

**Paper for the Panel on Financial Affairs Meeting
On 5 January 2006**

**Regulation of Securities related Programme
broadcast through the Mass Media**

The Deputy Chairman of the Panel on Financial Affairs has requested the Legal Service Division to provide a note on the existing legislative and regulatory provisions governing the securities related programme broadcast through the mass media to assist Members in considering issues relating to the review of derivative warrants market at the meeting of the Panel scheduled for 5 January 2006.

2. A securities related programme broadcast through the mass media is a radio or television programme in which the host(s) and invited guest(s) provide analyses or comments on the movements of the securities or foreign exchange markets, or specific securities or currencies and answer queries on particular securities from the general audience who are able to phone-in (securities related programme).

3. In the HKSAR, the Securities and Futures Commission (SFC) is the supervisory authority of all persons engaging in activities relating to transactions in securities and futures contracts as defined in the Schedule 5 of the Securities and Futures Ordinance (Cap. 571) (SFO).¹ These activities are called regulated activities. No person may engage in regulated activities unless he is either licensed or otherwise permitted or exempted under the relevant provisions of SFO.² Many of the hosts and guests of securities related programme are licensed persons under SFO but some are not. Their taking part in such programme may come within type 4 of regulated activities, i.e. advising on securities. However, paragraph (ix) in the definition of

¹ Schedule 5 of SFO. (All sections of SFO quoted in this paper are, unless otherwise expressly stated, extracted in Annex I.)

² Please see sections 114, 116, 120 and 121 of SFO.

“advising on securities” in Schedule 5 of SFO has expressly excluded the giving of advice or issuing of analyses or reports through a newspaper, magazine, or other publication which is made generally available to the public or through television broadcast or radio broadcast for reception by the public, whether on subscription or not. That means participation in securities related programme as such is not subject to the regulation of SFC. There are, however, other considerations.

4. A person has to satisfy SFC that he is a fit and proper person in order to be licensed for a regulated activity under SFO.³ This is a continuous obligation. If SFC is of the opinion that a licensed person is not a fit and proper person to be or to remain the same type of licensed person, it may exercise disciplinary powers including the revocation of the person’s licence.⁴ In considering whether a person is a fit or proper person, SFC may have regard to, *inter alia*, the reputation, character, reliability and financial integrity of that person and any other matter that it may consider relevant.⁵ If a licensed person has committed misconduct in a securities related programme, SFC may find that he is no longer a fit and proper person to be licensed for a regulated activity under SFO.

5. Further, a licensed person has to comply with the rules and code of conduct made by SFC.⁶ Paragraph 16.9 of the *Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission* (the Code) sets out the disclosures that an analyst should make, when providing analyses or comments on securities of a listed entity in the mass media.⁷ Paragraph 16 of the Code strictly speaking applies only to analysts, but licensed persons participating in the securities related programme do make the requisite disclosures in compliance with paragraph 16.9 of the Code.

6. Apart from the foregoing that applies only to persons licensed by or registered with SFC, SFO contains provisions that apply generally to all persons. For the present purposes, sections 107, 108, 298 and 301⁸ are perhaps the most relevant. Section 107 imposes criminal liability for making any fraudulent misrepresentation or reckless misrepresentation for the purposes

³ Section 120(3) of SFO.

⁴ Section 194 of SFO.

⁵ Section 129(1)(d) of SFO and also section 194(3).

⁶ Sections 168 and 169 of SFO.

⁷ The whole of paragraph 16 is relevant. It is set out in Annex II.

⁸ Please see Annex I.

of inducing another person to enter into or offer to enter into an agreement to acquire, dispose of, subscribe for or underwrite securities or a regulated investment agreement, or to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme. Section 108 imposes civil liabilities for such fraudulent or reckless misrepresentation. Section 298 makes it an offence for a person who discloses, circulates or disseminates false or misleading information likely to induce another person to subscribe for securities, or deal in future contracts, in Hong Kong, or induce the sale or purchase in Hong Kong of securities by another person or to maintain, increase or reduce or stabilize the price of securities or the price for dealings in futures contracts in Hong Kong. Section 301 creates an offence for similar conduct in relation to leveraged foreign exchange contract in Hong Kong. A person could be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of any contravention of section 298 or 301.⁹ This is so even though the person against whom the action is brought has not been charged with or convicted of any offence for the contravention. It is a question of fact whether in a particular case the conduct in a securities related programme is of sufficient proximity or the information is fraudulent or misleading so as to attract the statutory penalties or liabilities. To complete the picture, it should also be mentioned that the law of tort also provides civil remedies for negligent misstatement or deceit.

7. In so far as the marketing of derivative warrants is concerned, it is being looked into by SFC. The recent report¹⁰ of its review of the derivative warrants market in Hong Kong has specifically addressed the problem.¹¹ In Chapter VI of the Report, SFC acknowledged that a number of increasingly prevalent marketing and promotional practices employed by derivative warrant issuers had given cause for concern and proposed to publish new guidelines on marketing for derivative warrants. SFC expressed the intention to incorporate such guidelines in the Listing Rules and would discuss the issue with the Broadcasting Authority so as to ensure that all marketing activities are covered.

8. A securities related programme as part of radio or television broadcasting is subject to the supervision of the Broadcasting Authority (BA)

⁹ Section 305 of SFO.

¹⁰ *A Healthy Market for Informed Investors – A Report on the Derivative Warrants Market in Hong Kong*, November 2005. (the Report)

¹¹ Please see paragraphs 202 -209 of the Report at Annex III.

under the Broadcasting Ordinance (Cap. 562) (BO). It must be noted that BA supervises only the programme providers, i.e. the corporations licensed to provide radio or television programme, but not the individuals hosting, or participating in, such programme. A licensee is required, *inter alia*, to comply with all provisions in a Code of Practice that are applicable to it.¹² BA has pursuant to section 3(1) of BO issued and published Codes of Practice in respect of television and radio broadcasting respectively. The relevant Codes are *Radio Code of Practice on Programme Standards*, *Radio Code of Practice on Advertising Standards*, *Generic Code of Practice on Television Programme Standards* and *Generic Code of Practice on Television Advertising Standards*.¹³ The relevant provisions of the respective Codes are extracted for Members' easy reference at Annex IV. The Codes of Practice provide principle oriented guidance to broadcasting licence holders and do not directly regulate the conduct of securities related programme.

Prepared by
Legal Service Division
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¹² Section 23(2)(d) of BO.

¹³ All are accessible at the website of BA: <http://www.hkba.hk/en/download/>.

Annex I

**Extracts of the provisions
of
the Securities and Futures Ordinance
and
the Broadcasting Ordinance**

**107. 欺詐地或罔顧實情地誘使他人
投資金錢的罪行**

(1) 任何人為誘使另一人作出以下作為而作出任何欺詐的失實陳述或罔顧實情的失實陳述，即屬犯罪——

(a) 訂立或要約訂立——

- (i) 旨在取得、處置、認購或包銷證券的協議；或
- (ii) 受規管投資協議；或

(b) 取得或要約取得集體投資計劃的權益，或參與或要約參與集體投資計劃。

(2) 任何人犯第(1)款所訂罪行——

(a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 7 年；或

(b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

(3) 就本條而言——

(a) “欺詐的失實陳述”(fraudulent misrepresentation) 指——

- (i) 任何陳述，而在該陳述作出時，作出該陳述的人知道該陳述是虛假、具誤導性或具欺騙性的；
- (ii) 任何承諾，而在該承諾作出時，作出該承諾的人是無意履行該承諾的，或知道該承諾是不能夠履行的；
- (iii) 任何預測，而在該預測作出時，作出該預測的人知道根據他當時所知的事實，該預測是沒有充分理由支持的；或
- (iv) 任何陳述或預測，而在該陳述或預測作出時，作出該陳述或預測的人蓄意遺漏某項事關重要的事實，以致——

(A) (就陳述而言) 該陳述成為虛假、具誤導性或具欺騙性的陳述；或

(B) (就預測而言) 該預測成為具誤導性或具欺騙性的預測；

(b) “罔顧實情的失實陳述”(reckless misrepresentation) 指——

- (i) 任何陳述，而在該陳述作出時，該陳述是虛假、具誤導性或具欺騙性的，並且是罔顧實情地作出的；
- (ii) 任何承諾，而在該承諾作出時，該承諾是不能夠履行的，並且是罔顧實情地作出的；
- (iii) 任何預測，而在該預測作出時，該預測是罔顧實情地作出的，並且根據作出該預測的人當時所知的事實，該預測是沒有充分理由支持的；或

**107. Offence to fraudulently or recklessly induce
others to invest money**

(1) A person commits an offence if he makes any fraudulent misrepresentation or reckless misrepresentation for the purpose of inducing another person—

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

- (i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or
- (ii) a regulated investment agreement; or

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

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

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

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

(3) For the purposes of this section—

(a) “fraudulent misrepresentation” (欺詐的失實陳述) means—

- (i) any statement which, at the time when it is made, is to the knowledge of its maker false, misleading or deceptive;
- (ii) any promise which, at the time when it is made, its maker has no intention of fulfilling, or is to the knowledge of its maker not capable of being fulfilled;
- (iii) any forecast which, at the time when it is made, is to the knowledge of its maker not justified on the facts then known to him; or

(iv) any statement or forecast from which, at the time when it is made, its maker intentionally omits a material fact, with the result that—

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive;

(b) “reckless misrepresentation” (罔顧實情的失實陳述) means—

- (i) any statement which, at the time when it is made, is false, misleading or deceptive and is made recklessly;
- (ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made recklessly;
- (iii) any forecast which, at the time when it is made, is not justified on the facts then known to its maker and is made recklessly; or

- (iv) 任何陳述或預測，而在該陳述或預測作出時，作出該陳述或預測的人罔顧實情地遺漏某項事關重要的事實，以致——
- (A) (就陳述而言) 該陳述成為虛假、具誤導性或具欺騙性的陳述；或
- (B) (就預測而言) 該預測成為具誤導性或具欺騙性的預測。

108. 在某些情況下誘使他人投資金錢的民事法律責任

(1) 凡任何人作出任何欺詐的失實陳述、罔顧實情的失實陳述或疏忽的失實陳述，而另一人受該失實陳述所誘使而——

- (a) 訂立或要約訂立——
- (i) 旨在取得、處置、認購或包銷證券的協議；或
- (ii) 受規管投資協議；或
- (b) 取得或要約取得集體投資計劃的權益，或參與或要約參與集體投資計劃，

則首述的人負有法律責任以損害賠償的方式賠償該另一人因依賴該失實陳述而蒙受的金錢損失，不論首述的人是否根據本部或其他規定亦招致任何其他法律責任。

(2) 就本條而言，如某公司或其他法人團體曾作出任何欺詐的失實陳述、罔顧實情的失實陳述或疏忽的失實陳述，而另一人受該失實陳述所誘使而作出第(1)(a)或(b)款提述的任何作為，則在該失實陳述作出時擔任該公司或法人團體的董事的人，須推定為亦曾作出該失實陳述，但如證明他並無授權作出該失實陳述，則屬例外。

(3) 為免生疑問，凡任何法院具有司法管轄權對根據第(1)款提出的訴訟作出裁定，如該法院除本條外具有司法管轄權受理強制令的申請，則可按它認為適當的條款及條件批給強制令，以附加於或取代損害賠償。

(4) 本條並不授予在《公司條例》(第 32 章)第 40 條適用(不論是否參照該條例第 342E 條而適用)的個案中提出訴訟的權利。

- (iv) any statement or forecast from which, at the time when it is made, its maker recklessly omits a material fact, with the result that—
- (A) in the case of the statement, the statement is rendered false, misleading or deceptive; or
- (B) in the case of the forecast, the forecast is rendered misleading or deceptive.

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

(1) Where a person makes any fraudulent misrepresentation, reckless misrepresentation or negligent misrepresentation by which another person is induced—

- (a) to enter into or offer to enter into—
- (i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or
- (ii) a regulated investment agreement; or
- (b) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme,

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

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

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

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

(5) 任何人即使未因違反本部條文而被檢控或被定罪，其他人仍可根據第(1)款針對該人提出訴訟。

(6) 本條並不影響、限制或減免任何人根據普通法或任何其他成文法則而獲授予的權利或可招致的法律責任。

(7) 就本條而言——

(a) “欺詐的失實陳述”(fraudulent misrepresentation)指——

- (i) 任何陳述，而在該陳述作出時，作出該陳述的人知道該陳述是虛假、具誤導性或具欺騙性的；
- (ii) 任何承諾，而在該承諾作出時，作出該承諾的人是無意履行該承諾的，或知道該承諾是不能夠履行的；
- (iii) 任何預測，而在該預測作出時，作出該預測的人知道根據他當時所知的事實，該預測是沒有充分理由支持的；或
- (iv) 任何陳述或預測，而在該陳述或預測作出時，作出該陳述或預測的人蓄意遺漏某項事關重要的事實，以致——

(A) (就陳述而言) 該陳述成為虛假、具誤導性或具欺騙性的陳述；
或

(B) (就預測而言) 該預測成為具誤導性或具欺騙性的預測；

(b) “罔顧實情的失實陳述”(reckless misrepresentation)指——

- (i) 任何陳述，而在該陳述作出時，該陳述是虛假、具誤導性或具欺騙性的，並且是罔顧實情地作出的；
- (ii) 任何承諾，而在該承諾作出時，該承諾是不能夠履行的，並且是罔顧實情地作出的；
- (iii) 任何預測，而在該預測作出時，該預測是罔顧實情地作出的，並且根據作出該預測的人當時所知的事實，該預測是沒有充分理由支持的；或
- (iv) 任何陳述或預測，而在該陳述或預測作出時，作出該陳述或預測的人罔顧實情地遺漏某項事關重要的事實，以致——

(A) (就陳述而言) 該陳述成為虛假、具誤導性或具欺騙性的陳述；
或

(B) (就預測而言) 該預測成為具誤導性或具欺騙性的預測；

(c) “疏忽的失實陳述”(negligent misrepresentation)指——

- (i) 任何陳述，而在該陳述作出時，該陳述是虛假、具誤導性或具欺騙性的，並且是在沒有採取合理程度的謹慎以確保其準確性的情況下作出的；

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

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

(7) For the purposes of this section—

(a) “fraudulent misrepresentation”(欺詐的失實陳述) means—

- (i) any statement which, at the time when it is made, is to the knowledge of its maker false, misleading or deceptive;
- (ii) any promise which, at the time when it is made, its maker has no intention of fulfilling, or is to the knowledge of its maker not capable of being fulfilled;
- (iii) any forecast which, at the time when it is made, is to the knowledge of its maker not justified on the facts then known to him; or
- (iv) any statement or forecast from which, at the time when it is made, its maker intentionally omits a material fact, with the result that—

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive;

(b) “reckless misrepresentation”(罔顧實情的失實陳述) means—

- (i) any statement which, at the time when it is made, is false, misleading or deceptive and is made recklessly;
- (ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made recklessly;
- (iii) any forecast which, at the time when it is made, is not justified on the facts then known to its maker and is made recklessly; or
- (iv) any statement or forecast from which, at the time when it is made, its maker recklessly omits a material fact, with the result that—

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive;

(c) “negligent misrepresentation”(疏忽的失實陳述) means—

- (i) any statement which, at the time when it is made, is false, misleading or deceptive and is made without reasonable care having been taken to ensure its accuracy;

- (ii) 任何承諾，而在該承諾作出時，該承諾是不能夠履行的，並且是在沒有採取合理程度的謹慎以確保該承諾能夠履行的情況下作出的；
- (iii) 任何預測，而在該預測作出時，該預測是在沒有採取合理程度的謹慎以確保其準確性的情況下作出的，並且根據作出該預測的人當時所知的事實，該預測是沒有充分理由支持的；或
- (iv) 任何陳述或預測，而在該陳述或預測作出時，作出該陳述或預測的人疏忽地遺漏某項事關重要的事實，以致——
 - (A) (就陳述而言) 該陳述成為虛假、具誤導性或其欺騙性的陳述；或
 - (B) (就預測而言) 該預測成為具誤導性或其欺騙性的預測。

109. 發出關於進行受規管活動等的廣告的罪行

- (1) 除第 (3) 至 (6) 款另有規定外，任何人作出以下作為，即屬犯罪——
 - (a) 發出或為發出而管有任何廣告，而該人知道——
 - (i) 另一人在該廣告中顯示自己準備進行第 4、5、6 或 9 類受規管活動；及
 - (ii) 該另一人沒有根據本條例的規定就該等活動獲發牌或獲註冊；或
 - (b) 發出或為發出而管有該人知道載有上述廣告的文件。
- (2) 任何人犯第 (1) 款所訂罪行，一經定罪，可處第 5 級罰款及監禁 6 個月。
- (3) 任何人不得僅因他向以下的人發出任何廣告或文件，或為向以下的人發出而管有任何廣告或文件，而視為犯第 (1) 款所訂罪行——
 - (a) (就某人在廣告中顯示自己準備進行第 4 類受規管活動的情況而言) 就第 4 類受規管活動獲發牌或獲註冊的中介人，或為該中介人進行該類活動的該中介人的代表；
 - (b) (就某人在廣告中顯示自己準備進行第 5 類受規管活動的情況而言) 就第 5 類受規管活動獲發牌或獲註冊的中介人，或為該中介人進行該類活動的該中介人的代表；

- (ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made without reasonable care having been taken to ensure that it can be fulfilled;
- (iii) any forecast which, at the time when it is made, is not justified on the facts then known to its maker and is made without reasonable care having been taken to ensure the accuracy of those facts; or
- (iv) any statement or forecast from which, at the time when it is made, its maker negligently omits a material fact, with the result that—
 - (A) in the case of the statement, the statement is rendered false, misleading or deceptive; or
 - (B) in the case of the forecast, the forecast is rendered misleading or deceptive.

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

- (1) Subject to subsections (3) to (6), a person commits an offence if he issues, or has in his possession for the purposes of issue—
 - (a) an advertisement in which to his knowledge—
 - (i) a person holds himself out as being prepared to carry on Type 4, Type 5, Type 6 or Type 9 regulated activity; and
 - (ii) the person is not licensed or registered for such regulated activity as required under this Ordinance; or
 - (b) any document which to his knowledge contains such advertisement.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 5 and to imprisonment for 6 months.
- (3) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues any advertisement or document, or has any advertisement or document in his possession for the purposes of issue—
 - (a) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type 4 regulated activity, to an intermediary licensed or registered for Type 4 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary;
 - (b) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type 5 regulated activity, to an intermediary licensed or registered for Type 5 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary;

- (2) 在本部中，凡提述進行某類受規管活動的牌照——
- 就持牌法團而言，須解釋為授權經營該類活動的業務的牌照；及
 - 就持牌代表而言，須解釋為授權為他所隸屬的持牌法團（或代該法團或藉與該法團訂立的安排）而就該類活動執行任何受規管職能的牌照。
- (3) 凡根據第 119 條就某類受規管活動獲註冊，須解釋為獲註冊經營該類活動的業務。

114. 對經營受規管活動的業務的限制等

- 除第 (2)、(5) 及 (6) 款另有規定外，任何人不得——
 - 經營某類受規管活動的業務；或
 - 顯示自己經營某類受規管活動的業務。
- 第 (1) 款不適用於——
 - 就有關類別的受規管活動而根據第 116 或 117 條獲發牌的法團；
 - 就有關類別的受規管活動而根據第 119 條獲註冊的認可財務機構；或
 - 根據第 95(2) 條獲認可進行有關類別的受規管活動的人。
- 在不損害第 (1) 款的原則下但在第 (4) 款的規限下，任何人不得——
 - 就任何以業務形式進行的受規管活動執行任何受規管職能；或
 - 顯示自己執行該項職能。
- 第 (3) 款——
 - 在持牌代表為其主事人進行該代表獲發牌進行的受規管活動的情況下，不適用於該代表；
 - 不適用於符合以下說明的個人——
 - 為註冊機構進行該機構獲註冊進行的受規管活動；及
 - 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為受該機構就該類活動聘用的；或
 - 不適用於根據第 95(2) 條獲認可進行某類受規管活動的人士的僱員，而該僱員是就該類活動執行任何受規管職能的。

- (2) In this Part, a reference to a licence to carry on a regulated activity— shall be construed—
- in relation to a licensed corporation, as a licence to carry on a business in the regulated activity; and
 - in relation to a licensed representative, as a licence to perform for or on behalf of or by arrangement with a licensed corporation to which he is accredited any regulated function in relation to the regulated activity.
- (3) Registration for a regulated activity under section 119 shall be construed as registration for carrying on a business in the regulated activity.

114. Restriction on carrying on business in regulated activities, etc.

- Subject to subsections (2), (5) and (6), no person shall—
 - carry on a business in a regulated activity; or
 - hold himself out as carrying on a business in a regulated activity.
- Subsection (1) shall not apply to—
 - a corporation licensed under section 116 or 117 for the regulated activity;
 - an authorized financial institution registered under section 119 for the regulated activity; or
 - a person authorized under section 95(2) for the regulated activity.
- Without prejudice to subsection (1) but subject to subsection (4), no person shall—
 - perform any regulated function in relation to a regulated activity carried on as a business; or
 - hold himself out as performing such function.
- Subsection (3) shall not apply to—
 - a licensed representative who carries on for his principal a regulated activity for which the representative is licensed;
 - an individual—
 - who carries on for a registered institution a regulated activity for which the registered institution is registered; and
 - whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the registered institution in respect of the regulated activity; or
 - an employee of a person authorized under section 95(2) for the regulated activity who performs any regulated function in relation to the regulated activity for which the person is so authorized.

(5) 任何人不得僅因進行附表 5 第 3 部指明的一項或多於一項活動，而視為就第 8 類受規管活動違反第 (1) 款。

(6) 任何人如提供財務通融並合理地相信該項通融並非用以利便——

(a) 取得在證券市場(不論是認可證券市場或香港以外地方的任何其他證券市場)上市的證券；或

(b) 繼續持有該等證券，

則該人不得僅因該項提供而視為就第 8 類受規管活動違反第 (1) 款。

(7) 就第 (6) 款而言，在就違反第 (1) 款而進行的法律程序中，如證明有關的人在向某借用人提供財務通融之前，已從該借用人取得確認書，確認該項通融並非用以利便第 (6)(a) 及 (b) 款提述的取得或繼續持有，則除非相反證明成立，否則須推定該人已合理地相信該項通融不會如此使用。

(8) 任何人無合理辯解而違反第 (1) 款，即屬犯罪——

(a) 一經循公訴程序定罪，可處罰款 \$5,000,000 及監禁 7 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$100,000；或

(b) 一經循簡易程序定罪，可處罰款 \$500,000 及監禁 2 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$10,000。

(9) 任何人無合理辯解而違反第 (3) 款，即屬犯罪——

(a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$20,000；或

(b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$2,000。

(5) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of carrying on one or more of the activities specified in Part 3 of Schedule 5.

(6) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of providing financial accommodation if he reasonably believes that the financial accommodation is not to be used to facilitate—

(a) the acquisition of securities listed on a stock market (whether a recognized stock market or any other stock market outside Hong Kong); or

(b) the continued holding of such securities.

(7) For the purposes of subsection (6), where it is proved in any proceedings for a contravention of subsection (1) that the person had obtained, before providing the financial accommodation to a borrower, a written confirmation from the borrower that the financial accommodation was not to be used to facilitate such acquisition or continued holding as referred to in subsection (6)(a) and (b), that person shall be presumed, unless the contrary is proved, to have reasonably believed that the financial accommodation was not to be so used.

(8) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—

(a) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or

(b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

(9) A person who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable—

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$20,000 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

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作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) 款訂立的規則投購保險。
- (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——
- 持牌法團須向證監會交存並將之保持有效的任何保證；
 - 交存該等保證的方式；
 - 須按甚麼條款將該等保證保持有效；
 - 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；
 - 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——
- 持牌法團須就指明風險投購並將之保持有效的指明款額的保險保障內容；
 - 須按甚麼條款投購該等保險並將之保持有效；
 - 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—
- any security to be lodged and maintained by a licensed corporation with the Commission;
 - the manner in which the security is lodged;
 - the terms on which the security is maintained;
 - 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;
 - any other matter relating to the security.
- (5) The Commission may make rules for the purposes of subsection (3)(c)(ii) that provide for—
- insurance coverage for specified amounts to be taken out and maintained by a licensed corporation in relation to specified risks;
 - the terms on which the insurance is to be taken out and maintained;
 - 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.

該項註冊有待根據第 197(2) 條撤銷前，該類活動須以該通知指明的方式營辦。

(9) 證監會不得在沒有事先諮詢金融管理專員的情況下，根據第 (5) 或 (8)(b) 款行使其權力。

120. 代表須獲發牌

(1) 證監會可應任何個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，使他可為他所隸屬的、並根據第 116 條獲發牌的法團進行證監會在牌照上指明的一類或多於一類受規管活動。

(2) 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，行使其絕對酌情決定權向申請人批給臨時牌照，使他可為上述法團進行該申請所關乎的受規管活動。

(3) 除非申請人令證監會信納他是就有關的受規管活動獲發牌的適當人選，否則該會須拒絕根據第 (1) 或 (2) 款向他批給進行該類活動的牌照。

(4) 除非申請人令證監會信納根據第 (2) 款向他批給牌照不會損害投資大眾的利益，否則證監會須拒絕批給該牌照。

(5) 根據第 (1) 或 (2) 款批給的牌照須受第 (6) 款指明的條件以及證監會施加的任何其他合理條件規限。

(6) 根據第 (1) 或 (2) 款批給的牌照須受以下條件規限：有關持牌代表——

(a) 須時刻令證監會知悉其聯絡辦法資料的詳情，包括（在適用範圍內）其住址、電話號碼、傳真號碼及電子郵件地址；及

(b) 須在該等詳情有所改變後 14 日內將該項改變告知證監會。

(7) 證監會可隨時藉送達書面通知予有關持牌代表，修訂或撤銷根據第 (5) 款施加的任何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。

(8) 凡證監會根據第 (7) 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。

regulated activity, and the regulated activity shall be operated in such manner as may be specified in the notice pending the revocation of the registration under section 197(2).

(9) The Commission shall not exercise its power under subsection (5) or ~~(8)(b)~~ unless the Commission has first consulted the Monetary Authority.

120. Representatives to be licensed

(1) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity as the Commission may specify in the licence for a corporation licensed under section 116 to which he is accredited.

(2) The Commission in its absolute discretion may, upon request by the applicant in the prescribed manner and payment of the prescribed fee, grant to the applicant a provisional licence to carry on, for such corporation, the regulated activity in respect of which the application is made.

(3) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) or (2) unless the applicant satisfies the Commission that he is a fit and proper person to be so licensed for the regulated activity.

(4) The Commission shall refuse to grant a licence under subsection (2) unless the applicant satisfies the Commission that the grant of the licence will not prejudice the interest of the investing public.

(5) A licence granted under subsection (1) or (2) shall be subject to the condition specified in subsection (6) and to any other reasonable conditions as the Commission may impose.

(6) It shall be a condition of a licence granted under subsection (1) or (2) that the licensed representative concerned shall—

(a) at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his residential address, telephone and facsimile numbers and electronic mail address; and

(b) inform the Commission of any change in the particulars within 14 days after the change takes place.

(7) The Commission may at any time, by notice in writing served on the licensed representative concerned, amend or revoke any condition imposed under subsection (5) or impose new conditions as may be reasonable in the circumstances.

(8) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (7), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(9) 當有以下情況(以先發生者為準), 臨時牌照須當作被撤銷——

- (a) 證監會拒絕根據第(1)款提出的有關申請; 或
- (b) 證監會應該申請批給牌照。

(10) 在不損害證監會在第 IX 部下的權力的原則下, 該會可在考慮投資大眾的利益後, 行使其絕對酌情決定權, 藉送達書面通知予有關持牌代表, 撤銷根據第(2)款批給的臨時牌照。

(11) 凡臨時牌照根據第(9)款當作被撤銷或根據第(10)款被撤銷, 以往是持牌代表的人須在該項撤銷生效後 7 個營業日內, 將該牌照交還證監會。

(12) 任何人無合理辯解而違反第(11)款, 即屬犯罪, 一經定罪, 可處第 6 級罰款, 如屬持續的罪行, 則可就罪行持續期間的每一日, 另處罰款 \$2,000。

(13) 持牌代表在進行他根據第(1)或(2)款獲發牌進行的受規管活動時, 須使用牌照上指明的姓名, 而不得使用其他姓名。

121. 向代表批給短期牌照

(1) 證監會可應任何個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, 使他可——

- (a) 為他所隸屬的、並根據第 116 條獲發牌的法團; 或
- (b) 為他所隸屬的、並根據第 117 條獲發牌的法團,

進行證監會在牌照上指明的一類或多於一類受規管活動(第 3、7、8 及 9 類受規管活動除外), 為期不超過 3 個月。

(2) 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) 他根據在香港以外地方的主管當局或規管機構的授權(不論實際如何稱述)在該地方進行某項活動, 而該項活動如在香港進行, 便會構成該類受規管活動的, 而——
 - (i) 證監會認為該當局或機構所執行的職能, 是與本部授予該會的職能相似的;

(9) A provisional licence shall be deemed to be revoked—

- (a) upon the Commission's refusal of the relevant application made under subsection (1); or
- (b) upon the grant of the licence sought under the application,

whichever first occurs.

(10) Without prejudice to the Commission's powers under Part IX, the Commission may, after having regard to the interest of the investing public and in its absolute discretion, by notice in writing served on the licensed representative concerned, revoke a provisional licence granted under subsection (2).

(11) On the revocation of a provisional licence under subsection (9) or (10), the person who was formerly the licensed representative under such licence shall return the licence to the Commission within 7 business days after the revocation.

(12) A person who, without reasonable excuse, contravenes subsection (11) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

(13) A licensed representative shall not, when carrying on the regulated activity for which he is licensed under subsection (1) or (2), use a name other than the name specified in the licence.

121. Temporary licences for representatives

(1) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on, for a period not exceeding 3 months, one or more than one regulated activity (other than Type 3, Type 7, Type 8 and Type 9 regulated activities) as the Commission may specify in the licence—

- (a) for a corporation licensed under section 116 to which he is accredited; or
- (b) for a corporation licensed under section 117 to which he is accredited.

(2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission—

- (a) that he carries on in a place outside Hong Kong an activity which, if carried on in Hong Kong, would constitute carrying on the regulated activity, under an authorization (however described) by an authority or regulatory organization in that place which—
 - (i) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part;

- (ii) 該當局或機構確認並令證監會信納申請人已獲如此授權；及
 - (iii) 證監會信納該當局或機構獲該地方的法律賦權調查申請人在香港的行為，並在適用的情況下為該等行為採取紀律行動；
 - (b) 就申領第 (1)(a) 款所指的牌照的申請而言——
 - (i) 他為某法團或代某法團進行 (a) 段提述的活動，而該法團主要於香港以外地方，在符合以下說明的該地方的主管當局或規管機構的授權（不論實際如何稱述）下經營該項活動的業務——
 - (A) 證監會認為該當局或機構所執行的職能，是與本部授予該會的職能相似的；及
 - (B) 該當局或機構確認並令證監會信納該法團已獲如此授權；及
 - (ii) 他尋求隸屬的持牌法團是第 (i) 節提述的法團所屬的公司集團的成員；
 - (c) 就申領第 (1)(b) 款所指的牌照的申請而言，他尋求獲發該牌照，純粹是為了經營他的主事人經營的第 117(2)(a) 條提述的活動的業務；
 - (d) 批給該牌照，不會導致在任何一段 24 個月的期間內，他根據第 (1) 款獲批給的各牌照的各別牌照期合計超過 6 個月；及
 - (e) 他是就該類受規管活動獲如此發牌的適當人選。
- (3) 根據第 (1) 款批給的牌照須受第 (4) 款指明的條件以及證監會施加的任何其他合理條件規限。
- (4) 根據第 (1) 款批給的牌照須受以下條件規限：有關持牌代表——
- (a) 須時刻令證監會知悉其聯絡辦法資料的詳情，包括（在適用範圍內）其住址、電話號碼、傳真號碼及電子郵件地址；
 - (b) 須在該等詳情有所改變後 14 日內將該項改變告知證監會；及

- (ii) confirms to the satisfaction of the Commission that the applicant has been so authorized; and
 - (iii) the Commission is satisfied is empowered under the law of that place to investigate, and, where applicable, to take disciplinary action for, the conduct of the applicant in Hong Kong;
 - (b) where the application is for a licence under subsection (1)(a), that—
 - (i) he carries on the activity referred to in paragraph (a) for or on behalf of a corporation which carries on the activity as a business principally in a place outside Hong Kong under an authorization (however described) by an authority or regulatory organization in that place which—
 - (A) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part; and
 - (B) confirms to the satisfaction of the Commission that the corporation has been so authorized; and
 - (ii) the licensed corporation to which he seeks to be accredited is a member of the same group of companies as the corporation referred to in subparagraph (i);
 - (c) where the application is for a licence under subsection (1)(b), that he seeks to be so licensed solely for the conduct of his principal's business in the activity referred to in section 117(2)(a);
 - (d) that the granting of the licence would not result in his being granted licences under subsection (1) for respective licence periods that in total exceed 6 months in any period of 24 months; and
 - (e) that he is a fit and proper person to be so licensed for the regulated activity.
- (3) A licence granted under subsection (1) shall be subject to the condition specified in subsection (4) and to any other reasonable conditions as the Commission may impose.
- (4) It shall be a condition of a licence granted under subsection (1) that the licensed representative concerned—
- (a) shall at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his residential address, telephone and facsimile numbers and electronic mail address;
 - (b) shall inform the Commission of any change in the particulars within 14 days after the change takes place; and

(c) 在進行他獲如此發牌進行的受規管活動時，不得持有任何客戶資產。

(5) 證監會可隨時藉送達書面通知予有關持牌代表，修訂或撤銷根據第(3)款施加的任何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。

(6) 凡證監會根據第(5)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。

(7) 持牌代表在進行他根據第(1)款獲發牌進行的受規管活動時，須使用牌照上指明的姓名，而不得使用其他姓名。

122. 隸屬關係的批准及轉移

(1) 證監會可應以訂明方式提出的申請並在訂明費用獲繳付後，批准——

(a) 根據第 120(1) 或 (2) 或 121(1)(a) 條獲發牌的持牌代表隸屬根據第 116 條獲發牌的法團；或

(b) 根據第 121(1)(b) 條獲發牌的持牌代表隸屬根據第 117 條獲發牌的法團，並須於給予上述批准後，在牌照上指明該法團為該代表的主事人。

(2) 證監會可應根據第 120(1) 或 (2) 或 121(1) 條獲發牌的持牌代表以訂明方式提出的申請並在訂明費用獲繳付後，批准將該代表的隸屬關係轉移至另一個根據第 116 或 117 條(視屬何情況而定)獲發牌的法團，而在批准該項轉移後，證監會須向該代表再度發出牌照，並在牌照上指明該法團為其主事人。

(3) 除非申請人令證監會信納他將有能力履行他作為有關持牌法團的持牌代表的職責，並達到所需的水準，否則該會須拒絕——

(a) 根據第(1)款批准隸屬關係；或

(b) 根據第(2)款批准轉移隸屬關係。

(4) 在不局限第(3)款的一般性的原則下，凡根據第 121(1)(a) 條獲發牌的持牌代表提出申請，要求——

(a) 根據第(1)(a)款批准隸屬關係；或

(b) 根據第(2)款批准轉移隸屬關係。

(c) shall not hold any client assets in carrying on the regulated activity for which he is so licensed.

(5) The Commission may at any time, by notice in writing served on the licensed representative concerned, amend or revoke any condition imposed under subsection (3) or impose new conditions as may be reasonable in the circumstances.

(6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(7) A licensed representative shall not, when carrying on the regulated activity for which he is licensed under subsection (1), use a name other than the name specified in the licence.

122. Approval and transfer of accreditation

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the accreditation of a licensed representative—

(a) who is licensed under section 120(1) or (2) or 121(1)(a), to a corporation licensed under section 116; or

(b) who is licensed under section 121(1)(b), to a corporation licensed under section 117,

and shall specify in the licence, upon such approval, the corporation as his principal.

(2) The Commission may, upon application in the prescribed manner and payment of the prescribed fee by a licensed representative licensed under section 120(1) or (2) or 121(1), approve the transfer of his accreditation to another corporation licensed under section 116 or 117 (as the case may be), and upon approving the transfer, the Commission shall re-issue the licence to the licensed representative with the name of the corporation specified in the licence as his principal.

(3) The Commission shall refuse to—

(a) approve an accreditation under subsection (1); or

(b) approve a transfer of accreditation under subsection (2),

unless the applicant satisfies the Commission that he will be competent to carry out his duties to the requisite standard as a licensed representative for or on behalf of the licensed corporation concerned.

(4) Without limiting the generality of subsection (3), where a licensed representative who is licensed under section 121(1)(a) applies—

(a) under subsection (1)(a) for approval of an accreditation; or

(b) under subsection (2) for approval of a transfer of accreditation,

- ~~(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。~~

129. “適當人選”的斷定

(1) 證監會或金融管理專員(視屬何情況而定)在考慮某人是否就本部任何條文而言的適當人選時，除考慮其認為有關的任何事項外，在不抵觸第 134 條的情況下，亦須就該人考慮以下事項——

- (a) 有關人士的財政狀況及償付能力；
- (b) 有關人士的學歷或其他資歷或經驗，而在這方面的考慮必須顧及如申請一旦獲准則該人將會執行的職能的性質；
- (c) 有關人士是否有能力稱職地、誠實地而公正地進行有關的受規管活動；及
- (d) 有關人士的信譽、品格、可靠程度及在財政方面的穩健性，

而上述有關人士——

- (i) (凡該人是個人)是該人本人；
- (ii) (凡該人是並非認可財務機構的法團)是該法團及該法團的任何高級人員；或
- (iii) (凡該人是認可財務機構)是該機構及該機構的任何董事、最高行政人員、經理(《銀行業條例》(第 155 章)第 2(1)條所界定者)及主管人員。

(2) 在不局限第(1)款的一般性的原則下，證監會或金融管理專員(視屬何情況而定)在考慮某人是否就本條例任何條文而言的適當人選時，可——

- (a) 考慮以下人士就該人作出的任何決定——
 - (i) (如屬證監會的情況)金融管理專員或(如屬金融管理專員的情況)證監會；
 - (ii) 保險業監督；
 - (iii) 積金局；或
 - (iv) 任何其他主管當局或規管機構(不論該當局或機構是在香港或其他地方)，而證監會認為該當局或機構所執行的職能，是與該會的職能相似的；
- (b) 考慮其所管有的關乎以下人士的任何資料，不論這些資料是否由該人提供——

- ~~(b) the form, manner and time period in which such information is to be provided;~~
~~(c) any other matter relating thereto.~~

129. Determination of “fit and proper”

(1) In considering whether a person is a fit and proper person for the purposes of any provision of this Part, the Commission or the Monetary Authority (as the case may be) shall, in addition to any other matter that the Commission or the Monetary Authority (as the case may be) may consider relevant, but subject to section 134, have regard to—

- (a) the financial status or solvency;
- (b) the educational or other qualifications or experience having regard to the nature of the functions which, if the application is allowed, the person will perform;
- (c) the ability to carry on the regulated activity competently, honestly and fairly; and
- (d) the reputation, character, reliability and financial integrity,

of—

- (i) where the person is an individual, the person himself;
- (ii) where the person is a corporation (other than an authorized financial institution), the corporation and any officer of the corporation; or
- (iii) where the person is an authorized financial institution, the institution and any director, chief executive, manager (as defined in section 2(1) of the Banking Ordinance (Cap. 155)) and executive officer of the institution.

(2) Without limiting the generality of subsection (1), the Commission or the Monetary Authority (as the case may be) may, in considering whether a person is a fit and proper person for the purposes of any provision of this Ordinance—

- (a) take into account a decision made in respect of the person by—
 - (i) (in the case of the Commission) the Monetary Authority or (in the case of the Monetary Authority) the Commission;
 - (ii) the Insurance Authority;
 - (iii) the Mandatory Provident Fund Schemes Authority; or
 - (iv) any other authority or regulatory organization, whether in Hong Kong or elsewhere, which, in the Commission's opinion, performs a function similar to the functions of the Commission;
- (b) take into account any information in the possession of the Commission or the Monetary Authority (as the case may be), whether provided by the person or not, relating to—

- (i) (凡該項考慮是與根據第 116 或 117 條批給的牌照或申請該牌照有關的) 該人就或將會就該牌照或申請 (視屬何情況而定) 所關乎的受規管活動而僱用的任何其他人，或就或將會就該類活動與該人有聯繫的任何其他人；
- (ii) (凡該項考慮是與根據第 116 或 117 條批給進行某類受規管活動的牌照、就某類受規管活動根據第 119 條所作的註冊，或申請該牌照或註冊有關的) 將會就該類活動為該人或代該人行事的任何其他人；或
- (iii) (凡該人是某公司集團中的一個法團)——
 - (A) 該集團中的任何其他法團；或
 - (B) 該法團或 (A) 分節提述的法團的任何大股東或高級人員；
- (c) (凡該項考慮是與根據第 116 或 117 條批給的牌照、根據第 119 條所作的註冊，或申請該牌照或註冊有關的) 考慮該人是否已設立有效的內部監控程序及風險管理制度，以確保該人遵守任何有關條文中所有適用於該人的規管性規定，而就此尤其須考慮按照第 128 條提供的資料；及
- (d) 考慮該人正經營或擬經營的任何其他業務的狀況。

~~130. 存放紀錄或文件的處所的適合性~~

- (1) 證監會可應以訂明方式提出的申請並在訂明費用獲繳付後，批准持牌法團將某處所用作存放本條例規定的紀錄或文件的地方。
- (2) 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) 款就某處所給予批准——
 - (a) 該處所適合用作該款提述的用途；及
 - (b) (如該處所的某部分被用作居住用途) 該處所部分用作居住用途一事不會影響在本部或第 VI 或 VIII 部下任何權力的行使。

- (i) where such consideration relates to a licence under section 116 or 117 or an application for the licence, any other person who is or is to be employed by, or associated with, the person for the purposes of the regulated activity for which the licence is granted or the application is made (as the case may be);
- (ii) where such consideration relates to a licence under section 116 or 117 to carry on a regulated activity or any registration for a regulated activity under section 119 or an application for the licence or registration, any other person who will be acting for or on behalf of the person in relation to the regulated activity; or
- (iii) where the person is a corporation in a group of companies—
 - (A) any other corporation in the same group of companies; or
 - (B) any substantial shareholder or officer of the corporation or any corporation referred to in sub-subparagraph (A);
- (c) take into account, where such consideration relates to a licence under section 116 or 117 or any registration under section 119 or an application for the licence or registration, whether the person has established effective internal control procedures and risk management systems to ensure his compliance with all applicable regulatory requirements under any of the relevant provisions, having regard in particular to the information provided in accordance with section 128; and
- (d) have regard to the state of affairs of any other business which the person carries on or proposes to carry on.

~~130. Suitability of premises for keeping records or documents~~

- (1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve premises to be used by a licensed corporation for keeping records or documents required under this Ordinance.
- (2) The Commission shall refuse to approve premises under subsection (1) unless the applicant satisfies the Commission that—
 - (a) the premises are suitable for being used for the purpose referred to in that subsection; and
 - (b) where the premises are used partly for residential purposes, such residential use of the premises will not affect the exercise of any powers under this Part or Part VI or VIII.

- (i) 就某類受規管活動獲發牌為持牌代表；及
- (ii) 以隸屬該法團的身分為該法團進行該類活動的；或
- (b) 就註冊機構而言，指符合以下說明的個人——
- (i) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為受該機構就某類受規管活動聘用的；及
- (ii) 為該機構進行該類活動的；
- “客戶合約”(client contract) 指中介人與他人之間的任何合約或安排，而該中介人須根據該合約或安排的條款提供構成受規管活動的服務。

第 2 分部——業務操守

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；

- (i) who is licensed as a licensed representative for a regulated activity; and
- (ii) who carries on that regulated activity for the licensed corporation as a licensed corporation to which he is accredited; or
- (b) in relation to a registered institution, means an individual—
- (i) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution in respect of a regulated activity; and
- (ii) who carries on that regulated activity for the registered institution.

Division 2—Business conduct

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。

169. 中介人及其代表的業務操守守則

(1) 在不損害證監會根據第 168 條訂立規則的權力的原則下，該會可在憲報刊登及以該會認為適當的任何其他方式發表操守守則，就在通常情況下期望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方面須遵守的常規和標準，作出指引。

(2) 在不局限第(1)款的一般性的原則下，第(1)款提述的任何操守守則在作出該款提述的指引時，可提述——

- (a) 遵守並非由證監會發出或施加的任何其他守則或規定的義務；
- (b) 履行持續義務(包括以下的義務)的義務——
 - (i) (就中介人而言)向中介人的代表提供持續訓練的義務；或

- (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.

169. Codes for business conduct of intermediaries and their representatives

(1) Without prejudice to the power of the Commission to make rules under section 168, the Commission may publish, in the Gazette and in any other manner it considers appropriate, codes of conduct for the purpose of giving guidance relating to the practices and standards with which intermediaries and their representatives are ordinarily expected to comply in carrying on the regulated activities for which the intermediaries are licensed or registered.

(2) Without limiting the generality of subsection (1), any code of conduct referred to in that subsection may, in giving guidance referred to in that subsection, refer to obligations to observe—

- (a) any other codes or requirements issued or imposed otherwise than by the Commission;
- (b) continuing obligations, including any such obligations—
 - (i) in the case of an intermediary, to provide for the continuous training of its representatives; or

- (ii) (就中介人的代表而言) 接受持續訓練的義務；
- (c) 遵守關乎第 168(2) 條所述任何事宜的常規和標準的義務。
- (3) 證監會可不時以符合該會根據本條刊登及發表操守守則的權力的方式，修訂該守則的全部或任何部分，而——
- (a) 本條其他條文在作出必要的變通後，適用於該等修訂，猶如它們適用於該守則一樣；及
- (b) 除非文意另有所指，否則在本條例或其他條例中對該守則 (不論實際如何稱述) 的提述，須解釋為對經如此修訂的該守則的提述。
- (4) 任何中介人或其代表如沒有遵守根據本條刊登及發表並適用於他的任何操守守則所列條文，並不會僅因此而令他在任何司法或其他法律程序中被起訴，但在為施行本條例任何條文而考慮以下事項時，可顧及上述事實——
- (a) (就中介人而言) 該中介人是否獲發牌或獲註冊或繼續持牌或獲註冊的適當人選；
- (b) (就屬持牌法團的中介人的代表而言) 該代表是否獲發牌或繼續持牌的適當人選；或
- (c) (就屬註冊機構的中介人的代表而言) 該代表是否名列於或繼續名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為受該機構就某類受規管活動聘用的適當人選，
- 而在根據本條例於任何法庭進行的法律程序中，該守則須獲接納為證據；如法庭覺得該守則的任何條文與法律程序中產生的任何問題有關，則在裁定該問題時須考慮該條文。
- (5) 根據本條刊登及發表的任何操守守則可——
- (a) 在一般或特別情況下適用，而在不局限前文的一般性的原則下，該守則亦可——
- (i) 在指明的範圍內適用於或不適用於任何指明人士或屬某指明類別的人；
- (ii) 在某些指明情況下適用或不適用；
- (b) 就不同情況訂定不同條文，亦可就不同個案或不同類別的個案訂定不同條文。

- (ii) in the case of a representative of an intermediary, to undergo continuous training;
- (c) practices and standards concerning any of the matters described in section 168(2).
- (3) The Commission may from time to time amend the whole or any part of any code of conduct published under this section in a manner consistent with the power to publish the code of conduct under this section, and—
- (a) the other provisions of this section apply, with necessary modifications, to such amendments to the code as they apply to the code; and
- (b) any reference in this or any other Ordinance to the code (however expressed) shall, unless the context otherwise requires, be construed as a reference to the code as so amended.
- (4) A failure on the part of an intermediary, or a representative of an intermediary, to comply with the provisions set out in any code of conduct published under this section that apply to it or him shall not by itself render it or him liable to any judicial or other proceedings, but may be taken into account in considering, for the purposes of any provision of this Ordinance—
- (a) in the case of an intermediary, whether it is a fit and proper person to be or to remain licensed or registered;
- (b) in the case of a representative of an intermediary that is a licensed corporation, whether he is a fit and proper person to be or to remain licensed as a representative; or
- (c) in the case of a representative of an intermediary that is a registered institution, whether he is a fit and proper person to be or to remain a person whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by a registered institution in respect of a regulated activity,
- and in any proceedings under this Ordinance before any court the code shall be admissible in evidence, and if any provision set out in the code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.
- (5) Any code of conduct published under this section—
- (a) may be of general or special application and, without limiting the generality of the foregoing, may be made so as to apply, or so as not to apply—
- (i) to a specified extent in relation to any specified person or to members of a specified class of persons;
- (ii) in specified circumstances;
- (b) may make different provisions for different circumstances and provide for different cases or classes of cases.

(6) 根據本條刊登及發表的操守守則不是附屬法例。

第 3 分部——對賣空的限制等

170. 限制賣空

(1) 在第 (2) 及 (3) 款的規限下，除非任何人在認可證券市場或透過認可證券市場售賣證券時——

- (a) 具有或(如他以代理人身分售賣)他的當事人具有；或
- (b) 他相信並有合理理由相信他具有或(如他以代理人身分售賣)他的當事人具有，

一項即時可行使而不附有條件的權利，以將該等證券轉歸於其購買人名下，否則不得如此售賣該等證券。

(2) 就第 (1) 款而言——

- (a) 任何人如——
 - (i) 其本意是售賣證券；
 - (ii) 提出售賣證券的要約；
 - (iii) 顯示自己有權售賣證券；或
 - (iv) 指示任何為中介人進行第 1 類受規管活動的中介人代表售賣證券，則他須被視為售賣該等證券；
- (b) 任何人如在某特定時間具有一項即時可行使而不附有條件的權利，以將證券轉歸於他名下或按照他的指示而轉歸他人名下，則他須被視為在該時間具有一項即時可行使而不附有條件的權利，以將該等證券轉歸於其購買人名下；
- (c) 任何人將證券轉歸其購買人名下的權利，不得僅因該等證券被押記或質押予其他人以作為還款的保證，而被視為是附有條件的。

(3) 第 (1) 款不適用於——

- (a) 秉誠行事的人，而他相信並有合理理由相信在他作出第 (1) 款所指的售賣證券的作為時，他對該等證券或在該等證券中是具有權利、所有權或權益的；
- (b) 以中介人代表身分為該中介人進行第 1 類受規管活動的人，以該身分秉誠代其他人行事，而他相信並有合理理由相信在他代該其他人作出第 (1) 款所指的售賣證券的作為時，該其他人對該等證券或在該等證券中是具有權利、所有權或權益的。

(6) Any code of conduct published under this section is not subsidiary legislation.

Division 3—Restriction on short selling, etc.

170. Short selling restricted

(1) Subject to subsections (2) and (3), a person shall not sell securities at or through a recognized stock market unless at the time he sells them—

- (a) he has or, where he is selling as an agent, his principal has; or
- (b) he believes and has reasonable grounds to believe that he has or, where he is selling as an agent, that his principal has,

a presently exercisable and unconditional right to vest the securities in the purchaser of them.

(2) For the purposes of subsection (1)—

- (a) a person shall be regarded as selling securities if he—
 - (i) purports to sell the securities;
 - (ii) offers to sell the securities;
 - (iii) holds himself out as being entitled to sell the securities; or
 - (iv) instructs any representative of an intermediary that carries on Type 1 regulated activity for the intermediary, to sell the securities;
- (b) a person who, at a particular time, has a presently exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be regarded as having at that time a presently exercisable and unconditional right to vest the securities in a purchaser of them;
- (c) a right of a person to vest securities in a purchaser of them shall not be regarded as not unconditional by reason only of the fact that the securities are charged or pledged in favour of some other person to secure the repayment of money.

(3) Subsection (1) does not apply to—

- (a) a person who acts in good faith, believing and having reasonable grounds to believe that he has a right, title, or interest to or in the securities which he sells within the meaning of subsection (1);
- (b) a person who, as a representative of an intermediary that carries on Type 1 regulated activity for the intermediary, acts in good faith on behalf of some other person, believing and having reasonable grounds to believe that such other person has a right, title, or interest to or in the securities which he sells within the meaning of subsection (1) on behalf of such other person;

第 2 分部——紀律等

Division 2—Discipline, etc.

194. 就持牌人等採取紀律行動

- (1) 在符合第 198 條的規定下，如——
- (a) 某受規管人士犯失當行為或曾在任何時間犯失當行為；或
 - (b) 按證監會的意見，某受規管人士並非擔任或留任同一類受規管人士的適當人選，

則證監會可行使該會認為就有關個案的情況而言屬適當的下述權力——

- (i) 如該受規管人士是持牌人——
 - (A) 就該受規管人士獲發牌進行的所有或任何受規管活動或其中任何部分，撤銷該牌照；或
 - (B) 就該受規管人士獲發牌進行的所有或任何受規管活動或其中任何部分，將該牌照暫時吊銷一段證監會指明的期間或直至該會指明的事件發生為止；
- (ii) 如該受規管人士是某持牌法團的負責人員——
 - (A) 撤銷根據第 126(1) 條就該受規管人士成為該負責人員而給予該受規管人士的核准；或
 - (B) 將上述核准暫時撤銷一段證監會指明的期間或直至該會指明的事件發生為止；
- (iii) 公開地或非公開地譴責該受規管人士；
- (iv) 禁止該受規管人士在證監會指明的期間內或在該會指明的事件發生之前就該類受規管活動或該等受規管活動作出以下所有或其中任何事情——
 - (A) 申請牌照或註冊；
 - (B) 申請根據第 126(1) 條獲核准成為持牌法團的負責人員；
 - (C) 申請根據《銀行業條例》(第 155 章) 第 71C 條獲給予同意以或繼續以註冊機構的主管人員的身分行事；
 - (D) 透過註冊機構，尋求名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示該受規管人士就某類受規管活動受聘於該機構。

194. Disciplinary action in respect of licensed persons, etc.

- (1) Subject to section 198, where—
- (a) a regulated person is, or was at any time, guilty of misconduct; or
 - (b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,

the Commission may exercise such of the following powers as it considers appropriate in the circumstances of the case—

- (i) where the regulated person is a licensed person—
 - (A) revoke his licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed; or
 - (B) suspend his licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed for such period or until the occurrence of such event as the Commission may specify;
- (ii) where the regulated person is a responsible officer of a licensed corporation—
 - (A) revoke the approval granted under section 126(1) in respect of him as such a responsible officer; or
 - (B) suspend such approval for such period or until the occurrence of such event as the Commission may specify;
- (iii) publicly or privately reprimand the regulated person;
- (iv) prohibit the regulated person from doing all or any of the following in relation to such regulated activity or regulated activities, and for such period or until the occurrence of such event, as the Commission may specify—
 - (A) applying to be licensed or registered;
 - (B) applying to be approved under section 126(1) as a responsible officer of a licensed corporation;
 - (C) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance (Cap. 155);
 - (D) seeking through a registered institution to have his name entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution in respect of a regulated activity.

(2) 在符合第 198 及 199 條的規定下，如——

- (a) 某受規管人士犯失當行為或曾在任何時間犯失當行為；或
- (b) 按證監會的意見，某受規管人士並非擔任或留任同一類受規管人士的適當人選，

則證監會不論是否同時行使第 (1) 款所賦權力，均可命令該受規管人士繳付最高數額如下的罰款 (以金額較大者為準)——

- (i) \$10,000,000；或
- (ii) 因該失當行為或因該受規管人士其他導致證監會得出該意見的行為 (視屬何情況而定) 而令該受規管人士獲取的利潤金額或避免的損失金額的 3 倍。

(3) 證監會在斷定某受規管人士是否第 (1)(b) 或 (2)(b) 款所指的適當人選時，除可考慮其他事宜 (包括第 129 條指明的事宜) 外，亦可考慮該會認為在有關個案的情況下適宜考慮的該受規管人士現時或過往的行為。

(4) 根據第 (2) 款被命令繳付罰款的受規管人士，須在該命令根據第 232 條作為指明決定而生效後 30 日 (或證監會根據第 198(3) 條藉通知而指明的較長限期) 內，向該會繳付該罰款。

(5) 原訟法庭可應證監會按為施行本款而藉根據第 397 條訂立的規則訂明的方式而提出的申請，在原訟法庭登記根據第 (2) 款作出的命令，而該命令一經登記，即就所有目的而言視為原訟法庭在其民事司法管轄權範圍內就繳付款項而作出的命令。

(6) 依據一項根據第 (2) 款作出的命令而付予證監會或由該會追討所得的罰款，須由該會撥入政府一般收入。

(7) 在本條中——

“有關時間” (relevant time) 就某人而言——

- (a) 就第 (1)(a) 或 (2)(a) 款而言，指該人犯失當行為或曾犯失當行為的時間；或
- (b) 就第 (1)(b) 或 (2)(b) 款而言，指某事件發生的時間，而該事件 (不論是否連同任何其他事件) 令證監會得出該人並非該款所指的適當人選的意見；

“受規管人士” (regulated person) 指屬或曾在有關時間屬以下任何類別人士的人——

- (a) 持牌人；

(2) Subject to sections 198 and 199, where—

- (a) a regulated person is, or was at any time, guilty of misconduct; or
- (b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,

the Commission may, separately or in addition to any power exercisable under subsection (1), order the regulated person to pay a pecuniary penalty not exceeding the amount which is the greater of—

- (i) \$10,000,000; or
- (ii) 3 times the amount of the profit gained or loss avoided by the regulated person as a result of his misconduct, or of his other conduct which leads the Commission to form the opinion (as the case may be).

(3) The Commission, in determining whether a regulated person is a fit and proper person within the meaning of subsection (1)(b) or (2)(b), may, among other matters (including those specified in section 129), take into account such present or past conduct of the regulated person as it considers appropriate in the circumstances of the case.

(4) A regulated person ordered to pay a pecuniary penalty under subsection (2) shall pay the penalty to the Commission within 30 days, or such further period as the Commission may specify by notice under section 198(3), after the order has taken effect as a specified decision under section 232.

(5) The Court of First Instance may, on an application of the Commission made in the manner prescribed by rules made under section 397 for the purposes of this subsection, register an order made under subsection (2) in the Court of First Instance and the order shall, on registration, be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.

(6) Any pecuniary penalty paid to or recovered by the Commission pursuant to an order made under subsection (2) shall be paid by the Commission into the general revenue.

(7) In this section—

“regulated person” (受規管人士) means a person who is or at the relevant time was any of the following types of person—

- (a) a licensed person;
- (b) a responsible officer of a licensed corporation; or
- (c) a person involved in the management of the business of a licensed corporation;

“relevant time” (有關時間), in relation to a person, means—

- (a) where subsection (1)(a) or (2)(a) applies, the time when the person is, or was, guilty of misconduct; or

- (b) 持牌法團的負責人員；或
- (c) 參與持牌法團的業務的管理的人。

195. 在其他情況下就持牌人等採取紀律行動

(1) 在符合第 198 條的規定下，證監會可在以下情況下，就持牌人獲發牌進行的所有或任何受規管活動或其中任何部分，撤銷該牌照或將該牌照暫時吊銷一段該會指明的期間或直至該會指明的事件發生為止——

- (a) 持牌人屬個人，而——
 - (i) 該持牌人根據《破產條例》(第 6 章) 與債權人訂立自願安排，或有破產令根據該條例針對該持牌人而作出；
 - (ii) 該持牌人沒有清償某項實施執行所涉及的款項；
 - (iii) 該持牌人根據《精神健康條例》(第 136 章) 被法庭裁斷為精神上無行為能力或被羈留在精神病院，而證監會認為該項裁斷或羈留損害該持牌人作為繼續持牌的人選的適當性；或
 - (iv) 該持牌人在香港或其他地方被裁定犯某罪行(任何有關條文所訂罪行除外)，而證監會認為該項定罪損害該持牌人作為繼續持牌的人選的適當性；
- (b) 持牌人是法團，而——
 - (i) 有人獲委任為該持牌人的財產或業務的接管人或經理人；
 - (ii) 該持牌人沒有清償某項實施執行所涉及的款項；
 - (iii) 該持牌人與債權人作出債務妥協或債務償還安排；
 - (iv) 該持牌人正在清盤或被下令清盤；
 - (v) 該持牌人在香港或其他地方被裁定犯某罪行(任何有關條文所訂罪行除外)，而證監會認為該項定罪損害該持牌人作為繼續持牌的人選的適當性；

- (b) where subsection (1)(b) or (2)(b) applies, the time of occurrence of any matter which, whether with any other matter or not, leads the Commission to form the opinion that the person is not a fit and proper person within the meaning of such subsection.

195. Other circumstances for disciplinary actions in respect of licensed persons, etc.

(1) Subject to section 198, the Commission may revoke a licensed person's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed, or suspend a licensed person's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed for such period or until the occurrence of such event as the Commission may specify, if—

- (a) where the licensed person is an individual—
 - (i) the licensed person enters into a voluntary arrangement with creditors, or has a bankruptcy order made against him, under the Bankruptcy Ordinance (Cap. 6);
 - (ii) the licensed person fails to satisfy a levy of execution;
 - (iii) the licensed person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136), which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed; or
 - (iv) the licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed;
- (b) where the licensed person is a corporation—
 - (i) a receiver or manager of the property or business of the licensed person is appointed;
 - (ii) the licensed person fails to satisfy a levy of execution;
 - (iii) the licensed person enters into a compromise or scheme of arrangement with its creditors;
 - (iv) the licensed person goes into liquidation or is ordered to be wound up;
 - (v) the licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed;

當可能會因就該法團或其有連繫法團的證券或就該等期貨合約(視屬何情況而定)所進行的受禁交易,而得以維持、提高、降低或穩定,而某人或其有聯繫者——

- (a) 已直接或間接訂立或履行該受禁交易;或
- (b) 已由於披露、傳遞或散發上述資料而直接或間接收取利益,或預期會由於披露、傳遞或散發上述資料而直接或間接收取利益,

則該人不得披露、傳遞或散發該資料,或授權披露、傳遞或散發該資料,或牽涉入披露、傳遞或散發該資料。

(2) 除第(3)款另有規定外,任何人違反第(1)款,即屬犯罪。

(3) 凡任何人基於該人或其有聯繫者直接或間接收取第(1)(b)款提述的利益,或預期會直接或間接收取第(1)(b)款提述的利益,而就違反第(1)款被控犯第(2)款所訂罪行,如該人證明——

- (a) 該人或其有聯繫者(視屬何情況而定)收取或預期會收取的利益,並非從直接或間接訂立或履行有關的受禁交易的另一人或從該另一人的有聯繫者收取的;或
- (b) 該人或其有聯繫者(視屬何情況而定)收取或預期會收取的利益,是從直接或間接訂立或履行有關的受禁交易的另一人或從該另一人的有聯繫者收取的,但直至該資料被披露、傳遞或散發之時(包括該資料被披露、傳遞或散發的一刻),該人或其有聯繫者(視屬何情況而定)是以真誠行事的。

即可以此作為免責辯護。

(4) 在本條中——

- (a) 提述受禁交易之處,指構成市場失當行為的行為或交易,亦指構成違反第 2 至 4 分部任何條文的行為或交易;而
- (b) 提述任何人訂立或履行受禁交易之處,須據此解釋。

298. 披露虛假或具誤導性的資料 以誘使進行交易的罪行

(1) 如任何資料相當可能會——

- (a) 誘使他人 在香港認購證券或進行期貨合約交易;

means of authorized automated trading services will be maintained, increased, reduced or stabilized, or is likely to be maintained, increased, reduced or stabilized, because of a prohibited transaction relating to securities of either the corporation or a related corporation of the corporation or to the futures contracts (as the case may be), if he, or an associate of his—

- (a) has entered into or carried out, directly or indirectly, the prohibited transaction; or
- (b) has received, or expects to receive, directly or indirectly, a benefit as a result of the disclosure, circulation or dissemination of the information.

(2) Subject to subsection (3), a person who contravenes subsection (1) commits an offence.

(3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) on the basis that he, or an associate of his, received, or expected to receive, directly or indirectly, a benefit referred to in subsection (1)(b), it is a defence to the charge for the person to prove that—

- (a) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was not from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person; or
- (b) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person, but up to (and including) the time of the disclosure, circulation or dissemination of the information he has acted in good faith.

(4) In this section—

- (a) a reference to a prohibited transaction means any conduct or transaction which constitutes market misconduct or a contravention of any of the provisions of Divisions 2 to 4; and
- (b) a reference to any person having entered into or carried out the prohibited transaction shall be construed accordingly.

298. Offence of disclosure of false or misleading information inducing transactions

(1) A person shall not, in Hong Kong or elsewhere, disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information that is likely—

- (a) to induce another person to subscribe for securities, or deal in futures contracts, in Hong Kong;

- (b) 誘使他人 在香港售賣或購買證券；或
- (c) 在香港維持、提高、降低或穩定證券的價格或期貨合約交易的價格，則在以下情況下，任何人不得在香港或其他地方披露、傳遞或散發該資料，或授權披露、傳遞或散發該資料，或牽涉入披露、傳遞或散發該資料——
- (i) 該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；及
 - (ii) 該人知道該資料屬第 (i) 段所述的資料，或罔顧該資料是否屬第 (i) 段所述的資料。
- (2) 除第 (3) 至 (5) 款另有規定外，任何人違反第 (1) 款，即屬犯罪。
- (3) 凡任何人只因任何資料的發出或複製而違反第 (1) 款，並因此被控犯第 (2) 款所訂罪行，如他證明以下各項，即可以此作為免責辯護——
- (a) 該資料的發出或複製是在某業務(不論是否由他經營)的日常運作過程中發生的，而該業務的主要目的，是發出或複製其他人提供的材料；
 - (b) 該資料的內容(不論是全部或其中任何部分內容)——
 - (i) (如該業務是由他經營)並非由他本人或由他的任何高級人員、僱員或代理人設定；或
 - (ii) (如該業務不是由他經營)並非由他本人設定；
 - (c) 為了該項發出或複製——
 - (i) (如該業務是由他經營)他本人或他的任何高級人員、僱員或代理人；或
 - (ii) (如該業務不是由他經營)他本人，並無揀選、增補、修改或以其他方式控制該資料的內容；及
 - (d) 在該資料發出或複製時，他不知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性。
- (4) 凡任何人只因任何資料的再傳送而違反第 (1) 款，並因此被控犯第 (2) 款所訂罪行，如他證明以下各項，即可以此作為免責辯護——
- (a) 該資料的再傳送是在某業務(不論是否由他經營)的日常運作過程中發生的，而該業務的正常運作，涉及將資訊再傳送往資訊系統內的其他人，或將資訊從一個資訊系統再傳送往另一個資訊系統(不論位於何處)，不

- (b) to induce the sale or purchase in Hong Kong of securities by another person; or
- (c) to maintain, increase, reduce or stabilize the price of securities, or the price for dealings in futures contracts, in Hong Kong,
- if—
- (i) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and
 - (ii) the person knows that, or is reckless as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.
- (2) Subject to subsections (3) to (5), a person who contravenes subsection (1) commits an offence.
- (3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the issue or reproduction of information, it is a defence to the charge for the person to prove that—
- (a) the issue or reproduction of the information took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by others;
 - (b) the contents of the information were not, wholly or partly, devised—
 - (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, by himself;
 - (c) for the purposes of the issue or reproduction—
 - (i) where the business was carried on by him, he or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, he, did not select, add to, modify or otherwise exercise control over the contents of the information; and
 - (d) at the time of the issue or reproduction, he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact.
- (4) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the re-transmission of information, it is a defence to the charge for the person to prove that—
- (a) the re-transmission of the information took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system

論是直接地再傳送或是藉利便該等其他人與第三者之間建立連結而再傳送；

- (b) 該資料的內容(不論是全部或其中任何部分內容)——
- (i) (如該業務是由他經營)並非由他本人或由他的任何高級人員、僱員或代理人設定；或
- (ii) (如該業務不是由他經營)並非由他本人設定；
- (c) 為了該項再傳送——
- (i) (如該業務是由他經營)他本人或他的任何高級人員、僱員或代理人；或
- (ii) (如該業務不是由他經營)他本人，並無揀選、增補、修改或以其他方式控制該資料的內容；
- (d) 就該資料所作的再傳送，是附有一項大意如下的訊息的，或是在獲再傳送該資料的人確認明白以下事項之後完成的——
- (i) (如該業務是由他經營)他本人或他的任何高級人員、僱員或代理人並無設定該資料的內容，而且既不就該資料負責，亦不認可其準確性；或
- (ii) (如該業務不是由他經營)經營該業務的人或該人的任何高級人員、僱員或代理人並無設定該資料的內容，而且既不就該資料負責，亦不認可其準確性；及
- (e) 在該資料再傳送時——
- (i) 他不知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；或
- (ii) 他知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性，但——
- (A) (如該業務是由他經營)在有關個案的情況下，按理不能期望他阻止該項再傳送；或
- (B) (如該業務不是由他經營)在有關個案的情況下，他已採取所有合理步驟，使某個能夠採取步驟致使阻止該項再傳送的人，知悉該資料如此屬虛假或具誤導性之事(即使該項再傳送事實上發生)。

- (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;
- (b) the contents of the information were not, wholly or partly, devised—
- (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or
- (ii) where the business was not carried on by him, by himself;
- (c) for the purposes of the re-transmission—
- (i) where the business was carried on by him, he or any officer, employee or agent of his; or
- (ii) where the business was not carried on by him, he, did not select, add to, modify or otherwise exercise control over the contents of the information;
- (d) the re-transmission of the information was accompanied by a message to the effect, or was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding, that—
- (i) where the business was carried on by him, he or any officer, employee or agent of his; or
- (ii) where the business was not carried on by him, the person who carried on the business or any officer, employee or agent of that person, did not devise the contents of the information, and neither took responsibility for it nor endorsed its accuracy; and
- (e) at the time of the re-transmission—
- (i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or
- (ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—
- (A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or
- (B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the re-transmission to be prevented (even if the re-transmission in fact took place).

(5) 凡任何人只因任何資料的直播而違反第(1)款，並因此被控犯第(2)款所訂罪行，如他證明以下各項，即可以此作為免責辯護——

- (a) 該資料的廣播是在某廣播業者(不論他是否該廣播業者)的業務的日常運作過程中發生的；
- (b) 該資料的內容(不論是全部或其中任何部分內容)——
 - (i) (如他是該廣播業者)並非由他本人或由他的任何高級人員、僱員或代理人設定；或
 - (ii) (如他不是該廣播業者)並非由他本人設定；
- (c) 為了該項廣播——
 - (i) (如他是該廣播業者)他本人或他的任何高級人員、僱員或代理人；或
 - (ii) (如他不是該廣播業者)他本人，並無揀選、增補、修改或以其他方式控制該資料的內容；
- (d) 就該項廣播而言——
 - (i) (如他是該廣播業者)他；或
 - (ii) (如他不是該廣播業者)他相信並有合理理由相信該廣播業者，按照使他或該廣播業者(視屬何情況而定)有權以廣播業者身分廣播的牌照(如有的話)的條款及條件，及按照任何根據或依據《電訊條例》(第106章)或《廣播條例》(第562章)發出並以廣播業者身分適用於他或該廣播業者(視屬何情況而定)的業務守則或指引(不論實際如何稱述)而行事；及
- (e) 在該資料廣播時——
 - (i) 他不知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；或
 - (ii) 他知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性，但——
 - (A) (如他是該廣播業者)在有關個案的情況下，按理不能期望他阻止該項廣播；或

(5) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the live broadcast of information, it is a defence to the charge for the person to prove that—

- (a) the broadcast of the information took place in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);
- (b) the contents of the information were not, wholly or partly, devised—
 - (i) where he was the broadcaster, by himself or any officer, employee or agent of his; or
 - (ii) where he was not the broadcaster, by himself;
- (c) for the purposes of the broadcast—
 - (i) where he was the broadcaster, he or any officer, employee or agent of his; or
 - (ii) where he was not the broadcaster, he, did not select, add to, modify or otherwise exercise control over the contents of the information;
- (d) in relation to the broadcast—
 - (i) where he was the broadcaster, he; or
 - (ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster, acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster; and
- (e) at the time of the broadcast—
 - (i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or
 - (ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—
 - (A) where he was the broadcaster, in the circumstances of the case he could not reasonably be expected to prevent the broadcast; or

(B) (如他不是該廣播業者) 在有關個案的情況下, 他已採取所有合理步驟, 使某個能夠採取步驟致使阻止該項廣播的人, 知悉該資料如此屬虛假或具誤導性之事 (即使該項廣播事實上發生)。

- (6) 在本條中, “發出” (issue) 就任何材料 (包括任何資料) 而言, 包括——
- (a) 藉親自造訪;
 - (b) 在報章、雜誌、期刊或其他刊物;
 - (c) 藉海報、告示、啓事或通知的展示;
 - (d) 以通告、冊子、小冊子或傳單的方式;
 - (e) 藉照片展覽或放映電影片;
 - (f) 藉聲音或電視廣播;
 - (g) 藉資訊系統或其他電子器材; 或
 - (h) 以其他方式 (不論是以機械、電子、磁力、光學、人手或其他媒介, 或藉光、影像或聲音或其他媒介的產生或傳送),

發表、傳遞、分發或以其他方式散發該材料或其內容, 並包括安排或授權發出該材料。

~~299. 操縱證券市場的罪行~~

- (1) 任何人不得——
- (a) 意圖誘使另一人購買或認購或不售賣某法團或其有連繫法團的證券, 而在香港或其他地方直接或間接訂立或履行 2 宗或多於 2 宗買賣該法團的證券的交易, 而該等交易本身或連同其他交易提高或相當可能會提高任何證券的價格 (不論後述的證券是在有關認可市場或是透過使用認可自動化交易服務交易的);
 - (b) 意圖誘使另一人售賣或不購買某法團或其有連繫法團的證券, 而在香港或其他地方直接或間接訂立或履行 2 宗或多於 2 宗買賣該法團的證券的交易, 而該等交易本身或連同其他交易降低或相當可能會降低任何證券的價格 (不論後述的證券是在有關認可市場或是透過使用認可自動化交易服務交易的); 或

(B) where he was not the broadcaster, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the broadcast to be prevented (even if the broadcast in fact took place).

(6) In this section, “issue” (發出), in relation to any material (including any information), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether—

- (a) by any visit in person;
- (b) in a newspaper, magazine, journal or other publication;
- (c) by the display of posters or notices;
- (d) by means of circulars, brochures, pamphlets or handbills;
- (e) by an exhibition of photographs or cinematograph films;
- (f) by way of sound or television broadcasting;
- (g) by any information system or other electronic device; or
- (h) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the material to be issued.

~~299. Offence of stock market manipulation~~

- (1) A person shall not, in Hong Kong or elsewhere—
- (a) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities of the corporation or of a related corporation of the corporation;
 - (b) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction reduce, or are likely to reduce, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to sell, or to refrain from purchasing, securities of the corporation or of a related corporation of the corporation; or

第 4 分部——其他罪行

~~300. 涉及在證券、期貨合約或槓桿式外匯交易
方面使用欺詐或欺騙手段等的罪行~~

- (1) 任何人不得在涉及證券、期貨合約或槓桿式外匯交易的交易中——
- 意圖欺詐或欺騙而直接或間接使用任何手段、計劃或計謀；或
 - 直接或間接從事任何具欺詐或欺騙性質或會產生欺詐或欺騙效果的作為、做法或業務。
- (2) 任何人違反第(1)款，即屬犯罪。
- ~~(3) 在本條中，提述交易之處，包括提述要約及邀請(不論實際如何稱述)。~~

301. 披露虛假或具誤導性的資料以誘使
訂立槓桿式外匯交易合約的罪行

- (1) 在以下情況下，任何人不得在香港或其他地方披露、傳遞或散發任何相當可能誘使另一人在香港訂立槓桿式外匯交易合約的資料，或在香港或其他地方授權披露、傳遞或散發該資料，或在香港或其他地方牽涉入披露、傳遞或散發該資料——
- 該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；及
 - 該人知道該資料屬(a)段所述的資料，或罔顧該資料是否屬(a)段所述的資料。
- (2) 除第(3)至(5)款另有規定外，任何人違反第(1)款，即屬犯罪。
- (3) 凡任何人只因任何資料的發出或複製而違反第(1)款，並因此被控犯第(2)款所訂罪行，如他證明以下各項，即可以此作為免責辯護——
- 該資料的發出或複製是在某業務(不論是否由他經營)的日常運作過程中發生的，而該業務的主要目的，是發出或複製其他人提供的材料；
 - 該資料的內容(不論是全部或其中任何部分內容)——

Division 4—Other offences

~~300.—Offence involving fraudulent or deceptive devices,
etc. in transactions in securities, futures
contracts or leveraged foreign
exchange trading~~

- (1) A person shall not, directly or indirectly, in a transaction involving securities, futures contracts or leveraged foreign exchange trading—
- employ any device, scheme or artifice with intent to defraud or deceive; or
 - engage in any act, practice or course of business which is fraudulent or deceptive, or would operate as a fraud or deception.
- (2) A person who contravenes subsection (1) commits an offence.
- ~~(3) In this section, a reference to a transaction includes an offer and an invitation (however expressed).~~

301. Offence of disclosure of false or misleading
information inducing others to enter into
leveraged foreign exchange contracts

- (1) A person shall not, in Hong Kong or elsewhere, disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information that is likely to induce another person to enter into a leveraged foreign exchange contract in Hong Kong, if—
- the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and
 - the person knows that, or is reckless as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.
- (2) Subject to subsections (3) to (5), a person who contravenes subsection (1) commits an offence.
- (3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the issue or reproduction of information, it is a defence to the charge for the person to prove that—
- the issue or reproduction of the information took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by others;
 - the contents of the information were not, wholly or partly, devised—

- (i) (如該業務是由他經營)並非由他本人或由他的任何高級人員、僱員或代理人設定;或
 - (ii) (如該業務不是由他經營)並非由他本人設定;
 - (c) 為了該項發出或複製——
 - (i) (如該業務是由他經營)他本人或他的任何高級人員、僱員或代理人;或
 - (ii) (如該業務不是由他經營)他本人,並無揀選、增補、修改或以其他方式控制該資料的內容;及
 - (d) 在該資料發出或複製時,他不知道該資料在某事關重要的事實方面屬虛假或具誤導性,或因遺漏某事關重要的事實而屬虛假或具誤導性。
- (4) 凡任何人只因任何資料的再傳送而違反第(1)款,並因此被控犯第(2)款所訂罪行,如他證明以下各項,即可以此作為免責辯護——
- (a) 該資料的再傳送是在某業務(不論是否由他經營)的日常運作過程中發生的,而該業務的正常運作,涉及將資訊再傳送往資訊系統內的其他人,或將資訊從一個資訊系統再傳送往另一個資訊系統(不論位於何處),不論是直接地再傳送或是藉利便該等其他人士與第三者之間建立連結而再傳送;
 - (b) 該資料的內容(不論是全部或其中任何部分內容)——
 - (i) (如該業務是由他經營)並非由他本人或由他的任何高級人員、僱員或代理人設定;或
 - (ii) (如該業務不是由他經營)並非由他本人設定;
 - (c) 為了該項再傳送——
 - (i) (如該業務是由他經營)他本人或他的任何高級人員、僱員或代理人;或
 - (ii) (如該業務不是由他經營)他本人,並無揀選、增補、修改或以其他方式控制該資料的內容;
 - (d) 就該資料所作的再傳送,是附有一項大意如下的訊息的,或是在獲再傳送該資料的人確認明白以下事項之後完成的——
 - (i) (如該業務是由他經營)他本人或他的任何高級人員、僱員或代理人並無設定該資料的內容,而且既不就該資料負責,亦不認可其準確性;或

- (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, by himself;
- (c) for the purposes of the issue or reproduction—
- (i) where the business was carried on by him, he or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, he, did not select, add to, modify or otherwise exercise control over the contents of the information; and
- (d) at the time of the issue or reproduction, he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact.
- (4) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the re-transmission of information, it is a defence to the charge for the person to prove that—
- (a) the re-transmission of the information took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;
 - (b) the contents of the information were not, wholly or partly, devised—
 - (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, by himself;
 - (c) for the purposes of the re-transmission—
 - (i) where the business was carried on by him, he or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, he, did not select, add to, modify or otherwise exercise control over the contents of the information;
 - (d) the re-transmission of the information was accompanied by a message to the effect, or was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding, that—
 - (i) where the business was carried on by him, he or any officer, employee or agent of his; or

- (ii) (如該業務不是由他經營) 經營該業務的人或該人的任何高級人員、僱員或代理人並無設定該資料的內容，而且既不就該資料負責，亦不認可其準確性；及
- (e) 在該資料再傳送時——
- (i) 他不知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；或
- (ii) 他知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性，但——
- (A) (如該業務是由他經營) 在有關個案的情況下，按理不能期望他阻止該項再傳送；或
- (B) (如該業務不是由他經營) 在有關個案的情況下，他已採取所有合理步驟，使某個能夠採取步驟致使阻止該項再傳送的人，知悉該資料如此屬虛假或具誤導性之事 (即使該項再傳送事實上發生)。
- (5) 凡任何人只因任何資料的直播而違反第 (1) 款，並因此被控犯第 (2) 款所訂罪行，如他證明以下各項，即可以此作為免責辯護——
- (a) 該資料的廣播是在某廣播業者 (不論他是否該廣播業者) 的業務的日常運作過程中發生的；
- (b) 該資料的內容 (不論是全部或其中任何部分內容)——
- (i) (如他是該廣播業者) 並非由他本人或由他的任何高級人員、僱員或代理人設定；或
- (ii) (如他不是該廣播業者) 並非由他本人設定；
- (c) 為了該項廣播——
- (i) (如他是該廣播業者) 他本人或他的任何高級人員、僱員或代理人；或
- (ii) (如他不是該廣播業者) 他本人，並無揀選、增補、修改或以其他方式控制該資料的內容；
- (d) 就該項廣播而言——
- (i) (如他是該廣播業者) 他；或

- (ii) where the business was not carried on by him, the person who carried on the business or any officer, employee or agent of that person, did not devise the contents of the information, and neither took responsibility for it nor endorsed its accuracy; and
- (e) at the time of the re-transmission—
- (i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or
- (ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—
- (A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or
- (B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the re-transmission to be prevented (even if the re-transmission in fact took place).
- (5) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the live broadcast of information, it is a defence to the charge for the person to prove that—
- (a) the broadcast of the information took place in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);
- (b) the contents of the information were not, wholly or partly, devised—
- (i) where he was the broadcaster, by himself or any officer, employee or agent of his; or
- (ii) where he was not the broadcaster, by himself;
- (c) for the purposes of the broadcast—
- (i) where he was the broadcaster, he or any officer, employee or agent of his; or
- (ii) where he was not the broadcaster, he, did not select, add to, modify or otherwise exercise control over the contents of the information;
- (d) in relation to the broadcast—
- (i) where he was the broadcaster, he; or

(ii) (如他不是該廣播業者) 他相信並有合理理由相信該廣播業者，按照使他或該廣播業者(視屬何情況而定) 有權以廣播業者身分廣播的牌照(如有的話) 的條款及條件，及按照任何根據或依據《電訊條例》(第 106 章) 或《廣播條例》(第 562 章) 發出並以廣播業者身分適用於他或該廣播業者(視屬何情況而定) 的業務守則或指引(不論實際如何稱述) 而行事；及

(e) 在該資料廣播時——

- (i) 他不知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；或
- (ii) 他知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性，但——
 - (A) (如他是該廣播業者) 在有關個案的情況下，按理不能期望他阻止該項廣播；或
 - (B) (如他不是該廣播業者) 在有關個案的情況下，他已採取所有合理步驟，使某個能夠採取步驟致使阻止該項廣播的人，知悉該資料如此屬虛假或具誤導性之事(即使該項廣播事實上發生)。

(6) 在本條中，“發出”(issue) 就任何材料(包括任何資料) 而言，包括——

- (a) 藉親自造訪；
- (b) 在報章、雜誌、期刊或其他刊物；
- (c) 藉海報、告示、啓事或通知的展示；
- (d) 以通告、冊子、小冊子或傳單的方式；
- (e) 藉照片展覽或放映電影片；
- (f) 藉聲音或電視廣播；
- (g) 藉資訊系統或其他電子器材；或
- (h) 以其他方式(不論是以機械、電子、磁力、光學、人手或其他媒介，或藉光、影像或聲音或其他媒介的產生或傳送)，

發表、傳遞、分發或以其他方式散發該材料或其內容，並包括安排或授權發出該材料。

(ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster, acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster; and

(e) at the time of the broadcast—

- (i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or
- (ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—
 - (A) where he was the broadcaster, in the circumstances of the case he could not reasonably be expected to prevent the broadcast; or
 - (B) where he was not the broadcaster, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the broadcast to be prevented (even if the broadcast in fact took place).

(6) In this section, “issue” (發出), in relation to any material (including any information), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether—

- (a) by any visit in person;
- (b) in a newspaper, magazine, journal or other publication;
- (c) by the display of posters or notices;
- (d) by means of circulars, brochures, pamphlets or handbills;
- (e) by an exhibition of photographs or cinematograph films;
- (f) by way of sound or television broadcasting;
- (g) by any information system or other electronic device; or
- (h) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the material to be issued.

304. 關乎違反第 2 至 4 分部之事的交易

既非無效亦非可使無效

任何交易不得僅因任何違反第 2 至 4 分部任何條文之事曾就該交易或因該交易而發生，而屬無效或可使無效。

305. 就違反本部須負的民事法律責任

(1) 除第 (2) 及 (3) 款另有規定外，任何人如違反第 2 至 4 分部任何條文，則他負有法律責任以損害賠償的方式賠償另一人因該項違反而蒙受的金錢損失，不論他是否亦根據第 303 條或其他規定招致任何其他法律責任，亦不論該損失是否由於該另一人曾以受該項違反影響的價格訂立交易所引致的。

(2) 除非就有關個案的情況而言，某人應根據第 (1) 款作出賠償是公平、公正和合理的，否則該人無須根據該款作出賠償。

(3) 本部所指的可用於針對違反第 2 至 4 分部任何條文而提出的控罪的免責辯護，在就同一項違反而根據第 (1) 款提起的訴訟中，亦可用作免責辯護。

(4) 任何人即使未因違反第 2 至 4 分部任何條文而被檢控或被定罪，其他人仍可根據第 (1) 款就該項違反而針對該人提出訴訟。

(5) 為免生疑問，凡任何法院具有司法管轄權裁定根據第 (1) 款提出的訴訟，如該法院除本條外具有司法管轄權受理強制令的申請，則可按它認為適當的條款及條件批給強制令，以附加於或取代損害賠償。

(6) 在不損害《證據條例》(第 8 章) 第 62 條的原則下，在根據第 (1) 款提出的訴訟中——

- (a) 市場失當行為審裁處依據第 252(3)(a) 條裁定曾發生市場失當行為此一事實；
- (b) 市場失當行為審裁處在依據第 252(3)(b) 條所作的裁定中識辨某人(不論該人是否在根據本條第 (1) 款提出的訴訟的一方) 曾從事市場失當行為此一事實，

304. Transactions relating to contravention of Divisions 2 to 4 not void or voidable

A transaction is not void or voidable by reason only that a contravention of any of the provisions of Divisions 2 to 4 has taken place in relation to or as a result of it.

305. Civil liability for contravention of this Part

(1) Subject to subsections (2) and (3), a person who contravenes any of the provisions of Divisions 2 to 4 shall, whether or not he also incurs any other liability (whether under section 303 or otherwise), be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the contravention, whether or not the loss arises from the other person having entered into a transaction or dealing at a price affected by the contravention.

(2) No person shall be liable to pay compensation under subsection (1) unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.

(3) A defence under this Part to a charge for an offence in respect of a contravention of any of the provisions of Divisions 2 to 4 shall also be a defence in an action brought under subsection (1) in respect of the same contravention.

(4) A person may bring an action under subsection (1) in respect of a contravention of any of the provisions of Divisions 2 to 4 even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the contravention.

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

(6) Without prejudice to section 62 of the Evidence Ordinance (Cap. 8), in an action brought under subsection (1)—

- (a) the fact that there is a determination by the Market Misconduct Tribunal pursuant to section 252(3)(a) that market misconduct has taken place;
- (b) the fact that there is a determination by the Market Misconduct Tribunal pursuant to section 252(3)(b) identifying a person (whether or not a party to the action) as having engaged in market misconduct,

只要該裁定仍然存在，即可在與該訴訟的任何爭議點有關的情況下獲接納為證明以下事宜的證據——

- (i) (就 (a) 段提述的裁定而言) 曾發生該市場失當行為；或
 - (ii) (就 (b) 段提述的裁定而言) 該人曾從事該市場失當行為。
- (7) 在根據第 (1) 款提出的訴訟中，如有第 (6)(a) 或 (b) 款提述的裁定存在一事根據第 (6) 款可獲接納為證據——
- (a) 則——
 - (i) 就第 (6)(a) 款提述的裁定而言，除非相反證明成立，否則該裁定針對的市場失當行為須當作曾發生；或
 - (ii) 就第 (6)(b) 款提述的裁定而言，除非相反證明成立，否則該裁定針對的人須當作曾從事市場失當行為；及
 - (b) 在不損害為作為該裁定的證據或為確定該裁定所依據的事實而收取任何其他可獲接納的證據的原則下，根據第 262(2)(b)(i) 條發表並載有該裁定的市場失當行為審裁處報告的內容，或根據第 (8) 款提供並載有該裁定的市場失當行為審裁處報告的文本的內容，亦可為該目的而獲接納為證據。
- (8) 在根據第 (1) 款提出的訴訟中，如——
- (a) 有第 (6)(a) 或 (b) 款提述的裁定存在一事根據第 (6) 款可獲接納為證據；及
 - (b) 載有市場失當行為審裁處裁定的報告沒有根據第 262(2)(b)(i) 條發表，則具有司法管轄權就該訴訟作出裁定的法院如認為適當的話，可要求向該法院提供該報告的文本，以供該法院為第 (7)(b) 款的目的使用；如該法院作出該要求——
 - (i) 市場失當行為審裁處須安排向該法院提供該報告的文本，以供該法院為第 (7)(b) 款的目的使用；及
 - (ii) 該報告的內容可為第 (7)(b) 款指明的目的獲接納。
- (9) 在本條中，提述交易之處，包括提述要約及邀請 (不論實際如何稱述)。

shall, in so far the determination is still subsisting, be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in the action—

- (i) in the case of a determination referred to in paragraph (a), that the market misconduct has taken place; or
 - (ii) in the case of a determination referred to in paragraph (b), that the person has engaged in market misconduct.
- (7) In an action brought under subsection (1), where the fact that there is a determination referred to in subsection (6)(a) or (b) is admissible in evidence under subsection (6)—
- (a) then—
 - (i) in the case of a determination referred to in subsection (6)(a), the market misconduct that is the subject of the determination shall, unless the contrary is proved, be taken to have taken place; or
 - (ii) in the case of a determination referred to in subsection (6)(b), the person that is the subject of the determination shall, unless the contrary is proved, be taken to have engaged in market misconduct; and
 - (b) without prejudice to the reception of any other admissible evidence as evidence of the determination or for the purpose of identifying the facts on which the determination was based, the contents of a report of the Market Misconduct Tribunal containing the determination and published under section 262(2)(b)(i), or the contents of a copy of a report of the Market Misconduct Tribunal containing the determination and made available under subsection (8), shall also be admissible in evidence for such purpose.
- (8) Where in an action brought under subsection (1)—
- (a) the fact that there is a determination referred to in subsection (6)(a) or (b) is admissible in evidence under subsection (6); and
 - (b) a report of the Market Misconduct Tribunal containing the determination has not been published under section 262(2)(b)(i), the court having jurisdiction to determine the action may, where it considers appropriate, require that a copy of the report be made available to the court to enable it to be used for the purposes of subsection (7)(b), whereupon—
 - (i) the Market Misconduct Tribunal shall cause a copy of the report to be made available to the court to enable it to be used for the purposes of subsection (7)(b); and
 - (ii) the contents of the report shall be admissible for the purpose specified in subsection (7)(b).
- (9) In this section, a reference to a transaction includes an offer and an invitation (however expressed).

(10) 本條並不影響、限制或減免任何人根據普通法或任何其他成文法則而獲授予的權利或可招致的法律責任。

~~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。

307. 根據第 XIII 部就市場失當行為提起法律程序 後不得提起進一步法律程序

不論本部有任何規定，在以下情況下，不得就某行為而對某人提起刑事法律程序——

(a) 過往已根據第 252 條就同一行為對該人提起法律程序；及

(b) (i) 該法律程序仍待決；或

(ii) 由於過往已提起該法律程序，因此不得根據第 252 條就同一行為再次合法地對該人提起法律程序。

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

~~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.

307. No further proceedings after Part XIII market misconduct proceedings

Notwithstanding anything in this Part, no criminal proceedings may be instituted against any person under this Part in respect of any conduct if—

(a) proceedings have previously been instituted against the person under section 252 in respect of the same conduct; and

(b) (i) those proceedings remain pending; or

(ii) by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person under section 252 in respect of the same conduct.

附表 5

[第 114、118、139 及
142 條及附表 1]

受規管活動

第 1 部

以下各項為受規管活動——

- 第 1 類：證券交易；
- 第 2 類：期貨合約交易；
- 第 3 類：槓桿式外匯交易；
- 第 4 類：就證券提供意見；
- 第 5 類：就期貨合約提供意見；
- 第 6 類：就機構融資提供意見；
- 第 7 類：提供自動化交易服務；
- 第 8 類：提供證券保證金融資；
- 第 9 類：提供資產管理。

第 2 部

在本附表中——

“外匯交易”(foreign exchange trading)指訂立或要約訂立任何合約或安排，或誘使或企圖誘使他人訂立或要約訂立任何合約或安排，而某人藉該合約或安排承諾——

- (a) 與另一人兌換貨幣；
- (b) 將某數額的外幣交付另一人；或
- (c) 將某數額的外幣存入另一人的帳戶內，

但不包括為“槓桿式外匯交易”的定義中第(i)至(xv)段所描述的合約或安排或為建議的該等合約或安排作出的作為，亦不包括在與該等段落所描述的合約或安排或與建議的該等合約或安排有關連的情況下作出的作為；

“自動化交易服務”(automated trading services)指透過並非由認可交易所或認可結算所提供的電子設施而提供的服務，而藉該項服務——

- (a) 買賣任何證券或期貨合約的要約經常以某種方式被提出或接受，而按照已確立的方法(包括證券市場或期貨市場一般採用的方法)，以該種方式提出或接受該等要約構成具約束力的交易或導致具約束力的交易產生；
- (b) 人與人之間經常互相介紹或認識，從而洽商或完成任何證券或期貨合約的買賣，或在有他們將會以某種方式洽商或完成任何證券或期貨合約的買賣的合理期望的情況下經常互相介紹或認識，而按照已確立的方法(包括證券市場或期貨市場一般採用的方法)，以該種方式洽商或完成該等買賣構成具約束力的交易或導致具約束力的交易產生；或
- (c) 符合以下說明的交易得以更替、結算、交收或獲得擔保——
 - (i) (a)段提述的；
 - (ii) 由(b)段提述的活動而產生的；或
 - (iii) 在證券市場或期貨市場或在該等市場的規則的規限下完成的，

但不包括由政府或代政府營辦的法團所提供的該等服務；

SCHEDULE 5

[ss. 114, 118, 139 &
142 & Sch. 1]

REGULATED ACTIVITIES

PART 1

The following are regulated activities—

- Type 1: dealing in securities;
- Type 2: dealing in futures contracts;
- Type 3: leveraged foreign exchange trading;
- Type 4: advising on securities;
- Type 5: advising on futures contracts;
- Type 6: advising on corporate finance;
- Type 7: providing automated trading services;
- Type 8: securities margin financing;
- Type 9: asset management.

PART 2

In this Schedule—

“advising on corporate finance”(就機構融資提供意見) means giving advice—

- (a) concerning compliance with or in respect of rules made under section 23 or 36 of this Ordinance governing the listing of securities and the code published under section 399(2)(a) or (b) of this Ordinance;
- (b) concerning—
 - (i) any offer to dispose of securities to the public;
 - (ii) any offer to acquire securities from the public; or
 - (iii) acceptance of any offer referred to in subparagraph (i) or (ii), but only in so far as the advice is given generally to holders of securities or a class of securities; or
- (c) to a listed corporation or public company or a subsidiary of the corporation or company, or to its officers or shareholders, concerning corporate restructuring in respect of securities (including the issue, cancellation or variation of any rights attaching to any securities),

but does not include such advice given by—

- (i) a corporation solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
- (ii) a person who is licensed for Type 1 regulated activity who gives such advice wholly incidental to the carrying on of that regulated activity;
- (iii) an authorized financial institution which is registered for Type 1 regulated activity which gives such advice wholly incidental to the carrying on of that regulated activity;
- (iv) an individual—
 - (A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity; and
 - (B) who gives such advice wholly incidental to the carrying on of that regulated activity;
- (v) a solicitor who gives such advice wholly incidental to his practice as such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);
- (vi) counsel who gives such advice wholly incidental to his practice as such;

“期貨合約交易”(dealing in futures contracts)就任何人而言,指該人——

- (a) 為訂立、取得或處置期貨合約而與另一人訂立或要約與另一人訂立協議;
- (b) 誘使或企圖誘使另一人訂立或要約訂立期貨合約;
- (c) 誘使或企圖誘使另一人取得或處置期貨合約,

但不包括該人在以下情況進行的期貨合約交易——

- (i) 該人以認可結算所身分執行其職能;
- (ii) 該人透過另一人(“該交易商”)作出(a)、(b)或(c)段提述的作為,而該交易商是——
 - (A) 就第2類受規管活動獲發牌或獲註冊的;或
 - (B) 名列於金融管理專員根據《銀行業條例》(第155章)第20條備存的紀錄冊並顯示為就第2類受規管活動受聘於就該類活動獲註冊的認可財務機構的,但如該人是為賺取佣金、回佣或其他報酬而進行以下事項,則須視為進行期貨合約交易——
 - (I) 從第三者接收為訂立期貨合約而提出的要約或邀請,並以他本人或該第三者的名義將該要約或邀請轉達予該交易商;
 - (II) 使該交易商或其代表與第三者互相介紹,以使該第三者可與該交易商訂立期貨合約或提出與該交易商訂立期貨合約的要約或邀請;
 - (III) 透過該交易商為第三者達成期貨合約的取得或處置;
 - (IV) 為該交易商向第三者提出取得或處置期貨合約的要約;或
 - (V) 為該交易商接受第三者提出的取得或處置期貨合約的要約;
- (iii) 該人只在《商品交易所(禁止經營)條例》(第82章)第3(a)、(b)或(c)條提述的市場作出(a)、(b)或(c)段提述的作為;
- (iv) 該人屬《商品交易所(禁止經營)條例》(第82章)第3(d)條提述的商品交易所的成員,並且只在該交易所作出(a)、(b)或(c)段提述的作為;
- (v) 該人訂立市場合約;
- (vi) 該人就第9類受規管活動獲發牌或獲註冊,並純粹為進行該類活動而作出(a)、(b)或(c)段提述的作為;或
- (vii) 該人以主事人身分並透過與另一人交易而就並非在認可期貨市場交易的期貨合約作出(a)、(b)或(c)段提述的作為,而該另一人是專業投資者(不論以主事人或代理人身分行事);

“就期貨合約提供意見”(advising on futures contracts)指——

- (a) 就以下各項提供意見——
 - (i) 應否訂立期貨合約;
 - (ii) 應訂立哪些期貨合約;
 - (iii) 應於何時訂立期貨合約;或
 - (iv) 應按哪些條款或條件訂立期貨合約;或
- (b) 發出分析或報告,而目的是為利便該等分析或報告的受眾就以下各項作出決定——
 - (i) 是否訂立期貨合約;
 - (ii) 須訂立哪些期貨合約;
 - (iii) 於何時訂立期貨合約;或
 - (iv) 按哪些條款或條件訂立期貨合約,

但不包括在以下情況提供的意見或發出的分析或報告——

- (i) 任何法團純粹向其任何全資附屬公司、持有其所有已發行股份的控股公司,或該控股公司的其他全資附屬公司提供上述意見或發出上述分析或報告;

- (vii) a certified public accountant who gives such advice wholly incidental to his practice as such in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50); (*Amended 23 of 2004 s. 56*)
 - (viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which gives such advice wholly incidental to the discharge of its duty as such; or
 - (ix) a person through—
 - (A) a newspaper, magazine, book or other publication which is made generally available to the public; or
 - (B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise;
- “advising on futures contracts”(就期貨合約提供意見) means——
- (a) giving advice on—
 - (i) whether;
 - (ii) which;
 - (iii) the time at which; or
 - (iv) the terms or conditions on which, futures contracts should be entered into; or
 - (b) issuing analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on—
 - (i) whether;
 - (ii) which;
 - (iii) the time at which; or
 - (iv) the terms or conditions on which, futures contracts are to be entered into,
- otherwise than by——

- (i) a corporation which gives such advice or issues such analyses or reports solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
- (ii) a person who is licensed for Type 2 regulated activity who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
- (iii) an authorized financial institution which is registered for Type 2 regulated activity which gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
- (iv) an individual—
 - (A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 2 regulated activity by an authorized financial institution registered for that regulated activity; and
 - (B) who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
- (v) a solicitor who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);
- (vi) counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as counsel;
- (vii) a certified public accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a certified public accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50); (*Amended 23 of 2004 s. 56*)
- (viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which gives such advice or issues such analyses or reports wholly incidental to the discharge of its duty as such; or
- (ix) a person who gives such advice or issues such analyses or reports through—
 - (A) a newspaper, magazine, book or other publication which is made generally available to the public; or
 - (B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise;

- (ii) 就第 2 類受規管活動獲發牌的人完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告；
- (iii) 就第 2 類受規管活動獲註冊的認可財務機構完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告；
- (iv) 任何符合以下說明的個人——
 - (A) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為就第 2 類受規管活動受聘於就該類活動獲註冊的認可財務機構的；及
 - (B) 完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告的；
- (v) 律師完全因為在《法律執業者條例》(第 159 章) 所指的香港律師行或外地律師行以律師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；
- (vi) 大律師完全因為以大律師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；
- (vii) 會計師完全因為在《專業會計師條例》(第 50 章) 所指的執業單位以會計師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；(由 2004 年第 23 號第 56 條修訂)
- (viii) 根據《受託人條例》(第 29 章) 第 VIII 部註冊的信託公司完全因為履行它作為註冊信託公司的職責而附帶提供上述意見或發出上述分析或報告；或
- (ix) 任何人透過——
 - (A) 普遍地提供予公眾閱覽的報章、雜誌、書籍或其他刊物提供上述意見或發出上述分析或報告；或
 - (B) 供公眾接收(不論是需付收看費)的電視廣播或無線電廣播提供上述意見或發出上述分析或報告；

“就機構融資提供意見”(advising on corporate finance) 指——

- (a) 對根據本條例第 23 或 36 條訂立的關於管限證券上市的規章或規則及根據本條例第 399(2)(a) 或 (b) 條刊登或發表的守則的遵守問題或就該等規章、規則或守則提供意見；
- (b) 提供關於以下各項的意見——
 - (i) 處置證券而將之轉予公眾的要約；
 - (ii) 從公眾取得證券的要約；或
 - (iii) 接受第 (i) 或 (ii) 節提述的任何要約，但以意見是普遍地提供予證券或某類別證券的持有人為限；或
- (c) 向上市法團、公眾公司或該法團或公司的附屬公司，或向該法團、公司或附屬公司的高級人員或股東提供關於機構重組而在證券方面(包括發行、撤銷或更改附於任何證券的權利)的意見，
但不包括在以下情況提供的意見——
 - (i) 任何法團純粹向其任何全資附屬公司、持有其所有已發行股份的控股公司，或該控股公司的其他全資附屬公司提供上述意見；
 - (ii) 就第 1 類受規管活動獲發牌的人完全因為進行該類活動而附帶提供上述意見；
 - (iii) 就第 1 類受規管活動獲註冊的認可財務機構完全因為進行該類活動而附帶提供上述意見；
 - (iv) 任何符合以下說明的個人——
 - (A) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為就第 1 類受規管活動受聘於就該類活動獲註冊的認可財務機構的；及
 - (B) 完全因為進行該類活動而附帶提供上述意見的；

“advising on securities”(就證券提供意見) means—

- (a) giving advice on—
 - (i) whether;
 - (ii) which;
 - (iii) the time at which; or
 - (iv) the terms or conditions on which, securities should be acquired or disposed of;
 - (b) issuing analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on—
 - (i) whether;
 - (ii) which;
 - (iii) the time at which; or
 - (iv) the terms or conditions on which, securities are to be acquired or disposed of,
 otherwise than by—
 - (i) a corporation which gives such advice or issues such analyses or reports solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
 - (ii) a person who is licensed for Type 1 regulated activity who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
 - (iii) an authorized financial institution which is registered for Type 1 regulated activity which gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
 - (iv) an individual—
 - (A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity; and
 - (B) who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
 - (v) a solicitor who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);
 - (vi) counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as counsel;
 - (vii) a certified public accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a certified public accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50); (Amended 23 of 2004 s. 56)
 - (viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which gives such advice or issues such analyses or reports wholly incidental to the discharge of its duty as such; or
 - (ix) a person who gives such advice or issues such analyses or reports through—
 - (A) a newspaper, magazine, book or other publication which is made generally available to the public; or
 - (B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise,
 but does not include the giving of such advice that falls within the meaning of “advising on corporate finance”;
- “asset management”(資產管理), in relation to a person, means providing a service of managing a portfolio of securities or futures contracts for another person by the person, otherwise than by—
- (a) a corporation which provides such service solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
 - (b) a person who is licensed for Type 1 or Type 2 regulated activity who provides such service wholly incidental to the carrying on of that regulated activity;

- (v) 律師完全因為在《法律執業者條例》(第 159 章)所指的香港律師行或外地律師行以律師身分執業而附帶提供上述意見；
- (vi) 大律師完全因為以大律師身分執業而附帶提供上述意見；
- (vii) 會計師完全因為在《專業會計師條例》(第 50 章)所指的執業單位以會計師身分執業而附帶提供上述意見；(由 2004 年第 23 號第 56 條修訂)
- (viii) 根據《受託人條例》(第 29 章)第 VIII 部註冊的信託公司完全因為履行它作為註冊信託公司的職責而附帶提供上述意見；或
- (ix) 任何人透過——
- (A) 普遍地提供予公眾閱覽的報章、雜誌、書籍或其他刊物提供上述意見；或
- (B) 供公眾接收(不論是否需付收看費)的電視廣播或無線電廣播提供上述意見；
- “就證券提供意見”(advising on securities)指——
- (a) 就以下各項提供意見——
- (i) 應否取得或處置證券；
- (ii) 應取得或處置哪些證券；
- (iii) 應於何時取得或處置證券；或
- (iv) 應按哪些條款或條件取得或處置證券；或
- (b) 發出分析或報告，而目的是為便利該等分析或報告的受眾就以下各項作出決定——
- (i) 是否取得或處置證券；
- (ii) 須取得或處置哪些證券；
- (iii) 於何時取得或處置證券；或
- (iv) 按哪些條款或條件取得或處置證券，
- 但不包括在以下情況提供的意見或發出的分析或報告——
- (i) 任何法團純粹向其任何全資附屬公司、持有其所有已發行股份的控股公司，或該控股公司的其他全資附屬公司提供上述意見或發出上述分析或報告；
- (ii) 就第 1 類受規管活動獲發牌的人完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告；
- (iii) 就第 1 類受規管活動獲註冊的認可財務機構完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告；
- (iv) 任何符合以下說明的個人——
- (A) 名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就第 1 類受規管活動受聘於就該類活動獲註冊的認可財務機構的；及
- (B) 完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告的；
- (v) 律師完全因為在《法律執業者條例》(第 159 章)所指的香港律師行或外地律師行以律師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；
- (vi) 大律師完全因為以大律師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；
- (vii) 會計師完全因為在《專業會計師條例》(第 50 章)所指的執業單位以會計師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；(由 2004 年第 23 號第 56 條修訂)
- (viii) 根據《受託人條例》(第 29 章)第 VIII 部註冊的信託公司完全因為履行它作為註冊信託公司的職責而附帶提供上述意見或發出上述分析或報告；或

- (c) an authorized financial institution which is registered for Type 1 or Type 2 regulated activity which provides such service wholly incidental to the carrying on of that regulated activity;
- (d) an individual—
- (i) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 or Type 2 (as the case may be) regulated activity by an authorized financial institution registered for that regulated activity; and
- (ii) who provides such service wholly incidental to the carrying on of that regulated activity;
- (e) a solicitor who provides such service wholly incidental to his practice as such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);
- (f) counsel who provides such service wholly incidental to his practice as such;
- (g) a certified public accountant who provides such service wholly incidental to his practice as such in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50); or (Amended 23 of 2004 s. 56)
- (h) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which provides such service wholly incidental to the discharge of its duty as such;
- “automated trading services” (自動化交易服務) means services provided by means of electronic facilities, not being facilities provided by a recognized exchange company or a recognized clearing house, whereby—
- (a) offers to sell or purchase securities or futures contracts are regularly made or accepted in a way that forms or results in a binding transaction in accordance with established methods, including any method commonly used by a stock market or futures market;
- (b) persons are regularly introduced, or identified to other persons in order that they may negotiate or conclude, or with the reasonable expectation that they will negotiate or conclude sales or purchases of securities or futures contracts in a way that forms or results in a binding transaction in accordance with established methods, including any method commonly used by a stock market or futures market; or
- (c) transactions—
- (i) referred to in paragraph (a);
- (ii) resulting from the activities referred to in paragraph (b); or
- (iii) effected on, or subject to the rules of, a stock market or futures market, may be novated, cleared, settled or guaranteed,
- but does not include such services provided by a corporation operated by or on behalf of the Government;
- “dealing in futures contracts” (期貨合約交易), in relation to a person, means
- (a) making or offering to make an agreement with another person to enter into, or to acquire or dispose of, a futures contract;
- (b) inducing or attempting to induce another person to enter into, or to offer to enter into, a futures contract; or
- (c) inducing or attempting to induce another person to acquire or dispose of a futures contract,
- by the person, except where the person—
- (i) is carrying out his functions as a recognized clearing house;
- (ii) performs the act referred to in paragraph (a), (b) or (c) through another person (“the futures dealer”)—
- (A) who is licensed or registered for Type 2 regulated activity; or
- (B) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 2 regulated activity by an authorized financial institution registered for that regulated activity,
- but the person shall be regarded as dealing in futures contracts if, in return for a commission, rebate or other remuneration, the person—

(ix) 任何人透過——

- (A) 普遍地提供予公眾閱覽的報章、雜誌、書籍或其他刊物提供上述意見或發出上述分析或報告；或
- (B) 供公眾接收(不論是否需付收看費)的電視廣播或無線電廣播提供上述意見或發出上述分析或報告。

但如所提供的上述意見符合“就機構融資提供意見”的涵義，則“就證券提供意見”不包括提供該等意見；

“資產管理”(asset management)就任何人而言，指該人為另一人提供管理證券或期貨合約投資組合的服務，但不包括在以下情況提供的服務——

- (a) 任何法團純粹向其任何全資附屬公司、持有其所有已發行股份的控股公司，或該控股公司的其他全資附屬公司提供上述服務；
- (b) 就第 1 或 2 類受規管活動獲發牌的人完全因為進行該類活動而附帶提供上述服務；
- (c) 就第 1 或 2 類受規管活動獲註冊的認可財務機構完全因為進行該類活動而附帶提供上述服務；
- (d) 任何符合以下說明的個人——
- (i) 名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就第 1 或 2 類(視屬何情況而定)受規管活動受聘於就該類活動獲註冊的認可財務機構的；及
- (ii) 完全因為進行該類活動而附帶提供上述服務的；
- (e) 律師完全因為在《法律執業者條例》(第 159 章)所指的香港律師行或外地律師行以律師身分執業而附帶提供上述服務；
- (f) 大律師完全因為以大律師身分執業而附帶提供上述服務；
- (g) 會計師完全因為在《專業會計師條例》(第 50 章)所指的執業單位以會計師身分執業而附帶提供上述服務；或 (由 2004 年第 23 號第 56 條修訂)
- (h) 根據《受託人條例》(第 29 章)第 VIII 部註冊的信託公司完全因為履行它作為註冊信託公司的職責而附帶提供上述服務；

“槓桿式外匯交易”(leveraged foreign exchange trading)指以下任何作為——

- (a) 訂立或要約訂立槓桿式外匯交易合約，或誘使或企圖誘使他人訂立或要約訂立槓桿式外匯交易合約；
- (b) 提供任何財務通融，以利便進行外匯交易或 (a) 段提述的作為；或
- (c) 與另一人訂立或要約與另一人訂立一項為訂立合約而作出的安排，或誘使或企圖誘使某人與另一人訂立一項為訂立合約而作出的安排(不論該項安排是否在酌情決定的基礎上訂立)，以利便進行 (a) 或 (b) 段提述的作為，

但不包括為符合下述說明的合約或安排或為建議的該等合約或安排作出的作為，亦不包括在與符合下述說明的合約或安排或與建議的該等合約或安排有關連的情況下作出的作為——

- (i) 完全關於以公平價值或市場價值提供財產(貨幣除外)、服務或職位的；
- (ii) 凡該等合約或安排是由一個法團訂立的，而——
- (A) 該法團的主要業務並不包括任何形式的貨幣交易；
- (B) 該法團訂立該等合約或安排的目的，是對沖它就其業務所承受的貨幣兌換風險；及
- (C) 該等合約或安排是與另一個法團訂立的；

- (I) receives from a third person an offer or invitation to enter into a futures contract, and communicates it, either in his name or in the name of the third person, to the futures dealer;
- (II) effects an introduction between the futures dealer or his representative and a third person, so that the third person may enter into, or offer or invite to enter into, a futures contract with the futures dealer;
- (III) effects an acquisition or disposal of a futures contract for a third person through the futures dealer;
- (IV) makes an offer for the futures dealer to a third person to acquire or dispose of a futures contract; or
- (V) accepts for the futures dealer an offer by a third person to acquire or dispose of a futures contract;
- (iii) performs the act referred to in paragraph (a), (b) or (c) only on a market referred to in section 3(a), (b) or (c) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82);
- (iv) is a member of a commodity exchange referred to in section 3(d) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82) who only performs the act referred to in paragraph (a), (b) or (c) on such an exchange;
- (v) enters into a market contract;
- (vi) is licensed or registered for Type 9 regulated activity and performs the act referred to in paragraph (a), (b) or (c) solely for the purposes of carrying on that regulated activity; or
- (vii) as principal performs the act referred to in paragraph (a), (b) or (c) in relation to a futures contract traded otherwise than on a recognized futures market by way of dealing with a person who is a professional investor (whether acting as principal or agent);

“dealing in securities”(證券交易)，在關係到一個人，意思是使或誘使另一人訂立或要約訂立一項為訂立合約而作出的安排，或誘使或企圖誘使某人與另一人訂立一項為訂立合約而作出的安排(不論該項安排是否在酌情決定的基礎上訂立)，以利便進行 (a) 或 (b) 段提述的作為，

- (a) for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or
- (b) the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities, by the person, except where the person—
- (i) is a recognized exchange company operating a stock market;
- (ii) is a recognized clearing house;
- (iii) is a corporation providing automated trading services under authorization granted under section 95(2) of this Ordinance;
- (iv) performs the act through another person (“the securities dealer”)
- (A) who is licensed or registered for Type 1 regulated activity; or
- (B) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity,
- but the person shall be regarded as dealing in securities if, in return for a commission, rebate or other remuneration, the person—
- (I) receives from a third person an offer or invitation to enter into an agreement referred to in paragraph (a) or (b), and communicates it, either in his name or in the name of the third person, to the securities dealer;
- (II) effects an introduction between the securities dealer or his representative and a third person, so that the third person may enter into, or offer or invite to enter into, an agreement referred to in paragraph (a) or (b) with the securities dealer;
- (III) effects an agreement referred to in paragraph (a) or (b) on behalf of a third person through the securities dealer;
- (IV) makes an offer to the securities dealer on behalf of a third person to acquire or dispose of securities; or
- (V) accepts for the securities dealer an offer by a third person to enter into an agreement referred to in paragraph (a) or (b);

- (iii) 屬《貨幣兌換商條例》(第 34 章)所指的兌換交易；
- (iv) 由《銀行業條例》(第 155 章)第 2(1)條所指的核准貨幣經紀安排，而有關合約或安排的各方均是法團或根據《有限責任合夥條例》(第 37 章)註冊的有限責任合夥；
- (v) 屬保險人純粹為了其保險業務而進行的交易，而該保險人是根據《保險公司條例》(第 41 章)第 8 條獲授權經營保險業務或根據該條例第 61(1)或 (2) 條被當作獲如此授權的；
- (vi) 屬由任何就第 2 類受規管活動獲發牌或獲註冊的人或透過該人在指明期貨交易所執行的合約，或屬完全附帶於一份或多於一份該類合約或一系列該類合約的合約；
- (vii) 由以下團體或機構所安排的——
- (A) 金融管理專員認為屬以下性質的團體——
- (I) 中央銀行；或
- (II) 執行中央銀行職能的機構；或
- (B) 獲金融管理專員批准以代 (A) 節所述的團體行事的機構；
- (viii) 屬由任何就第 1 類受規管活動獲發牌或獲註冊的人或透過該人在指明證券交易所執行的交易，或屬完全附帶於一宗或多於一宗該類交易或一系列該類交易的交易；
- (ix) 屬由任何就第 7 類受規管活動獲發牌或獲註冊的人或透過該人執行的交易，或屬完全附帶於一宗或多於一宗該類交易或一系列該類交易的交易；
- (x) 屬就證監會根據本條例第 104 條認可的集體投資計劃的一項或多於一項權益而作出的交易；
- (xi) 屬完全附帶於一宗或多於一宗就指明債務證券作出的交易或一系列該類交易的交易；
- (xii) 由認可財務機構作出的；
- (xiii) 由任何屬某類別人士的人或從事某類業務的人作出的，而該類別人士或該類業務是由證監會為施行本段而藉根據本條例第 397 條訂立的規則訂明的；
- (xiv) 由任何人透過交易商作出的，但如該人是為賺取佣金、回佣或其他報酬而進行以下事項，則須視為進行槓桿式外匯交易——
- (A) 該人從另一人接收為進行以下各項而提出的要約或邀請——
- (I) 訂立槓桿式外匯交易合約；或
- (II) 使用任何財務通融以便利進行外匯交易或訂立槓桿式外匯交易合約，並以他本人或該另一人的名義將該要約或邀請傳達予該交易商；
- (B) 該人使另一人與該交易商或其代表互相介紹，以使該另一人可——
- (I) 與該交易商訂立槓桿式外匯交易合約；或
- (II) 使用由該交易商提供的任何財務通融以便利進行外匯交易或訂立槓桿式外匯交易合約；或
- (C) 該人透過該交易商而為另一人達成槓桿式外匯交易合約的訂立，
- 在本段中，“交易商”(trader)指認可財務機構或就第 3 類受規管活動獲發牌的法團；或
- (xv) 由——
- (A) 證監會根據本條例第 104 條認可的集體投資計劃作出的；或
- (B) 任何人為營辦證監會根據本條例第 104 條認可的集體投資計劃而在業務過程中作出的；
- “槓桿式外匯交易合約”(leveraged foreign exchange contract)指任何合約或安排，其效果是該合約或安排的一方同意或承諾——
- (a) 在他本人與協議的另一方或在他本人與另一人之間，按照某貨幣相對於另一貨幣的增值或減值(視屬何情況而定)作出調整；

- (v) as principal—
- (A) performs the act by way of dealing with a person who is a professional investor (whether acting as principal or agent); or
- (B) acquires, disposes of, subscribes for or underwrites securities;
- (vi) enters into a market contract;
- (vii) issues a prospectus which complies with, or is exempt from compliance with, Part II of the Companies Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance;
- (viii) issues a document relating to the securities of a corporation incorporated in Hong Kong which is not a company, being a document which—
- (A) would, if the corporation were a company, be a prospectus to which section 38 of the Companies Ordinance (Cap. 32) applies, or would apply if not excluded by section 38(5)(b) or 38A of that Ordinance; and
- (B) contains all the matters which, under Part XII of that Ordinance, would be required to contain if the corporation were a corporation incorporated outside Hong Kong and the document were a prospectus issued by the corporation;
- (ix) issues a form of application for the shares or debentures of a corporation, together with—
- (A) a prospectus which complies with, or is exempt from compliance with, Part II of the Companies Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance; or
- (B) in the case of a corporation incorporated in Hong Kong which is not a company, a document which contains the matters specified in paragraph (viii)(B);
- (x) issues a prospectus the registration of which has been authorized by the Commission under section 342C of the Companies Ordinance (Cap. 32) in relation to a collective investment scheme that is a corporation—
- (A) which is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in any property (including securities and futures contracts); and
- (B) the shares in which are exclusively, or primarily, redeemable shares, or issues together with the prospectus a form of application for the shares in the corporation;
- (xi) issues any advertisement, invitation or document the issue of which has been authorized by the Commission under section 105 of this Ordinance;
- (xii) is a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) acting as an agent for a collective investment scheme which, by performing the act, is carrying out its functions of distributing application forms, redemption notices, conversion notices and contract notes, receiving money and issuing receipts on behalf of its principal;
- (xiii) is licensed or registered for Type 4 or Type 6 regulated activity and, solely for the purposes of carrying on that regulated activity, he issues a document under section 175(1)(a)(i) or (ii) of this Ordinance, the content of which complies with the requirements of section 175(1)(b) and (c) of this Ordinance; or
- (xiv) is licensed or registered for Type 9 regulated activity and performs the act solely for the purposes of carrying on that regulated activity;
- “foreign exchange trading”(外匯交易) means entering into or offering to enter into, or inducing or attempting to induce a person to enter into or to offer to enter into, a contract or arrangement whereby any person undertakes to—
- (a) exchange currency with another person;
- (b) deliver an amount of foreign currency to another person; or
- (c) credit the account of another person with an amount of foreign currency,
- but does not include any act performed for or in connection with any contract or arrangement or a proposed contract or arrangement as described in paragraphs (i) to (xv) of the definition of “leveraged foreign exchange trading”;
- “leveraged foreign exchange contract”(槓桿式外匯交易合約) means a contract or arrangement the effect of which is that one party agrees or undertakes to—

- (b) 向協議的另一方或向另一人支付某數額的款項或交付某數量的商品，而該數額或該數量是按照或將會按照某貨幣相對於另一貨幣在幣值上的變動而釐定的；或
- (c) 在議定的將來某個時間，將一筆按議定代價計算的議定數額的貨幣，交付協議的另一方或交付另一人；

“證券交易”(dealing in securities)就任何人而言，指該人與另一人訂立或要約與另一人訂立協議，或誘使或企圖誘使另一人訂立或要約訂立協議，而——

- (a) 目的是或旨在取得、處置、認購或包銷證券；或
- (b) 該等協議的目的或伴稱目的是使任何一方從證券的收益或參照證券價值的波動獲得利潤。

但不包括該人在以下情況進行的證券交易——

- (i) 該人是營辦證券市場的認可交易所；
- (ii) 該人是一間認可結算所；
- (iii) 該人是根據本條例第 95(2) 條獲認可提供自動化交易服務的法團；
- (iv) 該人透過另一人(“該交易商”)作出有關作為，而該交易商是——
- (A) 就第 1 類受規管活動獲發牌或獲註冊的；或
- (B) 名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就第 1 類受規管活動受聘於就該類活動獲註冊的認可財務機構的，
- 但如該人是為賺取佣金、回佣或其他報酬而進行以下事項，則須視為進行證券交易——

- (I) 從第三者接收為訂立(a)或(b)段提述的協議而提出的要約或邀請，並以他本人或該第三者的名義將該要約或邀請傳達予該交易商；
- (II) 使該交易商或其代表與第三者互相介紹，以使該第三者可與該交易商訂立(a)或(b)段提述的協議，或提出與該交易商訂立(a)或(b)段提述的協議的要約或邀請；
- (III) 透過該交易商代第三者達成(a)或(b)段提述的協議；
- (IV) 代第三者向該交易商提出取得或處置證券的要約；或
- (V) 為該交易商接受第三者提出的訂立(a)或(b)段提述的協議的要約；
- (v) 該人以主事人身分進行以下事項——
- (A) 透過與另一人交易而作出有關作為，而該另一人是專業投資者(不論以主事人或代理人身分行事)；或
- (B) 取得、處置、認購或包銷證券；
- (vi) 該人訂立市場合約；
- (vii) 該人發出符合或獲豁免而無需符合《公司條例》(第 32 章)第 II 部的招股章程，如該人是在香港以外地方成立的法團，則指發出符合或獲豁免而無需符合該條例第 XII 部的招股章程；
- (viii) 該人發出關於在香港成立但並非公司的法團的證券的文件，而——
- (A) 假若該法團是一間公司，則該文件便會是《公司條例》(第 32 章)第 38 條適用或(若該文件沒有被該條例第 38(5)(b)或 38A 條豁免)會適用的招股章程；及
- (B) 假若該法團是在香港以外地方成立的法團，而該文件是該法團發出的招股章程的話，則該文件已載有該條例第 XII 部規定該文件須載有的所有事項；
- (ix) 該人發出申請某法團的股份或債權證的表格，而該表格連同——
- (A) 符合或獲豁免而無需符合《公司條例》(第 32 章)第 II 部的招股章程，或(如該法團是在香港以外地方成立的法團)符合或獲豁免而無需符合該條例第 XII 部的招股章程；或
- (B) (如該法團是在香港成立的不是公司的法團)載有第 (viii)(B) 段指明的事項的文件；

- (a) make an adjustment between himself and the other party or another person according to whether a currency is worth more or less (as the case may be) in relation to another currency;
- (b) pay an amount of money or to deliver a quantity of any commodity determined or to be determined by reference to the change in value of a currency in relation to another currency to the other party or another person; or
- (c) deliver to the other party or another person at an agreed future time an agreed amount of currency at an agreed consideration;

“leveraged foreign exchange trading”(槓桿式外匯交易) means—

- (a) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into or to offer to enter into, a leveraged foreign exchange contract;
- (b) the act of providing any financial accommodation to facilitate foreign exchange trading or to facilitate an act referred to in paragraph (a); or
- (c) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into, an arrangement with another person, on a discretionary basis or otherwise, to enter into a contract to facilitate an act referred to in paragraph (a) or (b),

but does not include any act performed for or in connection with any contract or arrangement or a proposed contract or arrangement—

- (i) wholly referable to the provision of property, other than currency, or services or employment at fair or market value;
- (ii) where the contract or arrangement is entered into by a corporation—
- (A) the principal business of which does not include dealing in currency in any form;
- (B) for the purpose of hedging its exposure to currency exchange risks in connection with its business; and
- (C) with another corporation;
- (iii) that is an exchange transaction within the meaning of the Money Changers Ordinance (Cap. 34);
- (iv) arranged by an approved money broker within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) and every party to which is a corporation or a limited partnership registered under the Limited Partnerships Ordinance (Cap. 37);
- (v) that is a transaction executed solely for the purpose of its insurance business by an insurer authorized under section 8 of the Insurance Companies Ordinance (Cap. 41) to carry on insurance business or deemed to be so authorized under section 61(1) or (2) of that Ordinance;
- (vi) that is a contract executed on a specified futures exchange by or through a person who is licensed or registered for Type 2 regulated activity or is wholly incidental to one or more than one such contract or a series of such contracts;
- (vii) arranged by—
- (A) a body which, in the opinion of the Monetary Authority, is—
- (I) a central bank; or
- (II) an institution which performs the functions of a central bank; or
- (B) an organization which, with the approval of the Monetary Authority, is acting on behalf of a body referred to in subparagraph (A);
- (viii) that is a transaction executed on a specified stock exchange by or through a person who is licensed or registered for Type 1 regulated activity or is wholly incidental to one or more than one such transaction or a series of such transactions;
- (ix) that is a transaction executed by or through a person who is licensed or registered for Type 7 regulated activity or is wholly incidental to one or more than one such transaction or a series of such transactions;
- (x) that is a transaction in an interest or interests in a collective investment scheme authorized by the Commission under section 104 of this Ordinance;
- (xi) that is wholly incidental to one or more than one transaction in specified debt securities or a series of such transactions;
- (xii) by an authorized financial institution;
- (xiii) by any person belonging to a class of persons, or carrying on a type of business, as prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph;

- (x) 該人就某屬法團的集體投資計劃發出已獲證監會根據《公司條例》(第 32 章) 第 342C 條批准註冊的招股章程，或連同該章程發出該法團的股份的申請表格，而——
- (A) 該法團主要是從事或顯示本身主要是從事投資、再投資或買賣任何財產(包括證券及期貨合約)的業務的；及
- (B) 該法團的股份純粹是或主要是可贖回股份；
- (xi) 該人發出已獲根據本條例第 105 條認可發出的廣告、邀請或文件；
- (xii) 該人是以某集體投資計劃的代理人身分行事的、根據《受託人條例》(第 29 章) 第 VIII 部註冊的信託公司，該公司藉作出有關作為而代其主事人執行派發申請表格、贖回通知、轉換通知及成交單據，以及收受金錢及發出收據等職能；
- (xiii) 該人就第 4 或 6 類受規管活動獲發牌或獲註冊，並純粹為進行該類活動而根據本條例第 175(1)(a)(i) 或 (ii) 條發出一份文件，而該文件的內容是符合本條例第 175(1)(b) 及 (c) 條的規定的；或
- (xiv) 該人就第 9 類受規管活動獲發牌或獲註冊，並純粹為進行該類活動而作出有關作為；

“證券保證金融資”(securities margin financing) 指提供財務通融，以便利——

- (a) 取得在任何證券市場(不論是認可證券市場或香港以外地方的任何其他證券市場) 上市的證券；及
- (b) (如適用的話) 繼續持有該等證券，
- 而不論該等證券或其他證券是否被質押作為該項通融的抵押，但不包括以下各項——
- (i) 提供組成某項包銷或分包銷證券安排的一部分的財務通融；
- (ii) 提供財務通融以便利按照某招股章程的條款取得證券，不論認購有關證券的要約是在香港或其他地方提出的；
- (iii) 由任何就第 1 類受規管活動獲發牌或獲註冊的人提供的、以便利該人為其客戶取得或持有證券的財務通融；
- (iv) 由屬法團的集體投資計劃提供的、對投資於它所發行的集體投資計劃的任何權益的投資提供財務通融，而——
- (A) 該法團主要是從事或顯示本身主要是從事投資、再投資或買賣任何財產(包括證券及期貨合約)的業務的；及
- (B) 該法團的股份純粹是或主要是可贖回股份；
- (v) 由某認可財務機構提供的、以便利該機構的客戶取得或持有證券的財務通融；
- (vi) 由持有某公司不少於 10% 已發行股本的個人向該公司提供的、以便利取得或持有證券的財務通融；或
- (vii) 由某中介人藉使某人與該中介人的有連繫法團互相介紹以使該法團可提供財務通融予該人的方式提供的財務通融。

第 3 部

以下是本條例第 114(5) 條提述的指明活動——

- (a) 取得在證券市場上市的證券，而此舉屬《印花稅條例》(第 117 章) 第 19(16) 條所界定的證券借用或證券交還或組成某項該等證券借用或證券交還的一部分，或屬與該等借用或交還相似的任何證券交易；或

- (xiv) by a person through a trader, but the person shall be regarded as carrying on leveraged foreign exchange trading if, in return for a commission, rebate or other remuneration, the person—
- (A) receives from another person an offer or invitation to—
- (I) enter into a leveraged foreign exchange contract; or
- (II) use any financial accommodation to facilitate foreign exchange trading or facilitate entering into a leveraged foreign exchange contract, and communicates it, either in his name or in the name of the other person, to the trader;
- (B) effects an introduction between the trader or its representative and another person, so that the other person may—
- (I) enter into a leveraged foreign exchange contract with the trader; or
- (II) use any financial accommodation provided by the trader to facilitate foreign exchange trading or facilitate entering into a leveraged foreign exchange contract; or
- (C) effects the entering into a leveraged foreign exchange contract by another person through the trader,
- where in this paragraph, “trader” (交易商) means a corporation licensed for Type 3 regulated activity or an authorized financial institution; or
- (xv) by—
- (A) a collective investment scheme; or
- (B) a person in the course of business for the purpose of operating a collective investment scheme,
- authorized by the Commission under section 104 of this Ordinance;
- “securities margin financing” (證券保證金融資) means providing a financial accommodation in order to facilitate—
- (a) the acquisition of securities listed on any stock market, whether a recognized stock market or any other stock market outside Hong Kong; and
- (b) (where applicable) the continued holding of those securities, whether or not those or other securities are pledged as security for the accommodation, but does not include the provision of financial accommodation—
- (i) that forms part of an arrangement to underwrite or sub-underwrite securities;
- (ii) to facilitate an acquisition of securities in accordance with the term of a prospectus, regardless of whether the offer of securities is made in Hong Kong or elsewhere;
- (iii) by a person who is licensed or registered for Type 1 regulated activity in order to facilitate acquisitions or holdings of securities by the person for his client;
- (iv) by a collective investment scheme that is a corporation—
- (A) which is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in any property (including securities and futures contracts); and
- (B) the shares in which are exclusively, or primarily, redeemable shares, in order to finance investment in any interest in the collective investment scheme of which it is the issuer;
- (v) by an authorized financial institution for the purpose of facilitating acquisitions or holdings of securities by the institution's clients;
- (vi) by an individual to a company in which he holds 10% or more of its issued share capital to facilitate acquisitions or holdings of securities; or
- (vii) by an intermediary by way of effecting an introduction between a person and a related corporation of the intermediary in order that the corporation may provide the person with financial accommodation.

PART 3

The following are the specified activities referred to in section 114(5) of this Ordinance—

- (a) the acquisition of securities listed on a stock market which is or forms part of a stock borrowing or stock return as defined in section 19(16) of the Stamp Duty Ordinance (Cap. 117), or any transaction in securities similar to such a borrowing or return; or

- (b) (i) 向任何就第 1 或 8 類受規管活動獲發牌的法團或向任何認可財務機構提供的、以便利取得或持有證券的財務通融；
- (ii) 由某公司向其董事或僱員提供的、以便利取得或持有該公司本身的證券的財務通融；或
- (iii) 由某公司集團的某成員向該集團的另一成員提供的、以便利該另一成員取得或持有證券的財務通融。

- (b) the provision of financial accommodation—
- (i) to a corporation licensed for Type 1 or Type 8 regulated activity or an authorized financial institution to facilitate acquisitions or holdings of securities;
- (ii) by a company to its directors or employees to facilitate acquisitions or holdings of its own securities; or
- (iii) by a member of a group of companies to another member of the group to facilitate acquisitions or holdings of securities by that other member.

附表 6 [第 113、139 及 143 條]

指明稱銜

項	條文	指明稱銜
1.	本條例第 139(1) 條	“股票經紀”、“債券交易商”、“債券經紀”、“證券交易商”、“證券經紀”、“bond broker”、“bond dealer”、“securities dealer”、“stock dealer”及“stockbroker”
2.	本條例第 139(2) 條	“期貨交易商”、“期貨經紀”、“futures broker”及“futures dealer”
3.	本條例第 139(3) 條	“槓桿式外匯交易商”及“leveraged foreign exchange trader”
4.	本條例第 139(4) 條	“股票顧問”、“證券顧問”、“securities adviser”、“securities consultant”及“stock adviser”
5.	本條例第 139(5) 條	“期貨顧問”、“futures adviser”及“futures consultant”
6.	本條例第 139(6) 條	“機構融資顧問”、“corporate finance adviser”及“corporate finance consultant”
7.	本條例第 139(7) 條	“自動化交易服務提供者”及“automated trading service provider”
8.	本條例第 139(8) 條	“證券保證金融資人”、“margin lender”及“securities margin financier”

附表 7 [第 175 及 177 條]

本條例第 175 條所指由進行第 1、4 或 6 類受規管活動的
 中介人或代表提出的要約

第 I 部

為取得證券而提出的要約所須符合的規定

1. 如擬取得的證券當時是在任何證券市場(不論是認可證券市場或香港以外地方的任何其他證券市場)上市或報價的，則該要約

SCHEDULE 6 [ss. 113, 139 & 143]

SPECIFIED TITLES

Item	Provision	Specified titles
1.	Section 139(1) of this Ordinance	“bond broker”, “bond dealer”, “securities dealer”, “stock dealer”, “stockbroker”, “股票經紀”, “債券交易商”, “債券經紀”, “證券交易商” and “證券經紀”
2.	Section 139(2) of this Ordinance	“futures broker”, “futures dealer”, “期貨交易商” and “期貨經紀”
3.	Section 139(3) of this Ordinance	“leveraged foreign exchange trader” and “槓桿式外匯交易商”
4.	Section 139(4) of this Ordinance	“securities adviser”, “securities consultant”, “stock adviser”, “股票顧問” and “證券顧問”
5.	Section 139(5) of this Ordinance	“futures adviser”, “futures consultant” and “期貨顧問”
6.	Section 139(6) of this Ordinance	“corporate finance adviser”, “corporate finance consultant” and “機構融資顧問”
7.	Section 139(7) of this Ordinance	“automated trading service provider” and “自動化交易服務提供者”
8.	Section 139(8) of this Ordinance	“margin lender”, “securities margin financier” and “證券保證金融資人”

SCHEDULE 7

[ss. 175 & 177]

OFFERS BY INTERMEDIARIES OR REPRESENTATIVES FOR
 TYPE 1, TYPE 4 OR TYPE 6 REGULATED ACTIVITY
 UNDER SECTION 175 OF THIS ORDINANCE

PART I

REQUIREMENTS TO BE SATISFIED IN RELATION TO
 OFFERS TO ACQUIRE SECURITIES

1. If the securities proposed to be acquired are currently listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, the offer shall

~~(12) 如廣管局信納某項其他須領牌電視節目服務只擬供或可供某單一屋苑接收，廣管局可藉送達有關的持牌人或尋求成為持牌人的人的書面通知，寬免在“其他須領牌電視節目服務”的定義中 (b)(i) 段指明的規定。~~

~~(13) 在本條例中——~~

~~(a) 對“telecommunications”的提述包括對“telecommunication”的提述；~~

~~(b) 對“Telecommunications”的提述包括對“Telecommunication”的提述。~~

第 II 部

業務守則及指引

3. 廣管局對業務守則的批准

(1) 在符合第 (8) 款的規定下，廣管局可就本條例施加於持牌人的規定或就牌照條件向持牌人提供實務指引——

- (a) 批准和發出該局認為就上述目的而言屬適合的業務守則 (不論是否由該局擬備)；及
- (b) 批准該局認為就上述目的而言屬適合並由其他人或擬由其他人發出的業務守則。

(2) 凡廣管局根據第 (1) 款批准任何業務守則，該局須藉憲報公告——

- (a) 指出有關的守則，並指明該項批准的生效日期；及
- (b) 指明該守則是為施行本條例甚麼規定或甚麼牌照條件而批准的。

(3) 廣管局可——

- (a) 不時修訂該局根據本條擬備的業務守則的全部或其中任何部分；及
- (b) 批准對或擬對當其時已根據本條批准的業務守則的全部或任何部分作出的修訂，

~~(12) The Broadcasting Authority may, by notice in writing served on the licensee, or the person seeking to be a licensee, concerned, waive the requirement specified in paragraph (b)(i) of the definition of “other licensable television programme service” if the Broadcasting Authority is satisfied that the other licensable television programme service concerned is only intended or available for reception by a single housing estate.~~

~~(13) In this Ordinance—~~

~~(a) a reference to “telecommunications” includes “telecommunication”;~~

~~(b) a reference to “Telecommunications” includes “Telecommunication”.~~

PART II

CODES OF PRACTICE AND GUIDELINES

3. Approval of codes of practice by Broadcasting Authority

(1) Subject to subsection (8), for the purpose of providing practical guidance for licensees in respect of any requirements under this Ordinance imposed on licensees or in respect of licence conditions, the Broadcasting Authority may—

- (a) approve and issue such codes of practice (whether prepared by it or not) as in its opinion are suitable for that purpose; and
- (b) approve such codes of practice issued or proposed to be issued otherwise than by it as in its opinion are suitable for that purpose.

(2) Where a code of practice is approved under subsection (1), the Broadcasting Authority shall, by notice in the Gazette—

- (a) identify the code concerned and specify the date on which its approval is to take effect; and
- (b) specify for which of the requirements under this Ordinance or licence conditions the code is so approved.

(3) The Broadcasting Authority may—

- (a) from time to time revise the whole or any part of any code of practice prepared by it under this section; and
- (b) approve any revision or proposed revision of the whole or any part of any code of practice for the time being approved under this section,

而第(2)款的條文在經必要的變通後，適用於根據本款作出的批准，一如該等條文適用於根據第(1)款作出的批准。

(4) 廣管局可隨時撤回任何根據本條而對某業務守則作出的批准。

(5) 凡廣管局根據第(4)款撤回對某業務守則的批准，該局須藉憲報公告指出該守則，並指明該局對該守則的批准終止有效的日期。

(6) 本條例中提述“業務守則”，即提述該守則經根據本條批准而對其全部或部分作出的任何修訂而在當其時具有效力的版本。

(7) 根據第(1)(b)款賦予廣管局批准業務守則的權力，包括批准該守則的某部分的權力，而在本條例中，“業務守則”據此可理解為包括該守則的某部分。

(8) 廣管局在根據第(1)款批准業務守則或根據第(3)款批准對該守則的修訂或擬作出的該等修訂前——

(a) (如該守則或該經如此修訂的守則(視屬何情況而定)將會全部或部分適用於某些持牌人)須諮詢該局認為合適的並代表該等持牌人的團體；及

(b) (在該守則或該經如此修訂的守則(視屬何情況而定)涉及廣播服務的技術標準的範圍內)須在該局認為合適的情況下諮詢電訊局長。

(9) 為免生疑問，現宣布：廣管局可為不同類別的持牌人，根據第(1)款批准不同的業務守則，亦可為該款所述的相同或不同的規定或就牌照條件，如此批准不同的業務守則。

4. 指引

(1) 廣管局可不時安排擬備不抵觸本條例並關乎——

(a) 廣管局擬執行本條例賦予該局的職能的方式的指引；

(b) 廣管局認為合適的與本條例有關的其他事宜的指引；

並安排以憲報公告刊登該等指引，以使持牌人或尋求成為持牌人的公司有所依循。

and the provisions of subsection (2) shall, with the necessary modifications, apply in relation to the approval of any revision under this subsection as they apply in relation to the approval of a code of practice under subsection (1).

(4) The Broadcasting Authority may at any time withdraw its approval from any code of practice approved under this section.

(5) Where under subsection (4) the Broadcasting Authority withdraws its approval from a code of practice approved under this section, it shall, by notice in the Gazette, identify the code concerned and specify the date on which its approval of it is to cease to have effect.

(6) References in this Ordinance to a “Code of Practice” are references to that code as it has effect for the time being by virtue of any revision of the whole or any part of it approved under this section.

(7) The power of the Broadcasting Authority under subsection (1)(b) to approve a code of practice issued or proposed to be issued otherwise than by it shall include power to approve a part of such a code and, accordingly, in this Ordinance “Code of Practice” may be read as including a part of such a code.

(8) The Broadcasting Authority shall, before approving a code of practice under subsection (1) or any revision or proposed revision of the code under subsection (3), consult with—

(a) such bodies representative of licensees to which the code or the code as so revised, as the case may be, will apply (whether in whole or in part); and

(b) in so far as the code or the code as so revised, as the case may be, relates to the technical standards of a broadcasting service, the Telecommunications Authority,

as it thinks fit.

(9) For the avoidance of doubt, it is hereby declared that different codes of practice may be approved under subsection (1) for different classes of licensees, and may be so approved for the same or different requirements mentioned in that subsection or licence conditions.

4. Guidelines

(1) The Broadcasting Authority may from time to time cause to be prepared and published by notice in the Gazette, for the guidance of licensees or companies seeking to be licensees, guidelines not inconsistent with this Ordinance—

(a) indicating the manner in which the Broadcasting Authority proposes to perform functions conferred by this Ordinance upon the Broadcasting Authority;

(b) on such other matters relevant to this Ordinance as the Broadcasting Authority thinks fit.

~~(d) 持牌人或該人在香港以外地方的刑事紀錄，而該等紀錄所關乎的行為，假若是在香港作出的即會構成或組成 (c) 段所述的持牌人或該人的香港刑事紀錄部分內容者。~~

22. 防止干預持牌人在節目內容方面的獨立性

(1) 持牌人不得協議在其領牌服務內包括或不包括任何材料，但持牌人正在訂約以求獲得供應給其領牌服務的材料則不在此限。

(2) 任何協議中如有任何規定持牌人在其領牌服務內包括或不包括任何材料的條文，不得針對該持牌人強制執行該條文，但如該材料屬根據該協議將會供應的材料，則不在此限。

23. 關於電視節目服務的一般規定

(1) 持牌人在任何時間均須負責確保其領牌服務不包括潛送訊息。

(2) 除第 (3) 款另有規定外，持牌人須——

- (a) 遵守其牌照條件；
- (b) 遵守本條例所訂並適用於該持牌人的規定；
- (c) 遵從根據本條例發出或作出並適用於該持牌人的任何指示、命令、決定或裁定；
- (d) 遵守適用於該持牌人的業務守則的所有條文；及
- (e) 在不影響任何與本條有關的業務守則的實施、根據第 42(1)(e) 條訂立的規例或廣管局根據《廣播事務管理局條例》(第 391 章) 第 9 條而有的職能的原則下，確保其領牌服務在電視節目內容及廣播技術方面均維持達到適當標準。

(3) 第 (2) 款不適用於政府所提供的材料。

(4) 為免生疑問，現宣布：如持牌人的領牌服務包括或會包括根據《電影檢查條例》(第 392 章) 獲豁免或核准上映或公布的材料，持牌人亦不因此而獲免履行根據本條例他須履行的任何責任。

~~(d) the criminal record in places outside Hong Kong of the licensee or person in respect of conduct which, if done in Hong Kong, would constitute or form part of the criminal record in Hong Kong of the licensee or person as mentioned in paragraph (c).~~

22. Prevention of interference with programming independence of licensees

(1) A licensee shall not, except in respect of material the supply of which it is contracting for its licensed service, agree to include or to refrain from including in its licensed service any material.

(2) Any provision in an agreement which requires a licensee to include or to refrain from including in its licensed service any material, other than material to be supplied under the agreement, shall not be enforceable against the licensee.

23. General requirements as to television programme services

(1) A licensee shall be responsible at all times for ensuring that its licensed service does not include a subliminal message.

(2) Subject to subsection (3), a licensee shall—

- (a) comply with its licence conditions;
- (b) comply with any requirements under this Ordinance which are applicable to it;
- (c) comply with any directions, orders, or determinations, under this Ordinance which are applicable to it;
- (d) comply with all provisions in a Code of Practice which are applicable to it; and
- (e) without prejudice to the operation of any Code of Practice which relates to this section, to any regulations under section 42(1)(e) or to the Broadcasting Authority's functions under section 9 of the Broadcasting Authority Ordinance (Cap. 391), secure proper standards for its licensed service with regard to television programme content and technical performance.

(3) Subsection (2) shall not apply in the case of material supplied by the Government.

(4) For the avoidance of doubt, it is hereby declared that the fact that any material included or to be included in a licensee's licensed service is material exempted or approved for the purposes of exhibition or publication under the Film Censorship Ordinance (Cap. 392) does not by itself relieve the licensee of any obligation under this Ordinance.

- (5) 在本條中——
 “潛送訊息”(subliminal message) 指播送時間短暫而不足以使人對所播送材料留下有意識的印象；
 “標準”(standards) 就電視節目內容而言，包括規定可於一天內的哪個時間提供某類別電視節目內容的限制。

第 VI 部

牌照的執行

24. 廣管局及電訊局長的指示

(1) 廣管局可向持牌人發出書面指示(關於技術標準的指示除外)，規定持牌人須採取有關通知指明的該局認為必須的行動，以使持牌人遵守某訂明條例的任何條文、任何牌照條件或適用於持牌人的業務守則的任何條文。

(2) 電訊局長可向持牌人發出書面指示，規定持牌人須採取關乎技術標準而在有關通知內指明的該局認為必須的行動，以使持牌人遵守某訂明條例的任何條文、任何牌照條件或適用於持牌人的業務守則的任何條文。

(3) 廣管局須安排在憲報刊登根據第(1)款發出的指示，或以其認為合適的其他方式刊登。

25. 對持牌人業務的調查

(1) 廣管局如信納為妥善履行其根據某訂明條例而具有的職能以確保持牌人遵守某牌照條件，或遵守該條例所訂並適用於該持牌人的規定，或遵守根據該條例發出或作出的並適用於該持牌人的指示、命令、決定或裁定，或遵守適用於該持牌人的業務守則條文，以致有此需要，可以書面授權任何人在該局於授權書內指明的時間，作出以下全部或任何一項行動——

- (5) In this section—
 “standards” (標準), in relation to television programme content, includes restrictions on the time of day when content of a particular class may be provided;
 “subliminal message” (潛送訊息) means the transmission of material the duration of which is so brief that it does not enable a person to obtain a conscious picture of the material.

PART VI

ENFORCEMENT OF LICENCES

24. Directions of Broadcasting Authority and Telecommunications Authority

(1) The Broadcasting Authority may issue directions in writing to a licensee (except directions relating to technical standards) requiring it to take such action specified in the notice as the Broadcasting Authority considers necessary in order for the licensee to comply with any requirement under a prescribed Ordinance, any licence condition or any provision in a Code of Practice applicable to it.

(2) The Telecommunications Authority may issue directions in writing to a licensee requiring it to take such action specified in the notice with regard to technical standards as the Telecommunications Authority considers necessary in order for the licensee to comply with any requirement under a prescribed Ordinance, any licence condition or any provision in a Code of Practice applicable to it.

(3) The Broadcasting Authority shall cause directions under subsection (1) to be published in the Gazette or in such other manner as it thinks fit.

25. Investigation of licensee's business

(1) Where the Broadcasting Authority is satisfied that it is necessary for the proper performance of its functions under a prescribed Ordinance in order to ensure a licensee's compliance with a licence condition, a requirement under the Ordinance which is applicable to it, a direction, order, or determination, under the Ordinance which is applicable to it, or a provision in a Code of Practice which is applicable to it, it may authorize in writing any person to do all or any of the following at such times as are specified by it in the authorization——

ANNEX II

**The Code of Conduct for Persons
Licensed by or Registered with
The Securities and Futures Commission
--- Paragraph 16**

Analysts

16.1 Application

- (a) This paragraph applies to:
 - (i) an analyst;
 - (ii) a firm that employs any analyst; and
 - (iii) a firm that issues any investment research.
- (b) This paragraph covers investment research on securities that are traded in Hong Kong and investment research that has an influence on such securities.

16.2 Interpretation

- (a) “Analyst” for the purposes of this paragraph means any individual within a firm who prepares and/or publishes investment research or the substance of investment research. The term does not include an individual:
 - (i) giving investment advice or comments wholly incidental to his dealing or broking function;
 - (ii) conducting research solely for the firm’s internal consumption and not for distribution to clients; or
 - (iii) giving personal (one-to-one) investment advice.

In respect of paragraph 16.2(a)(ii), the firm’s internal consumption includes consumption by all companies in the group and not just those specified in paragraph 16.2(d).

- (b) “Associate” for the purposes of this paragraph means:
 - (i) the spouse, or any minor child (natural or adopted) or minor step-child, of the analyst;
 - (ii) the trustee of a trust of which the analyst, his spouse, minor child (natural or adopted) or minor step-child, is a beneficiary or a discretionary object; or
 - (iii) another person accustomed or obliged to act in accordance with the directions or instructions of the analyst.

- (c) “Financial interest” for the purposes of this paragraph means any commonly known financial interest, such as investment in the securities in respect of a listed corporation, or financial accommodation arrangement between the listed corporation and the firm or analyst.

This term does not include commercial lending conducted at arm’s length, or investments in any collective investment scheme notwithstanding the fact that the scheme has investments in securities in respect of a listed corporation.

- (d) “Firm” for the purposes of this paragraph means any intermediary and its group of companies. A company will only be regarded as a group company if it carries on a business in Hong Kong in:
- (i) investment banking;
 - (ii) proprietary trading or market making; or
 - (iii) agency broking,
- in relation to securities.
- (e) “Individual employed by or associated with...the firm” for the purposes of paragraph 16.5(c) means any individual:
- (i) employed by the firm in accordance with whose directions or instructions the analyst is accustomed or obliged to act;
 - (ii) employed by the firm who has influence on the subject matter or content, or the timing of distribution, of investment research; or
 - (iii) who is responsible for determining the remuneration of the analyst.
- (f) “Investment research” for the purposes of this paragraph includes documentation containing any one of the following:
- (i) result of investment analysis of securities;
 - (ii) investment analysis of factors likely to influence the future performance of securities, not including any analysis on macro economic or strategic issue; or
 - (iii) advice or recommendation based on any of the foregoing result or investment analysis.

and an investment/research report shall be construed accordingly.

- (g) “Listed corporation” for the purposes of this paragraph means a corporation the securities of which are listed on The Stock Exchange of Hong Kong Limited.

- (h) “Securities” for the purposes of this paragraph means shares issued by a listed corporation and any warrants or options on these shares which are listed or traded on The Stock Exchange of Hong Kong Limited.

16.3 Principles

The Commission believes the following principles¹ are of fundamental importance to the business undertaken by all analysts and firms to which this Paragraph applies.

(a) Analyst trading and financial interests

Mechanisms should exist so that analysts' trading activities or financial interests do not prejudice their investment research and recommendations.

(b) Firm financial interests and business relationships

Mechanisms should exist so that analysts' investment research and recommendations are not prejudiced by the trading activities, financial interests or business relationships of the firms that employ them.

(c) Analyst reporting lines and compensation

Reporting lines for analysts and their compensation arrangements should be structured to eliminate or severely limit actual and potential conflicts of interest.

(d) Firm compliance systems

Firms that employ analysts should establish written internal procedures or controls to identify and eliminate, avoid, manage or disclose actual and potential analyst conflicts of interest.

(e) Outside influence

The undue influence of securities issuers, institutional investors and other outside parties upon analysts should be eliminated or managed.

¹ These principles generally replicate those published by the International Organisation of Securities Commissions (“IOSCO”) on 25 September 2003 in the Statement of Principles for Addressing Sell-side Securities Analyst Conflicts of Interest (“Statement of Principles”). Aside from these principles, analysts and firms are encouraged to adopt the measures specified in the Statement of Principles as best practices. The Statement of Principles is available at the IOSCO website at www.iosco.org.

(f) Clarity, specificity and prominence of disclosure

Disclosures of actual and potential conflicts of interest should be complete, timely, clear, concise, specific and prominent.

(g) Integrity and ethical behavior

Analysts should be held to high integrity standards.

16.4 Analyst trading and financial interests

(a) Firms to establish dealing policies for analysts

A firm that employs any analyst should establish and maintain written policies and control procedures governing the dealings and tradings by any such analyst with a view to eliminating, avoiding, managing or disclosing actual or potential conflicts of interest arising from such dealings or tradings.

(b) Limitations on dealing by analysts

An analyst or his associate should not deal in or trade any securities in respect of a listed corporation that the analyst reviews:

- (i) in a manner contrary to his outstanding recommendation; or
- (ii) within 30 days prior to and 3 business days after the issue of investment research on the listed corporation,

except in special circumstances outlined in the firm's policy and pre-approved by the relevant legal or compliance function.

In respect of paragraph 16.4(b)(ii), an analyst should not issue any investment research on a listed corporation if he or his associate had dealt in or traded the securities in respect of the listed corporation within the previous 30 days, except on occurrences of major events that would affect the price of the securities and the events are known to the public.

(c) Disclosure of relevant relationships

If an analyst or his associate serves as an officer of the listed corporation that the analyst reviews, the analyst should disclose that fact in the research report.

(d) Disclosure of relevant financial interests

If an analyst or his associate has any financial interests in relation to a listed corporation that the analyst reviews, he should disclose that fact in the research report.

16.5 Firm financial interests and business relationships

(a) Disclosure by firms of relevant financial interests

Where a firm has any financial interests in relation to a listed corporation the securities in respect of which are reviewed in a research report, and such interests aggregate to an amount equal to or more than 1% of the listed corporation's market capitalization, the firm should disclose that fact in the research report.

(b) Disclosure by firms of relevant market making activities

A firm that makes a market in the securities in respect of the listed corporation should disclose that fact in the research report.

(c) Disclosure by firms of relevant relationships

A firm having an individual employed by or associated with the firm serving as an officer of the listed corporation should disclose that fact in the research report.

(d) Disclosure by firms of relevant business relationships

A firm that has an investment banking relationship with the listed corporation should disclose that fact in the research report. Any compensation or mandate for investment banking services received within the preceding 12 months would constitute an investment banking relationship.

(e) Improper dealing by firms ahead of issue of investment research

A firm should not improperly deal or trade ahead in the securities in respect of the listed corporation which its investment research covers.

(f) Firms not to provide certain assurances to listed corporations

A firm should not, with a view to commencing or influencing a business relationship with a listed corporation, provide any promise or assurance of favourable review or change of coverage or rating in its investment research.

(g) Quiet periods

A firm that acts as a manager, sponsor or underwriter of a public offering should not issue any investment research covering the listed corporation at any time falling within a period of:

- (i) 40 days immediately following the day on which the securities are priced if the offering is an initial public offering; or
- (ii) 10 days immediately following the day on which the securities are priced if the offering is a secondary public offering,

unless the firm has been issuing investment research on the listed corporation with reasonable regularity in its normal course of business, or on occurrences of major events that would affect the price of the securities and the events are known to the public.

The day on which the securities are priced refers to the day when the specific price of the offering is determined.

16.6 Analyst reporting lines, compensation and participation in other functions

(a) Analyst reporting lines and compensation

A firm that has an investment banking function should not:

- (i) arrange for its analysts to report to such function; or
- (ii) directly link its analysts' compensation to any specific investment banking transaction.

(b) Pre-approval of investment research by investment banking function

A firm that has an investment banking function should not allow such function to pre-approve analyst reports or recommendations, except in circumstances subject to oversight by compliance or legal function where investment banking function reviews a research report for factual accuracy prior to publication.

(c) Analysts not to solicit investment banking business

An analyst should not participate in business activities designed to solicit investment banking business, such as sales pitches and deal road shows.

16.7 Firm compliance systems

A firm should establish, maintain and enforce a set of written policies and control procedures to eliminate, avoid or manage actual and potential analyst conflicts of interest. These policies and procedures should be appropriately formulated having regard to the firm's particular structure and business model and the experience and investment profile of its clients.

16.8 Outside influence

An analyst or his firm should disclose in the research report the fact where the listed corporation or other third party has provided or agreed to provide any compensation or other benefits in connection with the investment research.

16.9 Making commentaries or recommendations through the mass media

When an analyst makes commentaries or recommendations through the mass media, all provisions in paragraph 16, as modified (where applicable) under paragraph 16.9(a) and (b) below, should apply.

(a) Analysts appearing in personal capacity in the mass media

When an analyst provides analyses or comments on securities in respect of a listed corporation in the mass media in his personal capacity, including appearing in person, he should disclose the following at the time the analyses or comments are provided:

- (i) his name;
- (ii) his licence status; and
- (iii) where he and/or his associate has a financial interest in the listed corporation, the fact of having such an interest.

(b) Analysts responding in personal capacity to queries from audiences and journalists

When an analyst is asked by members of an audience, or otherwise by a journalist, for analyses or comments on specific securities, he may offer such analyses or comments, provided that he makes the disclosures set out in paragraph 16.9(a)(i) to (iii) notwithstanding the fact that he and/or his

associates have traded in the relevant securities during the 30 days prior to giving such analyses or comments.

(c) Firms communicating their investment research through the mass media

For avoidance of doubt, when a firm communicates its investment research through the mass media, such as disseminating its research reports in whole or in part in a sponsored programme, all relevant provisions in paragraph 16 should apply.

16.10 Clarity, specificity and prominence of disclosure

(a) Quality of disclosure

Where any matter is required to be disclosed under this Paragraph, the disclosure should be:

- (i) clear;
- (ii) concise;
- (iii) specific;
- (iv) given adequate prominence; and
- (v) released in a timely and fair manner.

(b) Methods of disclosure

Any disclosure required under this Paragraph should be made in a method that is commensurate with the medium through which the investment research, or analyst's advice or comments, is being delivered. The required disclosures are limited to the fact of the matter. Details such as the amount or its nature are not required.

(c) Disclosure responsibility

Where relevant disclosures have been made by analysts and/or firms, they will not be held responsible if their investment research, or recommendation is published or otherwise reproduced in whole or in part by the mass media without the relevant disclosures.

16.11 Integrity and ethical behavior

- (a) An analyst should have a reasonable basis for his analyses and recommendations.
- (b) An analyst should define the terms used in making recommendations, and utilize such definitions consistently.



SECURITIES AND
FUTURES COMMISSION
證券及期貨事務監察委員會

Annex III

**A Healthy Market for Informed Investors –
A Report on the
Derivative Warrants Market in Hong Kong**

Hong Kong
November 2005

香港
2005年11月

6 : Publishing new marketing guidelines

High penetration marketing strategy employed by many warrant issuers

202. Our review showed that many derivative warrant issuers employ high penetration marketing strategies to promote their derivative warrants. The more common activities include –
- (1) issuing regular market commentaries or recommendations via the mass media including newspapers and the Internet;
 - (2) inviting analysts or market commentators to give their comments on sponsored radio or television programmes; and
 - (3) advertising derivative warrants via other mass media, such as broadcasts on public transport and in other public areas.
203. As a result, the derivative warrants market has experienced tremendous growth in the past few years and derivative warrants are now considered a mainstream financial product available to the investing public in Hong Kong. This however ignores the complexity of derivative warrants, and the higher risks associated with investing in them.

Guidelines issued by the SFC

204. In December 2001, the SFC issued guidelines to derivative warrant issuers regarding marketing material for such products. These guidelines set out what information should be provided in marketing material, including material such as term sheets, newsletters, market updates and public advertisement. However, some market participants have suggested that it is not clear whether these guidelines apply only to marketing material which is in paper form or whether it extends to marketing via other media as well, such as radio, TV, the Internet, etc.
205. Separately, the SFC has also incorporated guidelines in its Code of Conduct³⁶ on potential and actual conflicts of interests relating to analysts who are licensed by or registered with us. These guidelines apply in respect of all securities listed or traded on the SEHK, including therefore derivative warrants. Licensed or registered analysts who make commentaries or recommendations on derivative warrants through the mass media must therefore comply with these guidelines. Given that in Hong Kong, many retail investors may regard commentaries or recommendations made in mass media as an important source of investment information, such guidelines are crucial.

Problems with marketing and promotional activities

206. Despite the existing guidelines, we have observed a number of increasingly prevalent marketing and promotional practices employed by derivative warrant issuers, which give us cause for concern. In particular –

³⁶ This refers to the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission. The guidelines are set out in paragraph 16 of this Code.

- (1) advertisements in newspapers regarding derivative warrants often only include a positive analysis;
 - (2) it is sometimes not clear whether the material in question is intended to be an advertisement or a commentary; and
 - (3) issuers selectively quote investors, noting only those who claim to have made a profit from trading the issuers' derivative warrants.
207. These practices contribute to giving investors a distorted view of derivative warrants, thus making this already complex product less likely to be properly understood.

Our proposals

208. In view of the above, we propose publishing new guidelines on marketing for derivative warrants so that there is no doubt that they cover marketing via mass media such as radio, TV, the Internet, etc. We also propose that the guidelines adopt a principle-based approach rather than a prescriptive approach, governing the whole spectrum of the marketing and promotion campaign.
209. Our preliminary view is that these revised guidelines will likely need to be incorporated in the Listing Rules, thus placing the burden of ensuring compliance on the issuers. We will also discuss this issue with the Broadcasting Authority as we acknowledge our own rules may be insufficient to catch all marketing activity.

7: Plain language

210. We believe market participants, and issuers in particular, can play an equally important role in enhancing investors' understanding of derivative warrants by ensuring that any materials concerning their products are readily accessible and easily understood. In particular, they should as far as possible be written in clear non-technical language and, where excessively lengthy, should be accompanied by a concise summary that is equally accessible and easy to understand.

Difficulties with existing documentation

211. Listing documents for derivative warrants available on the Exchange's website consist of –
- (1) a base listing document – this sets out the terms and conditions of a variety of derivative warrants as well as details about the issuer and any guarantor of the issuer, and typically runs to over 200 pages;
 - (2) a supplemental listing document – this sets out information in relation to a particular issue (such as a summary description of the issue, its terms and conditions, details of the liquidity provider, relevant risk factors and details of any

ANNEX IV

Extracts of the relevant provisions

of

the Radio Code of Practice on Programme Standards,

the Radio Code of Practice on Advertising Standards,

the Generic Code of Practice on Television Programme

Standards, and

the Generic Code of Practice on Television Advertising

Standards

issued by

the Broadcasting Authority

**RADIO CODE OF PRACTICE
ON PROGRAMME STANDARDS**

**BROADCASTING AUTHORITY
AS AT 4 FEBRUARY 2005**

~~therefore schedule programmes targeting adult listeners at times when it normally broadcasts programmes targeting children or young persons.~~

18. Children's programmes should impart appreciation of sound social, moral and spiritual concepts. They should contribute to the healthy development of personality, character and intelligence.

19. The standards relating to language, violence and sex should be strictly observed in programmes which might reasonably be expected to hold the attention of children and young people. It must be borne in mind that young people make up a large part of the radio audience.

Warning

20. Any programme containing material which is likely to offend or disturb some people should carry a warning to that effect at the beginning of the programme.

Impartiality

General

21. The licensees must ensure that due impartiality is preserved as respects news programmes and any factual programmes dealing with matters of public policy or controversial issues of public importance in Hong Kong (except personal view programmes which are dealt with separately under paragraph 36 below). Factual programmes are non-fiction programmes which are based on material facts. They can take the form of news, current affairs programmes, personal view programmes, phone-in programmes, documentaries and programmes adopting an investigative style of reporting.

22. Due impartiality requires the licensees to deal even-handedly when opposing points of view are presented in a programme. Balance should be sought through the presentation, as far as possible, of principal relevant viewpoints on matters of public importance. Programmes should not be slanted by the concealment of facts or by misleading emphasis. Every reasonable effort must be made to ensure that the factual content of programmes is accurate.

23. In achieving due impartiality, the term "due" is to be interpreted as meaning adequate or appropriate to the nature of the subject and the type of programme. Due impartiality does not mean that "balance" is required in the sense of equal time or an equal number of lines in the script being devoted to each view, nor does it require absolute neutrality on every controversial issue. Judgement will always be called for by the licensees.

24. A programme host should encourage the widest possible airing of views. He/She should also be alert to the danger of unsubstantiated allegations being made by participants in live programmes. Where necessary, the programme host should correct the factual errors to the best of his/her knowledge.

Impartiality Over Time

25. Although it is desirable, it is not always possible for principal opposing viewpoints to be reflected in a single programme. Sometimes a series of programmes may be considered as a whole. At other times, a narrower range of views may be appropriate within individual programmes. This is an issue which calls for editorial judgement based on particular circumstances. In achieving impartiality over time, it is not always necessary to ensure that in a single programme all sides have an opportunity to speak.

News

26. News should offer listeners an intelligent and informed account of issues that enables them to form their own views. Presentation of news should observe the following rules:

- (a) News should be presented with accuracy and due impartiality.
- (b) Sound effects, expressions, and other techniques characteristically associated with news should be reserved for the announcement of news.
- (c) Morbid, sensational, or alarming details not essential to factual reporting should be avoided. News should be presented in such a manner as to avoid unnecessary alarm.
- (d) Commentary and analysis should be clearly distinguished from news.
- (e) Correction of factual errors should be made as soon as practicable after the original error, or at the end of the current programme or the beginning of a subsequent programme.
- (f) No bona fide news programmes comprising local or international news item may be sponsored. For the purpose of this paragraph, 'news programmes' should not include programmes which take the form of news features, news magazines, news comments, current affairs, or business/financial/sports news. No advertising matter should be offered as news or included in the contents of a news programme or newsreel.

Potential Conflict Of Interest of Programme Presenters

27. The licensee shall devise and institutionalise within three months from promulgation of the Code a mechanism whereby its presenters of news programmes and factual programmes dealing with matters of public policy or controversial issues of public importance in Hong Kong are required to disclose the existence of any commercial agreement, arrangement or understanding, whether committed to writing or not, that may call into question the fairness or impartiality of the programmes. The licensee must then exercise its editorial judgement and decide whether:

- (a) the relevant programme presenter(s) should refrain from taking part in discussion of issues over which he/she may have conflict of interest; or
- (b) a disclosure announcement of the existence of a relevant commercial agreement should be made at the time of broadcast of the programme material.

The licensee shall receive and consider any complaint from any member of the public with respect to the potential conflict of interest of its programmes. The licensee shall inform the complainant and the BA of the findings of its investigation and make the findings available for public inspection free of charge by, for example, posting them on its website. Paragraph 27 does not apply to acquired programmes which are not produced by the licensee.

Fairness

General

28. The licensees have a responsibility to avoid unfairness to individuals or organisations featured in factual programmes, in particular through the use of inaccurate information or distortion. They should also avoid misleading the audience in a way which would be unfair to those featured in the programme.

Reporting of Court Cases

29. Programme items which are based on extracts of court proceedings or other matters of public record must be presented fairly and accurately. In particular the reporting of criminal cases for which proceedings have commenced must not be presented in such manner that would be likely to prejudice a fair trial, and the following should be avoided:

- (a) any pre-judgement of the issues in the case, in particular of the guilt or innocence of the accused;
- (b) any discussion of the merits or facts of the case which may prejudice the relevant legal proceedings;

- (c) any comment relating to the character or conduct of the accused; and
- (d) any comment or report which tends to impair the impartiality of the court.

Dramatised "Reconstructions"

30. Dramatised "reconstructions" in factual programmes which seek to reconstruct actual events should be carefully labelled as such, so that the fictional elements are not misleadingly presented as fact.

Interviews

31. Where proposed interviewees are unable or unwilling to accept an invitation to participate in a factual programme, references to the missing participants should be made in a detached and factual manner. Care should be taken to ensure that their views are not misrepresented.

32. Editing to shorten recorded interviews must not distort or misrepresent the known views of the interviewees.

33. Licensees should not misrepresent the views of interviewees by broadcasting a previously recorded interview and presenting it as the interviewees' current views. Listeners should be informed of the date the interviews were conducted where necessary.

Right of Reply

34. Licensees should take special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organizations. Licensees should take all reasonable care to satisfy themselves that all material facts are so far as possible fairly and accurately presented.

35. Where a factual programme reveals evidence of iniquity or incompetence, or contains a damaging critique of an individual or organization, those criticized should be given an appropriate and timely opportunity to respond.

Personal View Programmes

36. "Personal view programmes" are programmes in which the programme hosts and, sometimes, individual contributors put forward their own views. The following rules apply to all personal view programmes on matters of public policy or controversial issues of public importance in Hong Kong:

- (a) The nature of a personal view programme must be identified clearly at the start of the programme, for example, by an announcement in the following terms, "This programme only reflects the personal views of the programme host(s) and/or the individual contributor(s)."
- (b) Facts must be respected and the opinion expressed, however partial, should not rest upon false evidence.
- (c) A suitable opportunity for response to the programme should be provided.
- (d) Licensees should be mindful of the need for a sufficiently broad range of views to be expressed in any series of personal view programmes.

Privacy

General

37. The rights of individuals to privacy should be respected in all programmes. Complaints about programme invasion of privacy can arise from the gathering of material or from the way an individual is treated in the programme itself. In obtaining material for a programme, the licensees must ensure that the provisions of the Personal Data (Privacy) Ordinance (Cap. 486) are observed. The licensees shall only collect material for broadcast purpose by means which are lawful and fair in the circumstances of the case.

Scenes of Extreme Suffering and Distress

38. Licensees should be sensitive to the possibility of causing additional anxiety or distress when interviewing or recording people who are already extremely upset or under stress. People in a state of distress should not be put under pressure to provide interviews. Normally funerals may only be covered with the permission of the family.

Interviewing of Children

39. Children should not be questioned to elicit views on private family matters, nor asked for expressions of opinion on matters likely to be beyond their judgement.

Reporting of Sexual Offences Against Children

40. Reporting of sexual offences against children should avoid identification of the child.

Undue Prominence

41. No undue prominence may be given in any programme to a product, service, trademark, brand name or logo of a commercial nature or a person identified with the above so that the effect of such reference amounts to advertising. Such references must be

limited to what can clearly be justified by the editorial requirements of the programme itself, or of an incidental nature.

Consumer Advice

42. Programmes which contain material offering or including reviews or advice on products or services should apply the highest standards of fair dealing and editorial values. The real objective of the material must be bona fide consumer advice, and the presentation must be fair and objective. In addition, the licensee should ensure that the following rules are complied with:

- (a) the licensee or programme producer should not receive consideration for making references to products or services in such programmes;
- (b) such material must be designed to convey truthful and objective consumer information about products or services;
- (c) the disclosure of brand names must be relevant and appropriate to the objective of the programme and the products and services are selected objectively and without regard to the manufacturer or supplier of the product or service;
- (d) such material should be based on research so far as is practicable;
- (e) the information conveyed must be accurate and not misleading by concealing significant facts;
- (f) a wide range of firms or products or services should be included as far as practicable in order not to give unfair advantage or disadvantage to a particular brand or firm. In the case of a serial programme, the licensee may cover a range of products and services within the same series and not necessarily in one single episode;
- (g) while fair and objective assessment on certain products or services is permissible, presenters should avoid being carried away by personal preferences and showering the product or service with excessive praises and unnecessary details and hence giving it undue advantage over other products or services; and
- (h) such material should not include products or services insofar as they are not acceptable for advertising under the advertising code.

Contests

43. No fee is payable either in money or money's worth for participation in any contests. Subject to prior approval from the BA, a licensee may deviate from this requirement in respect of a contest for charitable purposes.

**RADIO CODE OF PRACTICE
ON ADVERTISING STANDARDS**

BROADCASTING AUTHORITY

4 FEBRUARY 2005

18. Generally speaking, drinks containing 1.2 per cent or less of ethyl alcohol by volume and presented as a low or no alcohol version of an alcoholic liquor, must not be advertised in or adjacent to children's programmes. In particular, drinks containing more than 0.5 per cent but not more than 1.2 per cent ethyl alcohol by volume, whether or not presented as a low or no alcohol version of an alcoholic liquor, must not be advertised in or adjacent to children's programmes. The advertisements must also comply with subparagraphs (a), (b), (c), (d), (f), (g), (h), (i), (j), (l), (m), and (o) of paragraph 17 above.

Educational Courses

19. The licensee must comply with section 86A of the Education Ordinance (Cap. 279), section 34 of the Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493) and section 3 of the Non-local Higher and Professional Education (Regulation) Rules (Cap. 493 sub.leg.).

Personal Products

20. Products of a personal nature, such as female sanitary products, condoms, deodorants for the genital area, incontinence products, etc., should be presented with ~~care and sensitivity.~~

Financial Advertising

21. The licensee should comply with the supplementary standards on financial advertising as set out in Appendix I.

Real Property Advertising

22. No advertisement offering for sale or to let any flat, shop, office or other unit of accommodation in Hong Kong should be accepted:
- (a) in respect of a completed building, unless the advertiser is able to substantiate that the proposed sale or letting does not constitute any breach of the conditions relating to such sale or letting as imposed in the lease conditions affecting the land on which such completed building stands;
 - (b) in respect of an uncompleted building:
 - (i) unless the prior consent of the Director of Lands or any other Government authority relating to such sale or letting as required under the lease conditions affecting the land on which such uncompleted building stands has been given; or
 - (ii) unless the developer is able to produce evidence that his solicitor has deposited a statutory declaration under Rule 5C (3) of the Solicitors Practice Rules in regard to the sale and purchase of the affected real property in the relevant Land Registry ~~where consent as mentioned in (b)(i) above is not~~

Appendix I

SUPPLEMENTARY STANDARDS ON FINANCIAL ADVERTISING

Legal Responsibility

1. It is the responsibility of the licensee to ensure that advertisements comply with all the relevant legal and regulatory requirements including, but not limited to, the following:

- (a) the Companies Ordinance (Cap. 32);
- (b) the Banking Ordinance (Cap. 155);
- (c) the Insurance Companies Ordinance (Cap. 41);
- (d) the Securities and Futures Ordinance (Cap. 571);
- (e) the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
- (f) the Codes of the Securities and Futures Commission (SFC), including without limitation :
 - (i) the Code on Unit Trusts and Mutual Funds;
 - (ii) the Code on Investment-linked Assurance Schemes;
 - (iii) the Code on Pooled Retirement Funds;
 - (iv) the Code on Immigration-linked Investment Schemes;
 - (v) the SFC Code on MPF Products;
 - (vi) the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission;
 - (vii) the Fund Manager Code of Conduct;
 - (viii) the Corporate Finance Adviser Code of Conduct; and
 - (ix) any other prevailing rules and guidelines on other types of investment products regulated by the SFC such as paper gold schemes; and

- (g) the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited and the Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited.

(The list is for reference only and it is the responsibility of the users of this Code to ascertain the applicable and up-to-date legal and regulatory requirements.)

Deposit and Savings Facilities

2. Advertisements for deposit and savings facilities should comply with the following provisions:

- (a) for deposit and savings facilities offered by any licensed bank, any restricted licence bank or any deposit-taking company authorized under the Banking Ordinance (Cap. 155):
 - (i) the advertisement should not use any terms or expressions indicating that the deposits will be absolutely or completely secure or to the like effect;
 - (ii) the advertisement should not state or imply that the repayment of any deposits or the payment of any interest payable on deposits is guaranteed or secured unless it also states the nature and extent of the guarantee and the name of the guarantor, or the nature and extent of the security, as the case may be;
 - (iii) no reference should be made to the amount of the nominal or authorized capital of the institution; and
 - (iv) no reference should be made to the total assets of the institution or to the total deposits made with the institution unless at the same time a reference is made to the amounts of the paid up capital and reserves either separately or together; or
- (b) for invitations to make a deposit outside Hong Kong, the advertisement should comply with the requirements specified in the Fifth Schedule to the Banking Ordinance (Cap. 155).

Lending and Credit

3. Mortgage, other lending facilities and credit services offered by licensed banks, restricted licence banks and deposit-taking companies authorized under the Banking Ordinance (Cap. 155) may be advertised. Care should be taken to avoid the public being misled as to the terms of the loan services being advertised.

Review or Advice about the Stock Market or Investment Prospects

4. Subject to paragraphs 5 and 6 of this appendix or unless otherwise permitted (whether expressly or impliedly) under applicable law, no advertisement should contain any review of or advice about the stock market (including securities listed on the stock market), investment prospects, any investment advice or make any reference to specific securities, futures contracts or investment products.

Investment Products

5. Advertisements for investment products requiring authorization by the SFC, including but not limited to unit trusts, mutual funds, investment-linked insurance schemes, pooled retirement funds, Mandatory Provident Fund products and immigration-linked investment schemes, are not acceptable unless these advertisements are authorized by the SFC pursuant to section 105 of the Securities and Futures Ordinance (Cap. 571).

Regulated Activities

6. Advertisements relating to carrying on of any regulated activity (as defined in the Securities and Futures Ordinance (Cap. 571)) should comply with the relevant provisions of the Securities and Futures Ordinance (Cap. 571) (including but not limited to the requirement for the issuer to be licensed by the SFC).

Financial Publications

7. Subject to paragraphs 5 and 6 of this appendix or unless otherwise permitted (whether expressly or impliedly) under applicable law, advertisements for publications, including periodicals, books, teletext services and other forms of electronic publishing, on investments and other financial matters must make no recommendation on specific securities or investment products; advertisements for subscription services for such publications must be in general terms and make no reference to specific securities or investment products.

Estimates of the Proceeds of Insurance Policies

8. No numerical examples of the proceeds of insurance policies including but not limited to estimates of future bonus or dividend declarations on participating life insurance policies should be quoted in any advertisement.

**GENERIC CODE OF PRACTICE
ON TELEVISION PROGRAMME STANDARDS**

BROADCASTING AUTHORITY

9 SEPTEMBER 2005

Chapter 9 Impartiality and Fairness

GENERAL PRINCIPLE FOR ALL CATEGORIES OF SERVICES

1. News programmes should offer viewers an intelligent and informed account of issues that enables them to form their own views. The licensees should ensure that news is presented with accuracy and due impartiality. Impartiality does not require editorial staff to be unquestioning; nor is it necessary for all sides of an issue be devoted the same amount of time. But it requires reporting to be dispassionate and give viewers an even-handed account of events.

SPECIFIC APPLICATIONS FOR DIFFERENT CATEGORIES OF SERVICES

DOMESTIC FREE AND DOMESTIC PAY TELEVISION PROGRAMME SERVICES

Impartiality

General

2. For domestic free and domestic pay programme services, the licensees must ensure that due impartiality is preserved as respects news programmes and any factual programmes dealing with matters of public policy or controversial issues of public importance in Hong Kong (except personal view programmes which are dealt with separately under paragraph 17 below). Factual programmes are non-fiction programmes which are based on material facts. They can take the form of news, current affairs programmes, personal view programmes, documentaries and programmes adopting an investigative style of reporting.

3. Due impartiality requires the licensees to deal even-handedly when opposing points of view are presented in a programme. Balance should be sought through the presentation, as far as possible, of principal relevant viewpoints on matters of public importance. Programmes should not be slanted by the concealment of facts or by misleading emphasis. Every reasonable effort must be made to ensure that the factual content of programmes is accurate.

4. In achieving due impartiality, the term “due” is to be interpreted as meaning adequate or appropriate to the nature of the subject and the type of programme. Due impartiality does not mean that “balance” is required in the sense of equal time or an

equal number of lines in the script being devoted to each view, nor does it require absolute neutrality on every controversial issue. Judgement will always be called for by the licensees.

5. A programme host should encourage the widest possible airing of views. He/She should also be alert to the danger of unsubstantiated allegations being made by participants in live programmes. Where necessary, the programme host should correct the factual errors to the best of his/her knowledge.

Impartiality Over Time

6. Although it is desirable, it is not always possible for principal opposing viewpoints to be reflected in a single programme. Sometimes a series of programmes may be considered as a whole. At other times, a narrower range of views may be appropriate within individual programmes. This is an issue which calls for editorial judgement based on particular circumstances. In achieving impartiality over time, it is not always necessary to ensure that in a single programme all sides have an opportunity to speak.

News

7. Presentation of news should observe the following rules:
- (a) Morbid, sensational, or alarming details not essential to factual reporting should be avoided. News should be presented in such a manner as to avoid unnecessary alarm.
 - (b) Pictorial representation of news should be carefully selected to ensure fairness and should not be misleading or sensational.
 - (c) Commentary and analysis should be clearly distinguished from news.
 - (d) When the presence of television cameras provokes incidents that would not otherwise have occurred, news editors and producers should make every effort to eliminate “manufactured” incidents or to reveal them for what they are.
 - (e) Correction of factual errors should be made as soon as practicable after the original error, or at the end of the current programme or the beginning of a subsequent programme. In some circumstances it may be appropriate for a statement to appear in print.
 - (f) No bona fide news programmes comprising local or international news item may be sponsored. No advertising matter should be offered as news or included in the contents of a news programme or newsreel.

Potential Conflict of Interest of Programme Presenters

8. The licensee shall devise and institutionalise within three months from promulgation of the Code a mechanism whereby its presenters of news programmes and factual programmes dealing with matters of public policy or controversial issues of public importance in Hong Kong are required to disclose the existence of any commercial agreement, arrangement or understanding, whether committed to writing or not, that may call into question the fairness or impartiality of the programmes. The licensee must then exercise its editorial judgement and decide whether:

- (a) the relevant programme presenter(s) should refrain from taking part in discussion of issues over which he/she may have conflict of interest; or
- (b) a disclosure announcement of the existence of a relevant commercial agreement should be made at the time of broadcast of the programme material.

The licensee shall receive and consider any complaint from any member of the public with respect to the potential conflict of interest of its programmes. The licensee shall inform the complainant and the BA of the findings of its investigation and make the findings available for public inspection free of charge by, for example, posting them on its website. Paragraph 8 does not apply to acquired programmes or channels which are not produced by the licensee.

Fairness

General

9. The licensees have a responsibility to avoid unfairness to individuals or organisations featured in factual programmes, in particular through the use of inaccurate information or distortion. They should also avoid misleading the audience in a way which would be unfair to those featured in the programme.

Reporting of Court Cases

10. Programme items which are based on extracts of court proceedings or other matters of public record must be presented fairly and accurately. In particular the reporting of criminal cases for which proceedings have commenced must not be presented in such manner that would be likely to prejudice a fair trial, and the following should be avoided:

- (a) any pre-judgement of the issues in the case, in particular of the guilt or innocence of the accused;

- (b) any discussion of the merits or facts of the case which may prejudice the relevant legal proceedings;
- (c) any comment relating to the character or conduct of the accused; and
- (d) any comment or report which tends to impair the impartiality of the court.

Dramatised "Reconstructions"

11. Dramatised "reconstructions" in factual programmes which seek to reconstruct actual events should be carefully labelled as such, so that the fictional elements are not misleadingly presented as fact.

Interviews

12. Where proposed interviewees are unable or unwilling to accept an invitation to participate in a factual programme, references to the missing participants should be made in a detached and factual manner. Care should be taken to ensure that their views are not misrepresented.

13. Editing to shorten recorded interviews must not distort or misrepresent the known views of the interviewees.

14. Licensees should not misrepresent the views of interviewees by broadcasting a previously recorded interview and presenting it as the interviewees' current views. Viewers should be informed of the date the interviews were conducted where necessary.

Right of Reply

15. Licensees should take special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organizations. Licensees should take all reasonable care to satisfy themselves that all material facts are so far as possible fairly and accurately presented.

16. Where a factual programme reveals evidence of iniquity or incompetence, or contains a damaging critique of an individual or organization, those criticized should be given an appropriate and timely opportunity to respond.

Personal View Programmes

17. "Personal view programmes" are programmes in which the programme hosts and, sometimes, individual contributors put forward their own views. The following rules apply to all personal view programmes on matters of public policy or controversial issues of public importance in Hong Kong:

- (a) The nature of a personal view programme must be identified clearly at the start of the programme, for example, by an announcement in the following terms, “This programme only reflects the personal views of the programme host(s) and/or the individual contributor(s).”
- (b) Facts must be respected and the opinion expressed, however partial, should not rest upon false evidence.
- (c) A suitable opportunity for response to the programme should be provided.
- (d) Licensees should be mindful of the need for a sufficiently broad range of views to be expressed in any series of personal view programmes.

NON-DOMESTIC TELEVISION PROGRAMME SERVICES

18. There is no additional provisions specific to this category of television programme services apart from the general principles in paragraph 1.

OTHER LICENSABLE TELEVISION PROGRAMME SERVICES

Services Intended for Members of the General Public in HK

19. The licensee must comply with the rules set out in paragraphs 2 to 17 above.

Services Intended for Hotel Guests and Other Special Interest Groups

20. There is no additional provisions specific to this category of television programme services apart from the general principles in paragraph 1.

**GENERIC CODE OF PRACTICE ON
TELEVISION ADVERTISING STANDARDS**

BROADCASTING AUTHORITY

9 SEPTEMBER 2005

Chapter 3 General Advertising Standards

GENERAL PRINCIPLES FOR ALL CATEGORIES OF SERVICES

1. Television advertising should be legal, clean, honest and truthful.
2. The content, presentation and placement of all advertising material must comply with the Generic Code of Practice on Television Programme Standards.

SPECIFIC APPLICATIONS FOR DIFFERENT CATEGORIES OF SERVICES

DOMESTIC FREE, DOMESTIC PAY AND OTHER LICENSABLE TELEVISION PROGRAMME SERVICES

Jurisdiction

3. All advertising material must comply with the laws of Hong Kong.

Identification of Advertisements

4. Advertising material should be clearly identifiable as an advertisement. Distinctions must be maintained between advertisements and programmes.
5. Any advertisement that adopts a programme style (e.g. documentary, studio interview, cookery demonstration) should be carefully assessed to ensure that there is no risk of confusion with programme material. Where the style makes it not fully apparent that it is an advertisement, the advertisement must be flagged as such in a clearly legible manner at the beginning and at the end (e.g. by superimposed text). This rule does not apply to a service or part of a service that comprises of home shopping material where the nature of the service or part of the service is, in the opinion of the BA, clearly identified to viewers.
6. For *domestic pay television programme services and other licensable television programme services*, advertisements built into satellite feed services which are produced primarily for reception outside Hong Kong and included in a licensee's television programme service but which do not contribute to the advertising revenue of the licensee may deviate from the standards set out in paragraphs 4 and 5 of this chapter when compliance is not feasible without interrupting the licensee's television programme services.

Good Taste

7. Advertising matter should be presented with courtesy and good taste.

Disturbing material such as overly persistent repetition, and words and phrases implying emergency should be avoided. Every effort should be made to keep the advertisement in harmony with the content and general tone of the programme in which it appears.

Disparagement

8. Advertising matter should contain no claims that have the effect of disparaging competitors, competing products or services or other industries, professions, or institutions.

Truthful Presentation

9. No advertisements may contain any descriptions, claims or illustrations which expressly or by implication depart from truth or mislead about the product or service advertised or about its suitability for the purpose recommended. The licensee should have his responsibility under this paragraph discharged if he did not know and had no reason to suspect that the claims made were false or misleading and could not, with reasonable diligence, have ascertained that the claims were false or misleading. *(For more detailed rules relating to claims, please see Chapter 4 Factual and Best-selling Claims).*

Imitation

10. Advertisements which imitate or approximate unreasonably the name or advertising slogans of competitors to the knowledge of the licensee should not be permitted.

Appeal to Fear

11. Advertisements should not unduly play on fear.

Repetition of Advertisements

12. Deleted.

Acceptability of Advertising Matters

13. A licensee shall refuse the facilities of his station where he has good reason to doubt the integrity of the advertiser, the truth of the advertising representations, or the compliance of the advertiser with the spirit and purpose of all legal requirements that applies to the advertiser.

14. A licensee shall refuse to permit the use of advertising matter, or the advertising of products and services, which he has good reason to believe would be objectionable to a substantial and responsible section of the community. *(See also Chapter 5 Unacceptable Products or Services).*

Categories of Programme Carrying No Advertising

15. Advertisements must not be inserted in the course of:
 - (a) a religious service or other devotional programme; or
 - (b) school programmes within the Educational Television (ETV) time slot supplied by the Government as the BA may require to be included in the domestic free television programme service under the Broadcasting Ordinance (Cap. 562).

NON-DOMESTIC TELEVISION PROGRAMME SERVICES

16. The licensee should observe the laws and programme and advertising standards of the relevant authorities of the intended recipient countries and places.

Chapter 4 Factual and Best-selling Claims

DOMESTIC FREE, DOMESTIC PAY AND OTHER LICENSABLE TELEVISION PROGRAMME SERVICES

Claims to be Substantiated

1. All factual claims and best-selling claims should be capable of substantiation. Statements should not be used in respect of any products that they are “the best”, “the most successful”, “safest”, “quickest”, or containing any similar use of superlative adjectives unless the truthfulness of such statements is adequately substantiated.
2. Where a factual claim is substantiated by research or testing based on the advertiser’s own assessment or work done at his request, the source and date of the assessment or research should be indicated in the advertisement.
3. Best-selling claims are further subject to the following rules:-
 - (a) such claims should be substantiated by:
 - (i) independently audited sales figures; or
 - (ii) probability sample surveys which are recognised or endorsed by an industry body or accepted under the industry-wide standards of the relevant trade of the advertisers or are scientifically conducted to ensure that the findings are statistically significant, reliable and valid; and
 - (b) best-selling claims should not be used unless there is adequate and explicit specification (aural and/or visual) in the advertisement of the category of brand leadership, country, and the time period it covers e.g. “In 1992, Brand X is the No.1 selling _____ (product category) in Hong Kong”.
4. Superlatives like “most popular”, “most preferred”, “most favoured”, etc., when used in a manner which clearly suggests a number one sales position, should be subject to the same standards governing best-selling claims.

Misleadingness

5. No advertisement may misleadingly claim or imply that the product or service advertised, or any ingredient of it, has some special features or compositions which are incapable of being established.
6. References to the results of research surveys or tests relating to the product or service to be advertised should be presented carefully, so as not to mislead viewers.

Irrelevant data and scientific jargon must not be used to make claims appear to have a scientific basis they do not possess. Statistics of limited validity must not be presented in such a way as to make it appear that they are universally true.

7. Information conveyed must be accurate and not misleading by concealing or failing to make clear significant facts.

8. Visual and verbal presentations of advertisements indicating price, price comparisons or reductions or any pricing element must be accurate and must not be misleading by undue emphasis or distortion.

Superimposed Text

9. When information is included in the form of captions, either standing alone or superimposed onto other images, the text must be clearly legible and held long enough for the full message to be read by the average viewer on a standard domestic television set.

10. Special attention should be paid to the typeface, letter spacing, line spacing, background or other element of presentation including without limitation the interaction with the background which may render the text blurred or otherwise indistinct.

NON-DOMESTIC TELEVISION PROGRAMME SERVICES

11. The licensee should observe the laws and programme and advertising standards of the relevant authorities of the intended recipient countries and places.

Personal Products

General

22. Products of personal nature, such as female sanitary products, condoms, deodorants for the genital area, incontinence products, etc., should be presented with care and sensitivity. Depiction of such products must be in good taste and not overly graphic. Advertising of female sanitary products and condoms should be restrained and discreet.

Female Sanitary Products

23. The product itself should not be shown in a manner likely to cause offence and/or embarrassment to the viewers. Close-up shots on the crotch area are unacceptable.

Condoms

24. Advertisements for condoms should be factual only and should not contain any claim that the condom product is capable of giving full protection against the transmission of Acquired Immune-Deficiency Syndrome (AIDS).

25. For *domestic free television programme services*, except with the special permission of the BA, no advertisement for condoms should be shown between 4:00p.m. and 8:30p.m.

Educational Courses

26. The licensee must comply with section 86A of the Education Ordinance (Cap. 279), section 34 of the Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493) and section 3 of the Non-local Higher and Professional Education (Regulation) Rules (Cap. 493 sub.leg.).

Financial Advertising

Legal Responsibility

27. It is the responsibility of the licensee to ensure that advertisements comply with all the relevant legal and regulatory requirements including, but not limited to, the following:

- (a) the Companies Ordinance (Cap. 32);
- (b) the Banking Ordinance (Cap. 155);
- (c) the Insurance Companies Ordinance (Cap. 41);

- (d) the Securities and Futures Ordinance (Cap. 571);
- (e) the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
- (f) the Codes of the Securities and Futures Commission (SFC), including without limitation :
 - (i) the Code on Unit Trusts and Mutual Funds;
 - (ii) the Code on Investment-linked Assurance Schemes;
 - (iii) the Code on Pooled Retirement Funds;
 - (iv) the Code on Immigration-linked Investment Schemes;
 - (v) the SFC Code on MPF Products;
 - (vi) the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission;
 - (vii) the Fund Manager Code of Conduct;
 - (viii) the Corporate Finance Adviser Code of Conduct; and
 - (ix) any other prevailing rules and guidelines on other types of investment products regulated by the SFC such as paper gold schemes; and
- (g) the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited and the Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited.

(The list is for reference only and it is the responsibility of the users of this Code to ascertain the applicable and up-to-date legal and regulatory requirements.)

28. Deleted.

Deposit and Savings Facilities

29. Advertisements for deposit and savings facilities should comply with the following provisions:

- (a) for deposit and savings facilities offered by any licensed bank, any restricted licence bank or any deposit-taking company authorized under the Banking Ordinance (Cap. 155) :
 - (i) the advertisement should not use any terms or expressions indicating that the deposits will be absolutely or completely secure or to the like effect;