

For discussion on
22 June 2001

Paper No. CE03/01

**Bills Committee on
Securities and Futures Bill and Banking (Amendment) Bill 2000**

Part IV of and Schedule 4 to the Securities and Futures Bill
Clause-by-clause examination

Part IV

At Annex A is the updated mark-up version of Part IV of the Securities and Futures Bill, with the proposed amendments thereto. The reasons for the amendments are set out in the footnotes.

Schedule 4

2. At Annex B is the updated mark-up version of Schedule 4 to the Securities and Futures Bill, with the proposed amendments thereto. The reasons for the amendments are set out in the footnotes.

**Securities and Futures Commission
Financial Services Bureau
20 June 2001**

PART IV

OFFERS OF INVESTMENTS

Division 1 - Interpretation

101. Interpretation of Part IV

(1) In this Part, unless the context otherwise requires -
"advertisement" (廣告) includes every form of advertising, whether
made orally or produced mechanically, electronically,
magnetically, optically, manually or by any other means;

"approved person" (核准人士) -

(a) in relation to a collective investment scheme,
means an individual approved by the Commission
under section 103(3); or

(b) in relation to the issue of an advertisement,
invitation or document, means an individual
approved by the Commission under section 104(3);

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

(a) directed at, or the contents of which are likely to
be accessed or read (whether concurrently or

otherwise) by, the public or any section of the¹
public; and

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

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

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

"issue" (發出), in relation to any advertisement, invitation or document, includes publishing, circulating, distributing or otherwise disseminating the advertisement, invitation or document or the contents thereof, whether -

- (a) by any visit in person;
- (b) in a newspaper, magazine, journal or other publication;
- (c) by the display of posters or notices;
- (d) by means of circulars, brochures, pamphlets or handbills;

¹ We mentioned in Paper 4/01 that the interpretation of "public" in clause 102 is to follow the definition of the term in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) to include "any class of the public". The proposed amendment is to expressly state the coverage of "any section of the public" for greater clarity. Same amendment in respect of clauses 102(1) and 102(10).

- (e) by an exhibition of photographs or cinematograph films;
- (f) by way of sound or television broadcasting;
- (g) by computer or other electronic device; or
- (h) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the advertisement, invitation or document to be issued;

~~"multilateral agency" (多邊機構) means a body specified in Part 3 of Schedule 4,²~~

"relevant authority" (監管當局), in relation to a place outside Hong Kong, means an authority which the Monetary Authority is

² We mentioned in Paper 4B/01 that we would propose a Committee Stage Amendment to relocate clause 108 on "Offers by intermediaries or representatives for Type 1 or Type 4 regulated activity" to Part VII on "Business Conduct, etc of Intermediaries", as the subject matter dealt with in clause 108 concerns the business conduct of intermediaries.

Amendments to Part IV consequent to the relocation are that -

- (a) the definition of "multilateral agency" currently set out in clause 101 of the Blue Bill would be relocated to Schedule 1 for shared use in respect of Parts IV and VII; and
- (b) the empowering provision to amend Schedule 5 that relates to Clause 108 would be relocated to Part VII. See Note (26).

satisfied is a recognized banking supervisory authority of that place;

"representative" (代表) -

(a) in relation to a licensed corporation, means an individual -

(i) who is licensed as a licensed representative for a regulated activity; and

(ii) who carries on that regulated activity for the licensed corporation as a licensed corporation to which he is accredited; or

(b) in relation to an exempt person, means an individual -

(i) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person employed by the exempt person in respect of a regulated activity; and

(ii) who carries on that regulated activity for the exempt person.

(2) For the purposes of this Part -

(a) an advertisement, invitation or document issued by a person shall be regarded as being issued by him

on every day on which he causes or authorizes it to be so issued;

- (b) an advertisement, invitation or document issued by one person on behalf of another shall be regarded as an advertisement, invitation or document (as the case may be) issued by both persons.

Division 2 - Regulation of offers of investments, etc.

102. Offence to issue advertisements, invitations or documents relating to investments in certain cases³

(1) Subject to subsections (2), (3) and (5) to (9), a person commits an offence if he issues, or has in his possession for the purposes of issue, an advertisement, invitation or document which to his knowledge is or contains an invitation to the public or any section of the public⁴ -

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

³ We are working on a possible CSA to reflect clearly our policy intention to cover in this Part of the Bill also those activities conducted overseas but targeting at investors in Hong Kong. This is in line with the arrangements in overseas jurisdictions.

⁴ We mentioned in Paper 4/01 that the interpretation of "public" in clause 102 is to follow the definition of the term in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) to include "any class of the public". The proposed amendment is to expressly state the coverage of "any section of the public" for greater clarity. See Note (1).

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

(ii) a regulated investment agreement; or

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

unless the issue is authorized by the Commission under section
104(1).

(2) Subsection (1) does not apply to the issue, or the
possession for the purposes of issue, of any advertisement,
invitation or document~~which is or is to be -~~

(a) made by or on behalf of⁶ an intermediary licensed or
exempt for Type 1, Type 4 or Type 6 regulated
activity activity, or a representative of such
intermediary that carries on such regulated
activity for such intermediary⁶, ~~whether~~ whether

⁵ The offence provision in clause 102(1) covers both "issue" and "possession for
the purpose of issue" of an advertisement, invitation or document. The carve-
out provision in clause 102(2) is amended to follow the formulation in the
offence provision for the avoidance of doubt. Same amendment to the other
carve-out provision in clause 102(3).

⁶ The proposed amendment has the effect of extending and making available the
carve-out to advertisement, etc issued or possessed for the purposes of issue by
any person working on behalf of an intermediary. The coverage of the carve-out
as revised would be the same as that under existing legislation and is also
consistent with the carve-out under for example, paragraphs (d) to (h).

acting⁷ as principal or agent,] in respect of securities;

(b) made by or on behalf of⁶ an intermediary licensed or exempt for Type 2 or Type 5 regulated activity ~~activity, or a representative of such intermediary that carries on such regulated activity for such intermediary, whether~~⁶ (whether acting⁷ as principal or agent,] in respect of futures contracts;

(c) made by or on behalf of⁶ -

(i) an authorized financial institution
(whether acting as principal or agent)⁷;

or

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

~~whether~~⁶ (whether acting⁷ as principal or agent),

agent,] in respect of leveraged foreign exchange contracts;

(d) made by or on behalf of a recognized exchange company or recognized clearing house in respect of the provision of services by such recognized exchange company or recognized clearing house (as the case may be);

⁷ Technical drafting change for greater clarity.

- (e) made by or on behalf of a corporation to holders of securities or creditors of, or employees employed by or agents acting in a professional capacity on behalf of, that corporation, or ~~acorporation~~ ⁸related corporation of that corporation, in respect of securities of that corporation or that related corporation;
- (f) made by or on behalf of the Government in respect of securities issued by it;
- (g) made by or on behalf of a credit union in respect of shares in the credit union;
- (h) made by or on behalf of a person acting as a trustee of a trust, not being a collective investment scheme, to beneficiaries under the trust; or
- (i) made by or on behalf of⁶ a person who is engaged in the business of selling and purchasing property other than securities, ~~whether~~ (whether acting⁷ as principal or agent, ~~)~~ in the ordinary course of that business.

(3) Subsection (1) does not apply to the issue, or the possession for the purposes of issue⁹ -

- (a) ~~the issue~~⁸ of -

⁸ Technical drafting change for brevity.

⁹ Same reason for amendment as in Note (5).

- (i) a prospectus which complies with or is exempt from compliance with Part II of the Companies Ordinance (Cap. 32);
 - (ii) in the case of a corporation incorporated outside Hong Kong, a prospectus which complies with or is exempt from compliance with Part XII of that Ordinance;
 - (iii) an extract from or abridged version of a prospectus referred to in subparagraph (i) or (ii), the publication of which would not contravene section 38B(1) of that Ordinance by virtue of the operation of section 38B(2) of that Ordinance;
- (b) ~~the issue~~^s of a document relating to securities of a body corporate incorporated in Hong Kong that is not a registered company, being a document which -
- (i) would, if the body corporate were a registered company, be a prospectus to which section 38 of the Companies Ordinance (Cap. 32) applies, or would apply if not excluded by section 38(5) (b) or 38A of that Ordinance; and
 - (ii) contains all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body

corporate were a company incorporated outside Hong Kong and the document were a prospectus issued by that company;

(c) ~~the issue~~³ of a form of application for shares or debentures of a company, together with -

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

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

~~(b) (ii),~~

all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body corporate were a company incorporated outside Hong Kong and the document were a prospectus issued by that company¹⁰;

¹⁰ Technical drafting change for greater clarity.

- (d) ~~the issue~~³ of a form of application for the securities of a corporation in connection with an invitation made in good faith to a person to enter into an underwriting agreement with respect to those securities;
- (e) ~~the issue~~³ of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a certificate of deposit by an authorized financial institution;
- (f) ~~the issue~~² of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a certificate of deposit -
- (i) the amount or denomination of which is not less than the sum specified in Part 1 of Schedule 4; and
 - (ii) by -
 - (A) a multilateral agency; or
 - (B) a bank incorporated outside Hong Kong and having no place of business in Hong Kong, where the Monetary Authority has declared in writing that he is satisfied that the bank is likely to be adequately supervised by the relevant authority of any place in which it is

incorporated or has its principal
place of business;

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

(i) is issued by an authorized financial institution or a multilateral agency, or by an exempted body which, if it is a corporation or a wholly owned subsidiary specified in item 153¹¹ of Part 4 of Schedule 4, complies with the relevant condition;

(ii) is issued by a corporation which complies with the relevant condition, and is guaranteed by an authorized financial institution or a multilateral agency, or by an exempted body (other than a corporation specified in item 153¹⁰ of Part 4 of Schedule 4 which does not comply with the relevant condition, or a

¹¹ Reference to Part 4 of Schedule 4 updated as a consequential change. See the note to Schedule 4.

wholly owned subsidiary of the corporation); or

(iii) is issued by a wholly owned subsidiary specified in item 153¹¹ of Part 4 of Schedule 4 and is guaranteed by the corporation of which it is such a subsidiary and ~~that corporation~~which¹² complies with the relevant condition;

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

(i) ~~the issue~~^s of any advertisement, invitation or document made in respect of securities, or interests in any collective investment scheme or regulated investment agreement, which are or are

¹² Technical drafting change for brevity.

intended to be disposed of only to persons outside Hong Kong;

- (j) ~~the issue~~^s of any advertisement, invitation or document made in respect of securities, or interests in any collective investment scheme or regulated investment agreement, which are or are intended to be disposed of only to professional investors, ~~whether~~ (whether acting⁷ as principal or agent).

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

- (a) on conviction on indictment to a fine of \$500,000 and to imprisonment for 3 years and, in the case of a continuing offence, to a further fine of \$20,000 for every day during which the offence continues; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

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

- (a) any advertisement, invitation or document, which is made in respect of securities, to an intermediary licensed or exempt for Type 1, Type 4 or Type 6

regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary;

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

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

(i) an authorized financial institution; or

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

~~_____ ¹³(6) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue, to purchasers copies of any newspaper, magazine, journal or other periodical publication of general and regular circulation, which contain an invitation to do any act referred to in subsection (1)(a) or (b).~~

¹³ The carve-out of "hawker" and "vendor", etc is no longer necessary as they would be covered with the proposed amendment to clause 102(7)(b) below.

14 and 15 (7) A person shall not be regarded as committing an offence under subsection (1) ~~in respect of by reason only that he issues, or has in his possession for the purposes of issue, an advertisement, invitation or document which is or contains an invitation to do any act referred to in subsection (1)(a) or (b)~~ if -

- (a) ~~he carried on a business~~ the advertisement, invitation or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was to provide the service of issuing or receiving and issuing materials provided to him by others;

¹⁴ We take the view that a person should be carved out from the general prohibition under clause 102(1), among other conditions, if the contents of the advertisement, etc were wholly devised by "another person" (instead of only if the contents of the advertisement, etc were wholly devised by "his customer or a person acting on behalf of that customer"), as the first person's position as a "mere conduit" remains irrespective of who (other than himself, his employees or agents) devised the contents of the advertisement. The proposed amendment to the original clause 102(7)(b) is to reflect this accordingly. Same amendment to clause 109(5)(b).

¹⁵ The proposed amendments are primarily to make it clear that the mere conduit carve-out would also be available to employees or agents of a person carrying out business of a mere conduit nature, provided that they themselves can satisfy the various prescribed conditions. Same amendments to clause 109(5).

~~(b) he issued, or had in his possession for the purposes of issue, the advertisement, invitation or document (as the case may be) by reason only of its being issued or received by him in the ordinary course of that business,~~

(e~~b~~) the contents of the advertisement, invitation or document (as the case may be) were wholly devised by a customer of his or by a person acting on behalf of a customer of his; and not, wholly or partly, devised by -

_____ (i) where the business was carried on by him, himself or any officer, employee or agent of him; or

_____ (ii) where the business was not carried on by him, himself; and

(c) for the purposes of the issue -

_____ (i) where the business was carried on by him, he or any officer, employee or agent of him; or

_____ (ii) where the business was not carried on by him, he,

~~(d) the nature of the service which he provided in relation to the advertisement, invitation or document (as the case may be) was such that he~~
_____ did not select, modify or otherwise exercise control over the contents of the advertisement,

invitation or document (as the case may be) ~~prior~~
~~to its issue or receipt.~~

(8) ¹⁶A person shall not be regarded as committing an offence under subsection (1) ~~in respect of~~ by reason only that he issues, or has in his possession for the purposes of issue, by live broadcast, an advertisement, invitation or document ~~which is or contains an invitation to do any act referred to in subsection~~ if -

~~(1) (a) or (b) if -~~

~~(a) he was a broadcaster,~~

~~(b) the advertisement, invitation or document (as the case may be) was broadcast live by him as a broadcaster,~~

so issued, or possessed for the purposes of issue, in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);

~~(c) he did not modify the contents of the advertisement, invitation or document (as the case~~

¹⁶ The proposed amendments are primarily to make it clear that the mere conduit carve-out for a broadcaster would also be available to his employees or agents carrying out the broadcaster's business of a mere conduit nature, provided that they themselves can satisfy the various prescribed conditions and had reasonable grounds to believe that the broadcaster had acted in accordance with the terms and conditions of its licence, and with the relevant code of practice or guidelines. Same amendments to clause 109(6).

may (b) the contents of the advertisement,
invitation or document (as the case may be) prior
to its broadcast, and were not, wholly or partly,
devised by -

(i) where he was the broadcaster, himself or
any officer, employee or agent of him; or

(ii) where he was not the broadcaster,
himself;

(c) for the purposes of the issue -

(i) where he was the broadcaster, he or any
officer, employee or agent of him; or

(ii) where he was not the broadcaster, he,
did not select, modify or otherwise exercise
control over the contents of the advertisement,
invitation or document (as the case may be); and

(d) he has, in relation to the broadcast -

(i) where he was the broadcaster, the
broadcaster; or

(ii) where he was not the broadcaster, he had
reasonable grounds to believe and did
believe that the broadcaster,

broadcast, acted in accordance with the terms and
conditions of the licence (if any) by which he the
broadcaster became entitled to broadcast as a
broadcaster and with any code of practice or
guidelines (however described) issued under or

pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (48 of 2000) and applicable to ~~him~~the broadcaster as a broadcaster.

(9) It is a defence to a charge for an offence under subsection (1) for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence with which he is charged.

(10) For the purposes of any proceedings under this section -

(a) an advertisement, invitation or document which consists of or contains information likely to lead, directly or indirectly, to the doing of any act referred to in subsection (1) (a) or (b) shall be regarded as an advertisement, invitation or document (as the case may be) which is or contains an invitation to do such act;

(b) an advertisement, invitation or document which is or contains an invitation directed at, or the contents of which are likely to be accessed or read (whether concurrently or otherwise) by, the public or any section of the public¹⁷ shall be regarded as an advertisement, invitation or document (as the

¹⁷ We mentioned in Paper 4/01 that the interpretation of "public" in clause 102 is to follow the definition of the term in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) to include "any class of the public". The proposed amendment is to expressly state the coverage of "any section of the public" for greater clarity. See Note (1).

case may be) which is or contains an invitation to
the public or any section of¹⁷ the public.

(11) Nothing in subsection (2) (a), (b), (c) or (i) applies to anything done by any person in respect of any interest in a collective investment scheme that is not authorized by the Commission under section 103.

(12) In subsection (7), "issue" (發出), in relation to any material (including any advertisement, invitation or document), has the same meaning as it has in relation to any advertisement, invitation or document under section 101(1).

(13) In this section -
"guaranteed" (作出擔保) means guaranteed fully, unconditionally, irrevocably and in writing;
"registered company" (註冊公司) means a company registered under the Companies Ordinance (Cap. 32);
"relevant condition" (有關條件), in relation to a corporation (including a wholly owned subsidiary of any other corporation), means a condition that the amount by which the aggregate of the corporation's assets exceeds the aggregate of its liabilities, as calculated in accordance with generally accepted accounting principles, is not less than the sum specified in Part 5 of Schedule 4.

103. Commission may authorize collective investment schemes.

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

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

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

(b) the Commission is informed of particulars -

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

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

(3) For the purposes of subsection (2) (a), on an application by any person to the Commission, the Commission may, where it considers appropriate, approve any individual nominated in the application in respect of a collective investment scheme as an approved person for the purpose of being served by the Commission with notices and decisions for the scheme, and may, by notice in writing served on the person, withdraw the approval.

(4) The Commission may at any time, by notice in writing served on the approved person for a collective investment scheme, amend or revoke any of the conditions (other than the condition specified in subsection (2)) imposed, or impose new conditions, in respect of the authorization granted under subsection (1) in respect of the scheme.

(5) Without limiting any other ground on which the Commission may refuse to authorize any collective investment scheme under subsection (1), the Commission may refuse to do so where it is not satisfied that the authorization is in the interest of the investing public.

(6) An application made pursuant to subsection (1) or (3) shall be accompanied by such information and documents as the Commission requires.

(7) Where the Commission refuses to authorize a collective investment scheme, or to approve an individual as an approved person, pursuant to subsection (1) or (3), it shall by notice in writing notify the person making the application in question of the decision and the reasons for which it is made.

(8) The Commission may publish in such manner as it considers appropriate particulars of any collective investment scheme authorized under subsection (1).

(9) Particulars published under subsection (8) are not subsidiary legislation.

104. Commission may authorize issue of advertisements, invitations or documents

(1) On an application to the Commission, the Commission may, where it considers appropriate, authorize the issue of any advertisement, invitation or document which is or contains an invitation to do any act referred to in section 102(1)(a) or (b), subject to the condition specified in subsection (2) and to any other conditions it considers appropriate, including conditions on the matter to which the advertisement, invitation or document relates.

(2) It shall be a condition of authorization of the issue of any advertisement, invitation or document under subsection (1) that at any time when the issue is authorized -

- (a) there is an individual approved by the Commission under subsection (3) as an approved person for the purpose of being served by the Commission with notices and decisions for the issue; and
- (b) the Commission is informed of particulars -
 - (i) subject to subparagraph (ii), of the current contact details of the approved person referred to in paragraph (a),

including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address of the approved person;

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

(3) For the purposes of subsection (2) (a), on an application by any person to the Commission, the Commission may, where it considers appropriate, approve any individual nominated in the application in respect of the issue of any advertisement, invitation or document as an approved person for the purpose of being served by the Commission with notices and decisions for the issue, and may, by notice in writing served on the person, withdraw the approval.

(4) The Commission may at any time, by notice in writing served on the approved person for the issue of any advertisement, invitation or document, amend or revoke any of the conditions (other than the condition specified in subsection (2)) imposed, or impose new conditions, in respect of the authorization granted under subsection (1) in respect of the issue.

(5) Without limiting any other ground on which the Commission may refuse to authorize the issue of any advertisement, invitation or document under subsection (1), the Commission may refuse to do so where it is not satisfied that the matter to which

the advertisement, invitation or document relates is in the interest of the investing public.

(6) An application made pursuant to subsection (1) or (3) shall be accompanied by such information and documents as the Commission requires.

(7) Where the Commission refuses to authorize the issue of any advertisement, invitation or document, or to approve an individual as an approved person, pursuant to subsection (1) or (3), it shall by notice in writing notify the person making the application in question of the decision and the reasons for which it is made.

105. Withdrawal of authorization under section 103 or 104, etc.

(1) Subject to subsection (5), where, in relation to an authorization of a collective investment scheme under section 103, or an authorization of the issue of an advertisement, invitation or document under section 104, the Commission decides that -

(a) any information provided to the Commission pursuant to section 103(6) or 104(6) (as the case may be) is was at the time when it was provided¹⁸ false or misleading in a material particular;

¹⁸ Technical amendment for greater clarity of the deterrent against provision of false or misleading information to the SFC.

- (b) any of the conditions imposed in respect of the authorization under section 103 or 104 (as the case may be) are not being complied with;
- (c) any information provided to the Commission in purported compliance with any of the conditions imposed in respect of the authorization under section 103 or 104 (as the case may be) ~~is~~was at the time when it was provided¹⁸ false or misleading in a material particular; or
- (d) it is desirable to withdraw the authorization in order to protect the interest of the investing public,

the Commission may withdraw the authorization.

(2) Subject to subsection (3), the Commission shall, upon a request in writing made by an approved person for a collective investment scheme or the issue of an advertisement, invitation or document to withdraw the authorization of the scheme or of the issue (as the case may be), withdraw the authorization.

(3) Subject to subsection (5), the Commission may refuse to withdraw an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (2) where it considers that -

- (a) in the case of an authorization of a collective investment scheme, it is in the public interest that any matter concerning the scheme should be

investigated before the authorization is withdrawn under subsection (2); or

(b) the withdrawal of the authorization would not be in the interest of the investing public.

(4) Subject to subsection (5), where the Commission withdraws an authorization under subsection (1) or (2), it may impose such conditions on the withdrawal of the authorization as it considers appropriate.

(5) The Commission shall not -

- (a) withdraw an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (1);
- (b) refuse to withdraw an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (3); or
- (c) impose any conditions on the withdrawal of an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (4),

without first giving the approved person for the scheme or the issue (as the case may be) a reasonable opportunity of being heard.

(6) Where the Commission -

- (a) withdraws an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (1);
- (b) withdraws an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (2);
- (c) refuses to withdraw an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (3); or
- (d) imposes any conditions on the withdrawal of an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (4),

it shall by notice in writing notify the approved person for the scheme or the issue (as the case may be) of the decision and, in the case of paragraph (a), (c) or (d), the reasons for which it is made.

(7) Where the Commission withdraws an authorization under subsection (1) or (2), it may publish notice of the withdrawal and the reasons therefor in such manner as it considers appropriate.

(8) A notice or any other matter published under subsection (7) is not subsidiary legislation.

106. Offence to fraudulently or recklessly induce others to invest money

(1) A person commits an offence if he, by any fraudulent or reckless misrepresentation, induces another person -

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

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

(ii) a regulated investment agreement; or

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

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

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or

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

(3) In this section, "fraudulent or reckless misrepresentation" (欺詐的或罔顧實情的失實陳述) means -

(a) any statement -

(i) which, to the knowledge of its maker, was false, misleading or deceptive; or

(ii) which is false, misleading or deceptive and was made recklessly;

(b) any promise -

- (i) which its maker had no intention of fulfilling;
 - (ii) which, to the knowledge of its maker, was not capable of being fulfilled; or
 - (iii) which is not capable of being fulfilled and was made recklessly;
- (c) any forecast -
- (i) which, to the knowledge of its maker, was not justified on the facts known to him at the time when he made it; or
 - (ii) which was not justified on the facts known to its maker at the time when he made it and was made recklessly; or
- (d) any statement, promise or forecast from which its maker intentionally or recklessly omitted a material fact, with the result that -
- (i) in the case of the statement, the statement was rendered false, misleading or deceptive;
 - (ii) in the case of the promise, the promise was not capable of being fulfilled or was rendered misleading or deceptive; or
 - (iii) in the case of the forecast, the forecast was not capable of being justified or was rendered misleading or deceptive.

107. Civil liability for inducing others
to invest money in certain cases

(1) A person who, by any fraudulent, reckless or negligent misrepresentation, induces another person -

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

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

(ii) a regulated investment agreement; or

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

shall, ~~in addition to whether or not he also incurs~~ any other
liability ~~he may incur~~¹⁹ (whether under this Part or otherwise), be
liable to pay compensation by way of damages to the other person
for any pecuniary loss that the other person has sustained as a
result of the reliance by the other person on the
misrepresentation.

(2) For the purposes of this section, where a company or
other body corporate has, by any fraudulent, reckless or negligent
misrepresentation, induced another person to do any act referred
to in subsection (1) (a) or (b), any person who was a director of
the company or body corporate at the time when the
misrepresentation was made shall, unless it is proved that he did
not authorize the making of the misrepresentation, be presumed

¹⁹ Technical amendment for greater clarity.

also to have, by the misrepresentation, induced that other person to do such act.

(3) For the avoidance of doubt, where a court has jurisdiction to determine an action brought under subsection (1), it may, where it is, apart from this section, within its jurisdiction to ~~do so~~ entertain an application for an injunction²⁰, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(4) This section does not confer a right of action in any case to which section 40 of the Companies Ordinance (Cap. 32) (whether with or without reference to section 342E of that Ordinance) applies.

(5) A person may bring an action under subsection (1) even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of a contravention of this Part.

(6) Nothing in this section affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.

(7) In this section, "fraudulent, reckless or negligent misrepresentation" (欺詐的、罔顧實情的或疏忽的失實陳述) means -

(a) any statement -

(i) which, to the knowledge of its maker, was false, misleading or deceptive;

²⁰ Technical amendment for greater clarity.

- (ii) which is false, misleading or deceptive and was made recklessly; or
 - (iii) which is false, misleading or deceptive and was made without reasonable care having been taken to ensure its accuracy;
- (b) any promise -
- (i) which its maker had no intention of fulfilling;
 - (ii) which, to the knowledge of its maker, was not capable of being fulfilled; or
 - (iii) which is not capable of being fulfilled and was made recklessly or without reasonable care having been taken to ensure that it could be fulfilled;
- (c) any forecast -
- (i) which, to the knowledge of its maker, was not justified on the facts known to him at the time when he made it; or
 - (ii) which was not justified on the facts known to its maker at the time when he made it and was made recklessly or without reasonable care having been taken to ensure the accuracy of those facts; or
- (d) any statement, promise or forecast from which its maker intentionally, recklessly or negligently omitted a material fact of which he had knowledge

or ought to have had knowledge, with the result
that -

- (i) in the case of the statement, the statement was rendered false, misleading or deceptive;
- (ii) in the case of the promise, the promise was not capable of being fulfilled or was rendered misleading or deceptive; or
- (iii) in the case of the forecast, the forecast was not capable of being justified or was rendered misleading or deceptive.

~~108. Offers by intermediaries or representatives
for Type 1 or Type 4 regulated activity²¹~~

~~(1) Subject to subsection (5), a Type 1 intermediary or representative or a Type 4 intermediary or representative shall not communicate an offer to acquire or dispose of any securities of, or issued by, a body unless~~

~~(a) the offer~~

~~(i) is contained in a document in an official language, or~~

~~(ii) if communicated verbally, is reduced to writing in a document in an official~~

²¹ Clause 108 deals with business conduct of intermediaries and would be relocated to Part VII of the Bill for the sake of tidiness and easy reference. See Note (2).

~~language and delivered to the person or persons to whom it was made not later than 24 hours after the verbal communication;~~

~~(b) the offer~~

~~(i) contains a description of the securities sufficient to enable them to be identified,~~

~~(ii) specifies the terms of the offer, including where appropriate the amount of consideration proposed to be paid for the securities to be acquired pursuant to the offer;~~

~~(iii) where a dividend has been declared or recommended in respect of the securities, or it is anticipated that a dividend may be so declared or recommended before the transfer of the securities, states whether the securities are to be transferred with or without the dividend;~~

~~(iv) specifies~~

~~(A) whether, in the event of a person accepting the offer, the offeror will pay any stamp duty which the person so accepting the offer will become liable to pay in respect of~~

~~the transaction under the Stamp Duty Ordinance (Cap. 117), and~~

~~(B) if the offeror will not so pay the stamp duty, the rate of the stamp duty that the person so accepting the offer will become liable to pay in respect of the transaction under that Ordinance;~~

~~(v) specifies whether, in the event of a person accepting the offer, any fees will be payable by that person to~~

~~(A) where the Type 1 intermediary or representative or the Type 4 intermediary or representative (as the case may be) is regarded as such by virtue of being an intermediary, the Type 1 intermediary or representative or the Type 4 intermediary or representative (as the case may be); or~~

~~(B) where the Type 1 intermediary or representative or the Type 4 intermediary or representative (as the case may be) is regarded as such by virtue of being a representative~~

~~before the communication of the offer, withdrawn that consent, and~~

~~(vii) if communicated verbally, where there is a report of an expert in connection with the offer, specifies the place at which the report is available for inspection, and contains a statement to the effect that the expert has consented to the contents of the report, and has not, before the communication of the offer, withdrawn that consent, and~~

~~(e) where the offer is contained in a document referred to in paragraph (a) (i) or is reduced to writing in a document referred to in paragraph (a) (ii) but the document is in only one official language, the document includes a translation, in the other official language, of all the particulars required in respect of the offer under paragraph (b), except where the Commission has previously agreed that the requirements of this paragraph may be dispensed with in any particular case.~~

~~(2) Where an offer contained in a document referred to in subsection (1) (a) (i) is to contain a statement referred to in subsection (1) (b) (vi) (E) regarding the consent of an expert, the offer shall not be communicated unless the expert has given, and has not before the communication of the offer withdrawn, his~~

~~consent to the offer being communicated with the inclusion of the statement in the form and context in which it is included in the document.~~

~~(3) Where an offer communicated verbally is to contain a statement referred to in subsection (1) (b) (vii) regarding the consent of an expert, the offer shall not be communicated unless the expert has given, and has not before the communication of the offer withdrawn, his consent to the offer being communicated with a reference to the statement in the form and context in which it is referred to.~~

~~(4) Any Type 1 intermediary or representative or Type 4 intermediary or representative who communicates an offer to acquire or dispose of any securities without having complied with subsections (1), (2) and (3) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$20,000 for every day during which the offence continues.~~

~~(5) This section does not apply to~~

~~(a) an offer regulated by, and made in accordance with, the requirements of~~

~~(i) the rules made under section 23 or 26 governing the listing of securities;~~

~~(ii) the code published under section 385(2) (a); or~~

~~(iii) Part II of the Companies Ordinance (Cap. 32) or, in the case of a corporation~~

~~incorporated outside Hong Kong, Part XII
of that Ordinance,~~

~~(b) an offer to dispose of securities of, or issued by,
a body in favour of persons who already hold
securities of, or issued by, the body,~~

~~(c) an offer by a Type 1 intermediary or representative
or a Type 4 intermediary or representative if the
offer is made to a person with whom, or on whose
behalf—~~

~~(i) where the Type 1 intermediary or
representative or the Type 4 intermediary
or representative (as the case may be) is
regarded as such by virtue of being an
intermediary, the Type 1 intermediary or
representative or the Type 4 intermediary
or representative (as the case may be),
or~~

~~(ii) where the Type 1 intermediary or
representative or the Type 4 intermediary
or representative (as the case may be) is
regarded as such by virtue of being a
representative of an intermediary, the
intermediary,~~

~~has transacted the sale or purchase of securities
on at least 3 occasions during the period of 3
years immediately preceding the date of the offer,~~

~~(d) an offer made to~~

~~(i) a professional investor;~~

~~(ii) a solicitor or professional accountant
acting in his professional capacity; or~~

~~(iii) any other person who is of a class
prescribed by rules made under section
384 for the purposes of this paragraph;~~

~~(e) an offer made by an exchange participant in the
ordinary course of trading on a recognized stock
market;~~

~~(f) an offer made by a person who is of a class
prescribed by rules made under section 384 for the
purposes of this paragraph;~~

~~(g) an offer which is of a class prescribed by rules
made under section 384 for the purposes of this
paragraph.~~

~~(6) Without prejudice to section 384(9) and (10), the
Commission may make rules to add to, waive or modify any of the
requirements specified in subsections (1), (2) and (3), whereupon
the provisions of subsections (1), (2) and (3) shall apply subject
to the rules accordingly.~~

~~(7) Where~~

~~(a) a person has accepted an offer to acquire or
dispose of any securities of, or issued by, a body
which is an offer to which this section applies;
and~~

~~(b) the offer has been made without subsections (1),
(2) and (3) having been complied with in a material
particular,~~

~~that person may, subject to the rights of a subsequent purchaser
of the securities in good faith for value, rescind the acceptance,
by giving notice in writing to that effect to the Type 1
intermediary or representative or the Type 4 intermediary or
representative who communicated the offer, within 14 days after
the date on which he becomes aware of the matter described in
paragraph (b).~~

~~(8) For the purposes of this section~~

~~(a) where a Type 1 intermediary or representative or a
Type 4 intermediary or representative invites a
person to acquire or dispose of any securities of,
or issued by, a body, the invitation shall be
deemed to be an offer, and a reference in this
section to acceptance shall be construed
accordingly,~~

~~(b) an offer to acquire or dispose of a right to
acquire or dispose of securities or an interest in
securities shall be deemed to be an offer to
acquire or dispose of securities, and a reference
in this section to a person who holds securities
includes a person who holds a right to acquire
securities or an interest in securities,~~

~~(c) an offer to acquire or dispose of securities in consideration or part consideration for other securities shall be deemed to be both an offer to acquire and an offer to dispose of securities.~~

~~(9) In this section, a reference to securities of a body shall, unless the context otherwise requires, be construed as a reference to securities (having the meaning under section 1 of Part 1 of Schedule 1) which are~~

~~(a) issued, made available or granted by the body, or~~

~~(b) proposed to be issued, made available or granted by the body.~~

~~(10) In this section~~

~~"body" (團體) means a corporation, a multilateral agency, or a government or municipal government authority,~~

~~"expert" (專家) includes an engineer, valuer, professional accountant, solicitor, and any other person whose profession gives authority to a statement made by him,~~

~~"Type 1 intermediary or representative" (第1類中介人或代表) means~~

~~(a) an intermediary licensed or exempt for Type 1 regulated activity, or~~

~~(b) its representative that carries on Type 1 regulated activity for it,~~

~~"Type 4 intermediary or representative" (第4類中介人或代表) means~~

~~(a) an intermediary licensed or exempt for Type 4 regulated activity, or~~

~~(b) its representative that carries on Type 4 regulated activity for it.~~

109. Offence to issue advertisements relating to carrying on of regulated activities, etc.

(1) Subject to subsections ~~(2) and (43A)~~ to (7), a person commits an offence if he issues, or has in his possession for the purposes of issue -

(a) an advertisement in which to his knowledge²² a ~~person, not being an intermediary licensed or exempt for -~~

~~Type 4, Type 5, Type 6 or Type 9 regulated activity, holds himself out as being prepared to carry on such regulated activity for which he is not licensed or exempt, or~~

- (i) a person holds himself out as being prepared to carry on Type 4, Type 5, Type 6 or Type 9 regulated activity; and
(ii) the person is not licensed or exempt for such regulated activity as required under this Ordinance²³; or

²² To make it clear that the applicability of the mental element ("to his knowledge") for committing the offence covers both the matters set out in clause 109(1)(a)(i) and (ii).

²³ The proposed amendment is to make it clear that the provision only catches an advertisement by a person who is required to be but has not been properly

(b) any document which to his knowledge contains such advertisement.

~~²⁴(2) Subsection (1) does not apply to the issue of any advertisement or document referred to in subsection (1) (a) or (b) to an intermediary licensed or exempt for Type 4, Type 5, Type 6 or Type 9 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary.~~

(3) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

(43A) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue, ~~to purchasers copies of any newspaper, magazine, journal or other periodical publication of general and regular circulation, which contain²⁵ any advertisement or document referred to in subsection (1) (a) or (b) to an intermediary licensed or exempt for Type 4, Type 5, Type 6 or Type 9 regulated activity, or a representative of such~~

~~licensed or exempt under the SF [Ordinance], and not by a person who is not at all required to be licensed or exempt.~~

²⁴ ~~Technical drafting amendment to relocate and reflect the original clause 109(2) under the new clause 109(3A).~~

²⁵ ~~The carve-out of "hawker" and "vendor" is no longer necessary as they would be covered with the proposed amendment to clause 109(5) (b) below. See Note (13).~~

intermediary that carries on such regulated activity for such intermediary²⁴.

^{26 and 27} (5) A person shall not be regarded as committing an offence under subsection (1) ~~in respect of~~ by reason only that he issues, or has in his possession for the purposes of issue, any advertisement or document referred to in subsection (1) (a) or (b) if -

- (a) he ~~carried on a business~~ ~~the~~ advertisement or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of a business (whether or not carried on by him), the principal purpose of which ~~would be to~~ waste provide the service of issuing or receiving and issuing materials provided to him by others;

²⁶ We take the view that a person should be carved out from the general prohibition under clause 109(1), among other conditions, if the contents of the advertisement, etc were wholly devised by "another person" (instead of only if the contents of the advertisement, etc were wholly devised by "his customer or a person acting on behalf of that customer"), as the first person's position as a "mere conduit" remains irrespective of who (other than himself, his employees or agents) devised the contents of the advertisement. The proposed amendment to clause 109(5) (b) is to reflect this accordingly. See Note (14).

²⁷ The proposed amendments are primarily to make it clear that the mere conduit carve-out would also be available to employees or agents of a person carrying out business of a mere conduit nature, provided that they can themselves satisfy the various prescribed conditions. See Note (15).

~~(b) he issued, or had in his possession for the purposes of issue, the advertisement or document (as the case may be) by reason only of its being issued or received by him in the ordinary course of that business;~~

(eb) the contents of the advertisement or document (as the case may be) were ~~wholly devised by a customer of his or by a person acting on behalf of a customer of his; and not, wholly or partly, devised~~ by -

(i) where the business was carried on by him, himself or any officer, employee or agent of him; or

(ii) where the business was not carried on by him, himself; and

(c) for the purposes of the issue -

(i) where the business was carried on by him, he or any officer, employee or agent of him; or

(ii) where the business was not carried on by him, he,

~~(d) the nature of the service which he provided in relation to the advertisement or document (as the case may be) was such that he did not select, modify or otherwise exercise control over the~~

contents of the advertisement or document (as the case may be) ~~prior to its issue or receipt.~~

²⁸(6) A person shall not be regarded as committing an offence under subsection (1) ~~in respect of~~ by reason only that he issues, or has in his possession for the purposes of issue, by live broadcast, any advertisement or document referred to in subsection (1)(a) or (b) if

~~(a) he was a broadcaster, if -~~

~~(ba) the advertisement or document (as the case may be) was broadcast live by him as a broadcaster so issued, or possessed for the purposes of issue, in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);~~

~~(c) he did not modify the contents of the advertisement or document (as the case may be) the contents of the advertisement or document (as the case may be) prior to its broadcast; and were not, wholly or partly, devised by -~~

²⁸ The proposed amendments are primarily to make it clear that the mere conduit carve-out for a broadcaster would also be available to his employees or agents carrying out the broadcaster's business of a mere conduit nature, provided that they themselves can satisfy the various prescribed conditions and had reasonable grounds to believe that the broadcaster had acted in accordance with the terms and conditions of its licence, and with the relevant code of practice or guidelines. See Note (16).

(i) where he was the broadcaster, himself or
any officer, employee or agent of him; or

(ii) where he was not the broadcaster,
himself;

(c) for the purposes of the issue -

(i) where he was the broadcaster, he or any
officer, employee or agent of him; or

(ii) where he was not the broadcaster, he,
did not select, modify or otherwise exercise
control over the contents of the advertisement or
document (as the case may be); and

(d) he has, in relation to the broadcast -

(i) where he was the broadcaster, the
broadcaster; or

(ii) where he was not the broadcaster, he had
reasonable grounds to believe and did
believe that the broadcaster,

broadcast, acted in accordance with the terms and
conditions of the licence (if any) by which ~~he~~the
broadcaster became entitled to broadcast as a
broadcaster and with any code of practice or
guidelines (however described) issued under or
pursuant to the Telecommunications Ordinance (Cap.
106) or the Broadcasting Ordinance (48 of 2000) and
applicable to ~~him~~the broadcaster as a broadcaster.

(7) It is a defence to a charge for an offence under subsection (1) for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence with which he is charged.

(8) In subsection (5), "issue" (發出), in relation to any material (including any advertisement or document), has the same meaning as it has in relation to any advertisement, invitation or document under section 101(1).

Division 3 - Miscellaneous

110. Submission of information to Commission

(1) A person that is -

- (a) an authorized financial institution;
- (b) an exempted body or, in the case of a wholly owned subsidiary specified in item 153²⁹ of Part 4 of Schedule 4 but incorporated outside Hong Kong, an authorized representative of that subsidiary;
- (c) a multilateral agency or an authorized representative of that agency; or
- (d) a bank incorporated outside Hong Kong or an authorized representative of that bank,

commits an offence if he fails, within 10 business days, or such longer period as is prescribed by rules made under section 384 for

²⁹ Reference in Part 4 of Schedule 4 updated as a consequential change. See the note to Schedule 4.

the purposes of this subsection, after the issue of any advertisement, invitation or document referred to in section 102(3)(e), (f) or (g) by the authorized financial institution, the exempted body or the wholly owned subsidiary, the multilateral agency or the bank (as the case may be), to submit to the Commission such information in respect of the advertisement, invitation or document as is prescribed by the rules.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$5,000 for every day during which the offence continues.

(3) In subsection (1), "authorized representative" (獲授權代表), in relation to the issue of any advertisement, invitation or document, means -

- (a) in the case of a wholly owned subsidiary specified in item 153²⁹ of Part 4 of Schedule 4 but incorporated outside Hong Kong, the listed corporation of which it is the subsidiary; or
- (b) in the case of a multilateral agency or a bank incorporated outside Hong Kong, a person resident in Hong Kong who is authorized by the agency or the bank (as the case may be) to act on behalf of the agency or the bank (as the case may be) in respect of that issue.

111. Service of notices, etc. on approved persons

(1) Notwithstanding section 386, any notice, decision, direction or other document (however described) required under this Ordinance to be issued to or served on an approved person by the Commission shall for all purposes be regarded as duly issued or served only if -

(a) it is delivered to him by hand; or

(b) it is -

(i) left at, or sent by post to, the last address;

(ii) sent by facsimile transmission to the last facsimile number; or

(iii) sent by electronic mail transmission to the last electronic mail address,

shown by the particulars of which the Commission is informed in respect of the approved person for the purposes of section 103(2)(b) or 104(2)(b) (as the case may be).

(2) Where a notice, decision, direction or other document (however described) is regarded as duly issued to or served on an approved person under subsection (1)(b), it shall for all purposes be regarded as issued to or served on the approved person, and as coming to his notice, at the time when -

(a) where it is left at an address, it is so left at that address;

- (b) where it is sent by post to an address, it would in the ordinary course of post be delivered to that address;
- (c) where it is sent by facsimile transmission to a facsimile number, it would in the ordinary course of transmission by facsimile be received at that number; or
- (d) where it is sent by electronic mail transmission to an electronic mail address, it would in the ordinary course of transmission by electronic mail be received at that address.

112. Amendment of Schedules ~~4 and 5~~ 4³⁰

(1) The Financial Secretary may, by notice published in the Gazette, amend Part 1 of Schedule 4.

(2) The Commission may, after consultation with the Financial Secretary, by notice published in the Gazette, amend Parts 2, 3, 4 and 5 of Schedule 4.

³⁰ Schedule 5 deals with offers by intermediaries for dealing in or advising on securities under clause 108. With the proposed relocation of clause 108 to Part VII or business conduct of intermediaries, the empowering provision to amend Schedule 5 would also be relocated to Part VII. See Note (2).

~~(3) The Chief Executive in Council may, by order published
in the Gazette, amend Schedule 5.²⁰~~

SCHEDULE 4[ss. 101, 102, 110 &
112 & Sch. 9]

OFFERS OF INVESTMENTS

PART 1

SUM SPECIFIED FOR PURPOSES OF SECTION
102(3)(f)(i) AND (g) OF THIS ORDINANCE

\$1 million or its equivalent in any foreign currency.

PART 2

INSTRUMENTS SPECIFIED FOR PURPOSES OF
SECTION 102(3)(g) OF THIS ORDINANCE

1. A bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap. 19).
2. A promissory note within the meaning of section 89 of the Bills of Exchange Ordinance (Cap. 19).
3. Any other instrument which evidences an obligation to pay a stated amount to bearer or to order, on or before a fixed time, with or without interest, being an instrument by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable (and, in the case of any such instrument which is a prescribed instrument by virtue of paragraph (a) of the definition of "prescribed instrument" in section 137B(1) of the Banking Ordinance (Cap. 155), such instrument includes any right or interest referred to

in paragraph (b) of that definition in respect of such instrument).

~~PART 3~~

~~MULTILATERAL AGENCIES~~

- ~~1. The African Development Bank.~~
- ~~2. The Asian Development Bank.~~
- ~~3. The European Investment Bank.~~
- ~~4. The Inter American Development Bank.~~
- ~~5. The International Bank for Reconstruction and Development (commonly known as the World Bank).~~
- ~~6. The International Finance Corporation (an affiliate of the World Bank).~~
- ~~7. The European Bank for Reconstruction and Development.~~

PART 4

EXEMPTED BODIES

1. The Government.
- ~~2. Any District Council.~~²
32. Hong Kong Housing Authority.
43. Airport Authority.
45. Kowloon-Canton Railway Corporation.
56. MTR Corporation Limited.

¹ As set out in Note 2 to Part IV, the definition of "multilateral agency" would be relocated to Schedule 1. This Part of the Schedule would also be relocated to Schedule 1 for similar reason.

² At the time when the Provision of Municipal Services (Reorganization) Bill was considered at the LegCo, it was noted that the District Councils Ordinance does not provide for the District Councils to issue any investment instrument. Accordingly, the reference to "District Councils" should be removed as an exempted body in respect of the issue of

- ~~67. Land Development Corporation~~Urban Renewal Authority³.
78. Hong Kong Export Credit Insurance Corporation.
- ~~89. The Hong Kong Industrial Estate~~Hong Kong Science and Technology Parks Corporation³.
- ~~10. Hong Kong~~Industrial Technology Centre Corporation.³
- ~~911.~~Hong Kong Productivity Council.
- ~~102. Hong Kong Tourist Association~~ Hong Kong Tourism Board³.
131. Hong Kong Trade Development Council.
142. Vocational Training Council.
153. Any other corporation which has any of its shares listed and any wholly owned subsidiary of such a corporation, whether incorporated in Hong Kong or elsewhere.

PART 5

SUM SPECIFIED FOR PURPOSES OF DEFINITION OF "RELEVANT CONDITION" IN SECTION 102(13) OF THIS ORDINANCE

\$100 million or its equivalent in any foreign currency.

investment instruments

³ Update of references in accordance with the change of names and/or merger of the various bodies.