

Consolidate and amend the law relating to financial products, the securities and futures market and the securities and futures industry, the regulation of activities and other matters connected with financial products, the securities and futures market and the securities and futures industry, the protection of investors, and other matters incidental thereto or connected therewith, and for connected purposes.

Enacted by the Legislative Council.

## PART I

### Preliminary

#### 1. Short title and commencement

(1) This Ordinance may be cited as the Securities and Futures Ordinance.

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

#### 2. Interpretation

(1) Schedule 1 contains interpretation provisions which apply to this Ordinance in accordance with their terms.

(2) Individual Parts and provisions of this Ordinance contain interpretation provisions which have application in accordance with their terms.

(3) The Commission may, by notice published in the Gazette, amend Parts 2, 3 and 4 of Schedule 1.

## PART II

### Securities and Futures Commission

#### Division 1---The Commission

#### 3. Securities and Futures Commission

(1) Notwithstanding the repeal of the Securities and Futures Commission Ordinance (Cap. 24) under section 392, the body established by section 3 of that Ordinance as the Securities and Futures Commission shall continue in existence in its original name as a body corporate with power to sue and be sued in that name.

(2) Subject to the provisions of this Ordinance, the corporate identity of the Commission, and the rights, privileges, powers, obligations and liabilities of the Commission and those of others in relation to the Commission, are not affected by the repeal of the Securities and Futures Commission Ordinance (Cap. 24) under section 392, and any reference to the Commission (whether by reference to that Ordinance or otherwise) in any Ordinance or any instrument, record or document, or in or for the purposes of any proceedings, agreement or arrangement (whether in writing or not) shall be construed accordingly.

(3) The receipts of the Commission are not subject to taxation under the Inland Revenue Ordinance (Cap. 112).

(4) Part 1 of Schedule 2 contains provisions relating to the constitution and proceedings of and other matters relating to the Commission.

#### 4. Regulatory objectives of Commission

The regulatory objectives of the Commission are---

- (a) to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
- (b) to promote understanding by the public of the operation and functioning of the securities and futures industry;
- (c) to secure an appropriate degree of protection for members of the public investing in or holding financial products;
- (d) to minimize crime and misconduct in the securities and futures industry;
- (e) to reduce systemic risks in the securities and futures industry; and
- (f) to assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the securities and futures industry.

#### 5. Functions and powers of Commission

(1) The functions of the Commission are to, so far as reasonably practicable---

- (a) take such steps as it considers appropriate to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and

futures industry;

(b) supervise, monitor and regulate---

(i) the activities carried on by recognized exchange companies, recognized clearing houses, recognized exchange controllers or recognized investor compensation companies, or by persons carrying on activities regulated by the Commission under any of the relevant provisions, other than exempt persons; and

(ii) such of the activities carried on by exempt persons as are required to be regulated by the Commission under any of the relevant provisions;

(c) promote and develop an appropriate degree of self-regulation in the securities and futures industry;

(d) promote, encourage and enforce the proper conduct, competence and integrity of persons carrying on activities regulated by the Commission under any of the relevant provisions in the conduct of such activities;

(e) encourage the provision of sound, balanced and informed advice regarding transactions or activities related to financial products;

(f) take such steps as it considers appropriate to ensure that the relevant provisions are complied with;

(g) maintain and promote confidence in the securities and futures industry in such manner as it considers appropriate, including by the exercise of its discretion to disclose to the public any matter relating or incidental to the performance of any of its functions;

(h) co-operate with and provide assistance to regulatory authorities or organizations, whether formed or established in Hong Kong or elsewhere;

(i) promote understanding by the public of the securities and futures industry and of the benefits, risks and liabilities associated with investing in financial products;

(j) encourage the public to appreciate the relative benefits of investing in financial products through persons carrying on activities regulated by the Commission under any of the relevant provisions;

(k) promote understanding by the public of the importance of making informed decisions regarding transactions or activities related to financial products and of taking responsibility therefor;

(l) secure an appropriate degree of protection for members of the public investing in or holding financial products, having regard to their degree of understanding and expertise in respect of investing in or holding financial products;

(m) promote, encourage and enforce---

(i) the adoption of appropriate internal controls and risk management systems by persons carrying on activities regulated by the Commission under any of the

relevant provisions, other than exempt persons; and

(ii) the adoption of appropriate internal controls and risk management systems by exempt persons in the conduct of activities regulated by the Commission under any of the relevant provisions;

(n) suppress illegal, dishonourable and improper practices in the securities and futures industry;

(o) take appropriate steps in relation to the securities and futures industry further to any requirement of the Financial Secretary for the purpose of providing assistance in maintaining the financial stability of Hong Kong;

(p) recommend reforms of the law relating to the securities and futures industry;

(q) advise the Financial Secretary on matters relating to the securities and futures industry and provide him with such information in relation thereto as it considers appropriate; and

(r) perform functions conferred or imposed on it by or under this or any other Ordinance.

(2) Subsection (1)(c) does not limit or otherwise affect any other function of the Commission.

(3) The Commission, in performing any of its functions in relation to---

(a) any authorized financial institution as an exempt person or as an associated entity of an intermediary; or

(b) any person as an associated entity of an authorized financial institution that is an exempt person,

may rely, in whole or in part, on the supervision of such authorized financial institution or person (as the case may be) by the Monetary Authority.

(4) The Commission has the power to do such things as it considers necessary in connection with, or reasonably incidental to, the performance of its functions and, without limiting the generality of the foregoing, may---

(a) acquire, hold and dispose of property of any description;

(b) make contracts or other agreements;

(c) receive and expend moneys;

(d) with the approval of the Financial Secretary, borrow money on security or other conditions;

(e) publish or otherwise make available materials, however described, indicating to persons who are, or who carry on activities, regulated by the Commission under any of the relevant provisions and, where the Commission considers appropriate, to any other persons the manner in which, in the absence of any particular consideration or circumstance, the Commission proposes to perform any of its functions; and

(f) publish or otherwise make available materials, however described, indicating to

the public any matter relating or incidental to the performance of any of the functions of the Commission.

(5) Materials published or otherwise made available under subsection (4)(e) or (f) are not subsidiary legislation.

#### 6. General duties of Commission

(1) In performing its functions, the Commission shall, so far as reasonably practicable, act in a way which---

(a) is compatible with its regulatory objectives; and

(b) it considers most appropriate for the purpose of meeting those objectives.

(2) In pursuing its regulatory objectives and performing its functions, the Commission shall have regard to---

(a) the international character of the securities and futures industry and the desirability of maintaining the status of Hong Kong as a competitive international financial centre;

(b) the desirability of facilitating innovation in connection with financial products and with activities regulated by the Commission under any of the relevant provisions;

(c) the principle that competition among persons carrying on activities regulated by the Commission under any of the relevant provisions should not be impeded unnecessarily;

(d) the importance of acting in a transparent manner, having regard to its obligations of preserving secrecy and confidentiality; and

(e) the need to make efficient use of its resources.

#### 7. Advisory Committee

(1) There shall be an Advisory Committee to advise the Commission on matters of policy regarding any of its regulatory objectives and functions.

(2) The Advisory Committee is constituted in accordance with Part 1 of Schedule 2 and shall conduct its business in accordance with that Part.

(3) The Advisory Committee shall meet at least once every 3 months to advise the Commission.

(4) The Commission may request the Advisory Committee to advise it on matters of policy regarding any of its regulatory objectives and functions.

#### 8. Commission may establish committees

(1) The Commission may establish---

(a) standing committees; and

(b) special committees.

(2) The Commission may refer a matter to a committee established under this section for consideration, inquiry or management.

(3) The Commission may appoint a person to be a member of a committee established under this section, whether or not the person is a member of the Commission, and may appoint a member of the committee to be the chairman of the committee.

(4) A reference of a matter to a committee under subsection (2) does not prevent the Commission from performing any of its functions.

(5) The Commission may---

(a) withdraw a reference under subsection (2) from a committee;

(b) revoke an appointment of a member or chairman of a committee under subsection (3).

(6) A committee established under this section may elect one of its members-

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(a) to be its chairman if a chairman has not been appointed by the Commission under subsection (3); or

(b) to act as its chairman for any period during which a chairman appointed by the Commission under subsection (3) is unable to act as chairman due to illness, absence from Hong Kong or any other cause,

and may at any time remove the member so elected from the office of the chairman.

(7) A committee established under this section may, subject to the provisions of this Ordinance, regulate its own procedure and business.

(8) A committee established under this section shall meet when and where the chairman of the committee determines, subject to any procedure fixed by the committee and any direction given by the Commission under subsection (9).

(9) The Commission may give directions to a committee established under this section, whether generally or in any particular case, and whether regarding the manner in which it shall act or otherwise, and the committee shall act in accordance with any such directions.

## 9. Staff of Commission

(1) The Commission may employ persons for such remuneration and allowances, and on such other terms and conditions, as the Commission determines.

(2) The Commission may provide and maintain schemes (whether contributory or not) for the payment of retirement benefits, gratuities or other allowances to its employees and their dependants.

(3) The Commission may engage consultants, agents and advisers to assist it in the performance of its functions.

## 10. Delegation and sub-delegation of Commission's functions

(1) Subject to subsection (2), the Commission may delegate any of its functions to---

- (a) a member of the Commission;
- (b) a committee established under section 8; or
- (c) an employee of the Commission, whether by reference to his name or to the office held by him

(2) No delegation shall be made under subsection (1) in respect of---

- (a) the power of the Commission to delegate under this section; or
- (b) a function specified in Part 2 of Schedule 2.

(3) Where the Commission delegates a function under this section, it may at the same time authorize the delegate to sub-delegate the function and the authorization may contain restrictions or conditions on the exercise of the power to sub-delegate.

(4) A delegation or sub-delegation under this section does not prevent the Commission or its delegate from concurrently performing the function delegated or sub-delegated.

(5) The Commission may---

- (a) revoke a delegation under this section;
- (b) revoke an authorization in respect of a sub-delegation under this section, whereupon the delegation or sub-delegation (as the case may be) shall cease to have effect.

(6) Where a person or committee purports to act pursuant to a delegation or sub-delegation under this section, he or it is presumed, unless the contrary is proved, to be acting in accordance with the terms of the delegation or sub-delegation.

(7) Without prejudice to subsection (4), where there is a delegation or sub-delegation under this section in respect of a function of the Commission, any reference in this or any other Ordinance to the Commission in connection with the performance of the function shall, unless the context otherwise requires, be construed accordingly.

(8) The Legislative Council may by resolution amend Part 2 of Schedule 2.

#### 11. Directions to Commission

(1) After consultation with the chairman of the Commission, the Chief Executive may, upon being satisfied that it is in the public interest to do so, give the Commission written directions as to the furtherance of any of its regulatory objectives or the performance of any of its functions.

(2) The Commission shall comply with any written direction given under subsection (1).

(3) Where any written direction is given under subsection (1), any requirement under any other provision of this or any other Ordinance that the Commission shall, for the purpose of performing any of the functions to which the written direction

relates---

- (a) form any opinion;
- (b) be satisfied as to any matter (including existence of particular circumstances);
- or
- (c) consult any person,

shall not apply for all purposes connected with the performance of functions pursuant to, or consequent upon, the written direction.

(4) Written directions given under subsection (1) are not subsidiary legislation.

## 12. Commission to furnish information

The Commission shall, when required by the Financial Secretary, furnish to the Financial Secretary such information as he specifies on the principles, practices and policy it is pursuing or adopting, or proposes to pursue or adopt, in furthering any of its regulatory objectives or performing any of its functions, and the reasons therefor.

## Division 2--- Accounting and financial arrangements

### 13. Financial year and estimates

(1) The financial year of the Commission commences on 1 April in each year.

(2) The Commission shall, not later than 31 December in each financial year of the Commission, submit to the Chief Executive for his approval estimates of its income and expenditure for the next financial year.

(3) The Financial Secretary shall cause the estimates as approved pursuant to subsection (2) to be laid on the table of the Legislative Council.

### 14. Appropriation

For each financial year of the Commission, the Government shall pay to the Commission out of the general revenue the moneys appropriated by the Legislative Council for that purpose.

### 15. Accounts and annual report

(1) The Commission shall keep proper accounts and records of its transactions.

(2) The Commission shall, as soon as reasonably practicable after the end of each financial year of the Commission, prepare financial statements which shall---

(a) give a true and fair view of the state of affairs of the Commission as at the end of the financial year and of the results of its operations and cash flows in the financial year; and

(b) be signed by the chairman, and one non-executive director, of the Commission.

(3) The Commission shall, as soon as reasonably practicable after the end of each financial year of the Commission, prepare a report on its activities during the financial year and send a copy of the report to the Financial Secretary who shall



cause a copy thereof to be laid on the table of the Legislative Council.

#### 16. Auditors and audit

(1) The Commission shall, with the approval of the Financial Secretary, appoint auditors.

(2) The Commission shall, as soon as reasonably practicable after the end of each financial year of the Commission, submit to the auditors appointed under subsection (1) for audit the financial statements prepared for the financial year under section 15(2).

(3) The auditors appointed under subsection (1) shall prepare a report on the financial statements submitted to them under subsection (2) and send the report to the Commission which shall, as soon as reasonably practicable after its receipt, send a copy of the report and a copy of the financial statements to the Financial Secretary.

(4) The auditors appointed under subsection (1) shall include in their report a statement as to whether, in their opinion, the financial statements to which the report relates give a true and fair view of the state of affairs of the Commission as at the end of the financial year for which the financial statements are prepared and of the results of its operations and cash flows in the financial year.

(5) An auditor appointed under subsection (1) has a right of access at all reasonable times to the books, accounts, vouchers, records and documents kept by the Commission and is entitled to require from the officers of the Commission such information and explanations as he considers necessary for the performance of his duties as auditor.

(6) The Financial Secretary shall cause a copy of the report referred to in subsection (3), and a copy of the financial statements to which the report relates, to be laid on the table of the Legislative Council.

(7) The Director of Audit or another public officer authorized by the Director under subsection (8) may at any reasonable time---

(a) examine any books, accounts, vouchers, records or documents kept by the Commission; and

(b) if the Director or the public officer (as the case may be) considers appropriate, make a copy of the whole of, or any entry in, such books, accounts, vouchers, records or documents.

(8) The Director of Audit may authorize any public officer to perform any function for the purposes of subsection (7).

#### 17. Investment of funds

The Commission may invest its funds which are not immediately required in the manner that the Financial Secretary approves.

PART III

Exchange Companies, Clearing Houses, Exchange  
Controllers, Investor Compensation Companies  
and Automated Trading Services

Division 1---Interpretation

18. Interpretation of Part III

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

"associated person" (相聯者), in relation to a person entitled to exercise, or control the exercise of, voting power in relation to, or holding securities in, a corporation---

(a) subject to paragraph (c), 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 securities or other interests in that corporation or under which they act together in exercising their voting power in relation to it;

(b) subject to paragraph (c), includes, in relation to such provisions of Division 4 as are specified in Part 2 of Schedule 3, a person, or a person belonging to a class of persons, specified in that Part to be an associated person;

(c) excludes, in relation to such provisions of Division 4 as are specified in Part 3 of Schedule 3, a person, or a person belonging to a class of persons, specified in that Part not to be an associated person;

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

(a) a shareholder controller of the corporation; or

(b) an indirect controller of the corporation;

"default proceedings" (違責處理程序) means any proceedings or other action taken by a recognized clearing house under its default rules;

"default rules" (違責處理規則), in relation to a recognized clearing house, means the rules of the clearing house required by section 40(2);

"defaulter" (違責者) means a clearing participant who is the subject of any default proceedings;

"indirect controller" (間接控制人), in relation to a corporation---

(a) subject to paragraph (b), means a person in accordance with whose directions or instructions the directors of the corporation or of another corporation of which it is a subsidiary are accustomed or obliged to act;

(b) excludes, in relation to such provisions of Division 4 as are specified in Part 4 of Schedule 3, a person, or a person belonging to a class of persons, specified

in that Part not to be an indirect controller;

"market charge" (市場押記) means a charge, whether fixed or floating, granted in favour of a recognized clearing house---

(a) over any property which is held by or deposited with the clearing house; and  
(b) for the purpose of securing liabilities arising directly in connection with the clearing house's ensuring the settlement of a market contract;

"market collateral" (市場抵押品) means any property which is held by or deposited with a recognized clearing house for the purpose of securing liabilities arising directly in connection with the clearing house's ensuring the settlement of a market contract;

"relevant corporation" (相關法團) means a corporation of which the relevant recognized exchange controller is the controller;

"relevant office-holder" (有關人員) means---

(a) the Official Receiver appointed under section 75 of the Bankruptcy Ordinance (Cap. 6);

(b) a person acting in relation to a company as its liquidator, provisional liquidator, receiver or manager;

(c) a person acting in relation to an individual as his trustee in bankruptcy or interim receiver of his property; or

(d) a person appointed pursuant to an order for the administration in bankruptcy of an insolvent estate of a deceased person;

"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;

"settlement" (交收), in relation to a market contract, includes partial settlement;

"shareholder controller" (股東控制人), in relation to a corporation, means any person who, either alone or with any associated person or persons, is entitled to exercise, or control the exercise of, more than 35% of the voting power at any general meeting of the corporation or of another corporation of which it is a subsidiary.

(2) Where a charge is granted partly for the purpose specified in the definition of "market charge" in subsection (1) and partly for other purposes, the charge is in Division 3 a market charge in so far as it has effect for that specified purpose.

(3) Where any collateral is granted partly for the purpose specified in the definition of "market collateral" in subsection (1) and partly for other purposes, the collateral is in Division 3 market collateral in so far as it has been provided for that specified purpose.

(4) In Division 3, a reference to the law of insolvency includes a reference to every provision made by or under---

- (a) the Bankruptcy Ordinance (Cap. 6);
- (b) the Companies Ordinance (Cap. 32); and
- (c) any other enactment which is concerned with or in any way related to the insolvency of a person.

(5) In Division 3, a reference to settlement in relation to a market contract is a reference to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise.

(6) Where there is a reference in this or any other Ordinance to the controller of a recognized exchange company or recognized clearing house (however expressed), the term controller shall be construed in accordance with the provisions of this section.

#### Division 2---Exchange companies

##### 19. Recognition of exchange company

(1) No person shall---

(a) operate a stock market unless the person is---

(i) the Stock Exchange Company;

(ii) a recognized exchange company of which a relevant recognized exchange controller is the controller; or

(iii) a relevant recognized exchange controller which is itself a recognized exchange company;

(b) operate a futures market unless the person is a recognized exchange company;

(c) assist in the operation of a stock market which is not operated by a person referred to in paragraph (a);

(d) assist in the operation of a futures market which is not operated by a recognized exchange company.

(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, after consultation with the public and then the Financial Secretary, by notice in writing served on a company, recognize the company as an exchange company---

(i) subject to such conditions as it considers appropriate specified in the notice; and

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

(3) Without limiting the generality of conditions which may be specified in a notice under subsection (2), the Commission may, by notice in writing served on a recognized exchange company, amend or revoke any condition specified in the first-mentioned notice or impose new conditions, where the Commission---

(a) is satisfied that it is appropriate to do so on a ground specified in paragraph

- (a) or (b) of that subsection; and
- (b) has consulted the Financial Secretary.

(4) Where the Commission amends or revokes any condition or imposes any new condition by a notice under subsection (3), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.

(5) A person who---

- (a) contravenes subsection (1); or
- (b) without lawful authority or reasonable excuse, fails to comply with a condition imposed by a notice served on the person under subsection (2) or (3), commits an offence and is liable---

(i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

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

(7) Where a company is seeking to be a recognized exchange company 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 not to recognize the company.

(8) A person shall not be regarded as contravening---

- (a) subsection (1)(b) by reason only of---

(i) carrying on a business of providing automated trading services that constitutes an operation of a futures market if---

(A) that person is authorized to provide the services under section 95(2) or is an intermediary licensed or exempt for Type 7 regulated activity; and

(B) by virtue of the authorization, licence or exemption, that person is permitted to engage in activities that constitute an operation of a futures market; or

(ii) carrying on a business of dealing in futures contracts that constitutes an operation of a futures market if---

(A) that person is an intermediary licensed or exempt for Type 2 regulated activity; and

(B) by virtue of the licence or exemption, that person is permitted to engage in activities that constitute an operation of a futures market; or

- (b) subsection (1)(d) by reason only of assisting in carrying on a business of providing automated trading services that constitutes an operation of a futures market or carrying on a business of dealing in futures contracts that constitutes

an operation of a futures market if the conditions referred to in paragraph (a)(i)(A) and (B) or (ii)(A) and (B) (as the case may be) are fulfilled in relation to the business of providing automated trading services or the business of dealing in futures contracts.

(9) In subsection (1), "stock market" (證券市場) shall have the meaning assigned to it in the definition of "stock market" in section 1 of Part 1 of Schedule 1, except that a reference to securities in that definition shall be construed as not including a reference to interests in any collective investment scheme.

20. Transactions that may be conducted on  
recognized stock market and  
recognized futures market

(1) No transaction may be conducted on a recognized stock market other than dealings in---

(a) securities; and

(b) other financial products which are approved in writing by the Commission, either generally or in a particular case.

(2) No transaction may be conducted on a recognized futures market other than dealings in---

(a) futures contracts; and

(b) other financial products,

which are approved in writing by the Commission, either generally or in a particular case.

21. Duties of recognized exchange company

(1) It shall be the duty of a recognized exchange company to ensure---

(a) so far as reasonably practicable, an orderly, informed and fair market---

(i) in the case of a recognized exchange company which operates a stock market, in securities that are traded on that stock market or through the facilities of that company; or

(ii) in the case of a recognized exchange company which operates a futures market, in futures contracts that are traded on that futures market or through the facilities of that company; and

(b) that risks associated with its business and operations are managed prudently.

(2) In discharging its duties under subsection (1), a recognized exchange company shall---

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

(b) ensure that the interests of the public prevail where they conflict with the interests of the recognized exchange company or the interests that it is required

to serve under any other applicable law.

(3) A recognized exchange company shall operate its facilities in accordance with the rules made under section 23 and approved under section 24.

(4) A recognized exchange company shall formulate and implement appropriate procedures for ensuring that its exchange participants comply with the rules of the company.

(5) A recognized exchange company shall immediately notify the Commission if it becomes aware---

(a) that any of its exchange participants is unable to comply with any rules of the company or any financial resources rules; or

(b) of a financial irregularity or other matter which in the opinion of the company may indicate that the financial standing or integrity of an exchange participant is in question, or that an exchange participant may not be able to meet his legal obligations.

(6) A recognized exchange company shall at all times provide and maintain---

(a) adequate and properly equipped premises;

(b) competent personnel; and

(c) automated systems with adequate capacity, facilities to meet contingencies or emergencies, security arrangements and technical support, for the conduct of its business.

## 22. Immunity, etc.

(1) Without limiting the generality of section 368(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by---

(a) a recognized exchange company; or

(b) any person acting on behalf of a recognized exchange company, including---

(i) any member of the board of directors of the company; or

(ii) any member of any committee established by the company,

in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties under section 21 or under the rules of the company.

(2) Where a recognized exchange controller is the controller of a recognized exchange company, the company's duties referred to in subsection (1) are not applicable to the company in respect of anything done or omitted to be done in good faith by the company in consequence of the discharge or purported discharge by the recognized exchange controller of the recognized exchange controller's duties under section 63.

(3) Any failure by a recognized exchange company to comply with its rules in

relation to a matter does not prevent the matter from being treated for the purposes of this Ordinance as done in accordance with the rules so long as the failure does not substantially affect the rights of a person entitled to require compliance with the rules.

### 23. Rules by recognized exchange company

(1) Without limiting any of its other powers to make rules, a recognized exchange company may make rules for such matters as are necessary or desirable---

- (a) for the proper regulation and efficient operation of the market which it operates;
- (b) for the proper regulation of its exchange participants and holders of trading rights;
- (c) for the establishment and maintenance of compensation arrangements for the investing public.

(2) Without limiting the generality of subsection (1), a recognized exchange company which may operate a stock market may make rules for---

- (a) applications for the listing of securities and the requirements to be met before securities may be listed;

(b) the entering into of agreements between the recognized exchange company and other persons in connection with the listing of securities, and the enforcement of those agreements by the company;

(c) the cancellation and withdrawal of the listing of, and the suspension and resumption of dealings in, securities listed on the recognized stock market operated by the recognized exchange company;

(d) the imposition on any person of obligations to observe specified standards of conduct or to perform, or refrain from performing, specified acts reasonably imposed in connection with the listing or continued listing of securities;

(e) the penalties or sanctions which may be imposed by the recognized exchange company for a breach of rules made under this section;

(f) procedures or conditions which may be imposed, or circumstances which are required to exist, in relation to matters which are provided for in the rules made under this section;

(g) dealing with possible conflicts of interest that might arise where a relevant corporation or a relevant recognized exchange controller seeks to be or is a listed corporation;

(h) such other matters as are necessary or desirable for the proper and efficient operation and management of the recognized exchange company.

(3) The Commission may, by notice in writing served on a recognized exchange company, request the company---



(a) to make rules specified in the request within the period specified in that request;  
or

(b) to amend rules referred to in the request in the manner and within the period specified in that request.

(4) Where the Commission is satisfied that a recognized exchange company has not complied with a request referred to in subsection (3) within the period specified in the request, the Commission may make or amend the rules specified in the request instead of the company.

(5) The following persons shall, if required to do so by the rules of a recognized exchange company, make a statutory declaration concerning such matters as may be specified in the rules---

- (a) an exchange participant or holder of trading rights of the company;
- (b) a director of a corporation which uses the facilities of the company;
- (c) a director of a corporation which is seeking to have any of its securities listed;
- (d) a director of a listed corporation or a person seeking approval from the company or the Commission, to his appointment as such; and
- (e) an adviser of a listed corporation.

(6) In making rules under this section, a recognized exchange company shall take into account that a solicitor or professional accountant acting in his professional capacity in private practice has duties imposed by law and under rules of professional conduct.

(7) A recognized exchange company shall, in circumstances stipulated in arrangements agreed from time to time between it and The Law Society of Hong Kong or the Hong Kong Society of Accountants, refer breaches of rules made under this section---

- (a) which are alleged to have been committed by a solicitor or professional accountant in private practice; and
  - (b) which may also constitute a breach of duty imposed by law or under rules of professional conduct,
- to The Law Society of Hong Kong or the Hong Kong Society of Accountants (as the case may be), for determination of whether to make a finding, impose a penalty or sanction or take other disciplinary action.

(8) For the purposes of subsections (6) and (7), a person shall be regarded as acting in the capacity of a solicitor or professional accountant in private practice if in the course of private practice he provides legal or professional accountancy services to a client, but shall not be regarded as so acting where, in respect of a matter governed by rules made under this section, he is also connected with the matter in any other capacity.

24. Approval of rules or amendments to rules  
of recognized exchange company

(1) Subject to subsection (7), no rule (whether or not made under section 23) of a recognized exchange company or any amendment thereto shall have effect unless it has the approval in writing of the Commission.

(2) A recognized exchange company shall submit or cause to be submitted to the Commission---

(a) for its approval the rules and every amendment thereto that require approval under subsection (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them; and

(b) for its information the rules which belong to a class the subject of a declaration under subsection (7) and every amendment to the rules, as soon as reasonably practicable after they have been made.

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

(4) The Commission may give its approval under subsection (3) subject to requirements which shall be satisfied before the rules or amendment of the rules or any part thereof take effect.

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

(6) The Financial Secretary may, after consultation with the Commission and the recognized exchange company concerned, extend the time prescribed in subsection (3).

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

(8) Neither the rules under section 23 nor a notice under subsection (7) is subsidiary legislation.

25. Transfer and resumption of functions of Commission

(1) The Commission may request the Chief Executive in Council to transfer, by order ("transfer order") published in the Gazette, to a recognized exchange company ("designated exchange company")---

(a) a function to which this section applies; or  
(b) that function in so far as it applies to the exchange participants or applicants to be exchange participants of the designated exchange company, if the Commission is satisfied that the designated exchange company is willing and able to perform the function.

(2) This section applies to a function of the Commission under---

- (a) Part V;
- (b) section 141; and
- (c) Parts II and XII of the Companies Ordinance (Cap. 32).

(3) A function to which this section applies may be transferred by a transfer order either in whole or in part, and the transfer may be subject to---

- (a) a reservation that the Commission is to perform the function concurrently with the designated exchange company; and
- (b) such other conditions as the Commission considers appropriate.

(4) A transfer order may contain such incidental, supplemental and consequential provisions as may be necessary or expedient for the purpose of giving full effect to the order.

(5) The Commission shall not request that a transfer order be made in respect of the making of financial resources rules unless the proposed designated exchange company has first supplied the Commission with a draft of the financial resources rules which it proposes to make, and the Commission is satisfied that the rules, if made, will afford the investing public an adequate level of protection.

(6) The Commission may at the request or with the consent of a designated exchange company resume a function transferred by a transfer order, but the resumption takes effect only by order of the Chief Executive in Council.

(7) The Chief Executive in Council may order that the Commission resume a function transferred to a designated exchange company by a transfer order if the Commission so requests and if it appears to the Chief Executive in Council to be in the public interest to do so.

(8) A transfer order may provide for a designated exchange company to retain all or any of the fees payable in relation to the performance of a transferred function, and an order made under subsection (6) or (7) may provide for the Commission to retain all or any such fees, from a date specified in the order.

26. Appointment of chief executive of recognized exchange company requires approval of Commission

No appointment of a person as chief executive of a recognized exchange company shall have effect unless the appointment has the approval in writing of the Commission.

27. Production of records, etc. by recognized exchange company

(1) The Commission may, by notice in writing served on a recognized exchange company, require the company to provide to the Commission, within such period as the Commission may specify in the notice---

- (a) such books and records kept by it in connection with or for the purposes of its business or in respect of any trading in securities or futures contracts; and
- (b) such other information relating to its business or any trading in securities or futures contracts,

as the Commission may reasonably require for the performance of its functions.

(2) A recognized exchange company served with a notice under subsection (1) which, without reasonable excuse, fails to comply with the notice commits an offence and is liable on conviction to a fine at level 5.

28. Withdrawal of recognition of exchange company and direction to cease to provide facilities or services

(1) Subject to subsections (2), (3) and (4), the Commission may, after consultation with the Financial Secretary, by notice in writing served on a recognized exchange company---

- (a) withdraw the company's recognition as an exchange company with effect from a date specified in the notice for the purpose; or
- (b) direct the company to cease with effect from a date specified in the notice for the purpose---

- (i) to provide or operate such facilities as are specified therein; or
  - (ii) to provide such services as are specified therein.

(2) The Commission may only serve a notice under subsection (1) in relation to a recognized exchange company that---

- (a) fails to comply with any requirement of this Ordinance or with a condition imposed under section 19;
- (b) is being wound up;
- (c) ceases to operate a market that it has been authorized to operate by virtue of section 19; or
- (d) requests the Commission to do so.

(3) Except where responding to a request under subsection (2)(d), the Commission shall not exercise its power under subsection (1) in relation to a recognized exchange company unless it has given the company a reasonable opportunity of being heard.

(4) Except where responding to a request under subsection (2)(d), the Commission shall give the recognized exchange company not less than 14 days' notice in writing

of its intention to serve a notice under subsection (1) and the grounds for doing so.

(5) Where the Commission withdraws a company's recognition as an exchange company under subsection (1)(a), it shall cause notice of that fact to be published in the Gazette.

(6) A notice served under subsection (1)(a) shall not take effect---

(a) subject to paragraph (b), until the expiration of the period within which an appeal against the notice may be made under section 33; or

(b) if an appeal against the notice is made under section 33, until the appeal is withdrawn, abandoned or determined.

(7) A notice served under subsection (1)(b) shall take effect immediately.

29. Direction to cease to provide facilities  
or services in emergencies

(1) In addition to the powers of the Commission under section 28, the Commission may, after consultation with a recognized exchange company, by notice in writing served on the company, direct the company to cease to provide or operate such facilities or cease to provide such services as are specified in the notice for a period not exceeding 5 business days.

(2) The Commission may only serve a notice under subsection (1) if it is of the opinion that the orderly transaction of business on the stock or futures market (as the case may be) is being, or is likely to be, impeded because---

(a) an emergency or natural disaster has occurred in Hong Kong; or

(b) there exists an economic or financial crisis, whether in Hong Kong or elsewhere, or any other circumstances, which is likely to prejudice orderly transaction of business on the stock or futures market (as the case may be).

(3) The Commission may, by notice in writing served on the recognized exchange company, extend the direction under subsection (1) for further periods not exceeding 10 business days in all.

(4) A notice served under this section shall take effect immediately.

30. Contravention of notice constitutes offence

A person who---

(a) provides or operates facilities; or

(b) provides services,

in contravention of a notice under section 28(1)(b) or 29(1) or (3) commits an offence and is liable---

(i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6

months.

### 31. Prevention of entry into closed trading markets

(1) The Commission may take all necessary steps to ensure compliance with a notice under section 28(1)(b) or 29(1) or (3) and may, in particular, secure---

(a) the facilities to which the notice relates; or

(b) the premises at which such facilities are kept or the premises at which the services to which the notice relates are provided, against use for dealings in securities or futures contracts or other purposes.

(2) A person commits an offence and is liable on conviction to a fine at level 5 if, without the authority of the Commission or reasonable excuse, he---

(a) makes use of any facilities or services to which the notice under section 28(1)(b) or 29(1) or (3) relates; or

(b) enters the premises at which such facilities are kept or the premises at which such services are provided.

### 32. Publication of directions

Where the Commission---

(a) directs a recognized exchange company under section 28(1)(b) or 29(1) to cease to provide or operate any facilities or cease to provide any services; or

(b) extends under section 29(3) a direction referred to in that section, it shall cause notice of the particulars of the direction or extension (as the case may be) to be published in the Gazette.

### 33. Appeals

(1) A company served with a notice under section 28(1) or 29(1) or (3) 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.

(2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.

### 34. Restriction on use of titles relating to exchanges, markets, etc.

(1) A person commits an offence if he, without the authorization of the Commission, takes or uses the title---

(a) "stock exchange";

(b) "stock market";

(c) "commodity exchange";

(d) "futures exchange";

(e) "futures market";

- (f) "證券交易所";
- (g) "股票交易所";
- (h) "證券市場";
- (i) "股票市場";
- (j) "商品交易所";
- (k) "期貨交易所";
- (l) "期貨市場",

or anything which closely resembles any such title.

(2) A person who commits an offence under this section is liable---

(a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years;  
or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

### 35. Contract limits and reportable open position

(1) Without prejudice to section 384(9) and (10), the Commission may make rules to---

(a) prescribe limits on, or conditions relating to, the number of futures contracts which may be held or controlled, directly or indirectly, by any person, whether or not such contracts are traded on a recognized futures market or through the facilities of a recognized exchange company;

(b) prescribe limits on, or conditions relating to, the number of options contracts which may be held or controlled, directly or indirectly, by any person, whether or not such contracts are traded on a recognized stock market or recognized futures market or through the facilities of a recognized exchange company;

(c) require a person holding or controlling a reportable position to lodge a notice of that reportable position with a recognized exchange company or the Commission;

(d) prescribe the manner in which and the period within which a notice of a reportable position is to be lodged;

(e) prescribe the information by which a notice of a reportable position is to be accompanied.

(2) The Commission shall consult the Financial Secretary before making rules under subsection (1)(e).

(3) Subsection (1) does not prohibit the Commission from prescribing different limits or conditions, or different reportable positions, for different types or classes of futures or options contracts, or from exempting specified futures or options contracts.

(4) Without limiting the generality of subsection (1) and without prejudice to section 384(9) and (10), the Commission may make rules for the purposes of this section to prohibit a person from---

- (a) directly or indirectly entering, during a specified period, into transactions of a specified class in excess of a specified amount; or
- (b) directly or indirectly holding or controlling positions of a specified class in excess of a specified position limit.

(5) Rules made under this section may provide that a person who contravenes any specified provision of the rules that applies to the person commits an offence and is liable to a specified penalty not exceeding---

- (a) on conviction on indictment a fine at level 6 and a term of imprisonment of 2 years;
- (b) on summary conviction a fine at level 3 and a term of imprisonment of 6 months.

(6) In this section "reportable position" (須申報的持倉量) means an open position in futures or options contracts the number or total value of which is in excess of a number or total value specified by rules made under this section.

### 36. Rules by Commission

(1) Without prejudice to section 384(9) and (10), the Commission may make rules in respect of the following matters---

- (a) the listing of securities, and in particular---
  - (i) prescribing the requirements to be met before securities may be listed;
  - (ii) prescribing the procedure for dealing with applications for the listing of securities;
  - (iii) providing for the cancellation of the listing of any specified securities if the Commission's requirements for listing, or the requirements of the undertaking referred to in paragraph (e), are not complied with or the Commission considers that such action is necessary to maintain an orderly market in Hong Kong;
- (b) the conditions subject to which, and the circumstances in which, a recognized exchange company shall suspend dealings in securities or shall direct that dealings in securities recommence;
- (c) the procedure for and the method of allotment of any securities arising out of an offer made to members of the public in respect of those securities;
- (d) persons who may be admitted as an exchange participant of a recognized exchange company;
- (e) requiring companies the securities of which are listed or accepted for listing to enter into an undertaking in the form prescribed in the rules with a recognized exchange company which may operate a stock market under section 19 to provide such information at such times as may be specified, and to carry out such duties in relation to its securities as may be imposed, in the undertaking;
- (f) requiring a recognized exchange company which has become aware of any matter which



adversely affects, or is likely to adversely affect, the ability of any exchange participant of the company to meet its obligations as an exchange participant, to make a report concerning the matter to the Commission as soon as reasonably practicable after becoming aware of the matter;

(g) requiring a recognized exchange company when it expels any of its exchange participants, or suspends any of its exchange participants from trading on the recognized stock market or recognized futures market it operates or through its facilities, or requests any of its exchange participants to resign as an exchange participant, to notify the Commission of that fact within 3 business days after the expulsion, suspension or making of the request (as the case may be) and, in addition, to cause the expulsion, suspension or request to be notified to the public in such manner and within such period as may be prescribed in the rules;

(h) any matter which is to be or may be prescribed by rules made under section 23.

(2) Before making any rules in respect of any matter specified in subsection (1), the Commission shall consult---

(a) the Financial Secretary; and

(b) the recognized exchange company or all the recognized exchange companies (as the case may be) to which that matter relates.

(3) Nothing in this section prevents a recognized exchange company from making rules under section 23 on any matter referred to in subsection (1), but any such rules shall have effect only to the extent that they are not repugnant to any rule made by the Commission under subsection (1).

#### Division 3---Clearing houses

#### 37. Recognition of clearing house

(1) 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, after consultation with the Financial Secretary, by notice in writing served on a company, recognize the company as a clearing house---

(i) subject to such conditions as it considers appropriate specified in the notice; and

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

(2) Without limiting the generality of conditions which may be specified in a notice under subsection (1), the Commission may, by notice in writing served on a recognized clearing house, amend or revoke any condition specified in the first-mentioned notice or impose new conditions, where the Commission---

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

(b) has consulted the Financial Secretary.

(3) Where the Commission amends or revokes any condition or imposes any new condition by a notice under subsection (2), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.

(4) Where a company becomes a recognized clearing house, the Commission shall cause notice of that fact to be published in the Gazette.

(5) Where a company is seeking to be a recognized clearing house and the Commission is minded not to recognize the company under subsection (1), the Commission shall give the company a reasonable opportunity of being heard before making a decision not to recognize the company.

### 38. Duties of recognized clearing house

(1) It shall be the duty of a recognized clearing house to ensure---

(a) so far as reasonably practicable, that there are orderly, fair and expeditious clearing and settlement arrangements for any transactions in securities or futures contracts cleared or settled through its facilities; and

(b) that risks associated with its business and operations are managed prudently.

(2) In discharging its duties under subsection (1), a recognized clearing house shall---

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

(b) ensure that the interests of the public prevail where they conflict with the interests of the recognized clearing house or the interests that it is required to serve under any other applicable law.

(3) A recognized clearing house shall operate its facilities in accordance with the rules made under section 40 and approved under section 41.

(4) A recognized clearing house shall formulate and implement appropriate procedures for ensuring that its clearing participants comply with the rules of the clearing house.

(5) A recognized clearing house shall at all times provide and maintain---

(a) adequate and properly equipped premises;

(b) competent personnel; and

(c) automated systems with adequate capacity, facilities to meet contingencies or emergencies, security arrangements and technical support, for the conduct of its business.

### 39. Immunity, etc.

(1) Without limiting the generality of section 368(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred

by---

(a) a recognized clearing house; or

(b) any person acting on behalf of a recognized clearing house, including---

(i) any member of the board of directors of the clearing house; or

(ii) any member of any committee established by the clearing house,

in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties under---

(i) section 38;

(ii) section 47; or

(iii) the rules of the clearing house, including its default rules.

(2) Where a recognized exchange controller is the controller of a recognized clearing house, the clearing house's duties referred to in subsection (1) are not applicable to the clearing house in respect of anything done or omitted to be done in good faith by the clearing house in consequence of the discharge or purported discharge by the recognized exchange controller of the recognized exchange controller's duties under section 63.

(3) Without limiting the generality of section 368(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by---

(a) a person discharging, by virtue of a delegation under the default rules of a recognized clearing house, a duty of the clearing house in connection with any default proceedings; or

(b) any person acting on behalf of a person referred to in paragraph (a), including---

(i) any member of the board of directors of that person; or

(ii) any member of any committee established by that person,

in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of that duty.

(4) Any failure by a recognized clearing house to comply with its rules in relation to a matter does not prevent the matter from being treated for the purposes of this Ordinance as done in accordance with the rules so long as the failure does not substantially affect the rights of a person entitled to require compliance with the rules.

(5) Where a relevant office-holder takes action in relation to property of a defaulter which is liable to be dealt with in accordance with the default rules of a recognized clearing house, and believes on reasonable grounds that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage (as the case may be) is caused by the office-holder's own negligence.

#### 40. Rules by recognized clearing houses

(1) Without limiting any of its other powers to make rules, a recognized clearing house may make rules for such matters as are necessary or desirable---

(a) for the proper regulation and efficient operation of the clearing facilities which it operates;

(b) for the proper regulation of its clearing participants;

(c) for the establishment and maintenance of compensation arrangements for the investing public.

(2) A recognized clearing house shall make rules which---

(a) provide for the taking of proceedings or other action if a clearing participant appears to be unable, or likely to become unable, to meet his obligations in respect of all unsettled or open market contracts to which he is a party; and

(b) comply with Part 5 of Schedule 3.

(3) Where a recognized clearing house takes default proceedings, all subsequent proceedings or other action taken under its rules for the settlement of market contracts to which the defaulter is a party shall be treated as taken under the default rules.

(4) The Commission may, by notice in writing served on a recognized clearing house, request the clearing house---

(a) to make rules specified in the request within the period specified in that request; or

(b) to amend rules referred to in the request in the manner and within the period specified in that request.

(5) Where the Commission is satisfied that a recognized clearing house has not complied with a request referred to in subsection (4) within the period specified in the request, the Commission may make or amend the rules specified in the request instead of the recognized clearing house.

#### 41. Approval of rules or amendments to rules of recognized clearing house

(1) Subject to subsection (7), no rule (whether or not made under section 40) of a recognized clearing house or any amendment thereto shall have effect unless it has the approval in writing of the Commission.

(2) A recognized clearing house shall submit or cause to be submitted to the Commission---

(a) for its approval the rules and every amendment thereto that require approval under subsection (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them; and

(b) for its information the rules which belong to a class the subject of a declaration

under subsection (7) and every amendment to the rules, as soon as reasonably practicable after they have been made.

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

(4) The Commission may give its approval under subsection (3) subject to requirements which shall be satisfied before the rules or amendment of the rules or any part thereof take effect.

(5) The Commission may in a particular case, with the agreement of the recognized clearing house concerned, extend the time prescribed in subsection (3).

(6) The Financial Secretary may, after consultation with the Commission and the recognized clearing house concerned, extend the time prescribed in subsection (3).

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

(8) Neither the rules under section 40 nor a notice under subsection (7) is subsidiary legislation.

#### 42. Production of records, etc. by recognized clearing house

(1) The Commission may, by notice in writing served on a recognized clearing house, require the clearing house to provide to the Commission, within such period as the Commission may specify in the notice---

(a) such books and records kept by it in connection with or for the purposes of its business or in respect of any clearing and settlement arrangements for any transactions in securities or futures contracts; and

(b) such other information relating to its business or any clearing and settlement arrangements for any transactions in securities or futures contracts, as the Commission may reasonably require for the performance of its functions.

(2) A recognized clearing house served with a notice under subsection (1) which, without reasonable excuse, fails to comply with the notice commits an offence and is liable on conviction to a fine at level 5.

#### 43. Withdrawal of recognition of clearing house and direction to cease to provide

facilities

(1) Subject to subsections (2), (3) and (4), the Commission may, after consultation with the Financial Secretary, by notice in writing served on a recognized clearing house---

(a) withdraw the company's recognition as a clearing house with effect from a date specified in the notice for the purpose; or  
(b) direct the clearing house to cease to provide or operate with effect from a date specified in the notice for the purpose such clearing or settlement facilities as are specified therein.

(2) The Commission may only serve a notice under subsection (1) in relation to a recognized clearing house that---

(a) fails to comply with any requirement of this Ordinance or with a condition imposed under section 37;  
(b) is being wound up;  
(c) ceases to operate as a clearing house; or  
(d) requests the Commission to do so.

(3) Except where responding to a request under subsection (2)(d), the Commission shall not exercise its power under subsection (1) in relation to a recognized clearing house unless it has given the clearing house a reasonable opportunity of being heard.

(4) Except where responding to a request under subsection (2)(d), the Commission shall give the recognized clearing house not less than 14 days' notice in writing of its intention to serve a notice under subsection (1) and the grounds for doing so.

(5) Where the Commission withdraws a company's recognition as a clearing house under subsection (1)(a), it shall cause notice of that fact to be published in the Gazette.

(6) Where the Commission directs under subsection (1)(b) a recognized clearing house to cease to provide or operate any clearing or settlement facilities, it shall cause notice of the particulars of the direction to be published in the Gazette.

(7) A notice served under subsection (1)(a) shall not take effect---

(a) subject to paragraph (b), until the expiration of the period within which an appeal against the notice may be made under section 44; or  
(b) if an appeal against the notice is made under section 44, until the appeal is withdrawn, abandoned or determined.

(8) A notice served under subsection (1)(b) shall take effect immediately.

#### 44. Appeals

(1) A company served with a notice under section 43(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.

(2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.

45. Proceedings of recognized clearing house take precedence over law of insolvency

(1) None of the following shall be regarded as to any extent invalid at law on the ground of inconsistency with the law relating to distribution of the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of a receiver over any of the assets of a person---

(a) a market contract;

(b) the rules of a recognized clearing house relating to the settlement of a market contract;

(c) any proceedings or other action taken under the rules of a recognized clearing house relating to the settlement of a market contract;

(d) a market charge;

(e) the default rules of a recognized clearing house; or

(f) any default proceedings.

(2) The powers of a relevant office-holder in his capacity as such, and the powers of a court acting under the law of insolvency, shall not be exercised in such a way as to prevent or interfere with---

(a) the settlement in accordance with the rules of a recognized clearing house of a market contract; or

(b) any default proceedings.

(3) Subsection (2) shall not operate to prevent a relevant office-holder from recovering an amount under section 51 after the completion of a matter referred to in paragraph (a) or (b) of that subsection.

46. Supplementary provisions as to default proceedings

(1) A court may, on an application by a relevant office-holder, make such order as it considers appropriate altering or releasing him from compliance with the functions of his office that are affected by the fact that default proceedings are pending or could be taken, or have been or could have been taken.

(2) The functions of the relevant office-holder referred to in subsection (1) shall be construed subject to an order made under that subsection.

(3) Sections 12, 14 and 20 of the Bankruptcy Ordinance (Cap. 6) and sections 166, 181, 183, 186 and 254 of the Companies Ordinance (Cap. 32) do not prevent or interfere with any default proceedings.

47. Duty to report on completion of default proceedings

(1) A recognized clearing house shall, upon the completion by it of any default proceedings, make a report on such proceedings stating in respect of each defaulter---

(a) the net sum (if any) certified by the clearing house to be payable by or to the defaulter; or

(b) the fact that no sum is so payable,  
(as the case may be) and the clearing house may include in that report such other particulars in respect of such proceedings as it considers appropriate.

(2) A recognized clearing house which has made a report pursuant to subsection (1) shall supply the report to---

(a) the Commission; and

(b) (i) any relevant office-holder acting in relation to---

(A) the defaulter to whom the report relates; or

(B) that defaulter's estate; or

(ii) if there is no relevant office-holder referred to in subparagraph (i), the defaulter to whom the report relates.

(3) Where the Commission receives pursuant to subsection (2) a report made pursuant to subsection (1), it may publish notice of that fact in such manner as it considers appropriate to bring it to the attention of creditors of the defaulter to whom the report relates.

(4) Where a relevant office-holder or defaulter receives pursuant to subsection (2) a report made pursuant to subsection (1), he shall, at the request of a creditor of the defaulter to whom the report relates---

(a) make the report available for inspection by the creditor;

(b) on payment of such reasonable fee as the relevant office-holder or defaulter (as the case may be) determines, supply to the creditor all or any part of that report.

(5) In subsections (2), (3) and (4), "report" (報告) includes a copy of a report.

#### 48. Net sum payable on completion of default proceedings

(1) This section applies with respect to any net sum referred to in section 47(1)(a).

(2) Where a bankruptcy or winding-up order has been made, or a resolution for voluntary winding up has been passed, any net sum shall, notwithstanding any provision of section 34 or 35 of the Bankruptcy Ordinance (Cap. 6) or section 264 of the Companies Ordinance (Cap. 32), be---

(a) provable in the bankruptcy or winding up or (as the case may be) payable to the relevant office-holder; and

(b) taken into account, where appropriate, under section 35 of the Bankruptcy Ordinance (Cap. 6) or that section as applied in the case of a winding-up order under the Companies Ordinance (Cap. 32).



49. Disclaimer of property, rescission of contracts, etc.

(1) Section 59 of the Bankruptcy Ordinance (Cap. 6) and section 268 of the Companies Ordinance (Cap. 32) do not apply in relation to---

- (a) a market contract;
- (b) a contract effected by a recognized clearing house for the purpose of realizing property provided as market collateral;
- (c) a market charge; or
- (d) any default proceedings.

(2) Section 42 of the Bankruptcy Ordinance (Cap. 6) and section 182 of the Companies Ordinance (Cap. 32) do not apply in relation to any act, matter or thing which has been done pursuant to---

- (a) a market contract;
- (b) a disposal of property pursuant to a market contract;
- (c) the provision of market collateral;
- (d) a contract effected by a recognized clearing house for the purpose of realizing property provided as market collateral, or any disposal of property pursuant to such a contract;
- (e) a disposal of property in accordance with the rules of a recognized clearing house as to the application of property provided as market collateral;
- (f) a disposal of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposal is made;
- (g) a disposal of property made in enforcing a market charge;
- (h) a market charge; or
- (i) any default proceedings.

50. Adjustment of prior transactions

(1) No order shall be made pursuant to---

- (a) section 49 or 50 of the Bankruptcy Ordinance (Cap. 6);
- (b) section 266 of the Companies Ordinance (Cap. 32); or
- (c) section 60 of the Conveyancing and Property Ordinance (Cap. 219),

in relation to any matter to which this section applies.

(2) The matters to which this section applies are---

- (a) a market contract;
- (b) a disposal of property pursuant to a market contract;
- (c) the provision of market collateral;
- (d) a contract effected by a recognized clearing house for the purpose of realizing property provided as market collateral;
- (e) a disposal of property in accordance with the rules of a recognized clearing house

as to the application of property provided as market collateral;

(f) a market charge; and

(g) any default proceedings.

51. Right of relevant office-holder to recover certain amounts arising from certain transactions

(1) Where a clearing participant ("the first participant") enters into a transaction for the sale or purchase of securities with another clearing participant ("the second participant") at an undervalue or an over-value in circumstances described in subsection (2), and thereafter a relevant office-holder is acting in relation to---

(a) the second participant;

(b) the person who was, in respect of the transaction, the principal of the second participant ("the second principal"); or

(c) the estate of the second participant or the second principal,

then, unless a court otherwise orders, the relevant office-holder may recover, from the first participant, or the person who was, in respect of the transaction, the principal of the first participant ("the first principal"), an amount equal to the prescribed gain obtained under the transaction by the first participant or the first principal (as the case may be). The amount is recoverable even if the transaction may have been discharged in accordance with the rules of a recognized clearing house and replaced by a market contract.

(2) The circumstances referred to in subsection (1) in which a transaction is entered into occur when---

(a) a prescribed event has occurred in relation to the second participant or the second principal; or

(b) the first participant or the first principal knew or ought reasonably to have known---

(i) in the case of the first participant, that a prescribed event was likely to occur in relation to the second participant or the second principal;

(ii) in the case of the first principal, that a prescribed event was likely to occur in relation to the second principal,

and the event occurs within the period of 6 months immediately following the date on which the transaction was so entered into.

(3) In this section---

"prescribed event" (訂明事件), in relation to a second participant or a second principal, means---

(a) a bankruptcy order has been made against the second participant or the second

principal (as the case may be);

(b) the making of a statutory declaration in respect of the second participant or the second principal (as the case may be) pursuant to section 228A(1) of the Companies Ordinance (Cap. 32);

(c) a meeting of creditors summoned in relation to the second participant or the second principal (as the case may be) pursuant to section 241 of the Companies Ordinance (Cap. 32); or

(d) the presentation of a petition for the winding up of the second participant or the second principal (as the case may be) by a court;

"prescribed gain" (訂明收益), in relation to a transaction referred to in subsection (1), means the difference between---

(a) the market value of the securities the subject of the transaction; and

(b) the value of the consideration for the transaction,

as at the time the transaction was entered into.

52. Application of market collateral not affected by certain other interests, etc.

(1) The provisions of this section have effect with respect to the application by a recognized clearing house of property provided as market collateral.

(2) So far as necessary to enable the property to be applied in accordance with the rules of a recognized clearing house, it may be so applied notwithstanding any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the clearing house had actual notice of the interest, right or breach of duty (as the case may be) at the time the property was provided as market collateral.

(3) No right or remedy arising subsequently to the property being provided as market collateral may be enforced so as to prevent or interfere with the application of the property by the recognized clearing house in accordance with its rules.

(4) Where a recognized clearing house has power by virtue of the provisions of this section to apply property notwithstanding an interest, right or remedy, a person to whom the clearing house disposes of the property in accordance with its rules takes free from that interest, right or remedy.

53. Enforcement of judgments over property subject to market charge, etc.

(1) Where property is subject to a market charge or has been provided as market collateral, no execution or other legal process for the enforcement of a judgment or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in or security over the property, except with the consent of the recognized clearing house concerned.

(2) Where by virtue of this section a person would not be entitled to enforce a judgment or order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.

#### 54. Law of insolvency in other jurisdictions

(1) A court shall not, pursuant to any enactment or rule of law, recognize or give effect to---

(a) an order of a court exercising jurisdiction under the law of insolvency in a place outside Hong Kong; or

(b) an act of a person appointed in that place to perform a function under the law of insolvency there,

in so far as making the order or doing the act would be prohibited in the case of a court in Hong Kong or a relevant office-holder by provisions made by or under this Ordinance.

(2) In this section, "law of insolvency" (破產清盤法), in relation to a place outside Hong Kong, means any law of that place which is similar to, or serves the same purposes as, any part of the law of insolvency in Hong Kong.

#### 55. Clearing participant to be party to certain transactions as principal

(1) Where a clearing participant---

(a) in his capacity as such enters into any transaction (including a market contract) with a recognized clearing house; and

(b) but for this subsection, would be a party to that transaction as agent, then, notwithstanding any other enactment or rule of law, as between, but only as between, the clearing house and any other person (including the clearing participant and the person who is his principal in respect of that transaction), the clearing participant shall for all purposes (including any action, claim or demand, either civil or criminal)---

(i) be deemed not to be a party to that transaction as agent; and

(ii) be deemed to be a party to that transaction as principal.

(2) Where---

(a) 2 or more clearing participants in their capacities as such enter into any transaction; and

(b) but for this subsection, any such clearing participant would be a party to that transaction as agent, then, notwithstanding any other enactment or rule of law, any such clearing participant to whom paragraph (b) applies shall for all purposes (including any action, claim or demand, either civil or criminal), except as between, but only as between, him and the person who is his principal in respect of that transaction---

(i) be deemed not to be a party to that transaction as agent; and

(ii) be deemed to be a party to that transaction as principal.

#### 56. Securities deposited with recognized clearing house

(1) Subject to subsections (2) and (3), where securities are deposited by a clearing participant with a recognized clearing house in accordance with the rules of the clearing house, then, notwithstanding any other enactment or rule of law, no action, claim or demand, either civil or criminal, in respect of any right, title or interest in those securities held or enjoyed by any person lies, or shall be commenced or allowed, against the clearing house or its nominees.

(2) The operation of subsection (1) in respect of securities deposited with a recognized clearing house is subject to the modifications and exclusions provided in the rules of the clearing house.

(3) This section does not operate to prejudice the operation of section 100 of the Companies Ordinance (Cap. 32).

#### 57. Preservation of rights, etc.

Except to the extent that they expressly provide, the provisions of this Division do not operate to limit, restrict or otherwise affect---

(a) any right, title, interest, privilege, obligation or liability of a person;

(b) any investigation, legal proceeding or remedy in respect of any such right, title, interest, privilege, obligation or liability.

#### 58. Amendment of Schedule 3

(1) The Financial Secretary may, by notice published in the Gazette, amend Part 5 of Schedule 3.

(2) For the avoidance of doubt, it is hereby declared that the power of the Financial Secretary under subsection (1) to amend Part 5 of Schedule 3 may be exercised in such a way as to include in that Part a provision which requires a recognized clearing house to have, as part of its default rules, rules which prohibit the clearing house from taking any proceedings or other action specified in the provision, either generally or in a particular case.

#### Division 4---Exchange controllers

#### 59. Recognition of exchange controller

(1) Subject to subsection (19) and section 62, no person shall become or continue to be the controller of a recognized exchange company or recognized 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, recognize the company as an exchange controller---

(i) subject to such conditions as it considers appropriate specified in the notice; and

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

(3) Without limiting the generality of conditions which may be specified in a notice under subsection (2), the Commission may, by notice in writing served on a recognized exchange controller, amend or revoke any condition specified in the first-mentioned notice or impose new condition, where the Commission---

(a) is satisfied that 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) Where the Commission amends or revokes any condition or imposes any new condition by a notice under subsection (3), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.

(5) Subject to subsection (6), a person who---

(a) contravenes subsection (1); or

(b) fails to comply with a condition imposed by a notice served on the person under subsection (2) or (3),  
commits an offence and is liable---

(i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

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

(a) in the case of subsection (5)(a), that the person did not know that the acts or circumstances by virtue of which the person became the controller of the recognized exchange company or recognized clearing house concerned were such as to have that effect;

(b) in the case of subsection (5)(b), that the person exercised reasonable diligence to comply with the condition concerned.

(7) Where a person---

(a) is a controller of a recognized exchange company or recognized clearing house in contravention of subsection (1) (and whether or not the person is charged with an offence under subsection (5) in relation to the contravention);

(b) did not know and had no reason to suspect the existence of any of the acts or circumstances by virtue of which the person became the controller of the recognized exchange company or recognized clearing house; and

(c) subsequently becomes aware of the fact that the person has become such a controller,

the person shall serve on the Commission, not later than 14 days after becoming aware of that fact, a notice in writing stating that the person has become such a controller.

(8) The Commission may, upon the service of a notice under subsection (7)---

(a) recognize the person as an exchange controller in accordance with subsection (2); or

(b) refuse to recognize the person as an exchange controller.

(9) Where a person is a controller of a recognized exchange company or recognized clearing house in contravention of subsection (1) (and whether or not the person is charged with an offence under subsection (5) in relation to the contravention)--

-

(a) the Commission may, by notice published in the Gazette---

(i) declare that any votes cast at any meeting of the recognized exchange company or recognized clearing house (as the case may be) by the person after the person became the controller shall be void and of no effect; and

(ii) give such directions as it considers appropriate for any such meetings to be reconvened for voting anew on the business on which such votes were cast;

(b) the person or any of his associated persons shall not exercise any rights conferred on the person as a holder of securities in the recognized exchange company or recognized clearing house, or any rights in securities in any such company which are otherwise controlled by the person; and

(c) the Commission may, by notice in writing served on the person, direct the person to take such steps as are specified in the notice---

(i) for the purpose of causing the person to cease to be such controller; and

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

(10) Without limiting the generality of steps referred to in subsection (9)(c) which may be specified in a notice under that subsection to be served on a person referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that person.

(11) The steps specified in a notice under subsection (9)(c) 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 recognized exchange company or recognized clearing house concerned.

(12) A notice served under subsection (9)(c) shall not take effect---  
(a) subject to paragraph (b), until the expiration of the period within which an appeal against the notice may be made under section 73; or  
(b) if an appeal against the notice is made under section 73, until the appeal is withdrawn, abandoned or determined.

(13) Subject to subsection (14), a person served with a notice under subsection (9)(c) who fails to comply with the notice commits an offence and is liable---  
(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or  
(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(14) It is a defence for a person charged with an offence under subsection (13) to prove that the person exercised reasonable diligence to comply with the notice concerned under subsection (9)(c) served on the person.

(15) Where a person served with a notice under subsection (9)(c) fails to comply with the notice (and whether or not the person is charged with an offence under subsection (13) in relation to the contravention), the provisions of Part 6 of Schedule 3 shall immediately apply.

(16) The provisions of this section, except subsection (5)(a), shall apply to a person who became the controller of a recognized exchange company or recognized clearing house before the commencement of this section as they apply to a person who became the controller of a recognized exchange company or recognized clearing house on or after that commencement.

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

(18) 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 not to recognize the company.

(19) Subsection (1) shall not apply to a person who is the controller of a recognized exchange company or recognized clearing house if the recognized exchange company or recognized clearing house is itself a recognized exchange controller.

(20) A notice under subsection (9)(a) is not subsidiary legislation.  
60. Interest of recognized exchange controller in recognized exchange company or recognized clearing house cannot be increased or decreased except with approval of Commission

Where a recognized exchange controller is a controller of a recognized exchange



company or recognized 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 recognized exchange company or recognized 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.

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

(1) Subject to subsections (2) and (16), on and after the commencement of this section, a person shall not---

- (a) be or become a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house except with the approval in writing of the Commission after consultation with the Financial Secretary; and
- (b) if such approval is given, and subject to any condition specified in the approval disapplying this paragraph in whole or in part, 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.

(2) The Commission shall not give an approval under subsection (1)(a) or (b) unless it is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest.

(3) Where the Commission refuses to give an approval under subsection (1)(a) or (b), it shall give notice in writing of its reasons for the refusal to the person concerned.

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

- (a) contravenes subsection (1); or
- (b) fails to comply with a condition specified in an approval under subsection (1), commits an offence and is liable---

(i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

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

- (a) in the case of subsection (4)(a), that the person---

(i) did not know that the acts or circumstances by virtue of which the person became a minority controller, or increased the interest the person has as a minority

controller (as the case may be) of the recognized exchange controller, recognized exchange company or recognized clearing house concerned were such as to have that effect; or

(ii) exercised reasonable diligence to avoid contravening subsection (1);  
(b) in the case of subsection (4)(b), that the person exercised reasonable diligence to comply with the condition concerned.

(6) Where a person---

(a) is a minority controller of a recognized exchange controller, recognized exchange company or recognized 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);

(b) did not know and had no reason to suspect the existence of any of the acts or circumstances by virtue of which the person became the minority controller of that recognized exchange controller, recognized exchange company or recognized clearing house; and

(c) subsequently becomes aware of the fact that the person has become such a minority controller,

the person shall serve on the Commission, not later than 14 days after becoming aware of that fact, a notice in writing stating that the person has become such a minority controller.

(7) The Commission may, upon the service of a notice under subsection (6)---

(a) approve the person as a minority controller in accordance with subsection (1);  
or

(b) refuse to approve the person as a minority controller.

(8) Where a person is the minority controller of a recognized exchange controller, recognized exchange company or recognized 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 published in the Gazette---

(a) declare that any votes cast at any meeting of the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) by the person after the person became the minority controller, shall be void and of no effect; and

(b) give such directions as it considers appropriate for any such meetings to be reconvened for voting anew on the business on which such votes were cast.

(9) Where a person has contravened subsection (1) 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 (4) in relation to the contravention or failure)---

(a) the person or any of his associated persons shall not exercise any rights conferred on the person as a holder of securities in the recognized exchange controller, recognized exchange company or recognized clearing house concerned or any rights in securities in any such company which are otherwise controlled by the person; and

(b) the Commission may, by notice in writing served on the person, direct the person to take such steps as are specified in the notice---

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

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

(10) Without limiting the generality of steps referred to in subsection (9)(b) which may be specified in a notice under that subsection to be served on a person referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that person.

(11) The steps specified in a notice under subsection (9)(b) 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, recognized exchange company or recognized clearing house concerned.

(12) A notice served under subsection (9)(b) shall not take effect---

(a) subject to paragraph (b), until the expiration of the period within which an appeal against the notice may be made under section 73; or

(b) if an appeal against the notice is made under section 73, until the appeal is withdrawn, abandoned or determined.

(13) Subject to subsection (14), a person served with a notice under subsection (9)(b) who fails to comply with the notice commits an offence and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

(14) It is a defence for a person charged with an offence under subsection (13) to prove that the person exercised reasonable diligence to comply with the notice concerned under subsection (9)(b) served on the person.

(15) Where a person served with a notice under subsection (9)(b) fails to comply with the notice (and whether or not the person is charged with an offence under subsection (13) in relation to the contravention), the provisions of Part 6 of

Schedule 3 shall immediately apply.

(16) 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 (1) subject to such conditions (if any) as are specified in the rules.

(17) Where a person is seeking to be a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house and the Commission is minded not to give approval under subsection (1) in relation thereto, the Commission shall give the person a reasonable opportunity of being heard before making a decision not to give such approval.

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

(a) interests held in the recognized exchange controller, recognized exchange company or recognized 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, recognized exchange company or recognized clearing house (as the case may be); or

(b) 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, recognized exchange company or recognized clearing house (as the case may be).

(19) A notice under subsection (8) is not subsidiary legislation.

(20) In this section, "minority controller" (次要控制人), in relation to a recognized exchange controller, recognized exchange company or recognized clearing house---

(a) subject to paragraph (b), means any person who, either alone or with any associated person or persons, is entitled to exercise, or control the exercise of, 5% or more of the voting power at any general meeting of the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) or of a corporation of which the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) is a subsidiary;

(b) does not include---

(i) a recognized exchange controller; or

(ii) a person, or a person belonging to a class of persons, specified in Part

7 of Schedule 3 not to be a minority controller for the purposes of this Division.

## 62. Exemption from section 59(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 59(1)---

(i) subject to such conditions as he considers appropriate 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 considers appropriate 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 on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

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

(5) Without limiting the generality of the Financial Secretary's power under subsection (1), a person is exempt from section 59(1) in the cases specified in Part 8 of Schedule 3.

(6) 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.

## 63. Duties of recognized exchange controller

(1) It shall be the duty of a recognized exchange controller which is the

controller of a recognized exchange company or recognized clearing house to ensure so far as reasonably practicable---

(a) an orderly, informed and fair market in securities or futures contracts traded on the stock market or futures market operated by the recognized exchange company or through the facilities of the company;

(b) that there are orderly, fair and expeditious clearing and settlement arrangements for any transactions in securities or futures contracts cleared or settled through the facilities of the recognized clearing house;

(c) that risks associated with its business and operations are managed prudently;

(d) that the recognized exchange company or recognized clearing house (as the case may be) complies 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 discharging its duty under subsection (1)(a), (b) or (c), 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 the interests of the public prevail where they conflict with the interests of the recognized exchange controller or the interests that it is required to serve under any other applicable law.

64. Immunity, etc.

(1) Without limiting the generality of section 368(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by---

(a) a recognized exchange controller; or

(b) any person acting on behalf of a recognized exchange controller, including--  
-

(i) any member of the board of directors of the recognized exchange controller;  
or

(ii) any member of any committee established by the recognized exchange controller,

in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties under section 63 or under the rules of the controller.

(2) Any failure by a recognized exchange controller to comply with its rules in relation to a matter does not prevent the matter from being treated for the purposes of this Ordinance as done in accordance with the rules so long as the failure does not substantially affect the rights of a person entitled to require compliance with

the rules.

#### 65. Establishment and functions of Risk Management Committee

(1) A recognized exchange controller shall 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 recognized exchange company or recognized clearing house of which the recognized exchange controller is the controller and to submit such policies to the recognized exchange controller for its consideration.

(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) of whom not less than one shall be a member of the board of directors of the recognized exchange controller who---

(a) is such a member otherwise than by virtue of an appointment under section 77(1); and

(b) is not the chief executive of the recognized exchange controller.

#### 66. Rules by recognized exchange controllers

(1) Without limiting any of its other powers to make rules, a recognized exchange controller may make rules for such matters as are necessary or desirable---

(a) for the performance of its duties under section 63;

(b) for the establishment and maintenance of compensation arrangements for the investing public.

(2) The Commission may, after consultation with the Financial Secretary, by notice published 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 paragraph (c)(ii)(C) of the definition of "rules" in section 1 of Part 1 of Schedule 1 shall apply.

#### 67. Approval of rules or amendments to rules of recognized exchange controller

(1) Subject to subsection (7), no rule (whether or not made under section 66) 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---

(a) for its approval the rules and every amendment thereto that require approval under subsection (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them; and  
(b) for its information the rules which belong to a class the subject of a declaration under subsection (7) and every amendment to the rules, as soon as reasonably practicable after they have been made.

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

(4) The Commission may give its approval under subsection (3) subject to requirements which shall be satisfied before the rules or amendment of the rules or any part thereof take effect.

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

(6) The Financial Secretary may, after consultation with the Commission and the recognized exchange controller concerned, extend the time prescribed in subsection (3).

(7) The Commission may, by notice published 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.

(8) Neither the rules under section 66(1) nor a notice under subsection (7) is subsidiary legislation.

#### 68. Transfer and resumption of functions of Commission

(1) The Commission may request the Chief Executive in Council to transfer, by order ("transfer order") published in the Gazette, to a recognized exchange controller ("designated exchange controller"), a function to which this section applies, if the Commission is satisfied that the designated exchange controller is willing and able to perform the function.

(2) This section applies to a function of the Commission under---

(a) Part V;

(b) section 141; and

(c) Parts II and XII of the Companies Ordinance (Cap. 32).



(3) A function to which this section applies may be transferred by a transfer order either in whole or in part, and the transfer may be subject to---

(a) a reservation that the Commission is to perform the function concurrently with the designated exchange controller; and

(b) such other conditions as the Commission considers appropriate.

(4) A transfer order may contain such incidental, supplemental and consequential provisions as may be necessary or expedient for the purpose of giving full effect to the order.

(5) The Commission shall not request that a transfer order be made in respect of the making of financial resources rules unless the proposed designated exchange controller has first supplied the Commission with a draft of the financial resources rules which it proposes to make, and the Commission is satisfied that the rules, if made, will afford the investing public an adequate level of protection.

(6) The Commission may at the request or with the consent of a designated exchange controller resume a function transferred by a transfer order, but the resumption takes effect only by order of the Chief Executive in Council.

(7) The Chief Executive in Council may order that the Commission resume a function transferred to a designated exchange controller by a transfer order if the Commission so requests and if it appears to the Chief Executive in Council to be in the public interest to do so.

(8) A transfer order may provide for a designated exchange controller to retain all or any of the fees payable in relation to the performance of a transferred function, and an order made under subsection (6) or (7) may provide for the Commission to retain all or any such fees, from a date specified in the order.

#### 69. Chairman of recognized exchange controller

(1) No person shall be the chairman of a company which is a recognized exchange controller 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.

#### 70. 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 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 notice served under subsection (2) shall take effect immediately.

#### 71. Production of records, etc. by recognized exchange controller

(1) The Commission may, by notice in writing served on a recognized exchange controller, require the controller to provide to the Commission, within such period as the Commission may specify in the notice---

(a) such books and records kept by it---

(i) in connection with or for the purposes of its business;

(ii) in respect of any trading in securities or futures contracts traded on the stock market or futures market operated by the recognized exchange company of which it is a controller, or through the facilities of that company; or

(iii) in respect of any clearing and settlement arrangements for any transactions in securities or futures contracts cleared or settled through the facilities of the recognized clearing house of which it is a controller; and

(b) such other information relating to its business or any such trading or clearing and settlement arrangements,

as the Commission may reasonably require for the performance of its functions.

(2) A recognized exchange controller served with a notice under subsection (1) which, without reasonable excuse, fails to comply with the notice commits an offence and is liable on conviction to a fine at level 5.

#### 72. 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; or

(ii) 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 controller a reasonable opportunity of being heard.

(3) Without limiting the generality of steps referred to in subsection (1)(ii) which may be specified in a notice under that subsection to be served on a company referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that company.

(4) The steps specified in a notice under subsection (1)(ii) 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 recognized exchange company or recognized clearing house concerned.

(5) Where the Commission withdraws a company's recognition as an exchange controller under subsection (1)(i), it shall cause notice of that fact to be published in the Gazette.

(6) A notice served under subsection (1) shall not take effect---  
(a) subject to paragraph (b), until the expiration of the period within which an appeal against the notice may be made under section 73; or  
(b) if an appeal against the notice is made under section 73, until the appeal is withdrawn, abandoned or determined.

(7) Subject to subsection (8), a company served with a notice under subsection (1) which fails to comply with the notice commits an offence and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

(8) It is a defence for a person charged with an offence under subsection (7) to prove that the person exercised reasonable diligence to comply with the notice concerned under subsection (1) served on the person.

(9) Where a company served with a notice under subsection (1) fails to comply with the notice (and whether or not the company is charged with an offence under subsection (7)), the provisions of Part 6 of Schedule 3 shall immediately apply.

### 73. Appeals

(1) A person served with a notice under section 59(9)(c), 61(9)(b), 70(2), 72(1) or 75(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.

(2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.

74. Provisions applicable where recognized exchange controller, etc. seeks to be listed corporation

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

(a) subject to subsection (2), rules made under section 23 adequately deal with possible conflicts of interest that might arise if the relevant recognized exchange controller or relevant corporation (as the case may be) were to be a listed corporation; and

(b) the relevant recognized exchange controller or relevant corporation (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 the stock market or futures market operated by the recognized exchange company concerned or through the facilities of that recognized exchange company; and

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

(2) Rules referred to in subsection (1)(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 corporation that would be taken by the Stock Exchange Company in the case of a corporation that was neither a recognized exchange controller nor a relevant corporation 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.

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

(a) rules made for the purposes of subsections (1)(a) and (2);

(b) arrangements referred to in subsection (1)(b).

(4) 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 (1)(a) and (2), 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.

75. 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 relevant corporation; and

(ii) the interest of the proper performance of the functions conferred by this or any other Ordinance (including any rules made under any Ordinance, whether or not they are subsidiary legislation) on the controller or the relevant corporation; 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 corporation (as the case may be) stating the reasons in support of the ground or grounds for the notice, direct the controller or relevant corporation (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 notice served under subsection (1) shall take effect immediately.

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

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

76. 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) a recognized exchange company or recognized clearing house---

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

(ii) in its capacity as a recognized exchange company or recognized clearing house (as the case may be),

shall have effect unless the fee is specified in the rules of the recognized exchange

controller, recognized exchange company or recognized 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, among other matters---

(a) the level of competition (if any) 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, recognized exchange company or recognized clearing house or any similar body outside Hong Kong, for the same or a similar matter to which the fee relates.

77. Financial Secretary may appoint not more than 8 persons to board of directors of recognized exchange controller

(1) Notwithstanding any enactment or rule of law but subject to subsection (2), the Financial Secretary may appoint not more than 8 persons to be members of the board of directors of a recognized exchange controller 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.

(2) The Financial Secretary shall exercise his power under subsection (1) in such a way that, immediately following the annual general meeting of the recognized exchange controller held in 2003 and thereafter, the number of members of its board of directors who are such members by virtue of an appointment under that subsection is not more than the maximum number of members of that board who may be such members otherwise than by virtue of such an appointment (but excluding the chief executive of the recognized exchange controller).

(3) Subject to subsection (4), a member of the board of directors of the recognized exchange controller who is such a member by virtue of an appointment under subsection (1) 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.

(4) Notwithstanding any enactment or rule of law, no person appointed under subsection (1) as a member of the board of directors of the recognized exchange controller may be removed from that office by a resolution of the other directors of the board or a special resolution of the recognized exchange controller.

78. Amendment of Schedule 3

The Chief Executive in Council may, by order published in the Gazette, amend Parts 2, 3, 4, 6, 7 or 8 of Schedule 3.

Division 5---Investor compensation companies

79. Recognition of investor compensation company

(1) 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 facilitation of the management and administration of the compensation fund under Part XII,  
it may, after consultation with the Financial Secretary, by notice in writing served on a company, recognize the company as an investor compensation company---

(i) subject to such conditions as it considers appropriate specified in the notice; and

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

(2) Without limiting the generality of conditions which may be specified in a notice under subsection (1), the Commission may, by notice in writing served on a recognized investor compensation company, amend or revoke any condition specified in the first-mentioned notice or impose new condition, where the Commission---

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

(b) has consulted the Financial Secretary.

(3) Where the Commission amends or revokes any condition or imposes any new condition by a notice under subsection (2), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.

(4) Where a company becomes a recognized investor compensation company, the Commission shall cause notice of that fact to be published in the Gazette.

(5) Where a company is seeking to be a recognized investor compensation company and the Commission is minded not to recognize the company under subsection (1), the Commission shall give the company a reasonable opportunity of being heard before making a decision not to recognize the company.

#### 80. Transfer and resumption of functions of Commission

(1) The Commission may request the Chief Executive in Council to transfer, by order ("transfer order") published in the Gazette, to a recognized investor compensation company ("designated investor compensation company"), a function to which this section applies, if the Commission is satisfied that the designated investor compensation company is willing and able to perform the function.

(2) This section applies to a function of the Commission under Part XII (other than section 236(2)) or rules made under that Part.

(3) For the purposes of subsection (2), the function of the Commission under Part XII to maintain the compensation fund includes a function to maintain all or any part of the compensation fund, and the other provisions of this Ordinance shall apply accordingly.

(4) A function to which this section applies may be transferred by a transfer order either in whole or in part, and the transfer may be subject to---

(a) a reservation that the Commission is to perform the function concurrently with the designated investor compensation company; and

(b) such other conditions as the Commission considers appropriate.

(5) A transfer order may contain such incidental, supplemental and consequential provisions as may be necessary or expedient for the purpose of giving full effect to the order.

(6) The Commission may at the request or with the consent of a designated investor compensation company resume a function transferred by a transfer order, but the resumption takes effect only by order of the Chief Executive in Council.

(7) The Chief Executive in Council may order that the Commission resume a function transferred to a designated investor compensation company by a transfer order if the Commission so requests and if it appears to the Chief Executive in Council to be in the public interest to do so.

81. Immunity, etc.

(1) Without limiting the generality of section 368(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by---

(a) a recognized investor compensation company; or

(b) any person acting on behalf of a recognized investor compensation company, including---

(i) any member of the board of directors of the company; or

(ii) any member of any committee established by the company, in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties to which this subsection applies.

(2) The duties to which subsection (1) applies are those---

(a) that relate to or arise out of a function that has been transferred to the recognized investor compensation company under section 80; or

(b) to which the company is subject under rules made under

Part XII.

(3) Any failure by a recognized investor compensation company to comply with its rules in relation to a matter does not prevent the matter from being treated for the purposes of this Ordinance as done in accordance with the rules so long as the failure does not substantially affect the rights of a person entitled to require compliance with the rules.

82. Rules by recognized investor compensation company

Without limiting any of its other powers to make rules, a recognized investor



compensation company may make rules for such matters as are necessary or desirable---

- (a) for the proper and efficient management and operation of the company;
- (b) for the obtaining of such insurance, surety, guarantee or other security or the making of such financial arrangement by the company as may be necessary or appropriate for the purposes of its operation;
- (c) for the proper and efficient performance of a function transferred to the company under section 80.

83. Approval of rules or amendments to rules of recognized investor compensation companies

(1) Subject to subsection (7), no rule (whether or not made under section 82) of a recognized investor compensation company or any amendment thereto shall have effect unless it has the approval in writing of the Commission.

(2) A recognized investor compensation company shall submit or cause to be submitted to the Commission---

- (a) for its approval the rules and every amendment thereto that require approval under subsection (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them; and
- (b) for its information the rules which belong to a class the subject of a declaration under subsection (7) and every amendment to the rules, as soon as reasonably practicable after they have been made.

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

(4) The Commission may give its approval under subsection (3) subject to requirements which shall be satisfied before the rules or amendment of the rules or any part thereof take effect.

(5) The Commission may in a particular case, with the agreement of the recognized investor compensation company concerned, extend the time prescribed in subsection (3).

(6) The Financial Secretary may, after consultation with the Commission and the recognized investor compensation company concerned, extend the time prescribed in subsection (3).

(7) The Commission may, by notice published in the Gazette, declare any class of rules of a recognized investor compensation company to be a class of rules which are not required to be approved under subsection (1) and, accordingly, any rules of

the company which belong to that class (including any amendment thereto) shall have effect notwithstanding that they have not been so approved.

(8) A recognized investor compensation company shall make its rules available to the public in a manner approved by the Commission.

(9) Neither the rules under section 82 nor a notice under subsection (7) is subsidiary legislation.

#### 84. Production of records, etc. by recognized investor compensation company

(1) The Commission may, by notice in writing served on a recognized investor compensation company, require the company to provide to the Commission, within such period as the Commission may specify in the notice---

(a) such books and records kept by it in connection with or for the purposes of its business or in respect of the management and administration of the compensation fund under Part XII; and

(b) such other information relating to its business or the management and administration of the compensation fund under Part XII,

as the Commission may reasonably require for the performance of its functions.

(2) A recognized investor compensation company served with a notice under subsection (1) which, without reasonable excuse, fails to comply with the notice commits an offence and is liable on conviction to a fine at level 5.

#### 85. Withdrawal of recognition of investor compensation company

(1) Subject to subsections (2), (3) and (4), the Commission may, after consultation with the Financial Secretary, by notice in writing served on a recognized investor compensation company, withdraw the company's recognition as an investor compensation company with effect from a date specified in the notice for the purpose.

(2) The Commission may only serve a notice under subsection (1) in relation to a recognized investor compensation company that---

(a) fails to comply with any requirement of this Ordinance or with a condition imposed under section 79;

(b) is being wound up;

(c) ceases to perform any function transferred to it under section 80; or

(d) requests the Commission to do so.

(3) Except where responding to a request under subsection (2)(d), the Commission shall not exercise its power under subsection (1) in relation to a recognized investor compensation company unless it has given the company a reasonable opportunity of being heard.

(4) Except where responding to a request under subsection (2)(d), the Commission

shall give the recognized investor compensation company not less than 14 days' notice in writing of its intention to serve a notice under subsection (1) and the grounds for doing so.

(5) Where the Commission withdraws a company's recognition as an investor compensation company under subsection (1), it shall cause notice of that fact to be published in the Gazette.

(6) A notice served under this section shall take effect immediately.

#### 86. Appeals

(1) A company served with a notice under section 85(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.

(2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.

#### 87. Subrogation of recognized investor compensation company to rights, etc. of claimant on payment from compensation fund

(1) Where a recognized investor compensation company makes any payment out of the compensation fund in respect of any claim made under rules made under Part XII---

(a) the company shall be subrogated, to the extent of that payment, to all the rights and remedies of the claimant in relation to the loss sustained by him by reason of the default on which the claim was based; and

(b) the claimant shall have no right in bankruptcy or winding up or by legal proceedings or otherwise to receive in respect of the loss any sum out of the assets of the exchange participant or other person concerned who is in default, or where the loss was caused by the defalcation, fraud or misfeasance of an employee of that exchange participant or that other person, the assets of that employee, until the company has been reimbursed the full amount of its payment.

(2) All amounts recovered by the recognized investor compensation company under subsection (1) shall be paid in such manner as the Commission may direct and shall become part of the compensation fund.

#### 88. Financial statements of a recognized investor compensation company

(1) Subject to subsection (3), a recognized investor compensation company shall---

(a) prepare such financial statements and other documents, for such periods, as are prescribed by rules made under section 384 for the purposes of this section; and

(b) submit the financial statements and other documents, together with an auditor's

report, to the Commission not later than 4 months after the end of the financial year to which they relate.

(2) Without limiting the generality of subsection (1), the requirements under that subsection relating to the financial statements and other documents, and the auditor's report, referred to in that subsection include the requirements that--

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(a) the financial statements and other documents are to relate to such matters and contain such particulars as are prescribed by rules made under section 384 for the purposes of this section;

(b) the auditor's report is to contain such particulars, including such statement of opinion, as are prescribed by the rules;

(c) the financial statements and other documents, and the auditor's report, are to be prepared in accordance with such principles or bases as are prescribed by the rules; and

(d) without limiting the generality of section 129B of the Companies Ordinance (Cap. 32), the financial statements and other documents are to be signed by the chief executive officer of the recognized investor compensation company, by which they are prepared.

(3) On an application in writing by the recognized investor compensation company by which any financial statements and other documents, and any auditor's report, are required under subsection (1) to be submitted, the Commission may, where it is satisfied that there are special reasons for so doing, extend the period within which the financial statements and other documents, and the auditor's report, are required to be submitted, for such period and subject to such conditions as the Commission considers appropriate, and upon the Commission granting the extension, subsection (1) shall apply subject to the extension accordingly.

(4) A recognized investor compensation company shall cause a copy of each of the financial statements and other documents and the auditor's report that are required under subsection (1) to be submitted by it to be sent to the Financial Secretary and to be published in the Gazette.

89. Employees of and delegations by a recognized investor compensation company

(1) The Commission may arrange for any of its officers, employees, agents or consultants to assist in the operations of a recognized investor compensation company.

(2) A recognized exchange company or recognized exchange controller may, with the consent of a recognized investor compensation company, arrange for any of its officers, employees agents or consultants to assist in the operations of that recognized investor compensation company.

(3) A recognized investor compensation company may by resolution and subject to the approval of the Commission, with or without restrictions or conditions as the company considers appropriate, delegate in writing to any person any of its powers and duties other than its power under section 82.

90. Further activities of recognized investor compensation company

(1) A recognized investor compensation company may, in addition to performing a function transferred to it under section 80, conduct such activities or businesses as may be approved in writing by the Commission.

(2) The Commission shall not approve the conduct of any activities or businesses referred to in subsection (1) unless it is satisfied that such activities or businesses are incidental to the management or administration of the compensation fund under Part XII.

Division 6---General---Exchange companies, clearing houses, exchange controllers and investor compensation companies

91. Supply of information

(1) The Commission, a recognized exchange company, a recognized clearing house, a recognized exchange controller or a recognized investor compensation company shall be entitled to supply each other with information about its affairs and---

(a) in the case of a recognized exchange company, the affairs of any of its exchange participants;

(b) in the case of a recognized clearing house, the affairs of any of its clearing participants;

(c) in the case of a recognized exchange controller, the affairs of any of its subsidiaries; or

(d) in the case of a recognized investor compensation company, any claim made against the compensation fund.

(2) The Commission may, by notice in writing served on a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, require it to supply the Commission with such information as the Commission may reasonably require for the performance of the functions of the Commission under the relevant provisions, including information in its possession relating to---

(a) in the case of a recognized exchange company, the affairs of any of its exchange participants;

(b) in the case of a recognized clearing house, the affairs of any of its clearing participants;

- (c) in the case of a recognized exchange controller, the affairs of any of its subsidiaries; or
- (d) in the case of a recognized investor compensation company, any claim made against the compensation fund.

(3) The supply of information under subsection (1) or (2) shall not be treated as publication for the purposes of the law of defamation and, without limiting the generality of section 368(3) but subject to section 366, a person supplying the information does not incur liability as a consequence thereof.

(4) Where any information is supplied under subsection (1) to a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, the company concerned, the clearing house or the controller to whom the information is supplied shall not disclose the information, or any part of it, to any other person without the consent of the Commission.

## 92. Additional powers of Commission---restriction notices

(1) Subject to subsections (2), (5) and (13), 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;
- (b) for the protection of investors; or
- (c) for the proper regulation of a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, it may by notice in writing ("restriction notice") served on the exchange company, clearing house, exchange controller or investor compensation company do any or all of the following---

(i) require the exchange company, clearing house, exchange controller or investor compensation company before the expiry of a period specified in the notice---

(A) to amend, supplement, withdraw or revoke, in the manner specified in the notice, a provision of its rules or other instrument so specified;

(B) to take such action relating to the management, conduct or operation of its business as may be so specified;

(ii) prohibit the exchange company, clearing house, exchange controller or investor compensation company from doing, during a period so specified, such act or other thing relating to the management, conduct or operation of its business as may be so specified.

(2) The Commission shall not serve a restriction notice unless---

- (a) it has previously consulted the Financial Secretary in relation to the notice;
- (b) it has previously requested in writing the exchange company, clearing house, exchange controller or investor compensation company concerned to put, or cause to

be put, into effect a provision (which includes a request to refrain from doing any act or other thing) specified in the request and similar in effect to the requirement or prohibition specified in the restriction notice or, where there is more than one such requirement or prohibition so specified, provisions the combined effect of all of which is similar to the combined effect of the requirements or prohibitions so specified; and

(c) in the case of a request under paragraph (b) which---

(i) contains a provision requesting the exchange company, clearing house, exchange controller or investor compensation company concerned to amend, supplement, withdraw or revoke any provision of its constitution under subsection (1)(i), the provision has not been complied with before the expiration of the period specified in relation thereto in the request being not less than 45 days; or

(ii) contains a provision requesting the exchange company, clearing house, exchange controller or investor compensation company concerned to do or refrain from doing any act or other thing, the Commission is satisfied that the provision has not been complied with.

(3) A recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company may appeal to the Chief Executive in Council against a restriction notice that requires the exchange company, clearing house, exchange controller or investor compensation company to amend, supplement, withdraw or revoke any provision of its constitution.

(4) A restriction notice served under this section shall take effect immediately.

(5) A period specified in a restriction notice in relation to a prohibition under subsection (1)(ii) shall not exceed 6 months beginning on the date of the notice.

(6) The Commission may, after consultation with the Financial Secretary, by notice in writing served on the exchange company, clearing house, exchange controller or investor compensation company concerned, extend, for a period or successive periods of not more than 3 months each, the period during which a restriction notice is to remain in force.

(7) Where a restriction notice is issued or extended under this section, the Commission may publish in the Gazette a copy of the notice or, as may be appropriate, particulars of the extension.

(8) A restriction notice may, on the application of the Commission to the Court of First Instance, be enforced by an order of the Court as if it were a judgment or order of the Court.

(9) Where a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company is in breach of a

requirement in a restriction notice under subsection (1)(i)(A) relating to a provision of its rules or other instrument---

- (a) in the case of a requirement to amend or supplement such provision, the provision shall be deemed to have effect as if the requirement had been complied with; or
- (b) in the case of a requirement to withdraw or revoke such provision, the provision ceases to have effect.

(10) Where---

- (a) a restriction notice includes a requirement described in subsection (1)(i)(A) and the requirement relates to the constitution of a company; and
  - (b) by virtue of subsection (9) the provision to which the requirement relates has effect as if the requirement had been complied with or has ceased to have effect (as the case may be),
- the Commission shall, as soon as may be, deliver to the Registrar of Companies a copy of the notice.

(11) If there is an appeal under subsection (3) against the notice and the appeal is not withdrawn, the Commission shall, as soon as may be, inform the Registrar of Companies in writing of the outcome of the appeal.

(12) Without limiting the generality of section 368(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by---

- (a) a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company;
  - (b) an officer or employee of a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company;
  - (c) an exchange participant; or
  - (d) a clearing participant,
- in respect of anything done or omitted to be done in good faith in compliance or purported compliance with a restriction notice.

(13) This section shall not be construed as enabling the Commission to do under this section anything which may be done by the Commission by direction under section 28(1)(b) or 29.

93. Additional powers of Commission---  
suspension orders

(1) 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;
- (b) for the protection of investors; or
- (c) for the proper regulation of a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company,



it may, after consultation with the Financial Secretary, issue a suspension order relating to all or any of the following---

(i) the functions of the board of directors or governing body of the exchange company, clearing house, exchange controller or investor compensation company;

(ii) the functions of a director of a board or a member of a body referred to in paragraph (i);

(iii) the functions of a committee, including a sub-committee, established by a board or body referred to in paragraph (i);

(iv) the functions of the chief executive officer (by whatever name called), of the exchange company, clearing house, exchange controller or investor compensation company.

(2) While a suspension order is in force the following provisions apply---

(a) neither the recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company to which the order relates nor any board, governing body, committee or officer of it shall perform a function to which the order relates;

(b) a function to which paragraph (a) applies may be performed by the person specified in the order in relation to that function;

(c) a person referred to in paragraph (a) shall not, by act or omission, either directly or indirectly, affect the manner in which a function referred to in that paragraph is performed.

(3) Subject to subsection (7), a suspension order shall continue in force for the period not exceeding 6 months specified in the order.

(4) A suspension order or an extension of it under subsection (7) shall take effect when a copy of the order or notice of the extension is served under subsection (8)(a) on the exchange company, clearing house, exchange controller or investor compensation company to which the order relates.

(5) Where a suspension order is made or extended under this section, the Commission shall, as soon as reasonably practicable to do so, give a copy of a suspension order or, as may be appropriate, notice of its extension to the chief executive officer of the exchange company, clearing house, exchange controller or investor compensation company to which the order relates and to the directors or members of its committee (if any) as the Commission considers appropriate in the circumstances.

(6) Nothing in subsection (5) affects subsection (4).

(7) The Commission may, after consultation with the Financial Secretary, extend

for a period or successive periods of not more than 3 months each the period during which a suspension order is to remain in force.

(8) Where a suspension order is made or extended under this section, the Commission shall---

(a) forthwith serve a copy of the order or notice in writing of the extension on the exchange company, clearing house, exchange controller or investor compensation company to which the order relates; and

(b) publish in the Gazette and publish through at least one other medium a copy of the suspension order or, as may be appropriate, notice of its extension.

(9) A suspension order may, on the application of the Commission to the Court of First Instance, be enforced by an order of the Court as if it were a judgment or order of the Court.

(10) The exchange company, clearing house, exchange controller or investor compensation company concerned shall pay to the Commission on demand costs or expenses reasonably incurred by the Commission or a member or employee of the Commission in connection with a suspension order.

(11) The amount of the costs or expenses demanded under subsection (10) are recoverable by the Commission as a civil debt.

(12) A person who knowingly contravenes subsection (2)(c) commits an offence and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

#### 94. Application of Companies Ordinance

Where there is any inconsistency between this Part and the Companies Ordinance (Cap. 32) in its application to a recognized exchange company, a recognized clearing house, a recognized exchange controller or a recognized investor compensation company, this Part prevails.

#### Division 7---Automated trading services

#### 95. Authorization for providing automated trading services

(1) No person shall provide automated trading services unless that person---

(a) is so authorized under subsection (2);

(b) is an employee or agent of a person so authorized under subsection (2), in so far as the employee or agent is acting in that capacity for or on behalf of that person;

(c) is an intermediary licensed or exempt for Type 7 regulated activity;

(d) is a licensed representative for Type 7 regulated activity, in so far as the representative is acting in that capacity for the licensed corporation to whom the

representative is accredited; or

(e) is an individual who has his name 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 an exempt person for Type 7 regulated activity in respect of that regulated activity, in so far as the individual is acting in that capacity for the exempt person.

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

(a) upon application by a person, by notice in writing served on that person, authorize that person to provide automated trading services---

(i) subject to such conditions as it considers appropriate specified in the notice; and

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

(b) authorize a stock exchange or futures exchange outside Hong Kong to provide automated trading services with effect from a date specified in the notice for the purpose.

(3) Where a person or a stock exchange or futures exchange outside Hong Kong is granted an authorization under subsection (2), the Commission shall cause notice of that fact to be published in the Gazette.

(4) Where a person or a stock exchange or futures exchange outside Hong Kong is seeking an authorization to provide automated trading services and the Commission is minded not to grant the authorization under subsection (2), the Commission shall give the person or (as the case may be) the stock exchange or futures exchange a reasonable opportunity of being heard before making a decision not to grant the authorization.

(5) The Commission shall prepare and publish in the Gazette or otherwise guidelines setting out the principles, procedures and standards in relation to authorization for providing automated trading services under this section.

(6) Guidelines published under subsection (5) are not subsidiary legislation.

#### 96. Application for authorization

(1) An application under section 95(2)(a) shall be accompanied by---

(a) such information and particulars as the Commission may reasonably require; and  
(b) an application fee prescribed by rules made under section 382 for the purposes of this section.

(2) Without limiting the generality of subsection (1)(a), an application under section 95(2)(a) shall also be accompanied by such information as may reasonably be required by the Commission regarding---

(a) the services and facilities which the applicant will hold itself out as being

able to provide if the application is allowed;

(b) the business which the applicant proposes to carry on and to which the application relates, any person whom the applicant proposes to employ or with whom the applicant intends to be associated in the course of carrying on the business;

(c) the business which the applicant is carrying on, the officers it employs and the persons with whom the applicant is associated in the course of carrying on the business; and

(d) its directors and substantial shareholders and, if any of its substantial shareholders is a corporation, the directors and substantial shareholders of that corporation.

(3) In considering an application under section 95(2)(a), the Commission may have regard to any information in its possession whether provided by the applicant or not.

#### 97. Conditions for authorization

(1) Without limiting the generality of conditions which may be specified in a notice under section 95(2)(a), the Commission may, by notice in writing served on a person authorized under that section, amend or revoke any conditions specified under that section or impose new conditions, where the Commission is satisfied that it is appropriate to do so.

(2) Where the Commission amends or revokes any condition or imposes any new condition under subsection (1), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.

(3) Without limiting the generality of subsection (1) or section 95(2)(a), a notice served thereunder may contain a condition that the person authorized to provide automated trading services shall comply with all or any of the following requirements, that is to say, the person shall---

(a) provide the services according to rules approved by the Commission for the purpose;

(b) ensure as far as is reasonably practicable that there is an orderly, informed and fair market in relation to all transactions which are carried out by means of or through the services;

(c) ensure that the securities or futures contract, the sale or purchase of which is to be negotiated or concluded by means of or through the services, belongs to a class of securities or futures contracts specified in the notice by the Commission for this purpose;

(d) ensure that the transaction that is to be novated, cleared, settled or guaranteed by means of or through the services belongs to a class of transactions specified in the notice by the Commission for this purpose;

- (e) disclose to the Commission within the time and in the manner specified in the notice, such information as the Commission may request for the purpose of performing its functions under this Ordinance;
- (f) permit any person authorized in that behalf by the Commission to enter at any reasonable time the premises at which the services are provided and to inspect the electronic facilities by means of which the services are provided;
- (g) provide and maintain automated systems with adequate capacity, facilities to meet contingencies or emergencies, security arrangements and technical support for the provision of the services;
- (h) notify the Commission of any changes to the information and particulars required by the Commission under section 96(1) or (3);
- (i) pay to the Commission a fee prescribed by rules made under section 382 for the purposes of this section.

#### 98. Withdrawal of authorization

(1) Subject to subsection (2), where the Commission is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest, it may, by notice in writing served on a person or a stock exchange or futures exchange granted an authorization under section 95(2), stating the reasons in support of the ground or grounds for the notice, withdraw the authorization with effect from a date specified in the notice for the purpose.

(2) The Commission shall not exercise its power under subsection (1) in relation to a person or a stock exchange or futures exchange granted an authorization under section 95(2) unless it has given the person or (as the case may be) the stock exchange or futures exchange a reasonable opportunity of being heard.

(3) Where the Commission withdraws an authorization under subsection (1), it shall cause notice of that fact to be published in the Gazette.

(4) A notice served under this section shall take effect immediately.

#### 99. Rules by Commission

(1) Without prejudice to section 384(9) and (10), the Commission may make rules to---

- (a) require a person authorized to provide automated trading services to supply the Commission with such information as the Commission requires to satisfy the Commission that the conditions specified in a notice served on the person under section 95(2)(a) or 97 are complied with;
- (b) provide for the time within which and the manner in which the information under paragraph (a) shall be provided;
- (c) provide for the regulation of automated trading services and any other matters incidental thereto.

(2) Without limiting the generality of rules which may be made under subsection (1), such rules may---

(a) provide for the standards of conduct and practices to be complied with in relation to the provision of automated trading services;

(b) prohibit the use of misleading or deceptive advertisements in relation to the provision of automated trading services or impose conditions for the use of advertisements in relation to the provision of such services;

(c) require a person authorized to provide automated trading services---

(i) to take steps to avoid conflicts of interests, and specify the steps that shall be taken in the event that there is a potential or actual conflict of interest; and

(ii) to take such steps as the Commission may specify to ensure that there is integrity, orderliness, transparency and fairness in transactions conducted through the services, including steps to ensure that---

(A) a request for the services is to be dealt with properly and as expeditiously as is appropriate in the circumstances; and

(B) access rights to the services and the relevant trading conventions relating to the transactions to be conducted through the services are properly explained to the persons to whom the services are provided;

(d) provide for measures designed to discourage and identify any money laundering activities.

(3) Rules made under this section may provide that a person who, without reasonable excuse, contravenes any specified provision of the rules that apply to the person commits an offence and is liable to a specified penalty not exceeding---

(a) on conviction on indictment a fine of \$500,000 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

100. Breach of condition of authorization

A person who---

(a) contravenes section 95(1); or

(b) fails to comply with a condition specified in a notice under section 95(2)(a) or 97 served on the person, commits an offence and is liable---

(i) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or

(ii) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every

day during which the offence continues.

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; 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;

(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;

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

(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---

(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,

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

(2) Subsection (1) does not apply to any advertisement, invitation or document which is or is to be---

(a) made by 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, whether as principal or agent, in respect of securities;

(b) made by 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, whether as principal or agent, in respect of futures contracts;

(c) made by---

(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,

whether as principal or 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);

(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 a corporation which is a related 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 a person who is engaged in the business of selling and purchasing property other than securities, whether as principal or agent, in the ordinary course of that business.

(3) Subsection (1) does not apply to---

(a) the issue of---

(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 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 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);

(d) the issue 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 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 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 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 15 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 15 of Part 4 of Schedule 4 which does not comply with the relevant condition, or a wholly owned subsidiary of the corporation); or

(iii) is issued by a wholly owned subsidiary specified in item 15 of Part 4 of Schedule 4 and is guaranteed by the corporation of which it is such a subsidiary and that corporation complies with the relevant condition;

(h) the issue 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 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 persons outside Hong Kong;

(j) the issue 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 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.

(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).

(7) A person shall not be regarded as committing an offence under subsection (1) in respect of 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 principal purpose of which was to provide the service of issuing or receiving materials provided to him by others;

(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;

(c) 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

(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) A person shall not be regarded as committing an offence under subsection (1) in respect of 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 was a broadcaster;

(b) the advertisement, invitation or document (as the case may be) was broadcast live

by him as a broadcaster;

(c) he did not modify the contents of the advertisement, invitation or document (as the case may be) prior to its broadcast; and

(d) he has, in relation to the broadcast, acted in accordance with the terms and conditions of the licence (if any) by which he became entitled to broadcast 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 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 shall be regarded as an advertisement, invitation or document (as the case may be) which is or contains an invitation to 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 false or misleading in a material particular;  
(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 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 any other liability he may incur (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 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, 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;

(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 activity

(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 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 of an intermediary, the intermediary;

(vi) if contained in a document referred to in paragraph (a)(i)---

(A) specifies the name and address of the offeror and, where any person is making the offer on behalf of the offeror, the name and address of that person;

(B) bears a date which is not more than 3 days before the date on which the offer is communicated;

(C) where the offer is for the acquisition of securities, satisfies the requirements of Part 1 of Schedule 5;

(D) where the offer is for the disposal of securities, satisfies the requirements of Part 2 of Schedule 5; and

(E) where a report of an expert in connection with the offer is included in or annexed to the offer, contains a statement to the effect that the expert has consented to the inclusion or annexure, and has not, before the communication of the offer, withdrawn that consent; 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

(c) 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 36 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 (4) 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 knowledge 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

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

(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.

(4) 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 any advertisement or document referred to in subsection (1)(a) or (b).

(5) A person shall not be regarded as committing an offence under subsection (1)

in respect of any advertisement or document referred to in subsection (1)(a) or (b) if---

(a) he carried on a business the principal purpose of which was to provide the service of issuing or receiving materials provided to him by others;

(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;

(c) 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

(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.

(6) A person shall not be regarded as committing an offence under subsection (1) in respect of any advertisement or document referred to in subsection (1)(a) or (b) if---

(a) he was a broadcaster;

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

(c) he did not modify the contents of the advertisement or document (as the case may be) prior to its broadcast; and

(d) he has, in relation to the broadcast, acted in accordance with the terms and conditions of the licence (if any) by which he became entitled to broadcast 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 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 15 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 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 15 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

(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.

(3) The Chief Executive in Council may, by order published in the Gazette, amend Schedule 5.

PART V

Licensing and Exemption

113. Interpretation of Part V

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

"executive director" (執行董事), in relation to a licensed corporation, means a director of the corporation who---

(a) actively participates in; or

(b) is responsible for directly supervising,

the business of a regulated activity for which the corporation is licensed;

"prescribed fee" (訂明費用) means a fee prescribed by rules made under section 382;

"principal" (主事人), in relation to a licensed representative, means the licensed corporation to which the representative is accredited;

"regulated function" (受規管職能), in relation to a regulated activity carried on as a business by any person, means any function performed for or on behalf of or by arrangement with the person relating to the regulated activity, other than work ordinarily performed by an accountant, clerk or cashier.

(2) In this Part, a reference to a licence to carry on a regulated activity shall be construed---

(a) in relation to a licensed corporation, as a licence to carry on a business in the regulated activity; and

(b) in relation to a licensed representative, as a licence to perform for or on behalf of or by arrangement with a licensed corporation to which he is accredited any regulated function in relation to the regulated activity.

(3) In this Part, a reference to a declaration of exemption for carrying on a regulated activity shall be construed as an exemption for carrying on a business in the regulated activity.

114. Restriction on carrying on business in regulated activities, etc.

(1) Subject to subsections (2), (5) and (6), no person shall---

(a) carry on a business in a regulated activity; or

(b) hold himself out as carrying on a business in a regulated activity.

(2) Subsection (1) shall not apply to---

(a) a corporation licensed under section 115 or 116 for the regulated activity;

(b) an authorized financial institution exempt under section 118 for the regulated activity; or

(c) a person authorized under section 95 for the regulated activity.

(3) Without prejudice to subsection (1) but subject to subsection (4), no person shall---

(a) perform any regulated function in relation to a regulated activity carried on as a business; or

(b) hold himself out as performing such function.

(4) Subsection (3) shall not apply to---

(a) a licensed representative who carries on for his principal a regulated activity for which the representative is licensed;

(b) an individual---

(i) who carries on for an exempt person a regulated activity for which the exempt person is exempt; and

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

(c) an employee of a person authorized under section 95 for the regulated activity who performs any regulated function in relation to the regulated activity for which the person is so authorized.

(5) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of carrying on one or more than one of the activities specified in Part 3 of Schedule 6.

(6) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of providing financial accommodation if he reasonably believes that the financial accommodation is not to be used to facilitate---

(a) the acquisition of securities listed on a stock market (whether a recognized stock market or any other stock market outside Hong Kong); or

(b) the continued holding of such securities.

(7) Any person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable---

(a) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or

(b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

(8) Any person who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 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 \$2,000 for every day during which the offence continues.

115. Corporations to be licensed for carrying on regulated activities

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity as the Commission may specify in the licence.

(2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless---

(a) the applicant is---

(i) a company; or

(ii) an overseas company which has complied with the provisions of Part XI of the Companies Ordinance (Cap. 32) for the registration of documents;

(b) applications have been lodged under section 125 in respect of such persons as referred to in section 124(1)(a) and (b) for approval of them as the responsible officers of the applicant in relation to the regulated activity; and

(c) an application has been lodged under section 129 for approval of premises to be used by the applicant for keeping records or documents required under this Ordinance.

(3) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission that---

(a) it is a fit and proper person to be licensed for the regulated activity;

(b) it will be able, if licensed, to comply with the financial resources rules; and

(c) it---

(i) has lodged and maintains with the Commission such security in accordance with rules made under subsection (4); or

(ii) is insured, in lieu of such security, to the satisfaction of the Commission against risks prescribed by the Commission.

(4) The Commission may make rules for the purposes of subsection (3)(c) that provide for---

(a) any security to be lodged and maintained by a licensed corporation with the Commission;

(b) the manner in which the security is lodged;

(c) the terms on which the security is maintained;

(d) the Commission's power to apply a security lodged and maintained with the Commission in such circumstances, for such purposes and in such manner as may be

prescribed in the rules;

(e) any other matter relating to the security.

(5) A licence granted under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the licensed corporation concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(7) A licensed corporation shall not, when carrying on a regulated activity for which it is licensed under subsection (1), use a name other than the name specified in the licence.

(8) Without prejudice to section 117(1)(c) and the Commission's powers in Part IX, a licence granted to a corporation to carry on Type 7 regulated activity shall be deemed to be revoked in respect of that regulated activity upon the corporation's being granted an authorization under section 95 to provide automated trading services.

116. Grant of temporary licences to corporations for carrying on regulated activities

(1) The Commission may, upon application by a corporation in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on, for a period not exceeding 3 months, one or more than one regulated activity as the Commission may specify in the licence.

(2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission that---

(a) it carries on a business principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute the regulated activity;

(b) it seeks to be licensed for the regulated activity solely for carrying on in Hong Kong such business in the activity;

(c) it carries on such business in the activity in the place referred to in paragraph (a) under an authorization (however described) by an authority or regulatory organization in that place which---

(i) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part;

(ii) confirms to the satisfaction of the Commission that the applicant has been so authorized; and

(iii) the Commission is satisfied is empowered under the law of that place to



investigate, and, where applicable, to take disciplinary action for, the conduct of the applicant in Hong Kong;

(d) in the 24 months immediately before the date on which it lodges the application, it has not carried on a business in the regulated activity in Hong Kong for more than 6 months;

(e) it is a fit and proper person to be so licensed for the regulated activity; and

(f) an application has been lodged under section 129 for approval of premises to be used by the applicant for keeping records or documents required under this Ordinance.

(3) A licence granted under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the licensed corporation concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(4) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (3), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(5) A licensed corporation shall not, when carrying on a regulated activity for which it is licensed under subsection (1), use a name other than the name specified in the licence.

#### 117. Licensing conditions in certain cases

(1) Without limiting the generality of section 115(5), it shall be a condition of a licence granted under section 115(1) for the carrying on of---

(a) a regulated activity---

(i) that the licensed corporation---

(A) shall lodge (whether or not in addition to any security that it may have lodged) and maintain with the Commission such security in respect of that regulated activity as may be required by rules made under section 115(4); or

(B) is insured, in lieu of lodging (where applicable) and maintaining such security, to the satisfaction of the Commission against risks prescribed by the Commission; and

(ii) that, in relation to that regulated activity, there is at least one responsible officer of the licensed corporation who is available at all times to supervise the business of the regulated activity for which the corporation is licensed;

(b) Type 3 regulated activity, that in relation to any dispute between the licensed corporation and a client regarding or touching upon any matter concerning the carrying on of that regulated activity, the licensed corporation is obliged, if the client so requires, to have the dispute settled by arbitration in accordance with rules made

under subsection (2);

(c) Type 7 regulated activity, that if the Commission in its absolute discretion requires by notice in writing, the licensed corporation shall apply, within such reasonable period as may be specified in the notice, for an authorization under section 95 for that regulated activity, and---

(i) the licence shall be deemed to be revoked---

(A) where the requirement is not complied with, upon the expiration of the period;

(B) where the requirement is complied with, upon

the determination of the application for such authorization; and

(ii) the regulated activity shall be operated in such manner as may be specified in the notice pending the revocation of the licence under subparagraph (i);

(d) Type 8 regulated activity, that---

(i) the licensed corporation shall carry on no business other than securities margin financing, except business that is necessarily incidental to the carrying on of such business; and

(ii) where the licensed corporation carries on a business in one or more than one of the activities specified in Part 3 of Schedule 6, it shall comply with the requirements of such rules made under Part VI as apply to it in relation to such business.

(2) The Commission may make rules for the purposes of subsection (1)(b) that provide for---

(a) the establishment and functions of an arbitration panel and relevant matters;

(b) the appointment by the Financial Secretary of members of the arbitration panel, including a chairman and one or more than one deputy chairman;

(c) the appointment from the arbitration panel of a tribunal to hear a dispute between a licensed corporation and its client and the constitution and composition of the tribunal;

(d) the liability or entitlement to costs of a party to a dispute and the recovery of costs;

(e) the practice and procedure in the hearing of a dispute;

(f) the Commission to use the findings of a tribunal for the exercise of its functions under any of the relevant provisions;

(g) the exercise of any discretion by a person under the rules.

#### 118. Exempt persons

(1) The Commission may, upon application by an authorized financial institution in the prescribed manner and payment of the prescribed fee, grant a declaration of exemption to the applicant for carrying on one or more than one regulated activity

(other than Type 3 and Type 8 regulated activities) as the Commission may specify in the declaration of exemption.

(2) The Commission shall refer to the Monetary Authority any application made to it under subsection (1).

(3) Upon receiving an application for an exemption for a regulated activity referred to him under subsection (2), the Monetary Authority shall---

- (a) consider the application;
- (b) consult the Commission upon the merits of the application; and
- (c) advise the Commission whether he is satisfied by the applicant that the applicant is a fit and proper person to be granted the exemption for that regulated activity.

(4) The Commission shall---

- (a) refuse to grant an exemption to the applicant if the Monetary Authority advises the Commission pursuant to subsection (3) that he is not satisfied; or
  - (b) grant an exemption to the applicant if the Monetary Authority advises the Commission pursuant to subsection (3) that he is satisfied,
- that the applicant is a fit and proper person to be granted the exemption.

(5) An exemption granted under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the exempt person concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(7) Without prejudice to subsection (8)(b) and the Commission's powers in Part IX, an exemption granted to an authorized financial institution to carry on a business in Type 7 regulated activity shall be deemed to be revoked in respect of that regulated activity upon the institution's being granted an authorization under section 95 to provide automated trading services.

(8) Without limiting the generality of subsection (5), it shall be a condition of an exemption granted under this section for carrying on the business of---

- (a) a regulated activity, that, in relation to the regulated activity, there is at least one executive officer of the exempt person who is available at all times to supervise the business of the regulated activity for which the person is exempt;
- (b) Type 7 regulated activity, that if the Commission in its absolute discretion requires by notice in writing, the exempt person shall apply, within such reasonable period as may be specified in the notice, for an authorization under section 95 for that regulated activity, and---

(i) the exemption shall be deemed to be revoked---

(A) where the requirement is not complied with, upon the expiration of the period;

(B) where the requirement is complied with, upon

the determination of the application for such authorization; and

(ii) the regulated activity shall be operated in such manner as may be specified in the notice pending the revocation of the exemption under subparagraph (i).

(9) The Commission shall not exercise its power under subsection (5) or (8)(b) unless the Commission has first consulted the Monetary Authority.

#### 119. Representatives to be licensed

(1) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity as the Commission may specify in the licence for a corporation licensed under section 115 to which he is accredited.

(2) The Commission in its absolute discretion may, upon request by the applicant in the prescribed manner and payment of the prescribed fee, grant to the applicant a provisional licence to carry on, for such corporation, the regulated activity in respect of which the application is made.

(3) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) or (2) unless the applicant satisfies the Commission that he is a fit and proper person to be so licensed for the regulated activity.

(4) The Commission shall refuse to grant a licence under subsection (2) unless the applicant satisfies the Commission that the grant of the licence will not prejudice the interest of the investing public.

(5) A licence granted under subsection (1) or (2) shall be subject to the condition specified in subsection (6) and to any other reasonable conditions as the Commission may impose.

(6) It shall be a condition of a licence granted under subsection (1) or (2) that the licensed representative concerned shall---

(a) at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his residential address, telephone and facsimile numbers and electronic mail address; and

(b) inform the Commission of any change in the particulars within 14 days after the change takes place.

(7) The Commission may at any time, by notice in writing served on the licensed representative concerned, amend or revoke any condition imposed under subsection (5) or impose new conditions as may be reasonable in the circumstances.

(8) Where the Commission by notice in writing amends or revokes any condition

or imposes any new condition under subsection (7), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(9) A provisional licence shall be deemed to be revoked---

(a) upon the Commission's refusal of the relevant application made under subsection (1); or

(b) upon the grant of the licence sought under the application, whichever first occurs.

(10) Without prejudice to the Commission's powers under Part IX, the Commission may, after having regard to the interest of the investing public and in its absolute discretion, revoke a provisional licence granted under subsection (2) by serving a notice in writing on the licensed representative concerned.

(11) On the revocation of a provisional licence under subsection (9) or (10), the person who was formerly the licensed representative under such licence shall return the licence to the Commission within 7 business days after the revocation.

(12) Any person who, without reasonable excuse, contravenes subsection (11) 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 \$2,000 for every day during which the offence continues.

(13) A licensed representative shall not, when carrying on the regulated activity for which he is licensed under subsection (1) or (2), use a name other than the name specified in the licence.

#### 120. Temporary licence for representative

(1) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on, for a period not exceeding 3 months, one or more than one regulated activity as the Commission may specify in the licence---

(a) for a corporation licensed under section 115 to which he is accredited; or

(b) for a corporation licensed under section 116 to which he is accredited.

(2) The Commission shall refuse to grant a licence for a regulated activity under subsection (1) unless the applicant satisfies the Commission---

(a) that he carries on in a place outside Hong Kong an activity which, if carried on in Hong Kong, would constitute carrying on the regulated activity, under an authorization (however described) by an authority or regulatory organization in that place which---

(i) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part;

(ii) confirms to the satisfaction of the Commission that the applicant has

been so authorized; and

(iii) the Commission is satisfied is empowered under the law of that place to investigate, and, where applicable, to take disciplinary action for, the conduct of the applicant in Hong Kong;

(b) where the application is for a licence under subsection (1)(a), that---

(i) he carries on the activity referred to in paragraph (a) for or on behalf of a corporation which carries on the activity as a business principally in a place outside Hong Kong under an authorization (however described) by an authority or regulatory organization in that place which---

(A) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part; and

(B) confirms to the satisfaction of the Commission that the corporation has been so authorized; and

(ii) the licensed corporation to which he seeks to be accredited is a member of the same group of companies as the corporation referred to in subparagraph (i);

(c) where the application is for a licence under subsection (1)(b), that he seeks to be so licensed solely for the conduct of his principal's business in the activity referred to in section 116(2)(a);

(d) that in the 24 months immediately before the date on which he lodges the application, he has not carried on the regulated activity in Hong Kong for more than 6 months; and

(e) that he is a fit and proper person to be so licensed for the regulated activity.

(3) A licence granted under subsection (1) shall be subject to the condition specified in subsection (4) and to any other reasonable conditions as the Commission may impose.

(4) It shall be a condition of a licence granted under subsection (1) that the licensed representative concerned shall---

(a) at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his residential address, telephone and facsimile numbers and electronic mail address; and

(b) inform the Commission of any change in the particulars within 14 days after the change takes place.

(5) The Commission may at any time, by notice in writing served on the licensed representative concerned, amend or revoke any condition imposed under subsection (3) or impose new conditions as may be reasonable in the circumstances.

(6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time

specified in the notice, whichever is the later.

(7) A licensed representative shall not, when carrying on the regulated activity for which he is licensed under subsection (1), use a name other than the name specified in the licence.

#### 121. Approval and transfer of accreditation

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the accreditation of a licensed representative---

(a) who is licensed under section 119(1) or (2) or 120(1)(a), to a corporation licensed under section 115; or

(b) who is licensed under section 120(1)(b), to a corporation licensed under section 116,

and shall specify in the licence, upon such approval, the corporation as his principal.

(2) The Commission may, upon application in the prescribed manner and payment of the prescribed fee by a licensed representative licensed under section 119(1) or (2) or 120(1), approve the transfer of his accreditation to another corporation licensed under section 115 or 116 (as the case may be), and upon approving the transfer, the Commission shall re-issue the licence to the licensed representative with the name of the corporation specified in the licence as his principal.

(3) The Commission shall refuse to---

(a) approve an accreditation under subsection (1); or

(b) approve a transfer of accreditation under subsection (2),

unless the applicant satisfies the Commission that he will be competent to carry out his duties to the requisite standard as a licensed representative for or on behalf of the licensed corporation concerned.

(4) Without limiting the generality of subsection (3), where a licensed representative who is licensed under section 120(1)(a) applies---

(a) under subsection (1)(a) for approval of an accreditation; or

(b) under subsection (2) for approval of a transfer of accreditation,

to a corporation licensed under section 115, the Commission shall refuse to grant the approval unless the applicant satisfies the Commission that the licensed corporation to which he seeks to be accredited is a member of the same group of companies as the corporation referred to in section 120(2)(b)(i).

#### 122. Commission to be notified, etc. if licensed representative ceases to act for principal

(1) If an individual licensed under section 119(1) or (2) or 120(1) ceases to act for or on behalf of his principal as a licensed representative, he thereupon ceases to be accredited to the principal and---

- (a) the principal shall, within 7 business days after such cessation, notify the Commission of the cessation;
- (b) the individual shall, within 7 business days after such cessation, return the licence to the Commission; and
- (c) where the individual has not applied for transfer of his accreditation to another corporation licensed under section 115 or 116 (as the case may be) within 90 days after such cessation, the licence shall be deemed to have been revoked upon such cessation.

(2) Any person who contravenes subsection (1)(a) or (b) commits an offence and is liable on conviction to a fine at level 6.

#### 123. Duplicate licence, etc.

(1) Subject to subsection (2), the Commission may, upon application in the prescribed manner and payment of the prescribed fee by a licensed person or an exempt person on the ground that his licence or exemption is lost, defaced or destroyed (as the case may be), issue to the person a duplicate of the licence or exemption (as the case may be) granted to the person.

- (2) In support of his application under subsection (1), the person shall---
- (a) submit to the Commission a statutory declaration made by the person stating the ground of his application and such other particulars as the case may require in order to verify the loss, defacement or destruction (as the case may be) of the licence or exemption; and
  - (b) furnish to the Commission such other information as the Commission may reasonably require in relation to the application.

#### 124. Requirement for executive officers

(1) A corporation licensed under section 115 shall not carry on any regulated activity for which it is licensed unless---

- (a) every executive director of the licensed corporation who is an individual is approved by the Commission as a responsible officer of the corporation in relation to the regulated activity; and
- (b) not less than 2 individuals, at least one of whom shall be an executive director of the licensed corporation, are approved by the Commission as the responsible officers of the corporation in relation to the regulated activity.

(2) An exempt person shall not carry on any regulated activity for which it is exempt unless it has complied with section 71D of the Banking Ordinance (Cap. 155) in respect of the appointment of executive officers and such executive officers are in compliance with section 71C of that Ordinance (including section 71C of that Ordinance as read with section 71E of that Ordinance).

(3) If a licensed corporation contravenes subsection (1) or an exempt person



contravenes subsection (2), without reasonable excuse, the licensed corporation or exempt person (as the case may be) commits an offence and is liable on summary conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

#### 125. Approval of responsible officers

(1) The Commission may, upon application by a licensed representative in the prescribed manner and payment of the prescribed fee, approve the applicant as a responsible officer of the licensed corporation to which he is accredited.

(2) The Commission shall refuse to approve an applicant as a responsible officer of a licensed corporation under subsection (1) unless the applicant satisfies the Commission that---

- (a) he is a fit and proper person to be so approved; and
- (b) he has sufficient authority within the licensed corporation.

(3) An approval under subsection (1) shall be subject to such reasonable conditions as the Commission may impose on the licensed corporation and the responsible officer concerned, and the Commission may at any time, by notice in writing served on the licensed corporation or the responsible officer concerned, amend or revoke such condition or impose new conditions as may be reasonable in the circumstances.

(4) The approval of an individual as a responsible officer of a licensed corporation shall be deemed to be revoked if the individual---

- (a) ceases to act as a licensed representative for or on behalf of; or
  - (b) ceases to be accredited to,
- the licensed corporation.

#### 126. Variation of regulated activity specified in licence or exemption

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, vary the regulated activity specified in the applicant's licence or exemption by adding to or reducing the regulated activity so specified.

(2) Where a person applies for variation of the regulated activity specified in his licence or exemption by adding any regulated activity, such application shall, for the purposes of this Part, be regarded as an application for a licence or exemption (as the case may be) in respect of that regulated activity.

#### 127. Applicant to provide information

(1) A person who applies---

- (a) for a licence under section 115, 116, 119 or 120;
- (b) for an exemption under section 118;
- (c) for approval of accreditation or approval of transfer of accreditation to a

principal, under section 121;

(d) for approval to be a responsible officer under section 125;

(e) for variation, under section 126, of the regulated activity for which the person is licensed or exempt;

(f) for approval of premises under section 129;

(g) for approval to become a substantial shareholder under section 130;

(h) for a modification or waiver under section 131; or

(i) for any other matter requiring the approval of the Commission under this Part, shall provide the Commission with such information as it may reasonably require to enable it to consider the application.

(2) In considering an application referred to in subsection (1), the Commission may have regard to any information in its possession whether provided by the applicant or not.

(3) The Commission may make rules providing for---

(a) the types of information to be provided by applicants to enable the Commission to consider their applications;

(b) the form, manner and time period in which such information is to be provided;

(c) any other matter relating thereto.

#### 128. Determination of "fit and proper"

(1) In considering whether a person is a fit and proper person for the purposes of any provision of this Part, the Commission or the Monetary Authority (as the case may be) shall, in addition to any other matter that the Commission or the Monetary Authority (as the case may be) may consider relevant, but subject to section 131, have regard to---

(a) the financial status or solvency;

(b) the educational or other qualifications or experience having regard to the nature of the functions which, if the application is allowed, the person will perform;

(c) the ability to carry on the regulated activity competently, honestly and fairly; and

(d) the reputation, character, reliability and financial integrity, of---

(i) where the person is an individual, the person himself;

(ii) where the person is a corporation (other than an authorized financial institution), the corporation and any officer of the corporation; and

(iii) where the person is an authorized financial institution, the institution and any director, manager (as defined in section 2(1) of the Banking Ordinance (Cap. 155)) and executive officer of the institution.

(2) Without limiting the generality of subsection (1), the Commission and the

Monetary Authority (as the case may be) may, in considering whether a person is a fit and proper person for the purposes of any provision of this Ordinance---

(a) take into account a decision made in respect of the person by---

(i) (in the case of the Commission) the Monetary Authority or (in the case of the Monetary Authority) the Commission;

(ii) the Insurance Authority;

(iii) the Mandatory Provident Fund Schemes Authority; or

(iv) any other authority or regulatory organization, whether in Hong Kong or elsewhere, which, in the Commission's opinion, performs a function similar to the functions of the Commission;

(b) take into account any information in the possession of the Commission or the Monetary Authority (as the case may be), whether provided by the person or not, relating to---

(i) where such consideration relates to a licence under section 115 or 116 or an application for the licence, any other person who is or is to be employed by, or associated with, the person for the purposes of the regulated activity for which the licence is granted or the application is made (as the case may be);

(ii) where such consideration relates to a licence under section 115 or 116 or an exemption or an application for the licence or exemption, any other person who will be acting for or on behalf of the person in relation to the regulated activity for which the licence or exemption is granted or the application is made (as the case may be);

(iii) where the person is a corporation in a group of companies---

(A) any other corporation in the same group of companies; or

(B) any substantial shareholder or officer of the corporation or any corporation referred to in

sub-subparagraph (A);

(c) take into account, where such consideration relates to a licence under section 115 or 116 or an exemption or an application for the licence or exemption, whether the person has established effective internal control procedures and risk management systems to ensure his compliance with all applicable regulatory requirements under any of the relevant provisions, having regard in particular to the information provided in accordance with section 127; and

(d) have regard to the state of affairs of any other business which the person carries on or proposes to carry on.

129. Suitability of premises for keeping records or documents

(1) The Commission may, upon application in the prescribed manner and payment

of the prescribed fee, approve premises to be used by a licensed corporation for keeping records or documents required under this Ordinance.

(2) The Commission shall not approve premises under subsection (1) unless the applicant satisfies the Commission that---

(a) the premises are suitable for being used for the purpose referred to in that subsection; and

(b) where the premises are used partly for residential purposes, such residential use of the premises will not affect the exercise of any powers under this Part or Part VI or VIII .

(3) A licensed corporation shall not, without the prior approval in writing of the Commission, use any premises for the keeping of records or documents relating to the carrying on of the regulated activity for which it is licensed.

(4) The Commission shall inform the applicant in writing of its decision under subsection (1) as soon as reasonably practicable after receipt of the application.

#### 130. Restriction on substantial shareholdings

(1) Subject to subsection (3), a person shall not become a substantial shareholder of a corporation licensed under section 115 unless he has been approved by the Commission under subsection (2).

(2) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the applicant to become a substantial shareholder of the licensed corporation.

(3) A person who becomes a substantial shareholder of a licensed corporation shall not be regarded as contravening subsection (1) if---

(a) at the time he became a substantial shareholder, he did not know, and had no reason to suspect, the existence of the act or circumstances by virtue of which he became a substantial shareholder of the licensed corporation;

(b) he subsequently becomes aware that he has become a substantial shareholder of the licensed corporation; and

(c) he applies for approval under subsection (2) as soon as reasonably practicable and in any event within 3 business days after he becomes so aware.

(4) The Commission shall refuse to approve an applicant to become a substantial shareholder of a licensed corporation unless the applicant satisfies the Commission that the licensed corporation will remain a fit and proper person to be licensed if the application is approved.

(5) An approval under subsection (2) shall be subject to such reasonable conditions as the Commission may impose on the applicant and on the licensed corporation of which he is a substantial shareholder, and the Commission may at any time, by notice in writing served on the approved substantial shareholder and the

licensed corporation, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(6) Any person who contravenes subsection (1) commits an offence and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

(7) It is a defence for a person charged with an offence under subsection (6) to prove that he---

(a) did not know; and

(b) could not have by the exercise of reasonable diligence ascertained the existence of,

the act or circumstances by virtue of which he became a substantial shareholder of the licensed corporation.

(8) If a person becomes a substantial shareholder of a licensed corporation without the Commission's approval under subsection (2), then, unless and until the Commission approves him to become such substantial shareholder---

(a) the transfer of shares concerned and, in the case of unissued shares, the transfer of the right to be issued with them and their subsequent issue are of no effect at law or in equity;

(b) the voting rights conferred by the shares concerned are not exercisable; and

(c) the licensed corporation shall not purport to give effect to a transfer of shares, or purport to issue shares, the transfer or issue of which is of no effect at law or in equity under paragraph (a).

(9) In considering whether a person is a substantial shareholder for the purposes of subsection (1) and solely for such purposes, subsection (8)(a) shall be disregarded.

(10) A person who purportedly exercises any right that is by virtue of subsection (8) of no effect at law or in equity or not exercisable commits an offence and is liable---

(a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or

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

(11) It is a defence for a person charged with an offence under subsection (10) to prove that he---

(a) did not know; and

(b) could not have by the exercise of reasonable diligence known,

that the right which he purportedly exercised is by virtue of subsection (8) of no effect at law or in equity or not exercisable.

(12) If a licensed corporation purports to give effect to a transfer of shares or purports to issue shares, and the transfer or issue of which is of no effect at law or in equity by virtue of subsection (8), then the corporation and every officer of the corporation who knowingly permits the transfer or the issue commit an offence and each is liable---

(a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or

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

#### 131. Modification or waiver of requirements

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee by---

(a) a licensed corporation;

(b) an applicant for a licence under section 115 or 116;

(c) an exempt person;

(d) an applicant for an exemption;

(e) a licensed representative;

(f) an applicant for a licence under section 119 or 120;

(g) a responsible officer approved under section 125;

(h) a substantial shareholder approved under section 130;

(i) an applicant for approval under section 130 to become a substantial shareholder; or

(j) an associated entity,

grant a modification or waiver, in relation to the applicant, in respect of any condition specified in section 117 or imposed under section 115, 116, 118, 119, 120, 125 or 130 or any of the requirements of the following---

(i) sections 115(2)(b) and 124(1) and (2);

(ii) sections 115(2)(c) and 129;

(iii) rules made under section 117(2);

(iv) section 128;

(v) rules made under section 141;

(vi) rules made under section 144;

(vii) rules made under section 145;

(viii) rules made under section 147;

(ix) rules made under section 148;

(x) rules made under section 163;

(xi) rules made under section 168; or

(xii) any provision of rules made by the Commission under this Ordinance.

(2) The grant of a modification or waiver under subsection (1) shall be effected

by a notice in writing served on the person applying for it specifying the period (if any) for which the modification or waiver is valid.

(3) The Commission shall refuse to grant a modification or waiver under subsection (1) unless it is satisfied by the applicant that to do so will not prejudice---

(a) in the case of a modification or waiver granted in respect of a condition imposed under section 115, 116 or 118, the interests of any client of the applicant; or  
(b) in the case of a modification or waiver granted in respect of a condition imposed under section 119, 120, 125 or 130 or specified in section 117, or in respect of any requirement of a provision specified in subsection (1)(i) to (xii), the interest of the investing public.

(4) A modification or waiver granted under subsection (1) to a person shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time by notice in writing served on---

(a) the person;

(b) where the person is an intermediary or an associated entity, an executive officer of the intermediary or the entity; and

(c) where the modification or waiver is granted pursuant to an application made under subsection (1)(e), (f) or (g), the principal to which the person is accredited, amend such modification or waiver, or amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(5) Subject to subsection (4), a modification or waiver granted under subsection (1) remains in force---

(a) if a period is specified in the notice served under subsection (2) in respect of the modification or waiver, until the end of the period; or

(b) if no such period is specified, until revoked by the Commission by notice in writing served on---

(i) the person;

(ii) where the person is an intermediary or an associated entity, an executive officer of the intermediary or the entity; and

(iii) where the modification or waiver is granted pursuant to an application made under subsection (1)(e), (f) or (g), the principal to which the person is accredited.

(6) In relation to a modification or waiver under subsection (1) to a person, the Commission shall---

(a) on the grant of the modification or waiver;

(b) on its amendment or an amendment or revocation of its conditions or the imposition of any new condition on it under subsection (4); or

(c) on its revocation under subsection (5)(b), publish a notice in the Gazette specifying the name of the person, the event referred to in paragraph (a), (b) or (c) (as the case may be) and (if applicable) the period for which the grant or amendment of the modification or waiver or the new condition so imposed on it or its condition as amended is valid.

(7) The Commission may by rules grant a modification or waiver, in relation to a class of licensed persons or exempt persons or associated entities, in respect of any of the requirements of the rules referred to in subsection (1)(v), (vi), (vii), (viii), (ix) or (x).

(8) The Commission shall not make any rules under subsection (7) to grant a modification or waiver referred to in that subsection unless the Commission is satisfied that to do so will not prejudice the interest of the investing public.

(9) The Commission may specify in the rules referred to in subsection (7) the conditions subject to which the modification or waiver is granted and the rules may provide that a person who fails to comply with such a condition commits an offence and is liable on conviction to a fine not exceeding level 6.

(10) The Commission may at any time by rules---

(a) revoke a modification or waiver granted under subsection (7); or

(b) amend, revoke or add to, any condition subject to which such modification or waiver is granted.

(11) The Commission shall not exercise its power under subsection (1), (4), (7), (9) or (10) in relation to any exempt person or any associated entity that is an authorized financial institution unless the Commission has first consulted the Monetary Authority.

(12) Any person who fails to comply with a condition imposed under subsection (4) commits an offence and is liable on conviction to a fine at level 6.

132. Events to be reported by licensed persons and exempt persons

(1) A licensed person or exempt person who intends to cease to carry on any regulated activity for which he is licensed or exempt shall notify the Commission and (in the case of an exempt person) the Monetary Authority in writing of such intended cessation as soon as reasonably practicable and in any event not later than 7 business days before such intended cessation.

(2) A licensed person or exempt person shall give to the Commission and (in the case of an exempt person) the Monetary Authority at least 7 business days' advance notice in writing of any intended change of address at which he proposes to carry on the regulated activity for which he is licensed or exempt.



(3) Subject to subsection (5), where a person has provided any information to the Commission under any provision of this Part and a change in the information occurs, then in such circumstances as are prescribed by rules made under section 384 for the purposes of this subsection, the person shall, within 7 business days of the change, give notice in writing of the change containing a full description of it.

(4) The notice referred to in subsection (3) shall be given to the following person or persons---

- (a) (where the information has been provided in connection with an application under any provision of this Part and the Commission is still considering the application) the Commission; or
- (b) (in other cases) the Commission and (if the information provided relates to an exempt person) the Monetary Authority.

(5) Where the information has been provided in connection with an application under any provision of this Part and the application has been refused or withdrawn, subsection (3) shall no longer apply in relation to the information.

(6) Where a person becomes or ceases to be a director of a licensed corporation, both the person and the corporation shall, within 7 business days thereafter, notify the Commission in writing of the name and address of the person and of the nature of the position which he occupies or has ceased to occupy (as the case may be).

(7) Any person who, without reasonable excuse, contravenes subsection (1), (2), (3) or (6) commits an offence and is liable on conviction to a fine at level 5.

133. Commission to maintain register of licensed persons and exempt persons

(1) The Commission shall maintain a register of licensed persons and exempt persons in such form as it considers appropriate.

(2) The register maintained under subsection (1) shall contain in relation to each licence or exemption---

- (a) the name and business address of the licensed person or exempt person (as the case may be);
- (b) such conditions of the licence or the exemption (as the case may be) as the Commission considers appropriate;
- (c) in relation to each licensed representative, the name of his principal;
- (d) in relation to the licensed corporation or exempt person (as the case may be) the name and business address of each of its executive officers; and
- (e) such other particulars as are prescribed by rules made under section 384 for the purposes of this subsection.

(3) The register may be maintained---

- (a) in a documentary form; or

(b) by recording the information required under subsection (2) otherwise than in a legible form, so long as the information is capable of being reproduced in a legible form.

(4) For the purposes of enabling any member of the public to ascertain whether he is dealing with a licensed person or an exempt person in matters of or connected with any regulated activity and to ascertain the particulars of the licence or exemption of such person, the register shall be made available for public inspection at all reasonable times.

(5) At all reasonable times, a member of the public may---

(a) inspect the register, or (where the register is maintained otherwise than in a documentary form) a reproduction of the information or the relevant part of it in a legible form; and

(b) obtain a copy of an entry in or extract of the register on payment of the prescribed fee.

(6) A document purporting to be---

(a) a copy of an entry in or extract of the register maintained under this section; and

(b) certified by an authorized officer of the Commission as a true copy of the entry or extract referred to in paragraph (a), shall be admissible as evidence of its contents in any legal proceedings.

#### 134. Publication of names of licensed persons and exempt persons

(1) The Commission shall at least once in each year publish in the Gazette, and in such other manner as it considers appropriate, at the time and in the manner it considers appropriate, the names and addresses of all licensed persons and exempt persons and such conditions of their licences or exemptions as the Commission considers appropriate.

(2) If the Commission amends the register maintained under section 133 by adding or removing the name of a person or changing any condition of a licence or exemption, it shall publish particulars of the amendment in the Gazette within one month after making the amendment.

#### 135. Annual fee and return

(1) A person licensed under section 115 or 119(1) or an exempt person shall pay to the Commission an annual fee prescribed by rules made under section 382 for the purposes of this subsection.

(2) The annual fee shall be payable on or before each successive anniversary of the date of grant of the licence or exemption (as the case may be), or on such other date as may be approved by the Commission by notice in writing.

(3) In default of full payment of the annual fee as required under subsection (2), the person shall pay to the Commission an additional sum calculated as follows---

(a) 10% of the fee for the first month after the due date for its payment;

(b) for each subsequent month when the fee remains unpaid, 20% of the fee, and in calculating the additional sum for the purpose of this subsection, any fraction of a month shall be treated as a month.

(4) A person licensed under section 115 or 119(1) shall submit an annual return to the Commission---

(a) within one month after each anniversary of the date on which the person is licensed; or

(b) by such other date as may be approved by the Commission by notice in writing, which return shall contain such information as is prescribed by rules made under section 384 for the purposes of this subsection.

#### 136. Prohibition of use of certain titles

(1) A person shall not take or use the title of "bond broker", "bond dealer", "securities dealer", "stock dealer", "stockbroker", "股票經紀", "債券交易商", "債券經紀", "證券交易商" or "證券經紀" unless---

(a) he is licensed or exempt for Type 1 regulated activity; or

(b) he is an employee of a person exempt for Type 1 regulated activity and his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as employed by the person in respect of that regulated activity, while acting as such employee.

(2) A person shall not take or use the title of "futures broker", "futures dealer", "期貨交易商" or "期貨經紀" unless---

(a) he is licensed or exempt for Type 2 regulated activity; or

(b) he is an employee of a person exempt for Type 2 regulated activity and his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as employed by the person in respect of that regulated activity, while acting as such employee.

(3) A person shall not take or use the title of "leveraged foreign exchange trader" or "槓桿式外匯交易商" unless---

(a) he is licensed or exempt for Type 3 regulated activity;

(b) he is an authorized financial institution; or

(c) he is an employee of an authorized financial institution, while acting for the institution in an activity that would have fallen within the meaning of the definition of "leveraged foreign exchange trading" in Part 2 of Schedule 6 but for paragraph (xii) of that definition.

(4) A person shall not take or use the title of "securities adviser", "securities

consultant", "stock adviser", "股票顧問" or "證券顧問" unless---

(a) he is licensed or exempt for Type 4 regulated activity; or

(b) he is an employee of a person exempt for Type 4 regulated activity and his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as employed by the person in respect of that regulated activity, while acting as such employee.

(5) A person shall not take or use the title of "futures adviser", "futures consultant" or "期貨顧問" unless---

(a) he is licensed or exempt for Type 5 regulated activity; or

(b) he is an employee of a person exempt for Type 5 regulated activity and his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as employed by the person in respect of that regulated activity, while acting as such employee.

(6) A person shall not take or use the title of "corporate finance adviser", "corporate finance consultant" or "機構融資顧問" unless---

(a) he is licensed or exempt for Type 6 regulated activity; or

(b) he is an employee of a person exempt for Type 6 regulated activity and his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as employed by the person in respect of that regulated activity, while acting as such employee.

(7) A person shall not take or use the title of "automated trading service provider" or "自動化交易服務提供者" unless---

(a) he is licensed or exempt for Type 7 regulated activity;

(b) he is granted an authorization under section 95 to provide automated trading services;

(c) he is an employee of a person exempt for Type 7 regulated activity and his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as employed by the person in respect of that regulated activity, while acting as such employee; or

(d) he is an employee of a person authorized under section 95 to provide automated trading services, while acting for the person in that regulated activity.

(8) A person shall not take or use the title of "margin lender", "securities margin financier" or "證券保證金融資人" unless---

(a) he is licensed for Type 8 regulated activity;

(b) he is an authorized financial institution; or

(c) he is an employee of an authorized financial institution, while acting for the institution in an activity that would have fallen within the meaning of the definition of "securities margin financing" in Part 2 of Schedule 6 but for paragraph (v) of

that definition.

(9) A person shall not take or use any title, other than any title specified in subsection (1), (2), (3), (4), (5), (6), (7) or (8), which suggests that---

(a) he carries on a business in any regulated activity referred to in any of those subsections; or

(b) he performs any regulated function in relation to a regulated activity referred to in any of those subsections which is carried on as a business, unless he falls within the description specified in a paragraph of such of those subsections.

(10) Any person who contravenes subsection (1), (2), (3), (4), (5), (6), (7), (8) or (9) 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 \$2,000 for every day during which the offence continues.

### 137. Procedural requirements

(1) If the Commission forms a preliminary view to---

(a) refuse the whole or a part of an application made under this Part;

(b) impose conditions on approving an application; or

(c) amend or revoke the conditions of, or impose new conditions to---

(i) a licence granted under section 115, 116, 119 or 120, or an exemption granted under section 118;

(ii) an accreditation approved or transferred under section 121;

(iii) an approval for a person to be a responsible officer under section 125 or to be a substantial shareholder under section 130; or

(iv) a modification or waiver granted under section 131(1), then the Commission shall, before making its final decision---

(i) inform the applicant or the relevant licensed corporation, exempt person, licensed representative, responsible officer or approved substantial shareholder (as the case may be) of the ground for the preliminary view; and

(ii) give such person a reasonable opportunity of being heard.

(2) When the Commission makes a final decision, it shall, as soon as reasonably practicable, notify the applicant or the relevant licensed corporation, exempt person, license representative, responsible officer or approved substantial shareholder (as the case may be) in writing of its decision and the reasons for making such decision.

### 138. Service of notices, etc. on licensed 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 a licensed person shall be regarded for all purposes as duly issued or served only if---

- (a) in the case of an individual, it is---
  - (i) delivered to him by hand; or
  - (ii) (A) left at, or sent by post to, the last residential address;
- (B) sent by facsimile transmission to the last facsimile number; or
- (C) sent by electronic mail transmission to the last electronic mail address, provided by the person to the Commission pursuant to section 119(6) or 120(4) (as the case may be); or
- (b) in the case of a corporation, 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, provided by the corporation to the Commission pursuant to section 115, 116, 129(1), 132(2) or 135(4) (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 a licensed person under subsection (1)(a)(ii) or (b), it shall be regarded for all purposes as issued to or served on the licensed 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.

#### 139. Amendment of Schedule 6

The Financial Secretary may, by notice published in the Gazette, amend Schedule 6.

PART VI

Capital Requirements, Client Assets,  
Records and Audit Relating  
to Intermediaries

Division 1---Interpretation

140. Interpretation of Part VI

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

"specified amount requirements" (指明數額規定) means the requirements specified in the financial resources rules pursuant to section 141(2)(a)(i).

Division 2---Capital requirements

141. Financial resources of licensed corporations

(1) The Commission may, after consultation with the Financial Secretary, make rules requiring licensed corporations to maintain such financial resources as are specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 384(9) and (10), the Commission may in the rules referred to in subsection (1)---

(a) require licensed corporations to maintain financial resources in accordance with---

(i) specified requirements as to the amount in which they are to be maintained; and

(ii) any other specified requirements;

(b) specify the assets, liabilities and other matters to be taken into account under the rules to determine the amount of the financial resources of licensed corporations for the purposes of the rules and the extent to which, and the manner in which, they are to be taken into account for that purpose;

(c) provide for the different treatment of the assets, liabilities and other matters for the purposes of the rules according to whether or not they are approved by the Commission for that purpose;

(d) provide that the rules, or any of the provisions of the rules, do not apply to licensed corporations which maintain financial resources, in Hong Kong or elsewhere, in accordance with an authorization of an authority, in Hong Kong or elsewhere, which in the opinion of the Commission performs a function which involves the imposition of requirements relating to financial resources of persons carrying on activities similar to any regulated activity for which a licensed person may be licensed, or apply to such licensed corporations with specified modifications or only in specified

circumstances;

(e) provide for the grant of approvals for specified purposes and for the amendment or revocation of such approvals, and for the publication of such approvals and of any amendment or revocation of such approvals in the specified manner;

(f) require licensed corporations to submit to the Commission---

(i) at specified intervals, returns relating to their financial resources and trading activities; and

(ii) notice in writing of specified circumstances relating to their financial resources and trading activities;

(g) require licensed corporations to submit returns to the Commission in response to a request by the Commission for information relating to their financial resources and trading activities;

(h) provide for any other matter relating to financial resources of licensed corporations.

#### 142. Failure to comply with financial resources rules

(1) If a licensed corporation becomes aware of its inability to maintain, or to ascertain whether it maintains, financial resources in accordance with the specified amount requirements that apply to it, it shall on the day on which it becomes aware of such inability---

(a) notify the Commission by notice in writing of that fact; and

(b) subject to subsection (2), cease carrying on any regulated activity for which it is licensed, otherwise than for the purpose of completing such transactions as the Commission may permit.

(2) Where the Commission considers appropriate, the Commission may permit a licensed corporation which gives notice to the Commission under subsection (1)(a) to carry on any regulated activity for which it is licensed, subject to such conditions as may be imposed by the Commission by notice given to it, whether orally or in writing.

(3) If a licensed corporation becomes aware of its inability to comply with, or to ascertain whether it complies with, all or any of the requirements of the financial resources rules that apply to it, other than the specified amount requirements, it shall within one business day thereafter notify the Commission by notice in writing of that fact.

(4) Without limiting the generality of the financial resources rules and the rules that may be made under section 147, a licensed corporation to which any of the requirements of the financial resources rules apply shall---

(a) keep its records in sufficient detail to establish readily whether all of such requirements are being complied with; and

(b) where the Commission by notice in writing served on it requires it to do so, make



its records available to the Commission within 5 business days after the service of the notice.

(5) Without prejudice to sections 187 and 188, where the Commission reasonably believes that a licensed corporation is unable to maintain, or to ascertain whether it maintains, financial resources in accordance with the specified amount requirements that apply to it, the Commission may, whether or not notice has been given under subsection (1)(a)---

(a) suspend the licensed corporation's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is licensed for such period or until the occurrence of such event as the Commission may specify; or  
(b) permit the licensed corporation to carry on any regulated activity for which it is licensed, subject to such conditions as may be imposed by the Commission by notice given to it, whether orally or in writing.

(6) Where any conditions are imposed pursuant to subsection (2) or (5)(b) by notice given to a licensed corporation in writing, the Commission may amend any of the conditions in such manner as may be specified by the Commission, by notice given to the licensed corporation, whether orally or in writing, and where any of the conditions are so amended---

(a) such conditions shall have effect subject to the amendment accordingly; and  
(b) where the conditions are amended by notice in writing, this subsection shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (2) or (5)(b) (as the case may be).

(7) Where any conditions are imposed pursuant to subsection (2) or (5)(b), or amended under subsection (6), by notice given to a licensed corporation otherwise than in writing, the Commission shall as soon as reasonably practicable give to the licensed corporation a further notice in writing to confirm the conditions imposed or the conditions as amended (as the case may be), subject to such amendment (if any) in respect of the conditions as it may specify in the notice, and where any conditions are so confirmed subject to any amendment---

(a) the conditions shall have effect subject to the amendment accordingly; and  
(b) subsection (6) shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (2) or (5)(b) (as the case may be).

(8) The imposition of any conditions pursuant to subsection (2) or (5)(b), or the amendment of any conditions under or pursuant to subsection (6) or (7), takes effect at the time when notice is given in respect of it pursuant to such subsection or at the time specified in the notice, whichever is the later.

(9) Where a licence of a licensed corporation is suspended under subsection

(5)(a), sections 192(1), 193(2) and (5), 194 and 195 shall apply, with necessary modifications, in relation to the suspension as if it were a suspension under section 187 or 188.

(10) A licensed corporation which contravenes subsection (1)(a) or (b) commits an offence and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$100,000 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.

(11) A licensed corporation which contravenes a condition imposed pursuant to subsection (2) or (5)(b), or as amended under or pursuant to subsection (6) or (7), commits an offence and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$100,000 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.

(12) A licensed corporation which, without reasonable excuse, contravenes subsection (3) commits an offence and is liable---

(a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(13) A licensed corporation which contravenes subsection (4) commits an offence and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

(14) The financial resources rules may provide that a licensed corporation which, without reasonable excuse, contravenes any specified provision of the financial resources rules that applies to it, other than that imposing any of the specified amount requirements, commits an offence and is liable to a specified penalty not exceeding---

(a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 1 year;

(b) on summary conviction a fine at level 5 and a term of imprisonment of 6 months.

143. Monitoring compliance with financial resources rules

(1) The Commission may at any time, by notice in writing served on an executive officer of a licensed corporation, require the licensed corporation to satisfy the Commission that it complies with all of the requirements of the financial resources rules that apply to it.

(2) Without limiting the generality of subsection (1), the Commission and any person authorized by the Commission under subsection (9) may exercise any of the powers of an auditor referred to in section 158 for the purpose of ascertaining whether a licensed corporation complies with all of the requirements of the financial resources rules that apply to it.

(3) Without prejudice to sections 187 and 188, where a licensed corporation, upon being required to do so under subsection (1), fails to satisfy the Commission that it maintains financial resources in accordance with the specified amount requirements that apply to it, the Commission may---

(a) suspend the licensed corporation's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is licensed for such period or until the occurrence of such event as the Commission may specify; or  
(b) permit the licensed corporation to carry on any regulated activity for which it is licensed, subject to such conditions as may be imposed by the Commission by notice given to it, whether orally or in writing.

(4) Where any conditions are imposed pursuant to subsection (3)(b) by notice given to a licensed corporation in writing, the Commission may amend any of the conditions in such manner as may be specified by the Commission, by notice given to the licensed corporation, whether orally or in writing, and where any of the conditions are so amended---

(a) such conditions shall have effect subject to the amendment accordingly; and  
(b) where the conditions are amended by notice in writing, this subsection shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (3)(b).

(5) Where any conditions are imposed pursuant to subsection (3)(b), or amended under subsection (4), by notice given to a licensed corporation otherwise than in writing, the Commission shall as soon as reasonably practicable give to the licensed corporation a further notice in writing to confirm the conditions imposed or the conditions as amended (as the case may be), subject to such amendment (if any) in respect of the conditions as it may specify in the notice, and where any conditions are so confirmed subject to any amendment---

(a) the conditions shall have effect subject to the amendment accordingly; and

(b) subsection (4) shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (3)(b).

(6) The imposition of any conditions pursuant to subsection (3)(b), or the amendment of any conditions under or pursuant to subsection (4) or (5), takes effect at the time when notice is given in respect of it pursuant to such subsection or at the time specified in the notice, whichever is the later.

(7) Where a licence of a licensed corporation is suspended under subsection (3)(a), sections 192(1), 193(2) and (5), 194 and 195 shall apply, with necessary modifications, in relation to the suspension as if it were a suspension under section 187 or 188.

(8) A licensed corporation which contravenes a condition imposed pursuant to subsection (3)(b), or as amended under or pursuant to subsection (4) or (5), commits an offence and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$100,000 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.

(9) For the purposes of subsection (2), the Commission may authorize any person in writing to exercise any of the powers referred to in that subsection.

#### Division 3---Client assets

144. Client securities and collateral held by intermediaries and their associated entities

(1) The Commission may make rules requiring intermediaries and their associated entities to treat and deal with client securities and collateral of the intermediaries, and to ensure that client securities and collateral of the intermediaries that are received or held by any other person on their behalf are treated and dealt with, in such manner as is specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 384(9) and (10), the Commission may in the rules referred to in subsection (1)---

(a) require client securities and collateral of intermediaries to be held, and accounted for, in the specified manner;

(b) provide that the client securities and collateral shall not be deposited, transferred, lent, pledged, repledged or otherwise dealt with except in the specified manner;

- (c) specify the circumstances in which the client securities and collateral may, notwithstanding that they are subject to a lawful claim or lien, be dealt with by intermediaries or their associated entities;
- (d) provide for the approval, subject to such conditions as the Commission considers appropriate, of companies or overseas companies as being suitable for the safe custody of the client securities and collateral;
- (e) require intermediaries and their associated entities to ensure, or to take reasonable steps to ensure, that persons who receive or hold client securities and collateral on their behalf comply with specified requirements;
- (f) require the maintenance of records in relation to the client securities and collateral (including records of performance of reconciliations in respect of movements of the client securities and collateral into and out of accounts of intermediaries or their associated entities) in the specified manner;
- (g) require the submission to the Commission, upon request or at specified intervals, of specified information, records and documents for the purpose of enabling the Commission to ascertain readily whether the rules are being complied with;
- (h) require specified matters, and the circumstances relevant thereto, to be notified to the clients of intermediaries or the Commission, or both;
- (i) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;
- (j) provide for any other matter relating to the client securities and collateral.

(3) Except as provided in the rules made under this section, client securities and collateral of an intermediary are not liable to be taken in execution against the intermediary or an associated entity of the intermediary under the order or process of a court.

(4) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding---

(a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(5) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding---

(a) on conviction on indictment a fine of \$1,000,000 and a term of imprisonment of

7 years;

(b) on summary conviction a fine of \$500,000 and a term of imprisonment of 1 year.

(6) Notwithstanding anything in this section---

(a) the power of the Commission to make rules under this section in respect of intermediaries shall, where the intermediaries are exempt persons, be regarded as the power to make rules in respect of the intermediaries only in relation to client securities and collateral received or held by them in the course of the businesses which constitute the regulated activities for which they are exempt as exempt persons;

(b) the power of the Commission to make rules under this section in respect of associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to make rules in respect of the associated entities only in relation to client securities and collateral received or held by them in the course of their businesses of receiving or holding client securities and collateral of intermediaries of which they are associated entities.

(7) Notwithstanding anything in subsection (3), that subsection---

(a) applies to client securities and collateral received or held by an exempt person only if the client securities and collateral were received or held by the exempt person in the course of the business which constitutes any regulated activity for which the exempt person is exempt;

(b) applies to client securities and collateral received or held by an associated entity that is an authorized financial institution only if the client securities and collateral were received or held by the associated entity in the course of its business of receiving or holding client securities and collateral of the intermediary of which the associated entity is an associated entity.

145. Client money held by licensed corporations  
and their associated entities

(1) The Commission may make rules requiring licensed corporations and their associated entities to treat and deal with client money of the licensed corporations in such manner as is specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 384(9) and (10), the Commission may in the rules referred to in subsection (1)---

(a) require client money of licensed corporations or any part thereof to be paid into segregated accounts established for client money and designated as trust accounts or client accounts;

(b) specify when and how the client money or any part thereof is to be paid into such accounts and require it to be dealt with, and accounted for, in the specified manner;

(c) specify the amount or proportion of the client money that is not to be paid into

such accounts, and the deductions that may be made before the client money is paid into such accounts;

(d) specify the circumstances in which the client money may be paid out of such accounts, including the circumstances in which the client money that is the subject of a lawful claim or lien may be paid out of such accounts;

(e) require interest accruing from the holding of the client money in such accounts to be dealt with and paid in the specified manner;

(f) specify the persons in Hong Kong with whom such accounts are to be established and maintained;

(g) provide for authorization by the Commission as a condition for payment out of such accounts in specified circumstances;

(h) require the maintenance of records in relation to such accounts (including records of performance of reconciliations of payments of the client money into and out of such accounts) in the specified manner;

(i) require the submission to the Commission, upon request or at specified intervals, of specified information, records and documents for the purpose of enabling the Commission to ascertain readily whether the rules are being complied with;

(j) require specified matters, and the circumstances relevant thereto, to be notified to the clients of licensed corporations or the Commission, or both;

(k) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;

(l) provide for any other matter relating to the client money.

(3) Except as provided in the rules made under this section, client money of a licensed corporation is not liable to be taken in execution against the licensed corporation or an associated entity of the licensed corporation under the order or process of a court.

(4) Rules made under this section may provide that a licensed corporation, or an associated entity of a licensed corporation, which contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding---

(a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(5) Rules made under this section may provide that a licensed corporation, or an associated entity of a licensed corporation, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding---

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

(b) on summary conviction a fine of \$500,000 and a term of imprisonment of 1 year.

(6) Notwithstanding anything in this section, no rules made under this section shall apply to associated entities that are authorized financial institutions.

(7) Notwithstanding anything in subsection (3), that subsection does not apply to client money of a licensed corporation that is received or held by an associated entity that is an authorized financial institution.

#### 146. Claims and liens not affected

Nothing in sections 144 and 145 and any rules made under any of those sections shall be construed as taking away or affecting a lawful claim or lien which any person has in respect of client assets of an intermediary (whether received or held by the intermediary or an associated entity of the intermediary), but the existence of any such claim or lien does not relieve the intermediary or an associated entity of the intermediary of the duty to comply with the requirements of those rules that apply to the intermediary or the associated entity (as the case may be).

#### Division 4---Records

#### 147. Keeping of accounts and records by intermediaries and their associated entities

(1) The Commission may make rules to provide for---

(a) the keeping by intermediaries of such accounts and records as are specified in the rules;

(b) the keeping by associated entities of intermediaries of such accounts and records in respect of client assets of the intermediaries that they receive or hold as are specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 384(9) and (10), the Commission may in the rules referred to in subsection (1)---

(a) require intermediaries and their associated entities to keep the specified accounts and records for specified purposes;

(b) provide for the manner in which the accounts and records are to be kept;

(c) provide for the period for which, and the location at which, the accounts and records are to be kept before they may be destroyed;

(d) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;

(e) provide for any other matter relating to accounts and records to be kept by intermediaries and their associated entities.

(3) An entry in the accounts or records of an intermediary or an associated entity



of an intermediary shall, unless there is evidence to the contrary, be deemed to have been made by it or with its authority.

(4) A person who, with intent to defraud---

(a) enters, records or stores, or causes to be entered, recorded or stored, in any accounts or records kept in compliance with, or in purported compliance with, rules made under this section, any matter which he knows to be false or misleading in a material particular;

(b) deletes, destroys, removes or falsifies, or causes to be deleted, destroyed, removed or falsified, any matter that has been entered, recorded or stored in any accounts or records kept in compliance with, or in purported compliance with, rules made under this section; or

(c) fails to enter, record or store in any accounts or records kept in compliance with, or in purported compliance with, rules made under this section, as soon as reasonably practicable, any matter that should be so entered, recorded or stored, commits an offence and is liable---

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

(ii) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.

(5) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding---

(a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(6) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding---

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

(b) on summary conviction a fine of \$500,000 and a term of imprisonment of 1 year.

(7) Notwithstanding anything in this section, the power of the Commission to make rules under this section in respect of intermediaries shall, where the intermediaries are exempt persons, be regarded as the power to make rules in respect of the intermediaries only in relation to accounts and records relating to the businesses which constitute the regulated activities for which they are exempt as exempt persons.

148. Provision of contract notes, receipts, statements of account and notifications by intermediaries and their associated entities

(1) The Commission may make rules to provide for---

(a) the preparation by intermediaries of such contract notes, receipts, statements of account and notifications as are specified in the rules, and the provision thereof to clients of the intermediaries;

(b) the preparation by associated entities of intermediaries, in respect of client assets of the intermediaries that they receive or hold, of such receipts, statements of account and notifications as are specified in the rules, and the provision thereof to clients of the intermediaries.

(2) Without limiting the generality of subsection (1) and without prejudice to section 384(9) and (10), the Commission may in the rules referred to in subsection (1)---

(a) require intermediaries, in relation to all transactions they enter into, over any specified period of time, with or on behalf of a client of the intermediaries in the conduct of any of the businesses which constitute the regulated activities for which they are licensed or exempt, to prepare and provide to the client a contract note and, where applicable, a statement of account in the specified manner and circumstances;

(b) require intermediaries and their associated entities, in relation to every client of the intermediaries to whom they have provided financial accommodation, to prepare and provide to the client a statement of account in the specified manner and circumstances;

(c) require intermediaries and their associated entities, in relation to every receipt of client assets from or for the account of a client of the intermediaries, to prepare and provide to the client a receipt in the specified manner and circumstances;

(d) require intermediaries and their associated entities, in relation to every notification which relates to client assets received or held by them on behalf of a client of the intermediaries, and which is received from any person other than the client (including any notification concerning any entitlement relating to client assets), to prepare and provide to the client a notification in the specified manner and circumstances;

(e) provide for the time when contract notes, receipts, statements of account and notifications are to be provided and the period for which, and the location at which, copies thereof are to be kept before they may be destroyed;

(f) require a person who becomes aware that he does not comply with any specified

provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;

(g) provide for any other matter relating to contract notes, receipts, statements of account and notifications to be prepared and provided to clients of intermediaries by the intermediaries and their associated entities.

(3) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding---

(a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(4) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding---

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

(b) on summary conviction a fine of \$500,000 and a term of imprisonment of 1 year.

(5) Notwithstanding anything in this section, the power of the Commission to make rules under this section in respect of intermediaries shall, where the intermediaries are exempt persons, be regarded as the power to make rules in respect of the intermediaries only in relation to contract notes, receipts, statements of account and notifications relating to the businesses which constitute the regulated activities for which they are exempt as exempt persons.

#### Division 5---Audit

149. Auditor to be appointed by licensed corporations and their associated entities

(1) A licensed corporation shall appoint an auditor to perform the functions required of an auditor of the corporation under or pursuant to the provisions of this or any other Ordinance.

(2) An associated entity of a licensed corporation shall appoint an auditor to perform the functions required of an auditor of the associated entity under or pursuant to the provisions of this or any other Ordinance.

(3) A licensed corporation, and an associated entity of a licensed corporation, shall, within 7 business days after its appointment of an auditor under subsection (1) or (2) (as the case may be), notify the Commission by notice in writing of the name and address of the auditor.

(4) A person---

(a) is not eligible for appointment as an auditor under subsection (1) or (2)---

(i) if he is an officer or employee of the licensed corporation or the associated entity the accounts of which are to be audited, or is in the employment of such an officer or employee; or

(ii) if he does not belong to a class of persons prescribed by rules made under section 384 for the purposes of this subsection;

(b) is, subject to paragraph (a), eligible for appointment as an auditor under subsection (1) or (2), notwithstanding that he is, apart from that appointment, already an auditor appointed by the licensed corporation or the associated entity the accounts of which are to be audited, whether for the purposes of the Companies Ordinance (Cap. 32) or otherwise.

(5) A licensed corporation, or an associated entity of a licensed corporation, which fails to appoint an auditor in accordance with subsection (1) or (2) within one month after---

(a) it becomes licensed or becomes such an associated entity (as the case may be); or

(b) the auditor first appointed under subsection (1) or (2) after it becomes licensed or becomes such an associated entity, or any auditor further appointed under subsection (1) or (2), ceases to be an auditor of the licensed corporation or of the associated entity (as the case may be), commits an offence and is liable---

(i) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or

(ii) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(6) A licensed corporation, or an associated entity of a licensed corporation, which contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 5.

(7) Nothing in this section prejudices the operation of any other requirements relating to the appointment of an auditor, whether under the Companies Ordinance (Cap. 32) or otherwise.

(8) In this section, a reference to an associated entity of a licensed corporation shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

150. Notification of proposed change of  
auditors by licensed corporations  
and their associated entities

(1) A licensed corporation, and an associated entity of a licensed corporation, shall within one business day after---

(a) it gives notice to its members of a motion, to be moved at its general meeting---

(i) to remove an auditor appointed by it under section 149 before the expiration of his term of office; or

(ii) to replace with another auditor, or not to reappoint, an auditor appointed by it under section 149 at the expiration of his term of office; or

(b) an auditor appointed by it under section 149 ceases to be its auditor before the expiration of his term of office, otherwise than in consequence of a motion referred to in paragraph (a),

notify the Commission by notice in writing of that fact.

(2) A licensed corporation, or an associated entity of a licensed corporation, which contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

(3) In this section, a reference to an associated entity of a licensed corporation shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

151. Notification of end of financial year by  
licensed corporations and their  
associated entities, etc.

(1) A licensed corporation, and an associated entity of a licensed corporation, shall---

(a) in the case of the licensed corporation, within one month after it becomes licensed; or

(b) in the case of the associated entity, within one month after it becomes such an associated entity,

notify the Commission by notice in writing of the date on which its financial year ends.

(2) A licensed corporation, and an associated entity of a licensed corporation, shall not---

(a) except with the approval in writing of the Commission under subsection (3)(a), alter the date notified to the Commission under subsection (1) as the date on which its financial year ends;

(b) except with the approval in writing of the Commission under subsection (3)(b), adopt any period which exceeds 12 months as its financial year.

(3) On an application in writing by a licensed corporation or an associated entity of a licensed corporation, the Commission may, subject to such conditions as it considers appropriate, grant approval in writing in respect of---

(a) an alteration of the date notified to the Commission under subsection (1) as the date on which its financial year ends;

(b) the adoption of any period which exceeds 12 months as its financial year.

(4) A licensed corporation, or an associated entity of a licensed corporation, which contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (3), commits an offence and is liable on conviction to a fine at level 5.

(5) Nothing in this section prejudices the operation of section 122 of the Companies Ordinance (Cap. 32).

(6) In this section, a reference to an associated entity of a licensed corporation shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

152. Audited accounts, etc. to be submitted by licensed corporations and their associated entities

(1) Subject to subsections (3) and (4), a licensed corporation, and an associated entity of a licensed corporation, shall---

(a) prepare such financial statements and other documents, for such periods, as are prescribed by rules made under section 384 for the purposes of this section; and

(b) submit the financial statements and other documents, together with an auditor's report, to the Commission not later than 4 months after the end of the financial year to which they relate.

(2) Subject to subsections (3) and (4), a licensed corporation that ceases, in such circumstances as are prescribed by rules made under section 384 for the purposes of this section, carrying on any of the regulated activities for which it is licensed, and an associated entity of a licensed corporation that ceases to be such an associated entity, shall---

(a) prepare such financial statements and other documents, which shall be made up to (and including) the date of the cessation, as are prescribed by the rules; and

(b) submit the financial statements and other documents, together with an auditor's report, to the Commission not later than 4 months after the date of the cessation.

(3) Without limiting the generality of subsection (1) or (2), the requirements under such subsection relating to the financial statements and other documents, and the auditor's report, referred to in such subsection include the requirements that---

(a) the financial statements and other documents are to relate to such matters and contain such particulars as are prescribed by rules made under section 384 for the purposes of this section;

(b) the auditor's report is to contain such particulars, including such statement of opinion, as are prescribed by the rules;

(c) the financial statements and other documents, and the auditor's report, are to

be prepared in accordance with such principles or bases as are prescribed by the rules; and

(d) without limiting the generality of section 129B of the Companies Ordinance (Cap. 32), the financial statements and other documents are to be signed by such person as is prescribed by the rules.

(4) On an application in writing by the licensed corporation or the associated entity by which any financial statements and other documents, and any auditor's report, are required under subsection (1) or (2) to be submitted, the Commission may, where it is satisfied that there are special reasons for so doing, extend the period within which the financial statements and other documents, and the auditor's report, are required to be submitted, for such period and subject to such conditions as the Commission considers appropriate, and upon the Commission granting the extension, subsection (1) or (2) (as the case may be) shall apply subject to the extension accordingly.

(5) A licensed corporation, or an associated entity of a licensed corporation, which, without reasonable excuse, contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (4), commits an offence and is liable---

(a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(6) A licensed corporation, or an associated entity of a licensed corporation, which, with intent to defraud, contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (4), commits an offence and 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 of \$500,000 and to imprisonment for 1 year.

(7) In this section, a reference to an associated entity of a licensed corporation shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

153. Auditors of licensed corporations or their associated entities to lodge report with Commission, etc. in certain cases

(1) If a person---

(a) in the course of performing his functions as an auditor appointed under section 149 by a licensed corporation or an associated entity of a licensed corporation or, where an associated entity of a licensed corporation is an authorized financial institution, as an auditor appointed for the purposes of the Banking Ordinance (Cap. 155) by the associated entity, becomes aware of a reportable matter; or

(b) in the course of performing his functions as an auditor appointed under section 149 by a licensed corporation or an associated entity of a licensed corporation, proposes to include any qualification or adverse statement in any report prepared by him on the financial statements or other documents of the licensed corporation or the associated entity (as the case may be) which are required to be submitted to the Commission under section 152, he shall---

(i) in the case of paragraph (a), as soon as reasonably practicable after he becomes aware of the reportable matter, lodge with---

(A) in the case of an auditor appointed under section 149 by a licensed corporation or an associated entity of a licensed corporation, the Commission; or

(B) in the case of an auditor appointed for the purposes of the Banking Ordinance (Cap. 155) by an associated entity of a licensed corporation, the Commission and the Monetary Authority,

a written report on the reportable matter;

(ii) in the case of paragraph (b), as soon as reasonably practicable after he first proposes the inclusion of the qualification or adverse statement, lodge with the Commission a written report on the qualification or adverse statement.

(2) If a person appointed as an auditor under section 149 by a licensed corporation or an associated entity of a licensed corporation---

(a) resigns as an auditor of the licensed corporation or the associated entity (as the case may be) before the expiration of his term of office as such auditor;

(b) does not seek reappointment as an auditor of the licensed corporation or the associated entity (as the case may be) at the expiration of his term of office as such auditor; or

(c) otherwise ceases to be an auditor of the licensed corporation or the associated entity (as the case may be),

he shall within one business day thereafter notify the Commission by notice in writing of that fact, and in the notice state the reasons therefor, and give particulars of any connected circumstances which he considers should be brought to the attention of the Commission or, where no such circumstances exist, make a statement to that effect.

(3) In this section---

"prescribed requirement" (訂明規定) means---

(a) any of the requirements under section 144(3) or 145(3);

(b) such of the requirements under any of the rules made under section 144, 145, 147 or 148 as are prescribed by rules made under section 384 for the purposes of this definition;



"reportable matter" (須報告事項), in relation to a person acting as an auditor within the meaning of subsection (1)(a), means a matter that, in the opinion of the person---

(a) in the case of a licensed corporation---

(i) constitutes on the part of the licensed corporation or any of its associated entities a failure to comply with any prescribed requirement;

(ii) adversely affects to a material extent the financial position of the licensed corporation or any of its associated entities; or

(iii) constitutes on the part of the licensed corporation a failure to comply with section 142 or with all or any of the requirements of the financial resources rules that apply to it; or

(b) in the case of an associated entity of a licensed corporation---

(i) constitutes on the part of the associated entity a failure to comply with any prescribed requirement; or

(ii) where the associated entity is not an authorized financial institution, adversely affects to a material extent the financial position of the associated entity.

154. Immunity in respect of communication with  
Commission, etc. by auditors of licensed  
corporations or their associated  
entities

(1) Without prejudice to sections 368 and 369, no duty which a person may be subject to as an auditor appointed under section 149 by a licensed corporation or an associated entity of a licensed corporation or, where an associated entity of a licensed corporation is an authorized financial institution, as an auditor appointed for the purposes of the Banking Ordinance (Cap. 155) by the associated entity shall be regarded as contravened by reason of his communicating in good faith to the Commission or the Monetary Authority, whether or not in response to a request made by the Commission or the Monetary Authority (as the case may be), any information or opinion on a matter which---

(a) he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor); and

(b) is relevant to any function of the Commission or the Monetary Authority (as the case may be).

(2) In addition to applying to a person who is an auditor appointed under section 149 by a licensed corporation or an associated entity of a licensed corporation, or appointed for the purposes of the Banking Ordinance (Cap. 155) by an associated entity of a licensed corporation, subsection (1) also applies to---

(a) a person whose appointment as an auditor appointed under section 149 by a licensed

corporation or an associated entity of a licensed corporation, or appointed for the purposes of the Banking Ordinance (Cap. 155) by an associated entity of a licensed corporation, has ceased, in which case a reference to a matter in that subsection shall be construed on the basis that it refers to any matter which he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor) before the appointment has ceased; and

(b) an auditor appointed, whether or not under section 149 or for the purposes of the Banking Ordinance (Cap. 155), by a former licensed corporation or by a former associated entity of a licensed corporation, in which case a reference to a matter in that subsection shall be construed on the basis that it refers to any matter which he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor).

(3) In this section---

"former associated entity of a licensed corporation" (前有聯繫實體) means a corporation which was formerly an associated entity of a licensed corporation;

"former licensed corporation" (前持牌法團) means a corporation which was formerly a licensed corporation.

155. Power of Commission to appoint auditors for licensed corporations and their associated entities

(1) Subject to subsection (3), where---

(a) a licensed corporation has failed to satisfy the Commission in accordance with section 143 that it complies with all of the requirements of the financial resources rules that apply to it;

(b) the Commission has reasonable cause to believe that a licensed corporation or any of its associated entities has failed to comply with any prescribed requirement;

(c) the Commission has reasonable cause to believe that a licensed corporation or any of its associated entities has failed to submit any financial statements or other documents in accordance with section 152; or

(d) the Commission has received a written report lodged by a person under section 153 in relation to a licensed corporation or any of its associated entities, the Commission may appoint an auditor to examine and audit, either generally or in respect of any particular matter, the accounts and records of the licensed corporation and any of its associated entities (including records of transactions entered into by the licensed corporation with any other person and of client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be)), and, without prejudice to section 157, to report to the Commission on such matters as the Commission may direct.

(2) Where an auditor is appointed under subsection (1) to examine and audit the accounts and records of a licensed corporation and any of its associated entities, the auditor may, for the purpose of carrying out the examination and audit, examine any client assets received or held by the licensed corporation or the associated entity (as the case may be).

(3) The Commission shall not appoint an auditor under subsection (1) to examine and audit the accounts and records of an associated entity that is an authorized financial institution unless the Commission has first consulted the Monetary Authority in respect of the appointment and of the scope of the examination and audit to be carried out by the auditor.

(4) Where an auditor appointed under subsection (1) has examined and audited the accounts and records of a licensed corporation or an associated entity of a licensed corporation, the Commission may, where it is of the opinion that it is appropriate to do so having regard to the conduct (whether before or after the appointment) of the licensed corporation or the associated entity (as the case may be), by notice in writing direct the licensed corporation or the associated entity (as the case may be) to pay a specified amount, being the whole or a part of the costs and expenses of the examination and audit, within the specified time and in the specified manner.

(5) Where a licensed corporation or an associated entity of a licensed corporation fails to comply with a direction of the Commission under subsection (4), the Commission may recover the specified amount referred to in the direction as a civil debt due to it.

(6) In this section, "prescribed requirement" (訂明規定) means---

- (a) any of the requirements under section 144(3) or 145(3);
- (b) such of the requirements under any of the rules made under section 144, 145, 147 or 148 as are prescribed by rules made under section 384 for the purposes of this definition.

156. Power of Commission to appoint auditors for  
licensed corporations and their associated  
entities on application

(1) Subject to subsections (3) to (6), on an application in writing by a person who alleges that a licensed corporation or any of its associated entities---

(a) has failed to account to the person for any client assets held on behalf of the person by the licensed corporation or the associated entity (as the case may be);  
or

(b) has failed to act in accordance with instructions given by the person to the licensed corporation or the associated entity (as the case may be), and has failed---

- (i) to account to the person for any profit that may have been secured or increased

by the person had the instructions been followed; or

(ii) to compensate the person for any loss that may have been avoided or reduced by the person had the instructions been followed, the Commission may appoint an auditor to examine and audit, either generally or in respect of any particular matter, the accounts and records of the licensed corporation and any of its associated entities (including records of transactions entered into by the licensed corporation with any other person and of client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be)), and, without prejudice to section 157, to report to the Commission on such matters as the Commission may direct.

(2) Where an auditor is appointed under subsection (1) to examine and audit the accounts and records of a licensed corporation and any of its associated entities, the auditor may, for the purpose of carrying out the examination and audit, examine any client assets received or held by the licensed corporation or the associated entity (as the case may be).

(3) A person making an application pursuant to subsection (1) shall state in the application---

(a) the particulars of the circumstances in which any licensed corporation or any associated entity of a licensed corporation is alleged to have failed to account for any client assets, or to act in accordance with instructions given to the licensed corporation or the associated entity and to account for any profit or compensate for any loss (as the case may be);

(b) the particulars of any client assets concerned;

(c) the particulars of the transactions in respect of which the alleged failure has occurred; and

(d) any other particulars the Commission may require, and shall verify all statements in the application by statutory declaration, which may be taken by any person authorized by the Commission in that behalf.

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

(a) the person making the application pursuant to that subsection has a good reason for making the application; and

(b) it is in the interest of---

(i) the licensed corporation and the associated entity the accounts and records of which are to be examined and audited by the auditor;

(ii) the person making the application; or

(iii) the investing public or the public, that the auditor be appointed.

(5) The Commission shall not appoint an auditor under subsection (1) to examine and audit the accounts and records of an associated entity that is an authorized financial institution unless the Commission has first consulted the Monetary Authority in respect of the appointment and of the scope of the examination and audit to be carried out by the auditor.

(6) The Commission shall not appoint an auditor under subsection (1) to examine and audit the accounts and records of a licensed corporation or an associated entity of a licensed corporation unless the Commission has given the licensed corporation or the associated entity (as the case may be) a reasonable opportunity of being heard.

(7) For the purposes of the law of defamation, every statement in an application made pursuant to subsection (1) shall, if made in good faith and without malice, be privileged.

(8) Where an auditor appointed under subsection (1) has examined and audited the accounts and records of a licensed corporation or an associated entity of a licensed corporation, the Commission may, where it is of the opinion that it is appropriate to do so having regard to the conduct (whether before or after the appointment) of the licensed corporation or the associated entity (as the case may be) and of the person making the application pursuant to that subsection in respect of the appointment, by notice in writing direct the licensed corporation or the associated entity (as the case may be) or the person making the application to pay a specified amount, being the whole or a part of the costs and expenses of the examination and audit, within the specified time and in the specified manner.

(9) Where a licensed corporation, an associated entity of a licensed corporation or a person making an application pursuant to subsection (1) fails to comply with a direction of the Commission under subsection (8), the Commission may recover the specified amount referred to in the direction as a civil debt due to it.

157. Auditors appointed under section 155  
or 156 to report to Commission

An auditor appointed under section 155 or 156 shall make such interim reports to the Commission as it may require and shall, on the conclusion of the examination and audit which he is appointed to carry out, make a final report to the Commission.

158. Powers of auditors appointed under  
section 155 or 156

(1) An auditor appointed under section 155 or 156 to examine and audit the accounts and records of any licensed corporation and any of its associated entities, for the purpose of carrying out the examination and audit, may, in addition to any other action that the auditor may reasonably take for the purpose---

(a) examine on oath, affirmation or otherwise---

(i) any officer, employee and agent of the licensed corporation or the associated entity (as the case may be); and

(ii) any auditor appointed by the licensed corporation or the associated entity (as the case may be) under section 149 or, where the associated entity is an authorized financial institution, for the purposes of the Banking Ordinance (Cap. 155),

in respect of any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be) and, for that purpose, administer oaths and affirmations accordingly;

(b) require any officer, employee and agent of the licensed corporation or the associated entity (as the case may be) to---

(i) produce any accounts and records concerning any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be); and

(ii) explain the contents of the accounts and records so produced;

(c) require any auditor appointed by the licensed corporation or the associated entity (as the case may be) under section 149 or, where the associated entity is an authorized financial institution, for the purposes of the Banking Ordinance (Cap. 155) to---

(i) produce any accounts and records held by him concerning any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be); and

(ii) explain the contents of the accounts and records so produced;

(d) require a recognized exchange company or recognized clearing house to---

(i) produce any accounts and records kept by it, or information in its possession, concerning any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be); and

(ii) explain the contents of the accounts and records, and the information, so produced;

(e) require any person receiving or holding client assets on behalf of the licensed corporation or the associated entity (as the case may be) to---

(i) produce any accounts and records kept by the person, or information in his

possession, concerning any matter relating to the client assets; and

(ii) explain the contents of the accounts and records, and the information, so produced;

(f) employ any person he considers necessary to assist him in carrying out the examination and audit which he is appointed to carry out; and

(g) for the purpose of the examination and audit which he is appointed to carry out, authorize in writing any person employed by him to do any act or thing referred to in this subsection (other than the examination of a person on oath or affirmation under paragraph (a)).

(2) If an auditor appointed under section 155 or 156, or a person authorized under subsection (1)(g), reasonably considers it necessary for the purpose of carrying out the examination and audit of the accounts and records of a licensed corporation and any of its associated entities which the auditor is appointed to carry out, the powers referred to in subsection (1)---

(a) are exercisable in relation to any other business carried on by the licensed corporation in conjunction with any regulated activity for which it is licensed, and any business of any of its associated entities, in which case any reference to any matter relating to the business of the licensed corporation or the associated entity in subsection (1)(a) to (g) shall be construed on the basis that it refers to any matter relating to such other business carried on by the licensed corporation, and such business of any of its associated entities; and

(b) are exercisable in relation to a related corporation of the licensed corporation or any of its associated entities, in which case---

(i) any reference to any officer, employee and agent of the licensed corporation or the associated entity in subsection (1)(a) to (g) shall be construed on the basis that it refers to that of the related corporation or any of its associated entities;

(ii) any reference to any auditor appointed by the licensed corporation or the associated entity in subsection (1)(a) to (g) shall be construed on the basis that it refers to any auditor appointed by the related corporation or any of its associated entities, whether under this Ordinance or otherwise;

(iii) any reference to any matter relating to the business of the licensed corporation or the associated entity or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity in subsection (1)(a) to (g) shall be construed on the basis that it refers to any matter relating to the business of the related corporation or any of its associated entities or to the client assets of the related corporation received or held by the related corporation or any of its associated entities; and

(iv) any reference to any person receiving or holding client assets on behalf

of the licensed corporation or the associated entity in subsection (1)(a) to (g) shall be construed on the basis that it refers to any person receiving or holding client assets on behalf of the related corporation or any of its associated entities.

(3) A person who, without reasonable excuse, fails to comply with any requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 155 or 156 or a person authorized under subsection (1)(g)) commits an offence and is liable---

(a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(4) A person who---

(a) in purported compliance with a requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 155 or 156 or a person authorized under subsection (1)(g)), produces any accounts or records or gives an answer which is false or misleading in a material particular; and

(b) knows that, or is reckless as to whether, the accounts or records or the answer is false or misleading in a material particular, commits an offence and is liable---

(i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

(5) A person who, with intent to defraud---

(a) fails to comply with any requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 155 or 156 or a person authorized under subsection (1)(g)); or

(b) in purported compliance with a requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 155 or 156 or a person authorized under subsection (1)(g)), produces any accounts or records or gives an answer which is false or misleading in a material particular, commits an offence and is liable---

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

(ii) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.

159. Offence to destroy, conceal, or alter



accounts, records or documents, etc.

(1) A person commits an offence if he, with intent to prevent, delay or obstruct the carrying out of any examination and audit which an auditor appointed under this Part is required to carry out---

(a) deletes, destroys, mutilates, falsifies, conceals, alters or otherwise makes unavailable any accounts, records or documents concerning any matter relating to the business of a licensed corporation or any of its associated entities or to the client assets of a licensed corporation, or aids or abets or conspires with another person to do so;

(b) disposes or procures the disposal, in any manner and by any means, of any property belonging to or in the possession of a licensed corporation or any of its associated entities, or aids or abets or conspires with another person to do so; or

(c) leaves, or attempts to leave, Hong Kong.

(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 of \$500,000 and to imprisonment for 1 year.

(3) If, in proceedings for an offence under subsection (1), it is proved that the accused person deleted, destroyed, mutilated, falsified, concealed or altered any accounts, records or documents concerning any matter relating to the business of a licensed corporation or any of its associated entities or to the client assets of a licensed corporation, or aided or abetted or conspired with another person to do so, he shall, in the absence of evidence to the contrary, be presumed to have done so with intent to prevent, delay or obstruct the carrying out of any examination and audit which an auditor appointed under this Part is required to carry out.

#### Division 6---Miscellaneous

##### 160. Restriction on receiving or holding of client assets

(1) No person shall receive or hold in Hong Kong client assets of an intermediary unless the person is---

(a) the intermediary;

(b) an associated entity of the intermediary; or

(c) an excluded person.

(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable---

(a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; or

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

(3) In this section, "excluded person" (豁除人士) means---

- (a) any authorized financial institution;
- (b) in the case of client collateral of any intermediary, any other intermediary or person with whom it is deposited, or to whom it is provided, in the circumstances referred to in paragraph (a)(A) or (B) or (b)(A) or (B) (as the case may be) of the definition of "securities collateral" or "other collateral" (as the case may be) in section 1 of Part 1 of Schedule 1;
- (c) any company or overseas company that is approved under rules made pursuant to section 144(2)(d) as being suitable for the safe custody of client securities and collateral of intermediaries; or
- (d) any person in Hong Kong that is specified under rules made pursuant to section 145(2)(f) as that with whom segregated accounts established for client money of licensed corporations and designated as trust accounts or client accounts are to be established and maintained.

#### 161. Associated entities

(1) An associated entity of an intermediary shall within 7 business days after---

- (a) it becomes such an associated entity; or
- (b) it ceases to be such an associated entity,

notify the Commission by notice in writing of that fact and such other particulars as are prescribed by rules made under section 384 for the purposes of this section.

(2) Where there is any change in the particulars required to be provided by an associated entity of an intermediary under subsection (1), the associated entity shall within 7 business days thereafter notify the Commission by notice in writing of that fact and provide in the notice particulars of the change.

(3) Where an associated entity of an intermediary, other than an authorized financial institution, receives or holds client assets of the intermediary, the associated entity shall not, unless authorized in writing by the Commission, conduct any business other than that of receiving or holding client assets, whether on behalf of the intermediary or otherwise.

(4) An associated entity of an intermediary which, without reasonable excuse, contravenes subsection (1), (2) or (3) commits an offence and is liable---

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(5) An associated entity of an intermediary which, with intent to defraud, contravenes subsection (1), (2) or (3) commits an offence and 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 of \$500,000 and to imprisonment for 1 year.

(6) An associated entity of an intermediary which becomes aware that it does not comply with subsection (1), (2) or (3) shall within one business day thereafter notify the Commission by notice in writing of that fact and of the surrounding circumstances.

(7) An associated entity of an intermediary which contravenes subsection (6) commits an offence and is liable---

(a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; or

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

(8) Notwithstanding anything in this section, the power of the Commission to make rules for the purposes of this section in respect of associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to make rules in respect of the associated entities only in relation to particulars relating to their businesses of receiving or holding client assets of intermediaries of which they are associated entities.

PART VII

Business Conduct, etc. of Intermediaries

Division 1---Interpretation

162. Interpretation of Part VII

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

Division 2---Business conduct

163. Business conduct of intermediaries

and their representatives

(1) The Commission may make rules requiring intermediaries and their representatives to comply with such practices and standards, relating to their conduct in carrying on the regulated activities for which the intermediaries are licensed or exempt, as are specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 384(9) and (10), the Commission may in the rules referred to in subsection (1)---

(a) prohibit the use of misleading or deceptive advertisements by or on behalf of intermediaries, and impose conditions for the use of advertisements by or on behalf of intermediaries;

(b) require specified terms and conditions to be included in client contracts and provide that the terms and conditions are, unless the Commission in relation to any particular term or condition otherwise directs, to be deemed to be of the essence of the client contracts in which they are included, whether or not a different intention appears from the provisions of such client contracts;

(c) require an intermediary to provide to its client, upon entering into a client contract with the client, and thereafter from time to time upon request by the client, specified information concerning the business of the intermediary, and the identity

and status of any person acting on behalf of the intermediary and with whom the client may have contact;

(d) require an intermediary, and any representative of an intermediary, to take specified steps to ascertain, in relation to each of the clients of the intermediary, specified matters relating to his identity and his financial situation, investment experience and investment objectives relevant to the services to be provided by the intermediary;

(e) require an intermediary, and any representative of an intermediary, when providing information or advice concerning financial products to any client of the intermediary, to take specified steps to ensure the suitability of such information or advice being provided to the client;

(f) require an intermediary, and any representative of an intermediary, to take specified steps to ensure that disclosure is made to any client of the intermediary of financial risks in relation to any financial product the intermediary or the representative (as the case may be) recommends to the client;

(g) require an intermediary, and any representative of an intermediary, to take specified steps to ensure that disclosure is made to any client of the intermediary of any commission or advantage the intermediary or the representative (as the case may be) receives or is to receive from any third party in connection with any financial product the intermediary or the representative (as the case may be) recommends to the client;

(h) require an intermediary, and any representative of an intermediary, not to effect a transaction on behalf of any client of the intermediary in specified circumstances;

(i) prohibit the use by an intermediary, or any representative of an intermediary, of information relating to the affairs of a client of the intermediary, except in specified circumstances and under specified conditions;

(j) require an intermediary, and any representative of an intermediary, to take specified steps to avoid cases of conflict arising between any of their interests and those of a client of the intermediary;

(k) prohibit the receipt by an intermediary of any property or services from another intermediary in consideration of directing business to that other intermediary, except in specified circumstances and under specified conditions;

(l) prohibit the dealing by any representative of an intermediary for his own account in securities or futures contracts, except in specified circumstances and under specified conditions;

(m) require an intermediary, and any representative of an intermediary, to take specified steps to introduce and implement procedures to discourage and identify any money laundering activities;

(n) provide for any other matter relating to the practices and standards relating to conduct in carrying on the regulated activities for which intermediaries are licensed or exempt.

(3) Notwithstanding anything in this section, the Commission shall not exercise any of its powers under this section to make rules to specify any terms and conditions for the purposes of any requirement referred to in subsection (2)(b) unless it is satisfied that the specification of the terms and conditions is for the better furtherance of any of its regulatory objectives or the better performance of any of its functions.

(4) Rules made under this section may provide that an intermediary, or a representative of an intermediary, that, without reasonable excuse, contravenes any specified provision of the rules that applies to it or him (as the case may be) commits an offence and is liable to a specified penalty not exceeding---

(a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(5) In this section, "client contract" (客戶合約) means any contract or arrangement between an intermediary and another person, which contains terms on which the intermediary is to provide services the provision of which constitutes a regulated activity.

#### 164. Codes for business conduct of intermediaries and their representatives

(1) Without prejudice to the power of the Commission to make rules under section 163, the Commission may publish, in the Gazette and in any other manner it considers appropriate, codes of conduct for the purpose of setting out guidelines relating to the practices and standards with which intermediaries and their representatives are ordinarily expected to comply in carrying on the regulated activities for which the intermediaries are licensed or exempt.

(2) Without limiting the generality of subsection (1), any code of conduct referred to in that subsection may, in setting out guidelines referred to in that subsection, refer to obligations to observe---

(a) any other codes or requirements issued or imposed otherwise than by the Commission;

(b) continuing obligations, including any such obligations---

(i) in the case of an intermediary, to provide for the continuous training of its representatives; or

(ii) in the case of a representative of an intermediary, to undergo continuous training;

(c) practices and standards concerning any of the matters described in section 163(2).

(3) The Commission may from time to time amend the whole or any part of any code of conduct published under this section in a manner consistent with the power to publish the code of conduct under this section, and---

(a) the other provisions of this section apply, with the necessary modifications, to such amendments to the code as they apply to the code; and

(b) any reference in this or any other Ordinance to the code (however expressed) shall, unless the context otherwise requires, be construed as a reference to the code as so amended.

(4) A failure on the part of an intermediary, or a representative of an intermediary, to comply with the provisions set out in any code of conduct published under this section that apply to it or him (as the case may be) shall not by itself render it or him (as the case may be) liable to any judicial or other proceedings, but may be taken into account in considering, for the purposes of any provision of this Ordinance---

(a) in the case of an intermediary, whether it is a fit and proper person to be or to remain licensed or exempt;

(b) in the case of a representative of an intermediary that is a licensed person, whether he is a fit and proper person to be or to remain licensed as a representative; or

(c) in the case of a representative of an intermediary that is an exempt person, whether his name should remain 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 in any proceedings under this Ordinance before any court the code shall be admissible in evidence, and if any provision set out in the code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(5) Any code of conduct published under this section---

(a) may be of general or special application and, without limiting the generality of the foregoing, may be made so as to apply, or so as not to apply---

(i) to a specified extent in relation to any specified person or to members of a specified class of persons;

(ii) in specified circumstances;

(b) may make different provisions for different circumstances and provide for different cases or classes of cases.

(6) Any code of conduct published under this section is not subsidiary

legislation.

Division 3---Restriction on short selling, etc.

165. Short selling restricted

(1) Subject to subsections (2) and (3), a person shall not sell securities at or through a recognized stock market unless at the time he sells them---

(a) he has or, where he is selling as an agent, his principal has; or

(b) he reasonably and honestly believes that he has or, where he is selling as an agent, that his principal has,

a presently exercisable and unconditional right to vest the securities in the purchaser of them.

(2) For the purposes of subsection (1)---

(a) a person shall be regarded as selling securities if he---

(i) purports to sell the securities;

(ii) offers to sell the securities;

(iii) holds himself out as being entitled to sell the securities; or

(iv) instructs any representative of an intermediary that carries on Type 1 regulated activity for the intermediary, to sell the securities;

(b) a person who, at a particular time, has a presently exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be regarded as having at that time a presently exercisable and unconditional right to vest the securities in a purchaser of them;

(c) a right of a person to vest securities in a purchaser of them shall not be regarded as not unconditional by reason only of the fact that the securities are charged or pledged in favour of some other person to secure the repayment of money.

(3) Subsection (1) does not apply to---

(a) a person who acts in good faith in the reasonable and honest belief that he has a right, title, or interest to or in the securities which he sells within the meaning of subsection (1);

(b) a person who, as a representative of an intermediary that carries on Type 1 regulated activity for the intermediary, acts in good faith on behalf of some other person in the reasonable and honest belief that such other person has a right, title, or interest to or in the securities which he sells within the meaning of subsection (1) on behalf of such other person;

(c) a sale of securities by an exchange participant acting as a principal, when he acts in the course of his business of dealing in odd lots of securities, in accordance with the rules of the recognized exchange company which operates a stock market, being a sale effected solely for the purpose of---

(i) accepting an offer to purchase an odd lot of securities; or



- (ii) disposing of an odd lot of securities, by means of the sale of one board lot of those securities;
- (d) a sale of securities effected pursuant to a transaction in an options contract traded on a recognized stock market;
- (e) a sale of securities falling within a class of transactions prescribed by rules made under section 384 for the purposes of this paragraph.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 2 years.

#### 166. Requirements to confirm short selling order

(1) A person, where he is selling as a principal, shall not convey a short selling order at or through a recognized stock market unless he provides to his agent an assurance, in the form of a document, that---

- (a) he has a presently exercisable and unconditional right to vest the securities to which the order relates in the purchaser of them; and
- (b) where the short selling order is such order by virtue of paragraph (a)(i) or (v) of the definition of "short selling order" in section 1 of Part 1 of Schedule 1, the counterparty or the other person (as the case may be) referred to in such paragraph has the securities to which the order relates available to lend or deliver to him.

(2) A person to which subsection (1) applies shall provide to his agent such information (if any), in the form of a document and within such time, as is prescribed by rules made under section 384 for the purposes of this subsection.

(3) An exchange participant, where he is selling as a principal, shall not convey a short selling order which is such order by virtue of paragraph (a)(i) or (v) of the definition of "short selling order" in section 1 of Part 1 of Schedule 1 at or through a recognized stock market unless he has received an assurance, in the form of a document, from the counterparty or the other person (as the case may be) referred to in such paragraph that the counterparty or the other person (as the case may be) has the securities to which the order relates available to lend or deliver to him.

(4) An exchange participant to which subsection (3) applies shall collect from the counterparty or the other person referred to in that subsection such information (if any), in the form of a document and within such time, as is prescribed by rules made under section 384 for the purposes of this subsection.

(5) A person, where he is selling as an agent, shall not convey or accept an order to sell securities which is a short selling order at or through a recognized stock market unless he has received from his principal, or the other person for whose benefit or on whose behalf the order is made, an assurance, in the form of a document, that---

- (a) his principal or that other person (as the case may be) has a presently exercisable and unconditional right to vest the securities to which the order relates in the

purchaser of them; and

(b) where the short selling order is such order by virtue of paragraph (a)(i) or (v) of the definition of "short selling order" in section 1 of Part 1 of Schedule 1, the counterparty or the other person (as the case may be) referred to in such paragraph has the securities to which the order relates available to lend or deliver to him.

(6) A person to which subsection (5) applies shall collect from his principal, or the other person referred to in that subsection, such information (if any), in the form of a document and within such time, as is prescribed by rules made under section 384 for the purposes of this subsection.

(7) For the purposes of subsections (1), (3) and (5), a person who conveys or accepts an order on behalf of his clients or beneficiaries shall be regarded as selling as a principal if---

(a) he has full discretion to sell the securities to which the order relates; and  
(b) his conveyance or acceptance is not in accordance with any instruction from his clients or beneficiaries.

(8) An agent or exchange participant who receives or collects an assurance or information by virtue of or under subsection (1), (2), (3), (4), (5) or (6) shall---

(a) subject to paragraph (b), retain the document in which it is contained for not less than one year from the date on which it is received; and  
(b) provide the document to the Commission upon request made at any time within that year by the Commission.

(9) An assurance or information referred to in subsection (1), (2), (3), (4), (5) or (6) shall in any proceedings under this Ordinance before any court be admissible as prima facie evidence of---

(a) in the case of an assurance, the matters specified in subsection (1), (3) or (5) (as the case may be) as that to which the assurance relates; or  
(b) in the case of information, the matters (if any) specified in the rules referred to in subsection (2), (4) or (6) (as the case may be) as that to which the information relates.

(10) Subject to subsection (11), a person who contravenes subsection (1), (3) or (5) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(11) It is a defence to a charge for an offence under subsection (10) for the person charged to prove that when he conveyed or, in the case of a contravention of subsection (5), conveyed or accepted the order concerned, he---

(a) had reasonable grounds to believe and did believe that the order was not a short selling order; or  
(b) did not know that the order was a short selling order.

(12) A person who, without reasonable excuse, contravenes subsection (2), (4), (6) or (8) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

#### 167. Requirements to disclose short sales

(1) An exchange participant or exchange participant's representative who knows or is informed that an order to sell securities is a short selling order shall--  
-

(a) when passing the order to any other person with a view that the other person shall input the order into the trading system of a recognized stock market, inform that other person that the order is a short selling order; and

(b) when inputting the order into the trading system of a recognized stock market, indicate such matters as may be required, under the rules of the recognized exchange company by which the recognized stock market is operated, to show that the order is a short selling order.

(2) A person who, without lawful excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(3) For the purposes of subsection (2), lawful excuse shall be regarded as having been established if the person by whom subsection (1) is contravened establishes that the contravention is by reason only of inadvertence, carelessness or negligence on his part.

(4) In this section, "exchange participant's representative" (交易所參與者代表) means a licensed representative accredited to a licensed corporation that is an exchange participant of a recognized exchange company which operates a recognized stock market.

#### Division 4---Other requirements

#### 168. Requirements for options trading

(1) The Commission may make rules---

(a) prohibiting Type 1 intermediaries from---

(i) transacting in Hong Kong;

(ii) holding themselves out in Hong Kong as being prepared to transact, except as provided in the rules, any dealing whereby directly or indirectly they confer on any person an option to sell to or purchase from them, or any other person on their behalf, any listed securities;

(b) prohibiting Type 2 intermediaries from---

(i) transacting in Hong Kong;

(ii) holding themselves out in Hong Kong as being prepared to transact, except as provided in the rules, any dealing whereby directly or indirectly they

confer on any person an option to sell to or purchase from them, or any other person on their behalf, any futures contracts traded on a recognized futures market.

(2) Rules made under this section may provide that a Type 1 intermediary, or a Type 2 intermediary, which contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding---

(a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(3) In this section---

"Type 1 intermediary" (第1類中介人) means an intermediary licensed or exempt for Type 1 regulated activity;

"Type 2 intermediary" (第2類中介人) means an intermediary licensed or exempt for Type 2 regulated activity.

169. Certain agreements not to be made during unsolicited calls

(1) Subject to subsections (2) and (3), a licensed or exempt person shall not, as principal or agent, during or as a consequence of an unsolicited call made by him---

(a) make or offer to make with another person---

(i) an agreement for that other person to sell or purchase, or with a view to having that other person sell or purchase, any securities, futures contract or leveraged foreign exchange contract;

(ii) an agreement for him to provide, or with a view to having him provide, to that other person securities margin financing; or

(iii) an agreement the purpose or effect, or pretended purpose or effect, of which is to provide, whether conditionally or unconditionally, to that other person a profit, income or other returns---

(A) from any securities, futures contract or leveraged foreign exchange contract; or

(B) calculated by reference to changes in the value of any securities, futures contract or leveraged foreign exchange contract; or

(b) induce or attempt to induce another person to enter into an agreement referred to in paragraph (a),

whether or not in making the unsolicited call he does any other act or thing.

(2) A person shall not be regarded as contravening subsection (1) by reason only that he---

(a) ii(i) makes a call on another person who is a solicitor or professional accountant acting in his professional capacity, or a licensed person, exempt person, money lender, existing client or professional investor; and

(ii) whether as principal or agent, makes or offers to make with that other person an agreement referred to in subsection (1)(a), or induces or attempts to induce that other person to enter into such an agreement; or

(b) ii(i) being an authorized financial institution, makes a call on another person; and

(ii) whether as principal or agent, makes or offers to make with that other person an agreement referred to in subsection (1)(a)(ii), or induces or attempts to induce that other person to enter into such an agreement.

(3) This section does not apply to---

(a) agreements relating to securities, futures contracts or leveraged foreign exchange contracts or to securities margin financing which are of a class prescribed by rules made under section 384 for the purposes of this paragraph;

(b) calls made by a person who is of a class prescribed by rules made under section 384 for the purposes of this paragraph;

(c) calls made on a person who is of a class prescribed by rules made under section 384 for the purposes of this paragraph;

(d) calls which are of a class prescribed by rules made under section 384 for the purposes of this paragraph.

(4) Without limiting the generality of the powers of the Commission to make rules for the purposes of subsection (3)(d), the Commission may in the rules prescribe that calls made by an authorized financial institution in compliance with such requirements under any guidelines published under section 7(3) of the Banking Ordinance (Cap. 155) that apply to it shall be within a class of calls to which this section does not apply.

(5) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

(6) Where, in consequence of a contravention of subsection (1), a person enters into an agreement with another person, that other person may, subject to the rights of a subsequent purchaser in good faith for value, rescind the agreement, by giving notice in writing to that effect to the person who contravenes that subsection, within 28 days after the date on which he becomes aware of the contravention.

(7) In this section---

"call" (造訪) means a visit in person, or a communication by any 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;

"client" (客戶), in relation to a licensed or exempt person, means a person for whom

the licensed or exempt person provides a service in the course of his business;  
"existing client" (原有客戶), in relation to a licensed or exempt person, means a client who has entered into an agreement with the licensed or exempt person as a client in accordance with requirements prescribed by rules made under section 384 for the purposes of this definition;

"futures contract" (期貨合約) means---

(a) a futures contract as defined in section 1 of Part 1 of Schedule 1;

(b) a futures contract, or a contract represented as being a futures contract, in respect of an item, whether or not capable of being delivered, which is prescribed by rules made under section 384 for the purposes of this definition;

"money lender" (放債人) has the meaning assigned to it by section 2(1) of the Money Lenders Ordinance (Cap. 163);

"unsolicited call" (未獲邀約的造訪) means any call made otherwise than at the express invitation of the person called upon, and for the purposes of this definition, the provision by a person of his contact details, including an address, telephone or facsimile number, or electronic mail address, does not by itself constitute an express invitation to call that person.

#### 170. Certain representations prohibited

(1) Subject to subsection (2), an intermediary, or a representative of an intermediary, shall not represent, or permit any other person to represent, in any manner and whether expressly or by implication, that its or his abilities or qualifications have been endorsed or warranted by the Government or the Commission.

(2) A statement to the effect that a person is licensed or exempt under this Ordinance does not by itself constitute a contravention of subsection (1).

(3) An intermediary, or a representative of an intermediary, that, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

PART VIII

Supervision and Investigations

Division 1---Interpretation

171. Interpretation of Part VIII

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

"audit working papers" (審計工作材料) means---

(a) any record or document prepared by or on behalf of an auditor; and

(b) any record or document obtained and retained by or on behalf of an auditor,  
for or in connection with the performance of any of his functions relating to  
the conduct of any audit of the accounts of a corporation;

"investigator" (調查員) means a person directed or appointed to investigate any  
matter under section 175(1);

"person under investigation" (受調查人) means a person in relation to whom any  
investigator is directed or appointed to investigate any matter under section 175(1).

Division 2---Powers to require information, etc.

172. Power to require production of records and documents concerning listed  
corporations

(1) Where, in relation to a corporation which is, or was at the relevant time,  
listed---

(a) it appears to the Commission that there are circumstances suggesting that the  
business of the corporation is being or has been conducted---

(i) with intent to defraud its creditors, or the creditors of any other person;

(ii) for any fraudulent or unlawful purpose; or

(iii) in a manner oppressive to its members or any part of its members;

(b) it appears to the Commission that there are circumstances suggesting that the  
corporation was formed for any fraudulent or unlawful purpose;

(c) it appears to the Commission that there are circumstances suggesting that persons  
concerned in the process by which the corporation became listed (including that for  
making the securities of the corporation available to the public in the course of  
such process) have engaged, in relation to such process, in defalcation, fraud,  
misfeasance or other misconduct;

(d) it appears to the Commission that there are circumstances suggesting that persons  
involved in the management of the affairs of the corporation are or have engaged,  
in relation to such management, in defalcation, fraud, misfeasance or other  
misconduct towards it or its members or any part of its members;

(e) it appears to the Commission that there are circumstances suggesting that members

of the corporation or any part of its members have not been given all the information with respect to its affairs that they might reasonably expect; or

(f) a matter in respect of the investigation of which the Commission decides to provide assistance under section 179 relates to the corporation and is, in the opinion of the Commission, of a nature similar to the matter described in paragraph (a), (b), (c), (d) or (e) as being suggested by the circumstances referred to in such paragraph, an authorized person may, subject to subsections (5) to (10), give a direction to---

(i) the corporation;

(ii) a corporation that is, or was at the relevant time, a related corporation of the corporation;

(iii) an authorized financial institution, other than the corporation or a corporation described in paragraph (ii);

(iv) an auditor, other than the corporation or a corporation described in paragraph (ii);

(v) any other person,

requiring the production, within the time and at the place specified in the direction, of any record and document specified in the direction.

(2) A power under this section to require the production of any record or document by any person includes the power---

(a) if the record or document is produced---

(i) to make copies or otherwise record details of the record or document; and

(ii) to require---

(A) the person;

(B) in the case of a corporation, any person who is a present or past officer of the corporation, or is or was at any time employed by the corporation,

to provide or make any explanation or statement in respect of the record or document (including, in so far as applicable, a description of the circumstances under which it was prepared or created, details of all instructions given or received in connection with it, and an explanation of the reasons for the making of entries contained in it or the omission of entries from it); or

(b) if the record or document is not produced, to require---

(i) the person;

(ii) in the case of a corporation, any person who is a present or past officer of the corporation, or is or was at any time employed by the corporation,

to state where it is.

(3) An authorized person may in writing require the person providing or making an explanation or statement under this section to verify within a reasonable period specified in the requirement the explanation or statement by statutory declaration,



which may be taken by the authorized person.

(4) If a person does not provide or make an explanation or statement in accordance with a requirement under this section for the reason that the explanation or statement was not within his knowledge or in his possession, an authorized person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.

(5) An authorized person shall not give any direction under subsection (1)(i) or (ii) to require the production of any record or document unless the authorized person has reasonable cause to believe that the record or document relates to the affairs of the corporation to which the direction is to be given or a corporation of which such corporation is, or was at the relevant time, a related corporation.

(6) An authorized person shall not give any direction to an authorized financial institution under subsection (1)(iii) to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that---

(a) the authorized financial institution is in possession of any record or document relating to the affairs of a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and

(b) the record or document required to be produced under the direction---

(i) relates to the affairs of such corporation or to a transaction with such corporation; and

(ii) is relevant to the consideration of whether there is or has been the occurrence of---

(A) where subsection (1)(a), (b), (c), (d) or (e) applies, the matter described in such subsection as being suggested by the circumstances referred to in such subsection; or

(B) where subsection (1)(f) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 179.

(7) An authorized person shall not give any direction to an auditor under subsection (1)(iv) to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that---

(a) the auditor is in possession of any record or document, which is in the nature of audit working papers, relating to the affairs of a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and

(b) the record or document required to be produced under the direction---

(i) relates to the affairs of such corporation; and

(ii) is relevant to the consideration of whether there is or has been the occurrence of---

(A) where subsection (1)(a), (b), (c), (d) or (e) applies, the matter described in such subsection as being suggested by the circumstances referred to in such subsection; or

(B) where subsection (1)(f) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 179.

(8) An authorized person shall not give any direction to a person under subsection (1)(v) to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that---

(a) the person has dealt or has had dealings, directly or indirectly, with, or is otherwise in possession of any record or document relating to the affairs of, a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and

(b) the record or document required to be produced under the direction---

(i) relates to the affairs of such corporation or to a transaction with such corporation;

(ii) is relevant to the consideration of whether there is or has been the occurrence of---

(A) where subsection (1)(a), (b), (c), (d) or (e) applies, the matter described in such subsection as being suggested by the circumstances referred to in such subsection; or

(B) where subsection (1)(f) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 179; and

(iii) cannot be obtained by giving a direction to any other person under subsection (1)(i), (ii), (iii) or (iv).

(9) The power of an authorized person to give any direction under subsection (1) (other than subsection (1)(iii)) to any corporation which is an authorized financial institution may be exercised only in respect of---

(a) subsection (1)(e); or

(b) subsection (1)(f), if, and only if, the matter in respect of the investigation of which the Commission decides to provide assistance under section 179 is, in the opinion of the Commission, of a nature similar to the matter described in paragraph (e) as being suggested by the circumstances referred to in that paragraph.

(10) Before an authorized person gives any direction under subsection (1)

(other than subsection (1)(iii)) to any corporation---

(a) where the corporation is an authorized financial institution or a corporation which, to the knowledge of the authorized person, is the controller of an authorized financial institution, or has as its controller an authorized financial institution, or has the same controller as an authorized financial institution, the authorized person shall consult the Monetary Authority; or

(b) where the corporation is an insurer authorized under the Insurance Companies Ordinance (Cap. 41), the authorized person shall consult the Insurance Authority.

(11) The Commission may authorize in writing any person as an authorized person for the purposes of this section.

(12) The Commission shall furnish an authorized person with a copy of his authorization, and the authorized person, before exercising any power under this section, shall produce a copy of the authorization to the person in respect of whom the power is exercised for inspection.

(13) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable---

(a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(14) A person who---

(a) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or provides or makes an explanation or statement which is false or misleading in a material particular; and

(b) knows that, or is reckless as to whether, the record or document or the explanation or statement is false or misleading in a material particular, commits an offence and is liable---

(i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

(15) A person who---

(a) with intent to defraud---

(i) fails to comply with a requirement imposed on him by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or provides or makes an explanation or statement which is false or misleading in a material

particular; or

(b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to---

(i) fail to comply with a requirement imposed on it by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on it by an authorized person under this section, produce any record or document or provide or make an explanation or statement which is false or misleading in a material particular, commits an offence and is liable---

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

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

(16) In this section---

"authorized person" (獲授權人) means a person authorized under subsection (11);

"controller" (控制人) means a person who is an indirect controller or a majority shareholder controller as defined in section 2(1) of the Banking Ordinance (Cap. 155);

"relevant time" (有關時間) means---

(a) where subsection (1)(a), (b), (c), (d) or (e) applies, the time at which the matter described in such subsection as being suggested by the circumstances referred to in such subsection appears to the Commission to be occurring or have occurred; or

(b) where subsection (1)(f) applies, the time at which the matter in respect of the investigation of which the Commission decides to provide assistance under section 179 appears to the Commission to be occurring or have occurred.

### 173. Supervision of intermediaries

and their associated entities

(1) Subject to subsections (9) and (10), an authorized person may at any reasonable time, for the purpose of ascertaining whether an intermediary or an associated entity of an intermediary is complying or has complied with, or is likely to be able to comply with, the requirement specified in subsection (2)---

(a) enter---

(i) in the case of an intermediary---

(A) where it is a licensed corporation, its premises as approved by the Commission under section 129(1); or

(B) where it is an exempt person, the premises of the exempt person; or

(ii) in the case of an associated entity of an intermediary, the premises of the associated entity;

(b) inspect, and make copies or otherwise record details of, any record or document relating to---

(i) the business conducted by the intermediary or the associated entity (as the case may be);

(ii) any transaction carried out by a related corporation of the intermediary or the associated entity (as the case may be); or

(iii) any transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the intermediary or the associated entity (as the case may be); and

(c) make inquiries of---

(i) the intermediary or the associated entity (as the case may be);

(ii) a related corporation of the intermediary or the associated entity (as the case may be);

(iii) subject to subsection (7), any other person, whether or not connected with the intermediary or the associated entity (as the case may be), whom the authorized person has reasonable cause to believe has information relating to, or is in possession of, any record or document referred to in paragraph (b),

concerning any record or document referred to in paragraph (b), or concerning any transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the intermediary or the associated entity (as the case may be).

(2) The requirement specified for the purposes of subsection (1) is the requirement not to contravene---

(a) any provision of this Ordinance;

(b) any notice or requirement given or made under or pursuant to any of the relevant provisions;

(c) any of the terms and conditions of a licence or an exemption under this Ordinance;

(d) any other condition imposed under or pursuant to any provision of this Ordinance.

(3) Subject to subsections (9) and (10), an authorized person in exercising any of his powers under subsection (1)(b) may require---

(a) the intermediary or the associated entity (as the case may be);

(b) a related corporation of the intermediary or the associated entity (as the case may be);

(c) subject to subsection (8), any other person, whether or not connected with the intermediary or the associated entity (as the case may be), whom the authorized person has reasonable cause to believe has information relating to, or is in possession of, any record or document referred to in subsection (1)(b),

to---

(i) give the authorized person access to any record or document referred to in subsection (1)(b), and produce, within the time and at the place specified by him, the record or document; and

(ii) answer any question regarding the record or document.

(4) Subject to subsections (9) and (10), an authorized person in exercising any of his powers under subsection (1)(c) may require the intermediary or the associated entity, the related corporation or the other person (as the case may be) referred to in subsection (1)(c), to---

(a) give the authorized person access to any record or document referred to in subsection (1)(b), and produce, within the time and at the place specified by him, the record or document; and

(b) answer any question raised for the purposes of subsection (1)(c).

(5) An authorized person may in writing require the person giving an answer under this section to verify within a reasonable period specified in the requirement the answer by statutory declaration, which may be taken by the authorized person.

(6) If a person does not give an answer in accordance with a requirement under this section for the reason that the answer was not within his knowledge, an authorized person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.

(7) An authorized person shall not exercise any of his powers under subsection (1)(c)(iii) unless he has reasonable cause to believe that the information sought cannot be obtained by the exercise of any of the powers under subsection (1)(c)(i) or (ii).

(8) An authorized person shall not exercise any of his powers under subsection (3)(c) unless he has reasonable cause to believe that the record or document or the information sought cannot be obtained by the exercise of any of the powers under subsection (3)(a) or (b).

(9) This section shall not be construed as requiring an authorized financial institution which is not an intermediary to disclose any information or produce any record or document relating to the affairs of a customer unless the relevant authority is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of this section.

(10) Before an authorized person exercises any power under this section in respect of a corporation which is not an intermediary---

(a) where the corporation is an authorized financial institution or a corporation which, to the knowledge of the authorized person, is the controller of an authorized

financial institution, or has as its controller an authorized financial institution, or has the same controller as an authorized financial institution, the authorized person shall consult the Monetary Authority; or

(b) where the corporation is an insurer authorized under the Insurance Companies Ordinance (Cap. 41), the authorized person shall consult the Insurance Authority.

(11) The relevant authority may authorize in writing any person as an authorized person for the purposes of this section.

(12) The relevant authority shall furnish an authorized person authorized by it with a copy of his authorization, and the authorized person, when exercising any power under this section, shall as soon as reasonably practicable produce a copy of the authorization for inspection.

(13) Where a copy of any record or document is supplied or made for the purpose of complying with a requirement imposed under this section and a facility of a person other than the relevant authority is used to make the copy, the relevant authority shall reimburse the expenses which, in the opinion of the relevant authority, have been reasonably incurred by the person in making the copy.

(14) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable---

(a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(15) A person who---

(a) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or gives an answer which is false or misleading in a material particular; and

(b) knows that, or is reckless as to whether, the record or document or the answer is false or misleading in a material particular, commits an offence and is liable---

(i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

(16) A person who---

(a) with intent to defraud---

(i) fails to comply with a requirement imposed on him by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on him by an

authorized person under this section, produces any record or document or gives an answer which is false or misleading in a material particular; or

(b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to---

(i) fail to comply with a requirement imposed on it by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on it by an authorized person under this section, produce any record or document or give an answer which is false or misleading in a material particular, commits an offence and is liable---

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

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

(17) In this section---

"authorized person" (獲授權人) means a person authorized under subsection (11);

"controller" (控制人) means a person who is an indirect controller or a majority shareholder controller as defined in section 2(1) of the Banking Ordinance (Cap. 155);

"relevant authority" (有關當局) means---

(a) where---

(i) the intermediary referred to in subsection (1);

(ii) the associated entity referred to in that subsection; or

(iii) the intermediary of which the associated entity referred to in that subsection is such associated entity,

is an exempt person, the Monetary Authority; or

(b) in any other case, the Commission.

#### 174. Information relating to transactions

(1) An authorized person may, for the purpose of performing a function of the Commission under any of the relevant provisions, require---

(a) a person registered as the holder of securities in a register of members kept under the Companies Ordinance (Cap. 32);

(b) a person whom the authorized person has reasonable cause to believe holds any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme;

(c) a person whom the authorized person has reasonable cause to believe has acquired or disposed of any securities, futures contract, leveraged foreign exchange contract,



or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme, whether directly or through a nominee, trustee or agent, and whether as beneficial owner, nominee, trustee, agent or otherwise;

(d) a licensed or exempt person through whom the authorized person has reasonable cause to believe any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme has been acquired, disposed of, dealt with, traded or arranged,

to furnish to him any of the information specified in subsection (2) within the time and in the form specified by him.

(2) The information specified for the purposes of subsection (1) is---

(a) the particulars (including, in so far as applicable, the name and aliases, address, telephone and facsimile numbers, electronic mail address, occupation and particulars of any document

of identity (including, if not an individual, any document evidencing incorporation or registration)) that are reasonably capable of establishing the identity of the person on whose behalf, or by, from, to or through whom, the securities, futures contract, leveraged foreign exchange contract, or the interest in securities, futures contract, leveraged foreign exchange contract or collective investment scheme in question is held, or has been acquired, disposed of, dealt with, traded or arranged (as the case may be);

(b) the particulars (including the quantity) of and, in the case of acquisition or disposal, the consideration (if any) for the securities, futures contract, leveraged foreign exchange contract, or the interest in securities, futures contract, leveraged foreign exchange contract or collective investment scheme; and

(c) the instructions (if any) given to or by the person referred to in paragraph (a), or any officer, employee or agent of such person, in relation to the holding, acquisition, disposal, dealing, trading, arrangement of or in respect of the securities, futures contract, leveraged foreign exchange contract, or the interest in securities, futures contract, leveraged foreign exchange contract or collective investment scheme.

(3) An authorized person may in writing require the person furnishing any information under this section to verify within a reasonable period specified in the requirement the information by statutory declaration, which may be taken by the authorized person.

(4) If a person does not furnish any information in accordance with a requirement under this section for the reason that the information was not within his knowledge

or in his possession, an authorized person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.

(5) The Commission may authorize in writing any person as an authorized person for the purposes of this section.

(6) The Commission shall furnish an authorized person with a copy of his authorization, and the authorized person, when exercising any power under this section, shall upon request by the person in respect of whom the power is exercised produce a copy of the authorization for inspection.

(7) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable---

(a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(8) A person who---

(a) in purported compliance with a requirement imposed on him

by an authorized person under this section, furnishes to the authorized person information which is false or misleading in a material particular; and

(b) knows that, or is reckless as to whether, the information is false or misleading in a material particular, commits an offence and is liable---

(i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

(9) A person who---

(a) with intent to defraud---

(i) fails to comply with a requirement imposed on him by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on him by an authorized person under this section, furnishes to the authorized person information which is false or misleading in a material particular; or

(b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to---

(i) fail to comply with a requirement imposed on it by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on it by an authorized person under this section, furnish to the authorized person information which is false or misleading in a material particular, commits an offence and is liable---

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

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

(10) In this section---

"authorized person" (獲授權人) means a person authorized under subsection (5);

"interest" (權益) includes an interest of any nature, whether legal, equitable, proprietary or otherwise.

Division 3---Powers of investigations

#### 175. Investigations

(1) Where---

(a) the Commission has reasonable cause to believe that an offence under any of the relevant provisions may have been committed;

(b) the Commission has reasonable cause to believe that a person may have engaged in defalcation, fraud, misfeasance or other misconduct in connection with---

(i) dealing in any securities or futures contract or trading in any leveraged foreign exchange contract;

(ii) the management of investment in any securities, futures contract or leveraged foreign exchange contract;

(iii) offering or making any leveraged foreign exchange contract or collective investment scheme;

(iv) giving advice in relation to the allotment of securities, or the acquisition or disposal of, or investment in, any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme; or

(v) any transaction involving securities margin financing;

(c) the Commission has reasonable cause to believe that market misconduct may have taken place;

(d) the Commission has reasonable cause to believe that the manner in which a person has engaged or is engaging in any of the activities referred to in paragraph (b)(i) to (v) is not in the interest of the investing public or in the public interest;

(e) the Commission---

(i) has reason to inquire whether any person, who is or was at any time a licensed person or a responsible officer of or a person involved in the management of the business of a licensed person, is or was at any time guilty of misconduct within the meaning of Part IX; or

(ii) has reason to inquire whether any such person is or was at any time otherwise not a fit and proper person to remain licensed, or to remain a responsible officer of or a person involved in the management of the business of the licensed person (as the case may be) (having regard, among other matters, to the matters specified in section 128);

(f) the Commission has reason to inquire whether any of the conditions imposed in respect of an authorization under section 103 or 104 are being complied with; or

(g) a matter in respect of the investigation of which the Commission decides to provide assistance under section 179 is, in the opinion of the Commission, of a nature similar to the matter described in paragraph (a), (b), (c), (d), (e) or (f) as that which the Commission has reasonable cause to believe or has reason to inquire (as the case may be),

the Commission may in writing direct one or more of its employees or, with the consent of the Financial Secretary, appoint one or more other persons, to investigate any of the matters referred to in paragraphs (a) to (g).

(2) The costs or expenses incurred by an investigator, other than an employee of the Commission, are to be paid out of moneys provided by the Legislative Council.

(3) The Commission shall furnish an investigator with a copy of his direction or appointment (as the case may be), and the investigator, before first imposing any requirement on a person under section 176(1), (2) or (3), shall produce a copy of the direction or appointment (as the case may be) to that person for inspection.

176. Conduct of investigations

(1) The person under investigation or a person whom the investigator has reasonable cause to believe has in his possession any record or document which contains, or which is likely to contain, information relevant to an investigation under section 175, or whom the investigator has reasonable cause to believe otherwise has such information in his possession, shall---

(a) produce to the investigator, within the time and at the place the investigator reasonably requires in writing, any record or document specified by the investigator which is, or may be, relevant to the investigation and which is in his possession;

(b) if required by the investigator, give to the investigator an explanation or further particulars in respect of any record or document produced under paragraph (a);

(c) attend before the investigator at the time and place the investigator requires in writing, and answer any question relating to the matters under investigation that the investigator may raise with him; and

(d) give to the investigator all assistance in connection with the investigation which he is reasonably able to give, including responding to any written question raised by the investigator.

(2) An investigator may in writing require the person giving or making an explanation, particulars, answer or statement under this section to verify within a reasonable period specified in the requirement the explanation, particulars, answer or statement by statutory declaration, which may be taken by the investigator.

(3) If a person does not give or make an explanation, particulars, answer or statement in accordance with a requirement under this section for the reason that the explanation, particulars, answer or statement was not within his knowledge or in his possession, an investigator may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the investigator, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.

(4) Neither section 175 nor this section shall be construed as requiring an authorized financial institution to disclose any information or produce any record or document relating to the affairs of a customer to the investigator unless---

(a) the customer is a person whom the investigator has reasonable cause to believe may be able to give information relevant to the investigation; and

(b) the Commission is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of the investigation.

(5) The investigator may, and if so directed by the Commission shall, make interim reports on his investigation to the Commission, and on the conclusion of his investigation shall make a final report on his investigation to the Commission.

(6) The Commission may, with the consent of the Secretary for Justice, cause a report under this section to be published.

#### 177. Offences in relation to investigations

(1) A person who, without reasonable excuse---

(a) fails to produce any record or document required to be produced under section 176(1)(a);

(b) fails to give an explanation or further particulars required under section 176(1)(b);

(c) fails to attend before the investigator as required under section 176(1)(c);

(d) fails to answer a question raised by the investigator under section 176(1)(c);

(e) fails to comply with section 176(1)(d); or

(f) fails to comply with a requirement under section 176(2) or (3), commits an offence and is liable---

(i) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or

(ii) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(2) A person---

(a) who---

(i) in purportedly complying with a requirement imposed by the investigator under section 176(1)(a), produces any record or document which is false or misleading in a material particular;

(ii) in purportedly complying with a requirement imposed by the investigator under section 176(1)(b), gives any explanation or further particulars which are false or misleading in a material particular;

(iii) in purportedly answering any question raised by the investigator under section 176(1)(c), says anything which is false or misleading in a material particular; or

(iv) in purportedly responding to any written question raised by the investigator under section 176(1)(d), states anything which is false or misleading in a material particular; and

(b) who knows that, or is reckless as to whether, the record or document, the explanation or further particulars, the thing or the statement (as the case may be) is false or misleading in a material particular, commits an offence and is liable---

(i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

(3) A person who---

(a) with intent to defraud---

(i) fails to do anything as described in subsection (1)(a), (b), (c), (d), (e) or (f);

(ii) in purportedly complying with a requirement imposed by the investigator under section 176(1)(a), produces any record or document which is false or misleading in a material particular;

(iii) in purportedly complying with a requirement imposed by the investigator under section 176(1)(b), gives any explanation or further particulars which are false or misleading in a material particular;

(iv) in purportedly answering any question raised by the investigator under section 176(1)(c), says anything which is false or misleading in a material particular; or

(v) in purportedly responding to any written question raised by the investigator under section 176(1)(d), states anything which is false or misleading in a material particular; or

(b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to---

(i) fail to do anything as described in subsection (1)(a), (b), (c), (d), (e) or (f);

(ii) in purportedly complying with a requirement imposed by the investigator under section 176(1)(a), produces any record or document which is false or misleading in a material particular;

(iii) in purportedly complying with a requirement imposed by the investigator under section 176(1)(b), gives any explanation or further particulars which are false or misleading in a material particular;

(iv) in purportedly answering any question raised by the investigator under section 176(1)(c), say anything which is false or misleading in a material particular; or

(v) in purportedly responding to any written question raised by the investigator under section 176(1)(d), state anything which is false or misleading in a material particular, commits an offence and is liable---

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

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

(4) Where any person is convicted by a court on a prosecution instituted as a result of an investigation under section 175, the court may order him to pay to the Commission the whole or part of the costs or expenses of the investigation and the Commission may recover such costs as a civil debt due to it.

(5) Where the Commission receives an amount under an order made under subsection (4) in respect of any costs or expenses of an investigation, and all or any of the costs or expenses have been paid out of moneys provided by the Legislative Council, the Commission shall pay to the Financial Secretary the amount received under the order to the extent that it has already been paid out of moneys provided by the Legislative Council.

Division 4---Miscellaneous

178. Certification to Court of First Instance relating to non-compliance with requirements under section 172, 173, 174 or 176

(1) If a person, without reasonable excuse, fails to do anything upon being required to do so by an authorized person under section 172, 173 or 174, or to do anything upon being required to do so by an investigator under section 176(1), (2) or (3), the authorized person or the investigator (as the case may be) may, by originating summons or originating motion, certify the failure to the Court of First Instance, and the Court may inquire into the case and---

(a) order the person to comply with the requirement within the period specified by the Court; and

(b) if the Court is satisfied that the failure was without reasonable excuse, punish the person, and any other person who appears to have been involved in the failure, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.

(2) An originating summons under subsection (1) shall be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg.).

(3) Notwithstanding anything in this section and any other provisions of this Ordinance---

(a) no proceedings may be instituted against any person under subsection (1)(b) in respect of any conduct if---

(i) criminal proceedings have previously been instituted against the person under section 172, 173, 174 or 177 in respect of the same conduct; and

(ii) (A) those criminal proceedings remain pending; or  
(B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under such section in respect of the same conduct;

(b) no criminal proceedings may be instituted against any person under section 172, 173, 174 or 177 in respect of any conduct if---

(i) proceedings have previously been instituted against the person under subsection (1)(b) in respect of the same conduct; and

(ii) (A) those proceedings remain pending; or  
(B) by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person under such subsection in respect of the same conduct.

179. Assistance to regulators outside Hong Kong



(1) Where the Commission receives, from an authority or regulatory organization outside Hong Kong which in the opinion of the Commission satisfies the requirements referred to in subsection (5)(a) and (b), a request for assistance to investigate whether a person specified by the authority or regulatory organization has contravened or is contravening legal or regulatory requirements which---

- (a) the authority or regulatory organization enforces or administers; and
- (b) relate to such transactions regarding any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or other similar transactions as are regulated by the authority or regulatory organization,

the Commission may, where it is of the opinion that the condition specified in subsection (3) is satisfied, provide the assistance to investigate the matter by exercising any of its powers under sections 172, 174, 175 and 176.

(2) Where the Commission receives, from a companies inspector outside Hong Kong who in the opinion of the Commission satisfies the requirements referred to in subsection (5)(a) and (b), a request for assistance to investigate whether a person specified by the companies inspector has contravened or is contravening legal or regulatory requirements which relate to transactions regarding any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or other similar transactions, the Commission may, where it is of the opinion that the condition specified in subsection (3) is satisfied, provide the assistance to investigate the matter by exercising any of its powers under sections 172, 174, 175 and 176.

(3) The condition referred to in subsections (1) and (2) is that---

- (a) it is desirable or expedient that the assistance requested under subsection (1) or (2) (as the case may be) should be provided in the interest of the investing public or in the public interest; or
- (b) the assistance will enable or assist the recipient of the assistance to perform its or his functions and it is not contrary to the interest of the investing public or to the public interest that the assistance should be provided.

(4) In deciding whether the condition specified in subsection (3) is satisfied in a particular case, the Commission shall take into account---

- (a) where the recipient of the assistance is an authority or regulatory organization referred to in subsection (1), whether the authority or regulatory organization will---

- (i) pay to the Commission any costs and expenses incurred in providing the assistance; and

- (ii) be able and willing to provide reciprocal assistance within its jurisdiction in response to a comparable request for assistance from Hong Kong; or

(b) where the recipient of the assistance is a companies inspector referred to in subsection (2), whether---

(i) the companies inspector will pay to the Commission any costs and expenses incurred in providing the assistance; and

(ii) under the laws of the country or territory in which the companies inspector is appointed, reciprocal assistance will be provided in response to a comparable request for assistance from Hong Kong.

(5) Where the Commission is satisfied, for the purposes of subsection (1) or (2), that an authority, regulatory organization or companies inspector outside Hong Kong---

(a) performs any function similar to a function of the Commission or the Registrar of Companies, or regulates, supervises or investigates banking, insurance or other financial services or the affairs of corporations; and

(b) is subject to adequate secrecy provisions,  
the Commission shall as soon as reasonably practicable thereafter cause the name of the authority, regulatory organization or companies inspector (as the case may be) to be published in the Gazette.

(6) If a person is obliged---

(a) to provide or make an explanation or statement as required by an authorized person within the meaning of section 172 exercising pursuant to subsection (1) or (2) a power under section 172; or

(b) to give an explanation or further particulars as required by, or to give an answer to any question as raised by, an investigator exercising pursuant to subsection (1) or (2) a power under section 176,

and the explanation or statement, the explanation or further particulars, or the answer (as the case may be) might tend to incriminate him and he so claims before providing or making the explanation or statement, giving the explanation or further particulars, or giving the answer (as the case may be), then, without limiting the provisions of section 180, the authorized person or investigator (as the case may be) shall not provide evidence of the requirement and the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be) to an authority, regulatory organization or companies inspector outside Hong Kong for use in criminal proceedings against him in the jurisdiction of the authority, regulatory organization or companies inspector (as the case may be).

(7) Where the Commission receives from an authority, regulatory organization or companies inspector outside Hong Kong an amount paid in respect of any costs or expenses incurred in providing assistance under this section, and all or any of the costs or expenses have been paid out of moneys provided by the Legislative Council,

the Commission shall pay to the Financial Secretary the amount received to the extent that it has already been paid out of moneys provided by the Legislative Council.

(8) Any matter published under subsection (5) is not subsidiary legislation.

(9) In this section, "companies inspector" (公司審查員), in relation to a place outside Hong Kong, means a person whose functions under the laws of that place include the investigation of the affairs of a corporation carrying on business in that place.

#### 180. Use of incriminating answers in proceedings

(1) Where---

(a) an authorized person within the meaning of section 172 requires a person to provide or make an explanation or statement under that section; or

(b) an investigator requires a person to give an explanation or further particulars or to give an answer to any question under section 176,

the authorized person or the investigator (as the case may be) shall ensure that the person has first been informed of the limitations imposed by subsection (2) on the admissibility in evidence of the requirement and of the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be).

(2) Notwithstanding any other provisions of this Ordinance, where---

(a) an authorized person within the meaning of section 172 requires a person to provide or make an explanation or statement under that section; or

(b) an investigator requires a person to give an explanation or further particulars or to give an answer to any question under section 176,

the person is obliged to provide or make the explanation or statement, to give the explanation or further particulars, or to give the answer (as the case may be), but if the explanation or statement, the explanation or further particulars, or the answer (as the case may be) might tend to incriminate the person, and he so claims before providing or making the explanation or statement, giving the explanation or further particulars, or giving the answer (as the case may be), the requirement and the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be)---

(i) are, subject to subparagraph (ii), not admissible in evidence against him in criminal proceedings in a court of law other than those in which he is charged with an offence under section 172(13), (14) or (15) or 177 or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the explanation or statement, the explanation or further particulars, or the answer (as the case may be);

(ii) are admissible in evidence for all the purposes of Part XIII (including any proceedings (civil or criminal) instituted under or pursuant to that Part).

181. Lien claimed on records or documents

Where the person in possession of any record or document required to be produced under this Part claims a lien on the record or document---

- (a) the requirement to produce the record or document shall not be affected by the lien;
- (b) no fees shall be payable for or in respect of the production; and
- (c) the production shall be without prejudice to the lien.

182. Production of computerized information

Where any information or matter contained in any record or document required to be produced under this Part is recorded otherwise than in a legible form, any power conferred by this Part to require the production of the record or document includes the power to require the production of a reproduction of the recording of the information or matter or of the relevant part of it---

- (a) where the recording enables the information or matter to be reproduced in a legible form, in a legible form; and
- (b) where the information or matter is recorded in a computer, in a form which enables the information or matter to be reproduced in a legible form.

183. Inspection of records or documents seized, etc.

Where an authorized person within the meaning of section 172, 173 or 174 or an investigator has taken possession of any record or document under this Part, the authorized person or the investigator (as the case may be) shall, subject to any reasonable conditions he imposes as to security or otherwise, permit a person who would be entitled to inspect the record or document had he not taken possession of it under this Part, to inspect it and to make copies or otherwise record details of it at all reasonable times.

184. Magistrate's warrants

(1) If a magistrate is satisfied on information on oath laid by---

- (a) an employee of the Commission or, where the exercise of powers under section 173 is concerned, of the relevant authority within the meaning of that section; or
- (b) an authorized person within the meaning of section 172 or 173, or an investigator, that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document which may be required to be produced under this Part, the magistrate may issue a warrant authorizing a person specified in the warrant, a police officer, and such other persons as may be necessary to assist in the execution of the warrant to---

(i) enter the premises so specified, if necessary by force, at any time within the period of 7 days beginning on the date of the warrant; and

(ii) search for, seize and remove any record or document which the person

specified in the warrant or police officer has reasonable cause to believe may be required to be produced under this Part.

(2) A person specified in, or a police officer or any other person authorized by, a warrant issued under subsection (1) may---

(a) require any person on the premises specified in the warrant whom he has reasonable cause to believe to be employed in connection with a business which is, or which has been, conducted on the premises to produce for examination any record or document which is in the possession of the person and which he has reasonable cause to believe may be required to be produced under this Part;

(b) prohibit any person found on the premises specified in the warrant from---

(i) removing from the premises any record or document required to be produced under paragraph (a);

(ii) erasing, adding to or otherwise altering an entry or other particulars contained in, or otherwise interfering in any manner with, or causing or permitting any other person to interfere with, the record or document;

(c) take, in relation to any record or document required to be produced under paragraph (a), any other step which may appear necessary for preserving it and preventing interference with it.

(3) Any record or document removed under this section may be retained for any period not exceeding 6 months beginning on the day of its removal or, where the record or document is or may be required for criminal proceedings or for any proceedings under this Ordinance, for such longer period as may be necessary for the purposes of those proceedings.

(4) Where a person removes any record or document under this section, he shall as soon as reasonably practicable thereafter give a receipt for it, and he may permit any person who would be entitled to inspect it but for the removal to inspect the record or document and to make copies or otherwise record details of it at all reasonable times.

(5) Section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to any property which has by virtue of this section come into the possession of the Commission or, where the exercise of powers under section 173 is concerned, of the relevant authority within the meaning of that section, as it applies to property which has come into the possession of the police.

(6) A person commits an offence if he---

(a) without reasonable excuse, fails to comply with a requirement or prohibition under subsection (2); or

(b) obstructs a person exercising a power conferred by subsection (2).

(7) A person who commits an offence under subsection (6) is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

185. Destruction of documents, etc.

(1) A person commits an offence if he destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or document required to be produced under this Part, with intent to conceal, from the person by whom the requirement to produce was imposed, facts or matters capable of being disclosed by the record or document.

(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 2 years; or

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

PART IX

Discipline, etc.

Division 1--- Interpretation

186. Interpretation of Part IX

(1) In this Part, unless the context otherwise requires---  
"misconduct" (失當行爲) means---

- (a) a contravention of any of the relevant provisions;
- (b) a contravention of any of the terms and conditions of a licence or an exemption under this Ordinance;
- (c) a contravention of any other condition imposed under or pursuant to any provision of this Ordinance; or
- (d) an act or omission relating to the carrying on of any regulated activity for which a person is licensed or exempt which, in the opinion of the Commission, is or is likely to be prejudicial to the interest of the investing public or to the public interest, and "guilty of misconduct" (犯失當行爲) shall be construed accordingly;

"register of companies" (公司登記冊) means the register within the meaning of section 291 of the Companies Ordinance (Cap. 32) or a register of oversea companies kept under section 333 of that Ordinance.

(2) In this Part, where any person is, or was at any time, guilty of misconduct within the meaning of paragraph (a), (b), (c) or (d) of the definition of "misconduct" in subsection (1) as a result of the commission of any conduct which occurred with the consent or connivance of, or was attributable to any neglect on the part of, another person as a responsible officer, or a person involved in the management of the business, of a licensed person, the conduct shall also be regarded as misconduct on the part of that other person, and "guilty of misconduct" shall also be construed accordingly.

Division 2--- Discipline, etc.

187. Disciplinary action in respect  
of licensed persons, etc.

(1) Subject to section 189, where---

- (a) a regulated person is, or was at any time, guilty of misconduct; or
  - (b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain licensed, or to be or to remain a responsible officer, or a person involved in the management of the business, of a licensed person,
- the Commission may exercise such of the following powers as it considers appropriate

in the circumstances of the case---

(i) where the regulated person is a licensed person---

(A) revoke his licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed; or

(B) suspend his licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed for such period or until the occurrence of such event as the Commission may specify;

(ii) where the regulated person is a responsible officer of a licensed person---

(A) revoke the approval granted under section 125(1) in respect of him as such a responsible officer; or

(B) suspend such approval for such period or until the occurrence of such event as the Commission may specify;

(iii) publicly or privately reprimand the regulated person;

(iv) prohibit the regulated person from applying to be licensed, or to be approved under section 125(1) as a responsible officer of a licensed person, for such period as the Commission may specify.

(2) Subject to subsection (7) and section 189, where---

(a) a regulated person is, or was at any time, guilty of misconduct; or

(b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain licensed, or to be or to remain a responsible officer, or a person involved in the management of the business, of a licensed person, the Commission may, separately or in addition to any power exercisable under subsection (1), order the regulated person to pay a pecuniary penalty not exceeding the amount which is the greater of---

(i) \$10,000,000; or

(ii) 3 times the amount of the profit secured or increased or loss avoided or reduced by the regulated person as a result of his misconduct, or of his other conduct which leads the Commission to form the opinion (as the case may be).

(3) The Commission, in determining whether a regulated person is a fit and proper person within the meaning of subsection (1)(b) or (2)(b), may, among other matters (including those specified in section 128), take into account such present or past conduct of the regulated person as it considers appropriate in the circumstances of the case.

(4) A regulated person ordered to pay a pecuniary penalty under subsection (2) shall pay the penalty to the Commission within 30 days after being informed of the order by a notice under section 189(2), or such further period as the Commission may specify by notice in writing to him.



(5) The Court of First Instance may, on an application of the Commission made in the manner prescribed by rules made under section 384 for the purposes of this subsection, register an order made under subsection (2) in the Court of First Instance and the order shall, on registration, be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.

(6) Any pecuniary penalty paid to or recovered by the Commission pursuant to an order made under subsection (2) shall be paid by the Commission into the general revenue.

(7) The Commission shall not perform any of its functions under subsection (2) unless it has published, in the Gazette and in any other manner it considers appropriate, guidelines to indicate the manner in which it proposes to perform such functions.

(8) Guidelines published under subsection (7) are not subsidiary legislation.

(9) In this section---

"regulated person" (受規管人士) means a person who is or at the relevant time was---

(a) a licensed person; or

(b) a responsible officer, or a person involved in the management of the business, of a licensed person;

"relevant time" (有關時間), in relation to a person, means---

(a) where subsection (1)(a) or (2)(a) applies, the time when the person is, or was, guilty of misconduct; or

(b) where subsection (1)(b) or (2)(b) applies, the time when the person is, in the opinion of the Commission, not a fit and proper person within the meaning of such subsection.

188. Other circumstances for disciplinary actions  
in respect of licensed persons, etc.

(1) Subject to section 189, the Commission may revoke a licensed person's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed, or suspend a licensed person's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed for such period or until the occurrence of such event as the Commission may specify, if---

(a) where the licensed person is an individual---

(i) the licensed person enters into a voluntary arrangement with creditors, or has a bankruptcy order made against him, under the Bankruptcy Ordinance (Cap. 6);

(ii) the licensed person fails to satisfy a levy of execution;

(iii) the licensed person has been found by a court to be mentally incapacitated,

or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136);  
or

(iv) the licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed;

(b) where the licensed person is a corporation---

(i) a receiver or manager of the property or business of the licensed person is appointed;

(ii) the licensed person fails to satisfy a levy of execution;

(iii) the licensed person enters into a compromise or scheme of arrangement with its creditors;

(iv) the licensed person goes into liquidation or is ordered to be wound up;

(v) the licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed;

(vi) any of the directors of the licensed person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136); or

(vii) any of the directors of the licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed;

(c) the licensed person does not carry on the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the revocation or suspension (as the case may be) relates;

(d) circumstances exist which would require or entitle the Commission to refuse to issue a licence of the same type as the licensed person's licence to the licensed person under this Ordinance if the licensed person had not already been the holder of the licence; or

(e) the licensed person requests the Commission to so revoke or suspend the licence.

(2) Subject to section 189, but without limiting the generality of subsection (1), the Commission may revoke a licensed person's licence in relation to Type 7 regulated activity or any part thereof if---

(a) the Commission has imposed a condition under section 117(1)(c) that the licensed person should, if he is to continue to carry on the regulated activity, be authorized

to provide the automated trading services in question under section 95; and

(b) (i) the licensed person has failed to make an application for the authorization under section 95, within a period that is reasonable in the circumstances of the case, or has otherwise informed the Commission that he proposes not to make an application for the authorization under section 95; or

(ii) the licensed person has made an application for the authorization under section 95, but the application is not granted.

(3) A licence shall be deemed to be revoked if---

(a) where the licensed person is an individual, the licensed person dies; or

(b) where the licensed person is a corporation, the licensed person is wound up, struck off the register of companies or is otherwise dissolved.

(4) Subject to subsection (5), a licence shall be deemed to be suspended if--

(a) the licensed person fails to pay any annual fee payable by him under section 135, or any additional sum payable by him under that section as a result of any default in paying any annual fee payable by him under that section, within 3 months after the annual fee first became so payable; or

(b) the licensed person fails to submit an annual return required to be submitted by him under section 135 within 3 months after the annual return was first required to be so submitted,

and, subject to subsection (6), the suspension shall remain in force until such time as the Commission considers it appropriate that the licence should no longer be suspended and informs the licensed person to that effect by notice in writing.

(5) A licence shall not be regarded as suspended under subsection (4) unless and until---

(a) in the case of a suspension under subsection (4)(a) by reference to any failure to pay any annual fee or additional sum, the Commission has, by notice in writing given not less than 10 business days before the suspension is to take effect, informed the licensed person of the requirement to pay the annual fee or additional sum (as the case may be), and of the consequence of the failure to comply with the requirement under this section; or

(b) in the case of a suspension under subsection (4)(b) by reference to any failure to submit an annual return, the Commission has, by notice in writing given not less than 10 business days before the suspension is to take effect, informed the licensed person of the requirement to submit the annual return, and of the consequence of the failure to comply with the requirement under this section.

(6) Where a licence is suspended under subsection (4) and the event described in subsection (4)(a) or (b) (as the case may be) has not been remedied within 30 days

after the date on which the suspension becomes effective under subsection (4), or such further period as the Commission may specify by notice in writing to the licensed person, the licence shall be deemed to be revoked.

(7) Subject to section 189, where a person who is a responsible officer of a licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the person to remain such a responsible officer, the Commission may---

(a) revoke the approval granted under section 125(1) in respect of the person as such a responsible officer; or

(b) suspend such approval for such period or until the occurrence of such event as the Commission may specify.

189. Procedural requirements in respect of exercise of powers under section 187 or 188

(1) The Commission shall not exercise any power under section 187(1) or (2) or 188(1)(a), (b), (c) or (d), (2) or (7) without first giving the person in respect of whom the power is exercised a reasonable opportunity of being heard.

(2) Where the Commission decides to exercise any power under section 187(1) or (2) or 188(1), (2) or (7), the Commission shall inform the person in respect of whom the power is exercised of its decision to do so by notice in writing, and the notice shall include---

(a) a statement of the reasons for which the decision is made;

(b) the time at which the decision is to take effect;

(c) in so far as applicable, the duration and terms of any revocation, suspension or prohibition to be imposed under the decision;

(d) in so far as applicable, the terms in which the person is to be reprimanded under the decision; and

(e) in so far as applicable, the amount of any pecuniary penalty to be imposed under the decision and the date by which it is required to be paid.

190. Disciplinary action in respect of exempt persons

(1) Subject to subsection (4) and section 191, the Commission may revoke an exempt person's exemption, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is exempt---

(a) if the exempt person carries on any of the regulated activities, or any part of the regulated activities, for which he is exempt, otherwise than in accordance with the conditions imposed under section 118(5);

(b) if the exempt person is, or was at any time, guilty of misconduct;

(c) if the Commission is of the opinion that the exempt person is not a fit and proper

person to be or to remain exempt;

(d) if---

(i) a receiver or manager of the property or business of the exempt person is appointed;

(ii) the exempt person fails to satisfy a levy of execution;

(iii) the exempt person enters into a compromise or scheme of arrangement with its creditors;

(iv) the exempt person goes into liquidation or is ordered to be wound up;

(v) the exempt person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the exempt person to remain exempt;

(e) if the exempt person does not carry on the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the revocation relates; or

(f) if the exempt person requests the Commission to so revoke the exemption.

(2) The Commission, in determining whether an exempt person is a fit and proper person within the meaning of subsection (1)(c), may, among other matters (including those specified in section 128), take into account such present or past conduct of the exempt person as it considers appropriate in the circumstances of the case.

(3) An exemption by which a person has become an exempt person shall be deemed to be revoked if---

(a) the exempt person ceases to be an authorized financial institution; or

(b) the exempt person is wound up, struck off the register of companies or is otherwise dissolved.

(4) No exemption by which a person has become an exempt person shall be revoked under subsection (1) unless the Commission has first consulted the Monetary Authority.

(5) Subject to subsection (6), an exemption by which a person has become an exempt person shall be deemed to be suspended if the exempt person fails to pay any annual fee payable by him under section 135, or any additional sum payable by him under that section as a result of any default in paying any annual fee payable by him under that section, within 3 months after the annual fee first became so payable, and, subject to subsection (7), the suspension shall remain in force until such time as the Commission considers it appropriate that the exemption should no longer be suspended and informs the exempt person to that effect by notice in writing.

(6) An exemption shall not be regarded as suspended under subsection (5) by reference to any failure to pay any annual fee or additional sum, unless and until

the Commission has, by notice in writing given not less than 10 business days before the suspension is to take effect, informed the exempt person of the requirement to pay the annual fee or additional sum (as the case may be), and of the consequence of the failure to comply with the requirement under this section.

(7) Where an exemption is suspended under subsection (5) and the failure to pay the annual fee or additional sum described in that subsection has not been remedied within 30 days after the date on which the suspension becomes effective under that subsection, or such further period as the Commission may specify by notice in writing to the exempt person, the exemption shall be deemed to be revoked.

191. Procedural requirements in respect of  
exercise of powers under section 190

(1) The Commission shall not revoke an exemption under section 190(1)(a), (b), (c), (d) or (e) without first giving the exempt person concerned a reasonable opportunity of being heard.

(2) Where the Commission decides to revoke an exemption under section 190(1), the Commission shall inform the exempt person concerned of its decision to do so by notice in writing, and the notice shall include---

- (a) a statement of the reasons for which the decision is made; and
- (b) the time at which the decision is to take effect.

Division 3---Miscellaneous

192. Effect of suspension under Part IX

(1) If a licence of a person is suspended under section 187 or 188 in relation to all or any, or any part of all or any, of the regulated activities for which the person is licensed, then, without prejudice to any provision of this Ordinance which has application in relation to the suspension, the person shall, during the period of the suspension---

- (a) continue to be regarded for the purposes of the provisions of this Ordinance, but not section 114, to be licensed for the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the suspension relates; and
- (b) without limiting the generality of paragraph (a), continue to be required to comply with such provisions of this Ordinance relating to a licensed person as would apply to him were the licence not so suspended.

(2) If an approval of a person as a responsible officer of a licensed person is suspended under section 187 or 188, then, without prejudice to any provision of this Ordinance which has application in relation to the suspension, the person shall, during the period of the suspension---

- (a) continue to be regarded for the purposes of the provisions of this Ordinance,

but not sections 117 and 124, to be such a responsible officer; and

(b) without limiting the generality of paragraph (a), continue to be required to comply with such provisions of this Ordinance relating to a responsible officer as would apply to him were the approval not so suspended.

(3) If an exemption by which a person has become an exempt person is suspended under section 190 in relation to all or any, or any part of all or any, of the regulated activities for which the person is exempt, then, without prejudice to any provision of this Ordinance which has application in relation to the suspension, the person shall, during the period of the suspension---

(a) continue to be regarded for the purposes of the provisions of this Ordinance, but not section 114, to be exempt for the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the suspension relates; and

(b) without limiting the generality of paragraph (a), continue to be required to comply with such provisions of this Ordinance relating to an exempt person as would apply to him were the exemption not so suspended.

(4) A licence of a person may be revoked under section 187 or 188 notwithstanding that, at the time of revocation, the licence is suspended, whether in relation to all or any, or any part of all or any, of the regulated activities for which the person is licensed, under any provision of this Ordinance.

(5) An approval of a person as a responsible officer of a licensed person may be revoked under section 187 or 188 notwithstanding that, at the time of revocation, the approval is suspended under any provision of this Ordinance.

(6) An exemption by which a person has become an exempt person may be revoked under section 190 notwithstanding that, at the time of revocation, the exemption is suspended, whether in relation to all or any, or any part of all or any, of the regulated activities for which the person is exempt, under any provision of this Ordinance.

193. General provisions relating to exercise of powers under Part IX

(1) In reaching a decision under section 187(1) or (2), 188(1), (2) or (7) or 190(1), the Commission may have regard to any information or material in its possession which is relevant to the decision, regardless of how the information or material has come into its possession.

(2) The revocation or suspension of a licence or an exemption under this Part does not operate so as to---

(a) avoid or affect an agreement, transaction or arrangement entered into by the licensed person or exempt person (as the case may be) whether the agreement,

transaction or arrangement was entered into before or after the revocation or suspension;

(b) affect a right, obligation or liability arising under the agreement, transaction or arrangement.

(3) Where at any time the Commission is contemplating exercising any power in respect of a person under section 187(1) or (2) or 188(1)(a), (b), (c) or (d), (2) or (7), it may, where it considers it appropriate to do so in the interest of the investing public or in the public interest, by agreement with the person---

(a) exercise any power under such section; and

(b) take such additional action as it considers appropriate in the circumstances of the case.

(4) Where the Commission exercises any power or takes any action under subsection (3), it shall comply with section 189(2), but, subject to the agreement of the person in respect of whom it decides to exercise the power or take the action (as the case may be), it is not obliged to comply with section 189(1).

(5) Nothing in this Part affects the power of the Court of First Instance to make any order or exercise any other power under or pursuant to section 204, 205, 206 or 207.

194. Requirement to transfer records upon revocation or suspension of licence or exemption

(1) Where a licence or exemption is revoked or suspended under this Part, the Commission may by notice in writing require the person to whom the licence was granted or the person who became an exempt person by the exemption (as the case may be) to transfer to, or to the order of, his client such records relating to client assets or to the affairs of the client held at any time for the client, in such manner, as the Commission reasonably specifies in the notice.

(2) A person who, without reasonable excuse, fails to comply with a requirement imposed on him under subsection (1) commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 2 years.

(3) In this section, "client" (客戶), in relation to a person referred to in subsection (1), means any person who, at any time when the first-mentioned person was an intermediary, was a client of the first-mentioned person under the definition of "client" in section 1 of Part 1 of Schedule 1.

195. Permission to carry on business operations upon revocation or suspension of licence or exemption

(1) Where a licence or exemption is revoked or suspended under this Part, the Commission may by notice in writing permit the person to whom the licence was granted or the person who became an exempt person by the exemption (as the case may be) to---



(a) in the case of a revocation, carry on business operations for the purpose of closing down the business connected with the revocation; or

(b) in the case of a suspension, carry on only essential business operations for the protection of interests of clients of the person or, in the case of a licensed representative, of the licensed corporation to which the person is accredited, during the period of suspension,

subject to such conditions as the Commission may specify in the notice.

(2) Notwithstanding section 192(1), where the Commission has granted a permission to a person under subsection (1), the person shall not, by reason of its carrying on business operations in accordance with the permission, be regarded as having contravened section 114.

(3) Any permission granted under subsection (1), and the imposition of conditions pursuant to that subsection, take effect at the time of the service of the notice given in respect thereof or at the time specified in the notice, whichever is the later.

PART X

Powers of Intervention and Proceedings

Division 1---Powers of intervention

196. Restriction of business

(1) Subject to section 200, the Commission may by notice in writing---

(a) prohibit a licensed corporation from---

(i) entering into transactions of a specified description or other than of a specified description, or entering into transactions in specified circumstances or other than in specified circumstances, or entering into transactions to a specified extent or other than to a specified extent;

(ii) soliciting business from persons of a specified description or from persons other than of a specified description;

(iii) carrying on business in a specified manner or other than in a specified manner;

(b) require a licensed corporation to carry on business in, and only in, a specified manner.

(2) A prohibition or requirement imposed on a licensed corporation under this section may relate to either or both of the following---

(a) transactions entered into in connection with the business

which constitutes a regulated activity for which the licensed corporation is licensed;

(b) transactions entered into in connection with any other business which is carried on by the licensed corporation in connection with the business which constitutes a regulated activity for which it is licensed.

197. Restriction on dealing with property

Subject to section 200, the Commission may, as regards any property (whether of a licensed corporation or not), by notice in writing---

(a) prohibit the licensed corporation from---

(i) disposing of the property;

(ii) dealing with the property in a specified manner or other than in a specified manner;

(b) require the licensed corporation to deal with the property in, and only in, a specified manner.

198. Maintenance of property

(1) Subject to section 200, the Commission may by notice in writing require a licensed corporation to maintain property in Hong Kong and in any specified place

outside Hong Kong such that---

(a) the property maintained is of the value and of the description that appear to the Commission to be desirable with a view to ensuring that the licensed corporation will be able to meet its liabilities in relation to the business which constitutes a regulated activity for which it is licensed; and

(b) the property is maintained in a manner that will enable the licensed corporation at any time freely to transfer or otherwise dispose of the property.

(2) The Commission may in any requirement imposed under this section direct that, for the purposes of the requirement, property of a specified description shall or shall not be taken into account.

#### 199. Requirement to transfer custody of property

(1) Subject to section 200, the Commission may by notice in writing require a licensed corporation or any other person to transfer the custody of relevant property of a specified description (whether of the licensed corporation or the other person (as the case may be) or not) to the Commission or to any person appointed in that behalf by the Commission.

(2) A requirement imposed under subsection (1) shall be regarded as also requiring the licensed corporation or the other person on whom the requirement is imposed to assist the Commission or the person appointed by the Commission pursuant to that subsection (as the case may be) to discharge its or his functions relating to the requirement.

(3) Where the custody of any relevant property has been transferred to the Commission, or to any person appointed by the Commission, pursuant to a requirement imposed under subsection (1), the Commission or the person (as the case may be) shall, subject to any order of a court (whether made under subsection (5) or otherwise) affecting all or any of the relevant property, take all reasonable steps to preserve the relevant property.

(4) Where the custody of any relevant property has been transferred to the Commission, or to any person appointed by the Commission, pursuant to a requirement imposed under subsection (1)---

(a) the Commission shall, as soon as reasonably practicable thereafter, apply to the Court of First Instance for an order under subsection (5) in respect of the relevant property; and

(b) the following persons may apply to the Court of First Instance for an order under subsection (5) in respect of the relevant property, or any part thereof---

(i) the licensed corporation or the other person (as the case may be) from whom the custody of the relevant property has been transferred; and

(ii) any other person having a claim to or any interest in, or in relation

to, all or any of the relevant property.

(5) The Court of First Instance may, on an application of the Commission, the licensed corporation or any other person made under subsection (4), make such order as it considers appropriate in relation to any of the relevant property in respect of which the application is made.

(6) Neither this section nor a transfer of the custody of any relevant property pursuant to a requirement imposed under subsection (1) shall affect any legal or equitable title to any of the relevant property.

(7) In this section, "relevant property" (有關財產) means---

(a) any property held by a licensed corporation, acting within the capacity for which the licensed corporation is licensed, on behalf of any of the clients of the licensed corporation, or held by any other person on behalf or to the order of the licensed corporation acting within such capacity;

(b) any other property which the Commission reasonably believes to be connected with the business which constitutes a regulated activity for which the licensed corporation is licensed,

but does not include securities deposited by a clearing participant with a recognized clearing house in accordance with the rules of the clearing house.

200. Imposition of prohibition or requirement  
under section 196, 197, 198 or 199

The Commission may impose a prohibition or requirement under section 196, 197, 198 or 199 in respect of or with reference to any licensed corporation if it appears to the Commission that---

(a) any property of the licensed corporation or its clients, or any property connected with the business which constitutes a regulated activity for which it is licensed, might be dissipated, transferred or otherwise dealt with in a manner prejudicial to the interest of any of its clients or creditors;

(b) the licensed corporation is not a fit and proper person to remain licensed or is not a fit and proper person to carry on any regulated activity for which it is licensed (having regard, among other matters, to the matters specified in section 128);

(c) the licensed corporation has failed to comply with the requirement specified in section 173(2) or, in purported compliance with such requirement, has furnished the Commission with information which is false or misleading in a material particular;

(d) the licence of the licensed corporation may be revoked or suspended on any of the grounds specified in section 187(1) or 188(1) or (2); or

(e) the imposition of the prohibition or requirement is desirable in the interest of the investing public or in the public interest.

201. Withdrawal, substitution or variation of prohibitions or requirements under section 196, 197, 198 or 199

(1) Subject to subsection (2), where a prohibition or requirement imposed under section 196, 197, 198 or 199 is in force, the Commission may, where it considers appropriate to do so (whether of its own volition or upon the request of the person on whom the prohibition or requirement is imposed or any other person affected by the prohibition or requirement), by notice in writing given to the person on whom the prohibition or requirement is imposed---

(a) withdraw the prohibition or requirement; or

(b) substitute another prohibition or requirement for, or vary, the prohibition or requirement.

(2) No withdrawal, substitution or variation may be made under subsection (1) in respect of a requirement imposed under section 199 after the Court of First Instance has made any order under section 199(5) in respect of the relevant property, or any of the relevant property, the custody of which has been transferred pursuant to the requirement.

(3) Subject as otherwise provided in any order made by the Court of First Instance under section 199(5), a prohibition or requirement imposed under section 196, 197, 198 or 199, or a prohibition or requirement substituting for another prohibition or requirement under subsection (1)(b), or a prohibition or requirement as varied under subsection (1)(b), shall, unless it provides otherwise, remain in force in accordance with the terms thereof until it is---

(a) withdrawn; or

(b) substituted by another prohibition or requirement, or varied, by the Commission under this section.

(4) The provisions of this section apply, with necessary modifications, to a prohibition or requirement substituting for another prohibition or requirement under subsection (1)(b), or a prohibition or requirement as varied under subsection (1)(b), as they apply to a prohibition or requirement imposed under section 196, 197, 198 or 199, and the provisions of this Division shall be construed accordingly.

(5) Without prejudice to subsection (4), section 199(2) to (6) applies, with necessary modifications, to a requirement substituting for another requirement under subsection (1)(b), or a requirement as varied under subsection (1)(b), as it applies to a requirement imposed under section 199, and the provisions of this Division shall be construed accordingly.

202. General provisions relating to sections 196, 197, 198, 199 and 201

(1) Where the Commission imposes under section 196, 197, 198 or 199, or withdraws, substitutes or varies under section 201, a prohibition or requirement, the imposition, withdrawal, substitution or variation (as the case may be) of the prohibition or requirement takes effect at the time of the service of the notice given in respect thereof or at the time specified in the notice, whichever is the later.

(2) Where the Commission imposes under section 196, 197, 198 or 199, or withdraws, substitutes or varies under section 201, a prohibition or requirement, the notice given in respect thereof shall be accompanied by a statement specifying the reasons for the imposition, withdrawal, substitution or variation (as the case may be) of the prohibition or requirement.

(3) Where any request is made by any person to the Commission pursuant to section 201(1) for the withdrawal, substitution or variation of a prohibition or requirement, the Commission shall serve on the person---

(a) where it withdraws, substitutes or varies the prohibition or requirement in accordance with the request, a copy of the notice given in respect thereof and of the statement accompanying it in accordance with subsection (2); or

(b) where it refuses to withdraw, substitute or vary the prohibition or requirement notwithstanding the request, a notice of its refusal, together with a statement specifying the reasons for the refusal.

(4) Where---

(a) the Commission imposes under section 196, 197, 198 or 199, or withdraws, substitutes or varies under section 201, a prohibition or requirement; and

(b) the reasons for the imposition, withdrawal, substitution or variation (as the case may be) as specified in the statement accompanying the notice given in respect thereof in accordance with subsection (2) relate specifically to matters which--

-

(i) refer to any person who is identified in the statement but who is not the person on whom the prohibition or requirement was imposed; and

(ii) are, in the opinion of the Commission, prejudicial to the person in any respect,

the Commission shall, as soon as reasonably practicable after the imposition, withdrawal, substitution or variation (as the case may be), take all reasonable steps to serve on the person a copy of the notice given in respect of the imposition, withdrawal, substitution or variation (as the case may be) and of the statement accompanying it in accordance with subsection (2).

(5) Where the Commission imposes a requirement under section 199, or withdraws, substitutes or varies such a requirement under section 201, the Commission shall, as soon as reasonably practicable after the imposition, withdrawal, substitution or

variation (as the case may be), take all reasonable steps to---

(a) identify any person who, not being a person on whom the requirement was imposed, has a claim to or any interest in, or in relation to, all or any of the relevant property to which the requirement relates; and

(b) serve on the person so identified a copy of the notice given in respect of the imposition, withdrawal, substitution or variation (as the case may be) and of the statement accompanying it in accordance with subsection (2).

(6) Nothing in subsections (3) to (5) requires a copy of any notice given in respect of the imposition, withdrawal, substitution or variation of a prohibition or requirement, or of a statement accompanying it in accordance with subsection (2), to be served on any person if the notice or statement or a copy of the notice or statement (as the case may be) has been served on the person under any other provision of this Part.

(7) The Commission may publish in the Gazette, and by such additional means as it may consider appropriate, a notice regarding the imposition under section 196, 197, 198 or 199, or the withdrawal, substitution or variation under section 201, of a prohibition or requirement.

(8) Where the imposition of a prohibition or requirement is published under subsection (7), the Commission shall also publish in the Gazette, and by such additional means as it may consider appropriate, a notice regarding any subsequent withdrawal, substitution or variation of the prohibition or requirement under section 201.

(9) A notice published under subsection (7) or (8) may, if the Commission considers appropriate, include a statement specifying the reasons for the imposition, withdrawal, substitution or variation (as the case may be) to which the notice relates.

(10) The Commission shall---

(a) before imposing under section 196, 197, 198 or 199, or withdrawing, substituting or varying under section 201, a prohibition or requirement in respect of or with reference to a corporation that is an exchange participant or a clearing participant, use its best endeavours to inform the recognized exchange company or the recognized clearing house (as the case may be) of the proposed imposition, withdrawal, substitution or variation (as the case may be) by notice in writing; and

(b) where before the imposition, withdrawal, substitution or variation of a prohibition or requirement it has not informed the recognized exchange company or the recognized clearing house (as the case may be) of the proposed imposition, withdrawal, substitution or variation (as the case may be) by notice in writing, forthwith after the imposition, withdrawal, substitution or variation (as the case

may be) inform the recognized exchange company or the recognized clearing house (as the case may be) thereof by notice in writing.

(11) Sections 196, 197, 198, 199 and 201, and the imposition, withdrawal, substitution or variation of a prohibition or requirement under section 196, 197, 198, 199 or 201, do not operate so as to render an agreement unenforceable by a party to the agreement if he proves that in entering into the agreement he acted in good faith and was unaware of any notice given, served or published, whether under section 196, 197, 198, 199 or 201 or under this section, in respect of or regarding the imposition, withdrawal, substitution or variation (as the case may be).

(12) Where by virtue of the application of section 196, 197, 198, 199 or 201 or of the giving, service or publication of any notice, whether under section 196, 197, 198, 199 or 201 or under this section, a person rescinds an agreement, he shall restore to any other party to the agreement any money or other benefit received or obtained by him under the agreement from that party.

(13) A notice published under subsection (7) or (8) is not subsidiary legislation.

### 203. Cases of revocation or suspension of licensed corporations' licences

(1) Notwithstanding any other provisions of this Ordinance, but without limiting the generality of section 192(1) (whether having application with or without reference to section 142(9) or 143(7)), the revocation or suspension of the licence of a licensed corporation under any provision of this Ordinance does not affect--

(a) the validity of---

(i) a prohibition or requirement imposed under section 196, 197, 198 or 199 in respect of or with reference to the corporation;

(ii) a prohibition or requirement substituting for another prohibition or requirement under section 201(1)(b); or

(iii) a prohibition or requirement as varied under section 201(1)(b),  
where the imposition, substitution or variation (as the case may be) takes effect at any time before the revocation or suspension (as the case may be) takes effect;  
(b) without limiting the generality of paragraph (a), any power exercisable by the Commission under section 201 in respect of any prohibition or requirement provided for in that paragraph, at the time when, or at any time after, the revocation or suspension (as the case may be) takes effect,  
and references in this Division to a licensed corporation shall be construed accordingly.

(2) Notwithstanding section 192(1) (whether having application with or without reference to section 142(9) or 143(7)), where---



(a) the licence of a corporation is revoked or suspended under any provision of this Ordinance; and

(b) the Commission has imposed under section 196, 197, 198 or 199 a prohibition or requirement in respect of or with reference to, or substituted or varied under section 201 a prohibition or requirement imposed in respect of or with reference to, the corporation, whether before or after the revocation or suspension, the corporation shall not, by reason of its compliance with the prohibition or requirement in force in respect of it under the circumstances described in paragraph (b), be regarded as having contravened section 114.

(3) For the avoidance of doubt, where the Commission has decided to revoke or suspend the licence of a licensed corporation under any provision of this Ordinance, the Commission may, at any time before the revocation or suspension (as the case may be) takes effect---

(a) impose under section 196, 197, 198 or 199 a prohibition or requirement in respect of or with reference to; or

(b) withdraw, substitute or vary under section 201 a prohibition or requirement imposed in respect of or with reference to, the licensed corporation.

204. Certification to Court of First Instance relating to non-compliance with prohibitions or requirements under section 196, 197, 198, 199 or 201

(1) If a person, without reasonable excuse, fails to comply with a prohibition or requirement in force in respect of him as a result of the exercise of any of the powers under sections 196, 197, 198, 199 and 201, the Commission may, by originating summons or originating motion, certify the failure to the Court of First Instance, and the Court may inquire into the case and---

(a) order the person to comply with the prohibition or requirement (as the case may be) within the period specified by the Court; and

(b) if the Court is satisfied that the failure was without reasonable excuse, punish the person, and any other person who appears to have been involved in the failure, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.

(2) If there is a reasonable likelihood that a person will fail to comply with a prohibition or requirement in force in respect of him as a result of the exercise of any of the powers under sections 196, 197, 198, 199 and 201, the Commission may, by originating summons or originating motion, apply to the Court of First Instance for an order that the person, and any other person who the Court is satisfied is able to procure the person to comply with the prohibition or requirement (as the case may be), to take such action or refrain from taking such action as the Court directs.

(3) An originating summons under this section shall be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg.).

Division 2---Other powers and proceedings

205. Winding-up orders and bankruptcy orders

(1) If---

(a) a corporation, other than an authorized financial institution, is of a class of corporations which the Court of First Instance has jurisdiction to wind up under the Companies Ordinance (Cap. 32); and

(b) it appears to the Commission that it is desirable in the public interest that the corporation should be wound up, the Commission may present a petition for the corporation to be wound up under that Ordinance on the ground that it is just and equitable that the corporation should be so wound up, and that Ordinance shall apply to such petition as it applies in relation to a petition presented under section 177 of that Ordinance.

(2) If---

(a) grounds exist for the presentation of a petition for a bankruptcy order against a licensed person by his creditor in accordance with the Bankruptcy Ordinance (Cap. 6); and

(b) it appears to the Commission that it is desirable in the public interest to present a petition for a bankruptcy order against the licensed person in accordance with that Ordinance, the Commission may present a petition for a bankruptcy order against the licensed person in accordance with that Ordinance, and that Ordinance shall apply to such petition as it applies in relation to a petition presented by a creditor.

(3) The Commission shall---

(a) before presenting a petition under this section against a corporation or licensed person that is an exchange participant or a clearing participant, use its best endeavours to inform the recognized exchange company or the recognized clearing house (as the case may be) of the proposed presentation of the petition by notice in writing; and

(b) where before the presentation of the petition it has not informed the recognized exchange company or the recognized clearing house (as the case may be) of the proposed presentation of the petition by notice in writing, forthwith after the presentation of the petition inform the recognized exchange company or the recognized clearing house (as the case may be) thereof by notice in writing.

206. Injunctions and other orders

(1) Where---

(a) a person has---

- (i) contravened---

(A) any of the relevant provisions;

(B) any notice or requirement given or made under or pursuant to any of the relevant provisions;

(C) any of the terms and conditions of a licence or an exemption under this Ordinance;

or

(D) any other condition imposed under or pursuant to any provision of this Ordinance;

- (ii) aided, abetted, or otherwise assisted, counselled or procured a person to commit any such contravention;
- (iii) induced, whether by threats, promises or otherwise, a person to commit any such contravention;
- (iv) directly or indirectly been in any way knowingly involved in, or a party to, any such contravention; or
- (v) attempted, or conspired with others, to commit any such contravention; or

(b) it appears, whether during the course of an investigation by an investigator under section 175 or not, to the investigator that any of the matters referred to in paragraph (a)(i) to (v) has occurred, is occurring or may occur, the Court of First Instance, on the application of the Commission, may, subject to subsection (4), make one or more of the orders specified in subsection (2).

(2) The orders specified for the purposes of subsection (1) are---

- (a) an order restraining or prohibiting the occurrence or the continued occurrence of any of the matters referred to in subsection (1)(a)(i) to (v);
- (b) where a person has been, or it appears that a person has been, is or may become, involved in any of the matters referred to in subsection (1)(a)(i) to (v), whether knowingly or otherwise, an order requiring the person to take such steps as the Court of First Instance may direct, including steps to restore the parties to any transaction to the position in which they were before the transaction was entered into;
- (c) an order restraining or prohibiting a person from acquiring, disposing of, or otherwise dealing in, any property specified in the order;
- (d) an order appointing a person to administer the property of another person;
- (e) an order declaring a contract relating to any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme to be void or voidable to the extent specified in the order;
- (f) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing any act specified

in the order;

(g) any ancillary order which the Court of First Instance considers necessary in consequence of the making of any of the orders referred to in paragraphs (a) to (f).

(3) The Commission shall---

(a) before making an application pursuant to subsection (1) for an order affecting any person that is an exchange participant or a clearing participant, use its best endeavours to inform the recognized exchange company or the recognized clearing house (as the case may be) of the proposed application by notice in writing; and

(b) where before the making of the application it has not informed the recognized exchange company or the recognized clearing house (as the case may be) of the proposed application by notice in writing, forthwith after the making of the application inform the recognized exchange company or the recognized clearing house (as the case may be) thereof by notice in writing.

(4) The Court of First Instance shall, before making an order under subsection (1), satisfy itself, so far as it can reasonably do so, that it is desirable that the order be made, and that the order will not unfairly prejudice any person.

(5) The Court of First Instance may, before making an order under subsection (1), direct that a notice of the application made in respect thereof be given to the persons it considers appropriate, or be published in the manner it considers appropriate, or both.

(6) Where the Court of First Instance considers it desirable to do so, it may grant such interim order as it considers appropriate pending the determination of an application made pursuant to subsection (1).

(7) Where the Commission applies to the Court of First Instance for an order pursuant to subsection (1), it shall not be required, as a condition of the granting of an interim order under subsection (6), to give an undertaking as to damages.

(8) An order may be made under subsection (1) whether or not it appears to the Court of First Instance that---

(a) the person against whom the order is made intends to engage again, or to continue to engage, in any of the matters referred to in subsection (1)(a)(i) to (v);

(b) the person against whom the order is made has previously engaged in any of such matters;

(c) there is an imminent danger of damage to any person in the event of the order not being made.

(9) Where the Court of First Instance has power to make an order against a person under subsection (1), it may, in addition to or in substitution for such order, make an order requiring the person to pay damages to any other person.

(10) The Court of First Instance may reverse, vary or discharge an order made

or granted by it under subsection (1) or (6) or suspend the operation of the order.

(11) A notice published under subsection (5) is not subsidiary legislation.

207. Remedies in cases of unfair prejudice, etc.

to interests of members

(1) If it appears to the Commission that the business or affairs of a listed corporation (other than a listed corporation which is an authorized financial institution) are being, or at or after the time of the formation of the corporation have been, conducted in a manner---

(a) oppressive to its members or any part of its members;

(b) involving defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members;

(c) resulting in its members or any part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; or

(d) unfairly prejudicial to its members or any part of its members,

the Commission, after consultation with the Financial Secretary, may by petition apply to the Court of First Instance for an order under this section, whether or not at the time of such application the corporation remains a listed corporation.

(2) If, on a petition under this section, the Court of First Instance is of opinion that the business or affairs of a listed corporation are being or have been conducted in a manner described in subsection (1)(a), (b), (c) or (d), whether through conduct consisting of an isolated act or a series of acts or any failure to act, the Court may---

(a) make an order restraining the carrying out, or requiring the carrying out, of any act or acts;

(b) order that the corporation shall bring in its name such proceedings as the Court considers appropriate against such persons, and on such terms, as may be specified in the order;

(c) appoint a receiver or manager of the whole or any part of the property or business of the corporation and may specify the powers and duties of the receiver or manager and fix his remuneration;

(d) subject to subsection (3), order that a person wholly or partly responsible for the business or affairs of the corporation being so conducted shall not, without the leave of the Court---

(i) be, or continue to be, a director, liquidator, or receiver or manager of the property or business, of the corporation or any other corporation; or

(ii) in any way, whether directly or indirectly, be concerned, or take part, in the management of the corporation or any other corporation,

for such period (not exceeding 15 years) as may be specified in the order;  
(e) make any other order it considers appropriate, whether for regulating the conduct of the business or affairs of the corporation in future, or for the purchase of the shares of any members of the corporation by other members of the corporation or by the corporation (and, in the case of a purchase by the corporation, for the reduction accordingly of the corporation's capital), or otherwise.

(3) No order made under subsection (2)(d) shall prohibit a person from being, or continuing to be, a director, liquidator, or receiver or manager of the property or business, of a corporation which is an authorized financial institution.

(4) Where the Court of First Instance makes an order under subsection (2)(d), the order shall be filed by the Court with the Registrar of Companies, as soon as reasonably practicable after it is made.

(5) Where an order under this section makes an alteration in or addition to the constitution of a company, notwithstanding any other provisions of the Companies Ordinance (Cap. 32) but subject to the provisions of the order, the company shall not have the power, without the leave of the Court of First Instance, to make any further alteration in or addition to the constitution inconsistent with the order.

(6) Where any alteration in or addition to the constitution of a company is made by an order under this section, the alteration or addition (as the case may be) has the same effect as if duly made by a resolution of the company, and the Companies Ordinance (Cap. 32) applies to the constitution as altered or added to accordingly.

(7) An office copy of an order of the Court of First Instance altering or adding to, or of the leave of the Court to alter or add to, the constitution of a company shall, within 14 days after the order is made or the leave is given, be delivered by the company to the Registrar of Companies for registration.

(8) A company which contravenes subsection (7) commits an offence and is liable on conviction to a fine at level 2 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

208. Civil liability for false or misleading public communications concerning securities and futures contracts

(1) Subject to subsections (3) to (7), where---

(a) a person is responsible for a relevant communication being made or issued to the public, or to a group of persons comprising members of the public (including the shareholders of a listed corporation or the holders of listed securities);

(b) the relevant communication concerns securities or futures contracts, or may affect the price of securities or futures contracts;

(c) the relevant communication is false or misleading in a material particular; and

(d) the person knows that, or is reckless or negligent as to whether, the relevant communication is false or misleading in a material particular, that person shall, apart from any other liability he may incur, be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of his acting, or refraining from acting in a manner in which he would otherwise have acted, in reliance on the relevant communication.

(2) For the purposes of subsection (1), a person responsible for a relevant communication being made or issued includes---

(a) any person making or issuing it; and

(b) any person who in a material manner participated in, or approved, the making or issuing of it.

(3) No person shall be liable to pay compensation under subsection (1) for any pecuniary loss sustained by any other person as a result of the other person acting, or refraining from acting in a manner in which he would otherwise have acted, in reliance on a relevant communication unless---

(a) he has assumed responsibility with respect to the other person in connection with the relevant communication; or

(b) it is fair, just and reasonable in the circumstances of the case that he should be so liable.

(4) No person shall be liable to pay compensation under subsection (1) for any pecuniary loss sustained by any other person as a result of the other person acting, or refraining from acting in a manner in which he would otherwise have acted, in reliance on a relevant communication if---

(a) the first-mentioned person carried on a business the principal purpose of which was to provide the service of issuing or reproducing materials provided to him by others;

(b) the relevant communication was issued or reproduced by him in the ordinary course of that business;

(c) the contents of the relevant communication were wholly devised by a customer of his or by a person acting on behalf of a customer of his;

(d) the nature of the service which he provided in relation to the relevant communication was such that he did not select, modify or otherwise exercise control over the contents of the relevant communication prior to its issue or reproduction; and

(e) at the time he issued or reproduced the relevant communication he did not know that it was false or misleading in a material particular.

(5) No person shall be liable to pay compensation under subsection (1) for any pecuniary loss sustained by any other person as a result of the other person acting,

or refraining from acting in a manner in which he would otherwise have acted, in reliance on a relevant communication if---

(a) he carried on a business the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;

(b) the relevant communication was re-transmitted by him to other persons in the ordinary course of such re-transmission of information;

(c) the contents of the relevant communication were devised by another person and he did not modify or otherwise exercise control over its contents prior to its re-transmission;

(d) the re-transmission of the relevant communication by him---

(i) was accompanied by a message to the effect; or

(ii) was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding,

that he did not devise the contents of the relevant communication and that he neither took responsibility for it nor endorsed its accuracy; and

(e) at the time he re-transmitted the relevant communication---

(i) he did not know that it was false or misleading in a material particular; or

(ii) he knew that it was false or misleading in a material particular, but in the circumstances of the case he could not reasonably be expected to prevent the re-transmission.

(6) No person shall be liable to pay compensation under subsection (1) for any pecuniary loss sustained by any other person as a result of the other person acting, or refraining from acting in a manner in which he would otherwise have acted, in reliance on a relevant communication if---

(a) the first-mentioned person was a broadcaster;

(b) the relevant communication was broadcast live by him as a broadcaster;

(c) he did not modify the contents of the relevant communication prior to its broadcast;

(d) he has, in relation to the broadcast, acted in accordance with the terms and conditions of the licence (if any) by which he became entitled to broadcast 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 as a broadcaster; and

(e) at the time of the broadcast---

(i) he did not know that the relevant communication was false or misleading in



a material particular; or

(ii) he knew that the relevant communication was false or misleading in a material particular, but in the circumstances of the case he could not reasonably be expected to prevent the broadcast.

(7) Where an action is brought against a person under subsection (1) by reference to subsection (2)(b) in respect of a relevant communication, it is a defence for the person to prove---

(a) that he only participated in, or approved, the making or issuing of a part of the relevant communication and that the part was not false or misleading in a material particular; or

(b) where the action is brought on the basis that he participated in the making or issuing of the relevant communication, that at the time when it was made or issued, he opposed the making or issuing of it because it was false or misleading in a material particular.

(8) 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, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(9) 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) or section 107 applies.

(10) 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.

(11) In this section---  
"issue" (發出), in relation to any material (including any relevant communication), includes publishing, circulating, distributing or otherwise disseminating the material, 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;

(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 material to be issued;  
"relevant communication" (有關通訊) means any communication, including any announcement, disclosure and statement, and any combination thereof.

## PART XI

### Securities and Futures Appeals Tribunal

#### Division 1---Interpretation

#### 209. Interpretation of Part XI

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

"application for review" (覆核申請) means an application made under section 211(1);

"excluded decision" (豁除決定) means a decision made in respect of an authorized financial institution as an exempt person or as an associated entity of an intermediary which---

(a) is made by the Commission under or pursuant to any of the provisions set out in column 2 of Part 3 of Schedule 7; and

(b) is within the description set out, opposite such provisions, in column 3 of Part 3 of Schedule 7;

"judge" (法官) means---

(a) a judge or a deputy judge of the Court of First Instance;

(b) a former Justice of Appeal of the Court of Appeal;

(c) a former judge or a former deputy judge of the Court of First Instance;

"parties" (各方), in relation to a review, means---

(a) the Commission; and

(b) the person making the application for review in question;

"review" (覆核) means a review of a specified decision by the Tribunal under section 212(1);

"specified decision" (指明決定) means a decision which---

(a) is made by the Commission under or pursuant to any of the provisions set out in column 2 of Part 2 of Schedule 7; and

(b) is within the description set out, opposite such provisions, in column 3 of Part 2 of Schedule 7,

but does not include an excluded decision;

"Tribunal" (審裁處) means the Securities and Futures Appeals Tribunal established by section 210.

Division 2---Securities and Futures Appeals Tribunal

210. Securities and Futures Appeals Tribunal

(1) There is established a Tribunal to be known as the Securities and Futures Appeals Tribunal which shall have jurisdiction to review specified decisions in accordance with this Part and Schedule 7.

(2) Subject as otherwise provided in this Part or in Schedule 7, the Tribunal---

(a) shall consist of a chairman and 2 other members; and

(b) shall be presided over by the chairman who shall sit with the 2 other members.

(3) The chairman of the Tribunal shall be a judge and the other 2 members of the Tribunal shall not be public officers.

(4) Part 1 of Schedule 7 shall have effect in relation to the appointment of members and temporary members of the Tribunal, and to the proceedings and sittings

of, and procedural and other matters concerning, the Tribunal.

(5) The Tribunal may, where the Chief Executive considers appropriate, be divided into 2 or more divisions, whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each division of the Tribunal as they apply to the Tribunal.

(6) With the exception of the chairman of the Tribunal who is a judge within the meaning of paragraph (a) of the definition of "judge" in section 209, a member of the Tribunal may be paid, as a fee for his services, such amount as the Financial Secretary considers appropriate, and that amount shall be a charge on the general revenue.

(7) Where a person who is a judge within the meaning of paragraph (a) of the definition of "judge" in section 209 is appointed as the chairman of the Tribunal, neither the appointment nor the service or removal of the person as the chairman affects---

(a) the tenure of office of, and the exercise of powers by, the person as a judge within the meaning of that paragraph;

(b) the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office;

(c) the terms and conditions to which the person is subject as a holder of that office.

211. Applications for review of specified decisions

(1) Subject to subsections (2) and (3), a person aggrieved by a specified decision of the Commission made in respect of him may, by notice in writing served on the Tribunal, apply to the Tribunal for a review of the decision.

(2) A notice served on the Tribunal under subsection (1) shall set out the grounds for the application to which the notice relates.

(3) An application for review of a specified decision of the Commission shall be made within 21 days after---

(a) subject to paragraph (b)---

(i) where there is any requirement in this or any other Ordinance for notice in writing in respect of the decision to be served, the notice has been served in accordance with such requirement; or

(ii) where there is no such requirement, a notice in writing in respect of the decision has been served on the person in respect of whom it is made;

(b) where the decision is that to which section 142(8) or 143(6) applies, a notice in respect of the decision has been given to the person in respect of whom it is made.

(4) Where the Tribunal receives a notice served on it under subsection (1), it shall as soon as reasonably practicable thereafter serve a copy of the notice on the Commission.

212. Proceedings before Tribunal

(1) Following the submission of an application for review, the Tribunal shall review the specified decision to which the application relates.

(2) Following the review of a specified decision under subsection (1), the Tribunal may---

(a) confirm, vary or set aside the decision, and substitute for the decision any other decision which the Tribunal considers appropriate, whether more or less onerous;

(b) remit the matter in question to the Commission with the directions it considers appropriate, which may include a direction to the Commission to make a decision afresh in respect of any matter specified by the Tribunal.

(3) The Tribunal shall not determine a review without first giving the parties to the review a reasonable opportunity of being heard.

(4) Subject to section 214(3), where the Tribunal is required to determine any matter of fact, it shall do so on the balance of probabilities from the evidence before it.

213. Powers of Tribunal

(1) Subject to the provisions of Part 1 of Schedule 7 and any rules made by the Chief Justice under section 226, the Tribunal, for the purposes of a review, may, on its own motion or on the application of any of the parties to the review---

(a) receive and consider any material by way of oral evidence, written statements, documents or otherwise, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law;

(b) by notice in writing signed by the chairman of the Tribunal require a person to attend before it at any sitting relating to the review and to give evidence and produce any article, record or document in his possession relating to the subject matter of the review;

(c) administer oaths and affirmations;

(d) examine or cause to be examined on oath, affirmation or otherwise a person attending before it and require the person to answer truthfully any question which the Tribunal considers appropriate for the purposes of the review;

(e) order a witness to provide evidence in a truthful manner for the purposes of the review by affidavit or affirmation;

(f) order a person not to publish or otherwise disclose any material the Tribunal receives;

(g) prohibit the publication or disclosure of any material the Tribunal receives at a sitting, or part of a sitting, which is held in private;

(h) determine the manner in which any material referred to in paragraph (a) is received;

(i) stay any of the proceedings in the review on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice;  
(j) determine the procedure to be followed in connection with the review;  
(k) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the review or the carrying out of its functions.

(2) A person commits an offence if he, without reasonable excuse---

(a) refuses or fails to comply with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1);  
(b) disrupts or otherwise misbehaves during any sitting of the Tribunal;  
(c) having been required by the Tribunal under subsection (1) to attend before the Tribunal, leaves the place where his attendance is so required without the permission of the Tribunal;  
(d) hinders or deters any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purposes of a review;  
(e) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal, on account of such attendance; or  
(f) threatens, insults or causes any loss to be suffered by any member of the Tribunal at any time on account of the performance of his functions in that capacity.

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

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or  
(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

#### 214. Contempt dealt with by Tribunal

(1) The Tribunal shall have the same powers as the Court of First Instance to punish for contempt.

(2) Without limiting the generality of the powers of the Tribunal under subsection (1), the Tribunal shall have the same powers as the Court of First Instance to punish for contempt, as if it were contempt of court, a person who, without reasonable excuse, commits any conduct falling within the description of section 213(2)(a), (b), (c), (d), (e) or (f).

(3) The Tribunal shall, in the exercise of its powers to punish for contempt under this section, adopt the same standard of proof as the Court of First Instance in the exercise of the same powers to punish for contempt.

(4) Notwithstanding anything in this section and any other provisions of this Ordinance---

(a) no proceedings may be instituted against any person under this section in respect of any conduct if---

(i) criminal proceedings have previously been instituted against the person

under section 213(2) in respect of the same conduct; and

- (ii) (A) those criminal proceedings remain pending; or
- (B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under such section in respect of the same conduct;
- (b) no criminal proceedings may be instituted against any person under section 213(2) in respect of any conduct if---

(i) proceedings have previously been instituted against the person under this section in respect of the same conduct; and

- (ii) (A) those proceedings remain pending; or
- (B) by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person under this section in respect of the same conduct.

#### 215. Privileged information

Nothing in this Part and Schedule 7 requires an authorized financial institution, acting as the banker or financial adviser of a person who makes an application for review, to disclose information as to the affairs of any of its customers other than that person.

#### 216. Costs

- (1) The Tribunal may, in relation to a review, by order award to---
  - (a) any person whose attendance, whether as a witness or otherwise, has been necessary or required for the purposes of the review;
  - (b) any party to the review,
- such sum as it considers appropriate in respect of the costs reasonably incurred by the person or the party (as the case may be) in relation to the review and the application for review in question.

(2) Any costs awarded under subsection (1) shall be paid by and recoverable as a civil debt from---

- (a) where the costs are awarded to any person under subsection (1)(a), such of the parties to the review in question as the Tribunal considers appropriate; or
- (b) where the costs are awarded to any party to the review under subsection (1)(b), the other party to the review.

(3) Subject to any rules made by the Chief Justice under section 226, Order 62 of the Rules of the High Court (Cap. 4 sub. leg.) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under subsection (1).

(4) The Tribunal may order that any costs awarded under subsection (1) shall be taxed on the basis of one of the scales of costs in the Schedules to Order 62 of the Rules of the High Court (Cap. 4 sub. leg.).

217. Notification of Tribunal determinations

(1) The Tribunal shall, as soon as reasonably practicable after the conclusion of a review, deliver---

(a) its determination in respect of the review, and the reasons for making the determination; and

(b) any order made under section 216 in relation to the review, and the reasons for making the order.

(2) Where any sitting of the Tribunal relating to a review, or any part thereof, is held in private, the Tribunal may by order prohibit the publication or disclosure of any determination or order, or any reasons for any determination or order, referred to in subsection (1)(a) or (b), or any part thereof.

(3) A person commits an offence if he, without reasonable excuse, refuses or fails to comply with an order of the Tribunal made pursuant to subsection (2) and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

218. Form and proof of orders of Tribunal

(1) An order made by the Tribunal shall be recorded in writing and signed by the chairman of the Tribunal when the order is made.

(2) A document purporting to be an order of the Tribunal and to be signed by the chairman of the Tribunal shall, in the absence of proof to the contrary, be regarded as an order of the Tribunal duly made, without proof of its making, or proof of signature, or proof that the person signing the order was in fact the chairman.

219. Orders of Tribunal may be registered in Court of First Instance

The Court of First Instance may, on notice in writing given by the Tribunal in the manner prescribed by rules made by the Chief Justice under section 226, register an order of the Tribunal in the Court of First Instance and the order shall, on registration, become for all purposes an order of the Court of First Instance made within the jurisdiction of the Court of First Instance.

220. Applications for stay of specified decisions

(1) A person who has made an application for review may, at any time before the review is determined by the Tribunal, apply to the Tribunal for a stay of the specified decision to which the application relates.

(2) On an application made under subsection (1), the Tribunal shall as soon as reasonably practicable conduct a hearing to determine the application, and may, where



it considers appropriate, grant a stay of the specified decision to which the application relates, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Tribunal considers appropriate.

#### Division 3---Appeals

##### 221. Appeal to Court of Appeal

(1) A party to a review who is dissatisfied with a finding or determination of the Tribunal relating to the review (whether or not it is a determination in respect of the review, or an order made under section 216 or 220) may appeal to the Court of Appeal against the finding or determination on a point of law.

(2) In an appeal under subsection (1), the Court of Appeal may---

(a) allow the appeal;

(b) dismiss the appeal;

(c) remit the matter in question to the Tribunal with the directions it considers appropriate, which may include a direction to the Tribunal to conduct the review in question afresh for the purpose of determining any question specified by the Court of Appeal.

(3) In an appeal under subsection (1), the Court of Appeal may make such order as to costs as it considers appropriate.

##### 222. No stay of execution on appeal

The lodging of an appeal under section 221 does not operate as a stay of execution of a finding or determination of the Tribunal (whether or not it is a determination in respect of a review, or an order made under section 216 or 220) unless the Court of Appeal otherwise orders, and any stay of execution may be subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal considers appropriate.

##### 223. No other right of appeal

Subject to section 221 and section 50 of the High Court Ordinance (Cap. 4), any decision of the Tribunal shall be final and shall not be subject to appeal.

#### Division 4---Miscellaneous

##### 224. Time when specified decisions to take effect

(1) Notwithstanding subsections (2) and (3) and any other provisions of this or any other Ordinance, no specified decision, other than that to which section 142(8) or 143(6) applies, takes effect at any time before---

(a) where there is any requirement in this or any other Ordinance for notice in writing in respect of the decision to be served, the notice has been served in accordance with such requirement; or

(b) where there is no such requirement, a notice in writing in respect of the decision

has been served on the person in respect of whom it is made.

(2) A specified decision, other than that to which section 97(2), 98(4), 115(6), 116(4), 119(8), 120(6), 142(8), 143(6), 187(4), 195(3) or 202(1) applies, takes effect---

(a) where, prior to the expiration of the time specified in section 211(3) as that within which an application for review of the decision shall be made, the person in respect of whom the decision is made notifies the Commission that he will not make the application, at the time when he so notifies the Commission;

(b) subject to paragraph (a), where the person does not make an application for review of the decision within the time specified in section 211(3) as that within which the application shall be made, at the time when the time so specified expires; or

(c) where the person makes an application for review of the decision within the time specified in section 211(3) as that within which the application shall be made--

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(i) where the decision is confirmed by the Tribunal, at the time when the decision is so confirmed;

(ii) where the decision is varied, or substituted by another decision, by the Tribunal, at the time when the decision is so varied or substituted, subject however to the terms of the variation or substitution; or

(iii) where the application is withdrawn, at the time when it is so withdrawn.

(3) Notwithstanding subsection (2) and any other provisions of this or any other Ordinance, but subject to subsection (1), the Commission may, where it considers appropriate in the interest of the investing public or in the public interest to do so, specify in the notice served in respect of a specified decision any time, other than that at which the decision is apart from this subsection to take effect, as the time at which the decision is to take effect, in which case the decision takes effect at the time so specified.

225. Appeals to Chief Executive in Council in respect of excluded decisions

(1) A person aggrieved by an excluded decision of the Commission made in respect of him may appeal to the Chief Executive in Council against the decision.

(2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.

(3) Notwithstanding subsections (4) and (5) and any other provisions of this or any other Ordinance, no excluded decision takes effect at any time before---

(a) where there is any requirement in this or any other Ordinance for notice in writing in respect of the decision to be served, the notice has been served in accordance with such requirement; or

(b) where there is no such requirement, a notice in writing in respect of the decision has been served on the person in respect of whom it is made.

(4) An excluded decision, other than that to which section 118(6) or 195(3) applies, takes effect---

(a) where, prior to the expiration of the time specified in rule 4 of the Administrative Appeals Rules (Cap. 1 sub. leg.) as that within which a written memorandum in respect of the decision shall be submitted, the person in respect of whom the decision

is made notifies the Commission that he will not submit the written memorandum, at the time when he so notifies the Commission;

(b) subject to paragraph (a), where the person does not submit a written memorandum in respect of the decision within the time specified in rule 4 of the Administrative Appeals Rules (Cap. 1 sub. leg.) as that within which the written memorandum shall be submitted, at the time when the time so specified expires; or

(c) where the person submits a written memorandum in respect of the decision within the time specified in rule 4 of the Administrative Appeals Rules (Cap. 1 sub. leg.) as that within which the written memorandum shall be submitted---

(i) where the decision is confirmed by the Chief Executive in Council, at the time when the decision is so confirmed;

(ii) where the decision is varied or reversed, or substituted by another decision, by the Chief Executive in Council, at the time when the decision is so varied, reversed or substituted, subject however to the terms of the variation, reversal or substitution; or

(iii) where the written memorandum is withdrawn, at the time when it is so withdrawn.

(5) Notwithstanding subsection (4) and any other provisions of this or any other Ordinance, but subject to subsection (3), where the Commission considers appropriate in the interest of the investing public or in the public interest to do so, it may, after consultation with the Monetary Authority, specify in the notice served in respect of an excluded decision any time, other than that at which the decision is apart from this subsection to take effect, as the time at which the decision is to take effect, in which case the decision takes effect at the time so specified.

226. Rules by Chief Justice

The Chief Justice may make rules---

(a) providing for the award of costs under section 216 and the taxation of those costs;

(b) prescribing the manner in which the Tribunal is to give notice to the Court of First Instance in respect of orders of the Tribunal pursuant to section 219;

(c) regulating the procedure for the hearing of appeals under section 221;

- (d) requiring the payment of the fees specified in the rules for any matter relating to applications for review;
- (e) providing for matters of procedure or other matters relating to applications for review or reviews, which are not provided for in this Part or in Part 1 of Schedule 7;

(f) prescribing any matter which this Part provides is, or may be, prescribed by rules made by the Chief Justice.

227. Amendment of Parts 2 and 3 of Schedule 7

The Chief Executive in Council may, by order published in the Gazette, amend Parts 2 and 3 of Schedule 7.

PART XII

Investor Compensation

228. Interpretation of Part XII

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

"compensation" (賠償) means compensation payable out of the compensation fund under rules made under section 236;

"Futures Exchange Compensation Fund" (期交所賠償基金) means the compensation fund established under Part VIII of the repealed Commodities Trading Ordinance;

"Unified Exchange Compensation Fund" (聯交所賠償基金) means the compensation fund established under Part X of the repealed Securities Ordinance.

229. Establishment of compensation fund

The Commission shall establish and maintain a compensation fund, to be known as the Investor Compensation Fund in English and "投資者賠償基金" in Chinese, for the purposes of this Part.

230. Money constituting the compensation fund

(1) The compensation fund shall consist of---

(a) all amounts paid to the Commission or a recognized investor compensation company in accordance with rules made under this Part;

(b) all amounts paid into the compensation fund under sections 72(2) or (8)(b), 73(2) or (8)(b) and 74(11) of Schedule 9;

(c) all amounts recovered by the Commission or a recognized investor compensation company in exercise of a right of action conferred by section 87 or 235;

(d) all amounts borrowed under subsection (2);

(e) any return or profit received on an investment made under section 233;

(f) all other amounts lawfully paid into the compensation fund.

(2) With the consent in writing of the Financial Secretary, the Commission may, for the purposes of the compensation fund, borrow from any authorized financial institution on such terms and at such rates of interest as it considers acceptable and may charge any investments acquired under section 233 by way of security for any such loan.

231. Money to be kept in account

The Commission shall open at one or more authorized financial institutions one or more accounts and shall, pending their application in accordance with this Part, pay into or transfer to such account or accounts all amounts forming part of the compensation fund.

232. Accounts of compensation fund

(1) The Commission shall keep proper accounts of the compensation fund.

(2) The Commission may, if it considers it necessary to do so---

(a) maintain separate accounts in respect of the amounts that are respectively paid into the compensation fund under sections 72, 73 and 74 of Schedule 9;

(b) maintain separate accounts in respect of the compensation fund---

(i) for different---

(A) recognized exchange companies;

(B) markets operated by recognized exchange companies;

(C) persons providing automated trading services; or

(D) classes of investors; or

(ii) for the better and more effectual management or administration of the fund;

(c) maintain sub-accounts in respect of the separate accounts referred to in paragraph (a) or (b) in such manner as it considers appropriate.

(3) The Commission shall in respect of the financial year beginning before and ending after the day on which this section commences, and in respect of each subsequent financial year, prepare---

(a) a financial statement made up to (and including) the last day of that year; and

(b) in the case where separate accounts are maintained under subsection (2)(a) or (b) or sub-accounts are maintained under subsection (2)(c)---

(i) a consolidated financial statement made up to (and including) the last day of that year, in respect of the separate accounts or sub-accounts (as the case may be); and

(ii) a separate financial statement made up to (and including) the last day of that year, in respect of each separate account or sub-account (as the case may be).

(4) A financial statement prepared under subsection (3) shall be signed by the chairman and at least one non-executive director of the Commission.

(5) The Commission shall appoint an auditor to audit the compensation fund.

(6) The auditor so appointed shall annually audit the accounts of the compensation fund and shall audit, and prepare an auditor's report in respect of, each financial statement prepared under subsection (3) and shall submit the report to the Commission.

(7) An auditor's report prepared under subsection (6) shall contain a statement made by the auditor as to whether in his opinion the financial statement gives a true and fair view of the matters to which the statement relates.

(8) The auditor appointed under this section may call for and inspect such books and records of the Commission or any recognized investor compensation company as he may require in order to perform his functions under this section.

(9) Not later than 4 months after the end of each financial year the Commission shall cause---

(a) a copy of---

(i) each audited financial statement in respect of that financial year; and

(ii) the auditor's report on each such financial statement,

to be sent to the Financial Secretary; and

(b) a copy of each such audited financial statement to be published in the Gazette.

(10) In this section, "financial statement" (財務報表) means a statement which contains all of the following documents---

(a) a revenue and expenditure account;

(b) a balance sheet; and

(c) a cash flow statement.

233. Investment of moneys

(1) The Commission may invest any money which forms part of the compensation fund and is not immediately required for any other purposes provided for by this Part---

(a) on fixed deposit with an authorized financial institution; or

(b) in securities in which trustees are authorized by law to invest trust funds.

(2) Any return or profit on an investment of moneys by the Commission under subsection (1) shall be added to the compensation fund.

(3) A fixed deposit receipt and other document evidencing the investment of money under subsection (1) may be kept in the office of the Commission or deposited for safe keeping with an authorized financial institution.

234. Payments out of the compensation fund

(1) Subject to this Part, there shall from time to time be paid out of the compensation fund as required and in such order as the Commission may determine one or more of the following amounts---

(a) all legal and other expenses incurred---

(i) in investigating or defending claims for compensation made under rules made under this Part;

(ii) in relation to the compensation fund;

(iii) in the exercise by the Commission of the rights, powers, and authorities vested in it by this Part or rules made under this Part in relation to the compensation

fund;

(iv) in the exercise by a recognized investor compensation company of a function transferred to it under section 80 or provided for under rules made under this Part;

(b) the expenses incurred in the management or administration of the compensation fund;

(c) the expenses incurred in obtaining insurance, surety, guarantee or other security, or in making any financial arrangement, in respect of claims for compensation made under rules made under this Part;

(d) interest on any sum borrowed under section 230(2);

(e) the amounts of claims for compensation, costs of and incidental to the making and proving of such claims and interest on compensation, as allowed under rules made under this Part;

(f) all other money payable out of the compensation fund in accordance with rules made under this Part.

(2) Where the Commission considers that the amount at credit in either the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund is insufficient to enable---

(a) the payment of the amounts which the Commission considers to be necessary to meet any claims or likely claims against the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund (as the case may be); and

(b) the repayment of the amounts deposited in cash with the Commission under section 104 of the repealed Securities Ordinance or section 82 of the repealed Commodities Trading Ordinance (as the case may be),

then the Commission shall, subject to subsection (3), pay into the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund (as the case may be) out of the compensation fund such amount as it considers equitable.

(3) The aggregate amounts paid under subsection (2) to the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund shall not exceed the respective aggregate amounts paid into the compensation fund under section 72(2) or 73(2) of Schedule 9 (as the case may be).

(4) In the event that the compensation fund is dissolved, the Commission may, in its absolute discretion, after the satisfaction of all outstanding liabilities against the compensation fund, pay---

(a) to the Stock Exchange Company or, if the Stock Exchange Company is in liquidation, to the liquidator of the Stock Exchange Company the whole or a portion of that part of the compensation fund which is derived from the Unified Exchange Compensation Fund under section 72(2) and (8)(b) of Schedule 9, and on any such payment being made those



amounts shall form part of the assets of the Stock Exchange Company or, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32); and

(b) to the Futures Exchange Company or, if the Futures Exchange Company is in liquidation, to the liquidator of the Futures Exchange Company the whole or a portion of that part of the compensation fund which is derived from the Futures Exchange Compensation Fund under section 73(2) and (8)(b) of Schedule 9, and on any such payment being made those amounts shall form part of the assets of the Futures Exchange Company or, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32).

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

(1) Where the Commission makes any payment out of the compensation fund in respect of any claim for compensation made under rules made under this Part---

(a) the Commission shall be subrogated, to the extent of that payment, to all the rights and remedies of the claimant in relation to the loss sustained by him by reason of the default on which the claim was based; and

(b) the claimant shall have no right in bankruptcy or winding up or by legal proceedings or otherwise to receive in respect of the loss any sum out of the assets of the exchange participant or other person concerned who is in default, or where the loss was caused by the defalcation, fraud or misfeasance of an employee of that exchange participant or that other person, the assets of that employee, until the Commission has been reimbursed the full amount of its payment.

(2) All amounts recovered by the Commission under subsection (1) shall become part of the compensation fund.

236. Rules by Chief Executive in Council  
and Commission

(1) The Chief Executive in Council may make rules for the following matters-

--

(a) the means of funding the compensation fund;

(b) the maximum amount of compensation that may be paid to a person making a claim for compensation;

(c) the maintenance of sub-accounts under section 232(2)(c), payments to be made from such sub-accounts and the apportionment between different sub-accounts of expenses incurred in relation to the compensation fund and of interest earned on the fund;

(d) providing for the better carrying out of the objects and purposes of this Part.

(2) Without prejudice to section 384(9) and (10), the Commission may, subject

to subsection (3), make rules which are not inconsistent with rules made by the Chief Executive in Council under subsection (1), for the following matters---

- (a) the circumstances in which a person is entitled to claim compensation;
- (b) the manner in which the claim for compensation is to be made;
- (c) the payment of costs of and incidental to the making and proving of a claim for compensation;
- (d) the payment of interest on the amount of compensation;
- (e) the information or documents to be supplied to the Commission for the purpose of enabling the Commission to determine the application;
- (f) the persons or classes of persons who are not entitled to make a claim for compensation;
- (g) the circumstances and manner in which the Commission may call for claims for compensation;
- (h) the circumstances and manner in which the Commission may determine, deal with and pay a claim for compensation;
- (i) enabling the Commission---

(i) to submit a claim for compensation as a proof of debt in any winding-up or bankruptcy proceedings;

(ii) to pay compensation in the form of securities and to purchase securities for that purpose; and

(iii) to require the assignment of a claimant's rights of action as a pre-condition for the payment of compensation;

(j) the functions of a recognized investor compensation company in relation to the management or administration of the compensation fund;

(k) the formulation of proper accounting and auditing systems with respect to the management or administration of the compensation fund for which a recognized investor compensation company may be responsible upon a transfer of a function to it under section 80;

(l) arrangements that are to be made when a recognized investor compensation company is wound up;

(m) the obtaining of such insurance, surety, guarantee or other security or the making of such financial arrangement as may be necessary or appropriate for the better carrying out of the objects and purposes of this Part;

(n) providing for the better carrying out of the objects and purposes of this Part.

(3) The Commission shall consult the Financial Secretary before making rules under subsection (2) for the matters specified in paragraphs (a) and (f) of that subsection.

PART XIII

Market Misconduct Tribunal

Division 1---Interpretation

237. Interpretation of Part XIII

(1) In this Part, unless the context otherwise requires---  
"associate" (有聯繫者), in relation to a person, means---

(a) the person's spouse or reputed spouse, any person cohabiting with the person as a spouse, the person's brother, sister, parent, step-parent, child (natural or adopted) or step-child;

(b) any corporation of which the person is a director;

(c) any employee or partner of the person;

(d) where the person is a corporation, each of its directors and its related corporations and each director or employee of any of its related corporations;

(e) without limiting the circumstances in which paragraphs (a) to (d) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or such interest, any other person with whom the person has an agreement or arrangement---

(i) with respect to the acquisition, holding or disposal of such securities or such interest; or

(ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;

"controller" (控制人), in relation to a corporation, means any person---

(a) in accordance with whose directions or instructions the directors of the corporation or of another corporation of which it is a subsidiary are accustomed or obliged to act; or

(b) who, either alone or with any of his associates, is entitled to exercise or control the exercise of more than 33% of the voting power at general meetings of the corporation or of another corporation of which it is a subsidiary;

"insider dealing" (內幕交易) means insider dealing within the meaning of section 261;

"judge" (法官) means---

(a) a judge or a deputy judge of the Court of First Instance;

(b) a former Justice of Appeal of the Court of Appeal;

(c) a former judge or a former deputy judge of the Court of First Instance;

"market misconduct" (市場失當行爲) means---

(a) insider dealing;

(b) false trading within the meaning of section 265;

- (c) price rigging within the meaning of section 266;
- (d) disclosure of information about prohibited transactions within the meaning of section 267;
- (e) disclosure of false or misleading information inducing transactions within the meaning of section 268; or
- (f) stock market manipulation within the meaning of section 269,

and includes attempting to engage in, or assisting, counselling or procuring another person to engage in, any of the conduct referred to in paragraphs (a) to (f); "Presenting Officer" (提控官), in relation to any proceedings instituted under section 244, means the person appointed under section 243(4) to conduct the proceedings;

"relevant overseas market" (有關境外市場)---

- (a) in relation to securities, means a stock market outside Hong Kong; or
- (b) in relation to futures contracts, means a futures market outside Hong Kong;

"relevant recognized market" (有關認可市場)---

- (a) in relation to securities, means a recognized stock market; or
- (b) in relation to futures contracts, means a recognized futures market;

"Tribunal" (審裁處) means the Market Misconduct Tribunal established by section 243.

(2) In this subsection and sections 238 to 241 and Division 4, unless the context otherwise requires---

"derivatives" (衍生工具), in relation to listed securities, means---

- (a) rights, options or interests (whether described as units or otherwise) in, or in respect of, the listed securities;
- (b) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss, wholly or partly by reference to the price or value, or a change in the price or value, of---

- (i) the listed securities; or

- (ii) any rights, options or interests referred to in paragraph (a);

- (c) rights, options or interests (whether described as units or otherwise) in, or in respect of---

- (i) any rights, options or interests referred to in paragraph (a); or

- (ii) any contracts referred to in paragraph (b);

- (d) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (a), (b) or (c), including certificates of interest or participation in, temporary or interim certificates for, receipts (including depositary receipts) in respect of, or warrants to subscribe for or purchase---

- (i) the listed securities; or

(ii) the rights, options or interests or the contracts,

whether or not the derivatives are listed and regardless of who issued or made them;

"listed corporation" (上市法團) means a corporation which has issued securities that are, at the time of any insider dealing in relation to the corporation, listed;

"listed securities" (上市證券) means---

(a) securities which, at the time of any insider dealing in relation to a corporation, have been issued by the corporation and are listed;

(b) securities which, at the time of any insider dealing in relation to a corporation, have been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently listed;

(c) securities which, at the time of any insider dealing in relation to a corporation, have not been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently so issued and listed;

"relevant information" (有關消息), in relation to a corporation, means specific information about---

(a) the corporation;

(b) a shareholder or officer of the corporation; or

(c) the listed securities of the corporation or their derivatives,

which is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but which would if it were generally known to them be likely to materially affect the price of the listed securities;

"securities" (證券) means---

(a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, or which it is reasonably foreseeable will be issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;

(b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(d) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;

(e) interests, rights or property, whether in the form of an instrument or otherwise, prescribed by notice under section 379 as being regarded as securities in accordance with the terms of the notice.

(3) For the purposes of the definition of "controller" in subsection (1), where a person is entitled to exercise or control the exercise of more than 33% of the voting power at general meetings of a corporation and the corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation ("the effective voting power"), then the effective voting power at general meetings of the other corporation shall be regarded as exercisable by the person.

(4) For the purposes of this Part, a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act by reason only that the directors of the corporation act on advice given by him in a professional capacity.

238. Interest in securities (insider dealing)

For the purposes of sections 237(2) and 239 to 241 and Division 4, a reference to an interest in securities shall be construed as including an interest of any kind in the securities, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.

239. Connected with a corporation (insider dealing)

(1) For the purposes of Division 4, a person shall be regarded as connected with a corporation if, being an individual---

(a) he is a director or employee of the corporation or a related corporation of the corporation;

(b) he is a substantial shareholder of the corporation or a related corporation of the corporation;

(c) he occupies a position which may reasonably be expected to give him access to relevant information in relation to the corporation by reason of---

(i) a professional or business relationship existing between---

(A) himself, or his employer, or a corporation of which he is a director, or a firm of which he is a partner; and

(B) the corporation, a related corporation of the corporation, or an officer or substantial shareholder of either corporation; or

(ii) his being a director, employee or partner of a substantial shareholder of the corporation or a related corporation of the corporation;

(d) he has access to relevant information in relation to the corporation and---

(i) he has such access by reason of his being in such a position that he would be regarded as connected with another corporation by virtue of paragraph (a), (b) or (c); and

(ii) the relevant information relates to a transaction (actual or contemplated) involving both those corporations or involving one of them and the

listed securities of the other or their derivatives, or to the fact that the transaction is no longer contemplated; or

(e) he was, at any time within the 6 months preceding any insider dealing in relation to the corporation, a person who would be regarded as connected with the corporation by virtue of paragraph (a), (b), (c) or (d).

(2) For the purposes of Division 4, a corporation shall be regarded as a person connected with another corporation so long as any of its directors or employees is a person who would be regarded as connected with that other corporation by virtue of subsection (1).

(3) In subsection (1), notwithstanding any other provisions of this Ordinance, "substantial shareholder" (大股東), in relation to a corporation, means a person who has an interest of any kind in the relevant share capital of the corporation, the nominal value of which is equal to or more than 5% of the nominal value of the relevant share capital of the corporation.

240. Connected with a corporation---possession of relevant information obtained in privileged capacity (insider dealing)

(1) For the purposes of Division 4, where a public officer or a specified person in that capacity receives relevant information in relation to a corporation, he shall be regarded as a person connected with the corporation.

(2) In subsection (1), a reference to a specified person means a person who is---

(a) a member of the Executive Council;

(b) a member of the Legislative Council;

(c) a member of a board, commission, committee or other body appointed by or on behalf of the Chief Executive or the Chief Executive in Council under an Ordinance;

(d) an officer or employee of a recognized exchange company, a recognized clearing house or a recognized exchange controller;

(e) an exchange participant;

(f) an officer or employee of an exchange participant;

(g) an officer or employee of a body corporate incorporated by an Ordinance; or

(h) an officer or employee of a body corporate specified by the Financial Secretary under subsection (3),

whether, in the case of paragraph (a), (b), (c), (d), (f), (g) or (h), the person is such a member, officer or employee (as the case may be) on a temporary or permanent basis, and whether he is paid or unpaid.

(3) The Financial Secretary may, by notice published in the Gazette, specify any body corporate for the purposes of subsection (2)(h).

241. Dealing in listed securities or their derivatives (insider dealing)

For the purposes of section 237(2) and Division 4, a person shall be regarded

as dealing in listed securities or their derivatives if, whether as principal or agent, he sells, purchases, exchanges or subscribes for, or agrees to sell, purchase, exchange or subscribe for, any listed securities or their derivatives or acquires or disposes of, or agrees to acquire or dispose of, the right to sell, purchase, exchange or subscribe for, any listed securities or their derivatives.

242. Interest in securities and beneficial ownership, etc. (market misconduct other than insider dealing)

(1) For the purposes of Division 5, a person shall be regarded as having an interest in securities if he has authority, whether formal or informal and whether express or implied, to dispose of or to exercise control over the disposal of the securities or, in the case of options in respect of the securities, to exercise the options.

(2) It is immaterial that the authority of a person referred to in subsection (1)---

(a) is, or is capable of being made, subject to restraint or restriction; or

(b) is exercisable jointly with another person.

(3) A person shall be regarded as having the authority referred to in subsection (1) where a corporation has the authority referred to in that subsection and---

(a) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions or instructions of the person in relation to the securities in question; or

(b) the person, or an associate of the person, is a controller of the corporation.

(4) Where a person---

(a) has entered into a contract to purchase securities;

(b) has a right to have securities transferred to him or to his order whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

(c) has the right to acquire securities, or an interest in securities, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not,

the person shall, to the extent to which he could do so on completing the contract, enforcing the right or exercising the option, be regarded as having the authority referred to in subsection (1).

(5) Where securities are subject to a trust, and a person who is not a trustee in those securities has an interest in those securities by virtue of subsection (4)(b), the interest of a trustee in those securities shall be disregarded for the purpose of determining whether the person has an interest in securities for the purposes of Division 5.



(6) The Commission may make rules to prescribe that an interest, being an interest of a person or of the persons included in a class of persons, shall be disregarded for the purpose of determining whether the person or the persons has or have an interest in securities for the purposes of Division 5.

(7) For the purposes of Division 5, a sale or purchase of securities does not involve a change in their beneficial ownership if a person who had an interest in the securities before the sale or purchase, or an associate of the person, has an interest in the securities after the sale or purchase.

#### Division 2---Market Misconduct Tribunal

##### 243. Market Misconduct Tribunal

(1) There is established a Tribunal to be known as the Market Misconduct Tribunal which shall have jurisdiction to hear and determine in accordance with this Part and Schedule 8 any question or issue arising out of or in connection with the proceedings instituted under section 244.

(2) Subject as otherwise provided in this Part or in Schedule 8, the Tribunal---

- (a) shall consist of a chairman and 2 other members; and
- (b) shall be presided over by the chairman who shall sit with the 2 other members.

(3) The chairman of the Tribunal shall be a judge and the other 2 members of the Tribunal shall not be public officers.

(4) The Secretary for Justice shall, in respect of any proceedings instituted under section 244, appoint a person as the Presenting Officer to conduct the proceedings, and may appoint one or more persons to assist the Presenting Officer.

(5) A Presenting Officer shall be a legal officer, a counsel or a solicitor.

(6) Schedule 8 shall have effect in relation to the appointment of members and temporary members of the Tribunal, the appointment and the role of Presenting Officers and of persons appointed to assist Presenting Officers, and to the proceedings and sittings of, and procedural and other matters concerning, the Tribunal.

(7) The Tribunal may, where the Chief Executive considers appropriate, be divided into 2 or more divisions, whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each division of the Tribunal as they apply to the Tribunal.

(8) There may be paid to---

- (a) a member of the Tribunal (other than the chairman of the Tribunal who is a judge within the meaning of paragraph (a) of the definition of "judge" in section 237(1));
- (b) a Presenting Officer (other than a Presenting Officer who is a legal officer);
- (c) any person appointed to assist a Presenting Officer (other than any such person who is a legal officer or a public officer),

such amount, as a fee for his services, as the Financial Secretary considers appropriate, and that amount shall be a charge on the general revenue.

(9) Where a person who is a judge within the meaning of paragraph (a) of the definition of "judge" in section 237(1) is appointed as the chairman of the Tribunal, neither the appointment nor the service or removal of the person as the chairman affects---

(a) the tenure of office of, and the exercise of powers by, the person as a judge within the meaning of that paragraph;

(b) the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office;

(c) the terms and conditions to which the person is subject as a holder of that office.

#### 244. Market misconduct proceedings

(1) If it appears to the Financial Secretary, whether or not following any report by the Commission under subsection (8) or by the Secretary for Justice under subsection (9), that market misconduct has or may have taken place, he may institute proceedings before the Tribunal concerning the matter.

(2) The Financial Secretary shall institute proceedings before the Tribunal by giving to the chairman of the Tribunal a notice in writing which shall contain a written statement specifying such matters as are prescribed in Schedule 8.

(3) Without limiting the generality of section 243(1), the object of the proceedings instituted under subsection (1) is for the Tribunal to determine---

(a) whether any market misconduct has taken place;

(b) the identity of any person who has engaged in the market misconduct; and

(c) the amount of any profit secured or increased or loss avoided or reduced as a result of the market misconduct.

(4) Subject to subsections (5) and (6), the Tribunal may identify a person as having engaged in market misconduct pursuant to subsection (3)(b) if---

(a) he has perpetrated any conduct which constitutes the market misconduct;

(b) notwithstanding that he has not perpetrated any conduct which constitutes the market misconduct---

(i) the Tribunal identifies another person which is a corporation as having engaged in market misconduct pursuant to subsection (3)(b); and

(ii) the market misconduct was directly or indirectly attributable to, or occurred with the consent or connivance of, him as an officer of the corporation; or

(c) notwithstanding that he has not perpetrated any conduct which constitutes the market misconduct---

(i) the Tribunal identifies any other person as having engaged in market

misconduct pursuant to subsection (3)(b); and

(ii) he assisted or connived with that other person in the perpetration of any conduct which constitutes the market misconduct, with the knowledge that such conduct constitutes or might constitute market misconduct.

(5) The Tribunal shall not identify a person as having engaged in market misconduct pursuant to subsection (3)(b) if it is provided under any provision of this Part that the person shall not by reason of that market misconduct be regarded as having engaged in market misconduct.

(6) The Tribunal shall not identify a person as having engaged in market misconduct pursuant to subsection (3)(b) without first giving the person a reasonable opportunity of being heard.

(7) Subject to section 253(3), the standard of proof required to determine any question or issue before the Tribunal shall be that applicable to civil proceedings in a court of law.

(8) The Commission may report to the Financial Secretary the occurrence of any event which the Commission reasonably believes or suspects constitutes market misconduct.

(9) The Secretary for Justice may report to the Financial Secretary the occurrence of any event which the Secretary for Justice reasonably believes or suspects constitutes market misconduct.

(10) Nothing in subsection (1) prevents the Financial Secretary from referring any matter to the Secretary for Justice, if it appears to the Financial Secretary, whether or not following any report by the Commission under subsection (8) or by the Secretary for Justice under subsection (9), that an offence under Part XIV has or may have been committed.

#### 245. Powers of Tribunal

(1) Subject to the provisions of Schedule 8 and any rules made by the Chief Justice under section 260, the Tribunal, for the purposes of any proceedings instituted under section 244, may, on its own motion or on the application of any party before it---

(a) receive and consider any material by way of oral evidence, written statements, documents or otherwise, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law;

(b) by notice in writing signed by the chairman of the Tribunal require a person to attend before it at any sitting relating to the proceedings and to give evidence and produce any article, record or document in his possession relating to the subject matter of the proceedings;

(c) administer oaths and affirmations;

(d) examine or cause to be examined on oath, affirmation or otherwise a person

attending before it and require the person to answer truthfully any question which the Tribunal considers appropriate for the purposes of the proceedings;

(e) order a witness to provide evidence in a truthful manner for the purposes of the proceedings by affidavit or affirmation;

(f) order a person not to publish or otherwise disclose any material the Tribunal receives;

(g) prohibit the publication or disclosure of any material the Tribunal receives at a sitting, or part of a sitting, which is held in private;

(h) determine the manner in which any material referred to in paragraph (a) is received;

(i) stay any of the proceedings on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice;

(j) determine the procedure to be followed in connection with the proceedings;

(k) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the proceedings or the carrying out of its functions.

(2) A person commits an offence if he, without reasonable excuse---

(a) refuses or fails to comply with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1);

(b) disrupts or otherwise misbehaves during any sitting of the Tribunal;

(c) having been required by the Tribunal under subsection (1) to attend before the Tribunal, leaves the place where his attendance is so required without the permission of the Tribunal;

(d) hinders or deters any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purposes of any proceedings instituted under section 244;

(e) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal, on account of such attendance; or

(f) threatens, insults or causes any loss to be suffered by any member of the Tribunal, any Presenting Officer or any person assisting a Presenting Officer at any time on account of the performance of his functions in that capacity.

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

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

246. Further powers of Tribunal concerning evidence

(1) For the purposes of any proceedings instituted under section 244, the Tribunal may, on its own motion or on the application of the Presenting Officer appointed for the proceedings, authorize the Commission in writing to exercise any

of the powers specified in subsection (2) and to provide the Tribunal with any of the records, documents and information obtained as a result of the exercise of the powers.

(2) The powers specified for the purposes of subsection (1) are the powers--

-

- (a) to inspect any record or document of any person where there are reasonable grounds to believe or suspect that the record or document may contain information relevant to the proceedings;
- (b) to make copies or otherwise record details of any record or document referred to in paragraph (a) and, subject to subsection (3), to take possession of the record or document for the period (not exceeding 2 days) necessary to do so;
- (c) to require any person to give, within a specified time, any explanation or particulars in respect of any record or document referred to in paragraph (a) (including, in so far as applicable, a description of the circumstances under which it was prepared or created, details of all instructions given or received in connection with it, and an explanation of the reasons for the making of entries contained in it or the omission of entries from it);
- (d) to require any person to give, within a specified time, information as to whether or not there is at any premises any record or document which may contain information relevant to the proceedings, and particulars as to the premises or the record or document;
- (e) to require that any information, explanation or particulars given pursuant to this section be verified by statutory declaration and to take the declaration;
- (f) to take a statement from a person whom the Tribunal has reasonable grounds to believe or suspect is able to provide information which is relevant for the purposes of the proceedings.

(3) The Commission shall, subject to any reasonable conditions it imposes as to security or otherwise, permit a person who would be entitled to inspect any record or document had the Commission not taken possession of it under subsection (2)(b), to inspect it and to make copies or otherwise record details of it at all reasonable times.

(4) A person shall produce a record or document in his possession to the Commission if the Commission seeks to inspect it, or exercise any other powers in respect of it, under this section.

(5) A person who is required under this section to give or provide any information, explanation or particulars shall comply with the requirement so far as it lies within his power to do so and shall, if requested, verify the information, explanation or particulars (as the case may be) by statutory declaration.

(6) A person commits an offence if---

(a) he, without reasonable excuse, contravenes subsection (4) or (5);

(b) he---

(i) in purported compliance with subsection (4) or (5), makes any statement which is false or misleading in a material particular; and

(ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular;

(c) he obstructs the Commission in the exercise of any of its powers under this section; or

(d) he, with intent to conceal, from the Tribunal, facts or matters capable of being disclosed by any record or document which is relevant to any proceedings instituted under section 244, destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, such record or document.

(7) A person who commits an offence under subsection (6) is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

247. Use of evidence received for purposes of market misconduct proceedings

(1) Notwithstanding any other provisions of this Ordinance, evidence given by any person at or for the purposes of any proceedings instituted under section 244 (including any material, record or document received by the Tribunal from the person or produced to the Tribunal by the person under section 245, and any record or document or information given, provided, produced or disclosed to the Tribunal by the person under section 246) is admissible in evidence for all the purposes of this Part (including any proceedings (civil or criminal) instituted under or pursuant to this Part) but, subject to subsections (2) and (3), is not admissible in evidence against that person in any other proceedings (civil or criminal) in a court of law brought by or against him.

(2) The evidence given by any person at or for the purposes of any proceedings instituted under section 244 as referred to in subsection (1) is admissible in evidence against that person in---

(a) civil proceedings in a court of law arising out of the giving of evidence at or for the purposes of the proceedings instituted under section 244;

(b) criminal proceedings where the person is charged with an offence under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of answers given by that person to questions put to him at or for the purposes of the proceedings instituted under section 244.

(3) The evidence given by any person at or for the purposes of any proceedings instituted under section 244 as referred to in subsection (1) is admissible in evidence against that person in any other proceedings (civil or criminal) in a court of law where, had there been no such proceedings instituted under section 244, the same evidence would have been admissible in evidence in such other proceedings under the law or procedures applicable to such other proceedings in that court.

#### 248. Privileged information

Nothing in this Part and Schedule 8 requires an authorized financial institution, acting as the banker or financial adviser of a person whose conduct is the subject, whether wholly or in part, of any proceedings instituted under section 244, to disclose information as to the affairs of any of its customers other than that person.

#### 249. Orders, etc. of Tribunal

(1) The Tribunal may at the conclusion of any proceedings instituted under section 244 make one, or more than one, of the following orders in respect of a person identified as having engaged in market misconduct pursuant to section 244(3)(b)-

--

(a) an order that the person shall not, without the leave of the Court of First Instance, be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation or in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation for the period (not exceeding 5 years) specified in the order;

(b) an order that the person shall not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme for the period (not exceeding 5 years) specified in the order;

(c) an order that the person shall not again perpetrate any conduct which constitutes such market misconduct as is specified in the order (whether the same as the market misconduct in question or not);

(d) an order that the person pay to the Government an amount not exceeding the amount of any profit secured or increased or loss avoided or reduced by the person as a result of the market misconduct in question;

(e) without prejudice to any power of the Tribunal under section 252, an order that the person pay to the Government the sum the Tribunal considers appropriate for the expenses incurred by the Government, whether in relation or incidental to the proceedings or in relation or incidental to any investigation of his conduct or

affairs carried out for the purposes of the proceedings;

(f) without prejudice to any power of the Tribunal under section 252, an order that the person pay to the Commission the sum the Tribunal considers appropriate for the expenses incurred by

the Commission, whether in relation or incidental to any investigation of his conduct or affairs carried out before the matter was referred to the Tribunal by the Financial Secretary or in relation or incidental to the proceedings;

(g) an order that any body which may take disciplinary action against the person as one of its members be recommended to take disciplinary action against him.

(2) When making any order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which---

(a) previously resulted in the person being convicted of an offence in Hong Kong;

(b) previously resulted in the person being identified by the Tribunal as having engaged in any market misconduct pursuant to section 244(3)(b); or

(c) at any time before the commencement of this Part resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.

(3) The Tribunal shall not make an order in respect of a person under subsection (1) without first giving the person a reasonable opportunity of being heard.

(4) Where the Tribunal makes an order under subsection (1)(a), the Tribunal may specify a corporation by name or by reference to a relationship with any other corporation.

(5) The Tribunal may, in relation to any person, specify any market misconduct in an order under subsection (1)(c), whether or not there is, at the time when the order is made, likelihood that the person would perpetrate any conduct which constitutes the market misconduct.

(6) The Tribunal shall by notice in writing notify a person of an order made in respect of him under subsection (1).

(7) An order made in respect of a person under subsection (1) takes effect at the time when it is notified to the person or at the time specified in the notice, whichever is the later.

(8) Where the Tribunal makes an order under subsection (1)(b), the Commission may notify any licensed or exempt person of the order in such manner as it considers appropriate.

(9) A person commits an offence if he refuses or fails to comply with an order made under subsection (1)(a), (b) or (c) and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2



years; or

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

250. Further orders in respect of officers of corporation

(1) Where a corporation has been identified as having engaged in market misconduct pursuant to section 244(3)(b) and the market misconduct is directly or indirectly attributable to a breach by any person as an officer of the corporation of the duty imposed on him by section 270, the Tribunal may make one, or more than one, of the orders referred to in section 249(1)(a) to (g) in respect of the person even if the person has not been identified as having engaged in market misconduct pursuant to section 244(3)(b).

(2) When making any order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which---

(a) previously resulted in the person being convicted of an offence in Hong Kong;

(b) previously resulted in the person being identified by the Tribunal as having engaged in any market misconduct pursuant to section 244(3)(b); or

(c) at any time before the commencement of this Part resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.

(3) The Tribunal shall not make an order in respect of a person under subsection (1) without first giving the person a reasonable opportunity of being heard.

(4) Where the Tribunal makes under subsection (1) an order referred to in section 249(1)(a), the Tribunal may specify a corporation by name or by reference to a relationship with any other corporation.

(5) Where the Tribunal, in relation to any person, makes under subsection (1) an order referred to in section 249(1)(c), the Tribunal may specify any market misconduct in the order, whether or not there is, at the time when the order is made, likelihood that the person would perpetrate any conduct which constitutes the market misconduct.

(6) The Tribunal shall by notice in writing notify a person of an order made in respect of him under subsection (1).

(7) An order made in respect of a person under subsection (1) takes effect at the time when it is notified to the person or at the time specified in the notice, whichever is the later.

(8) Where the Tribunal makes under subsection (1) an order referred to in section 249(1)(b), the Commission may notify any licensed or exempt person of the order in such manner as it considers appropriate.

(9) Where an order referred to in section 249(1)(a), (b) or (c) is made in respect

of a person under subsection (1), the person commits an offence if he refuses or fails to comply with the order and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

251. Interest on moneys payable under section 249 or 250

Where the Tribunal makes an order under section 249 or 250 requiring the payment of money by a person, the payment shall carry compound interest calculated from--

(a) where the payment is required under an order referred to in section 249(1)(e) or (f), whether made under section 249(1) or 250(1), the date of the order; or

(b) in any other case, the date of occurrence of the market misconduct in question, at the rate from time to time applicable to judgment debts under section 49 of the High Court Ordinance (Cap. 4) and with such rests and in such manner as the Tribunal considers appropriate.

252. Costs

(1) Subject to subsection (5), at the conclusion of any proceedings instituted under section 244 or as soon as reasonably practicable after the conclusion of the proceedings, the Tribunal may by order award to---

(a) any person whose attendance, whether as a witness or otherwise, has been necessary or required for the purposes of the proceedings;

(b) any person whose conduct is the subject, whether wholly or in part, of the proceedings,

such sum as it considers appropriate in respect of the costs reasonably incurred by the person in relation to the proceedings.

(2) Any costs awarded under this section are a charge on the general revenue.

(3) Subject to any rules made by the Chief Justice under section 260, Order 62 of the Rules of the High Court (Cap. 4 sub. leg.) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under this section.

(4) The Tribunal may order that any costs awarded under this section shall be taxed on the basis of one of the scales of costs in the Schedules to Order 62 of the Rules of the High Court (Cap. 4 sub. leg.).

(5) Subsection (1)(a) and (b) does not apply to---

(a) a person who has by virtue of section 244(4)(a), (b) or (c) been identified as having engaged in market misconduct pursuant to section 244(3)(b);

(b) a person whose conduct the Tribunal considers has caused, whether wholly or in part, the Tribunal to investigate or consider his conduct during the course of the proceedings in question;

(c) a person whom the Tribunal considers has by his conduct caused, whether wholly or in part, the institution of the proceedings.

#### 253. Contempt dealt with by Tribunal

(1) The Tribunal shall have the same powers as the Court of First Instance to punish for contempt.

(2) Without limiting the generality of the powers of the Tribunal under subsection (1), the Tribunal shall have the same powers as the Court of First Instance to punish for contempt, as if it were contempt of court, a person who---

(a) without reasonable excuse, commits any conduct falling within the description of section 245(2)(a), (b), (c), (d), (e) or (f);

(b) commits any conduct falling within the description of section 246(6)(a), (b), (c) or (d); or

(c) refuses or fails to comply with an order of the Tribunal referred to in section 249(9) or 250(9).

(3) The Tribunal shall, in the exercise of its powers to punish for contempt under this section, adopt the same standard of proof as the Court of First Instance in the exercise of the same powers to punish for contempt.

(4) Notwithstanding anything in this section and any other provisions of this Ordinance---

(a) no proceedings may be instituted against any person under this section in respect of any conduct if---

(i) criminal proceedings have previously been instituted against the person under section 245(2), 246(6), 249(9) or 250(9) in respect of the same conduct; and

(ii) (A) those criminal proceedings remain pending; or  
(B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under such section in respect of the same conduct;

(b) no criminal proceedings may be instituted against any person under section 245(2), 246(6), 249(9) or 250(9) in respect of any conduct if---

(i) proceedings have previously been instituted against the person under this section in respect of the same conduct; and

(ii) (A) those proceedings remain pending; or  
(B) by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person under this section in respect of the same conduct.

#### 254. Report of Tribunal

(1) The Tribunal shall, after the conduct of any proceedings instituted under section 244, prepare a written report in respect of the proceedings, which shall

contain---

- (a) any of its determinations made pursuant to section 244(3) and any order made under sections 249 and 250, and the reasons for making such determinations and order; and
- (b) any order made under section 252, and the reasons for making such order.

(2) The Tribunal shall issue the report prepared under subsection (1)---

- (a) first, by giving a copy of the report to the Financial Secretary; and
- (b) then, except where the Tribunal sat in private for the whole or any part of its proceedings, by---

(i) publishing the report so that copies of the report are available to the public;

(ii) giving a copy of the report, so far as reasonably practicable, to any person whose conduct was directly in question in the proceedings;

(iii) giving a copy of the report to the Secretary for Justice;

(iv) giving a copy of the report to the Commission; and

(v) where the Tribunal considers appropriate, giving a copy of the report to any body which may take disciplinary action against the person identified as having engaged in market misconduct pursuant to section 244(3)(b), as one of its members.

(3) Where the Tribunal sat in private for the whole or any part of its proceedings, the Financial Secretary may, where he is of the opinion that it is in the public interest to do so, cause the whole or any part of the report to be made available to the public or to a particular person or body in the manner he directs.

(4) A person is not liable to civil or criminal proceedings for publishing a true and accurate account or a fair and accurate summary of a report of the Tribunal issued or made available under subsection (2)(b) or (3).

#### 255. Form and proof of orders of Tribunal

(1) An order made by the Tribunal shall be recorded in writing and signed by the chairman of the Tribunal when the order is made.

(2) A document purporting to be an order of the Tribunal and to be signed by the chairman of the Tribunal shall, in the absence of proof to the contrary, be regarded as an order of the Tribunal duly made, without proof of its making, or proof of signature, or proof that the person signing the order was in fact the chairman.

#### 256. Orders of Tribunal may be registered in Court of First Instance

(1) The Court of First Instance may, on notice in writing given by the Tribunal in the manner prescribed by rules made by the Chief Justice under section 260, register an order of the Tribunal in the Court of First Instance and the order shall, on registration, become for all purposes an order of the Court of First Instance made within the jurisdiction of the Court of First Instance.

(2) Where an order is made under section 249(1)(a), or an order referred to in

section 249(1)(a) is made under section 250(1), the order shall be filed by the Tribunal with the Registrar of Companies, as soon as reasonably practicable after it is made.

Division 3---Appeals, etc.

257. Appeal to Court of Appeal

(1) Where, after the Tribunal has made any finding or determination for the purposes of any proceedings instituted under section 244, the Secretary for Justice, or a person identified as having engaged in market misconduct pursuant to section 244(3)(b), is dissatisfied with the finding or determination, the Secretary for Justice or the person (as the case may be) may appeal to the Court of Appeal against the finding or determination---

(a) on a point of law; or

(b) with the leave of the Court of Appeal, on a question of fact.

(2) A person in respect of whom an order has been made under section 249, 250 or 252 may appeal to the Court of Appeal against the order.

258. Powers of Court of Appeal on appeal

(1) In an appeal under section 257(1), the Court of Appeal may---

(a) allow the appeal;

(b) dismiss the appeal;

(c) remit the matter in question to the Tribunal with the directions it considers appropriate, which may include a direction to the Tribunal to conduct the proceedings in question afresh for the purpose of determining any question specified by the Court of Appeal.

(2) In an appeal under section 257(2), the Court of Appeal may---

(a) confirm, vary or set aside the order appealed against;

(b) substitute another order it considers appropriate, whether more or less onerous, being an order that the Tribunal had power to make in respect of the appellant.

(3) In an appeal under section 257, the Court of Appeal may make such order as to costs as it considers appropriate.

259. No stay of execution on appeal

Neither the lodging of an appeal nor the filing of an application for leave to appeal under section 257 operates as a stay of execution of a finding or determination or an order (as the case may be) of the Tribunal unless the Court of Appeal otherwise orders, and any stay of execution may be subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal considers appropriate.

260. Rules by Chief Justice

The Chief Justice may make rules---

- (a) providing for the award of costs under section 252 and the taxation of those costs;
- (b) prescribing the manner in which the Tribunal is to give notice to the Court of First Instance in respect of orders of the Tribunal pursuant to section 256;
- (c) regulating the procedure for---

- (i) applying for leave to appeal, and the hearing of applications for leave to appeal, under section 257;

- (ii) the hearing of appeals under that section;

- (d) requiring the payment of the fees specified in the rules for any matter relating to the proceedings instituted under section 244;

- (e) providing for matters of procedure or other matters relating to the proceedings instituted under section 244, which are not provided for in this Part or in Schedule 8;

- (f) prescribing any matter which this Part provides is, or may be, prescribed by rules made by the Chief Justice.

#### Division 4---Insider dealing

##### 261. Insider dealing

- (1) Insider dealing in relation to a listed corporation takes place---

- (a) when a person connected with the corporation and having information which he knows is relevant information in relation to the corporation---

- (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

- (ii) counsels or procures another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them;

- (b) when a person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for the corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation---

- (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, otherwise than for the purpose of the take-over; or

- (ii) counsels or procures another person to deal in such listed securities or derivatives, otherwise than for the purpose of the take-over;

- (c) when a person connected with the corporation and knowing that any information is relevant information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of

dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives;

(d) when a person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for the corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives;

(e) when a person who has information which he knows is relevant information in relation to the corporation and which he received, directly or indirectly, from a person whom he knows is connected with the corporation and whom he knows or has reasonable cause to believe held the information as a result of being connected with the corporation---

(i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

(ii) counsels or procures another person to deal in such listed securities or derivatives; or

(f) when a person having received, directly or indirectly, from a person whom he knows or has reasonable cause to believe is contemplating or is no longer contemplating making a take-over offer for the corporation, information to that effect which he knows is relevant information in relation to the corporation---

(i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

(ii) counsels or procures another person to deal in such listed securities or derivatives.

(2) Insider dealing in relation to a listed corporation also takes place when a person who knowingly has relevant information in relation to the corporation in any of the circumstances described in subsection (1)---

(a) counsels or procures another person to deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, knowing or having reasonable cause to believe that the other person will deal in such listed securities or derivatives outside Hong

Kong on a stock market other than a recognized stock market; or

(b) discloses the relevant information to another person knowing or having reasonable cause to believe that the other person or some other person will make use of the relevant information for the purpose of dealing, or of counselling or procuring any other person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, outside Hong Kong on a stock market other than a recognized stock market.

262. Insider dealing---certain persons not to be regarded as having engaged in market misconduct

(1) A person who enters into a transaction which is an insider dealing shall not by reason of the insider dealing be regarded as having engaged in market misconduct if he establishes that he entered into the transaction---

(a) for the sole purpose of acquiring shares required for his being qualified as a director or intending director of a corporation;

(b) in the performance in good faith of an underwriting agreement for the securities to which the transaction relates; or

(c) in the performance in good faith of his functions as a liquidator, receiver or trustee in bankruptcy.

(2) A corporation which enters into a transaction which is an insider dealing shall not by reason of the insider dealing be regarded as having engaged in market misconduct if it establishes that---

(a) although one or more of its directors or employees had the relevant information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the subject of the insider dealing, each person who took the decision to enter into the transaction for it did not have the relevant information up to (and including) the time when it entered into the transaction;

(b) arrangements then existed to secure that---

(i) the relevant information was, up to (and including) the time when it entered into the transaction, not communicated to any person who took the decision; and

(ii) none of its directors or employees who had the relevant information gave advice concerning the transaction to any person who took the decision at any time before it entered into the transaction; and

(c) the relevant information was in fact not so communicated to any person who took the decision and none of its directors or employees who had the relevant information in fact so gave the advice to any person who took the decision.

(3) A person who enters into a transaction which is an insider dealing shall not by reason of the insider dealing be regarded as having engaged in market misconduct if he establishes that the purpose for which he entered into the transaction was not,



or, where there was more than one purpose, the purposes for which he entered into the transaction did not include, the purpose of securing or increasing a profit or avoiding or reducing a loss, whether for himself or another, by using relevant information.

(4) A person who enters into a transaction which is an insider dealing shall not by reason of the insider dealing be regarded as having engaged in market misconduct if he establishes that---

- (a) he entered into the transaction as agent for another person;
- (b) he did not select or advise on the selection of the listed securities or their derivatives to which the transaction relates;
- (c) he had no knowledge or reasonable cause to suspect that the other person had the relevant information in question; and
- (d) he did not counsel or procure the other person in relation to the transaction.

(5) A person who enters into a transaction which is an insider dealing shall not by reason of the insider dealing be regarded as having engaged in market misconduct if he establishes that---

- (a) he and the other party to the transaction entered into the transaction directly with each other; and

- (b) at the time he entered into the transaction---

- (i) the other party to the transaction knew, or ought reasonably to have known, of the relevant information in question; and

- (ii) the transaction was not required to be recorded on a recognized stock market or to be notified to a recognized stock market under the rules of the recognized exchange company by which the recognized stock market is operated.

(6) A person who enters into a transaction which is an insider dealing shall not by reason of the insider dealing be regarded as having engaged in market misconduct if he establishes that---

- (a) he entered into the transaction, otherwise than as a person who has counselled or procured the other party to the transaction to deal in listed securities or their derivatives; and

- (b) at the time he entered into the transaction, the other party to the transaction knew, or ought reasonably to have known, that he was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the subject of the insider dealing.

(7) A person who enters into a transaction which is an insider dealing, as a person who has counselled or procured another person to deal in listed securities of a corporation or their derivatives, shall not by reason of the insider dealing be regarded as having engaged in market misconduct if he establishes that---

- (a) the other person entered into the transaction, otherwise than as a person who has counselled or procured the other party to the transaction to deal in listed securities or their derivatives; and
- (b) at the time the other person entered into the transaction, the other party to the transaction knew, or ought reasonably to have known, that the other person was a person connected with the corporation.

(8) A person who enters into a transaction which is an insider dealing shall not by reason of the insider dealing be regarded as having engaged in market misconduct if he establishes that the transaction is a market contract.

263. Insider dealing---certain trustees and personal representatives not to be regarded as having engaged in market misconduct

A person who, as trustee or personal representative, enters into a transaction which is an insider dealing shall not by reason of the insider dealing be regarded as having engaged in market misconduct if he establishes that he acted on advice obtained in good faith from another person, and---

- (a) that other person appeared to him to be an appropriate person from whom to seek the advice; and
- (b) it did not appear to him that, had that other person entered into the transaction, that other person would be entering into a transaction which would be an insider dealing.

264. Insider dealing---certain persons exercising right to subscribe for or acquire securities or derivatives not to be regarded as having engaged in market misconduct

A person who enters into a transaction which is an insider dealing through his exercise of a right to subscribe for or otherwise acquire the listed securities of a corporation or their derivatives shall not by reason of the insider dealing be regarded as having engaged in market misconduct if he establishes that the right was granted to him or was derived from securities or their derivatives that were held by him before he became aware of any relevant information in relation to the corporation.

Division 5---Other market misconduct

265. False trading

(1) False trading takes place when, in Hong Kong or elsewhere, a person intentionally or recklessly---

- (a) creates;
- (b) causes to be created; or
- (c) does anything that is likely to create,  
a false or misleading appearance---

(i) of active trading in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services; or

(ii) with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.

(2) False trading takes place when, in Hong Kong, a person intentionally or recklessly---

(a) creates;

(b) causes to be created; or

(c) does anything that is likely to create, a false or misleading appearance---

(i) of active trading in securities or futures contracts traded on a relevant overseas market; or

(ii) with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant overseas market.

(3) False trading takes place when, in Hong Kong or elsewhere, a person takes part in, is concerned in, or carries out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price, or maintaining at a level that is artificial (whether or not it was previously artificial) a price, for dealings in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.

(4) False trading takes place when, in Hong Kong, a person takes part in, is concerned in, or carries out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price, or maintaining at a level that is artificial (whether or not it was previously artificial) a price, for dealings in securities or futures contracts traded on a relevant overseas market.

(5) Without limiting the general nature of the conduct which constitutes false trading under subsection (1) or (2), a person who---

(a) enters into or carries out, directly or indirectly, any transaction of sale or purchase, or any transaction which purports to be a transaction of sale or purchase, of securities that does not involve a change in the beneficial ownership of them;

(b) offers to sell securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made

or proposes to make, an offer to purchase the same or substantially the same, number of them; or

(c) offers to purchase securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to sell the same or substantially the same, number of them,

shall, for the purposes of subsection (1) or (2), be regarded as having intentionally or recklessly created, caused to be created, or done something that is likely to create, a false or misleading appearance---

(i) where the securities are traded on a relevant recognized market or by means of authorized automated trading services, of active trading in securities so traded or with respect to the market for, or the price for dealings in, securities so traded; or

(ii) where the securities are traded on a relevant overseas market, of active trading in securities so traded or with respect to the market for, or the price for dealings in, securities so traded.

(6) A person shall not be regarded as having engaged in market misconduct by reason of false trading taking place through the commission of an act referred to in subsection (5)(a), (b) or (c) if he establishes that the purpose for which he committed the act was not, or, where there was more than one purpose, the purposes for which he committed the act did not include, the purpose of creating a false or misleading appearance of active trading in securities, or with respect to the market for, or the price for dealings in, securities, referred to in subsection (1) or (2) (as the case may be).

(7) In this section---

(a) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or purchase securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or purchase securities; and

(b) a reference to entering into or carrying out a transaction of sale or purchase shall, in the case of an offer or an invitation referred to in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

266. Price rigging

(1) Price rigging takes place when, in Hong Kong or elsewhere, a person---

(a) enters into or carries out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a relevant

recognized market or by means of authorized automated trading services; or  
(b) enters into or carries out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by means of authorized automated trading services.

(2) Price rigging takes place when, in Hong Kong, a person---

(a) enters into or carries out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a relevant overseas market; or

(b) enters into or carries out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities, or the price for dealings in futures contracts, that are traded on a relevant overseas market.

(3) For the purposes of subsections (1)(b) and (2)(b), the fact that a transaction is, or at any time was, intended to have effect according to its terms is not conclusive in determining whether the transaction is, or was, not fictitious or artificial.

(4) A person shall not be regarded as having engaged in market misconduct by reason of price rigging taking place through any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities if he establishes that the purpose for which the securities were sold or purchased was not, or, where there was more than one purpose, the purposes for which the securities were sold or purchased did not include, the purpose of creating a false or misleading appearance with respect to the price of securities.

(5) In this section---

(a) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or purchase securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or purchase securities; and

(b) a reference to entering into or carrying out a transaction of sale or purchase shall, in the case of an offer or an invitation referred to in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

267. Disclosure of information about prohibited transactions

(1) Disclosure of information about prohibited transactions takes place when a

person discloses, circulates or disseminates, or authorizes or is concerned in the disclosure, circulation or dissemination of, information to the effect that the price of securities of a corporation, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by means of authorized automated trading services will be maintained, increased, reduced or stabilized, or is likely to be maintained, increased, reduced or stabilized, because of a prohibited transaction relating to securities of either the corporation or a related corporation of the corporation or to the futures contracts (as the case may be), if he, or an associate of his---

(a) has entered into or carried out, directly or indirectly, the prohibited transaction; or

(b) has received, or expects to receive, directly or indirectly, a benefit as a result of the disclosure, circulation or dissemination of the information.

(2) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of information about prohibited transactions on the basis that he, or an associate of his, received, or expected to receive, directly or indirectly, a benefit as a result of disclosure, circulation or dissemination of the information, if he establishes that---

(a) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was not from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person; or

(b) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person, but up to (and including) the time of the disclosure, circulation or dissemination of the information he has acted in good faith.

(3) In this section---

(a) a reference to a prohibited transaction means any conduct or transaction which constitutes market misconduct or a contravention of any of the provisions of Divisions 2 to 4 of Part XIV; and

(b) a reference to any person having entered into or carried out the prohibited transaction shall be construed accordingly.

268. Disclosure of false or misleading information inducing transactions

(1) Disclosure of false or misleading information inducing transactions takes place when, in Hong Kong or elsewhere, a person discloses, circulates or disseminates, or authorizes or is concerned in the disclosure, circulation or dissemination of, information that is likely---

(a) to induce another person to subscribe for securities, or deal in futures contracts, in Hong Kong;

(b) to induce the sale or purchase in Hong Kong of securities by another person; or

(c) to maintain, increase, reduce or stabilize the price of securities, or the price for dealings in futures contracts, in Hong Kong,

if---

(i) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and

(ii) the person knows that, or is reckless or negligent as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.

(2) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of false or misleading information inducing transactions if he establishes that---

(a) he carried on a business the principal purpose of which was to provide the service of issuing or reproducing materials provided to him by others;

(b) the information was issued or reproduced by him in the ordinary course of that business;

(c) the contents of the information were wholly devised by a customer of his or by a person acting on behalf of a customer of his;

(d) the nature of the service which he provided in relation to the information was such that he did not select, modify or otherwise exercise control over the contents of the information prior to its issue or reproduction; and

(e) at the time he issued or reproduced the information, he did not know that it was false or misleading as to a material fact or was false or misleading through the omission of a material fact.

(3) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of false or misleading information inducing transactions if he establishes that---

(a) he carried on a business the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;

(b) the information was re-transmitted by him to other persons in the ordinary course of such re-transmission of information;

(c) the contents of the information were devised by another person and he did not modify or otherwise exercise control over its contents prior to its re-transmission;

(d) the re-transmission of the information by him---

(i) was accompanied by a message to the effect; or

(ii) was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding,

that he did not devise the contents of the information and that he neither took responsibility for it nor endorsed its accuracy; and

(e) at the time he re-transmitted the information---

(i) he did not know that it was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that it was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but in the circumstances of the case he could not reasonably be expected to prevent the re-transmission.

(4) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of false or misleading information inducing transactions if he establishes that---

(a) he was a broadcaster;

(b) the information was broadcast live by him as a broadcaster;

(c) he did not modify the contents of the information prior to its broadcast;

(d) he has, in relation to the broadcast, acted in accordance with the terms and conditions of the licence (if any) by which he became entitled to broadcast 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 as a broadcaster; and

(e) at the time of the broadcast---

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but in the circumstances of the case he could not reasonably be expected to prevent the broadcast.

(5) In this section, "issue" (發出), in relation to any material (including any information), includes publishing, circulating, distributing or otherwise disseminating the material, 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;

(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 material to be issued.

269. Stock market manipulation

(1) Stock market manipulation takes place when, in Hong Kong or elsewhere---

(a) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities issued by the corporation or by a related corporation of the corporation;

(b) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction reduce, or are likely to reduce, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to sell, or to refrain from purchasing, securities issued by the corporation or by a related corporation of the corporation; or

(c) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction maintain or stabilize, or are likely to maintain or stabilize, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to sell, purchase or subscribe for, or to refrain from selling, purchasing or subscribing for, securities issued by the corporation or by a related corporation of the corporation.

(2) Stock market manipulation takes place when, in Hong Kong---

(a) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities issued by the corporation or by a related corporation of the corporation;

(b) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with

any other transaction reduce, or are likely to reduce, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to sell, or to refrain from purchasing, securities issued by the corporation or by a related corporation of the corporation; or

(c) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction maintain or stabilize, or are likely to maintain or stabilize, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to sell, purchase or subscribe for, or to refrain from selling, purchasing or subscribing for, securities issued by the corporation or by a related corporation of the corporation.

(3) In this section---

(a) a reference to a transaction includes an offer and an invitation (however expressed); and

(b) a reference to entering into or carrying out a transaction shall, in the case of an offer or an invitation referred to in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

#### Division 6---Miscellaneous

##### 270. Duty of officers of corporations

Every officer of a corporation shall take all reasonable measures from time to time to ensure that proper safeguards exist to prevent the corporation from acting in a way which would result in the corporation perpetrating any conduct which constitutes market misconduct.

##### 271. Transactions constituting market misconduct not void or voidable

A transaction is not void or voidable by reason only of its constituting market misconduct.

##### 272. Civil liability for market misconduct

(1) Subject to subsection (2), a person who has committed a relevant act in relation to market misconduct shall, apart from any other liability he may incur (whether under this Part or otherwise), be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the market misconduct, whether the loss arises from the other person having entered into a transaction or dealing at a price affected by the market misconduct, or otherwise.

(2) No person shall be liable to pay compensation under subsection (1) unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.

(3) For the purposes of this section, a person shall, subject to subsection (4),

be regarded as having committed a relevant act in relation to market misconduct if---

(a) he has perpetrated any conduct which constitutes market misconduct;

(b) (i) another person which is a corporation has perpetrated any conduct which constitutes market misconduct; and

(ii) the market misconduct was directly or indirectly attributable to, or occurred with the consent or connivance of, him as an officer of the corporation; or

(c) (i) any other person has perpetrated any conduct which constitutes market misconduct; and

(ii) he assisted or connived with that other person in the perpetration of the conduct, with the knowledge that such conduct constitutes or might constitute market misconduct.

(4) For the purposes of this section, where it is provided under any provision of this Part that a person shall not by reason of any market misconduct be regarded as having engaged in market misconduct, the person shall not, in relation to that market misconduct, be regarded as having committed a relevant act in relation to market misconduct.

(5) A person may bring an action under subsection (1) even though the person against whom the action is brought---

(a) is not a person whose conduct has been the subject, whether wholly or in part, of any proceedings instituted under section 244 in respect of the market misconduct from which the pecuniary loss of the person bringing the action is alleged to result; or

(b) has not been identified by the Tribunal pursuant to section 244(3)(b) as having engaged in the market misconduct.

(6) 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, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(7) Without prejudice to section 62 of the Evidence Ordinance (Cap. 8), in an action brought under subsection (1)---

(a) a determination by the Tribunal pursuant to section 244(3)(a) that market misconduct has taken place;

(b) a determination by the Tribunal pursuant to section 244(3)(b) identifying a person (whether or not a party to the action) as having engaged in market misconduct, shall, in so far the determination is still subsisting, be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in the action---

(i) in the case of a determination referred to in paragraph (a), that the market

misconduct has taken place; or

(ii) in the case of a determination referred to in paragraph (b), that the person has engaged in market misconduct.

(8) In an action brought under subsection (1)---

(a) where there is a determination referred to in subsection (7)(a) or (b)---

(i) in the case of a determination referred to in subsection (7)(a), the market misconduct that is the subject of the determination shall, unless the contrary is proved, be taken to have taken place; or

(ii) in the case of a determination referred to in subsection (7)(b), the person that is the subject of the determination shall, unless the contrary is proved, be taken to have engaged in market misconduct; and

(b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the determination was based, the contents of a report of the Tribunal containing the determination and published under section 254(2)(b)(i), or the contents of a copy of a report of the Tribunal containing the determination and made available under subsection (9), shall also be admissible in evidence for that purpose.

(9) Where in an action brought under subsection (1)---

(a) a determination referred to in subsection (7)(a) or (b) is admissible in evidence under subsection (7); and

(b) a report of the Tribunal containing the determination has not been published under section 254(2)(b)(i),

the court having jurisdiction to determine the action may, where it considers appropriate, require that a copy of the report be made available to the court to enable it to be used for the purposes of subsection (8)(b), whereupon---

(i) the Tribunal shall cause a copy of the report to be made available to the court to enable it to be used for the purposes of subsection (8)(b); and

(ii) the contents of the report shall be admissible for the purpose specified in subsection (8)(b).

(10) 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.

273. Transactions not to constitute market misconduct

(1) Subject to subsections (2) and (3), the Commission may, where it considers it is in the public interest to do so, make rules to prescribe the circumstances in which any conduct that would otherwise constitute market misconduct under this Part shall not be regarded as constituting market misconduct.

(2) Where the Commission proposes to make rules under subsection (1), it shall

prepare and publish a draft of the rules, in such manner as it considers appropriate, for the purpose of inviting representations on the rules by the public.

(3) After a draft of the rules which the Commission proposes to make under subsection (1) is published under subsection (2), the Commission may, after consultation with the Financial Secretary, modify the rules, taking into consideration any representation on the rules received as a result of the publication, in such manner as it considers appropriate, for the purpose of having the rules made under subsection (1).

(4) Notwithstanding anything in this Part, a person shall not be regarded as having engaged in market misconduct by reason of any market misconduct under this Part if he establishes that the conduct in question is, according to the rules made under subsection (1), not to be regarded as constituting market misconduct.

(5) Notwithstanding anything in this Part, where---

(a) it is alleged that a person has engaged in market misconduct under section 265, 266 or 269 by reason of any conduct; and

(b) it is so alleged on the basis that the conduct was carried out not in respect of securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services, but in respect of securities or futures contracts traded on a relevant overseas market,

the person shall not be regarded as having engaged in the market misconduct unless it is proved that in any place in which such relevant overseas market is situated the conduct would have constituted a criminal offence had it been carried out there.

274. No further proceedings after Part XIV criminal proceedings

Notwithstanding anything in this Part, no proceedings may be instituted against any person under section 244 in respect of any conduct if---

(a) criminal proceedings have previously been instituted against the person under Part XIV in respect of the same conduct; and

(b) (i) those criminal proceedings remain pending; or

(ii) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under Part XIV in respect of the same conduct.

275. Market misconduct regarded as contravention of provisions of this Part

Where a person is by reference to any conduct identified in a determination made pursuant to section 244(3)(b) as having engaged in market misconduct, the person shall be regarded as having, by reason of the conduct, contravened the provisions of this Part, and any reference in this Ordinance to contravention of a provision of this Ordinance (however expressed) shall have application accordingly.

276. No retrospectivity

This Part shall not have effect with respect to any conduct that would otherwise constitute market misconduct under this Part if the conduct took place before the commencement of this Part.

#### PART XIV

Offences Relating to Dealings in Securities and Futures Contracts, etc.

##### Division 1---Interpretation

277. Interpretation of Part XIV

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

"associate" (有聯繫者), in relation to a person, means---

(a) the person's spouse or reputed spouse, any person cohabiting with the person as a spouse, the person's brother, sister, parent, step-parent, child (natural or adopted) or step-child;

(b) any corporation of which the person is a director;

(c) any employee or partner of the person;

(d) where the person is a corporation, each of its directors and its related corporations and each director or employee of any of its related corporations;

(e) without limiting the circumstances in which paragraphs (a) to (d) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or such interest, any other person with whom the person has an agreement or arrangement---

(i) with respect to the acquisition, holding or disposal of such securities or such interest; or

(ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;

"controller" (控制人), in relation to a corporation, means any person---

(a) in accordance with whose directions or instructions the directors of the corporation or of another corporation of which it is a subsidiary are accustomed or obliged to act; or

(b) who, either alone or with any of his associates, is entitled to exercise or control

the exercise of more than 33% of the voting power at general meetings of the corporation or of another corporation of which it is a subsidiary;

"relevant overseas market" (有關境外市場)---

(a) in relation to securities, means a stock market outside Hong Kong; or

(b) in relation to futures contracts, means a futures market outside Hong Kong;

"relevant recognized market" (有關認可市場)---

(a) in relation to securities, means a recognized stock market; or

(b) in relation to futures contracts, means a recognized futures market.

(2) In this subsection and sections 278 to 281 and Division 2, unless the context otherwise requires---

"derivatives" (衍生工具), in relation to listed securities, means---

(a) rights, options or interests (whether described as units or otherwise) in, or in respect of, the listed securities;

(b) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss, wholly or partly by reference to the price or value, or a change in the price or value, of---

(i) the listed securities; or

(ii) any rights, options or interests referred to in paragraph (a);

(c) rights, options or interests (whether described as units or otherwise) in, or in respect of---

(i) any rights, options or interests referred to in paragraph (a); or

(ii) any contracts referred to in paragraph (b);

(d) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (a), (b) or (c), including certificates of interest or participation in, temporary or interim certificates for, receipts (including depositary receipts) in respect of, or warrants to subscribe for or purchase---

(i) the listed securities; or

(ii) the rights, options or interests or the contracts,

whether or not the derivatives are listed and regardless of who issued or made them;

"listed corporation" (上市法團) means a corporation which has issued securities that are, at the time of the relevant contravention in relation to the corporation, listed;

"listed securities" (上市證券) means---

(a) securities which, at the time of the relevant contravention in relation to a corporation, have been issued by the corporation and are listed;

(b) securities which, at the time of the relevant contravention in relation to a corporation, have been issued by the corporation and are not listed, but which, at

that time, it is reasonably foreseeable will be and which, in fact, are subsequently listed;

(c) securities which, at the time of the relevant contravention in relation to a corporation, have not been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently so issued and listed;

"relevant contravention" (違例事件) means a contravention of any of the provisions of Division 2;

"relevant information" (有關消息), in relation to a corporation, means specific information about---

(a) the corporation;

(b) a shareholder or officer of the corporation; or

(c) the listed securities of the corporation or their derivatives,

which is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but which would if it were generally known to them be likely to materially affect the price of the listed securities;

"securities" (證券) means---

(a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, or which it is reasonably foreseeable will be issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;

(b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(d) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;

(e) interests, rights or property, whether in the form of an instrument or otherwise, prescribed by notice under section 379 as being regarded as securities in accordance with the terms of the notice.

(3) For the purposes of the definition of "controller" in subsection (1), where a person is entitled to exercise or control the exercise of more than 33% of the voting power at general meetings of a corporation and the corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation ("the effective voting power"), then the effective voting power at general meetings of the other corporation shall be regarded as exercisable by the person.



(4) For the purposes of this Part, a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act by reason only that the directors of the corporation act on advice given by him in a professional capacity.

278. Interest in securities (insider dealing offence)

For the purposes of sections 277(2) and 279 to 281 and Division 2, a reference to an interest in securities shall be construed as including an interest of any kind in the securities, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.

279. Connected with a corporation (insider dealing offence)

(1) For the purposes of Division 2, a person shall be regarded as connected with a corporation if, being an individual---

(a) he is a director or employee of the corporation or a related corporation of the corporation;

(b) he is a substantial shareholder of the corporation or a related corporation of the corporation;

(c) he occupies a position which may reasonably be expected to give him access to relevant information in relation to the corporation by reason of---

(i) a professional or business relationship existing between---

(A) himself, or his employer, or a corporation of which he is a director, or a firm of which he is a partner; and

(B) the corporation, a related corporation of the corporation, or an officer or substantial shareholder of either corporation; or

(ii) his being a director, employee or partner of a substantial shareholder of the corporation or a related corporation of the corporation;

(d) he has access to relevant information in relation to the corporation and---

(i) he has such access by reason of his being in such a position that he would be regarded as connected with another corporation by virtue of paragraph (a), (b) or (c); and

(ii) the relevant information relates to a transaction (actual or contemplated) involving both those corporations or involving one of them and the listed securities of the other or their derivatives, or to the fact that the transaction is no longer contemplated; or

(e) he was, at any time within the 6 months preceding the relevant contravention in relation to the corporation, a person who would be regarded as connected with the corporation by virtue of paragraph (a), (b), (c) or (d).

(2) For the purposes of Division 2, a corporation shall be regarded as a person connected with another corporation so long as any of its directors or employees is

a person who would be regarded as connected with that other corporation by virtue of subsection (1).

(3) In subsection (1), notwithstanding any other provisions of this Ordinance, "substantial shareholder" (大股東), in relation to a corporation, means a person who has an interest of any kind in the relevant share capital of the corporation, the nominal value of which is equal to or more than 5% of the nominal value of the relevant share capital of the corporation.

280. Connected with a corporation---possession of relevant information obtained in privileged capacity (insider dealing offence)

(1) For the purposes of Division 2, where a public officer or a specified person in that capacity receives relevant information in relation to a corporation, he shall be regarded as a person connected with the corporation.

(2) In subsection (1), a reference to a specified person means a person who is---

- (a) a member of the Executive Council;
- (b) a member of the Legislative Council;
- (c) a member of a board, commission, committee or other body appointed by or on behalf of the Chief Executive or the Chief Executive in Council under an Ordinance;
- (d) an officer or employee of a recognized exchange company, a recognized clearing house or a recognized exchange controller;
- (e) an exchange participant;
- (f) an officer or employee of an exchange participant;
- (g) an officer or employee of a body corporate incorporated by an Ordinance; or
- (h) an officer or employee of a body corporate specified by the Financial Secretary under subsection (3),

whether, in the case of paragraph (a), (b), (c), (d), (f), (g) or (h), the person is such a member, officer or employee (as the case may be) on a temporary or permanent basis, and whether he is paid or unpaid.

(3) The Financial Secretary may, by notice published in the Gazette, specify any body corporate for the purposes of subsection (2)(h).

281. Dealing in listed securities or their derivatives (insider dealing offence)

For the purposes of section 277(2) and Division 2, a person shall be regarded as dealing in listed securities or their derivatives if, whether as principal or agent, he sells, purchases, exchanges or subscribes for, or agrees to sell, purchase, exchange or subscribe for, any listed securities or their derivatives or acquires or disposes of, or agrees to acquire or dispose of, the right to sell, purchase, exchange or subscribe for, any listed securities or their derivatives.

282. Interest in securities and beneficial ownership, etc. (market misconduct offences other than insider dealing offence)

(1) For the purposes of Division 3, a person shall be regarded as having an interest in securities if he has authority, whether formal or informal and whether express or implied, to dispose of or to exercise control over the disposal of the securities or, in the case of options in respect of the securities, to exercise the options.

(2) It is immaterial that the authority of a person referred to in subsection (1)---

- (a) is, or is capable of being made, subject to restraint or restriction; or
- (b) is exercisable jointly with another person.

(3) A person shall be regarded as having the authority referred to in subsection (1) where a corporation has the authority referred to in that subsection and---

- (a) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions or instructions of the person in relation to the securities in question; or
- (b) the person, or an associate of the person, is a controller of the corporation.

(4) Where a person---

- (a) has entered into a contract to purchase securities;
  - (b) has a right to have securities transferred to him or to his order whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
  - (c) has the right to acquire securities, or an interest in securities, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not,
- the person shall, to the extent to which he could do so on completing the contract, enforcing the right or exercising the option, be regarded as having the authority referred to in subsection (1).

(5) Where securities are subject to a trust, and a person who is not a trustee in those securities has an interest in those securities by virtue of subsection (4)(b), the interest of a trustee in those securities shall be disregarded for the purpose of determining whether the person has an interest in securities for the purposes of Division 3.

(6) The Commission may make rules to prescribe that an interest, being an interest of a person or of the persons included in a class of persons, shall be disregarded for the purpose of determining whether the person or the persons has or have an interest in securities for the purposes of Division 3.

(7) For the purposes of Division 3, a sale or purchase of securities does not involve a change in their beneficial ownership if a person who had an interest in the securities before the sale or purchase, or an associate of the person, has an

interest in the securities after the sale or purchase.

## Division 2---Insider dealing offence

### 283. Offence of insider dealing

(1) A person connected with a listed corporation and having information which he knows is relevant information in relation to the corporation shall not---

(a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

(b) counsel or procure another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them.

(2) A person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for a listed corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation shall not---

(a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, otherwise than for the purpose of the take-over; or

(b) counsel or procure another person to deal in such listed securities or derivatives, otherwise than for the purpose of the take-over.

(3) A person connected with a listed corporation and knowing that any information is relevant information in relation to the corporation shall not disclose the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives.

(4) A person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for a listed corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation shall not disclose the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives.

(5) A person who has information which he knows is relevant information in relation to a listed corporation and which he received, directly or indirectly, from a person whom he knows is connected with the corporation and whom he knows or has

reasonable cause to believe held the information as a result of being connected with the corporation shall not---

(a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

(b) counsel or procure another person to deal in such listed securities or derivatives.

(6) A person who has received, directly or indirectly, from a person whom he knows or has reasonable cause to believe is contemplating or is no longer contemplating making a take-over offer for a listed corporation, information to that effect which he knows is relevant information in relation to the corporation shall not---

(a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

(b) counsel or procure another person to deal in such listed securities or derivatives.

(7) A person who knowingly has relevant information in relation to a listed corporation in any of the circumstances described in subsection (1), (2), (3), (4), (5) or (6) shall not---

(a) counsel or procure another person to deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, knowing or having reasonable cause to believe that the other person will deal in such listed securities or derivatives outside Hong Kong on a stock market other than a recognized stock market; or

(b) disclose the relevant information to another person knowing or having reasonable cause to believe that the other person or some other person will make use of the relevant information for the purpose of dealing, or of counselling or procuring any other person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, outside Hong Kong on a stock market other than a recognized stock market.

(8) Subject to sections 284, 285 and 286, a person who contravenes subsection (1), (2), (3), (4), (5), (6) or (7) commits an offence.

284. Insider dealing offence---general defences

(1) Where a person is charged with an offence under section 283(8) in respect of a contravention of section 283, it is a defence to the charge for the person to prove that the conduct which constituted the contravention was carried out---

(a) for the sole purpose of acquiring shares required for his being qualified as a director or intending director of a corporation;

- (b) in the performance in good faith of an underwriting agreement for the securities to which the transaction relates; or
- (c) in the performance in good faith of his functions as a liquidator, receiver or trustee in bankruptcy.

(2) Where a corporation is charged with an offence under section 283(8) in respect of a contravention of section 283 by reason of having entered into a transaction in the listed securities of a listed corporation or their derivatives, it is a defence to the charge for the corporation to prove that---

(a) although one or more of its directors or employees had the relevant information in relation to the listed corporation, each person who took the decision to enter into the transaction for it did not have the relevant information up to (and including) the time when it entered into the transaction;

(b) arrangements then existed to secure that---

(i) the relevant information was, up to (and including) the time when it entered into the transaction, not communicated to any person who took the decision; and

(ii) none of its directors or employees who had the relevant information gave advice concerning the transaction to any person who took the decision at any time before it entered into the transaction; and

(c) the relevant information was in fact not so communicated to any person who took the decision and none of its directors or employees who had the relevant information in fact so gave the advice to any person who took the decision.

(3) Where a person is charged with an offence under section 283(8) in respect of a contravention of section 283 by reason of having entered into a transaction in listed securities or their derivatives, it is a defence to the charge for the person to prove that the purpose for which he entered into the transaction was not, or, where there was more than one purpose, the purposes for which he entered into the transaction did not include, the purpose of securing or increasing a profit or avoiding or reducing a loss, whether for himself or another, by using relevant information.

(4) Where a person is charged with an offence under section 283(8) in respect of a contravention of section 283 by reason of having entered into a transaction in listed securities or their derivatives, it is a defence to the charge for the person to prove that---

(a) he entered into the transaction as agent for another person;

(b) he did not select or advise on the selection of the listed securities or the derivatives (as the case may be);

(c) he had no knowledge or reasonable cause to suspect that the other person had the relevant information in question; and

(d) he did not counsel or procure the other person in relation to the transaction.

(5) Where a person is charged with an offence under section 283(8) in respect of a contravention of section 283 by reason of having entered into a transaction in listed securities or their derivatives, it is a defence to the charge for the person to prove that---

(a) he and the other party to the transaction entered into the transaction directly with each other; and

(b) at the time he entered into the transaction---

(i) the other party to the transaction knew, or ought reasonably to have known, of the relevant information in question; and

(ii) the transaction was not required to be recorded on a recognized stock market or to be notified to a recognized stock market under the rules of the recognized exchange company by which the recognized stock market is operated.

(6) Where a person is charged with an offence under section 283(8) in respect of a contravention of section 283 by reason of having entered into a transaction in listed securities of a corporation or their derivatives, it is a defence to the charge for the person to prove that---

(a) he entered into the transaction, otherwise than as a person who has counselled or procured the other party to the transaction to deal in listed securities or their derivatives; and

(b) at the time he entered into the transaction, the other party to the transaction knew, or ought reasonably to have known, that he was a person connected with the corporation.

(7) Where a person is charged with an offence under section 283(8) by reason of having contravened section 283 as a person who has counselled or procured another person to deal in listed securities of a corporation or their derivatives, it is a defence to the charge for the person to prove that---

(a) the other person entered into the transaction, otherwise than as a person who has counselled or procured the other party to the transaction to deal in listed securities or their derivatives; and

(b) at the time the other person entered into the transaction, the other party to the transaction knew, or ought reasonably to have known, that the other person was a person connected with the corporation.

(8) Where a person is charged with an offence under section 283(8) in respect of a contravention of section 283 by reason of having entered into a transaction in listed securities or their derivatives, it is a defence to the charge for the person to prove that the transaction is a market contract.

285. Insider dealing offence---defences for certain trustees and personal representatives

Where a person is charged with an offence under section 283(8) in respect of a contravention of section 283 by reason of having entered into a transaction in listed securities or their derivatives and he entered into the transaction as a trustee or personal representative, it is a defence to the charge for the person to prove that he acted on advice obtained in good faith from another person, and---

- (a) that other person appeared to him to be an appropriate person from whom to seek the advice; and
- (b) it did not appear to him that, had that other person entered into the transaction, that other person would contravene section 283.

286. Insider dealing offence---defences for certain persons exercising right to subscribe for or acquire securities or derivatives

Where a person is charged with an offence under section 283(8) in respect of a contravention of section 283 through his exercise of a right to subscribe for or otherwise acquire the listed securities of a corporation or their derivatives, it is a defence to the charge for the person to prove that the right was granted to him or was derived from securities or their derivatives that were held by him before he became aware of any relevant information in relation to the corporation.

Division 3---Other market misconduct offences

287. Offence of false trading

(1) A person shall not, in Hong Kong or elsewhere, intentionally or recklessly---

- (a) create;
- (b) cause to be created; or
- (c) do anything that is likely to create,  
a false or misleading appearance---

(i) of active trading in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services; or

(ii) with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.

(2) A person shall not, in Hong Kong, intentionally or recklessly---

- (a) create;
- (b) cause to be created; or
- (c) do anything that is likely to create,  
a false or misleading appearance---

(i) of active trading in securities or futures contracts traded on a relevant overseas market; or

(ii) with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant overseas market.



(3) A person shall not, in Hong Kong or elsewhere, take part in, be concerned in, or carry out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price, or maintaining at a level that is artificial (whether or not it was previously artificial) a price, for dealings in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.

(4) A person shall not, in Hong Kong, take part in, be concerned in, or carry out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price, or maintaining at a level that is artificial (whether or not it was previously artificial) a price, for dealings in securities or futures contracts traded on a relevant overseas market.

(5) Without limiting the generality of subsection (1) or (2), a person who--

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(a) enters into or carries out, directly or indirectly, any transaction of sale or purchase, or any transaction which purports to be a transaction of sale or purchase, of securities that does not involve a change in the beneficial ownership of them;  
(b) offers to sell securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to purchase the same or substantially the same, number of them; or  
(c) offers to purchase securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to sell the same or substantially the same, number of them,  
shall, for the purposes of subsection (1) or (2), be regarded as having intentionally or recklessly created, caused to be created, or done something that is likely to create, a false or misleading appearance---

(i) where the securities are traded on a relevant recognized market or by means of authorized automated trading services, of active trading in securities so traded or with respect to the market for, or the price for dealings in, securities so traded; or

(ii) where the securities are traded on a relevant overseas market, of active trading in securities so traded or with respect to the market for, or the price for dealings in, securities so traded.

(6) Subject to subsection (7), a person who contravenes subsection (1), (2), (3) or (4) commits an offence.

(7) Where a person is charged with an offence under subsection (6) in respect of a contravention of subsection (1) or (2) by reason of having committed an act referred to in subsection (5)(a), (b) or (c), it is a defence to the charge for the person to prove that the purpose for which he committed the act was not, or, where there was more than one purpose, the purposes for which he committed the act did not include, the purpose of creating a false or misleading appearance of active trading in securities, or with respect to the market for, or the price for dealings in, securities, referred to in subsection (1) or (2) (as the case may be).

(8) In this section---

(a) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or purchase securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or purchase securities; and

(b) a reference to entering into or carrying out a transaction of sale or purchase shall, in the case of an offer or an invitation referred to in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

288. Offence of price rigging

(1) A person shall not, in Hong Kong or elsewhere---

(a) enter into or carry out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a relevant recognized market or by means of authorized automated trading services; or

(b) enter into or carry out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by means of authorized automated trading services.

(2) A person shall not, in Hong Kong---

(a) enter into or carry out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a relevant overseas market; or

(b) enter into or carry out, directly or indirectly, any fictitious or artificial

transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities, or the price for dealings in futures contracts, that are traded on a relevant overseas market.

(3) For the purposes of subsections (1)(b) and (2)(b), the fact that a transaction is, or at any time was, intended to have effect according to its terms is not conclusive in determining whether the transaction is, or was, not fictitious or artificial.

(4) Subject to subsection (5), a person who contravenes subsection (1) or (2) commits an offence.

(5) Where a person is charged with an offence under subsection (4) in respect of a contravention of subsection (1)(a) or (2)(a) taking place through any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, it is a defence to the charge for the person to prove that the purpose for which the securities were sold or purchased was not, or, where there was more than one purpose, the purposes for which the securities were sold or purchased did not include, the purpose of creating a false or misleading appearance with respect to the price of securities.

(6) In this section---

(a) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or purchase securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or purchase securities; and

(b) a reference to entering into or carrying out a transaction of sale or purchase shall, in the case of an offer or an invitation referred to in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

## 289. Offence of disclosure of information about prohibited transactions

(1) A person shall not disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information to the effect that the price of securities of a corporation, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by means of authorized automated trading services will be maintained, increased, reduced or stabilized, or is likely to be maintained, increased, reduced or stabilized, because of a prohibited transaction relating to securities of either the corporation or a related corporation of the corporation or to the futures contracts (as the case may be), if he, or an associate of his---

(a) has entered into or carried out, directly or indirectly, the prohibited transaction; or

(b) has received, or expects to receive, directly or indirectly, a benefit as a result

of the disclosure, circulation or dissemination of the information.

(2) Subject to subsection (3), a person who contravenes subsection (1) commits an offence.

(3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) on the basis that he, or an associate of his, received, or expected to receive, directly or indirectly, a benefit as a result of any disclosure, circulation or dissemination of information, it is a defence to the charge for the person to prove that---

(a) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was not from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person; or

(b) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person, but up to (and including) the time of the disclosure, circulation or dissemination of the information he has acted in good faith.

(4) In this section---

(a) a reference to a prohibited transaction means any conduct or transaction which constitutes market misconduct or a contravention of any of the provisions of Divisions 2 to 4; and

(b) a reference to any person having entered into or carried out the prohibited transaction shall be construed accordingly.

290. Offence of disclosure of false or misleading information inducing transactions

(1) A person shall not, in Hong Kong or elsewhere, disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information that is likely---

(a) to induce another person to subscribe for securities, or deal in futures contracts, in Hong Kong;

(b) to induce the sale or purchase in Hong Kong of securities by another person; or

(c) to maintain, increase, reduce or stabilize the price of securities, or the price for dealings in futures contracts, in Hong Kong,

if---

(i) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and

(ii) the person knows that, or is reckless or negligent as to whether, the information is false or misleading as to a material fact, or is false or misleading

through the omission of a material fact.

(2) Subject to subsections (3) to (5), a person who contravenes subsection (1) commits an offence.

(3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place in relation to any disclosure, circulation or dissemination of information, it is a defence to the charge for the person to prove that---

(a) he carried on a business the principal purpose of which was to provide the service of issuing or reproducing materials provided to him by others;

(b) the information was issued or reproduced by him in the ordinary course of that business;

(c) the contents of the information were wholly devised by a customer of his or by a person acting on behalf of a customer of his;

(d) the nature of the service which he provided in relation to the information was such that he did not select, modify or otherwise exercise control over the contents of the information prior to its issue or reproduction; and

(e) at the time he issued or reproduced the information, he did not know that it was false or misleading as to a material fact or was false or misleading through the omission of a material fact.

(4) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place in relation to any disclosure, circulation or dissemination of information, it is a defence to the charge for the person to prove that---

(a) he carried on a business the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;

(b) the information was re-transmitted by him to other persons in the ordinary course of such re-transmission of information;

(c) the contents of the information were devised by another person and he did not modify or otherwise exercise control over its contents prior to its re-transmission;

(d) the re-transmission of the information by him---

(i) was accompanied by a message to the effect; or

(ii) was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding,

that he did not devise the contents of the information and that he neither took responsibility for it nor endorsed its accuracy; and

(e) at the time he re-transmitted the information---

(i) he did not know that it was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that it was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but in the circumstances of the case he could not reasonably be expected to prevent the re-transmission.

(5) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place in relation to any disclosure, circulation or dissemination of information, it is a defence to the charge for the person to prove that---

(a) he was a broadcaster;

(b) the information was broadcast live by him as a broadcaster;

(c) he did not modify the contents of the information prior to its broadcast;

(d) he has, in relation to the broadcast, acted in accordance with the terms and conditions of the licence (if any) by which he became entitled to broadcast 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 as a broadcaster; and

(e) at the time of the broadcast---

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but in the circumstances of the case he could not reasonably be expected to prevent the broadcast.

(6) In this section, "issue" (發出), in relation to any material (including any information), includes publishing, circulating, distributing or otherwise disseminating the material, 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;

(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 material to be issued.

291. Offence of stock market manipulation

(1) A person shall not, in Hong Kong or elsewhere---

(a) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities issued by the corporation or by a related corporation of the corporation;

(b) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction reduce, or are likely to reduce, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to sell, or to refrain from purchasing, securities issued by the corporation or by a related corporation of the corporation; or

(c) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction maintain or stabilize, or are likely to maintain or stabilize, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to sell, purchase or subscribe for, or to refrain from selling, purchasing or subscribing for, securities issued by the corporation or by a related corporation of the corporation.

(2) A person shall not, in Hong Kong---

(a) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities issued by the corporation or by a related corporation of the corporation;

(b) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction reduce, or are likely to reduce, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to sell, or to refrain from purchasing, securities issued by the corporation or by a related corporation of the corporation; or

(c) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other

transaction maintain or stabilize, or are likely to maintain or stabilize, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to sell, purchase or subscribe for, or to refrain from selling, purchasing or subscribing for, securities issued by the corporation or by a related corporation of the corporation.

(3) A person who contravenes subsection (1) or (2) commits an offence.

(4) In this section---

(a) a reference to a transaction includes an offer and an invitation (however expressed); and

(b) a reference to entering into or carrying out a transaction shall, in the case of an offer or an invitation referred to in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

#### Division 4---Other offences

292. Offence involving fraudulent or deceptive devices, etc. in transactions in securities, futures contracts or leveraged foreign exchange trading

(1) A person shall not, directly or indirectly, in a transaction involving securities, futures contracts or leveraged foreign exchange trading---

(a) employ any device, scheme or artifice with intent to defraud or deceive; or

(b) engage in any act, practice or course of business which is fraudulent or deceptive, or would operate as a fraud or deception.

(2) A person who contravenes subsection (1) commits an offence.

(3) In this section, a reference to a transaction includes an offer and an invitation (however expressed).

293. Offence of disclosure of false or misleading information inducing others to enter into leveraged foreign exchange contracts

(1) A person shall not, in Hong Kong or elsewhere, disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information that is likely to induce another person to enter into a leveraged foreign exchange contract in Hong Kong, if---

(a) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and

(b) the person knows that, or is reckless or negligent as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.



(2) Subject to subsections (3) to (5), a person who contravenes subsection (1) commits an offence.

(3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place in relation to any disclosure, circulation or dissemination of information, it is a defence to the charge for the person to prove that---

(a) he carried on a business the principal purpose of which was to provide the service of issuing or reproducing materials provided to him by others;

(b) the information was issued or reproduced by him in the ordinary course of that business;

(c) the contents of the information were wholly devised by a customer of his or by a person acting on behalf of a customer of his;

(d) the nature of the service which he provided in relation to the information was such that he did not select, modify or otherwise exercise control over the contents of the information prior to its issue or reproduction; and

(e) at the time he issued or reproduced the information, he did not know that it was false or misleading as to a material fact or was false or misleading through the omission of a material fact.

(4) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place in relation to any disclosure, circulation or dissemination of information, it is a defence to the charge for the person to prove that---

(a) he carried on a business the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;

(b) the information was re-transmitted by him to other persons in the ordinary course of such re-transmission of information;

(c) the contents of the information were devised by another person and he did not modify or otherwise exercise control over its contents prior to its re-transmission;

(d) the re-transmission of the information by him---

(i) was accompanied by a message to the effect; or

(ii) was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding,

that he did not devise the contents of the information and that he neither took responsibility for it nor endorsed its accuracy; and

(e) at the time he re-transmitted the information---

(i) he did not know that it was false or misleading as to a material fact or was

false or misleading through the omission of a material fact; or

(ii) he knew that it was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but in the circumstances of the case he could not reasonably be expected to prevent the re-transmission.

(5) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place in relation to any disclosure, circulation or dissemination of information, it is a defence to the charge for the person to prove that---

(a) he was a broadcaster;

(b) the information was broadcast live by him as a broadcaster;

(c) he did not modify the contents of the information prior to its broadcast;

(d) he has, in relation to the broadcast, acted in accordance with the terms and conditions of the licence (if any) by which he became entitled to broadcast 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 as a broadcaster; and

(e) at the time of the broadcast---

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but in the circumstances of the case he could not reasonably be expected to prevent the broadcast.

(6) In this section, "issue" (發出), in relation to any material (including any information), includes publishing, circulating, distributing or otherwise disseminating the material, 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;

(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 material to be issued.

294. Offence of falsely representing dealings in futures contracts on behalf of

others, etc.

(1) A person shall not represent to another person that he has on behalf of the other person dealt in, or facilitated or arranged for any dealing in, a futures contract traded on a recognized futures market or by means of authorized automated trading services, when in fact he has not so dealt in, or facilitated or arranged for the dealing in, the futures contract.

(2) A person shall not represent to another person that he has dealt in, or facilitated or arranged for any dealing in, a contract or other instrument substantially resembling a futures contract on behalf of the other person in accordance with the rules of a futures market outside Hong Kong, when in fact he has not so dealt in, or facilitated or arranged for the dealing in, the contract or other instrument.

(3) Subject to subsection (4), a person who contravenes subsection (1) or (2) commits an offence.

(4) Where a person is charged with an offence under subsection (3) in respect of a contravention of subsection (1) or (2) by reason of the making of a representation, it is a defence to the charge for the person to prove that up to (and including) the time of the making of the representation he acted in good faith and did not know, and could not in the circumstances of the case reasonably have known, that in fact he has not---

(a) in the case of a contravention of subsection (1), dealt in, or facilitated or arranged for the dealing in, the futures contract referred to in that subsection in the manner described in that subsection; or

(b) in the case of a contravention of subsection (2), dealt in, or facilitated or arranged for the dealing in, the contract or other instrument referred to in that subsection in the manner described in that subsection.

#### Division 5---Miscellaneous

##### 295. Penalties

(1) A person who commits an offence under this Part is liable---

(a) on conviction on indictment to a fine of \$10,000,000 and to imprisonment for 10 years; or

(b) on summary conviction to a fine of \$1,000,000 and to imprisonment for 3 years.

(2) Where a person is convicted of an offence under this Part, the court before which the person is so convicted may, in addition to any penalty specified in subsection (1), make one, or more than one, of the following orders in respect of the person---

(a) an order that the person shall not, without the leave of the court, be or continue to be a director, liquidator, or receiver or manager of the property or business,

of a listed corporation or any other specified corporation or in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation for the period (not exceeding 5 years) specified in the order;

(b) an order that the person shall not, without the leave of the court, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme for the period (not exceeding 5 years) specified in the order;

(c) an order that any body which may take disciplinary action against the person as one of its members be recommended to take disciplinary action against him.

(3) When making any order in respect of a person under subsection (2), the court may take into account any conduct by the person which---

(a) previously resulted in the person being convicted of an offence in Hong Kong;

(b) previously resulted in the person being identified by the Market Misconduct Tribunal as having engaged in any market misconduct pursuant to section 244(3)(b); or

(c) at any time before the commencement of Part XIII resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.

(4) Where the court makes an order under subsection (2)(a), the court may specify a corporation by name or by reference to a relationship with any other corporation.

(5) Where the court makes an order under subsection (2)(a), the order shall be filed by the court with the Registrar of Companies, as soon as reasonably practicable after it is made.

(6) Where the court makes an order under subsection (2)(b), the Commission may notify any licensed or exempt person of the order in such manner as it considers appropriate.

(7) A person commits an offence if he refuses or fails to comply with an order made under subsection (2)(a) or (b) and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

296. Civil liability for contravention of this Part

(1) Subject to subsections (2) and (3), a person who contravenes any of the provisions of Divisions 2 to 4 shall, apart from any other liability he may incur

(whether under section 295 or otherwise), be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the contravention, whether the loss arises from the other person having entered into a transaction or dealing at a price affected by the contravention, or otherwise.

(2) No person shall be liable to pay compensation under subsection (1) unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.

(3) A defence under this Part to a charge for an offence in respect of a contravention of any of the provisions of Divisions 2 to 4 shall also be a defence in an action brought under subsection (1) in respect of the same contravention.

(4) A person may bring an action under subsection (1) in respect of a contravention of any of the provisions of Divisions 2 to 4 even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the contravention.

(5) 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, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(6) Without prejudice to section 62 of the Evidence Ordinance (Cap. 8), in an action brought under subsection (1)---

(a) a determination by the Market Misconduct Tribunal pursuant to section 244(3)(a) that market misconduct has taken place;

(b) a determination by the Market Misconduct Tribunal pursuant to section 244(3)(b) identifying a person (whether or not a party to the action) as having engaged in market misconduct,

shall, in so far the determination is still subsisting, be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in the action---

(i) in the case of a determination referred to in paragraph (a), that the market misconduct has taken place; or

(ii) in the case of a determination referred to in paragraph (b), that the person has engaged in market misconduct.

(7) In an action brought under subsection (1)---

(a) where there is a determination referred to in subsection (6)(a) or (b)---

(i) in the case of a determination referred to in subsection (6)(a), the market misconduct that is the subject of the determination shall, unless the contrary is proved, be taken to have taken place; or

(ii) in the case of a determination referred to in subsection (6)(b), the

person that is the subject of the determination shall, unless the contrary is proved, be taken to have engaged in market misconduct; and

(b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the determination was based, the contents of a report of the Market Misconduct Tribunal containing the determination and published under section 254(2)(b)(i), or the contents of a copy of a report of the Market Misconduct Tribunal containing the determination and made available under subsection (8), shall also be admissible in evidence for that purpose.

(8) Where in an action brought under subsection (1)---

(a) a determination referred to in subsection (6)(a) or (b) is admissible in evidence under subsection (6); and

(b) a report of the Market Misconduct Tribunal containing the determination has not been published under section 254(2)(b)(i),

the court having jurisdiction to determine the action may, where it considers appropriate, require that a copy of the report be made available to the court to enable it to be used for the purposes of subsection (7)(b), whereupon---

(i) the Market Misconduct Tribunal shall cause a copy of the report to be made available to the court to enable it to be used for the purposes of subsection (7)(b); and

(ii) the contents of the report shall be admissible for the purpose specified in subsection (7)(b).

(9) In this section, a reference to a transaction includes an offer and an invitation (however expressed).

(10) 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.

297. Transactions not to constitute offences

(1) Subject to subsections (2) and (3), the Commission may, where it considers it is in the public interest to do so, make rules to prescribe the circumstances in which any conduct that would otherwise constitute an offence under this Part (other than section 292 or 294) shall not be regarded as constituting such an offence.

(2) Where the Commission proposes to make rules under subsection (1), it shall prepare and publish a draft of the rules, in such manner as it considers appropriate, for the purpose of inviting representations on the rules by the public.

(3) After a draft of the rules which the Commission proposes to make under subsection (1) is published under subsection (2), the Commission may, after consultation with the Financial Secretary, modify the rules, taking into consideration any representation on the rules received as a result of the publication,

in such manner as it considers appropriate, for the purpose of having the rules made under subsection (1).

(4) Notwithstanding anything in this Part, where a person is charged with an offence under this Part (other than section 292 or 294) by reason of any conduct, it is a defence to the charge for the person to prove that the conduct is, according to the rules made under subsection (1), not to be regarded as constituting an offence.

(5) Notwithstanding anything in this Part, where---

(a) a person is charged with an offence under section 287, 288 or 291 by reason of any conduct; and

(b) the person is charged on the basis that the conduct was carried out not in respect of securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services, but in respect of securities or futures contracts traded on a relevant overseas market,

the person shall not be convicted of the offence unless the prosecution proves that in any place in which such relevant overseas market is situated the conduct would have constituted a criminal offence had it been carried out there.

298. No further proceedings after Part XIII market misconduct proceedings

Notwithstanding anything in this Part, no criminal proceedings may be instituted against any person under this Part in respect of any conduct if---

(a) proceedings have previously been instituted against the person under section 244 in respect of the same conduct; and

(b) (i) those proceedings remain pending; or

(ii) by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person under section 244 in respect of the same conduct.

PART XV

Disclosure of Interests

Division 1---Preliminary

299. Interpretation of Part XV

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

"associated corporation" (相聯法團), in relation to a listed corporation, means a corporation---

(a) which is a subsidiary or holding company of the listed corporation or a subsidiary of the listed corporation's holding company; or

(b) (not being a subsidiary of the listed corporation) in which the listed corporation has an interest in the shares of any class comprised in its share capital exceeding in nominal value one-fifth of the nominal value of the issued shares of that class;

"cash settled equity derivatives" (現金結算股本衍生工具) means equity derivatives other than physically settled equity derivatives;

"chief executive" (最高行政人員) means the person employed or otherwise engaged by a corporation who, either alone or together with one or more persons, is or will be responsible under the immediate authority of the board of directors for the conduct of the business of the corporation;

"contract multiplier" (合約乘數), in relation to a stock futures contract, means the number specified by the recognized exchange company operating the futures market on which the stock futures contract is traded to be the contract multiplier for that stock futures contract under the rules of the recognized exchange company;

"custodian" (保管人) means a corporation the principal business of which is to act as a custodian of securities or other property for another person whether on trust or by contract;

"deliver" (交付), in relation to any shares, debentures or equity derivatives, means deliver the shares, debentures or equity derivatives either physically or by electronic means and, in the case of unissued shares, means deliver the shares after they are issued; and "take delivery" (提取) shall be construed accordingly;

"duty of disclosure" (披露責任)---

(a) for the purposes of, and otherwise in relation to, Divisions 2 to 6, means the duty of disclosure arising under section 301 which has to be performed in accordance with section 315; or

(b) for the purposes of, and otherwise in relation to, Divisions 7 to 10, means the duty of disclosure arising under section 332 which has to be performed in accordance with section 338;



"equity derivatives" (股本衍生工具) means any---

(a) rights, options or interests (whether described as units or otherwise) in, or in respect of, underlying shares;

(b) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss, wholly or partly by reference to the price or value, or a change in the price or value, of---

(i) underlying shares; or

(ii) any rights, options or interests referred to in paragraph (a);

(c) rights, options or interests (whether described as units or otherwise) in, or in respect of---

(i) any rights, options or interests referred to in paragraph (a); or

(ii) any contracts referred to in paragraph (b); or

(d) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (a), (b) or (c), including stock futures contracts, certificates of interest or participation in, temporary or interim certificates for, receipts (including depositary receipts) in respect of, or warrants to subscribe for or purchase---

(i) underlying shares; or

(ii) the rights, options or interests or the contracts,  
whether or not---

(i) the rights, options or interests, the contracts or the instruments or documents are traded on a recognized stock market or a recognized futures market;

(ii) the rights, options or interests, the contracts or the instruments or documents are, where the underlying shares are shares in a listed corporation, issued or made available by the listed corporation; or

(iii) the obligations under the rights, options or interests, the contracts or the instruments or documents are settled by payment of cash or by delivery of the underlying shares or otherwise;

"Exchange Company (交易所公司) means the Exchange Company within the meaning of the repealed Securities (Disclosure of Interests) Ordinance;

"founder of the trust" (成立人), in relation to a discretionary trust, means a person who---

(a) has directly or indirectly provided, or undertaken to provide, property for the purpose of the trust; or

(b) has entered into a reciprocal arrangement or understanding (whether having legal effect or not) with another person leading, directly or indirectly, to the creation of the trust, or has procured another person, directly or indirectly, to create the trust,

and whose consent is required as a condition (whether having legal effect or not) to the exercise by any trustee of his discretion in connection with the trust property, or in accordance with whose wishes (whether having legal effect or not) any trustee is accustomed, or would be expected, to act;

"Hong Kong register" (香港登記冊), in relation to a listed corporation, means the register of members, or a branch register, of the listed corporation that is kept in Hong Kong;

"inspector" (審查員) means an inspector appointed under section 347 or 348;

"issued equity share capital" (已發行權益股本), in relation to a listed corporation, means the listed corporation's issued share capital of a class the shares in which carry rights to vote in all circumstances at general meetings of the corporation;

"listed" (上市) means listed on a recognized stock market;

"listed corporation" (上市法團) means any corporation which has any of its securities listed;

"notifiable interest" (須具報權益) has the meaning assigned to it by section 302(3);

"notifiable percentage level" (須具報百分率水平) has the meaning assigned to it by section 306(1);

"off-exchange transaction" (場外交易) means any transaction, arrangement or occurrence of event (other than an on-exchange transaction) under which a person becomes, or ceases to be, interested in shares;

"on-exchange transaction" (場內交易) means any transaction conducted on a recognized stock market or a recognized futures market under which a person becomes, or ceases to be, interested in shares;

"physically settled equity derivatives" (實物結算股本衍生工具) means equity derivatives that are, or are to be, settled by delivery of the underlying shares, including equity derivatives in respect of which there is an option for the holder, writer or issuer of the equity derivatives to choose whether to settle by payment of cash or by delivery of the underlying shares;

"register of directors' and chief executives' interests and short positions" (董事及最高行政人員權益及淡倉登記冊) means the register kept under section 343;

"register of interests in shares and short positions" (股份權益及淡倉登記冊) means the register kept under section 327 including, except where the context otherwise requires, that part of the register kept under section 328;

"regulations" (規例) means regulations made under section 365;

"relevant event" (有關事件)---

(a) for the purposes of, and otherwise in relation to, Divisions 2 to 6, means--

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(i) in a case under section 301(1)(a) or (b) or (4)(a) or (b), the event or change

referred to in such section;

(ii) in a case under section 301(2)(a), the event in consequence of which the corporation becomes a listed corporation;

(iii) in a case under section 301(2)(b), the event in consequence of which the listed corporation's share capital of a particular class becomes relevant share capital;

(iv) in a case under section 301(2)(c) or (5), the commencement of this Part;  
or

(v) in a case under section 301(3) or (6), the taking effect of the regulation providing for the reduction referred to in such section; or

(b) for the purposes of, and otherwise in relation to, Divisions 7 to 10, means--

(i) in a case under section 332(1)(a), (b), (c), (d), (e) or (f), the event referred to in such section;

(ii) in a case under section 332(2)(a), the event in consequence of which the corporation becomes a listed corporation;

(iii) in a case under section 332(2)(b), the commencement of this Part;

(iv) in a case under section 332(2)(c), the event in consequence of which the person becomes a director or chief executive of a listed corporation;

(v) in a case under section 332(2)(d), the event in consequence of which the corporation becomes an associated corporation; or

(vi) in a case under section 335(3)(a), (b) or (c), the event referred to in such section;

"relevant exchange company" (有關交易所公司), in relation to a listed corporation, means the recognized exchange company operating the stock market on which the shares in the listed corporation are listed;

"relevant share capital" (有關股本), in relation to a listed corporation---

(a) means the listed corporation's issued share capital of a class the shares in which carry rights to vote in all circumstances at general meetings of the corporation;  
and

(b) includes unissued shares in the listed corporation's share capital of any class which, if issued, would carry rights to vote in all circumstances at general meetings of the corporation;

"relevant time" (有關時間) means the time of the occurrence of the relevant event;

"short position" (淡倉) means the position which a person has---

(a) where the person is the holder, writer or issuer of any equity derivatives, by virtue of which the person---

(i) has a right to require another person to take delivery of the underlying

shares of the equity derivatives;

(ii) is under an obligation to deliver the underlying shares of the equity derivatives to another person, if called upon to do so;

(iii) has a right to receive from another person an amount if the price of the underlying shares of the equity derivatives declines; or

(iv) has a right to avoid or reduce a loss if the price of the underlying shares of the equity derivatives declines,

before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute; or

(b) where the person is the borrower of shares under a securities borrowing and lending agreement, by virtue of which the person is under an obligation to deliver shares to another person who has lent the shares, if called upon to do so, before or on a certain date or within a certain period, whether or not the obligation to deliver shares is to be settled by payment of cash or by delivery of the shares or otherwise;

"specified percentage level" (指明百分率水平) has the meaning assigned to it by section 306(2);

"stock futures contract" (股票期貨合約) means a contract which is of a class approved by the Commission as stock futures contracts for trading on a recognized futures market;

"target corporation" (目標法團), in relation to an agreement to which section 308 applies, means the particular listed corporation which is the target corporation for that agreement;

"trustee" (受託人) means a corporation the principal business of which is to hold property belonging to another person under the provisions of a trust deed;

"underlying shares" (相關股份), in relation to any equity derivatives and subject to subsection (6), means---

(a) for the purposes of, and otherwise in relation to, Divisions 2 to 6---

(i) the shares comprised in the relevant share capital of the listed corporation concerned which may be required to be delivered to, or by, the holder, writer or issuer of the equity derivatives on the exercise of rights or fulfilment of obligations under the equity derivatives, whether in any case the rights or obligations are conditional or absolute; or

(ii) the shares comprised in the relevant share capital of the listed corporation concerned by reference to the price or value of which, wholly or partly, the price or value of the equity derivatives is derived or determined; or

(b) for the purposes of, and otherwise in relation to, Divisions 7 to 10---

(i) the shares in the listed corporation concerned, or any associated corporation

of the listed corporation, which may be required to be delivered to, or by, the holder, writer or issuer of the equity derivatives on the exercise of rights or fulfilment of obligations under the equity derivatives, whether in any case the rights or obligations are conditional or absolute; or

(ii) the shares in the listed corporation concerned, or any associated corporation of the listed corporation, by reference to the price or value of which, wholly or partly, the price or value of the equity derivatives is derived or determined,

whether in any case those shares are issued or unissued.

(2) Where a listed corporation's share capital is divided into different classes of shares, a reference in this Part to a percentage of the nominal value of the listed corporation's issued equity share capital shall be construed as a reference to a percentage of the nominal value of the issued shares comprised in each of the classes taken separately.

(3) The temporary suspension of voting rights in respect of shares comprised in any class of the issued share capital of a listed corporation does not affect the application of this Part in relation to interests in those or any other shares comprised in that class.

(4) In section 308, and also in references elsewhere in this Part to an agreement to which that section applies, "agreement" (協議) includes any agreement or arrangement, and a reference in that section to provisions of an agreement---

(a) accordingly includes a reference to undertakings, expectations or understandings operative under any arrangement; and

(b) (without prejudice to paragraph (a)) also includes a reference to any provisions, whether express or implied and whether absolute or not.

(5) For the purposes of any provision of this Part which provides that an officer of a corporation who is in default is liable to a fine or penalty, the expression "every officer of it who is in default" (其每名違責的高級人員) means every officer of the corporation who knowingly and wilfully authorizes or permits the default, refusal or contravention referred to in that provision.

(6) Where---

(a) for the purposes of, and otherwise in relation to, Divisions 2 to 6---

(i) a substantial number of shares comprised in the relevant share capital of more than one listed corporation may be required to be delivered to, or by, the holder, writer or issuer of any equity derivatives on the exercise of rights or fulfilment of obligations under the equity derivatives; or

(ii) the price or value of shares comprised in the relevant share capital of more than one listed corporation plays a substantial part in the derivation or

determination of the price or value of any equity derivatives; or

(b) for the purposes of, and otherwise in relation to, Divisions 7 to 10---

(i) a substantial number of shares in more than one listed corporation may be required to be delivered to, or by, the holder, writer or issuer of any equity derivatives on the exercise of rights or fulfilment of obligations under the equity derivatives; or

(ii) the price or value of shares in more than one listed corporation plays a substantial part in the derivation or determination of the price or value of any equity derivatives,

those equity derivatives shall be taken to have no underlying shares.

### 300. Exemptions

(1) The Commission may, after consultation with the Financial Secretary, publish guidelines for the exemption of any corporation from all or any of the provisions of this Part.

(2) The Commission may, upon the application of a corporation, having regard to the guidelines published pursuant to subsection (1) and imposing such conditions as it considers appropriate, exempt the applicant corporation and any other person in relation to that corporation from all or any of the provisions of this Part.

(3) The Commission may, upon the application of the holder, writer or issuer, or the prospective holder, writer or issuer, of any equity derivatives, having regard to the guidelines published pursuant to subsection (1) and imposing such conditions as it considers appropriate, exempt the applicant, and any other person who is taken to have an interest or a short position in the underlying shares of the equity derivatives by virtue of the holding, writing or issuing of the equity derivatives, from all or any of the provisions of this Part.

(4) The Commission may from time to time---

(a) suspend or withdraw an exemption granted under subsection (2) or (3) on the ground that the conditions subject to which the exemption was granted have not been complied with or on such other ground as the Commission considers appropriate; or

(b) amend any condition imposed under subsection (2) or (3).

(5) Guidelines published pursuant to subsection (1) are not subsidiary legislation.

### Division 2---Disclosure of interests and short positions

### 301. Duty of disclosure: cases in which it may arise

(1) Where---

(a) a person acquires an interest in shares comprised in the relevant share capital of a listed corporation or ceases to be interested in shares so comprised (whether or not retaining an interest in other shares so comprised); or

(b) any change occurs affecting facts relevant to the application of section 304 to a person's existing interest in shares comprised in a listed corporation's share capital of any description,  
then in the circumstances specified in section 304(1), he comes under the duty of disclosure.

(2) Where a person is---

(a) interested in shares comprised in the relevant share capital of a corporation at the time when the corporation becomes a listed corporation;

(b) interested in shares comprised in a listed corporation's share capital of a particular class at the time when the listed corporation's share capital of that class becomes relevant share capital; or

(c) interested in shares comprised in the relevant share capital of a listed corporation at the commencement of this Part, if such interest has not previously been disclosed to the listed corporation and the Exchange Company under the Securities (Disclosure of Interests) Ordinance (Cap. 396) before its repeal under section 392, then in the circumstances specified in section 304(2), he comes under the duty of disclosure.

(3) Where a person is interested in shares comprised in the relevant share capital of a listed corporation at the time when there is a reduction in the notifiable percentage level made by regulations, then in the circumstances specified in section 304(3), he comes under the duty of disclosure.

(4) Where---

(a) a person comes to have, or ceases to have, a short position in shares comprised in the relevant share capital of a listed corporation; or

(b) the short position which a person has in shares comprised in the relevant share capital of a listed corporation changes,

then in the circumstances specified in section 304(4), he comes under the duty of disclosure.

(5) Where a person has a short position in shares comprised in the relevant share capital of a listed corporation at the commencement of this Part, then in the circumstances specified in section 304(5), he comes under the duty of disclosure.

(6) Where a person has a short position in shares comprised in the relevant share capital of a listed corporation at the time when there is a reduction in the specified percentage level made by regulations, then in the circumstances specified in section 304(6), he comes under the duty of disclosure.

(7) The existence of the duty of disclosure in a particular case depends (in part) on the circumstances obtaining before and after whatever is in that case the relevant time.

### 302. Interests to be disclosed

(1) Subject to subsection (2), the interests to be taken into account for the purposes of the duty of disclosure arising under section 300 are those in shares comprised in the relevant share capital of the listed corporation concerned.

(2) In subsection (1), a reference to interests in shares comprised in the relevant share capital of the listed corporation concerned includes a reference to interests in shares so comprised, which are the underlying shares of equity derivatives, that a person has, or ceases to have, by virtue of---

- (a) the holding, writing or issuing by him of the equity derivatives;
- (b) the exercise by him of rights under the equity derivatives; or
- (c) the assignment by him, or the lapsing without exercise, of rights under the equity derivatives.

(3) A person has a notifiable interest at any time when he is interested in shares comprised in the relevant share capital of the listed corporation concerned of an aggregate nominal value equal to or more than the nominal value of the percentage of the issued equity share capital which is the notifiable percentage level for the time being.

### 303. Short positions to be disclosed

The short positions to be taken into account for the purposes of the duty of disclosure arising under section 301 are those in shares comprised in the relevant share capital of the listed corporation concerned.

### 304. Circumstances in which duty of disclosure arises

(1) The circumstances referred to in section 301(1) are those where---

- (a) the person has a notifiable interest immediately after the relevant time, but did not have a notifiable interest immediately before the relevant time;
- (b) the person had a notifiable interest immediately before the relevant time, but does not have a notifiable interest immediately after the relevant time;
- (c) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, but the percentage levels of his interest immediately before and immediately after the relevant time are not the same; or
- (d) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, but the nature of his interest immediately before and immediately after the relevant time is not the same.

(2) The circumstances referred to in section 301(2) are those where the person has a notifiable interest immediately after the relevant time.

(3) The circumstances referred to in section 301(3) are those where the person has a notifiable interest immediately after the relevant time, but did not have a



notifiable interest immediately before the relevant time.

(4) The circumstances referred to in section 301(4) are those where the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, and---

(a) the person---

(i) did not have a short position in shares comprised in the relevant share capital of the listed corporation concerned immediately before the relevant time; or

(ii) had a short position in shares so comprised immediately before the relevant time of a percentage level less than the specified percentage level,

but has a short position in shares so comprised immediately after the relevant time of a percentage level equal to or more than the specified percentage level;

(b) the person had a short position in shares so comprised immediately before the relevant time of a percentage level equal to or more than the specified percentage level, but does not have a short position in shares so comprised immediately after the relevant time of a percentage level equal to or more than the specified percentage level; or

(c) the person had a short position in shares so comprised immediately before the relevant time of a percentage level equal to or more than the specified percentage level, and has a short position in shares so comprised immediately after the relevant time of a percentage level equal to or more than the specified percentage level, but the percentage levels of his short position immediately before and immediately after the relevant time are not the same.

(5) The circumstances referred to in section 301(5) are those where the person has a notifiable interest and a short position in shares comprised in the relevant share capital of the listed corporation concerned immediately after the relevant time.

(6) The circumstances referred to in section 301(6) are those where---

(a) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time; and

(b) the person had a short position in shares so comprised immediately before the relevant time of a percentage level less than the specified percentage level, but has a short position in shares so comprised immediately after the relevant time of a percentage level equal to or more than the specified percentage level.

(7) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (1)(c) is not under such a duty where---

(a) the percentage level of his interest in shares comprised in the relevant share capital of the listed corporation concerned, calculated in accordance with section

305(1), immediately after the relevant time is less than the percentage level of his interest in shares so comprised disclosed in the last notification required to be given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c); and

(b) the difference between---

(i) the percentage figure of his interest in shares so comprised, calculated in accordance with subsection (13)(a), immediately after the relevant time; and

(ii) the percentage figure of his interest in shares so comprised disclosed in the last notification required to be given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c),

is less than 0.5%.

(8) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (4)(c) is not under such a duty where---

(a) the percentage level of his short position in shares comprised in the relevant share capital of the listed corporation concerned, calculated in accordance with section 305(4), immediately after the relevant time is less than the percentage level of his short position in shares so comprised disclosed in the last notification required to be given by him where the duty of disclosure arose in the circumstances specified in subsection (4)(c); and

(b) the difference between---

(i) the percentage figure of his short position in shares so comprised calculated in accordance with subsection (13)(b) immediately after the relevant time; and

(ii) the percentage figure of his short position in shares so comprised disclosed in the last notification required to be given by him where the duty of disclosure arose in the circumstances specified in subsection (4)(c),

is less than 0.5%.

(9) A corporation ("the first-mentioned corporation") which would otherwise come under a duty of disclosure in the circumstances specified in subsection (1) is not under such a duty where---

(a) the first-mentioned corporation acquires the interest referred to in section 301(1)(a) directly from a related corporation; or

(b) the first-mentioned corporation ceases to have the interest referred to in section 301(1)(a) when such interest is acquired directly from the first-mentioned corporation by a related corporation,

and---

(i) either---

(A) the first-mentioned corporation controls 100% of the voting power at general meetings of the related corporation; or

(B) the related corporation controls 100% of the voting power at general meetings of the first-mentioned corporation; or

(ii) both the first-mentioned corporation and the related corporation are subsidiaries of another corporation which controls 100% of the voting power at general meetings of both the first-mentioned corporation and the related corporation.

(10) A corporation ("the first-mentioned corporation") which would otherwise come under a duty of disclosure in the circumstances specified in subsection (4) is not under such a duty where---

(a) the first-mentioned corporation comes to have the short position referred to in section 301(4)(a) under an agreement made directly with a related corporation; or

(b) the first-mentioned corporation ceases to have the short position referred to in section 301(4)(a) when---

(i) (if such short position arose under an agreement made directly with a related corporation) such short position ceases to exist; or

(ii) a related corporation, under an agreement made directly with the first-mentioned corporation, comes to have such short position, and---

(i) either---

(A) the first-mentioned corporation controls 100% of the voting power at general meetings of the related corporation; or

(B) the related corporation controls 100% of the voting power at general meetings of the first-mentioned corporation; or

(ii) both the first-mentioned corporation and the related corporation are subsidiaries of another corporation which controls 100% of the voting power at general meetings of both the first-mentioned corporation and the related corporation.

(11) In subsection (1)(d), a reference to the nature of a person's interest as being not the same includes a reference to a change in the nature of---

(a) the person's title to shares comprised in the relevant share capital of the listed corporation concerned; or

(b) any of the person's interests whether legal or equitable in shares so comprised, but does not include a reference to a change in the nature of the person's interest in shares so comprised---

(i) on delivery of the shares to him, if his equitable interest in those shares has previously been notified to the listed corporation concerned and the relevant exchange company under any provision of this Division or Division 3 or 4;

(ii) due to a change in the terms on which rights under any equity derivatives may be exercised resulting from a change in the number of the underlying shares in issue; or

(iii) where the person is a qualified stock borrower and lender, if he---  
(A) borrows the shares under a securities borrowing and lending agreement for the purposes of his business as a qualified stock borrower and lender from another person (other than a related corporation of the qualified stock borrower and lender); and  
(B) lends the shares, on the same day, under a securities borrowing and lending agreement, to a third person (other than a related corporation of the qualified stock borrower and lender).

(12) For the purposes of subsection (11), a person is a qualified stock borrower and lender if he---

- (a) is an intermediary licensed or exempt for Type 1 regulated activity;
- (b) borrows and lends the shares in accordance with the rules of a recognized exchange company; and
- (c) holds himself out at all normal times as willing to borrow and lend shares.

(13) For the purposes of---

- (a) subsection (7)(b), "percentage figure" (百分率數字) means the percentage figure referred to in section 305(1) before rounding down, if applicable, to the next whole number; and
- (b) subsection (8)(b), "percentage figure" (百分率數字) means the percentage figure referred to in section 305(4) before rounding down, if applicable, to the next whole number.

305. Percentage level in relation to notifiable interests and short positions

(1) Subject to subsections (2) and (3), "percentage level" (百分率水平), in section 304(1)(c) and (7), means the percentage figure found by expressing the aggregate nominal value of all the shares comprised in the relevant share capital of the listed corporation concerned in which the person is interested immediately before or immediately after (as the case may be) the relevant time as a percentage of the nominal value of the issued equity share capital of that listed corporation and rounding that figure down, if it is not a whole number, to the next whole number.

(2) Where the nominal value of the issued equity share capital of the listed corporation is greater immediately after the relevant time than it was immediately before the relevant time, the percentage level of the interest of the person immediately before (as well as immediately after) the relevant time is determined by reference to the greater amount.

(3) In determining the aggregate nominal value of shares comprised in the relevant share capital of the listed corporation in which a person is interested for the purposes of subsection (1), there shall be disregarded any short position which that person has in shares so comprised which, if included in the calculation of the aggregate nominal value of the shares so comprised in which the person is interested,

would reduce the aggregate nominal value of those shares.

(4) Subject to subsection (5), "percentage level" (百分率水平), in section 304(4) and (8), means the percentage figure found by expressing the aggregate nominal value of all the shares comprised in the relevant share capital of the listed corporation concerned in which the person has a short position immediately before or immediately after (as the case may be) the relevant time as a percentage of the nominal value of the issued equity share capital of that listed corporation and rounding that figure down, if it is not a whole number, to the next whole number.

(5) Where the nominal value of the issued equity share capital of the listed corporation is greater immediately after the relevant time than it was immediately before the relevant time, the percentage level of the short position of the person immediately before (as well as immediately after) the relevant time is determined by reference to the greater amount.

#### 306. Notifiable percentage level and specified percentage level

(1) In sections 301(3) and 302(3), a reference to notifiable percentage level shall be construed as a reference to---

(a) subject to paragraph (b), 5%; or

(b) where any other percentage is prescribed by regulations, such other percentage, and different percentages may be prescribed in relation to corporations of different classes or descriptions.

(2) In sections 301(6) and 304(4), a reference to specified percentage level shall be construed as a reference to---

(a) subject to paragraph (b), 1%; or

(b) where any other percentage is prescribed by regulations, such other percentage.

#### 307. Notification of family and corporate interests and short positions

(1) For the purposes of this Division and Divisions 3 and 4, a person is taken---

(a) to be interested in any shares in which his spouse, or any minor child (natural or adopted) of his, is interested; and

(b) to have a short position in any shares in which his spouse, or any minor child (natural or adopted) of his, has a short position.

(2) For the purposes of this Division and Divisions 3 and 4, a person is taken---

(a) to be interested in any shares in which a corporation is interested; and

(b) to have a short position in any shares in which a corporation has a short position, if---

(i) that corporation or its directors are accustomed or obliged to act in accordance with his directions or instructions; or

(ii) subject to subsection (5), he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that

corporation.

(3) Where---

(a) a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a corporation; and

(b) that corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation ("the effective voting power"),

then, for the purposes of subsection (2)(ii), the effective voting power is taken as exercisable by that person.

(4) For the purposes of subsections (2) and (3), a person is entitled to exercise or control the exercise of voting power if---

(a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or

(b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

(5) For the purposes of subsection (2)(ii), a person is not taken---

(a) to be interested in any shares in which a corporation is interested; or

(b) to have a short position in any shares in which a corporation has a short position, if---

(i) that corporation is interested in those shares or has a short position in those shares (as the case may be) by reason only of its obligation or power to invest in, manage, deal with or hold interests in those shares on behalf of its customers in the ordinary course of its business as an investment manager, custodian or trustee;

(ii) to the extent that the corporation has any right or power to vote in respect of those shares arising from or by reason of its capacity as an investment manager, custodian or trustee, such right or power is exercisable by that corporation independently without any reference to the person; and

(iii) when performing its functions as an investment manager, custodian or trustee, the power of that corporation to invest in, manage, deal with or hold interests in those shares is exercised by that corporation independently without any reference to the person.

(6) A person who is taken to be interested, or have a short position, in shares under subsection (2) shall be regarded as having ceased to be interested, or have a short position, in the shares if subsection (2)(i) or (ii) no longer applies.

(7) For the purposes of this section, a spouse or minor child (natural or adopted) of a person, or a corporation at the general meetings of which a person is entitled to exercise or control the exercise of one-third or more of the voting power, is taken to be interested, or have a short position,

in shares in the same circumstances in which the person is taken to be interested or have a short position, in shares (as the case may be) by virtue of section 313.

(8) In subsection (5), "investment manager" (投資經理) means---

(a) an intermediary licensed or exempt for Type 4 or Type 9 regulated activity; or  
(b) a corporation which is licensed or exempt in a place outside Hong Kong recognized for the purposes of this section by the Commission for an activity which is equivalent to any of the regulated activities referred to in paragraph (a),  
and is authorized to manage investments in securities for another person under a written agreement.

### 308. Agreement to acquire interests in particular listed corporation

(1) This section applies in relation to an agreement between 2 or more persons which includes provisions for the acquisition by any one or more of them of interests in shares comprised in the relevant share capital of a particular listed corporation ("the target corporation"), if---

(a) the agreement also includes provisions imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of their interests in shares comprised in the relevant share capital of the target corporation acquired in pursuance of the agreement (whether or not together with any other interests of theirs in the shares comprised in the relevant share capital of the target corporation to which the agreement relates); or  
(b) the agreement provides for the making of a loan, or the providing of security for a loan, by a controlling person or a director of the target corporation to any person on the understanding or with the knowledge that such loan (or any part thereof) would be used or applied for the acquisition of an interest in shares comprised in the relevant share capital of the target corporation,  
and an interest in shares comprised in the relevant share capital of the target corporation is in fact acquired by any of the parties in pursuance of such agreement.

(2) In subsection (1)(a), a reference to the use of interests in shares comprised in the relevant share capital of the target corporation shall be construed as a reference to the exercise of any rights, or of any control or influence, arising from those interests (including the right to enter into any agreement for the exercise, or for the control of the exercise, of any of those rights by another person).

(3) Once any interest in shares comprised in the relevant share capital of the target corporation has been acquired in pursuance of an agreement to which this section applies, this section continues to apply to the agreement irrespective of---  
(a) whether or not any further acquisitions of interests in shares comprised in the relevant share capital of the target corporation take place in pursuance of the agreement;

(b) any change in the persons who are for the time being parties to it; and  
(c) any variation of the agreement,  
so long as the agreement continues to include provisions of any description referred to in subsection (1)(a) or (b).

(4) In subsection (3), a reference to the agreement includes a reference to any agreement having effect (whether directly or indirectly) in substitution for an earlier agreement.

(5) In subsection (1), a reference to an agreement, in so far as subsection (1)(a) applies, does not include---

(a) a reference to an agreement which is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; and

(b) a reference to an agreement to underwrite or sub-underwrite any offer of shares in a corporation, if the agreement is confined to that purpose and any matters incidental to it.

(6) In subsection (1), a reference to an agreement, in so far as subsection (1)(b) applies, does not include a reference to an agreement under which a controlling person or a director of the target corporation makes the loan in the ordinary course of his business as---

(a) an authorized financial institution;

(b) a licensed money lender within the meaning of the Money Lenders Ordinance (Cap. 163);

(c) an exchange participant of a recognized exchange company; or

(d) an intermediary licensed or exempt for Type 1 regulated activity.

(7) For the purposes of this section, "controlling person" (控權人士), in relation to a corporation, means a person who, either alone or with any of his associates---

(a) is entitled to exercise or control the exercise of not less than---

(i) subject to subparagraph (ii), 35%; or

(ii) where any other percentage is prescribed by rules made under section 384 for the purposes of this subsection, such other percentage,  
of the voting power at general meetings of the corporation;

(b) has the right to nominate any of the directors of the corporation; or

(c) has an interest in shares carrying the right to---

(i) veto any resolution; or

(ii) amend, modify, limit or add conditions to any resolution,  
at general meetings of the corporation.

309. Interests of parties to agreement



(1) In the case of an agreement to which section 308 applies, each party to the agreement is taken (for the purposes of the duty of disclosure) to be interested in any shares comprised in the relevant share capital of the target corporation in which any other party to the agreement is interested apart from the agreement (whether or not the interest of the other party in question was acquired, or includes any interest which was acquired, in pursuance of the agreement).

(2) For the purposes of subsection (1) and section 310, an interest of a party to such an agreement in shares comprised in the relevant share capital of the target corporation is an interest apart from the agreement if he is interested in those shares otherwise than by the application of this section and section 308 in relation to the agreement.

(3) Accordingly, any such interest of the party to the agreement (apart from the agreement) includes, for the purposes of subsection (1), any interest which he is taken to have under section 307 or by the application of this section and section 308 in relation to any other agreement with respect to shares comprised in the relevant share capital of the target corporation to which he is a party.

310. Duty of parties to agreement acting together to keep each other informed

(1) A person who is a party to an agreement to which section 308 applies is subject to the requirements of this section at any time when---

- (a) the target corporation is a listed corporation, and he knows it to be so;
- (b) the shares in the target corporation to which the agreement relates consist of or include shares comprised in the relevant share capital of the target corporation, and he knows that to be the case; and
- (c) he knows the facts which make the agreement one to which section 308 applies.

(2) A person who is subject to the requirements of this section is under a duty to give notification to every other party to the agreement of the relevant particulars of his interest apart from the agreement (if any) in shares comprised in the relevant share capital of the target corporation---

- (a) on his first becoming subject to the requirements of this section; and
- (b) on each occurrence after that time and while he is still subject to those requirements of any event or change referred to in section 301(1), (2) or (3) (as it applies to his case otherwise than by reference to interests which he is taken to have under section 309 as applying to that agreement).

(3) The relevant particulars to be notified under subsection (2) are the number of shares (if any) comprised in the relevant share capital of the target corporation which the person giving the notification would be required to state as his interest if he were under the duty of disclosure with respect to that interest (apart from the agreement) immediately after the time when the duty to give notification under

subsection (2) arose.

(4) A person who is a party to an agreement to which section 308 applies is under a duty to give notification to every other party to the agreement of his current address---

(a) on his first becoming subject to the requirements of this section; and

(b) on any change in his address occurring after that time and while he is still subject to those requirements.

(5) If a person is under a duty to give any notification required by this section to any other person, the notification shall be given within 3 business days after the day on which that duty arises.

311. Circumstances in which persons have interests in shares or short positions by attribution

(1) In sections 301 to 304---

(a) a reference to a person acquiring an interest in shares comprised in the relevant share capital of a listed corporation or ceasing to be interested in shares so comprised includes a reference to his becoming or ceasing to be interested in those shares by virtue of another person's interest;

(b) a reference to the nature of a person's interest in shares comprised in the relevant share capital of a listed corporation as being not the same includes a reference to a change in the nature of his interest in those shares by virtue of a change in the nature of another person's interest; and

(c) a reference to a person coming to have a short position in shares comprised in the relevant share capital of a listed corporation or ceasing to have a short position in shares so comprised includes a reference to his coming to have or ceasing to have a short position in those shares by virtue of another person's short position.

(2) Subsection (1) applies where---

(a) a person becomes or ceases to be interested in shares comprised in the relevant share capital of a listed corporation;

(b) the nature of a person's interest in shares so comprised changes; or

(c) a person comes to have or ceases to have a short position in shares so comprised, under section 307 or 309 (as the case may be) whether---

(i) by virtue of the fact that the other person who is interested, or has a short position, in those shares becomes or ceases to be a person by reference to whose interests or short positions (if any) he is taken to have an interest or short position (as the case may be) under section 307 or 309;

(ii) in consequence of the fact that the other person has become or ceased to be interested in those shares, the nature of the other person's interest in those shares has changed, or the other person has come to have or ceased to have a short

position in those shares (as the case may be);

(iii) in consequence of the fact that he himself becomes or ceases to be a party to an agreement to which section 308 applies to which the other person interested in those shares is for the time being a party; or

(iv) in consequence of the fact that an agreement to which both he and the other person are parties becomes or ceases to be one to which section 308 applies.

(3) Upon---

(a) a person becoming or ceasing to be interested in shares comprised in the relevant share capital of a listed corporation;

(b) a change in the nature of a person's interest in shares so comprised; or

(c) a person coming to have or ceasing to have a short position in shares so comprised, (as the case may be) in the circumstances specified in subsection (2), the person shall be deemed to know that he has acquired an interest in those shares or has ceased to be interested in those shares, or that the nature of his interest in those shares has changed, or that he has come to have a short position in those shares or has ceased to have a short position in those shares (as the case may be), when he knows both---

(i) the relevant facts with respect to the other person's interest or short position (as the case may be) in those shares; and

(ii) the relevant facts by virtue of which he himself has become or ceased to be interested, or come to have or ceased to have a short position (as the case may be) in those shares under section 307 or 309.

(4) A person has the knowledge referred to in subsection (3)(i) if he knows (whether contemporaneously or not) either---

(a) of the fact that the other person is interested in those shares, or the nature of the other person's interest in those shares changes, or the other person has a short position in those shares (as the case may be) at any material time; or

(b) of the fact that the other person has become or ceased to be interested in those shares, or the nature of the other person's interest in those shares has changed, or the other person has come to have or ceased to have a short position in those shares (as the case may be) at any material time.

(5) A person shall be deemed to know of the fact that---

(a) the other person is interested in those shares or the nature of the other person's interest in those shares changes (as the case may be); or

(b) the other person has become or ceased to be interested in those shares or the nature of the other person's interest in those shares has changed (as the case may be),

if he has been notified under section 310 of facts which indicate that the other person is or has become or ceased to be interested in those shares or the nature of the other

person's interest in those shares changes or has changed (as the case may be), whether on the other person's own account or by virtue of a third party's interest in them.

(6) In subsection (4), "material time" (關鍵時間) means any time at which the interests or short positions (as the case may be) of the person concerned which are taken to be his under section 307 or 309 fall or fell to be so taken.

#### 312. Notification by agents

Where a person authorizes another person ("the agent")---

(a) to acquire or dispose of, on his behalf, interests in shares comprised in relevant share capital of a listed corporation; or

(b) to have or cease to have, on his behalf, short positions in shares so comprised, he shall secure that the agent notifies him immediately of acquisitions or disposals of interests, or having or ceasing to have short positions, effected by the agent which will or may give rise to any duty of disclosure or any duty to give notification under any provision of this Division or Division 3 or 4 with respect to his interests or short positions in those shares.

#### Division 3---Interests and short positions to be notified or disregarded

#### 313. Interests and short positions to be taken into account for the purpose of notification

(1) This section applies, subject to section 314, in determining for the purposes of Divisions 2, 4 and 5 whether a person has, or ceases to have, an interest or short position in shares comprised in the relevant share capital of a listed corporation that is notifiable.

(2) A reference to an interest in shares shall be construed as including a reference to an interest of any kind whatsoever in the shares, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.

(3) In construing a reference to a short position in shares, any restraint or restriction to which the exercise of a right or the settlement of an obligation, by virtue of the short position, may be subject shall be disregarded.

(4) Where property is held on trust and an interest, or short position, in shares is comprised in that property---

(a) a beneficiary of the trust who apart from this section does not have an interest, or short position, in the shares is taken to have such an interest or short position (as the case may be); and

(b) in the case of a discretionary trust, the founder of the trust is taken to have an interest or short position (as the case may be) in the shares.

(5) A person is taken to have an interest in shares if---

(a) he enters into a contract for their purchase by him (whether for cash or other

consideration); or

(b) he is entitled to---

(i) exercise any right conferred by the holding of the shares; or

(ii) control the exercise of any such right.

(6) For the purposes of subsection (5)(b), a person is taken to be entitled to exercise or control the exercise of any right conferred by the holding of shares if---

(a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or

(b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

(7) A person is taken to have an interest in shares if, otherwise than by virtue of having an interest under a trust---

(a) he has a right to call for delivery of the shares to himself or to his order; or

(b) he has a right to acquire an interest in the shares or is under an obligation to take delivery of the shares,

whether in any case the right or obligation is conditional or absolute.

(8) A person who is the holder, writer or issuer of equity derivatives is taken to have an interest in shares which are the underlying shares of the equity derivatives if, by virtue of his holding, writing or issuing of the equity derivatives---

(a) he has a right to require another person to deliver the underlying shares to him;

(b) he is under an obligation to take delivery of the underlying shares;

(c) he has a right to receive from another person an amount if the price of the underlying shares increases; or

(d) he has a right to avoid or reduce a loss if the price of the underlying shares increases,

before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute.

(9) The number of shares in which a person is taken to be interested under subsection (8) is---

(a) the number of the underlying shares of the equity derivatives---

(i) which he has a right to require another person to deliver to him; or

(ii) of which he is under an obligation to take delivery;

(b) the number of the underlying shares of the equity derivatives by reference to which, wholly or partly, the amount which he has a right to receive or the loss which he has a right to avoid or reduce, by virtue of his holding, writing or issuing of the equity derivatives, is derived or determined; or

(c) in the case of a stock futures contract, the contract multiplier which is to be

used in calculating the amount he may receive in respect of his holding of the stock futures contract,  
whether in any case the right or obligation is conditional or absolute, and the aggregate nominal value of the shares in which the person is taken to be interested shall be calculated accordingly.

(10) A person shall be regarded as having ceased to be interested in shares if---

(a) he delivers the shares to another person or to another person's order---

(i) in accordance with a contract under which he agreed to sell the shares to the other person; or

(ii) in fulfilling an obligation to do so when called upon by the other person to deliver the shares;

(b) his right to call for delivery of the shares lapses or he assigns such a right to another person;

(c) his obligation to take delivery of the shares lapses or he assigns such an obligation to another person;

(d) he receives from another person an amount, or avoids or reduces a loss, on settlement of any cash settled equity derivatives; or

(e) he assigns his rights under a stock futures contract to another person.

(11) The number of shares in which a person is regarded as having ceased to be interested under subsection (10)(d) is---

(a) the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or

(b) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract,

and the aggregate nominal value of the shares in which the person is regarded as having ceased to be interested under that subsection shall be calculated accordingly.

(12) The number of shares in which a person is regarded as having ceased to be interested under subsection (10)(e) is the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of each stock futures contract, and the aggregate nominal value of the shares in which the person is regarded as having ceased to be interested under that subsection shall be calculated accordingly.

(13) The number of shares in which a person is regarded as having a short position by virtue of his holding, writing or issuing of any equity derivatives is---

(a) the number of the underlying shares of the equity derivatives which he is entitled, or may be required, to deliver;

(b) in the case of cash settled equity derivatives, the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or

(c) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract,

and the aggregate nominal value of the shares in which the person is regarded as so having a short position shall be calculated accordingly.

(14) The number of shares in which a person is regarded as having a short position under a securities borrowing and lending agreement is the number of shares which he is obliged to deliver under the securities borrowing and lending agreement, if called upon to do so, whether or not the obligation to deliver shares may be settled by payment of cash or settled by delivery of the shares, and the aggregate nominal value of the shares in which the person is regarded as so having a short position shall be calculated accordingly.

(15) Persons having a joint interest or short position are taken each of them to have that interest or short position (as the case may be).

(16) It is immaterial that shares in which a person has an interest or short position are unidentifiable.

314. Interests to be disregarded for the purpose of notification

(1) The following interests in shares comprised in the relevant share capital of a listed corporation shall be disregarded for the purposes of Divisions 2 to 4---

(a) where property is held on trust and an interest in shares is comprised in that property---

(i) an interest in reversion or remainder;

(ii) an interest of a bare trustee; and

(iii) any discretionary interest;

(b) subject to subsection (3), an interest of or held by a holder, trustee or custodian of a collective investment scheme authorized under section 103 or an approved overseas scheme;

(c) an interest of a person subsisting by virtue of---

(i) a charitable scheme made by order of any court of competent jurisdiction; or

(ii) the vesting of a deceased's estate in any judicial officer between the time of death of the deceased and the grant of letters of administration;

(d) an interest for the life of himself, or of another, of a person under a settlement in the case of which the property comprised in the settlement consists of or includes shares, and the following conditions are satisfied---

(i) the settlement is irrevocable; and  
(ii) the settlor has no interest in any income arising under, or property comprised in, the settlement;  
(e) an exempt security interest;  
(f) an interest in shares held by a recognized clearing house;  
(g) an interest in shares held by the Registrar of the High Court in his official capacity;  
(h) an interest in shares of an intermediary licensed or exempt for Type 1 regulated activity where---

(i) the interest is acquired by the intermediary as an agent only for the purposes of a transaction entered into in the ordinary course of his business as such an intermediary;

(ii) the principal in that transaction is a person other than a related corporation of the intermediary;

(iii) the interest is acquired from a person other than a related corporation of the intermediary; and

(iv) the intermediary has been interested in the shares for not more than 3 business days; and

(i) such interests, or interests of such a class, as may be prescribed for the purposes of this section by regulations.

(2) A person is not taken to be interested in shares under section 313(5)(b) by reason only that he---

(a) has been appointed as a proxy to vote at a specified meeting of the listed corporation or of any class of its members and at any adjournment of that meeting; or

(b) has been appointed by a corporation to act as its representative at a meeting of the listed corporation or of any class of its members.

(3) An interest of or held by a holder, trustee or custodian of a collective investment scheme authorized under section 103 shall not be disregarded under subsection (1)(b) if the holder, trustee or custodian (as the case may be) is also a manager of the collective investment scheme.

(4) For the purposes of subsection (1)(b), "approved overseas scheme" (核准海外計劃) means a collective investment scheme which---

(a) is established in a place outside Hong Kong recognized for the purposes of this section by the Commission by notice published in the Gazette;

(b) is authorized by or registered with the authority (if any) responsible for the authorization or registration of collective investment schemes in the place where it is established, and complies with the requirements of such authority;



(c) is accepted by the Commission as being a bona fide widely held investment scheme;  
(d) is approved by the Commission; and  
(e) complies with such conditions as the Commission may impose on granting the approval under paragraph (d).

(5) An interest in shares is an exempt security interest for the purposes of subsection (1)(e) if it is held---

(a) by a person who is---

(i) an authorized financial institution;

(ii) an insurer authorized within the meaning of the Insurance Companies Ordinance (Cap. 41);

(iii) an exchange participant of a recognized exchange company;

(iv) an intermediary licensed or exempt for Type 1 or Type 8 regulated activity;

or

(v) a corporation authorized under the law of any place outside Hong Kong recognized for the purposes of this subsection by the Commission to carry on business---

(A) as a bank;

(B) as an insurance company; or

(C) in an activity that is in the opinion of the Commission equivalent to any of the regulated activities carried out by a person referred to in subparagraph (iv); and

(b) by way of security only for the purposes of a transaction

entered into in the ordinary course of his business as such a person.

(6) An interest in shares shall cease to be an exempt security interest for the purposes of subsection (1)(e), and the person holding the interest in the shares by way of security referred to in subsection (5) ("the lender") shall be taken to have acquired that interest for the purposes of Divisions 2 to 5, when---

(a) the lender---

(i) becomes entitled to exercise voting rights in respect of the interest in the shares held as security as a result of, or following, a default by the person giving the interest in the shares as security; and

(ii) has---

(A) evidenced an intention to exercise the voting rights or control their exercise; or

(B) taken any step to exercise the voting rights or control their exercise; or

(b) the power of sale in respect of the interest in the shares held as security becomes exercisable, and the lender or its agent offers the interest in the shares held as security, or any part of that interest, for sale.

(7) For the purposes of subsection (1), a person shall not be considered as not

being a bare trustee in respect of any property by reason only that---

(a) the person for whose benefit the property is held is not absolutely entitled thereto as against the trustee only because he is a minor or is a person under a disability; or

(b) the trustee has the right to resort to the property to satisfy any outstanding charge or lien or for the payment of any duty, tax, cost or other outgoings.

(8) An application for approval of a scheme under subsection (4)(d) shall be---

(a) made by the manager of the scheme; and

(b) accompanied by---

(i) a certified copy of the constitution of the scheme; and

(ii) such information about---

(A) the scheme;

(B) the persons who hold, or have the right to become holders of, units or shares or other interests under the scheme; and

(C) the persons who are trustees or custodians of the scheme,

as the Commission may require to satisfy itself that

the collective investment scheme complies with the requirements of subsection (4)(a),

(b) and (c).

(9) The following arrangements are not bona fide widely held investment schemes for the purposes of subsection (4)(c)---

(a) an arrangement operated by a person otherwise than by way of business;

(b) an arrangement under which less than 100 persons hold, or have the right to become holders of, units or shares or other interests that entitle the holders, directly or indirectly, to the income or property of the arrangement;

(c) an arrangement under which less than 50 persons hold, or have the right to become holders of, units or shares or other interests that entitle the holders, directly or indirectly, to 75% or more of the income or property of the arrangement; and

(d) such other arrangement as may be specified by the Commission by notice published in the Gazette.

(10) In subsection (8), "constitution" (章程), in relation to a scheme, means---

(a) where the scheme is a unit trust, the trust deed of the unit trust; or

(b) in any other case, the instrument providing for the establishment or constitution of the scheme,

including, where the scheme is established by a company, the memorandum and articles of the company, and also includes, if the trust deed, instrument or memorandum and articles are not written in the English or Chinese language, a translation thereof

in English or Chinese.

(11) For the purposes of subsection (10)---

"company" (公司) means a company incorporated outside Hong Kong which does not have a place of business in Hong Kong;

"memorandum and articles" (章程大綱及章程細則), in relation to a company, means the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company.

Division 4---Requirements for giving notification

315. Notification to be given

(1) Where a person comes under a duty of disclosure under section 301, he shall give notification to the listed corporation concerned and to the relevant exchange company of---

(a) the interests which he has, or ceases to have, in shares comprised in the relevant share capital of the listed corporation; and

(b) the short position (if any) which he has, or ceases to have, in shares so comprised.

(2) A notification required by this section shall be given in such manner so as to ensure that it is received by the listed corporation concerned and the relevant exchange company at the same time or, if it is not practicable to do so, that it is received by the listed corporation and the relevant exchange company one immediately after the other.

(3) The Commission may, by notice published in the Gazette, specify the form in respect of a notification required by this section, either generally or in any particular case, and, without limiting the generality of the foregoing, may in the form---

(a) notwithstanding section 384(1), include directions and instructions relating to the manner in which the form is to be completed, signed, executed and authenticated; and

(b) specify documents by which it is to be accompanied.

(4) For the purposes of subsection (3), the Commission may specify that different forms are to be used in different circumstances.

(5) Subject to subsection (6), where the Commission has specified any form under subsection (3) in respect of a notification required by this section to be given when a duty of disclosure arises under section 301, the duty shall not be regarded as having been performed unless the notification---

(a) is in the form specified;

(b) is completed, signed, executed and authenticated in accordance with such directions and instructions as are included in the form; and

(c) is accompanied by such documents as are specified in the form.

(6) A notification required by this section shall not by reason of any deviation from a form specified in respect of it by notice published pursuant to subsection (3) cease to be regarded as being in that form, if the deviation does not affect the substance of the form.

(7) A notice published pursuant to subsection (3) is not subsidiary legislation.

316. Time of notification

(1) A notification required by section 315 shall be given, where the duty of disclosure arises under section 301(1) or (4)---

(a) in the case that at the time at which the relevant event occurs the person concerned knows of its occurrence, within 3 business days after the day on which the relevant event occurs; or

(b) otherwise, within 3 business days after the day on which the occurrence of the relevant event comes to his knowledge.

(2) A notification required by section 315 shall be given, where the duty of disclosure arises under section 301(2) or (3)---

(a) within 10 business days after the day on which the relevant event occurs; or

(b) in the case that the person concerned is not aware---

(i) that he has an interest in shares comprised in the relevant share capital of the listed corporation concerned; or

(ii) that he has an interest in shares comprised in the relevant share capital of the listed corporation of an aggregate nominal value equal to or more than the nominal value of a percentage of that relevant share capital which is the notifiable percentage level for the time being,

within 10 business days after the day on which he becomes aware that he has such an interest.

(3) A notification required by section 315 shall be given, where the duty of disclosure arises under section 301(5)---

(a) within 10 business days after the day on which the relevant event occurs; or

(b) in the case that the person concerned is not aware that he has a short position in shares comprised in the relevant share capital of the listed corporation concerned, within 10 business days after the day on which he becomes aware that he has such a short position.

(4) A notification required by section 315 shall be given, where the duty of disclosure arises under section 301(6)---

(a) within 10 business days after the day on which the relevant event occurs; or

(b) in the case that the person concerned is not aware---

(i) that he has a short position in shares comprised in the relevant share capital

of the listed corporation concerned; or

(ii) that he has a short position in shares comprised in the relevant share capital of the listed corporation of an aggregate nominal value equal to or more than the nominal value of a percentage of that relevant share capital which is the specified percentage level for the time being,

within 10 business days after the day on which he becomes aware that he has such a short position.

317. Particulars to be contained in notification

(1) Where a duty of disclosure arises under section 301, a person shall, in performing the duty of disclosure, specify in the notification his name and address, and (so far as he is aware)---

(a) the date on which the relevant event occurred and---

(i) the date (if later) on which he became aware of the occurrence of the relevant event; or

(ii) in the case referred to in section 316(2)(b), (3)(b) or (4)(b), the date on which he became aware that he has the interest or short position (as the case may be) in the shares comprised in the relevant share capital of the listed corporation concerned;

(b) the total number and class of---

(i) shares comprised in the relevant share capital of the listed corporation concerned in which he was interested immediately before the relevant time specifying the percentage level and the percentage figure of his interest in the shares in each class; and

(ii) shares so comprised in which he is interested immediately after the relevant time specifying the percentage level and the percentage figure of his interest in the shares in each class;

(c) the total number and class of---

(i) shares comprised in the relevant share capital of the listed corporation concerned in which he had a short position immediately before the relevant time specifying the percentage level and the percentage figure of his short position in the shares in each class; and

(ii) shares so comprised in which he has a short position immediately after the relevant time specifying the percentage level and the percentage figure of his short position in the shares in each class;

(d) the circumstances in which he comes under the duty of disclosure;

(e) where the duty of disclosure arises under section 301(1) or (4), the total number and class of shares comprised in the relevant share capital of the listed corporation in which---

(i) he has acquired an interest, or ceased to have an interest, at the relevant time;

(ii) he has come to have, or ceased to have, a short position at the relevant time; or

(iii) the nature of his interest changes at the relevant time;

(f) where he acquires or disposes of the interest referred to in paragraph (e)(i)---

(i) through an on-exchange transaction, the highest price and the average price paid or received for the interest he acquires or disposes of (or, in the case that no price is paid or received, that fact); or

(ii) through an off-exchange transaction, the amount and nature of the consideration given or received for the interest he acquires or disposes of (or, in the case that no consideration is given or received, that fact);

(g) where he comes to have, or ceases to have, the short position referred to in paragraph (e)(ii)---

(i) through an on-exchange transaction, the highest price and the average price paid or received for the short position which he comes to have or ceases to have (or, in the case that no price is paid or received, that fact); or

(ii) through an off-exchange transaction, the amount and nature of the consideration given or received for the short position which he comes to have or ceases to have (or, in the case that no consideration is given or received, that fact);

(h) the capacity in which the interest, or short position, in shares comprised in the relevant share capital of the listed corporation is held immediately after the relevant time and, if the interest or short position in the shares is held in more than one capacity, the number of shares held in each capacity;

(i) where the duty of disclosure arises in the circumstances in which the nature of his interest in shares comprised in the relevant share capital of the listed corporation is not the same immediately before and immediately after the relevant time, the nature of his interest immediately before and immediately after the relevant time;

(j) where he is taken to be interested or have a short position in shares comprised in the relevant share capital of the listed corporation under section 307(1), 307(2) or 313(15)---

(i) the number and class of the shares; and

(ii) the name and address of each of the other persons having an interest or short position in the shares,

in which he is so taken to be interested or have a short position under each of those sections taken separately;

(k) where he no longer has an interest or short position in shares comprised in the relevant share capital of the listed corporation, the fact that he no longer has such an interest or short position; and

(l) such other information as may be required in the form specified for the purpose.

(2) Where any shares the particulars of which have to be specified in a notification by a person under subsection (1)(b), (c), (e), (i) or (j) are the underlying shares of equity derivatives, the person shall also specify separately in the notification the total number of---

(a) shares which are the underlying shares of any of the following categories of equity derivatives that are listed or traded on a recognized stock market or traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time---

(i) cash settled equity derivatives; or

(ii) physically settled equity derivatives;

(b) shares which are the underlying shares of any of the following categories of equity derivatives that are neither listed or traded on a recognized stock market nor traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time---

(i) cash settled equity derivatives; or

(ii) physically settled equity derivatives;

(c) shares which are the underlying shares of any of the equity derivatives referred to in paragraph (a) in which he is interested, or has a short position, immediately after the relevant time; and

(d) shares which are the underlying shares of any of the equity derivatives referred to in paragraph (b) in which he is interested, or has a short position, immediately after the relevant time.

(3) In determining the number of shares in which a person is interested for the purposes of this section---

(a) there shall be disregarded any short position which that person has in the shares which, if included in the calculation of the number of shares in which the person is interested, would reduce the number of the shares in which the person is interested; and

(b) particulars of the shares in which that person has a short position, or has ceased to have a short position, shall be specified separately in the notification.

(4) Unless a corporation is a listed corporation or a wholly owned subsidiary of a listed corporation, it shall, in performing a duty of disclosure arising under section 301, also specify in the notification the name and address of any person in accordance with whose directions or instructions it, or its directors, are accustomed

or obliged to act.

(5) A notification given by a person who is for the time being a party to an agreement to which section 308 applies shall also---

(a) state that the person giving the notification is a party to such an agreement;  
(b) include---

(i) the names and (so far as he is aware) the addresses of the other parties to the agreement, identifying them as such; and

(ii) the number and class of shares in which each of those other parties is interested;

(c) state whether or not any of the shares to which the notification relates are shares in which he is interested by the application of sections 308 and 309 and, if so, the total number and class of those shares;

(d) include a copy of any written agreement, contract, document or other instrument which records any terms or details of the agreement to which section 308 applies; and

(e) (where there is no written agreement, contract, document or other instrument of the type referred to in paragraph (d) or where the agreement is only partly recorded in writing) include a written memorandum recording the material terms of the agreement to which section 308 applies, which are not otherwise recorded in writing, including, but not limited to---

(i) any cash or other consideration involved; and

(ii) the identity of all persons between whom such cash or other consideration is passed or is intended to pass.

(6) A notification given by a person in consequence of his ceasing to be interested in any shares by virtue of the fact that he or any other person has ceased to be a party to an agreement to which section 308 applies shall also---

(a) state that he or that other person (as the case may be) has ceased to be a party to the agreement; and

(b) (in the latter case) include the name and (so far as he is aware) the address of that other person.

(7) Nothing in subsection (1) or (2) shall require details of the price that has been paid or may be payable, or the consideration that has been given or may be given, for or under equity derivatives (where the underlying shares of the equity derivatives are shares which are the subject of the disclosure) to be specified in the notification.

318. Duty to publish and notify Monetary Authority of information given under Division 4

(1) Upon receipt of any information under any provision of this Division, the



relevant exchange company shall forthwith publish such information in such manner and for such period as may be approved by the Commission.

(2) Whenever a listed corporation that is, or is the holding company of, an authorized financial institution receives information from a person under any provision of this Division, the listed corporation is under a duty to notify the Monetary Authority of that information.

(3) If a listed corporation is under a duty to give any notification required by subsection (2), the notification shall be given before the end of the business day after the day on which that duty arises.

(4) If default is made in complying with subsection (2) or (3), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

### 319. Offences for non-compliance with notification requirements

(1) A person---

(a) who fails to perform, within the specified period, a duty of disclosure arising under Division 2 in accordance with the provisions of this Division and Divisions 2 and 3 applicable to that duty;

(b) who---

(i) in purported performance of any such duty makes to a listed corporation or to the relevant exchange company a statement which is false or misleading in a material particular; and

(ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular;

(c) who fails to perform, within the specified period, a duty to give another person a notification required by section 310 in accordance with the provisions of this Division and Divisions 2 and 3 applicable to that duty; or

(d) who fails, without reasonable excuse, to comply with section 312 to secure the giving of notification to him by the agent, commits an offence and is liable---

(i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

(2) To the extent that an offence under subsection (1)(a) consists of a failure to comply with section 315(2) in that the notification referred to in that section was received by the listed corporation concerned and the relevant exchange company not at the same time or not one immediately after the other, it is a defence for a person charged with that offence to prove that he took all reasonably practicable

steps to comply with that section.

(3) It is a defence for a person charged with an offence under subsection (1)(c) to prove that it was not possible for him to give the notification to the other person required by section 310 within the specified period, and either---

(a) that it has not since become possible for him to give the notification so required; or

(b) that he gave the notification as soon after the end of that period as it became possible for him to do so.

(4) Where a person is convicted of an offence under this section, the Financial Secretary may by order direct that---

(a) the shares in relation to which the offence was committed that are registered on the Hong Kong register; or

(b) if the shares in relation to which the offence was committed are unissued shares, those unissued shares which on issue are to be registered on the Hong Kong register, shall, until further order, be subject to the restrictions under Division 12.

(5) Without prejudice to subsection (4), where a person is convicted of an offence under this section and the shares in relation to which the offence was committed are the underlying shares of any equity derivatives, the Financial Secretary may by order direct that the equity derivatives shall, until further order, be subject to the restrictions under Division 12.

(6) An order under subsection (4) or (5) may be made notwithstanding any power in a corporation's memorandum or articles enabling the corporation to impose similar restrictions on those shares or equity derivatives.

Division 5---Listed corporation's powers to investigate ownership

320. Power of listed corporation to investigate ownership of interests in its shares, etc.

(1) A listed corporation may carry out an investigation in relation to---

(a) any interest in shares comprised in its relevant share capital;

(b) any short position in shares comprised in its relevant share capital; or

(c) where shares comprised in its relevant share capital are the underlying shares of any equity derivatives, any interest in those equity derivatives,

by requiring, by notification, a person whom the listed corporation knows or has reasonable cause to believe to be interested in those shares or equity derivatives or have a short position in those shares or, at any time during the

3 years immediately before the day on which the notification is given, to have been interested in those shares or equity derivatives or had a short position in those shares---

(i) to confirm that fact or to indicate whether or not it is the case (as the

case may be); and

(ii) where he has, or has during that time had, an interest in those shares or equity derivatives or a short position in those shares, to give such further information as may be required in accordance with subsection (2).

(2) A notification under subsection (1) may require the person to whom it is addressed---

(a) to give particulars of---

(i) his own present interest in those shares or equity derivatives or his own present short position in those shares; or

(ii) his own past interest in those shares or equity derivatives or his own past short position in those shares (which he had at any time during the 3-year period referred to in subsection (1));

(b) where---

(i) his interest in those shares or equity derivatives is a present interest and any other person has an interest in those shares or equity derivatives; or

(ii) in any case, any other person had an interest in those shares or equity derivatives during that 3-year period at any time when he himself had an interest in those shares or equity derivatives,

to give (so far as he is aware) such particulars with respect to the other person's interest as may be required by the notification;

(c) where his interest in those shares or equity derivatives was a past interest, to give (so far as he is aware) particulars of the identity of the person who had that interest immediately upon his ceasing to have it;

(d) where---

(i) his short position in those shares is a present short position and any other person has an interest or short position in those shares; or

(ii) in any case, any other person had an interest or short position in those shares during that 3-year period at any time when he himself had a short position in those shares,

to give (so far as he is aware) such particulars with respect to the other person's interest or short position as may be required by the notification; or

(e) where his short position in those shares was a past short position, to give (so far as he is aware) particulars of the identity of the person who had that short position or had an interest in those shares immediately upon his ceasing to have that short position.

(3) The particulars referred to in subsection (2)(a), (b) and (d) include---

(a) particulars of the identity of persons interested in the shares or equity derivatives in question, or having a short position in the shares in question; and

(b) particulars of whether persons interested in the same shares are or were---

- (i) parties to any agreement to which section 308 applies; or
- (ii) parties to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.

(4) A notification under subsection (1) shall require any information given in response to the notification to be given within such reasonable time as may be specified in the notification.

(5) The Financial Secretary may by notice published in the Gazette exempt a person from the operation of this section.

(6) A notice published pursuant to subsection (5) is not subsidiary legislation.

(7) Sections 307 to 309 and 313 (with the omission of the reference in section 313 to section 314) apply---

(a) for the purposes of construing---

- (i) references in this section to a person interested in shares and to an interest in shares respectively; and

- (ii) references in this section to a person having a short position in shares and to a short position in shares respectively,

as they apply for the purposes of Divisions 2 to 4; and

(b) for the purposes of this Division as if, in those sections, a reference to an interest in shares includes, where those shares are the underlying shares of any equity derivatives, an interest in those equity derivatives.

(8) This section applies in relation to a person who has or previously had, or is or was entitled to acquire, a right to subscribe for shares in a listed corporation which would on issue be comprised in the relevant share capital of that corporation as it applies in relation to a person who is or was interested in shares so comprised; and in this section, a reference to an interest in shares and to shares shall be construed accordingly in any such case as including a reference respectively to any such right and shares which would on issue be so comprised.

321. Duty to notify relevant exchange company, Commission and Monetary Authority of information given under section 320

(1) Whenever in pursuance of a requirement imposed by a listed corporation on a person under section 320 the listed corporation receives any information, the listed corporation is under a duty to notify the relevant exchange company and the Commission of that information.

(2) Upon receipt of any information under subsection (1), the relevant exchange company shall forthwith publish such information in such manner and for such period as may be approved by the Commission.

(3) Whenever in pursuance of a requirement imposed by a listed corporation that

is, or is the holding company of, an authorized financial institution on a person under section 320 the listed corporation receives any information, the listed corporation is under a duty (in addition to the duty imposed by subsection (1)) to notify the Monetary Authority of that information.

(4) If a listed corporation is under a duty to give any notification required by subsection (1) or (3), the notification shall be given before the end of the business day after the day on which that duty arises.

(5) If default is made in complying with subsection (1), (3) or (4), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

322. Listed corporation to investigate ownership of interests in its shares, etc. on requisition by members

(1) A listed corporation may be required to exercise its powers under section 320 on the requisition of members of the corporation holding, at the date of the deposit of the requisition, shares comprised in the paid-up capital of the corporation carrying at that date the right of voting at general meetings of the corporation of an aggregate nominal value not less than the nominal value of one-tenth of that paid-up capital.

(2) The requisition must---

(a) state that the requisitionists are requiring the listed corporation to exercise its powers under section 320;

(b) specify the manner in which they require those powers to be exercised; and

(c) give reasonable grounds for requiring the listed corporation to exercise those powers in the manner specified,

and, subject to subsection (3), must be signed by the requisitionists and deposited at the listed corporation's registered office.

(3) The requisition may consist of several documents in like form each signed by one or more requisitionists.

(4) On the deposit of a requisition complying with this section, it is the duty of the listed corporation to exercise its powers under section 320 in the manner specified in the requisition.

(5) If default is made in complying with subsection (4), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable---

(a) on conviction on indictment to a fine at level 6; or

(b) on summary conviction to a fine at level 3.

(6) In this section and in sections 323 and 324, a reference to a corporation's registered office shall, where the corporation does not have a registered office in

Hong Kong, be deemed to be a reference to the corporation's principal place of business in Hong Kong.

323. Listed corporation to report to members

(1) On the conclusion of an investigation carried out by a listed corporation in pursuance of a requisition under section 322, it is the duty of the corporation to cause a report of the information received in pursuance of that investigation to be prepared.

(2) The report prepared under subsection (1) shall be made available at the listed corporation's registered office within 10 business days after the conclusion of the investigation.

(3) Where---

(a) a listed corporation carries out an investigation in pursuance of a requisition under section 322; and

(b) the investigation is not concluded before the end of 3 months beginning with the day next following the date of the deposit of the requisition, it is the duty of the listed corporation to cause to be prepared, in respect of that period and each successive period of 3 months ending before the conclusion of the investigation, an interim report of the information received during the respective period in pursuance of the investigation.

(4) Each report prepared under subsection (3) shall be made available at the listed corporation's registered office within 10 business days after the end of the period to which it relates.

(5) A report prepared under this section shall not include any information with respect to a corporation entitled to avail itself of the benefit conferred by section 128(3) or 129(3) of the Companies Ordinance (Cap. 32); but where any such information is omitted, that fact shall be stated in the report.

(6) The listed corporation shall, within 3 business days after making any report prepared under this section available at its registered office, notify the requisitionists that the report is so available.

(7) An investigation carried out by a listed corporation in pursuance of a requisition under section 322 shall be regarded for the purposes of this section as concluded when the listed corporation has made all such inquiries as are necessary or expedient for the purposes of the requisition and, in the case of each such inquiry, either a response has been received by the corporation or the time allowed for a response has expired.

(8) A report prepared under this section---

(a) shall be kept at the corporation's registered office from the day on which it is first made available there in accordance with subsection (2) or (4) until the expiry

of 6 years beginning with the day next following that day; and

(b) shall be made available for inspection in accordance with section 326 so long as it is so kept.

(9) If default is made in complying with subsection (1), (2), (3), (4), (6) or (8)(a), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable---

(a) on conviction on indictment to a fine at level 6; or

(b) on summary conviction to a fine at level 3.

324. Duty to deliver report prepared under section 323 to relevant exchange company, Commission and Monetary Authority

(1) Whenever a report is prepared under section 323, the listed corporation is under a duty to deliver a copy of the report to the relevant exchange company and the Commission.

(2) Upon receipt of any report under subsection (1), the relevant exchange company shall forthwith publish such report in such manner and for such period as may be approved by the Commission.

(3) Whenever a report is prepared under section 323 by a listed corporation that is, or is the holding company of, an authorized financial institution, the listed corporation is under a duty (in addition to the duty imposed by subsection (1)) to deliver a copy of the report to the Monetary Authority.

(4) The duty imposed on a listed corporation by subsection (1) or (3) shall be performed before the end of the business day after the day on which the report is first made available at the corporation's registered office.

(5) If default is made in complying with subsection (1), (3) or (4), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

325. Offences for failure to provide information required by listed corporation and power to impose restrictions

(1) Where---

(a) a notification is given by a listed corporation under section 320 to a person who is or was interested in shares comprised in the relevant share capital of the corporation that are registered on the Hong Kong register; and

(b) that person fails to give the corporation any information required by the notification within the time specified in it,

the listed corporation may apply to the Court of First Instance for an order directing that the shares in question be subject to the restrictions under Division 12.

(2) Where---

(a) a notification is given by a listed corporation under section 320 to a person

who is or was interested in equity derivatives; and

(b) that person fails to give the corporation any information required by the notification within the time specified in it,

the listed corporation may apply to the Court of First Instance for an order directing that the equity derivatives in question be subject to the restrictions under Division 12.

(3) An order under subsection (1) or (2) (as the case may be) may be made by the Court of First Instance notwithstanding any power contained in the applicant corporation's memorandum or articles enabling the listed corporation itself to impose similar restrictions on the shares or equity derivatives in question.

(4) Subject to subsections (5) and (6), a person---

(a) who fails to comply with a notification under section 320; or

(b) who---

(i) in purported compliance with such a notification, makes any statement which is false or misleading in a material particular; and

(ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular, commits an offence and is liable---

(i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

(5) A person is not guilty of an offence for failing to comply with a notification under section 320 if he proves that the requirement to give the information was frivolous or vexatious.

(6) A person is not obliged to comply with a notification under section 320 if he is for the time being exempted by the Financial Secretary under section 320(5).

### 326. Inspection of reports

(1) Any report which is required by section 323(8) to be made available for inspection in accordance with this section shall, during business hours (subject to such reasonable restrictions as the corporation concerned may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection), be open to inspection by any member of the corporation without charge or by any other person on payment of \$10, or such less sum as the corporation may determine, for each inspection.

(2) Any member of the corporation or any other person may require a copy of any such report, or any part of it, on payment of \$2, or such less sum as the corporation



may determine, for each page required to be copied; and the corporation shall cause any copy so required by a member or person to be sent to him within 10 business days after the day on which the requirement is received by the corporation.

(3) If an inspection of any report required under this section is refused or a copy so required is not sent within the specified period, the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

(4) In the case of a refusal of an inspection of any report required under this section, the Court of First Instance may by order compel an immediate inspection of it.

(5) In the case of a failure to send within the specified period a copy required under this section, the Court of First Instance may by order direct that the copy required shall be sent to the person requiring it.

(6) The Commission may by rules amend the sum specified in subsection (1) or (2).

#### Division 6---Keeping of register

##### 327. Register of interests in shares and short positions

(1) Every listed corporation shall keep a register of interests in shares and short positions for the purposes of Divisions 2 to 5.

(2) Whenever a listed corporation receives information from a person given in performance of a duty imposed on him by any provision of Divisions 2 to 5, the listed corporation is under a duty to record in the register, against the person's name, the information received and the date of the entry.

(3) Without prejudice to subsection (2), where a listed corporation receives a notification which includes a statement that the person giving the notification, or any other person, has ceased to be a party to an agreement to which section 308 applies, the listed corporation is under a duty to record that information against the name of the person who has ceased to be a party to that agreement in every place where his name appears in the register as a party to that agreement (including any entry relating to him made against another person's name).

(4) A duty imposed by subsection (2) or (3) shall be performed within 3 business days after the day on which that duty arises.

(5) A listed corporation is not, by virtue of anything done for the purposes of this section, affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares or equity derivatives.

(6) The register must be so made up that the entries against the several names recorded in it appear in chronological order.

(7) Unless the register is in such form as to constitute in itself an index, the

listed corporation shall keep an index of the names recorded in the register which shall in respect of each name contain a sufficient indication to enable the information recorded against it to be readily found.

(8) The listed corporation shall, within 10 business days after the day on which a name is recorded in the register, make any necessary alteration in the index.

(9) Subject to section 283 of the Companies Ordinance (Cap. 32), if the corporation ceases to be a listed corporation, it shall continue to keep the register and any index until the end of the period of 6 years beginning with the day next following that on which it ceases to be a listed corporation.

(10) The register and any index---

(a) shall be kept---

(i) if the corporation's register of members is kept at its registered office, at the corporation's registered office;

(ii) if the corporation's register of members is not so kept, at the corporation's registered office or the place where the register of members is kept; or

(iii) if the corporation does not have a registered office in Hong Kong, at the corporation's principal place of business in Hong Kong; and

(b) subject to subsection (11), shall be made available for inspection in accordance with section 331.

(11) Neither the register nor any index shall be made available for inspection in accordance with section 331 in so far as it contains information with respect to a corporation for the time being entitled to avail itself of the benefit conferred by section 128(3) or 129(3) of the Companies Ordinance (Cap. 32).

(12) The corporation shall send notice in the form specified by the Commission for the purposes of this section to the Registrar of Companies of---

(a) the place where the register is kept; and

(b) any change in that place,

unless the register has at all times been kept at the corporation's registered office.

(13) The duty imposed by subsection (12) shall be performed within 10 business days after the day on which the register is so kept or the change takes place (as the case may be).

(14) If default is made in complying with any provision of this section, the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

(15) For the purposes of this section, a reference to books and papers in

section 283 of the Companies Ordinance (Cap. 32) shall be construed as including a reference to the register and index required to be kept by a corporation under this section.

328. Registration of interests and short positions disclosed under section 320

(1) Whenever in pursuance of a requirement imposed by a listed corporation on a person under section 320 the listed corporation receives any information, the listed corporation is under a duty to record, against the name of the person interested in those shares or having a short position in those shares (as the case may be), in a separate part of its register of interests in shares and short positions---

(a) the fact that the requirement was imposed and the date on which it was imposed; and

(b) any information received in pursuance of the requirement.

(2) Section 327(4) to (14) applies in relation to any part of the register kept in accordance with subsection (1) as it applies in relation to the remainder of the register.

(3) A duty imposed on a listed corporation by this section shall be performed before the end of the business day after the day on which it receives the information.

(4) If default is made in complying with any provision of this section, the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

329. Removal of entries from register

(1) A corporation may remove an entry against a person's name from its register of interests in shares and short positions if more than 6 years have expired since the date of the entry being made, and either---

(a) that entry recorded the fact that the person in question had ceased to have an interest notifiable under any provision of this Division or Divisions 2 to 5 in shares comprised in the relevant share capital of the corporation; or

(b) it has been superseded by a later entry made under section 327 against the same person's name,

and, in a case under paragraph (a), the corporation may also remove that person's name from the register.

(2) If a person in pursuance of a duty imposed on him by any provision of this Division or Divisions 2 to 5 gives to a listed corporation the name and address of another person as being interested in shares comprised in the relevant share capital of the corporation or having a short position in shares so comprised, the corporation shall, within 10 business days after the day on which it was given that information, notify the other person that he has been so named and shall include in that notification---

(a) particulars of any entry relating to him made, in consequence of its being given that information, by the corporation in its register of interests in shares and short positions; and

(b) a statement informing him of his right to apply to have the entry removed in accordance with the following provisions of this section.

(3) A person who has been notified by a listed corporation under subsection (2) that an entry relating to him has been made in the corporation's register of interests in shares and short positions may apply in writing to the corporation for the removal of that entry from the register; and the corporation shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.

(4) If a person who is identified in a corporation's register of interests in shares and short positions as being a party to an agreement to which section 308 applies (whether by an entry against his own name or by an entry relating to him made against another person's name as referred to in subsection (2)(a)) ceases to be a party to that agreement, he may apply in writing to the corporation for the inclusion of that information in the register; and if the corporation is satisfied that he has ceased to be a party to that agreement, it shall record that information (if not already recorded) in every place where his name appears as a party to that agreement in the register.

(5) If an application under subsection (3) or (4) is refused (in a case under subsection (4), otherwise than on the ground that the information has already been recorded), the applicant may apply to the Court of First Instance for an order directing the corporation to remove the entry in question from the register or to include the information in question in the register (as the case may be); and the Court of First Instance may, if it considers appropriate, make such an order.

(6) Where a name or an entry is removed from a corporation's register of interests in shares and short positions in pursuance of subsection (1) or (3) or an order under subsection (5), the corporation shall within 10 business days after the date of that removal make any necessary alteration in any index.

(7) If default is made in complying with subsection (2) or (6), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

330. Otherwise, entries not to be removed from register

(1) Entries in a corporation's register of interests in shares and short positions shall not be removed except in accordance with section 329.

(2) If an entry is removed from a corporation's register of interests in shares and short positions in contravention of subsection (1), the corporation shall restore

that entry to the register as soon as reasonably practicable.

(3) If default is made in complying with subsection (1) or (2), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

### 331. Inspection of register

(1) Any register of interests in shares and short positions shall, during business hours (subject to such reasonable restrictions as the corporation concerned may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection), be open to inspection by any member of the corporation without charge or by any other person on payment of \$10, or such less sum as the corporation may determine, for each inspection.

(2) Any member of the corporation or any other person may require a copy of any such register, or any part of it, on payment of \$2, or such less sum as the corporation may determine, for each page required to be copied; and the corporation shall cause any copy so required by a member or person to be sent to him within 10 business days after the day on which the requirement is received by the corporation.

(3) If an inspection of the register required under this section is refused or a copy so required is not sent within the specified period, the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

(4) In the case of a refusal of an inspection of the register required under this section, the Court of First Instance may by order compel an immediate inspection of it.

(5) In the case of a failure to send within the specified period a copy required under this section, the Court of First Instance may by order direct that the copy required shall be sent to the person requiring it.

(6) The Commission may by rules amend the sum specified in subsection (1) or (2).  
Division 7---Disclosure of interests and short positions of directors and chief executives

### 332. Duty of disclosure by director and chief executive

(1) A director or chief executive of a listed corporation comes under a duty of disclosure on the occurrence, while he is a director or chief executive of the listed corporation, of any of the following events---

(a) any event in consequence of which he becomes, or ceases to be, interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation;

(b) the entering into by him of a contract to sell any such shares or debentures;  
(c) the assignment by him of a right granted to him by the listed corporation to subscribe for shares in or debentures of the listed corporation;  
(d) the grant to him by another corporation, being an associated corporation, of a right to subscribe for shares in or debentures of that associated corporation, the exercise of such a right granted to him and the assignment by him of such a right so granted;  
(e) any event in consequence of which the nature of his interest in shares in or debentures of the listed corporation or any associated corporation of the listed corporation, which has previously been notified to the listed corporation and the relevant exchange company where the duty of disclosure arose under paragraph (a), (b), (c) or (d) or subsection (2), changes; and  
(f) any event in consequence of which he comes to have or ceases to have a short position in shares in the listed corporation or any associated corporation of the listed corporation, or the short position he has in those shares changes.

(2) A person who---

(a) is the director or chief executive of a corporation when the corporation becomes a listed corporation and at that time---

(i) is interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation; or

(ii) has a short position in shares in the listed corporation or any associated corporation of the listed corporation;

(b) at the commencement of this Part is a director or chief executive of a listed corporation and at that time---

(i) is interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation; or

(ii) has a short position in shares in the listed corporation or any associated corporation of the listed corporation,

and that interest or short position (as the case may be) has not previously been disclosed to the listed corporation and the Exchange Company under the Securities (Disclosure of Interests) Ordinance (Cap. 396) before its repeal under section 392;

(c) becomes a director or chief executive of a listed corporation and at the time when he does so---

(i) is interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation; or

(ii) has a short position in shares in the listed corporation or any associated corporation of the listed corporation; or

(d) is the director or chief executive of a corporation when the corporation becomes an associated corporation and at that time---

(i) is interested in shares in or debentures of the associated corporation; or

(ii) has a short position in shares in the associated corporation, comes under a duty of disclosure.

(3) A person who would otherwise come under a duty of disclosure under subsection (2) is not under such a duty where the occurrence of the relevant event comes to his knowledge after he has ceased to be a director or chief executive.

(4) Nothing in this section operates so as to impose a duty with respect to shares in a corporation which is the wholly owned subsidiary of another corporation for the purposes of section 124 of the Companies Ordinance (Cap. 32).

(5) In subsection (1)(e), a reference to a change in the nature of the interest of a director or chief executive in shares or debentures includes a reference to a change in the nature of---

(a) his title to the shares or debentures; or

(b) any of his interest whether legal or equitable in the shares or debentures, but does not include a reference to a change in---

(i) the nature of his interest in the shares or debentures on delivery of the shares or debentures to him, if his equitable interest in those shares or debentures has previously been notified to the listed corporation concerned and the relevant exchange company under any provision of this Division or Division 8 or 9; or

(ii) the terms on which rights under any equity derivatives may be exercised resulting from a change in the number of the underlying shares in issue.

333. Interests to be disclosed by director and chief executive

(1) Subject to subsection (2), the interests to be taken into account for the purposes of the duty of disclosure arising under section 332 are those in shares in and debentures of the listed corporation concerned or any associated corporation of the listed corporation.

(2) In subsection (1), a reference to interests in shares in the listed corporation concerned or any associated corporation of the listed corporation includes a reference to interests in such shares, which are the underlying shares of equity derivatives, that a person has, or ceases to have, by virtue of---

(a) the holding, writing or issuing by him of the equity derivatives;

(b) the exercise by him of rights under the equity derivatives; or

(c) the assignment by him, or the lapsing without exercise, of rights under the equity derivatives.

334. Short positions to be disclosed by director and chief executive

The short positions to be taken into account for the purposes of the duty of disclosure arising under section 332 are those in shares in the listed corporation concerned or any associated corporation of the listed corporation.

335. Notification of family and corporate interests and short positions by director and chief executive

(1) For the purposes of this Division and Divisions 8 and 9---

(a) a director or chief executive of a listed corporation is taken---

(i) to be interested in any shares or debentures in which his spouse (not being herself or himself a director or chief executive of the listed corporation) is interested; and

(ii) to have a short position in any shares in which his spouse (not being herself or himself a director or chief executive of the listed corporation) has a short position; and

(b) the same applies with respect to---

(i) an interest which a minor child (natural or adopted) of a director or chief executive of a listed corporation (such child not being himself or herself a director or chief executive of the listed corporation) has in shares or debentures; and

(ii) a short position which a minor child (natural or adopted) of a director or chief executive of a listed corporation (such child not being himself or herself a director or chief executive of the listed corporation) has in shares.

(2) For the purposes of this Division and Divisions 8 and 9---

(a) a contract, assignment or right of subscription entered into, exercised or made by, or a grant made to, the spouse of a director or chief executive of a listed corporation (not being herself or himself a director or chief executive of the listed corporation) shall be taken also to have been entered into, exercised or made by, or as having been made to (as the case may be) the director or chief executive; and

(b) the same applies with respect to a contract, assignment or right of subscription entered into, exercised or made by, or a grant made to, a minor child (natural or adopted) of a director or chief executive of a listed corporation (such child not being himself or herself a director or chief executive of the listed corporation).

(3) A director or chief executive of a listed corporation is under a duty to give notification to the listed corporation and the relevant exchange company on the occurrence, while he is a director or chief executive, of any of the following events---

(a) the grant by the corporation to his spouse, or to any minor child (natural or adopted) of his, of a right to subscribe for shares in or debentures of the corporation;

(b) the exercise by his spouse, or by any minor child (natural or adopted) of his,



of such a right granted by the corporation to the spouse or the child; and  
(c) any event in consequence of which his spouse, or any minor child (natural or adopted) of his, come to have or ceases to have a short position in shares in the listed corporation or any associated corporation of the listed corporation.

(4) A notification required by subsection (3) shall provide---

(a) in the case of the grant of a right, the like information as is required by section 338 to be notified by the director or chief executive on the grant to him by another corporation, being an associated corporation, of a right to subscribe for shares in or debentures of that associated corporation;

(b) in the case of the exercise of a right, the like information as is required by section 338 to be notified by the director or chief executive on the exercise of a right granted to him by another corporation, being an associated corporation, to subscribe for shares in or debentures of that associated corporation; or

(c) in the case of the occurrence of an event referred to in subsection (3)(c), the like information as is required by section 338 to be notified by the director or chief executive on the occurrence of an event in consequence of which he has a short position in shares in the listed corporation concerned or any associated corporation of the listed corporation.

(5) If a director or chief executive is under a duty to give any notification required by subsection (3), the notification shall be given---

(a) in the case that at the time at which the relevant event occurs he knows of its occurrence, within 3 business days after the day on which the relevant event occurs; or

(b) otherwise, within 3 business days after the day on which the occurrence of the relevant event comes to his knowledge,

and, subject to subsection (4), in the manner specified in section 338(2).

(6) For the purposes of this Division and Divisions 8 and 9, a person is taken---

(a) to be interested in any shares in or debentures of the listed corporation or any associated corporation of the listed corporation in which a corporation is interested; and

(b) to have a short position in any shares in the listed corporation or any associated corporation of the listed corporation in which a corporation has a short position, if---

(i) that corporation or its directors are accustomed or obliged to act in accordance with his directions or instructions; or

(ii) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that corporation.

(7) Where---

(a) a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a corporation; and  
(b) that corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation ("the effective voting power"),  
then, for the purposes of subsection (6)(ii), the effective voting power is taken as exercisable by that person.

(8) A person who is taken to be interested in shares or debentures, or have a short position in shares, under subsection (6) shall be regarded as having ceased to be interested in the shares or debentures, or have a short position in the shares, if subsection (6)(i) or (ii) no longer applies.

(9) For the purposes of this Division and Divisions 8 and 9, a duty to give any notification imposed on a director or chief executive by this section shall be deemed to be a duty of disclosure arising under section 332.

Division 8---Interests and short positions to be notified by director and chief executive or disregarded

336. Interests and short positions to be taken into account for the purpose of notification by director and chief executive

(1) This section applies, subject to section 337, in determining for the purposes of Divisions 7 and 9 whether a person has, or ceases to have, an interest in shares in or debentures of, or short position in shares in, a listed corporation or any associated corporation of the listed corporation that is notifiable.

(2) A reference to an interest in shares or debentures shall be construed as including a reference to an interest of any kind whatsoever in the shares or debentures, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.

(3) In construing a reference to a short position in shares, any restraint or restriction to which the exercise of a right or the settlement of an obligation, by virtue of the short position, may be subject shall be disregarded.

(4) Where property is held on trust and an interest in shares or debentures, or short position in shares, is comprised in that property---

(a) a beneficiary of the trust who apart from this section does not have an interest in the shares or debentures, or a short position in the shares, is taken to have such an interest or short position (as the case may be); and

(b) in the case of a discretionary trust, the founder of the trust is taken to have an interest in the shares or debentures or a short position in the shares (as the case may be).

(5) A person is taken to have an interest in shares or debentures if---

(a) he enters into a contract for their purchase by him (whether for cash or other consideration); or

(b) he is entitled to---

(i) exercise any right conferred by the holding of the shares or debentures; or

(ii) control the exercise of any such right.

(6) For the purposes of subsection (5)(b), a person is taken to be entitled to exercise or control the exercise of any right conferred by the holding of shares or debentures if---

(a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or

(b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

(7) A person is taken to have an interest in shares or debentures if, otherwise than by virtue of having an interest under a trust---

(a) he has a right to call for delivery of the shares or debentures to himself or to his order; or

(b) he has a right to acquire an interest in the shares or debentures or is under an obligation to take delivery of the shares or debentures, whether in any case the right or obligation is conditional or absolute.

(8) A person who is the holder, writer or issuer of equity derivatives is taken to have an interest in shares which are the underlying shares of the equity derivatives if, by virtue of his holding, writing or issuing of the equity derivatives---

(a) he has a right to require another person to deliver the underlying shares to him;

(b) he is under an obligation to take delivery of the underlying shares;

(c) he has a right to receive from another person an amount if the price of the underlying shares increases; or

(d) he has a right to avoid or reduce a loss if the price of the underlying shares increases,

before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute.

(9) The number of shares in which a person is taken to be interested under subsection (8) is---

(a) the number of the underlying shares of the equity derivatives---

(i) which he has a right to require another person to deliver to him; or

(ii) of which he is under an obligation to take delivery;

(b) the number of the underlying shares of the equity derivatives by reference to which, wholly or partly, the amount which he has a right to receive or the loss which he has a right to avoid or reduce, by virtue of his holding, writing or issuing of

the equity derivatives, is derived or determined; or

(c) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract,

whether in any case the right or obligation is conditional or absolute.

(10) A person shall be regarded as having ceased to be interested in shares or debentures if---

(a) he delivers the shares or debentures to another person or to another person's order---

(i) in accordance with a contract under which he agreed to sell the shares or debentures to the other person; or

(ii) in fulfilling an obligation to do so when called upon by the other person to deliver the shares or debentures;

(b) his right to call for delivery of the shares or debentures lapses or he assigns such a right to another person;

(c) his obligation to take delivery of the shares or debentures lapses or he assigns such an obligation to another person;

(d) he receives from another person an amount, or avoids or reduces a loss, on settlement of any cash settled equity derivatives; or

(e) he assigns his rights under a stock futures contract to another person.

(11) The number of shares in which a person is regarded as having ceased to be interested under subsection (10)(d) is---

(a) the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or

(b) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract.

(12) The number of shares in which a person is regarded as having ceased to be interested under subsection (10)(e) is the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of each stock futures contract.

(13) The number of shares in which a person is regarded as having a short position by virtue of his holding, writing or issuing of any equity derivatives is---

(a) the number of the underlying shares of the equity derivatives which he is entitled, or may be required, to deliver;

(b) in the case of cash settled equity derivatives, the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or

(c) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract.

(14) The number of shares in which a person is regarded as having a short position under a securities borrowing and lending agreement is the number of shares which he is obliged to deliver under the securities borrowing and lending agreement, if called upon to do so, whether or not the obligation to deliver shares may be settled by payment of cash or settled by delivery of the shares.

(15) Persons having a joint interest or short position are taken each of them to have that interest or short position (as the case may be).

(16) It is immaterial that shares in which a person has an interest or short position are unidentifiable.

337. Interests to be disregarded for the purpose of notification by director and chief executive

(1) The following interests in shares in or debentures of a listed corporation or any associated corporation of the listed corporation shall be disregarded for the purposes of Divisions 7 to 9---

(a) so long as a person is entitled to receive income from trust property comprising shares or debentures during the lifetime of himself or another person, an interest in the shares or debentures in reversion or remainder;

(b) an interest of a person in shares or debentures if, and so long as, he holds the shares or debentures as a bare trustee;

(c) subject to subsection (3), an interest of or held by a holder, trustee or custodian of a collective investment scheme authorized under section 103 or an approved overseas scheme;

(d) an interest of a person subsisting by virtue of---

(i) a charitable scheme made by order of any court of competent jurisdiction; or

(ii) the vesting of a deceased's estate in any judicial officer between the time of death of the deceased and the grant of letters of administration; and

(e) such interests, or interests of such a class, as may be prescribed for the purposes of this section by regulations.

(2) A person is not taken to be interested in shares or debentures under section 336(5)(b) by reason only that he---

(a) has been appointed as a proxy to vote at a specified meeting of the listed corporation or associated corporation or of any class of its members and at any adjournment of that meeting; or

(b) has been appointed by a corporation to act as its representative at a meeting

of the listed corporation or associated corporation or of any class of its members.

(3) An interest of or held by a holder, trustee or custodian of a collective investment scheme authorized under section 103 shall not be disregarded under subsection (1)(c) if the holder, trustee or custodian (as the case may be) is also a manager of the collective investment scheme.

(4) For the purposes of subsection (1)(c), "approved overseas scheme" (核准海外計劃) means a collective investment scheme which---

(a) is established in a place outside Hong Kong recognized for the purposes of this section by the Commission by notice published in the Gazette;

(b) is authorized by or registered with the authority (if any) responsible for the authorization or registration of collective investment schemes in the place where it is established, and complies with the requirements of such authority;

(c) is accepted by the Commission as being a bona fide widely held investment scheme;

(d) is approved by the Commission; and

(e) complies with such conditions as the Commission may impose on granting the approval under paragraph (d).

(5) For the purposes of subsection (1), a person shall not be considered as not being a bare trustee in respect of any property by reason only that---

(a) the person for whose benefit the property is held is not absolutely entitled thereto as against the trustee only because he is a minor or is a person under a disability; or

(b) the trustee has the right to resort to the property to satisfy any outstanding charge or lien or for the payment of any duty, tax, cost or other outgoings.

(6) An application for approval of a scheme under subsection (4)(d) shall be---

(a) made by the manager of the scheme; and

(b) accompanied by---

(i) a certified copy of the constitution of the scheme; and

(ii) such information about---

(A) the scheme;

(B) the persons who hold, or have the right to become holders of, units or shares or other interests under the scheme; and

(C) the persons who are trustees or custodians of the scheme,

as the Commission may require to satisfy itself that the collective investment scheme complies with the requirements of subsection (4)(a), (b) and (c).

(7) The following arrangements are not bona fide widely held investment schemes for the purposes of subsection (4)(c)---

(a) an arrangement operated by a person otherwise than by way of business;

(b) an arrangement under which less than 100 persons hold, or have the right to become

holders of, units or shares or other interests that entitle the holders, directly or indirectly, to the income or property of the arrangement;

(c) an arrangement under which less than 50 persons hold, or have the right to become holders of, units or shares or other interests that entitle the holders, directly or indirectly, to 75% or more of the income or property of the arrangement; and

(d) such other arrangement as may be specified by the Commission by notice published in the Gazette.

(8) In subsection (6), "constitution" (章程), in relation to a scheme, means---

(a) where the scheme is a unit trust, the trust deed of the unit trust; or

(b) in any other case, the instrument providing for the establishment or constitution of the scheme,

including, where the scheme is established by a company, the memorandum and articles of the company, and also includes, if the trust deed, instrument or memorandum and articles are not written in the English or Chinese language, a translation thereof in English or Chinese.

(9) For the purposes of subsection (8)---

"company" (公司) means a company incorporated outside Hong Kong which does not have a place of business in Hong Kong;

"memorandum and articles" (章程大綱及章程細則), in relation to a company, means the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company.

Division 9---Requirements for giving notification by director and chief executive  
338. Notification to be given by director and chief executive

(1) Where a person comes under a duty of disclosure under section 332, he shall give notification to the listed corporation concerned and to the relevant exchange company of---

(a) the interests which he has, or ceases to have, in shares in or debentures of the listed corporation or any associated corporation of the listed corporation; and

(b) the short position (if any) which he has, or ceases to have, in shares in the listed corporation or any associated corporation of the listed corporation.

(2) A notification required by this section shall be given in such manner so as to ensure that it is received by the listed corporation concerned and the relevant exchange company at the same time or, if it is not practicable to do so, that it is received by the listed corporation and the relevant exchange company one immediately after the other.

(3) The Commission may, by notice published in the Gazette, specify the form in respect of a notification required by this section, either generally or in any particular case, and, without limiting the generality of the foregoing, may in the

form---

(a) notwithstanding section 384(1), include directions and instructions relating to the manner in which the form is to be completed, signed, executed and authenticated; and

(b) specify documents by which it is to be accompanied.

(4) For the purposes of subsection (3), the Commission may specify that different forms are to be used in different circumstances.

(5) Subject to subsection (6), where the Commission has specified any form under subsection (3) in respect of a notification required by this section to be given when a duty of disclosure arises under section 332, the duty shall not be regarded as having been performed unless the notification---

(a) is in the form specified;

(b) is completed, signed, executed and authenticated in accordance with such directions and instructions as are included in the form; and

(c) is accompanied by such documents as are specified in the form.

(6) A notification required by this section shall not by reason of any deviation from a form specified in respect of it by notice published pursuant to subsection (3) cease to be regarded as being in that form, if the deviation does not affect the substance of the form.

(7) A notice published pursuant to subsection (3) is not subsidiary legislation.  
339. Time of notification by director and chief executive

(1) A notification required by section 338 shall be given, where the duty of disclosure arises under section 332(1)(a), (b), (c), (d), (e) or (f)---

(a) in the case that at the time at which the relevant event occurs the person concerned knows of its occurrence, within 3 business days after the day on which the relevant event occurs; or

(b) otherwise, within 3 business days after the day on which the occurrence of the relevant event comes to his knowledge.

(2) A notification required by section 338 shall be given, where the duty of disclosure arises under section 332(2)---

(a) within 10 business days after the day on which the relevant event occurs; or

(b) in the case that the person concerned is not aware---

(i) that he has an interest in shares in or debentures of the listed corporation concerned or any associated corporation of the listed corporation; or

(ii) that he has a short position in shares in the listed corporation or any associated corporation of the listed corporation,

within 10 business days after the day on which he becomes aware that he has such an interest or short position (as the case may be).



340. Particulars to be contained in notification by director and chief executive

(1) Where a duty of disclosure arises under section 332, a person shall, in performing the duty of disclosure, specify in the notification his name, identifying him also as a director or chief executive (as the case may be) and his address, and (so far as he is aware)---

(a) the date on which the relevant event occurred and---

(i) the date (if later) on which he became aware of the occurrence of the relevant event; or

(ii) in the case referred to in section 339(2), the date on which he became aware that he has the interest in the shares in or debentures of, or the short position in the shares in, the listed corporation or the associated corporation of the listed corporation (as the case may be);

(b) subject to subsection (3), the total number and class of---

(i) shares in the listed corporation and any associated corporation of the listed corporation in which he was interested immediately before the relevant time specifying the percentage figure of his interest in the shares in each class; and

(ii) shares in the listed corporation and any associated corporation of the listed corporation in which he is interested immediately after the relevant time specifying the percentage figure of his interest in the shares in each class;

(c) subject to subsection (3), the amount of---

(i) debentures of the listed corporation and any associated corporation of the listed corporation in which he was interested immediately before the relevant time; and

(ii) debentures of the listed corporation and any associated corporation of the listed corporation in which he is interested immediately after the relevant time;

(d) subject to subsection (3), the total number and class of---

(i) shares in the listed corporation and any associated corporation of the listed corporation in which he had a short position immediately before the relevant time specifying the percentage figure of his short position in the shares in each class; and

(ii) shares in the listed corporation and any associated corporation of the listed corporation in which he has a short position immediately after the relevant time specifying the percentage figure of his short position in the shares in each class;

(e) the circumstances in which he comes under the duty of disclosure;

(f) where the duty of disclosure arises under section 332(1)---

(i) the number and class of shares in the listed corporation or any associated corporation of the listed corporation in which---

(A) he has acquired an interest, or ceased to have an interest, at the relevant time;  
(B) he has come to have, or ceased to have, a short position at the relevant time;  
or

(C) the nature of his interest changes at the relevant time; and

(ii) the amount of debentures of the listed corporation or any associated corporation of the listed corporation in which---

(A) he has acquired an interest, or ceased to have an interest, at the relevant time;  
or

(B) the nature of his interest changes at the relevant time;

(g) where he acquires or disposes of the interest referred to in paragraph (f)(i)(A) or (ii)(A)---

(i) through an on-exchange transaction, the highest price and the average price paid or received for the interest he acquires or disposes of (or, in the case that no price is paid or received, that fact); or

(ii) through an off-exchange transaction, the amount and nature of the consideration given or received for the interest he acquires or disposes of (or, in the case that no consideration is given or received, that fact);

(h) where he comes to have, or ceases to have, the short position referred to in paragraph (f)(i)(B)---

(i) through an on-exchange transaction, the highest price and the average price paid or received for the short position which he comes to have or ceases to have (or, in the case that no price is paid or received, that fact); or

(ii) through an off-exchange transaction, the amount and nature of the consideration given or received for the short position which he comes to have or ceases to have (or, in the case that no consideration is given or received, that fact);

(i) subject to subsection (3), the capacity in which the interest in shares in or debentures of, or the short position in shares in, the listed corporation or any associated corporation of the listed corporation is held immediately after the relevant time and, if the interest in the shares or debentures, or the short position in the shares, is held in more than one capacity, the number of shares or amount of debentures held in each capacity;

(j) subject to subsection (3), where the duty of disclosure arises on the occurrence of an event in consequence of which the nature of his interest in shares in or debentures of the listed corporation or any associated corporation of the listed corporation changes, the nature of his interest immediately before and immediately after the relevant time;

(k) subject to subsection (3), where he is taken to be interested in shares in or debentures of, or have a short position in shares in, the listed corporation or any

associated corporation of the listed corporation under section 335(1), 335(3), 335(7) or 336(15)---

(i) the number and class of the shares or amount of the debentures; and

(ii) the name and address of each of the other persons having an interest in the shares or debentures or having a short position in the shares,

in which he is so taken to be interested or have a short position under each of those sections taken separately;

(1) where he no longer has an interest in shares in or debentures of, or a short position in shares in, the listed corporation or any associated corporation of the listed corporation, the fact that he no longer has such an interest or short position; and

(m) such other information as may be required in the form specified for the purpose.

(2) Where any shares the particulars of which have to be specified in a notification by a person under subsection (1)(b), (d), (f), (j) or (k) are the underlying shares of equity derivatives, the person shall also specify, subject to subsection (3), separately in the notification---

(a) the total number of shares which are the underlying shares of any of the following categories of equity derivatives that are listed or traded on a recognized stock market or traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time---

(i) cash settled equity derivatives (specifying separately if they are futures or options); or

(ii) physically settled equity derivatives (specifying separately if they are futures or options);

(b) the total number of shares which are the underlying shares of any of the following categories of equity derivatives that are neither listed or traded on a recognized stock market nor traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time---

(i) cash settled equity derivatives (specifying separately if they are futures or options); or

(ii) physically settled equity derivatives (specifying separately if they are futures or options);

(c) the total number of shares which are the underlying shares of any of the equity derivatives referred to in paragraph (a) in which he is interested, or has a short position, immediately after the relevant time;

(d) the total number of shares which are the underlying shares of any of the equity derivatives referred to in paragraph (b) in which he is interested, or has a short position, immediately after the relevant time;

(e) the period within which rights under each of the equity derivatives may be exercised ("exercise period"); and

(f) the expiry date of the exercise period.

(3) Where a duty of disclosure arises under section 332(1)---

(a) subsection (1)(b), (c) and (d) shall apply in relation to a person as if a reference to the listed corporation and any associated corporation of the listed corporation in that subsection was a reference to the corporation in which---

(i) he has acquired an interest, or ceased to have an interest, at the relevant time;

(ii) he has come to have, or ceased to have, a short position at the relevant time; or

(iii) the nature of his interest changes at the relevant time;

(b) the particulars required to be specified under subsection (1)(i), (j) or (k) or (2) shall relate only to---

(i) the shares in which---

(A) he has (or is taken to have) acquired an interest, or ceased to have an interest, at the relevant time;

(B) he has (or is taken to have) come to have, or ceased to have, a short position at the relevant time; or

(C) the nature of his interest changes (or is taken to change) at the relevant time; and

(ii) the debentures in which---

(A) he has (or is taken to have) acquired an interest, or ceased to have an interest, at the relevant time; or

(B) the nature of his interest changes (or is taken to change) at the relevant time; and

(c) in the case referred to in section 335(3) where he is taken to have---

(i) acquired or disposed of the interest referred to in paragraph (b)(i)(A) or (ii)(A)---

(A) through an on-exchange transaction, he shall also specify in the notification the highest price and the average price paid or received for the interest he is taken to have acquired or disposed of (or, in the case that no price is paid or received, that fact); or

(B) through an off-exchange transaction, he shall also specify in the notification the amount and nature of the consideration given or received for the interest he is taken to have acquired or disposed of (or, in the case that no consideration is given or received, that fact); or

(ii) come to have, or ceased to have, the short position referred to in

paragraph (b)(i)(B)---

(A) through an on-exchange transaction, he shall also specify in the notification the highest price and the average price paid or received for the short position which he is taken to have come to have or ceased to have (or, in the case that no price is paid or received, that fact); or

(B) through an off-exchange transaction, he shall also specify in the notification the amount and nature of the consideration given or received for the short position which he is taken to have come to have or ceased to have (or, in the case that no consideration is given or received, that fact).

(4) Where a duty of disclosure arises under section 332(2)(a)(i), (b)(i), (c)(i) or (d)(i), a person shall, in performing the duty of disclosure, also specify in the notification---

(a) in respect of his interest in the shares which are the subject of the disclosure acquired through an on-exchange transaction, the highest price and the average price paid for the interest in the shares that were acquired within 4 months immediately before the day on which the relevant event occurred; and

(b) in respect of his interest in the shares which are the subject of the disclosure acquired through an off-exchange transaction, the amount and nature of the consideration given for the interest in the shares that were acquired within 4 months immediately before the day on which the relevant event occurred.

(5) Subject to subsections (6) and (7), "percentage figure" (百分率數字), in subsection (1)(b), means the percentage figure found by expressing the number of all the shares in the listed corporation concerned or any associated corporation of the listed corporation in which the person is interested immediately before or immediately after (as the case may be) the relevant time as a percentage of the number of the issued shares of the same class in the listed corporation or associated corporation (as the case may be).

(6) Where the number of the issued shares of the same class in the listed corporation or associated corporation (as the case may be) is greater immediately after the relevant time than it was immediately before the relevant time, the percentage figure of the interest of the person immediately before (as well as immediately after) the relevant time is determined by reference to the greater number.

(7) In determining the number of shares in which a person is interested for the purposes of subsection (5)---

(a) there shall be disregarded any short position which that person has in the shares which, if included in the calculation of the number of shares in which the person is interested, would reduce the number of shares in which the person is interested; and

(b) particulars of the shares in which that person has a short position, or has ceased to have a short position, shall be specified separately in the notification.

(8) Subject to subsection (9), "percentage figure" (百分率數字), in subsection (1)(d), means the percentage figure found by expressing the number of all the shares in the listed corporation concerned or any associated corporation of the listed corporation in which the person has a short position immediately before or immediately after (as the case may be) the relevant time as a percentage of the number of the issued shares of the same class in the listed corporation or associated corporation (as the case may be).

(9) Where the number of the issued shares of the same class in the listed corporation or associated corporation (as the case may be) is greater immediately after the relevant time than it was immediately before the relevant time, the percentage figure of the short position of the person immediately before (as well as immediately after) the relevant time is determined by reference to the greater number.

(10) Where an event on the occurrence of which a director or chief executive comes under a duty of disclosure under section 332 arises from the grant by the listed corporation, or any associated corporation of the listed corporation, of debentures or rights to subscribe for debentures, or the exercise or assignment of those rights so granted, the notification shall also specify---

(a) the---

(i) price paid or received---

(A) for the grant of those debentures or those rights; or

(B) on the exercise or assignment of those rights,

(or, in the case that no price is paid or received, that fact); or

(ii) consideration given or received---

(A) for the grant of those debentures or those rights; or

(B) on the exercise or assignment of those rights,

(or, in the case that no consideration is given or received, that fact),

(as the case may be);

(b) the period within which those rights may be exercised ("exercise period"); and

(c) the expiry date of the exercise period.

(11) Where an event on the occurrence of which a director or chief executive comes under a duty of disclosure under section 332 arises from the grant by the listed corporation, or any associated corporation of the listed corporation, of equity derivatives or rights under any equity derivatives, or the exercise or assignment of those rights so granted, the notification shall also specify the---

- (a) price paid or received---
    - (i) for the grant of those equity derivatives or those rights; or
    - (ii) on the exercise or assignment of those rights,  
(or, in the case that no price is paid or received, that fact); or
  - (b) consideration given or received--
    - (i) for the grant of those equity derivatives or those rights; or
    - (ii) on the exercise or assignment of those rights,  
(or, in the case that no consideration is given or received, that fact),
- (as the case may be).

(12) Subject to subsection (11), nothing in this section shall require details of the price that has been paid or may be payable, or the consideration that has been given or may be given, for or under equity derivatives (where the underlying shares of the equity derivatives are shares which are the subject of the disclosure) to be specified in the notification.

341. Duty to publish and notify Monetary Authority of information given under Division 9

(1) Upon receipt of any information under any provision of this Division or section 335, the relevant exchange company shall forthwith publish such information in such manner and for such period as may be approved by the Commission.

(2) Whenever a listed corporation that is, or is the holding company of, an authorized financial institution receives information from a director or chief executive under any provision of this Division or section 335, the listed corporation is under a duty to notify the Monetary Authority of that information.

(3) If a listed corporation is under a duty to give any notification required by subsection (2), the notification shall be given before the end of the business day after the day on which that duty arises.

(4) If default is made in complying with subsection (2) or (3), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

342. Offences for non-compliance with notification requirements by director and chief executive

(1) A person---

- (a) who fails to perform, within the specified period, a duty of disclosure arising under Division 7 in accordance with the provisions of this Division and Divisions 7 and 8 applicable to that duty; or
- (b) who---

(i) in purported performance of any such duty makes to a listed corporation or to the relevant exchange company a statement which is false or misleading in a material

particular; and

(ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular, commits an offence and is liable---

(i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

(2) To the extent that an offence under subsection (1)(a) consists of a failure to comply with section 338(2) in that the notification referred to in that section was received by the listed corporation concerned and the relevant exchange company not at the same time or not one immediately after the other, it is a defence for a person charged with that offence to prove that he took all reasonably practicable steps to comply with that section.

Division 10---Keeping of register of directors' and chief executives' interests and short positions

343. Register of directors' and chief executives' interests and short positions

(1) Every listed corporation shall keep a register of directors' and chief executives' interests and short positions for the purposes of Divisions 7 to 9.

(2) Whenever a listed corporation receives information from a director or chief executive given in performance of a duty of disclosure imposed on him by any provision of Divisions 7 to 9, the listed corporation is under a duty to record in the register, against the director's name or the chief executive's name (as the case may be), the information received and the date of the entry.

(3) The listed corporation is also under a duty, whenever it grants to a director or chief executive a right to subscribe for shares in or debentures of the listed corporation, to record in the register against his name---

(a) the date on which the right is granted;

(b) the period during which, or the time at which, the right is exercisable;

(c) the consideration for the grant (or, if there is no consideration, that fact); and

(d) the description of the shares or debentures involved, the number of those shares or amount of those debentures, and the price to be paid for them (or the consideration, if otherwise than in money).

(4) Whenever the right referred to in subsection (3) is exercised by a director or chief executive, the listed corporation is under a duty to record in the register against his name---

(a) that fact (identifying the right);



(b) the number of shares or amount of debentures in respect of which it is exercised; and

(c) if---

(i) they were registered in his name, that fact; or

(ii) they were not registered in his name, the name or names of the person or persons in whose name or names they were registered, together (if they were registered in the names of 2 persons or more) with the number of the shares or amount of the debentures registered in the name of each of them.

(5) A duty imposed by subsection (2), (3) or (4) shall be performed within 3 business days after the day on which that duty arises.

(6) A listed corporation is not, by virtue of anything done for the purposes of this section, affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares or debentures or equity derivatives.

(7) The register must be so made up that the entries against the several names recorded in it appear in chronological order.

(8) Unless the register is in such form as to constitute in itself an index, the listed corporation shall keep an index of the names recorded in the register which shall in respect of each name contain a sufficient indication to enable the information recorded against it to be readily found.

(9) The listed corporation shall, within 10 business days after the day on which a name is recorded in the register, make any necessary alteration in the index.

(10) Subject to section 283 of the Companies Ordinance (Cap. 32), if the corporation ceases to be a listed corporation, it shall continue to keep the register and any index until the end of the period of 6 years beginning with the day next following that on which it ceases to be a listed corporation.

(11) The register and any index---

(a) shall be kept at the place where the corporation's register of interests in shares and short positions is kept; and

(b) subject to subsection (12), shall be made available for inspection in accordance with section 346.

(12) Neither the register nor any index shall be made available for inspection in accordance with section 346 in so far as it contains information with respect to a corporation for the time being entitled to avail itself of the benefit conferred by section 128(3) or 129(3) of the Companies Ordinance (Cap. 32).

(13) The corporation shall send notice in the form specified by the Commission for the purposes of this section to the Registrar of Companies of---

(a) the place where the register is kept; and

(b) any change in that place,

unless the register has at all times been kept at the corporation's registered office.

(14) The duty imposed by subsection (13) shall be performed within 10 business days after the day on which the register is so kept or the change takes place (as the case may be).

(15) The register shall be produced at the commencement of the corporation's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(16) If default is made in complying with any provision of this section, the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

(17) For the purposes of this section, a reference to books and papers in section 283 of the Companies Ordinance (Cap. 32) shall be construed as including a reference to the register and index required to be kept by a corporation under this section.

344. Removal of entries from register of directors' and chief executives' interests and short positions

(1) A corporation may remove an entry against a person's name from its register of directors' and chief executives' interests and short positions if more than 6 years have expired since the date of the entry being made, and either---

(a) that entry recorded the fact that the person in question had ceased to have an interest notifiable under any provision of this Division or Divisions 7 to 9 in shares in or debentures of the corporation; or

(b) it has been superseded by a later entry made under section 343 against the same person's name,

and, in a case under paragraph (a), the corporation may also remove that person's name from the register.

(2) If a person in pursuance of a duty imposed on him by any provision of this Division or Divisions 7 to 9 gives to a listed corporation the name and address of another person as being interested in shares in or debentures of, or having a short position in shares in, the corporation, the corporation shall, within 10 business days after the day on which it was given that information, notify the other person that he has been so named and shall include in that notification---

(a) particulars of any entry relating to him made, in consequence of its being given that information, by the corporation in its register of directors' and chief executives' interests and short positions; and

(b) a statement informing him of his right to apply to have the entry removed in

accordance with the following provisions of this section.

(3) A person who has been notified by a listed corporation under subsection (2) that an entry relating to him has been made in the corporation's register of directors' and chief executives' interests and short positions may apply in writing to the corporation for the removal of that entry from the register; and the corporation shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.

(4) If an application under subsection (3) is refused, the applicant may apply to the Court of First Instance for an order directing the corporation to remove the entry in question from the register or to include the information in question in the register (as the case may be); and the Court of First Instance may, if it considers appropriate, make such an order.

(5) Where a name or an entry is removed from a corporation's register of directors' and chief executives' interests and short positions in pursuance of subsection (1) or (3) or an order under subsection (4), the corporation shall within 10 business days after the date of that removal make any necessary alteration in any index.

(6) If default is made in complying with subsection (2) or (5), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

345. Otherwise, entries not to be removed from register of directors' and chief executives' interests and short positions

(1) Entries in a corporation's register of directors' and chief executives' interests and short positions shall not be removed except in accordance with section 344.

(2) If an entry is removed from a corporation's register of directors' and chief executives' interests and short positions in contravention of subsection (1), the corporation shall restore that entry to the register as soon as reasonably practicable.

(3) If default is made in complying with subsection (1) or (2), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

346. Inspection of register of directors' and chief executives' interests and short positions

(1) Any register of directors' and chief executives' interests and short positions shall, during business hours (subject to such reasonable restrictions as

the corporation concerned may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection), be open to inspection by any member of the corporation without charge or by any other person on payment of \$10, or such less sum as the corporation may determine, for each inspection.

(2) Any member of the corporation or any other person may require a copy of any such register, or any part of it, on payment of \$2, or such less sum as the corporation may determine, for each page required to be copied; and the corporation shall cause any copy so required by a member or person to be sent to him within 10 business days after the day on which the requirement is received by the corporation.

(3) If an inspection of the register required under this section is refused or a copy so required is not sent within the specified period, the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

(4) In the case of a refusal of an inspection of the register required under this section, the Court of First Instance may by order compel an immediate inspection of it.

(5) In the case of a failure to send within the specified period a copy required under this section, the Court of First Instance may by order direct that the copy required shall be sent to the person requiring it.

(6) The Commission may by rules amend the sum specified in subsection (1) or (2).  
Division 11---Power to investigate listed corporation's ownership

#### 347. Power to investigate ownership of listed corporation

(1) If it appears to the Financial Secretary that there are reasonable grounds to do so, he may appoint one or more inspectors to investigate and report on---

- (a) the ownership of shares in or debentures of any listed corporation;
- (b) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the listed corporation;
- (c) where the shares in the listed corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives; and
- (d) otherwise with respect to the listed corporation,

for the purposes of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the listed corporation or able to control or materially to influence its policy.

(2) The Financial Secretary may, on appointing an inspector under this section, define the scope of the investigation (whether with respect to the matter or the period to which it is to extend or otherwise) and, in particular, may limit the investigation to matters connected with particular shares or debentures or equity derivatives.

(3) If application for an investigation under this section with respect to particular shares in or debentures of a listed corporation, or particular equity derivatives the underlying shares of which are shares in a listed corporation, is made to the Financial Secretary by members of the listed corporation, and the number of applicants or the number of shares held by them is not less than the number required for an application for the appointment of inspectors under section 142(1) of the Companies Ordinance (Cap. 32)---

(a) the Financial Secretary may appoint an inspector to conduct the investigation if he is satisfied that there are reasonable grounds for conducting the investigation; and

(b) the Financial Secretary shall not, on appointing an inspector, exclude from the scope of the investigation any matter which the application seeks to have included, except in so far as the Financial Secretary is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of his appointment, an inspector's powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

(5) The Financial Secretary may, before appointing an inspector upon application under subsection (3), require an applicant to give security in such amount as he may specify for payment of the costs of the investigation.

(6) Sections 307 to 309 and 313 (with the omission of the reference in section 313 to section 314) apply, in relation to any person other than a director or chief executive of a listed corporation---

(a) for the purposes of construing---

(i) references in this Division and Division 12 to a person interested in shares and to an interest in shares respectively; and

(ii) references in this Division and Division 12 to a person having a short position in shares and to a short position in shares respectively,

as they apply for the purposes of Divisions 2 to 4; and

(b) for the purposes of this Division and Division 12 as if, in those sections, a reference to an interest in shares includes, where those shares are the underlying shares of any equity derivatives, an interest in those equity derivatives.

(7) Sections 308, 309, 335 and 336 (with the omission of the reference in section 336 to section 337) apply, in relation to any person who is a director or chief executive of a listed corporation---

(a) for the purposes of construing---

(i) references in this Division and Division 12 to a person interested in shares

or debentures and to an interest in shares or debentures respectively; and

(ii) references in this Division and Division 12 to a person having a short position in shares and to a short position in shares respectively,

as they apply for the purposes of Divisions 7 to 9; and

(b) for the purposes of this Division and Division 12 as if, in those sections, a reference to an interest in shares includes, where those shares are the underlying shares of any equity derivatives, an interest in those equity derivatives.

348. Investigation of contraventions of sections 332 to 340

(1) If it appears to the Financial Secretary that there are circumstances suggesting that contraventions of any provision of sections 332 to 340 may have occurred in relation to the shares in or debentures of a listed corporation or, where the shares in a listed corporation are the underlying shares of any equity derivatives, to those equity derivatives, he may appoint one or more inspectors to carry out such investigations as are requisite to establish whether or not such contraventions have occurred and to report the result of the investigations to him.

(2) The Financial Secretary may, on appointing an inspector under this section, limit the period to which the investigation is to extend or confine it to shares or debentures or equity derivatives of a particular class, or both.

349. Inspector's powers during investigation

(1) If an inspector considers it necessary for the purposes of his investigation to investigate also---

(a) the ownership of shares in or debentures of any other corporation which is or has been an associated corporation of the listed corporation concerned;

(b) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the other corporation; and

(c) where the shares in the other corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives, he shall have power to do so, and shall report on the ownership of those shares or debentures and persons who have or had an interest in those shares or debentures or equity derivatives or a short position in those shares, so far as he considers that the results of his investigation with respect to those shares or debentures or equity derivatives are relevant to the investigation of---

(i) the ownership of shares in or debentures of the listed corporation;

(ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the listed corporation; or

(iii) where the shares in the listed corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives.

(2) An inspector may at any time in the course of his investigation, without the necessity of making an interim report, inform the Financial Secretary of matters coming to his knowledge as a result of the investigation tending to show that an offence has been committed.

350. Production of records and evidence to inspectors

(1) When an inspector has been appointed under section 347 or 348, it is the duty of---

(a) all officers and agents of the listed corporation concerned; and

(b) all officers and agents of any other corporation, if---

(i) the ownership of shares in or debentures of the other corporation;

(ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the other corporation; or

(iii) where the shares in the other corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives,

are investigated under section 349,

to---

(i) produce to the inspector all records of or relating to the listed corporation or the other corporation (as the case may be) which are in their possession;

(ii) attend before the inspector when required to do so; and

(iii) otherwise give the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) If an inspector considers that a person other than an officer or agent of the listed corporation or the other corporation is or may be in possession of information concerning the shares in or debentures of the listed corporation or the other corporation, or the equity derivatives the underlying shares of which are shares in the listed corporation or the other corporation, he may require that person to---

(a) produce to him any records of or relating to the listed corporation or the other corporation (as the case may be) which are in that person's possession;

(b) attend before him; and

(c) otherwise give him all assistance in connection with the investigation which that person is reasonably able to give,

and it shall be the duty of that person to comply with the requirement.

(3) An inspector may---

(a) examine on oath the officers and agents of the listed corporation or the other corporation, and any such person referred to in subsection (2), with respect to the shares in or debentures of the listed corporation or the other corporation, or the equity derivatives the underlying shares of which are shares in the listed corporation

or the other corporation; and

(b) administer an oath accordingly.

(4) A person is not excused from answering a question put to him under this section by an inspector on the ground that the answer might tend to incriminate the person, but if the answer might tend to incriminate him and he so claims before giving the answer, the question and the answer are not admissible in evidence against him in criminal proceedings in a court of law other than those in which he is charged with an offence under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the answer.

(5) In this section and sections 351 and 352---

(a) a reference to officers or to agents includes a reference to past, as well as present, officers or agents (as the case may be); and

(b) "agents" (代理人), in relation to a corporation, includes its bankers and solicitors and persons employed or otherwise engaged by it as auditors, whether those persons are or are not officers of the corporation.

#### 351. Delegation of powers by inspectors

(1) An inspector may, by instrument in writing, delegate to any person the powers conferred by section 350 to require the production of any records and to put questions to officers and agents otherwise than on oath, or either of those powers.

(2) Where 2 or more inspectors are appointed in respect of the same investigation, the power conferred by this section may be exercised by any of them.

#### 352. Obstruction of inspectors

(1) When an inspector is appointed under section 347 or 348, this section applies in relation to---

(a) any officer or agent of the listed corporation concerned;

(b) any officer or agent of any other corporation, if---

(i) the ownership of shares in or debentures of the other corporation;

(ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the other corporation; or

(iii) where the shares in the other corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives,

are investigated under section 349; and

(c) any such person referred to in section 350(2).

(2) If that officer, agent or person (as the case may be)---

(a) refuses to produce to an inspector any records which it is his duty under section 350 to produce;

(b) refuses to attend before an inspector when required to do so; or



(c) refuses to answer any question put to him by an inspector with respect to the shares in or debentures of the listed corporation or the other corporation, or the equity derivatives the underlying shares of which are the shares in the listed corporation or the other corporation,

the inspector may certify the refusal in writing to the Court of First Instance.

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

(a) thereupon enquire into the case; and

(b) after hearing any witness who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of court.

(4) In this section, a reference to an inspector includes a reference to any person to whom the powers of an inspector are delegated under section 351.

### 353. Inspector's reports

(1) An inspector may, and if so directed by the Financial Secretary shall, make interim reports to the Financial Secretary, and on the conclusion of an investigation shall make a final report to the Financial Secretary.

(2) Any such report shall be made within such time and in such manner as the Financial Secretary may direct.

(3) The Financial Secretary may, if he considers appropriate---

(a) forward a copy of any report made by an inspector to the registered office or principal place of business in Hong Kong of the listed corporation or the other corporation (as the case may be) which is the subject of the report;

(b) on request and on payment of such fee as is prescribed by regulations, furnish a copy of any such report to---

(i) any member of the listed corporation or the other corporation (as the case may be) which is the subject of the report;

(ii) any person whose conduct is referred to in the report;

(iii) the auditors of the listed corporation or the other corporation (as the case may be);

(iv) the applicants for the investigation; or

(v) any other person whose financial interests appear to the Financial Secretary to be affected by the matters dealt with in the report, whether as a creditor of the listed corporation or the other corporation (as the case may be) or otherwise; and

(c) cause any such report to be printed and published.

### 354. Expenses of investigation of affairs of corporation

(1) The expenses of and incidental to an investigation by an inspector shall be defrayed in the first instance out of the general revenue, but the following persons shall, to the following extent, be liable to repay such expenses to the Government---

(a) any person who is convicted by a court on a prosecution instituted as a result of the investigation shall be liable to such extent (if any) as may be ordered by such court;

(b) the listed corporation or the other corporation (as the case may be) dealt with by the investigation shall be liable to such extent (if any) as the Financial Secretary may direct;

(c) the director and the chief executive of the listed corporation or the other corporation (as the case may be) dealt with by the investigation shall be liable to such extent (if any) as the Financial Secretary may direct;

(d) any person who has an interest or short position notifiable under any provision of Divisions 2 to 5 in shares comprised in the relevant share capital of the listed corporation or the other corporation (as the case may be) dealt with by the investigation shall be liable to such extent (if any) as the Financial Secretary may direct; and

(e) the applicants for the investigation, where the inspector was appointed under section 347(3), shall be liable to such extent (if any) as the Financial Secretary may direct.

(2) An inspector appointed under section 347(3) may, if he considers appropriate, and shall if the Financial Secretary so directs, include in a report made by him a recommendation as to the directions (if any) he considers appropriate, in the light of his investigation, to be given under subsection (1)(b), (c), (d) or (e).

(3) A person to whom a direction is given under subsection (1)(b), (c), (d) or (e) may appeal against the direction to the Court of First Instance.

(4) Notwithstanding rule 3(3) of Order 55 of the Rules of the High Court (Cap. 4 sub. leg.), a direction under subsection (1)(b), (c), (d) or (e) shall not take effect, if an appeal against the direction has been made under subsection (3), until the appeal is heard or otherwise disposed of.

(5) Any liability to repay the Government imposed by subsection (1)(a) shall, subject to the satisfaction of the right of the Government to repayment, be a liability also to indemnify all persons against liability under subsection (1)(b), (c), (d) and (e).

(6) Any person liable under paragraph (a), (b), (c), (d) or (e) of subsection (1) shall be entitled to contribution from any other person liable under the same paragraph, according to the amount of their respective liabilities thereunder or, if an appeal is made, according to the amount of their respective liabilities as determined by the Court of First Instance.

355. Power to impose restrictions on shares, etc. in connection with investigation

(1) If, in connection with an investigation under section 347, 348 or 349, it

appears to the Financial Secretary that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), he may by order direct that---

- (a) the shares registered on the Hong Kong register; or
- (b) the unissued shares which on issue are to be registered on the Hong Kong register, shall, until further order, be subject to the restrictions under Division 12.

(2) If, in connection with an investigation under section 347, 348 or 349, it appears to the Financial Secretary that there is difficulty in finding out the relevant facts about any equity derivatives, he may by order direct that the equity derivatives shall, until further order, be subject to the restrictions under Division 12.

356. Power to obtain information as to those interested in shares, etc.

(1) If it appears to the Financial Secretary that---

- (a) there are reasonable grounds to investigate---
  - (i) the ownership of shares in or debentures of a listed corporation;
  - (ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, a listed corporation; and
  - (iii) where the shares in the listed corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives; and
- (b) it is unnecessary to appoint an inspector for the purpose, the Financial Secretary may require any person whom he has reasonable cause to believe to have, or to be able to obtain, any information as to---
  - (i) the present and past interests in those shares or debentures or equity derivatives;
  - (ii) the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to those shares or debentures or equity derivatives;
  - (iii) the present and past short positions in those shares; or
  - (iv) the names and addresses of the persons having those short positions and of any persons who act or have acted on their behalf in relation to those short positions,to give any such information to the Financial Secretary.

(2) For the purposes of subsection (1), a person shall be deemed to have an interest in shares or debentures if---

- (a) he has any right---
  - (i) to acquire or dispose of the shares or debentures or any interest in them;or

- (ii) to vote in respect of them;
- (b) his consent is necessary for the exercise of any right referred to in paragraph (a) of any other person; or
- (c) any other person having any right referred to in paragraph (a) can be required, or are accustomed or obliged, to exercise the other person's right in accordance with his directions or instructions.

(3) For the purposes of subsection (1), a person shall be deemed to have an interest in equity derivatives if---

- (a) he has any right to acquire or dispose of the equity derivatives or any interest in them;
- (b) his consent is necessary for the exercise of the right referred to in paragraph (a) of any other person; or
- (c) any other person having the right referred to in paragraph (a) can be required, or are accustomed or obliged, to exercise the other person's right in accordance with his directions or instructions.

(4) A person---

- (a) who fails to give information required of him under this section; or
- (b) who---

(i) in giving such information makes any statement which is false or misleading in a material particular; and

(ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular, commits an offence and is liable---

(i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

### 357. Privileged information

Nothing in sections 347 to 356 shall require disclosure to the Financial Secretary, or to an inspector appointed by him, by an authorized financial institution acting as a corporation's banker or financial adviser of information as to the affairs of any of its customers other than the corporation concerned.

Division 12---Orders imposing restrictions on shares, etc. under section 319, 325 or 355

### 358. Consequence of order imposing restrictions

(1) So long as any shares are directed to be subject to the restrictions under this Division---

(a) any transfer of those shares;  
(b) in the case of unissued shares---  
    (i) any transfer of the right to be issued with those shares; and  
    (ii) any issue of those shares;  
(c) any cancellation of those shares or of the relevant certificates for those rights;  
and  
(d) any removal of the registration of those shares to a register of members other than the Hong Kong register,  
are void.

(2) Where shares are subject to the restrictions of subsection (1), any agreement to transfer---

(a) those shares; or  
(b) in the case of unissued shares, the right to be issued with those shares,  
is void (except an agreement to sell those shares on the making of an order under section 360(4)).

(3) So long as any equity derivatives are directed to be subject to the restrictions under this Division---

(a) any transfer or assignment of---  
    (i) those equity derivatives; or  
    (ii) any rights under those equity derivatives;  
(b) the exercise of any rights under those equity derivatives; and  
(c) any removal of the registration of those equity derivatives to a register of holders of equity derivatives other than the Hong Kong register,  
are void.

(4) Where equity derivatives are subject to the restrictions of subsection (3), any agreement to---

(a) transfer or assign---  
    (i) those equity derivatives; or  
    (ii) any rights under those equity derivatives; or  
(b) exercise any rights under those equity derivatives,  
is void (except an agreement to sell those equity derivatives on the making of an order under section 360(4)).

359. Offences for attempted evasion of restrictions

(1) A person who---

(a) exercises or purports to exercise any right to dispose of---  
    (i) any shares or equity derivatives which, to his knowledge, are for the time being subject to the restrictions under this Division; or  
    (ii) any right to be issued with any such shares or any right under any such

equity derivatives; or

(b) having an interest in any such shares or equity derivatives, or being entitled to any right to be issued with other shares or under other equity derivatives in right of them, enters into any agreement which is void under section 358(2) or (4), commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(2) If---

(a) any shares in a corporation are registered as transferred;

(b) any shares in a corporation are issued;

(c) any shares in a corporation are cancelled; or

(d) the registration of any shares in a corporation is removed to a register of members other than the Hong Kong register,

in contravention of the restrictions under this Division, the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(3) If---

(a) any equity derivatives, or any rights under any equity derivatives, are registered as transferred or assigned;

(b) any rights under any equity derivatives are registered as having been exercised; or

(c) the registration of any equity derivatives is removed to a register of holders of equity derivatives other than the Hong Kong register,

in contravention of the restrictions under this Division, the corporation maintaining such register and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

360. Relaxation and removal of restrictions

(1) Where shares or equity derivatives are by order made subject to the restrictions under this Division, application may be made to the Court of First Instance (in any case) or the Financial Secretary (if the order applying the restrictions was made by the Financial Secretary under section 319 or 355) for an order directing that the shares or equity derivatives (as the case may be) shall cease to be so subject.

(2) If the order applying the restrictions was made---

(a) by the Court of First Instance under section 325, the application under subsection (1) may be made by any person aggrieved or by the corporation concerned; or

(b) by the Financial Secretary under section 319 or 355, the application under subsection (1) may be made by any person aggrieved.

(3) The Financial Secretary has a right to be heard, and to call evidence, at

the hearing of the application to the Court of First Instance under subsection (1).

(4) Subject to this section, an order of the Court of First Instance or the Financial Secretary directing that shares or equity derivatives (as the case may be) shall cease to be subject to the restrictions may be made only if---

(a) the Court of First Instance or the Financial Secretary (as the case may be) is satisfied that---

(i) all relevant facts about the interests in the shares or equity derivatives have been disclosed to the corporation concerned or an inspector (as the case may be); and

(ii) no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure; or

(b) the shares or equity derivatives are to be sold and the Court of First Instance (in any case) or the Financial Secretary (if the order applying the restrictions was made by the Financial Secretary under section 319 or 355) approves the sale.

(5) Where shares or equity derivatives are by order made subject to the restrictions under this Division, the Court of First Instance may on application order that the shares or equity derivatives shall be sold, subject to the Court's approval as to the sale, and may also direct that the shares or equity derivatives shall cease to be subject to the restrictions.

(6) An application to the Court of First Instance under subsection (5) may be made---

(a) by the Financial Secretary (unless the restrictions were imposed by court order under section 325); or

(b) by the corporation concerned.

(7) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application under subsection (5).

(8) Where an order has been made under subsection (5), the Court of First Instance may on application make such further order relating to the sale of the shares or equity derivatives as it considers appropriate.

(9) An application to the Court of First Instance under subsection (8) may be made---

(a) by the Financial Secretary (unless the restrictions were imposed by court order under section 325);

(b) by the corporation concerned;

(c) by the person appointed by, or in pursuance of, the order to effect the sale; or

(d) by any person interested in the shares or equity derivatives.

(10) The Financial Secretary has a right to be heard, and to call evidence,

at the hearing of the application under subsection (8).

(11) Where equity derivatives are by order made subject to the restrictions under this Division, the Court of First Instance may on application order that rights under the equity derivatives shall be exercised, subject to the Court's approval as to the manner in which, and the time at which, those rights are to be exercised, and may also direct that the equity derivatives shall cease to be subject to the restrictions.

(12) An application to the Court of First Instance under subsection (11) may be made---

(a) by the Financial Secretary (unless the restrictions were imposed by court order under section 325);

(b) by the corporation concerned; or

(c) by any person interested in the equity derivatives.

(13) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application under subsection (11).

(14) Where an order has been made under subsection (11), the Court of First Instance may also direct, in the case of the exercise of a right under the equity derivatives to call for delivery of shares, or to require another person to take delivery of shares, that the shares due to be delivered on the exercise of the right shall, upon delivery, be---

(a) subject to the restrictions under this Division; or

(b) sold.

(15) In this section, "the corporation concerned" (有關法團)---

(a) in relation to shares in a corporation that are subject to the restrictions under this Division, means that corporation; or

(b) in relation to equity derivatives that are subject to the restrictions under this Division, where the underlying shares of those equity derivatives are shares in a corporation, means that corporation.

361. Further provisions on sale by court order of restricted shares, etc.

(1) Subject to subsection (2), where shares or equity derivatives are sold in pursuance of an order of the Court of First Instance under section 360, the proceeds of the sale, less the costs of the sale, shall be paid into court.

(2) Where a right under equity derivatives is exercised in pursuance of an order of the Court of First Instance under section 360(11) and---

(a) an amount is received on settlement of the equity derivatives, the proceeds, less the costs incurred in exercising the right; or

(b) shares are sold in pursuance of an order of the Court of First Instance under section 360(14)(b), the proceeds of the sale, less the costs of the sale and the costs



incurred in exercising the right,  
shall be paid into court.

(3) Any person who had an interest in the shares or equity derivatives from which the proceeds, which have been paid into court under subsection (1) or (2), were derived may apply to the Court of First Instance for an order that the whole or part of those proceeds be paid to him.

(4) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of an application under subsection (3).

(5) The Court of First Instance may on application under subsection (3)---

(a) if it is satisfied that---

(i) the applicant was interested in the shares or equity derivatives at the time of the sale or (in the case of the exercise of any right under equity derivatives) at the time of the exercise of the right, and no other person had an interest in the shares or equity derivatives at that time; and

(ii) all relevant facts about the applicant's interests in the shares or equity derivatives have been disclosed to the corporation concerned or an inspector (as the case may be),

order the payment to the applicant, subject to subsection (6), of the whole of the proceeds, together with any interest thereon;

(b) if it is satisfied that---

(i) the applicant was interested in the shares or equity derivatives at the time of the sale or (in the case of the exercise of any right under equity derivatives) at the time of the exercise of the right, and another person also had an interest in the shares or equity derivatives at that time; and

(ii) all relevant facts about the applicant's interests in the shares or equity derivatives have been disclosed to the corporation concerned or an inspector (as the case may be) by the applicant,

order the payment to the applicant, subject to subsection (6), of such part of the proceeds as is equal to the proportion which the value of the applicant's interests in the shares or equity derivatives bears to the total value of the shares or equity derivatives, together with any interest thereon; or

(c) make such other order as it considers appropriate.

(6) On making an order under subsection (5) or section 360(5), (8) or (11), the Court of First Instance may further order that the costs of the applicant, and the costs of the Financial Secretary (where appropriate), be paid out of the proceeds.

Division 13---Miscellaneous

362. Liability of members for offences by corporations

Where the affairs of a corporation are managed by its members, section 378(1)

applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the corporation.

363. Method of giving notification and delivering report

Notwithstanding section 386, any notification or report required under any provision of this Part to be given or delivered shall for all purposes be regarded as duly given or delivered only if---

(a) in the case of a listed corporation, it is---

(i) left at, or sent by post to, the registered office of the listed corporation;

(ii) where the listed corporation does not have a registered office in Hong Kong, left at, or sent by post to, the listed corporation's principal place of business in Hong Kong;

(iii) sent by facsimile transmission to the facsimile number of the listed corporation;

(iv) sent by electronic mail transmission to the electronic mail address of the listed corporation; or

(v) sent by such other method as is prescribed by rules made under section 384;

(b) in the case of the relevant exchange company, it is---

(i) left at, or sent by post to, the registered office of the relevant exchange company;

(ii) sent by facsimile transmission to the facsimile number of the relevant exchange company;

(iii) sent by electronic mail transmission to the electronic mail address of the relevant exchange company; or

(iv) sent by such other method as is prescribed by rules made under section 384;

(c) in the case of the Commission, it is---

(i) left at, or sent by post to, the registered office of the Commission;

(ii) sent by facsimile transmission to the facsimile number of the Commission;

(iii) sent by electronic mail transmission to the electronic mail address of the Commission; or

(iv) sent by such other method as is prescribed by rules made under section 384;

(d) in the case of the Monetary Authority, it is---

(i) left at, or sent by post to, the registered office of the Monetary Authority;

(ii) sent by facsimile transmission to the facsimile number of the Monetary Authority;

(iii) sent by electronic mail transmission to the electronic mail address of the Monetary Authority; or

(iv) sent by such other method as is prescribed by rules made under section 384; or

(e) in any other case, it is sent in the manner (as appropriate) specified in section 386.

364. Form of registers and indices

(1) Any register or index required by this Part to be kept by a corporation may be kept either by making entries in a bound book or by recording the matters in question in any other manner.

(2) For the purposes of subsection (1), the corporation may record the matters in question otherwise than in a legible form so long as the recording is capable of being reproduced in a legible form.

(3) If any register or index required by this Part to be kept by a corporation is kept by the corporation by recording the matters in question otherwise than in a legible form, any duty imposed on the corporation by this Part to allow inspection of, or to furnish a copy of, the register or index or any part of it shall be deemed to be a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.

(4) If any such register or index is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.

(5) If default is made in complying with subsection (4), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

365. Regulations by Chief Executive in Council

(1) The Chief Executive in Council may make regulations to---

(a) prescribe anything required or permitted by any provision of this Part to be prescribed by regulations;

(b) provide for exclusions from the requirement to give notification under any provision of this Part;

(c) provide for any other matters for the better carrying out of the objects and purposes of this Part.

(2) Without limiting the generality of the regulations which may be made under subsection (1), such regulations may include any savings, transitional, incidental, supplemental, evidential and consequential provisions (whether involving the provisions of any principal legislation or provisions of any subsidiary legislation).

PART XVI

Miscellaneous

Division 1---Secrecy, conflict of interests,  
and immunity

366. Preservation of secrecy, etc.

(1) Except in the performance of a function under, or for the purpose of carrying into effect or doing anything required or authorized under, any of the relevant provisions, a specified person---

(a) shall preserve and aid in preserving secrecy with regard to any matter coming to his knowledge by virtue of his appointment under any of the relevant provisions, or in the performance of any function under or in carrying into effect any of the relevant provisions, or in the course of assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions;

(b) shall not communicate any such matter to any other person; and

(c) shall not suffer or permit any other person to have access to any record or document which is in his possession by virtue of the appointment, or the performance of any such function under or the carrying into effect of any such provisions, or the assistance to the other person in the performance of any such function under or in carrying into effect any such provisions.

(2) Nothing in subsection (1) applies to---

(a) the disclosure of information which has already been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section;

(b) the disclosure of information with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, or any investigation carried out under the laws of Hong Kong, in Hong Kong;

(c) the communication of any information or opinion to which section 369(1) applies (whether with or without reference to section 369(2))---

(i) to the Commission in the manner described in section 369(1);

(ii) where section 369(4) applies, to the Insurance Authority or the Monetary Authority (as the case may be) in the manner described in section 369(4).

(3) Notwithstanding subsection (1), the Commission may disclose information-

--

(a) in the form of a summary compiled from any information in the possession of the Commission, including information provided by persons under any of the relevant provisions, if the summary is so compiled as to prevent particulars relating to the

business or identity, or the trading particulars, of any person from being ascertained from it;

(b) in connection with any judicial or other proceedings (other than criminal proceedings) to which the Commission is a party;

(c) to a person who is a liquidator appointed under the Companies Ordinance (Cap. 32);

(d) to the Market Misconduct Tribunal;

(e) to the Securities and Futures Appeals Tribunal;

(f) to the Monetary Authority, if---

(i) the information relates to---

(A) any business of an exempt person which constitutes a regulated activity for which the exempt person is exempt; or

(B) any business of an associated entity that is an authorized financial institution, which is that of receiving or holding client assets of the intermediary of which the associated entity is an associated entity; or

(ii) in the opinion of the Commission the condition specified in subsection (5) is satisfied;

(g) if in the opinion of the Commission the condition specified in subsection (5) is satisfied, to---

(i) the Chief Executive;

(ii) the Financial Secretary;

(iii) the Secretary for Justice;

(iv) the Secretary for Financial Services;

(v) the Insurance Authority;

(vi) the Registrar of Companies;

(vii) the Mandatory Provident Fund Schemes Authority;

(viii) the Privacy Commissioner for Personal Data;

(ix) the Ombudsman;

(x) a public officer authorized by the Financial Secretary under subsection (12);

(xi) an inspector appointed by the Financial Secretary to investigate the affairs of a corporation;

(xii) a recognized exchange company;

(xiii) a recognized clearing house;

(xiv) a recognized exchange controller;

(xv) a recognized investor compensation company;

(xvi) a person authorized to provide authorized automated trading services under section 95(2);

(h) if in the opinion of the Commission the condition specified in subsection (5)

is satisfied---

(i) to an authority or regulatory organization outside Hong Kong which, or to a companies inspector outside Hong Kong who, in the opinion of the Commission satisfies the requirements referred to in subsection (6)(a) and (b);

(ii) to such professional or semi-professional bodies as are prescribed by rules made under section 384 for the purposes of this subparagraph;

(iii) without prejudice to subparagraph (ii), to the Hong Kong Society of Accountants with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the performance or non-performance of the professional duties of an auditor or a former auditor appointed under any of the relevant provisions;

(i) to a person who is or was an auditor appointed under any provision of this Ordinance, for the purpose of enabling or assisting the Commission to discharge its functions under any of the relevant provisions;

(j) where the information is obtained by an investigator under section 176, to--

-

(i) the Financial Secretary;

(ii) the Secretary for Justice;

(iii) the police;

(iv) the Independent Commission Against Corruption;

(v) the Market Misconduct Tribunal;

(vi) the Securities and Futures Appeals Tribunal;

(k) for the purpose of, or otherwise in connection with, an audit required by section 16;

(l) with the consent of the person from whom the information was obtained and, if the information relates to a different person, also with the consent of the person to whom the information relates.

(4) Notwithstanding subsection (1), a person who is or was an auditor appointed in relation to a licensed corporation or an associated entity of a licensed corporation under section 155 or 156, and a person who is or was an employee or agent of such auditor, may disclose information that comes to his knowledge in the course of performing his duties as such auditor or as an employee or agent of such auditor (as the case may be)---

(a) for the purposes of any judicial or other proceedings arising out of the performance of his duties as such auditor or as an employee or agent of such auditor (as the case may be);

(b) in the case of a person who is or was an employee or agent of an auditor, to the auditor.

(5) The condition referred to in subsection (3)(f), (g) and (h) is that---

(a) it is desirable or expedient that the information should be disclosed pursuant to subsection (3)(f), (g) or (h) (as the case may be) in the interest of the investing public or in the public interest; or

(b) the disclosure will enable or assist the recipient of the information to perform its or his functions and it is not contrary to the interest of the investing public or to the public interest that the information should be so disclosed.

(6) Where the Commission is satisfied, for the purposes of subsection (3)(h)(i), that an authority, regulatory organization or companies inspector outside Hong Kong---

(a) performs any function similar to a function of the Commission or the Registrar of Companies, or regulates, supervises or investigates banking, insurance or other financial services or the affairs of corporations; and

(b) is subject to adequate secrecy provisions,  
the Commission shall as soon as reasonably practicable thereafter cause the name of the authority, regulatory organization or companies inspector (as the case may be) to be published in the Gazette.

(7) Where information is disclosed pursuant to subsection (1), or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (b) and (1) and (4)(b))---

(a) the person to whom that information is so disclosed; or

(b) any other person obtaining or receiving the information, whether directly or indirectly, from the person referred to in paragraph (a),  
shall not disclose the information, or any part thereof, to any other person,  
unless---

(i) the Commission consents to the disclosure; or

(ii) the information or the part thereof (as the case may be) has already been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section.

(8) Where information is disclosed to an auditor in the circumstances described in subsection (4)(b)---

(a) the auditor; or

(b) any other person obtaining or receiving the information, whether directly or indirectly, from the auditor,  
shall not disclose the information, or any part thereof, to any other person,  
unless---

(i) in the case of the auditor, the disclosure is for the purpose described in subsection (4)(a);

(ii) the Commission otherwise consents to the disclosure; or

(iii) the information or the part thereof (as the case may be) has already been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section.

(9) A person who contravenes subsection (1) commits an offence and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

(10) Where a person discloses any information in contravention of subsection (7) or (8) and, at the time of the disclosure---

(a) in the case of a contravention of subsection (7), he---

(i) knew or ought reasonably to have known that the information was previously disclosed to him or any other person pursuant to subsection (1), or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (b) and (1) and (4)(b)); and

(ii) had no reasonable grounds to believe that subsection (7)(i) or (ii) applies to the disclosure of the information by him; or

(b) in the case of a contravention of subsection (8), he---

(i) knew or ought reasonably to have known that the information was previously disclosed to him or any other auditor in the circumstances described in subsection (4)(b); and

(ii) had no reasonable grounds to believe that subsection (8)(i), (ii) or (iii) applies to the disclosure of the information by him,  
he commits an offence and is liable---

(i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

(11) For the purposes of this section, a person shall be regarded as assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions if he so assists any other person or he otherwise---

(a) is a person who is subject to any requirement imposed by an authorized person under section 172, 173 or 174, or by an investigator under section 176, or is a counsel or solicitor or other professional adviser, acting for such person in connection with the requirement; or

(b) is a counsel or solicitor or other professional adviser acting for---

(i) any person who has made or proposes to make any application to the Commission under or pursuant to any of the relevant provisions;



(ii) an approved person as defined in section 101(1) in respect of any matter;  
(iii) any person in respect of whom the Commission exercises or proposes to exercise any power under Part IX;

(iv) any person who has made or proposes to make an application for review under Part XI or otherwise seeks advice regarding such an application;

(v) any person who is or may be involved in any proceedings instituted under section 244;

(vi) any person against whom any criminal proceedings have been or may be instituted under any of the relevant provisions; or

(vii) any person who is or may be involved in any other proceedings arising from any matter referred to in subparagraphs (i) to (vi).

(12) The Financial Secretary may authorize any public officer as a person to whom information may be disclosed under subsection (3)(g)(x).

(13) Any matter published under subsection (6) is not subsidiary legislation.

(14) For the avoidance of doubt, it is hereby declared that subsection (1) does not preclude the disclosure of information under a reprimand under section 187(1)(iii).

(15) In this section---

"companies inspector" (公司審查員), in relation to a place outside Hong Kong, means a person whose functions under the laws of that place include the investigation of the affairs of a corporation carrying on business in that place;

"specified person" (指明人士) means---

(a) the Commission;

(b) any person who is or was a member, an employee, or a consultant, agent or adviser, of the Commission; or

(c) any person who is or was---

(i) a person appointed under any of the relevant provisions;

(ii) a person performing any function under or carrying into effect any of the relevant provisions; or

(iii) a person assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions.

### 367. Avoidance of conflict of interests

(1) Subject to subsection (2), any member of the Commission or any person performing any function under any of the relevant provisions shall not directly or indirectly effect or cause to be effected, on his own account or for the benefit of any other person, a transaction regarding any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme---

(a) which transaction he knows is or is connected with a transaction or a person that is the subject of any investigation or proceedings by the Commission under any of the relevant provisions or the subject of other proceedings under any provision of this Ordinance; or

(b) which transaction he knows is otherwise being considered by the Commission.

(2) Subsection (1) does not apply to any transaction which a holder of securities effects or causes to be effected by reference to any of his rights as such holder---

(a) to exchange the securities or convert them to another form of securities;

(b) to participate in a scheme of arrangement sanctioned by the Court of First Instance under the Companies Ordinance (Cap. 32);

(c) to subscribe for other securities or dispose of a right to subscribe for other securities;

(d) to charge or pledge the securities to secure the repayment of money;

(e) to realize the securities for the purpose of repaying money secured under paragraph (d); or

(f) to realize the securities in the course of performing a duty imposed by law.

(3) Any member of the Commission or any person performing any function under any of the relevant provisions shall forthwith inform the Commission if, in the course of performing any function under any such provisions, he is required to consider any matter relating to---

(a) any securities, futures contract, leveraged foreign exchange contract, regulated investment agreement, or an interest in any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or regulated investment agreement---

(i) in which he has an interest;

(ii) in which a corporation, in the shares of which he has an interest, has an interest; or

(iii) which---

(A) in the case of securities, is of or issued by the same issuer, and of the same class, as those in which he has an interest; or

(B) in the case of a futures contract, is interests, rights or property based upon securities of or issued by the same issuer, and of the same class, as those in which he has an interest; or

(b) a person---

(i) by whom he is or was employed;

(ii) of whom he is or was a client;

(iii) who is or was his associate; or

(iv) whom he knows is or was a client of a person with whom he is or was employed

or who is or was his associate.

(4) A person who, without reasonable excuse, contravenes subsection (1) or (3) commits an offence and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

### 368. Immunity

(1) A person shall not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, in respect of any act done or any omission made by reason only of---

(a) his performance or purported performance in good faith of any function (including that under each of the paragraphs of section 5(1)) under any of the relevant provisions; or

(b) his furtherance or purported furtherance in good faith of any regulatory objective, or performance or purported performance in good faith of any function, pursuant to or consequent upon any written direction given by the Chief Executive under

section 11.

(2) Nothing in subsection (1) applies to a person appointed as an auditor under section 149.

(3) A person who complies with a requirement made under any provision of this Ordinance shall not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, to any person by reason only of that compliance.

(4) A person who is a legal practitioner (whether or not he is qualified in Hong Kong to practise as a counsel or to act as a solicitor) shall not be required under this Ordinance to disclose any information (other than the name and address of a client) or produce any record or document (whether an original or a copy) which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the Court of First Instance.

(5) A person who is not a legal practitioner shall not be required under this Ordinance to disclose any information or produce any record or document (whether an original or a copy) if the requirement to do so would not apply in the case of a legal practitioner by virtue of subsection (4).

### 369. Immunity in respect of communication with Commission by auditors of listed corporations, etc.

(1) Without prejudice to section 368, a person who is or was an auditor of a listed corporation, or of any associated corporation of a listed corporation, shall not incur any civil liability, whether arising in contract, tort, defamation, equity or

otherwise, by reason only of his communicating in good faith to the Commission any information or opinion on a matter of which he becomes or became aware in his capacity as such auditor, being a matter which in his opinion suggests---

(a) that the business of the listed corporation is being or has been conducted--

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(i) with intent to defraud its creditors, or the creditors of any other person;

(ii) for any fraudulent or unlawful purpose; or

(iii) in a manner oppressive to its members or any part of its members;

(b) that the listed corporation was formed for any fraudulent or unlawful purpose;

(c) that persons concerned in the process by which the listed corporation became listed (including that for making the securities of the corporation available to the public in the course of such process) have engaged, in relation to such process, in defalcation, fraud, misfeasance or other misconduct;

(d) that persons involved in the management of the affairs of the listed corporation are or have engaged, in relation to such management, in defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members; or

(e) that members of the listed corporation or any part of its members have not been given all the information with respect to its affairs that they might reasonably expect.

(2) In addition to applying to a person who is or was an auditor of a listed corporation, or of any associated corporation of a listed corporation, subsection (1) also applies to---

(a) a person who is or was an auditor of a corporation that was formerly a listed corporation, or of any associated corporation of that corporation, in which case a reference to matter in that subsection shall be construed on the basis that---

(i) it includes any matter occurring at any time whether before or after the first-mentioned corporation was a listed corporation; and

(ii) the circumstances required to be suggested by the matter under paragraphs (a), (b) and (c) of that subsection relate, instead of to the listed corporation referred to in those paragraphs, to the first-mentioned corporation when it was a listed corporation; and

(b) a person who is or was an auditor of a corporation that was formerly an associated corporation of a listed corporation, in which case a reference to matter in that subsection shall be construed on the basis that---

(i) it includes any matter occurring at any time whether before or after the first-mentioned corporation was an associated corporation of the listed corporation; and

(ii) the circumstances required to be suggested by the matter under paragraphs (a), (b) and (c) of that subsection relate, instead of to the listed corporation referred to in those paragraphs, to the listed corporation of which the first-mentioned corporation was formerly an associated corporation.

(3) The application of subsection (1) to any person (whether with or without reference to subsection (2)) is not affected by the fact that the person has, before communicating in the manner described in subsection (1) any information or opinion to which subsection (1) applies (whether with or without reference to subsection (2)), previously communicated such information or opinion to any other person.

(4) Without prejudice to subsection (1), where a person communicates in the manner described in that subsection any information or opinion to which that subsection applies (whether with or without reference to subsection (2)), he shall at the same time communicate the information or opinion to---

(a) where the corporation of which he is or was an auditor is or was an insurer authorized under the Insurance Companies Ordinance (Cap. 41), the Insurance Authority; or

(b) where the corporation of which he is or was an auditor is or was an authorized financial institution, the Monetary Authority.

(5) In this section---

"associated corporation" (相聯法團), in relation to a listed corporation, means--

(a) a subsidiary of that listed corporation;

(b) a corporation in which that listed corporation has an interest (whether held by that listed corporation directly or indirectly through any other corporation or corporations), which is properly accounted for by that listed corporation in its accounts using the method generally known as equity accounting; or

(c) a corporation a substantial shareholder of which is also a substantial shareholder of that listed corporation;

"auditor" (核數師), in relation to a corporation, means---

(a) a person appointed to be an auditor of the corporation for the purposes of any Ordinance, or otherwise for the purposes of auditing the accounts of the corporation (irrespective of whether such person is qualified for the appointment under the Professional Accountants Ordinance (Cap. 50) or is otherwise qualified for the appointment); or

(b) a person appointed to be an auditor of the corporation for the purposes of any enactment of a place outside Hong Kong which imposes on such person responsibilities comparable to those imposed on an auditor by the Companies Ordinance (Cap. 32).

Division 2---General provisions regarding proceedings and offences

### 370. Obstruction

A person who obstructs any other person in the performance of a function under or in carrying into effect any provision of this Ordinance commits an offence and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

### 371. False or misleading representations in applications to Commission

(1) A person commits an offence if---

(a) he, in support of any application made to the Commission under or pursuant to any provision of this Ordinance, whether for himself or for another person, makes a representation, whether in writing, orally or otherwise, that is false or misleading in a material particular; and

(b) he knows that, or is reckless as to whether, the representation is false or misleading in a material particular.

(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 2 years; or

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

(3) In this section, "representation" (陳述) means a representation or statement---

(a) of a matter of fact, either present or past;

(b) about a future event; or

(c) about an existing intention, opinion, belief, knowledge or other state of mind.

### 372. Provision of false or misleading information

(1) Subject to subsection (2), a person commits an offence if---

(a) he, in purported compliance with a requirement to provide information imposed by or under any of the relevant provisions, provides to a specified recipient any information which is false or misleading in a material particular; and

(b) he knows that, or is reckless as to whether, the information is false or misleading in a material particular.

(2) Subsection (1) does not apply to the provision of information which is false or misleading in a material particular if the provision of such information in purported compliance with a requirement imposed by or under any of the relevant provisions would, apart from subsection (1), also constitute an offence under any of the relevant provisions.

(3) Subject to subsection (4), a person commits an offence if---

(a) he, in circumstances other than those that would constitute an offence under

subsection (1), provides to a specified recipient, in connection with the performance by the specified recipient of a function under any of the relevant provisions, any record or document which is false or misleading in a material particular; and

(b) he---

(i) knows that, or is reckless as to whether, the record or document is false or misleading in a material particular; and

(ii) has, in relation to the provision of the record or document, received prior written warning from the specified recipient to the effect that the provision of any record or document which is false or misleading in a material particular in the circumstances of the case would constitute an offence under this subsection.

(4) Subject to subsection (5), no person shall be convicted of an offence under subsection (3) unless the prosecution proves that---

(a) the specified recipient to which the record or document in question has been provided has reasonably relied on the record or document; or

(b) the person intended that the specified recipient would rely on the record or document.

(5) Nothing in subsection (4)(a) requires it to be proved that the specified recipient who has reasonably relied on any record or document was---

(a) misled;

(b) suffered any detriment; or

(c) incurred any loss,

as a result of such reliance.

(6) 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 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(7) A person who commits an offence under subsection (3) is liable---

(a) on conviction on indictment to a fine of \$500,000 and to imprisonment for 6 months; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(8) In this section, "specified recipient" (指明收受者) means---

(a) the Commission;

(b) a recognized exchange company;

(c) a recognized clearing house; or

(d) a recognized exchange controller.

373. Power of Commission to intervene in proceedings

(1) Where---

(a) there are any judicial or other proceedings (other than criminal proceedings)

which concern a matter provided for in any of the relevant provisions, or in which the Commission has an interest by virtue of its functions under any of the relevant provisions; and

(b) the Commission is satisfied that it is in the public interest for the Commission to intervene and be heard in the proceedings,  
the Commission, after consultation with the Financial Secretary, may, by an application made in accordance with subsection (2) to the court hearing or otherwise having competent authority to hear the proceedings, apply to intervene and be heard in the proceedings.

(2) An application made for the purposes of subsection (1) shall be---

(a) made in writing; and

(b) supported by an affidavit showing that the conditions set out in subsection (1)(a) and (b) are satisfied.

(3) A copy of the application made for the purposes of subsection (1) shall be served on each of the parties to the proceedings to which the application relates as soon as reasonably practicable after the application is made.

(4) Subject to subsection (5), the court to which an application is made for the purposes of subsection (1) may by order---

(a) allow the application, subject to such terms as it considers just; or

(b) refuse the application.

(5) The court to which an application is made for the purposes of subsection (1) shall not make an order pursuant to subsection (4)(a) or (b) without first giving the Commission, and each of the parties to the proceedings to which the application relates, a reasonable opportunity of being heard.

(6) Where an application made for the purposes of subsection (1) is allowed under subsection (4)(a), the Commission, subject to the terms referred to in subsection (4)(a)---

(a) may intervene and be heard in the proceedings to which the application relates; and

(b) shall be regarded for all purposes as a party to the proceedings and shall have the rights, duties and liabilities of such a party.

(7) Nothing in this section prejudices Order 15, rule 6 of the Rules of the High Court (Cap. 4 sub. leg.).

(8) In this section, "court" (法院) includes a magistrate and a tribunal, other than the Market Misconduct Tribunal and the Securities and Futures Appeals Tribunal.  
374. Proceedings not to be stayed

(1) The existence of any judicial or other proceedings, or circumstances that disclose the commission of an offence, shall not by itself constitute justification



for any other proceedings or action under this Ordinance being stayed or deferred.

(2) For the avoidance of doubt, nothing in subsection (1) prevents a court of competent jurisdiction from ordering that any proceedings or action under this Ordinance shall be stayed or deferred.

### 375. Standard of proof

Where it is necessary for a court or the Commission to establish or to be satisfied, for the purposes of any of the relevant provisions (other than provisions relating to criminal proceedings or to an offence), that---

(a) a person has contravened---

(i) any provision of any Ordinance;

(ii) any notice or requirement given or made under or pursuant to any provision of any Ordinance;

(iii) any of the terms and conditions of a licence or an exemption under this Ordinance; or

(iv) any other condition imposed under or pursuant to any provision of this Ordinance;

(b) a person has been responsible for an unlawful act or omission;

(c) a person has assisted, counselled, procured or induced any other person to do anything which results in the occurrence of any of the matters referred to in paragraph (a) or (b);

(d) a person has been concerned in, or a party to, anything which results in the occurrence of any of the matters referred to in paragraph (a) or (b);

(e) a person has attempted, or conspired with any other person, to commit anything which results in the occurrence of any of the matters referred to in paragraph (a) or (b); or

(f) any of the matters referred to in paragraphs (a) to (e) might occur,

it is, except as otherwise provided in any of the relevant provisions, sufficient for the court or the Commission (as the case may be) to establish, or to be satisfied as to, the matter referred to in paragraph (a), (b), (c), (d), (e) or (f) (as the case may be) on the balance of probabilities.

### 376. Prosecution of certain offences by Commission

(1) An offence under any of the relevant provisions, and an offence of conspiracy to commit such an offence, may be prosecuted by the Commission in its own name but, where under this subsection the Commission prosecutes an offence, the offence shall be tried before a magistrate as an offence which is triable summarily.

(2) For, and only for, the purpose of the prosecution of an offence referred to in subsection (1), an employee of the Commission who apart from this subsection is not qualified to practise as a barrister or to act as a solicitor under the Legal

Practitioners Ordinance (Cap. 159) may appear and plead before a magistrate any case of which he has charge and shall, in relation to the prosecution, have all the other rights of a person qualified to practise as a barrister or to act as a solicitor under that Ordinance.

(3) Nothing in this section derogates from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.

#### 377. Limitation on commencement of proceedings

(1) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), any information or complaint relating to an offence under this Ordinance, other than an indictable offence, may be tried if it is laid or made (as the case may be) at any time within 3 years after the commission of the offence.

(2) Nothing in section 376(1) affects or limits the meaning of indictable offence referred to in subsection (1).

#### 378. Liability of officers of corporations for offences by corporations, and of partners for offences by other partners

(1) Where the commission of an offence under this Ordinance by a corporation is proved to have been aided, abetted, counselled, procured or induced by, or committed with the consent or connivance of, or attributable to any recklessness on the part of, any officer of the corporation, or any person who was purporting to act in any such capacity, that person, as well as the corporation, is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) Where the commission of an offence under this Ordinance by a partner in a partnership is proved to have been aided, abetted, counselled, procured or induced by, or committed with the consent or connivance of, or attributable to any recklessness on the part of, any other partner of the partnership, that other partner, as well as the first-mentioned partner, is guilty of the offence and is liable to be proceeded against and punished accordingly.

#### Division 3---Power to make rules, and codes or guidelines, etc.

#### 379. Financial Secretary to prescribe interests, etc. as securities and futures contracts

(1) For the purposes of this Ordinance, the Financial Secretary may by notice published in the Gazette prescribe, either generally or in a particular case, that---

(a) any interests, rights or property, whether in the form of an instrument or otherwise, or any class or description of any such interests, rights or property, is to be regarded as securities or futures contracts;

(b) any interests, rights or property, whether in the form of an instrument or otherwise, or any class or description of any such interests, rights or property, is not to be regarded as securities or futures contracts.

(2) Without limiting the generality of subsection (1), a notice under that subsection may prescribe the circumstances under which or the purposes for which any interests, rights or property, or any class or description of interests, rights or property, referred to in the notice is to be regarded, or not to be regarded, as securities or futures contracts (as the case may be).

380. Financial Secretary to prescribe arrangements as collective investment schemes

(1) For the purposes of this Ordinance, the Financial Secretary may by notice published in the Gazette prescribe, either generally or in a particular case, that---

(a) any arrangements, or any class or description of arrangements, is to be regarded as collective investment schemes, where the arrangements---

(i) are made available in the course of business and have the purpose or effect, or pretended purpose or effect, of enabling the participating persons---

(A) to acquire any right, interest, title or benefit in any property for valuable consideration;

(B) to defer taking possession of the property; and

(C) to transfer or retransfer any right, interest, title or benefit in the property to a person who is a party to, or is referred to in, the arrangements; or

(ii) have the purpose or effect, or pretended purpose or effect, of enabling the participating persons, whether by acquiring any right, interest, title or benefit in any property or any part of the property or otherwise, to participate in or receive---

(A) profits, income or other returns represented to arise or to be likely to arise from the acquisition, holding, management or disposal of the property or any part of the property, or sums represented to be paid or to be likely to be paid out of any such profits, income or other returns; or

(B) a payment or other returns arising from the acquisition, holding or disposal of, the exercise of any right in, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property;

(b) any arrangements, or any class or description of arrangements, is not to be regarded as collective investment schemes.

(2) Without limiting the generality of subsection (1), a notice under that subsection may prescribe the circumstances under which or the purposes for which any arrangements, or any class or description of arrangements, referred to in the notice is to be regarded, or not to be regarded, as collective investment schemes.

381. Orders by Chief Executive in Council for levies

(1) A levy (if any) at the rate specified by the Chief Executive in Council by order published in the Gazette shall be payable to the Commission by the person or persons so specified by the Chief Executive in Council for---

- (a) every sale and purchase of any securities which is recorded on a recognized stock market or notified to a recognized exchange company under its rules;
- (b) every sale and purchase of any futures contract traded on a recognized futures market; and
- (c) every sale and purchase of any securities or futures contracts traded by means of authorized automated trading services.

(2) For the purposes of subsection (1), the Chief Executive in Council may--

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(a) specify the rate or amount of the levy payable under that subsection for any sale and purchase---

(i) as a percentage of the consideration for the sale and purchase;

(ii) as a fixed amount;

(iii) as a nil rate, nil percentage or nil amount; or

(iv) as to be calculated in any other manner specified in the order;

(b) specify different rates for different classes of securities or futures contracts.

(3) Subject to subsection (4), each recognized exchange company, and each person authorized to provide authorized automated trading services, shall collect, account for, and pay to the Commission, the levy (if any) payable under subsection (1).

(4) A recognized exchange company shall retain such proportion of the levy (if any) collected under subsection (3) as is specified by the Chief Executive in Council by order published in the Gazette.

(5) The Commission may recover the amount of any levy payable under this section as a civil debt due to it.

(6) The Chief Executive in Council may make rules for---

(a) the payment of levies under this section;

(b) the imposition of charges or penalties for late payment of such levies;

(c) the keeping, examination and audit of the accounts of recognized exchange companies, and of persons authorized to provide authorized automated trading services, relating to the collection, retention, and payment to the Commission, of such levies.

(7) Nothing in subsection (1) requires the Chief Executive in Council to specify a rate or amount of levy in any particular sale and purchase to which that subsection applies or in any particular class of sales and purchases to which that subsection applies.

382. Rules by Chief Executive in Council for payment of fees

(1) The Chief Executive in Council may, after consultation with the Commission, make rules to---

(a) require and provide for the payment to the Commission of, and prescribe, fees---

(i) for an application to the Commission under or pursuant to any of the relevant

provisions;

(ii) for anything done by the Commission or a committee established under section 8 in the performance of a function relating to takeovers and mergers or to share repurchases;

(iii) for anything done by the Commission or a committee established under section 8 or the Monetary Authority in the performance of a function under any of the relevant provisions (other than the function referred to in subparagraph (ii));

(iv) for any other matter with regard to which provision is made by or under any of the relevant provisions;

(b) provide for the payment to the Commission of, and prescribe, fees (however described) which this Ordinance provides are, or may be, prescribed, specified or provided for by rules made under this section.

(2) Without prejudice to subsection (3), fees prescribed by rules made under this section may be fixed at levels sufficient to recover expenditure incurred, or likely to be incurred, by the Commission or a committee established under section 8 or the Monetary Authority in providing the services or performing the functions to which the fees relate, but in fixing the level of the fees appropriations under section 14 shall not be taken into account.

(3) Fees prescribed by rules made under this section shall not be limited by reference to the amount of the administrative or other costs incurred, or likely to be incurred, by the Commission or a committee established under section 8 or the Monetary Authority in providing the services or performing the functions to which the fees relate.

(4) Rules made under this section may provide---

(a) that the amount of any fee shall be fixed by reference to a scale set out in the rules;

(b) for the payment of different fees by or in relation to persons or cases of different classes or descriptions;

(c) that the payment of any fee shall be waived, either generally or in a particular case, whether or not it is otherwise specified as being payable under any provision of this Ordinance;

(d) for the payment of fees annually or at other intervals.

(5) The Commission may pay to the Monetary Authority such of the fees paid to it in accordance with the rules made under this section that in the opinion of the Commission represent the expenditure or costs incurred, or likely to be incurred, by the Monetary Authority in providing the services or performing the functions to which the fees relate.

(6) The Commission may recover the amount of any fees payable under the rules

made under this section as a civil debt due to it.

(7) This section is in addition to and not in derogation of sections 29 and 29A of the Interpretation and General Clauses Ordinance (Cap. 1).

### 383. Reduction of levy

(1) If during a financial year of the Commission---

(a) the reserves of the Commission, after deducting depreciation and all provisions, are more than twice its estimated operating expenses for the financial year; and  
(b) the Commission has no outstanding borrowings,  
the Commission shall consult the Financial Secretary with a view to recommending to the Chief Executive in Council that the rate or amount of a levy be reduced under section 381.

(2) The Commission may, after consultation with the Financial Secretary under subsection (1), recommend to the Chief Executive in Council that the rate or amount of a levy be reduced under section 381.

### 384. Rules by Commission

(1) The Commission may make rules to---

(a) provide for applications for licences and exemptions, the issue of licences and exemptions, and incidental matters;  
(b) require the display of licences and exemptions in the specified manner and circumstances and at specified places, and require that licences and exemptions are in specified circumstances, other than those specified in any provision of this Ordinance, to be returned to the Commission for any specified purpose;  
(c) require intermediaries to carry on business in relation to a specified class of persons, and in the specified manner and circumstances;  
(d) prescribe the qualifications, experience and training required of any persons employed or engaged by intermediaries, and provide for the obligations imposed on the persons and the intermediaries in relation to such requirements, the examinations that applicants for licences or exemptions are required to take, and the circumstances in which they may be exempted from such requirements;  
(e) provide for the correction of errors in the register maintained by the Commission under section 133;  
(f) provide for the admissibility in evidence in judicial or other proceedings of specified records, and extracts from specified records, kept by the Commission;  
(g) require documents and information required to be lodged, filed, submitted or retained for the purposes of any provision of this Ordinance to be so lodged, filed, submitted or retained in the specified manner, whether by electronic or other means;  
(h) require documents and information lodged, filed, submitted or retained for the purposes of any provision of this Ordinance in any specified manner to be completed,

signed, executed and authenticated in the specified form and manner;

(i) specify whether, when and the circumstances in which records compiled in any specified form or manner, or documents or information completed, signed, executed or authenticated in any specified form or manner, are acceptable or required for the purposes of any provision of this Ordinance;

(j) require the payment of remuneration to any auditor appointed, and the costs of an audit carried out, under any provision of

this Ordinance, and provide for matters relating to such remuneration and costs;

(k) require a person of a specified description, when selling securities at or through a recognized stock market where his right to vest the securities in the purchaser (or, where he is acting as agent, his principal's right to do so) is derived from an arrangement of a specified kind, to notify the exchange participant through whom the sale is being effected of the fact that the right to vest the securities in the purchaser is derived from such an arrangement, and require the person who, having sold such securities pursuant to such an arrangement, purchases securities at or through a recognized stock market in satisfaction, in whole or in part, of his obligations under the arrangement to notify the exchange participant through whom the purchase or purchases is or are being effected of that fact;

(l) require a lender under a securities borrowing and lending agreement to---

(i) keep specified records or documents in the specified form and manner; and

(ii) give copies of such records or documents to the Commission at its request in the specified form and manner and within the specified time;

(m) require intermediaries to make returns at specified times (whether at regular intervals or otherwise) to the Commission, and provide for the particulars, or the nature of particulars, to be contained therein, the person by whom, and the manner and circumstances in which they are to be made, and other matters related to such returns;

(n) require a form or return required to be submitted under any provision of this Ordinance to be received by the Commission by or within the specified time;

(o) prescribe, specify or provide for any matter which this Ordinance provides is, or may be, prescribed, specified or provided for by rules made under this section;

(p) provide for any other matters for the better carrying out of the objects and purposes of this Ordinance.

(2) Subject to subsections (3) and (4), in addition to the power to make rules under subsection (1), the Commission may, after consultation with the Financial Secretary, make such other rules as are necessary for the furtherance of any of its regulatory objectives and the performance of any of its functions.

(3) Where the Commission proposes to make rules under subsection (2), it shall,

before consulting the Financial Secretary for the purpose, prepare and publish a draft of the rules, in such manner as it considers appropriate, for the purpose of inviting representations on the rules by the public.

(4) After a draft of the rules which the Commission proposes to make under subsection (2) is published under subsection (3), the Commission may modify the rules, taking into consideration any representation on the rules received as a result of the publication, in such manner as it considers appropriate, for the purpose of having the rules made under subsection (2).

(5) Notwithstanding anything in this section---

(a) the power of the Commission to make rules under this section in respect of any persons as intermediaries shall, where the intermediaries are exempt persons, be regarded as the power to make rules in respect of the intermediaries only in relation to the businesses which constitute the regulated activities for which they are exempt as exempt persons;

(b) the power of the Commission to make rules under this section in respect of any persons as associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to make rules in respect of the associated entities only in relation to their businesses of receiving or holding client assets of intermediaries of which they are associated entities.

(6) For the avoidance of doubt, the powers of the Commission to make rules under this section are in addition to and not in derogation of any other power of the Commission to make rules under any provision of this or any other Ordinance.

(7) Notwithstanding any other provisions of this Ordinance, the Commission shall consult the Monetary Authority regarding rules it proposes to make under this section or any other provision of this Ordinance in so far as such rules apply to authorized financial institutions by reason of their being exempt persons, or associated entities of intermediaries.

(8) Where rules are made by the Commission under this section or any other provision of this Ordinance and it has not been provided in this Ordinance that the rules may provide that a contravention of any specified provision of the rules constitutes an offence, the Chief Executive in Council may make regulations to provide that a person who contravenes any specified provision of the rules that applies to him commits an offence and is liable to a specified penalty not exceeding---

(a) on conviction on indictment a fine of \$500,000 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(9) Except as otherwise provided in this Ordinance, rules made by the Commission under this section or any other provision of this Ordinance may provide that, subject



to the terms and conditions specified in the rules, the provisions of this Ordinance specified in the rules---

(a) shall not have effect, or shall only have effect to a specified extent, in relation to any specified person or to members of a specified class of persons---

(i) who is or are or may be required to be licensed by reason only of his or their doing anything that is incidental to another business;

(ii) who does not or do not, on behalf of any other person, deal in securities or futures contracts or trade in interests in collective investment schemes or leveraged foreign exchange contracts; or

(iii) who is or are or may be required to be licensed by reason only of his or their entering into a specified class of transactions;

(b) shall not have effect in relation to any specified transaction or class of transactions entered into by any specified person or class of persons;

(c) shall, where they require any application, statement, notice or other document (however described) to be lodged or filed with or submitted to the Commission, be regarded as having been complied with if the application, statement, notice or other document (as the case may be) is lodged or filed with or submitted to any other specified person.

(10) Except as otherwise provided in this Ordinance, rules made by the Commission under this section or any other provision of this Ordinance---

(a) may be of general or special application and may be made so as to apply only in specified circumstances;

(b) may make different provisions for different circumstances and provide for different cases or classes of cases;

(c) may authorize any matter or thing to be determined, applied or regulated by any specified person;

(d) may provide for the exercise of discretion in specified cases;

(e) may, for the better and more effectual carrying into effect of any provision of this Ordinance or the rules, include any savings, transitional, incidental, supplemental, evidential and consequential provisions (whether involving the provisions of any principal legislation or the provisions of any subsidiary legislation).

### 385. Codes or guidelines by Commission

(1) The Commission may publish, in the Gazette and in any other manner it considers appropriate, such codes and guidelines as it considers appropriate for providing guidance---

(a) for the furtherance of any of its regulatory objectives;

(b) in relation to any matter relating to any of the functions of the Commission under

any of the relevant provisions;

(c) in relation to the operation of any provision of this Ordinance.

(2) Without limiting the generality of subsection (1), the Commission may publish under that subsection---

(a) a code to be known as the "Code on Takeovers and Mergers" to provide for matters concerning takeovers and mergers and matters incidental thereto;

(b) a code to be known as the "Code on Share Repurchases" to provide for matters concerning share repurchases and matters incidental thereto.

(3) Notwithstanding anything in this section---

(a) the power of the Commission to publish codes or guidelines under this section in respect of any persons as intermediaries shall, where the intermediaries are exempt persons, be regarded as the power to publish codes or guidelines in respect of the intermediaries only in relation to the businesses which constitute the regulated activities for which they are exempt as exempt persons;

(b) the power of the Commission to publish codes or guidelines under this section in respect of any persons as associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to publish codes or guidelines in respect of the associated entities only in relation to their businesses of receiving or holding client assets of intermediaries of which they are associated entities.

(4) For the avoidance of doubt, the power of the Commission to publish codes or guidelines under this section is in addition to and not in derogation of any other power of the Commission to publish codes or guidelines under any provision of this or any other Ordinance.

(5) The Commission may from time to time amend the whole or any part of any code or guideline published under this section in a manner consistent with the power to publish the code or guideline under this section, and---

(a) the other provisions of this section apply, with the necessary modifications, to such amendments to the code or guideline as they apply to the code or guideline; and

(b) any reference in this or any other Ordinance to the code or guideline (however expressed) shall, unless the context otherwise requires, be construed as a reference to the code or guideline as so amended.

(6) A failure on the part of any person to comply with the provisions set out in any code or guideline published under this section that apply to him shall not by itself render him liable to any judicial or other proceedings, but in any proceedings under this Ordinance before any court the code or guideline shall be admissible in evidence, and if any provision set out in the code or guideline appears

to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(7) Any code or guideline published under this section---

(a) may be of general or special application and may be made so as to apply only in specified circumstances;

(b) may make different provisions for different circumstances and provide for different cases or classes of cases.

(8) Any code or guideline published under this section is not subsidiary legislation.

(9) Notwithstanding any other provisions of this Ordinance, the Commission shall consult the Monetary Authority regarding codes or guidelines it proposes to publish under this section or any other provision of this Ordinance, or amendments it proposes to make to codes or guidelines published under this section or any other provision of this Ordinance, in so far as such codes or guidelines or such amendments (as the case may be) apply to authorized financial institutions by reason of their being exempt persons, or associated entities of intermediaries.

#### Division 4---Miscellaneous

##### 386. Service of notices, etc.

Subject to sections 111, 138 and 363, any notice, direction or other document (however described) required under this Ordinance to be issued to or served on any person, other than the Commission, shall for all purposes be regarded as duly issued or served if---

(a) in the case of an individual, it is---

(i) delivered to him by hand;

(ii) left at, or sent by post to, his last known business or residential address;

(iii) sent by facsimile transmission to his last known facsimile number; or

(iv) sent by electronic mail transmission to his last known electronic mail address;

(b) in the case of a company, it is---

(i) left at, or sent by post to, the registered office of the company within the meaning of the Companies Ordinance (Cap. 32);

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

(iii) sent by electronic mail transmission to its last known electronic mail address;

(c) in the case of an overseas company, it is---

(i) delivered by hand to, or sent by post to, the person resident in Hong Kong who is authorized to accept service of process and notices on its behalf for the

purposes of Part XI of the Companies Ordinance (Cap. 32) at his address delivered to the Registrar of Companies under that Ordinance;

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

(iii) sent by electronic mail transmission to the last known electronic mail address of the person;

(d) in the case of a partnership, it is---

(i) delivered to any partner of the partnership by hand;

(ii) left at, or sent by post to, the last known principal place of business of the partnership;

(iii) sent by facsimile transmission to the last known facsimile number of the partnership; or

(iv) sent by electronic mail transmission to the last known electronic mail address of the partnership; or

(e) in the case of a body corporate (other than a company or an overseas company or the Commission) or an unincorporated body (other than a partnership), or a tribunal, it is---

(i) delivered to an officer of the body or the tribunal (as the case may be) by hand;

(ii) left at, or sent by post to, the last known principal place of business of the body or the tribunal (as the case may be);

(iii) in the case of the body, sent by facsimile transmission to the last known facsimile number of the body; or

(iv) in the case of the body, sent by electronic mail transmission to the last known electronic mail address of the body.

### 387. Evidence regarding Commission's records or documents

A record or document purporting to be a record or document, or a copy of a record or document, signed, executed or issued by or on behalf of the Commission and purporting to be signed or initialled by any member of the Commission or any person performing any function under any of the relevant provisions shall in any proceedings be admissible as evidence of the facts stated in it, without proof of the signature or initials of the person purporting to sign or initial the record or document.

### 388. General requirements for documents lodged with Commission

(1) The Commission may, by notice published in the Gazette, specify any form in respect of any application, statement, notice, return or other document (however described) required to be lodged, filed or submitted with or to the Commission for the purposes of any provision of this Ordinance, either generally or in any particular case, and, without limiting the generality of the foregoing, may in the form---

- (a) include directions and instructions relating to the inclusion of statutory declarations made in respect of the particulars in the application, statement, notice, return or other document (as the case may be); and
- (b) specify documents by which it is to be accompanied.

(2) For the purposes of subsection (1), the Commission may specify that different forms are to be used in different circumstances.

(3) Subject to subsections (4) and (5), where---

(a) there is any requirement for any application, statement, notice, return or other document (however described) to be lodged, filed or submitted with or to the Commission for the purposes of any provision of this Ordinance; and

(b) the Commission has specified any form in respect of it under subsection (1), the requirement shall not be regarded as having been complied with unless it---

(i) is in the form specified;

(ii) contains statutory declarations made in respect of the particulars in it, in accordance with such directions and instructions as are included in the form; and

(iii) is accompanied by such documents as are specified in the form.

(4) An application, statement, notice, return or other document shall not by reason of any deviation from a form specified in respect of it by notice published pursuant to subsection (1) cease to be regarded as being in that form, if the deviation does not affect the substance of the form.

(5) Where the Commission is satisfied that a person has substantial practical difficulties in complying with any of the requirements referred to in subsection (3)(i), (ii) or (iii), it may in its discretion dispense with the requirements in the case of the person to such extent as it considers necessary.

(6) A notice published pursuant to subsection (1) is not subsidiary legislation.

### 389. General provisions for approvals by Commission

Where under any provision of this Ordinance, an act cannot be done, or an omission cannot be made, except with the approval, whether in writing or otherwise, of the Commission---

(a) without prejudice to any express provisions in this Ordinance relating to imposition of conditions, the approval may be given subject to such conditions (if any) as the Commission may specify in giving the approval (including conditions which provide that failure to comply with the conditions causes the approval to lapse); and

(b) for the purposes of any pecuniary, custodial or other sanction which may be imposed under any provision of 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.

390. Exclusions of provisions of Gambling Ordinance

The Gambling Ordinance (Cap. 148) shall not apply to any transaction which is regulated by or under, or which is carried out in compliance with, this Ordinance.

391. Inland Revenue Ordinance not affected

Nothing in this Ordinance affects section 4 of the Inland Revenue Ordinance (Cap. 112).

PART XVII

Repeals and Related Provisions

392. Repeals

(1) Each of the following shall be repealed from a day appointed by the Secretary for Financial Services by notice published in the Gazette---

- (a) the Securities and Futures Commission Ordinance (Cap. 24);
- (b) the Commodities Trading Ordinance (Cap. 250);
- (c) the Securities Ordinance (Cap. 333);
- (d) the Protection of Investors Ordinance (Cap. 335);
- (e) the Stock Exchanges Unification Ordinance (Cap. 361);
- (f) the Securities (Insider Dealing) Ordinance (Cap. 395);
- (g) the Securities (Disclosure of Interests) Ordinance (Cap. 396);
- (h) the Securities and Futures (Clearing Houses) Ordinance (Cap. 420);
- (i) the Leveraged Foreign Exchange Trading Ordinance (Cap. 451);
- (j) the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555).

(2) Any repeal under this section is subject to---

- (a) the other provisions of this Part; and
- (b) Schedule 9.

(3) Without limiting the generality of section 11 of Part 1 of Schedule 1, a reference to any Ordinance in this section includes any subsidiary legislation made under such Ordinance.

393. Savings, transitional, consequential and related provisions, etc.

(1) Part 1 of Schedule 9 provides for the savings, transitional and supplemental arrangements that apply on, or relate to, the commencement of this Ordinance or any part thereof.

(2) Part 2 of Schedule 9 provides for the consequential and supplemental amendments that apply on, or relate to, the commencement of this Ordinance or any part thereof, and the enactments specified in column 2 of that Part are amended in the manner set out in column 3 of that Part.

394. Provisions of Part XVII, etc. not to derogate from section 23 of Interpretation and General Clauses Ordinance

Subject as otherwise provided in this Part or Schedule 9, the provisions of this Part and of Schedule 9 are in addition to and not in derogation of section 23 of the

Interpretation and General Clauses Ordinance (Cap. 1).

395. Amendment of Schedule 9

The Chief Executive in Council may, by order published in the Gazette, amend Schedule 9.

SCHEDULE 1 [ss. 2, 19, 66, 108, 160, 166, 169, 194 & 392 & Sch. 9]

Interpretation and General Provisions

PART 1

Interpretation

1. Interpretation of this Ordinance

In this Ordinance, unless otherwise defined or excluded or the context otherwise requires---

"accredited" (隸屬) means accredited to a licensed corporation under section 121 of this Ordinance;

"Advisory Committee" (諮詢委員會) means the Advisory Committee referred to in section 7 of this Ordinance;

"articles" (章程細則), in relation to a company, means its articles as defined in section 2(1) of the Companies Ordinance (Cap. 32);

"associate" (有聯繫者), in relation to a person, means---

(a) the spouse, or any minor child (natural or adopted) or minor step-child, of the person;

(b) any corporation of which the person is a director;

(c) any employee or partner of the person;

(d) the trustee of a trust of which the person, his spouse, minor child (natural or adopted) or minor step-child, is a beneficiary or a discretionary object;

(e) another person in accordance with whose directions or instructions the person is accustomed or obliged to act;

(f) another person accustomed or obliged to act in accordance with the directions or instructions of the person;

(g) a corporation in accordance with the directions or instructions of which, or the directions or instructions of the directors of which, the person is accustomed or obliged to act;

(h) a corporation which is, or the directors of which are, accustomed or obliged to act in accordance with the directions or instructions of the person;

(i) a corporation at general meetings of which the person, either alone or together with another, is directly or indirectly entitled to exercise or control the exercise of 33% or more of the voting power;

(j) a corporation of which the person controls the composition of the board of directors;



(k) where the person is a corporation---

(i) each of its directors and its related corporations and each director or employee of any of its related corporations; and

(ii) a pension fund, provident fund or employee share scheme of the corporation or of a related corporation of the corporation;

(l) without limiting the circumstances in which paragraphs (a) to (k) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or such interest, any other person with whom the person has an agreement or arrangement---

(i) with respect to the acquisition, holding or disposal of such securities or such interest; or

(ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;

"associated entity" (有聯繫實體), in relation to an intermediary, means a company, or an overseas company complying with the provisions of Part XI of the Companies Ordinance (Cap. 32) relating to the registration of documents, which---

(a) is in a controlling entity relationship with the intermediary; and

(b) receives or holds in Hong Kong client assets of the intermediary;

"auditor" (核數師) means a professional accountant registered and holding a practising certificate under the Professional Accountants Ordinance (Cap. 50), or such other person as is prescribed by rules made under section 384 of this Ordinance for the purposes of this definition;

"authorized automated trading services" (認可自動化交易服務) means automated trading services which a person is authorized to provide under section 95(2) of this Ordinance;

"authorized financial institution" (認可財務機構) means an authorized institution as defined in section 2(1) of the Banking Ordinance (Cap. 155);

"automated trading services" (自動化交易服務) has the meaning assigned to it by Part 2 of Schedule 6 to this Ordinance;

"bank" (銀行) means any institution carrying on business similar to that carried on by an authorized financial institution, whether it is an authorized financial institution or not, and "banker" (銀行) shall be construed accordingly;

"bank incorporated outside Hong Kong" (在香港以外地方成立為法團的銀行) means a bank incorporated outside Hong Kong that is not an authorized financial institution;

"banker's books" (銀行簿冊) includes---

(a) books of a banker;

(b) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession of a banker;

(c) securities in the possession of a banker, whether as a pledge or otherwise; and  
(d) any material in which information is recorded (however compiled or stored, and whether recorded in a legible form or recorded otherwise than in a legible form but is capable of being reproduced in a legible form) and which is used in the ordinary course of business of a bank;

"books" (簿冊) includes---

- (a) accounts and any accounting information; and
- (b) in the case of a banker, any banker's books,

however compiled or stored, and whether recorded in a legible form or recorded otherwise than in a legible form but is capable of being reproduced in a legible form;  
"broadcast" (廣播), in relation to any material (however described), includes having the information contained in the material broadcast;

"broadcast live" (直播), in relation to any material (however described), means having the material broadcast without its being recorded in advance;

"broadcaster" (廣播業者) means a person who lawfully---

- (a) establishes and maintains a broadcasting service within the meaning of Part IIIA of the Telecommunications Ordinance (Cap. 106); or
- (b) provides a broadcasting service as defined in section 2(1) of the Broadcasting Ordinance (48 of 2000);

"business day" (營業日) means a day other than---

- (a) a public holiday; and
- (b) a gale warning day or a black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

"certificate of deposit" (存款證) means a document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognizes an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document 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 document 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 document includes any right or interest referred to in paragraph (b) of that definition in respect of such document);

"charge" (押記) includes any form of security, including a mortgage;

"clearing house" (結算所) means a person---

- (a) whose activities or objects include the provision of services for the clearing and settlement of transactions in securities effected on a recognized stock market or subject to the rules of a recognized exchange company;
- (b) whose activities or objects include the provision of services for---

(i) the clearing and settlement of transactions in futures contracts; or  
(ii) the day-to-day adjustment of the financial position of futures contracts,

effected on a recognized futures market or subject to the rules of a recognized exchange company; or

(c) who guarantees the settlement of any such transactions as are referred to in paragraph (a) or (b),

but does not include a corporation operated by or on behalf of the Government;  
"clearing participant" (結算所參與者) means a person---

(a) who, in accordance with the rules of a recognized clearing house, may participate in one or more of the services provided by the clearing house in its capacity as a clearing house; and

(b) whose name is entered in a list, roll or register kept by that recognized clearing house as a person who may participate in one or more of the services provided by that clearing house;

"client" (客戶), in relation to an intermediary, means a person for whom the intermediary provides a service the provision of which constitutes a regulated activity, and---

(a) includes another intermediary that---

(i) deposits securities;

(ii) deposits money; or

(iii) deposits any property as collateral,  
with the first-mentioned intermediary;

(b) in connection with a leveraged foreign exchange contract, does not include a recognized counterparty;

"client assets" (客戶資產) means---

(a) client securities and collateral; and

(b) client money;

"client collateral" (客戶抵押品) means---

(a) securities collateral; and

(b) other collateral;

"client money" (客戶款項)---

(a) in relation to a licensed corporation, means any money---

(i) received or held by or on behalf of the licensed corporation; or

(ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the licensed corporation,

which is so received or held on behalf of a client of the licensed corporation or in which a client of the licensed corporation has a legal or equitable interest,

and includes any accretions thereto whether as capital or income; or

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

(i) received or held by or on behalf of the exempt person, in the course of the conduct of any regulated activity for which the exempt person is exempt; or

(ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the exempt person, in relation to such conduct of the regulated activity,

which is so received or held on behalf of a client of the exempt person or in which a client of the exempt person has a legal or equitable interest, and includes any accretions thereto whether as capital or income;

"client securities" (客戶證券)---

(a) in relation to a licensed corporation, means any securities (other than securities collateral)---

(i) received or held by or on behalf of the licensed corporation; or

(ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the licensed corporation,

which are so received or held on behalf of a client of the licensed corporation or in which a client of the licensed corporation has a legal or equitable interest; or

(b) in relation to an exempt person, means any securities (other than securities collateral)---

(i) received or held by or on behalf of the exempt person, in the course of the conduct of any regulated activity for which the exempt person is exempt; or

(ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the exempt person, in relation to such conduct of the regulated activity,

which are so received or held on behalf of a client of the exempt person or in which a client of the exempt person has a legal or equitable interest;

"client securities and collateral" (客戶證券及抵押品) means---

(a) client securities; and

(b) client collateral;

"collective investment scheme" (集體投資計劃) means---

(a) arrangements in respect of any property---

(i) under which the participating persons do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management;

(ii) under which---

(A) the property is managed as a whole by or on behalf of the person operating the

arrangements;

(B) the contributions of the participating persons and the profits or income from which payments are made to them are pooled; or

(C) the property is managed as a whole by or on behalf of the person operating the arrangements, and the contributions of the participating persons and the profits or income from which payments are made to them are pooled; and

(iii) the purpose or effect, or pretended purpose or effect, of which is to enable the participating persons, whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise, to participate in or receive---

(A) profits, income or other returns represented to arise or to be likely to arise from the acquisition, holding, management or disposal of the property or any part of the property, or sums represented to be paid or to be likely to be paid out of any such profits, income or other returns; or

(B) a payment or other returns arising from the acquisition, holding or disposal of, the exercise of any right in, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property; or

(b) arrangements which are arrangements, or are of a class or description of arrangements, prescribed by notice under section 380 of this Ordinance as being regarded as collective investment schemes in accordance with the terms of the notice, but does not include---

(i) arrangements operated by a person otherwise than by way of business;

(ii) arrangements under which each of the participating persons is a corporation in the same group of companies as the person operating the arrangements;

(iii) arrangements under which each of the participating persons is a bona fide employee or former employee of a corporation in the same group of companies as the person operating the arrangements, or a spouse, widow, widower, minor child (natural or adopted) or minor step-child of such employee or former employee;

(iv) franchise arrangements under which the franchisor or franchisee earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the goodwill attached to it;

(v) arrangements under which money is taken by a solicitor from his client, or as a stakeholder, acting in his professional capacity in the ordinary course of his practice;

(vi) arrangements made for the purposes of any fund or scheme maintained by the Commission, or by a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, under any provision of this Ordinance for the purpose of providing compensation in the event

of default by an exchange participant or a clearing participant;

(vii) arrangements made by any credit union in accordance with the objects thereof;

(viii) arrangements made for the purposes of any chit-fund permitted to operate under the Chit-Fund Businesses (Prohibition) Ordinance (Cap. 262);

(ix) arrangements made for the purposes of the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66);

(x) arrangements which are arrangements, or are of a class or description of arrangements, prescribed by notice under section 380 of this Ordinance as not being regarded as collective investment schemes in accordance with the terms of the notice;  
"Commission" (證監會) means the Securities and Futures Commission referred to in section 3(1) of this Ordinance;

"company" (公司) means a company as defined in section 2(1) of the Companies Ordinance (Cap. 32);

"compensation fund" (賠償基金) means the Investor Compensation Fund established under section 229 of this Ordinance;

"computer" (電腦) means any device for storing, processing, retrieving or transmitting information;

"conduct" (行爲) includes any act or omission, and any series of acts or omissions;

"constitution" (章程), in relation to a corporation, including a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, means---

(a) where the corporation is a company, the memorandum and articles of the corporation; or

(b) in any other case, any other instrument providing for the constitution of the corporation;

"controlling entity" (控權實體), in relation to a corporation, means a person who, either alone or with any of his associates---

(a) is entitled to exercise or control the exercise of not less than---

(i) subject to subparagraph (ii), 20%; or

(ii) where any other percentage is prescribed by rules made under section 384 of this Ordinance for the purposes of this definition, such other percentage, of the voting power at general meetings of the corporation;

(b) has the right to nominate any of the directors of the corporation; or

(c) has an interest in shares carrying the right to---

(i) veto any resolution; or

(ii) vary, modify, limit or add conditions to any resolution, at general meetings of the corporation;

"controlling entity relationship" (控權實體關係), in relation to a corporation, means its relationship with an intermediary by virtue of---

(a) the intermediary being a controlling entity of the corporation;

(b) the corporation being a controlling entity of the intermediary; or

(c) another person, who is a controlling entity of the corporation, being also a controlling entity of the intermediary;

"corporation" (法團) means a company or other body corporate incorporated either in Hong Kong or elsewhere, but does not include a company or other body corporate which is prescribed by rules made under section 384 of this Ordinance for the purposes of this definition as being exempted from the provisions of this Ordinance, or to the extent that it is prescribed by rules so made as being exempted from any provision of this Ordinance;

"court" (法庭、法院) includes a magistrate and a tribunal;

"credit union" (儲蓄互助社) means a credit union registered under the Credit Unions Ordinance (Cap. 119);

"data material" (數據材料) means a document or other material used with or produced by any information system;

"dealing in futures contracts" (期貨合約交易) has the meaning assigned to it by Part 2 of Schedule 6 to this Ordinance;

"dealing in securities" (證券交易) has the meaning assigned to it by Part 2 of Schedule 6 to this Ordinance;

"debenture" (債權證) includes debenture stocks, bonds, and other securities of a corporation, whether constituting a charge on the assets of the corporation or not;

"defalcation" (虧空) means misapplication, including misappropriation, of any property;

"director" (董事) includes a shadow director and any person occupying the position of director by whatever name called;

"document" (文件) includes any register and books, any tape recording and any form of computer input or output, and any other document or similar material (whether produced mechanically, electronically, magnetically, optically, manually or by any other means);

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

(a) who, in accordance with the rules of a recognized exchange company, may trade through that exchange company or on a recognized stock market or a recognized futures market operated by that exchange company; and

(b) whose name is entered in a list, roll or register kept by that recognized exchange company as a person who may trade through that exchange company or on a recognized stock market or a recognized futures market operated by that exchange company;

"executive director" (執行董事), in relation to the Commission, means a person who is appointed as an executive director of the Commission under section 2 of Part 1 of Schedule 2 to this Ordinance;

"executive officer" (主管人員)---

(a) in relation to a licensed corporation, means a responsible officer of the licensed corporation;

(b) in relation to an exempt person, means a person who is an executive officer of the exempt person under the Banking Ordinance (Cap. 155); or

(c) in relation to an associated entity of an intermediary, means any director of the associated entity who is responsible for directly supervising the receiving or holding by the associated entity of client assets of the intermediary;

"exempt person" (獲豁免人士) means an authorized financial institution which is granted an exemption;

"exemption" (豁免、豁免書) means a declaration of exemption granted under section 118 of this Ordinance or the exemption granted by virtue of the declaration (as may be applicable), and "exempt" (獲豁免) shall be construed accordingly;

"fee" (費用) includes a charge;

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

"financial product" (金融產品) means---

(a) any securities;

(b) any futures contract;

(c) any collective investment scheme;

(d) any leveraged foreign exchange contract;

"financial resources rules" (財政資源規則) means rules made under section 141 of this Ordinance;

"financial year" (財政年度)---

(a) in relation to the Commission, means the financial year referred to in section 13(1) of this Ordinance; or

(b) in relation to a licensed corporation, or an associated entity of a licensed corporation, means---

(i) the financial year in respect of which notification is given to the Commission under section 151(1) of this Ordinance or, where an approval is granted under section 151(3)(a) of this Ordinance, the financial year in respect of which the approval is



granted;

(ii) the financial year in respect of which notification is given to the Monetary Authority under section 59B(1) of the Banking Ordinance (Cap. 155) or, where an approval is granted under section 59B(3)(a) of that Ordinance, the financial year in respect of which the approval is granted; or

(iii) in any other case, a period of 12 consecutive months ending on 31 March in a calendar year;

"function" (職能) includes power and duty;

"futures contract" (期貨合約) means---

(a) a contract or an option on a contract made under the rules or conventions of a futures market;

(b) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 379 of this Ordinance as being regarded as futures contracts in accordance with the terms of the notice,

but does not include interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 379 of this Ordinance as not being regarded as futures contracts in accordance with the terms of the notice;

"Futures Exchange Company" (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;

"futures market" (期貨市場) means a place at which facilities are provided for persons to negotiate or conclude sales and purchases of, or for bringing together on a regular basis sellers and purchasers of---

(a) contracts the effect of which is---

(i) that one party agrees to deliver to the other party at an agreed future time an agreed property, or an agreed quantity of a property, at an agreed price; or

(ii) that the parties will make an adjustment between them at an agreed future time according to whether at that time an agreed property is worth more or less or an index or other factor stands at a higher or lower level than a value or level agreed at the time of making of the contract; or

(b) options on contracts of the kind described in paragraph (a),  
where---

(i) the contracts or options of the kind described in paragraph (a) or (b) are novated or guaranteed by a central counterparty under the rules or conventions of the market on which they are traded; or

(ii) the contractual obligations under the contracts or options of the kind

described in paragraph (a) or (b) are normally discharged before the contractual expiry date under the rules or conventions of the market on which they are traded, but does not include the office of a recognized clearing house;

"group of companies" (公司集團) means any 2 or more corporations one of which is the holding company of the other or others (as the case may be);

"hold" (持有), in relation to any property, includes---

(a) possession of the property;

(b) being registered or otherwise recorded, as having title to or being entitled to receive the property, in any register or other record (however compiled or stored) which is established or created for the purpose of identifying persons having title to or being entitled to receive any property; and

(c) in the case of a person carrying on business, the person being in a position to transfer the property to himself or otherwise receive the benefit of the property---

(i) where another person has a legal or equitable interest in the property;

(ii) where there is a connection between the property and the business which is carried on by the person; and

(iii) regardless of whether it would be lawful or unlawful for the person to transfer the property to himself or otherwise receive the benefit of the property,

but does not include, in the case of a cheque or other order made payable to any person, the possession of the cheque or other order during the course of dispatching or delivering it to that person or any other person on behalf of that person;

"holding company" (控股公司), in relation to a corporation, means any other corporation of which it is a subsidiary;

"incorporated" (成立、成立為法團) includes formed or established, by whatever means;

"Independent Commission Against Corruption" (廉政公署) means the Independent Commission Against Corruption established under section 3 of the Independent Commission Against Corruption Ordinance (Cap. 204);

"information" (資訊、資料、消息) includes data, text, images, sound codes, computer programmes, software and databases, and any combination thereof;

"information system" (資訊系統) means any system which---

(a) processes information;

(b) records or stores information;

(c) can be used to cause information to be recorded, stored or otherwise processed in or on other system (wherever situated); and

(d) can be used to retrieve information, whether the information is recorded or stored in or on the system itself or other system (wherever situated);

"Insurance Authority" (保險業監督) means the Insurance Authority appointed under section 4 of the Insurance Companies Ordinance (Cap. 41);

"insurer" (保險人) means an insurer as defined in section 2(1) of the Insurance Companies Ordinance (Cap. 41);

"intermediary" (中介人) means a licensed corporation or an exempt person;

"judicial or other proceedings" (司法或其他法律程序) means any legal proceedings, whether in the nature of judicial proceedings or otherwise;

"legal officer" (律政人員) means a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap. 87);

"leveraged foreign exchange contract" (槓桿式外匯交易合約) has the meaning assigned to it by Part 2 of Schedule 6 to this Ordinance;

"leveraged foreign exchange trading" (槓桿式外匯交易) has the meaning assigned to it by Part 2 of Schedule 6 to this Ordinance;

"licence" (牌、牌照) means a licence granted under section 115, 116, 119 or 120 of this Ordinance, and "licensed" (獲發牌、持牌) shall be construed accordingly;

"licensed corporation" (持牌法團) means a corporation which is granted a licence under section 115 or 116 of this Ordinance;

"licensed or exempt person" means a licensed person or an exempt person;

"licensed person" (持牌人) means a licensed corporation or a licensed representative;

"licensed representative" (持牌代表) means an individual who is granted a licence under section 119 or 120 of this Ordinance;

"liquidator" (清盤人) includes a provisional liquidator;

"listed" (上市) means listed on a recognized stock market, and for the purposes of this definition---

(a) a corporation shall be regarded as listed if any of its securities are listed;

(b) securities shall be regarded as listed when a recognized exchange company has, on the application of the corporation which issued them, or on the application of a holder of them, agreed to allow, subject to the requirements of this Ordinance, dealings in those securities to take place on a recognized stock market, and shall continue to be so regarded during a period of suspension of dealings in those securities on the recognized stock market;

"listing" (上市), in relation to securities, means the process by which the securities are listed;

"Mandatory Provident Fund Schemes Authority" (積金局) means the Mandatory Provident Fund Schemes Authority established under section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);

"market contract" (市場合約) means a contract subject to the rules of a recognized clearing house entered into by the clearing house with a clearing participant pursuant to a novation which is both in accordance with those rules and for the purposes of the clearing and settlement of transactions in securities or futures contracts

effected on a recognized stock market or a recognized futures market or subject to the rules of a recognized exchange company;

"market misconduct" (市場失當行為) has the meaning assigned to it by section 237(1) of this Ordinance;

"Market Misconduct Tribunal" (市場失當行為審裁處) means the Market Misconduct Tribunal established by section 243 of this Ordinance;

"member" (成員), in relation to the Commission, means any executive director or non-executive director of the Commission;

"memorandum" (章程大綱), in relation to a company, means its memorandum as defined in section 2(1) of the Companies Ordinance (Cap. 32);

"minor" (未成年), in relation to a person, means not having attained the age of 18 years;

"misfeasance" (不當行為) means the performance of an otherwise lawful act in a wrongful manner;

"Monetary Authority" (專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66);

"money laundering activities" (洗錢活動) means activities intended to have the effect of making any property, which in whole or in part, directly or indirectly, represents the proceeds obtained from the commission of an offence under the laws of Hong Kong, or of any conduct which if occurred in Hong Kong would constitute an offence under the laws of Hong Kong, not to appear to so represent such proceeds;

"non-executive director" (非執行董事), in relation to the Commission, means a person who is appointed as a non-executive director of the Commission under section 2 of Part 1 of Schedule 2 to this Ordinance;

"number" (數目), in relation to shares which in the context can be construed to include stock, includes amount;

"officer" (高級人員)---

(a) in relation to a corporation, means a director, manager or secretary of, or any other person involved in the management of, the corporation; or

(b) in relation to an unincorporated body, means any member of the governing body of the unincorporated body;

"Ombudsman" (申訴專員) means The Ombudsman appointed under section 3 of The Ombudsman Ordinance (Cap. 397);

"opportunity of being heard" (陳詞機會), when required to be given by the Commission, means an opportunity of being heard through the medium of written representations;

"other collateral" (其他抵押品)---

(a) in relation to a licensed corporation, means any property (other than securities or money)---

(i) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, the licensed corporation; or

(ii) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, any other intermediary or person,

which is so deposited or provided---

(A) as security for the provision by the licensed corporation of financial accommodation; or

(B) to facilitate the provision by the licensed corporation of financial accommodation under an arrangement that confers on the licensed corporation a collateral interest in the property; or

(b) in relation to an exempt person, means any property (other than securities or money)---

(i) deposited with, or otherwise provided by or on behalf of a client of the exempt person to, the exempt person, in the course of the conduct of any regulated activity for which the exempt person is exempt; or

(ii) deposited with, or otherwise provided by or on behalf of a client of the exempt person to, any other intermediary or person, in relation to such conduct of the regulated activity,

which is so deposited or provided---

(A) as security for the provision by the exempt person of financial accommodation; or

(B) to facilitate the provision by the exempt person of financial accommodation under an arrangement that confers on the exempt person a collateral interest in the property;

"overseas company" (海外公司) means an overseas company within the meaning of section 332 of the Companies Ordinance (Cap. 32);

"performance" (執行), in relation to a function, includes discharge and exercise;

"possession" (管有), in relation to any matter, includes custody, control and power of or over the matter;

"Privacy Commissioner for Personal Data" (私隱專員) means the Privacy Commissioner for Personal Data established under section 5(1) of the Personal Data (Privacy) Ordinance

(Cap. 486);

"professional accountant" (專業會計師) means a professional accountant as defined in section 2 of the Professional Accountants Ordinance (Cap. 50);

"professional investor" (專業投資者) means---

(a) any recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company;

(b) any licensed or exempt person, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong;

(c) any authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;

(d) any insurer authorized under the Insurance Companies Ordinance (Cap. 41), or any other person carrying on insurance business and regulated under the law of any place outside Hong Kong;

(e) any trust company registered under Part VIII of the Trustee Ordinance (Cap. 29);

(f) any collective investment scheme, or any person by whom a collective investment scheme is operated;

(g) any pension or provident fund, or any person by whom a pension or provident fund is managed;

(h) any government (other than a municipal government authority); or

(i) any person of a class prescribed by rules made under section 384 of this Ordinance for the purposes of this paragraph;

"property" (財產) includes---

(a) money, goods, choses in action and land, whether in Hong Kong or elsewhere; and

(b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a);

"prospectus" (招股章程) means any prospectus, notice, circular, brochure, advertisement, or other document---

(a) offering any shares or debentures of a corporation to the public for subscription or purchase for cash or other consideration; or

(b) calculated to invite offers by the public to subscribe for or purchase for cash or other consideration any shares or debentures of a corporation;

"purchase" (買、購買), in relation to securities, includes subscribing for or acquiring the securities, in whatever form the consideration may be;

"qualifying credit rating" (合資格信貸評級) means---

(a) a credit rating specified in Part 4; or

(b) any credit rating which, in the opinion of the Commission, is equivalent to a credit rating specified in Part 4;

"recognized clearing house" (認可結算所) means a company recognized as a clearing house under section 37(1) of this Ordinance;

"recognized counterparty" (認可對手方) means---

(a) an authorized financial institution;

(b) in relation to a particular transaction conducted by a corporation licensed for

Type 3 regulated activity, another corporation which is also so licensed but which is not a related corporation of the first-mentioned corporation; or

(c) an institution prescribed by rules made under section 384 of this Ordinance for the purposes of this definition as a recognized counterparty;

"recognized exchange company" (認可交易所) means a company recognized as an exchange company under section 19(2) of this Ordinance;

"recognized exchange controller" (認可控制人) means a company recognized as an exchange controller under section 59(2) of this Ordinance;

"recognized futures market" (認可期貨市場) means a futures market operated by a recognized exchange company;

"recognized investor compensation company" (認可投資者賠償公司) means a company recognized as an investor compensation company under section 79(1) of this Ordinance;

"recognized stock market" (認可證券市場) means a stock market operated by a recognized exchange company;

"record" (紀錄) means any record of information (however compiled or stored) and includes---

(a) any books, deeds, contract or agreement, voucher, receipt or data material, or information which is recorded otherwise than in a legible form but is capable of being reproduced in a legible form; and

(b) any document, disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of other equipment) of being reproduced, and any film (including a microfilm), tape or other device in which visual images are embodied so as to be capable (with or without the aid of other equipment) of being reproduced;

"Registrar of Companies" (公司註冊處處長) means the Registrar of Companies appointed under section 303 of the Companies Ordinance (Cap. 32);

"regulated activity" (受規管活動) means any of the regulated activities specified in Part 1 of Schedule 6 to this Ordinance, and a reference to a type of regulated activity by number shall be construed as a reference to the type of regulated activity of that number as specified in that Part;

"regulated investment agreement" (受規管投資協議) means an agreement the purpose or effect, or pretended purpose or effect, of which is to provide, whether conditionally or unconditionally, to any party to the agreement a profit, income or other returns calculated by reference to changes in the value of any property, but does not include an interest in a collective investment scheme;

"relevant provisions" (有關條文) means the provisions of---

(a) this Ordinance;

(b) Parts II and XII of the Companies Ordinance (Cap. 32), so far as those Parts relate,

directly or indirectly, to the performance of functions relating to---

(i) prospectuses;

(ii) the purchase by a corporation of its own shares;

(iii) a corporation giving financial assistance for the acquisition of its own shares,

whether or not such functions have been made the subject of a transfer order under section 25 of this Ordinance;

"relevant share capital" (有關股本) means the issued share capital of a corporation which is of a class carrying rights to vote in all circumstances at general meetings of the corporation;

"remuneration" (報酬) includes money, any consideration, financial accommodation or benefit, whether paid, provided or supplied directly or indirectly;

"repealed Commodities Trading Ordinance" (已廢除的《商品交易條例》) means the Commodities Trading Ordinance (Cap. 250) repealed under section 392 of this Ordinance;

"repealed Exchanges and Clearing Houses (Merger) Ordinance" (已廢除的《交易所及結算所 (合併) 條例》) means the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555) repealed under section 392 of this Ordinance;

"repealed Leveraged Foreign Exchange Trading Ordinance" (已廢除的《槓桿式外匯買賣條例》) means the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) repealed under section 392 of this Ordinance;

"repealed Protection of Investors Ordinance" (已廢除的《保障投資者條例》) means the Protection of Investors Ordinance (Cap. 335) repealed under section 392 of this Ordinance;

"repealed Securities and Futures (Clearing Houses) Ordinance" (已廢除的《證券及期貨(結算所)條例》) means the Securities and Futures (Clearing Houses) Ordinance (Cap. 420) repealed under section 392 of this Ordinance;

"repealed Securities and Futures Commission Ordinance" (已廢除的《證券及期貨事務監察委員會條例》) means the Securities and Futures Commission Ordinance (Cap. 24) repealed under section 392 of this Ordinance;

"repealed Securities (Disclosure of Interests) Ordinance" (已廢除的《證券(披露權益)條例》) means the Securities (Disclosure of Interests) Ordinance (Cap. 396) repealed under section 392 of this Ordinance;

"repealed Securities (Insider Dealing) Ordinance" (已廢除的《證券(內幕交易)條例》) means the Securities (Insider Dealing) Ordinance (Cap. 395) repealed under section 392 of this Ordinance;

"repealed Securities Ordinance" (已廢除的《證券條例》) means the Securities Ordinance (Cap. 333) repealed under section 392 of this Ordinance;



"repealed Stock Exchanges Unification Ordinance" (已廢除的《證券交易所合併條例》) means the Stock Exchanges Unification Ordinance (Cap. 361) repealed under section 392 of this Ordinance;

"responsible officer" (負責人員) means an individual who is approved by the Commission under section 125(1) of this Ordinance as a responsible officer of a licensed corporation;

"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 65(1) of this Ordinance by the controller;

"rules" (規章)---

(a) in relation to a recognized exchange company, means the rules, regulations and directions, by whatever name they may be called and wherever contained, governing---

- (i) its exchange participants;
  - (ii) the persons who may participate in any of the services it provides;
  - (iii) the setting and levying of fees;
  - (iv) the listing of securities;
  - (v) the trading of securities or futures contracts;
  - (vi) the provision of other services; or
  - (vii) generally, its management, operations or procedures,
- and includes, in respect of sections 24 and 92 of this Ordinance, its

constitution;

(b) in relation to a recognized clearing house, means the rules, regulations and directions, by whatever name they may be called and wherever contained, governing---

- (i) its clearing participants;
  - (ii) the persons who may participate in any of the services it provides;
  - (iii) the setting and levying of fees;
  - (iv) the provision of clearing and settlement services, and the suspension or withdrawal of such services;
  - (v) the provision of other services; or
  - (vi) generally, its management, operations or procedures,
- and includes, in respect of sections 41 and 92 of this Ordinance, its

constitution;

(c) in relation to a recognized exchange controller, means---

- (i) its constitution; or
- (ii) the rules, regulations and directions, by whatever name they may be called and wherever contained, governing the conduct or procedures of---

(A) the recognized exchange controller;

(B) the Risk Management Committee; or

(C) any person or body of persons declared in a notice under section 66(2) of this Ordinance to be a person or body of persons (as the case may be) to which this sub-subparagraph shall apply; or

(d) in relation to a recognized investor compensation company, means---

(i) its constitution; or

(ii) the rules, regulations and directions, by whatever name they may be called and wherever contained, governing its management, operations or procedures, or its provision of services;

"securities" (證券) means---

(a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;

(b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(d) interests in any collective investment scheme;

(e) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;

(f) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 379 of this Ordinance as being regarded as securities in accordance with the terms of the notice,

but does not include---

(i) shares or debentures of a company that is a private company within the meaning of section 29 of the Companies Ordinance (Cap. 32);

(ii) any interest in any collective investment scheme that is---

(A) a registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), or its constituent fund as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.);

(B) an occupational retirement scheme as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426); or

(C) a contract of insurance in relation to any class of insurance business specified in the First Schedule to the Insurance Companies Ordinance (Cap. 41);

(iii) any interest arising under a general partnership agreement or proposed general partnership agreement unless the agreement or proposed agreement relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf

of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts (whether or not that person is, or is to become, a party to the agreement or proposed agreement);

(iv) any negotiable receipt or other negotiable certificate or document evidencing the deposit of a sum of money, or any rights or interest arising under the receipt, certificate or document;

(v) any bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap. 19) and any promissory note within the meaning of section 89 of that Ordinance;

(vi) any debenture that specifically provides that it is not negotiable or transferable;

(vii) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 379 of this Ordinance as not being regarded as securities in accordance with the terms of the notice;

"Securities and Futures Appeals Tribunal" (上訴審裁處) means the Securities and Futures Appeals Tribunal established by section 210 of this Ordinance;

"securities and futures industry" (證券期貨業) means the securities and futures market and participants (other than investors) therein (including recognized exchange companies, recognized clearing houses, recognized exchange controllers, recognized investor compensation companies and persons carrying on any regulated activity), and any activities related to financial products that are carried on in such securities and futures market or by such participants;

"securities and futures market" (證券期貨市場) means any market, exchange, place or service which facilitates the bringing together on a regular basis persons who are parties to transactions related to financial products;

"securities borrowing and lending agreement" (證券借貸協議) means an agreement whereby a person borrows or lends securities pursuant to an arrangement where the borrower undertakes to return securities of the same description, or pay the equivalent value of the securities, to the lender, and includes a stock borrowing within the meaning of section 19(16) of the Stamp Duty Ordinance (Cap. 117);

"securities collateral" (證券抵押品)---

(a) in relation to a licensed corporation, means any securities---

(i) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, the licensed corporation; or

(ii) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, any other intermediary or person,

which are so deposited or provided---

(A) as security for the provision by the licensed corporation of financial accommodation; or

(B) to facilitate the provision by the licensed corporation of financial accommodation under an arrangement that confers on the licensed corporation a collateral interest in the securities; or

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

(i) deposited with, or otherwise provided by or on behalf of a client of the exempt person to, the exempt person, in the course of the conduct of any regulated activity for which the exempt person is exempt; or

(ii) deposited with, or otherwise provided by or on behalf of a client of the exempt person to, any other intermediary or person, in relation to such conduct of the regulated activity,

which are so deposited or provided---

(A) as security for the provision by the exempt person of financial accommodation; or

(B) to facilitate the provision by the exempt person of financial accommodation under an arrangement that confers on the exempt person a collateral interest in the securities;

"securities margin financing" (證券保證金融資) has the meaning assigned to it by Part 2 of Schedule 6 to this Ordinance;

"served" (送達) includes given;

"shadow director" (幕後董事) means a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act, but a person shall not be regarded as a shadow director by reason only of the fact that the directors act on advice given by him in a professional capacity;

"share" (股份) means any share in the share capital of a corporation, and, except where a distinction between stock and shares is express or implied, includes stock;

"short selling order" (賣空指示)---

(a) subject to paragraph (b), means an order to sell securities in respect of which the seller, or the person for whose benefit or on whose behalf the order is made, has a presently exercisable and unconditional right to vest the securities in the purchaser of them by virtue of having---

(i) under a securities borrowing and lending agreement---

(A) borrowed the securities; or

(B) obtained a confirmation from the counterparty to the agreement that the counterparty has the securities available to lend to him;

(ii) a title to other securities which are convertible into or exchangeable for the securities to which the order relates;

(iii) an option to acquire the securities to which the order relates;  
(iv) rights or warrants to subscribe for and to receive the securities to which the order relates; or

(v) entered into with any other person an agreement or arrangement of a description prescribed by rules made under section 384 of this Ordinance for the purposes of this subparagraph;

(b) in relation to paragraph (a)(ii), (iii), (iv) or (v), does not include an order where the seller, or the person for whose benefit or on whose behalf the order is made, has, at the time of placing the order, issued unconditional instructions to obtain the securities to which the order relates;

"specified debt securities" (指明債務證券) means debenture stocks, loan stocks, debentures, bonds, notes, indexed bonds, convertible debt securities, bonds with warrants, non-interest bearing debt securities and other securities or instruments acknowledging, evidencing or creating indebtedness---

(a) which are issued or guaranteed by the Government;

(b) which are issued by an issuer that has a qualifying credit rating for any of its debt instruments; or

(c) which are issued by any other issuer as may be approved by the Commission in writing in a particular case;

"specified futures exchange" (指明期貨交易所) means a futures exchange specified in Part 2;

"specified stock exchange" (指明證券交易所) means a stock exchange specified in Part 3;

"Stock Exchange Company" (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;

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

(a) an exchange participant of a recognized exchange company which may operate a stock market; or

(b) a recognized clearing house;

"take-over offer" (收購要約), in relation to a corporation, means an offer made to all the holders (or all the holders other than the person making the offer and his nominees) of the shares in the corporation to acquire the shares or a specified proportion of them, or to all the holders (or all the holders other than the person making the offer and his nominees) of a particular class of the shares to acquire

the shares of the class or a specified proportion of them;

"title" (稱銜) includes name or description;

"trading right" (交易權), in relation to a recognized exchange company, means a right to be eligible to trade through that exchange company or on a recognized stock market or a recognized futures market operated by that exchange company and entered as such a right in a list, roll or register kept by that exchange company.

## 2. References to subsidiary

(1) For the purposes of this Ordinance, a corporation shall be regarded as a subsidiary of another corporation if---

(a) the other corporation---

(i) controls the composition of its board of directors;

(ii) controls more than half of its voting power at general meetings; or

(iii) holds more than half of its issued share capital (which issued share capital, for the purposes of this subparagraph, excludes any part thereof which carries no right to participate beyond a specified amount on a distribution of either profits or capital); or

(b) it is a subsidiary of a corporation which is the other corporation's subsidiary.

(2) For the purposes of subsection (1), in determining whether a corporation is a subsidiary of another corporation---

(a) any shares held or power exercisable by the other corporation in a fiduciary capacity shall be regarded as not held or exercisable by it;

(b) subject to paragraphs (c) and (d), any shares held or power exercisable---

(i) by a nominee for the other corporation (except where the other corporation is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of the other corporation, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be regarded as held or exercisable by the other corporation;

(c) any shares held or power exercisable by a person under a debenture of the corporation or under a trust deed for securing the issue of the debenture shall be disregarded; and

(d) any shares held or power exercisable by, or by a nominee for, the other corporation or its subsidiary, not being held or exercisable as mentioned in paragraph (c), shall be regarded as not held or exercisable by the other corporation if the ordinary business of the other corporation or its subsidiary (as the case may be) includes the lending of money and the shares are held or power is exercisable by way of security only for a transaction entered into in the ordinary course of that business.

## 3. References to related corporation

For the purposes of this Ordinance---

(a) 2 or more corporations shall be regarded as related corporations of each other if one of them is---

(i) the holding company of the other;

(ii) a subsidiary of the other; or

(iii) a subsidiary of the holding company of the other;

(b) when an individual---

(i) controls the composition of the board of directors of one or more corporations;

(ii) controls more than half of the voting power at general meetings of one or more corporations; or

(iii) holds more than half of the issued share capital (which issued share capital, for the purposes of this subparagraph, excludes any part thereof which carries no right to participate beyond a specified amount on a distribution of either profits or capital) of one or more corporations,

each of the corporations referred to in subparagraph (i), (ii) or (iii), and each of their subsidiaries, shall be regarded as related corporations of each other.

4. References to controlling the composition of a corporation's board of directors

(1) For the purposes of this Ordinance, the composition of a corporation's board of directors shall be regarded as controlled by another corporation if the other corporation, by the exercise of some power exercisable by it, can, without the consent or concurrence of any other person, appoint or remove all or a majority of the directors of the corporation.

(2) For the purposes of subsection (1), a corporation shall be regarded as being able to appoint or remove a director of another corporation if---

(a) the appointment or removal cannot occur without the corporation exercising a power; or

(b) the appointment of a person as a director of the other corporation follows necessarily from his being a director or other officer of the corporation.

(3) For the purposes of this Ordinance, the composition of a corporation's board of directors shall be regarded as controlled by an individual if the individual, by the exercise of some power exercisable by him, can, without the consent or concurrence of any other person, appoint or remove all or a majority of the directors of the corporation.

(4) For the purposes of subsection (3), an individual shall be regarded as being able to appoint or remove a director of a corporation if---

(a) the appointment or removal cannot occur without the individual exercising a power; or

(b) the appointment of a person as a director of the corporation follows necessarily

from his being a director or other officer of another corporation and his appointment as a director or other officer of the other corporation cannot occur without the individual exercising a power.

#### 5. References to wholly owned subsidiary

For the purposes of this Ordinance, a body corporate shall be regarded as the wholly owned subsidiary of another body corporate if it has no members except that other, that other's nominee, that other's wholly owned subsidiary (as construed in accordance with this section), such wholly owned subsidiary's nominee, or any combination thereof.

#### 6. References to substantial shareholder

(1) For the purposes of this Ordinance, a person shall, in relation to a corporation, be regarded as a substantial shareholder of the corporation if he, either alone or with any of his associates---

(a) has an interest in shares in the corporation---

(i) the nominal value of which shares is equal to more than the nominal value of 10% of the issued share capital of the corporation; or

(ii) which entitles the person, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at general meetings of the corporation; or

(b) holds shares in any other corporation which entitles him, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of 35% or more of the voting power at general meetings of the other corporation, or of a further corporation, which is itself entitled, either alone or with any of its associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at general meetings of the corporation.

(2) For the purposes of subsection (1), a person shall be regarded as being entitled to exercise or control the exercise of 35% or more of the voting power at general meetings of a corporation indirectly if he, either alone or with any of his associates, has an interest in shares in a further corporation which entitles him, either alone or with any of his associates, to exercise or control the exercise of 35% or more of the voting power at general meetings of the further corporation which is itself entitled, either alone or with any of its associates, to exercise or control the exercise of 35% or more of the voting power at general meetings of the first-mentioned corporation.

#### 7. References to securities of a corporation

In this Ordinance, a reference to securities of a corporation shall, unless the context otherwise requires, be construed as a reference to securities (having the



applicable meaning, whether under section 1 or otherwise) which are---

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

#### 8. References to conditions

In this Ordinance, unless the context otherwise requires, a reference to any condition imposed under or pursuant to any provision of this Ordinance shall, in any case where the condition has been amended (however described) under or pursuant to any provision of this Ordinance, be construed as a reference to the condition as so amended.

#### 9. References relating to regulated activity

In this Ordinance---

(a) unless otherwise defined or excluded or the context otherwise requires, a person shall be regarded as carrying on a regulated activity if---

(i) he carries on a business in a regulated activity; or

(ii) he performs for or on behalf of or by arrangement with a person carrying on a business in a regulated activity, any regulated function (as defined in section 113 of this Ordinance) in relation to the regulated activity;

(b) a reference to a person carrying on a regulated activity for an intermediary shall be construed as a reference to the person performing for or on behalf of or by arrangement with the intermediary any regulated function (as defined in section 113 of this Ordinance) in relation to the regulated activity;

(c) (i) a corporation licensed under section 115 or 116 of this Ordinance to carry on a regulated activity shall be regarded as being licensed for that regulated activity;

(ii) an authorized financial institution exempt under section 118 of this Ordinance for carrying on a regulated activity shall be regarded as being exempt for that regulated activity;

(iii) an individual licensed under section 119 or 120 of this Ordinance to carry on a regulated activity for a licensed corporation shall be regarded as being licensed for that regulated activity.

#### 10. References to contravention, etc.

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

(a) a reference to contravention shall---

(i) be construed as including a reference to failure to comply; and

(ii) in relation to any provision of any Ordinance, be construed as including a reference to the commission of an offence under the provision;

(b) a reference to failure to comply shall---

(i) be construed as including a reference to contravention; and

(ii) in relation to any provision of any Ordinance, be construed as including a reference to the commission of an offence under the provision.

#### 11. References to Ordinance

For the avoidance of doubt, in this Ordinance, a reference to this or any other Ordinance, whether generally or specifically and whether by reference to the short title of the Ordinance or otherwise, shall, unless the context otherwise requires, be construed as including any subsidiary legislation made under this or that other Ordinance (as the case may be).

### PART 2

#### Specified Futures Exchanges

1. Amsterdam Exchanges NV
2. Australian Stock Exchange
3. Chicago Board of Trade
4. Chicago Board Options Exchange
5. Chicago Mercantile Exchange
6. Commodity Exchange, Inc. (New York)
7. Eurex
8. Hong Kong Futures Exchange Limited
9. Korea Stock Exchange
10. London International Financial Futures and Options Exchange
11. London Metal Exchange
12. Marche a Terme International de France
13. Marche des Options Negociables de Paris
14. New York Cotton Exchange, Inc.
15. New York Futures Exchange
16. New York Mercantile Exchange
17. New Zealand Futures and Options Exchange
18. OM Stockholm Exchange
19. Osaka Securities Exchange
20. Pacific Stock Exchange
21. Philadelphia Stock Exchange
22. Singapore Exchange Derivatives Trading Limited
23. Sydney Futures Exchange, Ltd.
24. Tokyo Grain Exchange
25. Tokyo International Financial Futures Exchange
26. Tokyo Stock Exchange

27. Toronto Futures Exchange
28. Winnipeg Commodities Exchange

### PART 3

#### Specified Stock Exchanges

1. American Stock Exchange
2. Amsterdam Exchanges NV
3. Australian Stock Exchange
4. Brussels Stock Exchange
5. Copenhagen Stock Exchange
6. Deutsche Borse AG
7. Helsinki Exchanges
8. Italian Stock Exchange
9. Japanese Association of Securities Dealers Automated Quotations
10. Korea Stock Exchange
11. Kuala Lumpur Stock Exchange
12. London Stock Exchange
13. Luxembourg Stock Exchange
14. Madrid Stock Exchange
15. The Montreal Exchange
16. Nagoya Stock Exchange
17. National Association of Securities Dealers Automated Quotations
18. New York Stock Exchange
19. New Zealand Stock Exchange
20. OM Stockholm Exchange
21. Osaka Securities Exchange
22. Oslo Stock Exchange
23. Paris Bourse
24. Philippine Stock Exchange
25. Singapore Exchange Securities Trading Limited
26. The Stock Exchange of Hong Kong Limited
27. Stock Exchange of Thailand

- 28. SWX Swiss Exchange
- 29. Tokyo Stock Exchange
- 30. Toronto Stock Exchange
- 31. Wiener Borse AG

PART 4

Qualifying Credit Rating

- 1. A Moody's Investors Service rating of---
  - (a) A3 or above for long term debt; or
  - (b) Prime -- 3 or above for short term debt.
- 2. A Standard & Poor's Corporation rating of---
  - (a) A or above for long term debt; or
  - (b) A -- 3 or above for short term debt.

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SCHEDULE 2 [ss. 3, 7 & 10 & Schs. 1 & 9]

Securities and Futures Commission

PART 1

Constitution and Proceedings of Commission, etc.

Chairman and members of Commission

- 1. The Commission consists of a chairman and an uneven number (to be determined by the Chief Executive but not being less than 7) of other members all of whom shall be appointed by the Chief Executive.
- 2. Half of the members, including the chairman, of the Commission shall be appointed to be executive directors of the Commission and the remainder shall be appointed to be non-executive directors of the Commission.
- 3. When the membership of the Commission ceases to comply with the requirements of sections 1 and 2, the Chief Executive shall as soon as reasonably practicable thereafter make the necessary appointment to ensure that the requirements are complied with.

Deputy chairman and vacancies in office of chairman or deputy chairman

- 4. The Chief Executive may appoint an executive director of the Commission to be the deputy chairman of the Commission.
- 5. If the office of chairman of the Commission is vacant or the chairman of the Commission is unable to act as chairman due to illness, absence from Hong Kong or any other cause, the deputy chairman appointed under section 4 shall act as chairman in his place.
- 6. Notwithstanding that a deputy chairman has been appointed under section 4, the

chairman of the Commission may, where there is no designation under section 7, designate an executive director of the Commission to act as chairman of the Commission for any period during which both he and the deputy chairman are unable to act as chairman due to illness, absence from Hong Kong or any other cause, and may at any time revoke any such designation.

7. If---

(a) no deputy chairman has been appointed under section 4 or the office of deputy chairman of the Commission is vacant; or

(b) the deputy chairman appointed under section 4 is unable to act as chairman due to illness, absence from Hong Kong or any other cause, and there is no designation under section 6,

the Financial Secretary may designate an executive director of the Commission to act as chairman of the Commission for any period during which the chairman of the Commission is unable to act as chairman due to illness, absence from Hong Kong or any other cause.

8. A designation under section 7 ceases to have effect when---

(a) it is revoked by the Financial Secretary;

(b) where the designation is under section 7(a), an appointment is made under section 4; or

(c) where the designation is under section 7(b), the deputy chairman appointed under section 4 is no longer unable to act as chairman due to illness, absence from Hong Kong or any other cause, whichever is the earlier.

9. A deputy chairman or an executive director of the Commission who acts as chairman of the Commission under section 5 or in accordance with a designation under section 6 or 7 shall be deemed for all purposes to be the chairman of the Commission.  
Office of members, etc.

10. The terms and conditions of the office of a member of the Commission (whether as the chairman, deputy chairman or otherwise) shall be determined by the Chief Executive.

11. A member of the Commission (whether as the chairman, deputy chairman or otherwise) may at any time resign his office by notice in writing to the Chief Executive.

12. A member of the Commission (whether as the chairman, deputy chairman or otherwise) shall be paid by the Commission such remuneration, allowances or expenses as the Chief Executive may determine.

13. The Chief Executive may by notice in writing remove from office any member of the Commission (whether as the chairman, deputy chairman or otherwise) whose removal appears to him to be desirable for the effective performance by the Commission of

its functions.

#### Meetings

14. Meetings of the Commission shall be held as often as may be necessary for the performance of its functions, and may be convened by the chairman or the deputy chairman, or any 2 other members, of the Commission.

15. At a meeting of the Commission---

(a) if the chairman of the Commission is present, he shall be the chairman of the meeting;

(b) if the chairman of the Commission is not present but the deputy chairman of the Commission is present, the deputy chairman shall be the chairman of the meeting; or

(c) if neither the chairman nor the deputy chairman of the Commission is present, the members of the Commission present shall choose one of their number to be the chairman of the meeting.

16. The quorum for a meeting of the Commission is 4 members of the Commission, of whom 2 shall be executive directors and 2 shall be non-executive directors.

17. A member of the Commission shall be regarded as being present at a meeting of the Commission if he participates in the meeting by telephone, video conferencing or other electronic means, provided he is able to hear the other members present at the meeting and they are able to hear him.

18. Each member of the Commission present at a meeting of the Commission has one vote.

19. Every question for decision at a meeting of the Commission shall be determined by a majority of votes of its members present and, in the event that voting is equally divided, the chairman of the meeting shall, subject to section 20, have a casting vote.

20. The chairman of a meeting of the Commission shall not exercise a casting vote in respect of any question for decision at the meeting until after he has consulted the Financial Secretary on the question.

#### Written resolution

21. Where a resolution---

(a) is in writing; and

(b) is signed by not less than 2 executive directors and not less than 2 non-executive directors of the Commission, including all of the executive directors and non-executive directors of the Commission who are, at any time when the resolution is made available for signature, present in Hong Kong and capable of signing the resolution,

the resolution shall be as valid and effectual as if it had been passed at a meeting of the Commission convened and conducted in accordance with this Ordinance.

22. For the purposes of section 21, a resolution to which that section applies may

be---

(a) in the form of one document; or

(b) in the form of more than one document, each in the like form and signed by one or more executive directors or non-executive directors of the Commission.

23. Where a resolution is in the form of more than one document as described in section 22(b), the requirement under section 21(b) shall be regarded as having been satisfied if the documents together bear the signatures of not less than 2 executive directors and not less than 2 non-executive directors of the Commission, including all of the executive directors and non-executive directors of the Commission who are, at any time when the resolution is made available for signature, present in Hong Kong and capable of signing the resolution.

24. For the purposes of sections 21 to 23---

(a) a document shall be regarded as having been signed by an executive director or non-executive director of the Commission if a telex, cable, facsimile or electronic transmission of a document bears the signature of the executive director or non-executive director; and

(b) a resolution to which section 21 applies shall be regarded as made on the date on which the resolution is signed by the last person signing as an executive director or non-executive director of the Commission for the purposes of that section.

Seal, and regulation of administration, etc.

25. The Commission shall have a seal, the affixing of which shall be authenticated by the signature of the chairman or the deputy chairman of the Commission, or by the signature of such other member of the Commission as is authorized by it to act in that behalf.

26. The Commission shall organize and regulate its administration, procedure and business in such manner as it considers will, subject to the requirements of this Ordinance, best ensure the performance of its functions.

Advisory Committee

27. The Advisory Committee shall consist of---

(a) the chairman of the Commission;

(b) not more than 2 executive directors of the Commission who shall be appointed by the Commission;

(c) not less than 8 (but not more than 12) other members who shall be appointed by the Chief Executive after consultation with the Commission.

28. A meeting of the Advisory Committee may be convened by---

(a) the chairman of the Commission; or

(b) any 3 other members of the Advisory Committee.

29. At a meeting of the Advisory Committee---

(a) if the chairman of the Commission is present, he shall be the chairman of the meeting; or

(b) if the chairman of the Commission is not present, the members of the Advisory Committee present shall choose one of their number to be the chairman of the meeting.

30. Where a member of the Advisory Committee appointed under section 27(b) ceases to be an executive director of the Commission, he ceases to be a member of the Advisory Committee.

31. A member of the Advisory Committee appointed under section 27(b) or (c) may at any time resign his office by notice in writing to---

(a) where he has been appointed under section 27(b), the Commission; or

(b) where he has been appointed under section 27(c), the Chief Executive.

32. The Chief Executive may by notice in writing remove from office any member of the Advisory Committee appointed under section 27(c).

## PART 2

### Non-Delegable Functions of Commission

1. Any function of the Commission to make subsidiary legislation under or pursuant to any Ordinance.

2. The following functions of the Commission---

(1) to borrow money, under section 5(4)(d) of this Ordinance;

(2) to publish or otherwise make available materials, under section 5(4)(e) of this Ordinance;

(3) to establish any committee, under section 8(1) of this Ordinance;

(4) to refer any matter to a committee, under section 8(2) of this Ordinance;

(5) to appoint a person to be a member or chairman of a committee, under section 8(3) of this Ordinance;

(6) to withdraw a reference from a committee, or to revoke an appointment of a member or chairman of a committee, under section 8(5) of this Ordinance;

(7) to submit to the Chief Executive estimates, under section 13(2) of this Ordinance;

(8) to prepare any financial statements, under section 15(2) of this Ordinance;

(9) to prepare any report, under section 15(3) of this Ordinance;

(10) to appoint auditors, under section 16(1) of this Ordinance;

(11) to invest funds, under section 17 of this Ordinance;

(12) to recognize a company as an exchange company under, or to impose conditions pursuant to, section 19(2) of this Ordinance;

(13) to amend or revoke conditions, or impose new conditions, under section 19(3) of this Ordinance;

(14) to give a company a reasonable opportunity of being heard, under section 19(7) of this Ordinance;



- (15) to request a recognized exchange company to make or amend rules, under section 23(3) of this Ordinance;
- (16) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 24(3) of this Ordinance;
- (17) to advise the Financial Secretary to extend time, pursuant to section 24(6) of this Ordinance;
- (18) to declare any class of rules to be a class of rules which are not required to be approved, under section 24(7) of this Ordinance;
- (19) to request the Chief Executive in Council to transfer any function of the Commission, under section 25(1) of this Ordinance;
- (20) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 25(7) of this Ordinance;
- (21) to approve the appointment of a person as chief executive, pursuant to section 26 of this Ordinance;
- (22) to withdraw recognition of a recognized exchange company, under section 28(1)(a) of this Ordinance;
- (23) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 28(1)(b) of this Ordinance;
- (24) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 29(1) of this Ordinance;
- (25) to extend a direction, under section 29(3) of this Ordinance;
- (26) to recognize a company as a clearing house under, or to impose conditions pursuant to, section 37(1) of this Ordinance;
- (27) to amend or revoke conditions, or impose new conditions, under section 37(2) of this Ordinance;
- (28) to give a company a reasonable opportunity of being heard, under section 37(5) of this Ordinance;
- (29) to request a recognized clearing house to make or amend rules, under section 40(4) of this Ordinance;
- (30) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 41(3) of this Ordinance;
- (31) to advise the Financial Secretary to extend time, pursuant to section 41(6) of this Ordinance;
- (32) to declare any class of rules to be a class of rules which are not required to be approved, under section 41(7) of this Ordinance;
- (33) to withdraw recognition of a recognized clearing house, under section 43(1)(a) of this Ordinance;
- (34) to direct a recognized clearing house to cease to provide or operate

facilities, under section 43(1)(b) of this Ordinance;

(35) to recognize a company as an exchange controller under, or to impose conditions pursuant to, section 59(2) of this Ordinance;

(36) to amend or revoke conditions, or impose new conditions, under section 59(3) of this Ordinance;

(37) to direct a person to take specified steps, under section 59(9)(c) of this Ordinance;

(38) to give a company a reasonable opportunity of being heard, under section 59(18) of this Ordinance;

(39) to approve the increase or decrease of any interest a recognized exchange controller has in a recognized exchange company or recognized clearing house, pursuant to section 60(a) of this Ordinance;

(40) to approve a person for becoming a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house, pursuant to section 61(1) of this Ordinance;

(41) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 67(3) of this Ordinance;

(42) to advise the Financial Secretary to extend time, pursuant to section 67(6) of this Ordinance;

(43) to declare any class of rules to be a class of rules which are not required to be approved, under section 67(7) of this Ordinance;

(44) to request the Chief Executive in Council to transfer any function of the Commission, under section 68(1) of this Ordinance;

(45) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 68(7) of this Ordinance;

(46) to approve the appointment of a person as chief executive or chief operating officer, pursuant to section 70(1) of this Ordinance;

(47) to remove a person from the office of a chief executive or chief operating officer, under section 70(2) of this Ordinance;

(48) to withdraw recognition of a recognized exchange controller, under section 72(1)(i) of this Ordinance;

(49) to direct a company to take specified steps, under section 72(1)(ii) of this Ordinance;

(50) to give a recognized exchange controller a reasonable opportunity of being heard, pursuant to section 72(2) of this Ordinance;

(51) to make statement in writing, pursuant to section 74(1) of this Ordinance;

(52) to direct a recognized exchange controller or a relevant corporation to take specified steps, under section 75(1) of this Ordinance;

- (53) to approve a fee, pursuant to section 76(1) of this Ordinance;
- (54) to recognize a company as an investor compensation company under, or to impose conditions pursuant to, section 79(1) of this Ordinance;
- (55) to amend or revoke conditions, or impose new conditions, under section 79(2) of this Ordinance;
- (56) to give a company a reasonable opportunity of being heard, under section 79(5) of this Ordinance;
- (57) to request the Chief Executive in Council to transfer any function of the Commission, under section 80(1) of this Ordinance;
- (58) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 80(7) of this Ordinance;
- (59) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 83(3) of this Ordinance;
- (60) to advise the Financial Secretary to extend time, pursuant to section 83(6) of this Ordinance;
- (61) to declare any class of rules to be a class of rules which are not required to be approved, under section 83(7) of this Ordinance;
- (62) to withdraw recognition of a recognized investor compensation company, under section 85(1) of this Ordinance;
- (63) to approve the conduct of activities or businesses, pursuant to section 90(1) of this Ordinance;
- (64) to serve a notice, under section 92(1) of this Ordinance;
- (65) to extend the period during which a restriction notice is to remain in force, under section 92(6) of this Ordinance;
- (66) to apply to the Court of First Instance, pursuant to section 92(8) of this Ordinance;
- (67) to issue a suspension order, under section 93(1) of this Ordinance;
- (68) to extend the period during which a suspension order is to remain in force, under section 93(7) of this Ordinance;
- (69) to appoint any person, other than an employee of the Commission, to investigate any of the matters referred to in section 175(1)(a) to (g) of this Ordinance, under section 175(1) of this Ordinance;
- (70) to cause a report to be published, under section 176(6) of this Ordinance;
- (71) to impose a prohibition or requirement, under section 196, 197, 198 or 199 of this Ordinance;
- (72) to withdraw, substitute or vary a prohibition or requirement, under section 201(1) of this Ordinance;
- (73) to present a petition, under section 205(1) of this Ordinance;

- (74) to apply to the Court of First Instance, pursuant to section 206(1) of this Ordinance;
- (75) to apply to the Court of First Instance, under section 207(1) of this Ordinance;
- (76) to establish a compensation fund, under section 229 of this Ordinance;
- (77) to borrow, or to charge any investments by way of security, under section 230(2) of this Ordinance;
- (78) to appoint an auditor, under section 232(5) of this Ordinance;
- (79) to invest money, under section 233(1) of this Ordinance;
- (80) to make report to the Financial Secretary, under section 244(8) of this Ordinance;
- (81) to publish guidelines, under section 300(1) of this Ordinance;
- (82) to make an application, pursuant to section 373(1) of this Ordinance;
- (83) to consult the Financial Secretary, under section 383(1) of this Ordinance;
- (84) to make recommendation to the Chief Executive in Council, under section 383(2) of this Ordinance;
- (85) to appoint members of the Advisory Committee, under section 27(b) of Part 1;
- (86) to direct any specified securities to be subject to restrictions, under section 1(2) of Part 6 of Schedule 3 to this Ordinance;
- (87) to apply to the Court of First Instance, pursuant to section 1(6)(a) of Part 6 of Schedule 3 to this Ordinance;
- (88) to apply to the Court of First Instance, pursuant to section 1(7) of Part 6 of Schedule 3 to this Ordinance.

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### SCHEDULE 3 [ss. 18, 40, 58, 59, 61, 62, 72 & 78 & Sch. 2]

#### Exchange Companies, Clearing Houses and Exchange Controllers

##### PART 1

##### Definitions

1. In this Schedule, unless the context otherwise requires, "associated person" (相聯者), "controller" (控制人), "default rules" (違責處理規則), "indirect controller" (間接控制人), "market charge" (市場押記), "market collateral" (市場抵押品) and "shareholder controller" (股東控制人) have the meanings respectively assigned to them in section 18 of this Ordinance.

##### PART 2

##### Specification of Persons who are Associated Persons

##### PART 3

##### Specification of Persons who are not Associated Persons

1. A person ("first person") is not an associated person of another person ("second person") for all the provisions of Division 4 of Part III of this Ordinance in so far as---

(a) the first person or the second person is a recognized clearing house (or its nominee) acting in its capacity as such;

(b) the first person is the chairman of a general meeting of a corporation entitled to exercise voting rights in the corporation due to his appointment as a proxy by the second person where the appointment---

(i) is for that meeting only; and

(ii) does not involve any valuable consideration; or

(c) the first person and the second person are persons who have appointed the chairman of a general meeting of a corporation as a proxy to exercise voting rights in the corporation where each appointment---

(i) is for that meeting only; and

(ii) does not involve any valuable consideration.

2. A person is not an associated person of another person for the purposes of section 61 of this Ordinance by reason only of each person having appointed the same person as a proxy to exercise voting rights in a corporation at a general meeting of the corporation where each appointment---

(a) is for that meeting only; and

(b) does not involve any valuable consideration.

#### PART 4

##### Specification of Persons Who are not Indirect Controllers

1. A person is not an indirect controller for all the provisions of Division 4 of Part III of this Ordinance in so far as the person is a person in accordance with whose directions or instructions the directors of a corporation or of another corporation of which it is a subsidiary are accustomed or obliged to act by reason only that they act on advice given by the person in the person's professional capacity.

#### PART 5

##### Requirements for Default Rules of Recognized Clearing Houses

1. The rules of a recognized clearing house which provide for the taking of proceedings or other action if a clearing participant appears to be unable, or likely to become unable, to meet his obligations in respect of all unsettled or open market contracts to which he is a party, shall---

(a) enable the settlement, or closing-out by offset, of all of the contracts;

(b) for the purpose of paragraph (a), provide for there to be payable by or to the clearing participant a sum of money in relation to each contract if this is required after taking into account all the rights and liabilities of the clearing participant

under or in respect of the contract concerned;

(c) enable all sums of money payable by or to the clearing participant as determined in accordance with paragraph (b) to be aggregated or set-off so as to produce a net sum (if any) payable by or to the clearing participant;

(d) if any net sum referred to in paragraph (c) is payable by the clearing participant, provide for that net sum to be set-off against all property of the clearing participant which is either subject to a market charge or which has been provided as market collateral (or set-off against the proceeds of the realization of such property) so as to produce a further net sum (if any) payable by or to the clearing participant;

(e) if any net sum referred to in paragraph (c) is payable to the clearing participant, provide that all property of the clearing participant which is either subject to a market charge or which has been provided as market collateral shall cease to be subject to the market charge (but without prejudice to any other form of charge to which it may be subject) or to be market collateral (but without prejudice to its provision as any other form of collateral) (as the case may be); and

(f) provide for the certification by the clearing house of any net sum referred to in paragraph (c) payable to the clearing participant, or of any further net sum referred to in paragraph (d) payable by or to the clearing participant (as the case may be) or, if there is no such sum, the certification by the clearing house of that fact.

## PART 6

Provisions Applicable Where there is Failure to Comply with Notice under Section 59(9)(c), 61(9)(b) or 72(1) of this Ordinance

### 1. Restrictions on and sale of securities

(1) The powers conferred by this section shall be exercisable where a person has failed to comply with a notice under section 59(9)(c), 61(9)(b) or 72(1) of this Ordinance.

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

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

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

(c) no further securities 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 corporation concerned on the securities, whether in respect of capital or otherwise;

(e) that the holder of the securities shall cause them to be transferred to a nominee of the Commission specified in the notice and within the period specified in the notice.

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

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

(5) Where securities 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 securities 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 securities 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 specified securities 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 securities as it considers appropriate.

(8) Where securities are sold pursuant to an order under this section, the proceeds of the sale, less the costs of the sale, shall, unless otherwise specified by the Court of First Instance, 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 securities of the corporation concerned by virtue of which the person

concerned is a shareholder controller, or minority controller within the meaning of section 61 of this Ordinance, of the corporation which are held by him or any associated person 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 61 of this Ordinance, of the corporation concerned by virtue of the acquisition by him or any associated person of his of securities of another corporation, to all the securities of that corporation which are held by him or any associated person 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 corporation to whose securities it relates and, if it relates to securities held by any associated person of that person, on that associated person.

(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).

(12) It is hereby declared that the operation of subsection (2)(b) or (e) shall not by itself cause any person to contravene section 59(1) or 61(1) of this Ordinance.

## 2. Punishment for attempted evasion of restrictions

(1) Any person who---

(a) exercises or purports to exercise any right to dispose of any securities, or of any right to be issued with any such securities, knowing that to do so contravenes any restrictions under section 1(2) to which the securities are subject;

(b) votes in respect of any such securities as a holder or as a proxy knowing that to do so contravenes any such restrictions;

(c) appoints a proxy in respect of any such securities knowing that to vote in respect of any such securities would contravene any such restrictions;

(d) being the holder of any such securities, 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 securities whether as a holder or as a proxy;

(e) being the holder of any such securities, or being entitled to any right to be issued with other securities 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); or

(f) without reasonable excuse, fails to comply with a restriction under section 1(2)(e) to which any such securities are subject, commits an offence and is liable---



(i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

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

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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

### 3. Prohibition on certain person acting as indirect controllers

(1) In this section, "prohibited person" (受禁制人士), in relation to a corporation, means any person who has failed to comply with a notice under section 59(9)(c) or 72(1) of this Ordinance in relation to the corporation in so far as the notice relates to a controller who is an indirect controller.

(2) Where a person is or may become a prohibited person in respect of a corporation, the Commission shall serve on the corporation a copy of the notice concerned under section 59(9)(c) or 72(1) of this Ordinance.

(3) No person who is a prohibited person in respect of a corporation shall act or continue to act (as the case may be) as an indirect controller of the corporation 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 corporation or of another corporation of which it is a subsidiary.

(4) Where any director of a corporation or of another corporation 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 corporation; and

(b) which are, or might reasonably be construed as being, prohibited from being so given by virtue of subsection (3),

the director shall forthwith notify the Commission of those directions or instructions and the circumstances in which they were so given.

(5) Any prohibited person who contravenes subsection (3) commits an offence and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 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.

(6) Any director who, without reasonable excuse, contravenes subsection (4) commits an offence and is liable---

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 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.

(7) 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 (3), and notwithstanding that any period (however expressed) specified in that subsection for complying with it has expired.

#### PART 7

##### Specification of Persons Who are not Minority Controllers

1. A person is not a minority controller for the purposes of Division 4 of Part III of this Ordinance in so far as the person is---

(a) a recognized clearing house (or its nominee) acting in its capacity as such; or

(b) the chairman of a general meeting of a corporation entitled to exercise voting rights in the corporation due to his appointment as a proxy where the appointment---

(i) is for that meeting only; and

(ii) does not involve any valuable consideration.

2. A person is not a minority controller for all the provisions of Division 4 of Part III of this Ordinance by reason only of being entitled to exercise voting rights in a corporation due to his appointment as a proxy where the appointment---

(a) is for only one general meeting of the corporation; and

(b) does not involve any valuable consideration.

#### PART 8

##### Exemption from Section 59(1) of this Ordinance

1. A person is exempt from section 59(1) of this Ordinance in so far as the person is---

(a) a recognized clearing house (or its nominee) acting in its capacity as such; or

(b) the controller of a corporation by reason only of being the chairman of a general meeting of the corporation entitled to exercise voting rights in the corporation due to his appointment as a proxy where the appointment---

- (i) is for that meeting only; and
- (ii) does not involve any valuable consideration.

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#### 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.

3. Hong Kong Housing Authority.
4. Airport Authority.
5. Kowloon-Canton Railway Corporation.
6. MTR Corporation Limited.
7. Land Development Corporation.
8. Hong Kong Export Credit Insurance Corporation.
9. The Hong Kong Industrial Estates Corporation.
10. Hong Kong Industrial Technology Centre Corporation.
11. Hong Kong Productivity Council.
12. Hong Kong Tourist Association.
13. Hong Kong Trade Development Council.
14. Vocational Training Council.
15. 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.

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SCHEDULE 5 [ss. 108 & 112]

Offers by Intermediaries or Representatives for  
Type 1 or Type 4 Regulated Activity under  
Section 108 of this Ordinance

PART 1

Requirements to be Satisfied in Relation to  
Offers to Acquire Securities

1. If the securities proposed to be acquired are currently listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, the offer shall---

- (a) state that fact and specify the stock markets on which the securities are currently listed or quoted;
- (b) specify the closing price in respect of the securities on each stock market on the latest practicable date immediately preceding the date of the offer;
- (c) specify the closing price in respect of the securities on the last trading day of each of the 6 months immediately preceding the date of the offer;
- (d) specify the highest and the lowest closing prices in respect of the securities during the period of 6 months immediately preceding the date of the offer; and
- (e) where the offer has been the subject of a public announcement, whether in a newspaper or any other form of information medium or otherwise, specify the closing price in respect of the securities on the last trading day immediately preceding the public announcement.

2. If the securities proposed to be acquired are not listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, the offer shall contain---

- (a) all information that the offeror may have as to the number and nominal value of those securities that have been sold in Hong Kong during the period of 6 months immediately preceding the date of the offer and the prices yielded by those sales; and
- (b) particulars of any restriction in the constitution, by whatever name called, of the body in question on the right to transfer the securities, that has the effect

of requiring the offerees, before transferring the securities, to offer those securities for purchase to any member of the body or to any other person and, where there is any such restriction, the arrangements (if any) being made to enable the securities to be transferred in pursuance of the offer.

3. If any requirement set out in sections 1 and 2 cannot be satisfied because any of the information and particulars required are not available, or because any of the matters covered by the requirement are not applicable to the body in question, the offer shall instead state that fact and the reasons therefor; and if the body in question is a corporation incorporated in Hong Kong but any of the information and particulars required under section 2 are not available in the returns of the corporation filed with the Registrar of Companies, the offer shall also state that fact.

4. The offer shall contain, in a prominent position, the following bilingual notice printed, in the case of the English text, in type of a size not smaller than the type known as 8 point Times and, in the case of the Chinese text, in type the face of which is not less than 2.5 mm in depth---

"IMPORTANT

If you are in doubt as to any aspect of this offer, you should consult a licensed securities dealer, bank manager, solicitor, professional accountant or other professional adviser.

重要提示

如你對此要約的任何方面有疑問，應諮詢持牌證券交易商、銀行經理、律師、專業會計師或其他專業顧問。".

5. (1) In this Part, "body" (團體) has the meaning assigned to it by section 108(10) of this Ordinance.

(2) Section 108(9) of this Ordinance applies to a reference to securities of a body (however described) in this Part as it applies to such a reference in section 108 of this Ordinance.

## PART 2

### Requirements to be Satisfied in Relation to Offers to Dispose of Securities

1. If the securities offered are currently listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, or, where the securities are not so listed or quoted, will be uniform in all respects with securities of the body in question that are so listed or quoted, the offer shall---

(a) state that fact and specify the stock markets on which the securities or the

securities with which they will be uniform (as the case may be) are currently listed or quoted;

(b) specify the closing price in respect of the securities or the securities with which they will be uniform (as the case may be) on each stock market on the latest practicable date immediately preceding the date of the offer;

(c) specify the closing price in respect of the securities or the securities with which they will be uniform (as the case may be) on the last trading day of each of the 6 months immediately preceding the date of the offer;

(d) specify the highest and the lowest closing prices in respect of the securities or the securities with which they will be uniform (as the case may be) during the period of 6 months immediately preceding the date of the offer; and

(e) where the offer has been the subject of a public announcement, whether in a newspaper or any other form of information medium or otherwise, specify the closing price in respect of the securities or the securities with which they will be uniform (as the case may be) on the last trading day immediately preceding the public announcement.

2. If the securities offered are not listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, and will not be uniform in all respects with securities of the body in question that are so listed or quoted, the offer shall---

(a) contain particulars of any restriction in the constitution, by whatever name called, of the body on the right to transfer the securities, that has the effect of requiring the holder of the securities, before transferring them, to offer them for purchase to any member of the body or to any other person; and

(b) (i) where the securities are of, or issued by, a corporation, contain the particulars specified in section 3 or be accompanied by a statement in writing containing those particulars, unless the offer is accompanied by a document which conforms with Part II or XII of the Companies Ordinance (Cap. 32) in relation to the corporation;

(ii) where the securities are of, or issued by, a multilateral agency, contain the particulars specified in section 4 or be accompanied by a statement in writing containing those particulars; or

(iii) where the securities are of, or issued by, a government or municipal government authority, contain the particulars specified in section 5 or be accompanied by a statement in writing containing those particulars.

3. The particulars referred to in section 2(b)(i), in relation to the corporation referred to in that section, are as follows---

(a) (i) the year in which, and the country or territory in which, the corporation has been incorporated;

(ii) the address of its registered or principal office in Hong Kong; and

(iii) where the corporation has been incorporated outside Hong Kong, the address of its registered or principal office in the country or territory in which it is incorporated or is resident;

(b) (i) the authorized capital of the corporation;

(ii) the amount of that capital that has been issued and is outstanding at the date specified as being the close of the 5 financial years of the corporation immediately preceding the date of the offer;

(iii) the classes of shares into which that capital is divided;

(iv) the rights, in respect of capital, dividends and voting, of holders of each of such classes of shares; and

(v) the number and total nominal value respectively of shares of the corporation issued as fully or partly paid up for cash or as fully or partly paid up for a consideration other than cash, or both;

(c) (i) the number and total nominal value of shares issued since the close of the last financial year of the corporation;

(ii) the classes of shares into which the shares issued since the close of the last financial year of the corporation are divided;

(iii) the rights, in respect of capital, dividends and voting, of holders of each of such classes of shares;

(iv) the number and total nominal value respectively of shares issued since the close of the last financial year of the corporation as fully or partly paid up for cash or as fully or partly paid up for a consideration other than cash, or both;

(v) the number of redeemable preference shares redeemed since the close of the last financial year of the corporation and the amounts repaid in respect of the shares so redeemed; and

(vi) particulars of any reduction of capital lawfully authorized in respect of the corporation since the close of the last financial year of the corporation;

(d) particulars of any reorganization of the capital of the corporation during each of its 2 financial years immediately preceding the date of the offer;

(e) (i) the amount of the net profit or loss of the corporation (before taking into account any form of tax calculated by reference to the amount of profits of the corporation);

(ii) the rate per cent and the amount of each payment of dividends made by the corporation in respect of each class of shares during each of its 5 financial years immediately preceding the date of the offer; and



(iii) where no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;

(f) the total amount of any debentures issued by the corporation and outstanding not more than 28 days before the date of the offer, and the total amount of mortgage debts, loans or charges due from the corporation not more than 28 days before that date, together with the rate of interest payable in respect of them;

(g) the names and addresses of the directors of the corporation;

(h) the number, description, and nominal value of the securities of the corporation held by or on behalf of each of its directors or, if a director does not hold any such securities and no such securities are held on his behalf, a statement to that effect; and

(i) whether or not the securities offered are or, in the case of securities to be issued, will be fully paid up, and, if not, to what extent they are or will be paid up, and, if the corporation has fixed a date and amount for payment of outstanding calls, the date and amount of each such call.

4. The particulars referred to in section 2(b)(ii), in relation to the multilateral agency referred to in that section, are as follows---

(a) the details of the organization and administration of the multilateral agency;

(b) the description of the activities of the multilateral agency; and

(c) the particulars of the financial situation of the multilateral agency, including---

(i) the income and expenditure for the past 2 years immediately preceding the date of the offer and the budgetary forecasts for the current year; and

(ii) the public debt for the past 2 years immediately preceding the date of the offer.

5. The particulars referred to in section 2(b)(iii), in relation to the government or municipal government authority referred to in that section, are as follows---

(a) the details of the organization and administration of the government or municipal government authority;

(b) in the case of a government, the particulars of the economic situation of the place of which it is the government, including---

(i) general information on the government;

(ii) the gross national product by economic sector for the past 2 years immediately preceding the date of the offer;

(iii) the production trends in the various economic sectors with a breakdown of the principal production branches for the past 2 years immediately preceding the date of the offer;

(iv) the price, wage and employment trends over the past 2 years immediately

preceding the date of the offer;

(v) the export and import trends by economic sector and country over the past 2 years immediately preceding the date of the offer;

(vi) the balance of payments in respect of economic and financial transactions with other places for the past 2 years immediately preceding the date of the offer; and

(vii) the gold and currency reserves;

(c) in the case of a municipal government authority, the particulars of the economic situation of the place of which it is the municipal government authority, including---

(i) general information on the municipal government authority;

(ii) the principal sources of revenue; and

(iii) the production trends in the various economic sectors with a breakdown of the principal production branches for the past 2 years immediately preceding the date of the offer; and

(d) the particulars of the financial situation of the government or municipal government authority, including---

(i) the income and expenditure for the past 2 years immediately preceding the date of the offer and the budgetary forecasts for the current year; and

(ii) the public debt for the past 2 years immediately preceding the date of the offer.

6. If the securities offered are yet to be issued by a body, the offer shall, in addition to any other requirements applicable to them in this Part---

(a) state---

(i) whether or not the issue requires the authority of a resolution of the body;

(ii) the first dividend in which the securities will participate; and

(iii) whether or not there has been, to the knowledge of the offeror, any material change in the financial position of the body since the date of the balance sheet and profit and loss account of the body for its financial year immediately preceding the date of the offer and, if so, the particulars of the change;

(b) be accompanied by copies of the balance sheet and profit and loss account of the body made up to (and including) the end of the last financial year of the body immediately preceding the date of the offer;

(c) be accompanied by copies of the constitution, by whatever name called, of the body unless the offer specifies---

(i) a place in Hong Kong at which such copies may be inspected by offerees; and

(ii) the times at which they may be inspected;

(d) in the case of securities which will be uniform in all respects with previously issued securities of the body that are not currently listed or quoted on any stock

market, whether a recognized stock market or any other stock market outside Hong Kong, contain all information that the offeror may have as to the number and nominal value of those securities that have been sold during the period of 6 months immediately preceding the date of the offer and the prices yielded by those sales; and  
(e) in the case of securities which will not be uniform in all respects with previously issued securities of the body, state---

(i) the respects in which the securities will differ from the previously issued securities;

(ii) whether or not any voting rights will attach to the securities and, if so, the limitations on those rights; and

(iii) whether or not application for permission to have the securities listed or quoted has been or will be made to any stock market, whether a recognized stock market or any other stock market outside Hong Kong, and, if such an application has been made, the name of the stock market to which the application has been made.

7. If any requirement set out in sections 1 to 6 cannot be satisfied because any of the information, particulars and documents required are not available, or because any of the matters covered by the requirement are not applicable to the body in question, the offer shall instead state that fact and the reasons therefor; and if the body in question is a corporation incorporated in Hong Kong but any of the information, particulars and documents required under sections 2 to 6 are not available in the returns of the corporation filed with the Registrar of Companies, the offer shall also state that fact.

8. The offer shall contain, in a prominent position, the following bilingual notice printed, in the case of the English text, in type of a size not smaller than the type known as 8 point Times and, in the case of the Chinese text, in type the face of which is not less than 2.5 mm in depth---

"IMPORTANT

If you are in doubt as to any aspect of this offer, you should consult a licensed securities dealer, bank manager, solicitor, professional accountant or other professional adviser.

重要提示

如你對此要約的任何方面有疑問，應諮詢持牌證券交易商、銀行經理、律師、專業會計師或其他專業顧問。".

9. (1) In this Part---

"body" (團體) has the meaning assigned to it by section 108(10) of this Ordinance;  
"multilateral agency" (多邊機構) has the meaning assigned to it by section 101(1) of this Ordinance.

(2) Section 108(9) of this Ordinance applies to a reference to securities of a body (however described) in this Part as it applies to such a reference in section 108 of this Ordinance.

SCHEDULE 6 [ss. 114, 117,  
136 & 139 &  
Schs. 1 & 9]  
Regulated Activities  
PART 1

The following are regulated activities---

- Type 1 : dealing in securities;
- Type 2 : dealing in futures contracts;
- Type 3 : leveraged foreign exchange trading;
- Type 4 : advising on securities;
- Type 5 : advising on futures contracts;
- Type 6 : advising on corporate finance;
- Type 7 : providing automated trading services;
- Type 8 : securities margin financing;
- Type 9 : asset management.

PART 2

In this Schedule---

"advising on corporate finance" (就機構融資提供意見) means giving advice---

(a) concerning compliance with or in respect of rules made under section 23 or 36 of this Ordinance governing the listing of securities and the code published under section 385(2)(a) or (b) of this Ordinance;

(b) concerning---

(i) any offer to dispose of securities to the public;

(ii) any offer to acquire securities from the public; or

(iii) acceptance of any offer referred to in subparagraph (i) or (ii), but only in so far as the advice is given generally to holders of securities or a class of securities; or

(c) to a listed corporation or public company or a subsidiary of the corporation or company, or to its officers or shareholders, concerning corporate restructuring (including the issue, cancellation or variation of any rights attaching to any securities),

but does not include such advice given by---

(i) a corporation solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;

(ii) a solicitor who gives such advice wholly incidental to his practice as

such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);

(iii) a counsel who gives such advice wholly incidental to his practice as such;

(iv) a professional accountant who gives such advice wholly incidental to his practice as such in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50);

(v) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which gives such advice wholly incidental to the discharge of its duty as such; or

(vi) a person through---

(A) a newspaper, magazine, book or other publication which is made generally available to the public; or

(B) television broadcast or radio broadcast for reception by the public or a section of the public, whether on subscription or otherwise;

"advising on futures contracts" (就期貨合約提供意見) means---

(a) giving advice on---

(i) whether;

(ii) which;

(iii) the time at which; or

(iv) the terms or conditions on which, futures contracts should be entered into; or

(b) issuing analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on---

(i) whether;

(ii) which;

(iii) the time at which; or

(iv) the terms or conditions on which, futures contracts are to be entered into, otherwise than by---

(i) a corporation which gives such advice or issues such analyses or reports solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;

(ii) a person who is licensed for Type 2 regulated activity who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(iii) an authorized financial institution which is exempt for Type 2 regulated activity which gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(iv) an individual---

(A) who is employed by an authorized financial institution referred to in paragraph (iii); and

(B) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as employed by that institution in respect of Type 2 regulated activity,

who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(v) a solicitor who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);

(vi) a counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a counsel;

(vii) a professional accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a professional accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50);

(viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which gives such advice or issues such analyses or reports wholly incidental to the discharge of its duty as such; or

(ix) a person who gives such advice or issues such analyses or reports through---

(A) a newspaper, magazine, book or other publication which is made generally available to the public; or

(B) television broadcast or radio broadcast for reception by the public or a section of the public, whether on subscription or otherwise;

"advising on securities" (就證券提供意見) means---

(a) giving advice on---

(i) whether;

(ii) which;

(iii) the time at which; or

(iv) the terms or conditions on which,  
securities should be acquired or disposed of; or

(b) issuing analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on---

(i) whether;

(ii) which;

(iii) the time at which; or  
(iv) the terms or conditions on which,  
securities are to be acquired or disposed of,  
otherwise than by---

(i) a corporation which gives such advice or issues such analyses or reports solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;

(ii) a person who is licensed for Type 1 regulated activity who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(iii) an authorized financial institution which is exempt for Type 1 regulated activity which gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(iv) an individual---

(A) who is employed by an authorized financial institution referred to in paragraph (iii); and

(B) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as employed by that institution in respect of Type 1 regulated activity,

who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(v) a solicitor who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);

(vi) a counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a counsel;

(vii) a professional accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a professional accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50);

(viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which gives such advice or issues such analyses or reports wholly incidental to the discharge of its duty as such; or

(ix) a person who gives such advice or issues such analyses or reports through---

(A) a newspaper, magazine, book or other publication which is made generally available to the public; or



(B) television broadcast or radio broadcast for reception by the public or a section of the public, whether on subscription or otherwise,

but does not include the giving of such advice that falls within the meaning of "advising on corporate finance";

"asset management" (資產管理), in relation to a person, means providing a service of managing a portfolio of securities or futures contracts for another person by the person, otherwise than by---

(a) a corporation which provides such service solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;

(b) a person who is licensed for Type 1 or Type 2 regulated activity who provides such service wholly incidental to the carrying on of that regulated activity;

(c) an authorized financial institution which is exempt for Type 1 or Type 2 regulated activity which provides such service wholly incidental to the carrying on of that regulated activity;

(d) an individual---

(i) who is employed by an authorized financial institution referred to in paragraph (c); and

(ii) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as employed by that institution in respect of Type 1 or Type 2 regulated activity,

who provides such service wholly incidental to the carrying on of that regulated activity;

(e) a solicitor who provides such service wholly incidental to his practice as such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);

(f) a counsel who provides such service wholly incidental to his practice as such;

(g) a professional accountant who provides such service wholly incidental to his practice as such in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50); or

(h) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which provides such service wholly incidental to the discharge of its duty as such; "automated trading services" (自動化交易服務) means services provided by means of electronic facilities, not being facilities provided by a recognized exchange company or a recognized clearing house, whereby---

(a) offers to sell or purchase securities or futures contracts are regularly made or accepted;

(b) persons are regularly introduced, or identified to other persons in order that

they may negotiate or conclude, or with the reasonable expectation that they will negotiate or conclude sales or purchases of securities or futures contracts; or (c) transactions resulting from the activities referred to in paragraph (a) or (b), or transactions effected on, or subject to the rules of, a stock market or futures market may be novated, cleared, settled or guaranteed,

but does not include such services provided by a corporation operated by or on behalf of the Government;

"dealing in futures contracts" (期貨合約交易), in relation to a person, means---

(a) making or offering to make an agreement with another person to enter into, or to acquire or dispose of, a futures contract;

(b) inducing or attempting to induce another person to enter into, or to offer to enter into, a futures contract; or

(c) inducing or attempting to induce another person to acquire or dispose of a futures contract,

by the person, except where the person---

(i) is carrying out his functions as a recognized clearing house;

(ii) performs the act referred to in paragraph (a), (b) or (c) through another person ("the futures dealer")---

(A) who is licensed or exempt for Type 2 regulated activity; or

(B) who is employed by an exempt person exempt for Type 2 regulated activity and whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as employed by the exempt person in respect of that regulated activity,

but the person shall be regarded as dealing in futures contracts if, in return for a commission, rebate or other remuneration, the person---

(I) receives from a third person an offer or invitation to enter into a futures contract, and communicates it, either in his name or in the name of the third person, to the futures dealer;

(II) effects an introduction between the futures dealer or his representative and a third person, so that the third person may enter into, or offer or invite to enter into, a futures contract with the futures dealer;

(III) effects an acquisition or disposal of a futures contract for a third person through the futures dealer;

(IV) makes an offer for the futures dealer to a third person to acquire or dispose of a futures contract; or

(V) accepts for the futures dealer an offer by a third person to acquire or dispose of a futures contract;

(iii) performs the act referred to in paragraph (a), (b) or (c) only on a market

referred to in section 3(a), (b) or (c) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82);

(iv) is a member of an exchange referred to in section 3(d) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82) who only performs the act referred to in paragraph (a), (b) or (c) on such an exchange;

(v) enters into a market contract;

(vi) is licensed or exempt for Type 9 regulated activity and performs the act referred to in paragraph (a), (b) or (c) solely for the purposes of carrying on that regulated activity; or

(vii) as principal performs the act referred to in paragraph (a), (b) or (c) in relation to a futures contract traded otherwise than on a recognized futures market by way of dealing with a person who is a professional investor or whose business involves the acquisition, disposal or holding of futures contract (whether acting as principal or agent);

"dealing in securities" (證券交易), in relation to a person, means---

(a) making or offering to make an agreement with another person, or inducing or attempting to induce another person to enter into or to offer to enter into an agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or

(b) providing a facility for bringing together on a regular basis sellers and purchasers of securities, or for negotiating or concluding sales and purchases of securities,

by the person, except where the person---

(i) is a recognized exchange company operating a stock market;

(ii) is a recognized clearing house;

(iii) is a corporation providing automated trading services under authorization granted under section 95 of this Ordinance;

(iv) performs the act referred to in paragraph (a) through another person ("the securities dealer")---

(A) who is licensed or exempt for Type 1 regulated activity; or

(B) who is employed by an exempt person exempt for Type 1 regulated activity and whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as employed by the exempt person in respect of that regulated activity,

but the person shall be regarded as dealing in securities if, in return for a commission, rebate or other remuneration, the person---

(I) receives from a third person an offer or invitation to enter into an agreement referred to in paragraph (a), and communicates it, either in his name or in the name

of the third person, to the securities dealer;

(II) effects an introduction between the securities dealer or his representative and a third person, so that the third person may enter into, or offer or invite to enter into, an agreement referred to in paragraph (a) with the securities dealer;

(III) effects an agreement referred to in paragraph (a) on behalf of a third person through the securities dealer;

(IV) makes an offer to the securities dealer on behalf of a third person to acquire or dispose of securities; or

(V) accepts for the securities dealer an offer by a third person to enter into an agreement referred to in paragraph (a);

(v) as principal---

(A) acquires, disposes of, subscribes for or underwrites securities; or

(B) performs the act referred to in paragraph (a) by way of dealing with a person who is a professional investor or whose business involves the acquisition, disposal or holding of securities, either as principal or agent;

(vi) enters into a market contract;

(vii) issues 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, Part XII of that Ordinance;

(viii) issues a document relating to securities of a corporation incorporated in Hong Kong which is not a company, being a document which---

(A) would, if the corporation was a 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

(B) contains all the matters which, under Part XII of that Ordinance, would be required to contain if the corporation were a corporation incorporated outside Hong Kong and the document was a prospectus issued by the corporation;

(ix) issues a form of application for shares or debentures of a corporation, together with---

(A) 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, Part XII of that Ordinance; or

(B) in the case of a corporation incorporated in Hong Kong which is not a company, a document which contains the matters specified in paragraph (viii)(B);

(x) issues a prospectus the registration of which has been authorized by the Commission under section 342C of the Companies Ordinance (Cap. 32) in relation to a mutual fund corporation, or issues together with prospectus a form of application

for shares in the mutual fund corporation;

(xi) issues any advertisement, invitation or document the issue of which has been authorized by the Commission under section 104 of this Ordinance;

(xii) is a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) acting as an agent for a collective investment scheme which, by performing the act referred to in paragraph (a), is carrying out its functions of distributing application forms, redemption notices, conversion notices and contract notes, receiving money and issuing receipts on behalf of its principal;

(xiii) is licensed or exempt for Type 4 or Type 6 regulated activity and, solely for the purposes of carrying on that regulated activity, he issues a document under section 108(1)(a)(i) or (ii) of this Ordinance, the content of which complies with the requirements of section 108(1)(b) and (c) of this Ordinance; or

(xiv) is licensed or exempt for Type 9 regulated activity and performs the act referred to in paragraph (a) solely for the purposes of carrying on that regulated activity;

"foreign exchange trading" (外匯交易) means entering into or offering to enter into, or inducing or attempting to induce a person to enter into or to offer to enter into, a contract or arrangement whereby any person undertakes to---

(a) exchange currency with another person;

(b) deliver an amount of foreign currency to another person; or

(c) credit the account of another person with an amount of foreign currency,

but does not include any act performed for or in connection with any contract or arrangement or a proposed contract or arrangement as described in paragraphs (i) to (xiv) of the definition of "leveraged foreign exchange trading";

"leveraged foreign exchange contract" (槓桿式外匯交易合約) means a contract or arrangement the effect of which is that one party agrees or undertakes to---

(a) make an adjustment between himself and the other party or another person according to whether a currency is worth more or less (as the case may be) in relation to another currency;

(b) pay an amount of money or to deliver a quantity of any commodity determined or to be determined by reference to the change in value of a currency in relation to another currency to the other party or another person; or

(c) deliver to the other party or another person at an agreed future time an agreed amount of currency at an agreed consideration;

"leveraged foreign exchange trading" (槓桿式外匯交易) means---

(a) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into or to offer to enter into, a leveraged foreign exchange contract;

(b) the act of providing any financial accommodation to facilitate foreign exchange trading or to facilitate an act referred to in paragraph (a); or

(c) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into, an arrangement with another person, on a discretionary basis or otherwise, to enter into a contract to facilitate an act referred to in paragraph (a) or (b),

but does not include any act performed for or in connection with any contract or arrangement or a proposed contract or arrangement---

(i) wholly referable to the provision of property, other than currency, or services or employment at fair or market value;

(ii) where the contract or arrangement is entered into by a corporation--

-

(A) the principal business of which does not include dealing in currency in any form;

(B) for the purpose of hedging its exposure to currency exchange risks in connection with its business; and

(C) with another company;

(iii) that is an exchange transaction within the meaning of the Money Changers Ordinance (Cap. 34);

(iv) arranged by a member of the Hong Kong Foreign Exchange and Deposit Brokers Association and every party to it is a corporation or a limited partnership registered under the Limited Partnerships Ordinance (Cap. 37);

(v) that is a transaction executed solely for the purpose of its insurance business by an insurer authorized under section 8 of the Insurance Companies Ordinance (Cap. 41) to carry on insurance business or deemed to be so authorized under section 61(1) or (2) of that Ordinance;

(vi) that is a contract executed on a specified futures exchange by or through a person who is licensed or exempt for Type 2 regulated activity or is wholly incidental to one or more than one such contract or a series of such contracts;

(vii) arranged by---

(A) a body which, in the opinion of the Monetary Authority, is---

(I) a central bank; or

(II) an institution which performs the functions of a central bank; or

(B) an organization which, with the approval of the Monetary Authority, is acting on behalf of a body referred to in subparagraph (A);

(viii) that is a transaction executed on a specified stock exchange by or through a person who is licensed or exempt for Type 1 regulated activity or is wholly incidental to one or more than one such transaction or a series of such transactions;

(ix) that is a transaction executed by or through a person who is licensed

for Type 7 regulated activity or is wholly incidental to one or more than one such transaction or a series of such transactions;

(x) that is a transaction in an interest or interests in a collective investment scheme authorized by the Commission under section 103 of this Ordinance;

(xi) that is wholly incidental to one or more than one transaction in specified debt securities or a series of such transactions;

(xii) by an authorized financial institution;

(xiii) by any person belonging to a class of persons, or carrying on a type of business, as prescribed by rules made under section 384 of this Ordinance for the purposes of this paragraph; or

(xiv) by a person through a trader, but the person shall be regarded as carrying on leveraged foreign exchange trading if, in return for a commission, rebate or other remuneration, the person---

(A) receives from another person an offer or invitation to---

(I) enter into a leveraged foreign exchange contract; or

(II) use any financial accommodation to facilitate foreign exchange trading or facilitate entering into a leveraged foreign exchange contract,

and communicates it, either in his name or in the name of the other person, to the trader;

(B) effects an introduction between the trader or its representative and another person, so that the other person may---

(I) enter into a leveraged foreign exchange contract with the trader; or

(II) use any financial accommodation provided by the trader to facilitate foreign exchange trading or facilitate entering into a leveraged foreign exchange contract; or

(C) effects the entering into a leveraged foreign exchange contract by another person through the trader,

where in this paragraph, "trader" (交易商) means a corporation licensed for Type 3 regulated activity or an authorized financial institution;

"securities margin financing" (證券保證金融資) means providing a financial accommodation in order to facilitate---

(a) the acquisition of securities listed on any stock market, whether a recognized stock market or any other stock market outside Hong Kong; and

(b) (where applicable) the continued holding of those securities,

whether or not those or other securities are pledged as security for the accommodation, but does not include the provision of financial accommodation---

(i) that forms part of an arrangement to underwrite or sub-underwrite securities;

(ii) to facilitate an acquisition of securities in accordance with the term

of a prospectus, regardless of whether the offer of securities is made in Hong Kong or elsewhere;

(iii) by a person who is licensed or exempt for Type 1 regulated activity in order to facilitate acquisitions or holdings of securities by the person for his client;

(iv) by a collective investment scheme that is a corporation---

(A) which is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in any property (including securities and futures contracts); and

(B) the shares in which are exclusively, or primarily redeemable shares,

in order to finance investment in any interest in the collective investment scheme of which it is the issuer;

(v) by an authorized financial institution for the purpose of facilitating acquisitions or holdings of securities by the institution's clients; or

(vi) by an individual to a company in which he holds 10% or more of its issued share capital to facilitate acquisitions or holdings of securities.

#### PART 3

The following are the specified activities referred to in section 114(5) of this Ordinance---

(a) the acquisition of securities listed on a stock market which is or forms part of a stock borrowing or stock return as defined in section 19(16) of the Stamp Duty Ordinance (Cap. 117), or any transaction in securities similar to such a borrowing or return; or

(b) the provision of financial accommodation---

(i) to a corporation licensed for Type 1 or Type 8 regulated activity or an authorized financial institution to facilitate acquisitions or holdings of securities;

(ii) by a company to its directors or employees to facilitate acquisitions or holdings of its own securities; or

(iii) by a member of a group of companies to another member of the group to facilitate acquisitions or holdings of securities by that other member.

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#### SCHEDULE 7 [ss. 209, 210, 213, 215, 226 & 227]

Securities and Futures Appeals Tribunal

#### PART 1

Appointment of Members and Proceedings of Tribunal, etc.

1. In this Schedule, unless the context otherwise requires---



"appeal panel" (上訴委員會) means the panel of persons appointed under section 7;  
"application for review" (覆核申請) has the meaning assigned to it by section 209 of this Ordinance;

"chairman" (主席) means the chairman of the Tribunal;

"judge" (法官) has the meaning assigned to it by section 209 of this Ordinance;

"member" (成員) means a member of the Tribunal;

"ordinary member" (普通成員) means a member other than the chairman;

"panel member" (上訴委員) means a member of the appeal panel;

"parties" (各方) has the meaning assigned to it by section 209 of this Ordinance;

"review" (覆核) has the meaning assigned to it by section 209 of this Ordinance;

"Secretary" (局長) means the Secretary for Financial Services;

"temporary member" (暫委成員) means a temporary member of the Tribunal appointed under section 16;

"Tribunal" (審裁處) has the meaning assigned to it by section 209 of this Ordinance.

#### Appointment of chairman

2. The chairman shall be appointed by the Chief Executive on the recommendation of the Chief Justice.

3. Subject to sections 4 to 6, the chairman shall be appointed for a term of 3 years or appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

4. The chairman may at any time resign his office by notice in writing to the Chief Executive.

5. The chairman may be removed from office by the Chief Executive for incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct proved to the satisfaction of the Chief Executive.

6. If a review has been commenced by the Tribunal but not completed before the expiry of the chairman's term of office or before the resignation from or vacation of office by the chairman takes effect, the Chief Executive may authorize the chairman to continue to act as the chairman for the purpose of completing the review.

#### Appointment of appeal panel

7. The Chief Executive shall appoint persons to a panel comprising such number of members, who are not public officers, as he considers appropriate.

8. Subject to sections 9 and 10, a panel member shall be appointed for such period as the Chief Executive considers appropriate, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

9. A panel member may at any time resign his office by notice in writing to the Chief Executive.

10. A panel member may be removed from office by the Chief Executive for incapacity,

bankruptcy, neglect of duty, conflict of interest or misconduct proved to the satisfaction of the Chief Executive.

#### Appointment of ordinary members

11. For the purpose of determining a review, the Secretary shall appoint 2 panel members as ordinary members in relation to the review.

12. Subject to sections 13 to 15, an ordinary member shall be appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

13. An ordinary member may at any time resign his office by notice in writing to the Secretary.

14. Where an ordinary member ceases to be a panel member, he ceases to be such ordinary member.

15. If a review has been commenced by the Tribunal but not completed before the resignation from or vacation of office by an ordinary member takes effect, the Secretary may authorize the ordinary member to continue to act as an ordinary member for the purpose of completing the review.

#### Appointment of temporary members

16. Where any member is precluded by illness, absence from Hong Kong or any other cause from performing his functions, or considers it improper or undesirable that he should perform his functions in relation to any specified matter---

(a) where such member is the chairman, the Chief Executive may, subject to sections 17 and 18, appoint a judge to act as a temporary member of the Tribunal in the place of the chairman for such period as he considers appropriate, and he may, subject to the other provisions of this Ordinance, from time to time be reappointed; or

(b) where such member is an ordinary member, the Secretary may, subject to sections 17 and 19, appoint a panel member to act as a temporary member of the Tribunal in the place of the ordinary member for such period as he considers appropriate, and he may, subject to the other provisions of this Ordinance, from time to time be reappointed.

17. A temporary member appointed by the Chief Executive or the Secretary may at any time resign his office by notice in writing to the Chief Executive or the Secretary (as the case may be).

18. A temporary member appointed by the Chief Executive may be removed from office by the Chief Executive for incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct proved to the satisfaction of the Chief Executive.

19. Where a temporary member appointed by the Secretary ceases to be a panel member, he ceases to be such temporary member.

20. A temporary member who acts in the place of the chairman or an ordinary member

in accordance with an appointment under section 16 shall be deemed for all purposes to be the chairman or the ordinary member (as the case may be) of the Tribunal.

#### Sittings

21. The chairman shall convene such sittings of the Tribunal as are necessary to determine a review.

22. Before convening a sitting under section 21 in respect of a review, the Tribunal may give directions to the parties to the review concerning procedural matters to be complied with by the parties and the time within which the parties are required to comply with such matters.

23. Subject to section 24, at any sitting of the Tribunal---

(a) the chairman and 2 ordinary members shall be present;

(b) the chairman shall preside; and

(c) every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the chairman alone.

24. At any sitting of the Tribunal held in respect of any matter which is determined by the chairman alone as the sole member of the Tribunal under section 34 or 35, the chairman only shall be present, and every question before the Tribunal shall be determined by him.

25. Every sitting of the Tribunal shall be held in public unless the Tribunal, on its own motion or on the application of any of the parties to the review, determines that in the interests of justice a sitting or any part thereof shall not be held in public in which case it may hold the sitting or the part thereof (as the case may be) in private.

26. Where an application is made pursuant to section 25 for a determination that a sitting or any part thereof shall not be held in public, any hearing of the application shall be held in private.

27. The parties to a review shall, at any sitting of the Tribunal relating to the review, be entitled---

(a) to be present in person or, in the case of the Commission or a corporation, through an officer of the Commission or the corporation (as the case may be); and

(b) to be represented by a counsel or a solicitor or, with the leave of the Tribunal, by any other person.

28. In section 27, "sitting" (聆訊) does not include any sitting of the Tribunal which is held solely for the purpose of deliberating on any question before the Tribunal.

29. The chairman shall prepare or cause to be prepared a record of the proceedings at any sitting of the Tribunal, which shall contain such particulars relating to the proceedings as he considers appropriate.

30. The order of proceedings at any sitting of the Tribunal shall be determined by the Tribunal in the manner most appropriate to the circumstances of the case.

Preliminary conferences and consent orders

31. At any time after an application for review has been made, the chairman may--

(a) if he considers it appropriate to do so, after consideration of any material that has been submitted to the Tribunal in relation to the application by the parties to the review; and

(b) if the parties agree,

direct that a conference, to be attended by the parties or their representatives and presided over by the chairman or such ordinary member or other person as he may specify, shall be held.

32. At any time after an application for review has been made, the Tribunal or the chairman may make any order which it or he is entitled to make under any provision of this Ordinance, whether or not the requirements otherwise applicable to the making of the order have been complied with, if---

(a) the parties to the review request, and agree to, the making of the order under this section by the Tribunal or the chairman (as the case may be); and

(b) the parties consent to all of the terms of the order.

33. Notwithstanding Part XI of this Ordinance or any other provisions of this Schedule, where under section 32 the Tribunal or the chairman makes any order, the order shall, for all purposes, be regarded as an order made by the Tribunal or the chairman (as the case may be) under the provision in question in compliance with the requirements otherwise applicable to the making of the order.

Chairman as sole member of Tribunal

34. Where, at any time after an application for review has been made but before any sitting of the Tribunal is held to determine the review, the parties to the review have, by notice in writing served on the Tribunal, informed the Tribunal that they have agreed that the review may be determined by the chairman alone as the sole member of the Tribunal, the chairman may determine the review as the sole member of the Tribunal.

35. Where an application is made to the Tribunal under section 220(1) of this Ordinance for a stay of a specified decision, the chairman may determine the application as the sole member of the Tribunal.

36. Where section 34 or 35 applies, the Tribunal constituted by the chairman as the sole member of the Tribunal shall, for all purposes, be regarded as the Tribunal constituted also by 2 ordinary members.

37. Where---

- (a) there is an application described in section 35;
  - (b) the chairman is precluded by illness, absence from Hong Kong or any other cause from performing his functions, or considers it improper or undesirable that he should perform his functions in relation to the application; and
  - (c) no temporary member is appointed under section 16 to act in the place of the chairman in relation to the application,
- a judge within the meaning of paragraph (a) of the definition of "judge" in section 209 of this Ordinance shall, upon appointment by the Chief Justice for the purpose, determine the application described in section 35 as if he were the chairman duly appointed under this Ordinance, and the provisions of this Ordinance shall apply to him accordingly.

#### Miscellaneous

38. Without limiting the generality of sections 215 and 368 of this Ordinance, the Tribunal and its members, and any party, witness, counsel, solicitor, or any other person involved, in a review, shall have the same privileges and immunities in respect of the review as they would have if the review were civil proceedings before the Court of First Instance.

## PART 2

### Specified Decisions

Item	Provision	Decision subject to review
1.	Section 93(10) of this Ordinance	Requirement to pay costs or expenses.
2.	Section 95(2)(a) or (b) of this Ordinance	Refusal to grant an authorization.
3.	Section 97(1) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
4.	Section 98(1) of this Ordinance	Withdrawal of an authorization.
5.	Section 103(1) of this Ordinance	Refusal to authorize a collective investment scheme, or imposition of any condition.
6.	Section 103(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of a collective investment scheme.
7.	Section 103(3) of this Ordinance	Refusal to approve an individual nominated in respect of a collective investment scheme.
8.	Section 103(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
9.	Section 104(1) of this Ordinance	Refusal to authorize the issue of any advertisement, invitation or document, or imposition of any condition.
10.	Section 104(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of the issue of any advertisement, invitation or document.
11.	Section 104(3) of this Ordinance	Refusal to approve an individual nominated

in respect of the issue of any advertisement, invitation or document.

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|--|---|
| 12. Section 104(4) of this Ordinance       | Amendment or revocation of any condition, or imposition of any new condition.             |
| 13. Section 105(1) of this Ordinance       | Withdrawal of an authorization.   |
| 14. Section 105(3) of this Ordinance       | Refusal to withdraw an authorization upon request.  |
| 15. Section 105(4) of this Ordinance       | Imposition of any condition.  |
| 16. Section 115(1) of this Ordinance       | Refusal to grant a licence.   |
| 17. Section 115(5) of this Ordinance       | Imposition, amendment or revocation of any condition, or imposition of any new condition. |
| 18. Section 116(1) of this Ordinance       | Refusal to grant a licence for a period not exceeding 3 months.                           |
| 19. Section 116(3) of this Ordinance       | Imposition, amendment or revocation of any condition, or imposition of any new condition. |
| 20. Section 119(1) of this Ordinance       | Refusal to grant a licence.   |
| 21. Section 119(5) of this Ordinance       | Imposition of any condition.  |
| 22. Section 119(7) of this Ordinance       | Amendment or revocation of any condition, or imposition of any new condition.             |
| 23. Section 120(1) of this Ordinance       | Refusal to grant a licence for a period not exceeding 3 months.                           |
| 24. Section 120(3) of this Ordinance       | Imposition of any condition.  |
| 25. Section 120(5) of this Ordinance       | Amendment or revocation of any condition, or imposition of any new condition.             |
| 26. Section 121(1) of this Ordinance       | Refusal to approve an accreditation.  |
| 27. Section 121(2) of this Ordinance       | Refusal to approve a transfer of an accreditation.  |
| 28. Section 123(1) of this Ordinance       | Refusal to issue a duplicate licence.   |
| 29. Section 125(1) of this Ordinance       | Refusal to approve a person as a responsible officer.                                     |
| 30. Section 125(3) of this Ordinance       | Imposition, amendment or revocation of any condition, or imposition of any new condition. |
| 31. Section 126(1) of this Ordinance       | Refusal to vary any regulated activity.   |
| 32. Section 129(1) of this Ordinance       | Refusal to approve premises.  |
| 33. Section 130(2) of this Ordinance       | Refusal to approve a person to become a substantial shareholder.                          |
| 34. Section 130(5) of this Ordinance       | Imposition, amendment or revocation of any condition, or imposition of any new condition. |
| 35. Section 131(1)(a), (b), (e), (f), (g), | Refusal to grant a modification or  |

waiver.

(h), (i) or (j) of this Ordinance

36. Section 131(4) of this Ordinance Amendment of a modification or waiver, imposition, amendment or revocation of any condition, or imposition of any new condition.

37. Section 142(2) or (5)(b) of this Ordinance Imposition of any condition.

38. Section 142(5)(a) of this Ordinance Suspension of a licence.

39. Section 142(6) or (7) of this Ordinance Amendment of any condition.

40. Section 143(3)(a) of this Ordinance Suspension of a licence.

41. Section 143(3)(b) of this Ordinance Imposition of any condition.

42. Section 143(4) or (5) of this Ordinance Amendment of any condition.

43. Section 155(1) of this Ordinance Appointment of an auditor.

44. Section 155(4) of this Ordinance Direction to pay any of the costs and expenses of any examination and audit.

45. Section 156(1) of this Ordinance Appointment of an auditor.

46. Section 156(8) of this Ordinance Direction to pay any of the costs and expenses of any examination and audit.

47. Section 187(1)(i), (ii), (iii) or (iv) of Exercise of power to revoke or suspend a

this Ordinance licence or the approval of a person as a responsible officer, to publicly or privately reprimand a person, or to prohibit a person from applying to be licensed or to be approved as a responsible officer.

48. Section 187(2) of this Ordinance Order requiring payment of a pecuniary penalty.

49. Section 188(1)(a), (b), (c) or (d) of this Revocation or suspension of a licence.

Ordinance

50. Section 188(2) of this Ordinance Revocation of a licence.

51. Section 188(7) of this Ordinance Revocation or suspension of the approval of a person as a responsible officer.

52. Section 194(1) of this Ordinance Requirement to transfer records.

53. Section 195(1) of this Ordinance Imposition of any condition.

54. Section 196(1)(a) or (b) of this Ordinance Prohibition or requirement imposed on a licensed corporation concerning transactions, etc.

55. Section 197(a) or (b) of this Ordinance Prohibition or requirement imposed on a licensed corporation concerning property.

56. Section 198(1) of this Ordinance Requirement imposed on a licensed corporation to maintain property.

57. Section 201(1)(b) of this Ordinance Substitution or variation of a prohibition or requirement under section 196, 197 or 198 of this Ordinance.

58. Section 201(1) of this Ordinance Refusal to withdraw, substitute or vary a prohibition or requirement under section 196, 197 or 198 of this Ordinance.

59. Section 300(2) of this Ordinance Refusal to grant an exemption, or imposition of any condition.

60. Section 300(3) of this Ordinance Refusal to grant an exemption, or imposition of any condition.

61. Section 300(4)(a) or (b) of this Ordinance Suspension or withdrawal of an exemption, or amendment of any condition.

62. Section 389 of this Ordinance Imposition of any condition.

63. Section 38A(1) of the Companies Refusal to issue a certificate of exemption,

Ordinance (Cap. 32) or imposition of any condition.

64. Section 342A(1) of the Companies Refusal to issue a certificate of exemption,

Ordinance (Cap. 32) or imposition of any condition.

### PART 3

#### Excluded Decisions

Item	Provision	Decision subject to appeal
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1.	Section 118(1) of this Ordinance	Refusal to grant a declaration of exemption.
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2.	Section 118(5) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
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3.	Section 123(1) of this Ordinance	Refusal to issue a duplicate exemption.
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4.	Section 126(1) of this Ordinance	Refusal to vary any regulated activity.
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5.	Section 131(1)(c), (d) or (j) of this Ordinance	Refusal to grant a modification or waiver.
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Ordinance

6.	Section 131(4) of this Ordinance	Amendment of a modification or waiver, imposition, amendment or revocation of any condition, or imposition of any new condition.
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7.	Section 155(1) of this Ordinance	Appointment of an auditor.
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8.	Section 155(4) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
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9.	Section 156(1) of this Ordinance	Appointment of an auditor.
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10.	Section 156(8) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
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11. Section 190(1)(a), (b), (c), (d) or (e) of Revocation of an exemption.  
this Ordinance
12. Section 194(1) of this Ordinance Requirement to transfer records.
13. Section 195(1) of this Ordinance Imposition of any condition.

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SCHEDULE 8 [ss. 243, 244, 245,  
248 & 260]

Market Misconduct Tribunal

1. In this Schedule, unless the context otherwise requires---  
"chairman" (主席) means the chairman of the Tribunal;  
"judge" (法官) has the meaning assigned to it by section 237(1) of this Ordinance;  
"member" (成員) means a member of the Tribunal;  
"ordinary member" (普通成員) means a member other than the chairman;  
"Presenting Officer" (提控官) has the meaning assigned to it by section 237(1) of this Ordinance;  
"proceedings" (研訊程序) means proceedings instituted under section 244 of this Ordinance;  
"temporary member" (暫委成員) means a temporary member of the Tribunal appointed under section 9;  
"Tribunal" (審裁處) has the meaning assigned to it by section 237(1) of this Ordinance.

Appointment of members

2. The chairman shall be appointed by the Chief Executive on the recommendation of the Chief Justice.
3. Subject to sections 6 to 8, the chairman shall be appointed for a term of 3 years or appointed to act in relation to any specified proceedings, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.
4. The ordinary members shall be appointed by the Chief Executive.
5. Subject to sections 6 to 8, an ordinary member shall be appointed to act in relation to any specified proceedings, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.
6. A member may at any time resign his office by notice in writing to the Chief Executive.
7. A member may be removed from office by the Chief Executive for incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct proved to the satisfaction of the Chief Executive.
8. If any proceedings have been commenced by the Tribunal but not completed before the expiry of the chairman's term of office or before the resignation from or vacation

of office by a member takes effect, the Chief Executive may authorize the chairman or the member (as the case may be) to continue to act as the chairman or a member (as the case may be) of the Tribunal for the purpose of completing the proceedings.

#### Appointment of temporary members

9. Subject to sections 11 and 12, the Chief Executive may appoint a person to act as a temporary member of the Tribunal in the place of any member for any period during which the member is precluded by illness, absence from Hong Kong or any other cause from performing his functions, or considers it improper or undesirable that he should perform his functions in relation to any specified matter, and the person may, subject to the other provisions of this Ordinance, from time to time be reappointed.

10. A temporary member who is appointed to act in the place of the chairman shall be a judge, and a temporary member who is appointed to act in the place of an ordinary member shall not be a person who would be disqualified under section 243(3) of this Ordinance from appointment as such ordinary member.

11. A temporary member appointed to act in the place of a member may at any time resign his office by notice in writing to the Chief Executive.

12. A temporary member appointed to act in the place of a member may be removed from office by the Chief Executive for incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct proved to the satisfaction of the Chief Executive.

13. A temporary member who acts in the place of a member in accordance with an appointment under section 9 shall be deemed for all purposes to be the member.

#### Written statements for institution of proceedings

14. The written statement required to be contained in a notice given by the Financial Secretary to the chairman under section 244(2) of this Ordinance shall specify--

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(a) the provision or provisions of Part XIII of this Ordinance by reference to which any person appears to have perpetrated any conduct which constitutes market misconduct; and

(b) such brief particulars as are sufficient to disclose reasonable information concerning the nature and essential elements of the market misconduct.

15. Where it appears to the Financial Secretary that a person may have perpetrated any conduct which constitutes market misconduct by reference to more than one provision of Part XIII of this Ordinance, the written statement described in section 14 may specify separately or in the alternative the market misconduct by reference to those provisions.

16. Where during the course of any proceedings it appears to the Tribunal that a person, other than a person who appears to have perpetrated any conduct which constitutes market misconduct according to the written statement described in section 14, may

have perpetrated any conduct which constitutes market misconduct by reference to any provision or provisions of Part XIII of this Ordinance, the Tribunal may, on its own motion or on the application of the Presenting Officer appointed for the proceedings---

(a) order the Presenting Officer to provide the Tribunal with a written statement concerning such market misconduct specifying, in relation to the person, the matters referred to in section 14(a) and (b) and, where applicable, the matters referred to in section 15; and

(b) make such additional order as it considers appropriate.

17. The Tribunal may at any time during the course of any proceedings order the Presenting Officer to amend a written statement described in section 14, or provided under section 16, in such manner as it considers appropriate.

18. For the avoidance of doubt, the Tribunal may identify pursuant to section 244(3)(b) of this Ordinance a person as having engaged in market misconduct by reason of any conduct referred to in a written statement provided under section 16, or a written statement as amended under section 17, in the same manner as it may so identify a person as having engaged in market misconduct by reason of any conduct referred to in a written statement described in section 14.

19. Any person in relation to whom a written statement described in section 14, or provided under section 16, specifies the matters required under such section shall be provided with a copy of the written statement and, where the written statement is amended under section 17, of the written statement as so amended, in such manner as the Tribunal may direct.

Presenting Officer

20. Without prejudice to any powers and functions of a Presenting Officer under Part XIII of this Ordinance, a Presenting Officer shall, in respect of the proceedings for which he is appointed, present to the Tribunal such available evidence, including any evidence which the Tribunal requests him to present to it, as shall enable the Tribunal to reach an informed decision as to whether market misconduct has taken place and, if so, the nature of the market misconduct.

21. The Secretary for Justice may at any time replace a Presenting Officer or any person appointed to assist a Presenting Officer.

Sittings

22. The chairman shall convene such sittings of the Tribunal as are necessary to hear and determine any question or issue arising out of or in connection with the proceedings.

23. Subject to section 24, at any sitting of the Tribunal---

(a) the chairman and 2 ordinary members shall be present;

(b) the chairman shall preside; and

(c) every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the chairman alone.

24. At any sitting of the Tribunal held in respect of any matter which is determined by the chairman alone as the sole member of the Tribunal under section 34, the chairman only shall be present, and every question before the Tribunal shall be determined by him.

25. Every sitting of the Tribunal shall be held in public unless the Tribunal, on its own motion or on the application of the Presenting Officer appointed for the proceedings or of any person whose conduct is the subject, whether wholly or in part, of the proceedings, or who is implicated or concerned in the subject matter of the proceedings, determines that in the interests of justice a sitting or any part thereof shall not be held in public in which case it may hold the sitting or the part thereof (as the case may be) in private.

26. Where an application is made pursuant to section 25 for a determination that a sitting or any part thereof shall not be held in public, any hearing of the application shall be held in private.

27. A person whose conduct is the subject, whether wholly or in part, of any proceedings, or who is implicated or concerned in the subject matter of any proceedings, shall, at any sitting of the Tribunal relating to the proceedings, be entitled---

(a) to be present in person or, in the case of a corporation, through an officer of the corporation; and

(b) to be represented by a counsel or a solicitor or, with the leave of the Tribunal, by any other person.

28. For the purposes of sections 25 and 27, the Tribunal shall determine---

(a) whether the conduct of any person is the subject, whether wholly or in part, of any proceedings;

(b) whether any person is implicated or concerned in the subject matter of any proceedings.

29. In section 27, "sitting" (聆訊) does not include any sitting of the Tribunal which is held solely for the purpose of deliberating on any question before the Tribunal.

30. The chairman shall prepare or cause to be prepared a record of the proceedings at any sitting of the Tribunal, which shall contain such particulars relating to the proceedings as he considers appropriate.

Preliminary conferences and consent orders

31. At any time after any proceedings have been instituted under section 244 of this

Ordinance, the chairman may---

(a) if he considers it appropriate to do so, after consideration of any material that has been submitted to the Tribunal in relation to the proceedings by the parties to the proceedings; and

(b) if the parties agree,

direct that a conference, to be attended by the parties or their representatives and presided over by the chairman or such ordinary member or other person as he may specify, shall be held.

32. At any time after any proceedings have been instituted under section 244 of this Ordinance, the Tribunal or the chairman may make any order which it or he is entitled to make under any provision of this Ordinance, whether or not the requirements otherwise applicable to the making of the order have been complied with, if---

(a) the parties to the proceedings request, and agree to, the making of the order under this section by the Tribunal or the chairman (as the case may be); and

(b) the parties consent to all of the terms of the order.

33. Notwithstanding Part XIII of this Ordinance or any other provisions of this Schedule, where under section 32 the Tribunal or the chairman makes any order, the order shall, for all purposes, be regarded as an order made by the Tribunal or the chairman (as the case may be) under the provision in question in compliance with the requirements otherwise applicable to the making of the order.

Chairman as sole member of Tribunal

34. Where, at any time after any proceedings have been instituted under section 244 of this Ordinance but before any sitting of the Tribunal is held to hear and determine any question or issue arising out of or in connection with the proceedings, the parties to the proceedings have, by notice in writing served on the Tribunal, informed the Tribunal that they have agreed that any such question or issue may be determined by the chairman alone as the sole member of the Tribunal, the chairman may determine the question or issue as the sole member of the Tribunal.

35. Where section 34 applies, the Tribunal constituted by the chairman as the sole member of the Tribunal shall, for all purposes, be regarded as the Tribunal constituted also by 2 ordinary members.

Miscellaneous

36. Without limiting the generality of sections 248 and 368 of this Ordinance, the Tribunal and its members, any Presenting Officer, and any party, witness, counsel, solicitor, or any other person involved, in any proceedings, shall have the same privileges and immunities in respect of the proceedings as they would have if the proceedings were civil proceedings before the Court of First Instance.

SCHEDULE 9 [ss. 230, 232, 234,  
392, 393, 394  
& 395]

Savings, Transitional, Consequential and  
Related Provisions, etc.

PART 1

Savings, Transitional and Supplemental Arrangements

Interpretation of Part 1

1. In this Part, a heading to any provision of this Part shall not have legislative effect and shall not in any way vary, limit or extend the interpretation of any provision of this Part.

Part II of this Ordinance (Securities and  
Futures Commission)

2. Without prejudice to section 3 of this Ordinance---

(a) anything done under or by virtue of the repealed Securities and Futures Commission Ordinance before the commencement of Part II of this Ordinance by or in relation to the Commission and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of any provision in that Part, continue to have effect upon such commencement as if it had been done under or by virtue of that provision;

(b) anything which immediately before the commencement of Part II of this Ordinance is in the process of being done under or by virtue of the repealed Securities and Futures Commission Ordinance by or in relation to the Commission may, in so far as it could upon such commencement have been done under or by virtue of any provision in that Part, be continued upon such commencement under or by virtue of that provision;

(c) any person holding office as the chairman or deputy chairman, or as an executive director or non-executive director, of the Commission immediately before the commencement of Part II of this Ordinance shall upon such commencement continue to hold, on the same terms and conditions as were applicable had this Ordinance not been enacted, the corresponding office under this Ordinance as if he had been appointed on such terms and conditions in accordance with the provisions regarding appointment to such corresponding office under that Part and Schedule 2 to this Ordinance;

(d) the Advisory Committee constituted under section 10 of the repealed Securities and Futures Commission Ordinance immediately before the commencement of Part II of this Ordinance shall upon such commencement continue in existence as if it had been constituted under section 7 of and Schedule 2 to this Ordinance;

(e) any committee which has been established under section 6 of the repealed Securities and Futures Commission Ordinance and which is in existence immediately before the commencement of Part II of this Ordinance shall upon such commencement continue in existence as if it had been established under section 8 of this Ordinance;

(f) any person holding office as a member of the Advisory Committee referred to in paragraph (d), or as a member of a committee referred to in paragraph (e), immediately before the commencement of Part II of this Ordinance shall upon such commencement continue to hold, on the same terms and conditions as were applicable had this Ordinance not been enacted, the corresponding office under this Ordinance as if he had been appointed on such terms and conditions in accordance with the provisions regarding appointment to such corresponding office under that Part and Schedule 2 to this Ordinance;

(g) any person employed or engaged in any office, other than that referred to in paragraph (c) or (f), by the Commission under or pursuant to any provision of the repealed Securities and Futures Commission Ordinance immediately before the commencement of Part II of this Ordinance shall upon such commencement continue to be so employed or engaged in the same office, on the same terms and conditions as were applicable had this Ordinance not been enacted, as if he had been employed or engaged under or pursuant to that Part on such terms and conditions.

Part III of this Ordinance (Exchanges, Clearing Houses and Investor Compensation Companies)

3. In sections 6 and 9---

"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;

"SECH" (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.

4. In sections 10 and 13---

"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.

5. On the commencement of Division 2 of Part III of this Ordinance---

(a) the Stock Exchange Company and the Futures Exchange Company shall each be deemed to be a recognized exchange company as if, upon such commencement, each of them had

been served a notice under section 19(2) of this Ordinance recognizing it as an exchange company, and the other provisions of this Ordinance (including sections 19(3) and 28) shall apply accordingly with all necessary modifications;

(b) the rules of---

(i) the Stock Exchange Company made under section 34 (except subsection (1)(b)) of the repealed Stock Exchanges Unification Ordinance and approved under section 35 of that Ordinance; and

(ii) the Futures Exchange Company approved under section 14 of the repealed Commodities Trading Ordinance,

which are in effect immediately before such commencement shall upon such commencement continue to have effect as if they were rules made under section 23 of this Ordinance and approved under section 24(3) of this Ordinance;

(c) the respective constitutions of the Stock Exchange Company and the Futures Exchange Company, which are in effect immediately before such commencement shall upon such commencement continue to have effect as if each of them had been approved under section 24 of this Ordinance; and

(d) any appointment of a person as chief executive of the Stock Exchange Company or the Futures Exchange Company which is in effect immediately before such commencement shall upon such commencement continue to have effect, on the same terms and conditions as were applicable had this Ordinance not been enacted, as if the appointment had been approved under section 26 of this Ordinance.

6. On the commencement of Division 3 of Part III of this Ordinance, the HKSCC, HKFECC and SEOCH shall each be deemed to be a recognized clearing house as if, upon such commencement, each of them had been served a notice under section 37(1) of this Ordinance recognizing it as a clearing house, and the other provisions of this Ordinance (including sections 37(2) and 43) shall apply accordingly with all necessary modifications.

7. Anything done under or by virtue of the repealed Securities and Futures (Clearing Houses) Ordinance before the commencement of Division 3 of Part III of this Ordinance and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, continue to have effect upon such commencement as if it had been done under or by virtue of that provision.

8. Anything which immediately before the commencement of Division 3 of Part III of this Ordinance is in the process of being done under or by virtue of the repealed Securities and Futures (Clearing Houses) Ordinance may, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, be continued upon such commencement under or by virtue of that provision.



9. Without limiting the generality of section 7---

(a) a notice which is published under section 4(4) of the repealed Securities and Futures (Clearing Houses) Ordinance and which is in effect immediately before the commencement of Division 3 of Part III of this Ordinance shall upon such commencement continue to have effect as if it had been published under section 41(7) of this Ordinance; and

(b) the rules of the HKSCC, HKFECC and SEOCH which---

(i) have been approved under section 4(7) of the repealed Securities and Futures (Clearing Houses) Ordinance; or

(ii) have been submitted or cause to be submitted under section 4(5) of that Ordinance,

and which are in effect immediately before the commencement of Division 3 of Part III of this Ordinance shall upon such commencement continue to have effect as if---

(A) in the case of subparagraph (i), they were rules approved under section 41(3) of this Ordinance; or

(B) in the case of subparagraph (ii), they were rules submitted or caused to be submitted under section 41(2)(b) of this Ordinance.

10. On the commencement of Division 4 of Part III of this Ordinance, the HKEC which is deemed to be a recognized exchange controller under section 19 of the repealed Exchanges and Clearing Houses (Merger) Ordinance shall upon such commencement continue to be so deemed as if it had been served a notice under section 59(2) of this Ordinance recognizing it as an exchange controller, and the other provisions of this Ordinance (including sections 59(3) and 72) shall apply accordingly with all necessary modifications.

11. Anything done under or by virtue of the repealed Exchanges and Clearing Houses (Merger) Ordinance before the commencement of Division 4 of Part III of this Ordinance and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, continue to have effect upon such commencement as if it had been done under or by virtue of that provision.

12. Anything which immediately before the commencement of Division 4 of Part III of this Ordinance is in the process of being done under or by virtue of the repealed Exchanges and Clearing Houses (Merger) Ordinance may, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, be continued upon such commencement under or by virtue of that provision.

13. Without limiting the generality of section 11---

(a) a notice which is published under section 10(6) of the repealed Exchanges and Clearing Houses (Merger) Ordinance and which is in effect immediately before the

commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect as if it had been published under section 67(7) of this Ordinance;

(b) the rules of the HKEC which have been approved under section 10(3) of the repealed Exchanges and Clearing Houses (Merger) Ordinance and which are in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect as if they were rules approved under section 67(3) of this Ordinance;

(c) any approval which is given under section 6(2) of the repealed Exchanges and Clearing Houses (Merger) Ordinance and which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect as if the approval had been given under section 61(1) of this Ordinance;

(d) any appointment of a person as chairman, chief executive or chief operating officer of a recognized exchange controller which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect, on the same terms and conditions as were applicable had this Ordinance not been enacted, as if the appointment had been approved under section 69 or 70 (as the case may be) of this Ordinance; and

(e) the Risk Management Committee established under section 9 of the repealed Exchanges and Clearing Houses (Merger) Ordinance shall upon the commencement of Division 4 of Part III of this Ordinance continue in existence as if it had been established under section 65 of this Ordinance.

14. Anything done under or by virtue of---

(a) section 50 of the repealed Securities and Futures Commission Ordinance before the commencement of section 92 of this Ordinance; or

(b) section 51 of the repealed Securities and Futures Commission Ordinance before the commencement of section 93 of this Ordinance,

and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of section 92 or 93 of this Ordinance, continue to have effect upon such commencement as if it had been done under or by virtue of that section 92 or 93 (as the case may be).

15. Anything which immediately before the commencement of---

(a) section 92 of this Ordinance is in the process of being done under or by virtue of section 50 of the repealed Securities and Futures Commission Ordinance; or

(b) section 93 of this Ordinance is in the process of being done under or by virtue of section 51 of the repealed Securities and Futures Commission Ordinance,

may, in so far as it could upon such commencement have been done under or by virtue

of section 92 or 93 of this Ordinance, be continued upon such commencement under or by virtue of that section 92 or 93 (as the case may be).

Part IV of this Ordinance (Offers of investments)

16. Subject to sections 18 and 19---

(a) any corporation or arrangement that is immediately before the commencement of Part IV of this Ordinance authorized under section 15 of the repealed Securities Ordinance as a mutual fund corporation or a unit trust; or

(b) any matter in respect of which the issue of an advertisement, invitation or document is immediately before the commencement of Part IV of this Ordinance authorized pursuant to section 4(2)(g) of the repealed Protection of Investors Ordinance,

shall, where its name appears in a list published by the Commission for the purposes of this section on the date of commencement of Part IV of this Ordinance, upon such commencement be regarded as authorized under section 103 of this Ordinance as a collective investment scheme, subject to the same conditions as were applicable had this Ordinance not been enacted.

17. Subject to sections 18 and 19, the issue of an advertisement, invitation or document that is immediately before the commencement of Part IV of this Ordinance authorized pursuant to section 4(2)(g) of the repealed Protection of Investors Ordinance shall upon such commencement be regarded as authorized under section 104 of this Ordinance, subject to the same conditions as were applicable had this Ordinance not been enacted.

18. Where no individual has been nominated pursuant to section 103(3) or 104(3) of this Ordinance before the expiration of 6 months from the commencement of Part IV of this Ordinance, any authorization otherwise having effect by virtue of section 16 or 17 shall thereupon cease to have effect.

19. Where an individual has been nominated pursuant to section 103(3) or 104(3) of this Ordinance before the expiration of 6 months from the commencement of Part IV of this Ordinance, any authorization otherwise having effect by virtue of section 16 or 17 shall continue to have effect until the Commission decides otherwise.

20. Where an application for---

(a) authorization of any corporation or arrangement under section 15 of the repealed Securities Ordinance as a mutual fund corporation or a unit trust; or

(b) authorization of the issue of an advertisement, invitation or document pursuant to section 4(2)(g) of the repealed Protection of Investors Ordinance,

has been made before the commencement of Part IV of this Ordinance but has not been finally determined by the Commission before such commencement, the application shall upon such commencement be regarded as---

(i) in the case of paragraph (a), an application for authorization of a collective investment scheme under section 103 of this Ordinance; or

(ii) in the case of paragraph (b), an application for authorization of a collective investment scheme under section 103 of this Ordinance, or an application for authorization of the issue of an advertisement, invitation or document under section 104 of this Ordinance, as the Commission considers appropriate.

21. A list published pursuant to section 16 is not subsidiary legislation.

Part V of this Ordinance (Licensing and Exemption)

Corporations other than exempt dealers

and exempt investment advisers

22. Subject to section 54, a corporation which immediately before the commencement of Part V of this Ordinance is---

(a) registered under the repealed Securities Ordinance as a dealer shall, upon such commencement, be regarded as licensed under section 115(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;

(b) registered under the repealed Securities Ordinance as an investment adviser shall, upon such commencement, be regarded as licensed under section 115(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;

(c) registered under the repealed Securities Ordinance as a securities margin financier shall, upon such commencement, be regarded as licensed under section 115(1) of this Ordinance for Type 8 regulated activity;

(d) registered under the repealed Commodities Trading Ordinance as a dealer shall, upon such commencement, be regarded as licensed under section 115(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities;

(e) registered under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be regarded as licensed under section 115(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities;

(f) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a leveraged foreign exchange trader shall, upon such commencement, be regarded as licensed under section 115(1) of this Ordinance for Type 3 regulated activity, and as having complied with the requirement of section 124(1)(a) and (b) of this Ordinance, and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

23. Subject to section 54, where a corporation is regarded under section 22 as

licensed, any director of that corporation who is an individual and immediately before the commencement of Part V of this Ordinance is---

(a) registered under the repealed Securities Ordinance as a dealer of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that corporation;

(b) registered under the repealed Securities Ordinance as an investment adviser of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that corporation;

(c) registered under the repealed Securities Ordinance as a securities margin financier's representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 8 regulated activity and as accredited to that corporation;

(d) registered under the repealed Commodities Trading Ordinance as a dealer of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that corporation;

(e) registered under the repealed Commodities Trading Ordinance as a commodity trading adviser of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that corporation;

(f) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 3 regulated activity and as accredited to that corporation,

and as approved under section 125(1) of this Ordinance as a responsible officer of that corporation, and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

24. Subject to section 54, where a corporation is regarded under section 22 as licensed, any individual not being a director of that corporation who immediately before the commencement of Part V of this Ordinance is---

(a) registered under the repealed Securities Ordinance as a dealer's representative of that corporation shall, upon such commencement, be regarded as licensed as a

licensed representative under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that corporation;

(b) registered under the repealed Securities Ordinance as an investment representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that corporation;

(c) registered under the repealed Securities Ordinance as a securities margin financier's representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 8 regulated activity and as accredited to that corporation;

(d) registered under the repealed Commodities Trading Ordinance as a dealer's representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that corporation;

(e) registered under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that corporation;

(f) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 3 regulated activity and as accredited to that corporation,

and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

Persons who are exempt dealers or  
exempt investment advisers

25. Subject to section 54---

(a) an authorized financial institution which immediately before the commencement of Part V of this Ordinance is---

(i) an exempt dealer within the meaning of the repealed Securities Ordinance shall, upon such commencement, be regarded as exempt under section 118(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;

(ii) an exempt investment adviser within the meaning of the repealed

Securities Ordinance shall, upon such commencement, be regarded as exempt under section 118(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities,

and, subject to section 52, shall be so regarded for a period of 2 years from such commencement;

(b) a corporation (other than an authorized financial institution), partnership or individual who immediately before the commencement of Part V of this Ordinance is---

(i) an exempt dealer within the meaning of the repealed Securities Ordinance shall, upon such commencement, be regarded as a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;

(ii) an exempt investment adviser within the meaning of the repealed Securities Ordinance shall, upon such commencement, be regarded as a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities,

and, subject to section 52, shall be so regarded for a period of 2 years from such commencement, and for so long as such corporation, partnership or individual is so regarded, the requirement of section 124(1)(a) and (b) of this Ordinance shall not apply to it.

26. An individual who immediately before the commencement of Part V of this Ordinance is employed by an exempt dealer or exempt investment adviser within the meaning of the repealed Securities Ordinance to perform any act which, after such commencement, would constitute a regulated function in relation to a regulated activity shall, upon such commencement, be regarded as---

(a) where the employer is an authorized financial institution and is regarded under section 25(a) as exempt for that regulated activity, a person whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as employed by the employer in respect of that regulated activity;

(b) where the employer is not an authorized financial institution and is regarded under section 25(b) as licensed for that regulated activity, licensed as a licensed representative under section 119(1) of this Ordinance for that regulated activity (subject to the condition specified in section 50) and as accredited to the employer, and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

#### Partnerships

27. Subject to section 54, a partnership which immediately before the commencement of Part V of this Ordinance is registered---

(a) under the repealed Securities Ordinance as a dealer shall, upon such commencement, be regarded as a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;

(b) under the repealed Securities Ordinance as an investment adviser shall, upon such commencement, be regarded as a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;

(c) under the repealed Commodities Trading Ordinance as a dealer shall, upon such commencement, be regarded as a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities;

(d) under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be regarded as a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities,

and as having complied with the requirement of section 124(1)(a) and (b) of this Ordinance, and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

28. Subject to section 54, where a partnership is regarded under section 27 as a licensed corporation, any partner of that partnership who immediately before the commencement of Part V of this Ordinance is registered---

(a) under the repealed Securities Ordinance as a dealer of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that licensed corporation;

(b) under the repealed Securities Ordinance as an investment adviser of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that licensed corporation;

(c) under the repealed Commodities Trading Ordinance as a dealer of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that licensed corporation;

(d) under the repealed Commodities Trading Ordinance as a commodity trading adviser



of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that licensed corporation, and as approved under section 125(1) of this Ordinance as a responsible officer of that licensed corporation, and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

29. Subject to section 54, where a partnership is regarded under section 27 as a licensed corporation, any individual who immediately before the commencement of Part V of this Ordinance is registered---

(a) under the repealed Securities Ordinance as a dealer's representative of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that licensed corporation;

(b) under the repealed Securities Ordinance as an investment representative of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that licensed corporation;

(c) under the repealed Commodities Trading Ordinance as a dealer's representative of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that licensed corporation;

(d) under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that licensed corporation, and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

Sole-proprietorships

30. Subject to section 54, an individual who immediately before the commencement of Part V of this Ordinance is registered---

(a) under the repealed Securities Ordinance as a dealer shall, upon such commencement, be regarded as---

(i) a licensed corporation that is licensed under section 115(1) of this

Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;

(ii) licensed as a licensed representative under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that licensed corporation; and

(iii) approved under section 125(1) of this Ordinance as a responsible officer of that licensed corporation;

(b) under the repealed Securities Ordinance as an investment adviser shall, upon such commencement, be regarded as---

(i) a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities;

(ii) licensed as a licensed representative under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that licensed corporation; and

(iii) approved under section 125(1) of this Ordinance as a responsible officer of that licensed corporation;

(c) under the repealed Commodities Trading Ordinance as a dealer shall, upon such commencement, be regarded as---

(i) a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities;

(ii) licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that licensed corporation; and

(iii) approved under section 125(1) of this Ordinance as a responsible officer of that licensed corporation;

(d) under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be regarded as---

(i) a licensed corporation that is licensed under section 115(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities;

(ii) licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that licensed corporation; and

(iii) approved under section 125(1) of this Ordinance as a responsible officer of that licensed corporation,

and as having complied with the requirement of section 124(1)(a) and (b) of this

Ordinance, and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

31. Subject to section 54, where an individual is regarded under section 30 as a licensed corporation, any other individual who immediately before the commencement of Part V of this Ordinance is registered---

(a) under the repealed Securities Ordinance as a dealer's representative of the first-mentioned individual shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that licensed corporation;

(b) under the repealed Securities Ordinance as an investment representative of the first-mentioned individual shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities and as accredited to that licensed corporation;

(c) under the repealed Commodities Trading Ordinance as a dealer's representative of the first-mentioned individual shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that licensed corporation;

(d) under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of the first-mentioned individual shall, upon such commencement, be regarded as licensed as a licensed representative under section 119(1) of this Ordinance for Type 5 and (subject to the condition specified in section 51) Type 9 regulated activities and as accredited to that licensed corporation,

and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

Licensed banks

32. Where immediately before the commencement of Part V of this Ordinance, a licensed bank would have fallen within the meaning of the definition of "investment adviser" in section 2(1) of the repealed Securities Ordinance but for paragraph (i) of that definition, it shall, upon such commencement, be regarded as exempt under section 118(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 50) Type 9 regulated activities, and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

33. An individual who immediately before the commencement of Part V of this Ordinance is employed by a licensed bank to perform any act which, after such commencement, would constitute a regulated function in relation to a regulated activity shall, upon

such commencement, be regarded as a person whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as employed by the employer in respect of that regulated activity, and, subject to section 52, shall be so regarded for a period of 2 years from such commencement.

Persons providing automated trading services

34. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in providing automated trading services, and the person is---

- (a) a corporation to which section 22(a) or (d) or 25(b)(i) applies;
- (b) a partnership to which section 25(b)(i) or 27(a) or (c) applies; or
- (c) an individual to whom section 25(b)(i) or 30(a) or (c) applies,

then in relation to the person, any of those sections that applies to the person as such corporation, partnership or individual (as the case may be) shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which the person is regarded as licensed (in its capacity as a licensed corporation by virtue of that section), and the provisions of sections 22 to 59 shall be construed accordingly.

35. Where section 34 is applicable to a corporation, partnership or individual ("the first-mentioned individual"), then in relation to---

- (a) a director of the corporation to whom section 23(a) or (d) applies;
- (b) an individual (not being a director) of the corporation to whom section 24(a) or (d) applies;
- (c) a partner of the partnership to whom section 28(a) or (c) applies;
- (d) an individual (not being a partner) of the partnership to whom section 29(a) or (c) applies;
- (e) the first-mentioned individual, to whom section 30(a)(ii) and (iii) or (c)(ii) and (iii) applies;
- (f) an individual to whom section 31(a) or (c) applies in relation to the first-mentioned individual; or
- (g) an individual to whom section 26(b) applies in relation to the corporation, partnership or first-mentioned individual,

any of those sections that applies to such director, partner or individual (including the first-mentioned individual) (as the case may be) shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which such director, partner or individual is regarded as licensed (in his capacity as a licensed representative by virtue of that section) or approved (in his capacity as a responsible officer by virtue of that section) and the provisions of sections 22 to 59 shall be construed accordingly.

36. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in providing automated trading services, and the person is an authorized financial institution to which section 25(a)(i) applies, then in relation to the institution, that section shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which the institution is regarded as exempt and the provisions of sections 22 to 59 shall be construed accordingly.

37. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in providing automated trading services and none of sections 34, 35 and 36 is applicable in relation to the person, then the person may continue carrying on the business for a period of 6 months from such commencement, and for such continuation of the business, this Ordinance shall not apply to---

(a) the person; and

(b) any individual employed by the person to perform any act in providing automated trading services in the business,  
until the expiration of that period.

Persons dealing in certain interests  
in collective investment scheme

38. For the purposes of sections 39, 40, 41, 42, 43 and 44, "excluded interests" (豁除權益) means interests in an collective investment scheme, where such interest does not fall within the meaning of "securities" as defined in section 2(1) of the repealed Securities Ordinance.

39. Where immediately before the commencement of Part V of this Ordinance, a person---

(a) is carrying on a business in dealing in excluded interests; and

(b) is registered under the repealed Commodities Trading Ordinance as a dealer, other than as such dealer in the capacity of---

(i) a director of a corporation; or

(ii) a partner of a partnership,

that is registered as such dealer,

then the person may continue carrying on the business referred to in paragraph (a) for a period of 2 years from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to the person until the expiration of that period.

40. Where section 39 is applicable to a person, and immediately before the commencement of

Part V of this Ordinance---

(a) (if the person is a corporation) a director of the person is registered as a dealer;

(b) (if the person is a partnership) a partner of the person is registered as a dealer;  
(c) an individual is registered as a dealer's representative,  
of the person under the repealed Commodities Trading Ordinance, then the director,  
partner or individual may deal in excluded interests in the business carried on by  
the person for a period of 2 years from such commencement, and solely for the purposes  
of dealing in excluded interests in such business, this Ordinance shall not apply  
to such director, partner or individual until the expiration of that period.

41. Where immediately before the commencement of Part V of this Ordinance, a person  
is carrying on a business in dealing in excluded interests, and neither section 39  
nor 40 is applicable to the person, then the person may continue carrying on the  
business in dealing in excluded interests for a period of 6 months from such  
commencement, and solely for the purposes of the continuation of such business, this  
Ordinance shall not apply to---

(a) the person; and

(b) any individual employed in the business by the person to deal in excluded  
interests,

until the expiration of that period.

Persons advising on certain interests  
in collective investment scheme

42. Where immediately before the commencement of Part V of this Ordinance, a person---

(a) is carrying on a business in advising on excluded interests (as defined in section  
38); and

(b) is registered under the repealed Commodities Trading Ordinance as a commodity  
trading adviser, other than as such adviser in the capacity of---

(i) a director of a corporation; or

(ii) a partner of a partnership,

that is registered as such adviser,

then the person may continue carrying on the business referred to in paragraph (a)  
for a period of 2 years from such commencement, and solely for the purposes of the  
continuation of such business, this Ordinance shall not apply to the person until  
the expiration of that period.

43. Where section 42 is applicable to a person, and immediately before the  
commencement of Part V of this Ordinance---

(a) (if the person is a corporation) a director of the person is registered as a  
commodity trading adviser;

(b) (if the person is a partnership) a partner of the person is registered as a  
commodity trading adviser;

(c) an individual is registered as a commodity trading adviser's representative,

of the person under the repealed Commodities Trading Ordinance, then the director, partner or individual may advise on excluded interests in the business carried on by the person for a period of 2 years from such commencement, and solely for the purposes of advising on excluded interests in such business, this Ordinance shall not apply to such director, partner or individual until the expiration of that period.

44. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in advising on excluded interests, and neither section 42 nor 43 is applicable to the person, then the person may continue carrying on the business in advising on excluded interests for a period of 6 months from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to---

(a) the person; and

(b) any individual employed in the business by the person to advise on excluded interests,

until the expiration of that period.

Persons dealing in futures contracts solely with persons outside Hong Kong

45. For the purposes of sections 46, 47, 48 and 49, "excluded clients" (豁除客戶) means persons outside Hong Kong.

46. Where immediately before the commencement of Part V of this Ordinance, a person---

(a) is carrying on a business which does not fall within the meaning of "trading in commodity futures contracts", as defined in section 2(1) of the repealed Commodities Trading Ordinance, solely because the person while engaging in such trading only deals with excluded clients; and

(b) (i) is registered under the repealed Securities Ordinance as a dealer, other than as such dealer in the capacity of---

(A) a director of a corporation; or

(B) a partner of a partnership,

that is registered as such dealer; or

(ii) is declared under the repealed Securities Ordinance as an exempt dealer, then the person may continue carrying on the business referred to in paragraph (a) for a period of 2 years from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to the person until the expiration of that period.

47. Where section 46 is applicable to a person who falls within the description of section 46(b)(i), and immediately before the commencement of Part V of this Ordinance---

(a) (if the person is a corporation) a director of the person is registered as a

dealer;

(b) (if the person is a partnership) a partner of the person is registered as a dealer;

(c) an individual is registered as a dealer's representative,

of the person under the repealed Securities Ordinance, then the director, partner or individual may deal in futures contracts solely with excluded clients in the business carried on by the person for a period of 2 years from such commencement, and solely for the purposes of dealing in futures contracts solely with excluded clients in such business, this Ordinance shall not apply to the director, partner or individual until the expiration of that period.

48. Where section 46 is applicable to a person who falls within the description of section 46(b)(ii), and immediately before the commencement of Part V of this Ordinance, an individual is employed by the person to deal solely with excluded clients in the person's business referred to in section 46(a), then the individual may deal in futures contracts solely with excluded clients in such business for a period of 2 years from such commencement, and solely for the purposes of dealing in futures contracts solely with excluded clients in such business, this Ordinance shall not apply to the person until the expiration of that period.

49. Where immediately before the commencement of Part V of this Ordinance, a person---

(a) is carrying on a business which does not fall within the meaning of "trading in commodity futures contracts", as defined in section 2(1) of the repealed Commodities Trading Ordinance, solely because the person while engaging in such trading only deals with excluded clients; and

(b) none of sections 46, 47 and 48 is applicable to the person,

then the person may continue carrying on the business referred to in paragraph (a) for a period of 6 months from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to---

(i) the person; and

(ii) any individual employed in the business by the person to deal in futures contracts solely with excluded clients, until the expiration of that period.

Deemed condition for Type 9 regulated activity

50. Where a person is---

(a) immediately before the commencement of Part V of this Ordinance---

(i) registered under the repealed Securities Ordinance as a dealer, investment adviser, dealer's representative or investment representative;

(ii) declared under the repealed Securities Ordinance as an exempt dealer or an exempt investment adviser; or

(iii) a licensed bank referred to in section 32; and



(b) regarded under section 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 or 32 as licensed or exempt for Type 9 regulated activity under Part V of this Ordinance, then without prejudice to section 54, such licence or exemption referred to in paragraph (b) shall be subject to a condition that the person shall not provide a service of managing a portfolio of futures contracts for another person.

51. Where a person is---

(a) immediately before the commencement of Part V of this Ordinance registered under the repealed Commodities Trading Ordinance as a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative; and

(b) regarded under section 22, 23, 24, 27, 28, 29, 30 or 31 as licensed for Type 9 regulated activity under Part V of this Ordinance, then without prejudice to section 54, such licence referred to in paragraph (b) shall be subject to a condition that the person shall not provide a service of managing a portfolio of securities for another person.

Further provisions on transitional period

52. (1) Where, within 2 years from the commencement of Part V of this Ordinance--

(a) a corporation regarded under section 22 or 25(b) as licensed for a regulated activity applies to be licensed for that regulated activity under section 115(1) of this Ordinance, then without prejudice to subsection (3)(C), it shall continue to be regarded---

(i) as so licensed; and

(ii) (in the case of a corporation regarded under section 22 as licensed) as having complied with the requirement of section 124(1)(a) and (b) of this Ordinance in relation to that regulated activity,

until the notice in writing of the Commission's final decision of that application has been served on the applicant;

(b) a company, or an overseas company that has complied with the provisions of Part XI of the Companies Ordinance (Cap. 32) for the registration of documents, applies to be licensed under section 115(1) of this Ordinance for a regulated activity and---

(i) all the partners of a partnership regarded under section 25(b) or 27 as licensed for that regulated activity are shareholders of the applicant;

(ii) the collective shareholdings of such partners would have made them a majority shareholder of the applicant if they were one single shareholder of the applicant; and

(iii) the applicant satisfies the Commission that---

(A) it is incorporated for the purposes of taking over the business carried on by that partnership in that regulated activity; and

(B) sufficient arrangements have been or will be made to effect the transfer of such business from that partnership to the applicant,

then without prejudice to subsection (3)(C), that partnership shall continue to be regarded---

(A) as so licensed; and

(B) (in the case of a partnership regarded under section 27 as licensed) as having complied with the requirement of section 124(1)(a) and (b) of this Ordinance in relation to that regulated activity,

until the notice in writing of the Commission's final decision of that application has been served on the applicant;

(c) a company, or an overseas company that has complied with the provisions of Part XI of the Companies Ordinance (Cap. 32) for the registration of documents, applies to be licensed under section 115(1) of this Ordinance for a regulated activity and---

(i) an individual regarded under section 25(b) or 30 as licensed for that regulated activity is a majority shareholder of the applicant; and

(ii) the applicant satisfies the Commission that---

(A) it is incorporated for the purposes of taking over the business carried on by that individual in that regulated activity; and

(B) sufficient arrangements have been or will be made to effect the transfer of such business from that individual to the applicant,

then without prejudice to subsection (3)(C), that individual shall continue to be regarded---

(A) as so licensed;

(B) (in the case of an individual regarded under section 30 as licensed) as having complied with the requirement of section 124(1)(a) and (b) of this Ordinance in relation to that regulated activity; and

(C) (in the case of an individual regarded under section 30 as licensed) as having been approved under section 125(1) of this Ordinance as a responsible officer in relation to that licensed corporation,

until the notice in writing of the Commission's final decision of that application has been served on the applicant;

(d) a director regarded under section 23, or a partner regarded under section 28, as---

(i) licensed for a regulated activity and as accredited to a corporation; and

(ii) approved as a responsible officer of that corporation,

applies to be licensed for the regulated activity under section 119(1) of this Ordinance, he shall, subject to subsection (6), continue to be so regarded---

(A) until the notice in writing of the Commission's final decision of that application

has been served on him; or

(B) where the application is refused, until the expiration of 21 days after the notice in writing of the Commission's final decision of that application has been served on him or (if an application is made under section 211 of this Ordinance for review of that decision) the determination of the review;

(e) an individual regarded under section 24, 26(b), 29 or 31 as licensed for a regulated activity and accredited to a corporation applies to be licensed for the regulated activity under section 119(1) of this Ordinance, he shall, subject to subsection (6), continue to be so regarded---

(i) until the notice in writing of the Commission's final decision of that application has been served on him; or

(ii) where the application is refused, until the expiration of 21 days after the notice in writing of the Commission's final decision of that application has been served on him or (if an application is made under section 211 of this Ordinance for review of that decision) the determination of the review.

(2) Where, within 2 years from the commencement of Part V of this Ordinance, an authorized financial institution regarded under section 25(a) as exempt, or a licensed bank regarded under section 32 as exempt, for a regulated activity, applies to be exempt for that regulated activity under section 118(1) of this Ordinance, then without prejudice to subsection (3)(C)---

(a) it shall continue to be regarded as so exempt; and

(b) an individual regarded under section 26(a) or 33 as a person whose name is entered in the register referred to in that section as employed by the institution or licensed bank (as the case may be) in that regulated activity shall, subject to subsection (6), continue to be so regarded,

until the notice in writing of the Commission's final decision of that application has been served on the applicant.

(3) Where---

(a) an application referred to in subsection (1)(a), (b) or (c) or (2) in relation to a regulated activity is refused; or

(b) such an application is refused and the applicant applies for review of the refusal under section 211 of this Ordinance or appeals against the refusal under section 225 of this Ordinance (as the case may be), and the refusal is confirmed by the Securities and Futures Appeals Tribunal or the Chief Executive in Council (as the case may be), then---

(i) in the case of an application referred to in subsection (1)(a) or (2), the applicant;

(ii) in the case of an application referred to in subsection (1)(b), the partnership from which the applicant intends to take over the business in that regulated activity; or

(iii) in the case of an application referred to in subsection (1)(c), the individual from whom the applicant intends to take over the business in that regulated activity,  
shall---

(A) cease to carry on that regulated activity within 21 days of the refusal or the confirmation (as the case may be) or within such further period as the Commission notifies the applicant, partnership or individual (as the case may be) in writing;  
(B) comply with such reasonable conditions as the Commission may impose for such cessation; and

(C) before such cessation but in any event not later than the 21 days or further period mentioned in paragraph (A) and solely for the purpose of winding up its business in that regulated activity, continue to be regarded as licensed or exempt or having complied with the requirement of section 124(1)(a) and (b) of this Ordinance or having been approved as a responsible officer for or in relation to that regulated activity, as may be applicable,

and may be subject to the exercise of the power of the Commission under section 193 of this Ordinance as if the licence or exemption referred to in paragraph (C) in respect of the applicant, partnership or individual (as the case may be) had been revoked on the occurrence of the circumstances specified in paragraphs (a) and (b) (whichever is applicable).

(4) Where a person is regarded under section 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 or 32 as licensed or exempt for a regulated activity, he shall, in the carrying on of that regulated activity, comply with the provisions of this Ordinance that apply to a person who is licensed or exempt (as the case may be) for that regulated activity with such modifications under section 131 of this Ordinance as may be necessary in case he is a partnership or an individual carrying on a business in that regulated activity (as the case may be).

(5) Where an individual's name is regarded---

(a) under section 26(a); or

(b) under section 33,

as entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as employed by the employer in respect of a regulated activity, the individual shall, in performing any act which constitutes a regulated function in relation to that regulated activity, comply with the provisions of this Ordinance that apply to a person who is so registered for that regulated activity

with such modifications under section 131 of this Ordinance as may be necessary.

(6) If---

(a) a director of a corporation who is regarded under section 23 as---

(i) licensed as a licensed representative and as accredited to that corporation;  
and

(ii) approved under section 125(1) of this Ordinance as a responsible officer of that corporation,

ceases to be a director of that corporation, he shall upon such cessation cease to be so regarded;

(b) a partner of a partnership who is regarded under section 28 as---

(i) licensed as a licensed representative and as accredited to that partnership (regarded under section 27 as a licensed corporation); and

(ii) approved under section 125(1) of this Ordinance as a responsible officer of that corporation,

ceases to be a partner of that partnership, he shall upon such cessation cease to be so regarded;

(c) an individual who is regarded under section 24, 26(b), 29 or 31 as licensed as a licensed representative and as accredited to a licensed person ceases to act for or on behalf of that licensed person in relation to the regulated activity for which he is so regarded, he shall upon such cessation cease to be so regarded;

(d) an individual who is regarded under section 26(a) or 33 as a person whose name is entered in the register referred to in that section ceases to be employed by the employer to perform any act which constitutes a regulated function in relation to the relevant regulated activity, he shall upon such cessation cease to be so regarded.  
Certain unregistered persons to be permitted

to carry on limited business

53. A person who---

(a) immediately before the commencement of Part XA of the repealed Securities Ordinance, carried on a business of securities margin financing; and

(b) continues to collect interest accrued or accruing on sums already advanced under financial accommodation granted before the commencement of that Part,  
is deemed not to be carrying on a business in Type 8 regulated activity for the purpose of section 114(1) of this Ordinance, but only if the person does not carry on, or hold itself out as carrying on, a business in any other securities margin financing.

Miscellaneous

54. Where a person is---

(a) immediately before the commencement of Part V of this Ordinance---

(i) registered under the repealed Securities Ordinance as a dealer, investment

adviser, securities margin financier, dealer's representative, investment representative or securities margin financier's representative;

(ii) declared under the repealed Securities Ordinance as an exempt dealer or an exempt investment adviser;

(iii) registered under the repealed Commodities Trading Ordinance as a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative; or

(iv) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a leveraged foreign exchange trader or representative; and

(b) regarded under section 22, 23, 24, 25, 27, 28, 29, 30, 31 or 32 as licensed or exempt under Part V of this Ordinance,

any condition that has been attached or imposed by the Commission to the registration, exemption or licence referred to in paragraph (a) which is in force immediately before such commencement shall, upon such commencement, be regarded as being imposed in respect of the licence or exemption referred to in paragraph (b).

55. Where---

(a) approval for premises to be used for keeping records or documents has been given by the Commission under the repealed Securities and Futures Commission Ordinance; and

(b) the approval subsists immediately before the commencement of Part V of this Ordinance,

the approval shall, upon such commencement, be regarded as given under section 129 of this Ordinance.

56. Where---

(a) approval for a subordinated loan has been given by the Commission under the Financial Resources Rules (Cap. 24 sub. leg.) repealed under section 392 of this Ordinance or the Leveraged Foreign Exchange Trading (Financial Resources) Rules (Cap. 451 sub. leg.) repealed under section 392 of this Ordinance; and

(b) the approval subsists immediately before the commencement of Part V of this Ordinance,

the approval shall, upon such commencement, be regarded as given under this Ordinance.

57. Where---

(a) an application is made before the commencement of Part V of this Ordinance for approval to be a substantial shareholder under section 26A of the repealed Securities and Futures Commission Ordinance; and

(b) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement, be treated as an application to become

a substantial shareholder under section 130 of this Ordinance.

58. Where the Commission has commenced action (including the making of any inquiry) before the commencement of Part V of this Ordinance under---

- (a) section 55 or 56 of the repealed Securities Ordinance;
- (b) section 35 or 36 of the repealed Commodities Trading Ordinance; or
- (c) section 11 or 12 of the repealed Leveraged Foreign Exchange Trading Ordinance, and the action is pending immediately before such commencement, the action shall, upon such commencement, be regarded as having been commenced under this Ordinance and may be continued in accordance with section 175 or 187 of this Ordinance.

59. (1) Where---

- (a) an application is made before the commencement of Part V of this Ordinance for---
  - (i) registration; or
  - (ii) a licence,  
in any capacity specified in column 2 of the Table; and
- (b) immediately before such commencement the application has not been granted, refused or withdrawn,  
the application shall, upon such commencement, be treated as an application for a licence as specified opposite thereto in column 3 of the Table, and the Commission shall be entitled to determine the application accordingly.

#### TABLE

Item	Application pending at commencement of Part V of this Ordinance	To be treated as application for a licence
1.	For registration as a dealer under the repealed Securities Ordinance, by---	
	(a) a corporation	(a) Under section 115(1) of this Ordinance for Type 1, Type 4, Type 6, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
	(b) an individual	(b) Under section 119(1) of this Ordinance for Type 1, Type 4, Type 6, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
2.	For registration as an investment adviser under the repealed Securities Ordinance, by---	
	(a) a corporation	(a) Under section 115(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities, or any one or more of them, as may be applicable
	(b) an individual	(b) Under section 119(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities, or any one or more of them, as may be applicable

3. For registration as a dealer's representative under the repealed Securities Ordinance Type 1, Type 4, Type 6, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
4. For registration as an investment representative under the repealed Securities Ordinance Type 4, Type 6 and Type 9 regulated activities, or any one or more of them, as may be applicable
5. For registration as a dealer under the repealed Commodities Trading Ordinance, by---
  - (a) a corporation (a) Under section 115(1) of this Ordinance for Type 2, Type 5, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
  - (b) an individual (b) Under section 119(1) of this Ordinance for Type 2, Type 5, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
6. For registration as a commodity trading adviser under the repealed Commodities Trading Ordinance, by---
  - (a) a corporation (a) Under section 115(1) of this Ordinance for Type 5 and Type 9 regulated activities, or any one of them, as may be applicable
  - (b) an individual (b) Under section 119(1) of this Ordinance for Type 5 and Type 9 regulated activities, or any one of them, as may be applicable
7. For registration as a dealer's representative under the repealed Commodities Trading Ordinance Type 2, Type 5, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
8. For registration as a commodity trading adviser's representative under the repealed Commodities Trading Ordinance Type 5 and Type 9 regulated activities, or any one of them, as may be applicable
9. For a licence as a leveraged foreign exchange trader under the repealed Leveraged Foreign Exchange Trading Ordinance Type 3 regulated activity



10. For a licence as a representative Under section 119(1) of this Ordinance for under the repealed Leveraged Type 3 regulated activity Foreign Exchange Trading Ordinance

11. For registration as a securities margin Under section 115(1) of this Ordinance for financier under the repealed Type 8 regulated activity Securities Ordinance

12. For registration as a securities margin Under section 119(1) of this Ordinance for financier's representative under Type 8 regulated activity the repealed Securities Ordinance

(2) Where---

(a) an application is made before the commencement of Part V of this Ordinance for a declaration as an exempt dealer under the repealed Securities Ordinance; and  
(b) immediately before such commencement the application has not been granted, refused or withdrawn,  
the application shall, upon such commencement---

(i) where the applicant is an authorized financial institution, be treated as an application under section 118(1) of this Ordinance for an exemption for Type 1, Type 4, Type 6 and Type 9 regulated activities; or

(ii) where the applicant is not an authorized financial institution, be treated as an application under section 115(1) of this Ordinance for Type 1, Type 4, Type 6 and Type 9 regulated activities.

(3) Where---

(a) an application is made before the commencement of Part V of this Ordinance for a declaration as an exempt investment adviser under the repealed Securities Ordinance; and  
(b) immediately before such commencement the application has not been granted, refused or withdrawn,  
the application shall, upon such commencement---

(i) where the applicant is an authorized financial institution, be treated as an application under section 118(1) of this Ordinance for an exemption for Type 4, Type 6 and Type 9 regulated activities; or

(ii) where the applicant is not an authorized financial institution, be treated as an application under section 115(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities.

Part VI of this Ordinance (Capital requirements,

client assets, records and audit relating to intermediaries)

60. Where---

(a) immediately before the commencement of Part VI of this Ordinance---

(i) an appointment of an auditor under section 52 of the repealed Commodities Trading Ordinance in relation to a dealer within the meaning of that section is still in force;

(ii) an appointment of an auditor under section 90 of the repealed Securities Ordinance in relation to a dealer within the meaning of that section is still in force;

(iii) an appointment of an auditor under section 121AW of the repealed Securities Ordinance in relation to a registered financier within the meaning of that section is still in force; or

(iv) an appointment of an auditor under section 33 of the repealed Leveraged Foreign Exchange Trading Ordinance in relation to a licensed leveraged foreign exchange trader within the meaning of that section is still in force; and

(b) the dealer, the registered financier or the licensed leveraged foreign exchange trader (as the case may be) is under this Ordinance a licensed corporation, the auditor shall upon such commencement be deemed to have been appointed under section 155 of this Ordinance, and section 155(4) and (5) and other provisions of this Ordinance shall apply accordingly.

61. Where---

(a) immediately before the commencement of Part VI of this Ordinance---

(i) an appointment of an auditor under section 53 of the repealed Commodities Trading Ordinance in relation to a dealer within the meaning of that section is still in force;

(ii) an appointment of an auditor under section 91 of the repealed Securities Ordinance in relation to a dealer within the meaning of that section is still in force;

(iii) an appointment of an auditor under section 121AX of the repealed Securities Ordinance in relation to a registered financier within the meaning of that section is still in force; or

(iv) an appointment of an auditor under section 34 of the repealed Leveraged Foreign Exchange Trading Ordinance in relation to a licensed leveraged foreign exchange trader within the meaning of that section is still in force; and

(b) the dealer, the registered financier or the licensed leveraged foreign exchange trader (as the case may be) is under this Ordinance a licensed corporation, the auditor shall upon such commencement be deemed to have been appointed under section 156 of this Ordinance, and section 156(8) and (9) and other provisions of this Ordinance shall apply accordingly.

Part VIII of this Ordinance (Supervision and investigations)

62. Where---

(a) any power has before the commencement of Part VIII of this Ordinance been exercised before such commencement under---

(i) section 29A, 30, 31, 33 or 36 of the repealed Securities and Futures Commission Ordinance; or

(ii) section 12, 41, 42, 44 or 47 of the repealed Leveraged Foreign Exchange Trading Ordinance; and

(b) the exercise of the power would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,  
then---

(i) the exercise of the power shall continue to have force and effect as if this Ordinance had not been enacted; and

(ii) the provisions of the repealed Securities and Futures Commission Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) shall continue to apply to the exercise of the power and to any other matters relating thereto as if this Ordinance had not been enacted.

Part IX of this Ordinance (Discipline, etc.)

63. Where---

(a) before the commencement of Part IX of this Ordinance any conduct, event, matter or thing that occurred can be the subject of---

(i) the exercise of any power under section 35 or 36 of the repealed Commodities Trading Ordinance;

(ii) the exercise of any power under section 55 or 56 of the repealed Securities Ordinance; or

(iii) the exercise of any power under section 11 or 12 of the repealed Leveraged Foreign Exchange Trading Ordinance; and

(b) no such power has been exercised before such commencement,  
then---

(i) the power may be exercised as if this Ordinance had not been enacted; and

(ii) subject to section 65, the provisions of the repealed Commodities Trading Ordinance, the repealed Securities Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) and the repealed Securities and Futures Commission Ordinance (where applicable) shall continue to apply to the exercise of the power and to any matters relating thereto as if this Ordinance had not been enacted.

64. Where---

(a) the exercise of any power under section 63 results in the revocation or suspension

of any registration or licence; and

(b) the registration or licence has, by virtue of sections 22 to 37, been regarded as a licence under this Ordinance,

the licence shall, notwithstanding sections 22 to 37, be regarded as having been revoked or suspended (as the case may be) on the same terms and conditions on which the registration or licence referred to in paragraph (a) is revoked or suspended.

65. Where any power is exercised under section 63, an appeal may be made to the Securities and Futures Appeals Tribunal and disposed of in all respects in respect of the exercise of the power as if the power had been exercised under Part IX of this Ordinance.

Part X of this Ordinance (Powers of intervention and proceedings)

66. Where---

(a) before the commencement of Part X of this Ordinance, there has been served on any person a notice under---

(i) section 39(1), 40, 41(1), 42(4) or 43(1) of the repealed Securities and Futures Commission Ordinance; or

(ii) section 50, 51, 52(1), 53(4) or 54(1) of the repealed Leveraged Foreign Exchange Trading Ordinance; and

(b) the prohibition or requirement to which the notice relates would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,

then---

(i) the prohibition or requirement shall continue to have force and effect as if this Ordinance had not been enacted; and

(ii) subject to section 67, the provisions of the repealed Securities and Futures Commission Ordinance or both the repealed Securities and Futures Commission Ordinance and the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) shall continue to apply to the prohibition or requirement and to any appeals and other matters relating thereto as if this Ordinance had not been enacted.

67. Where---

(a) before the commencement of Part X of this Ordinance an appeal has not been made in respect of a prohibition or requirement referred to in section 66---

(i) under section 44 of the repealed Securities and Futures Commission Ordinance, whether by virtue of the application of section 66(ii) or not; or

(ii) under section 56 of the repealed Leveraged Foreign Exchange Trading Ordinance, whether by virtue of the application of section 66(ii) or not; and

(b) the time within which the appeal may be made under such section is running and

has not expired or, in a case where section 66 applies, is running and has not expired or has not begun to run, upon such commencement, an appeal may be made to the Securities and Futures Appeals Tribunal and disposed of in all respects in respect of the prohibition or requirement as if the prohibition or requirement had been imposed under that Part as a result of the exercise of any of the powers under sections 196, 197, 198, 199 and 201 of this Ordinance.

Part XI of this Ordinance (Securities and Futures Appeals Tribunal)

68. Where a person has made an appeal to the Securities and Futures Appeals Panel before the commencement of Part XI of this Ordinance under---

(a) Part III of the repealed Securities and Futures Commission Ordinance; or

(b) Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance,

and the appeal has not been finally determined before such commencement, the appeal may be continued and disposed of in all respects as if this Ordinance had not been enacted.

69. Subject to sections 65 and 67, where---

(a) before the commencement of Part XI of this Ordinance an appeal has not been made under---

(i) Part III of the repealed Securities and Futures Commission Ordinance; or

(ii) Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance;

and

(b) the time within which the appeal may be made under such Part is running and has not expired upon such commencement,

the appeal may be made to the Securities and Futures Appeals Panel and disposed of in all respects as if this Ordinance had not been enacted.

70. Where, by virtue of sections 66, 68 and 69, any appeal is or is to be made or continued, and disposed of, under---

(a) Part III of the repealed Securities and Futures Commission Ordinance; or

(b) Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance,

then, without limiting the generality of sections 66, 68 and 69 (including the power to appoint any person as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel established by section 18 of the repealed Securities and Futures Commission Ordinance or as a member of a tribunal appointed under that Ordinance)---

(i) any person who immediately before the commencement of Part XI of this Ordinance holds any office as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel or as a member of the tribunal to determine the appeal shall, for the purposes of the appeal, continue to

hold the same office on the same terms and conditions as if this Ordinance had not been enacted; and

(ii) the Securities and Futures Appeals Panel and the tribunal shall, for the purposes of the appeal, continue in existence as if this Ordinance had not been enacted.

Part XII of this Ordinance (Investor compensation)

71. (1) In sections 72 to 74---

"Futures Exchange Compensation Fund" (期交所賠償基金) and "Unified Exchange Compensation

Fund" (聯交所賠償基金) have the meanings respectively assigned to them in section 228 of this Ordinance;

"repealed Commodities Trading Rules" (已廢除的《商品交易規則》) means the Commodities Trading (Dealers, Commodity Trading Advisers and Representatives) Rules (Cap. 250 sub. leg.) repealed under section 392 of this Ordinance;

"repealed Contract Levy Rules" (已廢除的《合約徵費規則》) means the Commodities Trading (Contract Levy) Rules (Cap. 250 sub. leg.) repealed under section 392 of this Ordinance;

"repealed Securities Rules" (已廢除的《證券規則》) means the Securities (Miscellaneous) Rules (Cap. 333 sub. leg.) repealed under section 392 of this Ordinance.

(2) For the avoidance of doubt, it is hereby declared that nothing in sections 72 to 74 shall be construed as enabling a claim to be made which is barred under any enactment or rule of law.

Unified Exchange Compensation Fund

72. (1) Despite the repeals effected by section 392 of this Ordinance, Part X of the repealed Securities Ordinance shall, subject to this section, continue to apply to and in relation to---

(a) any claim for compensation from the Unified Exchange Compensation Fund made under that Part before the appointed day; or

(b) any default occurring before the appointed day,

as if that section had not been enacted, subject to the following modifications-

--

(i) section 112 of that Part X shall cease to apply as from the appointed day;

(ii) for any reference to the Unified Exchange, there shall be substituted a reference to a recognized stock market within the meaning of this Ordinance;

(iii) for any reference to the Exchange Company, there shall be substituted a reference to the Stock Exchange Company within the meaning of this Ordinance; and

(iv) the expressions "dealing in securities", "exchange participant",

"listed", "securities" and "trading right" shall respectively be construed in accordance with this Ordinance.

(2) The Commission may after the appointed day pay into the compensation fund such sum of money from the Unified Exchange Compensation Fund as it considers appropriate, having regard to---

- (a) the amounts which the Commission considers to be necessary to meet any claims or likely claims against the Unified Exchange Compensation Fund; and
- (b) the amounts deposited in cash under section 104 of the repealed Securities Ordinance.

(3) As soon as reasonably practicable after the appointed day, the Stock Exchange Company shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after the publication of the notice, on or before which a claim for compensation from the Unified Exchange Compensation Fund may be made by any person.

(4) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation from the Unified Exchange Compensation Fund, he shall lodge his claim in writing with the Stock Exchange Company---

- (a) if a notice under subsection (3) has been published, on or before the date specified in the notice; or
- (b) if no such notice has been published, within 6 months after he became aware of the default giving rise to the claim.

(5) A claim made under subsection (4) shall be regarded as a claim made under section 109 of the repealed Securities Ordinance and other provisions of Part X of that Ordinance shall apply accordingly.

(6) A claim that is not made within the time limited by subsection (4) shall, unless the Stock Exchange Company otherwise determines, be barred.

(7) After---

- (a) all claims made or continued under this section have been disposed of; and
  - (b) all outstanding liabilities against the Unified Exchange Compensation Fund have been satisfied,
- the Commission shall apply any balance remaining in the Fund in accordance with subsection (8).

(8) Any balance mentioned in subsection (7) shall---

- (a) be used to repay the Stock Exchange Company or, if the Stock Exchange Company is in liquidation, the liquidator of the Stock Exchange Company, the amounts deposited in cash under section 104 of the repealed Securities Ordinance, to the extent that the balance is sufficient for this purpose and provided such deposits have not

previously been repaid; and on any such payment being made those amounts shall form part of the assets of the Stock Exchange Company and, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32); and

(b) if there is any remaining balance, be paid into the compensation fund.

(9) Where a claim for compensation from the Unified Exchange Compensation Fund is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because the Commission is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the claim is allowed, after which time the Commission shall apply the amount in accordance with subsection (8).

(10) Except as provided in this section, no claim for compensation from the Unified Exchange Compensation Fund may be made after the appointed day.

(11) The Secretary for Financial Services may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section.

(12) In this section---

"appointed day" (指定日期) means the date appointed under subsection (11);

"default" (違責) means a default referred to in section 109(1) of the repealed Securities Ordinance.

Futures Exchange Compensation Fund

73. (1) Despite the repeals effected by section 392 of this Ordinance, Part VIII of the repealed Commodities Trading Ordinance and the repealed Contract Levy Rules shall, subject to this section, continue to apply to and in relation to---

(a) any claim for compensation from the Futures Exchange Compensation Fund made under that Part before the appointed day; or

(b) any default occurring before the appointed day,

as if that section had not been enacted, subject to the following modifications--

(i) section 89 of that Part VIII shall cease to apply as from the appointed day;

(ii) for any reference to the Commodity Exchange, there shall be substituted a reference to a recognized futures market within the meaning of this Ordinance;

(iii) for any reference to the Exchange Company, there shall be substituted a reference to the Futures Exchange Company within the meaning of this Ordinance; and

(iv) the expressions "exchange participant", "futures contracts" and "trading right" shall respectively be construed in accordance with this Ordinance.

(2) The Commission may after the appointed day pay into the compensation fund such sum of money from the Futures Exchange Compensation Fund as it considers



appropriate, having regard to---

(a) the amounts which the Commission considers to be necessary to meet any claims or likely claims against the Futures Exchange Compensation Fund; and

(b) the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance.

(3) As soon as reasonably practicable after the appointed day, the Futures Exchange Company shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after the publication of the notice, on or before which a claim for compensation from the Futures Exchange Compensation Fund may be made by any person.

(4) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation from the Futures Exchange Compensation Fund, he shall lodge his claim in writing with the Futures Exchange Company---

(a) if a notice under subsection (3) has been published, on or before the date specified in the notice; or

(b) if no such notice has been published, within 6 months after he became aware of the default giving rise to the claim.

(5) A claim made under subsection (4) shall be regarded as a claim made under section 87 of the repealed Commodities Trading Ordinance and other provisions of Part VIII of that Ordinance shall apply accordingly.

(6) A claim that is not made within the time limited by subsection (4) shall, unless the Futures Exchange Company otherwise determines, be barred.

(7) After---

(a) all claims made or continued under this section have been disposed of; and

(b) all outstanding liabilities against the Futures Exchange Compensation Fund have been satisfied,

the Commission shall apply any balance remaining in the Fund in accordance with subsection (8).

(8) Any balance mentioned in subsection (7) shall---

(a) be used to repay the Futures Exchange Company or, if the Futures Exchange Company is in liquidation, the liquidator of the Futures Exchange Company, the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance, to the extent that the balance is sufficient for this purpose and provided such deposits have not previously been repaid; and on any such payment being made those amounts shall form part of the assets of the Futures Exchange Company and, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32); and

(b) if there is any remaining balance, be paid into the compensation fund.

(9) Where a claim for compensation from the Futures Exchange Compensation Fund is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because the Commission is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the claim is allowed, after which time the Commission shall apply the amount in accordance with subsection (8).

(10) Except as provided in this section, no claim for compensation from the Futures Exchange Compensation Fund may be made after the appointed day.

(11) The Secretary for Financial Services may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section.

(12) In this section---

"appointed day" (指定日期) means the date appointed under subsection (11);

"default" (違責) means a default referred to in section 87(1) of the repealed Commodities Trading Ordinance.

Dealers Deposit Scheme

74. (1) Despite the repeals effected by section 392 of this Ordinance---

(a) sections 52 (except subsections (1), (1A) and (6)) and 52A of the repealed Securities Ordinance;

(b) rules 2, 4, 5 and 6 (other than rule 6(4)) of the repealed Securities Rules;

(c) section 33 of the repealed Commodities Trading Ordinance; and

(d) Parts I and III (other than rule 15(5)) of the repealed Commodities Trading Rules, shall, subject to this section, continue to apply for the purposes of this section as if that section 392 had not been enacted.

(2) Where, prior to the appointed day---

(a) there arises any of the circumstances described in section 52(2) or (11) of the repealed Securities Ordinance or section 33(1) or (11) of the repealed Commodities Trading Ordinance; and

(b) no transfer, payment, forfeiture or application for release of the deposit (as the case may be) paid or deposited by the dealer concerned has been made pursuant to either of those sections,

then such transfer, payment, forfeiture or application for release and any subsequent application of such deposit may be made under the applicable provisions specified in subsection (1).

(3) A claim for compensation made before the appointed day in respect of a default occurring prior to that day that has not been disposed of may be continued and disposed of under subsection (1).

(4) As soon as reasonably practicable after the appointed day, the Commission

shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after the publication of the notice, on or before which a claim for compensation against the deposit forfeited under section 52(2)(c) of the repealed Securities Ordinance or section 33(1)(c) of the repealed Commodities Trading Ordinance may be made.

(5) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation against any deposit referred to in subsection (4), he shall lodge his claim in writing with the Commission---

(a) if a notice under subsection (4) has been published, on or before the date specified in the notice; or

(b) if no such notice has been published, within 6 months after he became aware of the default giving rise to the claim.

(6) A claim made under subsection (5) shall be regarded as a claim made under rule 6(5) of the repealed Securities Rules or rule 15(6) of the repealed Commodities Trading Rules(as the case may be), and other provisions of the Rules shall apply accordingly.

(7) A claim that is not made within the time limited by subsection (5) shall, unless the Commission otherwise determines, be barred.

(8) Where a claim made or continued under this section is not allowed or the amount or amounts determined to be payable as compensation do not exceed the amount of the deposit, the Commission shall repay the deposit to which the claim relates or the remaining balance of the deposit (as the case may be) to the dealer concerned.

(9) Where---

(a) a deposit made under section 52 of the repealed Securities Ordinance or section 31 of the repealed Commodities Trading Ordinance has not been or is not required to be disposed of under the Ordinance; and

(b) the deposit is not required to be disposed of under this section, the Commission shall repay the deposit to the dealer concerned.

(10) Where a claim made or continued under this section is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because the Commission is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the claim is allowed, after which time the Commission shall repay the amount to the dealer concerned.

(11) Where---

(a) a deposit or its remaining balance is required to be repaid to a dealer under subsection (8) or (9) or any amount is required to be repaid to a dealer under

subsection (10); but

(b) the Commission is unable to locate the dealer for the purpose of repayment during the period of 3 years beginning with---

(i) in the case of subsection (8), the date of the determination of the claim;

(ii) in the case of subsection (9), the appointed day; or

(iii) in the case of subsection (10), the end of the 3-year period referred to in that subsection,

the Commission shall pay the deposit or the remaining balance or the amount (as the case may be) to the compensation fund.

(12) Except as provided in this section, no claim for compensation may be made against any deposit forfeited under section 52(2)(c) of the repealed Securities Ordinance or section 33(1)(c) of the repealed Commodities Trading Ordinance after the appointed day.

(13) The Secretary for Financial Services may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section.

(14) In this section---

"appointed day" (指定日期) means the date appointed under subsection (13);

"default" (違責) means a default referred to in rule 6(2) of the repealed Securities Rules or rule 15(2) of the repealed Commodities Trading Rules.

Part XIII of this Ordinance (Market Misconduct Tribunal)

75. Where---

(a) the repealed Securities (Insider Dealing) Ordinance would but for the enactment of this Ordinance have effect with respect to an insider dealing; and

(b) the insider dealing does not take place on or after the commencement of Part XIII of this Ordinance,

then---

(i) that Ordinance shall continue to have application in connection with the insider dealing or with any inquiry, appeal, or other matters related thereto as if this Ordinance had not been enacted; and

(ii) without limiting the generality of paragraph (i), section 16(1) of that Ordinance shall have application accordingly.

76. Where, by virtue of section 75, any inquiry is or is to be instituted or disposed of under the repealed Securities (Insider Dealing) Ordinance, then, without limiting the generality of section 75 (including the power to appoint any person as a member (whether as the chairman or other member) or as a temporary member of the Insider Dealing Tribunal referred to in section 15 of that Ordinance)---

(a) any person who immediately before the commencement of Part XIII of this Ordinance holds any office as a member (whether as the chairman or other member) or as a temporary

member of the Insider Dealing Tribunal shall, for the purposes of the inquiry, continue to hold the same office on the same terms and conditions as if this Ordinance had not been enacted; and

(b) the Insider Dealing Tribunal shall, for the purposes of the inquiry, continue in existence as if this Ordinance had not been enacted.

Part XV of this Ordinance (Disclosure of Interests)

77. The repeal of the Securities (Disclosure of Interests) Ordinance (Cap. 396) shall not affect any duty of disclosure or duty to give notification that has arisen under that Ordinance, and such duty shall be performed in accordance with that Ordinance as if this Ordinance had not been enacted, whether or not---

(a) a duty of disclosure or duty to give notification in respect of the same subject matter (or part thereof) has arisen under this Ordinance; or

(b) the duty referred to in paragraph (a) has been performed in accordance with this Ordinance.

78. Any exemption that is granted under section 2A of the repealed Securities (Disclosure of Interests) Ordinance and is in effect immediately before the commencement of Part XV of this Ordinance shall, upon such commencement, continue to have effect as if it were granted, subject to the same conditions, under section 300 of this Ordinance.

79. Where an application has been made under the repealed Securities (Disclosure of Interests) Ordinance but has not been finally determined before the commencement of Part XV of this Ordinance, the application shall, upon such commencement, continue to be dealt with in accordance with that Ordinance as if this Ordinance had not been enacted.

80. Any restrictions imposed, or any orders made, by the court or the Financial Secretary (as the case may be) under the repealed Securities (Disclosure of Interests) Ordinance and are in effect immediately before the commencement of Part XV of this Ordinance shall, upon such commencement, continue to have effect as if this Ordinance had not been enacted.

81. Where an investigation is carried out under the repealed Securities (Disclosure of Interests) Ordinance but has not been concluded before the commencement of Part XV of this Ordinance, any power that is exercisable under that Ordinance for the purposes of the investigation shall, upon such commencement, remain exercisable as if this Ordinance had not been enacted.

82. Any register (including any part of it and any index) or report that is kept or maintained under the repealed Securities (Disclosure of Interests) Ordinance immediately before the commencement of Part XV of this Ordinance shall, upon such commencement, be regarded as kept under this Ordinance and, subject to section 83,

the relevant provisions of this Ordinance relating to the keeping and inspection of such register or report (as the case may be) shall apply, and the penalty for non-compliance with such provisions may be imposed, accordingly.

83. Where a register (including any part of it and any index) or report is kept or maintained under the repealed Securities (Disclosure of Interests) Ordinance immediately before the commencement of Part XV of this Ordinance, and such register or report is required to be kept, or any entry of such register is not to be removed, under that Ordinance until the elapse of 6 years, the 6-year period shall be computed in accordance with the relevant provisions of that Ordinance as if this Ordinance had not been enacted.

#### General

84. For the purposes of section 385 of this Ordinance---

- (a) the code published by the Commission as the Code on Takeovers and Mergers and in use immediately before the commencement of Part XVI of this Ordinance; and
- (b) the code published by the Commission as the Code on Share Repurchases and in use immediately before such commencement,

shall upon such commencement be regarded as the codes published under section 385(2)(a) and (b) respectively of this Ordinance, and the provisions of this Ordinance shall apply to the codes accordingly.

85. Where---

- (a) any provision of an Ordinance repealed under section 392 of this Ordinance provides for the issue, giving or service to, on or by the Commission of any document (whether described as a notice or otherwise) or information;
  - (b) the document or information has been issued, given or served to, on or by the Commission under or pursuant to the provision; and
  - (c) any provision in this Ordinance also provides for the issue, giving or service to, on or by the Commission of the document or information,
- the document or information shall be deemed to have been issued, given or served to, on or by the Commission under or pursuant to such provision in this Ordinance.

86. Where---

- (a) any period of time specified for the purposes of any provision ("repealed provision") of an Ordinance repealed under section 392 of this Ordinance is running at the time of the repeal of the repealed provision; and
  - (b) there is a provision ("corresponding provision") in this Ordinance which in the opinion of the Commission corresponds to the repealed provision,
- then, in reckoning the period of time for the purposes of the corresponding provision, this Ordinance shall have effect on the basis that---

- (i) the period of time specified for the purposes for the repealed provision is

to apply, whether or

not any other period of time is specified for the purposes of the corresponding provision; and

(ii) subject to paragraph (i), the corresponding provision had come into operation when the period of time, which is to apply under paragraph (i), began to run.

87. Subject as otherwise provided in this Part, any judicial proceedings commenced under, or by virtue of the exercise of any function conferred by, any provision of an Ordinance repealed under section 392 of this Ordinance, and pending or otherwise not finally determined at the time of the repeal of the provision may be continued and disposed of in all respects after the repeal as if this Ordinance had not been enacted.

## PART 2

### Consequential and Supplemental Amendments

Item	Enactment	Amendment
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1.	Specification of Public	In the Schedule---
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	Offices (Cap. 1 sub. leg.)	(a) repeal---
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	"Commissioner for Commodities Trading	Commodities Trading
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Ordinance (Chapter 250).";

(b) repeal---

"Commissioner for Securities	Securities Ordinance (Chapter
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333).".

2.	Trustee Ordinance	In the Second Schedule---
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	(Cap. 29)	(a) repeal paragraph 1(a)(i) and substitute---
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"(i) the shares are listed on a recognized stock market or specified stock exchange as these terms are defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000);";

(b) in paragraph 2(c), repeal "Part III of the Schedule to the Protection of Investors Ordinance (Cap. 335)" and substitute "Part 3 of Schedule 4 to the Securities and Futures Ordinance ( of 2000)";

(c) repeal paragraph 3 and substitute---

"3. Any unit trust or mutual fund authorized as a collective investment scheme under section 103 of the Securities and Futures Ordinance ( of 2000).";

(d) in paragraph 7---

(i) repeal "market listed in Schedule 5 to the Financial Resources Rules (Cap. 24 sub. leg.)" and substitute "recognized stock market, specified stock exchange, recognized futures market or specified futures exchange as these terms are defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of

2000)";

(ii) in subparagraph (b), repeal "an investment adviser (as defined in section 2 of the Securities Ordinance (Cap. 333)) or of a commodity trading adviser (as defined in section 2 of the Commodities Trading Ordinance (Cap. 250))" and substitute "a person licensed or exempt to carry on a business in advising on securities, advising on futures contracts, advising on corporate finance or asset management under Part V of the Securities and Futures Ordinance ( of 2000)";

(e) in paragraph 8---

(i) repeal the definition of "exempted body" and substitute---

"exempted body" (豁免團體) means a body specified in Part 4 of Schedule 4 to the Securities and Futures Ordinance

( of 2000) but does not include a body referred to in item 15 of that Part;";

(ii) repeal the definition of "Unified Exchange".

3. Companies Ordinance (a) In section 2(1)---

(Cap. 32) (i) in the definition of "Commission"---

(A) in paragraph (a), repeal "established by section 3 of the Securities and Futures Commission Ordinance (Cap. 24)" and substitute "referred to in section 3(1) of the Securities and Futures Ordinance ( of 2000)";

(B) repeal paragraph (b) and substitute---

"(b) where any relevant transfer order made under section 25 of that Ordinance is in force, the recognized exchange company concerned or both the Securities and Futures Commission and the recognized exchange company concerned, in accordance with the provisions of that order;";

(ii) repeal the definition of "Exchange Company" and substitute--

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"recognized exchange company" (認可交易所) means a company recognized under section 19(2) of the Securities and Futures Ordinance ( of 2000) as an exchange company for operating a stock market;";

(iii) in the definition of "listed company", repeal "the Unified Exchange" and substitute "a recognized stock market";

(iv) repeal the definition of "Unified Exchange" and substitute--

-

"recognized stock market" (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000);";

(v) in the definition of "unlisted company", repeal "the Unified Exchange" and substitute "a recognized stock market".

(b) In section 38(5)(b), repeal "the Unified Exchange" and substitute "a recognized stock market".



(c) In section 38B(2)(c), repeal "section 4(2)(g) of the Protection of Investors Ordinance (Cap. 335)" and substitute "section 104 of the Securities and Futures Ordinance ( of 2000)".

(d) In section 38D(2)(a), repeal everything after "issue by" and substitute "a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance ( of 2000), state that neither the Commission nor the recognized exchange company nor the Registrar takes any responsibility as to the contents of the prospectus;".

(e) In section 40(1A), repeal everything after "authorized by" and substitute "a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance ( of 2000), shall not apply to the Commission nor the recognized exchange company.".

(f) In section 40A(3), repeal everything after "authorized by" and substitute "a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance ( of 2000), shall not apply to the Commission nor the recognized exchange company.".

(g) In section 49B(5), repeal "the Unified Exchange" and substitute "a recognized stock market".

(h) In section 49BA---

(i) in subsections (1)(b) and (c) and (2)(b)---

(A) repeal "the Unified Exchange" and substitute "a recognized stock market";

(B) repeal "a recognized stock exchange" and substitute "an approved stock exchange";

(ii) in subsection (8), repeal "registered or exempt investment adviser within the meaning of the Securities Ordinance (Cap. 333)" and substitute "person licensed or exempt to carry on a business in advising on securities or advising on corporate finance under Part V of the Securities and Futures Ordinance ( of 2000)";

(iii) in subsection (9), repeal the definition of "recognized stock exchange" and substitute---

""approved stock exchange" (核准證券交易所) means a stock exchange approved for the purposes of this section by the Commission and the recognized exchange company by notice published in the Gazette;".

(i) In section 71A---

(i) in subsections (3) and (4)(a), repeal "Unified Exchange" and substitute "recognized stock market concerned";

(ii) in subsection (5)---

(A) repeal "The Unified Exchange" and substitute "Each recognized stock market";

(B) repeal "the exchange" and substitute "it";

(iii) in subsection (8), repeal "Unified Exchange" and substitute "recognized stock market concerned";

(iv) in subsection (12), in the definition of "company", repeal "the Unified Exchange" and substitute "a recognized stock market".

(j) In section 114A(2)(a), repeal "the Unified Exchange" and substitute "a recognized stock market".

(k) In section 115(1A), repeal "section 2 of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420)" and substitute "section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000)".

(l) In section 141D(3)(c), repeal "a dealer registered under the Securities Ordinance (Cap. 333)" and substitute "a person licensed under Part V of the Securities and Futures Ordinance ( of 2000) to carry on a business in any regulated activity within the meaning of that Ordinance".

(m) In section 153(2), repeal "the Unified Exchange" and substitute "a recognized stock market".

(n) In section 154A(3), repeal "the Unified Exchange" and substitute "a recognized stock market".

(o) In section 155A(1)(a), repeal "the Unified Exchange" and substitute "a recognized stock market".

(p) In section 157H(1) (in the definition of "company", in paragraph (b)(ii)) and (9)(a), repeal "the Unified Exchange" and substitute "a recognized stock market".

(q) Repeal section 168R(5) and substitute---

"(5) For the purposes of this section---

"court" (法院) includes---

(a) a magistrate;

(b) a Tribunal within the meaning of section 2 of the repealed Ordinance; and

(c) the Market Misconduct Tribunal within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000);

"disqualification order" (取消資格令) means an order of the court under---

(a) section 168E, 168F, 168G, 168H, 168J or 168L;

(b) section 23(1)(a) or 24(1) of the repealed Ordinance; or

(c) section 207(2)(d), 249(1)(a), 250(1) or 295(2)(a) of the Securities and Futures Ordinance ( of 2000);

"repealed Ordinance" (已廢除條例) means the Securities (Insider Dealing) Ordinance (Cap. 395) repealed under the Securities and Futures Ordinance ( of 2000).".

(r) In section 333(2)(a) and (aa), repeal "the Unified Exchange" and substitute "a recognized stock market".

(s) In section 342(5)(b), repeal "the Unified Exchange" and substitute "a recognized stock market".

(t) In section 342B(1A)(a), repeal "shares in a body corporate authorized as a mutual fund corporation under section 15 of the Securities Ordinance (Cap. 333)" and substitute "interests in a mutual fund authorized as a collective investment scheme under section 103 of the Securities and Futures Ordinance ( of 2000)".

(u) In section 342F(3), repeal everything after "authorized by" and substitute "a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance ( of 2000), shall not apply to the Commission nor the recognized exchange company.".

(v) In section 345(2)(c), repeal everything after "business as" and substitute "an exchange participant as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000) and consisting of persons each of whom is an exchange participant;".

(w) In the Ninth Schedule, in Part 1, in paragraphs 1 and 2, repeal "the Unified Exchange" and substitute "a recognized stock market".

(x) In the Tenth Schedule, in paragraphs 9(3) and 31(a), repeal "the Unified Exchange" and substitute "a recognized stock market".

(y) In the Sixteenth Schedule, in Part I, repeal items 3, 4, 5, 6 and 7 and substitute---

"3. A person licensed under Part V of the Securities and Futures Ordinance ( of 2000) to carry on a business in any regulated activity within the meaning of Schedule 6 to that Ordinance and an associated entity of the person within the meaning of Part VI of that Ordinance.".

4. Companies (Disqualifi-cation Orders) Regulation (Cap. 32 sub. leg.) (a)  
Repeal section 3(1)(aa) and substitute---

"(aa) where a disqualification order is made by the Tribunal within the meaning of section 2 of the repealed Ordinance (within the meaning of section 168R(5) of the Ordinance) or the Market Misconduct Tribunal within the meaning

of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000), the clerk to the Tribunal concerned, except that, where there is no clerk to the first-mentioned Tribunal, then the clerk to the second-mentioned Tribunal;".

(b) In Schedule 1, in Form D.O. 1, in item (1)---

(i) repeal "or Securities (Insider Dealing) Ordinance ("SIDO")" and substitute ", the repealed Securities (Insider Dealing) Ordinance ("SIDO") or the Securities and Futures Ordinance ("SFO")";

(ii) add at the end of the table---

"Section 207(2)(d) of SFO

Section 249(1)(a) of SFO

Section 250(1) of SFO

Section 295(2)(a) of SFO ".

(c) In Schedule 3, in Form D.O. 3, repeal "or the Securities (Insider Dealing) Ordinance (Cap. 395)" and substitute", the repealed Securities (Insider Dealing) Ordinance (Cap. 395) or the Securities and Futures Ordinance ( of 2000)".

5. Insurance Companies Ordinance (Cap. 41) (a) In section 51---

(i) repeal paragraph (h) and substitute---

"(h) a recognized clearing house within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000) only to the extent that it guarantees the settlement of transactions in securities or futures contracts as defined in that section;";

(ii) add---

"(i) a person who is authorized under Part III of the Securities and Futures Ordinance ( of 2000) to provide automated trading services within the meaning of Schedule 6 to that Ordinance only to the extent that it guarantees the settlement of transactions in securities or futures contracts as defined in section 1 of Part 1 of Schedule 1 to that Ordinance.".

(b) In section 53A(3B)(b), repeal "established under the Securities and Futures Commission Ordinance (Cap. 24)" and substitute "referred to in section 3(1) of the Securities and Futures Ordinance ( of 2000)".

(c) In the Eighth Schedule---

(i) in paragraph 1(i), repeal "'unit trust" (單位信託), as defined in the Securities Ordinance (Cap. 333)," and substitute "unit trust";

(ii) add---

"2. For the purpose of paragraph 1(i), "unit trust" (單位信託) means any arrangement made for the purpose, or having the effect, of providing

facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever."

6. Insurance Companies (General Business) (Valuation) Regulation (Cap. 41 sub. leg.) In section 2, in the definition of "listed"---

(a) repeal "the Unified Exchange as defined in the Stock Exchange Unification Ordinance (Cap. 361)" and substitute "a recognized stock market as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000)";

(b) repeal "of the Unified Exchange" and substitute "of such a recognized stock market".

7. Control of Exemption Clauses Ordinance (Cap. 71) In Schedule 1, in paragraph 1(f)---

(a) repeal "participant within the meaning of section 2 of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420)" and substitute "clearing participant within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000)";

(b) in sub-subparagraph (ii), add "該" before "參".

8. Commodity Exchanges (Prohibition) Ordinance (Cap. 82) In section 3---

(a) repeal paragraph (e) and substitute---

"(e) a recognized futures market as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000);";

(b) add---

"(f) any activity which under section 19(8) of the Securities and Futures Ordinance ( of 2000) shall not be regarded as contravening section 19(1)(b) of that Ordinance.".

9. Telecommunications Ordinance (Cap. 106) Repeal section 13J(4)(b)(iii) and substitute---

"(iii) an exchange participant as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000), or a person licensed or exempt to carry on a business in dealing in securities or securities margin financing under Part V of that Ordinance,".

10. Estate Duty Ordinance (Cap. 111) (a) In section 3(1), repeal the definition of "Unified

Exchange" and substitute---

""recognized futures market" (認可期貨市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000);

"recognized stock market" (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000);".

(b) In section 34(5)(b), repeal "the Unified Exchange and the shares were quoted in any list of that exchange" and substitute "a recognized stock market or recognized futures market and the shares were quoted in any list of that market".

(c) In section 44(4), repeal "the Unified Exchange in the ordinary course of business on that exchange" and substitute "a recognized stock market or recognized futures market in the ordinary course of business on that market".

11. Inland Revenue (a) In section 16(2)(f)(ii)(B), repeal "section 4(2)(g) of the Ordinance (Cap. 112) Protection of Investors Ordinance (Cap. 335)" and substitute "section 104 of the Securities and Futures Ordinance ( of 2000)".

(b) In section 20AA(6)---

(i) repeal the definition of "approved investment adviser" and substitute---

""approved investment adviser" (認可投資顧問) means---

(a) a person licensed to carry on a business in advising on securities or asset management under Part V of the Securities and Futures Ordinance ( of 2000); or

(b) a person exempt to carry on such a business under that Part, only to the extent that the person carries on such a business;"

(ii) repeal the definition of "broker" and substitute---

""broker" (經紀) means---

(a) a person licensed to carry on a business in dealing in securities under Part V of the Securities and Futures Ordinance ( of 2000); or

(b) a person exempt to carry on such a business under that Part, only to the extent that the person carries on such a business;"

(c) In section 26A---

(i) in subsection (1A)---

(A) repeal paragraphs (a)(i) to (v) and substitute---

"(i) a person chargeable to tax under this Part in respect of a mutual fund, unit trust or similar investment scheme that is authorized as a collective investment scheme under section 103 of the Securities and Futures Ordinance ( of 2000); or

(ii) a person chargeable to tax under this Part in respect of a mutual fund, unit trust or similar investment scheme where the Commissioner is satisfied that the mutual fund, unit trust or investment scheme is a bona fide widely held investment scheme which complies with the requirements of

a supervisory authority within an acceptable regulatory regime.";

(B) in paragraph (b)(i)---

(I) in sub-subparagraph (A), repeal "or (ii)";

(II) in sub-subparagraph (B), repeal "(iii), (iv) or (v)" and substitute "(ii)";

(C) in paragraph (b)(ii)---

(I) in sub-subparagraph (A), repeal "or (ii)";

(II) in sub-subparagraph (B), repeal "(iii), (iv) or (v)" and substitute "(ii)";

(ii) in subsection (2)---

(A) repeal the definition of "authorized";

(B) in the definition of "Commission", repeal "established by section 3 of the Securities and Futures Commission Ordinance (Cap. 24)" and substitute "referred to in section 3(1) of the Securities and Futures Ordinance ( of 2000)";

(C) repeal the definition of "mutual fund corporation" and substitute---

"mutual fund" (互惠基金) means any arrangement made for the purpose, or having the effect, of providing facilities for investment in shares in a corporation which is or hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities and which is offering for sale or has outstanding any redeemable shares of which it is the issuer;"

(D) repeal the definition of "unit trust" and substitute---

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

12. Gambling Ordinance (Cap. 148) (a) In section 2, repeal the definition of "Unified Exchange".

(b) Repeal section 29 and substitute---

"29. Exclusion of contracts under the Securities and Futures Ordinance

Without prejudice to section 390 of the Securities and Futures Ordinance ( of 2000), it is declared that this Ordinance shall not apply to any contract for differences which is listed on any specified stock exchange, or traded on any specified futures exchange, within the meaning of section 1 of Part 1 of Schedule 1 to that Ordinance."

(c) Repeal the Schedule.

13. Banking Ordinance (Cap. 155) (a) In section 2(1), repeal the definition of

"Unified

Exchange" and substitute---

"recognized stock market" (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000);".

(b) In section 3(1)---

(i) repeal paragraphs (j), (ja), (k) and (ka) and substitute---

"(j) a person who is licensed to carry on a business in dealing in securities, dealing in futures contracts, leveraged foreign exchange trading or securities margin financing under Part V of the Securities and Futures Ordinance ( of 2000) where rules made under section 145 of that Ordinance apply to such deposit;

(ja) a mutual fund or unit trust authorized as a collective investment scheme under section 103 of the Securities and Futures Ordinance ( of 2000);

(k) a person authorized under Part III of the Securities and Futures Ordinance ( of 2000) to provide automated trading services as defined in Part 2 of Schedule 6 to that Ordinance, where such deposit is provided as security in relation to a transaction referred to in paragraph (c) of that definition;"

i(ii) in paragraph (1), repeal "section 2 of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420)" and substitute "section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000)".

(c) In section 79(1), in the definition of "non-listed company", repeal "the Unified Exchange" and substitute "a recognized stock market".

(d) In section 92(5)(b), repeal everything after "which" and substitute "section 102(1) of the Securities and Futures Ordinance ( of 2000) does not apply by virtue of section 102(3)(f), (g) or (h) of that Ordinance or the issue of which is authorized under section 104(1) of that Ordinance; or".

(e) In section 137B(2), repeal "Securities Ordinance (Cap. 333)" and substitute "Securities and Futures Ordinance ( of 2000)".

(f) In the Third Schedule, in paragraph 3(i), repeal "Unified Exchange or on any exchange referred to in the Schedule to the Securities (Specification of Approved Assets, Liquid Assets and Ranking Liabilities) Notice 1990 (Cap. 333 sub. leg.)" and substitute "recognized stock market or on any stock exchange referred to in Part 3 of Schedule 1 to the Securities and Futures Ordinance ( of 2000)".

14. Banking Ordinance (Declaration Under Section 2(14)(b)) Notice 1998 (Cap. 155 sub. leg.) Repeal section 2 and substitute---

"2. Declaration



It is hereby declared that a person licensed to carry on a business in leveraged foreign exchange trading under Part V of the Securities and Futures Ordinance ( of 2000) is not a money broker for the purposes of the definition of "money broker".

15. Money Lenders Ordinance (Cap. 163) In Schedule 1---

(a) in Part 1, repeal paragraphs 10 and 11 and substitute---

"10. A person licensed to carry on a business in securities margin financing under Part V of the Securities and Futures Ordinance ( of 2000).

11. A person licensed or exempt to carry on a business in dealing in securities under Part V of the Securities and Futures Ordinance ( of 2000) who engages in securities margin financing in order to facilitate acquisitions or holdings of securities by the person for his client.";

(b) in Part 2, in paragraph 14---

(i) repeal subparagraph (a) and substitute---

"(a) a recognized stock market as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000); or";

(ii) in subparagraph (b), repeal "established under the Securities and Futures Commission Ordinance (Cap. 24)" and substitute "referred to in section 3(1) of the Securities and Futures Ordinance ( of 2000)".

16. Exchanges (Special Levy) Ordinance (Cap. 351) Add---

"10. Provisions consequential to the Securities and Futures Ordinance

(1) Subject to subsections (2) and (3), a reference in this Ordinance to a repealed Ordinance, or an expression in a repealed Ordinance, is a reference to the repealed Ordinance or that expression (as the case may be) as it existed immediately before the repeal of the repealed Ordinance.

(2) Any transfer under section 5(2)(a) effected after the compensation fund referred to in that section ceases to exist shall be effected in favour of the compensation fund within the meaning of Part XII of the Securities and Futures Ordinance ( of 2000).

(3) The reference to the Commission in sections 5(2)(b) and 8 (in the case of paragraphs (b) and (d)) shall on the commencement of Part II of the Securities and Futures Ordinance ( of 2000) mean the Commission within the meaning of section 1 of Part 1 of Schedule 1 to that Ordinance.

(4) In this section, "repealed Ordinance" (已廢除條例) means---

(a) the Securities and Futures Commission Ordinance (Cap. 24);

(b) the Commodities Trading Ordinance (Cap. 250);

(c) the Securities Ordinance (Cap. 333); or  
(d) the Stock Exchanges Unification Ordinance (Cap. 361),  
repealed under the Securities and Futures Ordinance

( of 2000).".

17. Occupational Retirement Schemes Ordinance (Cap. 426) In section 27---

(a) in subsection (1), repeal the definition of "mutual  
fund corporation" and substitute---

"mutual fund" (互惠基金) means any arrangement made for the purpose, or having the effect, of providing facilities for investment in shares in a corporation which is or hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities and which is offering for sale or has outstanding any redeemable shares of which it is the issuer;"

(b) repeal subsection (2)(c)(i) and (ii) and substitute---

"(i) listed on a recognized stock market as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance

( of 2000); or

(ii) publicly listed on a specified stock exchange as defined in that section.";

(c) in subsection (3)(b), repeal "redeemable shares in a mutual fund corporation" and substitute "interests in a mutual fund".

18. Organized and Serious Crimes Ordinance (Cap. 455) In section 24A, in the definition of "remittance agent", repeal

paragraph (b)(iii) and (iv) and substitute---

"(iii) a person licensed under Part V of the Securities and Futures Ordinance ( of 2000) to carry on a business in any regulated activity within the meaning of Schedule 6 to that Ordinance or the licensed representative of such person within the meaning of that Ordinance;"

19. Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.)

(a) In section 2---

(i) repeal the definitions of "authorized mutual fund"  
and "authorized unit trust" and substitute---

"authorized mutual fund" (認可互惠基金) means a mutual fund authorized as a collective investment scheme by the Securities and Futures Commission under section 103 of the Securities and Futures Ordinance ( of 2000);

"authorized unit trust" (認可單位信託) means a unit trust authorized as a collective investment scheme by the Securities and Futures Commission under section 103 of the Securities and Futures Ordinance

( of 2000);";

(ii) in the definition of "financial futures contract", repeal "a recognized futures exchange" and substitute "an approved futures exchange";

(iii) in the definition of "financial option contract", repeal "a recognized futures exchange or a recognized stock exchange" and substitute "an approved futures exchange or an approved stock exchange";

(iv) repeal the definition of "Futures Exchange" and substitute---  
    ""recognized futures market" (認可期貨市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000);";

(v) repeal the definition of "recognized futures exchange" and substitute---  
    ""approved futures exchange" (核准期貨交易所)  
    means---

    (a) a recognized futures market; or  
    (b) any futures exchange established in a place outside Hong Kong that is declared by the Authority by notice published in the Gazette to be an approved futures exchange for the purposes of this Regulation;";

(vi) repeal the definition of "recognized stock exchange" and substitute--

    ""approved stock exchange" (核准證券交易所)  
    means---  
    (a) a recognized stock market; or  
    (b) any stock exchange established in a place outside Hong Kong that is declared by the Authority by notice published in the Gazette to be an approved stock exchange for the purposes of this Regulation;";

(vii) in the definition of "securities", repeal "section 2 of the Securities Ordinance (Cap. 333)" and substitute "section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000);";

(viii) add---  
    ""recognized stock market" (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000);".

(b) In section 13(a), repeal "an overseas bank within the meaning of section 2 of the Protection of Investors Ordinance (Cap. 335)" and substitute "a bank incorporated outside Hong Kong and not holding a valid banking licence under the Banking Ordinance (Cap. 155)".

(c) Repeal section 44(3)(c) and substitute---  
    "(c) is licensed or exempt to carry on a business in asset management under Part V of the Securities and Futures Ordinance ( of 2000).".

(d) In section 45---

(i) repeal subsection (3)(b) and substitute---

"(b) a person licensed or exempt to carry on a business in asset management under Part V of the Securities and Futures Ordinance ( of 2000).";

(ii) in subsection (4)---

(A) repeal paragraph (b) and substitute---

"(b) is an associate of a person licensed or exempt to carry on a business in asset management under Part V of the Securities and Futures Ordinance ( of 2000); or";

(B) in paragraph (c), repeal "registered as an investment adviser under that Ordinance" and substitute "a person licensed or exempt to carry on a business in asset management under Part V of the Securities and Futures Ordinance ( of 2000)".

(e) In Schedule 1---

(i) in Part I, in section 1(1)---

(A) in the definition of "call warrant", repeal "a recognized stock exchange or a recognized futures exchange" and substitute "an approved stock exchange or an approved futures exchange";

(B) in the definition of "put warrant", repeal "a recognized stock exchange or a recognized futures exchange" and substitute "an approved stock exchange or an approved futures exchange";

(C) in the definition of "warrant", repeal "a recognized stock exchange" where it twice appears and substitute "an approved stock exchange";

(ii) in Part II---

(A) in sections 3(2)(a), 7(2)(d), 8(1) and (2)(a) and (b), 9(a) and 13(1)(b), repeal "a recognized stock exchange" and substitute "an approved stock exchange";

(B) in section 14---

(I) in subsection (2), repeal "a recognized futures exchange" and substitute "an approved futures exchange";

(II) in subsection (3), repeal "a recognized futures exchange or a recognized stock exchange" and substitute "an approved futures exchange or an approved stock exchange";

(iii) in Part III, in section 16(3), in the definition of "Hong Kong dollar currency investment"---

(A) in paragraphs (c) and (d), repeal "the Unified Exchange" and substitute "a recognized stock market";

(B) in paragraph (e), repeal "the Futures Exchange or the Unified Exchange" and substitute "a recognized futures market or a recognized stock market";

(iv) in Part IV---

(A) in section 17(2)(a), repeal "the investment arrangements within the meaning of the Protection of Investors Ordinance (Cap. 335)" and substitute "collective investment schemes under Part IV of the Securities and Futures Ordinance ( of 2000)";

(B) in section 19(5), repeal "registered as an investment adviser under the Securities Ordinance (Cap. 333)" and substitute "a person licensed or exempt to carry on a business in asset management under Part V of the Securities and Futures Ordinance ( of 2000)".

20. Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.)  
In Schedule 3, in section 3(1)---

(a) repeal paragraph (a) and substitute---

"(a) is a person licensed or exempt to carry on a business in asset management under Part V of the Securities and Futures Ordinance ( of 2000); or";

(b) in paragraph (b), repeal "business as an investment adviser under a law of a place outside Hong Kong" and substitute "under the law of a place outside Hong Kong the business referred to in paragraph (a)".

21. Personal Data (Privacy) Ordinance (Cap. 486) In section 2(1), in the definition of "financial regulator",

repeal paragraphs (b), (c), (d), (e) and (ea) and substitute---

"(b) the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance ( of 2000);

(c) a recognized clearing house, a recognized exchange company, a recognized exchange controller or a recognized investor compensation company within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000);

(d) a person authorized under Part III of the Securities and Futures Ordinance ( of 2000) to provide automated trading services as defined in Schedule 6 to that Ordinance;"

22. Legislative Council Ordinance (Cap. 542) (a) In section 20U---

(i) repeal subsection (1)(a) and (b) and substitute---

"(a) subject to subsection (2), exchange participants of a recognized exchange company; and";

(ii) in subsection (2)---

(A) in paragraph (a), repeal "an Exchange Company" and substitute "a recognized exchange company";

(B) in paragraph (b)---

(I) repeal "an Exchange Company" and substitute "a recognized exchange company";

(II) in subparagraph (i), repeal "Exchange Company" and substitute "recognized exchange company";

(iii) in subsection (3)---

(A) repeal the definition of "Exchange Company" and substitute---

"recognized exchange company" (認可交易所) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000);";

(B) repeal the definition of "exchange participant" and substitute---

"exchange participant" (交易所參與者) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000);";

(C) in the definition of "rules"---

(I) repeal "an Exchange Company" and substitute "a recognized exchange company";

(II) repeal "the Exchange Company" and substitute "the recognized exchange company".

(b) In section 25(4), repeal "and (b)".

23. Electronic Transactions Ordinance (Cap. 553) In Schedule 2---

(a) in paragraph (m), after "(Cap. 395)", add "repealed under the Securities and Futures Ordinance ( of 2000)";

(b) add---

"(ma) the Securities and Futures Appeals Tribunal or the Market Misconduct Tribunal established under Part XI or XIII of the Securities and Futures Ordinance ( of 2000);

(mb) any person arbitrating disputes in accordance with rules made under section 117(2) of the Securities and Futures Ordinance ( of 2000);";

(c) repeal paragraphs (zk) and (zl).

24. Mass Transit Railway Ordinance (Cap. 556) Repeal section 58(2)(c) and substitute---

"(c) the listing of any shares in the Corporation on a recognized stock market or a specified stock exchange as these terms are defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance ( of 2000),".

25. Broadcasting Ordinance (48 of 2000) In Schedule 1---

(a) in section 1(1), in the definition of "qualified voting controller", in paragraph (b)(i), repeal "corporation authorized under section 15 of the Securities Ordinance (Cap. 333)" and substitute "authorized as a collective investment scheme under section 103 of the Securities and Futures Ordinance ( of 2000)";

(b) in sections 15(1) and 29(1), repeal "section 18 of the Securities (Disclosure of Interests) Ordinance (Cap. 396)" and substitute "section 320 of the Securities and Futures Ordinance ( of 2000)".

## Explanatory Memorandum

The purpose of this Bill is to consolidate and amend the law relating to financial products (which expression is defined to cover securities, futures contracts, collective investment schemes, and leveraged foreign exchange contracts as respectively further defined in the Bill) and the relevant market and industry, as well as the law relating to the protection of investors.

2. For that purpose, the Bill is divided into 17 Parts.

### Part I

3. Part I contains preliminary provisions. In particular---

(a) clause 1 provides for the commencement of the Bill, so that the Bill, or any part of the Bill, may when enacted come into operation in the manner specified by the Secretary for Financial Services by notice published in the Gazette;

(b) clause 2 specifies that interpretation provisions are contained in Schedule 1 and individual Parts and provisions of the Bill.

### Part II

4. Part II contains provisions relating to the Securities and Futures Commission ("the Commission").

5. Division 1 of Part II provides for matters relating to the constitution of the Commission. In particular---

(a) clause 3 provides that the Commission established under the repealed Securities and Futures Commission Ordinance (see paragraph 73) is to continue in existence under the Bill with the same corporate identity, and is further to be regulated by the provisions of Part 1 of Schedule 2;

(b) clause 4 sets out the regulatory objectives of the Commission;

(c) clauses 5 and 6 set out the functions and powers as well as the duties of the Commission;

(d) clauses 7 to 9 provide for committees and the staff of the Commission;

(e) clause 10 specifies, with further reference to Part 2 of Schedule 2, circumstances in which the Commission may delegate its functions;

(f) clause 11 provides for circumstances in which the Chief Executive may give directions to the Commission as to the furtherance of its regulatory objectives or the performance of its functions;

(g) clause 12 requires the Commission to furnish information to the Financial Secretary on the furtherance of its regulatory objectives or the performance of its functions.

6. Division 2 (clauses 13 to 17) of Part II provides for the accounting and financial

arrangements relating to the Commission.

### Part III

7. Part III provides for the regulation of exchange companies, clearing houses, exchange controllers, investor compensation companies and automated trading services.

8. Division 2 of Part III deals with exchange companies---

- (a) clause 19 provides for the recognition of companies as exchange companies;
- (b) clause 20 provides for the transactions that may be conducted on an exchange company;
- (c) clause 21 sets out the duties of a recognized exchange company and clause 22 provides for immunities;
- (d) clauses 23 to 32 contain provisions relating to regulation of recognized exchange companies;
- (e) clause 33 provides for appeal against withdrawal of recognition as an exchange company, etc.;
- (f) clause 34 prohibits the use of titles relating to exchanges, etc.;
- (g) clause 35 empowers the Commission to make rules on contract limits and reportable open position;
- (h) clause 36 contains other rule-making powers of the Commission.

9. Division 3 of Part III deals with clearing houses---

- (a) clause 37 provides for the recognition of companies as clearing houses;
- (b) clause 38 sets out the duties of a recognized clearing house and clause 39 provides for immunities;
- (c) clauses 40 to 43 contain provisions relating to regulation of recognized clearing houses;
- (d) clause 44 provides for appeal against withdrawal of recognition as a clearing house, etc.;
- (e) clauses 45 to 54 deal with modifications of the law of insolvency for the purpose of safeguarding the operations and procedures of recognized clearing houses;
- (f) clauses 55 to 58 contain miscellaneous provisions.

10. Division 4 of Part III deals with controllers of recognized exchange companies or recognized clearing houses---

- (a) clause 59 provides for the recognition of companies as exchange controllers;
- (b) clause 62 empowers the Financial Secretary to grant an exemption from clause 59 and to revoke the exemption;
- (c) clause 63 imposes duties on a recognized exchange controller and clause 64 provides for immunities;
- (d) clause 73 provides for appeal against withdrawal of recognition as an exchange



controller and other notices issued by the Commission;

(e) other clauses of Division 4 mainly deal with the regulation of recognized exchange controllers.

11. Division 5 of Part III deals with investor compensation companies the establishment of which is for the purpose of facilitating compensation arrangements for investors---

(a) clause 79 provides for the recognition of companies as investor compensation companies;

(b) clause 80 provides for the transfer to an investor compensation company of the Commission's functions as regards compensation arrangements for investors;

(c) clause 81 provides for immunities;

(d) clauses 82 to 85 deal with the regulation of recognized investor compensation companies;

(e) clause 86 provides for appeal against withdrawal of recognition as an investor compensation companies, etc.;

(f) clauses 87 to 90 contain miscellaneous provisions.

12. Division 6 of Part III contains provisions which are applicable to recognized exchange companies, recognized clearing houses, recognized exchange controllers and recognized investor compensation companies.

13. Division 7 of Part III deals with the regulation of electronic trading of securities, etc. via automated trading facilities. In particular---

(a) clause 95 provides for authorization for providing automated trading services;

(b) clause 97 provides that the Commission may impose conditions upon authorization;

(c) clause 99 empowers the Commission to make rules in relation to the regulation of the services.

#### Part IV

14. Part IV contains provisions for the protection of investors.

15. Division 2 of Part IV provides for regulation of offers of investments, etc. In particular---

(a) clauses 102 to 105 contain provisions to regulate the issue of advertisements, invitations and documents relating to investments, and provide for the grant (clauses 103 and 104) or withdrawal (clause 105) of authorization for that purpose;

(b) clause 106 prohibits the use of any fraudulent or reckless misrepresentation to induce others to invest money, and clause 107 provides for a further civil liability for the use of any fraudulent, reckless or negligent misrepresentation to induce others to invest money;

(c) clause 108, with reference to Schedule 5, regulates the communication of offers to acquire or dispose of securities;

(d) clause 109 regulates the issue of advertisements relating to the carrying on of regulated activities, etc.

16. Division 3 of Part IV deals with submission of information to the Commission (clause 110), service of notices in respect of authorizations granted under clauses 103 and 104 (clause 111), and amendment of Schedules applicable to the provisions of Part IV (clause 112).

#### Part V

17. Part V provides for licensing and exemption of corporations and individuals who carry on activities regulated by the Commission ("regulated activities") including---

- (a) dealing in or advising on securities or futures contracts;
- (b) trading in leveraged foreign exchange contracts;
- (c) advising on corporate finance;
- (d) providing automated trading services, securities margin financing or asset management.

18. The relevant provisions are contained in clauses 113 to 139. In particular--  
-

(a) clause 114 prohibits any person from carrying on a regulated activity unless the person is licensed or exempt under this Part or is a person authorized under clause 95, for the regulated activity, or is an employee falling within the description of clause 114(4)(b) or (c);

(b) clause 115 provides for licensing of corporations by the Commission for regulated activities;

(c) clause 116 empowers the Commission to grant temporary licences to authorize an overseas corporation to carry on regulated activities in Hong Kong for the purpose of its overseas operation;

(d) under clause 118, authorized financial institutions may be exempt by the Commission for regulated activities. The Commission has to act on the advice of the Monetary Authority;

(e) clause 119 provides for licensing of individuals as licensed representatives to carry on regulated activities for licensed corporations. The Commission may grant a provisional licence pending the determination of an application for a licence;

(f) clause 120 empowers the Commission to grant a temporary licence so that an individual can act as a licensed representative for a corporation holding a temporary licence granted under clause 116 or for a corporation licensed under section 115, but in the latter case, the individual must be, at the time when he submits the application, carrying on for an overseas corporation in a place outside Hong Kong an activity, which, if carried on in Hong Kong would constitute the regulated activity

for which he seeks to be licensed, and that the overseas corporation and the licensed corporation must belong to the same group of companies;

(g) under clause 124, licensed corporations and exempt persons must have approved executive officers to supervise the carrying on of regulated activities;

(h) the type or types of regulated activity for which licensed persons or exempt persons are licensed or exempt may be varied by the Commission under clause 126 upon application;

(i) clause 129 requires licensed corporations to have suitable premises for the keeping of records and documents required under the Bill;

(j) under clause 130, no person shall become a substantial shareholder of a licensed corporation unless he has been approved by the Commission;

(k) the Commission may modify or waive under clause 131 requirements under various clauses of the Bill or conditions imposed under Part V as regards licensed persons, exempt persons, applicants for exemptions or licences, etc.;

(l) licensed persons or exempt persons have to report certain events to the Commission and (in certain cases) the Monetary Authority under clause 132;

(m) clauses 133 and 134 require the Commission to maintain a register of licensed persons or exempt persons and publish information relating to them;

(n) clause 135 provides for the payment of annual fee and submission of annual return;

(o) clause 136 prohibits the use of certain titles except by licensed persons, exempt persons, persons authorized under clause 95 or certain employees of exempt persons or such authorized persons;

(p) clause 137 provides that the Commission shall, before making its final decision on an application, amendment or revocation of conditions imposed in respect of a licence or accreditation or other approval granted by the Commissioner under the Bill, give the person affected an opportunity of being heard.

## Part VI

19. Part VI imposes capital requirements and other requirements relating to client assets, records and audit applicable to intermediaries.

20. Division 2 of Part VI deals with the requisite capital requirements. In particular---

(a) clause 141 enables the Commission to make rules after consultation with the Financial Secretary requiring licensed corporations to maintain financial resources in accordance with specified requirements;

(b) clause 142 provides for requirements to be followed in case of failure to comply with the rules made under clause 141, and clause 143 makes provisions to enable the Commission to monitor compliance with the rules.

21. Division 3 of Part VI deals with maintenance of client assets. In particular---

(a) clause 144 enables the Commission to make rules requiring intermediaries and their associated entities to deal with client securities in accordance with specified requirements;

(b) clause 145 enables the Commission to make rules requiring licensed corporations and their associated entities to deal with client money in accordance with specified requirements.

22. Division 4 of Part VI provides for the keeping of accounts and records. In particular---

(a) clause 147 enables the Commission to make rules to provide for the keeping of accounts and records by intermediaries and their associated entities;

(b) clause 148 enables the Commission to make rules to provide for the preparation by intermediaries and their associated entities of contract notes, receipts, statements of account and notifications to clients.

23. Division 5 of Part VI relates to audit requirements imposed on licensed corporations and their associated entities. In particular---

(a) clauses 149 and 150 impose requirements relating to appointment of auditors;

(b) clause 151 sets out requirements in relation to notification of financial years;

(c) clause 152 contains requirements as to submission of audited accounts;

(d) clauses 153 and 154 provide for the lodging of reports by auditors with the Commission and the Monetary Authority on specified matters, and further for immunity in respect of the lodging of such reports;

(e) clauses 155 to 158 enable the Commission to appoint independent auditors in respect of licensed corporations and their associated entities, whether of its own volition or on the application of clients, and further provide for the duties and powers of the auditors so appointed;

(f) clause 159 creates the offence of destroying or altering documents for obstructing the carrying out of duties of auditors appointed under Part VI.

24. Division 6 of Part VI contains miscellaneous provisions. In particular---

(a) clause 160 imposes restrictions on the receiving or holding of client assets;

(b) clause 161 sets out general obligations of associated entities of intermediaries.

Part VII

25. Part VII regulates business conduct of intermediaries.

26. Division 2 of Part VII contains provisions relating to business conduct of intermediaries. In particular---

(a) clause 163 enables the Commission to make rules requiring intermediaries and their representatives to comply with specified practices and standards relating to the regulated activities for which the intermediaries are licensed or exempt;

(b) clause 164 enables the Commission to publish non-statutory codes of conduct

setting out guidelines relating to the practices and standards with which intermediaries and their representatives are ordinarily expected to comply.

27. Division 3 of Part VII sets out requirements relating to short selling activities. In particular---

(a) clause 165 sets out the general prohibition on short selling when there is no presently exercisable and unconditional right to vest the securities in question in the purchasers of them;

(b) clause 166 imposes requirements on a seller in a short selling order to provide an assurance to confirm particulars relating to the short selling order, and imposes requirements on an exchange participant or an agent who deals with a short selling order to ensure receipt of an assurance which confirms particulars relating to the short selling order;

(c) clause 167 requires an exchange participant and its representative who deal with a short selling order to disclose its nature in the specified manner.

28. Division 4 of Part VII deals with other requirements. In particular---

(a) clause 168 imposes requirements in respect of options trading;

(b) clause 169 regulates the making of unsolicited calls for the purpose of making investment agreements, etc.;

(c) clause 170 sets out the general prohibition on intermediaries and their representatives regarding representation of abilities or qualifications.

#### Part VIII

29. Part VIII provides for powers of supervision and investigation of the Commission.

30. Division 2 of Part VIII contains provisions conferring power on the Commission to require information. In particular---

(a) clause 172 provides for the power to require production of records and documents concerning listed corporations from the listed corporations, its related corporations, authorized financial institutions, auditors and other persons, subject to the conditions set out in the clause;

(b) clause 173 provides for the power to supervise intermediaries and their associated entities and, for that purpose, provides for the power to enter premises, inspect records and documents and make enquiries, subject to the conditions set in the clause;

(c) clause 174 permits the collection of information relating to specified transactions.

31. Division 3 (clauses 175 to 177) of Part VIII contains provisions relating to the power of investigation of the Commission, and enables the Commission to appoint an investigator to exercise the power, subject to the conditions set out in the Division.

32. Division 4 of Part VIII contains miscellaneous provisions. In particular---

- (a) clause 178 enables the Commission to certify to the Court of First Instance instances of failure to comply with requirements made under clause 172, 173, 174 or 176;
- (b) clause 179 enables the Commission to provide assistance to overseas regulators in specified circumstances;
- (c) clause 180 sets out the admissibility of self-incriminating matters obtained by the exercise of powers under clauses 172 and 176;
- (d) clauses 181 to 185 contain other miscellaneous provisions.

#### Part IX

33. Part IX provides for disciplinary powers of the Commission exercisable in respect of licensed and exempt persons.

34. Division 2 of Part IX contains the disciplinary provisions. In particular---

(a) clauses 187 to 189 relate to licensed persons and responsible officers and other officers of licensed persons--- clause 187 sets out the general disciplinary power of the Commission exercisable in cases of misconduct, etc., which includes the power to revoke or suspend licences, to publish reprimands, and to impose fines, while clause 188 provides for revocation and suspension of a licence in other specified circumstances;

(b) clauses 190 and 191 relate to exempt persons, and clause 190 provides for revocation and suspension of an exemption in specified circumstances.

35. Division 3 of Part IX deals with miscellaneous matters including effect of suspension of a licence or exemption (clause 192), duty of licensed or exempt persons to transfer records upon revocation or suspension of a licence or exemption (clause 194), and permission to carry on business operations after revocation or suspension of a licence or exemption (clause 195).

#### Part X

36. Part X provides for powers of intervention exercisable by the Commission and for relevant proceedings.

37. Division 1 of Part X sets out the powers of intervention exercisable by the Commission in respect of or with reference to licensed corporations. In particular---

(a) clauses 196 to 199 provide that the Commission may impose prohibitions or requirements, covering restriction of businesses (clause 196), restriction on dealings with property (clause 197), requirements to maintain property (clause 198) and requirements to transfer the custody of property (clause 199);

(b) clause 200 sets out the circumstances in which any prohibition or requirement may be imposed under clauses 196 to 199;

(c) clauses 201 to 204 contain other ancillary provisions (including provisions enabling the Commission to apply to the Court of First Instance for enforcement of

any prohibition or requirement imposed under clauses 196 to 199).

38. Division 2 of Part X provides for other powers to seek remedies through the court. In particular---

(a) clauses 205 to 207 set out the power to seek winding-up orders in respect of corporations which are not authorized financial institutions and to seek bankruptcy orders in respect of licensed persons (clause 205), the power to seek injunctions and other orders for contravention of specified requirements (clause 206), and the power to seek remedy in cases of unfair prejudice to interests of members of listed corporations which are not authorized financial institutions (clause 207);

(b) clause 208 provides for civil liability in respect of false or misleading public communications concerning securities or futures contracts which have been made knowingly, recklessly or negligently.

#### Part XI

39. Part XI contains provisions relating to the Securities and Futures Appeals Tribunal, which is the tribunal established to review decisions made by the Commission, in respect of persons other than authorized financial institutions, under specified provisions.

40. Division 2 of Part XI contains provisions relating to the Securities and Futures Appeals Tribunal. In particular---

(a) clause 210, together with Part 1 of Schedule 7, provide for the establishment of the Tribunal, the appointment of chairman, who shall be a judge or a former judge, and other members of the Tribunal, and other matters relating to the constitution and proceedings of the Tribunal;

(b) clause 211, by reference to Part 2 of Schedule 7, specifies the decisions which are subject to the jurisdiction of the Tribunal, and generally provides for procedures applicable to a review;

(c) clauses 212 to 220 provide for proceedings, powers and other matters relating to the Tribunal.

41. Division 3 of Part XI relates to appeals from decisions from the Securities and Futures Appeals Tribunal. In particular---

(a) clause 221 provides for appeals to the Court of Appeal;

(b) clause 222 provides that there is no stay of execution on appeal to the Court of Appeal unless the Court of Appeal otherwise orders.

42. Division 4 of Part XI contains miscellaneous provisions. In particular---

(a) clause 225 provides for appeals to the Chief Executive in Council against decisions made by the Commission in respect of authorized financial institutions, which are decisions excluded from the scope of the class of decisions subject to the jurisdiction of the Securities and Futures Appeals Tribunal;

- (b) clause 226 provides for the rule-making power of the Chief Justice;
- (c) clause 227 enables the Chief Executive in Council to amend Parts 2 and 3 of Schedule 7.

#### Part XII

43. Part XII contains provisions for establishing a framework within which specific compensation arrangements for investors can be developed. In particular---

- (a) clause 229 provides for the establishment of a fund known as the Investors Compensation Fund;
- (b) clause 230 provides for the funding of the Fund;
- (c) clause 234 provides for the payments out of the Fund;
- (d) clause 236 empowers the Chief Executive in Council and the Commission to make rules for the Fund.

#### Part XIII

44. Part XIII contains provisions relating to the Market Misconduct Tribunal, which is the tribunal established to deal with market misconduct, including insider dealing specified in Division 4 of that Part and other market misconduct specified in Division 5 of that Part.

45. Division 2 of Part XIII contains provisions relating to the Market Misconduct Tribunal. In particular---

- (a) clause 243, together with Schedule 8, provide for the establishment of the Tribunal, the appointment of chairman, who shall be a judge or a former judge, and other members of the Tribunal, and other matters relating to the constitution and proceedings of the Tribunal;
- (b) clause 244 provides for the procedures for institution of proceedings before the Tribunal, for the object of such proceedings, as well as the standard of proof applicable to such proceedings;
- (c) clauses 245 and 246 set out the powers of the Tribunal;
- (d) clause 247 sets out the admissibility of evidence obtained at or for the purposes of proceedings before the Tribunal;
- (e) clauses 248 to 256 deal with other matters relating to the Tribunal, including orders that may be made by the Tribunal under clauses 249 and 250.

46. Division 3 of Part XIII relates to appeals from decisions from the Market Misconduct Tribunal. In particular---

- (a) clauses 257 and 258 provide for appeals to the Court of Appeal;
- (b) clause 259 provides that there is no stay of execution on appeal to the Court of Appeal unless the Court of Appeal otherwise orders;
- (c) clause 260 provides for the rule-making power of the Chief Justice.

47. Division 4 of Part XIII contains provisions relating to insider dealing. In



particular---

- (a) clause 261 prescribes circumstances in which insider dealing takes place;
- (b) clauses 262 to 264 specify circumstances in which certain persons are not regarded to have engaged in market misconduct by reason of insider dealing.

48. Division 5 of Part XIII contains provisions relating to market misconduct other than insider dealing. In particular---

- (a) clause 265 provides for false trading;
- (b) clause 266 provides for price rigging;
- (c) clause 267 provides for disclosure of information about prohibited transactions;
- (d) clause 268 provides for disclosure of false or misleading information inducing transactions;
- (e) clause 269 provides for stock market manipulation.

49. Division 6 of Part XIII contains miscellaneous provisions. In particular---

- (a) clause 270 provides for duty of officers of corporations for the purposes of clause 250;
  - (b) clause 271 expressly provides that validity of transactions is not affected by the transactions being market misconduct;
  - (c) clause 272 provides for civil liability for market misconduct;
  - (d) clause 273 prescribes circumstances in which conduct would not constitute market misconduct, and enables the Commission to make rules, after consultation with the Financial Secretary and the public, for that purpose;
  - (e) clause 274 provides, in the light of the possibility of market misconduct possibly being the subject of a charge or a conviction under Part XIV, that proceedings under Part XIII cannot be instituted in respect of conduct for which criminal proceedings have been instituted under Part XIV. This together with clause 298 will prevent double punishment by reason of the co-existence of the provisions of Parts XIII and XIV.
- Part XIV

50. Part XIV provides for offences relating to dealings in securities and futures contracts, etc., and by so doing establishes a dual route in which market misconduct can be punishable in appropriate circumstances as an offence under that Part (see also paragraph 54(d)).

51. Division 2 of Part XIV, which corresponds to Division 4 of Part XIII, contains provisions relating to the offence of insider dealing. In particular---

- (a) clause 283 prescribes circumstances in which the offence takes place;
- (b) clauses 284 to 286 specify circumstances in which defences for the offence can be established.

52. Division 3 of Part XIV, which corresponds to Division 5 of Part XIII, contains provisions relating to other market misconduct offences. In particular---

- (a) clause 287 provides for the offence of false trading;
- (b) clause 288 provides for the offence of price rigging;
- (c) clause 289 provides for the offence of disclosure of information about prohibited transactions;
- (d) clause 290 provides for the offence of disclosure of false or misleading information inducing transactions;
- (e) clause 291 provides for the offence of stock market manipulation.

53. Division 4 of Part XIV creates other offences. In particular---

- (a) clause 292 creates an offence for the use of fraudulent or deceptive devices, etc. in specified transactions;
- (b) clause 293 creates an offence for disclosure of false or misleading information inducing others to enter into leveraged foreign exchange contracts;
- (c) clause 294 creates an offence for falsely representing dealings in futures contracts on behalf of others, etc.

54. Division 5 of Part XIV contains miscellaneous provisions. In particular---

- (a) clause 295 sets out the penalties for commission of the offences under Part XIV and provides for orders that may be made further to convictions under that Part;
- (b) clause 296 creates further civil liability for acts done in contravention of Part XIV;
- (c) clause 297 prescribes circumstances in which conduct would not constitute an offence under Part XIV, and enables the Commission to make rules, after consultation with the Financial Secretary and the public, for that purpose;
- (d) clause 298, being the corresponding version of clause 274, also provides that criminal proceedings under Part XIV cannot be instituted in respect of conduct for which proceedings have been instituted under Part XIII.

## Part XV

55. Part XV sets out the regime for the disclosure of interests in shares, etc. in listed corporations.

56. Division 2 of Part XV deals with disclosure by persons having notifiable interests and short positions in shares comprised in the relevant share capital of listed corporations. In particular---

- (a) clauses 301 and 304 set out the cases and circumstances under which the duty of disclosure arises;
- (b) clauses 302 and 306 prescribe the interests (and the percentage level of such interests), as well as short positions, that are notifiable;
- (c) clauses 307 to 311 provide that persons are taken to have the interests and short positions held by their families, by corporations which they control and by other parties to agreements for acquisition of shares.

57. Division 3 (clauses 313 and 314) of Part XV sets out the interests and short positions to be taken into account and those to be disregarded for the purpose of notification.

58. Division 4 of Part XV deals with the requirements to give notification. In particular---

- (a) clause 315 requires notification to be given when the duty of disclosure arises;
- (b) clauses 316 and 317 specify the time limit for giving notification and the particulars to be contained in the notification;
- (c) clause 318 requires relevant exchange companies to publish information received and requires listed corporations to notify the Monetary Authority of the information;
- (d) clause 319 creates offences for non-compliance with the disclosure requirements, and provides that the Financial Secretary may impose restriction orders on the shares in relation to which an offence was committed and (if those shares are the underlying shares of equity derivatives) on those equity derivatives.

59. Division 5 of Part XV enables listed corporations to carry out investigations in relation to any interests or short positions in their shares, or (if their shares are the underlying shares of equity derivatives) any interests in those equity derivatives. In particular---

- (a) clauses 323 and 324 require listed corporations to provide reports on conclusion of investigations carried out in pursuance of members' requisitions;
- (b) clause 325 provides that listed corporations may apply to the Court of First Instance for restriction orders to be imposed on shares or equity derivatives in question if there are defaults in providing information to the listed corporations.

60. Division 6 (clauses 327 to 331) of Part XV requires listed corporations to keep registers of interests in shares and short positions.

61. Division 7 of Part XV deals with disclosure by directors and chief executives of listed corporations having interests in shares in or debentures of, or short positions in shares in, the listed corporations or associated corporations of the listed corporations. In particular---

- (a) clause 332 provides for the duty of disclosure;
- (b) clauses 333 and 334 prescribe the interests, as well as short positions, that are notifiable;
- (c) clause 335 provides that directors and chief executives are taken to have the interests and short positions held by their families and by corporations which they control.

62. Division 8 (clauses 336 and 337) of Part XV sets out the interests and short positions to be taken into account and those to be disregarded for the purpose of notification by directors and chief executives.

63. Division 9 of Part XV deals with the requirements to give notification by directors and chief executives. In particular---

- (a) clause 338 requires notification to be given when the duty of disclosure arises;
- (b) clauses 339 and 340 specify the time limit for giving notification and the particulars to be contained in the notification;
- (c) clause 341 requires relevant exchange companies to publish information received and requires listed corporations to notify the Monetary Authority of the information;
- (d) clause 342 creates offences for non-compliance with the disclosure requirements.

64. Division 10 (clauses 343 to 346) of Part XV requires listed corporations to keep registers of directors' and chief executives' interests and short positions.

65. Division 11 of Part XV empowers the Financial Secretary to investigate the ownership of shares in or debentures of listed corporations, and also persons who have or had interests or short positions in shares in, or interests in debentures of, listed corporations or (if the shares in the listed corporations are the underlying shares of equity derivatives) interests in those equity derivatives for the purposes of determining the true persons who control those corporations. In particular---

- (a) clauses 347 and 348 provide for the circumstances under which investigations may be conducted and for the appointment of inspectors to carry out the investigations;
- (b) clauses 349 to 351 relate to the powers of inspectors;
- (c) clause 355 empowers the Financial Secretary to impose restriction orders on the shares or equity derivatives in question.

66. Division 12 of Part XV deals with the consequences after restriction orders are made. In particular---

- (a) clause 358 provides that any transfer, etc. of shares or equity derivatives subject to the restrictions is void;
- (b) clause 360 allows applications for orders to remove the restrictions and provides for the right of the Financial Secretary to be heard at the hearings of the applications to the court, and also empowers the Court of First Instance to make orders for sale and orders for the exercise of rights under equity derivatives;
- (c) clause 361 requires proceeds of sale and proceeds arising from the exercise of rights under equity derivatives to be paid into court and allows applications to the court for payment out, and further provides for the right of the Financial Secretary to be heard at the hearings of the applications.

67. Division 13 of Part XV provides for miscellaneous matters including regulation-making power of the Chief Executive in Council.

## Part XVI

68. Part XVI contains miscellaneous provisions.

69. Division 1 of Part XVI contains secrecy, conflict of interests and immunity provisions. In particular---

(a) clause 366 requires persons performing functions under or carrying into effect any of the relevant provisions (as defined in Schedule 1) to preserve secrecy save in specified circumstances;

(b) clause 367 requires any member of the Commission and any person performing functions under any of the relevant provisions not to enter into specified transactions, and to disclose his interests in specified matters, to prevent cases of conflict of interests arising;

(c) clause 368 confers immunity on persons doing anything in good faith in the performance of functions under any of the relevant provisions or in compliance with a written direction given under clause 11, while clause 369 confers immunity on auditors of listed corporations or associated corporations of listed corporations in respect of communication in good faith to the Commission of specified matters.

70. Division 2 of Part XVI contains general provisions regarding proceedings and offences. In particular---

(a) clause 370 creates the offence of obstruction;

(b) clause 371 makes it an offence for a person making false or misleading representations in applications made to the Commission;

(c) clause 372 creates the offence of providing false or misleading information so far as the provision of the information is not otherwise an offence under any of the relevant provisions;

(d) clause 373 enables the Commission to intervene in proceedings which concern a matter provided for in any of the relevant provisions or in which the Commission has an interest by virtue of its powers or functions under any of the relevant provisions, if the Commission is satisfied that it is in the public interest to do so;

(e) clauses 374 to 377 provide for general matters relating to proceedings including standard of proof, prosecution of offences by the Commission and limitation period;

(f) clause 378 provides for liability of officers of a corporation in case of default by the corporation, and for liability of a partner in case of default by other partners.

71. Division 3 of Part XVI sets out powers to make rules, and codes or guidelines, etc. In particular---

(a) clauses 379 and 380 provides for the power of the Financial Secretary to prescribe interests, rights or property as securities and futures contracts, and to prescribe arrangements as collective investment schemes;

(b) clauses 381 to 383 provide for the making of orders and rules by the Chief Executive in Council in respect of levies payable for transactions in securities or

futures contracts, and of fees otherwise payable generally under the Bill, and further for the reduction of such levies in appropriate circumstances;

(c) clause 384 provides for the general rule-making powers of the Commission;

(d) clause 385 provides for powers of the Commission to make non-statutory codes or guidelines.

72. Division 4 of Part XVI deals with miscellaneous matters, and clauses 386 to 391 provide for service of notices, evidence regarding records or documents of the Commission, forms and other general matters.

#### Part XVII

73. Part XVII deals with repeals and related provisions. In particular---

(a) clause 392 provides for the repeal of the following Ordinances (including their respective subsidiary legislation)---

--- the Securities and Futures Commission Ordinance (Cap. 24);

--- the Commodities Trading Ordinance (Cap. 250);

--- the Securities Ordinance (Cap. 333);

--- the Protection of Investors Ordinance (Cap. 335);

--- the Stock Exchanges Unification Ordinance (Cap. 361);

--- the Securities (Insider Dealing) Ordinance (Cap. 395);

--- the Securities (Disclosure of Interests) Ordinance (Cap. 396);

--- the Securities and Futures (Clearing Houses) Ordinance (Cap. 420);

--- the Leveraged Foreign Exchange Trading Ordinance (Cap. 451);

--- the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555);

(b) clause 393 provides for the inclusion of savings, transitional, consequential and related provisions in Schedule 9;

(c) clause 394 is an avoidance of doubt provision to provide that the provisions of Part XVII are not to derogate from section 23 of the Interpretation and General Clauses Ordinance (Cap. 1);

(d) clause 395 enables the Chief Executive in Council to amend Schedule 9.

74. Schedule 1 contains interpretation provisions applicable to the Bill.

75. Schedule 2 relates to the Commission. Part 1 deals with the constitution and proceedings of the Commission, while Part 2 sets out the non-delegable functions of the Commission.

76. Schedule 3 relates to Part III. Part 2 specifies persons who are associated persons and Part 3 specifies persons who are not associated persons. Part 4 specifies persons who are not indirect controllers. Part 5 sets out the requirements for the

default rules of recognized clearing houses. Part 6 contains provisions applicable where there is a contravention of certain notices of the Commission. Part 7 relates to persons who are not minority controllers and Part 8 relates to exemption from section 59(1) of this Ordinance.

77. Schedules 4 and 5 relate to Part IV, and specify various matters and requirements for the purposes of that Part.

78. Schedule 6 contains the definitions of regulated activities, and certain activities of securities margin financing which are specified for the purposes of clause 114(5).

79. Schedule 7 deals with the Securities and Futures Appeals Tribunal. Part 1 provides for the appointment of members and proceedings of the Tribunal, while Part 2 sets out specified decisions in respect of which an application for review may be made to the Tribunal and Part 3 sets out excluded decisions in respect of which an appeal may be made to the Chief Executive in Council.

80. Schedule 8 deals with the Market Misconduct Tribunal and sets out provisions relating to the appointment of members and temporary members of the Tribunal, the appointment and the role of Presenting Officers and of persons appointed to assist Presenting Officers, and the proceedings and sittings of, and procedural and other matters concerning, the Tribunal.

81. Schedule 9 deals with savings, transitional, consequential and related provisions.