecommunication Ordinance (Cap. 106) is amended by repealing "a stockbroker" and substituting "an exchange participant".

Prevention of Bribery Ordinance

14. Public bodies

Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is amended by adding---

"96. Hong Kong Exchanges and Clearing Limited.".

15. Public bodies specified for purposes of

definition of "public servant"

Schedule 2 is amended by adding---

"6. Hong Kong Exchanges and Clearing Limited.".

Commodities Trading Ordinance

16. Interpretation

Section 2(1) of the Commodities Trading Ordinance (Cap. 250) is amended---

(a) in the definition of "default", by repealing "shareholder" wherever it appears

and substituting "exchange participant";

(b) in the definition of "rules of the Exchange Company", by repealing "shareholders" and substituting "exchange participants";

(c) by repealing the definition of "shareholder";

(d) by adding---

"exchange participant" (交易所參與者) means a person---

(a) who, in accordance with the rules of the Exchange Company, may trade on or through the Exchange Company; and

(b) whose name is entered in a list, register or roll kept by the Exchange Company as a person who may trade on or through the Exchange Company;

"recognized exchange controller" (認可控制人) means a recognized exchange controller within the meaning of section 2 of the Exchanges and Clearing Houses (Merger) Ordinance (of 1999);

"trading right" (交易權) means a right to be eligible to trade on or through the Exchange Company and entered as such a right in a list, register or roll kept by the Exchange Company."

17. Licensing of the Commodity Exchange

Section 13(3) is amended---

(a) by repealing paragraphs (d) and (e);

(b) in paragraphs (j) and (k), by repealing "shareholders" and substituting "exchange participants".

18. Disqualifications from becoming or remaining shareholders

Section 17 is repealed.

19. Deposits to be paid by dealers

Section 31(1)(a)(i), (b)(i) and (c)(i) and (2)(c) and (d) is amended by repealing "shareholder" wherever it appears and substituting "holder of a trading right".

20. Contract levy

Section 79A is amended---

(a) in subsection (1), by repealing "shareholder" and substituting "exchange participant";

(b) in subsection (4)(a), by repealing "a shareholder" and substituting "an exchange participant".

21. Exchange Company to make deposits in respect of holders of trading rights

Section 82(1) is amended by repealing "shareholder" and substituting "holder of a trading right".

22. Effect of persons ceasing to be

holders of trading rights

Section 84(1), (2) and (3) is amended by repealing "shareholder" wherever it appears and substituting "holder of a trading right".

23. Replenishment of compensation fund in certain cases

Section 85(1) and (2) is amended by repealing "shareholder" wherever it appears and substituting "holder of a trading right".

24. Claims against the compensation fund

Section 87 is amended---

(a) in subsection (1)---

(i) by repealing "a shareholder" and substituting "an exchange participant";

(ii) by repealing "the shareholder" wherever it appears and substituting "the exchange participant";

(b) in subsections (2), (3) and (4A), by repealing "shareholder" wherever it appears and substituting "exchange participant".

25. Rights of innocent directors, etc. in relation to the compensation fund

Section 88 is amended---

(a) in subsection (1)---

(i) by repealing "a shareholder" and substituting "an exchange participant";

(ii) by repealing "the shareholder" where it twice appears and substituting "the exchange participant";

(b) in subsection (2), by repealing "shareholder" where it twice appears and substituting "exchange participant";

(c) in subsection (3), by repealing "a shareholder" where it twice appears and substituting "an exchange participant".

26. Notice calling for claims against the compensation fund

Section 89 is amended---

(a) in subsection (1)---

(i) by repealing "a shareholder" and substituting "an exchange participant";

(ii) by repealing "the shareholder" and substituting "the exchange participant";

(b) by adding---

"(5) Where a recognized exchange controller is the controller of the Exchange Company, then subsection (4) shall apply to the recognized exchange controller and any member of its board of directors as that subsection applies to the Exchange Company and any member of the management committee.".

27. Exchange Company may require production of documents, etc.

Section 91(1)(b) is amended by repealing "shareholder" and substituting "exchange participant".

28. Supplementary provisions relating to court proceedings

Section 93(c) is amended by repealing "shareholder" where it twice appears and substituting "exchange participant".

29. Subrogation of the Commission to rights, etc. of claimant on payment from compensation fund

Section 95(b) is amended---

(a) by repealing "the shareholder" and substituting "the exchange participant";

(b) by repealing "a shareholder" and substituting "an exchange participant".

30. Provision where the compensation fund is insufficient to meet claims

Section 97(2) is amended by repealing "shareholder" and substituting "exchange participant".

31. Report of certain matters regarding exchange participants

Section 100 is amended---

(a) in subsection (1), by repealing "a shareholder" and substituting "an exchange participant";

(b) in subsection (2), by repealing "the membership of a shareholder is suspended, or a shareholder is expelled from membership" and substituting "an exchange participant is suspended, or expelled".

32. Prohibition of use of title "commodity exchange", etc.

Section 106(1) is amended by adding ", or a recognized exchange controller which is the controller of the Exchange Company," after "Exchange Company".

Securities Ordinance

33. Interpretation

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

(a) by repealing the definitions of "corporate member", "individual member", "member" and "stockbroker";

(b) in the definition of "rules", by repealing "members" and substituting "exchange participants";

(c) in the definition of "stock market", in paragraphs (a) and (b), by repealing "a

stockbroker" and substituting "an exchange participant";

(d) by adding---

"exchange participant" (交易所參與者) means a person---

(a) who, in accordance with the rules of the Exchange Company, may trade on or through the Exchange Company; and

(b) whose name is entered in a list, register or roll kept by the Exchange Company as a person who may trade on or through the Exchange Company;

"recognized exchange controller" (認可控制人) means a recognized exchange controller within the meaning of section 2 of the Exchanges and Clearing Houses (Merger) Ordinance (of 1999);

"trading right" (交易權) means a right to be eligible to trade on or through the Exchange Company and entered as such a right in a list, register or roll kept by the Exchange Company;"

34. Rules

Section 14(1) is amended---

(a) in paragraph (d), by repealing "to membership" and substituting "as exchange participants";

(b) in paragraph (fa), by repealing "member" and substituting "exchange participant";

(c) in paragraph (fb), by repealing "the membership of, any of its members, or requests any of its members to resign his membership" and substituting "an exchange participant, or requests any exchange participant to resign".

35. Restriction on use of the title

"stock exchange", etc.

Section 21(1) is amended by adding "or a recognized exchange controller which is the controller of the Exchange Company" after "Exchange Company".

36. Appeal against direction, etc.

Section 29(1) is amended by adding "(or, if a recognized exchange controller is the controller of the Exchange Company, that recognized exchange controller)" after "Exchange Company".

37. Deposit required before registration as dealer

Section 52(6)(a), (b) and (c) is amended by repealing "member" wherever it appears and substituting "the holder of a trading right".

38. Offers by dealers

Section 72(5)(d) is amended by repealing "a stockbroker" and substituting "an exchange participant".

39. Disclosure of certain interests

Section 79(2) is amended by repealing "a stockbroker" and substituting "an exchange participant".

40. Short selling prohibited

Section 80(4)(c) is amended by repealing "a stockbroker" and substituting "an exchange participant".

41. Certain money received by dealer to be paid into a trust account

Section 84(1)(a) and (b) is amended by repealing "a stockbroker" and substituting "an exchange participant".

42. Right of committee to impose obligations, etc., on exchange participants not affected by this Part

Section 97 is amended by repealing "members" and substituting "exchange participants".

43. Interpretation

Section 98(1) is amended---

(a) in the definition of "default"---

(i) by repealing "a stockbroker" and substituting "an exchange participant";

(ii) by repealing "the stockbroker" wherever it appears and substituting "the exchange participant";

(b) in the definition of "stockbroking business", in paragraph (a), by repealing "a member" and substituting "an exchange participant".

44. Exchange Company to make deposits in respect of exchange participants

Section 104 is amended---

(a) in subsection (1), by repealing "membership of the Exchange Company" and substituting "trading right";

(b) in subsection (2)---

(i) in paragraph (a)---

(A) by repealing "membership" and substituting "trading right";

(B) by repealing "and";

(ii) by repealing paragraph (b);

(c) by repealing subsection (3).

45. Section substituted

Section 106 is repealed and the following substituted---

"106. Repayment of deposits in certain cases

(1) Where the Exchange Company has deposited a sum of money with the Commission under section 104 in respect of a trading right and thereafter a person ceases to

be the holder of the trading right, then the Commission shall, unless the money is required to satisfy any claims or liabilities arising before such cessation, within 6 months after the cessation, deliver to the Exchange Company the sum deposited in respect thereof.

(2) If any money has been delivered to the Exchange Company pursuant to subsection (1) in respect of a trading right, the Exchange Company shall, if the person who ceased to be the holder of the trading right has satisfied all financial obligations due to the Exchange Company and is otherwise in good standing with the Exchange Company, deliver the money---

(a) to the person;

(b) where the person has died or is bankrupt, to his personal representative or trustee in bankruptcy, as the case may be; or

(c) where the person is a corporation in liquidation, to the liquidator thereof.".

46. Replenishment of fund in certain cases

Section 107 is amended---

(a) in subsection (1), by repealing "a stockbroker" and substituting "an exchange participant";

(b) in subsection (2), by repealing "the stockbroker" and substituting "the exchange participant".

47. Claims against the fund

Section 109 is amended---

(a) in subsection (1)---

(i) by repealing "a stockbroker" and substituting "an exchange participant";

(ii) by repealing "that stockbroker" and substituting "that exchange participant";

(iii) by repealing "the stockbroker" wherever it appears and substituting "the exchange participant";

(b) in subsections (2) and (3), by repealing "stockbroker" and substituting "exchange participant";

(c) in subsection (7)(a)---

(i) by repealing ""stockbroker" (股票經紀)" and substituting ""exchange participant" (交易所參與者)";

(ii) by repealing "a member" where it twice appears and substituting "an exchange participant".

48. Rights of innocent partner, etc. in relation to the fund

Section 111 is amended---

(a) in subsection (1)---

(i) by repealing "a stockbroker" wherever it appears and substituting "an exchange participant";

(ii) by repealing "that stockbroker" and substituting "that exchange participant";

(b) in subsection (2), by repealing "stockbroker" and substituting "exchange participant".

49. Notice calling for claims
against the fund

Section 112 is amended by adding---

"(5) Where a recognized exchange controller is the controller of the Exchange Company, then subsection (4) shall apply to the recognized exchange controller, the board of directors or any member thereof of the recognized exchange controller, or any employee of the recognized exchange controller, as it applies to the Exchange Company, the committee or any member thereof, or any employee of the Exchange Company."

50. Power of the committee of the Exchange
Company in respect of claims

Section 113(5A) is amended by repealing "a stockbroker" and substituting "an exchange participant".

51. Committee of the Exchange Company may
require production of securities, etc.

Section 114(1)(b) is amended by repealing "a stockbroker" and substituting "an exchange participant".

52. Supplementary provisions relating to proceedings
brought under section 115

Section 116(c) is amended by repealing "stockbroker" where it twice appears and substituting "exchange participant".

53. Subrogation of the Commission to rights,
etc., of claimant on payment from fund

Section 118(b) is amended by repealing "stockbroker" where it twice appears and substituting "exchange participant".

54. Provision where fund is insufficient to
meet claims or where claims exceed
total amount payable

Section 120(2) is amended by repealing "stockbroker or stockbrokers" and substituting "exchange participant or exchange participants".

55. Regulations

Section 146(1)(ra) is amended by repealing "stockbroker" and substituting

"exchange participant".

56. Requirements to be satisfied in relation to offers to acquire securities

Schedule 1 is amended, in paragraph 4, by repealing "a stockbroker" and substituting "an exchange participant".

57. Requirements to be satisfied in relation to offers to dispose of securities

Schedule 2 is amended, in paragraph 6, by repealing "a stockbroker" and substituting "an exchange participant".

Stock Exchanges Unification Ordinance

58. Interpretation

Section 2 of the Stock Exchanges Unification Ordinance (Cap. 361) is amended---

(a) in subsection (1)---

(i) by repealing the definition of "member";

(ii) by adding---

"exchange participant" (交易所參與者) means a person---

(a) who, in accordance with the rules of the Exchange Company, may trade on or through the Exchange Company; and

(b) whose name is entered in a list, register or roll kept by the Exchange Company as a person who may trade on or through the Exchange Company;

"recognized exchange controller" (認可控制人) means a recognized exchange controller within the meaning of section 2 of the Exchanges and Clearing Houses (Merger) Ordinance (of 1999);";

(b) by repealing subsection (2).

59. Committee to manage the Exchange Company

Section 10(3) to (7) is repealed.

60. Sections repealed

Sections 11, 12, 13 and 14 are repealed.

61. Duty of Exchange Company to notify in relation to compliance by its exchange participants with section 65B of the Securities Ordinance

Section 15 is amended---

(a) by repealing subsection (1);

(b) in subsection (2)(a) and (b), by repealing "member" and substituting "exchange participant".

62. Void agreements

Section 26 is amended---

- (a) by adding "or an exchange participant" after "a member" where it first appears;
- (b) in the proviso---
 - (i) in paragraph (b), by adding "or exchange participant" after "member";
 - (ii) in paragraph (c), by adding "or exchange participant" after "such member".

63. The Unified Exchange

Section 27(4) is repealed and the following substituted---

"(4) The reference in subsection (1) to the Exchange Company includes---

- (a) a recognized exchange controller which is the controller of the Exchange Company; and
- (b) an Exchange Company, within the meaning of section 2(1) of the Securities and Futures Commission Ordinance (Cap. 24), of which that recognized exchange controller is the controller."

64. Premises of the Unified Exchange, etc.

Section 29 is amended by adding---

"(3) Where a recognized exchange controller is the controller of the Exchange Company, then the recognized exchange controller shall at all times maintain to the satisfaction of the Commission adequate and properly equipped premises for the conduct of the business of the recognized exchange controller."

65. Rules of the Unified Exchange

Section 34 is amended---

(a) by repealing subsection (1)(b) and substituting the following---

"(b) to deal with possible conflicts of interest that might arise where a relevant recognized exchange controller or a relevant company, within the meaning of section 13 of the Exchanges and Clearing Houses (Merger) Ordinance (of 1999), seeks to be or is a listed company within the meaning of that section; and";

(b) by adding---

"(2A) The Commission may exercise the power under subsection (1)(b) instead of the Exchange Company."

66. Withdrawal of recognition of the Exchange Company

Section 36(1)(c) is amended by repealing "or 44(3)".

67. Exchange Company to amend its articles of association

Section 44 is repealed.

68. Schedule 1 repealed

Schedule 1 is repealed.

Securities (Insider Dealing) Ordinance

69. Possession of relevant information
obtained in privileged capacity

Section 5 of the Securities (Insider Dealing) Ordinance (Cap. 395) is amended---

(a) in subsection (2)(c), by repealing "or any clearing house" and substituting ", any clearing house or any recognized exchange controller";

(b) in subsection (3), by adding---

"member" (成員) includes an exchange participant within the meaning of section 2 of the Securities and Futures Commission Ordinance (Cap. 24);

"recognized exchange controller" (認可控制人) means a recognized exchange controller within the meaning of section 2 of the Exchanges and Clearing Houses (Merger) Ordinance (of 1999);".

Securities (Disclosure of Interests) Ordinance

70. Interests to be disregarded

Section 14(4)(a)(iii) of the Securities (Disclosure of Interests) Ordinance (Cap. 396) is amended by repealing "a stockbroker" and substituting "an exchange participant".

Legislative Council Ordinance as amended by the Legislative
Council (Amendment) Ordinance 1999

71. Composition of the financial services
functional constituency

Section 20U of the Legislative Council Ordinance (Cap. 542) as amended by the Legislative Council (Amendment) Ordinance 1999 (48 of 1999) is amended---

(a) by renumbering it as section 20U(1);

(b) in subsection (1), by repealing paragraphs (a) and (b) and substituting---

"(a) subject to subsection (2), exchange participants of the Exchange Company within the meaning of section 2 of the Stock Exchanges Unification Ordinance (Cap. 361);

(b) subject to subsection (2), exchange participants of the Exchange Company within the meaning of section 2 of the Commodities Trading Ordinance (Cap. 250); and";

(c) by adding---

"(2) Notwithstanding any other enactment or rule of law---

(a) by virtue of this subsection, the rules of an Exchange Company may provide that a class of exchange participants specified in the rules are not exchange participants for the purposes of this Ordinance;

(b) no amendment or substitution of the rules of an Exchange Company made on or after the commencement of this subsection shall have effect---

(i) for the purposes of this Ordinance to the extent, if any, to which the

amendment or substitution, as the case may be, causes a person to become or to cease to be an exchange participant of the Exchange Company; and

(ii) unless the amendment or substitution, as the case may be, has been approved in writing by the Secretary for Constitutional Affairs.

(3) In subsection (2)---

"Exchange Company" (交易所) means an Exchange Company within the meaning of section 2 of the Securities and Futures Commission Ordinance (Cap. 24);

"exchange participant" (交易所參與者) means an exchange participant within the meaning of section 2 of the Securities and Futures Commission Ordinance (Cap. 24);

"rules" (規章), in relation to an Exchange Company, means the rules governing the conduct, or the operation and management, of the Exchange Company or the conduct of its exchange participants, by whatever name such rules may be called and wherever contained."

72. Who is eligible to be registered as an elector: functional constituencies

Section 25 is amended---

(a) in subsection (4), by adding "20U(1)(a) and (b)," after "20T,";

(b) in subsection (5), by adding "(1)(c)" after "20U".

73. Savings and transitional provisions

Schedule 3 is amended by adding---

"4. Basis for the next provisional register of the financial services functional constituency

(1) The existing final register of functional constituencies published under section 32(1)(b) of this Ordinance, in so far as it relates to the financial services functional constituency, forms the basis of the next provisional register for the financial services functional constituency.

(2) Sections 2 and 3 shall apply to and in relation to the next provisional register for the financial services functional constituency and to the financial services functional constituency as they apply to and in relation to the first provisional register for the catering functional constituency and to the catering functional constituency.

(3) In this section, "the next provisional register for the financial services functional constituency" (金融服務界功能界別下一份臨時選民登記冊) means the part in the provisional register of functional constituencies to be compiled not later than 15 April 2000 under section 32(1)(a) of this Ordinance that relates to the financial services functional constituency."

Securities and Futures Commission (Fees) Rules

74. Application fees, annual fees, etc.

Schedule 1 to the Securities and Futures Commission (Fees) Rules (Cap. 24 sub. leg.) is amended by repealing item 25.

Financial Resources Rules

75. Interpretation

Section 2 of the Financial Resources Rules (Cap. 24 sub. leg.) is amended, in the definition of "adjusted net admissible assets", by repealing "members" and substituting "participants".

76. Interpretation

Section 5 is amended, in the definition of "securities introducing broker", in paragraphs (a) and (b), by repealing "members of the Unified Exchange or" and substituting "exchange participants of the Unified Exchange or members".

77. Liquid assets

Section 9 is amended---

(a) in paragraph (ze)(i) and (ii), by adding "or participants" after "members";
(b) in paragraph (zf)(i), by repealing "a member of the Unified Exchange or" and substituting "an exchange participant of the Unified Exchange or a clearing participant of";

(c) in paragraphs (zg)(i) and (zi), by adding "or participants" after "members".

78. Calculation of liquid assets

and ranking liabilities

Section 11(16) is amended by repealing "a member of the relevant exchanges or clearing houses" and substituting "an exchange participant or clearing participant in relation to the relevant exchanges or clearing houses, as the case may be".

79. Interpretation

Section 12 is amended, in the definition of "futures introducing broker", in paragraphs (a) and (b), by repealing "members of the Commodity Exchange or" and substituting "exchange participants of the Commodity Exchange or members".

80. Adjusted current assets

Section 15 is amended---

(a) in paragraphs (f), (g), (h) and (k)(i), by adding "clearing participants or" before "clearing members";

(b) in paragraph (l)(vi), by adding "participation or" before "membership costs".

81. Registered dealers to lodge

quarterly returns

Section 22 is amended by repealing "a member" and substituting "an exchange participant".

Securities and Futures Commission

(Annual Returns) Rules

82. Schedule amended

The Schedule to the Securities and Futures Commission (Annual Returns) Rules (Cap. 24 sub. leg.) is amended, in the Annual Return, in Part C---

(a) in paragraph 23(a) and (b), by repealing "a member" and substituting "an exchange participant/member";

(b) in paragraphs 24 and 25, by repealing "membership" and substituting "exchange participants/ membership".

Securities and Futures Commission

(Transfer of Functions) Order

83. Section substituted

Section 3 of the Securities and Futures Commission (Transfer of Functions) Order (Cap. 24 sub. leg.) is repealed and the following substituted---

"3. Application

Nothing in this Order shall apply in relation to---

(a) prospectuses of mutual fund corporations, as defined by section 2(1) of the Securities Ordinance (Cap. 333);

(b) functions conferred upon the Commission by virtue of section 13 of the Exchanges and Clearing Houses (Merger) Ordinance (of 1999) or section 34 of the Stock Exchanges Unification Ordinance (Cap. 361) or any rules made under either of those sections."

Commodities Trading (Dealers, Commodity Trading Advisers and Representatives) Rules

84. Particulars to be entered in registers

Rule 6 of the Commodities Trading (Dealers, Commodity Trading Advisers and Representatives) Rules (Cap. 250 sub. leg.) is amended by adding---

"(3) In this rule, "member" (會員) includes an exchange participant."

85. Schedule 1 amended

Schedule 1 is amended---

(a) in Form 1---

(i) in Part C---

(A) in item C13---

(I) by repealing "a shareholder" wherever it appears and substituting "an exchange participant";

(II) by repealing "became shareholder" and substituting "became exchange participant";

(B) in item C14---

(I) by repealing "a member" and substituting "an exchange participant/ member";

(II) by repealing "membership" where it twice appears and substituting "exchange participants/ membership";

(III) by repealing "became member" and substituting "became exchange participant/member";

(C) in items C15(a), C16(a) and C17(a), by repealing "membership" and substituting "exchange participants/membership";

(ii) in Part D---

(A) in item D21---

(I) by repealing "a shareholder" wherever it appears and substituting "an exchange participant";

(II) by repealing "became shareholder" and substituting "became exchange participant";

(B) in item D22---

(I) by repealing "a member" and substituting "an exchange participant/ member";

(II) by repealing "membership" where it twice appears and substituting "exchange participants/ membership";

(III) by repealing "became member" and substituting "became exchange participant/member".

(C) in items D23(a), D24(a) and D25(a), by repealing "membership" and substituting "exchange participants/membership";

(b) in Form 2---

(i) in item 15, by repealing "a shareholder" wherever it appears and substituting "an exchange participant";

(ii) in item 16---

(A) by repealing "a member" where it twice appears and substituting "an exchange participant/member";

(B) by repealing "membership" wherever it appears and substituting "exchange participant/membership";

(iii) in items 17(a), 18(a) and 19(a), by repealing "membership" and substituting "exchange participants/membership".

Commodities Trading (Trading Limits and Position Limits) Rules

86. Compliance by exchange members

Section 4 of the Commodities Trading (Trading Limits and Position Limits) Rules (Cap. 250 sub. leg.) is amended---

(a) by repealing "a shareholder" and substituting "an exchange participant";

(b) in paragraphs (a) and (b), by repealing "shareholder" and substituting "exchange participant".

Securities (Miscellaneous) Rules

87. Change of information

Rule 7(a)(ii) of the Securities (Miscellaneous) Rules (Cap. 333 sub. leg.) is amended by adding "exchange participation or" after "change in".

Securities (Dealers, Investment Advisers, Partnerships and Representatives) Rules

88. Particulars to be entered in the register of dealers

Rule 6(a)(vi), (b)(vii) and (c)(vii) of the Securities (Dealers, Investment Advisers, Partnerships and Representatives) Rules (Cap. 333 sub. leg.) is amended by repealing "a member" and substituting "an exchange participant or member".

89. Particulars to be entered in the register of investment advisers

Rule 7(c)(vii) is amended by repealing "a member" and substituting "an exchange participant or member".

90. Particulars to be entered in the register of dealers* representatives

Rule 8(e) is amended by repealing "a member" and substituting "an exchange participant or member".

91. Schedule amended

The Schedule is amended---

(a) in Form 1---

(i) in Part C---

(A) in item C12---

(I) by repealing "a member" and substituting "an exchange participant/ member";

(II) by repealing "membership" where it twice appears and substituting "exchange participation/ membership";

(III) by repealing "became member" and substituting "became exchange participant/member";

(B) in items C13(a), C14(a) and C15(a), by repealing "membership" and substituting "exchange participation/membership";

(ii) in Part D---

(A) in item D20---

(I) by repealing "a member" and substituting "an exchange participant/ member";

(II) by repealing "membership" where it twice appears and substituting "exchange participation";

(III) by repealing "became member" and substituting "became exchange participant/member";

(B) in items D21(a), D22(a) and D23(a), by repealing "membership" and substituting "exchange participant/membership";

(b) in Form 2---

(i) in item 15---

(A) by repealing "a member" where it twice appears and substituting "an exchange participant/member";

(B) by repealing "membership" wherever it appears and substituting "exchange participant/membership";

(ii) in items 16(a), 17(a) and 18(a), by repealing "membership" and substituting "exchange participant/membership".

Securities (Exchange---Traded Stock Options) Rules

92. Prescribed limits and reporting levels

Section 2(3) of the Securities (Exchange---Traded Stock Options) Rules (Cap. 333 sub. leg.) is amended---

(a) by repealing "a member" and substituting "an exchange participant";

(b) in paragraphs (a) and (b), by repealing "that member" and substituting "that exchange participant".

Securities (Disclosure of Interests)

(Exclusions) Regulations

93. Prescribed interests

Regulation 3(2)(b)(i) of the Securities (Disclosure of Interests)(Exclusions) Regulations

(Cap. 396 sub. leg.) is amended by repealing "a stockbroker" and substituting "an exchange participant".

Explanatory Memorandum

The principal object of this Bill is to facilitate the regulation of the Exchange Companies and clearing houses (see the definitions of "Exchange Company" and "clearing house" in clause 2(1)) by---

(a) prohibiting a person from becoming or continuing to be the controller of an Exchange Company or clearing house unless the person is a company recognized by the Securities and Futures Commission ("the Commission") as an exchange controller (see the definitions of "controller", "indirect controller" and "shareholder controller" in clause 2(1)); and

(b) regulating a recognized exchange controller in relation to the Exchange Companies and clearing houses of which it is the controller.

2. Part I (clauses 1 and 2) is preliminary. Clause 2(1) defines the terms used in the Bill. The definition of "exchange participant" should, in particular, be noted, as it will supersede the term "member" (of The Stock Exchange of Hong Kong Limited)

and the term "shareholder" (of the Hong Kong Futures Exchange Limited). The reason for the change in terminology is because there will now be a separation between membership of an Exchange Company and the right to trade on or through an Exchange Company.

3. Part II (clauses 3 to 7) provides for the recognition and withdrawal of recognition of companies as exchange controllers. Clause 3(2)(a) and (b) sets out the alternative grounds on which the Commission must be satisfied before recognizing a company as an exchange controller. The same grounds under clause 4(1)(a) and (b) form the basis on which the Commission may withdraw recognition of a company as an exchange controller. Both clauses 3 and 4 (and Schedule 1) set out the procedures to be adopted to cause a person to cease to be the controller of an Exchange Company or clearing house where the person is not recognized as an exchange controller or recognition is withdrawn. Clause 5 provides that a recognized exchange controller shall not increase or decrease its interest in an Exchange Company or clearing house of which it is the controller except with the approval of the Commission.

4. Clause 6 prohibits a person from becoming a minority controller (see the definition of "minority controller" in clause 6(1)) of a recognized exchange controller, Exchange Company or clearing house without the approval of the Commission. Clause 7 empowers the Financial Secretary to grant an exemption from clause 3(1), and to revoke any such exemption, on the same grounds on which a company may be recognized as an exchange holding company or have such recognition withdrawn. (See, also, clause 21).

5. Part III (clauses 8 and 9) imposes duties on a recognized exchange controller. Clause 8 requires such a controller to, inter alia, ensure, so far as is reasonably practicable and in its capacity as a controller, an orderly and fair market in securities or futures contracts traded on or through an Exchange Company of which it is the controller. Clause 9 requires such a controller to establish a Risk Management Committee to formulate policies on risk management matters relating to the activities of the controller and of any Exchange Company or clearing house of which it is the controller. The recognized exchange controller is also required to adopt and implement the policies formulated by the Risk Management Committee unless not less than two-thirds of the total membership of the board of directors of the controller decline to do so.

6. Part IV (clauses 10 to 14) relates to the regulation of a recognized exchange controller. Clause 10 provides that no amendments to the constitution or rules of a recognized exchange controller shall have effect unless approved by the Commission or exempted under clause 10(6). Clause 11 provides that no person may be the chairman of a recognized exchange controller unless he has the approval in writing of the Chief

Executive. Clause 12 provides that no appointment of, inter alia, the chief executive of a recognized exchange controller shall have effect unless it has the approval in writing of the Commission. Clause 13 covers the situation where a recognized exchange controller (or another company of which it is the controller) seeks to become a listed company. Clause 14 empowers the Commission to give directions to a recognized exchange controller where the Commission is satisfied that a conflict of interest exists between the interest of the controller as a company and the interest of the functions it is required to perform as such a controller.

7. Part V (clauses 15, 16 and 17) contains miscellaneous provisions. Clause 15 provides that no fees imposed by a recognized exchange controller or an Exchange Company or clearing house of which it is the controller shall have effect unless approved by the Commission. Clause 16 empowers the Chief Executive in Council to amend Schedule 1. Clause 17 makes it clear that the provisions of the Companies Ordinance (Cap. 32) apply to a recognized exchange controller to the extent they are not inconsistent with the Bill.

8. Part VI (clauses 18 to 24) and Schedule 2 contain transitional provisions, saving provisions and consequential amendments necessitated by the Bill. It should be noted that the Hong Kong Exchanges and Clearing Limited will be deemed to be a recognized exchange controller (clause 19), and that the Hong Kong Securities Clearing Company Limited will be converted from a company limited by guarantee to a company limited by shares (clause 22).