

- (c) 如是藉傳真傳送往某傳真號碼的，須視為在經一般傳真程序應可在該號碼接獲之時；或
- (d) 如是藉電子郵遞傳送往某電子郵件地址的，須視為在經一般電子郵遞程序應可在該地址接獲之時，
- 發出或送達該人士，並為他所知悉。

112. 附表 4 的修訂

- (1) 財政司司長可藉憲報公告修訂附表 4 第 1 部。
- (2) 證監會可在諮詢財政司司長後藉憲報公告修訂附表 4 第 2、3 及 4 部。

第 V 部

發牌及註冊

113. 第 V 部的釋義

- (1) 在本部中，除文意另有所指外——
- “主事人”(principal) 就持牌代表而言，指該代表所隸屬的持牌法團；
- “受規管職能”(regulated function) 就任何人以業務形式進行的某類受規管活動而言，指為該人(或代該人或藉與該人訂立的安排)執行的任何與該類活動有關的職能(通常由會計員、文員或出納員履行的工作除外)；
- “訂明方式”(prescribed manner) 指根據第 397 條訂立的規則所訂明的方式；
- “訂明費用”(prescribed fee) 指根據第 395 條訂立的規則所訂明的費用；
- “指明稱銜”(specified titles) 指附表 6 第 3 欄指明的稱銜；
- “執行董事”(executive director) 就持牌法團而言，指——
- (a) 積極參與；或
- (b) 負責直接監管，
- 該法團獲發牌經營的受規管活動的業務的該法團的董事。

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

112. Amendment of Schedule 4

- (1) The Financial Secretary may, by notice published in the Gazette, amend Part 1 of Schedule 4.
- (2) The Commission may, after consultation with the Financial Secretary, by notice published in the Gazette, amend Parts 2, 3 and 4 of Schedule 4.

PART V

LICENSING AND REGISTRATION

113. Interpretation of Part V

- (1) In this Part, unless the context otherwise requires—
- “executive director”(執行董事), in relation to a licensed corporation, means a director of the corporation who—
- (a) actively participates in; or
- (b) is responsible for directly supervising,
- the business of a regulated activity for which the corporation is licensed;
- “prescribed fee”(訂明費用) means a fee prescribed by rules made under section 395;
- “prescribed manner”(訂明方式) means such manner as is prescribed by rules made under section 397;
- “principal”(主事人), in relation to a licensed representative, means the licensed corporation to which the representative is accredited;
- “regulated function”(受規管職能), in relation to a regulated activity carried on as a business by any person, means any function performed for or on behalf of or by arrangement with the person relating to the regulated activity, other than work ordinarily performed by an accountant, clerk or cashier;
- “specified titles”(指明稱銜) means the titles specified in column 3 of Schedule 6.

本款而藉根據第 397 條訂立的規則訂明的較長限期內，將該等規則訂明的關於該廣告、邀請或文件的資料呈交證監會，即屬犯罪。

(2) 任何人犯第 (1) 款所訂罪行，一經定罪，可處第 5 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 \$5,000。

(3) 在第 (1) 款中，“獲授權代表”(authorized representative) 就任何廣告、邀請或文件的發出而言——

- (a) 如涉及附表 4 第 3 部第 11 項指明的但在香港以外地方成立為法團的全資附屬公司，指該公司所屬的上市法團；或
- (b) 如涉及多邊機構或在香港以外地方成立為法團的銀行，指居於香港並獲該機構或銀行(視屬何情況而定)授權就該項發出代它行事的人。

111. 將通知等送達核准人士

(1) 不論第 400 條有任何規定，由證監會或須由證監會為本條例的目的向核准人士發出或送達(不論實際如何稱述)的任何書面通知、決定或指示或其他文件(不論實際如何稱述)，就所有目的而言，只有在以下情況下，方可視為已妥為發出或送達——

- (a) 由專人交付他本人；或
- (b) 按為第 104(2)(b) 或 105(2)(b) 條(視屬何情況而定)的目的就該人士而告知證監會的詳情——
 - (i) 留在或郵寄往該等詳情所顯示的最後的地址；
 - (ii) 藉傳真傳送往該等詳情所顯示的最後的傳真號碼；或
 - (iii) 藉電子郵件遞送往該等詳情所顯示的最後的電子郵件地址。

(2) 凡任何通知、決定或指示或其他文件(不論實際如何稱述)根據第 (1)(b) 款視為已向核准人士妥為發出或送達，則就所有目的而言，該通知、決定或指示或文件——

- (a) 如是留在某地址的，須視為在如此留下之時；
- (b) 如是郵寄往某地址的，須視為在經一般郵遞程序應寄達之時；

agency or the bank (as the case may be), to submit to the Commission such information in respect of the advertisement, invitation or document as is prescribed by the rules.

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

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

- (a) in the case of a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4 but incorporated outside Hong Kong, the listed corporation of which it is the subsidiary; or
- (b) in the case of a multilateral agency or a bank incorporated outside Hong Kong, a person resident in Hong Kong who is authorized by the agency or the bank (as the case may be) to act on behalf of the agency or the bank (as the case may be) in respect of that issue.

111. Service of notices, etc. on approved persons

(1) Notwithstanding section 400, any written notice, decision or direction or other document (however described) to be, or required to be, issued or served (however described) to or on an approved person by the Commission for the purposes of this Ordinance shall for all purposes be regarded as duly issued or served only if—

- (a) it is delivered to him by hand; or
- (b) it is—
 - (i) left at, or sent by post to, the last address;
 - (ii) sent by facsimile transmission to the last facsimile number;
 - or
 - (iii) sent by electronic mail transmission to the last electronic mail address,

shown by the particulars of which the Commission is informed in respect of the approved person for the purposes of section 104(2)(b) or 105(2)(b) (as the case may be).

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

- (a) where it is left at an address, it is so left at that address;
- (b) where it is sent by post to an address, it would in the ordinary course of post be delivered to that address;

(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逾 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

- (2) 在本部中，凡提述進行某類受規管活動的牌照——
 - (a) 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
 - (b) 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

- (1) 除第 (2)、(5) 及 (6) 款另有規定外，任何人不得——
 - (a) 經營某類受規管活動的業務；或
 - (b) 顯示自己經營某類受規管活動的業務。
- (2) 第 (1) 款不適用於——
 - (a) 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；
 - (b) 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
 - (c) 根據第 95(2) 條獲認可進行有關類別的受規管活動的人。
- (3) 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——
 - (a) 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
 - (b) 顯示自己執行該項職能。
- (4) 第 (3) 款——
 - (a) 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；
 - (b) 不適用於符合以下說明的個人——
 - (i) 為註冊機構進行該機構獲註冊進行的受規管活動；及
 - (ii) 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
 - (c) 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—
 - (a) in relation to a licensed corporation, as a licence to carry on a business in the regulated activity; and
 - (b) in relation to a licensed representative, as a licence to perform for or on behalf of or by arrangement with a licensed corporation to which he is accredited any regulated function in relation to the regulated activity.
- (3) 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.

- (1) Subject to subsections (2), (5) and (6), no person shall—
 - (a) carry on a business in a regulated activity; or
 - (b) hold himself out as carrying on a business in a regulated activity.
- (2) Subsection (1) shall not apply to—
 - (a) a corporation licensed under section 116 or 117 for the regulated activity;
 - (b) an authorized financial institution registered under section 119 for the regulated activity; or
 - (c) a person authorized under section 95(2) for the regulated activity.
- (3) Without prejudice to subsection (1) but subject to subsection (4), no person shall—
 - (a) perform any regulated function in relation to a regulated activity carried on as a business; or
 - (b) hold himself out as performing such function.
- (4) Subsection (3) shall not apply to—
 - (a) a licensed representative who carries on for his principal a regulated activity for which the representative is licensed;
 - (b) an individual—
 - (i) who carries on for a registered institution a regulated activity for which the registered institution is registered; and
 - (ii) 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
 - (c) 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.

115. 第 114 條就在香港以外地方的行為或活動的適用

(1) 如——

- (a) 任何人(不論由他本人或由另一人代他)在香港或從香港以外地方向公眾積極推廣他提供的任何服務；及
- (b) 該等服務如在香港提供，便會構成某類受規管活動，

則——

- (i) 就第 114(1)(a) 條而言，提供該等被如此推廣的服務視為經營該類受規管活動的業務；
- (ii) 就第 114(1)(b) 條而言，該人推廣 (a) 段提述的服務，視為顯示自己經營該類受規管活動的業務；及
- (iii) 如提供該等服務涉及某人執行某項職能，而該項職能如在香港就某類受規管活動而執行，便會構成某項受規管職能，則在此範圍內，就第 114(3)(a) 條而言，該人執行該項職能，視為就該類受規管活動執行該項受規管職能。

(2) 如——

- (a) 任何人(不論由他本人或由另一人代他)在香港或從香港以外地方向公眾積極推廣他執行的任何職能；及
- (b) 該項職能如在香港就以業務形式進行的某類受規管活動而執行，便會構成某項受規管職能，

則——

- (i) 就第 114(3)(a) 條而言，執行該項被如此推廣的職能視為就該類受規管活動執行該項受規管職能；及
- (ii) 就第 114(3)(b) 條而言，該人推廣 (a) 段提述的職能，視為顯示自己就該類受規管活動執行該項受規管職能。

115. Application of section 114 in relation to conduct or activities outside Hong Kong

(1) If—

- (a) a person actively markets, whether by himself or another person on his behalf and whether in Hong Kong or from a place outside Hong Kong, to the public any services that he provides; and
- (b) such services, if provided in Hong Kong, would constitute a regulated activity,

then—

- (i) the provision of such services so marketed shall be regarded for the purposes of section 114(1)(a) as carrying on a business in that regulated activity;
- (ii) the person's marketing of such services as referred to in paragraph (a) shall be regarded for the purposes of section 114(1)(b) as holding himself out as carrying on a business in that regulated activity; and
- (iii) to the extent that the provision of such services involves the performance by a person of a function that, if performed in Hong Kong in relation to a regulated activity, would constitute a regulated function, the performance of such function by that person shall be regarded for the purposes of section 114(3)(a) as performance of that regulated function in relation to that regulated activity.

(2) If—

- (a) a person actively markets, whether by himself or another person on his behalf and whether in Hong Kong or from a place outside Hong Kong, to the public any function that he performs; and
- (b) such function, if performed in Hong Kong in relation to a regulated activity carried on as a business, would constitute a regulated function,

then—

- (i) the performance of such function so marketed shall be regarded for the purposes of section 114(3)(a) as performance of that regulated function in relation to that regulated activity; and
- (ii) the person's marketing of such function as referred to in paragraph (a) shall be regarded for the purposes of section 114(3)(b) as holding himself out as performing that regulated function in relation to that regulated activity.

116. 法團須獲發牌以進行受規管活動

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

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

(a) 申請人是——

(i) 一間公司；

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

(iii) 符合以下說明而非公司或海外公司的法團——

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

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

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

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

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

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

(a) 申請人是就該類活動獲發牌的適當人選；

(b) 申請人如獲發牌，將有能力遵守財政資源規則；及

(c) 申請人——

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

116. Corporations to be licensed for carrying on regulated activities

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity as the Commission may specify in the licence.

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

(a) the applicant is—

(i) a company;

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

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

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

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

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

(b) applications have been lodged under section 126 in respect of such persons as referred to in section 125(1)(a) and (b) for approval of them as the responsible officers of the applicant in relation to the regulated activity; and

(c) an application has been lodged under section 130(1) for approval of premises to be used by the applicant for keeping records or documents required under this Ordinance.

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

(a) it is a fit and proper person to be licensed for the regulated activity;

(b) it will be able, if licensed, to comply with the financial resources rules; and

(c) it—

(i) has lodged and maintains with the Commission such security in accordance with rules made under subsection (4); or

- (ii) 已按照根據第 (5) 款訂立的規則投購保險。
- (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.

117. 向法團批給短期牌照以進行受規管活動

(1) 證監會可應法團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（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) 申請人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的；
- (b) 申請人尋求就該類受規管活動獲發牌，純粹是為了在香港經營 (a) 段提述的業務；
- (c) 申請人根據 (a) 段提述的地方的主管當局或規管機構的授權（不論實際如何稱述）在該地方經營 (a) 段提述的業務，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；
 - (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；
- (d) 批給該牌照，不會導致在任何一段 24 個月的期間內，申請人根據第 (1) 款獲批給的各牌照的各別牌照期合計超過 6 個月；
- (e) 申請人是就該類受規管活動獲如此發牌的適當人選；
- (f) 申請人已提名至少一名個人以供證監會為第 (5)(a) 款的目的而核准；及
- (g) 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) 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。

117. Grant of temporary licences to corporations for carrying on regulated activities

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

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

- (a) it carries on a business principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute the regulated activity;
- (b) it seeks to be licensed for the regulated activity solely for carrying on in Hong Kong such business in the activity;
- (c) it carries on such business in the activity in the place referred to in paragraph (a) under an authorization (however described) by an authority or regulatory organization in that place which—
 - (i) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part;
 - (ii) confirms to the satisfaction of the Commission that the applicant has been so authorized; and
 - (iii) the Commission is satisfied is empowered under the law of that place to investigate, and, where applicable, to take disciplinary action for, the conduct of the applicant in Hong Kong;
- (d) the granting of the licence would not result in its being granted licences under subsection (1) for respective licence periods that in total exceed 6 months in any period of 24 months;
- (e) it is a fit and proper person to be so licensed for the regulated activity;
- (f) it has nominated at least one individual for approval by the Commission for the purposes of subsection (5)(a); and
- (g) 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) A licence granted under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the licensed corporation concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(4) 凡證監會根據第 (3) 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。

(5) 在不局限第 (3) 款的一般性的原則下，根據第 (1) 款為進行某類受規管活動而批給的牌照，須受以下條件規限——

(a) 就該類活動而言，須有至少一名個人——

(i) 由有關持牌法團提名，並獲證監會為本段的目的而核准；及

(ii) 可時刻監督該法團獲發牌進行的受規管活動的業務；及

(b) 該持牌法團在進行該類活動時不得持有任何客戶資產。

(6) 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。

118. 在某些情況下的發牌條件

(1) 在不局限第 116(6) 條的一般性的原則下，根據第 116(1) 條批給的牌照——

(a) 如是為進行某類受規管活動而批給的，則牌照須受以下條件規限——

(i) 持牌法團——

(A) 須就該類活動向證監會交存根據第 116(4) 條訂立的規則所規定的保證（不論是否附加於它已交存的任何保證），並將保證保持有效；或

(B) 已按照根據第 116(5) 條訂立的規則投購保險以代替交存（在適用情況下）上述保證及保持該項保證有效；及

(ii) 就該類活動而言，持牌法團須有至少一名負責人員可時刻監督該類活動的業務；

(b) 如是為進行第 3 類受規管活動而批給的，則牌照須受以下條件規限：就持牌法團與客戶之間的爭議而言，如是關於或觸及進行該類活動的任何事宜的，則在客戶要求下，持牌法團有責任按照根據第 (2) 款訂立的規則以仲裁方式解決該爭議；

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

(5) Without limiting the generality of subsection (3), it shall be a condition of a licence granted under subsection (1) for carrying on a regulated activity—

(a) that, in relation to the regulated activity, there is at least one individual who is—

(i) nominated by the licensed corporation and approved by the Commission for the purposes of this paragraph; and

(ii) available at all times to supervise the business of the regulated activity for which the corporation is licensed; and

(b) that the licensed corporation shall not hold any client assets in carrying on the regulated activity.

(6) 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.

118. Licensing conditions in certain cases

(1) Without limiting the generality of section 116(6), it shall be a condition of a licence granted under section 116(1) for carrying on—

(a) a regulated activity—

(i) that the licensed corporation—

(A) shall lodge (whether or not in addition to any security that it may have lodged) and maintain with the Commission such security in respect of that regulated activity as may be required by rules made under section 116(4); or

(B) is insured, in lieu of lodging (where applicable) and maintaining such security, in accordance with rules made under section 116(5); and

(ii) that, in relation to the regulated activity, there is at least one responsible officer of the licensed corporation who is available at all times to supervise the business of the regulated activity for which the corporation is licensed;

(b) Type 3 regulated activity, that in relation to any dispute between the licensed corporation and a client regarding or touching upon any matter concerning the carrying on of that regulated activity, the licensed corporation is obliged, if the client so requires, to have the dispute settled by arbitration in accordance with rules made under subsection (2);

- (c) 如是為進行第 7 類受規管活動而批給的，則牌照須受以下條件規限：如證監會行使其絕對酌情決定權藉書面通知提出要求，則持牌法團須在該通知指明的合理期間內，根據第 95(2) 條申請獲認可進行該類活動，而在該牌照有待根據第 195(2) 條撤銷前，該類活動須以該通知指明的方式營辦；
- (d) 如是為進行第 8 類受規管活動而批給的，則牌照須受以下條件規限——
- (i) 持牌法團不得經營證券保證金融資業務以外的業務，但屬必然附帶於經營該等業務的業務除外；及
 - (ii) 如持牌法團經營附表 5 第 3 部指明的一項或多於一項活動的業務，它須就該等業務遵守根據第 VI 部訂立並適用於它的規則的規定。
- (2) 證監會可為施行第 (1)(b) 款而訂立規則，就以下各項作出規定——
- (a) 仲裁小組的設立及職能以及有關事宜；
 - (b) 由財政司司長委任仲裁小組成員，包括主席及一名或多於一名副主席；
 - (c) 從仲裁小組中委出審裁小組，以聆訊持牌法團與其客戶之間的爭議，以及審裁小組的組成與成員組合；
 - (d) 爭議的一方支付訟費的法律責任及獲判訟費的權利，以及訟費的追討；
 - (e) 聆訊爭議的實務及程序；
 - (f) 證監會使用審裁小組的裁斷以行使該會根據任何有關條文獲授予的職能；
 - (g) 任何人根據該等規則行使任何酌情決定權。

119. 註冊機構

(1) 證監會可應任何認可財務機構以訂明方式提出的申請並在訂明費用獲繳付後，將申請人註冊，使申請人可進行一類或多於一類受規管活動（第 3 及 8 類受規管活動除外），該會並須在註冊後向申請人發給註冊證明書，指明該申請人獲註冊進行的受規管活動。

(2) 證監會須將任何根據第 (1) 款提出的申請轉交金融管理專員。

- (c) Type 7 regulated activity, that if the Commission in its absolute discretion requires by notice in writing, the licensed corporation shall apply, within such reasonable period as may be specified in the notice, for an authorization under section 95(2) for that regulated activity, and the regulated activity shall be operated in such manner as may be specified in the notice pending the revocation of the licence under section 195(2);
- (d) Type 8 regulated activity, that—
- (i) the licensed corporation shall carry on no business other than securities margin financing, except business that is necessarily incidental to the carrying on of such business; and
 - (ii) where the licensed corporation carries on a business in one or more of the activities specified in Part 3 of Schedule 5, it shall comply with the requirements of such rules made under Part VI as apply to it in relation to such business.
- (2) The Commission may make rules for the purposes of subsection (1)(b) that provide for—
- (a) the establishment and functions of an arbitration panel and relevant matters;
 - (b) the appointment by the Financial Secretary of members of the arbitration panel, including a chairman and one or more than one deputy chairman;
 - (c) the appointment from the arbitration panel of a tribunal to hear a dispute between a licensed corporation and its client and the constitution and composition of the tribunal;
 - (d) the liability or entitlement to costs of a party to a dispute and the recovery of costs;
 - (e) the practice and procedure in the hearing of a dispute;
 - (f) the Commission to use the findings of a tribunal for performing its functions under any of the relevant provisions;
 - (g) the exercise of any discretion by a person under the rules.

119. Registered institutions

(1) The Commission may, upon application by an authorized financial institution in the prescribed manner and payment of the prescribed fee, register the applicant for one or more than one regulated activity (other than Type 3 and Type 8 regulated activities) and shall, upon such registration, grant to the applicant a certificate of registration specifying the regulated activity for which it is registered.

(2) The Commission shall refer to the Monetary Authority any application made to it under subsection (1).

(3) 金融管理專員在收到根據第 (2) 款轉交的、要求就某類受規管活動獲註冊的申請後，須——

- (a) 考慮該申請；
- (b) 就應否批准該申請諮詢證監會；及
- (c) 通知證監會申請人是否令他信納申請人是就該類活動獲註冊的適當人選。

(4) 證監會在決定根據第 (1) 款將申請人註冊或拒絕根據第 (1) 款將申請人註冊時——

- (a) 須顧及金融管理專員依據第 (3)(c) 款給予該會的意見；及
- (b) 可完全或局部依賴該意見，以作出該決定。

(5) 根據第 (1) 款所作的註冊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註冊機構，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。

(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) 在不損害證監會在第 IX 部下的權力的原則下，凡某認可財務機構就第 7 類受規管活動獲註冊，在該機構根據第 95(2) 條獲認可提供自動化交易服務時，該項註冊須當作就該類活動而被撤銷。

(8) 在不局限第 (5) 款的一般性的原則下，根據第 (1) 款所作的註冊——

- (a) 如是就某類受規管活動所作的，則該項註冊須受以下條件規限——
 - (i) 就該類活動而言，註冊機構須有至少一名主管人員可時刻監督該類活動的業務；及
 - (ii) 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註冊機構就該類活動聘用的個人屬獲如此聘用的適當人選；
- (b) 如是就第 7 類受規管活動所作的，則該項註冊須受以下條件規限：如證監會行使其絕對酌情決定權藉書面通知提出要求，則註冊機構須在該通知指明的合理期間內，根據第 95(2) 條申請獲認可進行該類活動，而在

(3) Upon receiving an application for registration for a regulated activity referred to him under subsection (2), the Monetary Authority shall—

- (a) consider the application;
- (b) consult the Commission upon the merits of the application; and
- (c) advise the Commission whether he is satisfied by the applicant that the applicant is a fit and proper person to be registered for that regulated activity.

(4) In deciding whether to register or refuse to register an applicant under subsection (1), the Commission—

- (a) shall have regard to any advice given to it by the Monetary Authority pursuant to subsection (3)(c); and
- (b) may rely wholly or partly on that advice in making that decision.

(5) Any registration 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 registered institution concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

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

(7) Without prejudice to the Commission's powers under Part IX, the registration of an authorized financial institution for Type 7 regulated activity shall be deemed to be revoked in respect of that regulated activity upon the institution's being granted an authorization under section 95(2) to provide automated trading services.

(8) Without limiting the generality of subsection (5), it shall be a condition of any registration under subsection (1) for—

- (a) a regulated activity, that—
 - (i) in relation to the regulated activity, there is at least one executive officer of the registered institution who is available at all times to supervise the business of the regulated activity for which the institution is registered; and
 - (ii) any individual 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 is a fit and proper person to be so engaged;
- (b) Type 7 regulated activity, that if the Commission in its absolute discretion requires by notice in writing, the registered institution shall apply, within such reasonable period as may be specified in the notice, for an authorization under section 95(2) for that

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.

- (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,

以令他隸屬某一個根據第 116 條獲發牌的法團，則除非他令證監會信納該法團是第 121(2)(b)(i) 條提述的法團所屬的公司集團的成員，否則證監會須拒絕該申請。

**123. 持牌代表須將終止為其主事人
行事一事通知證監會等**

- (1) 如根據第 120(1) 或 (2) 或 121(1) 條獲發牌的任何個人終止以持牌代表身分為其主事人或代其主事人行事，則他即終止隸屬該主事人，而——
- (a) 該主事人須在該項終止發生後 7 個營業日內，將此事通知證監會；
 - (b) 該名個人須在該項終止發生後 7 個營業日內，將牌照交還證監會；及
 - (c) 如該名個人未有在該項終止發生後 180 日內申請將其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，則該牌照須當作在該項終止發生時被撤銷。
- (2) 任何人違反第 (1)(a) 款，即屬犯罪，一經定罪，可處第 6 級罰款。
- (3) 任何人無合理辯解而違反第 (1)(b) 款，即屬犯罪，一經定罪，可處第 6 級罰款。

124. 牌照的複本等

- (1) 在第 (2) 款的規限下，證監會可應持牌人或註冊機構以訂明方式提出的申請（申請理由須是申請人的牌照或註冊證明書遭遺失、污損或銷毀）並在訂明費用獲繳付後，向該人或該機構發出該牌照或註冊證明書（視屬何情況而定）的複本。
- (2) 根據第 (1) 款提出申請的持牌人或註冊機構須向證監會——
- (a) 呈交一份該人或該機構作出的法定聲明，述明申請理由，以及該個案所要求的其他詳情，以核實有關牌照或註冊證明書遭遺失、污損或銷毀（視屬何情況而定）一事；及
 - (b) 提交證監會就該申請而合理地要求的其他資料。

to a corporation licensed under section 116, the Commission shall refuse to grant the approval unless the applicant satisfies the Commission that the licensed corporation to which he seeks to be accredited is a member of the same group of companies as the corporation referred to in section 121(2)(b)(i).

**123. Commission to be notified, etc. if licensed
representative ceases to act for principal**

- (1) If an individual licensed under section 120(1) or (2) or 121(1) ceases to act for or on behalf of his principal as a licensed representative, he thereupon ceases to be accredited to the principal and—
- (a) the principal shall, within 7 business days after such cessation, notify the Commission of the cessation;
 - (b) the individual shall, within 7 business days after such cessation, return the licence to the Commission; and
 - (c) where the individual has not applied for transfer of his accreditation to another corporation licensed under section 116 or 117 (as the case may be) within 180 days after such cessation, the licence shall be deemed to have been revoked upon such cessation.
- (2) A person who contravenes subsection (1)(a) commits an offence and is liable on conviction to a fine at level 6.
- (3) A person who, without reasonable excuse, contravenes subsection (1)(b) commits an offence and is liable on conviction to a fine at level 6.

124. Duplicate licence, etc.

- (1) Subject to subsection (2), the Commission may, upon application in the prescribed manner and payment of the prescribed fee by a licensed person or a registered institution on the ground that his licence or certificate of registration is lost, defaced or destroyed, issue to the licensed person or the registered institution a duplicate of the licence or certificate of registration (as the case may be).
- (2) In support of an application under subsection (1), the licensed person or the registered institution shall—
- (a) submit to the Commission a statutory declaration made by the licensed person or the registered institution stating the ground of the application and such other particulars as the case may require in order to verify the loss, defacement or destruction (as the case may be) of the licence or certificate of registration; and
 - (b) furnish to the Commission such other information as the Commission may reasonably require in relation to the application.

125. 關於主管人員的規定

(1) 除非以下規定獲符合，否則根據第 116 條獲發牌的法團不得進行任何它獲發牌進行的受規管活動——

- (a) 該法團每名屬個人的執行董事均獲證監會就該類活動核准為該法團的負責人員；及
- (b) 有不少於 2 名個人獲證監會就該類活動核准為該法團的負責人員，而其中至少有 1 名為該法團的執行董事。

(2) 任何註冊機構除非已就委任主管人員符合《銀行業條例》(第 155 章) 第 71D 條的規定，而該等人員亦符合該條例第 71C 條 (包括與該條例第 71E 條一併理解的該條) 的規定，否則該機構不得進行該機構獲註冊進行的任何受規管活動。

(3) 任何持牌法團無合理辯解而違反第 (1) 款或任何註冊機構無合理辯解而違反第 (2) 款，該法團或機構 (視屬何情況而定) 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。

126. 負責人員的核准

(1) 證監會可應持牌代表以訂明方式提出的申請並在訂明費用獲繳付後，核准申請人成為他所隸屬的持牌法團的負責人員。

(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) 款核准他成為持牌法團的負責人員——

- (a) 他是獲如此核准的適當人選；及
- (b) 他在該法團內具有充分的權限。

(3) 根據第 (1) 款作出的核准須受證監會向有關的持牌法團或負責人員施加的合理條件規限，而證監會可隨時藉送達書面通知予該法團或人員，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。

125. Requirement for executive officers

(1) A corporation licensed under section 116 shall not carry on any regulated activity for which it is licensed unless—

- (a) every executive director of the licensed corporation who is an individual is approved by the Commission as a responsible officer of the corporation in relation to the regulated activity; and
- (b) not less than 2 individuals, at least one of whom shall be an executive director of the licensed corporation, are approved by the Commission as the responsible officers of the corporation in relation to the regulated activity.

(2) A registered institution shall not carry on any regulated activity for which it is registered unless it has complied with section 71D of the Banking Ordinance (Cap. 155) in respect of the appointment of executive officers and such executive officers are in compliance with section 71C of that Ordinance (including section 71C of that Ordinance as read with section 71E of that Ordinance).

(3) If a licensed corporation contravenes subsection (1) or a registered institution contravenes subsection (2), without reasonable excuse, the licensed corporation or registered institution (as the case may be) 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.

126. Approval of responsible officers

(1) The Commission may, upon application by a licensed representative in the prescribed manner and payment of the prescribed fee, approve the applicant as a responsible officer of the licensed corporation to which he is accredited.

(2) The Commission shall refuse to approve an applicant as a responsible officer of a licensed corporation under subsection (1) unless the applicant satisfies the Commission that—

- (a) he is a fit and proper person to be so approved; and
- (b) he has sufficient authority within the licensed corporation.

(3) An approval under subsection (1) shall be subject to such reasonable conditions as the Commission may impose on the licensed corporation and the responsible officer concerned, and the Commission may at any time, by notice in writing served on the licensed corporation or the responsible officer concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(4) 當有以下情況，對任何個人成為某持牌法團的負責人員的核准須當作被撤銷——

- (a) 該人不再以持牌代表身分為該法團或代該法團行事；或
- (b) 該人不再隸屬該法團。

127. 更改牌照或註冊證明書指明的受規管活動的類別

(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，藉增加或減少受規管活動的方式，更改申請人的牌照或註冊證明書所指明的受規管活動。

(2) 凡任何人申請藉增加受規管活動的方式更改其牌照或註冊證明書所指明的受規管活動，則就本部而言，該申請須視為就該類受規管活動而提出的牌照或註冊（視屬何情況而定）申請。

128. 申請人須提供資料

(1) 任何人如——

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

須向證監會提供該會合理地要求的資料，以令該會能考慮該申請。

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

(3) 證監會可訂立規則，就以下各項作出規定——

- (a) 申請人為令證監會能考慮其申請而須提供的資料；

(4) The approval of an individual as a responsible officer of a licensed corporation shall be deemed to be revoked if the individual—

- (a) ceases to act as a licensed representative for or on behalf of; or
 - (b) ceases to be accredited to,
- the licensed corporation.

127. Variation of regulated activity specified in licence or certificate of registration

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, vary the regulated activity specified in the applicant's licence or certificate of registration by adding to or reducing the regulated activity so specified.

(2) Where a person applies for variation of the regulated activity specified in his licence or certificate of registration by adding any regulated activity, such application shall, for the purposes of this Part, be regarded as an application for a licence or registration (as the case may be) in respect of that regulated activity.

128. Applicant to provide information

(1) A person who applies—

- (a) for a licence under section 116, 117, 120 or 121;
- (b) for registration under section 119;
- (c) for approval of accreditation or approval of transfer of accreditation to a principal, under section 122;
- (d) for approval to be a responsible officer under section 126;
- (e) for variation, under section 127, of the regulated activity for which the person is licensed or registered;
- (f) for approval of premises under section 130(1);
- (g) for approval to become or continue to be (as the case may be) a substantial shareholder under section 132;
- (h) for a modification or waiver under section 134; or
- (i) for any other matter requiring the approval of the Commission under this Part,

shall provide the Commission with such information as it may reasonably require to enable it to consider the application.

(2) In considering an application referred to in subsection (1), the Commission may have regard to any information in its possession whether provided by the applicant or not.

(3) The Commission may make rules providing for—

- (a) the information to be provided by an applicant to enable the Commission to consider his application;

- (b) 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士，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士；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 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.

(3) 任何持牌法團在未經證監會事先書面批准下，不得將任何處所用作存放關乎它獲發牌進行的受規管活動的紀錄或文件。

(4) 證監會在接獲申請後，須在合理地切實可行的範圍內盡快以書面將該會根據第 (1) 款作出的決定告知申請人。

131. 對大股東的限制等

(1) 任何人不得在未經證監會事先根據第 132(1)(a) 條核准的情況下成為或繼續作為根據第 116 條獲發牌的法團的大股東。

(2) 任何人違反第 (1) 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，並可就該人在未經證監會根據第 132(1)(b) 條核准的情況下繼續作為大股東的期間的每一日，另處罰款 \$5,000；或

(b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月，並可就該人在未經證監會根據第 132(1)(b) 條核准的情況下繼續作為大股東的期間的每一日，另處罰款 \$500。

(3) 被控犯第 (2) 款所訂罪行的人如證明——

(a) 他既不知道且即使盡了合理的努力亦不能確定有令他成為該大股東的作為或情況存在；及

(b) (如他其後察覺有上述作為或情況存在) 他已在合理地切實可行的範圍內盡快 (而無論如何須在他如此察覺後 3 個營業日內) 根據第 132(1)(b) 條申請核准繼續作為有關法團的大股東，

即可以此作為免責辯護。

(4) 如任何人憑藉——

(a) 股份的轉讓；

(b) 股份的發行；或

(c) 獲得發行的股份的權利的轉讓，

(3) A licensed corporation shall not, without the prior approval in writing of the Commission, use any premises for the keeping of records or documents relating to the carrying on of the regulated activity for which it is licensed.

(4) The Commission shall inform the applicant in writing of its decision under subsection (1) as soon as reasonably practicable after receipt of the application.

131. Restriction on substantial shareholding, etc.

(1) A person shall not become and continue to be a substantial shareholder of a corporation licensed under section 116 without first being approved by the Commission under section 132(1)(a).

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

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years, and to a further fine of \$5,000 for every day during which the person continues to be such substantial shareholder without the Commission's approval under section 132(1)(b); or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months, and to a further fine of \$500 for every day during which the person continues to be such substantial shareholder without the Commission's approval under section 132(1)(b).

(3) It is a defence for a person charged with an offence under subsection (2) to prove—

(a) that he did not know, and could not have by the exercise of reasonable diligence ascertained, the existence of the act or circumstances by virtue of which he became such a substantial shareholder; and

(b) where he subsequently became aware of such act or circumstances, that he applied under section 132(1)(b), as soon as reasonably practicable and in any event within 3 business days after he became so aware, for approval to continue to be a substantial shareholder of the corporation.

(4) If a person becomes a substantial shareholder of a corporation licensed under section 116 without the Commission's prior approval under section 132(1)(a) by virtue of—

(a) a transfer of shares;

(b) an issue of shares; or

(c) a transfer of the right to be issued with shares,

而在未經證監會事先根據第 132(1)(a) 條核准的情況下成為根據第 116 條獲發牌的法團的大股東，則在證監會根據第 132(1)(b) 條核准他繼續作為該法團的大股東之前，有關股份所賦予的投票權不得行使。

(5) 如任何人作出看來是行使根據第 (4) 款不得行使的投票權的作為，即屬犯罪——

- (a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 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。

(6) 被控犯第 (5) 款所訂罪行的人如證明他——

- (a) 並不知道；及
- (b) 即使盡了合理的努力亦不能知道，

根據第 (4) 款，他用意行使的投票權是不得行使的，即可以此作為免責辯護。

132. 核准成為或繼續作為大股東

(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，核准申請人——

- (a) 成為；或
- (b) 繼續作為，

(視屬何情況而定) 根據第 116 條獲發牌的法團的大股東。

(2) 除非申請人令證監會信納如申請一旦獲准，有關持牌法團會繼續是獲發牌的適當人選，否則證監會須拒絕核准申請人成為或繼續作為 (視屬何情況而定) 該法團的大股東。

(3) 根據第 (1)(a) 或 (b) 款給予的核准須受證監會向申請人及有關持牌法團施加的合理條件規限，而證監會可隨時藉送達書面通知予獲核准的大股東及該法團，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。

(4) 凡證監會根據第 (3) 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。

(5) 在不局限第 (3) 款的一般性的原則下，根據第 (1)(a) 或 (b) 款給予的核准須受以下條件規限：獲核准的大股東——

then, unless and until the Commission approves the person to continue to be a substantial shareholder of the corporation under section 132(1)(b), the voting rights conferred by the shares concerned are not exercisable.

(5) A person who purportedly exercises any voting right that is not exercisable by virtue of subsection (4) commits an offence and is liable—

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(6) It is a defence for a person charged with an offence under subsection (5) to prove that he—

- (a) did not know; and
- (b) could not have by the exercise of reasonable diligence known,

that the voting right which he purportedly exercised is by virtue of subsection (4) not exercisable.

132. Approval to become or continue to be substantial shareholder

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the applicant—

- (a) to become; or
- (b) to continue to be,

as the case may be, a substantial shareholder of a corporation licensed under section 116.

(2) The Commission shall refuse to approve an applicant to become or continue to be (as the case may be) a substantial shareholder of the licensed corporation concerned unless the applicant satisfies the Commission that the corporation will remain a fit and proper person to be licensed if the application is approved.

(3) An approval under subsection (1)(a) or (b) shall be subject to such reasonable conditions as the Commission may impose on the applicant and on the licensed corporation concerned, and the Commission may at any time, by notice in writing served on the approved substantial shareholder and the corporation, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

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

(5) Without limiting the generality of subsection (3), it shall be a condition of an approval under subsection (1)(a) or (b) that the approved substantial shareholder shall—

- (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）其業務地址、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。

133. 證監會發出指示的權力

- (1) 如任何人在未經證監會根據第 132(1)(a) 條事先核准的情況下成為大股東（不論該人是否已根據第 132(1)(b) 條申請核准繼續作為大股東，亦不論該人是否獲給予該項核准），證監會可藉書面通知指示有關持牌法團——
 - (a) 不得准許或默許該人參與該法團的業務的管理；
 - (b) 將該人或其有聯繫者（如有的話）在該法團的任何會議上所投的票當作無效；
 - (c) 再度召開上述會議，就該人已投票的事宜重新進行投票；及
 - (d) 採取該會在該通知指明的其他合理步驟。
- (2) 在不損害第 (1) 款的施行的原則下，如證監會拒絕批准根據第 132(1)(b) 條就繼續作為大股東而提出的申請，該會可藉書面通知指示申請人——
 - (a) 在該會要求的合理時間內，將該人藉以成為有關持牌法團的大股東的股份權益減低至他不再成為該法團的大股東的程度；及
 - (b) 採取該會在該通知指明的其他合理步驟。
- (3) 如任何人沒有遵從根據第 (1) 或 (2) 款發出的指示，證監會可藉原訴傳票或原訴動議，就該項不遵從向原訟法庭提出申請，而原訟法庭可查訊有關個案，如——
 - (a) 原訟法庭信納該人不遵從該指示是無合理辯解的，則原訟法庭可命令該人在原訟法庭指明的期間內遵從該指示；及

- (a) at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his business address, 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.

133. Commission's power to give directions

- (1) Where a person became a substantial shareholder without the Commission's prior approval under section 132(1)(a), whether or not he has applied under section 132(1)(b) for approval to continue to be such shareholder and regardless of whether such approval is granted or not, the Commission may by notice in writing direct the licensed corporation concerned—
 - (a) not to permit or acquiesce in the involvement of the person in the management of the business of the corporation;
 - (b) to deem void and of no effect any votes cast by the person and any of his associates (if any) at any meeting of the corporation;
 - (c) to reconvene any such meeting for voting anew on the business on which the votes were cast; and
 - (d) to take such other reasonable steps as it may specify in the notice.
- (2) Without prejudice to the operation of subsection (1), where the Commission refuses to approve an application to continue to be a substantial shareholder made under section 132(1)(b), it may by notice in writing direct the applicant—
 - (a) to reduce, within such reasonable time as the Commission may require, the interest in shares by virtue of which he became a substantial shareholder of the licensed corporation concerned to the extent that he is no longer a substantial shareholder of the corporation; and
 - (b) to take such other reasonable steps as the Commission may specify in the notice.
- (3) If a person fails to comply with any direction under subsection (1) or (2), the Commission may, by originating summons or originating motion, make an application to the Court of First Instance in respect of the failure, and the Court may inquire into the case and—
 - (a) if the Court is satisfied that there is no reasonable excuse for the person not to comply with the direction, order the person to comply with the direction within the period specified by the Court; and

(b) 原訟法庭信納該人是在無合理辯解的情況下沒有遵從該指示的，則原訟法庭可懲罰該人及明知而牽涉入該項不遵從的任何其他人，而懲罰的方式猶如該人及(如適用的話)該其他人犯藐視法庭罪一樣。

(4) 第(3)款所指的原訴傳票須採用《高等法院規則》(第4章，附屬法例)附錄A表格10。

134. 對規定作出修改或寬免

(1) 證監會可應——

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

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

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

(b) if the Court is satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.

(4) An originating summons under subsection (3) shall be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg.).

134. Modification or waiver of requirements

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee by—

- (a) a licensed corporation;
- (b) an applicant for a licence under section 116 or 117;
- (c) a registered institution;
- (d) an applicant for registration under section 119;
- (e) a licensed representative;
- (f) an applicant for a licence under section 120 or 121;
- (g) a responsible officer approved under section 126;
- (h) a substantial shareholder approved under section 132;
- (i) an applicant for approval under section 132 to become or continue to be (as the case may be) a substantial shareholder; or
- (j) an associated entity,

grant a modification or waiver, in relation to the applicant, in respect of any condition specified in section 118 or imposed under section 116, 117, 119, 120, 121, 126 or 132 or any of the requirements of the following—

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

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

(3) 除非申請人令證監會信納——

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

否則證監會須拒絕根據第(1)款作出該項修改或寬免。

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

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

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

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

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

(6) 就根據第(1)款應某人的申請作出的修改或寬免而言，證監會須——

- (a) 在作出該項修改或寬免時；

(2) The grant of a modification or waiver under subsection (1) shall be effected by a notice in writing served on the applicant specifying the period (if any) for which the modification or waiver is valid.

(3) The Commission shall refuse to grant a modification or waiver under subsection (1) unless it is satisfied by the applicant that to do so will not prejudice—

- (a) in the case of a modification or waiver granted in respect of a condition imposed under section 116, 117 or 119, the interests of any client of the applicant; or
- (b) in the case of a modification or waiver granted in respect of a condition specified in section 118 or imposed under section 120, 121, 126 or 132, or in respect of any requirement of a provision specified in subsection (1)(i) to (xiv), the interest of the investing public.

(4) A modification or waiver granted under subsection (1) to a person shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on—

- (a) the person;
- (b) where the person is an intermediary or an associated entity, an executive officer of the intermediary or the entity; or
- (c) where the modification or waiver is granted pursuant to an application made under subsection (1)(e), (f) or (g), the principal to which the person is accredited,

amend such modification or waiver, or amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(5) Subject to subsection (4), a modification or waiver granted under subsection (1) remains in force—

- (a) if a period is specified in the notice served under subsection (2) in respect of the modification or waiver, until the end of the period; or
- (b) if no such period is specified, until revoked by the Commission by notice in writing served on—
 - (i) the person;
 - (ii) where the person is an intermediary or an associated entity, an executive officer of the intermediary or the entity; or
 - (iii) where the modification or waiver is granted pursuant to an application made under subsection (1)(e), (f) or (g), the principal to which the person is accredited.

(6) In relation to a modification or waiver under subsection (1) to a person, the Commission shall—

- (a) on the grant of the modification or waiver;

- (b) 在根據第 (4) 款修訂該項修改或寬免、或修訂或撤銷該項修改或寬免的條件或施加任何新的條件時；或
- (c) 在根據第 (5)(b) 款撤銷該項修改或寬免時，
- (除在第 (7) 款規定的情況下外) 藉在憲報刊登的公告指明——
- 該人的姓名或名稱；
 - (a)、(b) 或 (c) 段 (視屬何情況而定) 提述的事情，及作出該事情的理
由；
 - 在作出該項修改或寬免時施加於該項修改或寬免的條件，或其後根據第
(4) 款修訂、撤銷或新施加的條件 (視屬何情況而定)；及
 - (如適用的話) 該項作出或修訂的有效期或所施加的條件的有效期。
- (7) 如申請人令證監會信納在遵守第 (6)(iii) 款的情況下指明任何條件會在不合理
的程度上損害該申請人的商業利益，證監會可在第 (6) 款提述的公告內包括以下項
目，以代替指明有關條件——
- 該會不指明有關條件的理由的簡述；及
 - 關於有關條件的、而證監會認為不會在不合理的程度上損害該申請人的
商業利益的適當資料。
- (8) 證監會可就某一類別的持牌人、註冊機構或有聯繫實體，藉訂立規則而就第
(1)(vi)、(vii)、(viii)、(ix)、(x) 或 (xi) 款提述的規則的任何規定，作出修改或寬免。
- (9) 除非證監會信納根據第 (8) 款訂立規則以作出該款提述的修改或寬免不會損
害投資大眾的利益，否則該會不得作出該項修改或寬免。
- (10) 證監會可在第 (8) 款提述的規則中，指明規限有關的修改或寬免的條件。該
等規則可規定沒有遵從該等條件的人屬犯罪，一經定罪，可處不超過第 6 級罰款。
- (11) 證監會可隨時藉訂立規則——
- 撤銷根據第 (8) 款作出的修改或寬免；或
 - 修訂、撤銷或增補規限該等修改或寬免的條件。
- (12) 證監會不得在沒有事先諮詢金融管理專員的情況下，就註冊機構或屬認可財
務機構的有聯繫實體而根據第 (1)、(4)、(8)、(10) 或 (11) 款行使其權力。

- (b) on its amendment or an amendment or revocation of its
conditions or the imposition of any new condition on it under
subsection (4); or
- (c) on its revocation under subsection (5)(b),
- by notice published in the Gazette specifying, subject to subsection (7)—
- the name of the person;
 - the event referred to in paragraph (a), (b) or (c) (as the case may
be) and the reasons for the event;
 - any condition imposed on the modification or waiver on its
grant, or the condition amended or revoked or newly imposed
subsequently under subsection (4) (as the case may be); and
 - (if applicable) the period for which the grant or amendment or
the condition so imposed is valid.
- (7) If the applicant satisfies the Commission that specifying any
condition in compliance with subsection (6)(iii) would prejudice, to an
unreasonable degree, the commercial interests of the applicant, the
Commission may, in lieu of specifying the condition, include in the notice
referred to in subsection (6)—
- a brief account of its reasons for not specifying the condition;
and
 - such appropriate information on the condition as the
Commission considers incapable of prejudicing, to an
unreasonable degree, the commercial interests of the applicant.
- (8) The Commission may by rules grant a modification or waiver, in
relation to a class of licensed persons or registered institutions or associated
entities, in respect of any of the requirements of the rules referred to in
subsection (1)(vi), (vii), (viii), (ix), (x) or (xi).
- (9) The Commission shall not make any rules under subsection (8) to
grant a modification or waiver referred to in that subsection unless the
Commission is satisfied that to do so will not prejudice the interest of the
investing public.
- (10) The Commission may specify in the rules referred to in subsection (8)
the conditions subject to which the modification or waiver is granted and the
rules may provide that a person who fails to comply with such a condition
commits an offence and is liable on conviction to a fine not exceeding level 6.
- (11) The Commission may at any time by rules—
- revoke a modification or waiver granted under subsection (8); or
 - amend, revoke or add to, any condition subject to which such
modification or waiver is granted.
- (12) The Commission shall not exercise its power under subsection (1),
(4), (8), (10) or (11) in relation to any registered institution or any associated
entity that is an authorized financial institution unless the Commission has
first consulted the Monetary Authority.

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

135. 持牌人及註冊機構須報告若干事情

(1) 持牌人或註冊機構如擬於某日終止進行他獲發牌或獲註冊進行的某類受規管活動，須在合理地切實可行的範圍內盡快以書面將此意向通知證監會及 (如屬註冊機構) 金融管理專員，而在任何情況下，該通知須在該日之前 7 個營業日或之前發出。

(2) 中介人如擬更改他擬用作進行他獲發牌或獲註冊進行的受規管活動的地址，須以書面給予證監會及 (如屬註冊機構) 金融管理專員不少於 7 個營業日的事先通知。

(3) 除第 (5) 款另有規定外，如任何人已根據本部任何條文向證監會提供任何資料，而該等資料有改變，則在為施行本款而藉根據第 397 條訂立的規則訂明的情況下，該人須在該項改變發生後 7 個營業日內，發出載有該項改變的詳盡描述的書面通知。

(4) 第 (3) 款提述的通知須向——

(a) (如有關資料是與根據本部任何條文提出的申請有關連的，而且證監會仍在考慮該申請) 證監會發出；或

(b) (在其他情況下) 證監會及 (如所提供的資料關乎註冊機構) 金融管理專員發出。

(5) 如所提供的資料是與根據本部任何條文提出的申請有關連的，而該申請已被拒絕或撤回，則第 (3) 款不再適用於該等資料。

(6) 凡任何人成為或終止擔任持牌法團的董事，則該人及該法團須在此事發生後 7 個營業日內，以書面將該人的姓名或名稱及地址，以及他所擔任或已停任 (視屬何情況而定) 的職位性質通知證監會。

(7) 任何人無合理辯解而違反第 (1)、(2)、(3) 或 (6) 款，即屬犯罪，一經定罪，可處第 5 級罰款。

(13) A person who fails to comply with a condition imposed under subsection (4) commits an offence and is liable on conviction to a fine at level 6.

135. Events to be reported by licensed persons and registered institutions

(1) A licensed person or registered institution who intends to cease to carry on any regulated activity for which he is licensed or registered shall notify the Commission and (in the case of a registered institution) the Monetary Authority in writing of such intended cessation as soon as reasonably practicable and in any event not later than 7 business days before such intended cessation.

(2) An intermediary shall give to the Commission and (in the case of a registered institution) the Monetary Authority at least 7 business days' advance notice in writing of any intended change of address at which it proposes to carry on the regulated activity for which it is licensed or registered.

(3) Subject to subsection (5), where a person has provided any information to the Commission under any provision of this Part and a change in the information occurs, then in such circumstances as are prescribed by rules made under section 397 for the purposes of this subsection, the person shall, within 7 business days of the change, give notice in writing of the change containing a full description of it.

(4) The notice referred to in subsection (3) shall be given to the following person or persons—

(a) (where the information has been provided in connection with an application under any provision of this Part and the Commission is still considering the application) the Commission; or

(b) (in other cases) the Commission and (if the information provided relates to a registered institution) the Monetary Authority.

(5) Where the information has been provided in connection with an application under any provision of this Part and the application has been refused or withdrawn, subsection (3) shall no longer apply in relation to the information.

(6) Where a person becomes or ceases to be a director of a licensed corporation, both the person and the corporation shall, within 7 business days thereafter, notify the Commission in writing of the name and address of the person and of the nature of the position which he occupies or has ceased to occupy (as the case may be).

(7) A person who, without reasonable excuse, contravenes subsection (1), (2), (3) or (6) commits an offence and is liable on conviction to a fine at level 5.

136. 證監會須備存持牌人及註冊機構紀錄冊

- (1) 證監會須以該會認為適當的格式備存一份持牌人及註冊機構紀錄冊。
- (2) 根據第 (1) 款備存的紀錄冊須就每個牌照或每項註冊而載有以下資料——
 - (a) 持牌人或註冊機構 (視屬何情況而定) 的姓名或名稱及業務地址；
 - (b) 牌照或註冊 (視屬何情況而定) 附有的而證監會認為適宜載入紀錄冊的條件；
 - (c) 就每名持牌代表而言，其主事人的名稱；
 - (d) 就持牌法團或註冊機構 (視屬何情況而定) 而言，其每名主管人員的姓名及業務地址；及
 - (e) 為施行本款而藉根據第 397 條訂立的規則訂明的其他詳情。
- (3) 紀錄冊可藉以下方式備存——
 - (a) 以文件形式；或
 - (b) 並非以文件形式記錄第 (2) 款所規定的資料，但如此記錄的該等資料須能以可閱讀形式重現。
- (4) 為使任何公眾人士能確定他是否正在就任何受規管活動的事宜或就與任何受規管活動有關連的事宜與持牌人或註冊機構有往來，以及為確定該人或該機構 (視屬何情況而定) 的牌照或註冊的詳情，紀錄冊須於任何合理時間提供予公眾查閱。
- (5) 在任何合理時間，公眾人士可——
 - (a) 查閱紀錄冊或 (如紀錄冊並非以文件形式備存的) 以可閱讀形式重現的紀錄冊的資料或其有關部分；及
 - (b) 在繳付訂明費用後，取得紀錄冊的任何記項或摘錄的副本。
- (6) 任何文件如看來是——
 - (a) 根據本條備存的紀錄冊的任何記項或摘錄的副本；及
 - (b) 經由證監會的獲授權人員核證為 (a) 段提述的記項或摘錄的真確副本；
 則須在任何法律程序中獲接納為其中內容的證據。

136. Commission to maintain register of licensed persons and registered institutions

- (1) The Commission shall maintain a register of licensed persons and registered institutions in such form as it considers appropriate.
- (2) The register maintained under subsection (1) shall contain in relation to each licence or registration—
 - (a) the name and business address of the licensed person or registered institution (as the case may be);
 - (b) such conditions of the licence or registration (as the case may be) as the Commission considers appropriate;
 - (c) in relation to each licensed representative, the name of his principal;
 - (d) in relation to the licensed corporation or registered institution (as the case may be) the name and business address of each of its executive officers; and
 - (e) such other particulars as are prescribed by rules made under section 397 for the purposes of this subsection.
- (3) The register may be maintained—
 - (a) in a documentary form; or
 - (b) by recording the information required under subsection (2) otherwise than in a documentary form, so long as the information is capable of being reproduced in a legible form.
- (4) For the purposes of enabling any member of the public to ascertain whether he is dealing with a licensed person or a registered institution in matters of or connected with any regulated activity and to ascertain the particulars of the licence or registration of such person or institution (as the case may be), the register shall be made available for public inspection at all reasonable times.
- (5) At all reasonable times, a member of the public may—
 - (a) inspect the register, or (where the register is maintained otherwise than in a documentary form) a reproduction of the information or the relevant part of it in a legible form; and
 - (b) obtain a copy of an entry in or extract of the register on payment of the prescribed fee.
- (6) A document purporting to be—
 - (a) a copy of an entry in or extract of the register maintained under this section; and
 - (b) certified by an authorized officer of the Commission as a true copy of the entry or extract referred to in paragraph (a),
 shall be admissible as evidence of its contents in any legal proceedings.

(7) 在不減損本條其他條文的原則下，證監會須另行安排將紀錄冊以聯機紀錄形式提供予公眾。

137. 持牌人及註冊機構的姓名或名稱的發表

(1) 證監會須至少每年一次在該會認為適當的時間及以該會認為適當的形式，發表每個持牌人及註冊機構的姓名或名稱及地址、該人或該機構獲發牌或獲註冊進行的受規管活動，以及該人或該機構的牌照或註冊所附有的而該會認為適宜發表的條件。

(2) 證監會如修訂根據第 136 條備存的紀錄冊，將某持牌人或註冊機構的姓名或名稱加入紀錄冊或從紀錄冊中刪除、更改某持牌人或註冊機構獲發牌或獲註冊進行的受規管活動，或更改某牌照或註冊所附有的任何條件，均須在作出修訂後一個月內發表該項修訂的詳情。

138. 年費及申報表

(1) 根據第 116 或 120(1) 條獲發牌的人或任何註冊機構須向證監會繳付為施行本款而藉根據第 395 條訂立的規則訂明的年費。

(2) 年費須於批給牌照或註冊證明書(視屬何情況而定)的日期之後每年的同月同日後一個月內繳付，或於證監會藉書面通知批准的其他日期繳付。

(3) 須繳付年費的人如不依照第(2)款的規定全數繳付年費，須向證監會繳付按以下方式計算的附加款項——

(a) 就到期繳付年費之日之後的首個月而言，金額為年費的 10% 或仍未繳付的部分年費的 10% (視屬何情況而定)；

(b) 如年費仍未繳付，就其後每個月而言，金額為年費的 20% 或仍未繳付的部分年費的 20% (視屬何情況而定)；

而在計算上述附加款項時，不足一個月須視作為一個月。

(4) 根據第 116 或 120(1) 條獲發牌的人須——

(a) 在發牌日期之後每年的同月同日後一個月內；或

(7) Without derogating from the other provisions of this section, the Commission shall, in addition, cause the register to be available to the public in the form of an on-line record.

137. Publication of names of licensed persons and registered institutions

(1) The Commission shall at least once in each year publish at such time and in such manner as it considers appropriate the name and address of each licensed person and registered institution, the regulated activities for which the person or institution is licensed or registered and such conditions of the licence or registration as the Commission considers appropriate.

(2) If the Commission amends the register maintained under section 136 by adding or removing the name of a licensed person or registered institution or varying the regulated activity for which a licensed person or registered institution is licensed or registered or any condition of a licence or registration, it shall publish particulars of the amendment within one month after making the amendment.

138. Annual fee and return

(1) A person licensed under section 116 or 120(1) or a registered institution shall pay to the Commission an annual fee prescribed by rules made under section 395 for the purposes of this subsection.

(2) The annual fee shall be payable within one month after each anniversary of the date of grant of the licence or certificate of registration (as the case may be), or on such other date as may be approved by the Commission by notice in writing.

(3) In default of full payment of the annual fee as required under subsection (2), the person shall pay to the Commission an additional sum calculated as follows—

(a) 10% of the fee or such part of the fee (as the case may be) that remains unpaid for the first month after the due date for its payment;

(b) 20% of the fee or such part of the fee (as the case may be) for each subsequent month when it remains unpaid, and in calculating the additional sum for the purposes of this subsection, any fraction of a month shall be treated as a month.

(4) A person licensed under section 116 or 120(1) shall submit an annual return to the Commission—

(a) within one month after each anniversary of the date on which the person is licensed; or

(b) 在證監會藉書面通知批准的其他日期或之前，向證監會呈交周年申報表，該申報表須載有為施行本款而藉根據第 397 條訂立的規則訂明的資料。

139. 禁止使用若干稱銜

(1) 除非以下規定獲符合，否則任何人不得採用或使用在附表 6 中與在第 2 欄中提述本款之處相對之處列出的任何指明稱銜——

- (a) 他就第 1 類受規管活動獲發牌或獲註冊；或
- (b) 他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人，而在採用或使用有關稱銜時他是以該身分行事的。

(2) 除非以下規定獲符合，否則任何人不得採用或使用在附表 6 中與在第 2 欄中提述本款之處相對之處列出的任何指明稱銜——

- (a) 他就第 2 類受規管活動獲發牌或獲註冊；或
- (b) 他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人，而在採用或使用有關稱銜時他是以該身分行事的。

(3) 除非以下規定獲符合，否則任何人不得採用或使用在附表 6 中與在第 2 欄中提述本款之處相對之處列出的任何指明稱銜——

- (a) 他就第 3 類受規管活動獲發牌；
- (b) 他是認可財務機構；或
- (c) 他受聘於認可財務機構，而在採用或使用有關稱銜時，他是為該機構在一項若非有附表 5 第 2 部中“槓桿式外匯交易”的定義的第 (xii) 段，便會構成該定義所指的槓桿式外匯交易的活動中行事的。

(4) 除非以下規定獲符合，否則任何人不得採用或使用在附表 6 中與在第 2 欄中提述本款之處相對之處列出的任何指明稱銜——

- (a) 他就第 4 類受規管活動獲發牌或獲註冊；或

(b) by such other date as may be approved by the Commission by notice in writing,
which return shall contain such information as is prescribed by rules made under section 397 for the purposes of this subsection.

139. Prohibition of use of certain titles

(1) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—

- (a) the person is licensed or registered for Type 1 regulated activity; or
- (b) his 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 a person registered for that regulated activity, while acting in that capacity.

(2) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—

- (a) the person is licensed or registered for Type 2 regulated activity; or
- (b) his 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 a person registered for that regulated activity, while acting in that capacity.

(3) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless the person—

- (a) is licensed for Type 3 regulated activity;
- (b) is an authorized financial institution; or
- (c) is engaged by an authorized financial institution, while acting for the institution in an activity that would have fallen within the meaning of the definition of “leveraged foreign exchange trading” in Part 2 of Schedule 5 but for paragraph (xii) of that definition.

(4) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—

- (a) the person is licensed or registered for Type 4 regulated activity; or

- (b) 他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 4 類受規管活動受聘於就該類活動獲註冊的人，而在採用或使用有關稱銜時他是以該身分行事的。
- (5) 除非以下規定獲符合，否則任何人不得採用或使用在附表 6 中與在第 2 欄中提述本款之處相對之處列出的任何指明稱銜——
- (a) 他就第 5 類受規管活動獲發牌或獲註冊；或
- (b) 他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 5 類受規管活動受聘於就該類活動獲註冊的人，而在採用或使用有關稱銜時他是以該身分行事的。
- (6) 除非以下規定獲符合，否則任何人不得採用或使用在附表 6 中與在第 2 欄中提述本款之處相對之處列出的任何指明稱銜——
- (a) 他就第 6 類受規管活動獲發牌或獲註冊；或
- (b) 他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 6 類受規管活動受聘於就該類活動獲註冊的人，而在採用或使用有關稱銜時他是以該身分行事的。
- (7) 除非以下規定獲符合，否則任何人不得採用或使用在附表 6 中與在第 2 欄中提述本款之處相對之處列出的任何指明稱銜——
- (a) 他就第 7 類受規管活動獲發牌或獲註冊；
- (b) 他根據第 95(2) 條獲認可提供自動化交易服務；
- (c) 他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 7 類受規管活動受聘於就該類活動獲註冊的人，而在採用或使用有關稱銜時他是以該身分行事的；或
- (d) 他是根據第 95(2) 條就該類活動獲認可的人的僱員，而在採用或使用有關稱銜時，他是為該人在該類活動中行事的。
- (8) 除非以下規定獲符合，否則任何人不得採用或使用在附表 6 中與在第 2 欄中提述本款之處相對之處列出的任何指明稱銜——
- (a) 他就第 8 類受規管活動獲發牌；

- (b) his 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 4 regulated activity by a person registered for that regulated activity, while acting in that capacity.
- (5) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—
- (a) the person is licensed or registered for Type 5 regulated activity; or
- (b) his 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 5 regulated activity by a person registered for that regulated activity, while acting in that capacity.
- (6) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—
- (a) the person is licensed or registered for Type 6 regulated activity; or
- (b) his 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 6 regulated activity by a person registered for that regulated activity, while acting in that capacity.
- (7) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—
- (a) the person is licensed or registered for Type 7 regulated activity;
- (b) the person is granted an authorization under section 95(2) to provide automated trading services;
- (c) his 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 7 regulated activity by a person registered for that regulated activity, while acting in that capacity; or
- (d) the person is an employee of a person authorized under section 95(2) to provide automated trading services, while acting for that person in that regulated activity.
- (8) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless the person—
- (a) is licensed for Type 8 regulated activity;

(b) 他是認可財務機構；或

(c) 他受聘於認可財務機構，而在採用或使用有關稱銜時，他是為該機構在一項若非有附表 5 第 2 部中“證券保證金融資”的定義的第 (v) 段，便會構成該定義所指的證券保證金融資的活動中行事的。

(9) 任何人不得採用或使用第 (1)、(2)、(3)、(4)、(5)、(6)、(7) 或 (8) 款提述的任何指明稱銜以外的，並顯示——

(a) 他是經營上述某款所提述的受規管活動的業務；或

(b) 他就以業務形式進行的上述某款所提述的受規管活動執行任何受規管職能，

的稱銜，但如該人符合該款某段的描述，則屬例外。

(10) 任何人違反第 (1)、(2)、(3)、(4)、(5)、(6)、(7)、(8) 或 (9) 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。

140. 程序規定

(1) 如證監會的初步意向是——

(a) 完全或局部拒絕根據本部提出的申請；

(b) 在批准有關申請時施加條件；或

(c) 修訂或撤銷以下項目的條件或就以下項目施加新的條件——

(i) 根據第 116、117、120 或 121 條批給的牌照，或根據第 119 條所作的註冊；

(ii) 根據第 122 條批准或轉移的隸屬關係；

(iii) 根據第 126 條就某人成為負責人員或根據第 132 條就某人成為或繼續作為（視屬何情況而定）大股東給予的核准；或

(iv) 根據第 134(1) 條作出的修改或寬免，

則證監會須在作出最終決定前——

(i) 將形成初步意向的理由告知申請人或有關的持牌法團、註冊機構、持牌代表、負責人員或獲核准的大股東（視屬何情況而定）；及

(ii) 給予該人合理的陳詞機會。

(b) is an authorized financial institution; or

(c) is engaged by an authorized financial institution, while acting for the institution in an activity that would have fallen within the meaning of the definition of “securities margin financing” in Part 2 of Schedule 5 but for paragraph (v) of that definition.

(9) A person shall not take or use any title, other than any specified title referred to in subsection (1), (2), (3), (4), (5), (6), (7) or (8), which suggests that—

(a) he carries on a business in any regulated activity referred to in any of those subsections; or

(b) he performs any regulated function in relation to a regulated activity referred to in any of those subsections which is carried on as a business,

unless he falls within the description specified in a paragraph of such of those subsections.

(10) A person who contravenes subsection (1), (2), (3), (4), (5), (6), (7), (8) or (9) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

140. Procedural requirements

(1) If the Commission forms a preliminary view to—

(a) refuse the whole or a part of an application made under this Part;

(b) impose conditions on approving an application; or

(c) amend or revoke the conditions of, or impose new conditions to—

(i) a licence granted under section 116, 117, 120 or 121, or any registration under section 119;

(ii) an accreditation approved or transferred under section 122;

(iii) an approval for a person to be a responsible officer under section 126 or to become or continue to be (as the case may be) a substantial shareholder under section 132; or

(iv) a modification or waiver granted under section 134(1),

then the Commission shall, before making its final decision—

(i) inform the applicant or the relevant licensed corporation, registered institution, licensed representative, responsible officer or approved substantial shareholder (as the case may be) of the ground for the preliminary view; and

(ii) give such person a reasonable opportunity of being heard.

(2) 當證監會作出最終決定時，該會須在合理地切實可行的範圍內盡快以書面將作出該決定的理由通知申請人或有關的持牌法團、註冊機構、持牌代表、負責人員或獲核准的大股東(視屬何情況而定)。

141. 將通知等送達持牌人

(1) 不論第 400 條有任何規定，為本條例的目的向持牌人或須向持牌人發出或送達(不論實際如何稱述)的任何書面通知、決定或指示或其他文件(不論實際如何稱述)，就所有目的而言，只有在以下情況下，方可視為已妥為發出或送達——

- (a) 該持牌人屬個人，而該通知、決定或指示或文件——
 - (i) 由專人交付他本人；或
 - (ii) (A) 留在或郵寄往他依據第 120(6) 或 121(4) 條(視屬何情況而定)提供予證監會的最後的住址；
 - (B) 藉傳真傳送往他如此提供的最後的傳真號碼；或
 - (C) 藉電子郵遞傳送往他如此提供的最後的電子郵件地址；或
- (b) 該持牌人屬法團，而該通知、決定或指示或文件——
 - (i) 由專人交付該法團的任何高級人員；或
 - (ii) (A) 留在或郵寄往它依據第 116、117、130(1)、135(2) 或 138(4) 條(視屬何情況而定)提供予證監會的最後的地址；
 - (B) 藉傳真傳送往它如此提供的最後的傳真號碼；或
 - (C) 藉電子郵遞傳送往它如此提供的最後的電子郵件地址。

(2) 凡任何通知、決定或指示或其他文件(不論實際如何稱述)根據第(1)(a)(ii)或(b)(ii)款視為已向持牌人妥為發出或送達，則就所有目的而言，該通知、決定或指示或文件——

- (a) 如是留在某地址的，須視為在如此留下之時；
- (b) 如是郵寄往某地址的，須視為在經一般郵遞程序應寄達之時；
- (c) 如是藉傳真傳送往某傳真號碼的，須視為在經一般傳真程序應可在該號碼接獲之時；或

(2) When the Commission makes a final decision, it shall, as soon as reasonably practicable, notify the applicant or the relevant licensed corporation, registered institution, licensed representative, responsible officer or approved substantial shareholder (as the case may be) in writing of its decision and the reasons for making such decision.

141. Service of notices, etc. on licensed persons

(1) Notwithstanding section 400, any written notice, decision or direction or other document (however described) to be, or required to be, issued or served (however described) to or on a licensed person for the purposes of this Ordinance shall for all purposes be regarded as duly issued or served only if—

- (a) in the case of an individual, it is—
 - (i) delivered to him by hand; or
 - (ii) (A) left at, or sent by post to, the last residential address;
 - (B) sent by facsimile transmission to the last facsimile number; or
 - (C) sent by electronic mail transmission to the last electronic mail address, provided by the person to the Commission pursuant to section 120(6) or 121(4) (as the case may be); or
- (b) in the case of a corporation, it is—
 - (i) delivered to any officer of the corporation by hand; or
 - (ii) (A) left at, or sent by post to, the last address;
 - (B) sent by facsimile transmission to the last facsimile number; or
 - (C) sent by electronic mail transmission to the last electronic mail address, provided by the corporation to the Commission pursuant to section 116, 117, 130(1), 135(2) or 138(4) (as the case may be).

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

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

(d) 如是藉電子郵遞傳送往某電子郵件地址的，須視為在經一般電子郵遞程序應可在該地址接獲之時，發出或送達該持牌人，並為他所知悉。

142. 附表 5 的修訂

財政司司長可藉憲報公告修訂附表 5。

143. 附表 6 的修訂

證監會可藉憲報公告修訂附表 6。

第 VI 部

關乎中介人的資本規定、客戶資產、紀錄及審計

第 1 分部——釋義

144. 第 VI 部的釋義

在本部中，除文意另有所指外——
“指明數額規定”(specified amount requirements) 指依據第 145(2)(a)(i) 條在財政資源規則中指明的規定。

第 2 分部——資本規定

145. 持牌法團的財政資源

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

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

(a) 規定持牌法團按照以下的規定維持財政資源——

(d) where it is sent by electronic mail transmission to an electronic mail address, it would in the ordinary course of transmission by electronic mail be received at that address.

142. Amendment of Schedule 5

The Financial Secretary may, by notice published in the Gazette, amend Schedule 5.

143. Amendment of Schedule 6

The Commission may, by notice published in the Gazette, amend Schedule 6.

PART VI

CAPITAL REQUIREMENTS, CLIENT ASSETS,
RECORDS AND AUDIT RELATING
TO INTERMEDIARIES

Division 1—Interpretation

144. Interpretation of Part VI

In this Part, unless the context otherwise requires—
“specified amount requirements” (指明數額規定) means the requirements specified in the financial resources rules pursuant to section 145(2)(a)(i).

Division 2—Capital requirements

145. Financial resources of licensed corporations

(1) The Commission may, after consultation with the Financial Secretary, make rules requiring licensed corporations to maintain such financial resources as are specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—

(a) require licensed corporations to maintain financial resources in accordance with—

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

146. 沒有遵守財政資源規則

(1) 如任何持牌法團察覺本身無能力按照適用於它的指明數額規定維持財政資源，或察覺本身無能力確定它是否如此維持財政資源，則該法團須——

- (i) specified requirements as to the amount in which they are to be maintained; and
- (ii) any other specified requirements;
- (b) specify the assets, liabilities and other matters to be taken into account under the rules to determine the amount of the financial resources of licensed corporations for the purposes of the rules and the extent to which, and the manner in which, they are to be taken into account for that purpose;
- (c) provide for the different treatment of the assets, liabilities and other matters for the purposes of the rules according to whether or not they are approved by the Commission for that purpose;
- (d) provide that the rules, or any of the provisions of the rules, do not apply to licensed corporations which maintain financial resources, in Hong Kong or elsewhere, in accordance with an authorization of an authority, in Hong Kong or elsewhere, which in the opinion of the Commission performs a function which involves the imposition of requirements relating to financial resources of persons carrying on activities similar to any regulated activity for which a licensed person may be licensed, or apply to such licensed corporations with specified modifications or only in specified circumstances;
- (e) provide for the grant of approvals for specified purposes and for the amendment or revocation of such approvals, and for the publication of such approvals and of any amendment or revocation of such approvals in the specified manner;
- (f) require licensed corporations to submit to the Commission—
 - (i) at specified intervals, returns relating to their financial resources and trading activities; and
 - (ii) notice in writing of specified circumstances relating to their financial resources and trading activities;
- (g) require licensed corporations to submit returns to the Commission in response to a request by the Commission for information relating to their financial resources and trading activities;
- (h) provide for any other matter relating to financial resources of licensed corporations.

146. Failure to comply with financial resources rules

(1) If a licensed corporation becomes aware of its inability to maintain, or to ascertain whether it maintains, financial resources in accordance with the specified amount requirements that apply to it, it shall—

- (a) 在合理地切實可行的範圍內盡快以書面將此事通知證監會；及
- (b) 除第 (2) 款另有規定外，立即停止進行它獲發牌進行的受規管活動，但為完成證監會所准許的交易而進行的活動則除外。
- (2) 證監會如認為適當，可准許任何根據第 (1)(a) 款給予通知的持牌法團在該會以口頭或書面通知施加的條件的規限下，進行該法團獲發牌進行的受規管活動。
- (3) 如任何持牌法團察覺本身無能力遵從財政資源規則中適用於它的全部或任何規定（指明數額規定除外），或察覺本身無能力確定它是否遵從該等規定，則該法團須在隨後一個營業日內，以書面將此事通知證監會。
- (4) 在不局限財政資源規則及根據第 151 條訂立的規則的一般性的原則下，財政資源規則中的任何規定所適用的持牌法團須——
 - (a) 備存紀錄，而該等紀錄的詳盡程度須足以令人輕易確定該等規定是否全部獲得遵從；及
 - (b) 在證監會藉送達書面通知予該法團，要求提供該等紀錄的情況下，在該通知送達後 5 個營業日內向證監會提供該等紀錄。
- (5) 在不損害第 194 及 195 條的原則下，如證監會合理地相信任何持牌法團無能力按照適用於它的指明數額規定維持財政資源，或無能力確定本身是否如此維持財政資源，則不論該法團是否已根據第 (1)(a) 款給予通知，該會均可——
 - (a) 藉送達予該法團的書面通知，就該法團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；或
 - (b) 准許該法團在證監會藉口頭或書面通知施加的條件的規限下，進行它獲發牌進行的受規管活動。
- (6) 凡證監會藉給予任何持牌法團書面通知而依據第 (2) 或 (5)(b) 款施加任何條件，該會可藉給予該法團口頭或另一書面通知而按該另一通知指明的方式，修訂任何該等條件，而凡任何條件被如此修訂——

- (a) as soon as reasonably practicable notify the Commission by notice in writing of that fact; and
- (b) subject to subsection (2), immediately cease carrying on any regulated activity for which it is licensed, otherwise than for the purpose of completing such transactions as the Commission may permit.
- (2) Where the Commission considers appropriate, the Commission may permit a licensed corporation which gives notice to the Commission under subsection (1)(a) to carry on any regulated activity for which it is licensed, subject to such conditions as may be imposed by the Commission by notice given to it, whether orally or in writing.
- (3) If a licensed corporation becomes aware of its inability to comply with, or to ascertain whether it complies with, all or any of the requirements of the financial resources rules that apply to it, other than the specified amount requirements, it shall within one business day thereafter notify the Commission by notice in writing of that fact.
- (4) Without limiting the generality of the financial resources rules and the rules that may be made under section 151, a licensed corporation to which any of the requirements of the financial resources rules apply shall—
 - (a) keep its records in sufficient detail to establish readily whether all of such requirements are being complied with; and
 - (b) where the Commission by notice in writing served on it requires it to do so, make its records available to the Commission within 5 business days after the service of the notice.
- (5) Without prejudice to sections 194 and 195, where the Commission reasonably believes that a licensed corporation is unable to maintain, or to ascertain whether it maintains, financial resources in accordance with the specified amount requirements that apply to it, the Commission may, whether or not notice has been given under subsection (1)(a)—
 - (a) by notice in writing served on the licensed corporation suspend the licensed corporation's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is licensed for such period or until the occurrence of such event as the Commission may specify; or
 - (b) permit the licensed corporation to carry on any regulated activity for which it is licensed, subject to such conditions as may be imposed by the Commission by notice given to it, whether orally or in writing.
- (6) Where any conditions are imposed pursuant to subsection (2) or (5)(b) by notice given to a licensed corporation in writing, the Commission may amend any of the conditions in such manner as may be specified by the Commission, by notice given to the licensed corporation, whether orally or in writing, and where any of the conditions are so amended—

- (a) 該等條件須按修訂後的內容而具有效力；及
 - (b) 如修訂是藉書面通知作出的，則本款的條文在作出必要的變通後，適用於該等經修訂的條件，猶如該等條件是依據第 (2) 或 (5)(b) 款 (視屬何情況而定) 施加的一樣。
- (7) 凡證監會藉給予任何持牌法團口頭通知而依據第 (2) 或 (5)(b) 款施加任何條件或根據第 (6) 款修訂任何條件，該會須在合理地切實可行的範圍內盡快另行給予該法團書面通知，以確認所施加的條件或經修訂的條件 (視屬何情況而定)；該會亦可在該書面通知中指明對該等條件作出的修訂 (如有的話)，而凡任何條件在任何修訂的規限下獲確認——
- (a) 該等條件須按修訂後的內容而具有效力；及
 - (b) 第 (6) 款在作出必要的變通後，適用於該等經修訂的條件，猶如該等條件是依據第 (2) 或 (5)(b) 款 (視屬何情況而定) 施加的一樣。
- (8) 如某法團已在就證監會依據第 (2) 或 (5)(b) 款施加任何條件或根據第 (6) 款修訂任何條件而依據第 (12) 款作出的陳詞中，提出證監會只可藉給予該法團書面通知而施加或修訂 (視屬何情況而定) 該等條件的要求，則不論本條有任何規定，證監會均不得藉給予該法團口頭通知而施加或修訂 (視屬何情況而定) 該等條件。
- (9) 證監會根據第 (5)(a) 款作出的暫時吊銷牌照，在該會就該項暫時吊銷而依據該款送達通知時或在該通知指明的時間 (兩者以較遲者為準) 生效。
- (10) 證監會依據第 (2) 或 (5)(b) 款施加的任何條件，或根據或依據第 (6) 或 (7) 款作出的修訂，在該會就該項施加或修訂而依據第 (2)、(5)(b)、(6) 或 (7) 款 (視屬何情況而定) 給予通知時或在該通知指明的時間 (兩者以較遲者為準) 生效。
- (11) 如任何牌照根據第 (5)(a) 款被暫時吊銷，則第 200(1)、201(2) 及 (5)、202 及 203 條在作出必要的變通後，適用於該項暫時吊銷，猶如該項暫時吊銷是根據第 194 或 195 條作出的一樣。
- (12) 不論本條有任何規定，除非證監會已給予有關持牌法團合理的陳詞機會，否則不得就該法團而行使該會在第 (1)(b)、(2)、(4)(b)、(5)、(6)、(7)、(9) 或 (10) 款下的任何權力。

- (a) such conditions shall have effect subject to the amendment accordingly; and
 - (b) where the conditions are amended by notice in writing, this subsection shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (2) or (5)(b) (as the case may be).
- (7) Where any conditions are imposed pursuant to subsection (2) or (5)(b), or amended under subsection (6), by notice given to a licensed corporation otherwise than in writing, the Commission shall as soon as reasonably practicable give the licensed corporation a further notice in writing to confirm the conditions imposed or the conditions as amended (as the case may be), subject to such amendment (if any) in respect of the conditions as it may specify in the notice, and where any conditions are so confirmed subject to any amendment—
- (a) the conditions shall have effect subject to the amendment accordingly; and
 - (b) subsection (6) shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (2) or (5)(b) (as the case may be).
- (8) Notwithstanding anything in this section, the Commission shall not impose any conditions pursuant to subsection (2) or (5)(b), or amend any conditions under subsection (6), by notice given to a licensed corporation otherwise than in writing if the licensed corporation has on the occasion of being heard pursuant to subsection (12) in respect of the imposition or amendment (as the case may be) made a request to the Commission that the conditions shall only be so imposed, or amended, by notice given to it in writing.
- (9) The suspension of a licence under subsection (5)(a) takes effect at the time when notice is served in respect of it pursuant to that subsection or at the time specified in the notice, whichever is the later.
- (10) The imposition of any conditions pursuant to subsection (2) or (5)(b), or the amendment of any conditions under or pursuant to subsection (6) or (7), takes effect at the time when notice is given in respect of it pursuant to such subsection or at the time specified in the notice, whichever is the later.
- (11) Where a licence of a licensed corporation is suspended under subsection (5)(a), sections 200(1), 201(2) and (5), 202 and 203 shall apply, with necessary modifications, in relation to the suspension as if it were a suspension under section 194 or 195.
- (12) Notwithstanding anything in this section, the Commission shall not exercise any power under subsection (1)(b), (2), (4)(b), (5), (6), (7), (9) or (10) in respect of a licensed corporation unless the Commission has given the licensed corporation a reasonable opportunity of being heard.

- (13) 任何持牌法團違反第(1)(a)或(b)款，即屬犯罪——
- 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 \$100,000；或
 - 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 \$10,000。
- (14) 任何持牌法團違反依據第(2)或(5)(b)款施加的任何條件，或根據或依據第(6)或(7)款修訂的任何條件，即屬犯罪——
- 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 \$100,000；或
 - 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 \$10,000。
- (15) 任何持牌法團無合理辯解而違反第(3)款，即屬犯罪——
- 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或
 - 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (16) 任何持牌法團違反第(4)款，即屬犯罪——
- 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
 - 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (17) 財政資源規則可規定如任何持牌法團無合理辯解而沒有遵守財政資源規則中適用於它的任何指明條文(施加任何指明數額規定的條文除外)，即屬犯罪——
- 一經循公訴程序定罪，可處不超過罰款 \$200,000 及監禁 1 年的指明罰則；
 - 一經循簡易程序定罪，可處不超過第 5 級罰款及監禁 6 個月的指明罰則。

- (13) A licensed corporation which contravenes subsection (1)(a) or (b) commits an offence and is liable—
- on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or
 - on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.
- (14) A licensed corporation which contravenes a condition imposed pursuant to subsection (2) or (5)(b), or as amended under or pursuant to subsection (6) or (7), commits an offence and is liable—
- on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or
 - on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.
- (15) A licensed corporation which, without reasonable excuse, contravenes subsection (3) commits an offence and is liable—
- on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
 - on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (16) A licensed corporation which contravenes subsection (4) commits an offence and is liable—
- on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (17) The financial resources rules may provide that a licensed corporation which, without reasonable excuse, contravenes any specified provision of the financial resources rules that applies to it, other than that imposing any of the specified amount requirements, commits an offence and is liable to a specified penalty not exceeding—
- on conviction on indictment a fine of \$200,000 and a term of imprisonment of 1 year;
 - on summary conviction a fine at level 5 and a term of imprisonment of 6 months.

(18) 任何持牌法團不得僅以遵從第 (3) 款可能會導致它入罪為理由，而獲豁免遵從該款。

147. 監察持牌法團是否遵守財政資源規則

(1) 證監會可隨時藉送達書面通知予持牌法團的主管人員，要求該法團令該會信納該法團有遵從所有適用於它的財政資源規則的規定。

(2) 在不局限第 (1) 款的一般性的原則下，為確定某持牌法團是否有遵從所有適用於它的財政資源規則的規定，證監會及根據第 (12) 款獲授權的人可行使第 162 條所提述的核數師的任何權力。

(3) 在不損害第 194 及 195 條的原則下，如任何持牌法團在證監會根據第 (1) 款提出要求時，沒有令該會信納該法團有按照適用於它的指明數額規定維持財政資源，則該會可——

(a) 藉送達予該法團的書面通知，就該法團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；或

(b) 准許該法團在證監會藉口頭或書面通知施加的條件的規限下，進行它獲發牌進行的受規管活動。

(4) 凡證監會藉給予任何持牌法團書面通知而依據第 (3)(b) 款施加任何條件，該會可藉給予該法團口頭或另一書面通知而按該另一通知指明的方式，修訂任何該等條件，而凡任何條件被如此修訂——

(a) 該等條件須按修訂後的內容而具有效力；及

(b) 如修訂是藉書面通知作出的，則本款的條文在作出必要的變通後，適用於該等經修訂的條件，猶如該等條件是依據第 (3)(b) 款施加的一樣。

(18) A licensed corporation is not excused from complying with subsection (3) only on the ground that to do so might tend to incriminate it.

147. Monitoring compliance with financial resources rules

(1) The Commission may at any time, by notice in writing served on an executive officer of a licensed corporation, require the licensed corporation to satisfy the Commission that it complies with all of the requirements of the financial resources rules that apply to it.

(2) Without limiting the generality of subsection (1), the Commission and any person authorized by the Commission under subsection (12) may exercise any of the powers of an auditor referred to in section 162 for the purpose of ascertaining whether a licensed corporation complies with all of the requirements of the financial resources rules that apply to it.

(3) Without prejudice to sections 194 and 195, where a licensed corporation, upon being required to do so under subsection (1), fails to satisfy the Commission that it maintains financial resources in accordance with the specified amount requirements that apply to it, the Commission may—

(a) by notice in writing served on the licensed corporation suspend the licensed corporation's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is licensed for such period or until the occurrence of such event as the Commission may specify; or

(b) permit the licensed corporation to carry on any regulated activity for which it is licensed, subject to such conditions as may be imposed by the Commission by notice given to it, whether orally or in writing.

(4) Where any conditions are imposed pursuant to subsection (3)(b) by notice given to a licensed corporation in writing, the Commission may amend any of the conditions in such manner as may be specified by the Commission, by notice given to the licensed corporation, whether orally or in writing, and where any of the conditions are so amended—

(a) such conditions shall have effect subject to the amendment accordingly; and

(b) where the conditions are amended by notice in writing, this subsection shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (3)(b).

(5) 凡證監會藉給予任何持牌法團口頭通知而依據第 (3)(b) 款施加任何條件或根據第 (4) 款修訂任何條件，該會須在合理地切實可行的範圍內盡快另行給予該法團書面通知，以確認所施加的條件或經修訂的條件（視屬何情況而定）；該會亦可在該書面通知中指明對該等條件作出的修訂（如有的話），而凡任何條件在任何修訂的規限下獲確認——

- (a) 該等條件須按修訂後的內容而具有效力；及
- (b) 第 (4) 款在作出必要的變通後，適用於該等經修訂的條件，猶如該等條件是依據第 (3)(b) 款施加的一樣。

(6) 如某法團已在就證監會依據第 (3)(b) 款施加任何條件或根據第 (4) 款修訂任何條件而依據第 (10) 款作出的陳詞中，提出證監會只可藉給予該法團書面通知而施加或修訂（視屬何情況而定）該等條件的要求，則不論本條有任何規定，證監會均不得藉給予該法團口頭通知而施加或修訂（視屬何情況而定）該等條件。

(7) 證監會根據第 (3)(a) 款作出的暫時吊銷牌照，在該會就該項暫時吊銷而依據該款送達通知時或在該通知指明的時間（兩者以較遲者為準）生效。

(8) 證監會依據第 (3)(b) 款施加的任何條件，或根據或依據第 (4) 或 (5) 款作出的修訂，在該會就該項施加或修訂而依據第 (3)(b)、(4) 或 (5) 款（視屬何情況而定）給予通知時或在該通知指明的時間（兩者以較遲者為準）生效。

(9) 如任何牌照根據第 (3)(a) 款被暫時吊銷，則第 200(1)、201(2) 及 (5)、202 及 203 條在作出必要的變通後，適用於該項暫時吊銷，猶如該項暫時吊銷是根據第 194 或 195 條作出的一樣。

(10) 不論本條有任何規定，除非證監會或任何獲該會根據第 (12) 款授權的人已給予有關持牌法團合理的陳詞機會，否則——

- (a) 該會或該人（視屬何情況而定）不得就該法團而行使在第 (2) 款下的任何權力；
- (b) 該會不得就該法團而行使在第 (3)、(4)、(5)、(7) 或 (8) 款下的任何權力。

(11) 任何持牌法團違反依據第 (3)(b) 款施加的任何條件，或根據或依據第 (4) 或 (5) 款修訂的任何條件，即屬犯罪——

(5) Where any conditions are imposed pursuant to subsection (3)(b), or amended under subsection (4), by notice given to a licensed corporation otherwise than in writing, the Commission shall as soon as reasonably practicable give the licensed corporation a further notice in writing to confirm the conditions imposed or the conditions as amended (as the case may be), subject to such amendment (if any) in respect of the conditions as it may specify in the notice, and where any conditions are so confirmed subject to any amendment—

- (a) the conditions shall have effect subject to the amendment accordingly; and
- (b) subsection (4) shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (3)(b).

(6) Notwithstanding anything in this section, the Commission shall not impose any conditions pursuant to subsection (3)(b), or amend any conditions under subsection (4), by notice given to a licensed corporation otherwise than in writing if the licensed corporation has on the occasion of being heard pursuant to subsection (10) in respect of the imposition or amendment (as the case may be) made a request to the Commission that the conditions shall only be so imposed, or amended, by notice given to it in writing.

(7) The suspension of a licence under subsection (3)(a) takes effect at the time when notice is served in respect of it pursuant to that subsection or at the time specified in the notice, whichever is the later.

(8) The imposition of any conditions pursuant to subsection (3)(b), or the amendment of any conditions under or pursuant to subsection (4) or (5), takes effect at the time when notice is given in respect of it pursuant to such subsection or at the time specified in the notice, whichever is the later.

(9) Where a licence of a licensed corporation is suspended under subsection (3)(a), sections 200(1), 201(2) and (5), 202 and 203 shall apply, with necessary modifications, in relation to the suspension as if it were a suspension under section 194 or 195.

(10) Notwithstanding anything in this section—

- (a) the Commission or any person authorized by the Commission under subsection (12) shall not exercise any power under subsection (2) in respect of a licensed corporation;

- (b) the Commission shall not exercise any power under subsection (3), (4), (5), (7) or (8) in respect of a licensed corporation,

unless the Commission or the person (as the case may be) has given the licensed corporation a reasonable opportunity of being heard.

(11) A licensed corporation which contravenes a condition imposed pursuant to subsection (3)(b), or as amended under or pursuant to subsection (4) or (5), commits an offence and is liable—

- (a) 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 \$100,000；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 \$10,000。
- (12) 為施行第 (2) 款，證監會可以書面授權任何人行使該款提述的任何權力。

第 3 分部——客戶資產

148. 由中介人及其有聯繫實體持有的客戶證券及抵押品

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

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

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

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

(12) For the purposes of subsection (2), the Commission may authorize any person in writing to exercise any of the powers referred to in that subsection.

Division 3—Client assets

148. Client securities and collateral held by intermediaries and their associated entities

(1) The Commission may make rules requiring intermediaries and their associated entities to treat and deal with client securities and collateral of the intermediaries, and to ensure that client securities and collateral of the intermediaries that are received or held by any other person on behalf of the intermediaries or the associated entities (as the case may be) are treated and dealt with, in such manner as is specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—

- (a) require client securities and collateral of intermediaries to be held, and accounted for, in the specified manner;
- (b) provide that the client securities and collateral shall not be deposited, transferred, lent, pledged, repledged or otherwise dealt with except in the specified manner;
- (c) specify the circumstances in which the client securities and collateral may, notwithstanding that they are subject to a lawful claim or lien, be dealt with by intermediaries or their associated entities;
- (d) provide for the approval, subject to such conditions as the Commission considers appropriate, of companies or overseas companies as being suitable for the safe custody of the client securities and collateral;

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

- (e) require intermediaries and their associated entities to ensure, or to take reasonable steps to ensure, that persons who receive or hold the client securities and collateral on behalf of the intermediaries or the associated entities (as the case may be) comply with specified requirements;
 - (f) require the maintenance of records in relation to the client securities and collateral (including records of performance of reconciliations in respect of movements of the client securities and collateral into and out of accounts of intermediaries or their associated entities) in the specified manner;
 - (g) require the submission to the Commission, upon request or at specified intervals, of specified information, records and documents for the purpose of enabling the Commission to ascertain readily whether the rules are being complied with;
 - (h) require specified matters, and the circumstances relevant thereto, to be notified to the clients of intermediaries or the Commission, or both;
 - (i) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;
 - (j) provide for any other matter relating to the client securities and collateral.
- (3) Except as provided in the rules made under this section, client securities and collateral of an intermediary are not liable to be taken in execution against the intermediary or an associated entity of the intermediary under the order or process of a court.
- (4) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—
- (a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 2 years;
 - (b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.
- (5) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—
- (a) on conviction on indictment a fine of \$1,000,000 and a term of imprisonment of 7 years;
 - (b) on summary conviction a fine of \$500,000 and a term of imprisonment of 1 year.

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

(7) 不論本條有任何規定——

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

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

(8) 不論第 (3) 款有任何規定——

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

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

149. 由持牌法團及其有聯繫實體持有的客戶款項

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

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

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

(7) Notwithstanding anything in this section—

(a) the power of the Commission to make rules under this section in respect of intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to make rules in respect of the intermediaries only in relation to client securities and collateral received or held by them in the course of the businesses which constitute any regulated activities for which they are registered;

(b) the power of the Commission to make rules under this section in respect of associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to make rules in respect of the associated entities only in relation to client securities and collateral received or held by them in the course of their businesses of receiving or holding client securities and collateral of intermediaries of which they are associated entities.

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

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

(b) applies to client securities and collateral received or held by an associated entity that is an authorized financial institution only if the client securities and collateral were received or held by the associated entity in the course of its business of receiving or holding client securities and collateral of the intermediary of which the associated entity is an associated entity.

149. Client money held by licensed corporations and their associated entities

(1) The Commission may make rules requiring licensed corporations and their associated entities to treat and deal with client money of the licensed corporations in such manner as is specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—

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

- (a) require client money of licensed corporations or any part thereof to be paid into segregated accounts established for client money and designated as trust accounts or client accounts;
- (b) specify when and how the client money or any part thereof is to be paid into such accounts and require it to be dealt with, and accounted for, in the specified manner;
- (c) specify the amount or proportion of the client money that is not to be paid into such accounts, and the deductions that may be made before the client money is paid into such accounts;
- (d) specify the circumstances in which the client money may be paid out of such accounts, including the circumstances in which the client money that is the subject of a lawful claim or lien may be paid out of such accounts;
- (e) require interest accruing from the holding of the client money in such accounts to be dealt with and paid in the specified manner;
- (f) specify the persons in Hong Kong with whom such accounts are to be established and maintained;
- (g) provide for authorization by the Commission as a condition for payment out of such accounts in specified circumstances;
- (h) require the maintenance of records in relation to such accounts (including records of performance of reconciliations of payments of the client money into and out of such accounts) in the specified manner;
- (i) require the submission to the Commission, upon request or at specified intervals, of specified information, records, and documents for the purpose of enabling the Commission to ascertain readily whether the rules are being complied with;
- (j) require specified matters, and the circumstances relevant thereto, to be notified to the clients of licensed corporations or the Commission, or both;
- (k) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;
- (l) provide for any other matter relating to the client money.
- (3) Except as provided in the rules made under this section, client money of a licensed corporation is not liable to be taken in execution against the licensed corporation or an associated entity of the licensed corporation under the order or process of a court.

(4) Rules made under this section may provide that a licensed corporation, or an associated entity of a licensed corporation, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

- (a) 一經循公訴程序定罪，可處不超過罰款 \$200,000 及監禁 2 年的指明罰則；
 - (b) 一經循簡易程序定罪，可處不超過第 6 級罰款及監禁 6 個月的指明罰則。
- (5) 根據本條訂立的規則可規定，凡任何持牌法團或持牌法團的有聯繫實體意圖詐騙而違反該等規則中對其適用的任何指明條文，即屬犯罪——
- (a) 一經循公訴程序定罪，可處不超過罰款 \$1,000,000 及監禁 7 年的指明罰則；
 - (b) 一經循簡易程序定罪，可處不超過罰款 \$500,000 及監禁 1 年的指明罰則。
- (6) 任何人不得僅以遵從依據第 (2)(k) 款訂立的任何規則中關於給予證監會通知的規定可能會導致他入罪為理由，而獲豁免遵從該規定。
- (7) 不論本條有任何規定，根據本條訂立的規則不適用於屬認可財務機構的有聯繫實體。
- (8) 如持牌法團的客戶款項是由屬認可財務機構的有聯繫實體所收取或持有的，則不論第 (3) 款有任何規定，該款並不阻止該等款項在針對該實體而執行判決時取去。

150. 申索權及留置權不受影響

第 148 及 149 條以及根據第 148 或 149 條訂立的任何規則，不得解釋為剝奪或影響任何人就中介人的客戶資產（不論該等資產是由中介人或其有聯繫實體收取或持有）所享有的合法申索權或留置權，但該等申索權或留置權的存在，並不免除該中介人或該實體的責任，使其無須遵從該等規則中適用於該中介人或該實體（視屬何情況而定）的規定。

第 4 分部——紀錄

151. 中介人及其有聯繫實體須備存帳目及紀錄

- (1) 證監會可訂立規則，規定——

- (a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 2 years;
 - (b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.
- (5) Rules made under this section may provide that a licensed corporation, or an associated entity of a licensed corporation, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—
- (a) on conviction on indictment a fine of \$1,000,000 and a term of imprisonment of 7 years;
 - (b) on summary conviction a fine of \$500,000 and a term of imprisonment of 1 year.
- (6) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(k) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.
- (7) Notwithstanding anything in this section, no rules made under this section shall apply to associated entities that are authorized financial institutions.
- (8) Notwithstanding anything in subsection (3), that subsection does not prevent client money of a licensed corporation that is received or held by an associated entity that is an authorized financial institution from being taken in execution against the associated entity.

150. Claims and liens not affected

Nothing in sections 148 and 149 and any rules made under any of those sections shall be construed as taking away or affecting a lawful claim or lien which any person has in respect of client assets of an intermediary (whether received or held by the intermediary or an associated entity of the intermediary), but the existence of any such claim or lien does not relieve the intermediary or an associated entity of the duty to comply with the requirements of those rules that apply to the intermediary or the associated entity (as the case may be).

Division 4—Records

151. Keeping of accounts and records by intermediaries and their associated entities

- (1) The Commission may make rules to provide for—

- (a) 中介人備存該等規則指明的帳目及紀錄；
- (b) 中介人的有聯繫實體就它收取或持有的中介人的客戶資產，備存該等規則指明的帳目及紀錄。
- (2) 在不局限第 (1) 款的一般性及不損害第 398(7) 及 (8) 條的原則下，證監會可在第 (1) 款提述的規則中——

- (a) 規定中介人及其有聯繫實體為指明的目的備存指明的帳目及紀錄；
- (b) 就備存該等帳目及紀錄的方式作出規定；
- (c) 就該等帳目及紀錄可予銷毀前須保留的時間及存放的地點，作出規定；
- (d) 規定任何人如察覺他沒有遵守該等規則中適用於他的任何指明條文，即須在指明的時間內將此事及任何進一步的指明的資料通知證監會；
- (e) 就關乎須備存的帳目及紀錄的其他事宜作出規定，而不論須由中介人或由其有聯繫實體備存。

(3) 在沒有相反證據的情況下，中介人或其有聯繫實體的帳目或紀錄中的記項，須當作是由該中介人或該實體（視屬何情況而定）作出，或在該中介人或該實體（視屬何情況而定）的授權下作出。

(4) 任何人意圖詐騙而——

- (a) 在遵守根據本條訂立的規則或在看來是遵守該等規則而備存的帳目或紀錄中記入、記錄或貯存他知道在要項上屬虛假或具誤導性的事項，或致使在該等帳目或紀錄中記入、記錄或貯存該等事項；
- (b) 刪除、銷毀、移除或捏改或致使刪除、銷毀、移除或捏改任何已記入、記錄或貯存於為遵守根據本條訂立的規則或看來是為遵守該等規則而備存的帳目或紀錄的事項；或
- (c) 沒有在合理地切實可行的範圍內盡快在為遵守根據本條訂立的規則或看來是遵守該等規則而備存的帳目或紀錄中記入、記錄或貯存任何應如此記入、記錄或貯存的事項，

即屬犯罪——

- (a) the keeping by intermediaries of such accounts and records as are specified in the rules;
- (b) the keeping by associated entities of intermediaries of such accounts and records in respect of client assets of the intermediaries that they receive or hold as are specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—

- (a) require intermediaries and their associated entities to keep the specified accounts and records for specified purposes;
- (b) provide for the manner in which the accounts and records are to be kept;
- (c) provide for the period for which, and the location at which, the accounts and records are to be kept before they may be destroyed;
- (d) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;
- (e) provide for any other matter relating to accounts and records to be kept, whether by intermediaries or their associated entities.

(3) An entry in the accounts or records of an intermediary or an associated entity of an intermediary shall, in the absence of evidence to the contrary, be deemed to have been made by or with the authority of the intermediary or the associated entity (as the case may be).

(4) A person who, with intent to defraud—

- (a) enters, records or stores, or causes to be entered, recorded or stored, in any accounts or records kept in compliance with, or in purported compliance with, rules made under this section, any matter which he knows to be false or misleading in a material particular;
- (b) deletes, destroys, removes or falsifies, or causes to be deleted, destroyed, removed or falsified, any matter that has been entered, recorded or stored in any accounts or records kept in compliance with, or in purported compliance with, rules made under this section; or
- (c) fails to enter, record or store in any accounts or records kept in compliance with, or in purported compliance with, rules made under this section, as soon as reasonably practicable, any matter that should be so entered, recorded or stored,

commits an offence and is liable—

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

152. 中介人及其有聯繫實體須提供成交單據、收據、戶口結單及通知單

- (1) 證監會可訂立規則，規定——
 - (a) 中介人製備並向其客戶提供該等規則指明的成交單據、收據、戶口結單及通知單；

- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
- (ii) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.

(5) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

- (a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 2 years;
- (b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(6) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

- (a) on conviction on indictment a fine of \$1,000,000 and a term of imprisonment of 7 years;
- (b) on summary conviction a fine of \$500,000 and a term of imprisonment of 1 year.

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

(8) Notwithstanding anything in this section, the power of the Commission to make rules under this section in respect of intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to make rules in respect of the intermediaries only in relation to accounts and records relating to the businesses which constitute any regulated activities for which they are registered.

152. Provision of contract notes, receipts, statements of account and notifications by intermediaries and their associated entities

- (1) The Commission may make rules to provide for—
 - (a) the preparation by intermediaries of such contract notes, receipts, statements of account and notifications as are specified in the rules, and the provision thereof to clients of the intermediaries;

- (b) 中介人的有聯繫實體須就他們收到或持有的該中介人的客戶資產，製備並向該中介人的客戶提供該等規則指明的收據、戶口結單及通知單。
- (2) 在不局限第(1)款的一般性及不損害第 398(7) 及 (8) 條的原則下，證監會可在第(1)款提述的規則中——
- (a) 規定中介人在經營任何構成他獲發牌或獲註冊進行的任何受規管活動的業務時，在指明的情況下按指明的方式，就他在某段指明的期間與其客戶訂立或代其客戶訂立的所有交易，製備並向有關客戶提供成交單據及(如適用的話)戶口結單；
- (b) 規定中介人及其有聯繫實體在指明的情況下按指明的方式，就每名獲該中介人提供財務通融的該中介人的客戶製備並向有關客戶提供戶口結單；
- (c) 規定中介人及其有聯繫實體在指明的情況下按指明的方式，就每次自該中介人任何客戶的帳戶或為該等帳戶收取的客戶資產，製備並向有關客戶提供收據；
- (d) 規定中介人及其有聯繫實體在指明的情況下按指明的方式，就每張關乎該中介人或該實體(視屬何情況而定)代該中介人任何客戶收取或持有的客戶資產但並非由有關客戶發出的通知單(包括任何關乎與客戶資產有關的權利的通知單)製備並向有關客戶提供通知單；
- (e) 就須提供成交單據、收據、戶口結單及通知單的時間及可將之銷毀前須保留的期間及其保留的地點，作出規定；
- (f) 規定任何人如察覺他沒有遵守該等規則中適用於他的任何指明條文，即須在指明的時間內將此事及任何進一步的指明的資料通知證監會；

- (b) the preparation by associated entities of intermediaries, in respect of client assets of the intermediaries that they receive or hold, of such receipts, statements of account and notifications as are specified in the rules, and the provision thereof to clients of the intermediaries.
- (2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—
- (a) require intermediaries, in relation to all transactions they enter into, over any specified period of time, with or on behalf of a client of the intermediaries in the conduct of any of the businesses which constitute any regulated activities for which they are licensed or registered, to prepare and provide to the client a contract note and, where applicable, a statement of account in the specified manner and circumstances;
- (b) require intermediaries and their associated entities, in relation to every client of the intermediaries to whom the intermediaries have provided financial accommodation, to prepare and provide to the client a statement of account in the specified manner and circumstances;
- (c) require intermediaries and their associated entities, in relation to every receipt of client assets from or for the account of a client of the intermediaries, to prepare and provide to the client a receipt in the specified manner and circumstances;
- (d) require intermediaries and their associated entities, in relation to every notification which relates to client assets received or held by the intermediaries or the associated entities (as the case may be) on behalf of a client of the intermediaries, and which is received from any person other than the client (including any notification concerning any entitlement relating to client assets), to prepare and provide to the client a notification in the specified manner and circumstances;
- (e) provide for the time when contract notes, receipts, statements of account and notifications are to be provided and the period for which, and the location at which, copies thereof are to be kept before they may be destroyed;
- (f) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;

- (g) 就關乎須製備並向該中介人的客戶提供的成交單據、收據、戶口結單及通知單的其他事宜作出規定，而不論須由中介人或由其有聯繫實體製備及提供。
- (3) 根據本條訂立的規則可規定，凡任何中介人或中介人的有聯繫實體無合理辯解而違反該等規則中對其適用的任何指明條文，即屬犯罪——
- (a) 一經循公訴程序定罪，可處不超過罰款 \$200,000 及監禁 2 年的指明罰則；
- (b) 一經循簡易程序定罪，可處不超過第 6 級罰款及監禁 6 個月的指明罰則。
- (4) 根據本條訂立的規則可規定，凡任何中介人或中介人的有聯繫實體意圖詐騙而違反該等規則中對其適用的任何指明條文，即屬犯罪——
- (a) 一經循公訴程序定罪，可處不超過罰款 \$1,000,000 及監禁 7 年的指明罰則；
- (b) 一經循簡易程序定罪，可處不超過罰款 \$500,000 及監禁 1 年的指明罰則。
- (5) 任何人不得僅以遵從依據第 (2)(f) 款訂立的任何規則中關於給予證監會通知的規定可能會導致他入罪為理由，而獲豁免遵從該規定。
- (6) 不論本條有任何規定，證監會根據本條就中介人訂立規則的權力，在該等中介人屬註冊機構的情況下，須視為只就該等中介人訂立與構成他們獲註冊進行的任何受規管活動的業務所涉及的成交單據、收據、戶口結單及通知單有關的規則的權力。

第 5 分部——審計

153. 持牌法團、及中介人的有聯繫實體須委任核數師

- (1) 持牌法團須委任一名核數師，以執行根據或依據本條例或其他條例須由該法團的核數師執行的職能。

- (g) provide for any other matter relating to contract notes, receipts, statements of account and notifications to be prepared and provided to clients of intermediaries, whether by the intermediaries or their associated entities.
- (3) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—
- (a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 2 years;
- (b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.
- (4) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—
- (a) on conviction on indictment a fine of \$1,000,000 and a term of imprisonment of 7 years;
- (b) on summary conviction a fine of \$500,000 and a term of imprisonment of 1 year.
- (5) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(f) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.
- (6) Notwithstanding anything in this section, the power of the Commission to make rules under this section in respect of intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to make rules in respect of the intermediaries only in relation to contract notes, receipts, statements of account and notifications relating to the businesses which constitute any regulated activities for which they are registered.

Division 5—Audit

153. Auditor to be appointed by licensed corporations and associated entities of intermediaries

- (1) A licensed corporation shall appoint an auditor to perform the functions required of an auditor of the corporation under or pursuant to the provisions of this or any other Ordinance.

(2) 中介人的有聯繫實體須委任一名核數師，以執行根據或依據本條例或其他條例須由該實體的核數師執行的職能。

(3) 持牌法團、及中介人的有聯繫實體，須在根據第 (1) 或 (2) 款 (視屬何情況而定) 委任核數師後 7 個營業日內，以書面將該核數師的姓名或名稱及地址通知證監會。

(4) 任何人——

(a) (i) 如是帳目須予審計的持牌法團或有聯繫實體的高級人員或僱員，或正受僱於該等人員或僱員，即沒有資格根據第 (1) 或 (2) 款獲委任；或

(ii) 如屬於為施行本款而藉根據第 397 條訂立的規則訂明的類別的人，即沒有資格根據第 (1) 或 (2) 款獲委任；

(b) 即使已獲帳目須予審計的持牌法團或有聯繫實體委任為核數師 (不論該項委任是為《公司條例》(第 32 章) 的目的或為其他目的而作出)，在不抵觸 (a) 段的條文下，除該項委任外，該人仍有資格根據第 (1) 或 (2) 款獲委任。

(5) 如任何持牌法團、或中介人的有聯繫實體——

(a) 在獲發牌或成為該實體 (視屬何情況而定) 後一個月內；或

(b) 在獲發牌或成為該實體 (視屬何情況而定) 後，首次根據第 (1) 或 (2) 款委任或其後根據第 (1) 或 (2) 款委任的任何核數師不再擔任該核數師後一個月內，

沒有按照第 (1) 或 (2) 款委任核數師，即屬犯罪——

(i) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或

(ii) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。

(6) 任何持牌法團、或中介人的有聯繫實體違反第 (3) 款，即屬犯罪，一經定罪，可處第 5 級罰款。

(7) 本條並不損害任何其他與核數師的委任有關的規定的施行，不論該等規定是否根據《公司條例》(第 32 章) 作出。

(2) An associated entity of an intermediary shall appoint an auditor to perform the functions required of an auditor of the associated entity under or pursuant to the provisions of this or any other Ordinance.

(3) A licensed corporation, and an associated entity of an intermediary, shall, within 7 business days after its appointment of an auditor under subsection (1) or (2) (as the case may be), notify the Commission by notice in writing of the name and address of the auditor.

(4) A person—

(a) is not eligible for appointment as an auditor under subsection (1) or (2)—

(i) if he is an officer or employee of the licensed corporation or the associated entity the accounts of which are to be audited, or is in the employment of such an officer or employee; or

(ii) if he belongs to a class of persons prescribed by rules made under section 397 for the purposes of this subsection;

(b) is, subject to paragraph (a), eligible for appointment as an auditor under subsection (1) or (2), notwithstanding that he is, apart from that appointment, already an auditor appointed by the licensed corporation or the associated entity the accounts of which are to be audited, whether for the purposes of the Companies Ordinance (Cap. 32) or otherwise.

(5) A licensed corporation, or an associated entity of an intermediary, which fails to appoint an auditor in accordance with subsection (1) or (2) within one month after—

(a) it becomes licensed or becomes such an associated entity (as the case may be); or

(b) the auditor first appointed under subsection (1) or (2) after it becomes licensed or becomes such an associated entity, or any auditor further appointed under subsection (1) or (2), ceases to be an auditor of the licensed corporation or of the associated entity (as the case may be),

commits an offence and is liable—

(i) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or

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

(6) A licensed corporation, or an associated entity of an intermediary, which contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 5.

(7) Nothing in this section prejudices the operation of any other requirements relating to the appointment of an auditor, whether under the Companies Ordinance (Cap. 32) or otherwise.

(8) 在本條中，中介人的有聯繫實體指上述實體中並非屬認可財務機構者。

154. 持牌法團、及中介人的有聯繫實體須就擬更換核數師發出通知

- (1) 凡任何持牌法團、或中介人的有聯繫實體——
 - (a) 向其成員發出通知，表示擬於成員大會上提出——
 - (i) 在其根據第 153 條委任的核數師的任期屆滿前將該核數師辭退的動議；或
 - (ii) 在其根據第 153 條委任的核數師任期屆滿時不再度委任他或以另一核數師取而代之的動議；或
 - (b) 根據第 153 條委任的核數師因 (a) 段所提述的動議以外的原因，而在其任期屆滿前不再擔任該法團或該實體（視屬何情況而定）的核數師，該法團或該實體（視屬何情況而定）須在此事發生後一個營業日內，以書面將此事通知證監會。
- (2) 任何持牌法團、或中介人的有聯繫實體違反第 (1) 款，即屬犯罪，一經定罪，可處第 5 級罰款。
- (3) 在本條中，中介人的有聯繫實體指上述實體中並非屬認可財務機構者。

155. 持牌法團、及中介人的有聯繫實體等須就財政年度的終結發出通知

- (1) 持牌法團、及中介人的有聯繫實體須在下述限期內，以書面將其財政年度終結的日期通知證監會——
 - (a) （就持牌法團而言）在它獲發牌後一個月內；或
 - (b) （就有聯繫實體而言）在它成為該實體後一個月內。
- (2) 持牌法團、及中介人的有聯繫實體——

(8) In this section, a reference to an associated entity of an intermediary shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

154. Notification of proposed change of auditors by licensed corporations and associated entities of intermediaries

- (1) A licensed corporation, and an associated entity of an intermediary, shall within one business day after—
 - (a) it gives notice to its members of a motion, to be moved at its general meeting—
 - (i) to remove an auditor appointed by it under section 153 before the expiration of his term of office; or
 - (ii) to replace with another auditor, or not to reappoint, an auditor appointed by it under section 153 at the expiration of his term of office; or
 - (b) an auditor appointed by it under section 153 ceases to be its auditor before the expiration of his term of office, otherwise than in consequence of a motion referred to in paragraph (a),
 notify the Commission by notice in writing of that fact.
- (2) A licensed corporation, or an associated entity of an intermediary, which contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.
- (3) In this section, a reference to an associated entity of an intermediary shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

155. Notification of end of financial year by licensed corporations and associated entities of intermediaries, etc.

- (1) A licensed corporation, and an associated entity of an intermediary, shall—
 - (a) in the case of the licensed corporation, within one month after it becomes licensed; or
 - (b) in the case of the associated entity, within one month after it becomes such an associated entity,
 notify the Commission by notice in writing of the date on which its financial year ends.
- (2) A licensed corporation, and an associated entity of an intermediary, shall not—

- (a) 除非得到證監會根據第 (3)(a) 款給予的書面批准，否則不得更改根據第 (1) 款通知證監會的其財政年度終結的日期；
- (b) 除非得到證監會根據第 (3)(b) 款給予的書面批准，否則不得採用一段超過 12 個月的期間作為其財政年度。
- (3) 持牌法團、或中介人的有聯繫實體如就以下事宜提出書面申請，證監會可在該會認為適當的條件的規限下給予書面批准——
- (a) 要求更改根據第 (1) 款通知證監會的其財政年度終結的日期；
- (b) 要求採用一段超過 12 個月的期間作為其財政年度。
- (4) 任何持牌法團、或中介人的有聯繫實體違反第 (1) 或 (2) 款或依據第 (3) 款施加的條件，即屬犯罪，一經定罪，可處第 5 級罰款。
- (5) 本條並不損害《公司條例》(第 32 章) 第 122 條的施行。
- (6) 在本條中，中介人的有聯繫實體指上述實體中並非屬認可財務機構者。

156. 持牌法團、及中介人的有聯繫實體須呈交經審計帳目等

- (1) 在不抵觸第 (3) 款的條文下及除第 (4) 款另有規定外，持牌法團、及中介人的有聯繫實體須——
- (a) 就為施行本條而藉根據第 397 條訂立的規則訂明的期間，擬備該等規則訂明的財務報表及其他文件；並
- (b) 在該等報表及文件所關乎的財政年度終結後 4 個月內，將該等報表及文件連同核數師報告呈交證監會。
- (2) 在不抵觸第 (3) 款的條文下及除第 (4) 款另有規定外，如持牌法團在為施行本條而藉根據第 397 條訂立的規則訂明的情況下，於某日停止進行它獲發牌進行的所有受規管活動，或如中介人的有聯繫實體停止作為該人的有聯繫實體，則該法團或該實體(視屬何情況而定)須——
- (a) 擬備該等規則訂明而以該日狀況為準的財務報表及其他文件；並

- (a) except with the approval in writing of the Commission under subsection (3)(a), alter the date notified to the Commission under subsection (1) as the date on which its financial year ends;
- (b) except with the approval in writing of the Commission under subsection (3)(b), adopt any period which exceeds 12 months as its financial year.
- (3) On an application in writing by a licensed corporation or an associated entity of an intermediary, the Commission may, subject to such conditions as it considers appropriate, grant approval in writing in respect of—
- (a) an alteration of the date notified to the Commission under subsection (1) as the date on which its financial year ends;
- (b) the adoption of any period which exceeds 12 months as its financial year.
- (4) A licensed corporation, or an associated entity of an intermediary, which contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (3), commits an offence and is liable on conviction to a fine at level 5.
- (5) Nothing in this section prejudices the operation of section 122 of the Companies Ordinance (Cap. 32).
- (6) In this section, a reference to an associated entity of an intermediary shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

156. Audited accounts, etc. to be submitted by licensed corporations and associated entities of intermediaries

- (1) Subject to subsections (3) and (4), a licensed corporation, and an associated entity of an intermediary, shall—
- (a) prepare such financial statements and other documents, for such periods, as are prescribed by rules made under section 397 for the purposes of this section; and
- (b) submit the financial statements and other documents, together with an auditor's report, to the Commission not later than 4 months after the end of the financial year to which they relate.
- (2) Subject to subsections (3) and (4), a licensed corporation that ceases, in such circumstances as are prescribed by rules made under section 397 for the purposes of this section, carrying on all of the regulated activities for which it is licensed, and an associated entity of an intermediary that ceases to be such an associated entity, shall—
- (a) prepare such financial statements and other documents, which shall be made up to (and including) the date of the cessation, as are prescribed by the rules; and

- (b) 在該日後 4 個月內，將該等報表及文件連同核數師報告呈交證監會。
- (3) 在不局限第 (1) 或 (2) 款的一般性的原則下，該等條文中關於財務報表、其他文件及核數師報告的規定，包括以下規定——
- (a) 該等報表及文件須就為施行本條而藉根據第 397 條訂立的規則訂明的事宜而擬備，並載有如此訂明的詳情；
 - (b) 該報告須載有該等規則訂明的詳情，包括如此訂明的意見陳述；
 - (c) 該等報表、文件及報告須按照該等規則訂明的原則或基礎擬備；及
 - (d) 在不局限《公司條例》(第 32 章) 第 129B 條的一般性的原則下，該等報表及文件須由該等規則訂明的人簽署。
- (4) 凡根據第 (1) 或 (2) 款規定須呈交財務報表、其他文件及核數師報告的持牌法團或有聯繫實體提出書面申請，而證監會信納有特別理由支持，則該會可將呈交該等報表、文件及報告的限期，延展該會認為適當的一段時期，並可施加該會認為適當的條件以作規限；凡該會准予延展時限，第 (1) 或 (2) 款(視屬何情況而定) 須在該項延展的規限下適用。
- (5) 任何持牌法團、或中介人的有聯繫實體無合理辯解而違反第 (1) 或 (2) 款或依據第 (4) 款施加的條件，即屬犯罪——
- (a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (6) 任何持牌法團、或中介人的有聯繫實體意圖詐騙而違反第 (1) 或 (2) 款或依據第 (4) 款施加的條件，即屬犯罪——
- (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，可處罰款 \$500,000 及監禁 1 年。

- (b) submit the financial statements and other documents, together with an auditor's report, to the Commission not later than 4 months after the date of the cessation.
- (3) Without limiting the generality of subsection (1) or (2), the requirements under such subsection relating to the financial statements and other documents, and the auditor's report, referred to in such subsection include the requirements that—
- (a) the financial statements and other documents are to relate to such matters and contain such particulars as are prescribed by rules made under section 397 for the purposes of this section;
 - (b) the auditor's report is to contain such particulars, including such statement of opinion, as are prescribed by the rules;
 - (c) the financial statements and other documents, and the auditor's report, are to be prepared in accordance with such principles or bases as are prescribed by the rules; and
 - (d) without limiting the generality of section 129B of the Companies Ordinance (Cap. 32), the financial statements and other documents are to be signed by such person as is prescribed by the rules.
- (4) On an application in writing by the licensed corporation or the associated entity by which any financial statements and other documents, and any auditor's report, are required under subsection (1) or (2) to be submitted, the Commission may, where it is satisfied that there are special reasons for so doing, extend the period within which the financial statements and other documents, and the auditor's report, are required to be submitted, for such period and subject to such conditions as the Commission considers appropriate, and upon the Commission granting the extension, subsection (1) or (2) (as the case may be) shall apply subject to the extension accordingly.
- (5) A licensed corporation, or an associated entity of an intermediary, which, without reasonable excuse, contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (4), commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (6) A licensed corporation, or an associated entity of an intermediary, which, with intent to defraud, contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (4), commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.

(7) 在本條中，中介人的有聯繫實體指上述實體中並非屬認可財務機構者。

157. 持牌法團、或中介人的有聯繫實體的核數師須
在某些情況下向證監會等提交報告

(1) 如——

- (a) 獲持牌法團、或中介人的有聯繫實體根據第 153 條委任的核數師，或在中介人的有聯繫實體屬認可財務機構的情況下，獲該實體為《銀行業條例》(第 155 章) 的目的而委任的核數師，在執行其職能時察覺有須報告事項；或
- (b) 獲持牌法團、或中介人的有聯繫實體根據第 153 條委任的核數師，在執行其職能時擬在他就根據第 156 條須呈交證監會的該法團或該實體(視屬何情況而定) 的財務報表或其他文件而擬備的報告內，加入任何有所保留的意見或不利聲明，

則——

- (i) 在 (a) 段所述的情況下，他須在察覺有該項須報告事項後，在合理地切實可行的範圍內盡快按以下規定提交關於該事項的書面報告——
 - (A) 如他獲持牌法團、或中介人的有聯繫實體根據第 153 條委任，則提交予證監會；或
 - (B) 如他獲中介人的有聯繫實體為《銀行業條例》(第 155 章) 的目的而委任，則提交予證監會及金融管理專員；
- (ii) 在 (b) 段所述的情況下，他須在首次擬加入該項有所保留的意見或不利聲明後，在合理地切實可行的範圍內盡快向證監會提交關於該項意見或聲明的書面報告。

(2) 獲持牌法團、或中介人的有聯繫實體根據第 153 條委任的核數師如——

(7) In this section, a reference to an associated entity of an intermediary shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

157. Auditors of licensed corporations or associated
entities of intermediaries to lodge report with
Commission, etc. in certain cases

(1) If a person—

- (a) in the course of performing his functions as an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary or, where an associated entity of an intermediary is an authorized financial institution, as an auditor appointed for the purposes of the Banking Ordinance (Cap. 155) by the associated entity, becomes aware of a reportable matter; or
- (b) in the course of performing his functions as an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary, proposes to include any qualification or adverse statement in any report prepared by him on the financial statements or other documents of the licensed corporation or the associated entity (as the case may be) which are required to be submitted to the Commission under section 156,

he shall—

- (i) in the case of paragraph (a), as soon as reasonably practicable after he becomes aware of the reportable matter, lodge with—
 - (A) in the case of an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary, the Commission; or
 - (B) in the case of an auditor appointed for the purposes of the Banking Ordinance (Cap. 155) by an associated entity of an intermediary, the Commission and the Monetary Authority, a written report on the reportable matter;
- (ii) in the case of paragraph (b), as soon as reasonably practicable after he first proposes the inclusion of the qualification or adverse statement, lodge with the Commission a written report on the qualification or adverse statement.

(2) If a person appointed as an auditor under section 153 by a licensed corporation or an associated entity of an intermediary—

(a) 在他作為該法團或該實體(視屬何情況而定)的核數師的任期屆滿前辭去核數師職務；

(b) 在他作為該法團或該實體(視屬何情況而定)的核數師的任期屆滿時不欲連任；或

(c) 在其他情況下不再擔任該法團或該實體(視屬何情況而定)的核數師，則須在隨後一個營業日內，以書面將此事通知證監會，並在通知書上說明理由，以及提供他認為應促請該會注意的相關情況的詳情，如無此等情況，則須作出表明此意的陳述。

(3) 在本條中——

“訂明規定”(prescribed requirement)指根據第 148、149、151 或 152 條訂立的任何規則中，由根據第 397 條訂立的規則為本定義的目的而訂明為訂明規定的規定；

“須報告事項”(reportable matter)就擔任第 (1)(a) 款所指的核數師的人而言——

- (a) 在他是持牌法團的核數師的情況下，指他認為——
- 構成該法團或其任何有聯繫實體沒有遵從任何訂明規定的事情；
 - 對該法團或其任何有聯繫實體的財務狀況有達關鍵程度的不利影響的事情；或
 - 構成該法團沒有遵從第 146 條或財政資源規則的全部或任何適用於它的規定的事情；或
- (b) 在他是中介人的有聯繫實體的核數師的情況下，指他認為——
- 構成該實體沒有遵從任何訂明規定的事情；或
 - (如該實體並非認可財務機構)對該實體的財務狀況有達關鍵程度的不利影響的事情。

- resigns as an auditor of the licensed corporation or the associated entity (as the case may be) before the expiration of his term of office as such auditor;
- does not seek reappointment as an auditor of the licensed corporation or the associated entity (as the case may be) at the expiration of his term of office as such auditor; or
- otherwise ceases to be an auditor of the licensed corporation or the associated entity (as the case may be),

he shall within one business day thereafter notify the Commission by notice in writing of that fact, and in the notice state the reasons therefor, and give particulars of any connected circumstances which he considers should be brought to the attention of the Commission or, where no such circumstances exist, make a statement to that effect.

(3) In this section—

“prescribed requirement”(訂明規定) means such of the requirements under any of the rules made under section 148, 149, 151 or 152 as are prescribed by rules made under section 397 for the purposes of this definition;

“reportable matter”(須報告事項), in relation to a person acting as an auditor within the meaning of subsection (1)(a), means a matter that, in the opinion of the person—

- in the case of a licensed corporation—
 - constitutes on the part of the licensed corporation or any of its associated entities a failure to comply with any prescribed requirement;
 - adversely affects to a material extent the financial position of the licensed corporation or any of its associated entities; or
 - constitutes on the part of the licensed corporation a failure to comply with section 146 or with all or any of the requirements of the financial resources rules that apply to it; or
- in the case of an associated entity of an intermediary—
 - constitutes on the part of the associated entity a failure to comply with any prescribed requirement; or
 - where the associated entity is not an authorized financial institution, adversely affects to a material extent the financial position of the associated entity.

158. 持牌法團、或中介人的有聯繫實體的核數師無須
就他向證監會傳達的某些資料承擔法律責任

(1) 在不損害第 380 及 381 條的原則下，根據第 153 條獲持牌法團、或中介人的有聯繫實體委任的核數師或在中介人的有聯繫實體屬認可財務機構的情況下，獲該實體為《銀行業條例》(第 155 章)的目的而委任的核數師，如將——

(a) 他基於該核數師身分而察覺(不論是否在執行該核數師職能時察覺)的；
及

(b) 對證監會或金融管理專員的任何職能屬有關的，
事情的任何資料或對該事情的意見，真誠地傳達予證監會或金融管理專員(視屬何情況而定)，則不論他是否應證監會或金融管理專員(視屬何情況而定)的要求而如此行事，他不得因此被視為違反他作為核數師須履行的責任。

(2) 第(1)款除適用於根據第 153 條獲持牌法團、或中介人的有聯繫實體委任的核數師，以及中介人的有聯繫實體為《銀行業條例》(第 155 章)的目的而委任的核數師外——

(a) 亦適用於曾根據第 153 條獲持牌法團、或中介人的有聯繫實體委任為核數師，或曾獲中介人的有聯繫實體為《銀行業條例》(第 155 章)的目的而委任的核數師，但其委任已終止的人；在此情況下，第(1)款提述的事情，須解釋為他在其委任終止之前，該款(a)段規定他須基於該核數師身分而察覺(不論是否在執行該核數師職能時察覺)的任何事情；

(b) 亦適用於獲前持牌法團、或中介人的前有聯繫實體委任的核數師(不論該項委任是否根據第 153 條或為《銀行業條例》(第 155 章)的目的而作出)；在此情況下，第(1)款提述的事情，須解釋為該款(a)段規定他須基於該核數師身分而察覺(不論是否在執行該核數師職能時察覺)的任何事情；及

158. Immunity in respect of communication with
Commission, etc. by auditors of licensed
corporations or associated entities of
intermediaries

(1) Without prejudice to sections 380 and 381, no duty which a person may be subject to as an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary or, where an associated entity of an intermediary is an authorized financial institution, as an auditor appointed for the purposes of the Banking Ordinance (Cap. 155) by the associated entity shall be regarded as contravened by reason of his communicating in good faith to the Commission or the Monetary Authority, whether or not in response to a request made by the Commission or the Monetary Authority (as the case may be), any information or opinion on a matter which—

(a) he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor); and

(b) is relevant to any function of the Commission or the Monetary Authority (as the case may be).

(2) In addition to applying to a person who is an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary, or appointed for the purposes of the Banking Ordinance (Cap. 155) by an associated entity of an intermediary, subsection (1) also applies to—

(a) a person whose appointment as an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary, or appointed for the purposes of the Banking Ordinance (Cap. 155) by an associated entity of an intermediary, has ceased, in which case a reference to a matter in that subsection shall be construed on the basis that paragraph (a) of that subsection requires the matter to be one which he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor) before the appointment has ceased;

(b) an auditor appointed, whether or not under section 153 or for the purposes of the Banking Ordinance (Cap. 155), by a former licensed corporation or by a former associated entity of an intermediary, in which case a reference to a matter in that subsection shall be construed on the basis that paragraph (a) of that subsection requires the matter to be one which he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor); and

- (c) 亦適用於曾獲前持牌法團、或中介人的前有聯繫實體委任為核數師(不論該項委任是否根據第 153 條或為《銀行業條例》(第 155 章)的目的而作出)但其委任已終止的人；在此情況下，第 (1) 款提述的事情，須解釋為他在其委任終止之前，該款 (a) 段規定他須基於該核數師身分而察覺(不論是否在執行該核數師職能時察覺)的任何事情。

(3) 在本條中——

“中介人的前有聯繫實體”(former associated entity of an intermediary)指曾是但已不再是中介人的有聯繫實體的法團；

“前持牌法團”(former licensed corporation)指曾是但已不再是持牌法團的法團。

159. 證監會就持牌法團及其有聯繫實體委任核數師的權力

(1) 在符合第 (3) 款的規定下，凡——

- 某持牌法團沒有按照第 147 條令證監會信納該法團有遵從所有適用於它的財政資源規則的規定；
- 證監會有合理理由相信某持牌法團或該法團的某有聯繫實體沒有遵從任何訂明規定；
- 證監會有合理理由相信某持牌法團或該法團的某有聯繫實體沒有按照第 156 條呈交財務報表或其他文件；或
- 證監會接到根據第 157 條就某持牌法團或該法團的某有聯繫實體而提交的書面報告，

則證監會可委任核數師全面或就任何個別事項審查和審計該法團及其任何有聯繫實體的帳目及紀錄(包括該法團與任何其他人士達成的交易的紀錄，以及該法團或帳目及紀錄被審查和審計的該實體(視屬何情況而定)所收取或持有的該法團的客戶資產的紀錄)，並在不損害第 161 條的原則下，就該會所指示的事項向該會作出報告。

- (c) a person whose appointment as an auditor, whether or not under section 153 or for the purposes of the Banking Ordinance (Cap. 155), by a former licensed corporation or by a former associated entity of an intermediary, has ceased, in which case a reference to a matter in that subsection shall be construed on the basis that paragraph (a) of that subsection requires the matter to be one which he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor) before the appointment has ceased.

(3) In this section—

“former associated entity of an intermediary”(中介人的前有聯繫實體) means a corporation which was formerly an associated entity of an intermediary; “former licensed corporation”(前持牌法團) means a corporation which was formerly a licensed corporation.

159. Power of Commission to appoint auditors for licensed corporations and their associated entities

(1) Subject to subsection (3), where—

- a licensed corporation has failed to satisfy the Commission in accordance with section 147 that it complies with all of the requirements of the financial resources rules that apply to it;
- the Commission has reasonable cause to believe that a licensed corporation or any of its associated entities has failed to comply with any prescribed requirement;
- the Commission has reasonable cause to believe that a licensed corporation or any of its associated entities has failed to submit any financial statements or other documents in accordance with section 156; or
- the Commission has received a written report lodged by a person under section 157 in relation to a licensed corporation or any of its associated entities,

the Commission may appoint an auditor to examine and audit, either generally or in respect of any particular matter, the accounts and records of the licensed corporation and any of its associated entities (including records of transactions entered into by the licensed corporation with any other person and of client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be)), and, without prejudice to section 161, to report to the Commission on such matters as the Commission may direct.

(2) 凡有核數師根據第(1)款獲委任，以審查和審計某持牌法團及其任何有聯繫實體的帳目及紀錄，他可為該項審查和審計的進行而審查該法團或該實體(視屬何情況而定)所收取或持有的該法團的任何客戶資產。

(3) 如有關的有聯繫實體屬認可財務機構，則證監會在根據第(1)款委任核數師審查和審計該實體的帳目及紀錄之前，須先就該項委任以及該項審查和審計的範圍諮詢金融管理專員。

(4) 在符合第(5)款的規定下，凡根據第(1)款委任的核數師已審查和審計有關的持牌法團或持牌法團的有聯繫實體的帳目及紀錄，而證監會在考慮到該法團或該實體(視屬何情況而定)的行為(不論是在該項委任之前或之後的行為)後，認為應由該法團或該實體(視屬何情況而定)支付審查和審計的全部或部分費用及開支，則該會可藉書面通知，指示該法團或該實體(視屬何情況而定)於指明時間內按指明方式，支付一筆相等於該等費用及開支的全部或部分的指明款項。

(5) 證監會在根據第(4)款向某持牌法團或有聯繫實體作出指示前，須給予該法團或該實體合理的陳詞機會。

(6) 持牌法團或持牌法團的有聯繫實體如沒有遵從根據第(4)款作出的指示，證監會可將該指示所提述的指明款項作為拖欠該會的民事債項予以追討。

(7) 在本條中，“訂明規定”(prescribed requirement)指根據第148、149、151或152條訂立的任何規則中，由根據第397條訂立的規則為本定義的目的而訂明為訂明規定的規定。

160. 證監會應申請而就持牌法團或其有聯繫實體委任核數師的權力

(1) 在不抵觸第(3)至(6)款的條文下，如有人提出書面申請，聲稱某持牌法團或該法團的某有聯繫實體——

(2) Where an auditor is appointed under subsection (1) to examine and audit the accounts and records of a licensed corporation and any of its associated entities, the auditor may, for the purpose of carrying out the examination and audit, examine any client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be).

(3) The Commission shall not appoint an auditor under subsection (1) to examine and audit the accounts and records of an associated entity that is an authorized financial institution unless the Commission has first consulted the Monetary Authority in respect of the appointment and of the scope of the examination and audit to be carried out by the auditor.

(4) Subject to subsection (5), where an auditor appointed under subsection (1) has examined and audited the accounts and records of a licensed corporation or an associated entity of a licensed corporation, the Commission may, where it is of the opinion that it is appropriate to do so having regard to the conduct (whether before or after the appointment) of the licensed corporation or the associated entity (as the case may be), by notice in writing direct the licensed corporation or the associated entity (as the case may be) to pay a specified amount, being the whole or a part of the costs and expenses of the examination and audit, within the specified time and in the specified manner.

(5) The Commission shall not give a direction under subsection (4) unless it has given the licensed corporation or the associated entity to which the direction is to be given a reasonable opportunity of being heard.

(6) Where a licensed corporation or an associated entity of a licensed corporation fails to comply with a direction of the Commission under subsection (4), the Commission may recover the specified amount referred to in the direction as a civil debt due to it.

(7) In this section, “prescribed requirement” (訂明規定) means such of the requirements under any of the rules made under section 148, 149, 151 or 152 as are prescribed by rules made under section 397 for the purposes of this definition.

160. Power of Commission to appoint auditors for licensed corporations and their associated entities on application

(1) Subject to subsections (3) to (6), on an application in writing by a person who alleges that a licensed corporation or any of its associated entities—

- (a) 沒有就該法團或該實體 (視屬何情況而定) 代該人持有的任何客戶資產，向作為該法團的客戶的該人作出交代；或
- (b) 沒有按照作為該法團的客戶的該人給予該法團或該實體 (視屬何情況而定) 的指示行事，且——

(i) 沒有就假若該指示獲依循該人可獲得或增加的利潤，向他作出交代；或

(ii) 沒有就假若該指示獲依循他可避免或減少的損失，向他作出賠償，則證監會可委任核數師全面或就任何個別事項審查和審計該法團及其任何有聯繫實體的帳目及紀錄 (包括該法團與任何其他人士達成的交易的紀錄，以及該法團或帳目及紀錄被審查和審計的該實體 (視屬何情況而定) 所收取或持有的該法團的客戶資產的紀錄)，並在不損害第 161 條的原則下，就該會所指示的事項向該會作出報告。

(2) 凡有核數師根據第 (1) 款獲委任，以審查和審計某持牌法團及其任何有聯繫實體的帳目及紀錄，他可為該項審查和審計的進行而審查該法團或該實體 (視屬何情況而定) 所收取或持有的該法團的任何客戶資產。

(3) 依據第 (1) 款提出申請的人，須在該申請中述明——

- (a) 有關的持牌法團或持牌法團的有聯繫實體遭指稱沒有就任何客戶資產作出交代的詳情，或沒有按照給予它的指示行事及就任何利潤作出交代或就任何損失作出賠償 (視屬何情況而定) 的詳情；
- (b) 所涉及的客戶資產的詳情；
- (c) 指稱沒有作出交代或沒有依循指示行事的事件所涉及的交易詳情；及
- (d) 證監會要求提供的任何其他詳情，

該人並須藉法定聲明核實該申請中的所有陳述，而該聲明可由證監會為此授權的任何人監理。

- (a) has failed to account to the person as a client of the licensed corporation for any client assets held on behalf of the person by the licensed corporation or the associated entity (as the case may be); or
- (b) has failed to act in accordance with instructions given by the person as a client of the licensed corporation to the licensed corporation or the associated entity (as the case may be), and has failed—

(i) to account to the person for any profit that may have been secured or increased by the person had the instructions been followed; or

(ii) to compensate the person for any loss that may have been avoided or reduced by the person had the instructions been followed,

the Commission may appoint an auditor to examine and audit, either generally or in respect of any particular matter, the accounts and records of the licensed corporation and any of its associated entities (including records of transactions entered into by the licensed corporation with any other person and of client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be)), and, without prejudice to section 161, to report to the Commission on such matters as the Commission may direct.

(2) Where an auditor is appointed under subsection (1) to examine and audit the accounts and records of a licensed corporation and any of its associated entities, the auditor may, for the purpose of carrying out the examination and audit, examine any client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be).

(3) A person making an application pursuant to subsection (1) shall state in the application—

- (a) the particulars of the circumstances in which any licensed corporation or any associated entity of a licensed corporation is alleged to have failed to account for any client assets, or to act in accordance with instructions given to the licensed corporation or the associated entity and to account for any profit or compensate for any loss (as the case may be);
- (b) the particulars of any client assets concerned;
- (c) the particulars of the transactions in respect of which the alleged failure has occurred; and

(d) any other particulars the Commission may require, and shall verify all statements in the application by statutory declaration, which may be taken by any person authorized by the Commission in that behalf.

- (4) 除非證監會信納以下條件獲符合，否則不得根據第(1)款委任核數師——
- (a) 依據該款提出有關申請的人有好的理由提出該項申請；及
 - (b) 委任核數師是符合以下人士的利益的——
 - (i) 帳目及紀錄將被該核數師審查和審計的持牌法團及有聯繫實體；
 - (ii) 提出該項申請的人；或
 - (iii) 投資大眾或公眾。
- (5) 如有關的有聯繫實體屬認可財務機構，則證監會在根據第(1)款委任核數師審查和審計該實體的帳目及紀錄之前，須先就該項委任以及該項審查和審計的範圍諮詢金融管理專員。
- (6) 除非證監會已給予有關的持牌法團或持牌法團的有聯繫實體合理的陳詞機會，否則不得根據第(1)款委任核數師審查和審計該法團或該實體（視屬何情況而定）的帳目及紀錄。
- (7) 就誹謗法而言，在依據第(1)款提出的申請中以真誠而並非惡意作出的每項陳述，均享有特權。
- (8) 在符合第(9)款的規定下，凡根據第(1)款委任的核數師已審查和審計有關的持牌法團或持牌法團的有聯繫實體的帳目及紀錄，而證監會在考慮到該法團或該實體（視屬何情況而定）的行為（不論是在該項委任之前或之後的行為），以及依據第(1)款提出該項委任申請的人的行為後，認為應由該法團或該實體（視屬何情況而定）或該人支付以下的指明款項，則該會可藉書面通知，指示該法團或該實體（視屬何情況而定）或該人於指明時間內按指明方式，支付該等款項——
- (a) （就該法團或該實體（視屬何情況而定）而言）審查和審計的全部或部分費用及開支；或
 - (b) （就該人而言）審查和審計的全部或部分費用及開支，但以為確定該項申請所關乎的事宜而合理地招致的費用及開支為限。

- (4) The Commission shall not appoint an auditor under subsection (1) unless it is satisfied that—
- (a) the person making the application pursuant to that subsection has a good reason for making the application; and
 - (b) it is in the interest of—
 - (i) the licensed corporation and the associated entity the accounts and records of which are to be examined and audited by the auditor;
 - (ii) the person making the application; or
 - (iii) the investing public or the public, that the auditor be appointed.
- (5) The Commission shall not appoint an auditor under subsection (1) to examine and audit the accounts and records of an associated entity that is an authorized financial institution unless the Commission has first consulted the Monetary Authority in respect of the appointment and of the scope of the examination and audit to be carried out by the auditor.
- (6) The Commission shall not appoint an auditor under subsection (1) to examine and audit the accounts and records of a licensed corporation or an associated entity of a licensed corporation unless the Commission has given the licensed corporation or the associated entity (as the case may be) a reasonable opportunity of being heard.
- (7) For the purposes of the law of defamation, every statement in an application made pursuant to subsection (1) shall, if made in good faith and without malice, be privileged.
- (8) Subject to subsection (9), where an auditor appointed under subsection (1) has examined and audited the accounts and records of a licensed corporation or an associated entity of a licensed corporation, the Commission may, where it is of the opinion that it is appropriate to do so having regard to the conduct (whether before or after the appointment) of the licensed corporation or the associated entity (as the case may be) and of the person making the application pursuant to subsection (1) in respect of the appointment, by notice in writing direct the licensed corporation or the associated entity (as the case may be) or the person making the application to pay a specified amount, being—
- (a) in the case of the licensed corporation or the associated entity (as the case may be), the whole or a part of the costs and expenses of the examination and audit; or
 - (b) in the case of the person making the application, the whole or a part of the costs and expenses of the examination and audit to the extent that they have been reasonably incurred for the purpose of ascertaining matters to which the application relates, within the specified time and in the specified manner.

(9) 證監會在根據第 (8) 款向某持牌法團、有聯繫實體或人作出指示前，須給予該法團、該實體或該人合理的陳詞機會。

(10) 持牌法團、持牌法團的有聯繫實體或依據第 (1) 款提出申請的人如沒有遵從根據第 (8) 款作出的指示，證監會可將該指示所提述的指明款項作為拖欠該會的民事債項予以追討。

**161. 根據第 159 或 160 條委任的核數師
須向證監會提交報告**

(1) 根據第 159 或 160 條獲委任的核數師須按證監會的規定，向該會提交中期報告，並在他獲委任進行的審查和審計完成後，向該會提交最後報告。

(2) 第 (1) 款提述的報告須在證監會指示的時間內以該會指示的方式提交。

(3) 凡根據第 (1) 款向證監會提交的任何報告所提述的審查和審計以某持牌法團或有聯繫實體的帳目及紀錄為對象，證監會如認為適當，可將該報告遞送至該法團或該實體（視屬何情況而定）。

162. 根據第 159 或 160 條委任的核數師的權力

(1) 根據第 159 或 160 條獲委任審查和審計任何持牌法團及其任何有聯繫實體的帳目及紀錄的核數師，為了進行該項審查和審計，除可採取他為進行該項審查和審計而可合理地採取的其他行動外，亦可——

(a) 就任何與該法團或該實體（視屬何情況而定）的業務有關的事宜，或任何與該法團或該實體（視屬何情況而定）所收取或持有的該法團的客戶資產有關的事宜，訊問經宣誓或未經宣誓的以下人士——

(i) 該法團或該實體（視屬何情況而定）的任何高級人員、僱員及代理人；及

(ii) 獲該法團或該實體（視屬何情況而定）根據第 153 條委任的任何核數師，或在該實體屬認可財務機構的情況下，獲該實體為《銀行業條例》（第 155 章）的目的而委任的任何核數師；

(9) The Commission shall not give a direction under subsection (8) unless it has given the licensed corporation, the associated entity or the person to which or to whom the direction is to be given a reasonable opportunity of being heard.

(10) Where a licensed corporation, an associated entity of a licensed corporation or a person making an application pursuant to subsection (1) fails to comply with a direction of the Commission under subsection (8), the Commission may recover the specified amount referred to in the direction as a civil debt due to it.

**161. Auditors appointed under section 159
or 160 to report to Commission**

(1) An auditor appointed under section 159 or 160 shall make such interim reports to the Commission as it may require and shall, on the conclusion of the examination and audit which he is appointed to carry out, make a final report to the Commission.

(2) A report referred to in subsection (1) shall be made within such time and in such manner as the Commission may direct.

(3) The Commission may, if it considers appropriate, forward a copy of any report made to it under subsection (1) to the licensed corporation or the associated entity the accounts and records of which are the subject of the examination and audit referred to in the report.

**162. Powers of auditors appointed under
section 159 or 160**

(1) An auditor appointed under section 159 or 160 to examine and audit the accounts and records of any licensed corporation and any of its associated entities, for the purpose of carrying out the examination and audit, may, in addition to any other action that the auditor may reasonably take for the purpose—

(a) examine on oath or otherwise—

(i) any officer, employee and agent of the licensed corporation or the associated entity (as the case may be); and

(ii) any auditor appointed by the licensed corporation or the associated entity (as the case may be) under section 153 or, where the associated entity is an authorized financial institution, for the purposes of the Banking Ordinance (Cap. 155),

以及為進行訊問的目的而監誓；

- (b) 要求該法團或該實體(視屬何情況而定)的任何高級人員、僱員及代理人——
 - (i) 交出帳目及紀錄，而該等帳目及紀錄是關乎任何與該法團或該實體(視屬何情況而定)的業務有關的事宜，或任何與該法團或該實體(視屬何情況而定)所收取或持有的該法團的客戶資產有關的事宜的；及
 - (ii) 就所交出的帳目及紀錄的內容作出解釋；
- (c) 要求獲該法團或該實體(視屬何情況而定)根據第 153 條委任的任何核數師，或在該實體屬認可財務機構的情況下，獲該實體為《銀行業條例》(第 155 章)的目的而委任的任何核數師——
 - (i) 交出他持有的帳目及紀錄，而該等帳目及紀錄是關乎任何與該法團或該實體(視屬何情況而定)的業務有關的事宜，或任何與該法團或該實體(視屬何情況而定)所收取或持有的該法團的客戶資產有關的事宜的；及
 - (ii) 就所交出的帳目及紀錄的內容作出解釋；
- (d) 要求認可交易所或認可結算所——
 - (i) 交出它備存的帳目及紀錄或它管有的資料，而該等帳目及紀錄或該等資料是關乎任何與該法團或該實體(視屬何情況而定)的業務有關的事宜，或任何與該法團或該實體(視屬何情況而定)所收取或持有的該法團的客戶資產有關的事宜的；及
 - (ii) 就所交出的帳目、紀錄及資料的內容作出解釋；
- (e) 要求任何代該法團或該實體(視屬何情況而定)收取或持有該法團的客戶資產的人——

- in respect of any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be) and, for that purpose, administer oaths accordingly;
- (b) require any officer, employee and agent of the licensed corporation or the associated entity (as the case may be) to—
 - (i) produce any accounts and records concerning any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be); and
 - (ii) explain the contents of the accounts and records so produced;
- (c) require any auditor appointed by the licensed corporation or the associated entity (as the case may be) under section 153 or, where the associated entity is an authorized financial institution, for the purposes of the Banking Ordinance (Cap. 155) to—
 - (i) produce any accounts and records held by him concerning any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be); and
 - (ii) explain the contents of the accounts and records so produced;
- (d) require a recognized exchange company or recognized clearing house to—
 - (i) produce any accounts and records kept by it, or information in its possession, concerning any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be); and
 - (ii) explain the contents of the accounts and records, and the information, so produced;
- (e) require any person receiving or holding client assets of the licensed corporation on behalf of the licensed corporation or the associated entity (as the case may be) to—

- (i) 交出他備存的關乎與該等資產有關的事宜的帳目及紀錄，或交出他管有的關乎該等事宜的資料；及
 - (ii) 就所交出的帳目、紀錄及資料的內容作出解釋；
 - (f) 僱用他認為需要的人協助進行他獲委任進行的該項審查和審計；及
 - (g) 為進行該項審查和審計，以書面授權他僱用的人作出或進行本款提述的任何作為或事情（根據 (a) 段於某人宣誓後向該人進行訊問或行使本段賦予他的任何權力除外）。
- (2) 如根據第 159 或 160 條獲委任的核數師或根據第 (1)(g) 款獲授權的人合理地認為，為進行該核數師獲委任進行的對有關的持牌法團及其任何有聯繫實體的帳目及紀錄的審查和審計而有此需要，則第 (1) 款提述的權力——
- (a) 可就該法團連同它獲發牌進行的任何受規管活動一併進行的任何其他業務，以及其任何有聯繫實體的任何業務而行使；在此情況下，第 (1)(a) 至 (g) 款中對“任何與該法團或該實體（視屬何情況而定）的業務有關的事宜”的提述，須解釋為對任何與該法團進行的該等其他業務或與該法團的任何有聯繫實體的業務有關的事宜的提述；及
 - (b) 可就該法團或其任何有聯繫實體的有連繫法團而行使；在此情況下——
 - (i) 第 (1)(a) 至 (g) 款中對“該法團或該實體（視屬何情況而定）的任何高級人員、僱員或代理人”的提述，須解釋為對該有連繫法團的任何高級人員、僱員或代理人的提述；
 - (ii) 第 (1)(a) 至 (g) 款中對“獲該法團或該實體（視屬何情況而定）根據第 153 條委任的任何核數師，或在該實體屬認可財務機構的情況下，獲該實體為《銀行業條例》（第 155 章）的目的而委任的任何核數師”的提述，須解釋為對獲該有連繫法團委任的任何核數師的提述，而不論該項委任是否根據本條例作出；

- (i) produce any accounts and records kept by the person, or information in his possession, concerning any matter relating to the client assets; and
 - (ii) explain the contents of the accounts and records, and the information, so produced;
 - (f) employ any person he considers necessary to assist him in carrying out the examination and audit which he is appointed to carry out; and
 - (g) for the purpose of carrying out the examination and audit which he is appointed to carry out, authorize in writing any person employed by him to do any act or thing referred to in this subsection (except to examine a person on oath under paragraph (a) or to exercise any power conferred by this paragraph).
- (2) If an auditor appointed under section 159 or 160, or a person authorized under subsection (1)(g), reasonably considers it necessary for the purpose of carrying out the examination and audit of the accounts and records of a licensed corporation and any of its associated entities which the auditor is appointed to carry out, the powers referred to in subsection (1)—
- (a) are exercisable in relation to any other business carried on by the licensed corporation in conjunction with any regulated activity for which it is licensed and to any business of any of its associated entities, in which case any reference to “any matter relating to the business of the licensed corporation or the associated entity (as the case may be)” in subsection (1)(a) to (g) shall be construed on the basis that it refers to any matter relating to such other business carried on by the licensed corporation or to such business of any of its associated entities; and
 - (b) are exercisable in relation to a related corporation of the licensed corporation or any of its associated entities, in which case—
 - (i) any reference to “any officer, employee and agent of the licensed corporation or the associated entity (as the case may be)” in subsection (1)(a) to (g) shall be construed on the basis that it refers to any officer, employee and agent of the related corporation;
 - (ii) any reference to “any auditor appointed by the licensed corporation or the associated entity (as the case may be) under section 153 or, where the associated entity is an authorized financial institution, for the purposes of the Banking Ordinance (Cap. 155)” in subsection (1)(a) to (g) shall be construed on the basis that it refers to any auditor appointed by the related corporation, whether under this Ordinance or otherwise;

(iii) 第 (1)(a) 至 (g) 款中對“任何與該法團或該實體(視屬何情況而定)的業務有關的事宜，或任何與該法團或該實體(視屬何情況而定)所收取或持有的該法團的客戶資產有關的事宜”的提述，除須解釋為對文中原先所提述的事宜的提述外，亦須解釋為對任何與該有連繫法團的業務有關的事宜的提述；及

(iv) 第 (1)(a) 至 (g) 款中對“任何代該法團或該實體(視屬何情況而定)收取或持有該法團的客戶資產的人”的提述，須解釋為對任何代該有連繫法團收取或持有文中所提述的該法團的客戶資產的人的提述。

(3) 任何人無合理辯解而沒有遵從根據本條向他施加(不論是由根據第 159 或 160 條獲委任的核數師或是由根據第 (1)(g) 款獲授權的人所施加)的要求(包括要他回答向他提出的問題的要求)，即屬犯罪——

(a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或

(b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。

(4) 任何人——

(a) 在看來是遵從根據本條向他施加(不論是由根據第 159 或 160 條獲委任的核數師或是由根據第 (1)(g) 款獲授權的人所施加)的要求(包括要他回答向他提出的問題的要求)時，交出在要項上屬虛假或具誤導性的帳目或紀錄，或給予在要項上屬虛假或具誤導性的答案；且

(b) 知道該等帳目、紀錄或答案在要項上屬虛假或具誤導性，或罔顧該等帳目、紀錄或答案是否在要項上屬虛假或具誤導性，

即屬犯罪——

(i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或

(ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

(5) 任何人意圖詐騙而——

(a) 沒有遵從根據本條向他施加(不論是由根據第 159 或 160 條獲委任的核數師或是由根據第 (1)(g) 款獲授權的人所施加)的要求(包括要他回答向他提出的問題的要求)；或

(iii) any reference to “any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be)” in subsection (1)(a) to (g) shall be construed on the basis that it refers, apart from the matter originally referred to, also to any matter relating to the business of the related corporation; and

(iv) any reference to “any person receiving or holding client assets of the licensed corporation on behalf of the licensed corporation or the associated entity (as the case may be)” in subsection (1)(a) to (g) shall be construed on the basis that it refers to any person receiving or holding client assets of the licensed corporation on behalf of the related corporation.

(3) A person who, without reasonable excuse, fails to comply with any requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 159 or 160 or a person authorized under subsection (1)(g)) commits an offence and is liable—

(a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or

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

(4) A person who—

(a) in purported compliance with a requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 159 or 160 or a person authorized under subsection (1)(g)), produces any accounts or records or gives an answer which is false or misleading in a material particular; and

(b) knows that, or is reckless as to whether, the accounts or records or the answer is false or misleading in a material particular,

commits an offence and is liable—

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

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

(5) A person who, with intent to defraud—

(a) fails to comply with any requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 159 or 160 or a person authorized under subsection (1)(g)); or

- (b) 在看來是遵從根據本條向他施加 (不論是由根據第 159 或 160 條獲委任的核數師或是由根據第 (1)(g) 款獲授權的人所施加) 的要求 (包括要他回答向他提出的問題的要求) 時, 交出在要項上屬虛假或具誤導性的帳目或紀錄, 或給予在要項上屬虛假或具誤導性的答案, 即屬犯罪——
- (i) 一經循公訴程序定罪, 可處罰款 \$1,000,000 及監禁 7 年; 或
- (ii) 一經循簡易程序定罪, 可處罰款 \$500,000 及監禁 1 年。

163. 銷毀、隱藏或更改帳目、紀錄或文件等的罪行。

- (1) 任何人意圖防止、阻延或阻撓進行根據本部獲委任的核數師所需進行的審查和審計, 而作出以下行為, 即屬犯罪——
- (a) 刪除、銷毀、切割、捏改、隱藏、更改或以其他方式致使不能提供任何與該項審查和審計有關的帳目、紀錄或文件, 或協助或教唆或串同另一人如此行事;
- (b) 不論以任何方式亦不論以任何途徑, 處置或促致處置任何與該項審查和審計有關的財產, 或協助或教唆或串同另一人如此行事; 或
- (c) 離開或企圖離開香港。
- (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, 可處罰款 \$500,000 及監禁 1 年。
- (3) 在就第 (1) 款所訂罪行而進行的法律程序中, 如證明被控人刪除、銷毀、切割、捏改、隱藏或更改任何與根據本部獲委任的核數師所需進行的任何審查和審計有關的帳目、紀錄或文件, 或協助或教唆或串同另一人如此行事, 被控人即推定為是意圖防止、阻延或阻撓該項審查和審計的進行而如此行事, 但如有相反證據, 則作別論。

- (b) in purported compliance with a requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 159 or 160 or a person authorized under subsection (1)(g)), produces any accounts or records or gives an answer which is false or misleading in a material particular, commits an offence and is liable—
- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
- (ii) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.

163. Offence to destroy, conceal, or alter accounts, records or documents, etc.

- (1) A person commits an offence if he, with intent to prevent, delay or obstruct the carrying out of any examination and audit which an auditor appointed under this Part is required to carry out—
- (a) deletes, destroys, mutilates, falsifies, conceals, alters or otherwise makes unavailable any accounts, records or documents related to such examination and audit, or aids or abets or conspires with another person to do so;
- (b) disposes or procures the disposal, in any manner and by any means, of any property related to such examination and audit, or aids or abets or conspires with another person to do so; or
- (c) leaves, or attempts to leave, Hong Kong.
- (2) A person who commits an offence under subsection (1) is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
- (b) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.
- (3) If, in proceedings for an offence under subsection (1), it is proved that the accused person deleted, destroyed, mutilated, falsified, concealed or altered any accounts, records or documents related to any examination and audit which an auditor appointed under this Part is required to carry out, or aided or abetted or conspired with another person to do so, he shall, in the absence of evidence to the contrary, be presumed to have done so with intent to prevent, delay or obstruct the carrying out of such examination and audit.

第 6 分部——雜項規定

164. 就收取或持有客戶資產方面的限制

- (1) 只有以下人士可在香港收取或持有中介人的客戶資產——
 - (a) 該中介人；
 - (b) 該中介人的有聯繫實體；或
 - (c) 豁除人士。
- (2) 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 \$200,000 及監禁 2 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) 在本條中，“豁除人士”(excluded person)——
 - (a) 指任何認可財務機構；
 - (b) 就任何中介人的客戶抵押品而言，指符合以下說明的任何其他人士或中介人：在附表 1 第 1 部第 1 條中“證券抵押品”或“其他抵押品”(視屬何情況而定)的定義的 (a)(A) 或 (B) 或 (b)(A) 或 (B) 段(視屬何情況而定)提述的情況下，該抵押品須提供予該其他人士或中介人或存放於其處；
 - (c) 指根據在第 148(2)(d) 條下訂立的規則，而獲核准為適合負責穩妥保管中介人的客戶證券及抵押品的任何公司或海外公司；或
 - (d) 指符合以下說明的在香港的人：根據在第 149(2)(f) 條下訂立的規則指明他為可與之開立和維持指定為信託帳戶或客戶帳戶的、就持牌法團的客戶款項而開立的獨立帳戶的人。

165. 有聯繫實體

- (1) 中介人的有聯繫實體須——
 - (a) 在它成為該實體後 7 個營業日內；或
 - (b) 在它不再是該實體後 7 個營業日內，
 以書面將此事以及為施行本條而藉根據第 397 條訂立的規則訂明的其他詳情通知證監會。

Division 6—Miscellaneous

164. Restriction on receiving or holding of client assets

- (1) No person shall receive or hold in Hong Kong client assets of an intermediary unless the person is—
 - (a) the intermediary;
 - (b) an associated entity of the intermediary; or
 - (c) an excluded person.
- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (3) In this section, “excluded person” (豁除人士) means—
 - (a) any authorized financial institution;
 - (b) in the case of client collateral of any intermediary, any other intermediary or person with which or whom it is deposited, or to which or whom it is provided, in the circumstances referred to in paragraph (a)(A) or (B) or (b)(A) or (B) (as the case may be) of the definition of “securities collateral” or “other collateral” (as the case may be) in section 1 of Part 1 of Schedule 1;
 - (c) any company or overseas company that is approved under rules made pursuant to section 148(2)(d) as being suitable for the safe custody of client securities and collateral of intermediaries; or
 - (d) any person in Hong Kong that is specified under rules made pursuant to section 149(2)(f) as that with whom segregated accounts established for client money of licensed corporations and designated as trust accounts or client accounts are to be established and maintained.

165. Associated entities

- (1) An associated entity of an intermediary shall within 7 business days after—
 - (a) it becomes such an associated entity; or
 - (b) it ceases to be such an associated entity,
 notify the Commission by notice in writing of that fact and such other particulars as are prescribed by rules made under section 397 for the purposes of this section.

(2) 凡中介人的有聯繫實體根據第 (1) 款須提供的詳情有任何改變，該實體須在該項改變發生後 7 個營業日內，以書面將此事通知證監會，並在通知內提供該項改變的詳情。

(3) 如中介人的有聯繫實體(屬認可財務機構者除外)收取或持有該中介人的客戶資產，則除非獲證監會書面認可，否則該實體除經營收取或持有客戶資產(不論該等資產是否代該中介人收取或持有)的業務外，不得經營任何其他業務。

(4) 任何中介人的有聯繫實體無合理辯解而違反第 (1)、(2) 或 (3) 款，即屬犯罪——

(a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 2 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。

(5) 任何中介人的有聯繫實體意圖詐騙而違反第 (1)、(2) 或 (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 7 年；或

(b) 一經循簡易程序定罪，可處罰款 \$500,000 及監禁 1 年。

(6) 中介人的有聯繫實體如察覺本身沒有遵守第 (1)、(2) 或 (3) 款，須在隨後一個營業日內，以書面將此事以及相關情況通知證監會。

(7) 任何中介人的有聯繫實體違反第 (6) 款，即屬犯罪——

(a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 2 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。

(8) 任何中介人的有聯繫實體不得僅以遵從第 (6) 款可能會導致它入罪為理由，而獲豁免遵從該款。

(9) 不論本條有任何規定，證監會為施行本條而就中介人的有聯繫實體訂立規則的權力，在該等實體屬認可財務機構的情況下，須視為只就該等實體訂立與他們收取或持有中介人的客戶資產的業務的詳情有關的規則的權力。

(2) Where there is any change in the particulars required to be provided by an associated entity of an intermediary under subsection (1), the associated entity shall within 7 business days thereafter notify the Commission by notice in writing of that fact and provide in the notice particulars of the change.

(3) Where an associated entity of an intermediary, other than an authorized financial institution, receives or holds client assets of the intermediary, the associated entity shall not, unless authorized in writing by the Commission, conduct any business other than that of receiving or holding client assets, whether on behalf of the intermediary or otherwise.

(4) An associated entity of an intermediary which, without reasonable excuse, contravenes subsection (1), (2) or (3) commits an offence and is liable—

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

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

(5) An associated entity of an intermediary which, with intent to defraud, contravenes subsection (1), (2) or (3) commits an offence and is liable—

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

(b) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.

(6) An associated entity of an intermediary which becomes aware that it does not comply with subsection (1), (2) or (3) shall within one business day thereafter notify the Commission by notice in writing of that fact and of the surrounding circumstances.

(7) An associated entity of an intermediary which contravenes subsection (6) commits an offence and is liable—

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

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

(8) An associated entity of an intermediary is not excused from complying with subsection (6) only on the ground that to do so might tend to incriminate it.

(9) Notwithstanding anything in this section, the power of the Commission to make rules for the purposes of this section in respect of associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to make rules in respect of the associated entities only in relation to particulars relating to their businesses of receiving or holding client assets of intermediaries of which they are associated entities.

166. 導致入罪的證據在法律程序中的使用

不論本條例其他條文有任何規定，凡任何人——

- (a) 根據第 146(3) 條須將任何事宜通知證監會；
- (b) 根據第 165(6) 條須將任何事宜通知證監會；或
- (c) 根據任何依據第 148(2)(i)、149(2)(k)、151(2)(d) 或 152(2)(f) 條訂立的規則須將任何事宜通知證監會，

但該通知可能會導致該人入罪，則除非屬以下情況，否則該通知不得在法庭進行的刑事法律程序中接納為針對該人的證據——

- (i) 他就該通知而被控犯《刑事罪行條例》(第 200 章) 第 V 部所訂罪行或被控犯作偽證供罪；
- (ii) 在 (a) 段所述情況下，他就該通知而被控犯第 146(15) 條所訂罪行；
- (iii) 在 (b) 段所述情況下，他就該通知而被控犯第 165(7) 條所訂罪行；或
- (iv) 在 (c) 段所述情況下，他因沒有遵從該段描述的關於通知的規定而導致違例，而他就該項違例被控犯根據第 148(4) 或 (5)、149(4) 或 (5)、151(5) 或 (6)、152(3) 或 (4) 條 (視屬何情況而定) 訂立的規則所訂罪行。

第 VII 部

中介人的業務操守等

第 1 分部——釋義

167. 第 VII 部的釋義

在本部中，除文意另有所指外——

“代表” (representative)——

- (a) 就持牌法團而言，指符合以下說明的個人——

166. Use of incriminating evidence in proceedings

Notwithstanding any other provisions of this Ordinance, where a person—

- (a) is required under section 146(3) to notify the Commission of any matter;
- (b) is required under section 165(6) to notify the Commission of any matter; or
- (c) is required by rules made pursuant to section 148(2)(i), 149(2)(k), 151(2)(d) or 152(2)(f) to notify the Commission of any matter,

and the notification might tend to incriminate the person, then the notification shall not be admissible in evidence against the person in criminal proceedings in a court of law other than those in which—

- (i) he is charged with an offence under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the notification;
- (ii) in the case of paragraph (a), he is charged with an offence under section 146(15) in respect of the notification;
- (iii) in the case of paragraph (b), he is charged with an offence under section 165(7) in respect of the notification; or
- (iv) in the case of paragraph (c), he is charged with an offence under any rules made under section 148(4) or (5), 149(4) or (5), 151(5) or (6), 152(3) or (4) (as the case may be) in respect of a contravention taking place by reason of a failure to comply with the requirement described in paragraph (c) relating to the notification.

PART VII

BUSINESS CONDUCT, ETC. OF INTERMEDIARIES

Division 1—Interpretation

167. Interpretation of Part VII

In this Part, unless the context otherwise requires—

“client contract” (客戶合約) means any contract or arrangement between an intermediary and another person, which contains terms on which the intermediary is to provide services the provision of which constitutes a regulated activity;

“representative” (代表)——

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

- (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;

- (c) 在交易所參與者按照營辦某證券市場的認可交易所的規則經營其證券碎股交易業務的過程中，他以當事人身分作出的證券售賣，而該項售賣純粹是為以下目的而作出的——
- (i) 接受購買證券碎股的要約；或
 - (ii) 以售賣一個交易單位的證券的方法，將證券碎股處置；
- (d) 依據一項期權合約的交易而作出的證券售賣，而該項合約是在認可證券市場進行買賣的；
- (e) 屬於為施行本段而藉根據第 397 條訂立的規則訂明的交易類別的證券售賣。
- (4) 任何人違反第 (1) 款，即屬犯罪，一經定罪，可處第 6 級罰款及監禁 2 年。

171. 確認賣空指示的規定

(1) 凡任何人以當事人身分售賣證券，他不得在認可證券市場或透過認可證券市場傳達任何賣空指示，除非他以文件形式向他的代理人提供一項對以下事項的保證——

- (a) 他具有一項即時可行使而不附有條件的權利，以將該指示所關乎的證券轉歸於其購買人名下；及
- (b) 如該指示是憑藉在附表 1 第 1 部第 1 條中的“賣空指示”的定義中的 (a)(i) 或 (v) 段而構成一項賣空指示的話，該段所提述的對手方或另一人（視屬何情況而定）備有該指示所關乎的證券可供借給或交付給他。

(2) 第 (1) 款所適用的人須在為施行本款而藉根據第 397 條訂立的規則訂明的時間內，以文件形式向他的代理人提供如此訂明的資料（如有的話）。

(3) 任何以當事人身分售賣證券的交易所參與者，不得在認可證券市場或透過認可證券市場傳達任何憑藉在附表 1 第 1 部第 1 條中的“賣空指示”的定義中的 (a)(i) 或 (v) 段而構成一項賣空指示的指示，除非他已從該段所提述的對手方或另一人（視屬何情況而定）收到一項以文件形式提供的保證，表示該對手方或該另一人備有該指示所關乎的證券可供借給或交付給他。

- (c) a sale of securities by an exchange participant acting as a principal, when he acts in the course of his business of dealing in odd lots of securities; in accordance with the rules of the recognized exchange company which operates a stock market, being a sale effected solely for the purpose of—
- (i) accepting an offer to purchase an odd lot of securities; or
 - (ii) disposing of an odd lot of securities, by means of the sale of one board lot of those securities;
- (d) a sale of securities effected pursuant to a transaction in an options contract traded on a recognized stock market;
- (e) a sale of securities falling within a class of transactions prescribed by rules made under section 397 for the purposes of this paragraph.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 2 years.

171. Requirements to confirm short selling order

(1) A person, where he is selling as a principal, shall not convey a short selling order at or through a recognized stock market unless he provides to his agent an assurance, in the form of a document, that—

- (a) he has a presently exercisable and unconditional right to vest the securities to which the order relates in the purchaser of them; and
- (b) where the short selling order is such order by virtue of paragraph (a)(i) or (v) of the definition of “short selling order” in section 1 of Part 1 of Schedule 1, the counterparty or the other person (as the case may be) referred to in such paragraph has the securities to which the order relates available to lend or deliver to him.

(2) A person to which subsection (1) applies shall provide to his agent such information (if any), in the form of a document and within such time, as is prescribed by rules made under section 397 for the purposes of this subsection.

(3) An exchange participant, where he is selling as a principal, shall not convey a short selling order which is such order by virtue of paragraph (a)(i) or (v) of the definition of “short selling order” in section 1 of Part 1 of Schedule 1 at or through a recognized stock market unless he has received an assurance, in the form of a document, from the counterparty or the other person (as the case may be) referred to in such paragraph that the counterparty or the other person (as the case may be) has the securities to which the order relates available to lend or deliver to him.

(4) 第 (3) 款所適用的交易所參與者須在為施行本款而藉根據第 397 條訂立的規則訂明的時間內，從該款所提述的對手方或另一人收取以文件形式提供的如此訂明的資料(如有的話)。

(5) 任何以代理人身分售賣證券的人，不得在認可證券市場或透過認可證券市場傳達或接受任何屬賣空指示的指示，除非他已從他的當事人或(如該指示是為其他人的利益作出或代其他人作出)該其他人，收到一項以文件形式提供的對以下事項的保證——

- (a) 該當事人或該其他人(視屬何情況而定)具有一項即時可行使而不附有條件的權利，以將該指示所關乎的證券轉歸其購買人名下；及
- (b) 如該指示是憑藉在附表 1 第 1 部第 1 條中的“賣空指示”的定義中的 (a)(i) 或 (v) 段而構成一項賣空指示的話，該段所提述的對手方或另一人(視屬何情況而定)備有該指示所關乎的證券可供借給或交付給他。

(6) 第 (5) 款所適用的人須在為施行本款而藉根據第 397 條訂立的規則訂明的時間內，從他的當事人或該款所提述的其他人收取以文件形式提供的如此訂明的資料(如有的話)。

(7) 就第 (1)、(3) 及 (5) 款而言，如有以下情況，則任何代客戶或受益人傳達或接受指示的人須視為以當事人身分售賣證券——

- (a) 他有完全酌情決定權售賣該指示所關乎的證券；及
- (b) 他並非按照其客戶或受益人的任何指示而作出上述的傳達或接受。

(8) 任何憑藉或根據第 (1)、(2)、(3)、(4)、(5) 或 (6) 款而收到或收取任何保證或資料的代理人或交易所參與者——

- (a) 在不抵觸 (b) 段的條文下，須於自他收到載有該保證或資料的文件當日起計 1 年內，保留該文件；及
- (b) 須在證監會於該年內任何時間作出要求時，讓該會有途徑取得該文件，及在該會指明的時間內在該會指明的地點向該會交出該文件。

(9) 在根據本條例於任何法庭進行的法律程序中，第 (1)、(2)、(3)、(4)、(5) 或 (6) 款提述的保證或資料須獲接納為以下事項的表面證據——

(4) An exchange participant to which subsection (3) applies shall collect from the counterparty or the other person referred to in that subsection such information (if any), in the form of a document and within such time, as is prescribed by rules made under section 397 for the purposes of this subsection.

(5) A person, where he is selling as an agent, shall not convey or accept an order to sell securities which is a short selling order at or through a recognized stock market unless he has received from his principal, or the other person for whose benefit or on whose behalf the order is made, an assurance, in the form of a document, that—

- (a) his principal or that other person (as the case may be) has a presently exercisable and unconditional right to vest the securities to which the order relates in the purchaser of them; and
- (b) where the short selling order is such order by virtue of paragraph (a)(i) or (v) of the definition of “short selling order” in section 1 of Part 1 of Schedule 1, the counterparty or the other person (as the case may be) referred to in such paragraph has the securities to which the order relates available to lend or deliver to him.

(6) A person to which subsection (5) applies shall collect from his principal, or the other person referred to in that subsection, such information (if any), in the form of a document and within such time, as is prescribed by rules made under section 397 for the purposes of this subsection.

(7) For the purposes of subsections (1), (3) and (5), a person who conveys or accepts an order on behalf of his clients or beneficiaries shall be regarded as selling as a principal if—

- (a) he has full discretion to sell the securities to which the order relates; and
- (b) his conveyance or acceptance is not in accordance with any instruction from his clients or beneficiaries.

(8) An agent or exchange participant who receives or collects an assurance or information by virtue of or under subsection (1), (2), (3), (4), (5) or (6) shall—

- (a) subject to paragraph (b), retain the document in which it is contained for not less than one year from the date on which it is received; and
- (b) upon request made at any time within that year by the Commission, give the Commission access to the document, and produce to the Commission, within the time and at the place specified by the Commission, the document.

(9) An assurance or information referred to in subsection (1), (2), (3), (4), (5) or (6) shall in any proceedings under this Ordinance before any court be admissible as prima facie evidence of—

(a) 就任何保證而言，第 (1)、(3) 或 (5) 款 (視屬何情況而定) 中指明的該保證所關乎的事項；或

(b) 就任何資料而言，第 (2)、(4) 或 (6) 款 (視屬何情況而定) 提述的規則中指明的該資料所關乎的事項 (如有的話)。

(10) 在不抵觸第 (11) 款的規定下，任何人違反第 (1)、(3) 或 (5) 款，即屬犯罪，一經定罪，可處第 5 級罰款及監禁 1 年。

(11) 被控犯第 (10) 款所訂罪行的人如證明當他傳達，或就違反第 (5) 款而言，當他傳達或接受有關指示時，他——

(a) 相信並有合理理由相信該指示並非一項賣空指示；或

(b) 並不知道該指示屬一項賣空指示，

則可以此作為免責辯護。

(12) 任何人無合理辯解而違反第 (2)、(4)、(6) 或 (8) 款，即屬犯罪，一經定罪，可處第 5 級罰款及監禁 1 年。

172. 披露賣空的規定

(1) 任何交易所參與者或交易所參與者代表如知道或獲告知某項售賣證券的指示屬一項賣空指示，則——

(a) 當他將該指示傳達任何其他人士，以使該人將該指示輸入某認可證券市場的交易系統時，他須告知該人該指示屬一項賣空指示；及

(b) 當他將該指示輸入某認可證券市場的交易系統時，他須註明營辦該市場的認可交易所的規章所規定的、用以顯示該指示屬一項賣空指示的事項。

(2) 除第 (3) 款另有規定外，任何人無合理辯解而違反第 (1) 款，即屬犯罪，一經定罪，可處第 5 級罰款及監禁 1 年。

(3) 任何人如僅因他的粗心大意、不小心或疏忽而違反第 (1) 款，則他不得視為犯第 (2) 款所訂罪行。

(a) in the case of an assurance, the matters specified in subsection (1), (3) or (5) (as the case may be) as that to which the assurance relates; or

(b) in the case of information, the matters (if any) specified in the rules referred to in subsection (2), (4) or (6) (as the case may be) as that to which the information relates.

(10) Subject to subsection (11), a person who contravenes subsection (1), (3) or (5) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(11) It is a defence to a charge for an offence under subsection (10) for the person charged to prove that when he conveyed or, in the case of a contravention of subsection (5), conveyed or accepted the order concerned, he—

(a) believed and had reasonable grounds to believe that the order was not a short selling order; or

(b) did not know that the order was a short selling order.

(12) A person who, without reasonable excuse, contravenes subsection (2), (4), (6) or (8) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

172. Requirements to disclose short sales

(1) An exchange participant or exchange participant's representative who knows or is informed that an order to sell securities is a short selling order shall—

(a) when passing the order to any other person with a view that the other person shall input the order into the trading system of a recognized stock market, inform that other person that the order is a short selling order; and

(b) when inputting the order into the trading system of a recognized stock market, indicate such matters as may be required, under the rules of the recognized exchange company by which the recognized stock market is operated, to show that the order is a short selling order.

(2) Subject to subsection (3), a person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(3) A person shall not be regarded as committing an offence under subsection (2) if he contravenes subsection (1) by reason only of his inadvertence, carelessness or negligence.

(4) 在本條中，“交易所參與者代表”(exchange participant's representative)指隸屬某持牌法團的持牌代表，而該法團是營辦某認可證券市場的認可交易所的交易所參與者。

第 4 分部——其他規定

173. 期權買賣的規定

- (1) 證監會可訂立規則——
 - (a) 禁止第 1 類中介人在該等規則所規定的情況以外的情況下——
 - (i) 在香港進行交易；
 - (ii) 在香港顯示自己準備進行交易，而交易的內容是直接或間接賦予任何人一項期權，以使該人可向該中介人售賣或購買，或向代該中介人行事的人售賣或購買任何上市證券；
 - (b) 禁止第 2 類中介人在該等規則所規定的情況以外的情況下——
 - (i) 在香港進行交易；
 - (ii) 在香港顯示自己準備進行交易，而交易的內容是直接或間接賦予任何人一項期權，以使該人可向該中介人售賣或購買，或向代該中介人行事的人出售或購買任何在認可期貨市場買賣的期貨合約。
- (2) 根據本條訂立的規則可規定，任何第 1 類中介人或第 2 類中介人無合理辯解而違反該等規則中適用於他的任何指明條文，即屬犯罪——
 - (a) 一經循公訴程序定罪，可處不超過罰款 \$200,000 及監禁 2 年的指明罰則；
 - (b) 一經循簡易程序定罪，可處不超過第 6 級罰款及監禁 6 個月的指明罰則。
- (3) 在本條中——

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

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

(4) In this section, “exchange participant's representative” (交易所參與者代表) means a licensed representative accredited to a licensed corporation that is an exchange participant of a recognized exchange company which operates a recognized stock market.

Division 4—Other requirements

173. Requirements for options trading

- (1) The Commission may make rules—
 - (a) prohibiting Type 1 intermediaries from—
 - (i) transacting in Hong Kong;
 - (ii) holding themselves out in Hong Kong as being prepared to transact, except as provided in the rules, any dealing whereby directly or indirectly they confer on any person an option to sell to or purchase from them, or any other person on their behalf, any listed securities;
 - (b) prohibiting Type 2 intermediaries from—
 - (i) transacting in Hong Kong;
 - (ii) holding themselves out in Hong Kong as being prepared to transact, except as provided in the rules, any dealing whereby directly or indirectly they confer on any person an option to sell to or purchase from them, or any other person on their behalf, any futures contracts traded on a recognized futures market.
- (2) Rules made under this section may provide that a Type 1 intermediary, or a Type 2 intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—
 - (a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 2 years;
 - (b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.
- (3) In this section—

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

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

174. 進行未獲邀約的造訪時 不得訂立某些協議

(1) 除第(2)及(3)款另有規定外，任何中介人或其代表不得在（不論是在香港或在其他地方）進行未獲邀約的造訪時或繼續進行未獲邀約的造訪後，以主事人或代理人身分作出以下作為——

(a) 與另一人訂立或要約與另一人訂立符合以下說明的協議——

(i) 協議的內容或目的是該另一人售賣或購買任何證券、期貨合約或槓桿式外匯交易合約；

(ii) 協議的內容或目的是向該另一人提供證券保證金融資；或

(iii) 協議的目的或作用，或伴稱的目的或作用是向該另一人提供（不論是否附有條件）——

(A) 從證券、期貨合約或槓桿式外匯交易合約中取得的利潤、收益或其他回報；或

(B) 藉參照任何證券、期貨合約或槓桿式外匯交易合約的價值的變動而計算的利潤、收益或其他回報；或

(b) 誘使或企圖誘使另一人訂立(a)段提述的協議，

不論他在進行該造訪時，有沒有作出任何其他作為或事情。

(2) 任何中介人或其代表不得僅因以下理由而視為違反第(1)款——

(a) 他造訪另一人，而該另一人是以其專業身分行事的律師或會計師，或是持牌人、註冊機構、放債人、專業投資者或是他的原有客戶；及（由2004年第23號第56條修訂）

(b) （不論以主事人或代理人身分）與該另一人訂立或要約與該另一人訂立第(1)(a)款提述的協議，或誘使或企圖誘使該另一人訂立該協議。

(3) 本條不適用於——

(a) 關乎屬於為施行本段而藉根據第397條訂立的規則訂明的類別的證券、期貨合約、槓桿式外匯交易合約或證券保證金融資的協議；

174. Certain agreements not to be made during unsolicited calls

(1) Subject to subsections (2) and (3), an intermediary, or a representative of an intermediary, shall not, as principal or agent, during or as a consequence of an unsolicited call made, whether in Hong Kong or elsewhere, by it or him—

(a) make or offer to make with another person—

(i) an agreement for that other person to sell or purchase, or with a view to having that other person sell or purchase, any securities, futures contract or leveraged foreign exchange contract;

(ii) an agreement to provide, or with a view to providing, to that other person securities margin financing; or

(iii) an agreement the purpose or effect, or pretended purpose or effect, of which is to provide, whether conditionally or unconditionally, to that other person a profit, income or other returns—

(A) from any securities, futures contract or leveraged foreign exchange contract; or

(B) calculated by reference to changes in the value of any securities, futures contract or leveraged foreign exchange contract; or

(b) induce or attempt to induce another person to enter into an agreement referred to in paragraph (a),

whether or not in making the unsolicited call it or he does any other act or thing.

(2) An intermediary, or a representative of an intermediary, shall not be regarded as contravening subsection (1) by reason only that it or he—

(a) makes a call on another person who is a solicitor or certified public accountant acting in his professional capacity, or is a licensed person, registered institution, money lender or professional investor, or its or his existing client; and
(Amended 23 of 2004 s. 56)

(b) whether as principal or agent, makes or offers to make with that other person an agreement referred to in subsection (1)(a), or induces or attempts to induce that other person to enter into such an agreement.

(3) This section does not apply to—

(a) agreements relating to securities, futures contracts or leveraged foreign exchange contracts or to securities margin financing which are of a class prescribed by rules made under section 397 for the purposes of this paragraph;

- (b) 由屬於為施行本段而藉根據第 397 條訂立的規則訂明的類別的人作出的造訪；
 - (c) 向屬於為施行本段而藉根據第 397 條訂立的規則訂明的類別的人作出的造訪；
 - (d) 屬於為施行本段而藉根據第 397 條訂立的規則訂明的類別的造訪。
- (4) 在不局限證監會為施行第 (3)(d) 款而訂立規則的權力的一般性的原則下，該會可在該等規則中訂明認可財務機構遵從根據《銀行業條例》(第 155 章) 第 7(3) 條刊登的、並適用於它的任何指引的規定而進行的造訪，屬本條並不適用的類別的造訪。
- (5) 任何中介人或其代表違反第 (1) 款，即屬犯罪，一經定罪，可處第 5 級罰款。
- (6) 如任何屬未獲邀約的造訪對象的人在第 (1) 款遭違反的情況下與另一人訂立協議，則被如此造訪的該人可在不抵觸其後付出有價值代價的真誠購買人的權利下，在訂立該協議當日後 28 日內或在他察覺該項違反當日後 7 日內(兩者以較早者為準)，藉向該另一人發出書面通知而撤銷該協議。
- (7) 在本條中——
- “未獲邀約的造訪”(unsolicited call) 指並非應被造訪的人的明示邀請而作出的造訪，而就本定義而言，該人不得僅因提供其聯絡辦法資料，包括地址、電話號碼、傳真號碼或電子郵件地址，而屬明示邀請對他作出造訪；
- “放債人”(money lender) 具有《放債人條例》(第 163 章) 第 2(1) 條給予該詞的涵義；
- “原有客戶”(existing client) 就任何中介人或其代表而言，指符合以下說明的人——
- (a) 在緊接進行有關造訪當日前的 3 年期間內的任何時間，他已和該中介人訂立客戶合約，而在進行有關造訪時，他仍然是該合約的一方的人；或

- (b) calls made by a person who is of a class prescribed by rules made under section 397 for the purposes of this paragraph;
 - (c) calls made on a person who is of a class prescribed by rules made under section 397 for the purposes of this paragraph;
 - (d) calls which are of a class prescribed by rules made under section 397 for the purposes of this paragraph.
- (4) Without limiting the generality of the powers of the Commission to make rules for the purposes of subsection (3)(d), the Commission may in the rules prescribe that calls made by an authorized financial institution in compliance with such requirements under any guidelines published under section 7(3) of the Banking Ordinance (Cap. 155) that apply to it shall be within a class of calls to which this section does not apply.
- (5) An intermediary, or a representative of an intermediary, that contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.
- (6) Where a person on whom an unsolicited call is made enters into an agreement with another person in consequence of a contravention of subsection (1), the person on whom the unsolicited call is so made may, subject to the rights of a subsequent purchaser in good faith for value, rescind the agreement, by giving notice in writing to that effect to that other person, within 28 days after the day on which the agreement is entered into or 7 days after the day on which he becomes aware of the contravention, whichever is the earlier.
- (7) In this section—
- “call” (造訪) means a visit in person, or a communication by any means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium;
- “existing client” (原有客戶), in relation to an intermediary or a representative of an intermediary, means a person—
- (a) who has entered into a client contract with the intermediary at any time during the period of 3 years immediately preceding the day on which the call is made, and remains a party to the client contract when the call is made; or
 - (b) for whom the intermediary has provided a service, the provision of which constitutes a regulated activity, at any time during the period of 3 years immediately preceding the day on which the call is made;
- “futures contract” (期貨合約) means—
- (a) a futures contract as defined in section 1 of Part 1 of Schedule 1;

(b) 在緊接進行有關造訪當日前的 3 年期間內的任何時間，獲該中介人提供構成受規管活動的服務的人；

“造訪”(call)指親身探訪，或以任何方式作出通訊，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作出的；

“期貨合約”(futures contract)指——

(a) 附表 1 第 1 部第 1 條界定的期貨合約；

(b) 就某項目訂立的期貨合約或表述為屬期貨合約的合約，而該項目是由為本定義的目的而藉根據第 397 條訂立的規則訂明的，不論該項目是否能夠予以交付。

175. 就由進行第 1、4 或 6 類受規管活動的中介人或代表提出的要約的規定

(1) 除第 (5) 款另有規定外，除非符合以下條件，否則第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表不得傳達為取得或處置某團體的或由某團體發行的證券而提出的要約——

(a) 該要約——

(i) 載於一份以一種法定語文寫成的書面文件中；或

(ii) 以符合第 (i) 節規定的書面文件以外的形式傳達，並在傳達後 24 小時內，轉為一份以一種法定語文寫成的書面文件並交付受要約的人；

(b) 該要約——

(i) 載有足以識辨該等證券的描述；

(ii) 指明要約的條款(如適用的話，包括建議須就依據該要約取得的證券而支付的代價的款額)；

(iii) (在已就該等證券宣布或建議派發股息，或預期在該等證券轉讓之前可能會就該等證券宣布或建議派發股息的情況下)述明該等證券在轉讓時是否附連該等股息；

(b) a futures contract, or a contract represented as being a futures contract, in respect of an item, whether or not capable of being delivered, which is prescribed by rules made under section 397 for the purposes of this definition;

“money lender”(放債人) has the meaning assigned to it by section 2(1) of the Money Lenders Ordinance (Cap. 163);

“unsolicited call”(未獲邀約的造訪) means any call made otherwise than at the express invitation of the person called upon, and for the purposes of this definition, the provision by a person of his contact details, including an address, telephone or facsimile number, or electronic mail address, does not by itself constitute an express invitation to call that person.

175. Requirements for offers by intermediaries or representatives for Type 1, Type 4 or Type 6 regulated activity

(1) Subject to subsection (5), a Type 1 intermediary or representative, a Type 4 intermediary or representative or a Type 6 intermediary or representative shall not communicate an offer to acquire or dispose of any securities of, or issued by, a body unless—

(a) the offer—

(i) is contained in a written document in an official language; or

(ii) if communicated otherwise than in the form of a written document satisfying the requirement of subparagraph (i), is reduced to a written document in an official language and delivered to the person or persons to whom it was made not later than 24 hours after the communication;

(b) the offer—

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

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

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

- (iv) 指明——
- (A) 如任何人接受該要約，該人就該宗交易而根據《印花稅條例》(第 117 章)有法律責任繳付的印花稅，會否由要約人繳付；及
 - (B) 如要約人不會繳付該等印花稅的話，則接受該要約的人將會就該宗交易而根據該條例有法律責任繳付的印花稅的稅率；
- (v) 指明如任何人接受該要約，該人是否須向以下的人支付任何費用——
- (A) (如該第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表(視屬何情況而定)憑藉作為中介人而被視為第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表(視屬何情況而定))該第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表(視屬何情況而定)；或
 - (B) (如該第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表(視屬何情況而定)憑藉作為某中介人的代表而被視為第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表(視屬何情況而定))該中介人；
- (vi) 如載於 (a)(i) 段提述的書面文件中，則——
- (A) 指明要約人的姓名或名稱及地址，如任何人代要約人發出要約，則一併指明該人的姓名或名稱及地址；
 - (B) 載有一個不早於傳達該要約日期前 3 日的日期；
 - (C) (如該要約是為取得證券)符合附表 7 第 1 部的規定；
 - (D) (如該要約是為處置證券)符合附表 7 第 2 部的規定；及
 - (E) (如該要約載列或附加一份與該要約有關連的專家報告)載有一項陳述，其意是該專家已同意該要約載列或附加該報告，並且沒有在該要約傳達前撤回該同意；及

- (iv) specifies—
- (A) whether, in the event of a person accepting the offer, the offeror will pay any stamp duty which the person so accepting the offer will become liable to pay in respect of the transaction under the Stamp Duty Ordinance (Cap. 117); and
 - (B) if the offeror will not so pay the stamp duty, the rate of the stamp duty that the person so accepting the offer will become liable to pay in respect of the transaction under that Ordinance;
- (v) specifies whether, in the event of a person accepting the offer, any fees will be payable by that person to—
- (A) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being an intermediary, the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be); or
 - (B) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being a representative of an intermediary, the intermediary;
- (vi) if contained in a written document referred to in paragraph (a)(i)—
- (A) specifies the name and address of the offeror and, where any person is making the offer on behalf of the offeror, the name and address of that person;
 - (B) bears a date which is not more than 3 days before the date on which the offer is communicated;
 - (C) where the offer is for the acquisition of securities, satisfies the requirements of Part 1 of Schedule 7;
 - (D) where the offer is for the disposal of securities, satisfies the requirements of Part 2 of Schedule 7; and
 - (E) where a report of an expert in connection with the offer is included in or annexed to the offer, contains a statement to the effect that the expert has consented to the inclusion or annexure, and has not, before the communication of the offer, withdrawn that consent; and

(vii) 如以 (a)(ii) 段描述的方式傳達，而有一份專家報告與該要約有關連，則指明可在何處查閱該報告，並包含一項陳述，其意是該專家已同意該報告的內容，並且沒有在該要約傳達前撤回該同意；及

(c) (如該要約載於 (a)(i) 段提述的書面文件中或轉為 (a)(ii) 段提述的書面文件，但該書面文件只以一種法定語文寫成) 該書面文件附有另一種法定語文的譯本，而該譯本載有 (b) 段就該要約規定的一切詳情，但如證監會先前已就個別個案同意可免除本段的規定，則該個案屬例外。

(2) 凡載於第 (1)(a)(i) 款提述的書面文件的要約須載有第 (1)(b)(vi)(E) 款提述的關於某專家的同意的陳述，該要約不得在以下條件不獲符合的情況下傳達：該專家已同意該要約在該陳述按它載列的形式及文意載列於該書面文件的情況下傳達，並且沒有在該要約傳達前撤回其同意。

(3) 凡以第 (1)(a)(ii) 款描述的方式傳達的要約須包含第 (1)(b)(vii) 款提述的關於某專家的同意的陳述，該要約不得在以下條件不獲符合的情況下傳達：該專家已同意該要約在該要約按它提述該陳述的形式及文意提述該陳述的情況下傳達，並且沒有在該要約傳達前撤回其同意。

(4) 任何第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表在沒有遵守第 (1)、(2) 及 (3) 款的情況下，傳達為取得或處置證券而提出的要約，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 \$20,000。

(5) 本條不適用於——

(a) 受以下規定規管或按照以下規定提出的要約——

(i) 根據第 23 或 36 條就管限證券上市而訂立的規章或規則的規定；

(ii) 根據第 399(2)(a) 條刊登或發表的守則的規定；或

(iii) 《公司條例》(第 32 章) 第 II 部或(就在香港以外地方成立的法團而言) 該條例第 XII 部的規定；

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

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

(2) Where an offer contained in a written document referred to in subsection (1)(a)(i) is to contain a statement referred to in subsection (1)(b)(vi)(E) regarding the consent of an expert, the offer shall not be communicated unless the expert has given, and has not before the communication of the offer withdrawn, his consent to the offer being communicated with the inclusion of the statement in the form and context in which it is included in the written document.

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

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

(5) This section does not apply to—

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

(i) the rules made under section 23 or 36 governing the listing of securities;

(ii) the code published under section 399(2)(a); or

(iii) Part II of the Companies Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance;

- (aa) 符合以下說明的要約——
- (i) 與《公司條例》(第 32 章) 附表 17 各部 (第 1 部除外) 一併理解的該附表第 1 部指明的要約；及
 - (ii) 由證監會藉於憲報刊登的公告指明為本條不適用的要約； (由 2004 年第 30 號第 3 條增補)
- (b) 向已經持有某團體的或由某團體發出的證券的人傳達，讓該人取得該團體的或由該團體發出的證券的要約；
- (c) 某第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表向某人傳達的要約，但不適用的前提是在緊接該要約的日期之前的 3 年內——
- (i) (如該第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表 (視屬何情況而定) 憑藉作為中介人而被視為第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表 (視屬何情況而定)) 該第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表 (視屬何情況而定)；或
 - (ii) (如該第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表 (視屬何情況而定) 憑藉作為某中介人的代表而被視為第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表 (視屬何情況而定)) 該中介人，
- 須已經與該人或代該人進行過至少 3 次證券售賣或購買的交易；
- (d) 向以下人士提出的要約——
- (i) 專業投資者；
 - (ii) 以其專業身分行事的律師或會計師；或 (由 2004 年第 23 號第 56 條修訂)
 - (iii) 屬於為施行本段而藉根據第 397 條訂立的規則訂明的類別的其他人；
- (e) 由交易所參與者在認可證券市場的日常交易過程中傳達的要約；
- (f) 由屬於為施行本段而藉根據第 397 條訂立的規則訂明的類別的人傳達的要約；
- (g) 屬於為施行本段而藉根據第 397 條訂立的規則訂明的類別的要約。

- (aa) an offer—
- (i) specified in Part 1 of the Seventeenth Schedule to the Companies Ordinance (Cap. 32) as read with the other Parts of that Schedule; and
 - (ii) specified by the Commission, by notice published in the Gazette, as an offer to which this section does not apply; (Added 30 of 2004 s. 3)
- (b) an offer communicated to persons who already hold securities of, or issued by, a body, for those persons to acquire securities of, or issued by, the body;
- (c) an offer communicated by a Type 1 intermediary or representative, a Type 4 intermediary or representative or a Type 6 intermediary or representative if the offer is made to a person with whom, or on whose behalf—
- (i) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being an intermediary, the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be); or
 - (ii) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being a representative of an intermediary, the intermediary,
- has transacted the sale or purchase of securities on at least 3 occasions during the period of 3 years immediately preceding the date of the offer;
- (d) an offer made to—
- (i) a professional investor;
 - (ii) a solicitor or certified public accountant acting in his professional capacity; or (Amended 23 of 2004 s. 56)
 - (iii) any other person who is of a class prescribed by rules made under section 397 for the purposes of this paragraph;
- (e) an offer communicated by an exchange participant in the ordinary course of trading on a recognized stock market;
- (f) an offer communicated by a person who is of a class prescribed by rules made under section 397 for the purposes of this paragraph;
- (g) an offer which is of a class prescribed by rules made under section 397 for the purposes of this paragraph.

(6) 凡——

(a) 任何人已接受為取得或處置某團體的或由某團體發行的證券而提出的要約，而本條適用於該要約；及

(b) 該要約的傳達在要項上是沒有遵守第 (1)、(2) 及 (3) 款的，則該人可在不抵觸其後為該等證券付出有值代價的真誠購買人的權利下，在該人接受該要約當日後 28 日內或在該人察覺 (b) 段提述的事宜當日後 7 日內 (兩者以較早者為準)，藉向提出該要約的人發出書面通知而撤銷該項承約。

(7) 就本條而言——

(a) 凡第 1 類中介人或代表，第 4 類中介人或代表或第 6 類中介人或代表向某人傳達取得或處置某團體的或由某團體發行的證券的邀請，該項邀請即當作為要約，而在本條中凡提述承約之處，須據此解釋；

(b) 凡有一項取得或處置證券或證券權益的權利，任何為取得或處置該項權利而提出的要約，即當作為一項為取得或處置證券而提出的要約；而在本條中凡提述持有證券的人，即包括持有取得證券或證券權益的權利的人；

(c) 用其他證券作為代價或部分代價以取得或處置證券的要約，即當作為既是為取得證券亦是為處置證券而提出的要約。

(8) 在本條中，除文意另有所指外，凡提述某團體的證券，須解釋為提述附表 1 第 1 部第 1 條界定並符合以下說明的證券——

(a) 由該團體發行、提供或批給；或

(b) 擬由該團體發行、提供或批給。

(8A) 根據第 (5)(aa)(ii) 款刊登的公告不是附屬法例。 (由 2004 年第 30 號第 3 條增補)

(9) 在本條中——

“書面文件”(written document) 指任何藉可見形式表達文字的文件、與文件相類似的物料或任何其他媒介 (不論該文件、物料或媒介是藉機械、電子、磁力、光學、人手或其他方式產生的)；

“第 1 類中介人或代表”(Type 1 intermediary or representative) 指——

(a) 就第 1 類受規管活動獲發牌或獲註冊的中介人；或

(b) 為該中介人進行第 1 類受規管活動的該中介人的代表；

(6) Where——

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

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

that person may, subject to the rights of a subsequent purchaser of the securities in good faith for value, rescind the acceptance, by giving notice in writing to that effect to the offeror, within 28 days after the date of acceptance or 7 days after the day on which he becomes aware of the matter described in paragraph (b), whichever is the earlier.

(7) For the purposes of this section——

(a) where a Type 1 intermediary or representative, a Type 4 intermediary or representative or a Type 6 intermediary or representative communicates an invitation to a person to acquire or dispose of any securities of, or issued by, a body, the invitation shall be deemed to be an offer, and a reference in this section to acceptance shall be construed accordingly;

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

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

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

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

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

(8A) A notice published under subsection (5)(aa)(ii) is not subsidiary legislation. (Added 30 of 2004 s. 3)

(9) In this section——

“body”(團體) means a corporation, a multilateral agency, or a government or municipal government authority;

“expert”(專家) includes an engineer, valuer, certified public accountant, solicitor, and any other person whose profession gives authority to a statement made by him; (Amended 23 of 2004 s. 56)

“Type 1 intermediary or representative”(第 1 類中介人或代表) means——

(a) an intermediary licensed or registered for Type 1 regulated activity; or

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

“第 4 類中介人或代表” (Type 4 intermediary or representative) 指——

- (a) 就第 4 類受規管活動獲發牌或獲註冊的中介人；或
- (b) 為該中介人進行第 4 類受規管活動的該中介人的代表；

“Type 4 intermediary or representative” (第 4 類中介人或代表) means—

- (a) an intermediary licensed or registered for Type 4 regulated activity; or
- (b) its representative that carries on Type 4 regulated activity for it;

“第 6 類中介人或代表”(Type 6 intermediary or representative)指——

- (a) 就第 6 類受規管活動獲發牌或獲註冊的中介人；或
- (b) 為該中介人進行第 6 類受規管活動的該中介人的代表；

“專家”(expert)包括工程師、估值師、會計師、律師，以及其所從事的專業令其所作的陳述具有權威性的任何其他人士；(由 2004 年第 23 號第 56 條修訂)

“團體”(body)指法團、多邊機構，或某政府或市政府當局。

176. 禁止作出某些表述

(1) 除第 (2) 款另有規定外，任何中介人或其代表均不得以任何方式(不論是明示或隱含的方式)作出他的能力或資格已獲政府或證監會認可或保證的表述，亦不得准許任何其他人士以上述方式作出該等表述。

(2) 任何人不得僅因表示某人獲根據本條例發牌或註冊的陳述而屬違反第 (1) 款。

(3) 任何中介人或其代表無合理辯解而違反第 (1) 款，即屬犯罪，一經定罪，可處第 5 級罰款。

第 5 分部——雜項條文

177. 修訂附表 7

行政長官會同行政會議可藉在憲報刊登的命令修訂附表 7。

第 VIII 部

監管及調查

第 1 分部——釋義

178. 第 VIII 部的釋義

在本部中，除文意另有所指外——

“受調查人”(person under investigation)在調查員根據第 182(1) 條獲指示或委任就某人調查任何事宜的情況下，指該人；

“Type 6 intermediary or representative”(第 6 類中介人或代表) means—

- (a) an intermediary licensed or registered for Type 6 regulated activity; or
- (b) its representative that carries on Type 6 regulated activity for it;

“written document”(書面文件) means any document or similar material, or any other medium (whether effected as such mechanically, electronically, magnetically, optically, manually or by any other means), by which words are represented in a visible form.

176. Certain representations prohibited

(1) Subject to subsection (2), an intermediary, or a representative of an intermediary, shall not represent, or permit any other person to represent, in any manner and whether expressly or by implication, that its or his abilities or qualifications have been endorsed or warranted by the Government or the Commission.

(2) A statement to the effect that a person is licensed or registered under this Ordinance does not by itself constitute a contravention of subsection (1).

(3) An intermediary, or a representative of an intermediary, that, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

Division 5—Miscellaneous

177. Amendment of Schedule 7

The Chief Executive in Council may, by order published in the Gazette, amend Schedule 7.

PART VIII

SUPERVISION AND INVESTIGATIONS

Division 1—Interpretation

178. Interpretation of Part VIII

In this Part, unless the context otherwise requires—

“audit working papers”(審計工作材料) means—

- (a) any record or document prepared by or on behalf of an auditor;
- and

“審計工作材料”(audit working papers)指為執行與核數師審計法團帳目有關的職能，或在與執行該等職能有關連的情況下，由該核數師或由他人代該核數師——

- (a) 擬備的紀錄或文件；及
- (b) 取得和保留的紀錄或文件；

“調查員”(investigator)指根據第 182(1) 條獲指示或委任調查任何事宜的人。

第 2 分部——要求資料的權力等

179. 要求交出關於上市法團等的紀錄及文件的權力

(1) 凡任何法團屬或曾屬上市法團，如——

- (a) 證監會覺得有某些情況顯示該法團的業務曾於任何有關時間在以下情況下經營——
 - (i) 用意在詐騙其債權人或其他人的債權人；
 - (ii) 是為欺詐性或非法目的而經營的；或
 - (iii) 是以欺壓該法團的成員或任何部分成員的方式而經營的；
- (b) 證監會覺得有某些情況顯示該法團是為欺詐性或非法目的而組成的；
- (c) 證監會覺得有某些情況顯示與該法團上市過程(包括在該過程中向公眾提供該法團的證券的過程)有關的人，曾經在與該過程有關的情況下作出虧空、欺詐、不當行為或其他失當行為；
- (d) 證監會覺得有某些情況顯示參與該法團事務的管理的人，曾於任何有關時間在與該等事務的管理有關的情況下對該法團或其成員或任何部分成員作出虧空、欺詐、不當行為或其他失當行為；

(b) any record or document obtained and retained by or on behalf of an auditor, for or in connection with the performance of any of his functions relating to the conduct of any audit of the accounts of a corporation;

“investigator”(調查員) means a person directed or appointed to investigate any matter under section 182(1);

“person under investigation”(受調查人) means a person in relation to whom any investigator is directed or appointed to investigate any matter under section 182(1).

Division 2—Powers to require information, etc.

179. Power to require production of records and documents concerning listed corporations, etc.

(1) Where, in relation to a corporation which is or was listed—

- (a) it appears to the Commission that there are circumstances suggesting that at any relevant time the business of the corporation has been conducted—
 - (i) with intent to defraud its creditors, or the creditors of any other person;
 - (ii) for any fraudulent or unlawful purpose; or
 - (iii) in a manner oppressive to its members or any part of its members;
- (b) it appears to the Commission that there are circumstances suggesting that the corporation was formed for any fraudulent or unlawful purpose;
- (c) it appears to the Commission that there are circumstances suggesting that persons concerned in the process by which the corporation became listed (including that for making the securities of the corporation available to the public in the course of such process) have engaged, in relation to such process, in defalcation, fraud, misfeasance or other misconduct;
- (d) it appears to the Commission that there are circumstances suggesting that at any relevant time persons involved in the management of the affairs of the corporation have engaged, in relation to such management, in defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members;

- (e) 證監會覺得有某些情況顯示該法團的成員或任何部分成員曾於任何有關時間未獲提供他們可合理期望獲得的關於該法團事務的所有資料；或
- (f) 證監會決定根據第 186 條協助調查某事宜，而該事宜與該法團有關，且（按該會的意見）在性質上與 (a)、(b)、(c)、(d) 或 (e) 段提述的情況所顯示的並在該段描述的事宜相似，
- 則獲授權人可在第 (5) 至 (10) 款的規限下向下述者發出指示，要求在該指示指明的時間內在該指示指明的地點，交出該指示指明的紀錄及文件——
- (i) 該法團；
 - (ii) 屬或曾在關鍵時間屬該法團的有連繫法團的另一法團；
 - (iii) 認可財務機構（但非該法團或第 (ii) 段描述的法團）；
 - (iv) 核數師（但非該法團或第 (ii) 段描述的法團）；
 - (v) 任何其他人士。
- (2) 根據本條要求某人交出紀錄或文件的權力，包括作出以下作為的權力——
- (a) 在該等紀錄或文件已交出的情況下——
 - (i) 複印該等紀錄或文件或以其他方式記錄其中的細節；及
 - (ii) 要求以下人士就該等紀錄或文件提供或作出解釋或陳述（在適用範圍內，包括描述擬備或製作該等紀錄或文件時的情況、提供所有在與該等紀錄或文件有關連的情況下作出或收取的指令的細節，以及解釋在該等紀錄或文件中作出或遺漏某記項的理由）——
 - (A) 該人；
 - (B)（如該人是法團）任何屬或曾屬該法團的高級人員的人，或任何正受僱或曾在任何時間受僱於該法團的人；或
 - (b) 在該等紀錄或文件未予交出的情況下，要求以下人士說明該等紀錄或文件在何處——
 - (i) 該人；

- (e) it appears to the Commission that there are circumstances suggesting that at any relevant time members of the corporation or any part of its members have not been given all the information with respect to its affairs that they might reasonably expect; or
- (f) a matter in respect of the investigation of which the Commission decides to provide assistance under section 186 relates to the corporation and is, in the opinion of the Commission, of a nature similar to the matter described in paragraph (a), (b), (c), (d) or (e) as being suggested by the circumstances referred to in such paragraph,
- an authorized person may, subject to subsections (5) to (10), give a direction to—
- (i) the corporation;
 - (ii) a corporation that is, or was at the material time, a related corporation of the corporation;
 - (iii) an authorized financial institution, other than the corporation or a corporation described in paragraph (ii);
 - (iv) an auditor, other than the corporation or a corporation described in paragraph (ii);
 - (v) any other person,
- requiring the production, within the time and at the place specified in the direction, of any record and document specified in the direction.
- (2) A power under this section to require the production of any record or document by any person includes the power—
- (a) if the record or document is produced—
 - (i) to make copies or otherwise record details of the record or document; and
 - (ii) to require—
 - (A) the person;
 - (B) in the case of a corporation, any person who is a present or past officer of the corporation, or is or was at any time employed by the corporation,
 to provide or make any explanation or statement in respect of the record or document (including, in so far as applicable, a description of the circumstances under which it was prepared or created, details of all instructions given or received in connection with it, and an explanation of the reasons for the making of entries contained in it or the omission of entries from it); or
 - (b) if the record or document is not produced, to require—
 - (i) the person;

(ii) (如該人是法團) 任何屬或曾屬該法團的高級人員的人，或任何正受僱或曾在任何時間受僱於該法團的人。

(3) 獲授權人可以書面要求根據本條提供或作出解釋、陳述或說明的人在該要求指明的合理期間內，藉法定聲明核實該解釋、陳述或說明，而該聲明可由該獲授權人監理。

(4) 如任何人沒有按照根據本條施加的要求提供或作出解釋、陳述或說明的理由，是該解釋、陳述或說明是他所不知道的或並非由他管有的，則獲授權人可以書面要求該人在該要求指明的合理期間內，藉法定聲明核實他因該理由不能遵從或不能完全遵從(視屬何情況而定) 該要求，而該聲明可由該獲授權人監理。

(5) 除非獲授權人有合理理由相信根據第(1)(i) 或(ii) 款向法團發出指示而要求交出的紀錄或文件，是與該法團的事務有關，或與屬或曾在關鍵時間屬該法團的有連繫法團的另一法團的事務有關，否則獲授權人不得根據第(1)(i) 或(ii) 款發出該指示。

(6) 除非獲授權人有合理理由相信並經證監會以書面證明他有合理理由相信以下各項，否則他不得根據第(1)(iii) 款向認可財務機構發出指示，要求它交出任何紀錄或文件——

(a) 該機構管有與某法團的事務有關的紀錄或文件，而該法團已根據或可能會根據第(1)(i) 或(ii) 款接獲指示；及

(b) 要求交出的紀錄或文件——

(i) 與該法團的事務或交易有關；及

(ii) (A) 在第(1)(a)、(b)、(c)、(d) 或(e) 款適用的情況下，與考慮該款提述的情況所顯示的並在該款描述的事宜曾否存在一事有關；或

(B) 在第(1)(f) 款適用的情況下，與考慮證監會決定根據第 186 條協助調查的事宜曾否存在一事有關。

(ii) in the case of a corporation, any person who is a present or past officer of the corporation, or is or was at any time employed by the corporation, to state where it is.

(3) An authorized person may in writing require the person providing or making an explanation or statement under this section to verify within a reasonable period specified in the requirement the explanation or statement by statutory declaration, which may be taken by the authorized person.

(4) If a person does not provide or make an explanation or statement in accordance with a requirement under this section for the reason that the explanation or statement was not within his knowledge or in his possession, an authorized person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.

(5) An authorized person shall not give any direction under subsection (1)(i) or (ii) to require the production of any record or document unless the authorized person has reasonable cause to believe that the record or document relates to the affairs of the corporation to which the direction is to be given or a corporation of which such corporation is, or was at the material time, a related corporation.

(6) An authorized person shall not give any direction to an authorized financial institution under subsection (1)(iii) to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that—

(a) the authorized financial institution is in possession of any record or document relating to the affairs of a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and

(b) the record or document required to be produced under the direction—

(i) relates to the affairs of such corporation or to a transaction with such corporation; and

(ii) is relevant to the consideration of whether there has been the occurrence of—

(A) where subsection (1)(a), (b), (c), (d) or (e) applies, the matter described in such subsection as being suggested by the circumstances referred to in such subsection; or

(B) where subsection (1)(f) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186.

(7) 除非獲授權人有合理理由相信並經證監會以書面證明他有合理理由相信以下各項，否則他不得根據第 (1)(iv) 款向任何核數師發出指示，要求該核數師交出任何紀錄或文件——

- (a) 該核數師管有任何屬審計工作材料性質並與某法團的事務有關的紀錄或文件，而該法團已根據或可能會根據第 (1)(i) 或 (ii) 款接獲指示；及
- (b) 要求交出的紀錄或文件——
 - (i) 與該法團的事務有關；及
 - (ii) (A) 在第 (1)(a)、(b)、(c)、(d) 或 (e) 款適用的情況下，與考慮該款提述的情況所顯示的並在該款描述的事宜曾否存在一事有關；或
 - (B) 在第 (1)(f) 款適用的情況下，與考慮證監會決定根據第 186 條協助調查的事宜曾否存在一事有關。

(8) 除非獲授權人有合理理由相信並經證監會以書面證明他有合理理由相信以下各項，否則他不得根據第 (1)(v) 款向任何人發出指示，要求該人交出任何紀錄或文件——

- (a) 該人曾直接或間接與某法團有事務往來或進行交易，或在其他情況下管有與某法團的事務有關的紀錄或文件，而該法團已根據或可能會根據第 (1)(i) 或 (ii) 款接獲指示；及
- (b) 要求交出的紀錄或文件——
 - (i) 與該法團的事務或交易有關；
 - (ii) (A) 在第 (1)(a)、(b)、(c)、(d) 或 (e) 款適用的情況下，與考慮該款提述的情況所顯示的並在該款描述的事宜曾否存在一事有關；或
 - (B) 在第 (1)(f) 款適用的情況下，與考慮證監會決定根據第 186 條協助調查的事宜曾否存在一事有關；及
 - (iii) 不能夠藉根據第 (1)(i)、(ii)、(iii) 或 (iv) 款向其他人發出指示而取得。

(7) An authorized person shall not give any direction to an auditor under subsection (1)(iv) to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that—

- (a) the auditor is in possession of any record or document, which is in the nature of audit working papers, relating to the affairs of a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and
- (b) the record or document required to be produced under the direction—
 - (i) relates to the affairs of such corporation; and
 - (ii) is relevant to the consideration of whether there has been the occurrence of—
 - (A) where subsection (1)(a), (b), (c), (d) or (e) applies, the matter described in such subsection as being suggested by the circumstances referred to in such subsection; or
 - (B) where subsection (1)(f) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186.

(8) An authorized person shall not give any direction to a person under subsection (1)(v) to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that—

- (a) the person has dealt or has had dealings, directly or indirectly, with, or is otherwise in possession of any record or document relating to the affairs of, a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and
- (b) the record or document required to be produced under the direction—
 - (i) relates to the affairs of such corporation or to a transaction with such corporation;
 - (ii) is relevant to the consideration of whether there has been the occurrence of—
 - (A) where subsection (1)(a), (b), (c), (d) or (e) applies, the matter described in such subsection as being suggested by the circumstances referred to in such subsection; or
 - (B) where subsection (1)(f) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186; and
 - (iii) cannot be obtained by giving a direction to any other person under subsection (1)(i), (ii), (iii) or (iv).

(9) 根據第 (1) 款 (第 (1)(iii) 款除外) 向任何屬認可財務機構的法團發出指示的權力——

- (a) 只可就第 (1)(e) 款而行使；或
- (b) 在以下情況下，方可就第 (1)(f) 款而行使：證監會決定根據第 186 條協助調查的事宜，按該會的意見，在性質上與第 (1)(e) 款提述的情況所顯示的並在第 (1)(e) 款描述的事宜相似。

(10) 獲授權人在根據第 (1) 款 (第 (1)(iii) 款除外)——

- (a) 向以下兩類法團發出指示前，須諮詢金融管理專員：第一類是屬認可財務機構的法團；第二類是符合以下說明的法團：獲授權人知道該法團是某認可財務機構的控制人，或知道該法團的控制人屬認可財務機構，或知道該法團的控制人亦是某認可財務機構的控制人；或
- (b) 向屬根據《保險公司條例》(第 41 章) 獲授權的保險人的法團發出指示前，須諮詢保險業監督。

(11) 證監會可為施行本條以書面授權任何人為獲授權人。

(12) 證監會須向獲授權人發給授權書文本，而獲授權人根據本條就任何人行使權力前，須向該人出示該授權書文本，以供查閱。

(13) 任何人無合理辯解而沒有遵從獲授權人根據本條向他施加的要求，即屬犯罪——

- (a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。

(14) 任何人——

- (a) 在看來是遵從獲授權人根據本條向他施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件，或提供或作出在要項上屬虛假或具誤導性的解釋、陳述或說明；且
- (b) 知道該紀錄、文件、解釋、陳述或說明在要項上屬虛假或具誤導性，或罔顧該紀錄、文件、解釋、陳述或說明是否在要項上屬虛假或具誤導性，

(9) The power of an authorized person to give any direction under subsection (1) (other than subsection (1)(iii)) to any corporation which is an authorized financial institution may be exercised only in respect of—

- (a) subsection (1)(e); or
- (b) subsection (1)(f), if, and only if, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186 is, in the opinion of the Commission, of a nature similar to the matter described in subsection (1)(e) as being suggested by the circumstances referred to in that subsection (1)(e).

(10) Before an authorized person gives any direction under subsection (1) (other than subsection (1)(iii)) to any corporation—

- (a) where the corporation is an authorized financial institution or a corporation which, to the knowledge of the authorized person, is a controller of an authorized financial institution, or has as its controller an authorized financial institution, or has a controller that is also a controller of an authorized financial institution, the authorized person shall consult the Monetary Authority; or
- (b) where the corporation is an insurer authorized under the Insurance Companies Ordinance (Cap. 41), the authorized person shall consult the Insurance Authority.

(11) The Commission may authorize in writing any person as an authorized person for the purposes of this section.

(12) The Commission shall furnish an authorized person with a copy of his authorization, and the authorized person, before exercising any power under this section, shall produce a copy of the authorization to the person in respect of whom the power is exercised for inspection.

(13) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable—

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(14) A person who—

- (a) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or provides or makes an explanation or statement which is false or misleading in a material particular; and
- (b) knows that, or is reckless as to whether, the record or document or the explanation or statement is false or misleading in a material particular,

即屬犯罪——

- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

(15) 任何人——

(a) 意圖詐騙而——

- (i) 沒有遵從獲授權人根據本條向他施加的要求；或
- (ii) 在看來是遵從獲授權人根據本條向他施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件，或提供或作出在要項上屬虛假或具誤導性的解釋、陳述或說明；或

(b) 如屬法團的高級人員或僱員，意圖詐騙而致使或容許該法團——

- (i) 沒有遵從獲授權人根據本條向該法團施加的要求；或
- (ii) 在看來是遵從獲授權人根據本條向該法團施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件，或提供或作出在要項上屬虛假或具誤導性的解釋、陳述或說明，

即屬犯罪——

- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 7 年；或
- (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

(16) 任何人不得僅以遵從獲授權人根據本條向他施加的要求可能會導致他入罪為理由，而獲豁免遵從該要求。

(17) 在本條中——

“有關時間”(relevant time)——

- (a) 就屬上市法團的法團而言，指在該法團組成之後的任何時間；或
- (b) 就曾屬上市法團的法團而言，指在該法團組成之後但不再屬上市法團之前的任何時間；

“控制人”(controller)指屬《銀行業條例》(第 155 章)第 2(1) 條所界定的間接控權人或大股東控權人的人；

commits an offence and is liable—

- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(15) A person who—

(a) with intent to defraud—

- (i) fails to comply with a requirement imposed on him by an authorized person under this section; or
- (ii) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or provides or makes an explanation or statement which is false or misleading in a material particular; or

(b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to—

- (i) fail to comply with a requirement imposed on it by an authorized person under this section; or
- (ii) in purported compliance with a requirement imposed on it by an authorized person under this section, produce any record or document or provide or make an explanation or statement which is false or misleading in a material particular,

commits an offence and is liable—

- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(16) A person is not excused from complying with a requirement imposed on the person by an authorized person under this section only on the ground that to do so might tend to incriminate the person.

(17) In this section—

“authorized person”(獲授權人) means a person authorized under subsection (11);

“controller”(控制人) means a person who is an indirect controller or a majority shareholder controller as defined in section 2(1) of the Banking Ordinance (Cap. 155);

“material time”(關鍵時間) means—

- (a) where subsection (1)(a), (b), (c), (d) or (e) applies, the time at which the matter described in such subsection as being suggested by the circumstances referred to in such subsection appears to the Commission as occurring; or

獲授權人”(authorized person)指根據第(11)款獲授權的人；

關鍵時間”(material time)——

- (a) 就第(1)(a)、(b)、(c)、(d)或(e)款而言，指證監會覺得該款提述的情況所顯示的並在該款描述的事宜正在發生的時間；或
- (b) 就第(1)(f)款而言，指證監會認為該會決定根據第186條協助調查的事宜正在發生的時間。

180. 對中介人及其有聯繫實體的監管

(1) 在第(9)及(10)款的規限下，獲授權人可為確定任何中介人或任何中介人的有聯繫實體是否正遵從、已遵從或相當可能有能力遵從第(2)款指明的規定，而於任何合理時間——

- (a) 進入以下處所——
 - (i) 就該中介人而言——
 - (A) (如該中介人是持牌法團) 證監會根據第130(1)條批准的該法團的處所；或
 - (B) (如該中介人是註冊機構) 該機構的處所；或
 - (ii) (就該中介人的有聯繫實體而言) 該實體的處所；
- (b) 查閱和複印任何關於下述事宜的紀錄或文件，或以其他方式記錄該等紀錄或文件中的細節——
 - (i) 該中介人或該實體(視屬何情況而定)經營的業務；
 - (ii) 由該中介人或該實體(視屬何情況而定)的有連繫法團履行的交易；或
 - (iii) 在該中介人或該實體(視屬何情況而定)經營的業務過程中所作的交易或活動，或可能影響該中介人或該實體(視屬何情況而定)經營的業務的交易或活動；及
- (c) 就(b)段提述的紀錄或文件，或就在該中介人或該實體(視屬何情況而定)經營的業務過程中所作的交易或活動，或就可能影響該中介人或該實體(視屬何情況而定)經營的業務的交易或活動，而——
 - (i) 查訊該中介人或該實體(視屬何情況而定)；
 - (ii) 查訊該中介人或該實體(視屬何情況而定)的有連繫法團；

- (b) where subsection (1)(f) applies, the time at which the matter in respect of the investigation of which the Commission decides to provide assistance under section 186 appears to the Commission as occurring;

“relevant time”(有關時間)——

- (a) in relation to a corporation which is listed, means any time since the formation of the corporation; or
- (b) in relation to a corporation which was listed, means any time since the formation of the corporation but before the corporation ceased to remain listed.

180. Supervision of intermediaries and their associated entities

(1) Subject to subsections (9) and (10), an authorized person may at any reasonable time, for the purpose of ascertaining whether an intermediary or an associated entity of an intermediary is complying or has complied with, or is likely to be able to comply with, the requirement specified in subsection (2)—

- (a) enter—
 - (i) in the case of an intermediary—
 - (A) where it is a licensed corporation, its premises as approved by the Commission under section 130(1); or
 - (B) where it is a registered institution, the premises of the registered institution; or
 - (ii) in the case of an associated entity of an intermediary, the premises of the associated entity;
- (b) inspect, and make copies or otherwise record details of, any record or document relating to—
 - (i) the business conducted by the intermediary or the associated entity (as the case may be);
 - (ii) any transaction carried out by a related corporation of the intermediary or the associated entity (as the case may be); or
 - (iii) any transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the intermediary or the associated entity (as the case may be); and
- (c) make inquiries of—
 - (i) the intermediary or the associated entity (as the case may be);
 - (ii) a related corporation of the intermediary or the associated entity (as the case may be);

- (iii) (在第 (7) 款的規限下) 查訊獲授權人有合理理由相信是管有 (b) 段提述的紀錄或文件或掌握關於該等紀錄或文件的資料的其他人，不論該人是否與該中介人或該實體 (視屬何情況而定) 有關連。
- (2) 為施行第 (1) 款而指明的規定是不得違反以下各項的規定——
- 本條例任何條文；
 - 根據或依據任何有關條文給予或作出的任何通知、規定或要求；
 - 根據本條例批給的任何牌照或註冊的任何條款或條件；
 - 根據或依據本條例任何條文施加的任何其他條件。
- (3) 在第 (9) 及 (10) 款的規限下，獲授權人在行使第 (1)(b) 款所賦權力時，可——
- 要求有關中介人或有關聯實體 (視屬何情況而定)；
 - 要求該中介人或該實體 (視屬何情況而定) 的有連繫法團；
 - (在第 (8) 款的規限下) 要求獲授權人有合理理由相信是管有第 (1)(b) 款提述的紀錄或文件或掌握關於該等紀錄或文件的資料的其他人，不論該人是否與該中介人或該實體 (視屬何情況而定) 有關連，
- 作出以下作為——
- 讓獲授權人有途徑取得第 (1)(b) 款提述的紀錄或文件，及在獲授權人指明的時間內在他指明的地點交出該等紀錄或文件；及
 - 回答任何關於該等紀錄或文件的問題。
- (4) 在第 (9) 及 (10) 款的規限下，獲授權人在行使第 (1)(c) 款所賦權力時，可要求該款提述的中介人、有聯繫實體、有連繫法團或其他人 (視屬何情況而定)——
- 讓獲授權人有途徑取得第 (1)(b) 款提述的紀錄或文件，及在獲授權人指明的時間內在他指明的地點交出該等紀錄或文件；及
 - 回答任何為施行第 (1)(c) 款而提出的問題。

- (iii) subject to subsection (7), any other person, whether or not connected with the intermediary or the associated entity (as the case may be), whom the authorized person has reasonable cause to believe has information relating to, or is in possession of, any record or document referred to in paragraph (b),
- concerning any record or document referred to in paragraph (b), or concerning any transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the intermediary or the associated entity (as the case may be).
- (2) The requirement specified for the purposes of subsection (1) is the requirement not to contravene—
- any provision of this Ordinance;
 - any notice or requirement given or made under or pursuant to any of the relevant provisions;
 - any of the terms and conditions of any licence or registration under this Ordinance;
 - any other condition imposed under or pursuant to any provision of this Ordinance.
- (3) Subject to subsections (9) and (10), an authorized person in exercising any of his powers under subsection (1)(b) may require—
- the intermediary or the associated entity (as the case may be);
 - a related corporation of the intermediary or the associated entity (as the case may be);
 - subject to subsection (8), any other person, whether or not connected with the intermediary or the associated entity (as the case may be), whom the authorized person has reasonable cause to believe has information relating to, or is in possession of, any record or document referred to in subsection (1)(b),
- to—
- give the authorized person access to any record or document referred to in subsection (1)(b), and produce, within the time and at the place specified by him, the record or document; and
 - answer any question regarding the record or document.
- (4) Subject to subsections (9) and (10), an authorized person in exercising any of his powers under subsection (1)(c) may require the intermediary or the associated entity, the related corporation or the other person (as the case may be) referred to in subsection (1)(c), to—
- give the authorized person access to any record or document referred to in subsection (1)(b), and produce, within the time and at the place specified by him, the record or document; and
 - answer any question raised for the purposes of subsection (1)(c).

(5) 獲授權人可以書面要求根據本條給予答案的人在該要求指明的合理期間內，藉法定聲明核實該答案，而該聲明可由該獲授權人監理。

(6) 如任何人沒有按照根據本條施加的要求給予答案的理由是他不知道答案，則獲授權人可以書面要求該人在該要求指明的合理期間內，藉法定聲明核實他因該理由不能遵從或不能完全遵從（視屬何情況而定）該要求，而該聲明可由該獲授權人監理。

(7) 除非獲授權人有合理理由相信不能夠藉行使第 (1)(c)(i) 或 (ii) 款所賦權力而取得所尋求的紀錄、文件或資料，否則他不得根據第 (1)(c)(iii) 款行使其權力。

(8) 除非獲授權人有合理理由相信不能夠藉行使第 (3)(a) 或 (b) 款所賦權力而取得所尋求的紀錄、文件或資料，否則他不得根據第 (3)(c) 款行使其權力。

(9) 本條不得解釋為規定並非第 (1) 款提述的有關中介人或有關有聯繫實體（或該中介人或該實體（視屬何情況而定）的有連繫法團）的認可財務機構披露任何關於其任何顧客的事務的資料或交出關於其任何顧客的事務的紀錄或文件，但如有關當局信納並以書面證明它信納為施行本條，披露該等資料或交出該等紀錄或文件是有需要的，則不在此限。

(10) 獲授權人在根據本條（第 (1)(c)(iii) 或 (3)(c) 款除外）——

(a) 就屬以下任何類別的法團行使權力前，須諮詢金融管理專員：第一類是屬認可財務機構的法團；第二類是符合以下說明的法團：獲授權人知道該法團是某認可財務機構的控制人，或知道該法團的控制人屬認可財務機構，或知道該法團的控制人亦是某認可財務機構的控制人；或

(b) 就屬根據《保險公司條例》（第 41 章）獲授權的保險人的法團行使權力前，須諮詢保險業監督。

(11) 有關當局可為施行本條以書面授權任何人為獲授權人。

(12) 有關當局須向它授權的獲授權人發給授權書文本，而獲授權人根據本條行使權力時，須在合理地切實可行的範圍內盡快出示該授權書文本，以供查閱。

(5) An authorized person may in writing require the person giving an answer under this section to verify within a reasonable period specified in the requirement the answer by statutory declaration, which may be taken by the authorized person.

(6) If a person does not give an answer in accordance with a requirement under this section for the reason that the answer was not within his knowledge, an authorized person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.

(7) An authorized person shall not exercise any of his powers under subsection (1)(c)(iii) unless he has reasonable cause to believe that the information sought cannot be obtained by the exercise of any of the powers under subsection (1)(c)(i) or (ii).

(8) An authorized person shall not exercise any of his powers under subsection (3)(c) unless he has reasonable cause to believe that the record or document or the information sought cannot be obtained by the exercise of any of the powers under subsection (3)(a) or (b).

(9) This section shall not be construed as requiring an authorized financial institution, not being the intermediary or the associated entity in question as referred to in subsection (1) or a related corporation of the intermediary or the associated entity (as the case may be), to disclose any information or produce any record or document relating to the affairs of a customer unless the relevant authority is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of this section.

(10) Before an authorized person exercises any power under this section (other than subsection (1)(c)(iii) or (3)(c)) in respect of a corporation—

(a) where the corporation is an authorized financial institution or a corporation which, to the knowledge of the authorized person, is a controller of an authorized financial institution, or has as its controller an authorized financial institution, or has a controller that is also a controller of an authorized financial institution, the authorized person shall consult the Monetary Authority; or

(b) where the corporation is an insurer authorized under the Insurance Companies Ordinance (Cap. 41), the authorized person shall consult the Insurance Authority.

(11) The relevant authority may authorize in writing any person as an authorized person for the purposes of this section.

(12) The relevant authority shall furnish an authorized person authorized by it with a copy of his authorization, and the authorized person, when exercising any power under this section, shall as soon as reasonably practicable produce a copy of the authorization for inspection.

(13) 凡任何紀錄或文件的文本是為遵從根據本條施加的要求而提供或製成，並藉使用某人的（而非有關當局）設施而製成的，則有關當局須向他付還該當局認為是他因製作該文本而合理地招致的開支。

(14) 任何人無合理辯解而沒有遵從獲授權人根據本條向他施加的要求，即屬犯罪——

- (a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。

(15) 任何人——

- (a) 在看來是遵從獲授權人根據本條向他施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件，或給予在要項上屬虛假或具誤導性的答案；且
- (b) 知道該紀錄、文件或答案在要項上屬虛假或具誤導性，或罔顧該紀錄、文件或答案是否在要項上屬虛假或具誤導性，

即屬犯罪——

- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

(16) 任何人——

(a) 意圖詐騙而——

- (i) 沒有遵從獲授權人根據本條向他施加的要求；或
- (ii) 在看來是遵從獲授權人根據本條向他施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件，或給予在要項上屬虛假或具誤導性的答案；或

(b) 如屬法團的高級人員或僱員，意圖詐騙而致使或容許該法團——

- (i) 沒有遵從獲授權人根據本條向該法團施加的要求；或
- (ii) 在看來是遵從獲授權人根據本條向該法團施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件，或給予在要項上屬虛假或具誤導性的答案，

(13) Where a copy of any record or document is supplied or made for the purpose of complying with a requirement imposed under this section and a facility of a person other than the relevant authority is used to make the copy, the relevant authority shall reimburse the expenses which, in the opinion of the relevant authority, have been reasonably incurred by the person in making the copy.

(14) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable—

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(15) A person who—

- (a) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or gives an answer which is false or misleading in a material particular; and
 - (b) knows that, or is reckless as to whether, the record or document or the answer is false or misleading in a material particular,
- commits an offence and is liable—

- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(16) A person who—

(a) with intent to defraud—

- (i) fails to comply with a requirement imposed on him by an authorized person under this section; or
- (ii) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or gives an answer which is false or misleading in a material particular; or

(b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to—

- (i) fail to comply with a requirement imposed on it by an authorized person under this section; or
- (ii) in purported compliance with a requirement imposed on it by an authorized person under this section, produce any record or document or give an answer which is false or misleading in a material particular,

即屬犯罪——

- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 7 年；或
- (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

(17) 在本條中——

“有關當局”(relevant authority)——

(a) 在以下情況下，指金融管理專員——

- (i) 第(1)款提述的有關中介人是註冊機構；或
- (ii) 第(1)款提述的有關有聯繫實體是註冊機構的有聯繫實體；或

(b) 在其他情況下，指證監會；

“控制人”(controller)指屬《銀行業條例》(第 155 章)第 2(1)條所界定的間接控權人或大股東控權人的人；

“獲授權人”(authorized person)指根據第(11)款獲授權的人。

81. 與交易有關的資料

(1) 獲授權人可為使證監會能夠根據任何有關條文執行職能，或為協助證監會根據任何有關條文執行職能，而要求以下人士在他指明的時間內，按他指明的形式向他提交第(2)款指明的資料——

- (a) 在根據《公司條例》(第 32 章)備存的成員登記冊中登記為證券持有人的
人；
- (b) 該獲授權人有合理理由相信是持有任何證券、期貨合約、槓桿式外匯交易合約，或任何證券、期貨合約、槓桿式外匯交易合約或集體投資計劃的權益的人；
- (c) 該獲授權人有合理理由相信已直接或透過代名人、受託人或代理人，且不論是以實益擁有人、代名人、受託人或代理人身分或其他身分，而取得或處置任何證券、期貨合約、槓桿式外匯交易合約，或任何證券、期貨合約、槓桿式外匯交易合約或集體投資計劃的權益的人；

commits an offence and is liable—

- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(17) In this section—

“authorized person” (獲授權人) means a person authorized under subsection (11);

“controller” (控制人) means a person who is an indirect controller or a majority shareholder controller as defined in section 2(1) of the Banking Ordinance (Cap. 155);

“relevant authority” (有關當局) means—

(a) where—

- (i) the intermediary in question as referred to in subsection (1) is a registered institution; or
- (ii) the associated entity in question as referred to in that subsection is the associated entity of a registered institution, the Monetary Authority; or

(b) in any other case, the Commission.

181. Information relating to transactions

(1) An authorized person may, for the purpose of enabling or assisting the Commission to perform a function under any of the relevant provisions, require—

- (a) a person registered as the holder of securities in a register of members kept under the Companies Ordinance (Cap. 32);
- (b) a person whom the authorized person has reasonable cause to believe holds any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme;
- (c) a person whom the authorized person has reasonable cause to believe has acquired or disposed of any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme, whether directly or through a nominee, trustee or agent, and whether as beneficial owner, nominee, trustee, agent or otherwise;

- (d) 符合以下說明的持牌人或註冊機構：該獲授權人有合理理由相信曾有任何證券、期貨合約、槓桿式外匯交易合約，或任何證券、期貨合約、槓桿式外匯交易合約或集體投資計劃的權益透過該持牌人或註冊機構而取得、處置、處理、買賣或安排。
- (2) 為施行第(1)款而指明的資料是——
- (a) 按理能夠確立有關的人的身分的詳情(在適用範圍內，包括姓名或名稱、別名、地址、電話號碼、傳真號碼、電子郵件地址、職業及身分證文件(就並非個人的人而言，包括成立為法團的證據或登記的證據)的詳情)，而有關證券、期貨合約、槓桿式外匯交易合約，或有關證券、期貨合約、槓桿式外匯交易合約或集體投資計劃的權益現時是代該人或由該人或透過該人而持有的或是從該人取得而持有的，或曾是代該人或由該人或從該人或透過該人而取得、處置、處理、買賣或安排的，或曾是經處置而轉予該人的(視屬何情況而定)；
- (b) 有關證券、期貨合約、槓桿式外匯交易合約，或有關證券、期貨合約、槓桿式外匯交易合約或集體投資計劃的權益的詳情(包括數量)及(如屬取得或處置)代價(如有的話)；及
- (c) (a)段提述的人或該人的高級人員、僱員或代理人就有關證券、期貨合約、槓桿式外匯交易合約，或有關證券、期貨合約、槓桿式外匯交易合約或集體投資計劃的權益的持有、取得、處置、處理、買賣或安排而作出或收取的指令(如有的話)，或與上述持有、取得、處置、處理、買賣或安排有關而向該等人作出或由該等人收取的指令(如有的話)。
- (3) 獲授權人可以書面要求根據本條提交資料的人在該要求指明的合理期間內，藉法定聲明核實該等資料，而該聲明可由該獲授權人監理。
- (4) 如任何人沒有按照根據本條施加的要求提交資料的理由，是該資料是他所不知道的或並非由他管有的，則獲授權人可以書面要求該人在該要求指明的合理期間內，藉法定聲明核實他因該理由不能遵從或不能完全遵從(視屬何情況而定)該要求，而該聲明可由該獲授權人監理。

- (d) a licensed person or registered institution through whom or which the authorized person has reasonable cause to believe any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme has been acquired, disposed of, dealt with, traded or arranged, to furnish to him any of the information specified in subsection (2) within the time and in the form specified by him.
- (2) The information specified for the purposes of subsection (1) is—
- (a) the particulars (including, in so far as applicable, the name and aliases, address, telephone and facsimile numbers, electronic mail address, occupation and particulars of any document of identity (including, if not an individual, any document evidencing incorporation or registration)) that are reasonably capable of establishing the identity of the person on whose behalf, or by, from, to or through whom, the securities, futures contract, leveraged foreign exchange contract, or the interest in securities, futures contract, leveraged foreign exchange contract or collective investment scheme in question is held, or has been acquired, disposed of, dealt with, traded or arranged (as the case may be);
- (b) the particulars (including the quantity) of and, in the case of acquisition or disposal, the consideration (if any) for the securities, futures contract, leveraged foreign exchange contract, or the interest in securities, futures contract, leveraged foreign exchange contract or collective investment scheme; and
- (c) the instructions (if any) given to or by the person referred to in paragraph (a), or any officer, employee or agent of such person, in relation to the holding, acquisition, disposal, dealing, trading, arrangement of or in respect of the securities, futures contract, leveraged foreign exchange contract, or the interest in securities, futures contract, leveraged foreign exchange contract or collective investment scheme.
- (3) An authorized person may in writing require the person furnishing any information under this section to verify within a reasonable period specified in the requirement the information by statutory declaration, which may be taken by the authorized person.
- (4) If a person does not furnish any information in accordance with a requirement under this section for the reason that the information was not within his knowledge or in his possession, an authorized person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.

- (5) 證監會可為施行本條以書面授權任何人為獲授權人。
- (6) 證監會須向獲授權人發給授權書文本，而獲授權人根據本條就任何人行使權力時，須應該人要求出示該授權書文本，以供查閱。
- (7) 任何人無合理辯解而沒有遵從獲授權人根據本條向他施加的要求，即屬犯罪——
- (a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (8) 任何人——
- (a) 在看來是遵從獲授權人根據本條向他施加的要求時，提交在要項上屬虛假或具誤導性的資料；且
- (b) 知道該資料在要項上屬虛假或具誤導性，或罔顧該資料是否在要項上屬虛假或具誤導性，
- 即屬犯罪——
- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (9) 任何人——
- (a) 意圖詐騙而——
- (i) 沒有遵從獲授權人根據本條向他施加的要求；或
- (ii) 在看來是遵從獲授權人根據本條向他施加的要求時，提交在要項上屬虛假或具誤導性的資料；或
- (b) 如屬法團的高級人員或僱員，意圖詐騙而致使或容許該法團——
- (i) 沒有遵從獲授權人根據本條向該法團施加的要求；或
- (ii) 在看來是遵從獲授權人根據本條向該法團施加的要求時，提交在要項上屬虛假或具誤導性的資料，

- (5) The Commission may authorize in writing any person as an authorized person for the purposes of this section.
- (6) The Commission shall furnish an authorized person with a copy of his authorization, and the authorized person, when exercising any power under this section, shall upon request by the person in respect of whom the power is exercised produce a copy of the authorization for inspection.
- (7) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (8) A person who—
- (a) in purported compliance with a requirement imposed on him by an authorized person under this section, furnishes to the authorized person information which is false or misleading in a material particular; and
- (b) knows that, or is reckless as to whether, the information is false or misleading in a material particular,
- commits an offence and is liable—
- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (9) A person who—
- (a) with intent to defraud—
- (i) fails to comply with a requirement imposed on him by an authorized person under this section; or
- (ii) in purported compliance with a requirement imposed on him by an authorized person under this section, furnishes to the authorized person information which is false or misleading in a material particular; or
- (b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to—
- (i) fail to comply with a requirement imposed on it by an authorized person under this section; or
- (ii) in purported compliance with a requirement imposed on it by an authorized person under this section, furnish to the authorized person information which is false or misleading in a material particular,

即屬犯罪——

- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 7 年；或
- (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

(10) 在本條中——

“獲授權人” (authorized person) 指根據第 (5) 款獲授權的人；

“權益” (interest) 包括任何性質的權益，不論是法律性質、衡平法性質、所有權性質或其他性質。

第 3 分部——調查權力

182. 調查

(1) 如——

- (a) 證監會有合理理由相信有人可能已犯任何有關條文所訂罪行；
- (b) 證監會有合理理由相信有人可能已在與下述事宜有關連的情況下作出虧空、欺詐、不當行為或其他失當行為——
 - (i) 證券或期貨合約的交易或槓桿式外匯交易合約的買賣；
 - (ii) 證券、期貨合約或槓桿式外匯交易合約的投資的管理；
 - (iii) 提出槓桿式外匯交易合約或集體投資計劃的要約，或訂立該等合約或計劃；
 - (iv) 提供關於以下事宜的意見：配售證券，或證券、期貨合約或槓桿式外匯交易合約的取得、處置或投資，或證券、期貨合約、槓桿式外匯交易合約或集體投資計劃的權益的取得、處置或投資；或
 - (v) 涉及證券保證金融資的交易；
- (c) 證監會有合理理由相信可能曾發生市場失當行為；
- (d) 任何人曾經或正在從事 (b)(i) 至 (v) 段提述的任何活動，而證監會有合理理由相信該人從事該等活動的方式並不符合投資大眾的利益或公眾利益；

commits an offence and is liable—

- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(10) In this section—

“authorized person” (獲授權人) means a person authorized under subsection (5);

“interest” (權益) includes an interest of any nature, whether legal, equitable, proprietary or otherwise.

Division 3—Powers of investigations

182. Investigations

(1) Where—

- (a) the Commission has reasonable cause to believe that an offence under any of the relevant provisions may have been committed;
- (b) the Commission has reasonable cause to believe that a person may have engaged in defalcation, fraud, misfeasance or other misconduct in connection with—
 - (i) dealing in any securities or futures contract or trading in any leveraged foreign exchange contract;
 - (ii) the management of investment in any securities, futures contract or leveraged foreign exchange contract;
 - (iii) offering or making any leveraged foreign exchange contract or collective investment scheme;
 - (iv) giving advice in relation to the allotment of securities, or the acquisition or disposal of, or investment in, any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme; or
 - (v) any transaction involving securities margin financing;
- (c) the Commission has reasonable cause to believe that market misconduct may have taken place;
- (d) the Commission has reasonable cause to believe that the manner in which a person has engaged or is engaging in any of the activities referred to in paragraph (b)(i) to (v) is not in the interest of the investing public or in the public interest;

(e) 證監會——

- (i) 為考慮是否根據第 194 或 196 條行使任何權力，有理由查訊任何人是否如第 194(1) 或 (2) 或 196(1) 或 (2) 條所描述般犯失當行為或曾在任何時間犯失當行為或並非適當人選；或
- (ii) 為協助金融管理專員考慮是否根據《銀行業條例》(第 155 章) 第 58A 或 71C 條行使任何權力，有理由查訊任何人是否——
 - (A) 如該條例第 58A(1) 條所描述般犯失當行為或曾在任何時間犯失當行為或並非或不再是適當人選；或
 - (B) 如該條例第 71C(4) 條所描述般犯失當行為或曾在任何時間犯失當行為或應不再視為適當人選；

(f) 證監會有理由查訊根據第 104 或 105 條就某項認可施加的條件是否正獲遵從；或

(g) 證監會決定根據第 186 條協助調查某事宜，而該事宜按該會的意見，在性質上與 (a)、(b)、(c)、(d)、(e) 或 (f) 段所述的而該會有合理理由相信或有理由查訊 (視屬何情況而定) 的事宜相似，

則證監會可以書面指示一名或多於一名該會僱員，或在財政司司長的同意下，委任一名或多於一名其他人，以調查 (a) 至 (g) 段提述的任何事宜。

(2) 並非證監會僱員的調查員所招致的費用及開支，由立法會所撥款項支付。

(3) 證監會須向調查員發給他所獲的指示或委任 (視屬何情況而定) 的文本，而調查員根據第 183(1)、(2) 或 (3) 條向任何人首次施加要求前，須向該人交出該文本，以作查閱。

(4) 證監會在指示其任何僱員或委任任何人作出以下作為前，須諮詢金融管理專員——

- (a) 根據第 (1)(e)(i) 款調查任何事宜，但只限於該項調查是為考慮是否根據第 196 條行使任何權力的；或
- (b) 根據第 (1)(e)(ii) 款調查任何事宜。

(e) the Commission—

- (i) for the purpose of considering whether to exercise any power under section 194 or 196, has reason to inquire whether any person is or was at any time guilty of misconduct, or is not a fit and proper person, as described in section 194(1) or (2) or 196(1) or (2); or
- (ii) for the purpose of assisting the Monetary Authority to consider whether to exercise any power under section 58A or 71C of the Banking Ordinance (Cap. 155), has reason to inquire whether any person—

- (A) is or was at any time guilty of misconduct, or is not or has ceased to be a fit and proper person, as described in section 58A(1) of that Ordinance; or
- (B) is or was at any time guilty of misconduct, or should cease to be regarded as a fit and proper person, as described in section 71C(4) of that Ordinance;

(f) the Commission has reason to inquire whether any of the conditions imposed in respect of an authorization under section 104 or 105 are being complied with; or

(g) a matter in respect of the investigation of which the Commission decides to provide assistance under section 186 is, in the opinion of the Commission, of a nature similar to the matter described in paragraph (a), (b), (c), (d), (e) or (f) as that which the Commission has reasonable cause to believe or has reason to inquire (as the case may be),

the Commission may in writing direct one or more of its employees or, with the consent of the Financial Secretary, appoint one or more other persons, to investigate any of the matters referred to in paragraphs (a) to (g).

(2) The costs and expenses incurred by an investigator, other than an employee of the Commission, are to be paid out of moneys provided by the Legislative Council.

(3) The Commission shall furnish an investigator with a copy of his direction or appointment (as the case may be), and the investigator, before first imposing any requirement on a person under section 183(1), (2) or (3), shall produce a copy of the direction or appointment (as the case may be) to that person for inspection.

(4) Before the Commission directs any of its employees, or appoints any person—

- (a) to investigate any matter under subsection (1)(e)(i), to the extent that the investigation is for the purpose of considering whether to exercise any power under section 196; or
- (b) to investigate any matter under subsection (1)(e)(ii),

the Commission shall consult the Monetary Authority.

183. 調查的進行

(1) 任何受調查人，或調查員有合理理由相信是管有載有或相當可能載有與根據第 182 條所作調查有關的資料的任何紀錄或文件的人，或調查員有合理理由相信是以其他方式管有該等資料的人，須——

- (a) 在該調查員以書面合理地要求的時間內，在該調查員以書面合理地要求的地點，向該調查員交出該調查員指明的、與或可能與該項調查有關的並且是由該人所管有的紀錄或文件；
- (b) 按該調查員的要求（如有的話），就根據 (a) 段交出的紀錄或文件向該調查員提供解釋或進一步詳情；
- (c) 在該調查員以書面合理地要求的時間及地點，面見該調查員，並回答該調查員就調查中的事宜向該人提出的問題；及
- (d) 就該項調查向該調查員提供所有該人按理能夠提供的協助，包括回答該調查員提出的書面問題。

(2) 調查員可以書面要求根據本條提供或作出解釋、詳情、答案或陳述的人在該要求指明的合理期間內，藉法定聲明核實該解釋、詳情、答案或陳述，而該聲明可由該調查員監理。

(3) 如任何人沒有按照根據本條施加的要求提供或作出解釋、詳情、答案或陳述的理由，是該解釋、詳情、答案或陳述是他所不知道的或並非由他管有的，則調查員可以書面要求該人在該要求指明的合理期間內，藉法定聲明核實他因該理由不能遵從或不能完全遵從（視屬何情況而定）該要求，而該聲明可由該調查員監理。

(4) 第 182 條及本條均不得解釋為規定認可財務機構向調查員披露關於其任何顧客的事務的資料或交出關於其任何顧客的事務的紀錄或文件，但如——

- (a) 調查員有合理理由相信該顧客可能有能力提供與該項調查有關的資料；及

183. Conduct of investigations

(1) The person under investigation or a person whom the investigator has reasonable cause to believe has in his possession any record or document which contains, or which is likely to contain, information relevant to an investigation under section 182, or whom the investigator has reasonable cause to believe otherwise has such information in his possession, shall—

- (a) produce to the investigator, within the time and at the place the investigator reasonably requires in writing, any record or document specified by the investigator which is, or may be, relevant to the investigation and which is in his possession;
- (b) if required by the investigator, give the investigator an explanation or further particulars in respect of any record or document produced under paragraph (a);
- (c) attend before the investigator at the time and place the investigator reasonably requires in writing, and answer any question relating to the matters under investigation that the investigator may raise with him; and
- (d) give the investigator all assistance in connection with the investigation which he is reasonably able to give, including responding to any written question raised by the investigator.

(2) An investigator may in writing require the person giving or making an explanation, particulars, answer or statement under this section to verify within a reasonable period specified in the requirement the explanation, particulars, answer or statement by statutory declaration, which may be taken by the investigator.

(3) If a person does not give or make an explanation, particulars, answer or statement in accordance with a requirement under this section for the reason that the explanation, particulars, answer or statement was not within his knowledge or in his possession, an investigator may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the investigator, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.

(4) Neither section 182 nor this section shall be construed as requiring an authorized financial institution to disclose any information or produce any record or document relating to the affairs of a customer to the investigator unless—

- (a) the customer is a person whom the investigator has reasonable cause to believe may be able to give information relevant to the investigation; and

(b) 證監會信納並以書面證明它信納就該項調查而言，披露該等資料或交出該等紀錄或文件是有需要的，則不在此限。

(5) 調查員可向證監會作出中期調查報告，如證監會有所指示，則調查員須向該會作出中期調查報告，而在調查完成後，調查員須向該會作出最後調查報告。

(6) 證監會可在律政司司長的同意下，安排發表根據本條作出的報告。

184. 與調查有關的罪行

(1) 任何人無合理辯解而沒有——

- (a) 交出根據第 183(1)(a) 條被要求交出的紀錄或文件；
- (b) 提供根據第 183(1)(b) 條被要求提供的解釋或進一步詳情；
- (c) 遵從根據第 183(1)(c) 條作出的面見要求；
- (d) 回答根據第 183(1)(c) 條提出的問題；
- (e) 遵守第 183(1)(d) 條；或
- (f) 遵從根據第 183(2) 或 (3) 條作出的要求，

屬犯罪——

- (i) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或
- (ii) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。

(2) 任何人——

- (a) (i) 在看來是遵從根據第 183(1)(a) 條施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件；
- (ii) 在看來是遵從根據第 183(1)(b) 條施加的要求時，提供在要項上屬虛假或具誤導性的解釋或進一步詳情；
- (iii) 在看來是回答根據第 183(1)(c) 條提出的問題時，說出在要項上屬虛假或具誤導性的話語；或

(b) the Commission is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of the investigation.

(5) The investigator may, and if so directed by the Commission shall, make interim reports on his investigation to the Commission, and on the conclusion of his investigation shall make a final report on his investigation to the Commission.

(6) The Commission may, with the consent of the Secretary for Justice, cause a report under this section to be published.

184. Offences in relation to investigations

(1) A person who, without reasonable excuse—

- (a) fails to produce any record or document required to be produced under section 183(1)(a);
- (b) fails to give an explanation or further particulars required under section 183(1)(b);
- (c) fails to attend before the investigator as required under section 183(1)(c);
- (d) fails to answer a question raised by the investigator under section 183(1)(c);
- (e) fails to comply with section 183(1)(d); or
- (f) fails to comply with a requirement under section 183(2) or (3),

commits an offence and is liable—

- (i) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
- (ii) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(2) A person—

- (a) who—
 - (i) in purportedly complying with a requirement imposed by the investigator under section 183(1)(a), produces any record or document which is false or misleading in a material particular;
 - (ii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(b), gives any explanation or further particulars which are false or misleading in a material particular;
 - (iii) in purportedly answering any question raised by the investigator under section 183(1)(c), says anything which is false or misleading in a material particular; or

- (iv) 在看來是回答根據第 183(1)(d) 條提出的書面問題時，作出在要項上屬虛假或具誤導性的陳述；且
- (b) 知道該紀錄、文件、解釋、詳情、話語或陳述(視屬何情況而定)在要項上屬虛假或具誤導性，或罔顧該紀錄、文件、解釋、詳情、話語或陳述(視屬何情況而定)是否在要項上屬虛假或具誤導性，
- 即屬犯罪——
- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (3) 任何人——
- (a) 意圖詐騙而——
- (i) 沒有作出第 (1)(a)、(b)、(c)、(d)、(e) 或 (f) 款描述的作為；
- (ii) 在看來是遵從根據第 183(1)(a) 條施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件；
- (iii) 在看來是遵從根據第 183(1)(b) 條施加的要求時，提供在要項上屬虛假或具誤導性的解釋或進一步詳情；
- (iv) 在看來是回答根據第 183(1)(c) 條提出的問題時，說出在要項上屬虛假或具誤導性的話語；或
- (v) 在看來是回答根據第 183(1)(d) 條提出的書面問題時，作出在要項上屬虛假或具誤導性的陳述；或
- (b) 如屬法團的高級人員或僱員，意圖詐騙而致使或容許該法團——
- (i) 沒有作出第 (1)(a)、(b)、(c)、(d)、(e) 或 (f) 款描述的作為；
- (ii) 在看來是遵從根據第 183(1)(a) 條施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件；
- (iii) 在看來是遵從根據第 183(1)(b) 條施加的要求時，提供在要項上屬虛假或具誤導性的解釋或進一步詳情；

- (iv) in purportedly responding to any written question raised by the investigator under section 183(1)(d), states anything which is false or misleading in a material particular; and
- (b) who knows that, or is reckless as to whether, the record or document, the explanation or further particulars, the thing or the statement (as the case may be) is false or misleading in a material particular,
- commits an offence and is liable—
- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (3) A person who—
- (a) with intent to defraud—
- (i) fails to do anything as described in subsection (1)(a), (b), (c), (d), (e) or (f);
- (ii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(a), produces any record or document which is false or misleading in a material particular;
- (iii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(b), gives any explanation or further particulars which are false or misleading in a material particular;
- (iv) in purportedly answering any question raised by the investigator under section 183(1)(c), says anything which is false or misleading in a material particular; or
- (v) in purportedly responding to any written question raised by the investigator under section 183(1)(d), states anything which is false or misleading in a material particular; or
- (b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to—
- (i) fail to do anything as described in subsection (1)(a), (b), (c), (d), (e) or (f);
- (ii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(a), produce any record or document which is false or misleading in a material particular;
- (iii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(b), give any explanation or further particulars which are false or misleading in a material particular;

- (iv) 在看來是回答根據第 183(1)(c) 條提出的問題時，說出在要項上屬虛假或具誤導性的話語；或
- (v) 在看來是回答根據第 183(1)(d) 條提出的書面問題時，作出在要項上屬虛假或具誤導性的陳述，

即屬犯罪——

- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 7 年；或
- (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

(4) 任何人不得僅以遵從調查員根據第 183 條向他施加的要求可能會導致他入罪為理由，而獲豁免遵從該要求。

(5) 如根據第 182 條進行的調查導致任何人被檢控並被法庭定罪，則該法庭可命令該人向證監會繳付該項調查的全部或部分費用及開支，而該會可將全部或部分（視屬何情況而定）該等費用及開支，作為拖欠該會的民事債項予以追討。

(6) 凡證監會根據第 (5) 款所指的命令就調查的費用及開支接獲任何款額，而所有或任何該等費用及開支是由立法會所撥款項支付的，則證監會須將該款額支付予財政司司長，但以上述撥款的款額為限。

第 4 分部——雜項條文

185. 就根據第 179、180、181 或 183 條作出的
要求不獲遵從而向原訟法庭提出申請

(1) 如任何人沒有作出獲授權人根據第 179、180 或 181 條要求他作出的事情，或沒有作出調查員根據第 183(1)、(2) 或 (3) 條要求他作出的事情，則該獲授權人或調查員（視屬何情況而定）可藉原訴傳票或原訴動議，就該項不遵從而向原訟法庭提出申請，而原訟法庭可查訊有關個案，如——

- (iv) in purportedly answering any question raised by the investigator under section 183(1)(c), say anything which is false or misleading in a material particular; or
- (v) in purportedly responding to any written question raised by the investigator under section 183(1)(d), state anything which is false or misleading in a material particular,

commits an offence and is liable—

- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(4) A person is not excused from complying with a requirement imposed on the person by an investigator under section 183 only on the ground that to do so might tend to incriminate the person.

(5) Where any person is convicted by a court on a prosecution instituted as a result of an investigation under section 182, the court may order him to pay to the Commission the whole or a part of the costs and expenses of the investigation and the Commission may recover the whole or the part (as the case may be) of the costs and expenses as a civil debt due to it.

(6) Where the Commission receives an amount under an order made under subsection (5) in respect of any of the costs and expenses of an investigation, and all or any of the costs and expenses have been paid out of moneys provided by the Legislative Council, the Commission shall pay to the Financial Secretary the amount received under the order to the extent that it has already been paid out of moneys provided by the Legislative Council.

Division 4—Miscellaneous

185. Application to Court of First Instance
relating to non-compliance with
requirements under section
179, 180, 181 or 183

(1) If a person fails to do anything upon being required to do so by an authorized person under section 179, 180 or 181, or to do anything upon being required to do so by an investigator under section 183(1), (2) or (3), the authorized person or the investigator (as the case may be) may, by originating summons or originating motion, make an application to the Court of First Instance in respect of the failure, and the Court may inquire into the case and—

- (a) 原訟法庭信納該人不遵從該要求是無合理辯解的，則原訟法庭可命令該人在原訟法庭指明的期間內遵從該要求；及
- (b) 原訟法庭信納該人是在無合理辯解的情況下沒有遵從該要求的，則原訟法庭可懲罰該人及明知而牽涉入該項不遵從的任何其他人，而懲罰的方式猶如該人及（如適用的話）該其他人犯藐視法庭罪一樣。
- (2) 第 (1) 款所指的原訴傳票須採用《高等法院規則》（第 4 章，附屬法例）附錄 A 表格 10。
- (3) 不論本條及本條例其他條文有任何規定——
 - (a) 在以下情況下，不得為施行第 (1)(b) 款就某行為對某人提起法律程序——
 - (i) 過往已根據第 179、180、181 或 184 條就同一行為對該人提起刑事法律程序；及
 - (ii) (A) 該刑事法律程序仍待決；或
 - (B) 由於過往已提起該刑事法律程序，因此不得根據該條就同一行為再次合法地對該人提起刑事法律程序；
 - (b) 在以下情況下，不得根據第 179、180、181 或 184 條就某行為而對某人提起刑事法律程序——
 - (i) 過往已為施行第 (1)(b) 款就同一行為對該人提起法律程序；及
 - (ii) (A) 該法律程序仍待決；或
 - (B) 由於過往已提起該法律程序，因此不得為施行該款就同一行為再次合法地對該人提起法律程序。

186. 向香港以外地方的規管者提供協助

- (1) 凡證監會接獲在香港以外地方，且是該會認為符合第 (5)(a) 及 (b) 款提述的規定的主管當局或規管機構的請求，要求協助調查該當局或機構指明的人是否已違反或正違反符合以下說明的法律規定或規管性規定——

- (a) if the Court is satisfied that there is no reasonable excuse for the person not to comply with the requirement, order the person to comply with the requirement within the period specified by the Court; and
- (b) if the Court is satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.
- (2) An originating summons under subsection (1) shall be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg.).
- (3) Notwithstanding anything in this section and any other provisions of this Ordinance—
 - (a) no proceedings may be instituted against any person for the purposes of subsection (1)(b) in respect of any conduct if—
 - (i) criminal proceedings have previously been instituted against the person under section 179, 180, 181 or 184 in respect of the same conduct; and
 - (ii) (A) those criminal proceedings remain pending; or
 - (B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under such section in respect of the same conduct;
 - (b) no criminal proceedings may be instituted against any person under section 179, 180, 181 or 184 in respect of any conduct if—
 - (i) proceedings have previously been instituted against the person for the purposes of subsection (1)(b) in respect of the same conduct; and
 - (ii) (A) those proceedings remain pending; or
 - (B) by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person for the purposes of such subsection in respect of the same conduct.

186. Assistance to regulators outside Hong Kong

- (1) Where the Commission receives, from an authority or regulatory organization outside Hong Kong which in the opinion of the Commission satisfies the requirements referred to in subsection (5)(a) and (b), a request for assistance to investigate whether a person specified by the authority or regulatory organization has contravened or is contravening legal or regulatory requirements which—

- (a) 由該當局或機構執行或施行的；及
- (b) 關乎由該當局或機構規管的關於任何證券、期貨合約、槓桿式外匯交易合約或集體投資計劃的交易或其他相類交易的，

該會在認為第 (3) 款指明的條件已獲符合的情況下，可藉行使第 179、181、182 及 183 條所賦權力，協助調查上述事宜。

(2) 凡證監會接獲在香港以外地方，且是該會認為符合第 (5)(a) 及 (b) 款提述的界定的公司審查員的請求，要求協助調查該審查員指明的人是否已違反或正違反關於任何證券、期貨合約、槓桿式外匯交易合約或集體投資計劃的交易或其他相類交易的法律規定或規管性規定，則該會在認為第 (3) 款指明的條件已獲符合的情況下，可藉行使第 179、181、182 及 183 條所賦權力，協助調查上述事宜。

(3) 第 (1) 及 (2) 款提述的條件是——

- (a) 就維護投資大眾的利益或公眾利益而言，提供根據第 (1) 或 (2) 款（視屬何情況而定）請求的協助是可取或合宜的；或
 - (b) 所提供的協助會使受協助者能夠執行其職能或會協助受協助者執行其職能，而該等協助並不違反投資大眾的利益或公眾利益。
- (4) 在任何個案中，證監會在斷定第 (3) 款指明的條件是否已獲符合時——
- (a) 如尋求協助者屬第 (1) 款提述的主管當局或規管機構，該會須考慮該當局或機構是否會——
 - (i) 向該會支付該會因提供協助而招致的任何費用及開支；及
 - (ii) 有能力和願意因應香港方面提出的類似請求而在其管轄範圍內提供交互協助；或
 - (b) 如尋求協助者屬第 (2) 款提述的公司審查員，該會須考慮——
 - (i) 該審查員是否會向該會支付該會因提供協助而招致的任何費用及開支；及

- (a) the authority or regulatory organization enforces or administers; and
- (b) relate to such transactions regarding any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or other similar transactions as are regulated by the authority or regulatory organization,

the Commission may, where it is of the opinion that the condition specified in subsection (3) is satisfied, provide the assistance to investigate the matter by exercising any of its powers under sections 179, 181, 182 and 183.

(2) Where the Commission receives, from a companies inspector outside Hong Kong who in the opinion of the Commission satisfies the requirements referred to in subsection (5)(a) and (b), a request for assistance to investigate whether a person specified by the companies inspector has contravened or is contravening legal or regulatory requirements which relate to transactions regarding any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or other similar transactions, the Commission may, where it is of the opinion that the condition specified in subsection (3) is satisfied, provide the assistance to investigate the matter by exercising any of its powers under sections 179, 181, 182 and 183.

(3) The condition referred to in subsections (1) and (2) is that—

- (a) it is desirable or expedient that the assistance requested under subsection (1) or (2) (as the case may be) should be provided in the interest of the investing public or in the public interest; or
- (b) the assistance will enable or assist the recipient of the assistance to perform its or his functions and it is not contrary to the interest of the investing public or to the public interest that the assistance should be provided.

(4) In deciding whether the condition specified in subsection (3) is satisfied in a particular case, the Commission shall take into account—

- (a) where the recipient of the assistance is an authority or regulatory organization referred to in subsection (1), whether the authority or regulatory organization will—
 - (i) pay to the Commission any of the costs and expenses incurred in providing the assistance; and
 - (ii) be able and willing to provide reciprocal assistance within its jurisdiction in response to a comparable request for assistance from Hong Kong; or
- (b) where the recipient of the assistance is a companies inspector referred to in subsection (2), whether—
 - (i) the companies inspector will pay to the Commission any of the costs and expenses incurred in providing the assistance; and

(ii) 根據委任該審查員的國家或地區的法律，是否會因應香港方面提出的類似請求而提供交互協助。

(5) 凡證監會就第 (1) 或 (2) 款信納在香港以外地方的主管當局、規管機構或公司審查員——

(a) 執行任何與該會或公司註冊處處長的職能相似的職能，或規管、監管或調查銀行服務、保險服務或其他財經服務或法團事務；及

(b) 已受足夠保密條文規限，

則該會須隨即在合理地切實可行的範圍內，盡快安排在憲報刊登該當局、機構或審查員（視屬何情況而定）的名稱或姓名。

(6) 任何人如須——

(a) 按第 179 條所指的獲授權人於依據第 (1) 或 (2) 款行使第 179 條所賦權力時作出的要求，而提供或作出解釋、陳述或說明；或

(b) 按調查員於依據第 (1) 或 (2) 款行使第 183 條所賦權力時作出的要求，而提供解釋或進一步詳情，或回答調查員於如此行使該等權力時提出的問題，

而該解釋或陳述或說明、該解釋或詳情或該答案（視屬何情況而定）可能會導致該人入罪，而該人在提供或作出該解釋或陳述或說明、提供該解釋或詳情或給予該答案（視屬何情況而定）前又聲稱如此，則在不局限第 187 條的原則下，該獲授權人或調查員（視屬何情況而定）不得向任何在香港以外地方的主管當局、規管機構或公司審查員提供該要求及該解釋或陳述或說明、該解釋或詳情或該問題及答案（視屬何情況而定）的證據，以供在該當局、機構或審查員（視屬何情況而定）的管轄範圍內在針對該人而提起的刑事法律程序中使用。

(7) 凡證監會從香港以外地方的主管當局、規管機構或公司審查員接獲一筆就根據本條提供協助所招致的任何費用及開支而支付的款額，而所有或任何該等費用及開支是由立法會所撥款項支付的，則證監會須將該款額支付予財政司司長，但以上述撥款的款額為限。

(ii) under the laws of the country or territory in which the companies inspector is appointed, reciprocal assistance will be provided in response to a comparable request for assistance from Hong Kong.

(5) Where the Commission is satisfied, for the purposes of subsection (1) or (2), that an authority, regulatory organization or companies inspector outside Hong Kong—

(a) performs any function similar to a function of the Commission or the Registrar of Companies, or regulates, supervises or investigates banking, insurance or other financial services or the affairs of corporations; and

(b) is subject to adequate secrecy provisions,

the Commission shall as soon as reasonably practicable thereafter cause the name of the authority, regulatory organization or companies inspector (as the case may be) to be published in the Gazette.

(6) If a person is required—

(a) to provide or make an explanation or statement as required by an authorized person within the meaning of section 179 exercising pursuant to subsection (1) or (2) a power under section 179; or

(b) to give an explanation or further particulars as required by, or to give an answer to any question as raised by, an investigator exercising pursuant to subsection (1) or (2) a power under section 183,

and the explanation or statement, the explanation or further particulars, or the answer (as the case may be) might tend to incriminate him and he so claims before providing or making the explanation or statement, giving the explanation or further particulars, or giving the answer (as the case may be), then, without limiting the provisions of section 187, the authorized person or investigator (as the case may be) shall not provide evidence of the requirement and the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be) to an authority, regulatory organization or companies inspector outside Hong Kong for use in criminal proceedings against him in the jurisdiction of the authority, regulatory organization or companies inspector (as the case may be).

(7) Where the Commission receives from an authority, regulatory organization or companies inspector outside Hong Kong an amount paid in respect of any of the costs and expenses incurred in providing assistance under this section, and all or any of the costs and expenses have been paid out of moneys provided by the Legislative Council, the Commission shall pay to the Financial Secretary the amount received to the extent that it has already been paid out of moneys provided by the Legislative Council.

(8) 根據第 (5) 款刊登的材料不是附屬法例。

(9) 在本條中，“公司審查員”(companies inspector)就香港以外任何地方而言，指根據該地方的法律，所具有的職能包括調查在該地方經營業務的法團的事務的人。

187. 導致入罪的證據在法律程序中的使用

(1) 凡——

(a) 第 179 條所指的獲授權人根據該條要求任何人提供或作出解釋、陳述或說明；或

(b) 調查員根據第 183 條要求任何人提供解釋或進一步詳情或回答問題，該獲授權人或調查員(視屬何情況而定)須確保該人已先獲告知或提醒(視屬何情況而定)關於第 (2) 款就該要求及該解釋或陳述或說明、該解釋或詳情或該問題及答案(視屬何情況而定)作為證據的可接納性所訂下的限制。

(2) 不論本條例其他條文有任何規定，凡——

(a) 第 179 條所指的獲授權人根據該條要求任何人提供或作出解釋、陳述或說明；或

(b) 調查員根據第 183 條要求任何人提供解釋或進一步詳情或回答問題，而該解釋或陳述或說明、該解釋或詳情或該答案(視屬何情況而定)可能會導致該人入罪，而該人在提供或作出該解釋或陳述或說明、提供該解釋或詳情或給予該答案(視屬何情況而定)前又聲稱如此，則該要求及該解釋或陳述或說明、該解釋或詳情或該問題及答案(視屬何情況而定)不得在法院進行的刑事法律程序中接納為針對該人的證據，但如該人就該解釋或陳述或說明、該解釋或詳情或該答案(視屬何情況而定)而被控犯第 179(13)、(14) 或 (15) 或 184 條或第 219(2)(a)、253(2)(a) 或 254(6)(a) 或 (b) 條或《刑事罪行條例》(第 200 章)第 V 部所訂罪行或被控犯作偽證供罪，則就該等罪行而進行的刑事法律程序屬例外。

(8) Any matter published under subsection (5) is not subsidiary legislation.

(9) In this section, “companies inspector” (公司審查員), in relation to a place outside Hong Kong, means a person whose functions under the laws of that place include the investigation of the affairs of a corporation carrying on business in that place.

187. Use of incriminating evidence in proceedings

(1) Where—

(a) an authorized person within the meaning of section 179 requires a person to provide or make an explanation or statement under that section; or

(b) an investigator requires a person to give an explanation or further particulars or to give an answer to any question under section 183,

the authorized person or the investigator (as the case may be) shall ensure that the person has first been informed or reminded (as the case may be) of the limitations imposed by subsection (2) on the admissibility in evidence of the requirement and of the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be).

(2) Notwithstanding any other provisions of this Ordinance, where—

(a) an authorized person within the meaning of section 179 requires a person to provide or make an explanation or statement under that section; or

(b) an investigator requires a person to give an explanation or further particulars or to give an answer to any question under section 183,

and the explanation or statement, the explanation or further particulars, or the answer (as the case may be) might tend to incriminate the person and the person so claims before providing or making the explanation or statement, giving the explanation or further particulars, or giving the answer (as the case may be), then the requirement as well as the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be) shall not be admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged with an offence under section 179(13), (14) or (15) or 184, or under section 219(2)(a), 253(2)(a) or 254(6)(a) or (b), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the explanation or statement, the explanation or further particulars, or the answer (as the case may be).

188. 聲稱對紀錄或文件擁有的留置權

凡任何人管有根據本部要求交出的任何紀錄或文件，而該人聲稱對該等紀錄或文件有留置權，則——

- (a) 交出該等紀錄或文件的要求，並不受該留置權影響；
- (b) 無須因該項交出或就該項交出而支付任何費用；及
- (c) 交出該等紀錄或文件並不損害該留置權。

189. 交出在資訊系統內的資料等

凡任何資料或材料載於根據本部要求交出的紀錄或文件，但並非以可閱讀形式記錄，則本部所授予要求交出紀錄或文件的權力，包括要求交出以下述形式將該等資料或材料或其有關部分重現而製成的版本的權力——

- (a) (如記錄該等資料或材料的方式能使該等資料或材料以可閱讀形式重現) 以可閱讀形式；及
- (b) (如該等資料或材料記錄於資訊系統) 以能使該等資料或材料以可閱讀形式重現的形式。

190. 查閱被檢取的紀錄或文件等

凡調查員或第 179、180 或 181 條所指的獲授權人根據本部管有任何紀錄或文件，他須在符合他就保安或其他方面而施加的合理條件下，准許如該等紀錄或文件沒有根據本部被他管有便會有權查閱該等紀錄或文件的人，在任何合理時間查閱該等紀錄或文件，及將該等紀錄或文件複印或以其他方式記錄其中的細節。

191. 裁判官手令

- (1) 裁判官如根據——
 - (a) 證監會僱員，或(就根據第 180 條行使權力的情況而言) 第 180 條所指的有關當局的僱員；或
 - (b) 調查員或第 179 或 180 條所指的獲授權人，

188. Lien claimed on records or documents

Where the person in possession of any record or document required to be produced under this Part claims a lien on the record or document—

- (a) the requirement to produce the record or document shall not be affected by the lien;
- (b) no fees shall be payable for or in respect of the production; and
- (c) the production shall be without prejudice to the lien.

189. Production of information in information systems, etc.

Where any information or matter contained in any record or document required to be produced under this Part is recorded otherwise than in a legible form, any power conferred by this Part to require the production of the record or document includes the power to require the production of a reproduction of the recording of the information or matter or of the relevant part of it—

- (a) where the recording enables the information or matter to be reproduced in a legible form, in a legible form; and
- (b) where the information or matter is recorded in an information system, in a form which enables the information or matter to be reproduced in a legible form.

190. Inspection of records or documents seized, etc.

Where an authorized person within the meaning of section 179, 180 or 181 or an investigator has taken possession of any record or document under this Part, the authorized person or the investigator (as the case may be) shall, subject to any reasonable conditions he imposes as to security or otherwise, permit a person who would be entitled to inspect the record or document had he not taken possession of it under this Part, to inspect it and to make copies or otherwise record details of it at all reasonable times.

191. Magistrate's warrants

- (1) If a magistrate is satisfied on information on oath laid by—
 - (a) an employee of the Commission or, where the exercise of powers under section 180 is concerned, of the relevant authority within the meaning of that section; or
 - (b) an authorized person within the meaning of section 179 or 180, or an investigator,

經宣誓而作的告發，信納有合理理由懷疑在該項告發指明的處所內，有或相當可能有任何紀錄或文件是根據本部可要求交出的，則該裁判官可發出手令，授權警務人員、手令指明的人及為協助執行該手令而需要其他人——

- (i) 在自該手令日期起計的 7 日內，隨時進入該處所，如有必要，可強行進入；及
 - (ii) 搜尋、檢取和移走警務人員或該手令指明的人有合理理由相信是根據本部可要求交出的任何紀錄或文件。
- (2) 根據第 (1) 款發出的手令所指明的人或所授權的警務人員或其他人，可——
- (a) 要求身處在手令指明的處所內而他合理理由相信是在與正在或曾經在該處所經營的業務有關連的情況下受僱的人，交出該人所管有而他合理理由相信是根據本部可要求交出的任何紀錄或文件，以供查驗；
 - (b) 禁止在手令指明的處所內發現的人——
 - (i) 將根據 (a) 段要求交出的任何紀錄或文件移離該處所；
 - (ii) 刪除、增添或以其他方式更改載於該等紀錄或文件的記項或其他詳情，或以任何方式干擾該等紀錄或文件，或致使或准許其他人干擾該等紀錄或文件；
 - (c) 就任何根據 (a) 段要求交出的紀錄或文件採取任何他覺得屬必要的其他步驟，以保存該等紀錄或文件及防止它受干擾。
- (3) 根據本條移走的紀錄或文件可在自移走當日起計的 6 個月內予以保留，如該等紀錄或文件為刑事法律程序或根據本條例提起的法律程序所需要，或可能為該等程序所需要，則可為該等法律程序的目的而保留所需的較長期間。
- (4) 凡任何人根據本條移走任何紀錄或文件，該人須隨即在合理地切實可行的範圍內盡快為此發出收據，並可准許如該等紀錄或文件沒有被移走便會有權查閱該等紀錄或文件的人，在任何合理時間查閱該等紀錄或文件，及將該等紀錄或文件複印或以其他方式記錄其中的細節。

that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document which may be required to be produced under this Part, the magistrate may issue a warrant authorizing a person specified in the warrant, a police officer, and such other persons as may be necessary to assist in the execution of the warrant to—

- (i) enter the premises so specified, if necessary by force, at any time within the period of 7 days beginning on the date of the warrant; and
 - (ii) search for, seize and remove any record or document which the person specified in the warrant or police officer has reasonable cause to believe may be required to be produced under this Part.
- (2) A person specified in, or a police officer or any other person authorized by, a warrant issued under subsection (1) may—
- (a) require any person on the premises specified in the warrant whom he has reasonable cause to believe to be employed in connection with a business which is, or which has been, conducted on the premises to produce for examination any record or document which is in the possession of the person and which he has reasonable cause to believe may be required to be produced under this Part;
 - (b) prohibit any person found on the premises specified in the warrant from—
 - (i) removing from the premises any record or document required to be produced under paragraph (a);
 - (ii) erasing, adding to or otherwise altering an entry or other particulars contained in, or otherwise interfering in any manner with, or causing or permitting any other person to interfere with, the record or document;
 - (c) take, in relation to any record or document required to be produced under paragraph (a), any other step which may appear necessary for preserving it and preventing interference with it.
- (3) Any record or document removed under this section may be retained for any period not exceeding 6 months beginning on the day of its removal or, where the record or document is or may be required for criminal proceedings or for any proceedings under this Ordinance, for such longer period as may be necessary for the purposes of those proceedings.
- (4) Where a person removes any record or document under this section, he shall as soon as reasonably practicable thereafter give a receipt for it, and he may permit any person who would be entitled to inspect it but for the removal to inspect the record or document and to make copies or otherwise record details of it at all reasonable times.

(5) 《刑事訴訟程序條例》(第 221 章) 第 102 條適用於已憑藉本條歸證監會或(就根據第 180 條行使權力的情況而言) 第 180 條所指的有關當局管有的財產，一如該條適用於已歸警方管有的財產。

(6) 任何人——

(a) 無合理辯解而沒有遵從根據第 (2) 款作出的要求或禁止；或

(b) 妨礙任何人行使第 (2) 款授予的權力，

即屬犯罪。

(7) 任何人犯第 (6) 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 2 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。

192. 文件的銷毀等

(1) 任何人意圖向根據本部要求交出任何紀錄或文件的人隱瞞可由該等紀錄或文件披露的事實或事情，而銷毀、捏改、隱藏或以其他方式處置該等紀錄或文件，或致使或准許他人作出該等作為，即屬犯罪。

(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 2 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。

第 IX 部

紀律等

第 1 分部——釋義

193. 第 IX 部的釋義

(1) 在本部中，除文意另有所指外——

“公司登記冊”(register of companies) 指《公司條例》(第 32 章) 第 291 條所指的登記冊，或根據該條例第 333 條備存的海外公司登記冊；

(5) Section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to any property which has by virtue of this section come into the possession of the Commission or, where the exercise of powers under section 180 is concerned, of the relevant authority within the meaning of that section, as it applies to property which has come into the possession of the police.

(6) A person commits an offence if he—

(a) without reasonable excuse, fails to comply with a requirement or prohibition under subsection (2); or

(b) obstructs a person exercising a power conferred by subsection (2).

(7) A person who commits an offence under subsection (6) is liable—

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

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

192. Destruction of documents, etc.

(1) A person commits an offence if he destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or document required to be produced under this Part, with intent to conceal, from the person by whom the requirement to produce was imposed, facts or matters capable of being disclosed by the record or document.

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

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

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

PART IX

DISCIPLINE, ETC.

Division 1—Interpretation

193. Interpretation of Part IX

(1) In this Part, unless the context otherwise requires—
“misconduct” (失當行為) means—

(a) a contravention of any of the relevant provisions;

“失當行為”(misconduct)指——

- (a) 違反任何有關條文；
- (b) 違反根據本條例批給的任何牌照或註冊的任何條款或條件；
- (c) 違反根據或依據本條例任何條文施加的任何其他條件，或違反根據《銀行業條例》(第 155 章)第 71C(2)(b) 或 (9) 或 71E(3) 條附加或修訂的任何條件；或
- (d) 與某人進行他獲發牌或獲註冊進行的受規管活動有關的作為或不作為，而按證監會的意見，該作為或不作為是有損或相當可能有損投資大眾的利益或公眾利益的，

而“犯失當行為”(guilty of misconduct)須據此解釋。

(2) 在本部中，如某中介人因作出某行為，而屬犯或曾在任何時間屬犯第 (1) 款中“失當行為”的定義的 (a)、(b)、(c) 或 (d) 段所指的失當行為，而該行為是在——

- (a) (就持牌法團而言)以——
 - (i) 該法團的負責人員；或
 - (ii) 參與該法團的業務的管理的人；或
- (b) (就註冊機構而言)以——
 - (i) 該機構的主管人員；或
 - (ii) 參與構成該機構現時或曾經(視屬何情況而定)獲註冊進行的受規管活動的業務的管理的人，

身分行事的另一人的同意或縱容下發生，或是可歸因於該另一人的怠忽的，則該行為亦視為該另一人的失當行為，而“犯失當行為”亦須據此解釋。

(3) 就第 (1) 款中“失當行為”的定義的 (d) 段而言，除非證監會已顧及在根據第 169 條刊登及發表的任何操守守則或根據第 399 條刊登及發表的任何守則或指引中所列的、就有關作為或不作為適用的、並在有關作為或不作為發生時有效的條文，否則不得得出該等作為或不作為是有損或相當可能有損投資大眾的利益或公眾利益的意見。

- (b) a contravention of any of the terms and conditions of any licence or registration under this Ordinance;
- (c) a contravention of any other condition imposed under or pursuant to any provision of this Ordinance, or of any condition attached or amended under section 71C(2)(b) or (9) or 71E(3) of the Banking Ordinance (Cap. 155); or
- (d) an act or omission relating to the carrying on of any regulated activity for which a person is licensed or registered which, in the opinion of the Commission, is or is likely to be prejudicial to the interest of the investing public or to the public interest,

and “guilty of misconduct” (犯失當行為) shall be construed accordingly; “register of companies” (公司登記冊) means the register within the meaning of section 291 of the Companies Ordinance (Cap. 32) or a register of overseas companies kept under section 333 of that Ordinance.

(2) In this Part, where an intermediary is, or was at any time, guilty of misconduct within the meaning of paragraph (a), (b), (c) or (d) of the definition of “misconduct” in subsection (1) as a result of the commission of any conduct occurring with the consent or connivance of, or attributable to any neglect on the part of—

- (a) in the case of a licensed corporation, another person as—
 - (i) a responsible officer of the licensed corporation; or
 - (ii) a person involved in the management of the business of the licensed corporation; or
- (b) in the case of a registered institution, another person as—
 - (i) an executive officer of the registered institution; or
 - (ii) a person involved in the management of the business constituting any regulated activity for which the registered institution is or was (as the case may be) registered,

the conduct shall also be regarded as misconduct on the part of that other person, and “guilty of misconduct” shall also be construed accordingly.

(3) For the purposes of paragraph (d) of the definition of “misconduct” in subsection (1), the Commission shall not form any opinion that any act or omission is or is likely to be prejudicial to the interest of the investing public or to the public interest, unless it has had regard to such of the provisions set out in any code of conduct published under section 169 or any code or guideline published under section 399 as are in force at the time of occurrence of, and applicable in relation to, the act or omission.

第 2 分部——紀律等

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列權力——
- (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。

Division 2—Discipline, etc.

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;

- (vi) 該持牌人的任何董事根據《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
- (vii) 該持牌人的任何董事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；
- (c) 持牌人不進行該項撤銷或暫時吊銷(視屬何情況而定)所關乎的受規管活動或其中部分活動；或
- (d) 持牌人請求證監會如此撤銷或暫時吊銷該牌照。
- (2) 在符合第 198 條的規定下，並在不局限第 (1) 款的一般性的原則下，證監會可在以下情況下，就第 7 類受規管活動或該類活動中的任何部分，撤銷持牌人的牌照——
 - (a) 證監會根據第 118(1)(c) 條要求該持牌人應根據第 95(2) 條就該類活動申請認可；而
 - (b) (i) 該持牌人沒有按照該要求根據第 95(2) 條申請認可，或該持牌人已以其他方式告知證監會他不擬根據第 95(2) 條申請認可；或
 - (ii) 該持牌人已根據第 95(2) 條申請認可，但該項申請不獲批准。
- (3) 在以下情況下，有關牌照當作被撤銷——
 - (a) 持牌人屬個人，而該持牌人去世；或
 - (b) 持牌人是法團，而該持牌人已清盤、自公司登記冊中剔除，或以其他方式解散。
- (4) 除第 (5) 款另有規定外，在以下情況下，有關牌照當作被暫時吊銷——
 - (a) 持牌人沒有在他須根據第 138 條繳付年費之日後 3 個月內全數繳付該年費，或沒有在該 3 個月內繳付因他沒有全數繳付該年費而致他根據該條

- (vi) any of the directors of the licensed person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136), which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed; or
- (vii) any of the directors of the licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed;
- (c) the licensed person does not carry on the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the revocation or suspension (as the case may be) relates; or
- (d) the licensed person requests the Commission to so revoke or suspend the licence.
- (2) Subject to section 198, but without limiting the generality of subsection (1), the Commission may revoke a licensed person's licence in relation to Type 7 regulated activity or any part thereof if—
 - (a) the Commission has required under section 118(1)(c) that the licensed person should apply for an authorization under section 95(2) for that regulated activity; and
 - (b) (i) the licensed person has failed to make an application for the authorization under section 95(2) in accordance with the requirement, or has otherwise informed the Commission that he proposes not to make an application for the authorization under section 95(2); or
 - (ii) the licensed person has made an application for the authorization under section 95(2), but the application is not granted.
- (3) A licence shall be deemed to be revoked if—
 - (a) where the licensed person is an individual, the licensed person dies; or
 - (b) where the licensed person is a corporation, the licensed person is wound up, struck off the register of companies or is otherwise dissolved.
- (4) Subject to subsection (5), a licence shall be deemed to be suspended if—
 - (a) the licensed person fails to make full payment of any annual fee payable by him under section 138, or any additional sum payable by him under that section as a result of any default in making full payment of any annual fee payable by him under

須繳付的附加款項；或

- (b) 持牌人沒有在他須根據第 138 條呈交周年申報表之日後 3 個月內呈交該申報表，

而除第 (6) 款另有規定外，暫時吊銷屬持續有效，直至證監會認為該牌照不應再被暫時吊銷並藉表明此意的書面通知告知持牌人為止。

- (5) 在以下條件獲符合前，任何牌照不得根據第 (4) 款當作被暫時吊銷——

- (a) (就根據第 (4)(a) 款因沒有全數繳付任何年費或附加款項一事而當作暫時吊銷的情況而言) 證監會已在該項暫時吊銷生效前給予不少於 10 個營業日的書面通知，告知持牌人須全數繳付有關年費或附加款項 (視屬何情況而定)，以及如沒有遵從該規定則根據本條會有何後果；或
- (b) (就根據第 (4)(b) 款因沒有呈交周年申報表一事而當作暫時吊銷的情況而言) 證監會已在該項暫時吊銷生效前給予不少於 10 個營業日的書面通知，告知持牌人須呈交周年申報表，以及如沒有遵從該規定則根據本條會有何後果。

(6) 如任何牌照根據第 (4) 款被暫時吊銷，而第 (4)(a) 或 (b) 款 (視屬何情況而定) 描述的事件在該項暫時吊銷根據第 (4) 款生效之日後 30 日內仍未補救，或在證監會藉向有關持牌人發出書面通知而指明的較長限期內仍未補救，該牌照即當作被撤銷。

(7) 在符合第 198 條的規定下，如持牌法團的負責人員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人作為留任負責人員的人選的適當性，該會可——

- (a) 撤銷根據第 126(1) 條就該人成為該負責人員而給予該人的核准；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。

that section, within 3 months after the due date for payment of the annual fee under that section; or

- (b) the licensed person fails to submit an annual return required to be submitted by him under section 138 within 3 months after the due date for submission of the annual return under that section,

and, subject to subsection (6), the suspension shall remain in force until such time as the Commission considers it appropriate that the licence should no longer be suspended and informs the licensed person to that effect by notice in writing.

(5) A licence shall not be regarded as suspended under subsection (4) unless and until—

- (a) in the case of a suspension under subsection (4)(a) by reference to any failure to make full payment of any annual fee or additional sum, the Commission has, by notice in writing given not less than 10 business days before the suspension is to take effect, informed the licensed person of the requirement to make full payment of the annual fee or additional sum (as the case may be), and of the consequence of the failure to comply with the requirement under this section; or
- (b) in the case of a suspension under subsection (4)(b) by reference to any failure to submit an annual return, the Commission has, by notice in writing given not less than 10 business days before the suspension is to take effect, informed the licensed person of the requirement to submit the annual return, and of the consequence of the failure to comply with the requirement under this section.

(6) Where a licence is suspended under subsection (4) and the event described in subsection (4)(a) or (b) (as the case may be) has not been remedied within 30 days after the day on which the suspension becomes effective under subsection (4), or such further period as the Commission may specify by notice in writing to the licensed person, the licence shall be deemed to be revoked.

(7) Subject to section 198, where a person who is a responsible officer of a licensed corporation is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the person to remain such a responsible officer, the Commission may—

- (a) revoke the approval granted under section 126(1) in respect of the person as such a responsible officer; or
- (b) suspend such approval for such period or until the occurrence of such event as the Commission may specify.

196. 就註冊機構等採取紀律行動

(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) 如該受規管人士是註冊機構——

- (A) 就該受規管人士獲註冊進行的所有或任何受規管活動或其中任何部分，撤銷該項註冊；或
- (B) 就該受規管人士獲註冊進行的所有或任何受規管活動或其中任何部分，將該項註冊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；

(ii) 公開地或非公開地譴責該受規管人士；

(iii) 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。

(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，

196. Disciplinary action in respect of registered institutions, 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 registered institution—

- (A) revoke its registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered; or
- (B) suspend its registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered for such period or until the occurrence of such event as the Commission may specify;

(ii) publicly or privately reprimand the regulated person;

(iii) 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) 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,

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) 在不損害金融管理專員根據《銀行業條例》(第155章)行使任何權力的原則下，證監會可就金融管理專員根據該條例第58A(1)或71C(4)條行使其任何權力方面，向金融管理專員作出該會認為適當的建議。

(8) 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) 註冊機構；
- (b) 註冊機構的主管人員；

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) Without prejudice to the exercise by the Monetary Authority of any powers under the Banking Ordinance (Cap. 155), the Commission may make such recommendations to the Monetary Authority in respect of the exercise by the Monetary Authority of any of his powers under sections 58A(1) and 71C(4) of that Ordinance as the Commission considers appropriate.

(8) 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 registered institution;
- (b) an executive officer of a registered institution;
- (c) a person involved in the management of the business constituting any regulated activity for which a registered institution is or was (as the case may be) registered; or
- (d) an individual whose name is or was (as the case may be) 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;

- (c) 參與構成註冊機構現時或曾經(視屬何情況而定)獲註冊進行的受規管活動的業務的管理的人；或
- (d) 現時或曾經(視屬何情況而定)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註冊機構就某類受規管活動聘用的個人。

197. 在其他情況下就註冊機構等採取紀律行動

(1) 在符合第 198 條的規定下，證監會可在以下情況下，就註冊機構獲註冊進行的所有或任何受規管活動或其中任何部分，撤銷該項註冊或將該項註冊暫時撤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) (i) 有人獲委任為該機構的財產或業務的接管人或經理人；
- (ii) 該機構沒有清償某項實施執行所涉及的款項；
- (iii) 該機構與債權人作出債務妥協或債務償還安排；
- (iv) 該機構正在清盤或被下令清盤；
- (v) 該機構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機構作為繼續獲註冊的人選的適當性；
- (b) 該機構不進行該項撤銷或暫時撤銷(視屬何情況而定)所關乎的受規管活動或其中部分活動；或
- (c) 該機構請求證監會如此撤銷或暫時撤銷該項註冊。

(2) 在符合第 198 條的規定下，並在不局限第(1)款的一般性的原則下，證監會可在以下情況下，就第 7 類受規管活動或該類活動中的任何部分，撤銷註冊機構的註冊——

- (a) 證監會根據第 119(8)(b) 條要求該機構應根據第 95(2) 條就該類活動申請認可；而

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

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

197. Other circumstances for disciplinary action in respect of registered institutions, etc.

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

- (a) if—
 - (i) a receiver or manager of the property or business of the registered institution is appointed;
 - (ii) the registered institution fails to satisfy a levy of execution;
 - (iii) the registered institution enters into a compromise or scheme of arrangement with its creditors;
 - (iv) the registered institution goes into liquidation or is ordered to be wound up;
 - (v) the registered institution 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 registered institution to remain registered;
- (b) if the registered institution does not carry on the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the revocation or suspension (as the case may be) relates; or
- (c) if the registered institution requests the Commission to so revoke or suspend the registration.

(2) Subject to section 198, but without limiting the generality of subsection (1), the Commission may revoke a registered institution's registration in relation to Type 7 regulated activity or any part thereof if—

- (a) the Commission has required under section 119(8)(b) that the registered institution should apply for an authorization under section 95(2) for that regulated activity; and

- (b) (i) 該機構沒有按照該要求根據第 95(2) 條申請認可，或該機構已以其他方式告知證監會它不擬根據第 95(2) 條申請認可；或
(ii) 該機構已根據第 95(2) 條申請認可，但該項申請不獲批准。
- (3) 在以下情況下，註冊機構的註冊當作被撤銷——
(a) 該機構不再是認可財務機構；或
(b) 該機構已清盤、自公司登記冊中剔除，或以其他方式解散。
- (4) 除第 (5) 款另有規定外，如註冊機構沒有在該機構須根據第 138 條繳付年費之日後 3 個月內全數繳付該年費，或沒有在該 3 個月內繳付因它沒有全數繳付該年費而致它根據該條須繳付的附加款項，該機構的註冊即當作被暫時撤銷，而除第 (6) 款另有規定外，暫時撤銷屬持續有效，直至證監會認為該項註冊不應再被暫時撤銷並藉表明此意的書面通知告知該機構為止。
- (5) 在以下條件獲符合前，任何註冊不得因沒有全數繳付年費或附加款項一事而根據第 (4) 款當作被暫時撤銷：證監會已在該項暫時撤銷生效前給予不少於 10 個營業日的書面通知，告知註冊機構須全數繳付有關年費或附加款項（視屬何情況而定），以及如沒有遵從該規定則根據本條會有何後果。
- (6) 如任何註冊根據第 (4) 款被暫時撤銷，而在該款所述的沒有全數繳付年費或附加款項之事在該項暫時撤銷根據該款生效之日後 30 日內仍未補救，或在證監會藉向有關註冊機構發出書面通知而指明的較長限期內仍未補救，該項註冊即當作被撤銷。

- (b) (i) the registered institution has failed to make an application for the authorization under section 95(2) in accordance with the requirement, or has otherwise informed the Commission that it proposes not to make an application for the authorization under section 95(2); or
(ii) the registered institution has made an application for the authorization under section 95(2), but the application is not granted.
- (3) The registration of a registered institution shall be deemed to be revoked if—
(a) the registered institution ceases to be an authorized financial institution; or
(b) the registered institution is wound up, struck off the register of companies or is otherwise dissolved.
- (4) Subject to subsection (5), the registration of a registered institution shall be deemed to be suspended if the registered institution fails to make full payment of any annual fee payable by it under section 138, or any additional sum payable by it under that section as a result of any default in making full payment of any annual fee payable by it under that section, within 3 months after the due date for payment of the annual fee under that section, and, subject to subsection (6), the suspension shall remain in force until such time as the Commission considers it appropriate that the registration should no longer be suspended and informs the registered institution to that effect by notice in writing.
- (5) Any registration shall not be regarded as suspended under subsection (4) by reference to any failure to make full payment of any annual fee or additional sum, unless and until the Commission has, by notice in writing given not less than 10 business days before the suspension is to take effect, informed the registered institution of the requirement to make full payment of the annual fee or additional sum (as the case may be), and of the consequence of the failure to comply with the requirement under this section.
- (6) Where any registration is suspended under subsection (4) and the failure to make full payment of the annual fee or additional sum described in that subsection has not been remedied within 30 days after the day on which the suspension becomes effective under that subsection, or such further period as the Commission may specify by notice in writing to the registered institution, the registration shall be deemed to be revoked.

第 3 分部——雜項條文

198. 有關根據第 IX 部行使權力的
程序規定

(1) 證監會在根據第 194(1) 或 (2)、195(1)(a)、(b) 或 (c)、(2) 或 (7)、196(1) 或 (2) 或 197(1)(a) 或 (b) 或 (2) 條就某人行使權力之前，須給予該人合理的陳詞機會。

(2) 證監會在根據第 196(1) 或 (2) 或 197(1) 或 (2) 條行使權力之前，須諮詢金融管理專員。

(3) 如證監會決定根據第 194(1) 或 (2)、195(1)、(2) 或 (7)、196(1) 或 (2) 或 197(1) 或 (2) 條就某人行使權力，須藉書面通知將該決定告知該人；該通知須包括——

- (a) 述明作出該決定的理由；
- (b) 載有該決定的生效時間；
- (c) (在適用範圍內) 載有根據該決定將施加的撤銷、暫時吊銷、暫時撤銷或禁止的持續期及條款；
- (d) (在適用範圍內) 載有根據該決定該人將受譴責的內容；及
- (e) (在適用範圍內) 載有根據該決定將判處的罰款金額以及須繳付該罰款的限期 (即指明為該決定根據第 232 條作為指明決定而生效後的一段期間)。

199. 根據第 194(2) 或 196(2) 條行使職能的指引

(1) 除非符合以下規定，否則證監會不得根據第 194(2) 或 196(2) 條執行其職能——

- (a) 該會已在憲報刊登並以該會認為適當的其他方式發表指引，顯示該會擬採用何種方式執行該等職能；及
- (b) 該會在執行該等職能時，已顧及如此刊登及發表的指引。

(2) 在不規限可加入證監會認為有關的任何其他因素的原則下，根據第 (1) 款刊登及發表的指引須包括證監會在根據第 194(2) 或 196(2) 條執行職能時須考慮的以下因素——

- (a) 有關受規管人士的行為是否屬蓄意、罔顧後果或疏忽的；

Division 3—Miscellaneous

198. Procedural requirements in respect of exercise
of powers under Part IX

(1) The Commission shall not exercise any power under section 194(1) or (2), 195(1)(a), (b) or (c), (2) or (7), 196(1) or (2) or 197(1)(a) or (b) or (2) without first giving the person in respect of whom the power is to be exercised a reasonable opportunity of being heard.

(2) The Commission shall not exercise any power under section 196(1) or (2) or 197(1) or (2) unless it has first consulted the Monetary Authority.

(3) Where the Commission decides to exercise any power under section 194(1) or (2), 195(1), (2) or (7), 196(1) or (2) or 197(1) or (2), the Commission shall inform the person in respect of whom the power is exercised of its decision to do so by notice in writing, and the notice shall include——

- (a) a statement of the reasons for which the decision is made;
- (b) the time at which the decision is to take effect;
- (c) in so far as applicable, the duration and terms of any revocation, suspension or prohibition to be imposed under the decision;
- (d) in so far as applicable, the terms in which the person is to be reprimanded under the decision; and
- (e) in so far as applicable, the amount of any pecuniary penalty to be imposed under the decision and the period (being specified as a period after the decision has taken effect as a specified decision under section 232) within which it is required to be paid.

199. Guidelines for performance of functions
under section 194(2) or 196(2)

(1) The Commission shall not perform any of its functions under section 194(2) or 196(2) unless——

- (a) it has published, in the Gazette and in any other manner it considers appropriate, guidelines to indicate the manner in which it proposes to perform such functions; and
- (b) in performing such functions, it has had regard to the guidelines so published.

(2) Without prejudice to the inclusion of any other factors that the Commission may consider relevant, guidelines published under subsection (1) shall include the following as factors that the Commission shall take into account in performing any of its functions under section 194(2) or 196(2)——

- (a) whether the conduct of the regulated person in question was intentional, reckless or negligent;

- (b) 該行為是否損害證券及期貨市場的廉潔穩健；
 - (c) 該行為是否對任何其他人士造成損失或使任何其他人士承擔支出；及
 - (d) 該行為是否導致該受規管人士或任何其他人士得到利益。
- (3) 根據第 (1) 款刊登及發表的指引不是附屬法例。

200. 根據第 IX 部作出的暫時吊銷或暫時撤銷的效果

- (1) 如某人的牌照根據第 194 或 195 條就該人獲發牌進行的所有或任何受規管活動或其中任何部分而被暫時吊銷，則在不損害本條例中就該項暫時吊銷而適用的任何條文的原則下，在暫時吊銷的期間——
- (a) 就本條例條文 (第 114 條除外) 而言，該人繼續視為獲發牌進行該等受規管活動或該部分活動；及
 - (b) 在不局限 (a) 段的一般性的原則下，該人須繼續遵守本條例中關於持牌人而在該牌照假若沒有被暫時吊銷的情況下本會適用於該人的條文。
- (2) 如某人獲核准成為某持牌法團的負責人員，而該項核准根據第 194 或 195 條被暫時撤銷，則在不損害本條例中就該項暫時撤銷而適用的任何條文的原則下，在暫時撤銷的期間——
- (a) 就本條例條文 (第 118 及 125 條除外) 而言，該人繼續視為該持牌法團的負責人員；及
 - (b) 在不局限 (a) 段的一般性的原則下，該人須繼續遵守本條例中關於負責人員而在該項核准假若沒有被暫時撤銷的情況下本會適用於該人的條文。
- (3) 如某人的註冊，根據第 196 或 197 條就該人獲註冊進行的所有或任何受規管活動或其中任何部分而被暫時撤銷，則在不損害本條例中就該項暫時撤銷而適用的任何條文的原則下，在暫時撤銷的期間——

- (b) whether the conduct damaged the integrity of the securities and futures market;
- (c) whether the conduct caused loss to, or imposed costs on, any other person; and
- (d) whether the conduct resulted in a benefit to the regulated person or any other person.

(3) Guidelines published under subsection (1) are not subsidiary legislation.

200. Effect of suspension under Part IX

- (1) If a licence of a person is suspended under section 194 or 195 in relation to all or any, or any part of all or any, of the regulated activities for which the person is licensed, then, without prejudice to any provision of this Ordinance which has application in relation to the suspension, the person shall, during the period of the suspension—
- (a) continue to be regarded for the purposes of the provisions of this Ordinance, but not section 114, to be licensed for the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the suspension relates; and
 - (b) without limiting the generality of paragraph (a), continue to be required to comply with such provisions of this Ordinance relating to a licensed person as would apply to the person were the licence not so suspended.
- (2) If an approval of a person as a responsible officer of a licensed corporation is suspended under section 194 or 195, then, without prejudice to any provision of this Ordinance which has application in relation to the suspension, the person shall, during the period of the suspension—
- (a) continue to be regarded for the purposes of the provisions of this Ordinance, but not sections 118 and 125, to be such a responsible officer; and
 - (b) without limiting the generality of paragraph (a), continue to be required to comply with such provisions of this Ordinance relating to a responsible officer as would apply to the person were the approval not so suspended.
- (3) If any registration of a person is suspended under section 196 or 197 in relation to all or any, or any part of all or any, of the regulated activities for which the person is registered, then, without prejudice to any provision of this Ordinance which has application in relation to the suspension, the person shall, during the period of the suspension—

- (a) 就本條例條文(第 114 條除外)而言,該人繼續視為獲註冊進行該等受規管活動或該部分活動;及
- (b) 在不局限 (a) 段的一般性的原則下,該人須繼續遵守本條例中關於註冊機構而在該項註冊假若沒有被暫時撤銷的情況下本會適用於該人的條文。

(4) 在某人的牌照根據本條例任何條文被暫時吊銷期間(不論是就該人獲發牌進行的所有或任何受規管活動或其中任何部分被暫時吊銷),該牌照仍可根據第 194 或 195 條被撤銷。

(5) 在准許某人成為某持牌法團的負責人員的核准根據本條例任何條文被暫時撤銷期間,該項核准仍可根據第 194 或 195 條被撤銷。

(6) 在某人的註冊根據本條例任何條文被暫時撤銷期間(不論是就該人獲註冊進行的所有或任何受規管活動或其中任何部分被暫時撤銷),該項註冊仍可根據第 196 或 197 條被撤銷。

201. 關於根據第 IX 部行使權力的一般條文

(1) 證監會在根據第 194(1) 或 (2)、195(1)、(2) 或 (7)、196(1) 或 (2) 或 197(1) 或 (2) 條作出決定時,可顧及該會管有的任何與該決定有關的資料或材料,不論該會如何得以管有該等資料或材料。

(2) 根據本部撤銷或暫時吊銷任何牌照或撤銷或暫時撤銷任何註冊,不具有以下效力——

(a) 廢止或影響由有關的持牌人或註冊機構(視屬何情況而定)訂立的協議、交易或安排,不論該協議、交易或安排是在撤銷或暫時吊銷或暫時撤銷之前或之後訂立的;

(b) 影響根據該協議、交易或安排產生的權利、義務或法律責任。

(3) 證監會如在任何時間考慮根據第 194(1) 或 (2)、195(1)(a)、(b) 或 (c)、(2) 或 (7)、196(1) 或 (2) 或 197(1)(a) 或 (b) 或 (2) 條就某人行使權力,並認為就維護投資大眾的利益或公眾利益而言,作出以下作為是適當的,則可與該人達成協議,作出以下作為——

- (a) continue to be regarded for the purposes of the provisions of this Ordinance, but not section 114, to be registered for the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the suspension relates; and
- (b) without limiting the generality of paragraph (a), continue to be required to comply with such provisions of this Ordinance relating to a registered institution as would apply to the person were the registration not so suspended.

(4) A licence of a person may be revoked under section 194 or 195 notwithstanding that, at the time of revocation, the licence is suspended, whether in relation to all or any, or any part of all or any, of the regulated activities for which the person is licensed, under any provision of this Ordinance.

(5) An approval of a person as a responsible officer of a licensed corporation may be revoked under section 194 or 195 notwithstanding that, at the time of revocation, the approval is suspended under any provision of this Ordinance.

(6) Any registration of a person may be revoked under section 196 or 197 notwithstanding that, at the time of revocation, the registration is suspended, whether in relation to all or any, or any part of all or any, of the regulated activities for which the person is registered, under any provision of this Ordinance.

201. General provisions relating to exercise of powers under Part IX

(1) In reaching a decision under section 194(1) or (2), 195(1), (2) or (7), 196(1) or (2) or 197(1) or (2), the Commission may have regard to any information or material in its possession which is relevant to the decision, regardless of how the information or material has come into its possession.

(2) The revocation or suspension of any licence or registration under this Part does not operate so as to—

(a) avoid or affect an agreement, transaction or arrangement entered into by the licensed person or registered institution (as the case may be) whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension;

(b) affect a right, obligation or liability arising under the agreement, transaction or arrangement.

(3) Where at any time the Commission is contemplating exercising any power in respect of a person under section 194(1) or (2), 195(1)(a), (b) or (c), (2) or (7), 196(1) or (2) or 197(1)(a) or (b) or (2), it may, where it considers it appropriate to do so in the interest of the investing public or in the public interest, by agreement with the person—

- (a) 行使該會根據本部可就該人行使的任何權力(不論該等權力是否與該會考慮行使的權力相同);及
- (b) 採取證監會認為就有關個案的情況而言屬適當的進一步行動。
- (4) 證監會如根據第(3)款就某人行使權力或採取進一步行動——
 - (a) 該會須遵守第 198(2) 及 (3) 條, 猶如第 198(2) 及 (3) 條除適用於根據該條指明的條文行使權力的情況外, 亦在作出必要的變通後適用於根據第(3)款採取任何進一步行動一樣;及
 - (b) 在該人同意下, 該會無須遵守第 198(1) 條。
- (5) 本部任何條文均不影響原訟法庭根據或依據第 211、212、213 或 214 條作出任何命令或行使任何其他權力的權力。

202. 在牌照或註冊被撤銷或暫時吊銷或暫時撤銷後, 須轉移紀錄

- (1) 凡任何牌照或註冊根據本部被撤銷、暫時吊銷或暫時撤銷, 證監會可藉書面通知, 要求獲批給該牌照或該項註冊(視屬何情況而定)的人將證監會在該通知合理地指明的並與客戶資產有關或與該人的客戶的事務有關而由該人在任何時間為該客戶持有的紀錄, 以該會在該通知合理地指明的方式轉移予該客戶或該客戶指定的人。
- (2) 任何人無合理辯解而沒有遵從根據第(1)款向他施加的要求, 即屬犯罪, 一經定罪, 可處罰款 \$200,000 及監禁 2 年。
- (3) 在本條中, “客戶”(client) 就第(1)款提述的人而言, 指在該人屬中介人的任何時候, 根據附表 1 第 1 部第 1 條中“客戶”的定義屬該人客戶的人。

203. 在牌照或註冊被撤銷或暫時吊銷或暫時撤銷後, 准許進行業務運作

- (1) 凡任何牌照或註冊根據本部被撤銷、暫時吊銷或暫時撤銷, 證監會可藉書面通知, 准許獲批給該牌照或該項註冊(視屬何情況而定)的人於證監會在該通知指明的條件(如有的話)的規限下——

- (a) exercise any power the Commission may exercise in respect of the person under this Part (whether or not the same as the power the exercise of which has been contemplated); and
- (b) take such additional action as it considers appropriate in the circumstances of the case.
- (4) Where the Commission exercises any power or takes any additional action in respect of a person under subsection (3)—
 - (a) it shall comply with section 198(2) and (3), as if section 198(2) and (3), in addition to applying to the exercise of power under the sections specified therein, also applies with necessary modifications to the taking of any additional action under subsection (3); and
 - (b) subject to the agreement of the person, it is not obliged to comply with section 198(1).
- (5) Nothing in this Part affects the power of the Court of First Instance to make any order or exercise any other power under or pursuant to section 211, 212, 213 or 214.

202. Requirement to transfer records upon revocation or suspension of licence or registration

- (1) Where any licence or registration is revoked or suspended under this Part, the Commission may by notice in writing require the person to whom the licence or registration (as the case may be) was granted to transfer to, or to the order of, his client such records relating to client assets or to the affairs of the client held at any time for the client, in such manner, as the Commission may reasonably specify in the notice.
- (2) A person who, without reasonable excuse, fails to comply with a requirement imposed on him under subsection (1) commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 2 years.
- (3) In this section, “client” (客戶), in relation to a person referred to in subsection (1), means any person who, at any time when the first-mentioned person was an intermediary, was a client of the first-mentioned person under the definition of “client” in section 1 of Part 1 of Schedule 1.

203. Permission to carry on business operations upon revocation or suspension of licence or registration

- (1) Where any licence or registration is revoked or suspended under this Part, the Commission may by notice in writing permit the person to whom the licence or registration (as the case may be) was granted to—

- (a) (就撤銷牌照或註冊的情況而言) 為結束與該項撤銷有關連的業務的目的而進行業務運作；或
- (b) (就暫時吊銷牌照或暫時撤銷註冊的情況而言) 在暫時吊銷或暫時撤銷的期間，只為保障該人的客戶或(如該人是持牌代表) 該人所隸屬的持牌法團的客戶的權益的目的而進行必要的業務運作。
- (2) 不論第 200(1) 條有任何規定，如證監會根據第 (1) 款向某人批給准許，則該人不得因按照該項准許進行業務運作而視為違反第 114 條。
- (3) 根據第 (1) 款批給的准許，及依據該款施加的條件，在就該項准許或施加而給予的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。

第 X 部

干預的權力及法律程序

第 1 分部——干預的權力

204. 限制業務

- (1) 在符合第 207 條的規定下，證監會可藉書面通知——
- (a) 禁止持牌法團——
- (i) 訂立屬指明種類或不屬指明種類的交易，或在指明情況下或在指明情況以外的情況下訂立交易，或在指明範圍內或在指明範圍以外訂立交易；
- (ii) 向屬指明種類或不屬指明種類的人招攬生意；
- (iii) 以指明方式或以指明方式以外的方式經營業務；
- (b) 要求持牌法團以(並只以) 指明方式經營業務。
- (2) 根據本條施加於任何持牌法團的禁止或要求，可涉及以下一項或兩項事宜——

- (a) in the case of a revocation, carry on business operations for the purpose of closing down the business connected with the revocation; or
- (b) in the case of a suspension, carry on only essential business operations for the protection of interests of clients of the person or, in the case of a licensed representative, of the licensed corporation to which the person is accredited, during the period of suspension,
- subject to such conditions as the Commission may specify in the notice.
- (2) Notwithstanding section 200(1), where the Commission has granted a permission to a person under subsection (1), the person shall not, by reason of its carrying on business operations in accordance with the permission, be regarded as having contravened section 114.
- (3) Any permission granted under subsection (1), and the imposition of conditions pursuant to that subsection, take effect at the time of the service of the notice given in respect thereof or at the time specified in the notice, whichever is the later.

PART X

POWERS OF INTERVENTION AND PROCEEDINGS

Division 1—Powers of intervention

204. Restriction of business

- (1) Subject to section 207, the Commission may by notice in writing——
- (a) prohibit a licensed corporation from——
- (i) entering into transactions of a specified description or other than of a specified description, or entering into transactions in specified circumstances or other than in specified circumstances, or entering into transactions to a specified extent or other than to a specified extent;
- (ii) soliciting business from persons of a specified description or from persons other than of a specified description;
- (iii) carrying on business in a specified manner or other than in a specified manner;
- (b) require a licensed corporation to carry on business in, and only in, a specified manner.
- (2) A prohibition or requirement imposed on a licensed corporation under this section may relate to either or both of the following——