

## **Extracts from the Securities and Futures Ordinance (Cap. 571)**

- I. Provisions requiring Consultation with Chairman of the Securities and Futures Commission**  
Section 11
- II. Provisions requiring Consultation with the Securities and Futures Commission**  
Sections 24, 41, 67, 83, 395 and section 27 of Part 1 of Schedule 2
- III. Provisions relating to the power to make subsidiary legislation by the Securities and Futures Commission**  
Sections 35, 36, 60, 66, 100, 116, 118, 128, 134, 145, 148, 149, 151, 152, 168, 173, 244, 250, 282, 290, 306, 377, 397, 398, and 404
- IV. Provisions relating to the role of the Chairman of the Securities and Futures Commission**  
Sections 11, 15, 240 and sections 6, 14, 15, 19, 20, 25, 27, 28 and 29 of Part 1 of Schedule 2
- V. Provisions relating to non-delegable functions of the Securities and Futures Commission**  
Section 10 and Part 2 of Schedule 2

**I. Provisions requiring Consultation with Chairman of the Securities and Futures Commission**

## 11. 向證監會發出指示

(1) 行政長官在諮詢證監會主席後，如信納就達致證監會任何規管目標或執行該會任何職能而向該會發出書面指示，是符合公眾利益的，則可如此發出書面指示。

(2) 證監會須遵從根據第(1)款發出的書面指示。

(3) 如行政長官根據第(1)款發出書面指示且該指示關乎證監會某項職能，而本條例其他條文或其他條例規定該會為執行該職能須——

(a) 得出意見；

(b) 確定是否信納某事宜(包括信納某種情況是否存在)；或

(c) 諮詢某人，

則就與依據或由該指示而執行職能一事有關連的所有目的而言，該等規定並不適用。

(4) 根據第(1)款發出的書面指示不是附屬法例。

## 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.

## **II. Provisions requiring Consultation with the Securities and Futures Commission**

#### 24. 批准認可交易所規章或 對該等規章的修訂

(1) 除第 (7) 款另有規定外，認可交易所的規章 (不論是否根據第 23 條訂立) 或對該等規章的修訂須獲證監會書面批准，否則不具效力。

(2) 認可交易所須——

(a) 將或安排將任何根據第 (1) 款須取得批准的規章及修訂，呈交證監會批准；呈交的規章及修訂須附有就該等規章及修訂的目的及相當可能會有影響 (包括對投資大眾的影響) 而作出的解釋，該等解釋的詳細程度，須足以使該會能夠決定是否批准該等規章及修訂；及

(b) 在屬根據第 (7) 款宣布的類別的規章訂立後，及在對該等規章的修訂作出後，在合理地切實可行的範圍內盡快向證監會呈交或安排向該會呈交該等規章及修訂，讓該會知悉。

(3) 證監會須在收到認可交易所根據第 (2)(a) 款呈交的規章或修訂後的 6 個星期內，藉送達書面通知予該交易所，批准或拒絕批准該等規章或修訂 (視屬何情況而定)，或批准或拒絕批准其中任何部分；如該會拒絕批准，須在有關通知中說明拒絕批准的理由。

(4) 證監會根據第 (3) 款給予的批准，可受某些在該等規章或修訂或其中任何部分生效前須符合的要求所規限。

(5) 證監會可在有關的認可交易所的同意下，在任何個別個案中延展第 (3) 款訂明的期限。

(6) 財政司司長可在諮詢證監會及有關的認可交易所後，延展第 (3) 款訂明的期限。

(7) 證監會可藉憲報公告宣布認可交易所的某類別的規章無須根據第 (1) 款獲批准，而任何屬於該類別的該交易所規章 (包括對該等規章的修訂) 即使沒有根據第 (1) 款獲批准，仍屬有效。

(8) 根據第 23 條訂立的規章及第 (7) 款提述的公告均不是附屬法例。

#### 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.

#### 41. 批准認可結算所規章或 對該等規章的修訂

(1) 除第 (7) 款另有規定外，認可結算所的規章(不論是否根據第 40 條訂立)或對該等規章的修訂須獲證監會書面批准，否則不具效力。

(2) 認可結算所須——

(a) 將或安排將任何根據第 (1) 款須取得批准的規章及修訂，呈交證監會批准；呈交的規章及修訂須附有就該等規章及修訂的目的及相當可能會有影響(包括對投資大眾的影響)而作出的解釋，該等解釋的詳細程度，須足以使該會能夠決定是否批准該等規章及修訂；及

(b) 在屬根據第 (7) 款宣布的類別的規章訂立後，及在對該等規章的修訂作出後，在合理地切實可行的範圍內盡快向證監會呈交或安排向該會呈交該等規章及修訂，讓該會知悉。

(3) 證監會須在收到認可結算所根據第 (2)(a) 款呈交的規章或修訂後的 6 個星期內，藉送達書面通知予該結算所，批准或拒絕批准該等規章或修訂(視屬何情況而定)，或批准或拒絕批准其中任何部分；如該會拒絕批准，須在有關通知中說明拒絕批准的理由。

(4) 證監會根據第 (3) 款給予的批准，可受某些在該等規章或修訂或其中任何部分生效前須符合的要求所規限。

(5) 證監會可在有關的認可結算所的同意下，在任何個別個案中延展第 (3) 款訂明的期限。

(6) 財政司司長可在諮詢證監會及有關的認可結算所後，延展第 (3) 款訂明的期限。

(7) 證監會可藉憲報公告宣布認可結算所的某類別的規章(違責處理規則除外)無須根據第 (1) 款獲批准，而任何屬於該類別的該結算所規章(包括對該等規章的修訂)即使沒有根據第 (1) 款獲批准，仍屬有效。

(8) 根據第 40 條訂立的規章及第 (7) 款提述的公告均不是附屬法例。

#### 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.

**67. 批准認可控制人規章或  
對該等規章的修訂**

(1) 除第(7)款另有規定外，認可控制人的規章(不論是否根據第66條訂立)或對該等規章的修訂須獲證監會書面批准，否則不具效力。

(2) 認可控制人須——

(a) 將或安排將任何根據第(1)款須取得批准的規章及修訂，呈交證監會批准；呈交的規章及修訂須附有就該等規章及修訂的目的及相當可能會有影響(包括對投資大眾的影響)而作出的解釋，該等解釋的詳細程度，須足以使該會能夠決定是否批准該等規章及修訂；及

(b) 在屬根據第(7)款宣布的類別的規章訂立後，及在對該等規章的修訂作出後，在合理地切實可行的範圍內盡快向證監會呈交或安排向該會呈交該等規章及修訂，讓該會知悉。

(3) 證監會須在收到認可控制人根據第(2)(a)款呈交的規章或修訂後的6個星期內，藉送達書面通知予該控制人，批准或拒絕批准該等規章或修訂(視屬何情況而定)，或批准或拒絕批准其中任何部分；如該會拒絕批准，須在有關通知中說明拒絕批准的理由。

(4) 證監會根據第(3)款給予的批准，可受某些在該等規章或修訂或其中任何部分生效前須符合的要求所規限。

(5) 證監會可在有關的認可控制人的同意下，在任何個別個案中延展第(3)款訂明的期限。

(6) 財政司司長可在諮詢證監會及有關的認可控制人後，延展第(3)款訂明的期限。

(7) 證監會可藉憲報公告宣布認可控制人的某類別的規章無須根據第(1)款獲批准，而任何屬於該類別的該控制人規章(包括對該等規章的修訂)即使沒有根據第(1)款獲批准，仍屬有效。

(8) 根據第66(1)條訂立的規章及第(7)款提述的公告均不是附屬法例。

**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.

### 83. 批准認可投資者賠償公司規章或對該等規章的修訂

(1) 除第 (7) 款另有規定外，認可投資者賠償公司的規章(不論是否根據第 82 條訂立)或對該等規章的修訂須獲證監會書面批准，否則不具效力。

(2) 認可投資者賠償公司須——

(a) 將或安排將任何根據第 (1) 款須取得批准的規章及修訂，呈交證監會批准，呈交的規章及修訂須附有就該等規章及修訂的目的及相當可能會有影響(包括對投資大眾的影響)而作出的解釋，該等解釋的詳細程度，須足以使該會能夠決定是否批准該等規章及修訂；及

(b) 在屬根據第 (7) 款宣布的類別的規章訂立後，及在對該等規章的修訂作出後，在合理地切實可行的範圍內盡快向證監會呈交或安排向該會呈交該等規章及修訂，讓該會知悉。

(3) 證監會須在收到認可投資者賠償公司根據第 (2)(a) 款呈交的規章或修訂後的 6 個星期內，藉送達書面通知予該公司，批准或拒絕批准該等規章或修訂(視屬何情況而定)，或批准或拒絕批准其中任何部分；如該會拒絕批准，須在有關通知中說明拒絕批准的理由。

(4) 證監會根據第 (3) 款給予的批准，可受某些在該等規章或修訂或其中任何部分生效前須符合的要求所規限。

(5) 證監會可在有關的認可投資者賠償公司的同意下，在任何個別個案中延展第 (3) 款訂明的期限。

(6) 財政司司長可在諮詢證監會及有關的認可投資者賠償公司後，延展第 (3) 款訂明的期限。

(7) 證監會可藉憲報公告宣布認可投資者賠償公司的某類別的規章無須根據第 (1) 款獲批准，而任何屬於該類別的該公司規章(包括對該等規章的修訂)即使沒有根據第 (1) 款獲批准，仍屬有效。

(8) 認可投資者賠償公司須以證監會批准的方式，向公眾提供該公司的規章。

(9) 根據第 82 條訂立的規章及第 (7) 款提述的公告均不是附屬法例。

### 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.



395. 行政長官會同行政會議就繳付費用而訂立規則

(1) 行政長官會同行政會議可在諮詢證監會後訂立規則——

(a) 規定就以下事宜向證監會繳付費用，並訂明該等費用——

- (i) 根據或依據任何有關條文向該會提出的申請；
- (ii) 該會或根據第 8 條設立的委員會在執行與收購、合併或股份購回有關的職能時作出的任何事情；
- (iii) 該會、根據第 8 條設立的委員會或金融管理專員在執行任何有關條文授予的職能(但並非第(ii)節提述的職能)時作出的任何事情；
- (iv) 與任何有關條文所作規定或與根據任何有關條文所作規定有關的任何其他事宜；

(b) 規定向證監會繳付本條例規定藉或可藉根據本條訂立的規則訂明、指明或規定的費用(不論實際如何稱述)，並訂明該等費用。

(2) 在不損害第(3)款的原則下，根據本條訂立的規則所訂明的費用，可定於足以收回證監會、根據第 8 條設立的委員會或金融管理專員因提供與該等費用有關的服務或執行與該等費用有關的職能而招致或相當可能招致的開支的水平，但在釐定該等費用的水平時，不得將根據第 14 條所撥款項計算在內。

(3) 根據本條訂立的規則所訂明的費用，不得局限於參照證監會、根據第 8 條設立的委員會或金融管理專員因提供與該等費用有關的服務或執行與該等費用有關的職能而招致或相當可能招致的行政費或其他費用的款額。

395. 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) 根據本條訂立的規則，可規定——

- (a) 費用的款額須參照規則內列明的收費表而釐定；
- (b) 不同類別或種類的人繳付不同的費用，或就不同類別或種類的個案而繳付不同的費用；
- (c) 一般地或就個別個案豁免繳付任何費用，不論是否指明在其他情況下須根據本條例其他條文繳付；
- (d) 每年或每隔一段其他期間繳付費用。

(5) 證監會可向金融管理專員繳付一筆該會按照在本條下訂立的規則獲繳付的費用，而該費用是該會認為相當於金融管理專員因提供與該等費用有關的服務或執行與該等費用有關的職能而招致或相當可能招致的開支或費用。

(6) 證監會可將根據在本條下訂立的規則須繳付的任何費用，作為拖欠該會的民事債項予以追討。

(7) 本條增補而非減損《釋義及通則條例》(第 1 章) 第 29 及 29A 條。

(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).

附表 2

[第 3、7 及 10 條及  
附表 1 及 10]

證券及期貨事務監察委員會

第 1 部

證監會的組成及處事程序等

諮詢委員會

27. 諮詢委員會由以下人士組成——

- (a) 證監會主席；
- (b) 1 或 2 名證監會其他執行董事，由證監會委任；
- (c) 8 至 12 名其他成員，由行政長官在諮詢證監會後委任。

SCHEDULE 2

[ss. 3, 7 & 10 &  
Schs. 1 & 10]

SECURITIES AND FUTURES COMMISSION

PART I

CONSTITUTION AND PROCEEDINGS OF COMMISSION, ETC.

Advisory Committee

27. The Advisory Committee shall consist of—

- (a) the chairman of the Commission;
- (b) not more than 2 other 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.

**III. Provisions relating to the power to make subsidiary legislation by the Securities and  
Futures Commission**

### 35. 合約限量及須申報的持倉量

- (1) 在不損害第 398(7) 及 (8) 條的原則下，證監會可訂立規則以——
  - (a) 訂明任何人可直接或間接持有或控制的期貨合約的數目上限，或與該等數目有關的條件，不論該等合約是否在認可期貨市場或透過認可交易所的設施買賣的；
  - (b) 訂明任何人可直接或間接持有或控制的期權合約的數目上限，或與該等數目有關的條件，不論該等合約是否在認可證券市場或認可期貨市場買賣或透過認可交易所的設施買賣的；
  - (c) 規定持有或控制某須申報的持倉量的人向認可交易所或證監會提交關於該持倉量的通知；
  - (d) 訂明提交關於須申報的持倉量的通知的方式及時限；
  - (e) 訂明關於須申報的持倉量的通知須附有的資料。
- (2) 證監會在根據第 (1)(e) 款訂立規則前須諮詢財政司司長。
- (3) 第 (1) 款並不禁止證監會為不同類型或類別的期貨或期權合約訂明不同的合約限量或條件或須申報的持倉量，亦不禁止該會豁免指明的期貨或期權合約。
- (4) 在不局限第 (1) 款的一般性及不損害第 398(7) 及 (8) 條的原則下，證監會可為施行本條而訂立規則，禁止任何人——
  - (a) 在指明期間直接或間接進行超逾指明限量的指明類別交易；或
  - (b) 直接或間接持有或控制超逾指明持倉限量的指明類別持倉量。
- (5) 根據本條訂立的規則，可訂明任何人無合理辯解而違反該等規則中適用於該人的指明條文，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處不超過第 6 級罰款及監禁 2 年的指明罰則；
  - (b) 一經循簡易程序定罪，可處不超過第 3 級罰款及監禁 6 個月的指明罰則。
- (6) 在本條中，“須申報的持倉量” (reportable position) 指數目或總值超逾根據在本條下訂立的規則指明的數目或總值的期貨或期權合約的持倉量。

### 35. Contract limits and reportable open position

- (1) Without prejudice to section 398(7) and (8), 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 398(7) and (8), 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, without reasonable excuse, 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. 證監會訂立規則

- (1) 在不損害第 398(7) 及 (8) 條的原則下，證監會可就以下事宜訂立規則——
- (a) 證券的上市，尤其是——
    - (i) 訂明在證券上市前須符合的規定；
    - (ii) 訂明處理證券上市申請的程序；
    - (iii) 訂定條文，在該會所訂的上市規定或關於 (e) 段提述的承諾的規定不獲遵從時，或在該會認為有需要取消某指明證券的上市以在香港維持一個有秩序的市場時，取消該證券的上市；
  - (b) 認可交易所須在何等條件規限下及在何等情況下暫停證券交易或指示恢復證券交易；
  - (c) 因向公眾就任何證券提出要約而作出的分配的程序及方法；
  - (d) 可接納為認可交易所的交易所參與者的人；
  - (e) 規定有證券上市或獲接納上市的公司，以規則訂明的格式向根據第 19 條可營辦證券市場的認可交易所作出承諾，在該承諾指明的時間提供該承諾指明的資料，並履行該承諾中委以的關於該公司的證券的責任；
  - (f) 規定認可交易所如察覺有任何事宜對該交易所任何交易所參與者履行其作為交易所參與者的義務的能力有或相當可能有不良影響，則須於察覺該事宜後，在合理地切實可行的範圍內盡快向該會作出關於該事宜的報告；

### 36. Rules by Commission

- (1) Without prejudice to section 398(7) and (8), 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) 規定認可交易所在開除其任何交易所參與者時，或使任何交易所參與者暫停或該交易所營辦的認可證券市場或認可期貨市場或透過該交易所的設施進行交易時，或在要求任何交易所參與者辭去該參與者的身分時，須在如此行事後 3 個營業日內，向該會具報此事，此外，並須安排將此事以規則訂明的方式在規則訂明的期間內向公眾公布；
- (h) 根據第 23 條訂立的規章須予訂明或可予訂明的任何事情。
- (2) 證監會在根據第 (1) 款就任何該款指明的事宜訂立規則前，須諮詢——
- (a) 財政司司長；及
- (b) 與該事宜有關的認可交易所。
- (3) 本條並不阻止認可交易所根據第 23 條就第 (1) 款提述的事宜訂立規章，但該規章具有效力，以不抵觸證監會根據第 (1) 款訂立的規則為限。

- (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).

**60. 未經證監會批准不得增加或減少認可控制人在認可交易所或認可結算所的權益**

不論任何其他成文法則或法律規則有任何規定，凡任何認可控制人是認可交易所或認可結算所的控制人，則憑藉本條的規定——

- (a) 除非得到證監會的書面批准，否則該控制人以控制人身分擁有的該所的權益不得增加或減少；
- (b) 任何在違反 (a) 段的情況下增加或減少該等權益的嘗試 (不論以協議或任何其他形式作出或由何人作出)，就任何目的而言，均屬無效。

**66. 認可控制人訂立規章**

(1) 在不局限認可控制人訂立規章的其他權力的原則下，該控制人可為以下目的而就有需要或可取的事宜訂立規章——

- (a) 履行第 63 條所指的责任；
- (b) 為投資大眾設立和維持賠償安排。

(2) 證監會可在諮詢財政司司長後，藉憲報公告宣布在附表 1 第 1 部第 1 條中的“規章”的定義的 (c)(ii)(C) 段適用於該公告中指明的人或團體。

**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.

**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 discharge 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 I of Schedule 1 shall apply.



## 100. 證監會訂立規則

- (1) 在不損害第 398(7) 及 (8) 條的原則下，證監會可訂立規則以——
- (a) 規定獲認可提供自動化交易服務的人向該會提供該會要求的資料，以使該會信納根據第 95(2) 或 97 條送達該人的通知所報明的條件獲得遵從；
  - (b) 就 (a) 段所指的資料須於何時及以何方式提供，訂定條文；
  - (c) 就自動化交易服務的規管及任何其他附帶事宜，訂定條文。
- (2) 在不局限可根據第 (1) 款訂立的規則的一般性的原則下，該等規則可——
- (a) 就提供自動化交易服務須遵守的操守及實務標準，訂定條文；
  - (b) 禁止使用與提供自動化交易服務有關而具誤導性或欺騙性的廣告，或就與該服務有關的廣告施加條件；
  - (c) 規定獲認可提供自動化交易服務的人——
    - (i) 採取步驟避免有利益衝突，並指明一旦出現潛在或實際利益衝突時須採取的步驟；及
    - (ii) 採取證監會指明的步驟，確保透過該服務進行的交易是在廉潔、穩健、有秩序、具透明度和公平的情況下進行的，包括採取步驟確保——
      - (A) 妥當地和在當時情況下在適當範圍內盡速地處理任何服務要求；及
      - (B) 向獲提供該服務的人妥為解釋關於透過該服務進行交易的使用服務權及有關慣例；
  - (d) 訂定措施以遏阻和識辨任何洗錢活動。
- (3) 根據本條訂立的規則，可訂明任何人無合理辯解而違反該等規則適用於該人的指明條文，即屬犯罪——
- (a) 一經循公訴程序定罪，可處不超過第 6 級罰款及監禁 2 年的指明罰則；
  - (b) 一經循簡易程序定罪，可處不超過第 3 級罰款及監禁 6 個月的指明罰則。

## 100. Rules by Commission

- (1) Without prejudice to section 398(7) and (8), 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) 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 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.

116. 法團須獲發牌以進行受規管活動

(1) 證監會可應申請人以訂明方式提出的申請並在訂明費用獲繳付後，向申請人批給牌照，使申請人可進行該會在牌照上指明的一類或多於一類受規管活動。

(2) 除非以下規定獲符合，否則證監會須拒絕根據第 (1) 款批給進行某類受規管活動的牌照——

(a) 申請人是——

(i) 一間公司；

(ii) 已遵守《公司條例》(第 32 章) 第 XI 部關於文件登記的條文的海外公司；或

(iii) 符合以下說明而非公司或海外公司的法團——

(A) 主要在香港以外地方經營某項活動的業務，而該項活動如在香港進行，便會構成該類受規管活動；

(B) 若非有第 115(1)(i) 及 (ii) 條的條文，則第 114(1) 條不會適用於該法團；及

(C) 如該法團在香港設立營業地點，則《公司條例》(第 32 章) 第 XI 部會適用於該法團；

(b) 已就第 125(1)(a) 及 (b) 條所提述的人根據第 126 條提出申請，要求核准他們就該類活動成為申請人的負責人員；及

(c) 已根據第 130(1) 條提出申請，要求批准將某處所用申請人存放本條例規定的紀錄或文件的地方。

(3) 除非申請人令證監會信納以下事宜，否則該會須拒絕根據第 (1) 款批給進行某類受規管活動的牌照——

(a) 申請人是就該類活動獲發牌的適當人選；

(b) 申請人如獲發牌，將有能力遵守財政資源規則；及

(c) 申請人——

(i) 已按照在第 (4) 款下訂立的規則向證監會交存保證，並將保證保持有效；或

116. 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;

(ii) an overseas company which has complied with the provisions of Part XI of the Companies Ordinance (Cap. 32) for the registration of documents; or

(iii) a corporation (other than a company or an overseas company)—

(A) which carries on a business principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute the regulated activity;

(B) to which section 114(1) would not apply but for the provisions of section 115(1)(i) and (ii); and

(C) to which Part XI of the Companies Ordinance (Cap. 32) would apply if it established a place of business in Hong Kong;

(b) applications have been lodged under section 126 in respect of such persons as referred to in section 125(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 130(1) 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) 已按照根據第 (5) 款訂立的規則投保保險。
- (4) 證監會可為施行第 (3)(c)(i) 款而訂立規則，就以下各項作出規定——
- (a) 持牌法團須向證監會交存並將之保持有效的任何保證；
  - (b) 交存該等保證的方式；
  - (c) 須按其條款將該等保證保持有效；
  - (d) 證監會按該等規則訂明的情況、目的及方式運用該等保證的權力；
  - (e) 關乎該等保證的任何其他事宜。
- (5) 證監會可為施行第 (3)(c)(ii) 款而訂立規則，就以下各項作出規定——
- (a) 持牌法團須就指明風險投保並將之保持有效的指明款額的保險保障內容；
  - (b) 須按其條款投保該等保險並將之保持有效；
  - (c) 關乎該等保險的任何其他事宜。
- (6) 根據第 (1) 款批給的牌照須受證監會施加的合理條件規限，而證監會可隨時藉送達書面通知予有關持牌法團，修訂或撤銷任何該等條件或施加新的條件，但該項修訂、撤銷或施加須是在有關情況下屬合理的。
- (7) 凡證監會根據第 (6) 款藉送達書面通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間（兩者以較遲者為準）生效。
- (8) 持牌法團在進行它根據第 (1) 款獲發牌進行的受規管活動時，須使用牌照上指明的名稱，而不得使用其他名稱。
- (9) 在不損害證監會在第 IX 部下的權力的原則下，凡某法團獲發牌進行第 7 類受規管活動，在該法團根據第 95(2) 條獲認可提供自動化交易服務時，該牌照須當作就該類活動而被撤銷。

- (ii) is insured in accordance with rules made under subsection (5).
- (4) The Commission may make rules for the purposes of subsection (3)(c)(i) 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) The Commission may make rules for the purposes of subsection (3)(c)(ii) that provide for—
- (a) insurance coverage for specified amounts to be taken out and maintained by a licensed corporation in relation to specified risks;
  - (b) the terms on which the insurance is to be taken out and maintained;
  - (c) any other matter relating to the insurance.
- (6) 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.
- (7) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (6), 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.
- (8) 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.
- (9) Without prejudice to the Commission's powers under 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(2) to provide automated trading services.

118. 在某些情況下的發牌條件

- (1) 在不局限第 116(6) 條的一般性的原則下，根據第 116(1) 條批給的牌照——
- (a) 如是為進行某類受規管活動而批給的，則牌照須受以下條件規限——
- (i) 持牌法團——
- (A) 須就該類活動向證監會交存根據第 116(4) 條訂立的規則所規定的保證（不論是否附加於它已交存的任何保證），並將保證保持有效；或
- (B) 已按照根據第 116(5) 條訂立的規則投購保險以代替交存（在適用情況下）上述保證及保持該項保證有效；及
- (ii) 就該類活動而言，持牌法團須有至少一名負責人員可時刻監督該類活動的業務；
- (b) 如是為進行第 3 類受規管活動而批給的，則牌照須受以下條件規限：就持牌法團與客戶之間的爭議而言，如是關於或觸及進行該類活動的任何事宜的，則在客戶要求下，持牌法團有責任按照根據第 (2) 款訂立的規則以仲裁方式解決該爭議；

118. Licensing conditions in certain cases

- (1) Without limiting the generality of section 116(6), it shall be a condition of a licence granted under section 116(1) for carrying on—
- (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 116(4); or
- (B) is insured, in lieu of lodging (where applicable) and maintaining such security, in accordance with rules made under section 116(5); and
- (ii) that, in relation to the 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) 如是為進行第 7 類受規管活動而批給的，則牌照須受以下條件規限：如證監會行使其絕對酌情決定權藉書面通知提出要求，則持牌法團須在該通知指明的合理期間內，根據第 95(2) 條申請獲認可進行該類活動，而在該牌照有待根據第 195(2) 條撤銷前，該類活動須以該通知指明的方式營辦；
- (d) 如是為進行第 8 類受規管活動而批給的，則牌照須受以下條件規限——
  - (i) 持牌法團不得經營證券保證金融資業務以外的業務，但屬必然附帶於經營該等業務的業務除外；及
  - (ii) 如持牌法團經營附表 5 第 3 部指明的一項或多於一項活動的業務，它須就該等業務遵守根據第 VI 部訂立並適用於它的規則的規定。
- (2) 證監會可為施行第 (1)(b) 款而訂立規則，就以下各項作出規定——
  - (a) 仲裁小組的設立及職能以及有關事宜；
  - (b) 由財政司司長委任仲裁小組成員，包括主席及一名或多於一名副主席；
  - (c) 從仲裁小組中委出審裁小組，以聆訊持牌法團與其客戶之間的爭議，以及審裁小組的組成與成員組合；
  - (d) 爭議的一方支付訟費的法律責任及獲判訟費的權利，以及訟費的追討；
  - (e) 聆訊爭議的實務及程序；
  - (f) 證監會使用審裁小組的裁斷以行使該會根據任何有關條文獲授予的職能；
  - (g) 任何人根據該等規則行使任何酌情決定權。

- (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(2) for that regulated activity, and the regulated activity shall be operated in such manner as may be specified in the notice pending the revocation of the licence under section 195(2);
- (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 of the activities specified in Part 3 of Schedule 5, 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 performing its functions under any of the relevant provisions;
  - (g) the exercise of any discretion by a person under the rules.

## 128. 申請人須提供資料

## (1) 任何人如——

- (a) 根據第 116、117、120 或 121 條申請牌照；
- (b) 根據第 119 條申請註冊；
- (c) 根據第 122 條申請批准隸屬關係或將隸屬關係轉移；
- (d) 根據第 126 條申請核准成為負責人員；
- (e) 根據第 127 條申請更改該人獲發牌或獲註冊進行的一類或多於一類受規管活動；
- (f) 根據第 130(1) 條申請批准某處所的用途；
- (g) 根據第 132 條申請核准成為或繼續作為(視屬何情況而定)大股東；
- (h) 根據第 134 條申請修改或寬免；或
- (i) 申請需要證監會根據本部批准或核准的任何其他事宜，

須向證監會提供該會合理地要求的資料，以令該會能考慮該申請。

(2) 證監會在考慮第 (1) 款提述的申請時，可考慮它所管有的任何資料，不論這些資料是否由申請人提供。

## (3) 證監會可訂立規則，就以下各項作出規定——

- (a) 申請人為令證監會能考慮其申請而須提供的資料；
- (b) 提供該等資料的格式、方式及時限；
- (c) 任何其他與此有關的事宜。

## 128. Applicant to provide information

## (1) A person who applies—

- (a) for a licence under section 116, 117, 120 or 121;
- (b) for registration under section 119;
- (c) for approval of accreditation or approval of transfer of accreditation to a principal, under section 122;
- (d) for approval to be a responsible officer under section 126;
- (e) for variation, under section 127, of the regulated activity for which the person is licensed or registered;
- (f) for approval of premises under section 130(1);
- (g) for approval to become or continue to be (as the case may be) a substantial shareholder under section 132;
- (h) for a modification or waiver under section 134; 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 information to be provided by an applicant to enable the Commission to consider his application;
- (b) the form, manner and time period in which such information is to be provided;
- (c) any other matter relating thereto.

## 134. 對規定作出修改或寬免

## (1) 證監會可應——

- (a) 持牌法團；
- (b) 根據第 116 或 117 條申請牌照的人；
- (c) 註冊機構；
- (d) 根據第 119 條申請註冊的人；
- (e) 持牌代表；
- (f) 根據第 120 或 121 條申請牌照的人；
- (g) 根據第 126 條獲核准的負責人員；
- (h) 根據第 132 條獲核准的大股東；
- (i) 根據第 132 條申請核准成為或繼續作為(視屬何情況而定)大股東的人；或
- (j) 有聯繫實體，

以訂明方式提出的申請並在訂明費用獲繳付後，就申請人而對第 118 條指明的或根據第 116、117、119、120、121、126 或 132 條施加的任何條件，或對以下條文或規則的任何規定作出修改或寬免——

- (i) 第 116(2)(b) 及 125(1) 及 (2) 條；
- (ii) 第 116(2)(c) 及 130 條；
- (iii) 根據第 118(2) 條訂立的規則；
- (iv) 第 121(2)(a) 條；
- (v) 第 129 條；
- (vi) 根據第 145 條訂立的規則；
- (vii) 根據第 148 條訂立的規則；
- (viii) 根據第 149 條訂立的規則；
- (ix) 根據第 151 條訂立的規則；
- (x) 根據第 152 條訂立的規則；
- (xi) 根據第 168 條訂立的規則；
- (xii) 根據第 173 條訂立的規則；
- (xiii) 第 175(1)、(2) 及 (3) 條；或
- (xiv) 證監會根據本條例訂立的規則的任何條文。

## 134. 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 116 or 117;
- (c) a registered institution;
- (d) an applicant for registration under section 119;
- (e) a licensed representative;
- (f) an applicant for a licence under section 120 or 121;
- (g) a responsible officer approved under section 126;
- (h) a substantial shareholder approved under section 132;
- (i) an applicant for approval under section 132 to become or continue to be (as the case may be) 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 118 or imposed under section 116, 117, 119, 120, 121, 126 or 132 or any of the requirements of the following—

- (i) sections 116(2)(b) and 125(1) and (2);
- (ii) sections 116(2)(c) and 130;
- (iii) rules made under section 118(2);
- (iv) section 121(2)(a);
- (v) section 129;
- (vi) rules made under section 145;
- (vii) rules made under section 148;
- (viii) rules made under section 149;
- (ix) rules made under section 151;
- (x) rules made under section 152;
- (xi) rules made under section 168;
- (xii) rules made under section 173;
- (xiii) section 175(1), (2) and (3); or
- (xiv) any provision of rules made by the Commission under this Ordinance.

(2) 第(1)款所指的修改或寬免，須以送達書面通知予申請人的方式作出，該通知須指明該項修改或寬免的有效期(如有的話)。

(3) 除非申請人令證監會信納——

- (a) 就根據第 116、117 或 119 條施加的條件作出修改或寬免，不會損害申請人任何客戶的權益；或
- (b) 就第 118 條指明的或根據第 120、121、126 或 132 條施加的條件或就第(1)(i)至(xiv)款指明的條文或規則的任何規定作出修改或寬免，不會損害投資大眾的利益，

否則證監會須拒絕根據第(1)款作出該項修改或寬免。

(4) 根據第(1)款應某人的申請作出的修改或寬免須受證監會施加的合理條件限制，而證監會可隨時藉送達書面通知予——

- (a) 該人；
- (b) (凡該人是中介人或有聯繫實體)該人的主管人員；或
- (c) (凡該項修改或寬免是應一項根據第(1)(e)、(f)或(g)款提出的申請而作出的)該人所隸屬的主事人，

修訂該項修改或寬免，或修訂或撤銷任何該等條件或施加新的條件，但該項修訂、撤銷或施加須是在有關情況下屬合理的。

(5) 除第(4)款另有規定外，根據第(1)款應某人的申請作出的修改或寬免——

- (a) 在根據第(2)款就此事送達的通知指明的期間內持續有效，直至該期間終結為止；
- (b) 在沒有上述的指明期間的情況下，則在證監會藉送達書面通知予以下人士而將之撤銷前持續有效——
  - (i) 該人；
  - (ii) (凡該人是中介人或有聯繫實體)該人的主管人員；或
  - (iii) (凡該項修改或寬免是依據一項根據第(1)(e)、(f)或(g)款提出的申請而作出的)該人所隸屬的主事人。

(6) 就根據第(1)款應某人的申請作出的修改或寬免而言，證監會須——

- (a) 在作出該項修改或寬免時；

(2) The grant of a modification or waiver under subsection (1) shall be effected by a notice in writing served on the applicant 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 116, 117 or 119, the interests of any client of the applicant; or
- (b) in the case of a modification or waiver granted in respect of a condition specified in section 118 or imposed under section 120, 121, 126 or 132, or in respect of any requirement of a provision specified in subsection (1)(i) to (xiv), 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; or
- (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; or
  - (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) 在根據第 (4) 款修訂該項修改或寬免、或修訂或撤銷該項修改或寬免的條件或施加任何新的條件時；或

(c) 在根據第 (5)(b) 款撤銷該項修改或寬免時，

(除在第 (7) 款規定的情況下外) 藉在憲報刊登的公告指明——

(i) 該人的姓名或名稱；

(ii) (a)、(b) 或 (c) 段 (視屬何情況而定) 提述的事情，及作出該事情的理由；

(iii) 在作出該項修改或寬免時施加於該項修改或寬免的條件，或其後根據第 (4) 款修訂、撤銷或新施加的條件 (視屬何情況而定)；及

(iv) (如適用的話) 該項作出或修訂的有效期或所施加的條件的有效期。

(7) 如申請人令證監會信納在遵守第 (6)(iii) 款的情況下指明任何條件會在不合理的程度上損害該申請人的商業利益，證監會可在第 (6) 款提述的公告內包括以下項目，以代替指明有關條件——

(a) 該會不指明有關條件的理由的簡述；及

(b) 關於有關條件的、而證監會認為不會在不合理的程度上損害該申請人的商業利益的適當資料。

(8) 證監會可就某一類別的持牌人、註冊機構或有聯繫實體，藉訂立規則而就第 (1)(vi)、(vii)、(viii)、(ix)、(x) 或 (xi) 款提述的規則的任何規定，作出修改或寬免。

(9) 除非證監會信納根據第 (8) 款訂立規則以作出該款提述的修改或寬免不會損害投資大眾的利益，否則該會不得作出該項修改或寬免。

(10) 證監會可在第 (8) 款提述的規則中，指明規限有關的修改或寬免的條件。該等規則可規定沒有遵從該等條件的人屬犯罪，一經定罪，可處不超過第 6 級罰款。

(11) 證監會可隨時藉訂立規則——

(a) 撤銷根據第 (8) 款作出的修改或寬免；或

(b) 修訂、撤銷或增補規限該等修改或寬免的條件。

(12) 證監會不得在沒有事先諮詢金融管理專員的情況下，就註冊機構或屬認可財務機構的有聯繫實體而根據第 (1)、(4)、(8)、(10) 或 (11) 款行使其權力。

(13) 任何人沒有遵從根據第 (4) 款施加的條件，即屬犯罪，一經定罪，可處第 6 級罰款。

(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),

by notice published in the Gazette specifying, subject to subsection (7)—

(i) the name of the person;

(ii) the event referred to in paragraph (a), (b) or (c) (as the case may be) and the reasons for the event;

(iii) any condition imposed on the modification or waiver on its grant, or the condition amended or revoked or newly imposed subsequently under subsection (4) (as the case may be); and

(iv) (if applicable) the period for which the grant or amendment or the condition so imposed is valid.

(7) If the applicant satisfies the Commission that specifying any condition in compliance with subsection (6)(iii) would prejudice, to an unreasonable degree, the commercial interests of the applicant, the Commission may, in lieu of specifying the condition, include in the notice referred to in subsection (6)—

(a) a brief account of its reasons for not specifying the condition; and

(b) such appropriate information on the condition as the Commission considers incapable of prejudicing, to an unreasonable degree, the commercial interests of the applicant.

(8) The Commission may by rules grant a modification or waiver, in relation to a class of licensed persons or registered institutions or associated entities, in respect of any of the requirements of the rules referred to in subsection (1)(vi), (vii), (viii), (ix), (x) or (xi).

(9) The Commission shall not make any rules under subsection (8) 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.

(10) The Commission may specify in the rules referred to in subsection (8) 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.

(11) The Commission may at any time by rules—

(a) revoke a modification or waiver granted under subsection (8); or

(b) amend, revoke or add to, any condition subject to which such modification or waiver is granted.

(12) The Commission shall not exercise its power under subsection (1), (4), (8), (10) or (11) in relation to any registered institution or any associated entity that is an authorized financial institution unless the Commission has first consulted the Monetary Authority.

(13) A 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.

## 145. 持牌法團的財政資源

(1) 證監會可在諮詢財政司司長後訂立規則，規定持牌法團須維持該等規則指明的財政資源。

(2) 在不局限第(1)款的一般性及不損害第 398(7) 及 (8) 條的原則下，證監會可在第(1)款提述的規則中——

- (a) 規定持牌法團按照以下的規定維持財政資源——
  - (i) 指明的關於須維持的財政資源數額的規定；及
  - (ii) 任何其他指明的規定；
- (b) 指明為施行該等規則而確定持牌法團的財政資源數額時，根據該等規則須予考慮的資產、負債及其他事宜，並指明為此目的對該等資產、負債及其他事宜作出考慮的範圍及方式；
- (c) 按資產、負債及其他事宜是否獲證監會為施行該等規則而批准，規定為施行該等規則而對他們作不同處理；
- (d) 規定如持牌法團按照香港或其他地方的主管當局的批准在香港或其他地方維持財政資源，而證監會認為該主管當局執行的職能，涉及對從事與持牌人可獲發牌進行的受規管活動相似的活動的人施加關於財政資源的規定，則該等規則或其任何條文不適用於該等法團，或在作出指明的變通後適用於該等法團，或僅在指明的情況下適用於該等法團；
- (e) 就為指明的目的給予批准及該等批准的修訂或撤銷作出規定，以及就以指明方式公布該等批准、修訂或撤銷作出規定；
- (f) 規定持牌法團——
  - (i) 每隔指明的期間，向證監會呈交關於其財政資源及交易活動的申報表；及
  - (ii) 就指明的關於其財政資源及交易活動的情況，向證監會呈交書面通知；
- (g) 規定持牌法團在證監會向它索取關於其財政資源及交易活動的資料時，應要求向證監會呈交申報表；
- (h) 就關乎持牌法團的財政資源的其他事宜，作出規定。

## 145. 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 398(7) and (8), 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.

**148. 由中介人及其有聯繫實體持有的客戶證券及抵押品**

(1) 證監會可訂立規則，規定中介人及其有聯繫實體以該等規則指明的方式，對待和處理中介人的客戶證券及抵押品，並確保由任何其他人士代中介人或其有聯繫實體（視屬何情況而定）收取或持有的中介人的客戶證券及抵押品，亦獲以該等方式對待和處理。

(2) 在不局限第(1)款的一般性及不損害第 398(7) 及 (8) 條的原則下，證監會可在第(1)款提述的規則中——

- (a) 規定以指明的方式持有及交代中介人的客戶證券及抵押品；
- (b) 規定客戶證券及抵押品只可以指明的方式存放、轉讓、借出、質押、再質押或作其他形式的處理；
- (c) 指明中介人或其有聯繫實體可在何種情況下，處理屬合法申索權或留置權的標的之客戶證券及抵押品；
- (d) 就於證監會認為適當的條件下，核准任何公司或海外公司為適合負責穩妥保管客戶證券及抵押品，作出規定；

**148. 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 behalf of the intermediaries or the associated entities (as the case may be) 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 398(7) and (8), 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) 規定中介人及其有聯繫實體確保(或採取合理步驟以確保)代中介人或其有聯繫實體(視屬何情況而定)收取或持有客戶證券及抵押品的人遵從指明的規定;
  - (f) 規定以指明的方式備存關於客戶證券及抵押品的紀錄(包括就該等客戶證券及抵押品在中介人或其有聯繫實體的帳戶的提存所進行的對帳的紀錄);
  - (g) 規定在證監會提出要求時或每隔指明的期間,向該會呈交指明的資料、紀錄及文件,以便該會能夠輕易確定該等規則是否獲得遵守;
  - (h) 規定將指明的事宜以及與該等事宜有關的情況,通知中介人的客戶或證監會或上述兩者;
  - (i) 規定任何人如察覺他沒有遵守該等規則中適用於他的任何指明條文,即須在指明時間內將此事及任何進一步的指明的資料通知證監會;
  - (j) 就關乎客戶證券及抵押品的任何其他事宜,作出規定。
- (3) 除非根據本條訂立的規則另有規定,否則中介人的客戶證券及抵押品不得在對該中介人或其有聯繫實體而執行法庭命令或法庭程序文件時取去。
- (4) 根據本條訂立的規則可規定,凡任何中介人或中介人的有聯繫實體無合理辯而違反該等規則中對其適用的任何指明條文,即屬犯罪——
- (a) 一經循公訴程序定罪,可處不超過罰款 \$200,000 及監禁 2 年的指明罰則;
  - (b) 一經循簡易程序定罪,可處不超過第 6 級罰款及監禁 6 個月的指明罰則。
- (5) 根據本條訂立的規則可規定,凡任何中介人或中介人的有聯繫實體意圖詐騙違反該等規則中對其適用的任何指明條文,即屬犯罪——
- (a) 一經循公訴程序定罪,可處不超過罰款 \$1,000,000 及監禁 7 年的指明罰則;
  - (b) 一經循簡易程序定罪,可處不超過罰款 \$500,000 及監禁 1 年的指明罰則。

- (e) require intermediaries and their associated entities to ensure, or to take reasonable steps to ensure, that persons who receive or hold the client securities and collateral on behalf of the intermediaries or the associated entities (as the case may be) 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) 任何人不得僅以遵從依據第 (2)(i) 款訂立的任何規則中關於給予證監會通知的規定可能會導致他人罪為理由，而獲豁免遵從該規定。

(7) 不論本條有任何規定——

(a) 證監會根據本條就中介人訂立規則的權力，在該等中介人屬註冊機構的情況下，須視為只就該等中介人訂立與他們在經營構成他們獲註冊進行的任何受規管活動的業務過程中所收取或持有的客戶證券及抵押品有關的規則的權力；

(b) 證監會根據本條就中介人的有聯繫實體訂立規則的權力，在該等實體屬認可財務機構的情況下，須視為只就該等實體訂立與他們在經營收取或持有該等中介人的客戶證券及抵押品的業務過程中所收取或持有的客戶證券及抵押品有關的規則的權力。

(8) 不論第 (3) 款有任何規定——

(a) 就註冊機構所收取或持有的客戶證券及抵押品而言，該等證券及抵押品須是該機構在經營構成它獲註冊進行的受規管活動的業務過程中所收取或持有的，第 (3) 款方適用於它們；

(b) 就某中介人的屬認可財務機構的有聯繫實體所收取或持有的客戶證券及抵押品而言，該等證券及抵押品須是該實體在經營收取或持有該中介人的客戶證券及抵押品的業務過程中所收取或持有的，第 (3) 款方適用於它們。

(6) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(i) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.

(7) 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 registered institutions, 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 any regulated activities for which they are registered;

(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.

(8) Notwithstanding anything in subsection (3), that subsection—

(a) applies to client securities and collateral received or held by a registered institution only if the client securities and collateral were received or held by the registered institution in the course of the business which constitutes any regulated activity for which the registered institution is registered;

(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.

## 149. 由持牌法團及其有聯繫實體持有的客戶款項

(1) 證監會可訂立規則，規定持牌法團及其有聯繫實體以該等規則指明的方式，對待和處理該法團的客戶款項。

(2) 在不局限第(1)款的一般性及不損害第 398(7) 及 (8) 條的原則下，證監會可在第(1)款提述的規則中——

- (a) 規定持牌法團的客戶款項或其任何部分須存入為客戶款項開立並指定為信託帳戶或客戶帳戶的獨立帳戶；
- (b) 指明於何時及如何將客戶款項或其任何部分存入該等帳戶，並規定以指明的方式處理和交代該等款項；
- (c) 指明無須存入該等帳戶的客戶款項的數額或比例，並指明將客戶款項存入該等帳戶前可作出的扣減；
- (d) 指明可在何種情況下從該等帳戶提取客戶款項，包括可在何種情況下從該等帳戶提取屬合法申索權或留置權的標的之客戶款項；
- (e) 規定以指明的方式處理和支付該等帳戶內的客戶款項所孳生的利息；
- (f) 指明哪些在香港的人為可與之開立和維持該等帳戶的人；
- (g) 規定在指明的情況下，須先獲得證監會的批准方可從該等帳戶提取客戶款項；
- (h) 規定以指明的方式備存關於該等帳戶的紀錄（包括就客戶款項在該等帳戶的提存所進行的對帳的紀錄）；
- (i) 規定在證監會提出要求時或每隔指明的期間，向該會呈交指明的資料、紀錄及文件，以便該會能夠輕易確定該等規則是否獲得遵守；
- (j) 規定須將指明的事宜以及與該等事宜有關的情況，通知持牌法團的客戶或證監會或上述兩者；
- (k) 規定任何人如察覺他沒有遵守該等規則中適用於他的任何指明條文，即須在指明的時間內將此事以及任何進一步的指明的資料通知證監會；
- (l) 就關乎客戶款項的任何其他事宜，作出規定。

## 149. 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 398(7) and (8), 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) 除非根據本條訂立的規則另有規定，否則持牌法團的客戶款項不得在針對該法團或其有聯繫實體而執行法庭命令或法庭程序文件時取去。

(4) 根據本條訂立的規則可規定，凡任何持牌法團或持牌法團的有聯繫實體無合理辯解而違反該等規則中對其適用的任何指明條文，即屬犯罪——

(a) 一經循公訴程序定罪，可處不超過罰款 \$200,000 及監禁 2 年的指明罰則；

(b) 一經循簡易程序定罪，可處不超過第 6 級罰款及監禁 6 個月的指明罰則。

(5) 根據本條訂立的規則可規定，凡任何持牌法團或持牌法團的有聯繫實體意圖詐騙而違反該等規則中對其適用的任何指明條文，即屬犯罪——

(a) 一經循公訴程序定罪，可處不超過罰款 \$1,000,000 及監禁 7 年的指明罰則；

(b) 一經循簡易程序定罪，可處不超過罰款 \$500,000 及監禁 1 年的指明罰則。

(6) 任何人不得僅以遵從依據第 (2)(k) 款訂立的任何規則中關於給予證監會通知的規定可能會導致他人入罪為理由，而獲豁免遵從該規定。

(7) 不論本條有任何規定，根據本條訂立的規則不適用於屬認可財務機構的有聯繫實體。

(8) 如持牌法團的客戶款項是由屬認可財務機構的有聯繫實體所收取或持有的，則不論第 (3) 款有任何規定，該款並不阻止該等款項在針對該實體而執行判決時取去。

(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, 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 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) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(k) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.

(7) Notwithstanding anything in this section, no rules made under this section shall apply to associated entities that are authorized financial institutions.

(8) Notwithstanding anything in subsection (3), that subsection does not prevent client money of a licensed corporation that is received or held by an associated entity that is an authorized financial institution from being taken in execution against the associated entity.

151. 中介人及其有聯繫實體須備存帳目及紀錄

- (1) 證監會可訂立規則，規定——
  - (a) 中介人備存該等規則指明的帳目及紀錄；
  - (b) 中介人的有聯繫實體就它收取或持有的中介人的客戶資產，備存該等規則指明的帳目及紀錄。
- (2) 在不局限第(1)款的一般性及不損害第 398(7) 及 (8) 條的原則下，證監會可在第(1)款提述的規則中——
  - (a) 規定中介人及其有聯繫實體為指明的目的備存指明的帳目及紀錄；
  - (b) 就備存該等帳目及紀錄的方式作出規定；
  - (c) 就該等帳目及紀錄可予銷毀前須保留的時間及存放的地點，作出規定；
  - (d) 規定任何人如察覺他沒有遵守該等規則中適用於他的任何指明條文，即須在指明的時間內將此事及任何進一步的指明的資料通知證監會；
  - (e) 就關乎須備存的帳目及紀錄的其他事宜作出規定，而不論須由中介人或由其有聯繫實體備存。
- (3) 在沒有相反證據的情況下，中介人或其有聯繫實體的帳目或紀錄中的記項，須當作是由該中介人或該實體（視屬何情況而定）作出，或在該中介人或該實體（視屬何情況而定）的授權下作出。
- (4) 任何人意圖詐騙而——
  - (a) 在遵守根據本條訂立的規則或在看來是遵守該等規則而備存的帳目或紀錄中記入、記錄或貯存他知道在要項上屬虛假或具誤導性的事項，或致使在該等帳目或紀錄中記入、記錄或貯存該等事項；
  - (b) 刪除、銷毀、移除或捏改或致使刪除、銷毀、移除或捏改任何已記入、記錄或貯存於為遵守根據本條訂立的規則或看來是為遵守該等規則而備存的帳目或紀錄的事項；或
  - (c) 沒有在合理地切實可行的範圍內盡快在為遵守根據本條訂立的規則或看來是遵守該等規則而備存的帳目或紀錄中記入、記錄或貯存任何應如此記入、記錄或貯存的事項，

即屬犯罪——

151. 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 398(7) and (8), 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, whether by intermediaries or their associated entities.
  - (3) An entry in the accounts or records of an intermediary or an associated entity of an intermediary shall, in the absence of evidence to the contrary, be deemed to have been made by or with the authority of the intermediary or the associated entity (as the case may be).
  - (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) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 7 年；或
  - (ii) 一經循簡易程序定罪，可處罰款 \$500,000 及監禁 1 年。
- (5) 根據本條訂立的規則可規定，凡任何中介人或中介人的有聯繫實體無合理辯解而違反該等規則中對其適用的任何指明條文，即屬犯罪——
- (a) 一經循公訴程序定罪，可處不超過罰款 \$200,000 及監禁 2 年的指明罰則；
  - (b) 一經循簡易程序定罪，可處不超過第 6 級罰款及監禁 6 個月的指明罰則。
- (6) 根據本條訂立的規則可規定，凡任何中介人或中介人的有聯繫實體意圖詐騙而違反該等規則中對其適用的任何指明條文，即屬犯罪——
- (a) 一經循公訴程序定罪，可處不超過罰款 \$1,000,000 及監禁 7 年的指明罰則；
  - (b) 一經循簡易程序定罪，可處不超過罰款 \$500,000 及監禁 1 年的指明罰則。
- (7) 任何人不得僅以遵從依據第 (2)(d) 款訂立的任何規則中關於給予證監會通知的規定可能會導致他人入罪為理由，而獲豁免遵從該規定。
- (8) 不論本條有任何規定，證監會根據本條就中介人訂立規則的權力，在該等中介人屬註冊機構的情況下，須視為只就該等中介人訂立與它們獲註冊進行的任何受規管活動的業務所涉及的帳目及紀錄有關的規則的權力。

- (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) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(d) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.
- (8) 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 registered institutions, 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 any regulated activities for which they are registered.

152. 中介人及其有聯繫實體須提供成交單據、  
收據、戶口結單及通知單

- (1) 證監會可訂立規則，規定——
  - (a) 中介人製備並向其客戶提供該等規則指明的成交單據、收據、戶口結單及通知單；
  - (b) 中介人的有聯繫實體須就他們收到或持有的該中介人的客戶資產，製備並向該中介人的客戶提供該等規則指明的收據、戶口結單及通知單。
- (2) 在不局限第(1)款的一般性及不損害第398(7)及(8)條的原則下，證監會可在第(1)款提述的規則中——
  - (a) 規定中介人在經營任何構成他獲發牌或獲註冊進行的任何受規管活動的業務時，在指明的情況下按指明的方式，就他在某段指明的期間與其客戶訂立或代其客戶訂立的所有交易，製備並向有關客戶提供成交單據及(如適用的話)戶口結單；
  - (b) 規定中介人及其有聯繫實體在指明的情況下按指明的方式，就每名獲該中介人提供財務通融的該中介人的客戶製備並向有關客戶提供戶口結單；
  - (c) 規定中介人及其有聯繫實體在指明的情況下按指明的方式，就每次自該中介人任何客戶的帳戶或為該等帳戶收取的客戶資產，製備並向有關客戶提供收據；
  - (d) 規定中介人及其有聯繫實體在指明的情況下按指明的方式，就每張關乎該中介人或該實體(視屬何情況而定)代該中介人任何客戶收取或持有的客戶資產但並非由有關客戶發出的通知單(包括任何關乎與客戶資產有關的權利的通知單)製備並向有關客戶提供通知單；

152. 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 398(7) and (8), 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 any regulated activities for which they are licensed or registered, 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 the intermediaries 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 the intermediaries or the associated entities (as the case may be) 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) 就須提供成交單據、收據、戶口結單及通知單的時間及可將之銷毀前須保留的期間及其保留的地點，作出規定；
- (f) 規定任何人如察覺他沒有遵守該等規則中適用於他的任何指明條文，即須在指明的時間內將此事及任何進一步的指明的資料通知證監會；
- (g) 就關乎須製備並向該中介人的客戶提供的成交單據、收據、戶口結單及通知單的其他事宜作出規定，而不論須由中介人或其有聯繫實體製備及提供。

(3) 根據本條訂立的規則可規定，凡任何中介人或中介人的有聯繫實體無合理辯解而違反該等規則中對其適用的任何指明條文，即屬犯罪——

- (a) 一經循公訴程序定罪，可處不超過罰款 \$200,000 及監禁 2 年的指明罰則；
- (b) 一經循簡易程序定罪，可處不超過第 6 級罰款及監禁 6 個月的指明罰則。

(4) 根據本條訂立的規則可規定，凡任何中介人或中介人的有聯繫實體意圖詐騙而違反該等規則中對其適用的任何指明條文，即屬犯罪——

- (a) 一經循公訴程序定罪，可處不超過罰款 \$1,000,000 及監禁 7 年的指明罰則；
- (b) 一經循簡易程序定罪，可處不超過罰款 \$500,000 及監禁 1 年的指明罰則。

(5) 任何人不得僅以遵從依據第 (2)(f) 款訂立的任何規則中關於給予證監會通知的規定可能會導致他人罪為理由，而獲豁免遵從該規定。

(6) 不論本條有任何規定，證監會根據本條就中介人訂立規則的權力，在該等中介人屬註冊機構的情況下，須視為只就該等中介人訂立與構成他們獲註冊進行的任何受規管活動的業務所涉及之成交單據、收據、戶口結單及通知單有關的規則的權力。

- (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, whether by the intermediaries or 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) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(f) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.

(6) 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 registered institutions, 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 any regulated activities for which they are registered.

168. 中介人及其代表的業務操守

(1) 證監會可訂立規則，規定中介人及其代表在進行該中介人獲發牌或獲註冊進行的受規管活動時，須遵守規則所指明的關乎該中介人或該代表（視屬何情況而定）在進行該等活動方面的行為操守的常規和標準。

(2) 在不局限第(1)款的一般性及不損害第 398(7) 及 (8) 條的原則下，證監會可在第(1)款提述的規則中——

- (a) 禁止中介人或他人代中介人使用具誤導性或欺騙性的廣告；並在中介人或他人代中介人使用廣告方面施加條件；
- (b) 規定客戶合約須包括指明的條款及條件，而除非證監會就任何個別條款或條件另有指示，否則該等條款及條件須視為有關合約的要素，而不論有關合約的條文是否顯露不同的意圖；
- (c) 規定中介人在與客戶訂立客戶合約時，及在其後不時在該客戶的要求下，須向該客戶提供指明的、關乎該中介人的業務及代該中介人行事而該客戶可聯絡的人的身分及地位的資料；

168. 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 the conduct of the intermediaries or the representatives (as the case may be) in carrying on the regulated activities for which the intermediaries are licensed or registered, as are specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), 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) 規定中介人及其任何代表須採取指明的步驟，以確知指明的、關乎該中介人的每一位客戶的身分、財務狀況，以及與該中介人提供的服務有關的投資經驗和目標的事宜；
- (e) 規定中介人及其任何代表在向該中介人的任何客戶提供有關金融產品的資料或意見之前須採取指明的步驟；
- (f) 規定中介人及其任何代表在向該中介人的任何客戶作出任何關於金融產品的建議時，須以指明的方式向該客戶披露該中介人或該代表（視屬何情況而定）在該產品中的任何利害關係；
- (g) 規定中介人及其任何代表須採取指明的步驟，以確保他向該中介人的客戶披露他所推薦的金融產品所涉及的財務風險；
- (h) 規定中介人及其任何代表須採取指明的步驟，以確保他向該中介人的客戶披露他就所推薦的金融產品而從第三者或將從第三者收取的佣金或利益；
- (i) 規定在指明情況下，中介人及其任何代表不得代該中介人的客戶進行交易；
- (j) 禁止中介人或其任何代表在指明情況以外的情況下，或在不符合指明條件的情況下，使用關乎該中介人任何客戶的事務的資料；
- (k) 規定中介人及其任何代表在其本身的利益與該中介人的客戶的利益出現衝突的情況下須採取指明的步驟；
- (l) 禁止中介人在指明情況以外的情況下，或在不符合指明條件的情況下，向另一中介人收取財物或獲取服務，以作為將業務轉介予該另一中介人的代價；

- (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, to take specified steps before providing information or advice concerning financial products to any client of the intermediary;
- (f) require an intermediary, and any representative of an intermediary, when making any recommendation concerning any financial product to any client of the intermediary, to disclose to the client in the specified manner any interest the intermediary or the representative (as the case may be) may have in the financial product;
- (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 financial risks in relation to 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, 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;
- (i) 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;
- (j) 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;
- (k) require an intermediary, and any representative of an intermediary, to take specified steps in cases of conflict arising between any of their interests and those of a client of the intermediary;
- (l) 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;

- (m) 禁止任何中介人的代表在指明情況以外的情況下，或在不符合指明條件的情況下，為自己進行證券或期貨合約交易；
- (n) 規定中介人及其任何代表須採取指明的步驟，以推行及實施遏阻及識辨洗錢活動的程序；
- (o) 就與常規和標準有關的其他事宜作出規定，而該等常規和標準是關乎在進行中介人獲發牌或獲註冊進行的受規管活動方面的操守的。

(3) 不論本條有任何規定，證監會不得行使本條賦予的訂立規則的權力，以就第(2)(b)款提述的規定指明任何條款及條件，除非該會信納指明該等條款及條件是為了更佳地達致該會的任何規管目標或更佳地執行其任何職能。

(4) 根據本條訂立的規則可規定，任何中介人或其代表無合理辯解而違反該等規則中適用於他的任何指明條文，即屬犯罪——

- (a) 一經循公訴程序定罪，可處不超過罰款 \$200,000 及監禁 2 年的指明罰則；
- (b) 一經循簡易程序定罪，可處不超過第 6 級罰款及監禁 6 個月的指明罰則。

- (m) 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;
- (n) 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;
- (o) 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 registered.

(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 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.

### 173. 期權買賣的規定

#### (1) 證監會可訂立規則——

##### (a) 禁止第 1 類中介人在該等規則所規定的情況以外的情況下——

(i) 在香港進行交易；

(ii) 在香港顯示自己準備進行交易，

而交易的內容是直接或間接賦予任何人一項期權，以使該人可向該中介人售賣或購買，或向代該中介人行事的人售賣或購買任何上市證券；

##### (b) 禁止第 2 類中介人在該等規則所規定的情況以外的情況下——

(i) 在香港進行交易；

(ii) 在香港顯示自己準備進行交易，

而交易的內容是直接或間接賦予任何人一項期權，以使該人可向該中介人售賣或購買，或向代該中介人行事的人出售或購買任何在認可期貨市場買賣的期貨合約。

(2) 根據本條訂立的規則可規定，任何第 1 類中介人或第 2 類中介人無合理辯解而違反該等規則中適用於他的任何指明條文，即屬犯罪——

(a) 一經循公訴程序定罪，可處不超過罰款 \$200,000 及監禁 2 年的指明罰則；

(b) 一經循簡易程序定罪，可處不超過第 6 級罰款及監禁 6 個月的指明罰則。

#### (3) 在本條中——

“第 1 類中介人”(Type 1 intermediary) 指就第 1 類受規管活動獲發牌或獲註冊的中介人；

“第 2 類中介人”(Type 2 intermediary) 指就第 2 類受規管活動獲發牌或獲註冊的中介人。

### 173. 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, 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.

#### (3) In this section—

“Type 1 intermediary” (第 1 類中介人) means an intermediary licensed or registered for Type 1 regulated activity;

“Type 2 intermediary” (第 2 類中介人) means an intermediary licensed or registered for Type 2 regulated activity.

## 244. 由行政長官會同行政會議及證監會訂立規則

## (1) 行政長官會同行政會議可就以下事宜訂立規則——

- (a) 為賠償基金提供經費的方法；
- (b) 提出賠償申索的人可獲得的最高賠償金額；
- (c) 根據第 240(2)(c) 條維持分帳戶，從該等分帳戶支付款項，以及就賠償基金所招致的開支及基金所賺得的利息在不同的分帳戶之間的分配；
- (d) 對更佳地實現本部的宗旨及目的作出規定。

## (2) 在不損害第 398(7) 及 (8) 條的原則及在符合第 (3) 款的規定下，證監會可就以下事宜，訂立不抵觸根據第 (1) 款訂立的規則的規則——

- (a) 在何種情況下有權提出賠償申索，包括任何第 235 或 236(2) 條提述的根據本條訂立的規則可予訂明的事情；
- (b) 提出賠償申索的方式；
- (c) 提出及證明賠償申索的費用及附帶費用的支付；
- (d) 賠償款項的利息的支付；
- (e) 為使證監會可決定是否批准申請而須向該會提交的資料或文件；
- (f) 何人或屬何類別的人無權提出賠償申索；
- (g) 證監會可於何種情況下及以何種方式顯請提出賠償申索；
- (h) 賠償申索的裁定及支付以及處理賠償申索的程序；
- (i) 賦權證監會作出以下事宜——
  - (i) 在清盤或破產的法律程序中提出一項賠償申索，作為債權證明；
  - (ii) 以證券作為支付賠償的形式，並為此目的而購買證券；及
  - (iii) 要求將申索人的訴訟權轉讓，以作為支付賠償的先決條件；
- (j) 認可投資者賠償公司在管理賠償基金方面的職能；

## 244. 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 240(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 398(7) and (8), 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, including any matter referred to in section 235 or 236(2) which may be prescribed by rules made under this section;
- (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 determination and payment of and the procedures for dealing with 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) 就認可投資者賠償公司根據第 80 條獲轉移職能時可能須負責的賠償基金的管理，制訂妥善的會計及審計制度；
  - (l) 須在認可投資者賠償公司清盤時作出的安排；
  - (m) 為更佳地實現本部的宗旨及目的而需要或適宜獲取的保險、擔保、保證或其他保障物，或需要或適宜作出的財務安排；
  - (n) 對更佳地實現本部的宗旨及目的作出規定。
- (3) 證監會在根據第 (2) 款就該款(a) 及 (j) 段指明的事宜訂立規則前，須諮詢財政司司長。
- (4) 在根據第 (1)(a) 款訂立規則時，行政長官會同行政會議須確保賠償基金的資金在合理地切實可行的範圍內由證券期貨市場的參與者或某個別類別的參與者承擔。

- (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 (j) of that subsection.
- (4) In making any rules under subsection (1)(a), the Chief Executive in Council shall ensure that the funds of the compensation fund shall, so far as reasonably practicable, be borne by participants or any particular class of participants in the securities and futures market.

**250. 證券權益及實益擁有權等 (內幕交易  
以外的市場失當行為)**

(1) 任何人如具有處置某證券或行使處置某證券的控制權的權限 (不論是正式或非正式的, 亦不論是明示或隱含的), 或就關乎某證券的期權而言, 具有行使該期權的權限, 則就第 5 分部而言, 他視為擁有該證券的權益。

(2) 第 (1) 款提述的人的權限即使——

- (a) 受到限制或約束, 或可受到限制或約束; 或
- (b) 須聯同另一人方可行使,

此事實無關重要。

(3) 凡任何法團就某證券具有第 (1) 款提述的權限, 而——

- (a) 該法團或其董事慣於或有義務 (不論是正式或非正式的) 按照某人的指示或指令就該證券而行事; 或
- (b) 某人或其有聯繫者是該法團的控制人,

則該人視為就該證券具有第 (1) 款提述的權限。

**250. 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) 凡任何人——

- (a) 已訂立合約以購買某證券，則在他若履行合約便能如此購買的範圍內；
- (b) 具有使某證券轉移予他或按他的命令轉移的權利，不論該權利是現在或將來可行使的，亦不論是否在某條件符合後方可行使的，則在他若強制執行該權利便能令該證券如此轉移的範圍內；或
- (c) 具有根據一項期權取得某證券或證券權益的權利，不論該權利是現在或將來可行使的，亦不論是否在某條件符合後方可行使的，則在他若行使該權利便能取得該證券或權益的範圍內，

他視為就該證券具有第 (1) 款提述的權限。

(5) 凡任何證券受信託所規限，而任何不是該證券的受託人的人如憑藉第 (4)(b) 款擁有該證券的權益，則在斷定某人是否就第 5 分部而言擁有證券權益時，受託人在該證券中的權益須不予理會。

(6) 證監會可訂立規則，訂明某人的權益或某些屬於某類別的人的權益，在斷定他或他們是否就第 5 分部而言擁有證券權益時須不予理會。

(7) 如任何人在買賣某證券前擁有該證券的權益，而該人或其有聯繫者在買賣該證券後擁有該證券的權益，則就第 5 分部而言，買賣該證券不涉及其實益擁有權的改變。

(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.

282. 不構成市場失當行為的行為

(1) 不論本部有任何規定，如任何人證明有關行為按照在第(2)款下訂立的規則不得視為構成市場失當行為，則不得以本部任何市場失當行為為理由，而視該人為曾從事市場失當行為。

(2) 為施行第(1)款，證監會如認為訂立規則訂明在何種情況下，任何根據本部本會構成市場失當行為的行為不得視為構成市場失當行為，是符合公眾利益的，則可在諮詢財政司司長後訂立該等規則。

(3) 不論本部有任何規定，如——

(a) 某人因某行為而被指稱曾從事第 274、275 或 278 條所指的市場失當行為；及

(b) 該項指稱是基於該行為是就在有關境外市場交易的證券或期貨合約而作出的，而非就在有關認可市場或透過使用認可自動化交易服務交易的證券或期貨合約而作出的，

除非證明假使該行為在該有關境外市場所在的地方作出，即屬違法，否則不得視該人為曾從事市場失當行為。

282. Conduct not to constitute market misconduct

(1) 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 (2), not to be regarded as constituting market misconduct.

(2) For the purposes of subsection (1), the Commission, after consultation with the Financial Secretary, 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.

(3) Notwithstanding anything in this Part, where—

(a) it is alleged that a person has engaged in market misconduct under section 274, 275 or 278 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 been unlawful had it been carried out there.

**290. 證券權益及實益擁有權等 (內幕交易罪  
以外的市場失當行為罪行)**

(1) 任何人如具有處置某證券或行使處置某證券的控制權的權限 (不論是正式或非正式的, 亦不論是明示或隱含的), 或就關乎某證券的期權而言, 具有行使該期權的權限, 則就第 3 分部而言, 他視為擁有該證券的權益。

(2) 第 (1) 款提述的人的權限即使——

- (a) 受到限制或約束, 或可受到限制或約束; 或
- (b) 須聯同另一人方可行使,

此事實無關重要。

(3) 凡任何法團就某證券具有第 (1) 款提述的權限, 而——

- (a) 該法團或其董事慣於或有義務 (不論是正式或非正式的) 按照某人的指示或指令就該證券而行事; 或
- (b) 某人或其有聯繫者是該法團的控制人,

則該人視為就該證券具有第 (1) 款提述的權限。

(4) 凡任何人——

- (a) 已訂立合約以購買某證券, 則在他若履行合約便能如此購買的範圍內;

**290. 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) 具有使某證券轉移予他或按他的命令轉移的權利，不論該權利是現在或將來可行使的，亦不論是否在某條件符合後方可行使的，則在他若強制執行該權利便能令該證券如此轉移的範圍內；或
- (c) 具有根據一項期權取得某證券或證券權益的權利，不論該權利是現在或將來可行使的，亦不論是否在某條件符合後方可行使的，則在他若行使該權利便能取得該證券或權益的範圍內，

他視為就該證券具有第(1)款提述的權限。

(5) 凡任何證券受信託所規限，而任何不是該證券的受託人的人如憑藉第(4)(b)款擁有該證券的權益，則在斷定某人是否就第3分部而言擁有證券權益時，受託人在該證券中的權益須不予理會。

(6) 證監會可訂立規則，訂明某人的權益或某些屬於某類別的人的權益，在斷定他或他們是否就第3分部而言擁有證券權益時須不予理會。

(7) 如任何人在買賣某證券前擁有該證券的權益，而該人或其有聯繫者在買賣該證券後擁有該證券的權益，則就第3分部而言，買賣該證券不涉及其實益擁有權的改變。

- (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.

**306. 不構成罪行的行為**

(1) 不論本部有任何規定，因某行為而被控犯本部(第 300 或 302 條除外)所訂罪行的人，如證明該行為按照在第(2)款下訂立的規則不得視為構成罪行，即可以此作為免責辯護。

(2) 為施行第(1)款，證監會如認為訂立規則訂明在何種情況下，根據本部(第 300 或 302 條除外)本會構成某罪行的行為不得視為構成該罪行，是符合公眾利益的，則可在諮詢財政司司長後訂立該等規則。

(3) 不論本部有任何規定，如——

(a) 某人因某行為而被控犯第 295、296 或 299 條所訂罪行；及

(b) 該項控罪是基於該行為是就在有關境外市場交易的證券或期貨合約而作出的，而非就在有關認可市場或透過使用認可自動化交易服務交易的證券或期貨合約而作出的，

除非控方證明假使該行為在該有關境外市場所在的地方作出，即構成刑事罪行，否則不得裁定該人犯該罪行。

**306. Conduct not to constitute offences**

(1) Notwithstanding anything in this Part, where a person is charged with an offence under this Part (other than section 300 or 302) 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 (2), not to be regarded as constituting an offence.

(2) For the purposes of subsection (1), the Commission, after consultation with the Financial Secretary, 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 300 or 302) shall not be regarded as constituting such an offence.

(3) Notwithstanding anything in this Part, where—

(a) a person is charged with an offence under section 295, 296 or 299 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.

### 377. 證監會訂立的規則

證監會可在諮詢財政司司長後，訂立不抵觸行政長官會同行政會議根據第 376 條訂立的規則，以——

- (a) 訂明任何依據或將依據證券借貸協議條文處理的上市法團有關股本中的股份的權益及淡倉，須在該等規則指明的條件規限下，為施行第 323 條而不予理會；
- (b) 為施行第 313(13) 條而訂明權益的性質的改變的情況；
- (c) 訂定在該等規則指明的條件的規限下，豁免本部任何條文就任何依據或將依據證券借貸協議條文處理的上市法團有關股本中的股份的權益及淡倉作出具報的規定。

### 377. Rules by Commission

The Commission may, after consultation with the Financial Secretary, make rules which are not inconsistent with regulations made by the Chief Executive in Council under section 376, to—

- (a) prescribe interests and short positions in shares comprised in the relevant share capital of a listed corporation, that are or are to be dealt with pursuant to the provisions of a securities borrowing and lending agreement, to be disregarded for the purposes of section 323 subject to such conditions as may be specified in the rules;
- (b) prescribe circumstances of change in the nature of interests for the purposes of section 313(13);
- (c) provide for exclusions, subject to such conditions as may be specified in the rules, from the requirement to give notification under any provision of this Part in respect of interests, or short positions, in shares comprised in the relevant share capital of a listed corporation that are or are to be dealt with pursuant to the provisions of a securities borrowing and lending agreement.



## 397. 證監會訂立規則

## (1) 證監會可訂立規則——

- (a) 就牌照及註冊的申請、牌照及註冊證明書的批給以及附帶事宜訂定條文；
- (b) 規定以指明方式在指明情況下於指明地方展示牌照及註冊證明書，並規定在指明情況（本條例任何條文指明的情況除外）下須為任何指明目的將牌照及註冊證明書交回證監會；
- (c) 規定中介人就指明類別的人以指明方式在指明情況下經營業務；
- (d) 訂明中介人僱用或聘用的人在資歷、經驗及訓練方面須符合的規定，並就與該等規定有關而施加於該等人或該等中介人的責任、就申請牌照或註冊的人須參加的考試，以及就他們可在何種情況下獲豁免而無須遵從該等規定，訂定條文；
- (e) 就更正證監會根據第 136 條備存的登記冊內的錯誤，訂定條文；
- (f) 就證監會備存的指明紀錄及該等紀錄的摘錄在司法或其他法律程序中作為證據的可接納性，訂定條文；
- (g) 規定為本條例任何條文的目的而須提交、送交存檔、呈交或保留的文件及資料，以指明方式（不論以電子或其他方法）提交、送交存檔、呈交或保留；
- (h) 規定為本條例任何條文的目的以指明方式提交、送交存檔、呈交或保留的文件及資料，以指明表格或格式及方式填具、簽署、簽立及認證；

## 397. Rules by Commission

## (1) The Commission may make rules to—

- (a) provide for applications for licence and registration, the issue of licences and certificates of registration, and incidental matters;
- (b) require the display of licences and certificates of registration in the specified manner and circumstances and at specified places, and require that licences and certificates of registration 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 licence or registration 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 136;
- (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) 指明為本條例任何條文的目的是，是否和何時和在何種情況下可接受以指明表格或格式或方式編纂的紀錄，或以指明表格或格式或方式填具、簽署、簽立或認證的文件或資料，以及是否和何時和在何種情況下須以指明表格或格式或方式編纂紀錄，或以指明表格或格式或方式填具、簽署、簽立或認證文件或資料；
- (j) 規定支付根據本條例委任的核數師的報酬及支付根據本條例任何條文進行的審計的費用，並就與該等報酬及審計有關的事宜訂定條文；
- (k) 規定指明種類的人透過某交易所參與者在或透過認可證券市場售賣證券時，如該人將證券歸屬購買人的權利（或凡該人以代理人身分行事，則為該人的主事人將證券歸屬購買人的權利）是由指明的一類安排衍生，則須將證券歸屬購買人的權利是由該項安排衍生的事實通知該交易所參與者，並規定該人在依據該項安排售賣該等證券後，在為履行他於該項安排下的全部或部分義務而透過某交易所參與者在或透過認可證券市場購買證券時，須將該事實通知該交易所參與者；
- (l) 規定證券借貸協議下的借出人——
  - (i) 以指明表格或格式及方式備存指明紀錄或文件；及
  - (ii) 應證監會的要求，在指明時間內以指明形式及方式向該會提供上述紀錄或文件；
- (m) 規定中介人在指明時間（不論是否定期）向證監會呈交申報表，以及就該等申報表須載有的詳情或詳情性質、該等申報表須由何人在何種情況下以何種方式呈交及與該等申報表相關的其他事宜，訂定條文；
- (n) 規定根據本條例任何條文須呈交的表格或申報表不得遲於指明時間或在指明時間內交到證監會；
- (o) 訂明或指明本條例規定由或可藉根據本條訂立的規則訂明、指明或規定的事宜，或就該等事宜訂定條文；
- (p) 為更佳地實現本條例的宗旨及目的而就其他事宜訂定條文。

- (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) 證監會除有權根據第(1)款訂立規則外，亦可在諮詢財政司司長後，訂立達致其任何規管目標及執行其任何職能所需的其他規則。

(3) 不論本條有任何規定——

(a) 證監會根據本條就中介人訂立規則的權力，在該等中介人屬註冊機構的情況下，須視為只就該等中介人訂立與構成他們作為註冊機構獲註冊進行的任何受規管活動的業務有關的規則的權力；

(b) 證監會根據本條就中介人的有聯繫實體訂立規則的權力，在該等實體屬認可財務機構的情況下，須視為只就該等實體訂立與他們收取或持有中介人的客戶資產的業務有關的規則的權力。

(4) 為免生疑問，證監會根據本條訂立規則的權力，增補而非減損該會根據本條例或其他條例的條文訂立規則的其他權力。

(2) 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) 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 registered institutions, be regarded as the power to make rules in respect of the intermediaries only in relation to the businesses which constitute any regulated activities for which they are registered;

(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.

(4) 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.

### 398. 證監會訂立規則的一般條文

(1) 不論本條例其他條文有任何規定，除第(3)款另有規定外，凡證監會擬根據本條例任何條文訂立規則，須以該會認為適當的方式發表規則草擬本，以邀請公眾就該等規則作出申述。

(2) 凡證監會在根據第(1)款就某規則發表草擬本後根據本條例任何條文訂立該等規則，該會須——

(a) 以該會認為適當的方式發表報告，以概括字句列出——

(i) 就該草擬本所作的申述；及

(ii) 該會對該等申述的回應；及

(b) (如該等規則經過修改，而該會認為該等修改導致該等規則與草擬本有重大差異)以該會認為適當的方式發表該等差異的細節。

### 398. General provisions for rules by Commission

(1) Notwithstanding any other provisions of this Ordinance but subject to subsection (3), where the Commission proposes to make rules under any provision of this Ordinance, it shall publish a draft of the proposed rules, in such manner as it considers appropriate, for the purpose of inviting representations on the proposed rules by the public.

(2) Where the Commission makes any rules under any provision of this Ordinance after a draft is published under subsection (1) in relation to the rules, it shall—

(a) publish, in such manner as it considers appropriate, an account setting out in general terms—

(i) the representations made on the draft; and

(ii) the response of the Commission to the representations; and

(b) where the rules are made with modifications which in the opinion of the Commission result in the rules being significantly different from the draft, publish, in such manner as it considers appropriate, details of the difference.

(3) 如證監會認為在有關個案的情況下——

- (a) 第(1)及(2)款的適用是不適當或無需要的；或
- (b) 為遵從第(1)及(2)款而涉及的任何延擱，並不符合——
  - (i) 投資大眾的利益；或
  - (ii) 公眾利益，

則第(1)及(2)款不適用。

(4) 不論本條例其他條文有任何規定，如證監會擬根據本條例任何條文訂立的某些規則，因某些認可財務機構屬註冊機構或屬中介人的有聯繫實體而適用於該等認可財務機構，則在該範圍內，證監會須就該等規則諮詢金融管理專員。

(5) 為免生疑問，第(1)至(4)款不影響除該等條文外適用於根據本條例任何條文訂立任何規則的規定。

(6) 凡證監會根據本條例任何條文訂立規則，而本條例沒有規定該等規則可訂定違反該等規則的指明條文即構成罪行，則行政長官會同行政會議可訂立規例，訂定任何人違反該等規則中適用於該人的指明條文，即屬犯罪——

- (a) 一經循公訴程序定罪，可處不超過罰款 \$500,000 及監禁 2 年的指明罰則；
- (b) 一經循簡易程序定罪，可處不超過第 6 級罰款及監禁 6 個月的指明罰則。

(7) 除本條例其他條文另有規定外，證監會根據本條例任何條文訂立的規則，可規定在該等規則指明的條款及條件的規限下——

- (a) 該等規則指明的本條例條文就以下指明人士或屬以下指明類別人士的人而言不具效力，或只具指明程度的效力——
  - (i) 只因作出任何附帶於另一業務的事情而須或可能須獲發牌的人；
  - (ii) 並非代表任何其他人士進行證券或期貨合約交易，或買賣集體投資計劃或槓桿式外匯交易合約的權益的人；或
  - (iii) 只因訂立一宗屬指明類別的交易而須或可能須獲發牌的人；

(3) Subsections (1) and (2) do not apply if the Commission considers, in the circumstances of the case, that—

- (a) it is inappropriate or unnecessary that such subsections should apply; or
- (b) any delay involved in complying with such subsections would not be—
  - (i) in the interest of the investing public; or
  - (ii) in the public interest.

(4) Notwithstanding any other provisions of this Ordinance, the Commission shall consult the Monetary Authority regarding rules it proposes to make under any provision of this Ordinance in so far as such rules apply to authorized financial institutions by reason of their being registered institutions, or associated entities of intermediaries.

(5) For the avoidance of doubt, nothing in subsections (1) to (4) affects any other requirements which, apart from such subsections, apply to the making of any rules under any provision of this Ordinance.

(6) Where rules are made by the Commission under any 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.

(7) Except as otherwise provided in this Ordinance, rules made by the Commission under any 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) 該等規則指明的本條例條文就任何指明人士或指明類別人士訂立的指明交易或指明類別的交易而言不具效力；
- (c) 凡該等規則指明的本條例條文規定任何申請、陳述、通知或其他文件(不論實際如何稱述)須提交或呈交證監會或送交證監會存檔，如該申請、陳述、通知或文件(視屬何情況而定)已提交或呈交任何其他指明人士或送交任何其他指明人士存檔，則該等條文須視為已獲遵守。
- (8) 除本條例其他條文另有規定外，證監會根據本條例任何條文訂立的規則——
  - (a) 可一般地適用或適用於特別情況，並可只於指明的情況下適用；
  - (b) 可就不同情況訂定不同條文，並可就不同個案或不同類別的個案訂定條文；
  - (c) 可授權將任何事宜或事情交由指明人士決定、施行、應用或規管；
  - (d) 可就在指明個案中行使酌情決定權，訂定條文；
  - (e) 為更佳和更有效地施行本條例或該等規則的任何條文，可納入保留條文、過渡性條文、附帶條文、增補條文、證據條文及相應條文(不論是否涉及任何主體條例的條文或任何附屬法例的條文)。

- (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.
- (8) Except as otherwise provided in this Ordinance, rules made by the Commission under any 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).

404. 《賭博條例》條文不適用

(1) 除第 (2) 款另有規定外，《賭博條例》(第 148 章) 不適用於本條例規管或根據本條例規管的交易或活動，亦不適用於在符合本條例的規定下進行的交易或活動。

(2) 證監會可訂立規則，以提述交易或活動的本質或交易或活動的所有或任何一方或所涉及的所有或任何人或其他方式，訂明若非因本條例《賭博條例》(第 148 章) 本會適用的任何類別的交易或活動為該條例適用的類別的交易或活動，而凡證監會訂立該等規則，該條例即據此適用。

404. Exclusions of provisions of Gambling Ordinance

(1) Subject to subsection (2), the Gambling Ordinance (Cap. 148) shall not apply to any transaction or activity which is regulated by or under, or which is carried out in compliance with, this Ordinance.

(2) The Commission may make rules to prescribe any class of transactions or activities (being transactions or activities to which the Gambling Ordinance (Cap. 148) would apart from this section apply), whether by reference to the nature of the transactions or activities or all or any of the parties to or persons involved in the transactions or activities or otherwise, as a class of transactions or activities to which that Ordinance shall apply, whereupon that Ordinance shall have application accordingly.

**IV. Provisions relating to the role of the Chairman of the Securities and Futures  
Commission**



## 11. 向證監會發出指示

(1) 行政長官在諮詢證監會主席後，如信納就達致證監會任何規管目標或執行該會任何職能而向該會發出書面指示，是符合公眾利益的，則可如此發出書面指示。

(2) 證監會須遵從根據第(1)款發出的書面指示。

(3) 如行政長官根據第(1)款發出書面指示且該指示關乎證監會某項職能，而本條例其他條文或其他條例規定該會為執行該職能須——

(a) 得出意見；

(b) 確定是否信納某事宜(包括信納某種情況是否存在)；或

(c) 諮詢某人，

則就與依據或由於該指示而執行職能一事有關連的所有目的而言，該等規定並不適用。

(4) 根據第(1)款發出的書面指示不是附屬法例。

## 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.

#### 15. 帳目及年報

- (1) 證監會須備存其財務往來的妥善帳目及紀錄。
- (2) 證監會須在其每個財政年度終結後，在合理地切實可行的範圍內盡快擬備財務報表，該報表須——
  - (a) 真實而中肯地反映該會在該年度終結時的事務狀況，以及該會在該年度的業績及現金流量；及
  - (b) 由證監會的主席及一名非執行董事簽署。
- (3) 證監會須在其每個財政年度終結後，在合理地切實可行的範圍內盡快擬備在該年度內該會事務的報告，並將該報告的文本送交財政司司長，而財政司司長須安排將一份文本提交立法會會議席上省覽。

#### 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.

#### 240. 賠償基金的帳目

- (1) 證監會須為賠償基金備存妥當帳目。
- (2) 證監會可在認為有需要時——
  - (a) 就根據附表 10 第 74、75 及 76 條分別撥入賠償基金的款項，維持獨立帳戶；
  - (b) 為——
    - (i) (A) 不同的認可交易所；
    - (B) 認可交易所營辦的不同的市場；
    - (C) 提供自動化交易服務的不同人士；或
    - (D) 不同類別的投資者；或
    - (ii) 更佳地及更有效地管理賠償基金，而就賠償基金維持獨立帳戶；
  - (c) 以該會認為適當的方式，就 (a) 或 (b) 段提述的獨立帳戶維持分帳戶。
- (3) 證監會須就在本條生效前開始並於本條生效後終結的財政年度，及就隨後的每個財政年度，擬備以下文件——
  - (a) 關於賠償基金的帳目，且以該年度最後一日狀況為準的財務報表；及
  - (b) 在根據第 (2)(a) 或 (b) 款維持獨立帳戶或根據第 (2)(c) 款維持分帳戶的情況下——
    - (i) 就該等獨立帳戶或分帳戶 (視屬何情況而定) 而擬備的以該年度最後一日狀況為準的綜合財務報表；及
    - (ii) 就每個獨立帳戶或分帳戶 (視屬何情況而定) 而擬備的以該年度最後一日狀況為準的獨立財務報表。

#### 240. 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 74, 75 and 76 of Schedule 10;
  - (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, in respect of the accounts of the compensation fund; 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) 根據第 (3) 款擬備的財務報表須由主席及至少一名證監會非執行董事簽署。
- (5) 證監會須委任一名核數師，審計賠償基金。
- (6) 根據第 (5) 款委任的核數師須每年審計賠償基金帳目，並須審計根據第 (3) 款擬備的每一份財務報表，以及就每份該等報表擬備有關的核數師報告，並將報告呈交證監會。
- (7) 根據第 (6) 款擬備的核數師報告須載有該核數師所作的一項陳述，說明他是否認為財務報表能真實而中肯地反映它們所關乎的事宜。
- (8) 根據本條委任的核數師為執行本條授予的職能，可按他所需要求提交及查閱證監會或任何認可投資者賠償公司的簿冊及紀錄。
- (9) 在每個財政年度終結後的 4 個月內，證監會須安排——
  - (a) 將以下文件文本提交財政司司長——
    - (i) 就該年度擬備並經審計的每份財務報表；及
    - (ii) 核數師就每份該等報表擬備的報告；及
  - (b) 在憲報刊登該等報表文本。
- (10) 財政司司長須安排將任何根據第 (9)(a) 款提交予他的財務報表及報告提交立法會會議席上省覽。
- (11) 在本條中，“財務報表”(financial statement) 指載有以下所有文件的報表——
  - (a) 收支帳目；
  - (b) 資產負債表；及
  - (c) 現金流轉表。

- (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) The Financial Secretary shall cause to be laid on the table of the Legislative Council any financial statement and report sent to him under subsection (9)(a).
- (11) 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.

## 附表 2

[第 3、7 及 10 條及  
附表 1 及 10]

## 證券及期貨事務監察委員會

## 第 1 部

## 證監會的組成及處事程序等

## 證監會的主席及其他成員

6. 即使已根據第 4 條委任證監會副主席，如證監會主席及副主席在任何期間均因傷病、不在香港或其他因由而不能擔任主席，而當時亦無有效的根據第 7 條作出的指定，則證監會主席可指定一名證監會執行董事在該段期間署理證監會主席職位；證監會主席亦可隨時撤銷任何該等指定。
14. 證監會須視乎執行其職能所需而隨時召開會議，會議可由證監會主席或副主席或任何 2 名其他成員召開。
15. 在證監會會議中——
- (a) 如證監會主席有出席，則他須擔任會議主席；
  - (b) 如證監會主席缺席，但證監會副主席有出席，則證監會副主席須擔任會議主席；或
  - (c) 如證監會主席及副主席均缺席，則須由出席會議的證監會成員互選一人擔任會議主席。
19. 在證監會會議中，每項有待決定的問題須取決於出席會議的成員所投的過半數票；如票數相等，則在符合第 20 條的規定下，會議主席有權投決定票。
20. 會議主席須在已就有待決定的問題諮詢財政司司長後，方可投決定票。
25. 證監會具有印章，使用該印章蓋印須由證監會主席或副主席簽署認證，或由該會為此授權的其他成員簽署認證。
27. 諮詢委員會由以下人士組成——
- (a) 證監會主席；
  - (b) 1 或 2 名證監會其他執行董事，由證監會委任；
  - (c) 8 至 12 名其他成員，由行政長官在諮詢證監會後委任。
28. 諮詢委員會會議可由以下人士召開——
- (a) 證監會主席；或
  - (b) 任何 3 名諮詢委員會其他成員。
29. 在諮詢委員會會議中——
- (a) 如證監會主席有出席，則他須擔任會議主席；或
  - (b) 如證監會主席缺席，則須由出席會議的成員互選一人擔任會議主席。

## SCHEDULE 2

[ss. 3, 7 & 10 &  
Schs. 1 & 10]

## SECURITIES AND FUTURES COMMISSION

## PART I

## CONSTITUTION AND PROCEEDINGS OF COMMISSION, ETC.

## Chairman and other members of Commission

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.
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.
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.
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.
27. The Advisory Committee shall consist of—
- (a) the chairman of the Commission;
  - (b) not more than 2 other 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.

**V. Provisions relating to non-delegable functions of the Securities and Futures  
Commission**

# 10. 證監會職能的轉授及再轉授

- (1) 除第(2)款另有規定外，證監會可將其職能轉授予——
  - (a) 該會成員；
  - (b) 根據第 8 條設立的委員會；或
  - (c) 指名的或擔任指明職位的該會僱員。
- (2) 證監會不得根據第(1)款轉授——
  - (a) 該會根據本條轉授職能的權力；或
  - (b) 附表 2 第 2 部指明的職能。
- (3) 證監會如根據本條轉授職能，可同時授權獲轉授職能者再轉授該職能，而該項授權可載有對再轉授職能的權力的行使的限制或規限條件。
- (4) 根據本條作出的轉授或再轉授，並不妨礙證監會或獲轉授職能者同時執行已轉授或已再轉授的職能。
- (5) 證監會可——
  - (a) 撤銷根據本條作出的轉授；
  - (b) 撤銷就根據本條作出的再轉授而作出的授權，而該項轉授或再轉授(視屬何情況而定)隨即不再具有效力。
- (6) 凡任何人或委員會看來是依據在本條下作出的轉授或再轉授而行事，除非相反證明成立，否則須推定該人或該委員會是按照該項轉授或再轉授的條款而行事的。
- (7) 在不損害第(4)款的原則下，凡根據本條就證監會任何職能作出轉授或再轉授，則在本條例或其他條例中就該職能的執行而提述證監會之處，除文意另有所指外，均須據此解釋。
- (8) 立法會可藉決議修訂附表 2 第 2 部。

# 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 shall be 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.

附表 2

[第 3、7 及 10 條及  
附表 1 及 10]

證券及期貨事務監察委員會

第 2 部

不得轉授的證監會職能

1. 證監會根據或依據任何條例訂立附屬法例的職能。
2. 證監會的以下職能——
  - (1) 根據本條例第 5(4)(d) 條借入款項；
  - (2) 根據本條例第 5(4)(e) 條發表或以其他方式提供材料；
  - (3) 根據本條例第 8(1) 條設立任何委員會；
  - (4) 根據本條例第 8(2) 條將任何事宜交付委員會；
  - (5) 根據本條例第 8(3) 條委任某人擔任委員會的委員或主席；
  - (6) 根據本條例第 8(5) 條撤回向委員會作出的交付，或撤銷委員會委員或主席的委任；
  - (7) 根據本條例第 13(2) 條向行政長官呈交預算；
  - (8) 根據本條例第 15(2) 條擬備財務報表；
  - (9) 根據本條例第 15(3) 條擬備報告；
  - (10) 根據本條例第 16(1) 條委任核數師；

SCHEDULE 2

[ss. 3, 7 & 10 &  
Schs. 1 & 10]

SECURITIES AND FUTURES COMMISSION

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) 根據本條例第 17 條將資金投資；
- (12) 根據本條例第 19(2) 條認可某公司為交易所公司，或依據該條施加條件；
- (13) 根據本條例第 19(3) 條修訂或撤銷條件或施加新的條件；
- (14) 根據本條例第 19(7) 條給予公司合理的陳詞機會；
- (15) 根據本條例第 23(3) 條要求認可交易所訂立或修訂規章；
- (16) 根據本條例第 24(3) 條拒絕批准任何規章或對任何規章的修訂或其中任何部分；
- (17) 依據本條例第 24(6) 條建議財政司司長展期期限；
- (18) 根據本條例第 24(7) 條宣布某類別的規章無須獲批准；
- (19) 根據本條例第 25(1) 條請求行政長官會同行政會議將證監會的職能轉移；
- (20) 依據本條例第 25(7) 條請求行政長官會同行政會議命令證監會收回任何職能；
- (21) 依據本條例第 26 條核准委任某人擔任最高行政人員；
- (22) 根據本條例第 28(1)(a) 條撤回對認可交易所的認可；
- (23) 根據本條例第 28(1)(b) 條指令認可交易所停止提供或運作設施或停止提供服務；
- (24) 根據本條例第 29(1) 條指令認可交易所停止提供或運作設施或停止提供服務；
- (25) 根據本條例第 29(3) 條將指令所涉的期間延展；
- (26) 根據本條例第 37(1) 條認可某公司為結算所，或依據該條施加條件；
- (27) 根據本條例第 37(2) 條修訂或撤銷條件或施加新的條件；
- (28) 根據本條例第 37(5) 條給予公司合理的陳詞機會；
- (29) 根據本條例第 40(4) 條要求認可結算所訂立或修訂規章；
- (30) 根據本條例第 41(3) 條拒絕批准任何規章或對任何規章的修訂或其中任何部分；
- (31) 依據本條例第 41(6) 條建議財政司司長展期期限；
- (32) 根據本條例第 41(7) 條宣布某類別的規章無須獲批准；
- (33) 根據本條例第 43(1)(a) 條撤回對認可結算所的認可；
- (34) 根據本條例第 43(1)(b) 條指令認可結算所停止提供或運作設施；
- (35) 根據本條例第 59(2) 條認可某公司為交易所控制人，或依據該條施加條件；
- (36) 根據本條例第 59(3) 條修訂或撤銷條件或施加新的條件；
- (37) 根據本條例第 59(9)(c) 條指令某人採取指明步驟；
- (38) 根據本條例第 59(18) 條給予公司合理的陳詞機會；
- (39) 依據本條例第 60(a) 條批准認可控制人增加或減少擁有的認可交易所或認可結算所權益；
- (40) 依據本條例第 61(1) 條核准某人成為認可控制人、認可交易所或認可結算所的次要控制人；

- (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) 根據本條例第 67(3) 條拒絕批准任何規章或對任何規章的修訂或其中任何部分；
- (42) 依據本條例第 67(6) 條建議財政司司長延展期限；
- (43) 根據本條例第 67(7) 條宣布某類別的規章無須獲批准；
- (44) 根據本條例第 68(1) 條請求行政長官會同行政會議將證監會的職能轉移；
- (45) 依據本條例第 68(7) 條請求行政長官會同行政會議命令證監會收回任何職能；
- (46) 依據本條例第 70(1) 條核准委任某人擔任最高行政人員或最高營運人員；
- (47) 根據本條例第 70(2) 條免除某人的最高行政人員或最高營運人員的職位；
- (48) 根據本條例第 72(1)(i) 條撤回對認可控制人的認可；
- (49) 根據本條例第 72(1)(ii) 條指令某公司採取指明步驟；
- (50) 依據本條例第 72(2) 條給予認可控制人合理的陳詞機會；
- (51) 依據本條例第 74(1) 條作出書面聲明；
- (52) 根據本條例第 75(1) 條指令認可控制人或相關法團採取指明步驟；
- (53) 依據本條例第 76(1) 條批准費用；
- (54) 根據本條例第 79(1) 條認可某公司為投資者賠償公司，或依據該條施加條件；
- (55) 根據本條例第 79(2) 條修訂或撤銷條件或施加新的條件；
- (56) 根據本條例第 79(5) 條給予公司合理的陳詞機會；
- (57) 根據本條例第 80(1) 條請求行政長官會同行政會議將證監會的職能轉移；
- (58) 依據本條例第 80(7) 條請求行政長官會同行政會議命令證監會收回任何職能；
- (59) 根據本條例第 83(3) 條拒絕批准任何規章或對任何規章的修訂或其中任何部分；
- (60) 依據本條例第 83(6) 條建議財政司司長延展期限；
- (61) 根據本條例第 83(7) 條宣布某類別的規章無須獲批准；
- (62) 根據本條例第 85(1) 條撤回對認可投資者賠償公司的認可；
- (63) 依據本條例第 90(1) 條批准進行活動或業務；
- (64) 根據本條例第 92(1) 條送達通知；
- (65) 根據本條例第 92(7) 條延展限制通知的有效期；
- (66) 依據本條例第 92(9) 條向原訟法庭提出申請；
- (67) 根據本條例第 93(1) 條作出暫停職能令；
- (68) 根據本條例第 93(9) 條延展暫停職能令的有效期；
- (69) 根據本條例第 182(1) 條委任非證監會僱員的人，調查本條例第 182(1)(a) 至 (g) 條提述的任何事宜；
- (70) 根據本條例第 183(6) 條安排發表報告；
- (71) 根據本條例第 204、205 或 206 條施加禁止或要求；
- (72) 根據本條例第 208(1) 條撤回、取代或更改某項禁止或要求；
- (73) 根據本條例第 212 條提出呈請；

- (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(7) of this Ordinance;
- (66) to apply to the Court of First Instance, pursuant to section 92(9) of this Ordinance;
- (67) to make 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(9) 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 182(1)(a) to (g) of this Ordinance, under section 182(1) of this Ordinance;
- (70) to cause a report to be published, under section 183(6) of this Ordinance;
- (71) to impose a prohibition or requirement, under section 204, 205 or 206 of this Ordinance;
- (72) to withdraw, substitute or vary a prohibition or requirement, under section 208(1) of this Ordinance;
- (73) to present a petition, under section 212 of this Ordinance;

- (74) 依據本條例第 213(1) 條向原訟法庭提出申請；
- (75) 根據本條例第 214(1) 條向原訟法庭提出申請；
- (76) 根據本條例第 232(3) 條指明某指明決定的生效時間；
- (77) 根據本條例第 236 條設立賠償基金；
- (78) 根據本條例第 237(2)(a) 條借入款項，或將投資項目作為押記，用以擔保借貸；
- (79) 根據本條例第 240(5) 條委任核數師；
- (80) 根據本條例第 241(1) 條將款項投資；
- (81) 根據本條例第 252(8) 條向財政司司長作出報告；
- (82) 根據本條例第 309(1) 條發表指引；
- (83) 依據本條例第 385(1) 條提出申請；
- (84) 根據本條例第 396(1) 條諮詢財政司司長；
- (85) 根據本條例第 396(2) 條向行政長官會同行政會議作出建議；
- (86) 根據第 1 部第 27(b) 條委任諮詢委員會成員；
- (87) 根據本條例附表 3 第 6 部第 1(2) 條指令任何指明證券須受限制；
- (88) 依據本條例附表 3 第 6 部第 1(6)(a) 條向原訟法庭提出申請；
- (89) 依據本條例附表 3 第 6 部第 1(7) 條向原訟法庭提出申請。

- (74) to apply to the Court of First Instance, pursuant to section 213(1) of this Ordinance;
- (75) to apply to the Court of First Instance, under section 214(1) of this Ordinance;
- (76) to specify the time at which a specified decision is to take effect, under section 232(3) of this Ordinance;
- (77) to establish a compensation fund, under section 236 of this Ordinance;
- (78) to borrow, or to charge any investments by way of security, under section 237(2)(a) of this Ordinance;
- (79) to appoint an auditor, under section 240(5) of this Ordinance;
- (80) to invest money, under section 241(1) of this Ordinance;
- (81) to make report to the Financial Secretary, under section 252(8) of this Ordinance;
- (82) to publish guidelines, under section 309(1) of this Ordinance;
- (83) to make an application, pursuant to section 385(1) of this Ordinance;
- (84) to consult the Financial Secretary, under section 396(1) of this Ordinance;
- (85) to make recommendation to the Chief Executive in Council, under section 396(2) of this Ordinance;
- (86) to appoint members of the Advisory Committee, under section 27(b) of Part 1;
- (87) to direct any specified securities to be subject to restrictions, under section 1(2) of Part 6 of Schedule 3 to this Ordinance;
- (88) to apply to the Court of First Instance, pursuant to section 1(6)(a) of Part 6 of Schedule 3 to this Ordinance;
- (89) to apply to the Court of First Instance, pursuant to section 1(7) of Part 6 of Schedule 3 to this Ordinance.